

DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR THE  
MOUNTAIN VISTA COMMUNITY  
IN COLORADO SPRINGS, CO

## **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MOUNTAIN VISTA COMMUNITY**

This Declaration of covenants, conditions and restrictions of Mountain Vista ("Declaration") is made as of February 15, 2019 by Challenger Communities, LLC, a Colorado limited liability company ("Declarant")

### **BACKGROUND AND PURPOSE**

This Declaration is executed and recorded (a) in furtherance of a common and general plan for those parcels of land described in Exhibit A attached hereto (the initial "Community Area") and all other real property subsequently included within the Community Area; [b] to protect and enhance the quality, value, desirability and attractiveness of all property within the Community Area; and (c) to define duties, powers and rights of the Declarant and owners of property within the Community Area.

The Community Area is known as Mountain Vista, a residential development in the City of Colorado Springs, El Paso County, Colorado.

### **DECLARATION**

NOW, THEREFORE, Declarant, for itself, its successors and assigns, hereby declares that the Community Area is and shall henceforth be owned, held, encumbered, leased, improved, used, occupied, enjoyed and conveyed subject to the following uniform covenants, conditions and restrictions in furtherance of a general plan for the subdivision, ownership, improvement, sale, use and occupancy of the Community Area, and to enhance the value, desirability and attractiveness of this development. This Declaration is intended to and shall run with the land and shall be binding on all persons having or acquiring any interest in the Community Area or any part thereof; shall inure to the benefit of and be binding upon every part of the Community Area and every interest therein; and shall inure to the benefit of, be binding upon and be enforceable by Declarant, its successors in interest, each Owner and such Owner's successors in interest.

#### **Article I. DEFINITIONS**

Section 1.01 The following words and phrases when used herein shall have the meanings hereinafter specified.

Section 1.02 Architectural Committee (AC) shall mean the committee created pursuant to Article 5.

Section 1.03 Community Documents shall mean this Declaration and any amendments thereto; Plats; Design Guidelines; and Rules and Regulations.

Section 1.04 Builder shall mean any Person purchasing a Lot for constructing a Home to be sold to an Owner, or any Person hired by an Owner to construct a Home on the Owner's Lot.

Section 1.05 Community Area shall initially mean the real property described Exhibit A attached hereto and all real property that Declarant makes subject to this Declaration in the future pursuant to a document recorded in the records of El Paso County, Colorado.

Section 1.06 Declarant shall mean Challenger Communities, LLC, a Colorado limited liability company and a person or entity to which Declarant, specifically assigns all or a portion of its rights or obligations as Declarant under this Declaration by written document recorded in the records of El Paso County, Colorado, and its successors and assigns. A successor to Challenger Communities, LLC, by consolidation or merger shall automatically be deemed a successor or assign of Challenger Communities, LLC, as Declarant under this Declaration.

Section 1.07 Design Guidelines shall mean the architectural, construction, structural and/or aesthetic criteria, rules or standards, if any, established by the Architectural Committee and adopted by the Mountain Vista Metropolitan District from time to time that will apply to Improvements within all or specified portions of the Community Area.

Section 1.08 Expansion Area is that area listed on Exhibit B which may be added to this Declaration.

Section 1.09 Home shall mean an Improvement on a lot that is intended to be used for residential occupancy.

Section 1.10 Improvement shall mean anything which alters the previously existing exterior appearance of any land, all structures and appurtenances thereto including, but not limited to, Homes, buildings, outbuildings, patios, swimming pools, garages, doghouses, pet enclosures, mailboxes, aerials, antennas, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning units, water softener fixtures or equipment, and poles, tanks, pipes, lines, meters, towers and other facilities used in connection with water, sewer, gas, electric, telephone, radio, television (including cable or satellite systems), or other utilities.

Section 1.11 Landscape shall mean the treatment of ground surface with live plant materials or decorative surfacing materials approved by the Architectural Committee and shall include related irrigation or watering systems.

Section 1.12 Lot shall mean a parcel of land designated as a lot, a separate parcel of land, improved or unimproved, in a recorded Plat within the Community Area, together with all appurtenances and Improvements associated therewith, now existing or subsequently created.

Section 1.13 Mountain Vista Metropolitan shall mean that Title 32 Special District established by court order in accordance with the Service Plan dated July 12, 2006 as it has or will be amended and adopted by the City of Colorado Springs.

Section 1.14 Owner shall mean the record title holder, including Declarant, whether one or more Persons, of fee simple title to a Lot.

Section 1.15 Period of Declarant Control shall mean the first to occur of: i) a period of twenty (20) years commencing on the date of recordation of this Declaration; ii) the date when Declarant no longer owns any real property within the Community Area; or iii) the date when Declarant records a document terminating the Period of Declarant Control in the records of El Paso County, Colorado.

Section 1.16 Person shall mean a natural individual, trust or legal entity with the legal right to hold title to real property.

Section 1.17 Pet shall mean and include any dogs, cats, birds, reptiles, or other household animals as may be further defined in or supplemented by the Rules and Regulations.

Section 1.18 Plans shall mean all documents designed to guide or control an Improvement or other proposals in question, including but not limited to those indicating size, shape, configuration or materials, all site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utilities services and all other documentation or information relevant to the Improvement or proposal in question.

Section 1.19 Plat shall mean a governmentally approved and recorded map of land that is part of the Community Area. All such Plats are incorporated herein by reference and include a part hereof as though attached as an Exhibit.

Section 1.20 Rebuilding or Restoration means restoring an Improvement to substantially the same condition it was prior to damage, and with the same boundaries as before.

Section 1.21 Rules and Regulations shall mean those written instruments, however identified, if any, adopted by the Board as provided in Section 6.07(d) of this Declaration, for the regulation and management of the community, and as the same may be amended from time to time.

## **Article II. DEVELOPMENT AND EXPANSION**

Section 2.01 Subdivision and Development by Declarant. All lands and Improvements contained within the Community Area shall be subject to this Declaration. Declarant shall, however, have absolute and complete discretion with respect to the designation of Lots and the way the planning and build-out of the Mountain Vista development is to progress.

Section 2.02 Expansion. During the Period of Declarant Control, Declarant may, at any time and from time to time, add to the real property which is the subject of this Declaration and which becomes a part of the Community Area. Such land need not be contiguous to land already subject to this Declaration and may include single family residential development on lots that are configured differently from the Lots in the initial phase and which may be subject to additional

covenant, rules, restrictions and assessments. Additional real property described in a recorded document that incorporates this Declaration, including any amendments to this Declaration specific to the additional real property, will become part of the Community Area, and subject to this Declaration. Expansion of the Community Area is not necessarily limited to the currently designated Expansion Area.

Section 2.03 Withdrawal. Declarant reserves the right to withdraw any real property within the Community Area, including without limitation, all or any portion of the Expansion Area, from the jurisdiction of this Declaration, if consent is obtained from the owner of the real property to be withdrawn.

## **Article 111. COVENANTS TO PRESERVE THE CHARACTER OF THE COMMUNITY**

Section 3.01 All real property within the Community Area shall be owned, held, conveyed, encumbered, leased, used, occupied and enjoyed subject to the limitations contained in this Article. These covenants are adopted to preserve the desirability, attractiveness and value of property in the Community Area, and to assure the continuing quality and maintenance of common areas and facilities that benefit the residents of the Community Area. The following restrictions and conditions shall apply to all land that is now or may hereafter be subject to this Declaration.

Section 3.02 General. All Homes, buildings and structures of any kind shall be constructed, installed and maintained in compliance with City of Colorado Springs, Colorado standards, ordinances, rules and regulations after obtaining all required permits and licenses, and in accordance with Design Guidelines, as those may be amended from time to time. Except as otherwise provided for herein, all Lots shall be used only for residential purposes and ancillary uses thereto.

Section 3.03 Improvements. All Improvements placed on a Lot shall be subject to prior approval in writing by the Architectural Committee, as further defined in Article 5 of this Declaration.

Section 3.04 Construction.

(a) Construction Type. All construction shall be new. Any building previously used at another location or any building or Improvement originally constructed as a mobile dwelling may not be moved onto a Lot except as expressly provided in Section 3.07 for temporary construction, sales or administration buildings or as approved by the Architectural Committee.

(b) Minimum Home Size. The minimum ground floor or footprint area of a Home, exclusive of open porches, basements and garages, shall be 1,000 square feet for a one-story dwelling, and 600 square feet for a dwelling of more than one story.

(c) Storage. Building materials may not be stored on any Lot except temporarily during continuous construction of a building or its alteration or improvement, unless such building materials are stored in an enclosed area and fully screened; except that Declarant and Builders,

with the prior written approval of Declarant, may store building materials, supplies and equipment on their own land in the Community Area.

(d) Construction Rules and Regulations. During the period of construction of a Home, building or other Improvement on a Lot, the Owner of the Lot or the Builder shall comply with all construction rules and regulations which Declarant or the Architectural Committee may establish from time to time.

(e) Construction Completion. All construction work shall be prosecuted diligently and continuously from the time of commencement until fully completed. The exterior of all Homes, buildings or Improvements must be completed within ten (10) months after the commencement of construction, or such other time as the Architectural Committee deems reasonable under the circumstances due to the nature of the project or other factors. "Commencement of Construction" for a Home or building is defined as the obtaining of necessary building permits and the excavation of earth for a foundation and shall be defined as the undertaking of any visible exterior work, for all other Improvements. If construction is not completed within the above time periods or such later time as approved by the Architectural Committee, the Architectural Committee may take further action as provided for in this Declaration.

(f) Occupancy. Any Home or building constructed on a Lot shall not be occupied during original construction until the applicable building authority authorizes such occupancy.

(g) Landscaping. Within six (6) months after occupancy of a Home on a Lot, all Landscaping shown on a landscaping plan approved by the Architectural Committee must be properly installed unless extensions to this deadline are granted based on weather conditions.

(h) Fences or Walls. Fences or Walls must be constructed in compliance with the Design Guidelines.

(i) Construction of Sales Offices. Temporary buildings for construction or administration purposes or for sales offices may be erected or maintained by a Builder with the permission of the Architectural Committee. Model homes may be used and exhibited by a Builder with the permission of the Architectural Committee. Temporary buildings shall be promptly removed when they cease to be used for construction or sales purposes.

U) Utilities. All utilities serving a Lot will be placed underground. Declarant reserves the right to locate main transmission lines above ground if determined to be advisable. The Architectural Committee may grant approval for temporary above ground utility service during construction.

Section 3.05 Mining and Drilling. No portion of the Community Area may be used for mining, quarrying, drilling, boring or exploring or for removing oil, gas or other hydrocarbons, water, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth. Excavations and earthwork related to the drilling of wells and the construction of Improvements within the Community Area will not be deemed a violation of this Section. Any of the activities permitted under this Section shall be conducted in such a manner as to cause subsidence on adjacent portions of the Community Area or as to interfere with Improvements previously constructed on portions of the Community Area adjacent to such activities.

Section 3.06 Rebuilding or Restoration. If any Improvement is destroyed in whole or in part, it must be rebuilt, or all debris must be removed, and the Lot restored to a safe and attractive condition. Such rebuilding or restoration must be commenced within thirty (30) days after the damage or destruction occurs and thereafter diligently pursued to completion within a reasonable time, not to exceed ten (10) months after the date the damage occurred or such longer period as may be approved by the Architectural Committee. If restoration or rebuilding is not completed within the above time periods or such later time approved by the Architectural Committee, or if the restoration or rebuilding shall cease for a period of twenty (20) consecutive days without permission of the Architectural Committee, the Architectural Committee may give written notice to the Owner that unless the restoration is diligently pursued within the ten (10) days following notice, the Improvement will be declared a nuisance and the Association shall have the right to enter on the Lot and remove, rebuild or restore the Improvements at the Owner's expense, or take such other action pursuant to this Declaration or the Community Documents.

Section 3.07 Declarant Exemption. During the Period of Declarant Control, this Declaration will not prevent or limit the right of Declarant to construct any and all types of Improvements or to construct and maintain model homes, sales offices, management offices and similar facilities; to post signs incidental to construction, sales and leasing within the Community Area; and to store construction materials, supplies and equipment on land controlled by Declarant, or to grant similar rights described in this Section 3.07 to a Builder,

#### **Article IV. LIVING ENVIRONMENT STANDARDS**

Section 4.01 Building and Grounds Maintenance. The exterior of all Improvements and grounds of a Lot must be maintained by the Owner in a state of good condition and repair. Such obligation includes, but is not limited to, maintaining the exterior materials and finishes of the Improvements, fencing, Landscaping, drainage areas, driveways and sidewalks. Irrigation of Landscaping will follow any applicable City of Colorado Springs watering ordinance. If an Owner fails to maintain the Improvements, written notice may be given to the Owner that, unless the required maintenance is diligently pursued within the ten (10) days following such notice, the property will be declared a nuisance.

Section 4.02 Garage Doors. Owners should keep their garage doors closed except when being used for ingress and egress to or from the garage or when the garage is being actively attended for cleaning, etc.

Section 4.03 Outside Storage. Equipment, tools and other items should be stored in an enclosed building or otherwise adequately screened so as not to be visible from neighboring properties or adjoining streets. A shed used for outside storage must be placed in the rear yard and not be closer to any public or private street than the home or neighboring home.

Section 4.04 Carports, Patio Covers, Outdoor Clotheslines, Swing sets and Other Similar Structures. These structures or other similar facilities may only be installed on a Lot in accordance with the Design Guidelines or as approved by the Architectural Committee.

Section 4.05 Refuse. Unsightly objects or materials, including but not limited to ashes, trash, garbage, grass or shrub clippings, scrap material or other refuse, or containers for such items, must not be stored, accumulated or deposited outside or to be visible from any neighboring property or adjoining street, except during hours of refuse collection.

Section 4.06 Nuisances. Noxious, hazardous or offensive activity must not be carried in or upon any Lot, Home or Improvement, nor may anything be done on a Lot tending to cause unreasonable embarrassment, discomfort, annoyance, nuisance or disturbance to any Owner or which may unreasonably interfere with the peaceful enjoyment or possession or the proper use of a Lot, Home or Improvement or any portion of the Community Area.

Section 4.07 Lights, Sounds, and Odors. Lights that are unreasonably bright or cause unreasonable glare and sounds or odors that are noxious or offensive to others are not permitted to emanate from any Lot.

Section 4.08 Weeds. The entire area of every Lot on which no Improvement has been constructed must be kept free from plants and weeds infected with noxious insects or plant diseases and from weeds which, in the reasonable opinion of the Board or the Architectural Committee, constitute a nuisance or are likely to cause the spread of infection or weeds to neighboring property, and free from brush or other growth which creates an undue danger of fire.

Section 4.09 Grading Patterns. Material changes shall not be made in the ground level, slope, pitch or drainage patterns of any Lot as fixed by the original finish grading without the prior approval of the Architectural Committee. Grading shall always be maintained to conduct irrigation and surface waters away from buildings and to protect foundations and footings from excess moisture. In the event it is necessary or desirable to change the established drainage over any Lot then the party responsible for the maintenance of such real property shall submit a plan to the Architectural Review Committee for its review and recommendation to the Board, by which such plan is to be approved in accordance with Article 5 herein.

Section 4.10 Animals. No animals or livestock of any kind shall be raised, bred or kept upon any Lot. So long as allowed by applicable county or other governmental regulations, chickens may be kept or raised on a Lot, but Roosters are not allowed. Pets may be kept in reasonable number as determined by the Board, provided that the number of Pets kept on a Lot shall not exceed four (4) animals. No animal of any kind shall be permitted which, in the opinion of the Board, makes an unreasonable amount of noise or odor or is otherwise a nuisance. All animals must be physically leashed with the leash in the hands of a responsible individual when animals are not on the Owner's Lot. No animals may be kept, bred or maintained on a Lot for any commercial purpose. The Owner of a Lot upon which an animal is kept is responsible for payment of any and all damage caused to the property of others. Owners are responsible for cleaning up after their pets.

Section 4.11 Vehicles.

(a) Parking. A boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle (including any vehicle with signage and/or ladder racks), mobile home, motor homes, any towed



trailer unit, motorcycle, all-terrain vehicle, recreational vehicle or truck shall not be parked on any street or within any Lot except within a completely enclosed Improvement for longer than 72 hours unless approved by the Architectural Committee and in compliance with the Design Guidelines.

(b) Vehicle Repairs. The maintenance, servicing, repair, dismantling, sanding or repairing of any type of vehicle, boat, machine, apparatus, trailer, equipment or device should be done in a manner that limits the sight and sound of the activity from adjoining streets and from neighboring property.

(c) Abandoned or Inoperable Vehicles and Equipment. Any type of stripped down, partially wrecked, abandoned, unlicensed, inoperable or other similar vehicle boat, machine, apparatus, trailer, equipment or device, or any sizeable part thereof which has not been driven under its own propulsion for a period of 72 hours or longer, shall not be permitted to be placed anywhere within the Community Area except within a completely enclosed Improvement..

Section 4.12 Signs. Any sign, poster, billboard, advertising device or display of any kind shall be erected or maintained on a Lot unless in compliance with the Design Guidelines. One professionally lettered "For Sign" or "For Rent" sign not more than five (5) square feet and one professionally lettered security or alarm sign not exceeding one (1) square foot shall be displayed on a Lot.

Section 4.13 Outdoor Burning. Outside burning of leaves, trash, garbage or household refuse is not permitted. Fires in barbecues and outside fireplaces contained within facilities or receptacles intended for such purpose will be allowed, and any outside facilities intended for use as a fireplace or to contain fires will follow Design Guidelines or otherwise approved by the Architectural Committee. An Owner must not permit any condition on a Lot that creates a fire hazard or is in violation of fire prevention regulations adopted by the City of Colorado Springs or any governmental authority having jurisdiction and control over outside burning. If any ban on outdoor fires is at any time imposed by the City or other governmental authority, such ban shall be observed within the Community Area.

Section 4.14 Temporary Buildings. A temporary house, trailer, tent, garage or other outbuilding will not be placed or erected on a Lot or used as a residence. The Architectural Committee may grant permission for the placement of a temporary structure for storage of materials during construction on a Lot.

Section 4.15 Solar Energy Devices. All solar energy devices must be aesthetically integrated into the Home or building they serve or adequately screened from the view of neighbors and adjacent streets and must be approved in advance by the Architectural Committee.

Section 4.16 Manufacturing or Commercial Enterprise. No manufacturing or commercial enterprise or other activity conducted for gain may be conducted or maintained upon, in front of, or in connection with any Lot. A home office may be maintained on a Lot if it follows all applicable City of Colorado Springs laws and ordinances and does not create a change in regular residential traffic and parking practices.

Section 4.17 Subdivision of Lots. No Lot may be subdivided or further divided by an Owner other than Declarant.

Section 4.18 Antennas, Roof Projections, Satellite Dishes. Except as provided below in this Section, no aerial, antenna or other device for reception of radio or television or other electronic signals may be maintained on the roof of any building, nor will such structure be mounted at any location to be visible from neighboring properties or adjacent streets. Plans for structures, other than FCC Structures (as defined below) must be approved by the Architectural Committee prior to installation. An "FCC Structure" is defined as an antenna that is (i) designed to receive direct broadcast satellite service that is one meter or less in diameter, (ii) designed to receive video programming services via multiple distribution services that is one meter or less in diameter or diagonal measurement, or (iii) that is designed to receive television broadcast signals, as defined by the Federal Communications Commission or the Telecommunications Act of 1996, as amended. An FCC Structure will be permitted so long as the means, method and location of such structure comply with the Design Guidelines or as approved by the Architectural Committee.

Section 4.19 Use/Occupancy. All Lots shall only be used for those uses and/or purposes as allowed by the local zoning control and regulation and permitted by this Declaration. Lots shall not be used for any purpose other than a residential dwelling except as set forth in this Section. Home occupation shall be allowed so long as the home occupations are incidental and secondary to the use of the Lots and do not change the residential character thereof, comply with local zoning ordinances and regulations and comply with this Declaration. Uses which have the following characteristics are not permitted: i) manufacturing or fabrication of any kind; ii) storage of hazardous materials; iii) increased traffic or parked vehicles beyond that which is customary and reasonable to a residential dwelling use, as determined in the sole discretion of the Board; iv) permanent or long term parking of heavy equipment, including semi-trailers; v) the use or rental of any structure of a Lot for any transient, hotel, motel, bed and breakfast, restaurant, bar, or other commercial purpose.

Section 4.20 No Hazardous Activities. No activity shall be conducted on and no Improvement shall be constructed on any lot or Community Area which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot. No open fires shall be permitted on any Lot except in a contained barbeque unit while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent the dispersal of embers unless otherwise prohibited by governmental regulations. No Owner shall permit any condition on his Lot which creates a fire hazard or is in violation of applicable fire prevention regulations.

Section 4.21 Compliance with Governing Documents and Other Laws. Each Owner shall strictly comply with the provisions of this Declaration and all valid laws and regulations of all governmental bodies having jurisdiction over the lot or Community Area or any portion thereof.

Section 4.22 Metropolitan District. The Owners recognize and understand that the Community Area is within the boundaries of the Mountain Vista Metropolitan District which supplies various municipal services to the properties within the District and that the Owners' Lots are subject to the

ordinances, regulations, various fees and charges, and mill levies now in force or which might be adopted by the District.

Section 4.23 Management and Care of Common Areas within the Community Area. The Declarant will maintain, operate and repair all Common Areas and tracts keep the same in an attractive and desirable condition for the use and enjoyment of the Owners until the earlier of (a) the end of the Declarant Control Period or (b) thirty (30) days after the applicable Metropolitan District has accepted in writing, any completed common area and/or tracts, or portions thereof, at which time the maintenance responsibilities for any such accepted Common Areas and/or tracts will become the responsibility of the applicable Metropolitan District. The Common Areas and tracts may be completed and accepted by the Metropolitan District in stages and at different times. The Declarant will coordinate its maintenance responsibilities with the Mountain Vista Metropolitan District or its successor and will not maintain or improve any portion of the Community Area maintained or improved by the District. Owners will be responsible for the maintenance of areas of landscaping in the City ROW in the same manner as their adjacent properties.

Section 4.24 Provision of Special Services. The Mountain Vista Metropolitan District or its successor will have the power to provide special services to Owners. Without limiting the foregoing, the Mountain Vista Metropolitan District or its successor shall have the power to select and enter into a contract with one service provider to provide trash removal services for the Community Area. Any services provided under this Section shall be provided pursuant to a written agreement. Any fees for such services will be payable to the Mountain Vista Metropolitan District or its successor by any means allowed by this Declaration or other applicable laws.

Section 4.25 Community Center and Pool. In the event a community center and/or pool shall be built in the Community Area or Expansion Area, such facilities may be available for use by the public for a fee. There will be the option to charge a usage fee and different membership and daily use rates for in- district and out-of-district persons. After the completion of any such community center and/or pool and acceptance of same by the Mountain Vista Metropolitan District or its successor, such Metropolitan District shall have the ability to run such facilities, collect applicable fees or hire a manager or other third party to manage and maintain the same.

## **Article V. ARCHITECTURAL REVIEW**

Section 5.01 Architectural Committee. During the Period of Declarant's Control, or until such earlier time as Declarant elects to assign to any applicable Metropolitan District the right to appoint the Architectural Committee, the Declarant shall appoint the Architectural Committee. The Architectural Committee will initially consist of two to three members. After the right to appoint the Architectural Committee has been transferred to the Mountain Vista Metropolitan District or any other applicable Metropolitan District in existence at such time, the Architectural

Committee shall consist of at least three and not more than five individuals, all of whom shall be owners in the Community Area.

**Section 5.03 Design Guidelines.** The Mountain Vista Metropolitan District Board may from time to time, upon review and recommendation by the Architectural Committee, adopt Design Guidelines applicable to Improvements within the Community Area. The Mountain Vista Metropolitan District Board shall have the right to modify or supplement the Design Guidelines from time to time in its sole discretion; provided, however, that no modification to the Design Guidelines may result in a provision that conflicts with this Declaration. The Mountain Vista Metropolitan District Board may create a nonprofit corporation, subcommittee or other structure made up of Owners in the Community and assign all their responsibilities for enforcement of the provisions of this document to that entity.

**Section 5.04 Approval Required.** Except for Declarant's exemption as provided for in Section 3.07, an Improvement shall not be placed, erected, installed or permitted to exist on any Lot, the exterior of any existing Improvements shall not be painted, changed or altered, and construction shall not be commenced on any Improvements, unless and until the Plans for such Improvement have been submitted to and approved in writing by the Architectural Committee. Improvements installed or constructed prior to Architectural Committee written approval, or not installed or constructed in compliance with the approved Plans, shall be deemed to be in non-compliance and may be subject to enforcement action as set forth herein.

**Section 5.05 Submittal of Plans.** The requirements for submittal of Plans to the Architectural Committee shall be set forth in the Design Guidelines.

**Section 5.06 Approval Process.** All action required or permitted to be taken by the Architectural Committee must be stated in writing, and any such written statement must establish the action of the Architectural Committee. The Architectural Committee will approve or disapprove Plans within thirty (30) days following submission of a complete set of Plans. If the Architectural Committee does not act within thirty (30) days following submission, the Plans shall be deemed disapproved. The Architectural committee may charge reasonable fees to cover expenses incurred in the professional review of Plans. The Architectural Committee will retain one copy of all approved Plans as part of its records and written records of all actions taken by it that will be available to Owners for inspection at reasonable business hours. Approval of any Plans will automatically expire one year after approval if construction is not commenced within such one-year period, and if approval so expires, the applicant must submit a new request for approval. Once construction is commenced, the Owner shall have one year from the date of issuance of a building permit to complete construction.

**Section 5.07 Approval Standards.** In granting or withholding approval of matters submitted to it, the Architectural Committee shall consider the specific standards and specifications set forth in any Design Guidelines then in effect and any other matter whether objective or subjective, that the Architectural Committee feels is relevant to the issue presented. the Architectural Committee shall have the right to disapprove any Plans or details submitted to it if it determines, in its sole discretion, that the proposed Improvement is not consistent with the Design Guidelines or any

provision of this Declaration; if the Plans submitted are incomplete; or if the Architectural Committee deems the Plans or details, or any part thereof, to be contrary to the best interests, welfare or rights of all or any part of the Community Area, the Association or the Owners. If the Architectural Committee believes there may be questions of structural integrity, it may, as part of the review process, require certification of the final plans and specification by a professional architect or engineer licensed in Colorado. Most of the Architectural Committee members attending a meeting in which Plans are approved shall constitute a quorum, and a majority vote of the quorum of the Architectural Committee members present shall constitute action of the Architectural Committee. Owners acknowledge that architectural review is inherently a subjective process and that the Architectural Committee is given wide discretion in carrying out its function. The decisions of the Architectural Committee shall be final and binding unless they are clearly arbitrary and there is no competent evidence to support the Architectural Committee's decision.

Section 5.08 Variances by Architectural Committee. The Architectural Committee shall have the authority to grant a Lot a variance from any provision of this Declaration (including any provision of the Design Guidelines) that is within the authority of the Architectural Committee. Such variance will only be made upon the Architectural Committee's finding of exceptional and extraordinary circumstances where literal enforcement of the covenant will create a material hardship to the applicant, and that such a variance is not contrary to the interests of the Community Area, the Association and Owners.

Section S.09 No Liability. The Declarant and the Architectural Committee, and any member, agent or representative thereof, shall not be liable in damages or otherwise to anyone submitting Plans for approval or requesting a variance, or to any Owner or other Person, by reason of mistake in judgment, negligence, nonfeasance or any act or omission in connection with the approval, disapproval or failure to approve the Plans or variance. Approval by the Architectural Committee shall not mean that Plans are in compliance with the requirements of any local building codes, zoning ordinances, or other governmental regulations, and it shall be the responsibility of the Owner or applicant to comply with all codes, ordinances and regulations. It is the intent of this Declaration that the Architectural Committee shall be recognized as a nonprofit organization for purposes of Sections 13-21-115.5, 13-21-115.7 and 13-21-116, Colorado Revised Statutes (and any successor statutes), and that individuals serving on the Architectural Committee shall, to the fullest extent permitted by such statutes, be protected from personal liability.

Section 5.10 Commencement and Completion of Construction. All Improvements approved by the Architectural Committee must be commenced within six (6) months from the date of approval unless otherwise stated on the approval form. If not commenced within that time, then the approval shall be deemed revoked, unless the Architectural Committee grants an extension in writing. All approved work must be completed within ninety (90) days unless the Architectural Committee grants an extension in writing.

(a) Owners shall notify the Architectural Committee five (5) days of such completion.

(b) Upon completion the Owner authorizes the Architectural Committee or its representative to enter the Lot for exterior inspection.

(c) Failure to notify the Architectural Committee of the completion or failure to grant the exterior inspection shall result in withdrawal of the Architectural Committee's approval.

(d) In the event of a withdrawal of Architectural Committee approval for any reason stated in this Section, and upon written request by the Architectural Committee, the Owner, at his sole cost and expense and cost shall promptly restore the Lot to substantially the same condition that existed prior to the commencement of the Improvement's installation or construction, and such withdrawal will be deemed to toll the statute of limitations as it pertains to the Improvement until such time as the Improvement is brought into compliance.

Section 5.11 Enforcement. The Declarant shall have the right to enforce these covenants during the period of Declarant Control. After the Declarant Control period has ended the enforcement shall fall to the Mountain Vista Metropolitan District Board or its successor. The Declarant, Architectural Committee or Mountain Vista Metropolitan District may impose per diem fees and penalties for violations of these Covenants or Design Guidelines which charges may be a lien on the real property which is in violation and may be foreclosed in the same manner as mechanic's liens in Colorado.

## **Article VI. DECLARANT'S DEVELOPMENT RIGHTS, SPECIAL RIGHTS, AND RESERVATIONS**

Section 6.01 Period of Declarant's Rights and Reservations. In addition to other rights of Declarant described elsewhere in this Declaration, Declarant shall have, retain and reserve certain rights as hereinafter set forth during the Period of Declarant Control. These rights and reservations shall be deemed excepted and reserved in each conveyance by Declarant. The rights, reservations and easements set forth herein and in any Community Documents may not, without Declarant's prior written consent, be modified, amended, rescinded, or affected by any amendment of the Owners or any future homeowner's association should the Owners choose to form such an association.

Section 6.02 Declarant's Development Rights. For the Period of Declarant Control, Declarant shall have the following development rights:

Subject to the specific limitations contained herein, Declarant may add land to and create additional Lots within the Community Area, but only with the consent of the Owner of such land to be added. No assurances are made by Declarant concerning which portions of the Community Area may be affected by Declarant's exercise of its development rights or the order in which portions of the Community Area may be affected. Declarant is not obligated to exercise any of its development rights and may elect not to exercise any or all of them.

Section 6.03 Special Declarant Rights. Declarant has the right, but not the obligation, to perform any of the following "Special Declarant Rights":

- (a) to complete any improvements shown on a Plat;
- (b) to exercise any development rights set forth in this Declaration;
- (c) to maintain anywhere within the Community Area sales offices, management offices, signs advertising the Community Area and model homes; and
- (d) to store building materials, supplies and equipment on land owned by Declarant within the Community Area.

Declarant may transfer or assign its Special Declarant Rights, or any other rights or obligations of Declarant in this Declaration, to another Person or entity upon the recording of a document evidencing the transfer, except that Declarant may authorize a Builder to perform any of the rights set forth in Section 6.3(a), (c), (d), and (e) without recording a document.

Section 6.04 Right to Complete Development. After the Period of Declarant Control has ended, Declarant shall retain the right to complete development of the Community Area as Declarant may elect.

## **Article VII. EASEMENTS**

Section 7.01 Declarant Easements. Declarant reserves, for itself, its successors and assigns, a perpetual and non-exclusive easement on, over and across all Lots within the Community Area for erecting and maintaining perimeter fencing and any Landscaping or other amenities within any tract or public right of way as shown on a Plat or other recorded instrument, or as required by any governmental agency having jurisdiction over the Community Area. Such easement shall be appurtenant to and shall run with all real property within the Community Area now or hereafter owned by Declarant, its successors or assigns, and such easements shall automatically be conveyed to any successor of Declarant as the developer of the Community Area whether the easement is expressly conveyed in any deed or conveyance transferring real property within the Community Area to such successor.

Section 7.02 Easements for Utilities. Declarant hereby creates and reserves to itself until Declarant has sold the last Lot In the Community Area to an Owner other than Declarant perpetual, alienable, divisible and releasable easements and the right from time to time to grant such easements to others over, under, in and across each of the utility easements of each Lot as shown on a Plat for the placement of utilities, drainage structures or other similar purposes, together with a blanket easement across, over and under the Association Properties for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities and drainage facilities.

Section 7.03 Easement for Emergency Vehicle. An easement is granted for emergency vehicles, including fire, police and ambulance, to enter upon any portion of the Community Area for emergency and other official purposes.

Section 7.04 Matters of Record. In addition to the easements created in this Article 7 and on any Plat, the Community Area is subject to all other easements, reservations and restrictions of record in El Paso County, Colorado.

## **Article VIII. Releases, Disclaimers and Indemnities.**

The Owners acknowledge and agree that:

Section 8.01 The provisions of this Article shall apply to any "Protected Party" which is defined as any person or party, including without limitation, the Declarant, its agents, employees, shareholders, contractors, brokers, successors, assigns or any person or party related to them, and including any Builder affiliated with Declarant, or any prior owner of the property, against whom is asserted any claim, demand, liability, obligation or matter whatsoever regarding the construction, physical condition, value, assessments, reserves, association, and any other matters related thereto in connection with the Community Area.

Section 8.02 No Representation or Warranties of any kind, express or implied, shall be deemed to have been given or made by any Protected Party in connection with any portion of the Community Area, as to its or their physical condition, soils condition, zoning, compliance with applicable laws, or fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall have been specifically set forth in a writing signed by Declarant.

Section 8.03 Each Owner acknowledges and agrees that certain environmental conditions, including but not limited to mold, lead, or any other hazardous or toxic substances or conditions may affect the Community Area and that the Protected Parties expressly disclaim any liability for any existing or future conditions and any other soil or environmental conditions affecting the Community Area. Each Owner acknowledges that they have been given a full opportunity to inspect all reports and documents with the City of Colorado Springs and any governmental entity, as well as their Lot, Homes and Improvements and obtain any professional inspection relating to the environmental condition of their Lot and the Community Area if desired. By acceptance of a deed to a Home, each Owner accepts the physical and environmental condition of their Lot and the Community Area and acknowledges a full opportunity to conduct their own inspections. Except as may be acknowledged by Declarant or any other Protected Party in writing, Declarant and Protected Parties have not assumed or undertaken any obligation to inspect or remedy any physical or environmental condition of the Community Area, regardless of any report, recommendation or other information. Each Owner, for themselves, their heirs, successors and assigns, waive and release the Declarant and the other Protected Parties, their agents, successors and assigns, from all claims, liabilities, lawsuits and other matters arising from or related to any physical and/or environmental condition of the Community Area.

Section 8.04 Owners shall maintain the landscaping, drainage, and sprinkler systems upon the property and their Lot, in such a fashion that the soil surrounding the foundations of the buildings and other improvements shall not become so impregnated with water that they cause expansion of or shifting of the soils supporting the Improvements or other damage to the Improvements and do not impede the proper functioning of the drainage, landscaping, or sprinkler systems as originally installed. Such maintenance shall include, where necessary, the removal or replacement of improperly functioning landscaping, drainage, or sprinkler system



elements and shall also include regrading and resurfacing where necessary to provide for adequate drainage and to prevent any ponding; no changes in landscaping shall be made in such a way as to endanger the structural integrity or the stability of any of the buildings, units, common elements, or the other Improvements upon the property. In addition, each Owner understands that the soil in the Colorado area contains clay and other substances which may cause it to swell when wet and so can cause earth movement and/or shifting around a building's foundation. Each Owner shall be responsible for any settlement on such Owner's property, including areas such as porches, sidewalks, decks, patios, and driveways. Owners, for themselves, their successors and assigns, waive and release the Protected Parties from all claims, actions, liabilities, lawsuits, and other matters arising from or related to any physical and/or environmental condition at the project and Community Area, whether past, present, or future.

Section 8.05 The Colorado Department of Public Health and Environment and the United States Environmental Protection Agency ("EPA") have detected elevated levels of naturally occurring radon in structures in the El Paso County area. EPA has raised concerns with respect to adverse effects on human health of long-term exposure to high levels of radon. Each Owner is responsible for conducting such investigations and consulting with such experts as an Owner deems appropriate to determine the possible presence of radon in or on the Owner's Lot and to evaluate radon mitigation measures that can be employed in the design and construction of Improvements. Each Owner acknowledges that the Protected Parties have made absolutely no representations whatsoever, express or implied, concerning the presence or absence of radon occurring on the Lots or the Community Area, the suitability of the Lots for development, or the design or construction techniques, if any, that can be employed to reduce any radon level in Improvements built on the Lots. Each Owner, for themselves, their heirs, successors, assigns, waive and release the Protected Parties, their agents, successors and assigns, from all claims, actions, liabilities, lawsuits and other matters arising from or related to the presence of radon in the Community Area or the Lots.

Section 8.06 Fiberglass insulation (also known as glass wool) is commonly used for insulation of homes. Fiberglass in various thicknesses and values is used in the areas of walls, floor to ceiling assemblies and ceiling to roof assemblies of homes to prevent movement of heat and to reduce noise. The U.S. Department of Health and Human Services produced a report that lists glass wool as a substance "which may be reasonably anticipated to be a carcinogen", but that report merely identifies substances selected for further study because of potential risk. The listing of a substance in the report is not an assessment that there is causal connection between glass wool and illness. The Owners acknowledge that fiberglass is used in the wall and floor to ceiling assemblies, and waive any claims against any Protected Party, arising because of the use of fiberglass insulation. The Owners shall hold all Protected Parties harmless from any claim or liability resulting from the existence of fiberglass insulation in the project, Community Area, buildings, structures or Improvements.

Section 8.07 Each Owner further covenants and agrees that no representation, promise, or warranty has been made by any of the Protected Parties regarding the development of adjacent properties, the investment potential of the unit or the Lot, any economic benefits to the Owners,

their heirs, successors and assigns, to be derived from the managerial or other efforts of the Protected Parties, or any other third party designated or arranged by any Protected Party, related to the ownership or rental of the unit, the Lot, or regarding the continued existence of any view from the unit, the Lot or any Improvements thereon. The Owners, their heirs, successors and assigns, understand that the Protected Parties are under no obligation with respect to future, zoning or development of additional property in the area. The Owners, their heirs, successors and assigns, understand that the square footages, sizes, and type of units have been set forth at the sole discretion of the Declarant, and that the sales prices may decrease or increase at the sole discretion of the Declarant.

Section 8.08 The Owners, their heirs, successors and assigns covenant and agree that the Protected Parties make no representations or warranties, express or implied, of any nature regarding the project or Community Area (all of which are hereby disclaimed by the Protected Parties), including without limitation, any as to the fitness, workmanlike construction, safety, merchantability, design, condition, quality, or habitability of the unit, the project, Community Area, or the common area or improvements related thereto or any electrical, plumbing, heating, gas, water, sewer, structural components or other mechanical or utility systems or components or appliances or fixtures related thereto. The Owners and the Association accept the foregoing disclaimer of warranties and waive, release, and indemnify the Protected Parties from all claims related thereto, and any expenses and attorney fees incurred by any Protected Party, together with any claims for bodily injury, property damage and incidental or consequential damages made by any person or party.

Section 8.09 No Protected Party shall be liable for claims or consequential, exemplary, and/or punitive damages or for claims relating to the unit, the Lot, or to the Community Area or any Improvements arising or relating to any defect in workmanship or in any material used in construction, and the Owners, their heirs, successors and assigns, expressly waive and release all rights to sue for a defect in construction of the Home, the Lot, the common area or Improvements and shall rely solely on the Owner's own inspection and examination of the Community Area and Lot and not on any representations or warranties of any Protected Party. The Owners, their heirs, successors and assigns covenant and agree that this Declaration creates an alternative dispute resolution process and imposes waivers and/or limitations on the parties' respective rights and remedies, and that the sales prices of the units and Lots are based in part upon the dispute resolution process, releases, waivers, and indemnities contained in this Section and the other provisions of the Declaration.

## **Article IX. DISPUTE RESOLUTION**

Section 9.01 Actions and Exemptions. The Architectural Committee, Declarant, and all Owners agree to encourage the use of mediation and binding arbitration in the resolution of disputes pertaining to the Declaration or Community Documents and the Community Area. Accordingly, each covenant and agree to be bound by the provisions set forth in this Article 9.

(a) Enforcement of Declaration and Community Documents by the Architectural Committee or the Association. The Architectural Committee including an assignee or delegate thereof, may enforce the provisions of this Declaration and may act to remedy any nuisance situation in accordance with this Declaration, including charging of per diem fees and penalties for violations of these covenants which charges may be a lien on the real property which is in violation and may be foreclosed in the same manner as mechanic's liens in Colorado; or they may elect (in their sole discretion) to proceed with the dispute resolution procedures set forth in herein. Any disputes between any of the Architectural Committee and the Declarant, whether in contract, tort or statutory, shall be resolved pursuant to the dispute resolution procedures set forth in herein.

(b) Action by an Owner. Any action by a Lot Owner against the Declarant, the Architectural Committee, or any of the officers, directors, partners, members, employees, agents or representatives of the foregoing, or any Owner of another Lot, whether in contract, tort or statutory, shall proceed pursuant to the dispute resolution procedure set forth in herein; provided that (i) all actions against the Declarant or any Protected Party (as defined below) shall be governed solely by the terms of the contract between the Owner (or Owner's predecessor in interest) and the Declarant or Builder; and (ii) any suit between or among Owners that does not include Declarant as a party, and that asserts a claim independent of the Community Documents Declaration, is not governed by the dispute resolution procedures herein unless mutually agreed by such Owners.

(i) Separate Agreements Control. All actions related to alleged construction defects of any kind or nature are governed by the terms of the contract between the Owner or their predecessor in interest (excluding Declarant or Builder) and the Declarant or Builder. All Owners, the Declarant and Protected Parties acknowledge and agree that all matters governed by the terms of such contract(s) are not matters affecting the community.

Section 9.02 Costs and Attorney fees. Except as specifically provided in this Declaration, each party shall bear all of its own costs and expenses, including attorneys' fees, incurred prior to and during any proceedings: without allocation in any award, unless the decision maker determines that any party initiated proceedings in bad faith or without merit, in which case allocation may be made to the party defending against such bad faith or without merit Claim (defined below).

Section 9.03 Resolution of Disputes.

(a) Dispute Resolution. Except as provided in herein and except for Sections 5.01 and 9.01(a) dealing with fines and levying of liens, all actions, disputes, claims or controversy between any Owner, the Architectural Committee, the Declarant, and the Protected Parties, and their respective agents, contractors, successors and assigns, whether in contract, tort or otherwise, shall be resolved by the procedures as set forth herein or as set forth in any limited warranty (if any), or any applicable agreement between Declarant and any Owner his/her heirs, successors or assigns:

(b) Initial Notification and Negotiation. For each claim governed by this Section (a "Claim"), the claimant ("Claimant") shall give notice to the other parties against whom the claim is asserted ("Respondent"), setting forth: the nature of the Claim; the basis or reason for the Claim; any

other material information regarding the Claim; the specific relief and/or proposed remedy sought; and the intent to invoke this Section (the "Notice of Claim"). Claimant and Respondent shall use good faith efforts to resolve the Claim through negotiations following delivery of the notice, pending mediation pursuant to Section 9.03(c).

(c) Mediation. The Claim shall first be mediated before a mediator jointly selected by the parties. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute formally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding.

(i) The mediation shall occur within thirty (30) days following delivery of the Notice of Claim (the "Mediation Period"). Mediation shall be a condition precedent to arbitrating any dispute. In the event Claimant does not appear for mediation, Claimant shall be deemed to have irrevocably waived the Claim, and Respondent shall be released from all liability to Claimant because of such Claim.

(ii) The costs of the mediation shall be borne equally by Claimant and Respondent. In the event mediation is successful, the resolution shall be documented in writing and signed by the parties. Thereafter, if either party violates the resolution, the other party may apply immediately to a court for relief. The mediation, unless otherwise agreed, shall terminate if the entire dispute is not resolved before the expiration of the Mediation Period.

(iii) If mediation is unsuccessful, then Claimant may make written demand for arbitration as set forth herein within sixty (60) days following the expiration of the Mediation Period. If no written demand for arbitration is made within the specified time, Claimant shall irrevocably waive the Claim and any and all right to proceed to arbitration regarding the Claim.

(d) Arbitration. Following the Mediation Period and a written demand for arbitration, the Claim shall be resolved by binding arbitration administered by the American Arbitration Association (or any successor to such association) in accordance with the current American Arbitration Association Construction Industry Arbitration Rules in effect at the time of submission to arbitration, and as provided for in this subsection. In the event of any inconsistency between such rules and these arbitration provisions, these provisions shall supersede such rules.

(i) Should an action, dispute, claim or controversy be brought against Declarant and or Builder by a third party who is not bound by a binding arbitration provision similar to the arbitration provision contained herein, the term of this subsection shall apply to such action, dispute, claim or controversy.

(ii) The Arbitrator shall be selected from a panel of Arbitrators from El Paso County Colorado (or if no such panel is available, from El Paso County, Colorado), with an Arbiter mutually acceptable to the parties. If the parties are unable to jointly agree upon the Arbiter, then each party shall select an Arbiter and the two Arbiters shall select a third person to serve as the sole Arbiter. The parties agree that the Arbiter shall have substantial experience in the real estate field.

(iii) The parties shall share equally in the Arbiter's fees and the costs of the arbitration. All parties shall have the right to be represented by legal counsel.

(iv) In determining any question, matter, or dispute before them, the Arbiter shall apply the provisions of the Declaration and Community Documents without varying from them in any respect, and they shall not have the power to add to, modify or change any of the provisions hereof.

(v) Any arbitration award may be enforced through entry of judgment by any court having jurisdiction thereover. Exclusive venue for any arbitration proceeding shall be in El Paso County, Colorado. Except as may be required by law or for enforcement, neither a party nor the Arbiter may disclose the existence, content, or results of any arbitration without the prior written consent of all parties to the Claim.

(vi) The parties shall be entitled to conduct discovery as if the dispute were pending in a District Court in the State of Colorado. In any arbitration proceeding subject to these provisions the Arbiter is specifically empowered to decide pre-hearing motions that are substantially like pre-hearing motions to dismiss and motions for summary adjudication. A stenographic record of the arbitration shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and appeals. The Arbiter's decision may contain findings of fact and conclusions of law to the extent applicable and the Arbiter shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

(vii) The statement of decision of the Arbiter upon all of the issues considered by the arbitrator is conclusive, final and binding upon the parties. Judgment upon any award rendered by the Arbiter may be entered by any State or Federal Court, as appropriate.

(e) Standards of Construction. If any claim regarding defects in construction is made, each claim shall be specified with particularity. Each location of any claimed defect must be identified and all evidence supporting each claim, along with all repair methodologies and costs of repair, must be provided by the claimant in advance of any mediation hereunder. In any arbitration or other proceedings, it shall be rebuttably presumed that any construction done by the builder or Declarant was not defective, that the builder or Declarant adequately performed its obligations under its contract, and that the builder or Declarant was not negligent if the builder or Declarant's performance was substantially in accordance with any of the following: (i) the standards of trade in the El Paso County Area on the date hereof or (ii) any applicable building code in El Paso County on the date hereof; or (iii) any applicable national association of home builders residential construction guidelines. Any expert witness used by either party shall be required to have held a commercial contractor license in El Paso County for a minimum of ten (10) years. In any such proceedings, evidence of any scientific, engineering, or technical advancements or other knowledge or techniques, or any design theory or philosophy, or any construction or testing knowledge or techniques, where such advancements were discovered subsequent to the date hereof, shall not be admissible for any purpose. If any of Claimant's claims relate, in any way, to any work completed by any of Declarant's or Builders subcontractors or any materials and/or equipment provided by any suppliers, Declarant or Builder, as applicable, in its sole discretion,

may join such subcontractors and/or suppliers to any arbitration proceeding with Claimant. The sole manner in which may be used to establish breach of any obligations under this Declaration, any obligations which may exist by law or reason of any statute, any applicable industry standards, and/or Claimant's damages, including, but not limited to, appropriate repair costs, shall be through the testimony of a homebuilder with experience in El Paso County, Colorado. The Arbiter shall completely exclude the testimony of any tendered expert who does not meet the foregoing qualifications.

(f) Limitation of Remedies. Each party, to the extent permitted by law, hereby disclaims and waives any claims for the following remedies and damages for any matters related to any Claim, whether a Claim is made on the basis of contract, tort or any other theory or basis at law or in equity: (i) punitive or exemplary damages, (ii) claims for emotional distress or pain and suffering and/or (iii) claims for incidental and/or consequential damages (except as otherwise provided herein). Claimant further agrees that, subject to the other limitations contained herein, Respondent's total liability to Claimant shall be limited to, and in no event exceed, the amount of any insurance proceeds available with respect to any and all Claims, whether in contract, tort or otherwise.

Section 9.04 Acknowledge of Waiver of Right to Jury Trial. Notwithstanding anything to the contrary contained herein any claim, controversy, breach or dispute pertaining to, involving, or relating the Declarant regarding its obligations under the Declaration and (b) any and all claims against the Declarant, developer or general contractor relating to the design and construction of the project, Community Area or any part thereof, shall ONLY be settled by binding arbitration according to the procedures of the American Arbitration Association. All Owners and other parties agree to arbitrate solely on an individual basis, and that this Declaration does not permit class arbitration or any claims brought as a plaintiff or class member in any class or representative arbitration proceeding. The arbitral tribunal may not consolidate more than one Owner's or person's claims, and may not otherwise preside over any form of a representative or class proceeding. In the event the prohibition on class arbitration is deemed invalid or unenforceable, then the remaining portions of the arbitration agreement will remain in force. The Federal Arbitration Act shall govern the interpretation, enforcement and proceedings pursuant to the arbitration clause in this agreement. Any standard arbitration hearing that requires the physical presence of involved parties shall be held in El Paso County, CO. The Owners and Declarant also agree that any award tendered by the arbitrator may be entered as a judgment in the United States court in and for the district within which such award was made and enforceable as an order of said court and the Owners and Declarant hereby submit to the venue and jurisdiction of that court for purposes of enforcement of any arbitration award.

(a) This arbitration provision cannot be removed from the Declaration without the affirmative written consent of the Declarant and Builder for the Project. Each party and Owner understand that by using binding arbitration to resolve disputes they are voluntarily waiving and giving up any right that they may have to a judge or jury trial about all issues concerning the Lot, Home, common elements, the Community Area, Improvements, and matters related thereto.

## **Article X. MISCELLANEOUS**

Section 10.01 Term of Declaration. Unless amended as herein provided, all provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration shall be effective for twenty (20) years following the date this Declaration was originally recorded, and thereafter shall be automatically extended for two (2) successive periods of ten (10) years each unless terminated by agreement of the Owners with at least sixty-seven percent (67%) of the voting power of the Community Area after proper notice and hearing.

Section 10.02 Amendment of Declaration by Declarant. Declarant may amend or repeal any provisions, covenants, conditions, restrictions and equitable servitudes of this Declaration by the recordation of a document setting forth such amendment or repeal and upon the satisfaction of one or more of the following conditions:

- (a) The conveyance of the first Lot by recorded deed to an Owner other than Declarant has not yet occurred;
- (b) A government agency requires an amendment or repeal as a condition to making, purchasing, insuring or guaranteeing mortgages, or an amendment or repeal is required to comply with the requirements, standards or guidelines of recognized secondary mortgage markets, HUD, FHA or other government mortgage agency;
- (c) An amendment or repeal is necessary or useful for the exercise of Declarant's development rights as set forth in this Declaration, including but not limited to the inclusion of additional land within the scope of this Declaration and the creation of additional Lots.

Section 10.03 Amendment of Declaration by Owners. Except as specifically set forth in Section 9.04(a) or as otherwise provided in this Declaration, and subject to the written approval of Declarant during the Period of Declarant Control, any provision, covenant, condition, restriction or equitable servitude may be amended, modified or added upon approval by Owners with at least sixty- seven percent (67%) of the voting power of the Community Area.

Section 10.04 Notices. Any notice permitted or required to be given under this Declaration shall be in writing and may be served either personally or by mail, or by email unless the Owner requests in writing to the enforcing party that email is not enough. If served by mail, each notice shall be sent postage prepaid, addressed to any Person at the address given by such Person to the Declarant or applicable enforcement body for the purpose of service of such notice, or to the Lot of such Person if no address has been given to the Declarant or other appropriate enforcement body, and shall be deemed received, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing.

Section 10.05 Persons Entitled to Enforce Declaration. The Declarant and later after Declarant control has ended the Mountain Vista Metropolitan District Board or its successor, shall have the right but not the obligation to enforce any or all of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration in accordance with the provisions and dispute resolution procedures contained in this Declaration.

Section 10.06 Violations of Law. Any violation of any federal, state, county or municipal law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Community Area is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

Section 10.07 Limitation on Liability. The Architectural Committee and Declarant, and any agent or employee of any of the same, shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice.

Section 10.08 Governing Law. The Declaration shall be construed and governed in accordance with the laws of the State of Colorado.

Section 10.09 Severability. Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability or partial invalidity or partial enforceability or any provision or portion thereof shall not affect the validity or enforceability of any other provision.

Section 10.10 Number. Unless the context requires a contrary construction, as used in the Association Documents, the singular shall include the plural and the plural, the singular.

Section 10.11 Cautions for Convenience. The titles, headings and captions used herein are intended solely for convenience of reference and are not intended to affect the meaning of any provision of this Declaration.

Section 10.12 Interpretive Authority Resolves Questions of Construction. If any doubt or question should arise concerning the true intent or meaning of any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration, the Declarant, during the Period of Declarant Control, and thereafter, the Mountain Vista Metropolitan District Board or its successors (the "Interpretive Authority"), shall determine the proper construction of the provisions in question and shall set forth the meaning, effect, and application of the provision in a written document duly acknowledged by the Interpretive Authority. This determination will thereafter be binding on all parties so long as it is not arbitrary, or capricious.

Section 10.13 Limitations. Notwithstanding any other provision of this Declaration, no Claim or proceedings may be initiated after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitation or statute of repose.

Section 10.14 Amendment. Notwithstanding anything to the contrary contained in this Declaration, no provision of Sections 9.01, 9.02, 9.03, or 9.04 may be amended, modified, or repealed unless such amendment, modification, or repeal is approved by Owners in accordance with this Declaration and is consented to in writing by the Declarant.

Section 10.15 Accrual of Claims. In the event of any purported amendment, modification, or repeal of any provision of Sections 9.01, 9.02, 9.03, or 9.04 not in accordance with Section 10.14 above, or in the event Section 10.14 above is deemed unenforceable, then and in such event any amendment, modification, repeal, or severance of the affected provisions of Sections 9.01, 9.02,



9.03, or 9.04 shall only apply prospectively, to claims that accrue following the date of such amendment, modification, repeal, or severance.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, Declarant, Challenger Communities, LLC, a Colorado limited liability company has executed this Declaration to be effective as of the day and year first written above.

\_\_\_\_\_,  
\_\_\_\_\_

STATE OF COLORADO

COUNTY OF EL PASO

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019 by \_\_\_\_\_ as \_\_\_\_\_, the Manager of the Declarant hereunder.

Witness my hand and official seal. My commission expires: \_\_\_\_\_

Notary Public

EXHIBIT A- ORIGINAL

Lots 1-54 and Tracts A, B and C Enclaves at Mountain Vista Ranch Filing No. 3 recorded on the 28<sup>th</sup> day of May, 2018 at Reception Number 218714 of the records of El Paso County, Colorado; except for

Lot 8, 4266 Prairie Agate, and

Lot 36, 8219 Diorite Drive, and

Lot 43, 4299 Prairie Agate, and

Lot 10, 4282 Prairie Agate, and

Lot 40, 4267 Prairie Agate.

Exhibit B – Expansion Area