

FIRST AMENDED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR MOUNTAIN VISTA FIRST ADDITION, A PLANNED UNIT DEVELOPMENT

THIS DECLARATION, made of the date hereinafter set fourth by
MOUNTAIN VIEW HOME BUILDERS, INC., a Colorado corporation,
hereinafter referred to as the "Declarant".

WITNESSETH:

WHEREAS Declarant is the owner of certain real property
located in the City of Loveland, County of Larimer, State of
Colorado, (the "Properties") which is legally described as
follows:

Lot 1 - 36 of Block 2, and Lot 1 - 26 of Block 3, of
Mountain Vista First Subdivision, a Planned Unit
Development, according to the Plat recorded June 12,
1995 at Reception No.95033084, a Subdivision located in
Section 34, Township 6 North, Range 69 West of the 6th
P.M., City of Loveland, County of Larimer, State of
Colorado.

Tracts A, B, C, D, E, F, G, H, I and J of Block 2, and
Tracts K, L, M, N, O, P, Q and R of Block 3, of
Mountain Vista First Subdivision, a Planned Unit
Development, according to the Plat recorded June 12,
1995 at Reception No.95033084, a Subdivision located in
Section 34, Township 6 North, Range 69 West of the 6th
P.M., City of Loveland, County of Larimer, State of
Colorado.

NOW, THEREFORE. Declarant hereby declares that all of
the real property described above shall be held, sold and
conveyed subject to the following easements, restrictions,
covenants and conditions which are for the purpose of protecting
the value and desirability of and which shall run with said real
property and be binding on all parties having any right, title or
interest in said real property or any part thereof, their heirs,
successors and assigns and shall inure to the benefit of each
Owner thereof.

DAVID GLATT
Title Abstracting Service West
P.O. Box 10000 - Colorado Springs, CO

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Lot, nor shall any construction or excavation whatsoever be commenced, or materials, equipment or construction vehicles be placed on any Lot, until the construction plans and specifications and a plan showing the location of the structure on the Lot have been approved by the Committee as to the quality of the workmanship and materials, harmony of external design with existing structures, and a location with respect to topography, finish grade elevations and relationship to existing set-back lines. There is hereby established an Architectural Review Committee for purposes of reviewing all such plans and enforcing the architectural guidelines for the Properties. The Executive Board may adopt or modify architectural guidelines for the Properties from time to time. All such architectural guidelines shall be binding on the Lots and the Homeowners.

Membership. The initial Committee consists of the Declarant or its designated committee members. The original Committee or its designees may remain in place until Mountain Vista First Addition P.U.D. is complete and all initial construction has been reviewed and approved.

All decisions of the Committee shall be by majority vote, provided that a majority of the Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, Declarant shall have full authority to designate a successor. In the event no volunteer successor can be found, the remaining members may designate any Owner of a Lot as successor. The members of the Committee shall not be entitled to any compensation for services performed pursuant to this Declaration. At such time as the Declarant has sold the last of the aforesaid Lots, the Executive Board shall appoint three Homeowners to serve as successor members.

2. **Control.** No building, fence, wall or other structure shall be erected or altered until the construction plans and specifications regarding quality of workmanship, type of materials, and harmony of external design shall have been approved by the Committee. Each Owner shall provide, at his cost, two complete sets of house plans, specifications, site, grade and landscape plans to the Committee at least thirty (30) days prior to the date actual construction is scheduled to commence on his residence. The Committee, at its discretion, may approve plans to include a number of acceptable "stock" plans which meet minimum criteria. The property is subject to all the requirements and limitations stated and depicted in the P.U.D.

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ARTICLE I.

DEFINITIONS

1. "Committee" shall mean and refer to Mountain Vista Architectural Control Committee, its successors and assigns.

2. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title, to any lot or Unit which is a part of the Property including contract sellers and buyers, but excluding those having such interest merely as security for the performance of an obligation.

Each Owner of a Lot shall have a right and easement of enjoyment to the Common Elements which rights shall be appurtenant to the Lot.

3. "Properties" shall mean and refer to that certain real property herein above described and referred to as Mountain Vista First Addition P.U.D.

4. "Lot" shall mean and refer to an individual lot of the Mountain Vista First Addition P.U.D. as shown in the Amended Site Plan or Plat. In the event Declarant subsequently replats any of the aforesaid Lots into two or more Lots, all such additional Lots shall be likewise included in the term "Lot".

5. "Declarant" shall mean and refer to Mountain View Home Builders, Inc., its successor and assigns.

6. "Association" shall mean the Mountain Vista Homeowner's Association, Inc.

7. "Common Elements" shall mean all of the Properties except the individual Lots which will be sold to individual purchasers who will then become Homeowners.

ARTICLE II.

ARCHITECTURAL CONTROL

1. Architectural Review. No dwelling or other improvements shall be erected, altered, modified or placed on any

A Preliminary Development Plan and Final Development Plan for Mountain Vista 1st Subdivision as approved and on file with the City of Loveland, Colorado.

Should the Committee fail to approve or disapprove the plans and specifications submitted to it by the Owner of a Lot in the Property within forty five (45) days after Committee receives a fully documented application for approval, then such approval shall not be required; provided, however, that no building or other structure shall be erected or be allowed to remain on any Lot which violates any of the covenants or restrictions contained herein or in the applicable architectural guidelines. The issuance of a building permit or license, which may be in contravention of these protective covenants, shall not prevent the Committee from enforcing these provisions.

The Committee's approval of a dwelling, fence, wall or other structure or landscape plan, does not alleviate the Owner from the responsibility of obtaining a building permit from the City nor from complying with the requirements and limitations of the approved P.U.D. plan on file with the City of Loveland, Colorado.

3. "No Liability". Neither the Committee, its members, nor Declarant, nor their respective successors or assigns, shall be liable in damages to anyone submitting plans to the Committee for approval, or to any Owner affected by this Declaration, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans to the Committee for approval. Each Homeowner agrees, by submission of such plans and specifications, that he will not bring any action or suit against the Committee, its members, or Declarant to recover any such damages. Approval by the Committee shall not be deemed to constitute compliance with the requirements of any local building codes, and it shall be the responsibility of the Owner or other person submitting plans to the Committee to comply therewith.

ARTICLE III.

USE RESTRICTIONS

1. Residential Use. No Lot or Lots situated in the properties shall be used for other than single family residential purposes. There shall not exist on any Lot as shown on the plat recorded at the Larimer County Clerk and Recorder's Office at any

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time more than one dwelling. All dwellings or structures erected upon said property shall be of new construction, which shall have been constructed "on site" on the Lot. No garage or porch shall be constructed except as an integral part of the residence it is intended to serve. Only one or two car garages shall be allowed. Detached garages are permitted. Home occupations shall not be allowed other than as permitted by the City of Loveland, Colorado or by the Association.

2. Building Standard. All structures shall conform with the edition of the Uniform Building Code published by the International Conference of Building Officials as a guide for sound construction which is most recently adopted by the City of Loveland; further, all buildings shall conform to the editions of the National Electric and National Plumbing Code most recently adopted by the City of Loveland. All structures shall conform with all requirements or standards established by the Declarant, the Association, the Committee and as set forth in the design and building requirements of the PUD approval of the Properties.

3. Dwelling Quality and Size. All dwellings must meet minimum standards of design, construction and quality of materials to insure the design intent of the Declarant. The ground floor area of the main structure, exclusive of one-story open porches and garages, shall not be less than 1,000 square feet.

4. Landscaping, Maintenance, and Repair. The Association shall be responsible for maintenance of the Common Areas and Common Elements and all improvements thereon, including all landscape located in the public street right-of-way as shown on the approved PUD plans on file with the City of Loveland. Each Lot Owner shall be responsible for maintenance, repair and replacement of all improvements on his own individual Lot including landscaping.

The Association will be responsible for all Common Area maintenance including Common Area landscaping, perimeter sidewalks, Common Area fences, Common entry court areas and driveway approaches and all other common elements. It shall be the Owner's continuing responsibility to maintain all other improvements on each individual Lot, including any fences. It shall also be the Owner's continuing responsibility to maintain all improvements lying between the face of the street curb and their abutting property line, in compliance with the approved PUD

plans and Public Improvement Construction Plans on file with the City of Loveland.

It is important to maintain the quality and consistency of landscaping throughout the Properties. Therefore, 75 percent of all Lots, exclusive of the dwelling, driveways and sidewalk areas, shall be covered with grass and/or living plants or shrubs. Any Owner may submit a landscaping plan to the Committee which provides for coverage of less than 75 percent of such area with grass and/or living plants or shrubs, however, no such plans shall be implemented without the prior written consent of the Committee.

5. Roof Pitch. Each structure erected within the Properties shall have a minimum pitch of 5:12.

6. Color Approval. The exterior paint, stain or other coloring materials to be utilized on any dwelling, out building, fence, wall or other exterior structure shall first be approved in writing by the Committee.

7. Time for Construction. At the time plans and specifications are approved by the Committee, the Lot Owner shall proceed with commencing construction within three years, and the same shall be completed within a maximum period of one (1) year's time from the date of commencement; excepting, however, that this period may be extended by written instrument as may be deemed reasonable by the Committee, if said extension is made reasonably necessary by reason of inclement weather, inability to obtain materials, strikes, acts of God, or other unforeseeable cause. Once construction is commenced, it must be completed within one (1) year.

8. Occupancy of Structure. No structure shall be occupied or used for the purpose for which it was designed or built until the same shall be approved by the Building Inspector of the City of Loveland or such other official designated by said City. No structure erected upon any Lot shall be occupied in manner, while in the course of construction nor at any time prior to its being fully completed, as herein required.

9. Air Conditioning Units, or Communication Antennas. No air conditioning unit, solar collector, evaporative cooler, radio antennas, or other object shall be placed upon the roof or fireplace chimney of any residence or building, or the side yard of any Lot, unless appropriate plans have been submitted to and

approved by the Committee. Satellite dishes shall not be allowed on any Lot, except that satellite dishes not exceeding eighteen (18) inches in diameter may be allowed if approved by the Committee. All other proposed installations or improvements must be submitted to the Committee for its review and approval prior to construction. The construction, maintenance, repair and replacement of any such conditions shall be the responsibility of the individual Lot Owner.

10. Storage. Motor vehicles used for daily family and work related travel will be stored in the garage, driveway, or on the street directly in front of the Lot. Recreational vehicles, motor homes, campers, boats or other equipment must be stored in an enclosed garage facility. Recreational vehicles, motorhomes or boats, and similar equipment or vehicles may not be kept on the Lot, street or parking areas, except that such vehicles of guests of an Owner may be kept for up to forty-eight (48) hours. No vehicles of Owners or guests shall be parked in such a manner as to obstruct any public sidewalk, shared drive access easement, common entry court, nor extend beyond the property line.

11. Automotive Repairs. No automotive repairs shall be done on any street, driveway or any parking area.

12. Disables Vehicles. No disables vehicles shall be allowed to remain on the street, driveway, parking area or any Common Area.

13. Unnatural Drainage. Under no circumstances shall the drainage characteristics of any Lot(s), as established by Declarant and approved by governmental and municipal agencies, be altered by any Lot Owner(s) or his agent during the course of landscaping; subsequent construction with the site(s) or erosion that is a direct result of lack of landscaping or maintenance. Drainage swales, channels and easements established by Declarant shall not be altered, obliterated or blocked by Lot Owner(s) or its agent. The elevation of a Lot shall not be changed so as to materially affect the surface elevation or grade of the adjacent Lots. The property Owner(s) or his agent is responsible for maintaining such grades, swales and easements once they have been established by Declarant.

14. Temporary Residence. No Structure of temporary character, no trailer, converted trailer, mobile home, tent or accessory building shall be used on any Lot as a residence

8 temporarily or permanently, and no used structure of any sort shall be moved onto any Lot, except that the Committee may approve the use of trailers, mobile homes or show homes for a designated length of time, to be used solely for sales offices, construction compound and/or construction headquarters during the construction of the permanent residences.

15. Nuisance. Nothing shall be done or permitted on the properties which may be or become an annoyance or nuisance to the Properties. No noxious or offensive activities or commercial business or trade shall be carried on or upon any Lot. No Lot shall be used in whole or in part for the storage of any property or thing that will cause such Lot to appear in the unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material emit foul odors, or that which will cause any noise that will or might disturb the peace, quiet, comfort, or serenity of the occupants of surrounding property.

16. Garbage and Refuse Disposal. No Lot nor any part of the Common Area shall be used or maintained as a dumping ground for garbage, rubbish, lawn refuse or any trash. Trash, garbage or other waste shall not be kept, except in sanitary containers. Each Lot Owner shall be responsible for his own trash, garbage or other waste storage and removal; provided, however, that the Association may require that only one trash hauler be contracted to service the Properties.

17. Walls and Fences. No boundary wall or fence shall be constructed with a height of more than five (5) feet as determined by specific fencing guidelines as approved by the Committee; no chain link fences shall be allowed. All fences constructed shall meet all applicable guidelines and restrictions, including those established by the Association, the Committee, or as a part of the approval requirements of the PUD for the properties, and all fences must be consistent in design, size, materials and color consistent with the design for the 43rd Street fence as well as matching the adjacent structure.

18. Pets, Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any site, except that dogs, cats, or other domesticated household pets may be kept, provided that they are not kept bred or maintained for any commercial purposes, and provided further that the number of household pets shall not exceed two for each lot. All pets must be kept on a leash in the Common Areas. Each

individual Lot Owner shall be responsible for any damage or injuries caused by his pets and shall indemnify and hold the Association harmless herefrom. Each individual Lot Owner shall also be responsible for cleaning up after his pets.

19. Signs. No sign of any character shall be displayed or placed upon any of the Lots, except one professional sign of not more than four square feet in area per side advertising the residence for sale. However, signs used by a builder to advertise the property during construction and sales period may be placed on said Lots as approved by the Committee.

20. Mining. No derrick or other structure designed for the use in boring for oil or natural gas shall be erected, placed or permitted upon any part of such premises, nor shall any natural gas, petroleum, asphalt, or hydrocarbon products or minerals of any kind be produced or extracted therefrom.

21. Subdivision of Lots. None of the Lots shall at any time be divided, subdivided, or re-subdivided unless said divisions, subdivisions, or re-subdivisions is permitted under the regulations, codes and ordinances of the City of Loveland, Colorado, and is approved in writing by the Association. In the event of division, all property thereunder shall be subject to all other provisions hereof.

22. Setbacks. No dwelling shall be located on any building site nearer to the front Lot line or nearer to the side street line than the minimum setback lines shown on the approved PUD plans on file with the City of Loveland, or as otherwise provided by law. In the event, no building shall be located on any building site nearer than that which is permitted by the applicable City of Loveland ordinance for Mountain Vista First Addition P.U.D.; or nearer than that which is permitted by applicable law. No dwelling shall be located on any interior site nearer than that which is permitted by applicable law. For purposes of this covenant, eaves, steps, and open porches shall not be considered as a part of the dwelling; provided however that this shall not be construed to permit any portion of the building site to encroach upon another building site a platted in the subdivision. Any variance to the regulations of the City of Loveland granted by said City shall likewise be considered a variance to these covenants.

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ARTICLE IV.

ASSESSMENTS

1. Periodic/Annual Assessments. The Association shall have the right and duty to assess each individual Lot and Lot Owner for periodic fees in order to pay the reasonable and necessary costs of the Association as contemplated by this Declaration, the Articles and the Bylaws. The annual assessments shall be payable according to the schedule set by the Executive Board pursuant to the Bylaws and shall be the same for each Lot

2. Special Assessments. The Association shall also have the right to levy special assessments against any Lot or Lot Owner for extraordinary expenses incurred by the Association in connection with any individual Lot or for special improvements, capital funds and other reasonable and necessary Association expenses.

3. Liens. Any unpaid assessments shall create a lien in favor of the Association on the respective Lot failing to pay the assessment. Any such lien may be foreclosed in the same manner as any other lien as provided by Colorado law. The Association shall also have all other rights of collection of assessments.

The lien of any assessment shall be subordinate to the lien of any first mortgage or deed of trust on a Lot. Mortgagees shall not be required to collect assessments. Assessments shall be the obligation of the Lot Owner. The failure of a Lot Owner to pay assessments shall not constitute a default under a mortgage or deed of trust affecting a Lot.

The Common Elements shall not be mortgaged or conveyed without the signed consent of at least 67% of the Homeowners excluding the Declarant, as well as approval of the City of Loveland, Colorado.

ARTICLE V.

EASEMENTS

1. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as

shown on the recorded plat of Mountain Vista First Addition P.U.D. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow or drainage channels to the easements or which may obstruct or retard the flow of water through drainage channels in the easements. The easements areas of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility is responsible. From time to time additional easements may be required for maintenance and installation of utilities and Declarant reserves the right to grant and create such easements.

If ingress or egress to any Lot is through any Common Element, any conveyance or encumbrance of such area shall be subject to the easement of the Owner of said Lot.

ARTICLE VI.

GENERAL PROVISIONS

1. Abatement and Suit. The provisions herein contained shall run with the land, and be binding upon and inure to the benefit of the Declarant and the Owners of every Lot within the Property. These provisions may be enforced as hereinafter provided by Declarant acting for itself, the Committee, or as trustee on behalf of all of the Owners of the Lots. Each Owner, by acquiring an interest in the Property appoints irrevocably the Declarant as such Owner's attorney-in-fact for such purposes; provided, however, that if an Owner notifies Declarant in writing of a claimed violation of the provisions herein contained, and Declarant fails to take action to remedy the violation within thirty (30) days after receipt of such notification, then, and in the event only an Owner may separately at such Owner's own cost and expense, enforce the provisions herein. Violation of any of the provisions herein contained shall give the Declarant the right (1) to enter upon the portion of the property wherein said violation or breach exists and summarily to abate and remove, at the expense of the Owner, any structure, thing or condition that may be or exists thereon contrary to the intent and meaning of the provisions hereof; (2) to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of the provisions herein to enjoin or prevent them

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from doing so; and (3) to cause said violation to be remedied or to recover damages for said violation.

2. Deemed to Constitute a Nuisance. Every violation of this Declaration or any part thereof is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed therefor by law or equity against an Owner, shall be applicable against every such violation and may be exercised by Declarant or any Owners pursuant to Section 1 of this Article IV.

In any legal or equitable proceeding for the enforcement or to restrain the violation of this Declaration or any provision hereof, the losing party or parties shall pay the reasonable attorney's fees of the prevailing party or parties in the amount as may be fixed by the Court in such proceedings. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

The failure of the Declarant or of the Committee or Owner to enforce any of the provisions of this Declaration herein contained shall in no event be deemed to be a waiver of the right to do so for subsequent violations or of the right to enforce any other provisions thereof, and the above-named entities shall not be liable therefor.

3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for a successive period of ten (10) years. This Declaration may further be extended for successive ten (10) year periods by a vote of at least 67% of the Homeowners. Any amendment must be recorded. If any then applicable regulations of the City of Loveland, Colorado require City approval of such amendments, such approval must also be obtained.

4. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

5. Additional Property. Annexation of any additional property by the Association, mergers and consolidations, mortgaging of the Common Elements, dedication of Common Elements, dissolution and amendment of the Articles all

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require prior written approval of HUD/VA so long as there is a Class B membership (while the Declarant is in control.)


6 Enforcement. Both the Association and any individual Lot Owner(s) shall have the right and power to enforce the provisions of this Declaration.

7. The Declarant, the Association and all Lot Owners shall be prohibited from taking any action to restrict the development or use of the adjacent commercial property to the west (Lot 1, Block 1, Mountain Vista P.U.D. First Subdivision), which property currently is approved for commercial development. The anticipated development may include, but is not necessarily limited to, a gas station/convenience store, retail stores, day care, offices, apartments or other similar commercial development.

IN WITNESS WHEREOF, the undersigned, being the Declarant, has executed this Declaration this 7 day of March 1996.

Declarant:

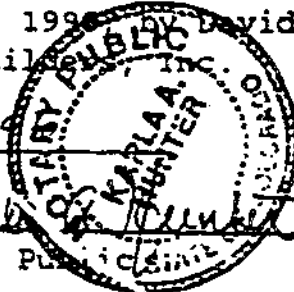
Mountain View Home Builders, Inc.
a Colorado corporation

By: 
David E. Glatt, President

STATE OF COLORADO)
) SS.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me on this 7th day of March, 1996 by David E. Glatt, President of Mountain View Home Builders, Inc.

My Commission Expires: 7-11-98


Karla A. Hunter
Notary Public