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Chuck Broerman, Clerk and Recorder  
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## CONSTRUCTION / GRADING EASEMENT AGREEMENT

**THIS CONSTRUCTION/GRADING EASEMENT AGREEMENT** (this "Agreement") is made and entered into as of June 22, 2022 (the "Effective Date"), by **EL PASO COUNTY SCHOOL DISTRICT NO 49**, ("D49"), for the benefit of **Challenger Communities, LLC**, a Colorado limited liability company and its successors and assigns ("Challenger").

### RECITALS

A. D49 is the fee owner of certain real property located in Peyton, El Paso County, Colorado, and legally described and set forth in special warranty deed recorded under reception No. 205075726, records of El Paso County, Colorado ("D49 Parcel").

B. Challenger is the developer of a residential community in El Paso County, Colorado to be known as Falcon Meadows at Bent Grass ("Bent Grass").

C. Challenger desires to construct a turn lane and alter the grade of a portion of the D49 Parcel (the "Project") in accordance with an El Paso County, Colorado approved Woodmen Frontage Road Turn Lane Plan (the "Turn Lane Plan").

D. D49 is willing to grant Challenger certain rights, authorities and easements over, upon and across a portion of the D49 Parcel on the terms and conditions set forth herein.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, D49, as of the Effective Date, hereby grants, creates, covenants and declares as follows:

1. Temporary Construction/Grading Easement. D49 grants to Challenger and its successors and assigns, a temporary construction/grading easement (the "Easement") over, under, across, and upon the portion of the D49 Parcel described on Exhibit A attached hereto and incorporated herein (collectively, the "Easement Area"). D49 authorizes Challenger to enter onto the D49 Parcel and to modify the Easement Area in a manner conforming with the Turn Lane Plan. Challenger's authority includes, without limitation, the right to: (i) modify the grade of the Easement Area in a manner that will cause the D49 Parcel to have consistent grades in the manner generally provided for in the Turn Lane Plan; (ii) reseed and irrigate as needed the Easement Area; (iii) utilize the soils from within the Easement Area for the purpose of grading the Property in a manner generally provided for in the Turn Lane Plan; and/or (iv) remove from Easement Area, at

Challenger's sole expense, soils and other materials as Challenger determines to be in excess of the material needed for the Turn Lane Plan. At the conclusion of the Project, the Easement Area reseeding and any required erosion control measures shall be completed at Challenger's sole cost and expense and in such a manner that full vegetation is restored. The temporary construction/grading easement shall automatically terminate twenty-four (24) months after the Effective Date of this Agreement, unless earlier terminated in writing by the parties.

2. Character of the Easements.

2.1 Appurtenant Easements. The benefits and burdens created by this Agreement shall run with the D49 Parcel and shall inure to the benefit of and be binding upon D49 and its successors and assigns.

2.2 No Implied Easements. Nothing contained in this Agreement shall be deemed to create any implied easements not otherwise expressly established herein.

3. Permits and Governmental Authority. Challenger covenants to obtain, at Challenger's sole cost and expense, any and all permits and governmental authorizations needed for the Project (the "Permits") and comply with all applicable governmental requirements, including, but not limited to erosion control measures and permits. Challenger further agrees to obtain any and all required inspections related to the Project or the Permits and to manage all Permits issued in connection with the Project.

4. Liens. Challenger will not permit any lien to be filed against the D49 Parcel for any labor or materials in connection with the work of any character performed or claimed to have been performed on or in connection with the Project; provided, however, if any mechanic's, materialmen's, or similar lien is filed on the D49 Parcel as a result of any work performed by or on behalf of Challenger, then Challenger shall discharge, bond or otherwise remove such mechanic's, materialmen's, or other lien within thirty (30) days after the date Challenger first learns of such lien; provided further, Challenger shall have the right to contest any such lien by the institution of appropriate legal proceedings or otherwise so long as D49's interest in the D49 Parcel is not put at risk.

5. Indemnification. During this agreement, Challenger, its representatives and assigns, covenants and agrees to indemnify, hold harmless and defend D49 and its shareholders, officers, directors, employees, agents, successors, and assigns (individually and collectively, the "Indemnitee"), from and against any and all claims owed to or asserted by any third party to the extent arising from (a) the use of the Easements by Challenger, and/or (b) any breach of this Agreement by Challenger, except to the extent such claims arise from the negligent acts or omissions of an Indemnitee.

6. Miscellaneous.

6.1 Descriptive Headings. The descriptive headings of the sections hereof are inserted for convenience only and shall not control or affect the meanings or construction of any provisions hereof.

6.2 Modification. The terms and conditions of this Agreement may be abrogated, modified, rescinded, or amended in whole or in part only by written instrument executed by D49 and Challenger or its successors and assigns and recorded with the Clerk and Recorder for El Paso County, Colorado.

6.3 Partial Invalidity. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

6.4 Further Actions. All of the parties agree that they shall execute and deliver, or cause to be executed and delivered, such other and further agreements, documents, and instruments as may be necessary or appropriate in order to carry out the intent and purpose of this Agreement.

6.5 Binding. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and to their respective heirs, successors, assigns and representatives.

6.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

6.7 Counterparts. This Agreement may be signed in any one or more counterparts, each of which taken together shall be but one and the same Agreement.

6.8 Affiliations. Nothing in this Agreement shall be construed to make D49 and Challenger partners or joint venturers, or render either party liable for the debts or obligations of the other party.

6.9 Notices. Any notices required or permitted hereunder shall be in writing and shall be deemed given on the same day if delivered personally, or on the date receipt is confirmed if mailed by registered or certified mail or by commercial overnight courier (e.g., FedEx, DHL, etc.), return receipt or confirmation of delivery requested, to the parties at the following addresses (or at such other address for a party as shall be specified by like notice.

D49:

Falcon School District 49  
10850 E. Woodmen Rd.  
Peyton, CO. 80831

Challenger:

Challenger Communities, LLC  
 8605 Explorer Drive, Ste. 250  
 Colorado Springs, CO 80920





**EXHIBIT "A"**  
**TEMPORARY CONSTRUCTION EASEMENT**  
**LOT 2, "LATIGO BUSINESS CENTER FILING NO. 1"**  
**RECEPTION NO. 205075726**

A TEMPORARY CONSTRUCTION EASEMENT LOCATED IN THE WEST HALF OF SECTION 1, T13S, R65W OF THE 6th P.M., EL PASO COUNTY, COLORADO BEING A PORTION OF LOT 2, "LATIGO BUSINESS CENTER FILING NO. 1" RECORDED UNDER RECEPTION NO. 205075726 IN THE RECORDS OF SAID EL PASO COUNTY, ALL MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE SOUTH 30 FEET OF SAID LOT 2.

SAID EASEMENT CONTAINS AN AREA OF 12.427 S.F. MORE OR LESS.

PREPARED BY:

VERNON P. TAYLOR, COLORADO PLS NO. 25966  
FOR AND ON BEHALF OF M&S CIVIL CONSULTANTS

