

DECLARATION OF COVENANT
SILVER RIDGE TOWNHOMES

This **DECLARATION OF COVENANT** (hereinafter "Covenant") is entered by Silver Ridge Rocky Mountain, LLC, a Colorado limited liability company, ("the Owner"), effective November 9th, 2004.

RECITALS

- A. Owner is the owner of certain property in Grand County, Colorado, described on Exhibit 1, attached hereto and incorporated herein by reference, (the "Property").
- B. Owner has obtained the annexation of the Property into the Town of Granby, Colorado (the "Town").
- C. Owner wishes to make arrangements through this Covenant to provide future owners of the Property with certain amenities, services, and benefits to be received by them.
- D. Because such public amenities, services, and benefits will be needed as and to the extent that the Property is actively sold and developed, and their value to future owners of the Property will be reflected in future property values, the Owner has determined that it is reasonable and appropriate to distribute the costs thereof by means of a fee expressed as a percentage of future sales prices of the Property.
- E. The rate, exemptions and other attributes of such fee have been determined as set forth below in this Covenant, and such provisions represent a reasonable allocation of the costs of such amenities, services, and benefits.
- F. The fee provided for herein shall be payable to a non-profit corporation described in Section 4 herein solely for the purpose of providing the amenities, services, and benefits contemplated hereby.
- G. Each person acquiring any interest in the Property shall be deemed for all purposes to have assented and agreed, as an essential condition of any conveyance to it, to the provisions of this Covenant, to have agreed to comply with this Covenant and to have waived any right to challenge or contest the provisions hereof or to seek any refund or abatement of the fee payable hereunder.

COVENANT

The Owner hereby covenants and binds the Property as follows:

- 1. Covenant. Owner hereby covenants and agrees that, except as provided in Section 3 below, a transfer fee ("Transfer Fee") based on a percentage of the Consideration paid on the transfer of any portion of or interest in the Property shall be due and payable by the grantee

at the time of transfer and shall apply to each transfer of any portion of or interest in the Property. The Transfer Fee is one percent (1%) of the Consideration for such transfer. Owner hereby waives, on behalf of itself and its successors in title, any right to challenge the Transfer Fee on any basis.

2. Definitions. For purposes of this Covenant, certain words are defined as follows:
 - a. The term "Attainable Housing" shall refer to dwelling units intended to be purchased and/or leased by Granby area residents. Said units shall be deed restricted and/or rent restricted for sale or lease designed to target households having an income of between 80% and 120% of the average median household income in Grand County and shall be limited to Granby area residents.
 - b. The term "Consideration" shall refer to and includes the actual cash paid and/or value of the property delivered, or contracted to be paid or delivered, in return for the transfer of ownership or title to any portion of or interest in the Property and shall include the amount of any liens, mortgage, contract indebtedness, or other encumbrance, given to secure the purchase price, or any part thereof, remaining unpaid on such Property at the time of sale. The term does not include the amount of any outstanding lien or encumbrance in favor of the United States, the State of Colorado, or of a municipal or quasi-municipal governmental corporation or district for taxes, special benefits or improvements.
 - c. The term "Conveyance" shall refer to and includes any conveyance of ownership or title to any portion of or interest in the Property as evidenced by any deed or instrument or writing wherein or whereby title to such Property is granted or conveyed subject to the exclusions provided herein. Conveyance of "ownership" for the purposes of this Covenant means and includes the transfer of more than fifty percent (50%) of the ownership interest of an entity which has as a principal asset an interest in any portion of or interest in the Property.
 - d. The term "Developer" means any person or entity that owns two or more vacant lots within a single subdivision.
 - e. "Final Court Action" means a final order or opinion issued by a court of competent jurisdiction by which the Foundation, the Town or the Owner is bound, and wherein no appeal can be taken or the time for filing an appeal has expired.
 - f. The term "Foundation" means the Recreation, Open Space and Housing Foundation created as described in Section 4 hereof.
 - g. The term "Property" shall refer to and includes the real property described in Exhibit 1.
3. Exemptions. The fee imposed by this Covenant shall not apply to:

- a. Any transfer of un-subdivided vacant land or transfer of subdivided lots by a Developer.
- b. All transfers prior to the transfer of an individual residential lot, individual residential unit or individual non-residential unit within the Property after such lot or unit has been subdivided and sold to an individual unit or lot owner other than a Developer.
- c. Any document wherein the United States, or any agency or instrumentality thereof, the State of Colorado, any county, city and county, municipality, district or other political subdivision of the state, is either the grantor or grantee.
- d. Any document wherein the grantee is a non-profit entity.
- e. Any document granting or conveying title to real property in consequence of a gift of such property, where no consideration other than love and affection, charitable donation or a nominal compensation is evidenced by the terms of the instrument of transfer.
- f. Any document terminating or evidencing termination of a joint tenancy in real property except where additional consideration of value is paid in connection with such termination, or a decree or agreement partitioning real property held under common ownership unless consideration of value is paid in connection therewith.
- g. Transfers for estate planning purposes where the grantor and grantee are family members or entities in which the individuals or principals (including the settlors of any trust) in the grantor entity are family members of the individuals or principals (including the beneficiaries of any trust) in the grantee, and any transfer of title or change of interest in real property by reason of death.
- h. Transfers made pursuant to mergers or consolidation of corporations or by a subsidiary to a parent corporation which does not result in a change of control.
- i. Any deed or conveyance made and delivered without consideration for the purposes of confirming, correcting, modifying or supplementing a transfer previously recorded; making minor boundary adjustments, removing clouds on titles; or granting easements, rights-of-way or licenses.
- j. Any decree or order of a court of record determining or vesting title, including, without limitation, the final award of title pursuant to a condemnation proceeding, a dissolution of marriage proceeding, quiet title proceeding, etc.
- k. Any transfer of ownership from one or more individuals or from an entity, to an entity where the individuals or principals in the grantee entity are the same as the individuals or the principals in the grantor.

- l. Any mineral deed or royalty deed.
 - m. Transfers to secure a debt or other obligation, or transfers or releases of property which is security for a debt or other obligation.
 - n. Any deed or conveyance under execution, sale, foreclosure sale under a power of sale or court decree of lien foreclosure; sheriff's deed; public trustee's deed; or treasurer's deed.
 - o. Any conveyance of a deed-restricted employee or Attainable Housing Unit.
 - p. Any lease of real property (or assignment or transfer of any interest in any such lease), provided such lease by its terms does not exceed 50 years. In the event the lease is for more than 50 years, the Transfer Fee shall be paid based on the fair market value of the leased premises (as though the conveyance were in fee simple).
4. Recreation, Open Space and Housing Foundation. A non-profit corporation known as the "Recreation, Open Space and Housing Foundation," has been formed and is charged with the collection and expenditure of the Transfer Fee provided for hereby. The Foundation shall have only the authority to collect, receive and expend the Transfer Fee provided for herein and in other similar covenants, for the purposes described in Section 6 hereof, and for no other purpose. On or before January 31 of each calendar year, the Foundation shall prepare and deliver to the Town of Granby Board of Trustees and the Owner a report detailing the prior year's receipts and expenditures of funds, and the proposed budget for those purposes for the current year, and the cumulative amount of receipts and expenditures.
 5. Application for Exemption. In the event any document which is exempt from the fee herein imposed does not contain language clearly showing its intent and character, the grantor or grantee may apply for and obtain from the Foundation a certificate of exemption, which may be affixed to such deed or instrument of transfer. In the event of a determination by the Foundation favorable to the applicant, any amount previously deposited or so much thereof as may be allowed by the Foundation shall be promptly refunded to the applicant. In the event of a determination by the Foundation unfavorable to the applicant, the applicant shall have the right to submit the matter to arbitration pursuant to the provisions of the American Arbitration Association. The determination made as a result of such arbitration shall be binding on the parties.
 6. Receipt and Application of Funds. All Transfer Fees shall be paid directly to the Foundation described in Section 4. All funds received by the Foundation pursuant to this Covenant shall be accounted for separately, but may be combined with funds received as a result of other similar covenants applying to other properties. The funds shall be used (1) to acquire open space adjacent to or in the vicinity of the Property, by deed, conservation easement, purchase of development rights or otherwise, to preserve the open, rural feeling of the surrounding area; (2) to assist in providing Attainable Housing needed as a result of the development of the Property; (3) to develop recreational facilities for use by the owners or residents of the

Property, as well as other owners and residents of the Town of Granby; and (4) to operate and maintain the Foundation, including pursuing actions to collect and administer the fee provided herein. Apportionment of the funds among these purposes shall be determined by the Foundation in the exercise of its discretion, except that initial priority shall be given to (1) acquiring or preserving open space along the Highway 40 corridor between Red Dirt Hill and the Town's limits, (2) developing the site provided for Attainable Housing pursuant to Article 12 of the Planned Development Overlay District Preliminary Plan for SolVista Golf & Ski Ranch (the "SolVista PDOD Preliminary Plan"), and (3) developing the site provided for a recreation center pursuant to Section 9.02 of the SolVista PDOD Preliminary Plan. Completion of any one or more of these priority items is not required before the Foundation can expend funds it receives from the Transfer Fee for any of the other foregoing open space, Attainable Housing and/or recreation projects or items or operation and maintenance of the Foundation.

7. Penalties and Liens.

- a. All Transfer Fees imposed by this Covenant, if not paid when due, shall bear simple interest at the rate of eighteen percent (18%) per annum until so paid. The amount of the fee imposed by this Covenant and interest due thereon is hereby imposed upon the Property or any portion thereof upon the transfer of which said fee is imposed, and if not paid when due, such assessment and interest, if any, shall constitute a lien on the portion of the Property transferred for the amount thereof, which lien shall continue until the amount thereof is paid or until it is discharged of record by foreclosure of a senior lien or otherwise. Such lien may be foreclosed in the same manner as a deed of trust, through the public trustee or through the District Court of Grand County, Colorado.
- b. Any remedies provided for herein shall be cumulative, not exclusive, and shall be in addition to any other remedies provided by law.

8. Relationship to Land. The Owner acknowledges and agrees that the obligations imposed by this Covenant are related to and touch and concern the Property, since the Transfer Fees are required to be used for the purposes specified in Section 6 above. The Owner further acknowledges and agrees that the Transfer Fees represent fees which are being imposed by the Owner in order to obtain funds to pay to the Foundation so that the Foundation may obtain and preserve open space to ensure the continued rural feel of the SolVista development, provide Attainable Housing for the development and provide recreational opportunities and facilities for the owners and occupants of the Property.

9. Credit for Further Transfer Fee or Charge. In the event any future fee or charge is imposed by the Town of Granby on the transfers defined herein for which the Transfer Fee is payable, full credit shall be given by the Foundation against sums due under such future fee or charge for all payments made hereunder upon such transfer.

10. Recording. This Covenant shall be recorded in the records of Grand County, Colorado.

11. Enforcement. This Covenant is made for the express benefit of the owners and occupants of the Property and for the additional express benefit of the Foundation. The Foundation shall have the right and power to bring suit for either legal or equitable relief for any breach, default or lack of compliance with the provisions of this Covenant, provided that no suit may be filed until the Foundation and the Owner or its successors and assigns is provided with written notice of such breach or lack of compliance and fails to cure such breach or lack of compliance within ten (10) days after the mailing of such notice. Further, the Town shall have the right, upon the request of the Foundation, to refuse to further process and/or deny any building permit, certificate of occupancy or development application with regard to any portion of the Property for which a Transfer Fee is owed and not paid. The Owner shall not have any obligation to enforce this Covenant, and the failure of any party to pay any Transfer Fee payable hereunder shall not constitute a default by the Owner hereunder or under the Annexation and Development Agreement between Owner and the Town.

12. Defense and Cure of Covenant.
 - a. In the event of any legal challenge by a third party to the validity or enforceability of any provision of this Covenant, the Owner shall cooperate with the Foundation and the Town, as necessary, in the defense of such challenge and each party to such challenge shall bear its own costs and attorney fees. During the pendency of any such legal challenge, through and including any Final Court Action, the Owner shall not assert any legal position contrary to the enforceability of this Covenant.

 - b. In the event of a Final Court Action determining this Covenant to be invalid or unenforceable, in whole or in part, resulting from such third-party legal challenge, the Owner shall cooperate with the Foundation and the Town, as necessary, and use its efforts to cure any such legal defects identified by such Final Court Action, and immediately upon such cure, take such actions as may be necessary to render the terms of this Covenant effective and enforceable. No such action shall alter the amount of the Transfer Fee as set forth in Section 1 above, or the purposes for which the funds raised by the Fee shall be expended, as set forth in Section 6 above.

13. Severability. Any determination by any court of competent jurisdiction that any provision of this Covenant is invalid or unenforceable shall not affect the validity or enforceability of any other provision hereof.

14. Statement Regarding Fee. Upon written request by any interested party, the Foundation shall issue a written statement setting forth the amount of any unpaid Transfer Fee with respect to any specific portion of the Property identified in such request. Such statement shall be furnished as soon as reasonably practicable, but in no event later than 30 days after receipt of the request, and shall be binding on the Foundation. If no statement is furnished to the inquiring party within such 30 day period, then the Foundation shall have no right to assert any claim for any unpaid Transfer Fee with respect to such property which was due as of the date of the request.

Any prospective purchaser of a unit may also obtain a written statement confirming or denying that an exemption would apply to the transfer. Anyone wishing to obtain such a statement must provide a copy of the proposed deed as well as an explanation of the exemption claimed. The Foundation will reply thereto as soon as reasonably practicable, but in no event later than 30 days after receipt of the request, and its reply shall be binding on the Foundation. If no statement is furnished to the inquiring party within such 30 day period, then the Foundation shall have no right to assert any claim for a Transfer Fee with respect to the proposed transfer so long as the transfer occurs as explained in the statement.

The requests described in the preceding two paragraphs must be made to the address of the foundation which is PO Box 440, GRANBY, CO 80446. A request will be deemed made on the date of delivery to the Foundation by a commercial carrier such as FedEx or UPS, the date a return receipt is signed by the Foundation or three days after such request has been deposited in the U.S. Mail, postage prepaid.

In the event of a determination by the Foundation unfavorable to the applicant, the applicant shall have the right to submit the matter to arbitration pursuant to the provisions of the American Arbitration Association. The determination made as a result of such arbitration shall be binding on the parties.

15. Amendment. This Covenant shall not be amended or terminated without the advance written consent of the Foundation and the Town of Granby acting by and through its Board of Trustees. If the Foundation and the Town provide such consent, no amendment shall be effective unless it is contained in a written instrument signed and acknowledged by the Owner or its successors in the same manner as a deed and duly recorded in the records of Grand County, Colorado.
16. Term. Except as provided herein, the term of this Covenant shall be perpetual.
17. Colorado Law. The interpretation, enforcement or any other matters relative to this Covenant shall be construed and determined in accordance with the laws of the State of Colorado.
18. Binding on Successors. The provisions of this Covenant shall run with the Property and be binding on all persons who hereafter acquire any interest in the Property, whether as an owner, renter, trustee, or mortgage beneficiary or otherwise.
19. Encumbrance. Until terminated, each and every provision contained in this Covenant shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any of the Property is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument.

IN WITNESS WHEREOF, the Owner has executed this Covenant the date first written above.



2004-014412 12/07/2004 12:16P DEC SARA L ROSENE
9 of 9 R 46.00 D 0.00 GRAND COUNTY CLERK

EXHIBIT 1

Legal description of the Property

Silver Ridge Townhomes, according to the final plat thereof recorded January 2, 2001 at Reception Number 2001-000027 in the records of the Grand County Clerk and Recorder.