

**ANNEXATION AND DEVELOPMENT AGREEMENT  
SILVER RIDGE TOWNHOMES**

**A. PARTIES**

**THIS AGREEMENT** is made and entered into the date last below approved by and between the Town of Granby, a Colorado municipal corporation (Town) and Silver Ridge Rocky Mountain, LLC (Developer).

**B. RECITALS**

This Agreement is entered into on the basis of the following facts, understandings and intentions of the parties:

1. The Town is a municipal corporation existing under the laws of the State of Colorado. Developer is a limited liability company, duly organized, existing and in good standing under the laws of the State of Colorado.
2. Developer is the owner of real property located in Grand County, Colorado, (the Developer Property) described as follows:  
  
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.
3. Developer desires to annex the Developer Property to the Town and has submitted an annexation petition for that purpose. It is the contemplation of the Parties that this Agreement will be entered into before the Town adopts an ordinance or ordinances annexing the Developer Property to the Town. However, this Agreement will not become effective until the ordinance(s) annexing and zoning the Developer Property are finally adopted and take effect. If such ordinance(s) annexing and zoning the Developer Property are not finally adopted on or before November 30, 2004, then this Agreement may be declared null and void, at the election of either party.
4. Sections 31-12-121, et seq., C.R.S., *inter alia*, authorizes the Parties to enter into this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the Town and Developer, the parties agree as follows:

**C. TERM; EFFECTIVE DATE OF AGREEMENT**

This Agreement will be effective from the date of its execution and shall continue in effect unless and until terminated as provided herein. The term hereof will be eight years from the effective date. After the expiration of the term, this Agreement shall be deemed terminated and of no further force and effect; provided, however, such termination shall not affect (a) annexation of the Developer Property into the Town; (b) any vested rights obtained prior to such termination and contemplated to continue after such termination; or (c) any right arising from Town permits, approvals or other entitlements for the Developer Property which were granted or approved prior to, concurrently with, or subsequent to the approval of this Agreement and that were contemplated to continue after termination of this Agreement.

**D. ZONING & SUBDIVISION; FACILITIES AND UTILITIES**

1. Developer has requested that, upon annexation, the Developer Property be zoned Residential/Business (R/B), as defined in the Town's Zoning Ordinance, with a clubhouse allowed as a use by right which clubhouse may be used as a sales office until all platted units have been built and sold to a consumer. (As used herein the term consumer means

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and refers to those who may purchase a unit for use by the buyer and does not include third party developers who may buy portions of the Developer Property for the purpose of construction and resale.) If an ordinance or resolution adopting such a zoning classification for the Developer Property is not finally adopted by the Town concurrently with the adoption of the ordinance annexing the property, then Developer may withdraw its petition for annexation.

2. The Developer Property has been platted as Silver Ridge Townhomes by Grand County and a final plat creating 184 units recorded January 2, 2001 at Reception Number 2001-000027 in the records of the Grand County Clerk and Recorder. The plat complied within all requirements of Grand County, Colorado when platted including its zoning and subdivision regulations. The Town confirms and accepts such plat subject to the Developer's obligations to provide infrastructure. A Sale Restriction in the form attached hereto as Exhibit B will be recorded at the same time this Agreement is recorded. To the extent that the final plat is inconsistent with the R/B zone the plat will control and no zoning violation of any sort will be deemed to exist.

3. Those facilities and utilities defined below are allowed within the Developer Property to service the development:

Drainage Facilities: Drainage ways and storm water structures, conveyances, retention and detention areas and facilities.

Utility Service Facilities: Electric distribution line, natural gas distribution line, lp gas tank, telephone line, cable television line, fiber optic line, electric and other above ground utility boxes as required by the utility service provider to serve a subdivision, gas regulator/motor station, cell site, antenna or any similar or related facilities, structures and equipment.

Wastewater Facilities: Lift stations, pumps and pumps stations, pipes, storage tanks, ponds and reservoirs, wastewater treatment plants, and related facilities, structures and equipment.

Water Facilities: Well facilities, pumps and pump stations, water storage facilities (including tanks, ponds and reservoirs), pipes, water treatment plants, and related facilities, structures and equipment.

**E. SERVICES**

It is contemplated that the Town will not be providing any significant public services to the Developer Property during the term of this agreement, other than police protection and possibly water and sewer service if the municipal exclusion proceedings referred to in Section F are effectuated. Specifically, the Town will not be providing road improvement or maintenance services to the Developer Property, which services are currently provided by the Master Homeowners Association of SilverCreek. If such Master Homeowners Association fails to provide necessary road improvement or maintenance services during the term of this Agreement, then such services shall be Developer's responsibility, not the Town's.

Except as specifically provided in this Agreement with regard to municipal services Developer has agreed need not be provided by the Town or that may be provided on a limited basis, after the effective date of this Agreement, the Town agrees to provide the Developer Property such other municipal services currently provided within the Town and on terms and conditions on which such services are provided generally to other properties within the Town. These provisions will not be construed as a limitation upon the authority of the Town to adopt different ordinances, rules, regulations, resolutions, policies or codes which change charges or costs for any service or class of service or any other charges so long as they apply throughout the Town uniformly or to the class of service uniformly or to all users of a particular utility system, such as a particular water system or sewer system, uniformly.

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**F. MUNICIPAL EXCLUSION**

The Developer Property is currently within the boundaries of the Silver Creek Water and Sanitation District ("SCW&SD") and is currently receiving water and sanitary sewer service from such District. The Town may, upon adoption of the annexation ordinance relating to the Developer Property, seek to effect a municipal exclusion pursuant to §32-1-502, C.R.S., of the Developer Property from SCW&SD. Developer agrees to support and cooperate with the Town in such exclusion efforts, if such proceedings are instituted, but Developer will not be responsible for paying any costs associated with such proceedings. The Town warrants and agrees that the water and sanitary sewer services to be provided by the Town upon completion of such exclusion proceedings will be at least equivalent, in terms of reliability and service standards, to the existing services provided by SCW&SD, and the costs of such services to be provided by the Town, in terms of mill levies and service fees, will not exceed those currently charged by SCW&SD. Nothing in this Agreement is intended to or will be construed to limit the rights or authority of the Town to seek exclusion of the Developer Property or any other property within the Town's boundaries pursuant to Section 32-1-502, C.R.S. or otherwise, subject to the terms of the preceding sentence. Notwithstanding the foregoing the parties agree to cooperate and to take all steps that might be necessary so as to avoid a situation where the Property was excluded from SCW&SD but the annexation was set aside.

**G. DEFAULT AND REMEDIES**

1. If the Town alleges that Developer is in default under this Agreement and Developer does not cure that default within thirty (30) days following written notice from the Town, the Town will be entitled to the following remedies which will be cumulative: (1) injunctive relief; (2) specific performance; and (3) any other remedies available at law or in equity, except damages. The Town will extend the cure period if the nature of the default is such that it cannot reasonably be remedied within thirty (30) days, provided Developer commences the corrective action within thirty (30) days and diligently pursues such correction thereafter.
2. If Developer alleges the Town is in default under this Agreement and the Town does not cure this default within thirty (30) days following written notice from Developer, Developer will be entitled to the following remedies which will be cumulative: (1) injunctive relief; (2) specific performance; and (3) any other remedies available at law or in equity, except damages. Any remedies available to Developer will be limited by the then existing governmental immunity act. Developer will extend the cure period if the nature of the default is such that it cannot reasonably be remedied within thirty (30) days, provided the Town commences corrective action within thirty (30) days and diligently pursues such correction thereafter.

**H. MISCELLANEOUS**

1. The Town has collected or will collect certain annexation and land use fees from the Developer and the Town will apply those fees against the reasonable development review expenses incurred by the Town while processing the Developer's development review proposal. In the event the Town incurs reasonable development review expenses greater than the monies collected from the Developer, the Developer agrees to reimburse the Town for the additional reasonable expenses and fees upon submittal of an invoice. Developer shall pay all invoices submitted by the Town within thirty (30) days of the Town's delivery of such invoice. Failure by the Developer to pay any invoice within the specified time shall be cause for the Town to cease processing the application, cease development of the Property, deny approval of the application, withhold the issuance of building permits or certificates of occupancy and for the Town to exercise such rights and remedies as are otherwise available to it in law or equity or under the applicable provisions of the Town Code; provided, however, that the Town shall not take any such action if the Developer timely deposits any disputed amount to be held in escrow pending resolution of such dispute.

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2. The Town has been provided with proof that the Developer has paid fees in lieu of land dedication to the Grand County Treasurer for the benefit of the East Grand School District and agrees that no additional land dedications or school fees, as described in section 17-2-5 of the Town Code will be required unless the Developer requests that more Units be created than have been approved by Grand County. The Developer agrees to cooperate with and assist the Town in having such fees transferred from Grand County to the Town unless they have already been transferred to the School District by the County. The Town has also been provided with proof that attainable housing fees in the amount of \$10,000.00 have been paid to Grand County in connection with the final plat and no additional fees or dedications will be required unless the Developer requests that more Units be created than have been approved by Grand County. The Developer agrees to cooperate with and assist the Town in having such fees transferred from Grand County to the Town. The Developer has not paid water quality fees to Grand County and payment of such fees in the amount established by the Town Code will be required; payment thereof may be secured with a deed of trust that provides that the fee per unit will be due and payable upon any transfer thereof.

3. Time is of the essence with respect to the performance of each party's obligations hereunder. However, neither party will be liable for delays or failures to perform due to acts (or the failure to act) of God, strikes, civil commotions, epidemics, quarantines, freight embargoes, or other cause of similar nature not reasonably within such party's control.

4. Referendum

In the event that the ordinances to be considered by the Town relative to the annexation and zoning of the Developer Property become the subject of a citizen petitioned referendum, the ordinances subject to such referendum, and this Agreement will be suspended pending the outcome of the referendum. If the result of the referendum election is to reject such annexation or zoning, all of the provisions contained herein will be null and void and of no effect, and such rejection will be deemed a "failure to serve" pursuant to Section 31-12-119, C.R.S., but will not be deemed to be a default by the Town under Section H.2. and remedies provided in Section H.2. will not be available. Conversely, if the result of such referendum election is to affirm such annexation and zoning, the Developer Property will be deemed finally annexed and zoned, whereupon this Agreement will be come effective and the parties will be bound by all of the terms and conditions contained herein as of the effective date of this Agreement. If Developer does not consent to the repeal of the annexation and zoning of the Developer Property in response to such a referendum, then the parties agree to cooperate in the defense of the annexation and zoning of the Developer Property and Developer agrees to reimburse the Town for all costs and attorneys' fees in defending and participating in such referendum, including but not limited to the costs of the referendum election.

5. Recording of Agreement and Binding Effect

This Agreement will be recorded with the Clerk and Recorder in Grand County, Colorado, will run with the land, and will be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto, provided, however, that no individual residential unit within the Developer Property that has been sold to an individual unit owner, other than Developer, will have any obligation or liability of any kind under this Agreement. This Agreement will not constitute an encumbrance or cloud on title on any such individual residential units included in the Developer Property. Developer will pay all recording fees for the recording of this Agreement.

6. Entire Agreement

This Agreement and the adopting ordinance of the Town embodies the whole agreement of the Parties. This Agreement will supersede all previous communications,

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representations, or agreements either verbal or written between the parties hereto. If adopted by the Town, the parties agree that the ordinances approving annexation of the Developer Property may contain additional matters pertinent to the integration of the Developer Property into the Town. Therefore, this Agreement must be interpreted and applied in a manner consistent with such ordinances.

7. Notice

Notices required or allowed by this Agreement will be in writing and will be mailed or sent by commercial carrier to the other party, postage prepaid, at the party's address set forth below. Any notice may be transmitted to the fax number or e-mail address provided and will be deemed given on the date of successful transmission. Any mailed notice will be deemed given five days after mailing or on the date of receipt if signed for in less than five days. Any notice by e-mail or fax will also be sent by postal mail or by commercial carrier.

To Developer:

Silver Ridge Rocky Mountain, LLC  
Steven S. Bromberg, Manager  
P.O. Box 4007  
Granby, CO 80446  
e-mail: [sbromberg@grandelk.com](mailto:sbromberg@grandelk.com)  
Fax: 970/887-2540

with a copy to:

Ronald Stern  
Stern & Newton, P.C.  
P.O. Box 50  
Granby, CO 80446  
Fax: 970/887-3986  
e-mail: [ronstern@rkymtnhi.com](mailto:ronstern@rkymtnhi.com)

To Town:

Granby Town Manager  
Post Office Box 440  
Granby, CO 80446  
FAX: 970/887-9347  
e-mail: [thhale@town.granby.co.us](mailto:thhale@town.granby.co.us)

With a copy to:

Scotty P. Krob, Town Attorney  
8400 E. Prentice Ave., Penthouse  
Greenwood Village, CO 80111  
FAX: 303/694-5005  
e-mail: [spkrob@aol.com](mailto:spkrob@aol.com)

Either party may change the address to which notice is to be sent by providing notice in the manner set forth in this Section 1.6.

8. Cooperative Drafting

This Agreement is the product of a cooperative drafting effort by the Town and Developer and will not be construed or interpreted against either party solely on the basis that one party or its attorney drafted this Agreement or any portion of it.

EXHIBITS REFERRED TO ON THIS INSTRUMENT HAVE NOT ATTACHED HEREIN THE DOCUMENT WAS RECEIVED IN FULL PAYMENT OF THE DEBT OR OBLIGATION OF THE PARTY TENDERING SAME APPARENTLY CONSIDERS IT TO BE SUFFICIENT FOR HIS PURPOSES.

9. Severability

The fact that any portion of this Agreement may be held to be unenforceable will not affect the enforceability of the remaining portions thereof.

10. Amendment

This Agreement cannot be modified or revoked except by an instrument in writing signed by the Town and Developer.

11. No Third Party Beneficiaries

Nothing expressed or implied in this Agreement is intended or will be construed to confer upon, or to give to, any legal person other than the Parties, any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all of the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties will be for the sole and exclusive benefit of the Parties. Nothing in this Agreement is intended to interfere with the agreements of the Parties with third parties.

12. Real estate transfer fee. The Developer agrees, upon annexation of the Developer Property to the Town, to impose upon the Developer Property a covenant substantially in the form attached hereto as Exhibit C, creating a real estate transfer fee.

IN WITNESS WHEREOF, the parties have hereunto subscribed their signatures.

ATTEST:

TOWN OF GRANBY

*Deborah K. Hess*

Deborah K. Hess  
Town Clerk

*Edward Wang*

By: \_\_\_\_\_  
Edward Wang  
Mayor



STATE OF COLORADO

ss

COUNTY OF GRAND

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of November, 2004, by Edward Wang, as Mayor, and Deborah K. Hess, as Town Clerk, of the Town of Granby, a Colorado municipal corporation.

Witness my hand and official seal.

My commission expires: 8/22/07

*Anthony J. Jada*  
Notary Public

(Seal)



EXHIBITS REFERRED TO ON THIS INSTRUMENT ARE NOT ATTACHED TO THIS INSTRUMENT. THE DOCUMENT WAS FILED WITH THE COUNTY CLERK OF GRAND COUNTY, COLORADO. THE PARTY TENDERING SAME APPARENTLY CONSIDERS IT TO BE SUFFICIENT FOR HIS PURPOSES.



**EXHIBIT A**

**TABLES OF USES PERMITTED BY RIGHT, ACCESSORY USES AND CONDITIONAL USES**

– Constituting a more restrictive version of the R/B Zone District than as established by the Town Code –  
 [Uses not itemized are prohibited]

PRINCIPAL USES PERMITTED BY RIGHT
Single family dwellings and duplexes with permanent foundations
Multiple family dwellings (three or more attached units)
Parks
Recreation uses and facilities
Eating and drinking establishments
Clubs, spas, health facilities
Clubhouse
Clubhouse used as temporary sales office

ACCESSORY USES PERMITTED BY RIGHT
Home occupations that have no exterior indications of non-residential activity
Day care home (six or fewer children)
Parking for the principal use
Uses that are customarily incidental to any of the permitted principal uses and are located on the same lot or on an adjacent lot
Storage of materials provided all such storage is located within a structure
Other uses not listed above that are deemed similar by the Town Zoning Enforcement Officer

CONDITIONAL USES
Community centers
Personal service businesses
Professional offices and studios
Banks and financial institutions
Retail stores and establishments
Repair or rental of products
Fabrication or assembling incidental to retail sales
Hotels, motels, lodges, boarding houses
Commercial Mobile Radio Services (CMRS)
Communication towers

EXHIBITS REFERRED TO ON THESE AND OTHER DOCUMENTS ARE HEREBY INCORPORATED AS PART OF THIS DOCUMENT AS IF THE PARTY TENDERING SAME APPARENTLY CONSIDERS IT TO BE SUFFICIENT FOR HIS PURPOSES.

**ORDINANCE NO.:**

**626**

**RESOLUTION NO.:**

**2004-11-08C**

**2004-11-08D**

**2004-11-09E**