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Kathleen Neel – Summit County Recorder

24 Pages

6/13/2019 3:01 PM

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**RESTRICTIVE HOUSING COVENANT AND NOTICE OF LIEN  
FOR SMITH RANCH DEVELOPMENT, FILING No. 2  
SUMMIT COUNTY, COLORADO**

THIS RESTRICTIVE HOUSING COVENANT (the "Covenant") is made and entered into this 12<sup>th</sup> day of June, 2019 (the "Effective Date"), by and between the Town of Silverthorne, a Colorado home rule municipality with an address of P.O. Box 1309, Silverthorne, Colorado 80498 (the "Town") and Smith Ranch Development, LLC, with an address of PO Box 6539, Dillon, CO 80435 ("Declarant") (individually a "Party" and collectively the "Parties").

**RECITALS**

WHEREAS, Declarant is the owner of certain real property more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, the Property is subject to the terms of the Development Agreement between Declarant and the Town of Silverthorne (hereinafter referred to as the "Town"), which is dated May 23, 2018 and recorded in the Office of the Clerk and Recorder for Summit County under Reception No. 1171298, (hereinafter referred to as the "Development Agreement"); and

WHEREAS, the Parties agree to restrict the acquisition and/or transfer of the Units to Eligible Households who meet the appropriate income category established by the Town for each Unit purchased, as set forth in attached **Exhibit C**; and

WHEREAS, Declarant agrees that this Covenant shall constitute an agreement setting forth the maximum sale ("Initial Sale Price") and resale price for which a Unit may be sold ("Maximum Resale Price") and the terms and provisions controlling the sale of the Unit; and

WHEREAS, by this Covenant, Declarant hereby restricts the Units to be built upon the Property from use and occupancy inconsistent with the terms as set forth in this Covenant; and

WHEREAS, under this Covenant Declarant intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use of the Units described and provided for herein shall be and are hereby made covenants running with the land and are intended to be and shall be binding upon the Declarant and all subsequent owners and occupiers of such Units for the stated term of this Covenant, unless and until this Covenant is released and terminated in the manner hereafter described.

NOW, THEREFORE, in consideration of the promises and covenants hereinafter

set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**ARTICLE I**  
**DEFINED TERMS**

1.1. For purposes of this Restrictive Housing Covenant, the following terms shall have the following meanings:

A. "Area Median Income" or "AMI" means the median annual income for Summit County (or such next larger statistical area calculated by HUD that includes Summit County, if HUD does not calculate the area median income for Summit County on a distinct basis from other areas), as adjusted for household size, that is calculated and published annually by HUD (or any successor index thereto acceptable to the Town or its designee in its reasonable discretion). The Town reserves the right to collaboratively determine appropriate AMI numbers if the current AMI data is not representative of actual market conditions. If AMI data pertaining to the date of sale of a Unit is not yet available as of the date the sale price is calculated, then the most recent data published by HUD shall be used in its place.

B. "Authorized Lessee" means any tenant approved by the Town who shall meet the definitions of both Eligible Household and Qualified Occupant, and who shall lease a Unit at a reasonable rental rate, as set forth in Article VII of this Covenant.

C. "Business" as used in this Covenant means an enterprise or organization providing goods and/or services, whether or not for profit, and shall include, but not be limited to, educational, religious, governmental, and other similar institutions.

D. "County" means Summit County, Colorado. As referenced in the definitions of 'Principal Place of Residence' and 'Qualified Occupant', Summit County shall also include the areas at or within two (2) miles of the Summit County boundary.

E. "Dependent" means a person, including a spouse of, a child of, a step-child of, a child in the permanent legal custody of, or a parent of, a Resident, in each case whose principal place of residence is in the same household as such Resident, and who is financially dependent upon the support of the Resident. Dependent shall also include any person included within the definition of "Familial Status" as defined in 42 U.S.C. § 3602(k), commonly known as the Fair Housing Act, as that act shall from time to time be amended.

F. "Eligible Household" means a Household approved by the Town so as to allow for the execution of the Memorandum of Acceptance of Residential Housing Covenant and Notice of Lien for the Smith Ranch Development set forth in **Exhibit B** of this Covenant, and whose income meets the parameters set for each Unit, identified in **Exhibit C** of this Covenant. Once a Unit is designated per the AMI category noted in Exhibit C, it shall remain so designated throughout the term of this Covenant, unless otherwise approved by the Town.

A Household's income for purposes of determining whether such household meets this definition of eligibility shall be determined at the time of purchase or, as the case may be, commencement of leasehold occupancy. Income testing shall be done only at the time a person purchases a Unit, begins to lease a Unit, or renews a lease on a Unit. Additional income obtained by persons in an Eligible Household after purchasing the Unit shall not have any effect on the household's qualifications or income classification under this Covenant.

G. "First Mortgage" means a deed of trust or mortgage which is recorded senior to any other deeds of trust or liens against a Unit to secure a loan used to purchase or refinance the purchase of the Unit by a Mortgagee.

H. "Household" means one (1) or more persons who intend to live together in the premises of a Unit as a single housekeeping unit.

I. "HUD" means the U.S. Department of Housing and Urban Development

J. "Maximum Resale Price" means the maximum Purchase Price that shall be paid by any purchaser of a Unit, other than the initial purchaser who acquires a Unit from Declarant, which is determined in accordance with the provisions of Article VIII of this Covenant. The Maximum Resale Price is not a guaranteed price, but merely the highest price an Owner may obtain for the sale of the Property.

K. "Mortgagee" means any bank, individual, savings and loan association, or any other institutional lender which is licensed to engage in the business of providing purchase money mortgage financing for residential real property and which is the beneficiary of a deed of trust or mortgage encumbering a Unit.

L. "Owner" means the record owner at any time taking and holding fee simple title to a Unit.

M. "Permitted Capital Improvements" means those improvements to a Unit performed by the Owner, which shall qualify for inclusion within the calculation of Maximum Resale Price if such improvements are set forth in the PCI schedule contained in the Silverthorne Housing Guidelines, and if the Owner furnishes the Town or its designee with the following information:

i. Original or duplicate receipts to verify the actual costs expended by the Owner for the Permitted Capital Improvements;

ii. Affidavit verifying the receipts are valid and correct receipts tendered at the time of purchase; and

iii. True and correct copies of any building permit or certificate of occupancy required to be issued by the Town for the Permitted Capital Improvements.

N. "Principal Residence" means the home or place in which one's habitation is

fixed and to which one has a present intention of returning after a departure or absence therefrom. In determining what is a Principal Place of Residence, the Town shall consider the criteria set forth in C.R.S § 31-10-201(3), as amended. If an individual becomes a resident elsewhere, accepts permanent employment outside of Summit County, Colorado or resides in the Unit for fewer than 10 months per calendar year, the Unit shall not be considered his or her Principal Residence, unless specifically recognized and permitted by the Town for good cause based on a written request by the subject Unit Owner.

O. "Purchase Money Mortgage" means a Mortgage given by an Owner to the extent that it is: (i) taken or retained by the seller of the Unit to secure all or part of the payment of the Purchase Price; or (ii) taken by a person who by making advances, by making a loan, or by incurring an obligation gives value to enable the Owner to acquire a Unit if such value is in fact so used.

P. "Qualified Owner" means a natural person(s) that meet(s) the definition of both Eligible Household and Qualified Occupant.

Q. "Qualified Occupant" means:

1. A legal resident of the United States aged 18 or older, along with and his or her Dependents, if any, who at all times during ownership or occupancy of a Unit, earns his or her living from a business operating in and serving the County, by working at such business an average of at least thirty (30) hours per week on an annual basis.

2. For individuals claiming self-employment, their employment must be at least thirty (30) hours per week on an annual basis for a legally formed business entity provided such entity is approved by the Town in writing as having demonstrated that its principle place of business is located within Summit County, Colorado, and provides a significant and primary percentage of its goods and/or services locally within Summit County to the residents, property owners, or visitors located in the County, whether or not for profit. If a person is a work from home employee for a business, the person must work at least thirty (30) hours per week on an annual basis in Summit County, be approved in writing by the Town, and the business must provide a significant and primary (at least 75%) percentage of its goods and/or services to the residents, property owners, or visitors of Summit County, whether or not for profit.

3. A person at or above full benefit age for federal Social Security shall remain a Qualified Occupant regardless of his or her working status, so long as he or she has owned and occupied that particular Unit, for a time period of not less than seven (7) years, and satisfied the requirements of subsection –1- or –2- above regarding employment in Summit County for at least seven (7) continuous years prior to retirement.

4. A Qualified Occupant who becomes disabled after commencing

ownership or occupancy of a Unit such that he or she cannot work the required number of hours each week required by this Covenant shall remain a Qualified Occupant; provided that such person is permitted to occupy the Unit only for a maximum period of one (1) year following the commencement of said person's disability, unless a longer period of occupancy is authorized by the Town, based on the submittal of medical documentation that substantiates the disability and the inability to resume working the number of hours each week required by this Covenant.

5. The Town or its designee shall have the discretion to determine any person's eligibility as a Qualified Occupant under this section and may request such evidence as is necessary to make said determination.

R. "SCHA" means Summit Combined Housing Authority

S. "Silverthorne Housing Guidelines" means the administrative rules, regulations, policies, and standards adopted by the Town, as amended from time to time, and maintained by the Silverthorne Community Development Department.

T. "Transfer" or "transferred" means any sale, assignment, or transfer that is voluntary, involuntary, or by operation of law (whether by deed, contract of sale, gift, devise, trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in a Unit, including, but not limited to, a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, or any interest evidenced by a land contract by which possession of a Unit is transferred and the Owner obtains title.

U. "Town" includes the Town's authorized designees, or its respective successors or assigns.

V. "Unit" means each of the residential dwelling units constructed on the Property.

## **ARTICLE II**

### **PURPOSE**

The purpose of this Covenant is to restrict ownership, occupancy and sale of the Units in such a fashion as to provide, on a permanent basis, moderately priced housing to be occupied by Qualified Owners or Authorized Lessees, which Qualified Owners or Authorized Lessees, because of their income, may not otherwise be in a position to afford to purchase, own, occupy or lease other similar properties, and to help establish and preserve a supply of moderately priced housing to help meet the needs of the locally employed residents of the County.

**ARTICLE III**  
**BINDING EFFECT**

This Restrictive Housing Covenant shall constitute covenants running with title to the Property as a burden thereon, for benefit of, and enforceable by the Town, and this Covenant shall bind Declarant and all subsequent Owners and occupants of a Unit. Each Owner and Authorized Lessee, upon acceptance of a deed or lease to a Unit, shall be personally obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during the Owner's period of ownership or Authorized Lessee's tenancy, as may be appropriate. Each and every Transfer or lease of a Unit, for all purposes, shall be deemed to include and incorporate by this reference the terms and conditions contained in this Covenant, even without reference to this Covenant in any document of conveyance.

**ARTICLE IV**  
**NATURAL PERSONS**

Other than by the Declarant and the Town, the use and occupancy of a Unit shall be limited exclusively to housing for natural persons who meet the definition of Qualified Owner or Authorized Lessee.

**ARTICLE V**  
**OWNERSHIP RESTRICTIONS**

5.1 Ownership and Occupancy Obligation. Ownership of a Unit is hereby limited exclusively to Declarant and Qualified Owners, which shall include the parties described and approved as set forth herein. In the event that a Unit is occupied without compliance with this Covenant, the Town shall have the remedies set forth herein.

5.2 Income. At the time of entering into any purchase contract for a Unit, individuals or households, as applicable, shall be subject to the following income categories for each Unit, as set forth in **Exhibit C**, and the Priority parameters set forth in Section 8.3 of this document:

- A. 80% AMI Units shall be available to those earning up to 100% AMI.
- B. 85% AMI Units shall be available to those earning up to 105% AMI.
- C. 90% AMI Units shall be available to those earning up to 110% AMI.
- D. 95% AMI Units shall be available to those earning up to 115% AMI
- E. 100% AMI Units shall be available to those earning up to 120% AMI.
- F. 105 % AMI Units shall be available to those earning up to 125% AMI.

5.3 Compliance. Along with the recorded instrument of conveyance evidencing a Transfer of a Unit, any such Transfer of a Unit shall include a completed copy of the "Memorandum of Acceptance of Residential Housing Covenant and Notice of Lien for the Smith Ranch Development" attached hereto as **Exhibit B**, which copy is executed by the

transferee and acknowledged by a notary public. The instrument of conveyance evidencing such Transfer, or some other instrument referencing the same shall bear the following language followed by the acknowledged signature of an authorized representative of the Town to wit:

"The conveyance evidenced by or referenced in this instrument has been approved by the Town of Silverthorne as being in compliance with the Residential Housing Covenant and Notice of Lien for the Smith Ranch Development, recorded in the records of Summit County, Colorado, on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, at Reception No. \_\_\_\_\_"

Each sales contract, or lease as the case may be, for a Unit shall also (a) recite that the proposed purchaser or lessee, as applicable, has read, understands and agrees to be bound by the terms of this Covenant, and (b) require the proposed purchaser and/or lessee to submit such information as may be required by the Town under its rules and regulations or policies adopted for the purpose of ensuring compliance with this Covenant.

#### 5.4 Appreciation Limiting Promissory Note and Deed of Trust.

A. At the time of each sale of a Unit, beginning with the first such sale by the Declarant to a Unit Owner, the purchaser(s) of each Unit shall execute an Appreciation Limiting Promissory Note in the form provided for in the Silverthorne Housing Guidelines, together with a form of Appreciation Limiting Deed of Trust to a public trustee in the form provided for in the Silverthorne Housing Guidelines; with said deed of trust intended to encumber the Unit to secure strict compliance with the terms of the Note.

B. The Appreciation Limiting Deed of Trust shall contain a strict due on sale provision, and shall be in form and substance acceptable to the attorney for the Town.

C. At the time of closing of each transfer of title to a Unit subsequent to the first transfer by Declarant, the Town shall determine whether the transfer complies with the requirements of this Covenant. If the transfer complies with the requirements of this Covenant, the Town shall mark the selling Unit Owner's Appreciation Limiting Promissory Note as paid and execute a request for release of the Appreciation Limiting Deed of Trust upon verification to the Town, by the title company or other independent agent responsible for closing on the transfer of title to a Unit, that the amount paid for the purchase of the Unit does not exceed the Maximum Resale Price or that, if the price exceeds the Maximum Resale Price, the amount of such excess will be paid to the Town.

D. At the time of each subsequent closing of the transfer of title to a Unit, the standing Note and Deed of Trust shall be extinguished, and a new Appreciation Limiting Promissory Note shall be executed by the purchaser(s) and delivered to the Town, and a new Appreciation Limiting Deed of Trust shall be executed by the purchaser(s) and recorded at the Summit County Clerk and Recorder office.

E. If title to a Unit is transferred without obtaining the release of an Appreciation Limiting Deed of Trust securing an Appreciation Limiting Promissory Note in favor of the Town, and/or a new such Note and Deed of Trust, the Town, among other rights available to it, shall have the right to foreclose said Appreciation Limiting Deed of Trust.

5.5 Refinance Restriction. An Owner shall not encumber a Unit with debt, exclusive of interest, in any form which exceeds, at any time, 95% of the Maximum Resale Price as determined in accordance with this Covenant. An Owner may encumber a Unit under a non-cash out refinance for any amount.

5.6 Records and Inspection. An Owner's records with respect to the Owner's use and occupancy of a Unit shall be subject to examination, inspection and copying by the Town upon reasonable advance notice. The Town shall also have the right to enter into or upon a Unit for the purpose of determining compliance with the provisions of this Covenant; provided, however, that the Town shall first attempt to secure the permission of any occupants of the Unit no less than 48 hours in advance prior to making entry. An Owner shall submit any information, documents or certificates requested from time to time by the Town with respect to the occupancy and use of the Owner's Unit which the Town reasonably deems necessary to substantiate the Owner's continuing compliance with the provisions of this Covenant. Documents may include, but are not limited to: Federal and State Income Tax Returns, W2s, 1099s, bank statements, and invoices for utility payments. Such information shall be submitted to the Town within such reasonable time period as the Town may establish. All lessees of a Unit shall be bound by the terms of this Section and shall cooperate with all requirements herein. The Town shall maintain confidentiality of financial information as provided by law.

5.7 Maintenance Responsibilities. The Owner(s) is responsible for maintaining the Unit in good working order and good repair throughout the length of the Owner's ownership of the Unit, and adhering to all homeowner's association requirements for maintenance, upkeep and appearance during such tenure of ownership.

5.8 Ownership Interest in Other Residential Property. If at any time an Owner also owns any interest alone, or in conjunction with others, in any other developed residential property within the state of Colorado, the Owner shall immediately disclose such ownership to the Town, and promptly offer such other property interest for sale or request that the Town approve an exception for extenuating circumstances. This prohibition concerning additional ownership is deemed to include entities, partnerships, trusts and the like in which the Owner is either a party to the entity in any part or a trustee and/or beneficiary of a trust. In the event said other property has not been sold by the Owner within one hundred twenty (120) days of its listing required hereunder, then the Owner shall immediately list his or her Unit for sale pursuant to the provisions of this Covenant. It is understood and agreed between the parties hereto that, in the case of an Owner whose business is the construction and sale of residential properties, the properties which constitute inventory in such Owner's business shall not constitute "other developed residential property" as that term is used in this Section.



5.9 Vacancy. In the event that a Qualified Owner ceases to occupy a Unit as his or her Principal Residence for a period of ninety (90) consecutive days (as reasonably determined by the Town), the Town may, in its sole discretion and in addition to any other remedies the Town may have hereunder, determine that the Unit shall be offered for sale pursuant to the provisions of Article VIII below or require the Qualified Owner to rent the Unit for up to one (1) year to an Authorized Lessee while the Unit is listed for sale.

## **ARTICLE VI ORIGINAL SALE OF A UNIT**

Upon completion of construction of each Unit by the Declarant, the Unit shall be sold to a Qualified Owner at a purchase price determined by the Town, in collaboration and agreement with the Declarant, which price shall not exceed the purchase price affordable to a person making the percentage of AMI applicable to the Unit as set forth in **Exhibit C**.

## **ARTICLE VII USE RESTRICTIONS**

7.1 Occupancy. Except as otherwise provided in this Covenant, each Unit shall, at all times, be occupied as a Principal Residence by a Qualified Owner (along with Dependents), or as the case may be an Authorized Lessee (along with Dependents) who, at the time of purchase, or in the case of an Authorized Lessee at the time of occupancy, of a Unit, is an Eligible Household and a Qualified Occupant. Notwithstanding anything contained herein to the contrary, in no event shall any Household consist of a group of more than three (3) persons unrelated by blood, adoption, legal custody, or marriage.

7.2 Rentals. Units owned by natural persons shall not be rented for any period of time without the prior written approval of the Town. Any tenancy approved by the Town shall be to a natural person meeting the definition of Authorized Lessee. No tenancy period shall be less than six (6) months or longer than twelve (12) months. One (1) twelve (12) month renewal period of a lease may be approved by the Town in writing for exceptional circumstances. The maximum rental fee for such approved rentals shall be affordable for individuals earning at or below the AMI percentage that applied to current Owner's purchase of the particular Unit.

7.3 Roommates. The requirements of this Article shall not preclude a Qualified Owner from sharing occupancy of the Unit with other natural persons on a rental basis provided the Owner continues to meet the obligations set forth in this Covenant. All roommates charged rent by the Owner are required to have written approval by the Town, and shall meet the definition of Qualified Occupant. Notwithstanding anything contained herein to the contrary, in no event shall any Household consist of a group of more than three (3) persons unrelated by blood, adoption, legal custody, or marriage.

7.4 Short-term Rentals. No Unit or portion of a Unit may be rented on a short-term

basis for periods of time of less than six (6) months. Evidence of use as a short-term rental includes, but is not limited to, the use of web rental portals, social media websites, or other advertising media.

7.5 In the event that any Unit, or any portion thereof, is leased or rented without compliance with this Covenant, the Town shall have the remedies set forth by law, including but not limited to the rights set forth in this Covenant.

## **ARTICLE VIII RESALE OF A UNIT**

8.1 **Resale.** No Unit shall be transferred subsequent to the original purchase from the Declarant, except upon full compliance with the procedures set forth in this Article.

8.2 **Notice.** In the event that an Owner shall desire to Transfer a Unit, or in the event that an owner shall be required to Transfer such Unit pursuant to the terms of this Covenant, the Owner shall notify the Town in writing of the Owner's intention to Transfer such Unit. The Unit shall not, however, be Transferred to: (i) any person, entity, or entities other than a Qualified Owner, and (ii) for consideration to be paid by such Qualified Owner that exceeds the Maximum Resale Price as such is determined pursuant to the provisions of this Article.

8.3 **Priority.** At the time of the initial sale and any subsequent resale, Eligible Households whose incomes are within ten percent (10%) of the AMI set forth for each Unit in **Exhibit C** shall receive priority in the sale or resale of a Unit. Individuals currently living or working within the Town of Silverthorne will also receive priority in the sale and resale of a Unit, based on the length of time working or living within the Town of Silverthorne.

**ALL SALES AND REALES OF UNITS SHALL FOLLOW THE PROCEDURES DETAILED IN THE SILVERTHORNE HOUSING GUIDELINES, AS AMENDED FROM TIME TO TIME, INCLUDING THOSE FOR LOTTERIES AND FOR MULTIPLE QUALIFIED BIDS.**

8.4. **Maximum Resale Price.** The Maximum Resale Price may not exceed the sum of: (i) the Purchase Price paid by the Owner of the Unit, plus (ii) an increase of 2% of such Purchase Price per year (pro-rated at the rate of .167 percent for each whole month for any part of a year, but not compounded annually) from the date of the Owner's purchase of the Unit to the date of the Owner's execution of the listing contract, plus (iii) Permitted Capital Improvements subject to the limitations in Section 8.5 below, plus (iv) a maximum of one and three-fourths percent (1.75%) of the sum of items (i), (ii), and (iii) of this Section 8.4 to provide the selling Owner with assistance in paying any sales commissions to a licensed real estate broker, attorney's fees, and closing costs incurred by the Owner in connection with the sale of the Unit.

**NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION**

**OR GUARANTEE BY THE TOWN OR THE DECLARANT THAT UPON RESALE THE OWNER SHALL OBTAIN THE MAXIMUM RESALE PRICE.**

8.5 Allowance for Permitted Capital Improvements. Subject to the limitations of this Section, for the purpose of determining the Maximum Resale Price in accordance with this Covenant, the Owner may add to the amount specified in Section 8.4 above, the cost of approved and Permitted Capital Improvements ("PCI"), as set forth in the PCI schedule contained in the Silverthorne Housing Guidelines, as amended from time to time, in total amount not to exceed five percent (5%) of the Initial Purchase Price over a cumulative period of ten (10) years; and the same 5% limit on such PCI shall apply for each successive 10 year period of ownership.

8.6 Real Estate Sales Commission. The Owner of a Unit may list the Unit with the SCHA or a private real estate broker licensed according to the laws of the State of Colorado. Regardless of whether the Unit is listed with the SCHA or through a private real estate broker, the Owner may add the amount paid in sales commission, up to 1.75%, to the Maximum Resale Price, as described in Section 8.4 above. This Covenant does not mandate what commissions and sales fees an Owner may pay, it merely specifies the maximum amount that may be added to the resale price of the Unit. All real estate commissions and other sale-related costs shall be paid by the Owner of a Unit, and shall not be transferred to the buyer by including these costs in the resale calculation, with the exception stated above for a maximum of 1.75% to be added to the Maximum Resale Price. The ability to increase the Maximum Resale Price by the allowable sales commission amount does not apply to Units for sale by owner unless owner is a real estate broker licensed according to the laws of the State of Colorado.

8.7 Condition of Unit at Resale. Each Owner shall be responsible for ensuring that the Unit is in good condition at the time of resale, with reasonable wear and tear acceptable. This obligation includes all matters which are in the control and responsibility of an Owner, and includes but is not limited to: cleaning the unit; making necessary improvements to repair and maintain plumbing and mechanical fixtures, appliances, carpets or other flooring; interior painting and other work, and ensuring that there are no health and safety violations regarding the Unit. If the Unit is not in good condition, the Town has the right to bring the Unit into saleable condition and collect the costs of taking such efforts, by means of a lien upon the property, and the accordant right to collect upon such lien through appropriate means, including the right to deduct the cost of any expenses incurred from the Owner's proceeds at closing for the sale of the Unit.

8.8 Closing Costs, No Additional Consideration. Owner shall not permit any prospective buyer to assume any or all of the Owner's customary closing costs, including but not limited to, title insurance, sales fee, prorated taxes attributed to the property prior to the date of sale, homeowner's dues, existing obligations for special assessments, including any installments due and owing prior to the date of closing, etc.; nor shall Owner accept any other consideration which would cause an increase in the purchase price above the bid price so as to induce the Owner to sell to such prospective buyer.

8.9 Non-Qualified Transferees. In the event that title to a Unit vests in a party that is not a Qualified Owner (a "Non-Qualified Transferee") by descent, by foreclosure and/or redemption by any lien or mortgage holder (except any holder of a HUD-insured First Mortgage), or by operation of law or any other event, the Town will notify the Non-Qualified Transferee that it must either attain Qualified Occupant status or sell the Unit within a specific period of time. The Non-Qualified Transferee(s) shall not: (i) occupy the Unit; (ii) rent all or any part of the Unit; (iii) engage in any business activity on or in the Unit; (iv) sell or otherwise Transfer the Unit, except in accordance with this Covenant; or (v) sell or otherwise Transfer the Unit for use in trade or business.

8.10 Sales to Preserve as Attainable Housing

A. In the event a Unit is occupied, transferred, or leased in violation of this Covenant, the Town may, at its sole discretion, require the Owner to immediately list the Unit for sale. The highest bid from a Qualified Owner for not less than ninety-five percent (95%) of the Maximum Resale Price shall be accepted by the Owner; provided, however, if the Unit is listed for a period of at least ninety (90) days and all bids are below ninety-five percent (95%) of the Maximum Resale Price, the Unit shall be sold to a Qualified Owner that has made the highest offer for at least the appraised market value of the Unit, as determined by the Town in its reasonable good faith judgment, after such ninety (90) day period.

B. In the case of such an uncured violation, if required by the Town, the Owner shall: (i) consent to any sale, conveyance, or transfer of such Unit to a Qualified Owner; (ii) execute any and all documents necessary to do so; and (iii) otherwise reasonably cooperate with the Town to take actions needed to accomplish such sale, conveyance, or transfer of such Unit. For this purpose, each Owner hereby constitutes and appoints the Town as its true and lawful attorney-in-fact with full power of substitution to complete or undertake any and all actions required under this Section. It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. Owner specifically agrees that all power granted to the Town under this Covenant may be assigned by it to its successors or assigns.

C. In order to preserve the affordability of the Units for persons of low to moderate income, the Town shall also have and is hereby granted the right and option to purchase a Unit, exercisable within a period of fifteen (15) calendar days after notice is sent by the Town to the Owner that requires the Owner to sell the Unit pursuant to this Section. Thereafter, the Town shall complete the purchase of such Unit within thirty (30) calendar days after exercising its option hereunder for a price equal to the lesser of the appraised market value of the Unit, as determined by the Town in its reasonable good faith judgment, or the Maximum Resale Price. The Town may assign its option to purchase hereunder to an eligible purchaser that, for the purpose of this Section, shall be a Qualified Owner.

D. In all situations in which the provisions of this Section apply, the Town may alternatively require the Owner to lease or rent a Unit to an Authorized Lessee in

accordance with the requirements of this Covenant.

## **ARTICLE IX FORECLOSURE**

9.1 Release. Notwithstanding anything herein to the contrary, this Covenant shall be deemed released as to a Unit in the event of the issuance of a public trustee's confirmation deed, sheriff's confirmation deed, or similar conveyance of the Unit in connection with a foreclosure by the holder of a First Mortgage. If the Town chooses to terminate this Covenant with respect to a particular Unit, the Town shall record a document referencing such termination in the real property records of the County. Any and all claims of the Town available hereunder against the Owner personally shall survive any release or termination of this Restriction.

9.2 Lien.

A. Town shall have, and is hereby granted, a lien against the Unit to secure payment of any amounts due and owing the Town pursuant to this Covenant including without limitation all sales proceeds and/or amounts due to the Town in the event of a foreclosure of a First Mortgage and to secure the obligations to the Town hereunder. The Town's Lien on the respective Unit shall be superior to all other liens and encumbrances, except the following:

1. Liens and encumbrances recorded prior to the recording of this Covenant;
2. Real property ad valorem taxes and special assessment liens duly imposed by Colorado governmental or political subdivision or special taxing districts;
3. Liens given superior priority by operation of law; and
4. The lien of any First Mortgage against such Unit.

B. Recording of this Covenant in Summit County constitutes record notice and perfection of the Town's Lien. No further recordation of any claim of lien is required. By virtue of the Town's Lien, the Town shall have all of the rights that a mortgage holder may have against a Unit, including, but not limited to, the right to judicially foreclose upon a Unit. The Town shall be entitled to file such notices and other information necessary to preserve its rights, as a lienor, and to cure and redeem in foreclosure of a Unit, as provided by C.R.S. § 38-38-101, *et seq.*, and any other applicable law. In addition, unless otherwise instructed by the Town in writing, the Owner shall sign, acknowledge, and cooperate in the Town's recording in the County Clerk and Recorder's Office immediately subsequent to the recording of the First Mortgage, a notice of the Town's Lien, substantially in the form attached hereto as **Exhibit B**, in order to assure that the Town receives notice in the event of the foreclosure of the First Mortgage pursuant to this Article. The notice shall not alter the priority date of the Town's Lien as established herein.

C. The sale or other Transfer of a Unit shall not affect the Town's Lien. No sale or deed in lieu of foreclosure shall relieve the Owner from continuing personal liability for payment of his or her obligations hereunder. The Town's Lien does not prohibit actions or suits to recover sums due pursuant to this Covenant, or to enforce the terms of this Covenant, or to prohibit the Town from taking a deed in lieu of foreclosure.

D. Upon request, the Town shall agree to subordinate the Town's Lien to a bona fide mortgage or deed of trust provided that the total principal indebtedness secured by those mortgages or deeds of trust with priority over the Town's Lien shall not exceed the current allowed Maximum Resale Price under this Covenant as of the date of subordination. To the extent that **Exhibit B** is inconsistent with this provision, the provisions of this Section shall control.

### 9.3 The Town's Option to Redeem.

A. Notice of Default to the Town. Within ten (10) days after Owner's receipt of any notice of default from a Mortgagee or any applicable governmental entity or homeowner's association, the Owner shall give written notice of such default to the Town.

B. Foreclosure/Town Option to Redeem. In the event of any foreclosure of a First Mortgage or other lien, the Town or its authorized agent shall be entitled to receive notice of the foreclosure proceedings as is required by law to be given by the public trustee or the sheriff, as applicable, to lienors of a Unit that are junior to the First Mortgage (as provided in C.R.S. § 38-38-101, *et seq.*, as amended). The Town shall have a right of redemption, purchase, and such other rights as a lienor and holder of deed of trust in foreclosure, as its interest appears, in accordance with Colorado law governing foreclosure.

C. Upon Exercising Option. If the Town obtains title to a Unit, the Town may sell such Unit to a Qualified Owner, or rent such Unit to an Authorized Lessee until such time that such Unit can be sold to a Qualified Owner.

D. Perpetuities Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations, or options created by this Covenant are held to be unlawful or void for violation of: (i) the rule against perpetuities or some analogous statutory provision; (ii) the rule restricting restraints on alienation; or (iii) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the shorter of: (x) the term of this Covenant, or (y) the period of the lives of the current duly elected and seated members of the Town Council of the Town of Silverthorne, Colorado, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

## **ARTICLE X** **ENFORCEMENT**

10.1 Notification of Breach. It shall be a breach of this Covenant for any Owner or

Qualified Occupant to violate any provision of this Covenant. Upon violation of this Covenant, the Town shall inform the Owner or Qualified Occupant by written notice and provide reasonable period of time in which to correct such violation. If such violation is not corrected to the satisfaction of the Town within the time period, the Town may without further notice declare a breach of this Covenant.

10.2 Right to Inspect. If the Town has reasonable cause to believe that an Owner or Qualified Occupant is violating this Covenant, the Town may inspect the Unit between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing the Qualified Occupants with 24 hours written notice by posting at the Restricted Unit. This Covenant shall constitute permission to enter the Property during such times upon such notice.

10.3 Enforcement of This Restriction. The Declarant and each Owner hereby grants and assigns to the Town the right to review and enforce compliance with this Covenant. Compliance may be enforced by the Town by any lawful means, including without limitation, seeking any equitable relief (including, without limitation, specific performance and other equitable relief as set forth in Section 10.4 below), as well as a suit for damages; provided, however, in the event a Unit is financed by a HUD-insured First Mortgage and is sold in violation of Article VIII hereof, such enforcement shall not include:

- A. Acceleration of a mortgage;
- B. Voiding a conveyance by an Owner;
- C. Terminating an Owner's interest in a Unit; or
- D. Subjecting an Owner to contractual liability

Notwithstanding the foregoing, in no event shall the Town have any equitable remedies (including, but not limited to, the right to sue for specific performance or seek other equitable relief as set forth herein) or the right to sue for damages if the Owner of a Unit that was financed with a HUD-insured First Mortgage breaches or violates the terms, covenants and other provisions of Article VIII hereof and if to do so would violate any existing or future requirement of HUD, it being understood, however, that in such event, the Town shall retain all other rights and remedies hereunder for enforcement of any other terms and provisions hereof, including, without limitation: (i) the right to sue for damages to reimburse the Town, or its agents, for its enforcement costs and to require an Owner to repay with reasonable interest (not to exceed ten percent (10%) per annum) any assistance received in connection with the purchase of the Property; (ii) the right to prohibit an Owner from retaining sales or rental proceeds collected or received in violation of this Covenant; and (iii) the option to purchase granted to the Town in Section 8.11 hereof. Venue for a suit enforcing compliance shall be proper in Summit County, Colorado and service may be made or notice given by posting such service or notice in a conspicuous place on the applicable Unit. As part of any enforcement action on the part of the Town, the applicable Owner shall pay all court costs and reasonable legal fees incurred by the Town, or its agents, in connection with these claims, actions, liabilities or judgments, including an amount to pay for the time, if any, of Town or its agents, or attorney spent on such claims at the rates generally charged for similar services by private practitioners within the County.

10.4 Injunctive and other Equitable Relief. Declarant and each Owner agree that in the event of Declarant's or Owner's default under or non-compliance with the terms of this Covenant, the Town shall have the right to seek such equitable relief as it may deem necessary or proper, including, without limitation, the right to: (a) seek specific performance of this Covenant; (b) obtain a judgment from any court of competent jurisdiction granting a temporary restraining order, preliminary injunction and/or permanent injunction; and (c) set aside or rescind any sale of a Unit made in violation of this Covenant. Any equitable relief provided for in this Section may be sought singly or in combination with such legal remedies as the Town may be entitled to, either pursuant to this Covenant, under the laws of the State of Colorado or otherwise.

10.5 Price Freeze. Any violation of this Covenant shall cause the Maximum Resale Price to freeze and remain fixed until the date such violation is fully cured.

## **ARTICLE XI** **INSURANCE**

11.1 Owner Insurance Requirements. Each Owner, shall in conjunction with the purchase or acquisition of a Unit, keep the Unit and its improvements now existing or hereafter erected, insured against loss or casualty by fire or hazards included within the term "extended coverage" in an amount equal to the replacement costs of returning the Unit to its condition prior to loss ("Property Insurance"). The insurance carrier providing the insurance shall be qualified to write Property Insurance in Colorado and shall be chosen by Owner subject to the Town's right to reject the chosen carrier for objectively reasonable cause. All insurance policies and renewals thereof shall provide that the insurance carrier shall notify the Town at least ten (10) days before cancellation, termination or any material change of coverage. Insurance policies shall be furnished to the Town by Owner at or before closing. The Town shall have the right, but not the obligation, to request proof of insurance and/or continued coverage limits from Owner by written request, at any such time(s) as the Town deems appropriate. In the event of loss, Owner shall give prompt notice to the insurance carrier and the Town. Insurance proceeds shall be applied to the restoration or repair of the Unit damaged, provided such restoration or repair is economically feasible and the security of any existing deed of trust or mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of an existing deed of trust would be impaired, the insurance proceeds shall be applied to the sums secured by the deed of trust, with the excess, if any, paid to the Owner. If the total Unit insurance payment in such case exceeds the Maximum Resale Price at the date of loss, the excess above the Maximum Resale Price shall be paid by the Owner to the Town, excluding all compensation for personal property, ancillary compensation for casualty such as rent stipends, and other such proceeds not related to the value of the Unit itself.

## **ARTICLE XII** **PERIODIC REVIEW AND AMENDMENT**

12.1 Town's Right to Periodically Review and Amend Certain Provisions of this Restriction. In recognition of the changing nature of the housing market in the County,



and the Town's desire to keep this Covenant current for the benefit of all interested parties, the following provisions of this Covenant are subject to periodic review by the Town, and may be amended from time to time in the Silverthorne Housing Guidelines in the manner provided in this Section without invalidating or affecting the enforceability of this Covenant:

- A. ARTICLE V – Ownership Restrictions;
- B. ARTICLE VII – Use Restrictions; and
- C. ARTICLE VIII – Resale of a Unit

Amendments made to this Covenant by the Town pursuant to this Section shall be effective upon the effective date of the amendment to the Silverthorne Housing Guidelines. No amendment made by the Town pursuant to this Section shall become effective unless it has been reviewed by the Town Council at a regular or special meeting, notice of which meeting has been given to the public as required by Section 24-6-402, C.R.S., which is part of the Colorado Open Meeting Act, or any successor statute. The Town will notify any Owner affected by an amendment to the Town of Silverthorne Housing Guidelines in writing.

### **ARTICLE XIII GENERAL PROVISIONS**

13.1 Equal Housing Opportunity. Pursuant to the Fair Housing Act, Declarant, the SCHA, and the Town shall not discriminate on the basis of race, creed, color, sex, national origin, familial status or disability in the lease, sale, use or occupancy of the Property.

13.2 Rules, Regulations, and Standards. The Town shall have the authority to promulgate and adopt such rules, regulations and standards as it may deem appropriate, from time to time, for the purpose of carrying out its obligations and responsibilities described herein, all of which rules, regulations and standards, and any amendments thereof, shall be subject to approval of the Town.

13.3 Waiver of Exemptions. Every Owner, by taking title to a Unit, shall be deemed to have subordinated to this Covenant any and all right of homestead and any other exemption in, or with respect to, such Unit under state or federal law presently existing or hereafter enacted.

13.4 Enforcement. Except as otherwise provided herein, the Town, the Declarant, or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, and reservations imposed by the provisions of this Covenant and shall be entitled to specific enforcement of the same. Failure by any party described in this paragraph to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right by such party or any other party to do so thereafter.

13.5 Expenses of Enforcement. In the event that any party entitled to enforce the terms of this Covenant shall be required to bring any action as the result of any breach of the terms of this Covenant by any Owner, the party bringing such action shall be entitled to recover from and against the Owner in breach of this Covenant, in addition to any and all other remedies available at law or in equity, reasonable attorney's fees and costs incurred in the enforcement of this Covenant and in the bringing of such action, and the party against whom such fees and costs are awarded shall be personally liable for the payment of such fees and costs, and such award and judgment shall constitute a lien against the Unit owned by the party in breach of this Covenant which lien may be enforced by foreclosure of the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado or elimination of Owner's resale gain on the Unit.

13.6 Severability. Invalidation of any one of the covenants or restrictions contained herein by judgment or Court order shall in no way affect any other provisions, it being the intent of the Declarant, the Town, and its designee that such invalidated provision be severable.

13.7 Term. This Covenant shall run with the land and bind the Property and the Units in perpetuity. The Parties agree that the Town's rights and interests under this Covenant are vested immediately and that this Covenant shall be binding and in full force and effect for the full term as set forth herein.

13.8 Amendment. This Covenant may be amended only by an instrument recorded in the records of Summit County, Colorado executed by the Town and the then-Owner of a Unit, or as described in Article XII of this Covenant.

13.9 No Third Party Beneficiaries. There are no intended third-party beneficiaries to this Covenant.

13.10 Non-Liability. The Town, its designee, and their respective employees, members, officers, elected officials, and agents shall not be liable to any Owner or third party by virtue of the exercise of their rights or the performance of their obligations under this Covenant. The parties understand and agree that they are relying on, and do not waive or intend to waive by any provision of this Covenant, the monetary limitations or any other rights, immunities or protections afforded by the Governmental Immunity Act, CRS § 24-10-101, et seq., as they may be amended, or any other limitation, right, immunity or protection otherwise available to the parties.

13.11 Exhibits. All exhibits attached hereto are incorporated herein and by this reference made part hereof.

13.12 Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and use of the singular shall include the plural and vice versa.

13.13 Personal Liability. Each Owner shall be personally liable for any of the transactions contemplated herein, jointly and severally with his or her co-owners.

13.14 Further Actions. The Owner and Owner's successors and assigns agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Restriction or any agreement or document relating hereto or entered into in connection herewith.

13.15 Notices. Any notice under this Covenant shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the Party's last known address.

13.16. No Joint Venture. Notwithstanding any provision hereof, the Town shall never be a joint venture in any private entity or activity which participates in this Covenant, and the Town shall never be liable or responsible for any debt or obligation of any participant in this Covenant.

13.17. Governmental Immunity. The Town and its officers, attorneys, elected officials, and employees, are relying on, and do not waive or intend to waive by any provision of this Covenant, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

IN WITNESS WHEREOF, the Parties have executed this Deed Restriction on the Effective Date.

TOWN OF SILVERTHORNE, COLORADO

  
\_\_\_\_\_  
Ann-Marie Sandquist, Mayor

ATTEST:

  
\_\_\_\_\_  
Michele Miller, Town Clerk

DECLARANT

BL

STATE OF Colorado )  
 ) ss.  
COUNTY OF Summit )

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 13 day of June, 2019, by Blake Shuttler as Manager of Smith Ranch Development LLC

My commission expires:  
Feb 11, 2023

(SEAL)

Lisa M Hunter  
Notary Public

LISA M HUNTER  
NOTARY PUBLIC - STATE OF COLORADO  
NOTARY ID 20194005783  
MY COMMISSION EXPIRES FEB 11, 2023

**EXHIBIT A  
LEGAL DESCRIPTION**

Smith Ranch Subdivision, Filing No. 2

**EXHIBIT B**

**MEMORANDUM OF ACCEPTANCE  
OF  
RESIDENTIAL HOUSING COVENANT AND NOTICE OF LIEN  
FOR THE SMITH RANCH DEVELOPMENT  
SUMMIT COUNTY, COLORADO**

WHEREAS, \_\_\_\_\_ [Buyer Name] \_\_\_\_\_, the "Buyer" is purchasing from \_\_\_\_\_ [Seller Name] \_\_\_\_\_, the "Seller", at a price of \$ \_\_\_\_\_ [purchase price amount] \_\_\_\_\_, real property described as \_\_\_\_\_ [Legal Description] \_\_\_\_\_ according to the plat recorded under Reception No. \_\_\_\_\_, in the real property records of the County of Summit, Colorado (the "Unit"); and

WHEREAS, the Seller of the Unit is requiring, as a prerequisite to the sale transaction, that the Buyer acknowledge and agree to the terms, conditions, and restrictions found in that certain instrument entitled "Residential Housing Covenant and Notice of Lien for Smith Ranch Development, Summit County, Colorado," recorded on \_\_\_\_\_, 2018, under Reception No. \_\_\_\_\_, in the real property records of the County of Summit, Colorado (the "Covenant").

NOW, THEREFORE, as an inducement to the Seller to sell the Unit, the Buyer:

1. Acknowledges that Buyer has carefully read the entire Covenant; has had the opportunity to consult with legal and financial counsel concerning the Covenant prior to signing it; and fully understands the terms, conditions, provisions, and restrictions contained in the Covenant.

2. Agrees to be bound by and to comply with the terms, conditions, and requirements of the Covenant.

4. States that the Notice to Buyer should be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Directs that this memorandum be placed of record in the real estate records of the County of Summit, Colorado, and a copy provided to the Town of Silverthorne.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the \_\_\_ day of \_\_\_\_\_, 20\_\_.

BUYER(S):

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name:

STATE OF                    )  
                                  ) ss.  
COUNTY OF                )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

## **EXHIBIT C**

The List of Units in Smith Ranch, Filing No. 2 by AMI will be recorded no later than 30 days prior to the lottery for Phase 2