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Kathleen Neel--Summit County Recorder

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**TOWN OF SILVERTHORNE, COLORADO  
RESOLUTION NO. 2017-6**

**A RESOLUTION OF THE SILVERTHORNE TOWN COUNCIL APPROVING AN  
AMENDED AND RESTATED DECLARATION OF REAL ESTATE TRANSFER  
COVENANT FOR SOUTH MARYLAND CREEK RANCH**

WHEREAS, Maryland Creek Ranch, LLC is the owner of real property in the Town known as South Maryland Creek Ranch;

WHEREAS, Maryland Creek Ranch, LLC executed and recorded the Declaration of Covenant, Maryland Creek Ranch (Real Estate Transfer Assessment Covenant) in the real property records of Summit County, Colorado on February 6, 2006, at Reception No. 814525 ("RETA Covenant #1");

WHEREAS, Maryland Creek Ranch, LLC executed and recorded the Declaration of Covenant, Maryland Creek Ranch in the real property records of Summit County, Colorado on December 14, 2007, at Reception No. 876092 ("RETA Covenant #2");

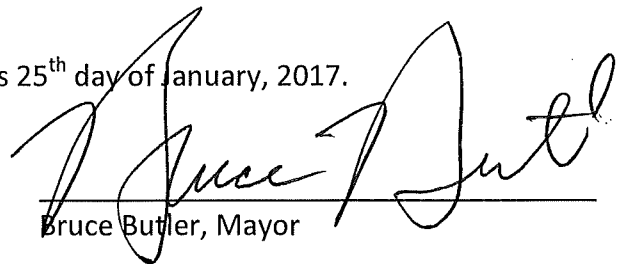
WHEREAS, Maryland Creek Ranch, LLC and the Town entered into the Development Agreement dated June 10, 2015, by which the parties agreed to amend the real estate transfer assessment provided for in RETA Covenant #1 and RETA Covenant #2; and

WHEREAS, the Town Council wishes to approve the Amended and Restated Declaration of Real Estate Covenant attached hereto.

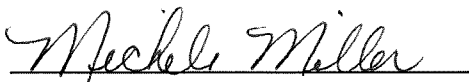
NOW THEREFORE BE IT RESOLVED BY THE SILVERTHORNE TOWN COUNCIL AS FOLLOWS:

Section 1. The Town Council hereby approves the Amended and Restated Declaration of Real Estate Covenant for South Maryland Creek Ranch, to be recorded by Maryland Creek Ranch, LLC in the real property records of Summit County, Colorado in substantially the form attached hereto.

INTRODUCED, PASSED AND ADOPTED this 25<sup>th</sup> day of January, 2017.

  
Bruce Butler, Mayor

ATTEST:

  
Michele Miller, Town Clerk

**AMENDED AND RESTATED DECLARATION  
OF REAL ESTATE TRANSFER COVENANT  
South Maryland Creek Ranch**

This Amended and Restated Declaration of Real Estate Transfer Covenant ("Covenant") is made by Maryland Creek Ranch, LLC, a South Dakota limited liability company, ("Owner"), effective upon its recording in the Summit County, Colorado real estate records.

**RECITALS**

A. Owner executed and recorded the Declaration of Covenant, South Maryland Creek Ranch (Real Estate Transfer Assessment Covenant) in the Summit County, Colorado real estate records ("Records") on February 6, 2006 at Reception No. 814525 ("RETA Covenant #1"), and RETA Covenant #1 applied to the real property described in Exhibit 1 thereto, which property consisted of 355.002 acres.

B. Owner executed and recorded the Declaration of Covenant, Maryland Creek Ranch in the Records on December 14, 2007 at Reception No. 876092 ("RETA Covenant #2"), and RETA Covenant #2 applied to the real property described in Exhibit 1 thereto, which property consisted of 416.05 acres and included the 355.002 acres described in Exhibit 1 to RETA Covenant #1.

C. Subsequent to recording of RETA Covenant #2, the 416.05 acres described in Exhibit 1 thereto were subdivided by the plat of South Maryland Creek Ranch – First Amendment recorded in the Records on March 26, 2015 at Reception No. 1078868 and became Tracts 1R and 2, South Maryland Creek Ranch ("Tracts 1R and 2"), Tract 3R, South Maryland Creek Ranch ("Tract 3R"), Tract Q, South Maryland Creek Ranch ("Tract Q") and public rights of way.

D. Subsequent to the recording of the plat of South Maryland Creek Ranch – First Amendment, Tract Q, South Maryland Creek Ranch was transferred to Oxbow Ranch Company in exchange for the transfer by Oxbow Ranch Company of Tract B, Oxbow Ranch, according to the plat thereof recorded in the Records on March 26, 2015 at Reception No. 1078869 ("Tract B").

E. Tracts 1R and 2 and Tract B were subdivided by the plat of South Maryland Creek Ranch – Filing No. 1 recorded in the Records on March 11, 2016 at Reception No. 1106534 and became the Tracts and Lots described on Exhibit A attached hereto and incorporated herein by this reference ("Tracts & Lots").

F. Owner is the owner of Tract 3R and the Tracts & Lots.

G. As the owner of Tracts 1R and 2, Tract 3R and Tract B (now described as Tract 3R and the Tracts & Lots and herein collectively described as the "Property"), Owner entered into the Development Agreement with the Town dated June 10, 2015 and recorded in the Records on June 18, 2015 at Reception No. 1084860 by which the Town and Owner agreed that the a real estate transfer assessment of 1% would replace

the 2% real estate transfer assessment provided for in RETA Covenant #1 and RETA Covenant #2 by the execution and recording of this Covenant.

H. Owner wishes to make arrangements through this Covenant to provide future owners of the Property and residents of the Town with certain amenities, services, and benefits, in the form of parks, trails, recreation, arts and cultural activities and infrastructure improvements and capital.

I. 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 an assessment expressed as a percentage of future sales prices of lots and tracts within the Property.

J. The rate, exemptions and other attributes of such assessment have been determined as set forth below in this Covenant.

K. The assessment provided for herein shall be payable to the Town as described in Section 5 herein solely for the purposes therein described.

L. Each person acquiring any interest in any portion, lot or tract within 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 assessment 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 assessment ("Transfer Assessment") 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 Assessment 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 Assessment on any basis.

2. Definitions. For purposes of this Covenant, certain words are defined as follows:

a. 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.

b. 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.

c. "Final Court Action" means a final order or opinion issued by a court of competent jurisdiction by which the Town or the Owner is bound, and wherein no appeal can be taken or the time for filing an appeal has expired.

d. The term "Town" shall mean the Town of Silverthorne, Colorado.

3. Exemptions. The assessment imposed by this Covenant shall not apply to:

a. Any transfer of un-subdivided vacant land by the Owner.

b. 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.

c. 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.

d. 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.

e. Transfers for estate planning purposes where the grantor and grantee are family members (related by blood, marriage or legal adoption) 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.

f. 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.

g. 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.

h. 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.

i. 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.

j. Any mineral deed or royalty deed.

k. Execution of a deed of trust or similar instrument to secure a debt or other obligation, or releases of such instruments or of property which is security for a debt or other obligation.

l. 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 Assessment shall be paid based on the fair market value of the leased premises (as though the conveyance were in fee simple).

m. Any transfer of real property to the South Maryland Creek Homeowner's Association, or to the Town.

n. A transfer of any unimproved real property from the Owner to any individuals who within six (6) months after the date of recording of this Covenant are members of the board of directors of the South Maryland Creek Metropolitan District.

4. Application for Exemption. In the event any document evidencing a transfer which is exempt from the assessment herein imposed does not contain language clearly showing its intent and character, the grantor or grantee may apply for and obtain from the Town's certificate of exemption, which may be affixed to such deed or instrument of transfer. In the event of a determination by the Town favorable to the applicant, any amount previously deposited or so much thereof as may be allowed by the Town's Finance Director shall be promptly refunded to the applicant.

5. Receipt and Application of Funds. All Transfer Assessments shall be paid directly to the Town. All amounts received by the Town pursuant to this Covenant shall be directed to the Town's General Fund, but accounted for as a separate income item.

A portion of the funds may be used to administer the collection of the fee provided herein.

6. Penalties and Liens.

a. All Transfer Assessments 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 assessment imposed by this Covenant and interest due thereon is hereby imposed upon the Property or any portion thereof upon the transfer of which said assessment 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 Summit County, Colorado, or by any other means available to the Town under law.

b. Any remedies provided for herein shall be cumulative, not exclusive, and shall be in addition to any other remedies provided by law.

7. 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 5 above.

8. Recording. This Covenant shall be recorded in the records of Summit County, Colorado.

9. 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 Town. The Town 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 Town 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 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 Assessment is owed and not paid. Owner shall not have any obligation to enforce this Covenant, and the failure of any party to pay any Transfer Assessment payable hereunder shall not constitute a default by Owner hereunder or under the Annexation Agreement between Owner and the Town.

10. 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 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 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 Assessment 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 5 above.

c. The Owner shall not be required to purchase or repurchase any property to effect a cure nor be required to pay any transfer fees not collectable by the Town because this covenant is held to be invalid or unenforceable by any Final Court Action.

11. 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.

12. Statement Regarding Assessment. Upon written request by any interested party, the Town shall issue a written statement setting forth the amount of any unpaid Transfer Assessment 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 Town. If no statement is furnished to the inquiring party within such 30 day period, then the Town shall have no right to assert any claim for any unpaid Transfer Assessment with respect to such property which was due as of the date of the request.

13. Amendment. This Covenant shall not be amended or terminated without the advance written consent of the Town of Silverthorne acting by and through its Town Council. If the Town provides 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 Summit County, Colorado.

14. Term. Except as provided herein, the term of this Covenant shall be perpetual.

15. 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.





MARYLAND CREEK RANCH BUILDERS, LLC

By:

[Signature]  
Thomas S. Everist, President

STATE OF SOUTH DAKOTA )  
 ) ss.  
COUNTY OF MINNEHAHA )

Acknowledged, subscribed and sworn to before me this 15<sup>th</sup> day of December, 2016, by Thomas S. Everist as Manager of Maryland Creek Ranch Builders, LLC.

WITNESS my hand and official seal.

My commission expires: 12/23/2020

[Signature]  
Notary Public



[Signature]  
Paul L. Books

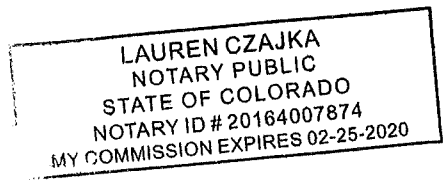
STATE OF COLORADO )  
 ) ss  
COUNTY OF DENVER )

Acknowledged before me this 29 day of December, 2016, by Paul L. Books.

Witness my hand and official seal.

My commission expires: 2/25/2020

[Signature]  
Notary Public





Matthew L. Mueller, by Paul L. Books  
Matthew L. Mueller, by Paul L. Books,  
as Attorney-in-Fact *as Attorney-in-Fact*

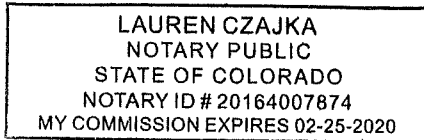
STATE OF COLORADO )  
 ) ss  
COUNTY OF DENVER )

Acknowledged before me this 29 day of December, 2016, by Paul L. Books, as Attorney-in-Fact for Matthew L. Mueller.

Witness my hand and official seal.

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

My commission expires: 2/25/2020



Brett A. Barrett, by Paul L. Books, as  
Brett A. Barrett, by Paul L. Books, as  
Attorney-in-Fact *Attorney-in-Fact*

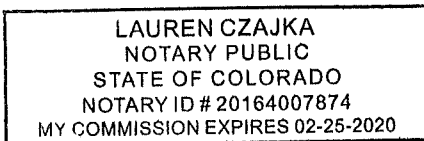
STATE OF COLORADO )  
 ) ss  
COUNTY OF DENVER )

Acknowledged before me this 29 day of December, 2016, by Paul L. Books, as Attorney-in-Fact for Brett A. Barrett.

Witness my hand and official seal.

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

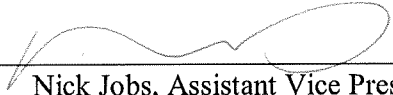
My commission expires: 2/25/2020



**LENDER CONSENT**


The undersigned, the beneficiary under that certain First Deed of Trust dated March 15, 2016, and recorded March 15, 2016 at Reception No. 1106713 in the office of the Clerk and Recorder for the County of Summit, Colorado, that certain Second Deed of Trust dated March 15, 2016, and recorded March 15, 2016 at Reception No. 1106714 in said office, that certain Third Deed of Trust dated March 15, 2016, and recorded March 15, 2016 at Reception No. 1106715 in said office, that certain First Amendment to First Deed of Trust and Security Agreement and Assignment of Rents and Other Rights dated December 7, 2016, and recorded December 9, 2016 at Reception No. 1129406 in said office, that certain First Amendment to Second Deed of Trust and Security Agreement and Second Assignment of Rents and Other Rights dated December 7, 2016, and recorded December 9, 2016 at Reception No. 1129407 in said office, that certain First Amendment to Third Deed of Trust and Security Agreement and Third Assignment of Rents and Other Rights dated December 7, 2016, and recorded December 9, 2016 at Reception No. 1129408 in said office, and that certain Fourth Deed of Trust and Security Agreement dated December 7, 2016, and recorded December 9, 2016 at Reception No. 1129409 in said office, as the same may be amended or supplemented from time to time (collectively, the **"Deed of Trust"**), which Deed of Trust encumbers the Property subject to this Amended and Restated Declaration of Real Estate Transfer Covenant (the **"Covenant"**), hereby consents to and approves (but does not subordinate its lien or any rights to) the Covenant. The Covenant shall not be extinguished, limited or affected to any extent by any foreclosure of the Deed of Trust.

FirstBank, a Colorado banking corporation

By:   
Nick Jobs, Assistant Vice President

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 29 day of December, 2016, by Nick Jobs as an Assistant Vice President of FirstBank, a Colorado banking corporation.

  
Notary Public

(Seal and Expiration)

LAUREN CZAJKA  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID # 20164007874  
MY COMMISSION EXPIRES 02-25-2020

**Exhibit A**

**to Amended and Restated Declaration of Real Estate Transfer Covenant**

PARCEL A:

LOTS 38 AND 39, AND LOTS 49 THROUGH 50, AND TRACTS 1R3, 2R1, 1R2, 2R2 AND TRACTS 3R, S, I AND F, SOUTH MARYLAND CREEK RANCH-FILING NO. 1, AS SHOWN ON THE PLAT RECORDED MARCH 11, 2016 UNDER RECEPTION NO. 1106534, COUNTY OF SUMMIT, STATE OF COLORADO.

PARCEL B:

TRACT D AND LOTS 11 THROUGH 14, AND LOTS 26 THROUGH 34, AND LOTS 36 AND 37, AND LOTS 40 THROUGH 47, AND LOTS 51 AND 52, SOUTH MARYLAND CREEK RANCH – FILING NO. 1 AS SHOWN ON THE PLAT RECORDED MARCH 11, 2016 UNDER RECEPTION NO. 1106534, COUNTY OF SUMMIT, STATE OF COLORADO.

PARCEL C:

TRACT X, SOUTH MARYLAND CREEK RANCH – FILING NO. 1, TRACT X – FIRST AMENDMENT, AS SHOWN ON THE PLAT RECORDED AUGUST 2, 2016 UNDER RECEPTION NO. 1117371, COUNTY OF SUMMIT, STATE OF COLORADO.

PARCEL D:

LOT 48, SOUTH MARYLAND CREEK RANCH – FILING NO. 1, AS SHOWN ON THE PLAT RECORDED MARCH 11, 2016 UNDER RECEPTION NO. 1106534, COUNTY OF SUMMIT, STATE OF COLORADO.