

## FIRST AMENDMENT TO ANNEXATION AGREEMENT

This FIRST AMENDMENT TO ANNEXATION AGREEMENT (this “**First Amendment**”) is made as of March 6, 2007, by and between CORNERSTONE WINTER PARK HOLDINGS LLC, a Colorado limited liability company (“**Annexor**”) and the TOWN OF WINTER PARK, a municipal corporation of the State of Colorado (the “**Town**”).

### RECITALS

This First Amendment is made with reference to the following facts:

A. Annexor and the Town have previously executed that certain Annexation and Development Agreement for Leland Creek dated as of August 24, 2004, and recorded in the Grand County, Colorado, real property records on October 18, 2004 at Reception No. 2004-012313 (the “**Agreement**”). Unless otherwise defined in this First Amendment, capitalized terms used in this First Amendment have the meanings ascribed to them in the Agreement.

B. The Agreement pertains to certain real property generally known as Leland Creek, as more particularly described in *Exhibit A* attached to the Agreement.

C. Pursuant to Section 4.1(b)(ii) of the Agreement, the parties are obligated to cooperate to obtain Public Utilities Commission approval to construct a below grade railroad crossing at the location depicted on *Exhibit C* attached to the Agreement (the “**Crossing**”) and to obtain binding commitments for equitable contributions from Union Pacific Railroad Company and any other third parties toward the funding of the Crossing design and construction.

D. The Town agreed to finance \$1.75 million of the total cost of the construction of the Crossing, to be funded as described in Section 4.1(b)(ii) of the Agreement.

E. Faced with a shortfall in financing for the construction of the Crossing, the Town now desires to contribute additional funds toward the construction of the Crossing, Annexor agrees to abide by certain timing deadlines tied to such additional funds and the parties desire to clarify certain other provisions relating to the Crossing, all as set forth in this First Amendment.

### AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements of the Town and Annexor, as more particularly set forth herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Town and Annexor covenant and agree as follows:

1. Incorporation of Recitals. The Recitals set forth above are hereby incorporated into and constitute substantive provisions of this First Amendment.

2. Amendments. The Agreement is hereby modified as follows:

(a) Section 4.1(b)(i) of the Agreement is deleted in its entirety and replaced with the following:

(i) Road Extension. Subject to Section 8.1 of this Agreement, the Town will fund construction of the Road Extension as set forth below. Annexor will not be responsible for any maintenance of the Road Extension. Annexor will cooperate with the Town and the Town of Fraser to provide the Town adequate rights of entry to maintain those portions of the Road Extension located within the Town of Fraser, if necessary. Annexor will design and construct the Road Extension. The Town will fund 100% of the total hard and soft costs for the Road Extension, plus a management fee to be paid to Annexor, as follows: As Annexor incurs costs in connection with the Road Extension, the Town will reimburse Annexor for the total amount of such costs plus a 20% fee within 20 days after receipt of an invoice therefor. Any invoice not promptly paid by the Town pursuant to this Section 4.1(b)(i) will incur interest at the rate of 18% per annum. Upon completion of construction of the Road Extension, Annexor will dedicate all portions of the Road Extension located within the Town of Fraser to the Town of Fraser pursuant to separate agreement. Annexor will grant an easement to the Town for public use of all portions of the Road Extension located within the Town for which Annexor has a right to grant easements pursuant to the covenants for Leland Creek Subdivision.

(b) Section 4.1(b)(ii) of the Agreement is deleted in its entirety and replaced with the following:

(ii) Below Grade Rail Crossing.

(A) Annexor, the Town, and any third parties, including Union Pacific Railroad, will cooperate to accomplish the construction of the Crossing. Annexor will design and coordinate construction of the Crossing. The Town will reasonably cooperate with Annexor to obtain binding commitments from Union Pacific and other third parties for equitable contributions to the costs of designing and constructing the Crossing, and will actively support and participate with Annexor in obtaining Public Utilities Commission and Union Pacific Railroad Company approval of the Crossing in the desired location and configuration. At Annexor's option, Annexor may commence construction of the Crossing at any time after the Public Utilities Commission and Union Pacific Railroad Company have given approval for the Crossing. However, Annexor, the Town and any required third parties will execute a contract for construction of the Crossing not later than twenty-four (24) months after the Public Utilities Commission and Union Pacific Railroad Company give their approval of the Crossing; provided, however, that the twenty-four (24) month

period does not jeopardize the use of the Public Utilities Commission approved Union Pacific Railroad funding. Annexor may apply for and the Town shall grant a modification of such deadline for good cause shown.

(B) Annexor will fund 100% of the soft costs relating to design of the Crossing including, but not limited to, materials and supplies and the fees and costs of surveyors, engineers, planners and project managers.

(C) The parties will fund the hard costs of construction of the Crossing including, but not limited to, the costs of materials, labor and supervision (the “**Hard Construction Costs**”) as follows:

(1) Subject to Section 8.1 of this Agreement, and except as provided in Section 4.1(b)(ii)(C)(4) below, the Town will fund a fixed \$1.75 million of the Hard Construction Costs.

(2) Except as provided in Section 4.1(b)(ii)(C)(3) below, during the course of construction of the Crossing, Annexor will pay 50% and the Town will pay 50% of the Hard Construction Costs. As Annexor incurs Hard Construction Costs, the Town will reimburse Annexor for the Town’s 50% share of such Hard Construction costs within 20 days after receipt of an invoice therefor. Any invoice not promptly paid by the Town pursuant to this Section 4.1(b)(ii)(C)(2) will incur interest at the rate of 18% per annum.

(3) If, during the course of construction of the Crossing, the Hard Construction Costs exceed \$3.5 million (such that the Town has paid its entire \$1.75 million of the Hard Construction Costs), Annexor will solely fund the remainder of the Hard Construction Costs on a going forward basis. If the Hard Construction Costs do not exceed \$3.5 million during the course of construction of the Crossing (such that the Town’s \$1.75 million of the Hard Construction Costs has not been expended), the Town will pay to Annexor the balance of the Town’s \$1.75 million of the Hard Construction Costs within 20 days after notice from Annexor that the Crossing is operational and providing access to and from the existing Kings Crossing Road, notwithstanding the fact that Annexor’s share of the Hard Construction Costs will consequently equal less than 50% of the total Hard Construction Costs. Regardless of

the total cost of construction of the Crossing, Union Pacific Railroad Company may contribute funds which may serve as reimbursement to Annexor of a portion of Annexor's total hard and soft costs of construction of the Crossing. Such contribution by Union Pacific Railroad Company will not alter the Town's payment obligations pursuant to this Section 4.1(b)(ii).

(4) If the Crossing is operational and providing public access to and from the existing Kings Crossing Road on or before December 31, 2008 (regardless of the total cost of construction of the Crossing), the Town will pay to Annexor an additional \$250,000 (over and above the \$1.75 million to be paid by the Town pursuant to Sections 4.1(b)(ii)(C)(1) through (3) above) within 20 days after notice from Annexor that the Crossing is operational and providing access to and from the existing Kings Crossing Road.

(D) The Town will cause the existing at-grade crossing at Kings Crossing Road (the "**At-Grade Crossing**") to be permanently closed and removed as set forth below. The Town is solely responsible for such closure and removal, including but not limited to the design, construction, permitting and funding for the closure and removal. The Town will use its best efforts to permanently close the At-Grade Crossing as quickly as possible following notice from Annexor that the Crossing is operational; provided however, that the Town may utilize concrete "jersey barriers" to temporarily close the At-Grade Crossing if permanent closure of the At-Grade Crossing is impossible or impracticable because of weather conditions at the time the Crossing becomes operational, in which case, the Town will use its best efforts to complete permanent closure and removal of the At-Grade Crossing as soon as practicable thereafter. The Town will commence design and permitting for the closure and removal of the At-Grade Crossing upon Annexor's receipt of approval from the Public Utilities Commission and Union Pacific Railroad Company for the construction of the Crossing.

(E) Annexor will not be responsible for any maintenance of the Crossing structure.

(c) *Exhibit D* attached to the Agreement ("Form of Escrow Agreement") is hereby deleted in its entirety.

3. Effect of Amendment. Except as expressly modified by this First Amendment, the Agreement is unmodified, and is hereby ratified and affirmed, and will remain in full force

and effect in accordance with its terms. If there is any inconsistency between the terms of the Agreement and the terms of this First Amendment, the provisions of this First Amendment will govern and control.


4. Governing Law. This First Amendment will be governed by and construed in accordance with the laws of the State of Colorado.

5. Counterparts. This First Amendment may be executed in one or more counterparts, each of which will be deemed to be an original, and all such counterparts taken together will constitute one and the same instrument.

IN WITNESS WHEREOF, the Town and Annexer have executed this First Amendment as of the day and year first set forth above.

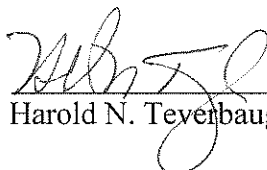
**ANNEXOR:**

CORNERSTONE WINTER PARK HOLDINGS  
LLC, a Colorado limited liability company

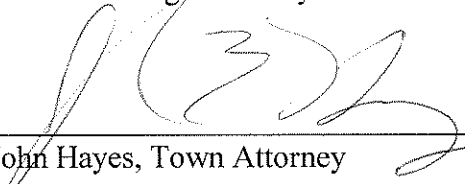
By:   
C. Clark Lipscomb, President

**TOWN:**

TOWN OF WINTER PARK, a municipal  
corporation of the State of Colorado

By:   
Harold N. Teverbaugh, Mayor

Approved as to legal form by:

By:   
John Hayes, Town Attorney

STATE OF COLORADO )  
 ) ss:  
COUNTY OF GRAND )

The foregoing instrument was acknowledged before me this 12th day of April, 2007, by C. Clark Lipscomb as President of Cornerstone Winter Park Holdings LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 4-11-10.



My Commission Expires 04/11/2010

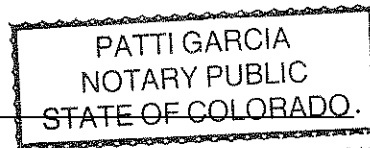
Mary Kay Wray  
Notary Public

STATE OF COLORADO )  
 ) ss:  
COUNTY OF GRAND )

The foregoing instrument was acknowledged before me this 15th day of March, 2007, by Harold N. Teverbaugh as Mayor of the Town of Winter Park, a municipal corporation of the State of Colorado.

Witness my hand and official seal.

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



My Commission Expires Oct. 3, 2010

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