

DISTRICT COURT, GRAND COUNTY, COLORADO P.O. Box 192, 307 Moffat Ave., Hot Sulphur Springs, CO 80451	
<b>Plaintiff:</b> TOWN OF WINTER PARK, a Colorado home rule municipal corporation,  v.  <b>Defendants:</b> CORNERSTONE WINTER PARK HOLDINGS, LLC, a Colorado limited liability company; WEST MOUNTAIN METROPOLITAN DISTRICT, a Title 32 metropolitan district; THE TOWN OF FRASER, a Colorado municipal corporation; and THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GRAND, COLORADO.	▲ COURT USE ONLY ▲
<b>Attorneys for Plaintiff:</b> Kendra L. Carberry, #25457, <a href="mailto:klc@hpwclaw.com">klc@hpwclaw.com</a> M. Patrick Wilson, #26303, <a href="mailto:pwilson@hpwclaw.com">pwilson@hpwclaw.com</a> Daniel P. Harvey, #49863, <a href="mailto:dph@hpwclaw.com">dph@hpwclaw.com</a> Hoffmann, Parker, Wilson & Carberry, P.C. 511 16 <sup>th</sup> Street, Suite 610, Denver, CO 80202 (303) 825-6444	Case No.: 2017CV30078  Division: 1
<b>SECOND AMENDED COMPLAINT</b>	

Plaintiff, the Town of Winter Park, Colorado ("Winter Park"), by and through its attorneys, Hoffmann, Parker, Wilson & Carberry, P.C., and pursuant to C.R.C.P. 15(a), hereby submits its Second Amended Complaint against Defendants Cornerstone Winter Park Holdings, LLC, West Mountain Metropolitan District, the Town of Fraser, Colorado and the Board of County Commissioners of the County of Grand, Colorado (collectively, "Defendants"). In support hereof, Winter Park states and alleges as follows:

### **PARTIES, JURISDICTION AND VENUE**

1. Winter Park is a Colorado home rule municipal corporation located in Grand County, Colorado.

2. Upon information and belief, Defendant Cornerstone Winter Park Holdings, LLC ("Cornerstone"), is a Colorado limited liability company with a principal street address of 46 Market Street, Fraser, in Grand County, Colorado and a principal mailing address of P.O. Box 30, Winter Park, in Grand County, Colorado.

3. Upon information and belief, Cornerstone owns real property in Grand County near and/or adjacent to Winter Park's jurisdictional limits.

4. Upon information and belief, Defendant West Mountain Metropolitan District ("West Mountain") is a Colorado Title 32 metropolitan district, with a principal mailing address of 28 Second Street, Suite 213, Edwards, Colorado.

5. Upon information and belief, West Mountain is a developer controller special district organized and operating in Grand County, Colorado to assist with the development of certain real property located in Grand County, Colorado.

6. Upon information and belief, West Mountain owns real property in Grand County near and/or adjacent to Winter Park's jurisdictional limits.

7. The Town of Fraser, Colorado ("Fraser"), is a statutory municipal corporation located in Grand County, Colorado adjacent to Winter Park.

8. The Board of County Commissioners of the County of Grand ("Grand County") is the governing body of Grand County, Colorado.

9. This Court has subject matter jurisdiction over this matter. Pursuant to C.R.C.P. 57, the District Court has the authority and jurisdiction to declare the rights, status and other legal relations as requested herein.

10. Venue is proper in this Court, because this action concerns real property located within Grand County and because Defendants are residents of, or operate within Grand County. C.R.C.P. 98.

### **GENERAL ALLEGATIONS**

11. Winter Park repeats and re-alleges the allegations set forth in each of the previous paragraphs as though each were set forth fully herein.

12. Cornerstone and/or West Mountain are the purported owners of certain real property in Grand County that is near and/or adjacent to Winter Park (the "Cornerstone Property").

13. The term "Cornerstone Property" includes real property at this location that may be owned by West Mountain or Cornerstone, or by an entity affiliated with either of these Defendants.

14. The Cornerstone Property is located in Grand County, Colorado.

15. The Cornerstone Property is not annexed to or included within Winter Park.

16. The Cornerstone Property is annexed into Fraser.

17. The Cornerstone Property is subject to the land use jurisdiction of Fraser.

Kings Crossing Road

18. The Cornerstone Property is near or adjacent to Kings Crossing Road.
19. Kings Crossing Road is a public street.
20. Kings Crossing Road is under the jurisdiction of Winter Park.
21. Kings Crossing Road is owned, maintained and regulated by Winter Park.
22. There is a locked gate restricting access from Kings Crossing Road into the Cornerstone Property at a location just west of the Union Pacific Railroad tracks.
23. The Cornerstone Property has legal access to public streets at one or more locations other than Kings Crossing Road.
24. Upon information and belief, Defendants Cornerstone and/or West Mountain are currently undertaking construction and development activities in connection with the Cornerstone Property.
25. Upon information and belief, Defendants Cornerstone and/or West Mountain are undertaking such activities with the consent and assistance of Fraser.
26. On August 31, 2017, Winter Park and Cornerstone entered into an Amendment to Haul Road Agreement ("Amendment").
27. With this Amendment, Winter Park granted Cornerstone certain temporary rights to use and access Kings Crossing Road at the location just west of the Union Pacific Railroad tracks for purposes related to the construction of a railroad underpass to be built on the Cornerstone property. *See generally* aerial photograph, attached hereto as **Exhibit 1**.
28. The rights granted to Cornerstone in the Amendment terminate no later than December 31, 2018.
29. Except for the rights granted to Cornerstone in the Amendment, Defendants have no legal right to connect to, access or use Kings Crossing Road to or from the Cornerstone property at the location just west of the Union Pacific Railroad tracks.
30. Alternatively, if Defendants have a legal right to connect to, access or use Kings Crossing Road beyond what was granted to Cornerstone in the Amendment, such rights are limited to historical use, access and location.
31. Upon information and belief, some or all Defendants maintain that the Cornerstone Property has a legal connection to Kings Crossing Road at this location beyond what was granted to Cornerstone in the Amendment.

32. Upon information and belief, some or all Defendants maintain that the Cornerstone Property may connect to Kings Crossing Road at this location with a permanent, improved street.

33. Pursuant to the Winter Park Town Code and other legal authority, a connection to Winter Park streets requires prior approval of the Winter Park Town Council.

34. At no time has the Winter Park Town Council approved of a connection between the Cornerstone Property and Kings Crossing Road.

*Old King Road*

35. At a location west of the Union Pacific Railroad tracks, where the Cornerstone Property is near or adjacent to Kings Crossing Road and near or adjacent to the Kings Crossing at-grade railroad crossing, there is a locked gate across an unpaved vehicle route.

36. This vehicle route is referred to herein as "Old King Road."

37. Old King Road is located on or adjacent to the Cornerstone Property.

38. Old King Road is located near or adjacent to Kings Crossing Road.

39. It is not clear whether Old King Road is currently a public road.

40. It is not clear whether Old King Road was properly dedicated as a public road.

41. It is not clear whether Old King Road was properly accepted as a public road.

42. If a public road, it is not clear whether Old King Road has been abandoned, relinquished or vacated.

43. If a public road, it is not clear whether the status or ownership of Old King Road was affected by subsequent events such as municipal incorporation or annexation.

44. The width of Old King Road is not known.

45. The length of Old King Road is not known.

46. The location and extent of Old King Road is not known.

47. The permissible uses of and access to and from Old King Road is not known.

48. Fraser may have an interest in the legal status, location and ownership of Old King Road.

49. Grand County may have an interest in the legal status, location and ownership of Old King Road.

50. Old King Road cannot be physically accessed from Kings Crossing Road by the public due to the existence of a locked gate.

51. Upon information and belief, all or part of Old King Road has not been regularly used by the public.

52. Upon information and belief, all or part of Old King Road has not been maintained or improved by any public entity.

53. There is no legal connection or access between Old King Road and Kings Crossing Road.

54. There is no legal connection or access between the Cornerstone Property and Kings Crossing Road.

55. Other than what may be provided for in the Amendment, Winter Park has not approved a connection from Old King Road to Kings Crossing Road.

56. Other than what may be provided for in the Amendment, before Old King Road (or any other portion of the Cornerstone Property) can connect to Kings Crossing Road for the anticipated development proposed by Defendants, approval of the Winter Park Town Council is required.

57. Other than what may be provided for in the Amendment, before Old King Road (or any other portion of the Cornerstone Property) can connect to Kings Crossing Road for a new level of use, Winter Park Town Council approval is required.

58. Other than what may be provided for in the Amendment, before Old King Road (or any other portion of the Cornerstone Property) can connect to Kings Crossing Road at a different or new location, approval of the Winter Park Town Council is required.

59. Upon information and belief, some or all Defendants maintain that Old King Road is a public road.

60. Upon information and belief, some or all Defendants maintain that Old King Road is already legally connected to Kings Crossing Road.

61. Upon information and belief, some or all Defendants maintain that the Cornerstone Property may connect to Kings Crossing Road via Old King Road beyond what was provided for in the Amendment.

62. Upon information and belief, some or all Defendants maintain that Old King Road may connect to Kings Crossing Road without approval of the Winter Park Town Council.

63. Upon information and belief, some or all Defendants maintain that the Cornerstone Property may connect to Kings Crossing Road via Old King Road without approval of the Winter Park Town Council.

*The Kings Crossing Railroad Crossing*

64. Winter Park and Defendant Cornerstone entered into an Annexation and Development Agreement for Leland Creek in 2004 ("Annexation Agreement"), attached hereto as **Exhibit 2**.

65. The Annexation Agreement was amended by the parties pursuant to a First Amendment to Annexation Agreement in 2007 ("Amended Agreement"), attached hereto as **Exhibit 3**.

66. At the time the Annexation Agreement and the Amended Agreement were entered into, the parties did not expect the development of the Cornerstone Property to be delayed for over a decade.

67. Cornerstone has not performed all of its obligations under the Annexation Agreement and/or the Amended Agreement.

68. The Annexation Agreement, as modified by the Amended Agreement, purports to require Winter Park to take certain action with respect to the closing of the at-grade railroad crossing at Kings Crossing Road upon certain conditions.

69. In particular, Section 4.1(b)(ii)(D) of the Annexation Agreement, as modified by the Amended Agreement, purports to require Winter Park to close the at-grade railroad crossing at Kings Crossing Road upon notice that a new underpass crossing (to be built on the Cornerstone Property in the Fraser) is operational.

70. Section 4.1(b)(ii)(D) of the Annexation Agreement, as modified by the Amended Agreement, was entered into by a prior Winter Park Town Council over a decade ago.

71. The Annexation Agreement, as modified by the Amended Agreement, was not intended to still be applicable and in force as of this date.

72. Section 4.1(b)(ii)(D) is invalid and void in that it purports to hinder Winter Park's ability to manage its public streets.

73. Section 4.1(b)(ii)(D) is invalid and void in that it purports to contract away Winter Park's police power to regulate and control its public streets.

74. Section 4.1(b)(ii)(D) is invalid and void in that it purports to contractually obligate Winter Park to undertake a significant alteration to its public street system.

75. Section 4.1(b)(ii)(D) is invalid and void in that it purports to obligate Winter Park to appropriate funds to undertake a significant alteration to its public street system.

76. In a 2013 lawsuit, *Town of Winter Park v. Cornerstone Winter Park Holdings, LLC, et al.* (2013CV30045 – Grand County District Court) (the "2013 Lawsuit"), this Court declared that certain mandatory funding provisions of the Annexation Agreement, as modified by the Amended Agreement, violated Article X, Section 20 of the Colorado Constitution, commonly referred to as the taxpayer bill of rights or "TABOR," and cannot supplant the Winter Park Town Council's discretion to appropriate public funds.

77. Requiring Winter Park to fund or pay for any actions in connection with the closing of the at-grade railroad crossing at Kings Crossing Road is precluded by this Court's December 30, 2013 Order of Judgment and Dismissal in the 2013 Lawsuit.

78. If the at-grade railroad crossing at Kings Crossing Road were closed, the public and emergency responders would only have one point of access to a significant portion of Winter Park that lies west of the railroad tracks.

79. If the at-grade railroad crossing at Kings Crossing Road were closed, the sole access to this portion of Winter Park would be via Vasquez Road, a two-lane crossing nearly a mile to the south.

80. If the at-grade railroad crossing at Kings Crossing Road were closed, and a need for an emergency evacuation arise, the only evacuation route for residents of Winter Park would be via Vasquez Road.

81. Closing the at-grade railroad crossing at Kings Crossing Road would deprive a significant portion of Winter Park of adequate access to U.S. Highway 40.

82. Closing the at-grade railroad crossing at Kings Crossing Road would endanger the public health, safety and welfare.

**FIRST CLAIM FOR RELIEF - ALL DEFENDANTS**  
**DECLARATORY JUDGMENT**

83. Winter Park repeats and re-alleges the allegations set forth in each of the previous paragraphs as though each were set forth fully herein.

84. Upon information and belief, some or all Defendants maintain that they may connect to Kings Crossing Road at the location just to the west of the Union Pacific Railroad tracks beyond what is contemplated in the Amendment without Winter Park Town Council approval as described herein.

85. There is an actual and present controversy, dispute and disagreement between Winter Park and Defendants as to whether Defendants are required to obtain Winter Park Town

Council permission to connect the Cornerstone Property or Old King Road to Kings Crossing Road as described herein.

86. There is an actual and present controversy, dispute and disagreement between Winter Park and Defendants as to whether Defendants are required to obtain Winter Park Town Council permission to connect the Cornerstone Property or Old King Road to Kings Crossing Road with increased, altered or expanded access or use.

87. There is an actual and present controversy, dispute and disagreement between Winter Park and Defendants as to whether Defendants are required to obtain Winter Park Town Council permission to connect the Cornerstone Property to Old King Road to Kings Crossing Road at a different location than any current or historic location.

88. As a Colorado home rule municipality, Winter Park has broad police power over the regulation of its roadways and the traffic that travels on them. *Webb v. City of Black Hawk*, 295 P.3d 480, 488 (Colo. 2013).

89. Pursuant to its home rule authority, Winter Park regulates connections to its streets or rights-of-way.

90. In addition to its inherent police power, Winter Park regulates connections to its public street system in order to determine: whether the proposed connection and projected traffic as a result of the connection will alter the character of or negatively impact a residential neighborhood; whether the proposed connection and projected traffic as a result of the connection will negatively impact any park or open space; whether the proposed connection will create an undue burden on the existing Winter Park street system; whether the proposed connection complies with Winter Park's comprehensive plan; whether the proposed connection meets all Winter Park standards and regulations, including, without limitation, the "Town of Winter Park Standards and Specifications for Design and Construction"; and whether the proposed connection is in the interest of the public health, safety and welfare.

91. These provisions were adopted as part of Winter Park's police power to regulate the use of public streets and to protect and promote the public health, safety and welfare.

92. Defendants are required to comply with the Winter Park Town Code to the extent they seek to connect to Winter Park streets or right-of-way.

93. Defendants are required to comply with the Winter Park Town Code to the extent they seek to connect the Cornerstone Property to Kings Crossing Road.

94. Winter Park also regulates vehicular access to or from its streets pursuant to state law in order to protect the public health, safety and welfare, to maintain smooth traffic flow, to maintain right-of-way drainage, and to protect the functional level public highways.



95. There is an actual and present controversy, dispute and disagreement between Winter Park and Defendants as to the legal status, location, width, length and extent of Old King Road.

96. There is an actual and present controversy, dispute and disagreement between Winter Park and Defendants as to the ownership and jurisdictional control of Old King Road.

97. There is an actual and present controversy, dispute and disagreement between Winter Park and Defendants as to any historical access, use, maintenance, improvement, connection and location of Old King Road.

98. There is an actual and present controversy, dispute and disagreement between Winter Park and Defendants as to whether Old King Road is connected to or may connect to Kings Crossing Road.

99. There is an actual and present controversy, dispute and disagreement between Winter Park and Defendants as to whether the Cornerstone Property is connected to or may connect to Kings Crossing Road.

100. This Court has the power to declare the rights, status and other legal relations between the parties. C.R.S. § 13-51-105; C.R.C.P. 57(a).

101. All parties necessary for a complete adjudication of this question have been joined herein.

102. A declaration and decree from this Court will resolve the controversy and terminate the dispute between the parties hereto as to their respective rights and obligations as to the access to and use of Kings Crossing Road.

103. A declaration and decree from this Court will resolve the controversy and terminate the dispute between the parties hereto as to their respective rights and obligations as to the access to and use of Old King Road.

104. Winter Park seeks declaratory judgment from this Court to resolve the disputes and disagreements as stated herein.

**SECOND CLAIM FOR RELIEF—DEFENDANT CORNERSTONE  
DECLARATORY JUDGMENT**

105. Winter Park repeats and re-alleges the allegations set forth in each of the previous paragraphs as though each were set forth fully herein.

106. Upon information and belief, Defendants Cornerstone and/or West Mountain have an agreement with the Union Pacific Railroad Company by which they will seek to close the at-grade railroad crossing at Kings Crossing Road.

107. Upon information and belief, Defendants Cornerstone and/or West Mountain will attempt to use and/or rely upon the Annexation Agreement, as modified by the Amended Agreement, in an effort to close the at-grade railroad crossing at Kings Crossing Road.

108. Upon information and belief, Defendants Cornerstone and/or West Mountain will attempt to use the Annexation Agreement, as modified by the Amended Agreement, to preclude Winter Park from seeking to take action it may deem necessary or appropriate with respect to the at-grade railroad crossing at Kings Crossing Road.

109. The Annexation Agreement, as modified by the Amended Agreement, contains invalid restrictions on Winter Park's police powers with respect to its public streets.

110. Specifically, Section 4.1(b)(ii)(D) of the Annexation Agreement, as modified by the Amended Agreement, is invalid in that it purports to contract away Winter Park's police power and ability to manage its public streets.

111. In addition, Section 4.1(b)(ii)(D) of the Annexation Agreement, as modified by the Amended Agreement, is invalid in that it purports to obligate Winter Park to undertake a significant alteration to its public street system.

112. Further, Section 4.1(b)(ii)(D) of the Annexation Agreement, as modified by the Amended Agreement, is invalid in that it purports to obligate Winter Park to appropriate funds to undertake a significant alteration to its public street system in violation of this Court's judgment in the 2013 Lawsuit.

113. Finally, Section 4.1(b)(ii)(D) of the Annexation Agreement, as modified by the Amended Agreement, is subject to the provisions of Section 8.1 of the Annexation Agreement with respect to Winter Park's discretion as to funding.

114. Other provisions of the Annexation Agreement, as modified by the Amended Agreement, may also be invalid.

115. Winter Park is not obligated to perform any obligations under the Annexation Agreement, as modified by the Amended Agreement, because of the passage of time and changed circumstances.

116. Winter Park is not obligated to perform any obligations under the Annexation Agreement, as modified by the Amended Agreement, because of Cornerstone's failure to perform its obligations as contemplated in those documents.

117. Upon information and belief, Defendants Cornerstone and/or West Mountain maintain that the Annexation Agreement, as modified by the Amended Agreement, is binding on Winter Park.

118. Upon information and belief, Defendants Cornerstone and/or West Mountain maintain that the Annexation Agreement, as modified by the Amended Agreement, validly restricts Winter Park's ability to exercise its police power to regulate its public streets in furtherance of the public health, safety and welfare.

119. Closing the at-grade railroad crossing at Kings Crossing Road would be detrimental to the public health, safety and welfare.

120. As a Colorado home rule municipality, Winter Park cannot lawfully abrogate its police power by contract, and any attempt to do so is void *ab initio*. *Crossroads West, LLC v. Town of Parker*, 929 P.2d 62, 65 (Colo. App. 1996).

121. There is an actual and present controversy, dispute and disagreement between Winter Park and Defendants Cornerstone and/or West Mountain as to whether Section 4.1(b)(ii)(D) and other provisions of the Annexation Agreement, as modified by the Amended Agreement, are valid and binding on Winter Park.

122. This Court has the power to declare the rights, status and other legal relations between the parties. C.R.S. § 13-51-105; C.R.C.P. 57(a).

123. All parties necessary for a complete adjudication of this question have been joined herein.

124. As a party interested under a written contract, Winter Park is entitled to a declaration of its rights and obligations, even if there has not yet been a breach thereof. C.R.C.P. 57(b) and (c).

125. A declaration and decree from this Court will resolve the controversy and terminate the dispute between the parties as to their respective rights and obligations as to whether Section 4.1(b)(ii)(D) and other provisions of the Annexation Agreement, as modified by the Amended Agreement are valid and binding on Winter Park.

126. Winter Park seeks declaratory judgment from this Court to resolve the disputes and disagreements as stated herein.

WHEREFORE, Winter Park respectfully requests the Court enter judgment in its favor and against Defendants, as follows:

1. A declaration and decree:

a. That there is no lawful connection between the Cornerstone Property and Kings Crossing Road, beyond what is provided for in the Amendment to the Haul Road Agreement;

b. That consent and approval from the Winter Park Town Council is required before any connection between the Cornerstone Property and Kings Crossing Road may be established, increased, altered, expanded or relocated;

c. That there is no lawful connection between Old King Road and Kings Crossing Road, beyond what is provided for in the Amendment to the Haul Road Agreement;

d. That consent and approval from the Winter Park Town Council is required before any connection between Old King Road and Kings Crossing Road may be established, increased, altered, expanded or relocated;

e. Establishing the legal status, ownership, jurisdictional control, location, width, length, extent, permissible uses of, and access to and from Old King Road; and

f. Establishing the historical access, use, maintenance, improvement, connection and location of Old King Road; and

2. A declaration and decree to the effect that:

a. Any remaining obligations under the Annexation Agreement, as modified by the Amended Agreement, are not valid and are not binding on Winter Park because they impermissibly restrict Winter Park's police powers and ability to regulate its public streets;

b. Any remaining obligations under the Annexation Agreement, as modified by the Amended Agreement, are not valid and are not binding on Winter Park because of the passage of time and changed circumstances; and

c. Any remaining obligations under the Annexation Agreement, as modified by the Amended Agreement, are not valid and are not binding on Winter Park because of Cornerstone's failure to perform its obligations as contemplated in those documents; and

3. For such other and further relief as the Court deems just and proper.

Dated this 25<sup>th</sup> day of September, 2017.

**HOFFMANN, PARKER, WILSON &  
CARBERRY, P.C.**

By: /s/ M. Patrick Wilson  
M. Patrick Wilson  
**ATTORNEYS FOR PLAINTIFF TOWN OF  
WINTER PARK, COLORADO**

Plaintiff's Address:

Town of Winter Park

P.O. Box 3327

50 Vasquez Road

Winter Park, CO 80482

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25<sup>th</sup> day of September, 2017, a true and correct copy of the foregoing **SECOND AMENDED COMPLAINT** was sent to the following via the Colorado Courts E-Filing System, electronic mail and/or U.S. Mail on the following:

Scott D. Albertson, Esq.  
Dennis B. Polk, Esq.  
Melissa R. Liff, Esq.  
Holley, Albertson & Polk, P.C.  
1667 Cole Boulevard, Suite 100  
Golden, Colorado 80401  
Email: [sda@haplaw.net](mailto:sda@haplaw.net)  
[dbp@haplaw.net](mailto:dbp@haplaw.net)  
[mrl@haplaw.net](mailto:mrl@haplaw.net)

/s/   
William Griego, Paralegal

# Exhibit 1

Temporary Access

King's Crossing Road

Temporary Access Location

N

100 ft

Google Earth



2004-012313 10/18/2004 02:48P ODC SARA L ROSENE  
1 of 38 R 191.00 D 0.00 GRAND COUNTY CLERK

TOWN OF WINTER PARK  
ORDINANCE NO. 338  
SERIES OF 2004

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF WINTER PARK, COLORADO, ANNEXING TO THE TOWN OF WINTER PARK THAT AREA KNOWN AS PLANNING AREA 22W AND/OR LELAND CREEK SUBDIVISION CONTAINING 75.60 ACRES, MORE OR LESS, AS HEREINAFTER SPECIFICALLY DESCRIBED ON EXHIBIT A, AND APPROVING AN ANNEXATION AGREEMENT

WHEREAS, the Town Council of the Town of Winter Park on May 18, 2004 adopted Resolution No. 842, Series of 2004, entitled "Finding a Petition for Annexation of that Area Sometimes Known as Planning Area 22W Property to be in Substantial Compliance with Section C.R.S. 31-12-107(1) and Establishing a Date, Time and Place for the Winter Park Town Council to Hold a Hearing to Determine if the Proposed Annexation Complies with C.R.S. 31-12-104 and 31-12-105"; and

WHEREAS, pursuant to notice require under C.R.S. §31-12-108 of the Municipal Annexation Act of 1965 (the "Annexation Act") the Town Council of Winter Park held on July 6, 2004, a hearing pertaining to said annexation; and

WHEREAS owners of one hundred percent (100%) of the area described within Exhibit A have petitioned for such annexation; and

WHEREAS the Town Council of the Town of Winter Park has by Resolution made findings of fact and conclusions of law based thereon and determinations pertaining to said annexation, and has determined that said area should be annexed forthwith into the Town of Winter Park; and

WHEREAS the owners of one hundred percent (100%) of the area proposed described in Exhibit A have presented to the Town for approval (a) an Annexation Agreement (the "Annexation Agreement"); and

WHEREAS the Town Council held a public hearing on July 20, 2004 to consider approval of the Annexation Agreement.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WINTER PARK, COLORADO, AS FOLLOWS:

Section 1. Attached hereto as Exhibit A and incorporated herein by reference as if fully set forth is a legal description of the area sometimes known as the Planning Area 22W Property.

Section 2. The Town Council approves the annexation to the Town of Winter Park for the area described in the attached Exhibit A, subject to compliance with the conditions set forth in Section 7 below.

Section 3. Upon completion of all legal requirements to effectuate the annexation accomplished hereby, said area shall become a part of the Town of Winter Park, Colorado for all intents and purposes as of the effective date of this ordinance, with the exception of general taxation, in which respect said annexation shall not be effective until on or after January 1, 2005, and except as otherwise expressly modified by the Annexation Agreement described hereinbelow.

8/19/2004 Updated

EXHIBIT

A



Section 4. The Annexation Agreement, a copy of which is attached hereto as Exhibit B and incorporated herein, is hereby approved. The Mayor is authorized to execute the Annexation and Development Agreement and the Escrow Agreement upon acceptance by the Town Attorney and Town Manager. The Mayor is directed to execute any and all instruments and other documents as may be necessary to effectuate the foregoing approvals, the Mayor's signature thereon being conclusive proof of the necessity and appropriateness of all such instruments and other documents.

Section 5. The final Development Plan Application constitutes a site specific development plan and shall be vested for the period specified in Article 3 of the Annexation Agreement attached hereto as Exhibit B. Vesting is contingent on approval of final plat by Winter Park Town Council.

Section 6. This Ordinance shall be in full force and effect from and after its passage and publication as provided in the Town Code.

Section 7. After this Ordinance and the disconnection ordinance have become legally effective, the Town Clerk is instructed to coordinate with the Clerk of the Town of Fraser to accomplish the filing of the following documents, in the order set forth below, with the Clerk and Recorder for Grand County:

- (i) Two (2) certified copies of the Town of Fraser's ordinance approving the disconnection of the area described in Exhibit A from the Town of Fraser;
- (ii) Three (3) certified copies of this Ordinance, together with the annexation map;
- (iii) One (1) executed original of the Annexation Agreement;
- (iv) One (1) certified copy of the ordinance approving residential zoning of the area described in Exhibit A; and
- (v) Any other documents related to the annexation of area described on Exhibit A as may be required to be recorded.

Section 8. Health, Safety and Welfare. The Town Council hereby finds, determines and declares that this Ordinance is necessary and proper for the health, safety and welfare of the Town of Winter Park and the inhabitants thereof.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN SUMMARY this 6th day of July, 2004. A public hearing shall be held at the regular meeting of the Town Council of the Town of Winter Park, Colorado, on the 20th day of July, 2004, or as soon thereafter as possible, at the Town Hall, Winter Park, Colorado.

ATTEST:



  
Nancy J. Anderson, CMC, Town Clerk

TOWN OF WINTER PARK

  
Harold N. Teverbaugh, Mayor

2004-012313 10/18/2004 02:40P ODC SARA L. ROSENE  
3 of 38 R 191.00 D 0.00 GRAND COUNTY CLERK

INTRODUCED, READ, ADOPTED AND ORDERED PUBLISHED IN SUMMARY on second  
and final reading by a vote of 7 to 0 on the 17 day of August, 2004.



ATTEST:

Nancy J. Anderson  
Nancy J. Anderson, CMC, Town Clerk

TOWN OF WINTER PARK

Harold N. Teverbaugh  
Harold N. Teverbaugh, Mayor

**EXHIBIT A**  
Legal Description of the Property

**WEST MOUNTAIN PLANNING AREA 22W**  
SHEET 1 OF 3

**LEGAL DESCRIPTION**

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 29;  
THENCE SOUTH 00°11'10" EAST ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 29, A DISTANCE OF 485.07 FEET TO A POINT ON THE SOUTHEASTERLY CORNER OF A TOWN OF WINTER PARK PARCEL AS RECORDED AT THE GRAND COUNTY CLERK AND RECORDER'S OFFICE IN BOOK 308 PAGE 657, SAID POINT ALSO BEING ON THE WEST LINE OF THE ALPINE TIMBERS SUBDIVISION AS RECORDED IN THE GRAND COUNTY CLERK AND RECORDER'S OFFICE AT RECEPTION NUMBER 140404, SAID POINT ALSO BEING THE POINT OF BEGINNING;

THENCE SOUTH 00°11'10" EAST CONTINUING ALONG SAID EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 29, A DISTANCE OF 845.77 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 29;

THENCE SOUTH 01°26'34" EAST ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID NORTHEAST QUARTER OF SECTION 32, A DISTANCE OF 1311.76 FEET TO THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 32;

THENCE NORTH 89°54'25" WEST ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 32, A DISTANCE OF 1312.91 FEET TO THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID NORTHEAST QUARTER OF SECTION 32;

THENCE NORTH 89°54'25" WEST ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 32, A DISTANCE OF 401.57 FEET;

THENCE NORTH 20°07'06" EAST, A DISTANCE OF 274.30 FEET;

THENCE NORTH 17°18'39" WEST, A DISTANCE OF 157.29 FEET;

THENCE NORTH 03°36'42" EAST, A DISTANCE OF 437.81 FEET;

THENCE NORTH 06°02'32" EAST, A DISTANCE OF 394.74 FEET;

THENCE NORTH 19°14'13" EAST, A DISTANCE OF 80.31 FEET;

THENCE SOUTH 89°48'41" EAST, A DISTANCE OF 92.15 FEET TO A POINT ON THE CENTERLINE OF LELAND CREEK AS DEFINED BY THE BOARD OF WATER COMMISSIONERS IN THE DOCUMENT RECORDED AT RECEPTION NUMBER 97002916 OF THE RECORDS OF THE GRAND COUNTY CLERK AND RECORDER AND LAND SURVEY PLAT NUMBER LS 763 DEPOSITED IN THE OFFICE OF THE GRAND COUNTY SURVEYOR;



**Carroll & Lange**  
Professional Engineers & Land Surveyors  
41 Cooper Creek Way, Suite 325  
Winter Park, Colorado 80482-5343  
(970) 728-8100

EXHIBIT A  
WEST MOUNTAIN PLANNING AREA 22W  
SHEET 2 OF 3

LEGAL DESCRIPTION (CONTINUED)

THENCE ALONG SAID CENTERLINE OF LELAND CREEK THE FOLLOWING SEVEN (7) COURSES:

- 1) THENCE NORTH 30°10'40" EAST, A DISTANCE OF 671.00 FEET;
- 2) THENCE NORTH 43°50'24" EAST, A DISTANCE OF 604.08 FEET;
- 3) THENCE NORTH 51°11'35" EAST, A DISTANCE OF 55.49 FEET;
- 4) THENCE NORTH 44°39'10" EAST, A DISTANCE OF 63.95 FEET;
- 5) THENCE NORTH 32°40'38" EAST, A DISTANCE OF 61.16 FEET;
- 6) THENCE NORTH 53°30'56" EAST, A DISTANCE OF 82.14 FEET;
- 7) THENCE NORTH 34°27'50" EAST, A DISTANCE OF 73.50 FEET TO A POINT ON A CURVE;

THENCE ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 10°53'46", A RADIUS OF 190.00 FEET, A CHORD BEARING OF SOUTH 45°04'21" EAST, AND AN ARC LENGTH OF 36.13 FEET, TO A POINT OF COMPOUND CURVATURE;

THENCE ALONG A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 18°15'50", A RADIUS OF 880.00 FEET, A CHORD BEARING OF SOUTH 48°45'23" EAST, AND AN ARC LENGTH OF 280.51 FEET TO A POINT ON A CURVE, SAID POINT ALSO BEING ON THE SOUTHERLY LINE OF SAID TOWN OF WINTER PARK PARCEL;

THENCE ALONG SAID TOWN OF WINTER PARK PARCEL THE FOLLOWING TWO (2) COURSES:

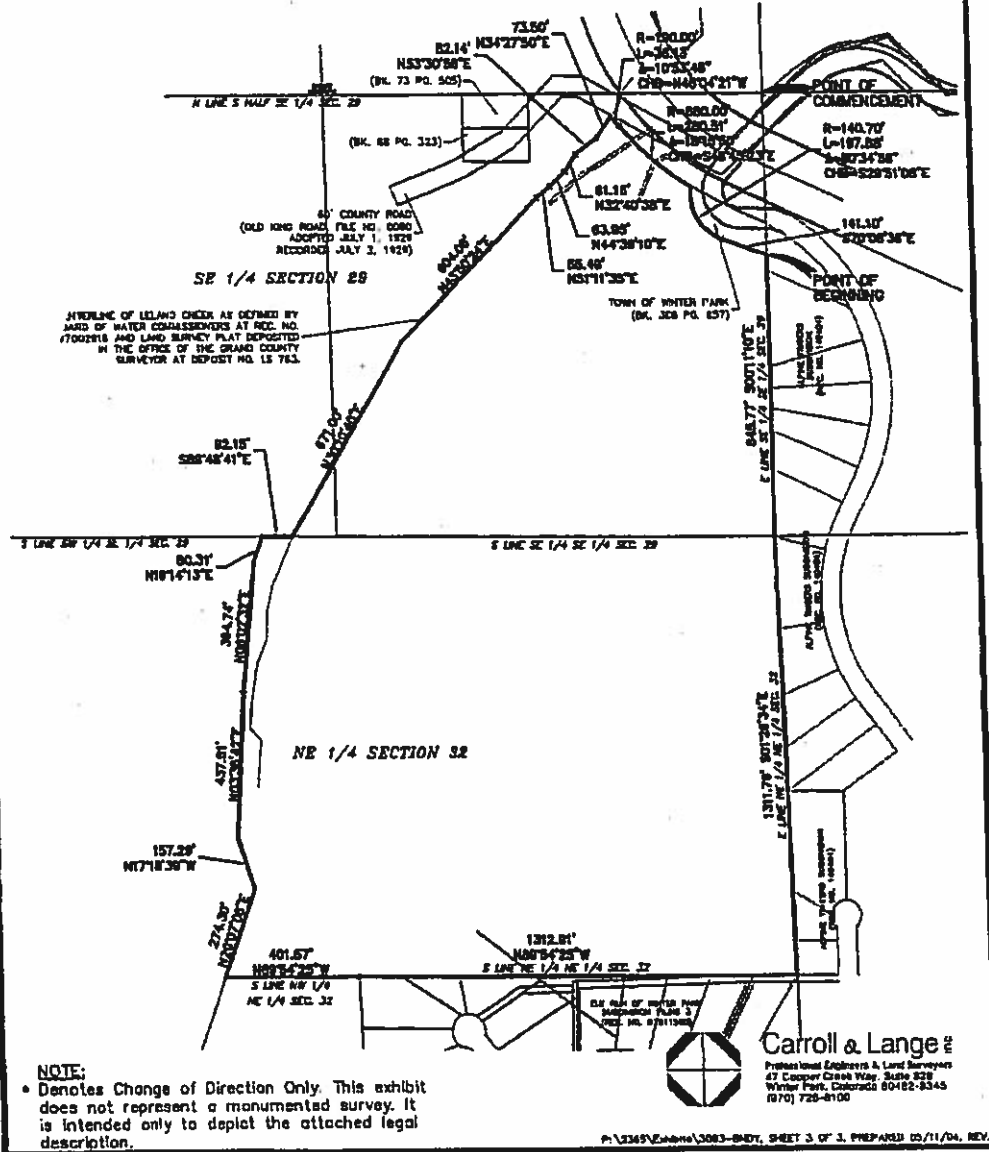
- 1) THENCE ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 80°34'56", A RADIUS OF 140.70 FEET, A CHORD BEARING OF SOUTH 29°51'08" EAST, AND AN ARC LENGTH OF 197.88 FEET;
- 2) THENCE SOUTH 70°08'36" EAST, A DISTANCE OF 141.10 FEET TO THE POINT OF BEGINNING;

SAID PARCEL CONTAINS 75.60 ACRES MORE OR LESS.



**Carroll & Lange**  
Professional Engineers & Land Surveyors  
47 Cooper Creek Way, Suite 329  
Winter Park, Colorado 80482-3345  
(970) 728-8100

# EXHIBIT A WEST MOUNTAIN PLANNING AREA 22W SHEET 3 OF 3



2004-012313 10/18/2004 02:40P ODC SARA L ROSENE  
7 of 38 R 191.00 D 0.00 GRAND COUNTY CLERK

**ANNEXATION AND DEVELOPMENT AGREEMENT**

**FOR**

**LELAND CREEK**

**BETWEEN**

**THE TOWN OF WINTER PARK**

**AND**

**CORNERSTONE WINTER PARK HOLDINGS, LLC**

**DATED AS OF: August 27, 2004**

## ANNEXATION AND DEVELOPMENT AGREEMENT FOR LELAND CREEK

THIS ANNEXATION AND DEVELOPMENT AGREEMENT FOR LELAND CREEK (this "Agreement") is made and entered into as of August 24, 2004 ("Effective Date") 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 county of Grand, State of Colorado ("Town").

### RECITALS

This Agreement is made with respect to the facts set forth below. Capitalized terms used in these Recitals have the meanings set forth in Section 1.1 of this Agreement unless otherwise indicated.

A. Annexor owns the Property, totaling approximately 76 acres, as more particularly described in Exhibit A, which Annexor wishes to annex to and develop within the Town.

B. Annexor has submitted the Annexation Petition to Town requesting that the Town annex, zone and subdivide the Property in accordance with the terms and conditions of the Annexation Petition, the Zoning Application, the Subdivision Application, and this Agreement. The Property was previously annexed to the Town of Fraser, which is processing Annexor's request for Disconnection concurrently with the Town's processing of the Annexation Petition.

C. Development of the Project in accordance with the terms and conditions of this Agreement will require that Annexor make substantial, up-front investments in infrastructure improvements and public facilities which will serve the needs of the Project and the Town, including, without limitation, roads, drainage facilities, water lines and sanitary sewer lines. These investments can be supported only if there are assurances that the development of the Project, once approved by the Town, will be allowed to proceed to ultimate completion as provided in this Agreement.

D. The Vested Property Rights Statute provides for the establishment of vested property rights in order to advance the purposes stated therein and authorizes the Town to enter into development agreements with landowners providing for vesting of property development rights for periods of greater than three years.

E. Development of the Property in accordance with this Agreement will provide for orderly and well planned growth in accordance with the policies and goals set forth in the Town's Master Plan, promote diversity of housing stock within the Town, ensure reasonable certainty, stability and fairness in the land use planning process, secure the reasonable investment-backed expectations of Annexor, foster cooperation between the public and private sectors in the area of land use planning and the provision of public infrastructure, and otherwise achieve the goals and purposes of the Vested Property Rights Statute. In exchange for these

benefits and the other benefits to the Town contemplated by this Agreement, together with the public benefits served by the orderly and well planned development of the Property, Annexor desires to receive the assurance that it may proceed with development of the Property pursuant to the terms and conditions of this Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Annexor and the Town agree as follows:

### ARTICLE 1

#### Definitions and General Provisions

1.1 Definitions. The following terms will have the meanings indicated below:

(a) Agreement. This Annexation and Development Agreement for Cornerstone, as approved by the Town and amended from time to time in the manner contemplated herein.

(b) Annexation Petition. The petition for annexation of the Property, which Annexor filed with the Town on May 11, 2004.

(c) Annexor. Cornerstone Winter Park Holdings, LLC, a Colorado limited liability company and, except to the extent that particular provisions of this Agreement expressly provide otherwise, its successors and assigns.

(d) Approved Zoning. The approved R-1 zoning for the Property, which, pursuant to Section 2.2 of this Agreement, must be substantially consistent with the Zoning Application, together with any amendments thereto to which Annexor consents.

(e) Approved Uses. The primary uses and accessory uses for the Property, the density and the intensity of use, and the development standards for the Property, all as set forth in the Approved Zoning, including, without limitation, 73 single family residential dwellings, each of which may include an accessory unit as defined by the Town Code.

(f) Crossing. As defined in Section 4.1(b) of this Agreement.

(g) Crossing Project Area. The area depicted in Exhibit C of this Agreement, within which construction of the Crossing and related transitions will occur.

(h) Disconnection. Disconnection of the Property from the Town of Fraser as described in Section 2.1(a) of this Agreement.



(i) Effective Date. The date first set forth above, which will be the effective date of the ordinance approving this Agreement and authorizing the Mayor to execute this Agreement on behalf of the Town.

(j) Escrow Agent. The party responsible for receiving the Participating Parties' pro rata shares and contributions from any other third parties for the construction costs as specified in Article 4 below and administering those funds in accordance with the Escrow Agreement attached hereto as Exhibit D.

(k) Escrow Agreement. The agreement regarding the instructions for the escrow account to be executed by the Participating Parties and the Escrow Agent in the form attached hereto as Exhibit D.

(l) Exhibits. The following Exhibits to this Agreement which are incorporated by reference into and made a part of this Agreement:

Exhibit A: Legal Description of Property.

Exhibit B: Conceptual Depiction of the Road Extension

Exhibit C: Crossing Project Area

Exhibit D: Form of Escrow Agreement

(m) Final Approval. The fortieth (40<sup>th</sup>) day after publication following final action by Town Council to approve the latest of the ordinances by which Town Council approves (a) this Agreement, (b) the Zoning Application, (c) the Subdivision Application, or (d) annexation of the Property to the Town. Final Approval will be deemed not to have occurred for purposes of this Agreement if a Legal Challenge occurs on or before such fortieth (40<sup>th</sup>) day; provided, however, that Annexor may waive in writing the foregoing limitation on Final Approval, in which case Final Approval will be deemed to have occurred at the time stated therein.

(n) Final Plat. The approved subdivision preliminary/final plat for the Property, which, pursuant to Section 2.2 of this Agreement, must be substantially consistent with the Subdivision Application, together with any amendments thereto to which Annexor consents, including any replats.

(m) Financing District(s). As defined in Section 5.2 of this Agreement.

(n) Grand County No. 1. Grand County Water and Sanitation District No. 1.

(o) Legal Challenge. For purposes of this Agreement, either of the following will constitute a Legal Challenge: (1) any third party commences any legal proceeding, request for reconsideration pursuant to § 31-12-116, 9 C.R.S. (2003), or other action that directly or indirectly challenges (A) this Agreement, (B) the annexation, initial zoning and/or subdivision of the Property, (C) any of the Town's resolutions or

ordinances approving the annexation, the Zoning Application, the Subdivision Application, or this Agreement, (D) the Disconnection, or (E) inclusion of the Property into Grand County No. 1; or (2) any third party submits a petition for a referendum or other challenge seeking to reverse or nullify any such ordinances or actions.

(p) Master Plan. The "Master Plan of Winter Park," as referred to in Section 7-1-1 of the Town Code.

(q) Participating Parties. Cornerstone Winter Park Holdings, LLC; the Town and Union Pacific Railroad (or other railroad representative).

(r) Project. The proposed development of the Property as generally described in the Zoning Application, including the Approved Uses.

(s) Project Plans. Collectively, this Agreement, the Approved Zoning, and the Final Plat.

(t) Property. The real property described on Exhibit A attached to this Agreement.

(u) Road Extension. As defined in Section 4.1(b) of this Agreement.

(v) Term. As defined in Section 3.2 of this Agreement.

(w) Town. The Town of Winter Park, a municipal corporation of the County of Grand, State of Colorado.

(x) Town Code. The Town Code of the Town of Winter Park in effect on the Effective Date or as amended in the future so long as said amendment(s) is uniform and non-discriminatory and does not conflict with this Agreement.

(y) Town Council. The Town Council of the Town of Winter Park.

(z) Subdivision Application. The application for subdivision of the Property, which Annexor submitted to the Town on June 11, 2004, requesting approval of the Final Plat.

(aa) Vested Property Rights Regulations. Section 8-6-1 through 8-6-10 of the Town Code.

(bb) Vested Property Rights Statute. Sections 24-68-101, et seq. of the Colorado Revised Statutes in effect as of the Effective Date.

(cc) Zoning Application. The application for zoning of the Property, which Annexor submitted to the Town on June 11, 2004, requesting approval to zone the Property to the R-1 zone district consistent with the Approved Uses.

1.2 Covenants. The provisions of this Agreement constitute covenants or servitudes, which touch, attach to and run with the land comprising the Property. The burdens and benefits of this Agreement will bind and inure to the benefit of all estates and interests in the Property and all successors in interest to the parties to this Agreement, except as otherwise provided in Section 1.3 below.

1.3 Amendment of Agreement. Except as otherwise set forth in this Agreement, this Agreement may be amended or terminated only by mutual consent in writing of the Town and Annexor following the public notice and public hearing procedures required for approval of this Agreement. For the purposes of any amendment to this Agreement, Annexor will mean only the signatory to this Agreement constituting Annexor and those parties, if any, to whom such signatories have specifically granted, in writing, the power to enter into such an amendment. An amendment to any component of the Project Plans other than this Agreement will not constitute or require an amendment to this Agreement.

## ARTICLE 2

### Annexation, Zoning and Development

2.1 Annexation. Annexation of the Property will be in accordance with the terms and conditions of the Annexation Petition, this Agreement, and the Municipal Annexation Act of 1965, as amended (§§ 31-12-101, *et seq.*, C.R.S. (2003)).

(a) Conditions Precedent. Annexation of the Property to the Town will not become effective until the following conditions have been satisfied: (1) Annexor and the Town have mutually executed and delivered this Agreement; (2) Final Approval has occurred; (3) the Town of Fraser has approved, executed and recorded an ordinance that disconnects the Property from the Town of Fraser and there is no Legal Challenge to the Disconnection; and (4) Grand County No. 1 has included the Property within its boundaries as contemplated in Section 4.3 of this Agreement and there is no Legal Challenge to the inclusion.

(b) Failure of Conditions. Unless and until all of the conditions set forth in Section 2.1(a) have been satisfied or waived by Annexor, Annexor may withdraw the Annexation Petition, and neither Annexor nor the Town will record or cause to be recorded the items described in § 31-12-113(2)(a)(II)(A), C.R.S. (2003). If Annexor withdraws the Annexation Petition, then the Property will be deemed not annexed to the Town, and any obligations of the Town and Annexor under this Agreement which are to be performed after the annexation becomes effective will be deemed void and of no force or effect.

2.2 Zoning and Subdivision. Annexor's consent to annexation of the Property is contingent on obtaining the Town's approval of zoning for the Property that is substantially consistent with the Zoning Application and subdivision of the Property that is substantially consistent with the Subdivision Application.

### ARTICLE 3 Vested Property Rights

3.1 Vesting of Property Rights. The Project Plans constitute an approved "site-specific development plan" as defined in the Vested Property Rights Statute. Any amendment to any component of the Project Plans that Annexor submits to the Town subsequent to the Effective Date will, if Annexor so requests, be processed as a "site specific development plan" as defined in the Vested Property Rights Statute. The vested property rights created in connection with the Project Plans, as amended, will be supplemental and in addition to those property rights initially vested through this Agreement as of the Effective Date, and will be vested pursuant to the Vested Property Rights Statute for the remaining portion of the Term.

3.2 Term. The term of the statutory vested property rights established pursuant to this Agreement will commence when the Final Plat is recorded with the Grand County Clerk and Recorder and will continue until the tenth (10<sup>th</sup>) anniversary of the recording (the "Term"). After expiration of the Term, the Property will continue to be subject to the charter, ordinances, rules and regulations of the Town for so long as it is located within the municipal boundaries of Town, and the statutory vested property rights established by this Agreement will be deemed terminated and of no further force or effect; provided, however, that such termination will not affect (a) the annexation of the Property to the Town; (b) any common-law vested rights obtained prior to such termination; or (c) any right, whether characterized as vested or otherwise, arising from Town permits, approvals or other entitlements for the Property or the Project which were granted or approved prior to, subsequent to, concurrently, or in conjunction with the approval of this Agreement.

3.3 Compliance with General Regulations. Subject to the terms, conditions and limitations of the Vested Property Rights Statute and except as otherwise provided in this Agreement, the establishment of vested property rights pursuant to this Agreement will not preclude the application on a uniform and non-discriminatory basis of Town regulations of general applicability (including, but not limited to, building, fire, plumbing, electrical and mechanical codes, the Town Code, and other Town rules and regulations) or the application of state or federal regulations, as all of such regulations exist or may be enacted or amended after the Effective Date. Annexor does not waive its right to oppose the enactment or amendment of any such regulations.

3.4 Property Rights Vested. Except as the Vested Property Rights Statute expressly provides otherwise, no initiated or referred zoning, subdivision, land use or other legal or administrative action which would directly or indirectly have the effect of materially and adversely altering, impairing, preventing, diminishing, imposing a moratorium on development, delaying or otherwise adversely affecting any of the Annexor's rights set forth in this Agreement will apply to or be effective against the Property or the Project. Subject to the terms, conditions and limitations of the Vested Property Rights Statute and except as otherwise provided in this Agreement, the rights identified below will constitute the vested property rights under this Agreement during the Term:

- (a) The right to develop, plan and engage in land uses within the Property in the order, at the rate and at the time as market conditions dictate, in a manner

that is substantially consistent with the Project as described in the Project Plans, including the entitlement to develop 73 single-family residential dwellings with accessory units as defined in the Town Code.

(b) The right to commence and complete development of the Project (including, without limitation, the right to receive all Town approvals and permits necessary for the development of the Project) with conditions, standards and dedications which are no more onerous than those imposed by the Town upon other developers in the Town on a uniform, non-discriminatory and consistent basis.

(c) The right to apply for and, upon compliance with the terms and conditions of this Agreement, the Town Code, and applicable regulations, to receive grading permits, building permits, certificates of occupancy, and other permits necessary for development, construction and occupancy of improvements within the Project.

(d) The right to have the Town accept and process applications for subsequently required development approvals and amendments to the Project Plans as site specific development plans which, if approved, will establish vested property rights pursuant to the Vested Property Rights Statute in the manner described in Section 3.1 above.

(e) The right to rely upon and enforce the terms and conditions of that certain Haul Road Agreement entered into between Annexor and the Town on June 1, 2004, and that certain Access Easement Agreement entered into between Annexor and the Town on June 1, 2004.

3.5 No Obligation to Develop. Annexor will have no obligation to develop all or any portion of the Project and will have no liability under this Agreement to the Town or to any other party for its failure to develop all or any part of the Project; provided, however, that this Section 3.5 will not be construed to relieve Annexor of its obligation to construct any public improvements required by any subdivision improvement agreement(s) executed by Annexor after the Effective Date.

#### ARTICLE 4 Infrastructure, Fees, and Dedications

4.1 Streets and Roads. Annexor will design and construct the public streets within the Project, at no cost to the Town, as generally depicted in the Subdivision Application and to be more particularly set forth in the Final Plat engineering documents. The roadway design consists of a 24' wide asphalt roadway bordered by 3' pan curbs from the entrance at Kings Crossing to the "T" intersection on Leland Creek Circle, at which point the asphalt portion reduces to 20' in width, bordered by 3' pan curbs; a cul-de-sac at the end of Creek Way; aligned within a 50' right of way with 10' utility and snow storage easements on both sides. Except as described above, construction will be in accordance with the engineering documents approved in connection with processing of the Subdivision Application. Upon completion of construction, all public streets within the Project will be dedicated to and accepted by the Town in accordance with the Town Code and regulations in effect as of the Effective Date; with the exception that the

covenants for Leland Creek Subdivision will direct the HOA (Homeowner's Association) to be the responsible party for maintenance (repair and replacement) of the pan curbs; and shall hold the Town of Winter Park harmless for their condition.

Offsite street and road improvements will be governed by the following provisions:

(a) Construction Traffic. Ingress and egress of construction traffic to and from the Property will be as provided in that certain Haul Road Agreement entered into between Annexor and the Town on June 1, 2004.

(b) Kings Crossing Road. In order to address existing and future traffic conditions unrelated to the Project, the Town plans to construct an extension of King's Crossing Road in the general alignment depicted in Exhibit B (the "Road Extension"). The Town also plans to support and participate in the funding of a below grade crossing of the Union Pacific rail line within the Crossing Project Area. The Road Extension and the Crossing will provide substantial benefits to the Town and the surrounding areas, and will also benefit the Project. The respective obligations of the Town and Annexor for the costs of the Road Extension and the Crossing, based upon their relative impacts and benefits from the Road Extension and the Crossing, are as set forth below.

(i) Road Extension. Subject to Section 8.1 of this Agreement, the Town will fund construction of the Road Extension. Additionally, the Town will maintain the roadway at the Town's sole expense in accordance with an intergovernmental agreement it will execute with the Town of Fraser. Annexor will design and construct the Road Extension. The Town will reimburse Annexor for 100% of the engineer's probable cost estimate for the Road Extension construction costs. A contingency of 20% will be added as part of the probable cost estimate. Reimbursement shall be in two payments in accordance with the following schedule: (i) the first payment of 50% will be made on the date of submittal of final engineering plans to the Colorado Public Utilities Commission who shall consider approval of the Crossing; and (ii) the second payment of 50% will be made on the day that the Crossing becomes operational and provides access to and from U.S. Highway 40. Best efforts will be made to design the Road Extension in a cost-effective manner while meeting accepted engineering standards, and agency requirements. The Town may review and provide input on the engineer's design and probable cost estimate at 30% and 100% design completion phases. The Town's acceptance of the probable cost estimate cannot be unreasonably withheld.

(ii) Below Grade Rail Crossing. 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 the Public Utilities

Commission approval of the Crossing in the desired location and configuration. Annexor shall submit final engineering drawings and all other necessary application materials to the Public Utilities Commission on or before September 1, 2005, provided, however, that the Annexor may apply for and the Town shall grant the Annexor modification of such deadline for good cause shown. Annexor may commence design of the Crossing within thirty (30) days after the date of Final Approval. At Annexor's option, Annexor may commence construction of the Crossing at any time after the Public Utilities Commission has granted approval for the Crossing. However, Annexor will execute a contract for construction of the Crossing not later than twenty-four (24) months after the later of the following to occur: (A) the Public Utilities Commission having granted its approval of the Crossing and it being funded by the Union Pacific Railroad; or (B) the Town having fully funded its respective share of the construction cost; 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.

Subject to Section 8.1 of this Agreement, the Town will fund \$1.75 million of the total construction cost of the Crossing. An escrow account for collection and disbursement of funds to fund the Crossing with escrow instructions agreed to by the Participating Parties pursuant to the Escrow Agreement and administered by the Escrow Agent, will be established to which the Town shall fund its share of the Crossing costs contingent upon an equal contribution by Annexor. The Town's funding will begin no later than December 1, 2004, with a payment of \$250,000 to the escrow account. The Town Manager will also budget \$300,000 per annum for 2005 and subsequent years, which will be funded into the Crossing escrow account on or before December 31, 2005, and each succeeding year on the same date thereafter until the Town's share is fully funded. All Town funds and interest thereupon shall be maintained in one or more accounts, as directed by the Town, that are separate and segregated from funds and interest of other Participating Parties.

In each fiscal year for which the Town has funded the escrow account as provided above (and provided the Town has replenished any funds withdrawn from the Town's escrow account in a prior fiscal year as provided below), the Town will have the right to withdraw from and to utilize money from its escrow account in any amount, subject to the following limitations: (I) any money may be withdrawn only for the purpose of being directly utilized to facilitate the Town's creation of the planned affordable housing project to be known as Hideaway Junction; (II) any money that the Town withdraws from its escrow account in any fiscal year shall be replaced in full before the end of that fiscal year, with the replenishing obligation being cumulative, so that at the end of each fiscal year the entire amount previously withdrawn by the Town, regardless of the fiscal year of original appropriation, will be in the escrow account; (III) the Town's withdrawal rights (but not its replenishment obligation) will terminate upon the earlier of the following to occur: (A) one (1) year prior to the Public Utility Commission's

funding date; (B) immediately upon execution of the contract to construct the Crossing. The Town may apply for and the Annexor shall grant a modification of such deadline for good cause shown.

If a contract to construct the Crossing has not been executed within the time frame contemplated in this Section 4.1(b)(ii), the Town will be entitled to submit unilateral instructions, pursuant to Paragraph 5 of the Escrow Agreement, directing the Escrow Agent to disburse to the Town from the Town's escrow account any funds and interest then on deposit, and Annexor will not object thereto.

Annexor's contribution to the escrow account may take the form of third party costs related to design including a 15% project management fee, the posting of a performance bond, letter of credit or cash. Annexor will provide proof of costs on or before December 31, 2004, and on or before December 31 of each succeeding year. In any unilateral or joint instructions to the Escrow Agent pursuant to the Escrow Agreement regarding disbursement of escrowed funds and interest thereupon, Annexor shall receive full credit for its verified costs as provided herein, and the Town shall not object thereto. Additionally, Annexor will have the right to withdraw and replace its escrowed funds within any fiscal year on the same terms and conditions as the Town, as described above, except that Annexor may withdraw funds only for the purpose of paying Crossing costs. Subject to reimbursement pursuant to Section 5.4 of this Agreement, Annexor may elect to advance the cost of designing and constructing the Crossing if Annexor deems it necessary or desirable before the Town and/or other parties have budgeted or otherwise committed the necessary funds. If the Public Utilities Commission approves the Crossing and the railroad funds have been budgeted before the Town has fully funded its share into the Crossing escrow account as contemplated above, the Town will fund the account fully for its share of the costs prior to the commencement of construction contingent on an executed contract to construct the Crossing.

4.2 Taxes, Exactions and Fees. Except as set forth in subsections (a) and (b) below, all future taxes, assessments, fees and exactions imposed on the Property and the Project by the Town will be imposed on a uniform and non-discriminatory basis on the same terms as are in effect generally throughout the Town and in accordance with the Town Code as in effect at the time Annexor's tax, assessment, fee or exaction obligation accrues.

(a) Park and Open Space Dedication. In full satisfaction of the Project's parks and open space obligation, Annexor will pay cash in lieu of land dedication to the Town, at the time the Final Plat is recorded, pursuant to the following formula:  $(\text{Total acreage } [76] \times .05) \times \$7,700 = \text{Total Payment } [\$29,260.00]$ ; and construct public trails as noted and depicted on Final Plat.

(b) School Land Dedication. In full satisfaction of the Project's school land dedication obligation, Annexor has previously paid cash to the District in the sum of



\$250,000 and has provided written confirmation from the District that there is no additional impact because there is no increase in density.

4.3 Water and Sanitation Service. The Town does not presently provide water and sanitary sewer services. Grand County No. 1 currently provides water and sanitary sewer services within the Town's municipal boundaries. Concurrently with annexation of the Property to the Town, or promptly thereafter, Annexor will initiate proceedings for inclusion of the Property into the boundaries of Grand County No. 1 on terms and conditions reasonably acceptable to Annexor. The Town will actively support Annexor's efforts for inclusion within Grand County No. 1 as provided herein.

4.4 Vasquez Creek Stream Flows. Annexor acknowledges that it owns the senior water right (Cozens Ditch) on the Vasquez Creek. Annexor recognizes the value of the aquatic environment in Vasquez Creek, and will work cooperatively with the Town and other water users during drought conditions.

## ARTICLE 5

### Infrastructure Financing

5.1 General. In recognition of the extraordinary public infrastructure costs associated with development of the Project, including, without limitation, the Crossing and the Road Extension, the Town and Annexor wish to establish certain conceptual commitments regarding mechanisms for cooperation between the public and private sectors to accomplish the financing of the infrastructure contemplated by this Agreement.

5.2 Public Financing Mechanisms. Annexor and the Town will cooperate to jointly investigate, evaluate and implement creation of a general improvement district pursuant to C.R.S. § 31-25-601, *et seq.*, a special improvement district, pursuant to C.R.S. § 31-25-501, *et seq.*, and/or one or more special districts pursuant to C.R.S. § 32-1-101, *et seq.* (individually a "Financing District," and collectively, the "Financing Districts"). The purposes of the Financing District(s) will be, *inter alia*, to facilitate financing, maintenance, and development of the public infrastructure improvements contemplated by this Agreement, and for which Annexor is or may become obligated under the terms in this Agreement. Annexor will have the right to assign to the Financing District(s) all or any part of its obligations and rights under this Agreement with respect to the funding, construction, maintenance, reimbursement and/or offset of fees, and other matters related to the infrastructure required to support development of the Project in accordance with the terms and conditions of this Agreement and applicable law. In such event, the Financing District(s) will provide facilities and services that the Town and/or Developer might otherwise have to provide. Annexor will remain jointly and severally liable with the Financing District(s) for performance of the assigned obligation except to the extent that the Town releases Annexor from performance of the assumed obligation in writing, which written release the Town will not unreasonably withhold or delay. Accordingly, references to "Annexor" in the context of public infrastructure improvement obligations addressed in this Agreement will be construed to include the Financing District(s), to the extent such entities subsequently assume the obligations of Annexor pursuant to the terms of this Agreement. The Town will reasonably cooperate with Annexor's efforts for the formation and operation of the Financing Districts, and with the

implementation of Annexor's plans for financing, developing and maintaining the public infrastructure improvements required to support development of the Project.

5.3 Dissolution of Districts. Unless Annexor requests the Town to do so earlier, the Town will not initiate or pursue any proceeding to dissolve any Financing District until all infrastructure improvements and public amenities contemplated in the service plan for the Financing District have been constructed and no issued general obligations or revenue obligations of the Financing District remain outstanding with respect thereto. In no event may the Town initiate or pursue any proceeding to dissolve any Financing District until all of the Financing District's maintenance and operating obligations have ceased, or unless the Town has assumed full responsibility for performing any unperformed and ongoing maintenance and/or operating obligations of the Financing District.

5.4 Reimbursement. The Town will reasonably cooperate with Annexor to obtain prompt reimbursement from any third parties who benefit from the improvements financed by Annexor pursuant to this Agreement for that party's equitable pro rata share of the costs. Additionally, with respect to the Town's share of the costs as set forth in this Agreement, Annexor will be entitled to receive cash reimbursement from the Town, subject to the provisions of Section 8.1 of this Agreement. Under the terms of this Agreement, an escrow account will be established to handle contributions from the Participating Parties and the Escrow Agent shall reimburse the Town and Annexor in accordance with the terms of the Escrow Agreement. Reimbursements may be funded from any escrow accounts established, or from any other funding sources then available to the Town. To the extent necessary to implement the intent of this Agreement with respect to reimbursement for a particular improvement or from a particular source, the Town will take such other and further action as may be required to authorize and promptly implement the intent of this Agreement.

#### ARTICLE 6 Legal Challenges

6.1 Expiration or Termination During Pendency of Legal Challenge. If a Legal Challenge occurs, this Agreement will not expire or terminate during the pendency of any Legal Challenge and will, unless earlier terminated or modified by a written amendment signed by all parties hereto, remain in full force and effect through and until the fortieth (40<sup>th</sup>) day following entry of a final, non-appealable order resolving such Legal Challenge.

6.2 Successful Legal Challenge Contingency. If any Legal Challenge successfully voids, enjoins, or otherwise invalidates annexation and/or zoning of the Property or any portion thereof, the Town and Annexor will cooperate to cure the legal defect and to pursue annexation and/or zoning of the Property or portion thereof in a manner that most fully implements the intent and purpose of this Agreement.

#### ARTICLE 7 Default; Remedies; Termination

7.1 Default by Town. A "breach" or "default" by the Town under this Agreement will be defined as: (a) any zoning, land use or other action or inaction, direct,

indirect or pursuant to an initiated measure, taken without Annexor's consent, that alters, impairs, prevents, diminishes, imposes a moratorium on development, delays or otherwise materially and adversely affects any development, use or other rights of Annexor under this Agreement; or (b) the Town's failure to fulfill or perform any material obligation of the Town contained in this Agreement.

7.2 Default by Annexor. A "breach" or "default" by Annexor will be defined as Annexor's failure to fulfill or perform any material obligation of Annexor contained in this Agreement.

7.3 Notices of Default. In the event of a default by either party under this Agreement, the non-defaulting party will deliver written notice to the defaulting party of such default, at the address specified in Section 8.14, and the defaulting party will have twenty (20) days from and after receipt of such notice to cure such default. If such default is not of a type which can be cured within such 20-day period and the defaulting party gives written notice to the non-defaulting party within such 20-day period that it is actively and diligently pursuing such cure, the defaulting party will have a reasonable period of time given the nature of the default following the end of such 20-day period to cure such default, provided that such defaulting party is at all times within such additional time period actively and diligently pursuing such cure.

7.4 Remedies. If any default under this Agreement is not cured as described above, the non-defaulting party will have the right to enforce the defaulting party's obligations hereunder by an action for any equitable remedy, including injunction and/or specific performance. Notwithstanding the foregoing, however, since this Agreement extends the period of vesting for more than three years, as provided in the Vested Property Rights Statute, in the event of a breach or default by the Town, in addition to any of the foregoing remedies, Annexor will be entitled to recover from the Town any damages and/or compensation specifically available to Annexor as contemplated in Colorado Revised Statutes Section 24-68-105(1)(c) as in effect on the Effective Date with respect to those rights vested pursuant to Section 3.4 of this Agreement (excluding the Town's funding obligations with respect to the Road Extension and the Crossing as set forth in Sections 4.1(b)(i) and 4.1(b)(ii) respectively). Each remedy provided for in this Agreement is cumulative and is in addition to every other remedy provided for in this Agreement or otherwise existing at law, in equity or by statute.

7.5 Venue. Venue for any action to enforce or interpret the terms of this Agreement will be in District Court, Grand County, Colorado.

## ARTICLE 8 Miscellaneous

8.1 Annual Appropriation. To the extent that any of the Town's obligations under this Agreement are deemed to constitute a multiple fiscal year financial obligation pursuant to Article X, Section 20 of the Colorado Constitution, the Town's performance will be conditioned upon annual appropriation by the Council, in its sole discretion. The Town's manager (or any other official or employee charged with the responsibility of formulating the budget proposals) is hereby directed to include in the budget proposals submitted to the Town

Council, for each year until sufficient funds to meet the Town's obligations under this Agreement are present in the escrow account.

8.2 No Third Party Beneficiaries. Nothing herein contained will be deemed to be a gift or dedication of any portion of the Property to the general public or for any public use or purpose whatsoever. Except as specifically provided herein, no right or privilege of any party hereto will inure to the benefit of any third party, nor will any third party be deemed to be a beneficiary of any of the provisions contained herein.

8.3 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement will, unless amended or modified by mutual consent of the parties, continue in full force and effect so long as enforcement of the remaining provisions would not be inequitable to the party against whom they are being enforced under the facts and circumstances then pertaining.

8.4 Captions. The captions preceding the text of the articles, sections, paragraphs, and subparagraphs herein are included for convenience of reference. Captions will be disregarded in the construction and interpretation of this Agreement.

8.5 Applicable Law. This Agreement will be governed by, and construed and interpreted in accordance with, the laws of the State of Colorado.

8.6 Municipal Services. Except as this Agreement expressly states otherwise, the Town will have the responsibility and obligation to provide all municipal services to the Project on an equivalent basis to those provided to any other area of the Town on a uniform and non-discriminatory basis, including, without limitation: snow removal and road maintenance, building code enforcement, maintenance of such public facilities and other administrative and utility services provided by the Town.

8.7 Intent. No provision of this Agreement will be construed as an implied waiver by Annexor of the right to any reimbursement to which it is entitled by law, or as an implied waiver or acquiescence in the impairment of any of its substantive or procedural rights under § 29-20-201, *et seq.*, C.R.S. (2003), or as an implied agreement by Annexor to be responsible for more than its pro rata share of any regional public infrastructure improvements or to be responsible for the costs of improvements that are not roughly proportional to the impacts of the development of the Project.

8.8 No Joint Venture or Partnership. No form of joint venture or partnership exists between the Town and Annexor, and nothing contained in this Agreement will be construed as making Annexor and the Town joint venturers or partners.

8.9 Merger and Ratification. This Agreement constitutes the entire understanding and agreement of the parties, integrates all of the terms and conditions mentioned therein and incidental thereto, and supersedes all negotiation or previous agreements between the parties. All waivers of this Agreement must be made in writing and signed by the appropriate authorities of the Town or of the Annexor.

8.10 Further Assurances. Each party will execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges under this Agreement.

8.11 Attorney's Fees. If any action is filed or maintained by either party in relation to this Agreement, the substantially prevailing party will be awarded its reasonable costs and attorney's fees, which rights will survive termination of this Agreement.

8.12 Waiver. No waiver of one or more of the terms of this Agreement will constitute a waiver of other terms. No waiver of any provision of this Agreement in any instance will constitute a waiver of such provision in other instances.

8.13 Town Findings. Town hereby finds and determines that execution of this Agreement is in the best interests of the public health, safety, and general welfare and the provisions of this Agreement are consistent with the Town's Master Plan, development laws, regulations and policies.

8.14 Notices. Any notice or communication required under this Agreement between the Town and Annexor must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice will be deemed to have been given when delivered to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided in this Section, designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or communication will be given. Such notices or communications will be given to the parties at their addresses set forth below:

If to Town:

Town of Winter Park  
P.O. Box 3327  
Winter Park, Colorado 80482  
Attention: Daryl Shrum, Town Manager  
Telephone: (970) 726-8081

With a required copy to:

Hayes, Phillips, Hoffman & Carberry, P.C.  
1350 17th Street, Suite 450  
Denver, Colorado 80202  
Attention: John Hayes, Esq.  
Telephone: (303) 825-6444

If to Annexor:

Cornerstone Winter Park Holdings, LLC  
P.O. Box 30  
Winter Park, Colorado 80482  
Attention: C. Clark Lipscomb & Jack Bestall  
Telephone: 970-726-8600

With a required copy to:

Ottens, Johnson, Robinson, Neff & Ragonetti, P.C.  
950 17th Street, Suite 1600  
Denver, Colorado 80202  
Attention: Munsey L. Ayers, Esq.  
Telephone: 303-825-8400

A copy shall also be submitted to:

Town of Fraser  
P.O. Box 120  
Fraser, Colorado 80442  
Attention: Town Manager  
Telephone: (970) 726-5491

8.15 Assignment. This Agreement is binding upon and, except as otherwise provided in this Agreement, will inure to the benefit of the successors in interest or the legal representatives of the parties hereto. Annexor will have the right to assign or transfer all or any portion of its interests, rights or obligations under this Agreement to third parties acquiring an interest or estate in the Property, including, but not limited to, purchasers or long term ground lessees for terms not less than twenty (20) years of individual lots, parcels, or of any improvements now or hereafter located within the Property, provided that to the extent Annexor assigns any of its obligations under this Agreement, the assignee of such obligations will expressly assume such obligations. The express assumption of any of Annexor's obligations under this Agreement by its assignee or transferee will, upon written notice to the Town, thereby relieve Annexor of any further obligations under this Agreement with respect to the matter so assumed.

8.16 Successors and Assigns; Binding Effect. Where used herein, the term "Annexor" is Cornerstone Winter Park Holdings, LLC, and, except to the extent that particular provisions of this Agreement expressly provide otherwise, the heirs, executors, personal representatives, transferees, successors, successors-in-title or assigns of Annexor, and all such parties shall have the right to enforce and be enforced under the terms of this Agreement as if they were the original parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns including special districts and financial institutions.

2004-012313 10/18/2004 02:48P ODC SARA L ROSENE  
24 of 38 R 191.00 D 0.00 GRAND COUNTY CLERK

8.17 Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.



TOWN:

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

By: [Signature]  
Harold N. Teverbaugh, Mayor

ATTEST:

[Signature]  
Title: Town Clerk

ANNEXOR:

CORNERSTONE WINTER PARK HOLDINGS, LLC, a Colorado limited liability company

By: [Signature]  
C. Clark Lipscomb, Vice President

2004-012313 10/18/2004 02:40P ODC SARA L ROSENE  
25 of 38 R 191.00 D 0.00 GRAND COUNTY CLERK

STATE OF COLORADO )  
COUNTY OF Grand )

ss.

The foregoing instrument was acknowledged before me this 24 day of August, 2004, C. Clark Lipscomb, as Vice President of Cornerstone Winter Park Holdings, LLC, a Colorado limited liability company.

Witness my hand and official seal.

Nancy Jo Anderson  
Notary Public

My commission expires:

NANCY JO ANDERSON  
NOTARY PUBLIC  
STATE OF COLORADO

My Commission Expires 09-25-2005



EXHIBIT A  
Legal Description of the Property

WEST MOUNTAIN PLANNING AREA 22W  
SHEET 1 OF 3

LEGAL DESCRIPTION

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 29;  
THENCE SOUTH 00°11'10" EAST ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 29, A DISTANCE OF 485.07 FEET TO A POINT ON THE SOUTHEASTERLY CORNER OF A TOWN OF WINTER PARK PARCEL AS RECORDED AT THE GRAND COUNTY CLERK AND RECORDER'S OFFICE IN BOOK 308 PAGE 657, SAID POINT ALSO BEING ON THE WEST LINE OF THE ALPINE TIMBERS SUBDIVISION AS RECORDED IN THE GRAND COUNTY CLERK AND RECORDER'S OFFICE AT RECEPTION NUMBER 140404, SAID POINT ALSO BEING THE POINT OF BEGINNING;

THENCE SOUTH 00°11'10" EAST CONTINUING ALONG SAID EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 29, A DISTANCE OF 845.77 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 29;

THENCE SOUTH 01°26'34" EAST ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID NORTHEAST QUARTER OF SECTION 32, A DISTANCE OF 1311.76 FEET TO THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 32;

THENCE NORTH 89°54'25" WEST ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 32, A DISTANCE OF 1312.91 FEET TO THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID NORTHEAST QUARTER OF SECTION 32;

THENCE NORTH 89°54'25" WEST ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 32, A DISTANCE OF 401.57 FEET;

THENCE NORTH 20°07'06" EAST, A DISTANCE OF 274.30 FEET;

THENCE NORTH 17°18'39" WEST, A DISTANCE OF 157.29 FEET;

THENCE NORTH 03°36'42" EAST, A DISTANCE OF 437.81 FEET;

THENCE NORTH 06°02'32" EAST, A DISTANCE OF 394.74 FEET;

THENCE NORTH 19°14'13" EAST, A DISTANCE OF 80.31 FEET;

THENCE SOUTH 89°48'41" EAST, A DISTANCE OF 92.15 FEET TO A POINT ON THE CENTERLINE OF LELAND CREEK AS DEFINED BY THE BOARD OF WATER COMMISSIONERS IN THE DOCUMENT RECORDED AT RECEPTION NUMBER 97002916 OF THE RECORDS OF THE GRAND COUNTY CLERK AND RECORDER AND LAND SURVEY PLAT NUMBER LS 763 DEPOSITED IN THE OFFICE OF THE GRAND COUNTY SURVEYOR;

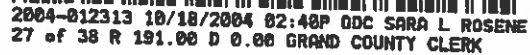


**Carroll & Lange**

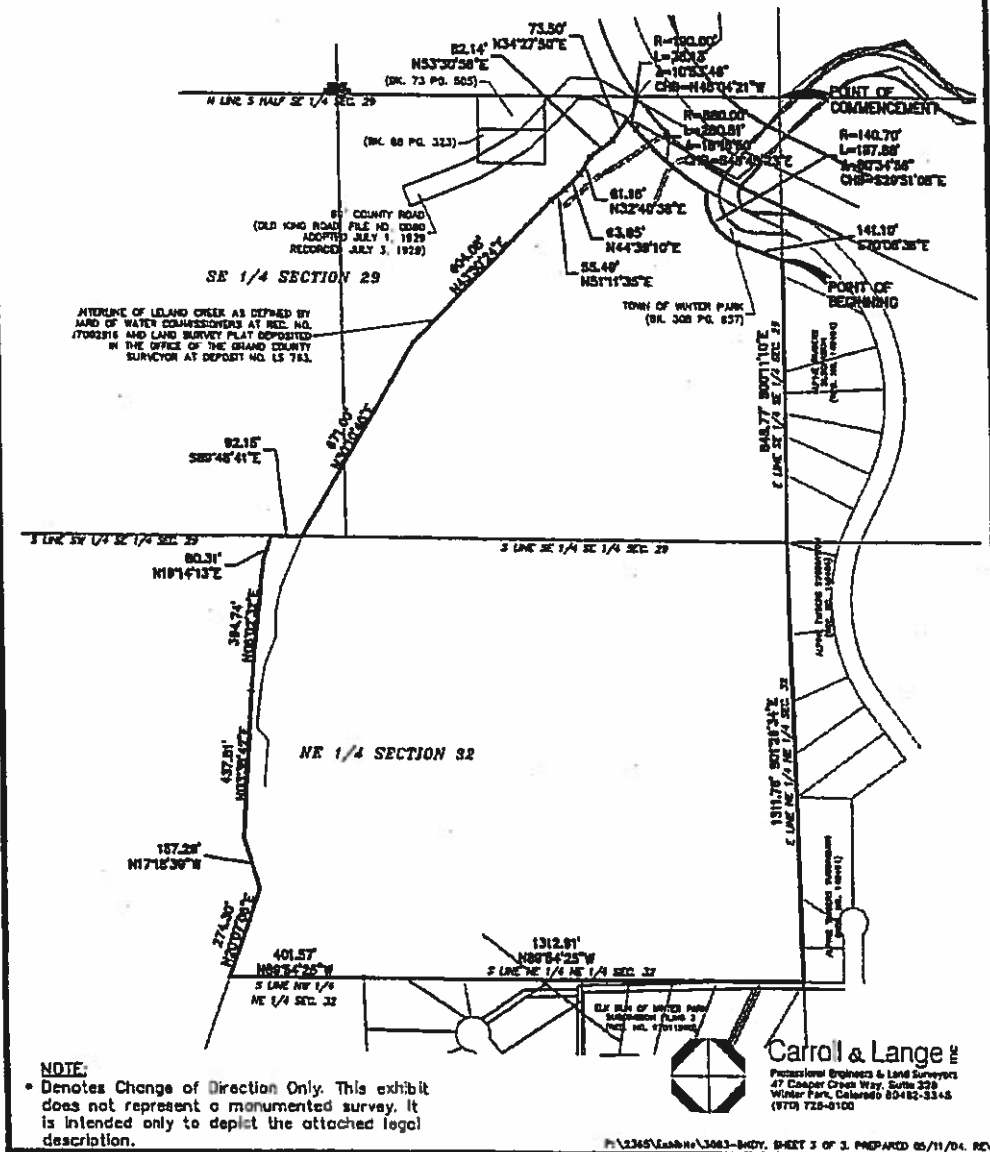
Professional Engineers & Land Surveyors  
47 Cooper Creek Way, Suite 228  
Winter Park, Colorado 80482-3348  
(970) 728-6100

2004-012313 10/18/2004 02:48P ODC SARA L ROSENE  
26 of 38 R 191.00 D 0.00 GRAND COUNTY CLERK

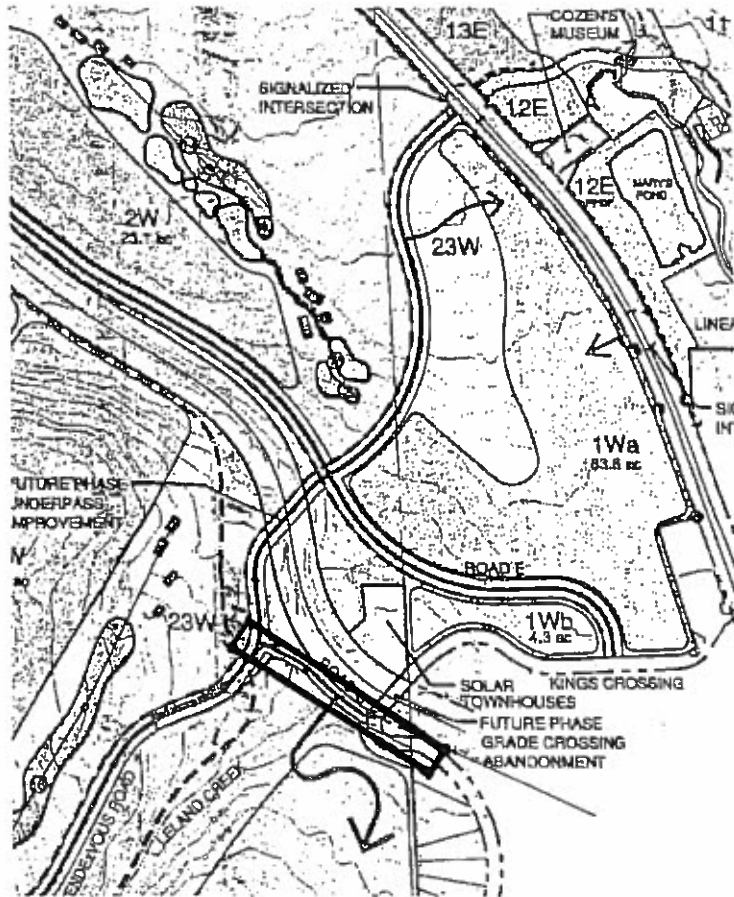
P:\2383\Carroll\3083-BNDY, SHEET 1 OF 3, PREPARED 05/11/04, REV. 03/12/04



# EXHIBIT A WEST MOUNTAIN PLANNING AREA 22W SHEET 3 OF 3



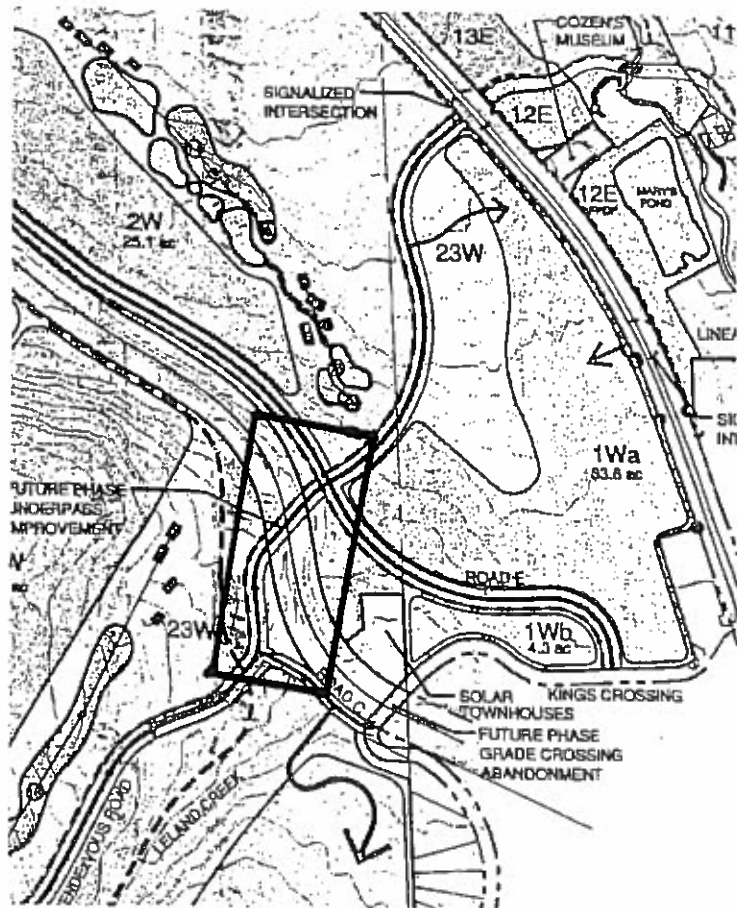
**EXHIBIT B**  
Conceptual Depiction of the Road Extension



Source: Rendezvous PDD 8/26/03

2004-012313 18/18/2004 02:40P ODC SARA L. ROSENE  
30 of 38 R 181.00 D 0.00 GRAND COUNTY CLERK

EXHIBIT C  
Crossing Project Area



Source: Rendezvous PDD 8/26/03

2004-012313 10/18/2004 02:40P ODC SARA L ROSENE  
31 of 38 R 191.00 D 0.00 GRAND COUNTY CLERK

**EXHIBIT D**

**Form of Escrow Agreement**

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "Agreement") is made and entered into as of this 24 day of August, 2004, by Cornerstone Winter Park Holdings, LLC, a Colorado limited liability company ("Cornerstone"), the Town of Winter Park, Colorado, a municipal corporation of the County of Grand, State of Colorado ("Town") and Title Company of the Rockies, Inc., a Colorado Corporation ("Escrow Agent").

RECITALS

This Agreement is made with respect to the following facts:

A. Under Section 4.1(b)(ii) of the Annexation and Development Agreement for Leland Creek dated as of August 24, 2004 (the "Annexation Agreement"), Cornerstone and the Town have reached certain agreements regarding the construction and funding of a below-grade rail crossing (as defined in the Annexation Agreement, the "Crossing"). The Annexation Agreement establishes the respective rights and obligations of the Town and Cornerstone with respect to the Crossing and the Funds.

B. Sections 4.1(b)(ii) and 5.4 of the Annexation Agreement further contemplate that the Town and Cornerstone will deposit funds ("Funds") into an escrow account with the Escrow Agent pursuant to the terms and conditions of the Escrow Agreement (as such terms are defined in the Annexation Agreement).

C. The Town, Cornerstone and Escrow Agent have agreed to enter into this Agreement, which constitutes the Escrow Agreement as contemplated in the Annexation Agreement, for the purpose of addressing the escrow of funds supplied by the Town and Cornerstone toward construction of the Crossing. This Agreement does not address the participation of any third parties that may in the future participate in the funding of the Crossing as contemplated in the Annexation Agreement.

AGREEMENT

In consideration of the foregoing and the agreements of the parties set forth herein, the sufficiency and adequacy of which are hereby acknowledged, the Town, Cornerstone and Escrow Agent promise and agree as follows:

1. Deposit of Funds. To the extent so obligated under the terms and conditions of the Annexation Agreement, the Town and Cornerstone shall deposit Funds with the Escrow Agent from time to time.

2. Acknowledgment by Escrow Agent. Escrow Agent shall acknowledge receipt of the Funds in writing, with a copy delivered to the Town and to Cornerstone, on a periodic basis as they are deposited by the Town or Cornerstone. Escrow Agent shall hold and disburse the Funds in accordance with the terms and conditions of this Agreement.

3. Funds to be Deposited. Escrow Agent shall deposit the Funds in one or more separate federally insured interest bearing savings accounts or money market fund accounts (individually or collectively, an "Account"), as the Town or Cornerstone, whichever has deposited such Funds, in its discretion determines from time to time to be appropriate; provided, however, that the Funds shall be held in such a manner and in such Account so as to render the Funds continuously available to be withdrawn by Escrow Agent. The Funds of the Town and Cornerstone shall be maintained in separate Accounts from, and shall not be intermingled with, Funds deposited by the other party. Any interest or other income earned on the Funds (the "Interest") shall be held in the Account and disbursed in accordance with the provisions of this Agreement, and shall accrue to the benefit of the Town or Cornerstone, whichever contributed the particular Funds. As used in this Agreement, the term "Funds" shall not include the Interest.

4. Joint Instructions. The Town and Cornerstone shall, from time to time, but not more often than once per month, when one or more of them becomes entitled to the disbursement of Funds pursuant to the Annexation Agreement, promptly upon request by the other party, jointly execute instructions to Escrow Agent ("Joint Instructions") providing for the disbursement of part or all of the Funds. If Escrow Agent receives Joint Instructions, executed by the Town and Cornerstone, Escrow Agent shall act in accordance with the Joint Instructions.

5. Unilateral Instructions.

(a) Escrow Agent shall disburse all or any portion of the Funds at any time and from time to time, but not more than once per month, to the Town or Cornerstone pursuant to written instructions (the "Unilateral Instructions") executed by only the Town or Cornerstone, as applicable (the "Requesting Party"), certifying that the Requesting Party is entitled to the disbursement of all or a portion of the Funds under the Annexation Agreement. Unilateral Instructions shall certify that the Funds for which the Requesting Party is requesting disbursement are due and payable to the Requesting Party pursuant to specified provisions of the Annexation Agreement. Upon receipt of any Unilateral Instructions, the Escrow Agent shall promptly give written notice (the "Disbursement Notice") of its receipt of the Unilateral Instructions, together with a copy of the Unilateral Instructions, to the Town or Cornerstone, as applicable (the "Receiving Parties"), pursuant to Paragraph 11 below. Neither the Town nor Cornerstone shall give Unilateral Instructions to the Escrow Agent hereunder unless they are entitled under the Annexation Agreement to the disbursement requested by the Unilateral Instructions.

(b) Each Receiving Party shall have the right to object to any Unilateral Instructions by delivering written notice of objection (an "Objection") to the Escrow Agent and the Requesting Party within ten (10) business days after the Disbursement Notice has been given pursuant to subparagraph (a) above (the "Objection Period") stating in reasonable detail the grounds upon which such Objection is made. No Receiving Party shall object to Unilateral Instructions of the Requesting Party unless such Unilateral Instructions fail to comply herewith or the Requesting Party is not entitled to all or the portion of the requested disbursement to which objection is made by the Receiving Party.



(c) Unless the Escrow Agent receives an Objection (executed by a Receiving Party) or Joint Instructions (executed by each Receiving Party and the Requesting Party specifically overriding the Unilateral Instructions) by the end of the Objection Period, the Escrow Agent shall disburse the Funds as directed in the Unilateral Instructions on the second (2<sup>nd</sup>) business day after the last day of the Objection Period. If the Escrow Agent receives an Objection during the Objection Period, the Escrow Agent shall (i) disburse any part of the Funds requested in the Unilateral Instructions to which no Objection is made, and (ii) hold and not disburse the portion of the Funds to which the Objection applies, except in accordance with subsequent Joint Instructions or final, non-appealable court order. If Escrow Agent receives Joint Instructions, Escrow Agent shall act in accordance with the Joint Instructions.

6. Priority of Funds Disbursements. The Funds will be held in multiple Accounts and consist of money received from the Town and Cornerstone in multiple deposits. Upon receipt of instructions to disburse Funds pursuant to Paragraphs 4 and 5 of this Agreement, Escrow Agent shall, unless such instructions direct otherwise, disburse the Funds from the various Accounts on a pro rata basis calculated based on the relative current balances in the respective Accounts of the Town and Cornerstone.

7. Amendment. The Town, Cornerstone and Escrow Agent may amend this Agreement for any mutually agreed upon reason, provided that no amendment or modification of this Agreement shall be made or deemed to have been made unless made in writing and executed by the Town, Cornerstone and Escrow Agent, with copies provided to each of them.

8. Termination of the Escrow Agreement. This Agreement shall terminate when the Funds and the Interest have been fully disbursed in accordance with this Agreement, or at such earlier time when the Town and Cornerstone by delivery of Joint Instructions (or Unilateral Instructions without Objection) to Escrow Agent directing Escrow Agent to disburse the Funds and the Interest and to terminate this Agreement. If any Funds remain in the Accounts after Escrow Agent receives written notice executed by the Town and Cornerstone that all costs of the Crossing have been paid to the appropriate party, unless Escrow Agent receives Joint Instructions or Unilateral Instructions to the contrary, Escrow Agent shall disburse the remaining Funds and Interest to the Town and/or to Cornerstone, whichever deposited the Funds and is entitled to the Interest pursuant to Paragraph 3 of this Agreement. If, pursuant to the Annexation Agreement, the Town, or Cornerstone is entitled to additional funds after reconciliation of the costs of that party's expenditures for design or construction of the Crossing, then neither the Town nor Cornerstone shall be entitled to final disbursement until the reconciled expenses and costs have been paid to the Town or Cornerstone, whichever is entitled to receive the payment, either by disbursement of all or a portion of the Interest or by the payment of additional funds into escrow and disbursement of such funds pursuant to Unilateral Instructions without Objection, or otherwise paid pursuant to Joint Instructions.

9. Release/Indemnification of Escrow Agent. The Escrow Agent and its employees shall not be liable to the Town or Cornerstone, personally or otherwise, for any act it may do or omit to do hereunder as the Escrow Agent, while acting in good faith and in exercise of its own best judgment in performing its obligations under this Agreement, and any act done or omitted by it pursuant to the advice of its own counsel shall be conclusive evidence of such good

faith. The Town and Cornerstone each indemnify Escrow Agent and hold it and its employees harmless as to any liability incurred by it to any other person, firm, or corporation by reason of Escrow Agent having accepted this Agreement, or in connection with Escrow Agent's performance of its obligations under this Agreement.

10. Interpleader. In the event of any dispute or disagreement between the Town and Cornerstone as to the terms and obligations herein or to any other facts or matters relating to this Agreement that results in adverse or conflicting claims and demands being made upon Escrow Agent by the Town and Cornerstone as evidenced by the submission of an Objection by either the Town or Cornerstone pursuant to Section 5(b) above, Escrow Agent shall comply with its obligations as set forth in Section 5(c) above. In disbursing any Funds with respect to which it has not received a timely Objection pursuant to Section 5(b) above or refusing to disburse any Funds that are the subject of an Objection as required by Section 5(c) above, Escrow Agent shall not be or become liable to the Town or Cornerstone, it being the intent of the Town and Cornerstone that the Escrow Agent shall comply with the foregoing provisions and that their respective remedies for any disbursement or refusal to disburse that is not authorized under the Annexation Agreement shall be limited exclusively to claims against the other party but not against Escrow Agent. With respect to any failure of the Town or Cornerstone to timely submit an Objection under circumstances where that party is entitled to submit an Objection pursuant to Section 5(b) above, such party's remedy, if any, shall be pursuant to a suit against the other party for breach of its obligation (as set forth in Section 5(a) above) not to submit Unilateral Instructions unless authorized under the Annexation Agreement to do so. Escrow Agent shall have the right to employ legal counsel to advise and represent it in determining any of its obligations under this Agreement and, if unable in good faith to determine its obligations or to obtain the written agreement of the Town and Cornerstone resolving the uncertainty, to file a declaratory or interpleader action, naming the Town and Cornerstone as respondents or defendants, in the Grand County District Court, in order to resolve such uncertainty. If an interpleader action is brought forth by Escrow Agent, Escrow Agent may deposit the Funds or other properties, or documents in its hands with the clerk of the District Court, and Escrow Agent shall thereupon be released from all liability as to the documents, Funds, or other properties so deposited. Under such circumstances, Escrow Agent shall be reimbursed for all expenses including, among other things, attorney fees and court costs (as provided in Section 13 below) incurred in connection with such proceedings.

11. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed given when a copy thereof is actually delivered, by hand, by commercial courier, by successful facsimile transmission (with printed transmission verification), or by certified or registered mail, return receipt requested, to the parties at the following address:

If to Town:

Town of Winter Park  
P.O. Box 3327  
Winter Park, Colorado 80482  
Attention: Daryl Shrum, Town Manager  
Telephone: (970) 726-8081  
Facsimile: (970) 726-8081

With a required copy to:

Hayes, Phillips, Hoffman & Carberry, P.C.  
1350 17th Street, Suite 450  
Denver, Colorado 80202  
Attention: John Hayes, Esq.  
Telephone: (303) 825-6444  
Facsimile: (303) 825-1269

If to Cornerstone:

Cornerstone Winter Park Holdings, LLC  
P.O. Box 30  
Winter Park, Colorado 80482  
Attention: C. Clark Lipscomb & Jack Bestall  
Telephone: (970) 726-8600  
Facsimile: (970) 726-8833

With a required copy to:

Otten, Johnson, Robinson, Neff & Ragonetti, P.C.  
950 17th Street, Suite 1600  
Denver, Colorado 80202  
Attention: Munsey L. Ayers, Esq.  
Telephone: (303) 825-8400  
Facsimile: (303) 825-6525

If to Escrow Agent:

Title Company of the Rockies, Inc.  
78491 U.S. Highway 40  
Post Office Box 415  
Winter Park, Colorado 80482  
Attention: Kajsa Wiberg, V.P.  
Telephone: 970-726-8077  
Facsimile: 970-726-5089

or at such other address as any party shall request by a notice given pursuant to this Section.

12. Choice of Law. The validity and effect of this Agreement shall be determined in accordance with the laws of the State of Colorado.

13. Costs and Attorneys' Fees. The Town and Cornerstone shall each pay a pro rata share, calculated based on their respective contribution of Funds, of any reasonable attorneys' fees and costs incurred by Escrow Agent in connection with any interpleader or other court action brought pursuant to Section 10. If any action is brought to determine whether the Town or Cornerstone is entitled to the disbursement of part or all of the Funds or Interest, the

party or parties prevailing in such action shall be entitled to recover their costs of such action and reasonable attorneys' fees incurred in connection with such action.

14. Compensation of Escrow Agent. In consideration of the acceptance of this Agreement by Escrow Agent, the Town and Cornerstone, and their respective heirs, personal representatives, successors and assigns, as applicable, shall each pay or reimburse the Escrow Agent, on a pro rata basis based on their relative contribution of Funds:

(a) Its fees, charges, and expenses for all services rendered by it under this Agreement; and

(b) All of its costs and expenses including, but not limited to, attorney fees and court costs (as provided in Section 13 above) incurred in connection herewith; and

(c) Reasonable compensation for services rendered in connection with this Agreement but not expressly provided for herein and reimbursement for those expenses incurred by Escrow Agent in rendering such services.

Escrow Agent shall have a first and prior lien upon the Funds and Interest to secure the payments described under subparagraphs (a) and (b) of this Paragraph 14 and Paragraph 13 above. If any such payment is not timely received by Escrow Agent, the Town and Cornerstone authorize Escrow Agent to deduct such payment from, in the following priority, (i) Interest of the delinquent party; (ii) Funds of the delinquent party; (iii) Interest of the other party; and (iv) Funds of the other party. All such payments due but not paid within 30 days shall accrue interest at the rate of 8 percent per annum chargeable to the particular delinquent party.

15. Counterparts. This Agreement may be executed in counterparts and, when counterparts of this Agreement have been executed and delivered by each of the parties hereto, this Agreement shall be fully binding and effective, just as if each of the parties hereto had executed and delivered a single counterpart hereof.

16. Entire Agreement. Except as supplemented by the Annexation Agreement, this Agreement contains the entire contract, understanding, and agreement between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.



TOWN:

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

By: 

Name: Harold N. Teverbaugh  
Title: Mayor

2004-012313 10/10/2004 02:40P ODC SARA L ROSENE  
38 of 38 R 191.00 D 0.00 GRAND COUNTY CLERK

ATTEST:

4 Mary Peterson  
Title: Town Clerk

CORNERSTONE:

CORNERSTONE WINTER PARK  
HOLDINGS, LLC, a Colorado limited liability  
company

By: C. Clark Lipscomb  
Name: C. Clark Lipscomb  
Title: Vice President

ESCROW AGENT:

TITLE COMPANY OF THE ROCKIES, INC.

By: Kajsa Wiberg  
Name: Kajsa Wiberg  
Title: Vice President

**EXHIBIT****3**

**TOWN OF WINTER PARK  
ORDINANCE NO 393  
SERIES OF 2007**

**AN ORDINANCE AMENDING ORDINANCE NO 338, AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF WINTER PARK, COLORADO ANNEXING TO THE TOWN OF WINTER PARK THAT AREA KNOWN AS PLANNING AREA 22W AND/OR LELAND CREEK SUBDIVISION CONTAINING 75 60 ACRES, MORE OR LESS, AS HEREINAFTER SPECIFICALLY DESCRIBED ON THE FIRST AMENDMENT TO ANNEXATION AGREEMENT**

WHEREAS, the Town Council of the Town of Winter Park on August 24, 2004, adopted Ordinance No. 338, Series of 2004, entitled "An Ordinance of the Town Council of the Town of Winter Park, Colorado, Annexing to the Town of Winter Park That Area Known as Planning Area 22W And/or Leland Creek Subdivision Containing 75 60 Acres, More or Less, as Hereinafter Specifically Described on Exhibit A, and Approving an Annexation Agreement"; and

WHEREAS, The Agreement pertains to certain real property generally known as Leland Creek as more particularly described as Exhibit A attached to the Agreement; and

WHEREAS, 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 (Crossing), and

WHEREAS, 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;

WHEREAS, Pursuant to a shortfall in the financing for the construction of the Crossing, the Town now desires to contribute additional funds toward the construction of the Crossing and Cornerstone Winter Park Holdings LLC agrees to abide by certain timing deadlines tied to such additional funds as set forth in this Amendment.

WHEREAS, In light of the foregoing facts and circumstances, it is necessary that the Town and Cornerstone Winter Park Holdings LLC enter into the attached First Amendment to Annexation Agreement.

**NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WINTER PARK, COLORADO, AS FOLLOWS**

The Town Council approves the First Amendment to Annexation Agreement; subject to compliance with the conditions set forth.

Section 1. The Town Council hereby approves, and authorizes the Mayor and the Town Clerk to execute, the First Amendment to Annexation Agreement which is attached hereto and incorporated herein.

Section 2. Except as expressly modified in said First Amendment to Annexation Agreement, the Annexation and Development Agreement dated August 24, 2004 shall remain in full force and effect.

**EXHIBIT****B**

INTRODUCED, APPROVED ON FIRST READING, AND ORDERED PUBLISHED IN SUMMARY this 6<sup>th</sup> day of February, 2007. A public hearing shall be held at the regular meeting of the Town Council of the Town of Winter Park, Colorado, on the 13<sup>th</sup> day of February, 2007 or as soon thereafter as possible, at the Winter Park Town Hall.

ATTEST

Patti Garcia  
Patti Garcia, Town Clerk



TOWN OF WINTER PARK

Harold N. Teverbaugh  
Harold N. Teverbaugh, Mayor

READ, ADOPTED AND ORDERED PUBLISHED IN SUMMARY on second and final reading by a vote of 6 to 0 on the 6<sup>th</sup> day of March, 2007

ATTEST

Patti Garcia  
Patti Garcia, Town Clerk



TOWN OF WINTER PARK

Harold N. Teverbaugh  
Harold N. Teverbaugh, Mayor

## 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 Annexors 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

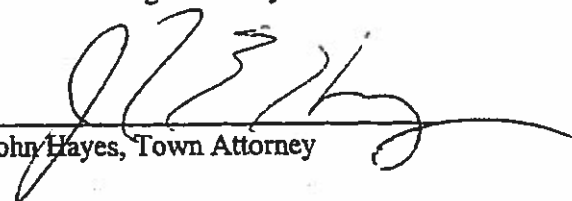
By:   
C. Clark Lipscomb, President

**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 )

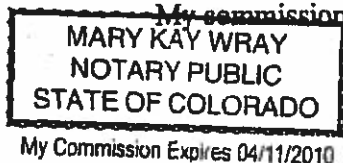
) ss:

COUNTY OF GRAND )

The foregoing instrument was acknowledged before me this 14th 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



Mary Kay Wray  
Notary Public

STATE OF COLORADO )

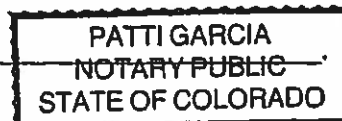
) ss:

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