

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; and C. CLARK LIPSCOMB, an individual.	<b>▲ COURT USE ONLY ▲</b>
<b>Attorneys for Plaintiff:</b> Attorney: Kendra L. Carberry, #25457 M. Patrick Wilson, #26303 Daniel P. Harvey, #49863 Firm: Hoffmann, Parker, Wilson & Carberry, P.C. Address: 511 16 <sup>th</sup> Street, Suite 610 Denver, CO 80202 Phone No.: (303) 825-6444 E-mail: <a href="mailto:klc@hpwclaw.com">klc@hpwclaw.com</a> ; <a href="mailto:pwilson@hpwclaw.com">pwilson@hpwclaw.com</a> ; <a href="mailto:dph@hpwclaw.com">dph@hpwclaw.com</a>	Case No.:  Division:
<b>VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF</b>	

Plaintiff, the Town of Winter Park, Colorado (the "Town"), by and through its attorneys, Hoffmann, Parker, Wilson & Carberry, P.C., as its Verified Complaint for Declaratory and Injunctive Relief against Defendants Cornerstone Winter Park Holdings, LLC, West Mountain Metropolitan District and C. Clark Lipscomb (collectively, "Defendants"), states and alleges as follows:

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

1. The Town of Winter Park (the "Town") 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, 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.

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

5. Upon information and belief, Defendant C. Clark Lipscomb ("Lipscomb") is an individual citizen and resident of the Town of Fraser, in Grand County, Colorado.

6. Upon information and belief, Lipscomb is a principal and/or officer of Cornerstone.

7. Upon information and belief, Lipscomb is a principal and/or officer of West Mountain.

8. 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.

9. Pursuant to C.R.C.P. 65, the District Court has the authority and jurisdiction to enjoin the unlawful conduct complained of herein.

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

### **GENERAL ALLEGATIONS**

11. The Town adopts and incorporates the allegations contained in paragraphs 1 through 10, inclusive, as if fully set forth herein.

#### **Unlawful Access, Use and Attempted Connection to Kings Crossing Road**

12. Cornerstone is the purported owner of certain real property in Grand County that is near and/or adjacent to the Town (the "Cornerstone Property").

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

14. The Cornerstone Property is not annexed to or included within the Town of Winter Park.

15. The Cornerstone Property is annexed into the Town of Fraser, Colorado.

16. The Cornerstone property is near or adjacent to Kings Crossing Road.
17. Kings Crossing Road is a public street under the jurisdiction of the Town.
18. Kings Crossing Road is owned, maintained and regulated by the Town.
19. There is a locked gate restricting access from Kings Crossing Road into the Cornerstone Property.
20. The Cornerstone Property has legal access to public streets at one or more other locations other than Kings Crossing Road.
21. Upon information and belief, Defendants are currently undertaking construction and development activities in connection with the Cornerstone Property.
22. Recently, Defendants, their agents, employees and/or contractors have accessed, used and attempted to connect to Kings Crossing Road as part of their construction and development activities on the Cornerstone Property.
23. Defendants, their agents, employees and/or contractors have accessed, used and attempted to connect to Kings Crossing Road at and/or near the Kings Crossing at-grade railroad crossing.
24. Such access and use of Kings Crossing Road includes the use and operation of large earth-moving equipment on Kings Crossing Road. *See* photographs taken on or about July 17, 2017, attached hereto as **Exhibit 1** and incorporated herein by reference.
25. Such access and use of Kings Crossing Road has occurred without adequate traffic control or safety precautions.
26. Upon information and belief, Defendants, their agents, employees and/or contractors intend to continue to access, use and attempt to connect to Kings Crossing Road as part of their construction and development activities of the Cornerstone Property.
27. Upon information and belief, such access and use of Kings Crossing Road will continue to involve construction, vehicle and equipment traffic as the Cornerstone Property develops.
28. Defendants, their agents, employees and/or contractors have no legal right to access or use Kings Crossing Road in connection with their construction and development activities or uses.
29. Defendants, their agents, employees and/or contractors have no legal right to attempt to connect to Kings Crossing Road in connection with their construction and development activities or uses.

30. The Cornerstone Property does not have legal access to connect to, access or use Kings Crossing Road.

31. Alternatively, if legal access to Kings Crossing Road is found to exist, it is limited to historical use, access and location.

32. The use of Kings Crossing Road by Defendants, their agents, employees and/or contractors in connection with their construction and development activities has caused damage to Kings Crossing Road.

33. The operation and use of construction vehicles and heavy equipment on Kings Crossing Road resulted in stress, compaction, subsidence and scuffing of the Town's street improvements.

34. The use of Kings Crossing Road by Defendants, their agents, employees and/or contractors in connection with their construction and development activities will continue to cause damage to the public street.

35. The use of Kings Crossing Road by Defendants, their agents, employees and/or contractors in connection with their construction and development activities has created an unsafe condition in the public street.

36. By occupying Kings Crossing Road with construction vehicles and equipment, public traffic, emergency vehicles and Town maintenance vehicles cannot freely access Kings Crossing Road.

37. By attempting to connect to Kings Crossing Road, Defendants have altered and increased the traffic use and patterns of Kings Crossing Road that have not been accounted for.

38. The use of Kings Crossing Road by Defendants, their agents, employees and/or contractors in connection with their construction and development activities will continue to create an unsafe condition in the public street.

39. The use of Kings Crossing Road by Defendants, their agents, employees and/or contractors in connection with their construction and development activities constitutes work within a Town street.

40. Pursuant to the Winter Park Town Code § 5-2-1:

All work within town streets or rights of way shall require a construction permit issued by the town as described in the "Town of Winter Park Standards and Specifications for Design and Construction." All such work shall conform to the "Town of Winter Park Standards and Specifications for Design and Construction" and, as applicable, any standards or specifications required by special districts or utility companies.

41. Prior to commencing construction and development activities and the access and use of Kings Crossing Road, Defendants did not obtain a duly issued construction permit from the Town pursuant to the Winter Park Town Code § 5-2-1.

42. At no time has the Town issued to Defendants a construction permit pursuant to the Winter Park Town Code § 5-2-1 or otherwise.

43. Defendants' activities on Kings Crossing Road do not comply with the Town of Winter Park Standards for Design and Construction, and are in direct violation of Winter Park Town Code § 5-2-1.

44. The use of Kings Crossing Road by Defendants, their agents, employees and/or contractors in connection with their construction and development activities constitutes an attempted connection to a Town street.

45. Pursuant to the Winter Park Town Code § 5-2-6, entitled "Connection to Town Roadways," "[n]o connection shall be made to any street, right of way or trail owned or under the jurisdiction of the town without the prior approval of the Town Council."

46. Prior to accessing Kings Crossing Road from the Cornerstone Property and Old King Road for construction-related activities, Defendants did not obtain approval from the Town Council pursuant to the Winter Park Town Code § 5-2-6.

47. At no time has the Town Council given its approval for Defendants to connect either the Cornerstone Property or Old King Road to Kings Crossing Road pursuant to Winter Park Town Code § 5-2-6 or otherwise.

48. Upon information and belief, Defendants claim a right to access and use Kings Crossing Road.

49. Upon notification of violation of Winter Park Town Code, Defendants claim a right to access and use Kings Crossing Road for construction-related activities without a Town-issued permit.

50. Upon notification of violation of Winter Park Town Code, Defendants claim a right to connect to and to continue to connect to Kings Crossing Road without Town Council approval.

51. Upon notification of violation of the Winter Park Town Code §§ 5-2-1- & 5-2-6, Defendants indicated their belief to the Town that their use of and access to Kings Crossing Road for construction-related activities is not a violation of any Code provision.

52. Defendants have failed or refused to seek or obtain a permit to use Kings Crossing Road for construction-related activities, and have refused to seek or obtain Town Council approval to connect the Cornerstone Property or Old King Road to Kings Crossing Road.

53. The Town has recently cited Defendants, their agents, employees and/or contractors for violation of the above-cited Code provisions.

54. Upon information and belief, Defendants intend to continue to access and use Kings Crossing Road for construction-related activities, despite such citations.

Old King Road

55. At a location where the Cornerstone Property is near or adjacent to Kings Crossing Road and the Kings Crossing at-grade railroad crossing, there is a locked gate along an unpaved vehicle route.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

70. Alternatively, if such a connection exists between Old King Road (or the Cornerstone Property) and Kings Crossing Road, it is limited to historical access, use and location.

71. Such historical access, use and connection do not include the construction activities under taken by Defendants.

72. Such historical access, use and connection do not include the anticipated development uses proposed by Defendants.

73. Such historical access, use and connection do not include a connection at an alternative or different location.

74. The Town has not approved a connection from Old King Road to Kings Crossing Road.

75. The Town has not approved a connection from the Cornerstone Property to Kings Crossing Road.

76. Before Old King Road (or any other portion of the Cornerstone Property) can lawfully connect to Kings Crossing Road for the construction activities under taken by Defendants, Town Council approval is required.

77. Before Old King Road (or any other portion of the Cornerstone Property) can lawfully connect to Kings Crossing Road for the anticipated development proposed by Defendants, Town Council approval is required.

78. Before Old King Road (or any other portion of the Cornerstone Property) can lawfully connect to Kings Crossing Road for a new level of use, Town Council approval is required.

79. Before Old King Road (or any other portion of the Cornerstone Property) can lawfully connect to Kings Crossing Road at a different or new location, Town Council approval is required.

*The Kings Crossing Railroad Crossing*

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

81. 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**.

82. 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.

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

84. In particular, Section 4.1(b)(ii)(D) of the Annexation Agreement, as modified by the Amended Agreement, purports to require the Town 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 Town of Fraser) is operational.

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

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

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

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

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

90. 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 Town Council's discretion to appropriate public funds.

91. Requiring the Town 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.

92. 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 the Town that lies west of the railroad tracks.



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

94. 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 the Town would be via Vasquez Road.

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

96. 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**

97. The Town adopts and incorporates the allegations contained in paragraphs 1 through 96, inclusive, as if fully set forth herein.

98. Upon information and belief, Defendants maintain they are not in violation of Winter Park Town Code §§ 5-2-1 or 5-2-6.

99. Upon information and belief, Defendants maintain they may use Kings Crossing Road for construction-related activities without a Town-issued permit.

100. Upon information and belief, Defendants maintain that they may connect to Kings Crossing Road without Town Council approval.

101. There is an actual and present controversy, dispute and disagreement between the Town and Defendants as to whether Defendants are required to obtain a Town construction permit under Winter Park Town Code § 5-2-1 to use Kings Crossing Road for construction-related activities.

102. There is an actual and present controversy, dispute and disagreement between the Town and Defendants as to whether Defendants are required to obtain Town Council permission under Winter Park Town Code § 5-2-6 to connect the Cornerstone Property or Old King Road to Kings Crossing Road.

103. There is an actual and present controversy, dispute and disagreement between the Town and Defendants as to whether Defendants are required to obtain Town Council permission under Winter Park Town Code § 5-2-6 to connect the Cornerstone Property or Old King Road to Kings Crossing Road with increased, altered or expanded access or use.

104. There is an actual and present controversy, dispute and disagreement between the Town and Defendants as to whether Defendants are required to obtain Town Council permission under Winter Park Town Code § 5-2-6 to connect the Cornerstone Property to Old King Road to Kings Crossing Road at a different location than any historic location.

105. As a Colorado home rule municipality, the Town 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).

106. Pursuant to its home rule authority, the Town enacted Winter Park Town Code § 5-2-1 for the purpose of regulating and providing a permitting process for construction activities or work affecting its streets and rights-of-way.

107. In addition to its inherent police power, the Town has specific authority to regulate the use of its public streets, including, but not limited to: restrictions as to the size and type of equipment; designation of routes upon which materials may be transported; requirements as to the cleaning of streets, the prevention of noise, and other results offensive or injurious to the neighborhood, the general public, or any portion thereof; regulations as to the use of streets in the course of the work; and temporary patches or other measures that may be necessary to protect the public and the public way. Winter Park Town Code § 5-2-5.

108. Pursuant to its home rule authority, the Town enacted Town Municipal Code § 5-2-6 for the purpose of regulating connections to its streets or rights-of-way.

109. In addition to its inherent police power, the Town 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 Town street system; whether the proposed connection complies with the Town's comprehensive plan; whether the proposed connection meets all Town 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.

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

111. In violation of these provisions, Defendants and their agents, employees and contractors have used Kings Crossing Road for construction activities without receiving a construction permit from the Town.

112. In violation of the Winter Park Town Code, Defendants and their agents, employees and contractors are accessing Kings Crossing Road from the Cornerstone Property and Old King Road without permission from the Town Council.

113. Defendants are required to comply with the Winter Park Town Code.
114. Defendants, or their agents, employees or contractors have been cited for violation of the above-cited Code provisions.
115. Despite such citation, Defendants continue to use and access Kings Crossing Road in violation of law.
116. Upon information and belief, Defendants intend to continue to unlawfully use and access Kings Crossing Road for purposes beyond any historical access, uses or purposes.
117. There is an actual and present controversy, dispute and disagreement between the Town and Defendants as to the legal status, location, width, length and extent of Old King Road.
118. There is an actual and present controversy, dispute and disagreement between the Town and Defendants as to any historical access, use, maintenance, improvement, connection and location of Old King Road.
119. There is an actual and present controversy, dispute and disagreement between the Town and Defendants as to whether Old King Road is connected to or may connect to Kings Crossing Road.
120. There is an actual and present controversy, dispute and disagreement between the Town and Defendants as to whether the Cornerstone Property is connected to or may connect to Kings Crossing Road.
121. 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).
122. A declaration and decree from this Court will resolve the controversy and terminate the dispute between the Town and Defendants as to their respective rights and obligations as to the access to and use of Kings Crossing Road.
123. A declaration and decree from this Court will resolve the controversy and terminate the dispute between the Town and Defendants as to their respective rights and obligations as to the access to and use of Old King Road.
124. The Town seeks declaratory judgment from this Court declaring that:
- (a) Prior to using or accessing Kings Crossing Road in connection with their construction activities, Defendants must comply with Winter Park Town Code § 5-2-1; and
  - (b) Prior to connecting the Cornerstone Property or Old King Road to Kings Crossing Road, Defendants must comply with Winter Park Town Code § 5-2-6.

**SECOND CLAIM FOR RELIEF - ALL DEFENDANTS**  
**PRELIMINARY AND PERMANENT INJUNCTION**

125. The Town hereby incorporates the allegations contained in paragraphs 1 through 124, inclusive, as if fully set forth herein.

126. Defendants are unlawfully and without the required construction permit accessing, using and accessing Kings Crossing Road for construction and development purposes.

127. Defendants are unlawfully and without the required Town Council approval, accessing and using Kings Crossing Road.

128. Defendants are unlawfully and without the required construction permit or the Town Council approval, causing construction vehicles and/or equipment to travel along and access Kings Crossing Road.

129. Despite having been cited in connection with their unlawful activities described herein, Defendants continue to use and access Kings Crossing Road.

130. The Town has no other adequate remedy to prevent Defendants' unlawful use of and access to Kings Crossing Road.

131. The Town is specifically authorized to bring an action to enjoin any violation of the charter, this code, ordinances or regulations of the Town. Winter Park Town Code § 1-4-2(E).

132. Defendants have refused to stop using Kings Crossing Road for construction-related activities.

133. Defendants have refused to stop Old King Road as a connection between the Cornerstone Property to Kings Crossing Road.

134. The Town has suffered and continues to suffer a real, immediate, and irreparable injury and damage as a result of Defendants' use of Kings Crossing Road for construction-related activities.

135. Specifically, Defendants' continued use of Kings Crossing Road for construction-related activities is damaging public improvements and creating unsafe traffic conditions on the Town's public streets and adjacent to a railroad crossing.

136. Defendants cannot be permitted to continue to take actions in violation of the Winter Park Town Code.

137. Defendants cannot be permitted to continue to take actions that damage the Town's streets and related improvements.

138. Defendants cannot be permitted to continue to take actions that endanger or compromise the public health, safety and welfare.

139. An injunction is necessary to preserve the status quo and to prevent injury or damage to the Town pending a trial on the merits.

140. The Town has a reasonable probability of success on the merits.

141. The granting of a preliminary injunction will not disserve the public interest.

142. The Town is entitled to a preliminary and permanent injunction prohibiting Defendants from accessing or using Kings Crossing Road until such time as Defendants have fully complied with Winter Park Town Code §§ 5-2-1 & 5-2-6.

**THIRD CLAIM FOR RELIEF—ALL DEFENDANTS**  
**DECLARATORY JUDGMENT**

143. The Town hereby incorporates the allegations contained in paragraphs 1 through 142, inclusive, as if fully set forth herein.

144. Upon information and belief, Defendants 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.

145. Upon information and belief, Defendants will attempt to use the Annexation Agreement, as modified by the Amended Agreement, to justify the closing of the at-grade railroad crossing at Kings Crossing Road.

146. Upon information and belief, Defendants will attempt to use the Annexation Agreement, as modified by the Amended Agreement, to preclude the Town from seeking to take action it deems necessary or appropriate with respect to the at-grade railroad crossing at Kings Crossing Road.

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

148. 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 the Town's police power and ability to manage its public streets.

149. 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 the Town to undertake a significant alteration to its public street system.

150. 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 the Town to appropriate funds to

undertake a significant alteration to its public street system in violation of this Court's judgment in the 2013 Lawsuit.

151. 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 the Town's discretion as to funding.

152. Upon information and belief, Defendants maintain that the Annexation Agreement, as modified by the Amended Agreement, is binding on the Town and restricts the Town's ability to exercise its police power to regulate its public streets in furtherance of the public health, safety and welfare.

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

154. There is an actual and present controversy, dispute and disagreement between the Town and Defendant Cornerstone as to whether Section 4.1(b)(ii)(D) of the Annexation Agreement, as modified by the Amended Agreement, is valid and binding on the Town.

155. 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).

156. As a party interested under a written contract, the Town 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).

157. As a Colorado home rule municipality, the Town 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).

158. A declaration and decree from this Court will resolve the controversy and terminate the dispute between the Town and Defendant Cornerstone as to their respective rights and obligations as to whether Section 4.1(b)(ii)(D) of the Annexation Agreement, as modified by the Amended Agreement is valid and binding on the Town.

159. The Town seeks declaratory judgment from this Court declaring that:

(a) Section 4.1(b)(ii)(D) of the Annexation Agreement, as modified by the Amended Agreement, is invalid as an unlawful hindrance of the Town's police power;

(b) Section 4.1(b)(ii)(D) of the Annexation Agreement, as modified by the Amended Agreement, is invalid as contrary to public policy;

(c) Section 4.1(b)(ii)(D) of the Annexation Agreement, as modified by the Amended Agreement, is not valid or binding on the Town;

(d) Section 4.1(b)(ii)(D) of the Annexation Agreement, as modified by the Amended Agreement, does not prevent the Town Council from exercising its discretion with respect to the Kings Crossing at grade railroad crossing; and

(e) 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 the Town's discretion as to funding

WHEREFORE, the Town respectfully requests the Court enter judgment in its favor and against Defendants, as indicated above, and for such other and further relief as the court deems just and proper.

Dated this 11<sup>th</sup> day of August, 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

**VERIFICATION**

I, Drew Nelson, Town Manager of the Town of Winter Park, Colorado, being of lawful age, do affirm and verify that I have reviewed the foregoing **VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** and that, to the best of my knowledge and belief, the same are true, complete and accurate as of today's date.

DATED: August 10, 2017



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Drew Nelson, Town Manager  
Town of Winter Park, Colorado