

Those members of the public wishing to attend the meeting digitally are asked to please contact the Town Clerk Department at (970) 726-8081 ext. 208 or email [djardee@wpgov.com](mailto:djardee@wpgov.com) for a conference call-in number and passcode.



## **WINTER PARK TOWN COUNCIL MEETING**

Winter Park Town Hall – 50 Vasquez Road

Tuesday, November 3, 2020 – 5:30 p.m.

*Dinner will be provided.*

### **AGENDA**

1. Meeting Call to Order
  - a. Pledge of Allegiance
  - b. Roll Call of Council Members
2. Town Hall Meeting (public comment)
3. Consent Agenda
  - a. Approval of October 20, 2020 Regular Meeting Minutes
4. Action Items
  - a. Ordinance 544, An Ordinance Authorizing the Disposition of Town Property and Approving a Disposition and Development Agreement with Winter Park Partners, LLC for the Development of Workforce Housing, Second Reading and Public Hearing
5. Town Manager’s Report
6. Mayor’s Report
7. Town Council Items for Discussion



## MINUTES

- DATE:** Tuesday, October 20, 2020
- MEETING:** Winter Park Town Council
- PLACE:** Town Hall Council Chambers and Zoom Meeting Call
- PRESENT:** Mayor Nick Kutrumbos, Mayor Pro Tem Michael Periolat, Councilors, Art Ferrari, Jennifer Hughes, Mike Davlin, Jeremy Henn, and Chris Seemann via phone Town Manager Keith Riesberg, Assistant Town Manager Alisha Janes, and Town Clerk Dani Jardee
- OTHERS**
- PRESENT:** Finance Director Lizbeth Lemley, Community Development Director James Shockey, Police Chief Glen Trainor, Town Planner Hugh Bell, Transit Manager Michael Koch and New Transit Manager Ivy Compton
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Mayor Nick Kutrumbos called the meeting to order at 5:30 p.m.

Mayor Nick Kutrumbos led those present in reciting the Pledge of Allegiance.

**2. Town Hall Meeting (Public Comment)**

President of East Grand School District Ed Ragner presented the facts on Ballot Issue 4A to Council.

**3. Consent Agenda**

**3.a. Approval of October 6, 2020 Regular Meeting Minutes**

Councilor Art Ferrari moved and Councilor Mike Davlin seconded the motion approving the consent agenda. Motion carried: 7-0.

**4. Action Items**

**4.a. Ordinance 543, An Ordinance Continuing the Temporary Suspension of the Disposable Bag Fee and Certain Sections of the Town's Sign Code Relating to Banners and Sandwich Boards, Waiving Design Review and Associated Fees for Temporary Outdoor Patios for Restaurants, and Authorizing the Town Clerk to Approve Temporary Modification of Liquor Licensed Premises for Temporary Outdoor Patios for Restaurants, Second Reading and Public Hearing**

Town Manager Keith Riesberg stated this ordinance will grant flexibility to local businesses to have a successful ski season. Councilor Ferrari asked if we have oversight and approval of sandwich boards. Mr. Riesberg stated we cannot regulate content; however, the signs are not allowed to impede pedestrian access or snow removal efforts. Mayor Kutrumbos opened the public hearing, hearing no comments. Mayor Kutrumbos closed the public hearing.

Councilor Jeremy Henn moved and Councilor Art Ferrari seconded the motion approving Ordinance 543, An Ordinance Continuing the Temporary Suspension of the Disposable Bag Fee and Certain Sections of the Town’s Sign Code Relating to Banners and Sandwich Boards, Waiving Design Review and Associated Fees for Temporary Outdoor Patios for Restaurants, and Authorizing the Town Clerk to Approve Temporary Modification of Liquor Licensed Premises for Temporary Outdoor Patios for Restaurants. Motion carried by the following roll call vote:

Mike Davlin	“Aye”	Michael Periolat	“Aye”
Chris Seemann	“Aye”	Art Ferrari	“Aye”
Jeremy Henn	“Aye”	Jennifer Hughes	“Aye”
Nick Kutumbos	“Aye”		

**4.b. Resolution 1815, A Resolution Approving Contract for Paid Ride Service**

Transit Manager Michael Koch stated understanding that winter has its challenges due to COVID-19, and that public transportation may make people uncomfortable, transit looked for a paid ride service option. Mr. Koch stated transit has been working with Home James to incentivize a paid ride service for extra mobility during the winter. Mr. Koch stated this contract with Home James would offer a paid ride service on holidays and weekends to the public. Mr. Koch stated the public would pay a fee per carload, not per rider.

Councilor Art Ferrari moved and Councilor Mike Davlin seconded the motion approving Resolution 1815, A Resolution Approving Contract for Paid Ride Service. Motion carried: 7-0.

**4.c. Resolution 1816, A Resolution Approving a Variance to the Parking Requirements of Section 3.9 of the Standards and Specifications for Design and Construction, for Reunion Station**

Town Planner Hugh Bell stated this is a variance request for parking for Reunion Station. Mr. Bell stated the applicant has gone through the final plat process and would like a 31% decrease in parking, parking would go from 48 spaces down to 33 spaces. Mr. Bell stated the reasoning behind the request is Reunion Station is located on US Hwy 40 and there is on street parking available as well as a public parking garage across the highway.

Councilor Jeremy Henn moved and Mayor Pro Tem Michael Periolat seconded the motion approving Resolution 1816, A Resolution Approving a Variance to the Parking Requirements of Section 3.9 of the Standards and Specifications for Design and Construction, for Reunion Station. Motion carried: 7-0.

**4.d. Resolution 1817, A Resolution Approving with Conditions the Final Plat for Reunion Station at Winter Park**

Community Development Director James Shockey stated the parking variance item was on the agenda first because it was a condition the applicants needed to meet. Mr. Shockey stated Reunion Station has been a project Staff has been reviewing for years and was approved with conditions in 2015 but was never recorded. Mr. Shockey stated it is now back in front of Council with some adjustments, Reunion Station consists of five townhomes, commercial space for retail and a restaurant with condominiums above the commercial space. Mr. Shockey stated Town is waiting for the deed for Lot B which will then be dedicated to the Town, and engineers are working with the applicant on the redlines of the final plat, other than that the conditions have been met.

Councilor Art Ferrari moved and Councilor Mike Davlin seconded the motion approving Resolution 1817, A Resolution Approving with Conditions the Final Plat for Reunion Station at Winter Park. Motion carried: 7-0.

**4.e. Resolution 1818, A Resolution Approving a Development Improvements Agreement Standard Form for Reunion DP1, LLC**

Community Development Director James Shockey stated as required by Town Code, Council must approve the development improvements agreement along with the approval of the final plat. Mr. Shockey stated this agreement is to do all the improvements such as drainage, landscaping, paving, etc.

Councilor Art Ferrari moved and Councilor Mike Davlin seconded the motion approving Resolution 1818, A Resolution Approving a Development Improvements Agreement Standard Form for Reunion DP1, LLC. Motion carried: 7-0.

**4.f. Ordinance 544, An Ordinance Authorizing the Disposition of Town Property and Approving a Disposition and Development Agreement with Winter Park Partners, LLC for the Development of Workforce Housing, First Reading**

Assistant Town Manager Alisha Janes stated this ordinance is for the disposition and development agreement for the Fireside Creek proposal. Ms. Janes stated this agreement would give the Town 70 deed restricted units located by Silverado II. Ms. Janes presented the Fireside Creek concept site plan to Council again as a refresher, and went over layouts, rents, details of deed restrictions, etc. Ms. Janes stated the Town’s contributions to the project would be fee waivers and water taps. Mayor Kutrumbos asked for a timeline of the project. Ms. Janes stated site work would start spring of 2021 and residents would be able to move in late fall of 2022. Council discussed deed restrictions and water taps. Winter Park Partners George Brit stated they have been in the management business for awhile now, and are looking to have a possible leasing agent on the property, and may contract with a local property management company since it is a smaller development.

Mayor Pro Tem Michael Periolat moved and Councilor Jeremy Henn seconded the motion approving Ordinance 544, An Ordinance Authorizing the Disposition of Town Property and Approving a Disposition and Development Agreement with Winter Park Partners, LLC for the Development of Workforce Housing, First Reading. Motion carried by following roll call vote:

Jennifer Hughes	“Aye”	Jeremy Henn	“Aye”
Art Ferrari	“Aye”	Michael Periolat	“Aye”
Mike Davlin	“Aye”	Chris Seemann	“Aye”
Nick Kutrumbos	“Aye”		

**5. Town Manager’s Report**

Town Manager Keith Riesberg stated Grand County Water and Sanitation District are holding a public hearing next Wednesday, October 28 to consider a proposal to amend the water and sewer tap connection fees for workforce housing projects. Mr. Riesberg stated Staff will be present to speak in favor of this proposal. Mr. Riesberg stated Staff have continued efforts with the Chamber to develop plans for activating our Downtown for the winter season. Mr. Riesberg stated Town will also do some additional grooming of trails and are working to establish curbside pick up and drop off zones to help local businesses. Mr. Riesberg stated his thanks to Transit Manager Michael Koch for his service to the Town of Winter Park and wanted to recognize him for all he has done to advance the efforts of the transit system.

**6. Mayor’s Report**

Mayor Nick Kutrumbos stated he will be speaking at the business summit tomorrow and will restate what Mr. Riesberg stated in his report. Mayor Kutrumbos stated the overlying goal is for businesses to stay open. Mayor Kutrumbos stated he was on a call with Assistant Town Manager Alisha Janes

to learn about COVID testing for on-demand and recurring testing, the conversations are very preliminary at this point.

**7. Town Council Items for Discussion**

Councilor Jeremy Henn stated Coffee with a Councilor is this Thursday, 10/22 at Town Hall at 5 p.m. Councilor Chris Seemann asked a COVID-19 question if there are a cluster of outbreaks on the west side of the County, does it affect our businesses on the east side. Town Manager Keith Riesberg stated that is a concern the Fraser Valley communities have raised. Mr. Riesberg stated they did attend the Board of County Commissioner’s meeting to encourage them to embrace the message to control the spread and will also have that conversation with the state at some point to raise that concern. Councilor Seemann asked if businesses are looking into delivery options just in case things go to take out. Mayor Kutrumbos stated yes, Staff, Chamber, and businesses are looking into delivery options, etc. Councilor Mike Davlin stated an update from Chamber Board, they are going to use the matrix system for events and implement that moving forward. Councilor Davlin stated web traffic was up over 50 percent, users were up as well. Councilor Davlin stated the Chamber Board is also coming up with a new lifetime achievement award, he would like to nominate Jim Myers if Council is supportive. Council stated their support.

Mayor Nick Kutrumbos reads legal executive session script.

Councilor Art Ferrari moved and Mayor Pro Tem Michael Periolat seconded the motion to go into Executive Session in accordance with C.R.S. Title 24, Section 6, Subsection 402(4)(e) and C.R.S. Title 24, Section 6, Subsection 402(4)(f). Motion carried by the following roll call vote:

Jennifer Hughes	“Aye”	Jeremy Henn	“Aye”
Art Ferrari	“Aye”	Michael Periolat	“Aye”
Mike Davlin	“Aye”	Chris Seemann	“Aye”
Nick Kutrumbos	“Aye”		

**8. Consecutive Executive Sessions Pursuant to:**

- 8.a. C.R.S. 24-6-402(4)(e) for determining positions relative to matters that may be subject to negotiations; developing strategies for negotiations; and instructing negotiators regarding the acquisition of easements, development, and annexation of the Pyne property and associated properties; and**
- 8.b. C.R.S. 24-6-402(4)(e) for determining positions relative to matters that may be subject to negotiations; developing strategies for negotiations; and instructing negotiators, regarding the Town’s potential cooperation with an institute of higher education; and**
- 8.c. C.R.S. 24-6-402(4)(f) for a personnel matter that is the Town Manager’s annual performance evaluation.**

Mayor Nick Kutrumbos concludes executive session at 8:29 p.m.

Upon conclusion of the discussion, Mayor Nick Kutrumbos read the closing executive session script, those in attendance at that time were: Mayor Nick Kutrumbos, Mayor Pro Tem Michael Periolat, Councilors Jennifer Hughes, Jeremy Henn, Art Ferrari, Mike Davlin, and Chris Seemann via phone, Town Manager Keith Riesberg, Assistant Town Manager Alisha Janes, Town Clerk Dani Jardee, Finance Director Lizbeth Lemley, and Community Development Director James Shockey.

There being no further business to discuss, upon a motion regularly adopted, the meeting was adjourned at 8:30 p.m.

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The next scheduled meeting of the Town Council will be Tuesday, November 3, 2020 at 5:30 p.m.

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Danielle Jardee, Town Clerk



## MEMO

**TO** Mayor and City Council  
**FROM** Alisha Janes, Assistant Town Manager  
**CC** Keith Riesberg, Town Manager  
**DATE** October 10, 2020  
**RE** Fireside Creek Apartments Updated Deed Restriction

### **Background**

On October 20, 2020 Council Approved on first reading Ordinance 544 authorizing the disposition of Town property and approving a disposition and development agreement with Winter Park Partners, LLC for the development of workforce housing. Based on Council direction, staff worked with legal counsel to update the deed restriction prior to the second reading and public hearing on the ordinance. Additionally, staff met with the management of the Silverado II condominiums to begin addressing questions and mutual concerns.

### **Analysis**

The updated deed restriction requires that all three-bedroom units be rented to at least two qualified residents. Qualified residents are required to: use the apartment as their primary residence, work 32 hours per week or 1,000 per year in Grand County, and earn no more than 120% of the area median income as define by HUD annually for Grand County. The updated deed restriction allows for a waiver of the requirement on a case-by-case basis for good cause. The owner will manage the waivers, but the process is required to be approved by the Town.

Staff also met with the management of Silverado II condominiums in order to be able to understand access concerns as well as the previously contemplated land swap agreement. Staff will continue to work with Silverado II as well as the developer throughout the land use planning process.

### **Recommendation**

Staff recommends approval of Ordinance 544 authorizing the disposition of Town property and approving a disposition and development agreement with Winter Park Partners, LLC for the development of workforce housing.





Should the Town Council wish to approve the ordinance the following motion should be made:

I move to approve Ordinance 544 authorizing the disposition of Town property and approving a disposition and development agreement with Winter Park Partners, LLC for the development of workforce housing.

Should the Town Council wish to deny the ordinance, the following motion should be made:

I move to deny Ordinance 544 authorizing the disposition of Town property and approving a disposition and development agreement with Winter Park Partners, LLC for the development of workforce housing.

Should you have any questions or need additional information regarding this matter, please contact me.

**TOWN OF WINTER PARK  
ORDINANCE NO. 544  
SERIES OF 2020**

**AN ORDINANCE AUTHORIZING THE DISPOSITION OF TOWN  
PROPERTY AND APPROVING A DISPOSITION AND DEVELOPMENT  
AGREEMENT WITH WINTER PARK PARTNERS, LLC FOR THE  
DEVELOPMENT OF WORKFORCE HOUSING**

WHEREAS, Winter Park Partners, LLC, submitted a response to an RFP published March 12, 2019 for planning and development services for the Town-owned Fireside Creek parcel, also known as Lot 3 Silverado condominiums II (the "Property");

WHEREAS, due to complications in receiving the tax credits, Winter Park Partners, LLC, and the Town have restructured the project to allow it to move forward as much needed workforce housing;

WHEREAS, the Town is willing to convey ownership of the Property to Winter Park Partners, LLC, for its development of it as workforce housing in exchange for a permanent deed restriction on the Property requiring it to be used for and preserved as workforce housing serving residents of Grand County;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL FOR THE TOWN OF WINTER PARK, COLORADO, THAT:

Section 1. It is the best interest of the Town to dispose of the Property, as more fully described in the Disposition and Development Agreement attached hereto, to Winter Park Partners, LLC, for its development of deed-restricted workforce housing, according to the terms and conditions of the Disposition and Development Agreement.

Section 2. The Disposition and Development Agreement is approved in substantially the form attached hereto, subject to final approval by the Town Attorney. Upon approval of the Town Attorney, the Town Council hereby authorizes the Mayor to execute the agreement and all related documents necessary to complete the transfer of ownership.

INTRODUCED, APPROVED ON FIRST READING, AND ORDERED PUBLISHED IN FULL this \_\_\_ day of October 2020. A public hearing shall be held at the regular meeting of the Winter Park Town Council on the \_\_\_ day of \_\_\_\_\_ 2020 at 5:30 p.m., or as soon thereafter as possible, at the Winter Park Town Hall.

TOWN OF WINTER PARK

\_\_\_\_\_  
Nick Kutrumbos, Mayor

ATTEST:

\_\_\_\_\_  
Danielle Jardee, Town Clerk

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by  
a vote of \_\_\_\_\_ to \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, 2020.

TOWN OF WINTER PARK

\_\_\_\_\_  
Nick Kutrumbos, Mayor

ATTEST:

\_\_\_\_\_  
Danielle Jardee, Town Clerk

**DISPOSITION AND DEVELOPMENT AGREEMENT**  
**(Fireside Creek)**

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (the "**Agreement**") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2020 (the "**Effective Date**"), by and among the Town of Winter Park, Colorado, a Colorado home rule municipality with an address of P.O. Box 3327, Winter Park, Colorado 80482 (the "**Town**") and Winter Park Partners, LLC, a Colorado limited liability company with an address of \_\_\_\_\_ ("**Developer**") (each a "**Party**" and collectively the "**Parties**").

WHEREAS, the Town is the owner of 1.9 acres of real property, generally known as Lot 3, Silverado Condominiums II and Pt. SR3735-TW1S, Grand County, Colorado, more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "**Property**");

WHEREAS, the Property is subject to the title commitment and title insurance policy attached hereto and incorporated herein as **Exhibit B**, including the Schedule B, exceptions from coverage (the "**Permitted Exceptions**");

WHEREAS, the Town has determined that the Property is not needed for municipal purposes, and should instead be used for private development that will provide workforce housing for Grand County;

WHEREAS, the Developer submitted a proposal for the development of the Property in response to a Request for Proposal issued by the Town on \_\_\_\_\_, 2019, and since that time the Parties have negotiated for the development of workforce housing on the Property;

WHEREAS, the Town is willing to convey ownership of the Property to Developer at a greatly reduced cost in exchange for Developer's development, restriction and use of the Property as workforce housing serving residents of Grand County earning less than or equal to 120% Average Median Income ("AMI") (the "**Development**") and subject to the terms of this Agreement;

WHEREAS, the Property will be subject to a deed restriction in perpetuity in the form attached hereto and incorporated herein as **Exhibit C** to guarantee its use as workforce housing (the "**Deed Restriction**"); and

WHEREAS, the Parties wish to elaborate on the terms for the conveyance of the Property, the process for its development, and the requirements for the ongoing operation of the Development.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties agree as follows:

1. **Conveyance.** The Town agrees to convey, sell, transfer and assign to the Developer, and Developer agrees to purchase from the Town, on the terms and conditions of this Agreement, the Property and all appurtenant rights now owned by the Town (including without limitation

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easements, rights-of-way, licenses, permits, consents, mineral and development rights, as applicable).

2. Purchase Price. The Purchase Price to be paid by Developer to the Town for the sale and conveyance of the Property is \$10.00 plus incidental closing costs, excluding title work, to be paid by Buyer at closing in funds which comply with all applicable Colorado laws.

3. Closing. The date of closing shall take place within 30 days after Developer's completion of Section 5(d) below and on or before \_\_\_\_\_, or earlier, if 14 days' notice is given by the Developer to the Town and the Town agrees to the earlier closing date. The hour and place of closing shall be as designated by the Developer. The Developer shall pay all closing costs, including title insurance and title company fees for preparing documents and handling the closing. The Town and the Developer shall sign and complete all customary or required documents at or before closing. Neither the Town nor Developer are using a broker and no broker commissions will be paid.

4. Obligations of the Town. The Town covenants and agrees as follows:

a. At Closing, the Town will convey the Property to Developer by special warranty deed, subject to the Permitted Exceptions but free and clear of other mortgages, liens, encumbrances, charges, claims, restrictions, pledges, security interests or impositions. The Town agrees to provide all documents and information required by any title company with respect to the transfer of the Property to Developer, including a standard owner's affidavit. If defects in title are disclosed in any title report or commitment or survey, the Town agrees to remove, or have removed, any such defects prior to Closing.

b. At the time Developer applies for building permits for the Development, the Town shall convey by separate resolution 25.73 water and sewer taps it currently holds. In addition, the Town agrees to waive the normally applicable Town fees set forth in **Exhibit D**, attached hereto and incorporated herein, for an approximate savings to Developer of \$187,550.

c. No officer or employee of the Town taking official action with respect to this Agreement or the Development shall have any personal interest, direct or indirect, in the Property or the Development nor shall any officer or employee of the Town participate in any decision relating to the Development or this Agreement which affects their personal interest or the interest of any corporation, partnership or association in which they are directly or indirectly interested.

5. Obligations of Developer. Developer covenants and agrees as follows:

a. The Development shall at all times be subject to the Code, all approved land use plans, and the Deed Restriction.

b. Developer shall be responsible for obtaining all building permits in connection with the Development, but the Town agrees to waive all applicable fees for such permits.

c. Developer shall be responsible for obtaining such additional water and sewer taps from the Grand County Water and Sanitation District No. 1 as may be necessary to support the Development.

d. Developer shall comply with and participate in the Town land use planning process. The Town and Developer shall be joint applicants, and the process shall result in a Final Plat for the Development according to Section 8-2-4 of the Code, as amended. The land use planning process will address, without limitation, the potential relocation of existing utilities to accommodate the Development.

e. Developer shall be solely responsible to procure financing for the Development. If Developer wishes to use federal or state funds for the Development, it shall be Developer's sole responsibility to procure such funds, though the Town will cooperate with Developer as needed in Developer's efforts.

f. Developer shall, at its sole cost, construct improvements on the Property comprised of, at a minimum, 70 rental units and the Public Improvements, defined and described below, in accordance with the construction standards set forth herein, the Code, and other applicable law.

g. Developer shall commence construction of the Improvements, as defined below, within 180 days after the Closing but not later than July 1, 2021 ("**Construction Commencement Date**"), whichever occurs first, and shall achieve substantial completion of the Improvements, including the Town's acceptance of Public Improvements, on or before the date that is 15 months after the Construction Commencement Date (the "**Construction Completion Date**"), unless a later date is mutually agreed to by both Parties. "**Improvements**" means all buildings, structures, signage, streets, sidewalks, utilities (including Public Improvements, as defined below) and other improvements necessary for the Development and constructed or installed by or for Developer on the Property.

h. In the event of a force majeure condition, the time frames set forth herein shall be increased as mutually agreed upon to include an amount of time equal to the length of the force majeure condition. A "force majeure" condition means a condition by reason of which the development, financing or construction of the Development or completion of all or any of the Development is delayed, prevented or materially impeded through no fault of the Developer, due to acts of God, prohibitive or seasonal weather conditions, strikes, lockouts, labor troubles, inability to procure materials, failure of power, extraordinary governmental delay, pandemic, riots or other events or circumstances beyond the Developer's control.

i. Developer shall operate and administer the Development as work force housing serving only residents of the of Grand County, Colorado, with an annual income less than or equal to 120% of the AMI as published annually by the U.S. Department of Housing and Urban Development for Grand County, Colorado, and as required by the Deed Restriction. Developer shall ensure the Development's ongoing compliance with the Deed Restriction. As part of

operating the Development, Developer shall obtain and maintain in good standing a Town business license.

j. Certain of the Improvements shall be for the benefit of the public, and Developer shall complete all public improvements required by the Code, Final Plat, and applicable Town regulation at Developer's sole cost (the "**Public Improvements**"). By way of example, Public Improvements generally include the following items:

- i. *Trails and Sidewalks*. Installation and construction of all required pedestrian and bicycle trails and sidewalks.
- ii. *Streets and Other Roadways*. Construction of all public streets and other roadways on the Property.
- iii. *Utilities*. On-site and off-site wet and dry utilities, including without limitation water facilities, sewer internal distribution lines, fire hydrants, electric lines, gas lines and all other utility improvements necessary to serve the Development.
- iv. *Street Lighting*. Installation of all required street lighting for the Development.
- v. *Drainage Facilities*. Installation of all required drainage facilities for the Development including snow storage, storm water quality and storm water management for the Property.
- vi. *Erosion Control*. Installation of all necessary on-site and off-site erosion control measures.
- vii. *Landscaping*. Installation of all required landscaping for the Development.
- viii. *Parking*. Installation of all required parking for the Development.

6. Representations, Covenants and Warranties of Town. The Town warrants, covenants and represents the following to Developer as of the Effective Date and as of Closing, each of which shall survive Closing and not be merged into the deed: The Town owns the Property free and clear of all liens and encumbrances except as shown in the Permitted Exceptions; the undersigned are authorized to execute this Agreement on behalf of the Town; the Property is adjacent to at least one publicly dedicated (and duly accepted) vehicular thoroughfare and there are no restrictions on access to such thoroughfare; no work has been performed and no materials have been furnished to the Property which might give rise to a mechanics', materialmens' or other similar lien against the Property; there are no existing agreements, options or commitments granting to any person or entity the right to acquire the Town's right, title or interest in or to any part or all of the Property or any interest therein, and so long as this Agreement is in full force and effect and has not been terminated as provided herein, the Town shall not promote or advertise the sale or offer of the Property and shall not enter in any other agreement for the sale or transfer of any of the Property; the Town has received no notice from any federal, state, county, or municipal governmental authority alleging any health, safety, pollution, environmental, toxic waste, zoning, or

other condition or violation of law in respect to the Property or any part thereof; the Property is not listed nor to the best of Town's knowledge threatened to be listed on the National Priorities List by the Environmental Protection Agency or any other applicable governmental or quasi-governmental authority having jurisdiction thereof. The Town has not caused or allowed any and, to the best of the Town's knowledge, there has been no disposal, release, discharge, deposit, injection, dumping, leaking, spilling, placing, or escape of any Hazardous Substance (as herein-after defined) on, in, under the surface or from the Property, and there is no facility in or on the Property which is used for the treatment or disposal of any Hazardous Substance.

The term "Hazardous Substance" shall mean any substance which at any time shall be listed as "hazardous" or "toxic" under or in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Superfund Amendment and Reauthorization Act of 1986 ("SARA"), the Resource, Conservation and Recovery Act ("RCRA"), the Federal Water Pollution Control Act ("FWPCA"), the Clean Air Act ("CAA"), the Clean Water Act ("CWA"), the Toxic Substance Control Act ("TSCA"), the Safe Drinking Water Act ("SDWA"), the Hazardous Materials Transportation Act ("HMTA") and the regulations implementing any of the foregoing acts, or which have been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under any applicable law. The term Hazardous Substance shall also include, without limitation, raw materials, asbestos, building components, the products of any manufacturing or other activities on the Property, petroleum products or bi-products and constituents thereof, and special nuclear or bi-product material as defined by the Atomic Energy Act of 1954 ("AEA").

7. Construction.

a. All construction, alterations, renovations, repairs, refurbishment and other work on the Property shall be performed in compliance with this Agreement, the Deed Restriction, the Code and the following:

i. Work shall be done in a workmanlike manner, in full compliance with all applicable building codes, ordinances, and other laws or regulations of all governmental authorities having jurisdiction.

ii. No work shall be commenced without all licenses, permits, and authorizations required by applicable law.

iii. Developer shall have no right, authority or power to bind the Town for any claim for labor or for material or for any other charge or expense incurred in constructing any Improvements or performing any alteration, renovation, repair, refurbishment or other work.

iv. Developer shall not be considered the agent of the Town in the construction, erection or operation of any Improvements.



b. Subject to Section 12 and the Town's right of reversion, if Developer fails to complete the Public Improvements as required by this Agreement, the Code, and the Final Plat, the Town shall have the right, but not the obligation, to: complete the Public Improvements; restore the Property to the condition it was prior to commencement of construction of the Public Improvements; or restore the Property to a condition that the Town deems safe while awaiting completion of the Public Improvements by another party; and to charge the costs thereof to Developer.

c. Developer or Developer's general contractor shall comply with Code, Sec. 8-3-11 and deposit with the Town cash or letter of credit equal to the 120% of the full amount of the cost of construction of the Public Improvements.

d. Developer shall comply with all applicable law, including without limitation all current and future federal, state and local statutes, regulations, ordinances and rules relating to: the emission, discharge, release or threatened release of a Hazardous Material into the air, surface water, groundwater or land; the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation or investigation of a Hazardous Material; and the protection of human health, safety or the indoor or outdoor environmental, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; the Clean Air Act; the Federal Water Pollution Control Act; the Occupational Safety and Health Act; all applicable environmental statutes of the State of Colorado; all other federal, state or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect; the Americans with Disabilities Act, 42 U.S.C. § 1201, *et seq.*;

e. Within 120 days of the Construction Completion Date, or as required by the Final Plat, Developer shall convey or dedicate to the Town all Public Improvements, except for parking and utilities serving the Development, including all necessary rights-of-way and easements.

f. Developer shall warrant any and all Public Improvements for a period of 2 years from the date of completion (the "Warranty Period"). Developer shall be responsible for scheduling the necessary inspections for preliminary acceptance as outlined in the Standards and Specifications for Design and Construction. Specifically, but not by way of limitation, Developer shall warrant that: the Public Improvements will not fail during the Warranty Period and will be constructed and installed in a workmanlike manner suitable for their intended uses and in accordance with any applicable federal, state, municipal, and special district statutes, ordinances, regulations, rules and codes; the title conveyed is marketable and its transfer rightful. Upon the expiration of the Warranty Period for any particular Public Improvement, and provided any breaches of warranty have been cured, the Town shall maintain such improvements. Upon Developer's request, the Town shall confirm in writing the final acceptance of such Public Improvement.

8. Nuisance Conditions. Developer shall prevent the existence of any nuisances on the Property by way of its construction activities. If the Town determines that a nuisance exists, Developer shall be subject to the provisions of the Code regarding the abatement of nuisances and the cost assessed therefor

9. Term and Termination. This Agreement shall commence on the Effective Date and shall terminate upon successful completion of the Warranty Period for Public Improvements unless sooner terminated by reversion of the Property to the Town under Section 12 or as otherwise provided herein. Developer reserves the right to terminate this Agreement prior to Closing if Developer determines, in its reasonable discretion, that it is not feasible to develop, construct, own or operate the Development, or if Developer is unable to obtain satisfactory debt, equity and other financing for the Development. In the event this Agreement is terminated prior to Closing for any reason, the Town agrees to negotiate in good faith to reimburse Developer for some or all costs or expenses incurred by Developer with respect to any geological or soil report or study Developer chooses to undertake or commission. If termination occurs prior to Closing, Developer agrees to transfer to the Town all of its rights and interests in such geological or soil reports or studies.

10. Indemnification. Developer hereby agrees to indemnify and hold harmless the Town, its officers, employees and agents from any and all suits, actions and claims of every nature and description caused by, arising from or on account of any act or omission of Developer, or of any other person or entity for whose act or omission Developer is liable, with respect to construction of the Public Improvements, except to the extent such suits, actions or claims are caused by, the Town, its agents, contractors or employees; and Developer shall pay any and all judgments rendered against the Town as the result of any suit, action or claim within the scope of the indemnification provision contained in the prior clause, together with all reasonable expenses and attorney fees incurred by the Town in defending any such suit, action or claim

11. Insurance. Throughout the term of this Agreement, Developer shall maintain for the Property the following insurance, and certificates of such insurance shall be furnished to the Town within 30 days of the Effective Date and each subsequent policy renewal date:

a. Developer and its contractors, subcontractors, and employees shall carry Comprehensive General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. The Town of Winter Park and employees shall be listed as additional insureds for premises and products/completed operations under such policy. Developer shall provide the Town of Winter Park certificates evidencing such insurance at the time of initial construction and the same shall be applicable until completion of the Development.

b. Workers' compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of work on the Property, and employers' liability insurance with minimum statutory limits of \$100,000 per occurrence for bodily injury, \$100,000 per employee for bodily injury by disease and a \$500,000 policy limit for bodily injury by disease.

12. Reversion. Except for delays caused by the act or omission of the Town, its agents, contractors or employees, if Developer fails to commence construction on or before the Construction Commencement Date, or fails to obtain all required certificates of occupancy for the Development or fails to achieve final acceptance of the Public Improvements before the Construction Completion Date, subject to force majeure conditions as set forth in Section 5(g), the Town may elect, at the Town Council's sole, reasonable discretion, to require that Developer transfer the fee ownership of the Property including the associated water and sewer taps, back to the Town, with agreed upon compensation for Developer's costs and expenses, provided the Town shall have first provided Developer with a 30 day written notice and opportunity to cure such failure.

13. Developer Default and Remedies.

a. *Default*. Each of the following is a Developer default of this Agreement:

i. If Developer materially fails to perform any of its obligations under this Agreement and materially fails to remedy the same within 30 days after Developer is given a written notice specifying the same; provided that, if the nature of the violation is such that it cannot reasonably be remedied within 30 days, and Developer provides evidence to the Town that the violation cannot reasonably be remedied within 30 days, then the violation shall be remedied as soon as reasonably practicable, but in any case, within 180 days of the original notice of violation.

ii. If an involuntary petition is filed against Developer under a bankruptcy or insolvency law or under the reorganization provisions of any law, or when a receiver of Developer, or of all or substantially all of the property of Developer, is appointed without acquiescence, and such petition or appointment is not discharged or stayed within 120 days after the happening of such event.

iii. If Developer makes an assignment of its property for the benefit of creditors or files a voluntary petition under a bankruptcy or insolvency law, or seeks relief under any other law for the benefit of debtors.

b. *Remedies*. If a Developer uncured default occurs, the Town may, in its sole, reasonable discretion and without waiving any other rights under this Agreement or available to the Town:

- i. Withhold issuance of certificates of occupancy not yet issued for any buildings on the Property until said default has been remedied, except if a certificate of occupancy is required to remedy any default;
- ii. Refuse to issue any building permit or revoke any building permit previously issued under which construction directly related to such building permit has not commenced, except a building permit previously issued to a third party, except if a building permit is required to remedy any default;
- iii. Cause construction of all or part of the Improvements to be completed, and recover the costs of such completion from Developer, and Developer shall, at the request of the Party completing the Improvements, promptly deliver a copy of all of Developer's plans and specifications related to the Improvements; and
- iv. Cause the removal of any partially constructed Improvements and return of the Property to the condition it was prior to the commencement of construction, and recover the costs of such removal from Developer.

c. *Additional Remedies.* In addition to the specific remedies set forth herein, the Town shall have all other remedies available at law or equity, and the exercise of one remedy shall not preclude the exercise of any other remedy. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted for work negligently or defectively performed.

14. Town Default and Remedies.

a. *Default.* The following is a Town default of this Agreement: if the Town fails perform any of its obligations under this Agreement and fails to remedy the same within 30 days after the Town is given a written notice specifying the same; provided that, if the nature of the violation is such that it cannot reasonably be remedied within 30 days, and the Town provides evidence to Developer that the violation cannot reasonably be remedied within 30 days, then the violation shall be remedied as soon as reasonably practicable, but in any case, within 180 days of the original notice of violation.

b. *Remedies.* If a Town default occurs, Developer shall have all remedies available at law or equity, and the exercise of one remedy shall not preclude the exercise of any other remedy, including the remedy of specific performance against the Town. The expiration or termination of this Agreement shall in no way limit the Developer's legal or equitable remedies.

15. Miscellaneous.

a. *Modification.* This Agreement may only be modified by subsequent written agreement of the Parties.

b. *Integration.* This Agreement and any attached exhibits constitute the entire agreement among the Parties regarding the matters covered herein, superseding all prior oral or written communications.

c. *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and assigns.

d. *Severability.* If any provision of this Agreement is determined to be void by a court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect.

e. *Governing Law and Venue.* This Agreement shall be governed by the laws of the State of Colorado and any legal action concerning the provisions hereof shall be brought in Grand County, Colorado.

f. *Assignment.* There shall be no transfer or assignment of any of the rights or obligations of Developer under this Agreement without the prior written approval of the Town, except that Developer may assign its rights and obligations to an affiliated single-purpose entity formed for the purpose of owning, constructing, maintaining and managing the Development.

g. *Recordation.* This Agreement shall be recorded in the real estate records of Grand County and shall be a covenant running with the Property.

h. *Title and Authority.* Developer and the Town expressly warrant and represent to each other Party that the undersigned have full power and authority to enter into this Agreement. Each Party understands that the other Parties are relying on such representations and warranties in entering into this Agreement.

i. *Waiver.* In executing this Agreement, each Party waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of a Party to impose conditions on another Party as set forth herein, and concerning the procedure, substance and form of the resolution adopting this Agreement. Developer expressly agrees that the Town cannot be legally bound by the representations of any of its officers or agents or their designees, except in accordance with the Winter Park Town Code and applicable law, which the undersigned represents and warrants have been complied with.

j. *Third Parties.* There are no intended third-party beneficiaries to this Agreement.

k. *Contingency; No Debt.* Pursuant to Article X, § 20 of the Colorado Constitution, any financial obligations of the Town under this Agreement are specifically contingent upon annual appropriation of funds sufficient to perform such obligations. This Agreement shall never constitute a debt or obligation of the Town within any statutory or constitutional provision.

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

m. *Notice.* Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class U.S. Mail or by overnight courier to the party at the address set forth on the first page of this Agreement.

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

o. *Recitals.* The above Recitals are hereby incorporated into this Agreement.

p. *Developer Financing.* Notwithstanding any other provision in this Agreement, Developer's obligations herein are expressly conditioned on Closing.

q. *Brokers.* Each Party represents and warrants it is not represented by a broker or agent. Developer agrees to indemnify Town and hold Town harmless from any loss, liability, damage, cost or expense (including court costs and reasonable attorneys' fees) incurred by Town by reason of any claim to any broker's, finder's or other fee in connection with this transaction by any party claiming by, through or under Developer. Town agrees to indemnify Developer and hold Developer harmless from any loss, liability, damage, cost or expense (including court costs and reasonable attorneys' fees) incurred by Developer by reason of any claim to any broker's, finder's or other fee in connection with this transaction by any party claiming by, through or under Town.

16. *Modifications for Material Hardship.* The Parties understand and agree that this Agreement is predicated on Closing and certain assumptions existing as of the Effective Date. The Parties further understand that certain material changes in the conditions on which such assumptions were made may impact the ability of the Parties to effectuate the conditions and obligations of this Agreement or otherwise impose upon Developer a material hardship. Accordingly, in the event that such a material change shall occur, and as a result thereof Developer is unable to comply with all of the terms, provisions and conditions of this Agreement without substantial financial hardship, the Parties agree to work in good faith to adjust the terms, provisions and/or conditions of this Agreement to reach a resolution that would allow the Parties to realize, to the extent possible, the reasonable expectations of the Parties. Material hardship conditions may include, but not be limited to, (i) material issues in the condition or title of the Property that impact the ability to develop the Development, and (ii) any other condition that the Town, in its reasonable discretion, acknowledges and agrees would constitute a material modification of the assumed conditions relied upon by the Developer or that would cause a substantial financial hardship for the Developer.

WHEREFORE, the Parties have executed this Agreement as of the Effective Date.

**TOWN OF WINTER PARK**



**Exhibit A**  
**Legal Description**



**Exhibit B**  
**Title Commitment and Policy showing Permitted Exceptions**

**Exhibit C**  
**Form of Deed Restriction**

**Exhibit D**  
**Town Fees Waived Pursuant to Section 4(c)**  
**and Estimate of Value**

The Town shall waive the following generally applicable fees with the following estimated value. The estimate is based on approximately \$13 million dollars in construction costs and 48,000 square feet for the Development:

- Building Permit Fees: \$28,000
- Plan Review Fees: \$18,000
- Process Fees for Final Plat: \$1,500
- Design Review Fees: \$2,050
- Affordable Housing Fee: \$138,000  
\$187,550

**DEED RESTRICTION AGREEMENT**  
**Work Force Housing**

THIS DEED RESTRICTION AGREEMENT (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020 (the "Effective Date") by and between the TOWN OF WINTER PARK, a Colorado home rule municipal corporation with an address of 50 Vasquez Road, P.O. Box 3327, Winter Park, CO 80482 (the "Town"), and Winter Park Partners, LLC, a Colorado limited liability company with an address of \_\_\_\_\_, ("Owner") (each a "Party" and collectively the "Parties").

WHEREAS, Owner owns certain real property within the Town, more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, Owner will develop the Property into work force housing units that it will own and lease to qualified residents working within Grand County, Colorado;

WHEREAS, in exchange for the Town's no-cost transfer of the Property to Owner, Owner has agreed to place certain restrictions on its use and occupancy of the Development as defined below.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties agree as follows:

1. Property. The Property is hereby burdened with the covenants and restrictions specified in this Agreement.

2. Definitions. For purposes of this Agreement, terms shall have their defined meaning according to of the Winter Park Town Code, Section 7-2-3, and the following terms shall have the following meanings:

a. *Development* means all residential dwellings on the Property.

b. *Principal place of residence* means the home or place in which one's habitation is fixed and to which one has a present intention of returning after a departure or absence therefrom. To determine a person's principal place of residence, the criteria set forth in C.R.S. § 31-10-201(3), as amended, shall apply.

c. *Qualified Household* means one Qualified Resident or a group of persons that contains at least one Qualified Resident. A Qualified Household may have occupants that are not Qualified Residents as long as the Qualified Resident is named on the lease.

d. *Qualified Resident* means a person who works a minimum of 32 hours per week or 1,000 hours per year or more at a business in Grand County, Colorado, that holds a valid and current business license, or pays sales taxes, or is otherwise generally recognized as a legitimate business, and whose annual income is shown to be less than or equal to 120% of the Average Median Income ("AMI") as published annually by the U.S. Department of Housing and Urban Development for Grand County, Colorado. To determine that a person is a Qualified Resident,

Owner shall apply the guidelines set forth in **Exhibit B**, attached hereto and incorporated herein (the "Guidelines").

3. Occupancy Restrictions.

a. Owner shall allow occupancy of a Dwelling Unit only by written lease binding a Qualified Resident to occupancy for a duration of at least 6 months.

b. Owner shall require one Qualified Resident per Dwelling Unit, except that for Dwelling Units with 3 bedrooms or more, Owner shall require at least two Qualified Residents for whom the Dwelling Unit is their principal place of residence. Owner may waive the requirement for two Qualified Residents for good cause on a case-by-case basis according to a Town-approved waiver process.

c. All leases shall prohibit subleasing.

d. Owner shall only lease a Dwelling Unit to a Qualified Resident.

e. Except when two Qualified Residents are required, as set forth in (b) above, every occupied Dwelling Unit shall at all times be occupied by at least one Qualified Resident for whom the Dwelling Unit is his or her principal place of residence.

f. No business activity shall occur on or in the Property or within the Development other than as permitted within the zone district applicable to the Property.

4. Dwelling Units with Three or More Bedrooms. Owner shall establish and administer a waiver process for use with Dwelling Units with three bedrooms or more to determine when the requirement for at least 2 Qualified Residents will be waived such that only one Qualified Resident is permitted. Owner shall submit the waiver process to the Town for review and approval prior to first occupancy of the Development.

5. Annual Verification. No later than June 1st of each year, beginning in the year following the first occupancy of the Development, Owner shall submit to the Town for each occupied Dwelling Unit, as well as for the Development generally, the following information attested to by Owner affirming that the information provided is true and correct to the best of Owner's knowledge and belief:

a. Evidence to establish to the Town's reasonable satisfaction that all occupied Dwelling Units are leased to and occupied by a Qualified Household, including documentation showing how the Owner applied the Guidelines to qualify at least one tenant named on each Dwelling Unit's lease as a Qualified Resident for new leases and any renewing leases.

b. A copy of the lease form currently used to lease Dwelling Units, the Development's vacancy rate, and information about how vacancies are advertised and filled.

c. Information describing Owner's application and use of, if any, the waiver process for Dwelling Units with three bedrooms as referenced in Section 4 above.

d. Proof of Owner's annual calculation of the applicable annual income restriction at 120% or less of the AMI as published annually by the U.S. Department of Housing and Urban Development for Grand County, Colorado.

e. Proof of insurance for the Development for coverages and in amounts acceptable to the Town.

f. Proof of Owner's valid Town business license for operation of the Development.

5. Audit Rights. If at any time the Town has reasonable cause to believe Owner is violating this Agreement, the Town may audit Owner's books and records related to the lease and occupancy of the Dwelling Units between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing Owner with 24 hours written notice. Owner shall cooperate with and facilitate any such audit.

6. Consensual Lien; Right to Redeem. For the purpose of securing Owner's performance under this Agreement and creating in favor of the Town a right to redeem in accordance with Part 3 of Article 38 of Title 38, C.R.S., as amended, Owner hereby grants to Town a consensual lien on the Property. Such lien shall not have a lien amount.

7. Town's Option. Owner shall first notify the Town if Owner wishes to sell the Property. The Town shall have the first option to purchase the Property.

8. Breach. It is a breach of this Agreement for Owner to violate any provision of this Agreement, or to default in payment or other obligations due to be performed under a promissory note secured by a first deed of trust encumbering the Property. Owner shall notify the Town, in writing, of any notification received from any lender of past due payments or defaults in payments or other obligations within 5 days of receipt.

9. Remedies.

a. The Town shall have any and all remedies provided by law and in equity for a violation of this Agreement, including without limitation: (i) damages; (ii) specific performance; and (iii) injunctions, including without limitation an injunction requiring eviction of the occupant(s) and an injunction to prohibit the occupancy of the Property in violation of this Agreement. All remedies shall be cumulative.

b. The cost to the Town of any activity taken in response to any violation of this Agreement, including reasonable attorney fees, shall be paid promptly by Owner.

10. Foreclosure.

a. For purposes of foreclosure, this Agreement and the foregoing covenants and restrictions shall constitute a non-monetary lien on the Property.

b. In the event of a foreclosure, acceptance of a deed-in-lieu of foreclosure, or assignment, this Agreement shall remain in full force and effect.

c. Owner shall give immediate notice to the Town: of any notice of foreclosure under the first deed of trust or any other subordinate security interest in the Property; or when any payment on any indebtedness encumbering the Property is required to avoid foreclosure of the first deed of trust or other subordinate security interest in the Property.

d. Within 60 days after receipt of any notice described herein, the Town may (but shall not be obligated to) proceed to make any payment required to avoid foreclosure. Upon making any such payment, the Town may place a lien on the Property in the amount paid to cure the default and avoid foreclosure, including all fees and costs resulting from such foreclosure.

e. The Town shall have 30 days after issuance of the public trustee's deed or the acceptance of a deed in lieu of foreclosure by the holder in which to purchase by tendering to the holder, in cash or certified funds, an amount equal to the redemption price which would have been required of the borrower or any person who might be liable upon a deficiency on the last day of the statutory redemption period(s) and any additional reasonable costs incurred by the holder related to the foreclosure.

#### 11. Miscellaneous.

a. Modification. This Agreement may only be modified by subsequent written agreement of the Parties.

b. Integration. This Agreement and any attached exhibits constitute the entire agreement between Owner and the Town, superseding all prior oral or written communications.

c. Runs with the Land. The benefits and obligations of the Parties under this Agreement shall run with the land, and Owner's obligations hereunder shall be binding on Owner's successors and assigns, consistent with subsection (f), below, and any subsequent holder of an ownership interest in the Property.

d. Severability. If any provision of this Agreement is determined to be void by a court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect.

e. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Grand County, Colorado.

f. Assignment. There shall be no transfer or assignment of any of the rights or obligations of Owner under this Agreement without the prior written approval of the Town.

g. Third Parties. There are no intended third-party beneficiaries to this Agreement.

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

i. Notice. Any notice under this Agreement shall be in writing and shall be deemed sufficient when directly presented or sent prepaid, first-class United States Mail to the Party at the address set forth on the first page of this Agreement.

j. Recording. This Agreement shall be recorded with the Grand County Clerk and Recorder.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**TOWN OF WINTER PARK**

\_\_\_\_\_  
Nick Kutrumbos, Mayor

ATTEST:

\_\_\_\_\_  
Danielle Jardee, Town Clerk

**OWNER**

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF GRAND     )

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_.

Witness my hand and official seal.

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

(S E A L)

My commission expires:



**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

## **EXHIBIT B GUIDELINES**

1. Purpose. The purpose of these Guidelines is to set forth the criteria for establishing a Qualified Resident for a Dwelling Unit of the Development pursuant to the Deed Restriction Agreement.
2. Definitions. All capitalized terms herein shall have the meanings set forth in the Deed Restriction Agreement.
3. Application. Owner must establish a person is a Qualified Resident by requesting and reviewing the following information:
  - a. Verification (*e.g.*, wage stubs, employer name, address, telephone number and other appropriate documentation) of the person's current employment with a business in Grand County that holds a valid and current business license, or pays sales taxes, or is otherwise generally recognized as a legitimate business;
  - b. Evidence that the applicant has worked, or will work, an average of 32 hours per week or 1,000 hours or more per year for one or more of such businesses;
  - c. Income verification documents as needed to show income at less than or equal to 120% AMI, including without limitation federal and state income tax returns, W2s, 1099s, bank and credit card statements, release forms for employment and tax information;
  - d. A valid form of identification, such as a driver's license, state-issued identification, passport or military identification; and
  - e. A signed statement certifying and acknowledging that all information submitted in such application is true to applicant's best knowledge and authorizing verification of all information submitted.