

## AFFORDABLE HOUSING RESTRICTIVE COVENANT AND AGREEMENT

**THIS AFFORDABLE HOUSING RESTRICTIVE COVENANT AND AGREEMENT** (this "**Agreement**") is made and entered into as of this 21<sup>st</sup> day of FEBRUARY, 2006, by the **TOWN OF WINTER PARK**, a Colorado home rule municipal corporation (the "Town"), and **WINTER PARK AFFORDABLE HOUSING CORPORATION**, a Colorado nonprofit corporation ("WPAHC").

### RECITALS

A. The Town is the owner of that certain parcel of real property and related easement rights located in the Town of Winter Park, Grand County, Colorado commonly known as "Hideaway Junction" and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "**Town Property**"), a portion of which the Town desires to sell to WPAHC for the purpose of developing, marketing and selling affordable housing to qualified residents in the Town of Winter Park, Colorado (the "**Property**"). The Property is legally described on Exhibit B attached hereto and incorporated herein by this reference.

B. WPAHC is organized as a Colorado nonprofit corporation for public purposes that include the development, marketing and sale of affordable housing within the Town of Winter Park.

C. Subsequent purchasers of the Property will benefit from the limitation on the purchase and sale price of portions of the Property that this Agreement requires.

D. Pursuant to that certain Contract to Buy and Sell Real Estate (Commercial) by and between the Town, as "Seller," and WPAHC, as "Buyer," as amended (the "**Purchase Contract**"), WPAHC will purchase the Town Property and following the closing of the same, WPAHC will subdivide the Town Property, reconvey to the Town that portion of the Town Property to be legally described as "Tract C, Hideaway Junction Subdivision Filing No. 1," and then develop, market and sell affordable fee simple lots and residential improvements on the remaining Property (collectively, the "**Lots**") as part of a planned community in accordance with the provisions of the Colorado Common Interest Ownership Act, Section 38-33.3-101 et seq., C.R.S., as amended (the "**Act**").

E. The intent of the Town is to preserve through this Agreement the affordability of the Lots for "**Qualified Buyers**" and "**Qualified Residents**" (as those terms are hereinafter defined), and to assign to WPAHC the right and responsibility to enforce compliance with this Agreement.

F. Under this Agreement, the Town intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use of the Lots to be

created by WPAHC within the Property pursuant to the Act shall be and are hereby declared to be covenants running with title to the Property and are intended to be binding upon the Town, WPAHC following closing of its purchase of the Property, and all subsequent owners of the Lots until and unless this Agreement is released and terminated in the manner hereafter described.

G. The Town and WPAHC acknowledge that by entering into this Agreement, both have acted in their own proprietary capacity and for the private advantage of their respective constituents and for themselves as separate and distinct legal entities.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the promises and covenants hereinafter set forth, the parties hereby declare, covenant and agree as follows:

## AGREEMENT

### ARTICLE I DEFINITIONS

In addition to other capitalized terms defined elsewhere in this Agreement, the following capitalized terms used in this Agreement shall have the following respective meanings:

**"First Mortgage"** means any Mortgage that is not subordinate to any other lien or encumbrance, except liens for taxes or other liens that are given priority by statute.

**"First Mortgagee"** means a Mortgagee under a First Mortgage.

**"Lot"** means a physical portion of the planned community to be created by WPAHC on the Property. Each Lot consists of fee simple title to the land comprising the Lot, and all improvements constructed or located thereon.

**"Mortgage"** means any mortgage, deed of trust or other document pledging any Lot or interest therein as security for payment of a debt or obligation.

**"Mortgagee"** means any Person named as a mortgagee or beneficiary in any Mortgage and any successor to the interest of any such Person under a Mortgage.

**"Owner"** means the record holder of legal title to the fee simple interest in any Lot or portion thereof to be created by WPAHC on the Property. If there is more than one record holder of legal title to a Lot, each record holder shall be an Owner. The term "Owner" includes WPAHC to the extent that WPAHC is the record holder of legal title to the fee simple interest in a Lot.

**"Person"** means any natural person, corporation, partnership, limited liability company, association, trust, trustee, governmental or quasi-governmental entity or any other entity capable of owning real property under the laws of the State of Colorado.

**"Qualified Buyers"** and **"Qualified Residents"** are used interchangeably and for all Lots the terms shall mean and refer to the Town, WPAHC, and a natural Person or natural Persons within a household who meet the following requirements:

(a) Currently working or been hired to work in Grand County as an employee or sole proprietor who is actively involved in his/her own business.

(b) Works a minimum of thirty-two (32) hours per week, or at least 1,200 hours annually for a Grand County employer.

(c) Does not own any other residential real estate or a mobile home as rental property at the time they occupy one of the Lots except to the extent permitted in Paragraph 1 of Article IV below. For purposes of this subparagraph, if a Person owns vacant land during the time of ownership of a Lot and improves that vacant land with a residence, when that Person receives a Certificate of Occupancy for that residence, that Person will be deemed to "own other residential real estate."

(d) Upon purchase of a Lot, the Purchaser shall occupy the Lot as their primary residence.

## **ARTICLE II AGREEMENT BINDS THE PROPERTY**

This Agreement shall constitute a covenant running with title to the land and as a burden thereon, for the benefit of, and enforceable by, WPAHC and its successors and assigns. This Agreement shall bind each Lot Owner, and each Lot Owner shall be personally obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during the Lot Owner's period of ownership of a Lot. Each and every conveyance of a Lot, for all purposes, shall be deemed to include and incorporate by this reference, the covenants contained in this Agreement, even without reference to this Agreement in any document of conveyance.

## **ARTICLE III NATURAL PERSONS**

Other than the Town and WPAHC, the use and occupancy of the Lots shall be limited exclusively to housing for natural persons who meet the definition of Qualified Buyers or Qualified Residents.

**ARTICLE IV  
RESTRICTIONS**

1. Master Deed Restrictions. A Lot Owner shall:

A. Occupy the Lot as his or her sole place of residence, except as otherwise provided herein. The Lots shall be utilized only as the exclusive and permanent place of residence of the respective Lot Owner. A permanent residence shall mean the home or place in which one's habitation is fixed and to which one, whenever he or she is absent, has a present intention of returning after a departure or absence therefrom. In determining what is a permanent residence, WPAHC may take into account, without limitation, the following circumstances relating to a Lot Owner: location of business pursuits, employment and income sources; residence for income tax purposes; residence of parents, spouse and children, if any; location of personal and real property; and motor vehicle registration. By way of example, a Lot Owner may be deemed to have changed his or her permanent residence by becoming a resident elsewhere, by accepting permanent employment outside Grand County, or by residing in the Lot for fewer than ten (10) months per calendar year without the express written approval of WPAHC. In the event a Lot Owner changes residence or ceases to utilize the Lot as his or her exclusive and permanent place of residence, as determined by WPAHC, WPAHC shall have all of its rights under and pursuant to "**WPAHC's Purchase Option**" and "**WPAHC's Right of First Refusal**" (as those terms are hereinafter defined). If at any time the Lot Owner also owns any interest alone or in conjunction with others in any other developed residential property located in Grand County, the Lot Owner shall immediately list such other property interest for sale and sell his or her interest in such property. In the event said other property has not been sold by the Lot Owner within one hundred eighty (180) days of its listing required hereunder (or such longer period as may be approved in writing by WPAHC in its sole discretion), then WPAHC shall have all of its rights under and pursuant to WPAHC's Purchase Option and WPAHC's Right of First Refusal. It is understood and agreed between the parties hereto that, in the case of a Lot Owner whose business is the construction and sale of residential properties or the purchase and resale of such properties, the properties which constitute inventory in such a Lot Owner's business shall not constitute "other developed residential property" as that term is used in this paragraph.

B. Not engage in any business activity on or in such Lot, except home occupations as allowed by the regulations of the Town of Winter Park.

C. Not sell or otherwise transfer such Lot except in accordance with the terms of this Article IV.

D. Not sell or otherwise transfer such Lot for use in a trade or business, except home occupations as allowed by the regulations of the Town of Winter Park and subject to the terms of this Article IV.

E. Not permit any use or occupancy of such Lot except in compliance with the terms of this Article IV.

F. Not encumber the Lot in an amount in excess of the purchase price originally paid by the current Owner of the Lot.

G. Not default in payment or other obligations to a Mortgagee. Lot Owners must notify WPAHC in writing, within five (5) calendar days of the Lot Owner's notification from a Mortgagee of any notification from such Mortgagee of past due payments or default in payment or other obligations due or to be performed under a Mortgage. Upon notification from a Lot Owner as provided in this paragraph, or other notice of such default, WPAHC, at its sole discretion, may offer loan counseling or distressed loan services to the Lot Owner, if any of these services are available. WPAHC shall have the additional right, in its sole discretion, to directly cure the default or any portion thereof. In such event, the Lot Owner shall be required to execute a promissory note (the "**WPAHC Note**") in favor and to the order of WPAHC for the amounts expended by WPAHC to cure the default, including attorneys' fees and costs incurred by WPAHC, and any future advances made for such purposes, plus a deed of trust securing payment thereof encumbering the Lot in favor and for the use and benefit of WPAHC. The Lot Owner shall be personally liable to WPAHC for, and the amount reflected in WPAHC Note, all payments made by WPAHC to cure the default, all actual expenses of WPAHC incurred in curing the default, including attorneys' fees and costs made or incurred by WPAHC, plus an amount equal to one percent (1%) of the costs so expended, together with interest thereon at the rate specified in WPAHC Note. The Lot Owner may cure the default and satisfy its obligation to WPAHC under this paragraph at the time specified in WPAHC Note, but in any event prior to the sale or other transfer of the Lot to a Qualified Buyer. Otherwise, the Lot Owner's indebtedness to WPAHC shall be satisfied from the Lot Owner's proceeds from the sale or other transfer of the Lot at the closing thereof.

H. Not, except with prior written approval of WPAHC and subject to WPAHC's conditions of approval, rent his or her Lot for any period of time. Prior to occupancy, any tenant must be approved by WPAHC as a Qualified Resident. Except as provided below, WPAHC shall not approve any Lot rental if such rental is being utilized by the Lot Owner as an income producing asset. WPAHC shall not approve a lease with a rental term less than thirty (30) days, or with a term longer than six (6) months without reasonable evidence that a lease longer than six (6) months is necessary as determined by WPAHC. A signed copy of the lease must be provided to WPAHC prior to occupancy by any tenant. Any such lease approved by WPAHC shall be for a rental amount equal to the monthly expenses attributable to the Lot, including

but not limited to the cost of principal and interest payments, taxes, property insurance, association assessments, utilities remaining in the Lot Owner's name, plus an additional twenty dollars (\$20.00), and a reasonable (refundable) security deposit. If the Lot is not encumbered by a Mortgage, for purposes of calculating the applicable rental amount, principal and interest will be computed by using a Mortgage amount equal to ninety-five percent (95%) of the consideration stated in the last recorded conveyancing deed for the Lot, a 30-year Mortgage term, and a fixed interest rate equal to the prevailing market interest rate for similar Mortgage loans offered at or about the time of recordation of the last conveyancing deed for the Lot, all as determined in the sole discretion of WPAHC. The requirements of this paragraph shall not preclude the Lot Owner from sharing occupancy of the Lot with non-Owners (including "**Non-Qualified Owners**" as described in Section 10 of this Article IV) on a rental basis provided the Lot Owner continues to meet the definition of Qualified Buyer or Qualified Resident. NOTHING HEREIN SHALL BE CONSTRUED TO REQUIRE WPAHC TO PROTECT OR INDEMNIFY ANY UNIT OWNER AGAINST ANY LOSSES ATTRIBUTABLE TO THE RENTAL OF A UNIT, INCLUDING, WITHOUT LIMITATION, NON-PAYMENT OF RENT OR DAMAGE TO THE UNIT; NOR TO REQUIRE WPAHC TO OBTAIN A QUALIFIED TENANT FOR ANY UNIT OWNER IN THE EVENT THAT NONE IS FOUND BY THE UNIT OWNER.

2. Voluntary Sale of Lot By Owner. In the event that a Lot Owner desires to sell or transfer his or her title to a Lot, the Lot Owner shall provide to WPAHC a written notice of the Lot Owner's intent to sell or otherwise transfer title to the Lot ("**Notice of Intent**"). Upon WPAHC's receipt of a Lot Owner's Notice of Intent, WPAHC shall have the option to purchase title to the Owner's Lot upon the terms and conditions set forth in Paragraph 12 of this Article IV ("**WPAHC's Purchase Option**"). Alternatively, if WPAHC does not exercise WPAHC's Purchase Option upon the terms and conditions set forth in Paragraph 12 of this Article IV, WPAHC shall have the right of first refusal to purchase title to the Owner's Lot upon the terms and conditions set forth in Paragraph 13 of this Article IV ("**WPAHC's Right of First Refusal**").

3. Maximum Sales Price After the First Transfer. After the first transfer of title to a Lot, in no event shall title to a Lot be sold or otherwise transferred for an amount in excess of an amount (the "**Maximum Sales Price**") calculated as follows:

A. The Lot Owner's original purchase price, plus the sum of the following items:

(1) if the transfer occurs *during* the first three (3) year period following the date that the Lot Owner acquires title to the Lot, then an increase of two percent (2%) per year of such Owner's purchase price, calculated from the date of the Owner's acquisition of title to the Lot to the date of closing of the Owner's transfer of title to a new Owner; and if the transfer occurs *after* such three (3) year period, then an increase equal to the sum of (a) the increase permitted

during the first three (3) year period described above, *plus* (b) one percent (1%) per year of such Owner's purchase price, calculated from the date of the Owner's acquisition of title to the Lot to the date of closing of the Owner's transfer of title to a new Owner;

(2) the amount of any brokerage or sales commission to be paid by the Owner as a result of the Owner's transfer of title to a new Owner; and

(3) any accrued negative amortization if the Owner financed the purchase of the Lot with a graduated payment mortgage.

B. Add to the amount determined pursuant to subparagraph (A) above, the amount of "**Eligible Capital Improvements**" (as that term is hereinafter defined) that have been approved by WPAHC up to the time of transfer.

C. Add to the amounts determined pursuant to subparagraphs (A) and (B) above, the costs of any public improvements for which assessments were imposed by any municipal special improvement district as created by or with the Town of Winter Park since the date of recordation of this Agreement.

D. Deduct from the amounts determined pursuant to subparagraphs (A), (B) and (C) above, the amount of any "**Excessive Damage Assessment**" (as that term is hereinafter defined). The Owner shall maintain the Lot in good, safe, and habitable condition in all respects, except for normal wear and tear, and in full compliance with all applicable laws, ordinances, rules and regulations of any governmental authority with jurisdiction over matters concerning the condition of the Lot. The Owner shall suffer no mechanics liens to be recorded against the Lot. Shortly before the Maximum Sales Price is determined, WPAHC shall have the right to inspect the Lot to determine whether the Owner has complied fully with these maintenance obligations. If, after such an inspection, WPAHC determines in its judgment that the Owner has not fully complied with this obligation, WPAHC shall determine in its judgment the cost to complete such repairs, replacements, and other work necessary to restore the Lot to a good, safe and habitable condition in all respects, and to bring it into full compliance with all applicable laws, ordinances, rules and regulations of any governmental authority with jurisdiction over matters concerning the condition of the Lot. This amount shall be called the "**Excessive Damage Assessment,**" and it shall be included in the calculation of the Maximum Sales Price.

4. Eligible Capital Improvements. Only capital improvements to Lots approved in advance by WPAHC, which approval may be withheld in WPAHC's sole and exclusive discretion, shall be "**Eligible Capital Improvements.**" Nothing in this Agreement shall prohibit an Owner from making an improvement to a Lot that does not qualify as an Eligible Capital Improvement. However, only Eligible Capital Improvements may be included in the calculation of the Maximum Sale Price of the Lot,

as set forth herein. Furthermore, no improvement to any Lot shall be permitted unless also approved by the Town of Winter Park in its capacity as grantor and declarant under this Agreement, and not in its capacity as the issuer of building permits within the Town of Winter Park.

5. Procedure for Approval of Proposed Eligible Capital Improvements. In order to qualify as an Eligible Capital Improvement, each expenditure must be conditionally approved in advance by WPAHC. Regardless whether the proposed improvement will be an Eligible Capital Improvement, no improvement to any Lot shall be permitted unless also approved by the Town of Winter Park in its capacity as grantor and declarant under this Agreement, and not in its capacity as the issuer of building permits within the Town of Winter Park. After a proposed Eligible Capital Improvement has been completed, it must be finally approved by WPAHC as an Eligible Capital Improvement and the amount thereof must be determined by WPAHC.

A. The Owner must submit in advance to WPAHC detailed plans for each proposed Eligible Capital Improvement and an itemization of the expected costs. Within fourteen (14) days after this information is received by WPAHC, it will notify the Owner in writing whether or not the proposed expenditure is conditionally approved as an Eligible Capital Improvement.

B. Within ninety (90) days after the proposed Eligible Capital Improvement has been completed, the Owner shall submit to WPAHC true and correct copies of any building permit or certificate of occupancy required to be issued by the Town of Winter Park with respect to the proposed Eligible Capital Improvements and complete documentation showing all costs thereof. This documentation shall be reasonably satisfactory to WPAHC. If bartered goods or services were included in the cost, the Owner must submit an independent valuation of the value of those goods or services. If labor of the Owner, his or her spouse, domestic partner, children or parents for construction work is included within the cost, a detailed account of the work and the time spent on the work shall be submitted along with two estimates of the value of that work by at least two construction contractors licensed by the Town of Winter Park.

C. WPAHC shall have the right to inspect the Lot at times that are mutually convenient to WPAHC and the Owner to confirm that the proposed Eligible Capital Improvements have been completed in a workmanlike manner and to determine the reasonable value thereof. If WPAHC, in its reasonable discretion, is unsatisfied with the documentation provided by the Owner, it may base its determination of the value of the improvements upon the valuation of a person chosen by WPAHC who is knowledgeable about local construction costs and practices. At the conclusion of this process, WPAHC shall notify the Owner in writing if the improvement has been approved as an Eligible Capital Improvement and the amount thereof.



6. Dispute Resolution. If the Owner reasonably disputes WPAHC's determination of the amount of an Eligible Capital Improvement or of an Excessive Damage Assessment, the Owner may request that the dispute be arbitrated. The Owner shall choose the arbitrator from a list provided by WPAHC, and the arbitration shall be conducted in accordance with the applicable rules of the American Arbitration Association, or of any similar successor organization. The decision of the arbitrator shall be final and binding upon the parties. The Owner shall pay for all costs of the arbitration, whatever the arbitrator's decision may be.

7. No Guarantee of Price. NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY WPAHC THAT THE UNIT OWNER WILL BE ABLE TO OBTAIN THE MAXIMUM SALES PRICE, AND WPAHC HEREBY DISCLAIMS ANY SUCH REPRESENTATION OR WARRANTY THAT MIGHT OTHERWISE BE ALLEGED OR ATTRIBUTED.

8. No Assumption of Owner's Costs. No Owner shall permit any prospective buyer to assume any or all of the Owner's customary closing costs, nor accept any other consideration that would cause an increase in the purchase price above the Maximum Sales Price. Each Owner shall pay all costs of advertising and marketing his, her or its Lot for sale, including real estate sales commissions and fees paid to WPAHC or other Persons.

9. No Sales or Transfer Price in Excess of Maximum Sales Price. In the event WPAHC elects not to exercise WPAHC's Purchase Option or WPAHC's Right of First Refusal with respect to a proposed sale or transfer of title to an Owner's Lot, and the purchase price for such title to be paid to an Owner by a Qualified Buyer is in excess of the Maximum Sales Price, at closing of such transfer the selling Owner shall be entitled to a closing purchase price credit equal only to the Maximum Sales Price, and any portion of the purchase price for such title which is in excess of the Maximum Sales Price shall be credited to and paid over to WPAHC at such closing.

10. Non-Qualified Owners. In the event that title to a Lot vests by descent or other means in a Person or Persons who do not meet the definition of a Qualified Buyer or Qualified Resident, such Person or Persons shall immediately provide written notice to WPAHC of such fact and upon WPAHC's receipt of such notice, such Person or Persons shall thereafter be deemed to be a "**Non-Qualified Owner.**" Alternatively, in the event that the current Owner is determined by WPAHC to no longer meet the definition of a Qualified Buyer or Qualified Resident or to satisfy the requirements of Section 1(A) of this Article IV, WPAHC shall promptly provide written notice to the Owner of such fact and such Owner shall thereafter be deemed to be a "**Non-Qualified Owner.**" Notwithstanding anything to the contrary contained in the immediately preceding sentence, however, (A) if the current Owner satisfies all of the requirements contained in the definition of a Qualified Buyer or Qualified Resident to the satisfaction of WPAHC with the exception of the requirements to be currently working a minimum of

thirty-two (32) hours per week, or at least 1,200 hours annually for a Grand County employer as a result of retirement from active employment, and (B) if the current Owner has been the current Owner of the Lot for at least fifteen (15) continuous years and satisfied all of the requirements contained in the definition of a Qualified Buyer or Qualified Resident during that entire time, and (C) if the current Owner has reached the age of 65 years, then the Current Owner will be allowed to retain ownership of the Lot and not be classified as a Non-Qualified Owner until that Owner's death or until violation of any other requirements or conditions contained in the definition of a Qualified Buyer or Qualified Resident or to satisfy the requirements of Section 1(A) of this Article IV. Upon WPAHC's giving or receipt of the written notice described in this Section, WPAHC may exercise WPAHC's Purchase Option as provided in Paragraph 12 of this Article IV. Alternatively, WPAHC shall have WPAHC's Right of First Refusal with respect to any proposed sale or other transfer of title to the Non-Qualified Owner's Lot as provided in Paragraph 13 of this Article IV. Non-Qualified Owner(s) shall join in any sale, conveyance or transfer of title to its Lot to a Qualified Owner and shall execute any and all documents and take all other actions necessary to do so. Non-Qualified Owner(s) shall not be permitted to occupy a Lot, or rent all or any part of a Lot, except in strict compliance with Paragraph 1(H) of this Article IV, or violate any of the restrictions on ownership described in this Agreement without the written consent of WPAHC, which consent may be withheld by WPAHC in its sole discretion.

11. Inspection Upon Reasonable Cause; Notice and Hearing. In the event that WPAHC or the Town has reasonable cause to believe that a Lot Owner is violating any provision of this Agreement, WPAHC and/or the Town, through their respective authorized representative or designee, may inspect the Lot between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing the Lot Owner with no less than twenty-four (24) hours' prior written notice. In the event a violation of this Agreement is discovered, WPAHC and/or the Town shall send a notice of violation to the Lot Owner detailing the nature of the violation and allowing the Lot Owner fifteen (15) days to cure. Said notice shall state that the Lot Owner may request a hearing before the entity issuing the notice within fifteen (15) days to determine the merits of the allegations. If no hearing is requested and the violation is not cured within the fifteen (15) day period, the Lot Owner shall be considered in violation of this Agreement. If a hearing is held before the entity issuing the notice, the decision of that entity based on the record of such hearing shall be final for the purpose of determining if a violation has occurred.

12. WPAHC's Purchase Option. Upon either WPAHC's receipt from an Owner of a Notice of Intent to sell or otherwise transfer title to that Owner's Lot, or upon determination by WPAHC and/or the Town pursuant to Paragraph 11 of any breach or violation of any restriction contained in this Agreement (following notice, opportunity to cure and a hearing with respect to such breach or violation if required by the terms of this Article IV)(receipt of such Notice of Intent or determination of a breach or violation is hereinafter referred to as a "**Purchase Option Trigger Event**"), WPAHC shall have the

right and option to purchase title to the Owner's Lot ("**WPAHC's Purchase Option**") for the Maximum Sales Price or the appraised market value of the Lot, whichever is less (the "**Option Price**"). WPAHC's Purchase Option is exercisable by (A) WPAHC's delivery of notice of exercise to the subject Owner(s) within a period of fifteen (15) calendar days after the occurrence of the Purchase Option Trigger Event, and (B) closing of the sale of the Owner's Lot to WPAHC on a date designated by WPAHC within forty-five (45) days after the occurrence of the Purchase Option Trigger Event. At the time of first acquiring title to a Lot, each Owner shall execute a general warranty deed and bill of sale in such form as may be reasonably requested by WPAHC to effectuate the transfer of title to WPAHC following exercise of WPAHC's Purchase Option, if ever. Such general warranty deed and bill of sale shall be deposited in an escrow account with a Grand County title insurance company selected by WPAHC, which escrow shall permit the recordation of all instruments required to legally transfer title to the Owner's Lot to WPAHC upon WPAHC's payment of the Option Price into the escrow for the benefit of the selling Owner. Each Owner hereby covenants and agrees with WPAHC that, prior to closing of transfer of title to the Owner's Lot following WPAHC's exercise of WPAHC's Purchase Option, such selling Owner shall execute and deposit into such escrow all other instruments and other documents, including, without limitation, closing settlement statements and required federal, state and local tax forms, as may be required by the escrow agent in order to legally transfer title to the Owner's Lot to WPAHC.

13. WPAHC's Right of First Refusal. In the event WPAHC elects in its sole discretion not to exercise WPAHC's Purchase Option, WPAHC shall have a right of first refusal to acquire title to a Lot upon the terms and conditions described in this paragraph ("**WPAHC's Right of First Refusal**"). If after expiration of WPAHC's Purchase Option with respect to a particular Owner's Lot, that Owner receives a third party offer to buy that Owner's Lot, which offer the Owner intends to accept, such Owner shall provide WPAHC written notice of such offer together with a copy of the offer and any written purchase contract executed in connection therewith (WPAHC's receipt of such written notice is hereinafter referred to as a "**Right of First Refusal Trigger Event**"). WPAHC shall have the first right to purchase title to the Owner's Lot upon substantially the same terms and conditions described in the purchase offer delivered to WPAHC, and for a purchase price equal to either the purchase price stated in the Owner's written notice to WPAHC, or the Maximum Sales Price for the Lot, whichever is less (the "**Right of First Refusal Price**"). WPAHC's Right of First Refusal is exercisable by (A) WPAHC's delivery of notice of exercise to the subject Owner(s) within a period of fifteen (15) calendar days after the occurrence of the Right of First Refusal Trigger Event, and (B) closing of the sale of the Owner's Lot to WPAHC on a date designated by WPAHC within forty-five (45) days after the occurrence of the Right of First Refusal Trigger Event. At the time of first acquiring title to a Lot, each Owner shall execute a general warranty deed and bill of sale in such form as may be reasonably requested by WPAHC to effectuate the transfer of title to WPAHC following exercise of WPAHC's Right of First Refusal, if ever. Such general warranty deed and

bill of sale shall be deposited in an escrow account with a Grand County title insurance company selected by WPAHC, which escrow shall permit the recordation of all instruments required to legally transfer title to the Owner's Lot to WPAHC upon WPAHC's payment of the Right of First Refusal Price into the escrow for the benefit of the selling Owner. Each Owner hereby covenants and agrees with WPAHC that, prior to closing of transfer of title to the Owner's Lot following WPAHC's exercise of WPAHC's Right of First Refusal, such selling Owner shall execute and deposit into such escrow all other instruments and other documents, including, without limitation, closing settlement statements and required federal, state and local tax forms, as may be required by the escrow agent in order to legally transfer title to the Owner's Lot to WPAHC.

14. Termination of Restrictions Upon Foreclosure or Assignment. Subject to the terms and conditions of the Termination and Release of Deed Restrictions Upon Foreclosure (the "**Foreclosure Procedures**"), attached hereto as Exhibit C and incorporated into this Agreement by this reference, WPAHC shall release and waive its ability to enforce any and all affordable housing restrictions contained in this Article IV and in any other document relating to a Lot to which WPAHC is a party, in the event of foreclosure or the acceptance of a deed in lieu of foreclosure with respect to that Lot only. Subject to the foregoing provisions of this Paragraph, all affordable housing restrictions contained in this Article IV and in any other document relating to a Lot to which WPAHC is a party shall automatically terminate as to that Lot only upon either (A) assignment of the First Mortgage encumbering the Lot to the United States Department of Housing and Urban Development, or (B) foreclosure of the First Mortgage encumbering the Lot if the loan secured by the First Mortgage has been sold to a secondary mortgage market lender or the loan is insured by any governmental entity or agency, and the Lot Owner of such Lot has not exercised its statutory right of redemption from the foreclosure sale or otherwise reacquired, directly or indirectly, title to the Lot following the foreclosure sale.

15. WPAHC's Administration of Article IV Restrictions; No Amendment or Termination Without WPAHC's Consent. The parties acknowledge and agree that the provisions of this Article IV were and will continue to be a material part of the Town's decision to convey the Property to WPAHC, and WPAHC's decision to acquire the Property and develop the Property into an affordable residential fee simple planned community in accordance with the provisions of the Act and WPAHC's purpose to provide affordable housing opportunities in Winter Park, Colorado. Each Owner of any portion of the Property acknowledges and agrees that by taking title to a Lot, (A) the Lot and the individual Lot Owner shall be subject to all of the terms, conditions and restrictions of this Article IV and all other provisions of this Agreement, (B) each Lot Owner consents to the administration of the terms of this Article IV solely by the WPAHC, the Town or their duly authorized designee, and (C) notwithstanding any provision of this Agreement to the contrary, the provisions of this Article IV may not be amended, modified or terminated without the prior written consent of the WPAHC and

the Town, which consent WPAHC and the Town may withhold in their sole respective discretion.

## ARTICLE V GENERAL PROVISIONS

1. No Conflicting Agreement. No party to this Agreement, nor any and all successors, assigns, grantees or other parties in subsequent interest to any part or the entirety of the Property may execute any other agreement with provisions contradictory to, or in opposition with, the provisions of this Agreement, and in any event, it is agreed that the provisions of this Agreement are paramount and controlling as to the rights, obligations and limitations set forth herein and shall supersede any other provision in conflict herewith.

2. Notices. All notices and demands required or permitted under this Agreement shall be in writing, as follows: (1) by actual delivery of the notice to the party entitled to receive it; (2) by mailing such notice by certified mail, return receipt requested, in which case the notice shall be deemed to be given three days after the date of its mailing; (3) by Federal Express or any other overnight carrier, in which case the notice shall be deemed to be given as of the date it is sent; or (4) by facsimile to the facsimile number of the appropriate party indicated below, in which case it will be deemed received at the time indicated on the facsimile confirmation report. All notices that concern this Agreement shall be sent to the address or facsimile number of the appropriate party set forth below:

WPAHC:

Address: Winter Park Affordable Housing Corporation  
P.O. Box 3327  
Winter Park, Colorado 80482

Town of Winter Park:

Address: Town of Winter Park  
P.O. Box 3327  
Winter Park, Colorado 80482

To Lot Owner:

To the Lot address of the Lot Owner as set forth in the recorded deed by which the Lot Owner took title to the Lot.

3. Exhibits. All exhibits attached hereto (Exhibits A, B and C) are incorporated herein and by this reference made a part hereof.

4. Severability. Whenever possible, each provision of this Agreement and any other related document shall be interpreted in such a manner as to be valid under applicable law; but if any provision of any of the foregoing shall be determined by a court of competent jurisdiction to be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of this Agreement.

5. Binding Effect and Running with the Land. This Agreement shall be binding upon and inure to the benefit of the parties, their respective heirs, successors, assigns, legal representatives and personal representatives, and all subsequent owners of the Property or any interest therein, and shall run with title to the Property. WPAHC agrees that this Agreement does not constitute an unreasonable restraint on alienation of the Property or interests therein and that any and all requirements of the laws of the State of Colorado to be satisfied in order for the provisions of this Agreement to constitute a restrictive covenant running with title to the land shall be deemed to be satisfied in full, and that any requirements of privity of estate are intended to be satisfied, or in the alternative, that an equitable servitude has been created to ensure that the covenants, conditions and restrictions set forth herein run with title to the Property. Each and every contract, deed or other instrument hereafter executed conveying the Property or any portion thereof or interest therein shall expressly provide that such conveyance is subject to this Agreement; provided, however, that the covenants, conditions and restrictions contained herein shall survive and be effective as to successors and/or assigns of all or any portion of the Property, regardless whether such contract, deed or other instrument hereafter executed conveying the Property or any portion thereof or interest therein provides that such conveyance is subject to this Agreement.

6. Attorneys' Fees. If any action is brought by either party to this Agreement concerning the enforcement, interpretation or construction of this Agreement, the prevailing party, either at trial or upon appeal, shall be awarded its reasonable attorneys' fees and costs, including expert witness' fees, incurred in the prosecution or defense of such action.

7. Applicable Law; Venue. This Agreement shall be governed by and construed and interpreted in all respects in accordance with the laws of the State of Colorado. Venue shall only be proper in the District Court of Grand County, Colorado.

8. Successors. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the parties.

9. Section Headings. Article and Section headings within this Agreement are inserted solely for convenience or reference, and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

10. Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Agreement shall be valid against any party hereto except on the basis of a written instrument executed by the parties to this Agreement. However, the party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition.

11. Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.

12. Further Actions. The parties to this Agreement agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Agreement or any agreement or document relating hereto or entered into in connection herewith.

13. Appropriation of Funds. Notwithstanding anything to the contrary contained herein, the payment of all direct and indirect obligations hereunder, in fiscal years subsequent to the current fiscal year, are contingent upon funds for this Agreement being duly appropriated and budgeted by WPAHC and/or the Town. If funds for this Agreement are not so appropriated and budgeted in any year subsequent to the fiscal year of execution of this Agreement by WPAHC or the Town, WPAHC and/or the Town may terminate that affected portion of this Agreement. This Agreement is intended to be in compliance with the provisions of Article 25 of Title 30 of the Colorado Revised Statutes, and with the Local Government Budget Law (C.R.S. Section 29-1-101 et seq.).

14. Governmental Immunity. Neither party hereto intends to waive, by any provision of this Agreement, the monetary limits or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101 et seq., C.R.S., as amended from time to time.

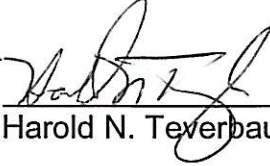
15. No Benefit to Inure to Third Parties. This Agreement does not and shall not be deemed to confer upon or grant to any third party, including Lot Owners, any right to claim damages or to bring any lawsuit, action or other proceedings against either of the original parties hereto because of any breach or alleged breach hereof, or because of any terms, covenants, agreements or conditions contained herein.

16. Perpetuities Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Agreement shall be unlawful or void for violation of: (a) the rule against perpetuities or some analogous





**TOWN OF WINTER PARK,**  
a Colorado home rule municipal corporation

By:   
Harold N. Teverbaugh, Mayor

STATE OF COLORADO    )  
  ) ss:  
COUNTY OF GRAND     )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of FEBRUARY, 2006, by Harold N. Teverbaugh, as Mayor of **TOWN OF WINTER PARK**, a Colorado home rule municipal corporation, on behalf of the corporation.

Witness my hand and official seal.

  
Notary Public

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



My Commission Expires 01-19-2009

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

LOT 1, DIMMIT EXEMPTION, ACCORDING TO THE FINAL PLAT RECORDED AT  
RECEPTION NO. 97004438 OF THE GRAND COUNTY, COLORADO REAL PROPERTY  
RECORDS.

EXHIBIT "A"

1

**EXHIBIT B**  
**LEGAL DESCRIPTION OF THE PROPERTY**

THAT PORTION OF LOT 1, DIMMIT EXEMPTION, ACCORDING TO THE FINAL PLAT RECORDED AT RECEPTION NO. 97004438 OF THE GRAND COUNTY, COLORADO REAL PROPERTY RECORDS, WHICH WILL BE SUBDIVIDED BY WPAHC PURSUANT TO THE TERMS OF THE PURCHASE CONTRACT FOLLOWING RECORDATION OF THIS AGREEMENT, INTO LOTS 1 THROUGH 10, INCLUSIVE, AND TRACTS A, B-1 AND B-2, HIDEAWAY JUNCTION SUBDIVISION FILING NO. 1, TOWN OF WINTER PARK, GRAND COUNTY, COLORADO.

EXHIBIT "B"

1

## EXHIBIT "C"

### TERMINATION AND RELEASE OF DEED RESTRICTIONS UPON FORECLOSURE

In the event of a foreclosure by a First Mortgagee on a Lot or Lots within the planned community to be created on the Property by WPAHC as provided in the Agreement, and provided that the Lot Owner of each such Lot or Lots does not exercise its statutory right of redemption from the foreclosure sale or otherwise reacquire, directly or indirectly, title to the Lot following such foreclosure sale, then any and all affordable housing restrictions relating to the Lot or Lots subject to the foreclosure which are contained herein, in Paragraph 14 of Article IV of the Agreement, and in any other document relating to that Lot or Lots to which WPAHC is a party (collectively the "**Affordable Housing Restrictions**"), shall be terminated and released effective as of the date of the foreclosure sale, subject to Paragraph 14 of Article IV of the Agreement to which this Exhibit C is attached.

Termination of the Affordable Housing Restrictions on the Lot or Lots subject to the foreclosure shall be as follows:

I. Release of Deed Restrictions. In the event that the First Mortgagee, or its transferee or assignee who is not the Lot Owner, as the case may be, is issued a public trustee's deed, the First Mortgagee, or its transferee or assignee who is not the Lot Owner, as the case may be, may make written demand to WPAHC that it terminate and release the Affordable Housing Restrictions as applied to the Lot or Lots subject to the foreclosure, subject to Paragraph 14 of Article IV of the Agreement. Such demand shall be sent by certified mail, return receipt requested, and addressed to WPAHC as described in Section I hereof. Upon receipt of such demand, WPAHC shall cause to be recorded in the records of the Clerk and Recorder of Grand County a full and complete release of the Affordable Housing Restrictions as to the Lot or Lots subject to the foreclosure, subject to Paragraph 14 of Article IV of the Agreement. Such release shall be placed of record within fourteen (14) days after demand therefor by the First Mortgagee, or its transferee or assignee who is not the Lot Owner, as the case may be, and a certified copy of the release shall be mailed to the First Mortgagee, or its transferee or assignee, as the case may be, by WPAHC upon its recordation. Notwithstanding any provision to the contrary in this paragraph IV, all affordable housing restrictions contained in this Article IV and in any other document relating to a Lot to which WPAHC is a party shall automatically terminate without written demand as to that Lot only upon either (A) assignment of the First Mortgage encumbering the Lot to the United States Department of Housing and Urban Development, or (B) foreclosure of the First Mortgage encumbering the Lot if the loan secured by the First Mortgage has been sold to a secondary mortgage market lender or the loan is insured by any governmental entity or agency, and the Lot Owner of such Lot has not exercised its statutory right of redemption from the foreclosure sale or otherwise reacquired, directly or

EXHIBIT "C"

indirectly, title to the Lot following the foreclosure sale. In the event of such automatic termination, WPAHC shall cause to be recorded in the records of the Clerk and Recorder of Grand County a full and complete release of the Affordable Housing Restrictions as to the Lot or Lots subject to the assignment or foreclosure as aforesaid.

II. Notices. Unless otherwise specifically described herein, all notices provided or hereunder shall be deemed given and received 48 hours after the same are deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the applicable party at the address indicated herein.

III. Successors and Assigns. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to be binding upon the heirs, successors and assigns of the parties bound by this Exhibit C.

IV. Modifications. The parties bound by this Exhibit C agree that any modification to this Exhibit C shall be effective only when made by writings signed by WPAHC and the First Mortgagee and recorded with the Clerk and Recorder of Grand County, Colorado.