

If members of the public wish to attend the workshop digitally the link is below in yellow.

WINTER PARK HOUSING AUTHORITY AGENDA

Tuesday, July 20, 2021 - 4:15 p.m.



AGENDA

1. Meeting Call To Order
2. Roll Call
3. Housing Authority Meeting
 - a. Public Comment
4. Action Items
 - a. Resolution 7, A Resolution Establishing a Public Place for the Posting of Meeting Notices as Required by the Colorado Open Meetings Law
 - b. Resolution 8, A Resolution Appointing an Executive Director to the Winter Park Housing Authority
 - c. Resolution 9, A Resolution Making Findings Regarding Fireside Creek Apartments and Approving an Operating Agreement for Winter Park Partners, LLC
5. Housing Authority Items for Discussion
 - a. Winter Park Partners Project Update

You are invited to a Zoom webinar.

When: July 20, 2021 04:15 PM Mountain Time (US and Canada)

Topic: Town of Winter Park Regular Council Meeting

Register in advance for this webinar:

https://us02web.zoom.us/webinar/register/WN_DWzbonYxRzOczSD94EVv3w





MEMO

TO Winter Park Housing Authority
FROM Alisha Janes, Assistant Town Manager
CC Keith Riesberg
DATE July 16, 2021
RE Official Posting Place for Meeting Agendas

Background:

Since this is the first meeting of the Winter Park Housing Authority this year, it is necessary to officially designate a posting place for meeting agendas. This is required by state statute for all local government entities.

Analysis:

The proposed resolution lists both a physical posting place and a web address that will be shared with the Department of Local affairs and added to their website as well. Both a web posting, and a physical posting are required under the most recent version of this state statute. The state regulation includes language that allows for the possibility of technical issues with web posting.

Recommendation:

Staff recommends approval of Resolution 7, establishing a public place for the posting of meeting notices as required by the Colorado open meetings law.

Should the Winter Park Housing Authority wish to approve the resolution, the following motion should be made:

I move to approve Resolution 7, establishing a public place for the posting of meeting notices as required by the Colorado open meetings law.

Should the Winter Park Housing Authority wish to deny the proposed resolution, the following motion should be made:

I move to deny Resolution 7, establishing a public place for the posting of meeting notices as required by the Colorado open meetings law.

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

WINTER PARK HOUSING AUTHORITY

RESOLUTION NO. 7
SERIES OF 2021

A RESOLUTION ESTABLISHING A PUBLIC PLACE FOR THE POSTING OF MEETING
NOTICES AS REQUIRED BY THE COLORADO OPEN MEETINGS LAW

WHEREAS, pursuant to the Colorado Open Meetings Law, C. R. S. § 24-6-401, *et seq.*, and specifically C. R. S. § 24-6-402(2)(c), the Winter Park Housing Authority must, at its first regular meeting of each year, designate a public place within the jurisdictional boundaries of the Authority where meeting notices will be posted.

NOW THEREFORE, BE IT RESOLVED by the Winter Park Housing Authority board of commissioners as follows:

Section 1. The designated public places for the posting of meeting notices shall be:

- A. The front door of the Town Hall, located at 50 Vasquez Road, Winter Park, Colorado; and
- B. Town of Winter Park official website at www.wpgov.com.

Section 2. The Authority Secretary shall be responsible for posting the required notices no later than 24 hours prior to each meeting. Meeting notices shall include specific agenda information where possible.

Section 3: The Authority shall provide the official website address to the State Department of Local Affairs for inclusion in the Department's inventory.

APPROVED AND PASSED this 20th day of July 20, 2021 by a vote of _____ to _____.

WINTER PARK HOUSING AUTHORITY

Nick Kutrumbos, Chair

ATTEST:

Alisha Janes, Executive Director



MEMO

TO Winter Park Housing Authority
FROM Alisha Janes, Assistant Town Manager
CC Keith Riesberg
DATE July 16, 2021
RE Appointing an Executive Director

Background:

Legal Counsel has recommended that the Housing Authority designate an Executive Director in order to comply with the adopted bylaws. No Executive Director has been previously appointed.

Analysis:

The appointment does not create a new position with the Town of Winter Park and no additional pay or duties are assigned. This administrative action designates existing staff in order to properly carry out the work of the Winter Park Housing Authority as outlined in the adopted bylaws.

Recommendation:

Staff recommends approval of Resolution 8, appointing an Executive Director to the Winter Park Housing Authority.

Should the Winter Park Housing Authority wish to approve the resolution, the following motion should be made:

I move to approve Resolution 8, appointing an Executive Director to the Winter Park Housing Authority.

Should the Winter Park Housing Authority wish to deny the proposed resolution, the following motion should be made:

I move to deny Resolution 8, appointing an Executive Director to the Winter Park Housing Authority.

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

WINTER PARK HOUSING AUTHORITY

RESOLUTION NO. 8
SERIES OF 2021

A RESOLUTION APPOINTING AN EXECUTIVE DIRECTOR TO THE WINTER PARK
HOUSING AUTHORITY

WHEREAS, the Winter Park Housing Authority Bylaws Art. II, Sec. 2, states that the Executive Director of the Housing Authority shall serve as the Secretary of the Authority;

WHEREAS, the Winter Park Housing Authority wishes to recognize and appoint an Executive Director;

WHEREAS, Assistant Town Manager, Alisha Janes is qualified to serve the Winter Park Housing Authority Board in this capacity.

NOW THEREFORE, BE IT RESOLVED by the Winter Park Housing Authority board of commissioners as follows:

Section 1. Alisha Janes is appointed and shall serve as Executive Director of the Winter Park Housing Authority

APPROVED AND PASSED this 20th day of July 20, 2021 by a vote of _____ to ____.

WINTER PARK HOUSING AUTHORITY

Nick Kutrumbos, Chair

ATTEST:

Alisha Janes, Executive Director



MEMO

TO Winter Park Housing Authority
FROM Alisha Janes, Assistant Town Manager
CC Keith Riesberg
DATE July 16, 2021
RE Fractional Ownership of Fireside Creek Apartments

Background:

The Town of Winter Park has been working with Winter Park Partners, LLC since 2019 to develop workforce housing at the Fireside Creek site. Staff has worked with legal counsel and Winter Park Partners on the development of the attached operating agreement that would establish fractional ownership of the Fireside Creek Apartments by the Winter Park Housing Authority. The proposed resolution acknowledges the operating agreement establishing fractional ownership and makes findings that allow the Housing Authority to certify that Fireside Creek Apartments is eligible for tax abatement as an affordable housing development.

Analysis:

Under state statute, affordable housing projects that are partially owned by a Housing Authority are exempted from sales and property taxes. State statute also authorizes local Housing Authorities to make findings establishing local definitions for affordable housing based on the needs of the community and benefits to lower-income individuals. The findings outlined in the resolution certify that the Fireside Creek Apartments, serving individuals between 80%-120% AMI, provides a community benefit to lower-income individuals and is based on a proven need of affordable housing in the community. This need is shown by both the recent Mountain Migration Study, Winter Park's 2015 Housing Needs Assessment, and a prepared market analysis specifically for the Fireside Creek Apartment project.

The development of Fireside Creek Apartments is not financially feasible without the tax abatement made possible through Housing Authority Fractional Ownership.

Recommendation:

Staff recommends approval of Resolution 9 making findings regarding Fireside Creek Apartments and approving an operating agreement for Winter Park Partners, LLC.



Should the Winter Park Housing Authority wish to approve the resolution, the following motion should be made:

I move to approve Resolution 9 making findings regarding Fireside Creek Apartments and approving an operating agreement for Winter Park Partners, LLC.

Should the Winter Park Housing Authority wish to deny the proposed resolution, the following motion should be made:

I move to deny Resolution 9 making findings regarding Fireside Creek Apartments and approving an operating agreement for Winter Park Partners, LLC.

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

WINTER PARK HOUSING AUTHORITY

RESOLUTION NO. 9
SERIES OF 2021

A RESOLUTION MAKING FINDINGS REGARDING FIRESIDE CREEK APARTMENTS
AND APPROVING AN OPERATING AGREEMENT FOR WINTER PARK PARTNERS, LLC

WHEREAS, the Town of Winter Park (the "Town") is the owner of certain real property more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, on November 5, 2020, the Town entered into a Disposition and Development Agreement with Winter Park Partners, LLC, (the "Agreement") granting Winter Park Partners, LLC, the right to design, develop, build, own and operate a multi-family rental housing development on the Property known as the Fireside Creek Apartments (the "Project");

WHEREAS, design and construction of the Project has been delayed due to unforeseen conditions and certain permitting and land use decisions have reshaped the Project such that it now contains only 50 deed-restricted apartment units (down from 70);

WHEREAS, to remain viable, the Project requires additional support and participation from the Town and the Winter Park Housing Authority (the "WPHA");

WHEREAS, because the Property is currently owned by the Town, the Property is exempt from property taxation;

WHEREAS, Winter Park Partners, LLC, seeks to continue the existing property tax exemption for the Property;

WHEREAS, to continue the property tax exemption from the Grand County Assessor, the WPHA must find that the Project substantially benefits persons of low income as determined by the WPHA;

WHEREAS, to continue the property tax exemption from the Grand County Assessor, the WPHA will also accept a nominal ownership interest in Winter Park Partners, LLC, which entity will serve as the master lessee of the Property;

WHEREAS, for the WPHA to accept an ownership interest in Winter Park Partners, LLC the WPHA must approve the Operating Agreement of Winter Park Partners, LLC; and

WHEREAS, by and through the operating agreement, WPHA is recognized as a 1% owner of Winter Park Partners, LLC.

NOW THEREFORE, BE IT RESOLVED by the Winter Park Housing Authority that:

Section 1. The WPHA hereby finds and determines, based on the evidence presented at the July 20, 2021, meeting of the WPHA Commissioners, that the Project substantially benefits persons of low income for and including, without limitation, the following reasons:

a. The recently released Mountain Migration Report, which surveyed almost 5,000 respondents in Grand, Summit, Routt, Pitkin, San Miguel and Eagle, highlights the dire nature of the housing situation. According to the survey, gross sales volume reached nearly \$1 billion in Grand County last year, up 39% from 2019 to 2020, while total transactions increased by 15%. The increased demand from part-time owners and other interests means Grand and other counties are losing housing inventory, according to the Mountain Migration Report. The report said that in 2020, less than one in four property sales in Grand went to county residents. Notably, newcomers and part-time residents are coming to the six surveyed counties with higher average incomes compared to full-time residents. More than 30% of newcomers and 50% of part-time residents make more than \$300,000 in annual gross household income as compared to just over 10% of Grand County residents.

b. Most homes in the area are priced significantly out-of-reach for the local workforce. Already in 2015, an average income of over \$163,000, or 260% AMI, was required to buy a single-family home. Additionally, Grand County is experiencing a record-breaking real-estate market, with the average sale price for a single-family home now over \$700,000 and the average condominium sale price over \$400,000.

c. The Town's 2015 housing needs assessment estimated that, at the time, 22% of the local workforce were housed within the Town of Winter Park. In order to merely keep pace with a growing population and workforce, the study found a need for an additional 40 units of attainable housing or 160 additional units to house 30% of the workforce. Since the 2015 housing needs assessment the Town has added only 38 attainable housing units. Additionally no units in the 100%-120% AMI range have been added.

Section 2. The WPHA hereby finds that it is in the best interest of the public health, safety and welfare for the WPHA to accept an ownership interest in Winter Park Partners, LLC.

Section 3. Based on the foregoing findings, the WPHA hereby approves the Operating Agreement for Winter Park Partners, LLC in substantially the form attached hereto, subject to final approval by the WPHA's General Counsel, and upon such approval, the Chair is authorized to execute such Operating Agreement.

APPROVED AND PASSED this 20th day of July, 2021 by a vote of ___ to ___.

WINTER PARK HOUSING AUTHORITY

Nick Kutrumbos, Chair

ATTEST:

Alisha Janes, Executive Director

**OPERATING AGREEMENT
OF
WINTER PARK PARTNERS, LLC**

OPERATING AGREEMENT (hereinafter “*Agreement*”) of **WINTER PARK PARTNERS, LLC**, a Colorado limited liability company (“*Company*”), is made and entered into as of March 11, 2019, (“*Effective Date*”), by, between and among **MRE CAPITAL INVESTMENTS, LLC**, a Missouri limited liability company (“*MRE* ”), **CONSOLIDATED DEVELOPMENT PARTNERS, LLC**, a Missouri limited liability company (“*Consolidated*”), **CWHP, LLC**, a Colorado limited liability company (“*CWHP*”), **STREAMLINE EQUITY, LLC**, a Kansas limited liability company (“*Streamline*”) and **WINTER PARK HOUSING AUTHORITY**, a Colorado housing authority (“*WPHA*”) (each a “*Member*” and collectively the “*Members*”).

WHEREAS, *Company* was formed as a Colorado limited liability company pursuant to a Certificate of Formation that was filed on March 11, 2019 in the Office of the Secretary of State of the State of Colorado;

WHEREAS, the parties hereto desire to enter into this Agreement to provide for (i) the continuation of *Company*; and (ii) a restatement of the rights, obligations and duties of *Members* to each other and to *Company*; and

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the parties hereto agree and certify that this Agreement is stated in its entirety as follows:

ARTICLE I--FORMATION

1.1. Formation. The *Members* have formed and operated a limited liability company pursuant to the laws of the State of Colorado, including the Colorado Limited Liability Act (“*Act*”), as amended from time to time. However, unless the Act expressly provides that the Act supersedes any provision contained in this Agreement, the terms and conditions of this Agreement shall apply.

1.2. Ratification. The *Members* hereby ratify the Certificate of Formation filed in the Office of the Secretary of State for the State of Colorado on March 11, 2019 (“*Filing Date*”), and shall take such further action as shall be appropriate to comply with the legal requirements for the formation and operation of a limited liability company in all states where *Company* does business.

1.3. Meetings. Meetings of the *Members* may be called upon request of *Members* holding not less than 60% of all interests in the *Company*. The call shall state the nature of the business to be transacted. Notice of any such meeting shall be given to all *Members* not less than ten (10) days nor more than sixty (60) days prior to the date of such meeting. *Members* may vote in person or by proxy. The *Members* also may make decisions without holding a meeting, by written consent of a majority of the *Members*.

1.4. Deadlock. If at two successive meetings, the *Members* are unable to reach a decision by the required vote regarding a Major Action (a “*Deadlock*”), the *Deadlock* shall be resolved by tenant-in-common in the Project, Axiom Properties, LLC (“*Axiom*”). The decision of *Axiom* shall be final and binding on the *Members*.

1.5. Liability of Members. No *Member* shall be liable as such for the liabilities of *Company*. The failure of *Company* to observe any formalities or requirements relating to the exercise of its powers or

management of its business or affairs under this Agreement or the Act shall not be grounds for imposing personal liability on the Members for liabilities of Company.

1.6. Membership Interest is Personal Property. A Member's "Membership Interest" (as herein defined) shall be personal property for all purposes. All real or other property owned by Company shall be deemed owned by Company as an entity, and no Member individually shall have any ownership in such property. All references to the "Code" refer to the Internal Revenue Code of 1986, as amended. All references to the "Regulations" refer to the United States Department of Treasury Regulations promulgated under the Code.

1.7. Amendments. This Operating Agreement may be amended by the Members by written vote of a majority of Members.

ARTICLE II--NAME

The name of Company is **WINTER PARK PARTNERS, LLC**. The business and affairs of Company shall be conducted solely under such name as may be amended by Members at any time.

ARTICLE III--PURPOSES

The business of Company shall be to:

(i) to indirectly invest in the partial ownership of real estate located in Winter Park, Colorado, and the construction, operation and maintenance of improvements thereon ("*Project*");

(ii) to receive profits and losses, net cash flow, and other economic benefits and assets inuring to the ownership and operation of the Project; and

(iii) to transact any or all lawful business for which a limited liability company may be organized under Colorado law; and all things necessary, advisable, or expedient in connection with or incidental thereto.

ARTICLE IV--PRINCIPAL OFFICE, REGISTERED OFFICE, AND REGISTERED AGENT

4.1. Principal Office. The principal office of Company shall be at 650 South Cherry Street, Suite 1400, Denver, Colorado 80246, or such other place or places as may hereafter be approved by the Managers. Company may maintain additional offices, either within or outside the State of Colorado, as the Managers deem necessary.

4.2. Registered Office. The initial registered office of Company is located at 650 South Cherry Street, Suite 1400, Denver, Colorado 80246, and the registered agent at such office is Consolidated Development Partners, LLC. The registered office and agent of Company may be changed by the Managers from time to time, as they deem necessary.

ARTICLE V--TERM OF COMPANY

Company was effective on the Filing Date and shall continue into perpetuity unless Company shall be sooner dissolved and its affairs wound up in accordance with the Act and this Agreement.

ARTICLE VI--ACCOUNTING METHODS, RECORDS AND FISCAL YEAR

6.1. Books and Records. Company shall keep its accounting records and shall report its income for income tax purposes by such method of accounting as shall properly reflect the profits and losses of Company as approved by a majority of Managers. Such accounting shall be in accordance with generally accepted accounting principles. The books and records of Company, as required by the Act, shall be maintained at all times at the principal office of Company, and each Member shall have the right, during ordinary business hours, to inspect and copy such books and records. Each Member shall bear all expenses incurred in any examination made for such Member's account. The fiscal year of Company shall be the calendar year.

6.2. Bank Accounts. The bank accounts of Company shall be maintained as required by any lender of Project Owner ("**Lender**") or as the Managers shall determine. Withdrawals shall be made only in the regular course of Company business on such signature(s) as the Managers may determine.

6.3. Accountants. The Managers shall engage accountants to prepare for execution all tax returns of Company and shall prepare all annual financial reports to Members.

6.4. Federal Income Tax Elections. All elections made by Company under the Code shall be made by the Managers.

6.5. Information to Members. For each year of Company's existence, Company shall deliver to the Members within sixty (60) days after the end of the fiscal year, copies of all forms, financial statements and information, including, but not limited to, year-end financial statements and profit and loss statements, that are required to produce all forms to be filed with the Internal Revenue Service for the taxable year for the Members, including, but not limited to, its Schedule K-1. Within ninety (90) days after the end of each fiscal year of the Company, the Managers shall cause to be prepared and distributed to the Members a copy of all financial reporting delivered to any lender or, if no such reporting is required, a report containing:

- (a) a Company balance sheet, which may be unaudited;
- (b) a statement of Company income and expenses for the year then ended, which may be unaudited; and
- (c) a statement of Company cash flows, reserves, and capital proceeds for the year then ended, which may be unaudited.

ARTICLE VII--CAPITAL CONTRIBUTIONS

7.1. Initial Capital Contributions. Each Member shall make the capital contribution described herein and/or shall perform that Member's commitment specified herein (each a "**Capital Contribution**"). Each new Member shall make a Capital Contribution as may be prescribed by a majority of the then-existing Members. The then-existing Members shall also determine the value of such additional Member's Capital Contribution as well as the time that such Capital Contribution is to be made.

7.2. Additional Capital Contributions. Members shall make additional Capital Contributions from time to time as required by the vote of Members holding a majority of the Membership Interest of the Company. If a Member fails to meet a Capital Contribution requirement, any capital needs of the company may be provided by any other Member in the form of a loan. Such additional funds shall be considered a loan to the Company pursuant to Section 7.8 hereunder and shall not increase such lending Member's capital account nor dilute the Membership Interest of any other Member.

7.3. Capital Contribution of MRE. Upon execution and delivery of this Agreement, each Member shall make the following Capital Contribution and shall thereupon be admitted as a Member of Company:

| <u>NAME</u> | <u>CAPITAL</u> | <u>OWNERSHIP INTEREST</u> |
|--------------|----------------|---------------------------|
| MRE | \$47.00 | 47.00% |
| Consolidated | \$31.30 | 31.30% |
| CWHP | \$15.70 | 15.70% |
| Streamline | \$5.00 | 5.00% |
| WPHA | \$1.00 | 1.00% |

7.4. Capital Contributions of Company to Project. Company shall make Capital Contributions to the Project as the Managers shall determine. A Manager shall have no personal liability for the payment or repayment of any Capital Contribution of a Member.

7.5. Interest on and Return of Capital. No Member shall be entitled to any interest on its capital account or on its contributions to the capital of Company, nor, except as otherwise specifically provided herein, shall any Member have the right to demand or to receive the return of all or any part of its capital account or of its contributions to the capital of Company.

7.6. Capital Accounts. A separate capital account shall be maintained for each Member, consisting of the value of its Capital Contribution to the capital of Company, plus the agreed value of any property which it contributes hereafter to Company, plus the aggregate of any Additional Capital Contributions which it contributes to Company pursuant to Section 7.4 hereof, plus its cumulative allocable share of Company’s profits pursuant to Article VIII hereof, and decreased by its cumulative allocable share of Company’s losses pursuant to Article VIII hereof, and further decreased by the amount of any cash and the agreed value of any Company property hereafter distributed to him or her pursuant to Articles IX and XIV hereof (“*Capital Account*”).

7.7. Compliance With 26 U.S.C. § 704. The provisions of this Article VII as they relate to the maintenance of capital accounts are intended, and shall be construed, and if necessary modified, to cause the allocation of profits, losses, income, gain and credits pursuant to Articles VII and VIII to have substantial economic effect under the regulations promulgated under 26 U.S.C. § 704. Notwithstanding anything herein to the contrary, however, this Agreement shall not be construed as creating a deficit restoration obligation or otherwise personally obligating any Member to make a capital contribution in excess of the Member’s initial Capital Contribution.

7.8. Loans. Notwithstanding anything else contained herein, a Member shall be entitled to make loans to Company upon the prior written consent of all Managers. Such loans shall be made on terms approved by the Managers and shall be evidenced by a written promissory note and other appropriate loan documents. Such loans shall not increase such lending Member’s capital account.

ARTICLE VIII--ALLOCATIONS

8.1 Sharing Ratios. A Member’s economic interest in the capital, profits, and losses of Company, and distributions thereof, is hereinafter sometimes referred to as the Member’s “Sharing Ratio”. As of the Effective Date, the Sharing Ratios of Members shall be as follows:

| <u>Name of Member</u> | <u>Sharing Ratio</u> |
|-----------------------|----------------------|
| MRE | 47.00% |
| Consolidated | 31.30% |
| CWHP | 15.70% |
| Streamline | 5.00% |
| WPHA | <u>1.00%</u> |
| TOTAL | 100.00% |

8.2. Membership Interests. “**Membership Interest**” shall mean the entire ownership interest in the Member’s capital account, income, gains, losses, deductions, tax credits, distributions and Company assets, and all other rights and obligations of such Member under this Agreement.

8.3. Allocations of Profits and Losses. Except as may be required under 26 U.S.C. §704(c), for accounting and federal and state income tax purposes, all profits and losses of Company (including capital gains and losses attributable to the sale or disposition of all or substantially all of the assets of Company), and all income, losses, deductions, and credits, with respect to each fiscal year of Company, shall be allocated among Members in proportion to the Sharing Ratios of Members with respect to such fiscal year.

8.4. Special Allocation Rules.

(a) Varying Sharing Ratios. For purposes of determining the profits, losses or any other items allocated to any period, profits, losses and any other such items shall be determined on a daily, monthly or other basis, as determined by the Managers using any permissible methods under Code Section 706 and the Regulations thereunder.

(b) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), (5), or (6) of the Regulations, which create or increase an Adjusted Capital Account Deficit of such Member, then items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year and, if necessary, for subsequent years) shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit as quickly as possible. This Section 8.7(b) is intended to be a “qualified income offset” in compliance with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations, and shall be interpreted consistently therewith. For purposes of this Section, an “*Adjusted Capital Account Deficit*” for a Member means the deficit balance, if any, in such Member’s Capital Account as of the end of the relevant taxable year, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or the Act, or is deemed obligated to restore pursuant to Sections 1.704-2(g) and (i) of the Regulations; and

(ii) Debit to such Capital Account the items described in Sections 1.704(b)(2)(ii)(d)(4), (5), and (6) of the Regulations.

(c) Deficit Capital Account and Share of Minimum Gain. If the balance in the Capital Account of a Member is less than zero, net loss and deductions shall be allocated to such Member only to the extent that (i) the sum of the minimum gain of such Member (determined in accordance with the provisions of Section 1.704-2(g) of the Regulations) plus the amount of its negative Capital

Account that such Member has agreed to restore exceeds (ii) the deficit balance in the Capital Account of such Member (determined at the end of such tax year to which the allocation relates).

(d) Minimum Gain Chargeback. Notwithstanding any other provision of this Article VIII, if there is a net decrease in Company's minimum gain as defined in Section 1.704-2(d) of the Regulations during a taxable year of Company, then, the Capital Accounts of each Member shall be allocated items of income (including gross income) and gain for such year (and if necessary for subsequent years) equal to that Member's share of the net decrease in Company minimum gain. This Section is intended to comply with the minimum gain chargeback require of Section 1.704.2 of the Regulations and shall be interpreted consistently therewith. If in any taxable year that Company has a net decrease in Company's minimum gain, if the minimum gain chargeback requirement would cause a distortion in the economic arrangement among Members and it is not expected that Company will have sufficient other income to correct that distortion, Company may in its discretion seek to have the Internal Revenue Service waive the minimum gain chargeback requirement in accordance with Section 1.704-2(f)(4) of the Regulations.

(e) Deductions Attributed to Nonrecourse Liabilities. For any taxable year in which Section 8.7(g) does not apply, all Company deductions attributed to any nonrecourse liabilities of Company (including deductions or losses allocated from Project Owner that are attributable to deductions attributed to any nonrecourse liabilities of Project Owner) shall be allocated 100% to MRE.

(f) Member's Share of Excess Nonrecourse Liabilities. The Members agree that Members' shares of the excess nonrecourse liabilities of Company under Section 1.752-3(a)(3) of the Regulations shall be allocated in accordance with the manner in which it is reasonably expected that the deductions attributable to those nonrecourse liabilities will be allocated.

(g) Nonrecourse Deductions. Beginning in the first taxable year in which there are allocations of "nonrecourse deductions" (as described in Section 1.704-2(b) of the Regulations) such deductions shall be allocated to Members in a manner specified in Section 1.704-2(e)(2) of the Regulations.

(h) Member Nonrecourse Deductions. Items of Company loss, deduction, and expenditures described in Section 705(a)(2)(B) of the Code which are attributable to any nonrecourse debt of Company and are characterized as partner nonrecourse deductions under Section 1.704-2(i) of the Regulations shall be allocated to Members' Capital Accounts in accordance with said Section 1.704-2(i) of the Regulations.

ARTICLE IX--DISTRIBUTIONS

9.1. In General. For purposes of this Agreement, "Net Cash Flow" shall be the net income of the Company determined in accordance with the cash method of accounting applied on a consistent basis (including profits and losses arising from the sale or other disposition of less than all or substantially all of the assets of Company and including the amount derived from the refinancing of any Company indebtedness), plus depreciation and other non-cash charges deducted in determining such net income, and minus (i) principal payments on any Project loans ("Loans") and all other mortgages and other secured and unsecured indebtedness, (ii) property replacement reserves and expenditures when made from other than such reserves, (iii) any other cash expenditures (except distributions to Members) which have not yet been deducted in determining the net income of Company, and (iv) any amount required to maintain a reasonable Working Capital Reserve pursuant to Section 9.2 hereof.

9.2. Working Capital Reserve. Company may establish and maintain a Working Capital Reserve. In order to maximize distributions of Net Cash Flow to Members, additions to Working Capital Reserve shall be made out of available Net Cash Flow for a fiscal year only to the extent that such additions are necessary in order for Company to pay its anticipated cash obligations for the succeeding year without being required to liquidate its assets or incur debt, and to provide necessary reserves for the purchase, repair and maintenance of Company assets and the retirement of Company debt. Further, amounts standing in any existing Working Capital Reserve shall be disbursed therefrom at the end of a fiscal year unless retention of such amounts is necessary for the reasons indicated in this Section 9.2.

9.3. Option to Withhold Distributions. Notwithstanding Section 9.1 hereof, if approved by a majority of Managers, Company may retain for investment or other Company purposes all or any portion of the Net Cash Flow of Company otherwise available for distribution to Members.

9.4. Distributions of Property. Any distribution by Company to Members under any provision of this Agreement shall be made exclusively in cash unless a distribution of property is approved by a majority of Members. In the event of any property distribution, the value of all Company assets shall be restated on the books of Company to their respective fair market values, and the capital accounts of Members shall be restated to reflect such adjustment in the book value of such assets. For this purpose, such restated accounts shall be determined as if Company sold all of its assets for their respective fair market values, and the resulting gain or loss was charged or credited to the capital accounts of Members pursuant to Section 7.6 hereof. Following such adjustment to Company's books, the restated book value of the assets distributed to Members shall be charged to the adjusted capital accounts of Members receiving such distributions.

9.5. Priority of Distributions. Prior to termination, Net Cash Flow, as determined by the Managers, shall be distributed monthly as follows:

- (a) First, to Members, in proportion to and to the extent of accrued and unpaid interest on loans owing to such Members pursuant to Section 7.8;
- (b) Second, to Members, in proportion to and to the extent of unpaid principal on loans owing to such Members pursuant to Section 7.8;
- (c) Third, to Members in proportion to their Sharing Ratio.

ARTICLE X--ADMINISTRATIVE FEES AND SALARIES TO MEMBERS AND MANAGERS

No Member or Manager shall receive any salary, fee or draw for services rendered to or on behalf of the Company unless unanimously approved by all the Managers.

ARTICLE XI--MANAGERS

11.1 Authority of Managers. The daily business and affairs of Company shall be managed by the *Managers*. There Managers shall be appointed by MRE and Consolidated, which shall each appoint two Managers. The initial Managers appointed by MRE shall be Jacob Mooney and Daniel Sailler, III. The initial Managers appointed by Consolidated shall be Jim Potter and George Birt. A Manager shall serve in such capacity until the first to occur (the "Removal Event") of (i) such Manager's resignation as such, delivered to the Member who appointed such Manager; or (ii) the vote of the Member who appointed such Manager to remove such Manager. Upon the Removal Event, a new Manager may be selected by the applicable Member. Managers shall act by majority vote.

The Managers shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of Company's business. The Managers may delegate to any person any power or authority which is not expressly non-delegable under this Agreement or applicable law.

11.2 Without the consent of the Members holding a majority of the Sharing Ratios, the Company or the Managers, on behalf of the Company, shall not, and shall not enter into a commitment to perform any of the following actions ("Major Actions"):

- (a) require a Capital Contribution to the Company;
- (b) amend, modify, or waive any provisions of the Articles of Organization;
- (c) issue additional new equity, equity securities, or other securities or admit additional Members to the Company;
- (d) make any loan or advance to, or a Capital Contribution in, any person, in excess of \$[NUMBER];
- (e) enter into or effect any transaction or series of related transactions involving the sale, lease, license, exchange, or other disposition (including by merger, consolidation, sale of stock, or sale of assets) by the Company of any assets or equity interests worth in excess of [Number];
- (f) sell or otherwise dispose of all or substantially all of the assets of Company as part of a single transaction or plan so long as such disposition is not in violation of or a cause of a default under any other agreement to which Company may be bound;
- (g) establish a subsidiary or enter into any joint venture or similar business arrangement;
- (h) settle any lawsuit, action, dispute, or other proceeding or agree to the provision of any equitable relief by the Company;
- (i) change the Company's name; provided that the name shall always contain the words "limited liability company" or the abbreviation "L.L.C." or "LLC;" or
- (j) make any investment in any other Person in excess of \$[NUMBER].

11.3 Certain Powers of Managers. In addition to the statutory powers granted by law, the Managers shall have the exclusive power and authority on behalf of Company to run Company's daily affairs and take all actions not requiring Member consent pursuant to Section 11.2 including without limitation:

- (a) To acquire property from any person as the Managers may determine. The fact that the Managers are directly or indirectly affiliated or connected with any such person shall not prohibit the Managers from dealing with that person;

(b) To borrow money for Company from banks, other lending institutions, Managers, or affiliates of Managers on such terms as the Managers deem appropriate, and in connection therewith, to hypothecate, encumber and grant security interests in the assets of Company to secure repayment of the borrowed sums. No debt shall be contracted or liability incurred by or on behalf of Company except by the Managers, or to the extent permitted under the Act, by agents or employees of Company expressly authorized to contract such debt or incur such liability by the Managers;

(c) To purchase liability and other insurance to protect Company's property and business;

(d) To purchase, hold and own any Company real and/or personal properties in the name of Company;

(d) To invest any Company funds temporarily (by way of example but not limitation) in time deposits, short-term governmental obligations, commercial paper or other investments;

(e) To execute on behalf of Company all instruments and documents, including, without limitation, checks, drafts, notes and other negotiable instruments, deeds, mortgage or deeds of trust, security agreements, financing statements, documents providing for the acquisition, mortgage or disposition of Company's property, assignments, bills of sale, leases, partnership agreements, operating agreements of other limited liability companies, and any other instruments or documents necessary or useful, in the opinion of the Manager, to the business of Company;

(f) To employ accountants, legal counsel, managing agents or other experts to perform services for Company and to compensate them from Company funds,

(g) To enter into any and all other agreements on behalf of Company (with Member consent as may be required by section 11.1), with any other person for any purpose, in such forms as the Managers may approve; and

(h) To do and perform all other acts as may be necessary or appropriate to the conduct of Company's business.

11.4 No Exclusive Duty to Company. The Managers and Members shall not be required to devote sole and exclusive attention to the management of Company, may have other business, and engage in other activities in addition to those relating to Company.

11.5 Bank Accounts. The Managers may from time to time open bank accounts in the name of Company and may designate such signatory or signatories thereon as the Managers shall determine.

11.6 Representations and Warranties. Each Manager hereby represents and warrant to the Members and the Company that to the best of their actual knowledge and belief the following are true and accurate as of the date hereof:

(a) The execution and delivery by the Manager of this Agreement and the transactions contemplated hereby have been duly authorized by all necessary corporate or other action, and the consummation of any such transactions contemplated hereby with or on behalf of Company does not constitute a breach or violation of, or a default under, the statutes, regulations, bylaws or other governing instruments of the Manager or any agreement by which it or any of its property is bound,

nor a violation of any law, administrative regulation or court decree, any of which would have a material adverse effect on Company.

(b) Company is a limited liability company, validly existing and in good standing under the laws of the State of Colorado, is authorized to transact business in the State of Colorado and has the requisite power to carry on its business, to enter into and perform under the contracts, instruments and documents executed in connection with the Project (“*Project Documents*”), and to carry out the transactions contemplated hereunder, and Company has complied with all filing requirements necessary to preserve the limited liability of Members.

(c) No events of bankruptcy (or events which, in the course of time, would result in bankruptcy) have occurred with respect to the Manager.

(d) If Manager is an entity, the Manager has been duly organized, is validly existing and in good standing under the laws of the State and has all requisite corporate power to be a Manager and to perform its duties and obligations as contemplated by this Agreement and the Project Documents. Neither the execution and delivery by the Manager of this Agreement nor the performance of any of the actions of the Manager contemplated hereby has constituted or will constitute a violation of (i) the articles of organization or operating agreement of the Manager; (ii) any agreement by which the Manager is bound or to which any of its property or assets is subject; or (iii) any law, administrative regulation or court decree.

(e) To the best of Manager’s knowledge, no event has occurred which has caused, and the Manager has not acted in any manner which will cause (i) Company to be treated for federal income tax purposes as an association taxable as a corporation, (ii) Company to fail to qualify as a limited liability company under the Act, or (iii) any Member to be liable for Company obligations in excess of its agreed-to Capital Contributions.

(f) The Manager shall make reasonable efforts to cause construct the Project in a timely manner in conformity with the Project Documents (and approvals thereof).

11.7 Covenants Relating to Company. Managers shall have the following duties and obligations with respect to Company, and covenants that:

(a) While conducting the business of Company, it shall not act in any manner which it knows would (i) cause the termination of Company for federal income tax purposes; (ii) cause Company to be treated for federal income tax purposes as an association taxable as a corporation; (iii) cause Company to fail to qualify as a limited liability company under the Act; or (iv) cause a Member to be liable for Company obligations in excess of its unpaid Capital Contributions plus any distributions required to be returned pursuant to the Act.

(b) It shall exercise good faith in all activities relating to the conduct of the business of Company, and shall take no action in its capacity as Manager with respect to the business and property of Company which is not reasonably related to the achievement of the purpose of Company.

11.8 Indemnification. The Member and the Managers of the Company and their respective affiliates, stockholders, members, managers, directors, officers, partners, employees, agents and representatives (individually, an “Indemnitee”) shall be indemnified and held harmless by the Company from and against any and all losses, claims, damages, liabilities, expenses (including legal fees and expenses), judgments, fines, settlements and other amounts arising from any and all claims, demands,

actions, suits or proceedings, civil, criminal, administrative or investigative, in which the Indemnitee may be involved, or threatened to be involved, as a party or otherwise by reason of such Indemnitee's status as any of the foregoing, which relates to or arises out of the Company, its assets, business or affairs, if in each of the foregoing cases (i) the Indemnitee acted in good faith and in a manner such Indemnitee believed to be in, or not opposed to, the best interests of the Company, and, with respect to any criminal proceeding, had no reasonable cause to believe such Indemnitee's conduct was unlawful, and (ii) the Indemnitee's conduct did not constitute gross negligence or willful or wanton misconduct. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, or its equivalent, shall not, of itself, create a presumption that the Indemnitee acted in a manner contrary to that specified in (i) or (ii) above. Any indemnification pursuant to this Section 11.8 shall be made only out of the assets of the Company and the Member shall not have any personal liability on account thereof.

Expenses (including reasonable legal fees) incurred by an Indemnitee in defending any claim, demand, action, suit or proceeding described in this Section 11.8 may, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding, in the discretion of the Member, upon receipt by the Company of an undertaking by or on behalf of the Indemnitee to repay such amount if it shall be determined that Indemnitee is not entitled to be indemnified as authorized in this Section.

The indemnification and advancement of expenses set forth in this Section shall not be exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any statute, the Company's articles of organization, this Agreement, any other agreement, a vote of the Member, a policy of insurance or otherwise, and shall not limit in any way any right which the Company may have to make additional indemnifications with respect to the same or different persons or classes of persons, as determined by the Member. The indemnification and advancement of expenses set forth in this Section shall continue as to a person or entity who has ceased to hold the position giving rise to such indemnification and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of such a person or entity.

The Company may purchase and maintain insurance on behalf of any Indemnitee against any liability asserted against an Indemnitee and incurred by an Indemnitee in such capacity, or arising out of such Indemnitee's status as aforesaid, whether or not the Company would have the power to indemnify such Indemnitee against such liability under this Section.

ARTICLE XII--RESTRICTIONS ON MEMBERS

12.1. Liabilities. No Member shall make, draw, accept or endorse any promissory note or other engagement for the payment of money for or on behalf of Company, or guarantee any debt or account on behalf of Company, unless such action is approved by the Managers. Except as otherwise expressly provided in this Agreement, no Member shall have any authority to act for, or assume any obligations or responsibilities on behalf of, any other Member or Company.

12.2. Company Property. No Member shall voluntarily cause the sale, mortgage, assignment or pledge, the financing or refinancing, or the long-term leasing, of all or substantially all the assets of Company, unless approved by the Managers. No Member shall have the right to partition any real property of Company during the term of this Agreement.

12.3. Dissolution. Anything in this Agreement to the contrary notwithstanding, the powers of the parties hereto to effect a dissolution of Company at any time shall be governed by the provisions of the Act, but this shall not be construed to authorize nor shall any Member have the right to cause the dissolution of Company, except as expressly provided in this Agreement.

12.4. Outside Activities. Nothing in this Agreement shall be deemed to restrict in any way the freedom of any party hereto to conduct any other business or activity whatsoever (including the acquisition, development and exploitation of similar investments) without any accountability to Company or to any other party hereto, even if such business or activity competes with the business of Company.

ARTICLE XIII-- TRANSFER OF MEMBERSHIP INTERESTS

13.1. Transfers. Except as otherwise permitted in this Agreement, no Member may transfer its member interest in Company without the consent of the other Members. Any transfers in violation of this Section 13.1 shall be void and of no force and effect. A person or entity who acquires any interest of a Member who is not admitted as a Substitutes Member by agreement of all other Members shall be entitled only to allocations and distributions with respect to such interest in the Company, and shall have no right to information or accounting of affairs of the Company, shall not be entitled to inspect the books and records of the Company, and shall not have any rights of a Member under this Agreement or the Act.

13.2. Permitted Transfers. A Member may at any time transfer all or any portion of its Interest in the Company to (a) the transferor's personal representative to whom such Interests are transferred involuntarily by operation of law, or (b) to any transferee with the unanimous consent of all other Members, provided such transferring Member provides to the Managers such documentation, information and opinions of counsel as the Managers shall require.

13.3. Securities Act of 1933. No Member's interest in Company has been registered under the Securities Act of 1933, as amended. Unless expressly waived in writing by every Member of Company, no Member's interest may be offered for sale, sold, transferred or assigned to a non-Member unless:

- (a) such interest is registered under the Securities Act of 1933;
- (b) at the expense of the transferring Member, Company receives a counsel opinion letter, satisfactory to Company, to the effect that such transfer is exempt from registration under the Act and is in compliance with all applicable federal and state securities laws and regulations; or
- (c) Company receives a "no-action" letter from the Securities and Exchange Commission, satisfactory to Company, to the effect that the transfer is exempt from registration.

ARTICLE XIV--DISSOLUTION OF COMPANY

14.1. Dissolving Events. Company shall dissolve upon the occurrence of the first of the following events:

- (a) The affirmative vote of all of Members to dissolve Company; or
- (b) The bankruptcy or receivership of Company.

14.2. Effects of Dissolution. Upon the dissolution of Company, Company's books shall be closed as of the day of the dissolving event, as if such day were the last day of a Company year. The profits or losses of Company shall be computed for such period ending on such date and shall be allocated to Members according to the provisions of Article VIII hereof. Distributions pursuant to Article IX hereof shall be made as if the date of the dissolving event was the last day of Company year.

Following the occurrence of a dissolving event, Company's activities shall be strictly limited to winding up its affairs by selling its assets in an orderly manner (so as to avoid the loss normally associated with forced sales), and applying the proceeds of such sale, together with other funds held by Company, to satisfy Company's outstanding unpaid obligations (including loans from Members) and the expenses of liquidation. Company's net assets, after satisfaction of its liabilities and expenses (hereinafter sometimes referred to as "liquidation proceeds"), shall be distributed to Members as set forth in Section 14.3 hereof. All gains or losses recognized by Company after the date of the dissolving event attributable to the sale or other disposition of all or substantially all of Company's assets shall be allocated among Members according to the provisions of Article VIII hereof.

The Members shall have authority and responsibility for liquidating Company in the manner provided herein; provided, however, that Company, if approved by all of Members, shall appoint one or more liquidators (who need not be Members) who shall be vested with the same authority and responsibility to liquidate Company as would have been held by Members.

14.3 Distribution of Liquidation Proceeds. The liquidation proceeds of Company (less any reasonable portion thereof reserved by Members or liquidators for a reasonable time to pay contingent or unforeseen Company liabilities) shall be distributed to Members in the following priority and order:

- (a) First, to Members, in proportion to and to the extent of unpaid principal and interest on loans owing to such Members;
- (b) Second, to Members in satisfaction of, and in proportion to, the relative, positive balances standing in the respective Capital Accounts of Members as of the time of distribution, until there shall have been distributed to Members liquidation proceeds sufficient to reduce their respective capital accounts to a zero balance; and
- (c) Any remaining liquidation proceeds shall be distributed to Members in accordance with their respective Sharing Ratios.

14.4. Distributions in Kind. Notwithstanding the provisions of Section 14.2 hereof, if, on the dissolution of Company, Members or the liquidators determine that an immediate sale of some or all of Company's assets would cause undue loss to Members, they may either defer for a reasonable time the liquidation of any assets, except those necessary to satisfy the liabilities of Company to others than Members, or they may distribute to Members, as tenants in common and in accordance with Section 14.3 hereof, an undivided interest in any Company assets in lieu of cash, liquidating only assets that are necessary to satisfy Company liabilities.

ARTICLE XV--GENERAL PROVISIONS

15.1. Binding Effect and Benefits. This Agreement shall be binding upon, and shall inure to the benefit of, and be enforceable by, the parties hereto and their respective heirs, personal representatives, successors and assigns.

15.2. Exhibits and Schedules. All exhibits and schedules which are referred to in this Agreement and attached hereto are specifically incorporated herein by reference and form an integral part hereof.

15.3. Amendments. This Agreement may not be altered, amended or modified except pursuant to a written instrument executed by all the parties hereto.

15.4. Governing Law. This Agreement shall be construed and interpreted in accordance with, and governed by, the laws of the State of Colorado.

15.5. Section Captions. The captions of the various Sections and paragraphs of this Agreement have been inserted only for the purposes of convenience; such captions are not a part of this Agreement and shall not be deemed in any manner to modify, explain, enlarge, or restrict any of the provisions of this Agreement.

15.6. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

15.7. Gender and Number. Whenever the context of this Agreement requires, the masculine gender includes the feminine and neuter genders, and vice versa, and the singular number includes the plural, and vice versa.

15.8. Severability. If any provision of this Agreement or any related document or instrument is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be either (i) reformed by a court of competent jurisdiction to reflect the intent of the parties, or (ii) deleted from the Agreement by the court, whichever course of action in the opinion of the court would best reflect the intent of the parties, taking into consideration all provisions of the Agreement. If a provision is deleted, the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by severance herefrom.

15.9 Company Representative. ***** shall be the Company's designated "representative" within the meaning of the Internal Revenue Code (the "Company Representative"). The Company Representative shall have the power and authority granted to such position under the provisions of the Code as enacted by the Bipartisan Budget Act of 2015, P.L 114-74 as the same may be subsequently be modified, amended or repealed, particularly Sections 6221 through 6241 of the Code, together with any guidance issued thereunder or successor provisions and any similar provision of state or local tax laws ("Audit Rules") and shall exercise such power and authority in a manner consistent with such Audit Rules.

15.10 Housing Authorities Law. The Company shall operate in compliance with the Housing Authorities Law, set forth in Title 29, Article 4, Part 2 of the Colorado Revised Statutes, as amended.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Operating Agreement of WINTER PARK PARTNERS, LLC as of the day and year first above written.

MEMBERS:

MRE Capital Investments,
a Missouri limited liability company

By: _____
Daniel Sailler, III, Manager

By: _____
Jacob Mooney, Manager

Consolidated Development Partners, LLC,
a Missouri limited liability company

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

CWHP, LLC,
a Colorado limited liability company

By: _____

Printed Name: _____

Title: _____

Winter Park Housing Authority,
a Colorado housing authority

By: _____

Printed Name: _____

Title: _____

Streamline Equity, LLC,
a Kansas limited liability company

By: _____
Kyle Greenfield, Manager

By: _____
Daniel Sailer, III, Manager

By: _____
Jacob Mooney, Manager

