

## **ANNEXATION, ZONING, DEVELOPMENT AND VESTED RIGHTS AGREEMENT**

THIS ANNEXATION, ZONING, DEVELOPMENT AND VESTED RIGHTS AGREEMENT (the “**Agreement**”) is executed by and between the TOWN OF WINTER PARK, a Colorado home rule municipal corporation with an address of 50 Vasquez Road, P.O. Box 3327, Winter Park, Colorado 80482 (the “**Town**”), and WINTER PARK ENTERPRISES, LLC, a Colorado limited liability company, with an address of 360 E. College St., P.O. Drawer A, Batesville, Arkansas 72503 (“**WPE, LLC**”; together with Town the “**Parties**” and each individually a “**Party**”), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021 (the “**Approval Date**”), with reference to the following facts:

### **RECITALS**

A. WPE, LLC owns all of that certain real property legally described on **Exhibit 1** attached hereto, which property is currently located in unincorporated Grand County, Colorado (the “**Property**”).

B. The Winter Park Town Council (the “**Town Council**”) is the governing body of the Town, with the legal authority to approve annexation of unincorporated territory into the Town pursuant to the Colorado Municipal Annexation Act, C.R.S. §§ 31-12-101, *et seq.* (the “**Annexation Act**”) and to confer vested rights as defined in and pursuant to C.R.S. §§ 24-68-101, *et seq.* (the “**Vested Rights Act**”).

C. WPE, LLC has executed and filed with the Town a Petition for Annexation of the Property into the Town (the “**Petition**”), which Petition was found by the Town Council to be in substantial compliance with the requirements of the Annexation Act, and the Property was found by the Town Council to be eligible for annexation under the Annexation Act.

D. WPE, LLC or a successor entity proposes to develop the Property as a multi-phase (each a “**Phase**”) mixed-use residential and commercial development featuring multi-family residences, commercial uses, roads and streets, utilities, trails and other amenities (collectively, the “**Project**”).

E. As the proposed development does not contemplate a Planned Development zoning overlay, no Final Development Plan is required or will be submitted.

F. The Parties desire to set forth in this Agreement their understanding relative to the annexation, zoning, development, vested rights and future use of the Property and the Project.

Accordingly, the Parties hereby agree as follows:

### **Section 1. General Provisions.**

1.1 Incorporation of Recitals. The foregoing Recitals are incorporated into and made substantive provisions of this Agreement.

1.2 Nature of Agreement. This Agreement addresses the terms required by the Town

relating to the annexation, zoning and development of the Property. It does not address site planning terms and conditions as may be required prior to issuance of building permits. The Town Council's approval of the Annexation and Zoning (as such terms are hereinafter defined) contemplated in this Agreement shall establish vested property rights pursuant to Article 68 of Title 24, C.R.S., as amended.

1.3 Legal Challenge. As used in this Agreement, "**Legal Challenge**" means: any judicial proceeding or other legal action brought by a third party, including referendum or initiative, that challenges this Agreement, the annexation of the Property to the Town (the "**Annexation**") or the zoning of the Property (the "**Zoning**"). If a Legal Challenge occurs, this Agreement shall not become effective until the entry of a final, non-appealable order resolving such Legal Challenge substantially in favor of the Town and WPE, LLC (the "**Resolution of the Legal Challenge**"). The Parties covenant and agree to cooperate in good faith in the event of a Legal Challenge.

1.4 Effective Date. This Agreement shall not become effective until the later to occur of the following: (a) the date on which the Town Council's approvals of the Annexation and the Zoning (collectively, the "**Approvals**") become final and non-appealable; or (b) the Resolution of the Legal Challenge.

1.5 Rescission without Penalty. Notwithstanding any other provision of this Agreement, should the Approvals or the Resolution of the Legal Challenge not occur, any Party shall be entitled to rescission of this Agreement without any penalty whatsoever and, if the Annexation has been completed, WPE, LLC shall be entitled to commence disconnection proceedings pursuant to Section 7.2 of this Agreement.

1.6 Successful Legal Challenge Contingency. If a Legal Challenge successfully voids, enjoins, or otherwise invalidates this Agreement and the Parties do not enter into a written agreement to cure the defect, either of the Parties shall have the right to terminate this Agreement.

**Section 2. Annexation.** Annexation of the Property shall be in accordance with the Annexation Act.

**Section 3. Zoning.** Concurrently with Annexation, the Property shall be zoned D-C (Destination Center) without a Planned Development overlay or a Final Development Plan, but subject to an overall Project-wide average density limitation of 22 dwelling units per acre. The Town supports WPE LLC's request that the Property be exempted from the Downtown Business Overlay (DBO) district as it does not have direct access to Main Street. WPE LLC's consent to annexation of the Property is contingent on its obtaining the Town's approval of the foregoing D-C zoning pursuant to and consistent with WPE, LLC's application for the same submitted by WPE, LLC to the Town concurrently herewith (the "Approved Zoning").

**Section 4. Fees and Exactions.**

4.1 Fees and Exactions. WPE, LLC shall pay the impact fees and satisfy the dedication requirements set forth in this Section 4, subject to any modifications to the Town Code that are generally applicable at the time of final plat recordation or building permit application, as specified by Town Code, to all property located within the Town limits.

4.2 School Impact, Emergency Service and Other Similar Fees. WPE, LLC shall pay applicable school impact, emergency service and similar fees in place at the time of final plat recordation or building permit application, as specified by Town Code, and as generally applicable to and imposed on developments currently within the Town limits, in each case in accordance with Chapter 8 of the Town Code of Winter Park, Colorado, as amended (the “**Town Code**”).

4.3 Open Space Fees and Dedications. The Town's generally applicable open space fee, as set forth in Section 8-3-10 of the Town Code applies, requiring a dedication of land equal to five percent (5%) of the total area of the subdivision, or a payment in lieu of such dedication, which payment shall be calculated as five percent (5%) of the fair market value of the property as determined at the date of platting. The easement required by Section 5.2 of this Agreement shall count toward WPE, LLC's open space dedication requirement.

4.4 Affordable and Workforce Housing.

4.4.1 Affordable Housing Fees. Prior to the issuance of any building permit for any uses, WPE, LLC shall pay to the Town at the time of application of a building permit for any Phase of the Project the affordable housing fee for such Phase determined by multiplying the current per gross square foot fee as set forth in the Town Code by the number of gross square feet in such Phase (exclusive of parking garages and unenclosed decks/patios serving residential and commercial uses as described in Section 6-5-1 of the Town Code). Alternatively and at WPE, LLC’s sole election made at the time of the first final plat for each Phase, WPE, LLC may impose on the Project a Real Estate Transfer Assessment (“RETA”) in the amount of one-half of one percent (.50%) of the consideration paid for each non-exempt transfer of residential real property in the Project.

4.4.2 General Municipal Operations RETA. In addition to the Affordable Housing Fee or RETA referenced above, prior to the issuance of any building permit for any uses WPE, LLC shall pay to the Town a general municipal operations Real Estate Transfer Assessment (“RETA”) in the amount of one percent (1.0%) of the consideration paid for each non-exempt transfer of residential real property in the Project. The RETA shall be recorded as an encumbrance on all Property within the Project. The payment of such RETA shall be waived for initial transfers of the Property to the Project developer to facilitate development of the Project.

4.4.3 RETT. In addition to the current per gross square foot fee or .50% RETA, as applicable, and the General Municipal Operations 1.0% RETA, WPE, LLC shall also pay the RETT applicable to all real property transfers in the Town of Winter Park as more particularly defined and described in Section 4.5 below.

4.4.4 Negotiation. WPE, LLC and the Town acknowledge that WPE, LLC’s obligations relating to affordable housing fees, emergency services, municipal operations, and other impact fees and exactions are the result of negotiations between WPE, LLC and the Town, and are not the result of unilateral requirements imposed by the Town.

4.5 Residential Real Estate Transfer Assessment. Within 30 days following the Effective Date, WPE, LLC shall record a covenant against the Property requiring payment to the Town of the RETA in the amount of 1.0%, at a minimum, as required by Section 4.4.2, and in the

amount of 1.5%, if WPE, LLC elects to satisfy its affordable housing requirements by imposition of the 0.5% RETA, as permitted by Section 4.4.1. The RETA shall be recorded as an encumbrance on all Property within the Project. The payment of such RETA shall be waived for initial transfers of the Property to the Project developer to facilitate development of the Project.

4.6 The RETA shall be in addition to the existing Real Estate Transfer Tax administered by the Town under Title 1, Chapter 10 of the Town Code (the “RETT”) and shall be in substantially the form attached hereto as Exhibit 2. The Town shall administer and collect the RETA in the same manner as the Town administers and collects the RETT, with the same exemptions, except that the following transactions shall also be exempt from the RETA: (a) any transfer that is specifically exempted from payment of the Town’s Real Estate Transfer Tax pursuant to Section 1-10-6 of the Town Code; (b) any reorganization of any business entity that owns title to any real property within the Project that does not result in the conveyance by deed of such real property to another business entity or individual; (c) any transfer of any portion of the Property between WPE, LLC and any entity in which the owners of WPE, LLC also have an ownership interest; (d) WPE, LLC’s transfer of the Property or portions thereof to a third party development entity that purchases such Property for subsequent residential or commercial development; and (e) any transfer of any non-residential portion of the Property. The RETA may be paid either by the buyer or the seller of the subject property as negotiated by the parties to the transfer. The Town shall use the funds generated by the 0.5% RETA or the per-square-foot fee elected at WPE, LLC's option, and as required by Section 4.4.1 herein, exclusively for the construction, maintenance or acquisition of affordable or workforce housing. Funds generated by the 1.0% RETA, as set forth in Section 4.4.2 herein, may be used for general municipal purposes.

## **Section 5. WPE, LLC Obligations.**

5.1 Plans. With input from the Town, WPE, LLC shall prepare all applications and related plans for the Project at WPE, LLC’s sole cost.

5.2 Existing Trail Connection. As a condition of Town approval of the first final plat for the Project, WPE, LLC shall grant and convey to the Town for public use a non-exclusive, perpetual access easement twelve feet in width, increased where needed to accommodate cut or fill slopes, for pedestrian ingress and egress over and across a trail on portions of the Property that connect Village Drive to the existing pedestrian trail located on the western boundary of the Property. The Town shall be responsible for the maintenance of such pedestrian trail and the location, width and other terms and provisions of the easement for same shall be negotiated by the Town and WPE, LLC and included in a form of easement agreement in recordable form mutually and reasonably acceptable to the Town and WPE, LLC. Such easement agreement shall be recorded no later than recording of the first final plat for the Project. The easement required by this Section shall count toward WPE, LLC's open space dedication requirement as set forth in Section 4.3.

5.3 Applicable Law. WPE, LLC shall comply with all applicable laws, including without limitation all current and future federal, state, and local statutes, regulations, ordinances, and rules relating to: the emission, discharge, release or threatened release of a Hazardous Material into the air, surface water, groundwater, or land; the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation, or investigation of a

Hazardous Material; and the protection of human health, safety, or the indoor or outdoor environment, including (without limitation) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* (“CERCLA”); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* (“RCRA”); the Toxic Substances Control Act, 15 U.S.C. § 2601, *et. seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; the Clean Air Act; the Federal Water Pollution Control Act; the Occupational Safety and Health Act; all applicable environmental statutes of the State of Colorado; and all other federal, state, or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders, or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance, or material, as now or at any time hereafter in effect.

5.4 WPE, LLC's Representations and Warranties. WPE, LLC hereby represents and warrants to the Town that all of the following are true and correct as of the date of signature and the Effective Date: this Agreement has been duly authorized and executed by WPE, LLC as the legal, valid and binding obligation of WPE, LLC, and is enforceable as to WPE, LLC in accordance with its terms; the person executing this Agreement on behalf of WPE, LLC is duly authorized and empowered to execute and deliver this Agreement on behalf of WPE, LLC; to the best of WPE, LLC knowledge, there is no pending or threatened litigation, administrative proceeding or other proceeding pending or threatened against WPE, LLC which, if decided or determined adversely, would have a material adverse effect on the ability of WPE, LLC to undertake its obligations under this Agreement; and neither the execution of this Agreement nor the consummation of the transaction contemplated by this Agreement will constitute a breach under any contract, agreement or obligation to which WPE, LLC is a party or by which WPE, LLC is bound or affected.

## **Section 6. Vested Rights.**

6.1 Vesting. The Parties hereby agree that this Agreement and the Approved Zoning collectively constitute a “Site Specific Development Plan” under Title 8, Chapter 6 of the Town Code and C.R.S. § 24-68-101, *et seq.*, and WPE, LLC and its successors and assigns shall have a vested property right to undertake and complete the Project and use the Property under the terms and conditions set forth herein (the “Vested Rights”). The Vested Rights shall constitute benefits and burdens to the land and shall run with title to the Property.

6.2 General Regulations. The establishment of the Vested Rights under this Agreement to be submitted prior to development shall not preclude the application of Town regulations of general applicability including, but not limited to, the application of local improvement districts, building, fire, plumbing, engineering, electrical, and mechanical codes, or the application of regional, state, or federal regulations, as all of the foregoing exist on the Effective Date or may be enacted or amended after the Effective Date, except as otherwise provided herein, as against the Property and the Project. WPE, LLC does not waive its rights, however, to oppose adoption of any such regulations.

## **Section 7. Remedies.**

7.1 Available Remedies. Upon a breach of this Agreement by any Party, the non-breaching Parties shall be entitled to pursue all remedies allowed by law or in equity, including

but not limited to those remedies established under the Vested Rights Act, and the exercise of one remedy shall not preclude the exercise of any other remedy.

7.2 Disconnection. In addition to any other remedy available at law or in equity, in the event of an uncured breach by the Town, WPE, LLC shall be entitled to disconnect the Property or any portion thereof from the Town as set forth in this Section. It is expressly understood and acknowledged that the procedures specified herein shall be in lieu of any procedures set forth in C.R.S. § 31-12-501, *et seq.*, or C.R.S. § 31-12-701, *et seq.*, which only apply to statutory cities and towns, as confirmed in *Allely v. City of Evans*, 124 P.3d 911 (Colo. App. 2005). The disconnection procedures set forth in this Section are authorized by the Town's home rule charter under Article XX, Section 6 of the Colorado Constitution.

7.2.1 Petition for Disconnection. To avail itself of this remedy, WPE, LLC shall file a written petition for disconnection with the Town Clerk, which shall include a legal description of the Property or portion thereof subject to the disconnection and a map depicting the property to be disconnected. Within 60 days following receipt of such a petition, the Town Council shall finally adopt an ordinance disconnecting the Property from the Town (the "**Disconnection**"). The Town shall file the Disconnection ordinance and map with all parties entitled to receive an annexation ordinance and map under C.R.S. § 31-12-113.

7.2.2 Levied Taxes. Upon the Disconnection, the Property shall not be exempt from the payment of any property taxes lawfully assessed against it for the purpose of paying any indebtedness lawfully contracted by the Town while such Property was within the limits of the Town and which remains unpaid and for the payment of which the Property could be lawfully taxed. When the Town levies a property tax for the purpose of paying indebtedness or any part thereof or interest thereon, the Town may levy a tax at the same rate and for the same purpose on the disconnected Property. The County Treasurer shall pay over to the Town all moneys collected on account of such tax, to be applied only to the payment of such indebtedness. If any owner of the disconnected Property pays off and discharges a portion of such indebtedness equal in amount to the same proportion of the indebtedness which the valuation for assessment of the land bears to the entire valuation for assessment of all the property subject to taxation for the payment of such indebtedness, calculated according to the last assessment previous to such payment, said land is exempted from further taxation to pay such indebtedness. Upon such payment being made, evidences of payment of such portion of said indebtedness shall be deposited with the Town, and the Town shall issue a certificate stating that such payment has been made.

7.2.3 Conflicts. In the event of any conflict between this Section 7.2 and any provision of the Municipal Annexation Act or the Town Code regarding disconnection, this Section 7.2 shall control.

7.2.4 Findings. The Town Council hereby finds and agrees that the best interests of the Town will not be prejudiced by the Disconnection in the event of the Town's breach or default under this Agreement.

## **Section 8. Miscellaneous.**

8.1 Amendments. This Agreement may be amended only with the prior written

approval of all of the Parties and any such amendment shall be recorded in the Grand County, Colorado real property records.

8.2 Notices. Any notice required by this Agreement shall be in writing, addressed as follows:

If to the Town:

Town of Winter Park  
50 Vasquez Road  
Winter Park, CO 80482  
Attn: Town Clerk

With a copy to:

Kendra L. Carberry, Esq.  
Hoffmann, Parker, Wilson & Carberry, P.C.  
511 Sixteenth Street, Suite 610  
Denver, CO 80202

If to WPE, LLC:

Winter Park Enterprises, LLC  
360 East College Street  
P.O. Box Drawer A  
Batesville, Arkansas 72503  
Attn: Rog Rogers

With a copy to:

Paul V. Franke  
Polsinelli P.C.  
1401 Lawrence Street, Suite 2300  
Denver, CO 80202

Notices will be deemed delivered and effective as follows: if given personally, when delivered to the Party to whom it is addressed; if delivered by overnight courier, the date upon which delivery is confirmed by such overnight courier; or if given by mail, five (5) days after a letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail.

8.3 Entire Agreement. This Agreement constitutes the entire and final understanding among the Parties with respect to the subject matter hereof, other than subsequent development improvement agreements affecting the Project. This Agreement supersedes all prior agreements and understandings between the Parties relating to the subject matter hereof.

8.4 Assignment. WPE, LLC may assign to one or more successor developers or a special district formed for such purpose (each a "District") all or any part of its obligations and rights under this Agreement with notice to the Town and in accordance with the terms and

conditions of this Agreement, any applicable service plan for such District, and applicable law. A District may assign to one or more additional metropolitan districts all or any part of its obligations and rights under this Agreement with notice to the Town in accordance with the terms and conditions of this Agreement, any applicable service plan for such District, and applicable law. Where used in this Agreement; the term "WPE, LLC" or "District" shall also mean any of the lawful successors or assigns of WPE, LLC and/or such District, and all such successors and assigns shall be bound by and have the right to enforce this Agreement.

8.5 Indemnification. WPE, LLC hereby agrees to indemnify and hold harmless the Town, its officers, employees, agents or servants from any and all suits, actions and claims of every nature and description caused by, arising from or on account of any grossly negligent or willful and wanton act or omission of WPE, LLC, or of any other person or entity for whose grossly negligent or willful and wanton act or omission WPE, LLC is liable, with respect to construction of the Project (the "Claims"); and Developer shall pay any and all judgments rendered against the Town as the result of any suit, action or claim, together with all reasonable expenses and attorney fees incurred by the Town in defending any such suit, action or claim arising out of or related to Claims. In addition, WPE, LLC shall pay all property taxes on property underlying improvements to be dedicated to the Town before acceptance by the Town, and shall indemnify and hold harmless the Town for any such property tax liability.

8.6 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall, unless amended or modified by mutual consent of the Parties, continue in full force and effect.

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

8.8 Conflict with Other Provisions of the Town Code. In the event any provision of this Agreement conflicts with any provision of the Town Code, except as provided in Section 4 and Section 8.3, this Agreement shall control the determination of the rights and obligations of the Parties with respect to such conflicting matter.

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

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

8.11 No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

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



[seal]

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Notary Public

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

**EXHIBIT 1**

Legal Description

A PARCEL OF LAND BEING IN THE SOUTH ON-HALF OF SECTION 33, TOWNSHIP 1 SOUTH, RANGE 75 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF GRAND, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE EASTERLY-MOST CORNER OF BEAVER VILLAGE - FILING NO. 2 AT WINTER PARK; THENCE NORTH 90°00'00" EAST ALONG THE SOUTH LINE OF LOT 15, BLOCK 2 OF HIDE-AWAY PARK, A DISTANCE OF 393.64 FEET TO A POINT ON A CURVE THE CENTER OF WHICH BEARS SOUTH 71°38'48" WEST, SAID POINT ON CURVE BEING A POINT ON THE WESTERLY RIGHT-OF-WAY OF U.S. HIGHWAY NO. 40; THENCE THE FOLLOWING FOUR (4) COURSES ALONG SAID WESTERLY RIGHT-OF-WAY:

- 1) SOUTHEASTERLY ALONG A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 0°38'01", A RADIUS OF 3371.59 FEET, THE LONG CHORD BEARING SOUTH 18°01'53" EAST A DISTANCE OF 37.28 FEET;
- 2) SOUTH 16°55'26" WEST, A DISTANCE OF 170.72 FEET;
- 3) SOUTH 14°00'24" EAST, A DISTANCE OF 236.10 FEET;
- 4) SOUTH 14°50'54" EAST, A DISTANCE OF 80.00 FEET TO A POINT ON THE NORTHERLY LINE OF BEAR VILLAGE - FILING NO. 1 AT WINTER PARK;

THENCE THE FOLLOWING FOUR (4) COURSES ALONG SAID NORTHERLY LINE:

- 1) NORTH 87°47'49" WEST, A DISTANCE OF 16.92 FEET TO A POINT OF CURVE;
- 2) NORTHWESTERLY ALONG A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 16°20'49", A RADIUS OF 354.04 FEET, THE LONG CHORD BEARING NORTH 79°37'24" WEST A DISTANCE OF 100.67 FEET TO A POINT OF TANGENCY;
- 3) NORTH 71°27'00" WEST, A DISTANCE OF 172.90 FEET TO A POINT OF CURVE;
- 4) WESTERLY ALONG A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 40°02'06", A RADIUS OF 262.18 FEET, THE LONG CHORD BEARING SOUTH 88°31'57" WEST A DISTANCE OF 179.49 TO AN ANGLE POINT ON THE EASTERLY-MOST BOUNDARY OF SAID FILING NO. 2;

THENCE NORTH 3°25'57" EAST ALONG SAID EASTERLY-MOST BOUNDARY, A DISTANCE OF 436.79 FEET TO THE **POINT OF BEGINNING**, COMMON WITH THE EXISTING BOUNDARY OF THE TOWN OF WINTER PARK.

## EXHIBIT 2

### DECLARATION OF COVENANT

#### Residential Real Estate Transfer Assessment

This Declaration of Covenant (the "Covenant") is made by WINTER PARK ENTERPRISES, LLC, a Colorado limited liability company ("WPE, LLC"), and shall be effective upon its recording in the Grand County, Colorado, real property records (the "Effective Date").

#### RECITALS:

A. As the owner of certain property more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Property"), WPE, LLC entered into an Annexation, Zoning, Development and Vested Rights Agreement (the "Agreement") with the Town of Winter Park (the "Town"), dated \_\_\_\_\_, 2021, and recorded in the real property records of Grand County (the "Records") on \_\_\_\_\_, 2021, at Reception No. \_\_\_\_\_. The Agreement governs the annexation, zoning and development of the Property.

B. WPE, LLC proposes to develop the Property as a mixed-use multifamily residential and commercial development featuring multi-family residences, commercial uses, roads and streets, utilities, trails, and other amenities (the "Project").

C. Pursuant to Section 6-5-1 of the Winter Park Town Code, the development of the Property is currently subject to an affordable housing fee per gross square foot of new construction.

D. In the Agreement, the Town and WPE, LLC agreed to a residential real estate transfer assessment in the amount of 0.5% of the consideration paid for each non-exempt transfer of any portion of the Property in residential use (the "Transfer Assessment"). Such Transfer Assessment will be paid in lieu of the affordable housing fee per gross square foot described in Recital C above.

E. In addition, in the Agreement, as a mechanism for funding general municipal operations, WPE, LLC, agreed to a residential real estate transfer assessment in the amount of 1.0% of the consideration paid for each non-exempt transfer of any portion of the Property in residential use, for a total Transfer Assessment of 1.5%.

F. Each person acquiring any interest in any lot or tract within the Property shall be deemed for all purposes to have assented and agreed, as an essential condition of any conveyance to it, to the provisions of this Covenant, and to have waived any right to challenge or contest the provisions hereof or to seek any refund or abatement of the assessment payable hereunder.

#### COVENANT

In light of the foregoing Recitals and the consideration set forth in the Agreement, WPE, LLC

hereby covenants and binds the Property as follows:

1. Definitions. For purposes of this Covenant, and consistent with Title 1, Chapter 10 of the Winter Park Town Code (the “Code”), as amended, the following terms shall have the following meanings:

a. **“Consideration”** means the gross consideration paid for any of the property affected by the Transfer and includes actual cash paid, the money equivalent of real and personal property delivered or conveyed in exchange for the Transfer, or contracted to be paid or delivered or conveyed, in return for the Transfer of ownership or interests in the Property, and includes the amount of any lien, mortgage, contract indebtedness, or other encumbrance on the Property at the time of the Transfer. “Consideration” does not include as an addition to gross consideration the amount of any outstanding lien or encumbrance in favor of the United States, the State of Colorado, or of a municipal or quasi-municipal corporation or district for taxes, special benefits, or improvements.

b. **“Final Court Action”** means a final order or opinion issued by a court of competent jurisdiction by which the Town or WPE, LLC is bound, where no appeal can be taken or the time for filing an appeal has expired.

c. **“Transfer”** means, whether or not the same is in writing or is recorded, each and every sale, grant, assignment, exchange, or conveyance of any ownership or title to any portion of the Property in residential use, and the sale, leasing, letting, conveyance, or assignment of a possessory interest in any portion of the Property in residential use, subject to the exemptions set forth in Section 3.

2. Covenant. WPE, LLC hereby covenants and agrees that the Transfer Assessment shall be due and payable at the time of each Transfer. The amount of the Transfer Assessment is one and one-half percent (1.5%) of the Consideration paid for such Transfer. Except as provided in Sections 3 and 4, WPE, LLC hereby waives, on behalf of itself and its successors in title, any right to challenge the Transfer Assessment on any basis at any time. The parties to the Transfer shall be entitled to determine, as among themselves, which party or parties to the Transfer shall pay the Transfer Assessment, so long as the total amount of the Transfer Assessment is paid to the Town.

3. Exemptions.

a. No Transfer Assessment shall be due or payable with respect to any Transfer that is specifically exempted from payment of the Town’s Real Estate Transfer Tax pursuant to Section 1-10-6 of the Code.

b. No Transfer Assessment shall be due or payable with respect to any Transfer which is a reorganization of any business entity that owns title to any portion of the property being transferred that does not result in the conveyance by deed of such real property to another business entity or individual.

c. No Transfer Assessment shall be due or payable with respect to any Transfer of any portion of the Property between WPE, LLC and any entity in which the owners of WPE, LLC also have an ownership interest.

d. No Transfer Assessment shall be due or payable with regard to WPE, LLC's Transfer of the Property or portions thereof to a third party development entity that purchases such Property for subsequent residential or commercial development.

e. No Transfer Assessment under this Covenant shall be due or payable with respect to the Transfer of any non-residential portion of the Property.

4. Exemption Procedure. The procedure for obtaining an exemption shall be the procedure set forth in Title 1, Chapter 10 of the Code.

5. Receipt and Application of Funds. The Transfer Assessment may be paid by either party to the Transfer, as negotiated in each Transfer. Each Transfer Assessment shall be paid directly to the Town. All amounts received by the Town pursuant to this Covenant shall be directed to the Town's General Fund, but accounted for as a separate income item and used exclusively for construction, maintenance or acquisition of attainable or workforce housing, and for general municipal operations, provided that a portion of the funds may be used to administer the collection of the Transfer Assessment.

6. Penalties and Liens. Penalties and liens shall be imposed as set forth in Title 1, Chapter 10 of the Code.

7. Relationship to Property. WPE, LLC acknowledges and agrees that, because the funds raised by the Transfer Assessment are required to be used for the purpose specified in Section 5 above, the obligations imposed by this Covenant are related to and touch and concern the Property. This Covenant shall run with the Property and be binding on all persons who hereafter acquire any interest in the Property, whether as an owner, renter, trustee, or mortgage beneficiary or otherwise.

8. Recording. This Covenant shall be recorded in the records of Grand County, Colorado.

9. Enforcement. This Covenant is made for the express benefit of the owners and occupants of the Property and for the additional express benefit of the Town. The Town shall have the right and power to enforce the terms of this Covenant as provided in the Code, including but not limited to Titles 1 and 7 thereof, and to bring suit for either legal or equitable relief for any breach, default, or lack of compliance with the provisions of this Covenant, provided that no suit may be filed until the Town and WPE, LLC or its successors and assigns is provided with written notice of such breach or lack of compliance and fails to cure such breach or lack of compliance within ten (10) days after receipt of such notice.

10. Defense and Cure of Covenant.

a. In the event of any legal challenge by a third party to the validity or enforceability of any provision of this Covenant, WPE, LLC shall cooperate with the Town in the defense of such challenge, with each bearing its own costs and attorney fees. During the pendency of any such legal challenge, through and including any Final Court Action, WPE, LLC shall not assert any legal position contrary to the enforceability of this Covenant.

b. In the event of a Final Court Action determining this Covenant to be invalid or unenforceable, in whole or in part, resulting from such third-party legal challenge, WPE, LLC shall cooperate with the Town as necessary, and use its efforts to cure any such legal defects identified by such Final Court Action, and immediately upon such cure, take such actions as may be necessary to render the terms of this Covenant effective and enforceable. No such action shall alter the amount of the Transfer Assessment as set forth in Section 1 above, or the purposes for which the funds raised by the Transfer Assessment shall be expended, as set forth in Section 5 above.

c. If this Covenant is held to be invalid or unenforceable by any Final Court Action, WPE, LLC shall not be required to purchase or repurchase any of the Property to effect a cure nor be required to pay any Transfer Assessment not collectable by the Town.

11. Severability. A determination by any court of competent jurisdiction that any provision of this Covenant is invalid or unenforceable shall not affect the validity or enforceability of any other provision hereof.

12. Statements. Upon written request by any interested party, the Town shall issue a written statement setting forth the amount of any unpaid Transfer Assessment with respect to any specific portion of the Property identified in such request. Such statement shall be furnished as soon as reasonably practicable, but in no event more than thirty (30) days after receipt of the request, and shall be binding on the Town.

13. Amendment. This Covenant shall not be amended or terminated without the advance written consent of the Town. If the Town provides such consent, no amendment shall be effective unless it is contained in a written instrument signed and acknowledged by Owner or its successors in the same manner this Agreement and duly recorded.

14. Term. The Transfer Assessment shall become effective upon recording of this Covenant and shall have an indefinite term, the intent being that this Covenant shall apply in perpetuity.

15. Governing Law and Venue. The interpretation, enforcement or any other matters relative to this Covenant shall be construed and determined in accordance with the laws of the State of Colorado, and venue for any legal action arising out of this Agreement shall be in Grand County, Colorado.

16. Encumbrance. Until terminated, each and every provision contained in this Covenant shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any of the Property is transferred, granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument.



## EXHIBIT A

### Legal Description of Property

A PARCEL OF LAND BEING IN THE SOUTH ON-HALF OF SECTION 33, TOWNSHIP 1 SOUTH,  
RANGE 75 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF GRAND, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE EASTERLY-MOST CORNER OF BEAVER VILLAGE - FILING NO. 2 AT WINTER PARK; THENCE NORTH 90°00'00" EAST ALONG THE SOUTH LINE OF LOT 15, BLOCK 2 OF HIDE-AWAY PARK, A DISTANCE OF 393.64 FEET TO A POINT ON A CURVE THE CENTER OF WHICH BEARS SOUTH 71°38'48" WEST, SAID POINT ON CURVE BEING A POINT ON THE WESTERLY RIGHT-OF-WAY OF U.S. HIGHWAY NO. 40; THENCE THE FOLLOWING FOUR (4) COURSES ALONG SAID WESTERLY RIGHT-OF-WAY:

- 1) SOUTHEASTERLY ALONG A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 0°38'01", A RADIUS OF 3371.59 FEET, THE LONG CHORD BEARING SOUTH 18°01'53" EAST A DISTANCE OF 37.28 FEET;
- 2) SOUTH 16°55'26" WEST, A DISTANCE OF 170.72 FEET;
- 3) SOUTH 14°00'24" EAST, A DISTANCE OF 236.10 FEET;
- 4) SOUTH 14°50'54" EAST, A DISTANCE OF 80.00 FEET TO A POINT ON THE NORTHERLY LINE OF BEAR VILLAGE - FILING NO. 1 AT WINTER PARK;

THENCE THE FOLLOWING FOUR (4) COURSES ALONG SAID NORTHERLY LINE:

- 1) NORTH 87°47'49" WEST, A DISTANCE OF 16.92 FEET TO A POINT OF CURVE;
- 2) NORTHWESTERLY ALONG A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 16°20'49", A RADIUS OF 354.04 FEET, THE LONG CHORD BEARING NORTH 79°37'24" WEST A DISTANCE OF 100.67 FEET TO A POINT OF TANGENCY;
- 3) NORTH 71°27'00" WEST, A DISTANCE OF 172.90 FEET TO A POINT OF CURVE;
- 4) WESTERLY ALONG A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 40°02'06", A RADIUS OF 262.18 FEET, THE LONG CHORD BEARING SOUTH 88°31'57" WEST A DISTANCE OF 179.49 TO AN ANGLE POINT ON THE EASTERLY-MOST BOUNDARY OF SAID FILING NO. 2;

THENCE NORTH 3°25'57" EAST ALONG SAID EASTERLY-MOST BOUNDARY, A DISTANCE OF 436.79 FEET TO THE **POINT OF BEGINNING**, COMMON WITH THE EXISTING BOUNDARY OF THE TOWN OF WINTER PARK.