

**APPROVAL OF THIS AGREEMENT CREATES A VESTED PROPERTY RIGHT
PURSUANT TO C.R.S. § 24-68-103, AS AMENDED**

**COOPER CREEK VILLAGE AND COOPER CREEK SQUARE
DEVELOPMENT GUIDE AGREEMENT**

THIS DEVELOPMENT GUIDE AGREEMENT (this “**Agreement**”) is made as of this ____ day of _____, 2022 (the “**Approval Date**”), by and between the TOWN OF WINTER PARK, a Colorado home rule municipal corporation with an address of 50 Vasquez Road, P.O. Box 3327, Winter Park, Colorado 80482 (the “**Town**”), JAC COLORADO II, LLC, a Colorado limited liability company with an address of 747 Sheridan Blvd., #7D, Lakewood, Colorado 80214 (“**JAC**”), COOPER CREEK WP, LLC, a Colorado limited liability company with an address of 747 Sheridan Blvd., #7D, Lakewood, Colorado 80214 (“**CCWP**”), STATION WP, LLC, a Colorado limited liability company with an address of 747 Sheridan Blvd., #7D, Lakewood, Colorado 80214 (“**SWP**”), and WINTER PARK TOWER, LIMITED LIABILITY COMPANY, a Colorado limited liability company with an address of P.O. Box 3233, Winter Park, Colorado 80482 (“**WPT**”) (JAC, CCWP, SWP and WPT are sometimes hereinafter referred to individually as an “**Owner**”, and collectively as the “**Owners**”), COOPER CREEK VILLAGE METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado (“**District No. 1**”), COOPER CREEK VILLAGE METROPOLITAN DISTRICT NO. 2, a quasi-municipal corporation and political subdivision of the State of Colorado (“**District No. 2**”), COOPER CREEK VILLAGE METROPOLITAN DISTRICT NO. 3, a quasi-municipal corporation and political subdivision of the State of Colorado (“**District No. 3**”), COOPER CREEK VILLAGE METROPOLITAN DISTRICT NO. 4, a quasi-municipal corporation and political subdivision of the State of Colorado (“**District No. 4**”), and COOPER CREEK VILLAGE METROPOLITAN DISTRICT NO. 5, a quasi-municipal corporation and political subdivision of the State of Colorado (“**District No. 5**,” and collectively with District No. 1, District No. 2, District No. 3 and District No. 4, the “**Districts**”) (collectively the “**Parties**” and each a “**Party**”).

RECITALS

A. This Agreement is entered into in accordance with the Town’s contemporaneous approval of annexation into the Town of certain unincorporated territory referred to in this Agreement as the “**Cooper Creek Village Property**” pursuant to the Colorado Municipal Annexation Act, C.R.S. §§ 31-12-101, *et seq.* (the “**Annexation Act**”) and the terms and conditions of that certain “**Annexation Agreement**” by and among the Parties of even date herewith, and the Town’s contemporaneous conferral of vested rights as defined in and pursuant to C.R.S. §§ 24-68-101, *et seq.* (the “**Vested Rights Act**”) upon title to the “**FDP Properties**” (as hereinafter defined) as described in this Agreement and in the Annexation Agreement.

B. The terms and conditions of the Annexation Agreement are incorporated into the operative provisions of this Agreement as if set forth in this Agreement in full.

AGREEMENT

NOW, THEREFORE, in consideration of the premises, mutual covenants, and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

Section 1. Definitions. Certain terms used in this Final Development Plan shall have definitions as set forth in this Section 1:

1.1 **"Accessory Dwelling Unit"** shall mean a dwelling that is incorporated within the living area of a single-family residence or in a detached building. An Accessory Dwelling Unit includes permanent provisions for living, sleeping, eating, cooking, bathing and sanitation.

1.2 **"Accessory Use"** shall mean a use incidental to and customarily associated with a specific principal use, located on the same lot or parcel.

1.3 **"Active Open Space"** shall have the meaning set forth in Section 7.1.

1.4 **"Adjacent Project"** shall mean, individually, any development project located on properties in the vicinity of the FDP Properties.

1.5 **"Agricultural"** shall mean a use category containing nonresidential uses primarily related to the raising of animals and crops that do not exceed the threshold for concentrated or intensive animal feeding operations. The use category includes: crop production; nursery (retail); stables; and animal, crop, and farm equipment storage.

1.6 **"Annexation Agreement"** shall mean the Annexation and Development Agreement for the FDP Properties, as the same may be amended from time to time.

1.7 **"Approval Date"** shall have the same meaning as is attributed to it in the Annexation Agreement.

1.8 **"Attainable Dwelling Unit"** shall mean a primary or accessory dwelling unit for the purpose of providing attainable housing for residents earning a low to moderate annual income.

1.9 **"CCWP"** shall mean Cooper Creek WP, LLC, a Colorado limited liability company, its successors and assigns in title and interest to the portions of the Cooper Creek North Parcels it owns.

1.10 **"Commercial Square Footage"** or **"CSF"** shall mean any area, measured in square feet, which may be used, rented or leased for the purpose of generating retail business or consumer services, excluding DUs, OAU and Recreational Amenities.

1.11 **"Cooper Creek North Parcels"** shall mean those parcels representing approximately 3.94 acres, located north of Vazquez Road between Lions Gate Road and US 40

that are owned by JAC, CCWP and WPT, subject to Johnson Acquisition Corp.'s option to purchase the parcel owned by WPT, all as legally described herein.

1.12 **“Cooper Creek South Parcel”** shall mean that parcel located south of Vasquez Road but north of the Cooper Creek Village Property legally described herein representing approximately 1.91 acres that is owned by SWP.

1.13 **“Cooper Creek Village Property”** shall mean those annexation parcels representing approximately 53.3 acres as legally described on Exhibit 1 of the Annexation Agreement.

1.14 **“Cooper Creek Square Shopping Center”** shall mean the existing shopping center located on the three (3) parcels owned by CCWP, which parcels are part of the Cooper Creek North Parcels.

1.15 **“Dedicated Trails”** shall be those trails identified as the same on the Final Open Space and Trails Plan which are to be dedicated to the Town.

1.16 **“Developer”** shall mean WCJ Holdings, LLC, a Colorado limited liability company, the master developer of the Project.

1.17 **“District”** shall mean and refer to any metropolitan district formed pursuant to Title 32, C.R.S., for the purpose of financing and constructing any or all of the Public Improvements and for providing certain public services to the FDP Properties.

1.18 **“Drainage Plan”** shall mean that certain Master Drainage Plan and Report prepared by TKE Engineering dated May 28, 2021.

1.19 **“Dwelling Unit”** or **“DU”** shall mean one (1) or more rooms in a dwelling designed for occupancy by one (1) family for living purposes and having not more than one kitchen.

1.20 **“FDP Properties”** shall mean the Cooper Creek Village Property, the Cooper Creek South Parcel and the Cooper Creek North Parcels.

1.21 **“Final Development Plan”** shall mean that certain Final Development Plan for Cooper Creek Village and Cooper Creek Square, as approved by the Town Council and attached hereto as Exhibit 1, as the same may be amended from time to time, and shall include the Final Development Plan Narrative, the Existing Conditions Plan, Final Land Use Plan, Final Zoning Plan, Final Multi-Modal Plan, Conceptual Grading Plan, Final Open Space and Trails Plan and Roadway Report dated May 28, 2021.

1.22 **“Gondola Connection”** shall mean the area designated as the “Gondola Connection” on the Final Development Plan.

1.23 **“GCWSD”** shall mean Grand County Water and Sanitation District No. 1, a political subdivision of the State of Colorado.

1.24 **“Hazardous Material”** shall mean any hazardous, toxic or dangerous waste, substance or material, pollutant or contaminant, as defined for purposes of the Comprehensive Environmental Response, Compensation and Liability Act Of 1980 (42 U.S.C. Sections 9601 et seq.), as amended (“CERCLA”), or the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901 et seq.), as amended (“RCRA”), or any material which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, or any material which contains gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls (pcbs), radon gas, urea formaldehyde, asbestos, lead or electromagnetic waves.

1.25 **“Interior Road Improvements”** shall mean all private interior subdivision roads, driveways and related improvements which provides vehicular access to abutting properties without undue hazard to public property or residents and is not owned or maintained by the Town.

1.26 **“JAC”** shall mean JAC Colorado II, LLC, a Colorado limited liability company, its successors and assigns in title and interest to the Cooper Creek Village Property and the portions of the Cooper Creek North Parcels it owns.

1.27 **“Master Owners Association”** shall mean one or more master owners associations formed and existing pursuant to C.R.S. §§ 38-33.3-101 *et seq.*, for the purpose of providing certain non-public services to the FDP Properties and/or the Project.

1.28 **“Overnight Accommodation Unit”** or **“OAU”** shall mean commercial bedroom and bathroom units arranged for short-term stays of less than thirty (30) days for rent that contain a lobby on the premises. Examples of this use category include bed and breakfast; hostel; hotel or motel and other uses that the Town’s planning director or his or her designee interprets to meet the characteristics of Overnight Accommodations. Short-term rental (see § 3-10 in the Town Code) is excluded from this definition.

1.29 **“Owners”** shall mean JAC, CCWP, SWP and WPT, and each of their successors and assigns. Each of the aforementioned entities shall be an “Owner.”

1.30 **“Parking Garage”** shall have the meaning ascribed thereto in the Parking Agreement.

1.31 **“Parking Agreement”** shall have the meaning set forth in Section 5.3.

1.32 **“Phase”** shall mean any portion of the Project identified by Developer from time to time for development of Public Improvements which comply with the development standards stated in the Final Development Plan.

1.33 **“Planning Area”** shall be a planning area shown on the Final Development Plan.

1.34 **“Private Active Open Space”** shall mean any Active Open Space that is not Public Active Open Space.

1.35 **“Project”** shall mean the mixed-use commercial and residential development featuring single-family residences, multi-family residences, lodging, commercial uses, roads and streets, utilities, trails, parks, open space, and other amenities as more fully described in the Final Development Plan.

1.36 **“Public Active Open Space”** shall mean the Dedicated Trails.

1.37 **“Public Improvements”** shall mean any drainage ditch, roadway, parkway, sidewalk, pedestrian way, tree, lawn, off-street parking area, lot improvement, or other facility for which the local government may ultimately assume the responsibility for maintenance and operation, or which may affect an improvement for which local government responsibility is established. All such improvements shall be properly bonded for or secured by a letter of credit or other acceptable legal instruments.

1.38 **“Recreational Amenities”** shall mean facilities operated in conjunction with CSF intended to provide recreational or other leisure opportunities for guests of, customers of or visitors to businesses located within CSF on the FDP Properties and shall include, without limitation, plazas, skating rinks, cultural and community centers, indoor and outdoor water parks, swimming pools and hot tubs, sledding hills, playing fields, and indoor and outdoor tennis and other racquet sport facilities.

1.39 **“Resort Cabins”** shall mean individual cabins/accommodations with cooking and sleeping facilities that are offered to the public primarily on a short term or transient basis with parking facilities for use of guests nearby.

1.40 **“Roadway Report”** shall mean the Roadway Report included with the Final Development Plan.

1.41 **“Service Plan”** shall mean that certain Consolidated Service Plan for Cooper Creek Village Metropolitan District Nos. 1, 2, 3, 4 and 5 submitted contemporaneously to the Town Council with this FDP and the Annexation Agreement.

1.42 **“SFE Equivalent”** shall mean the amount of water, measured by volume over a period of time (i.e., acre-feet per year or gallons per day), that is required to satisfy the water demand for a single-family residential unit, as determined by GCWSD.

1.43 **“Single Track Trail”** shall mean the area designated as Single Track Trail on the Final Open Space and Trails Plan, which provides access to Beavers Village Condominiums and the Ice Hill trail at Winter Park Resort and connects to the Ski Trail Connection throughout the Cooper Creek Village Property as depicted on the Final Open Space and Trails Plan.

1.44 **“Single Track Trail Easement Area”** shall mean a relocatable easement area that is comprised of a minimum ten foot (10’) wide trail, together with additional widths for cuts, fills and/or retaining walls necessary for the safe establishment of the Single Track Trail, the final dimensions of which shall be determined at the time of final design and construction and

confirmed upon the filing of the final subdivision plat of a portion or portions of the FDP Properties that includes the Single Track Trail segment.

1.45 “**Ski Trail Connection**” shall mean the trail area designated as “Ski Trail Connection” on the Final Open Space and Trails Plan.

1.46 “**Ski Trail Connection Easement Area**” shall mean a relocatable easement area that is comprised of a minimum twenty foot (20’) wide trail, together with additional widths for cuts, fills and/or retaining walls necessary for the safe establishment of the Ski Trail Connection, the final dimensions of which shall be determined at the time of final design and construction and confirmed upon the filing of the final subdivision plat of a portion or portions of the FDP Properties that includes the Ski Trail Connection segment.

1.47 “**SWP**” shall mean Station WP, LLC, a Colorado limited liability company, its successors and assigns in title and interest to the Cooper Creek South Parcel.

1.48 “**Town**” shall mean the Town of Winter Park, a Colorado municipal corporation.

1.49 “**Town Code**” shall mean the Winter Park Town Code.

1.50 “**Town Council**” shall mean the Winter Park Town Council.

1.51 “**Unit**” shall mean either a DU or an OAU and the term “**Units**” shall mean more than one DU, more than one OAU, or a combination of DUs and OAUs.

1.52 “**Vested Property Rights**” shall have the meaning set forth in Section 10 and as further provided in the Annexation Agreement.

1.53 “**WCJ**” shall mean WCJ Holdings, LLC, a Colorado limited liability company, the master developer of the Project, its successors and assigns.

1.54 “**WPT**” shall mean Winter Park Tower, Limited Liability Company, a Colorado limited liability company, its successors and assigns in title and interest to the portion of the Cooper Creek North Parcels it owns.

Section 2. Nature of Final Development Plan. This Final Development Plan shall be binding and regulatory upon the Town, Owners, Developer, the Districts, the FDP Properties, and the Project. Pursuant to C.R.S. § 24-68-102.5(1) the Town Council intends that this Final Development Plan will be designated as a “Site Specific Development Plan” as that term is defined in C.R.S. § 24-68-102(4)(a) and the Town Code. The Final Development Plan vests property rights for a period in excess of three (3) years as warranted by all relevant circumstances, including, but not limited to, the size and phasing of the Project, economic cycles, and market conditions.

Any breach by the Town, Owners, Developer or the Districts of this Final Development Plan shall also constitute a breach of the Annexation Agreement and any non-breaching party(ies) shall be subject to all rights and remedies set forth in the Annexation Agreement.

Section 3. Land Use. The Final Development Plan was submitted to the Town in accordance with Title 7, Chapter 7 (P-D Planned Developments) of the Town Code, and specifically in accordance with Section 7-7-5-2, which addresses final development plan application review procedures in connection with annexation of qualified territory. The FDP Properties and the Project shall be subject to all provisions of the Town Code except as expressly modified by the terms and conditions of the Annexation Agreement or the Final Development Plan, as applicable. In the event of an irreconcilable conflict between or among the terms and conditions of the Town Code, the Final Development Plan, and/or the Annexation Agreement, the terms and conditions of the Final Development Plan and the Town Code shall apply and control in that order.

Section 4. Zoning.

4.1 RC, DC, and Open Space/Forestry Zone Districts. The FDP Properties shall be zoned RC (Residential-Commercial District) and DC (Destination Center District) as modified by the Final Development Plan; specifically, the Cooper Creek Village Property shall be zoned RC and DC with an FDP overlay, and the Cooper Creek South Parcel and the Cooper Creek North Parcels shall be zoned DC with an FDP overlay. The acreage and boundaries of the Planning Areas depicted on the Final Development Plan are preliminary and subject to change as more detailed planning for the FDP Properties progresses. The acreage of any Planning Area may be increased or decreased by up to ten percent (10%) of the total Project acreage in the discretion of JAC or Developer and no amendment of the Final Development Plan shall be required as a result of such increase or decrease. The final acreage of each Planning Area shall be determined at the time of final subdivision platting of all portions of that Planning Area.

4.2 Continuation of Current Use. Notwithstanding any provision of the Final Development Plan or the Town Code to the contrary, all existing residential and commercial uses shall be permitted to continue on the FDP Properties until such time as construction is commenced on such portion of the FDP Properties and all or any portion of FDP Properties shall be permitted to be used for Agricultural or forestry purposes until such time as construction is commenced on such portion or portions of the FDP Properties.

4.2.1. Signage. Notwithstanding any provision of the Final Development Plan or the Town Code to the contrary, all existing signage located on the Cooper Creek South Parcel and the Cooper Creek North Parcels shall be permitted to continue unaltered until the improvements thereon are raised or destroyed. Upon such event on any portion of the Cooper Creek South Parcel Cooper or the Creek North Parcels, any alterations or modifications to existing signage must conform with the applicable sign regulations of the Town.

Section 5. Densities.

5.1 Overall Densities. Developer shall have the right to develop up to 15,000 CSF, 200 OAU and 650 DU within the Cooper Creek Village Property. Developer shall have the right to develop up to 100,000 CSF (inclusive of redevelopment of existing properties), 520 OAU and 225 DU within the Cooper Creek South Parcel and the Cooper Creek North Parcels. Affordable housing units, including the deed restricted units contemplated under the Annexation Agreement, shall be excluded from the maximum densities outlined above and permitted under the Final Development Plan. The area occupied by Recreational Amenities shall be credited as an open area when calculating maximum building coverage ratios permitted within the FDP Properties. Land use densities within planning areas defined by the Final Development Plan may be increased or decreased so long as sufficient roadway, water and sewer capacity is available. Up to 30% of permitted density within a planning area may transferred to other planning areas without requiring an amendment of the Final Development Plan.

5.2 Land Use Summary Matrix. Subject to the terms of Section 5.1, the FDP Properties may only be developed consistent with the Land Use Summary Matrix of the Final Development Plan, which governs the uses and densities allowed in each Planning Area of the Project.

5.3 Parking. Parking requirements shall comply with Winter Park Standards and Specifications for Construction Section 3.9.3, and all uses under the Final Development Plan shall satisfy the Town Code's parking requirements. In addition, certain parking requirements for the densities contemplated in Section 5.1, and specifically for the parcels owned by CCWP known as the Cooper Creek Square Shopping Center, are addressed in that certain Parking Garage Agreement dated September 2, 2015, and recorded at Reception No. 2021004361 in the Grand County, Colorado public records (the "**Parking Agreement**"). The Parking Agreement provides that CCWP as the owner of the Cooper Creek Square Shopping Center has the right to use 215 unallocated and undesignated parking spaces within the Parking Garage pursuant to the terms of the Parking Agreement. Notwithstanding anything to the contrary in the Parking Agreement, this Final Development Plan hereby amends the Parking Agreement such that CCWP (who may act by and through Developer) may allocate pursuant to separate instrument to the owners of the Cooper Creek South Parcel, Cooper Creek North Parcels, Crestview Place Condominiums and/or Winter Park Station properties, including their successors, assigns, employees, invitees, licensees, customers and tenants, use rights for any surplus parking spaces located in the Parking Garage that are not needed to satisfy the Town Code's parking requirements for Cooper Creek Square. In the event of any conflict between this Section 5.3 amendment and the Parking Agreement, this Section 5.3 amendment shall control. CCWP acknowledges and agrees that consent from third-parties will be required should any third-parties be adversely affected by any revised or updated parking allocation.

Section 6. Infrastructure Financing. In recognition of the extraordinary public infrastructure costs associated with development of the Project, including, without limitation, the Public Improvements, the Town and JAC have agreed to the establishment of certain mechanisms between the public and private sectors to accomplish the financing of the infrastructure

contemplated by the Annexation Agreement. Such mechanisms as set forth in the Service Plan are hereby incorporated by reference.

Section 7. Open Space Dedication.

7.1 Active Open Space. Open space shall be land areas not occupied by buildings, structures, parking areas, driveways, streets or alleys. Said open space shall be devoted to landscaping, planting, patios, walkways, recreational areas and facilities, and preservation of natural features, Recreational Amenities or structures and their Accessory Uses located in common recreation areas shall be considered open space as long as total impervious surfaces, including paving and roofs, constitute no more than five percent (5%) of the total open space. As described in the Final Development Plan, active open space areas (“**Active Open Space**”) are planned throughout the Project and are to be located within the FDP Properties as depicted on the Open Space Plan. These areas shall include the public and private, paved and unpaved, non-motorized, multi-use recreational trails connecting the Project to Town and surrounding properties. All Active Open Space shall remain open and undeveloped, except for the recreational trails, buried utility systems, and other ancillary structures as may be constructed on or installed within Active Open Space areas in accordance with the Final Development Plan. Except as set forth below, the Public Active Open Space is to be public, as depicted on the Final Open Space and Trails Plan, and shall be dedicated to the Town for public use at the time of final subdivision platting of the portion or portions of the FDP Properties containing such Public Active Open Space. The Town shall accept and thereafter own, operate, and maintain the Public Active Open Space for the benefit of the Town’s citizens and guests as further provided below. Private Active Open Space shall be developed and conveyed to the Master Owners Association or the District for the benefit of a specific neighborhood or portion of the Project. The Town shall not be responsible for the maintenance of Private Active Open Space, but the Town will include Private Active Open Space in calculating overall community open space requirements for the Project. In consideration of JAC’s conveyances of the Public Active Open Space, designation of Private Active Open Space and construction of Public Improvements in the Active Open Space, all in accordance with the terms of this Section, no additional public open space dedications or payments in lieu thereof, of any kind, type or sort, shall be required with respect to any portion of the Project. Without limiting the generality of the foregoing, individual subdivision submissions to the Town will not be required to independently satisfy the five percent (5%) public open space requirement of Town Code Section 8-3-10-B (or payment in lieu thereof under Town Code Section 8-3-10-D) at the time of their approval or meet any other dedication or cash-in-lieu requirements that the Town may in the future impose.

7.1.1 Approximate Size and Public Infrastructure of Open Space. As depicted on the Final Open Space and Trails Plan, the Public Active Open Space shall include the following approximate acreage and Public Improvements.

7.1.2 Gondola Easement. As depicted on the Final Open Space and Trails Plan, JAC shall dedicate required easements for the proposed gondola. The easement shall include a width of 100’. The easement shall be granted contemporaneously with approval of the

annexation of the Cooper Creek Village Property pursuant to the terms and conditions of the Annexation Agreement.

7.1.3 Ski Trail Connection. As depicted on the Final Open Space and Trails Plan, the Ski Trail Connection Easement Area shall include a relocatable area that is comprised of a minimum twenty foot (20') wide trail, together with additional widths for cuts, fills and/or retaining walls necessary for the safe establishment of the Ski Trail Connection, the final dimensions of which shall be determined at the time of final design and construction and confirmed upon the filing of the final subdivision plat of a portion or portions of the FDP Properties that includes the Ski Trail Connection segment. A bridge will be constructed over the Union Pacific Railroad right-of-way as required to accommodate the Ski Connection Trail. The bridge located within the Ski Trail Connection will be dedicated to the Town following completion and preliminary acceptance by the Town. The District shall construct or cause construction of the bridge, and the Town shall contribute \$800,000 towards the bridge's construction (the "Town's Contribution"). At the time the bridge is completed, the easement for the Ski Trail Connection within the Ski Trail Connection Easement Area shall be granted by JAC or its assigns, and the Town and the District shall enter into a cost recovery agreement. The formula for collection and distribution of the Town's Contribution shall be determined pursuant to a development improvements agreement entered between the Town and JAC. The Town's Contribution shall be paid to JAC no later than two (2) years following completion of the bridge.

7.1.4 Easement Vacation and Reversion. The easements described in Sections 7.1.2 and 7.1.3 shall be vacated and title to the real property encumbered by those easements shall revert back to the legal title holder of the land underlying the easements upon occurrence of the following events:

7.1.4.1 If the Town has not obtained all required off-site easements for the construction and operation of the gondola within three (3) years following the date of annexation of the Cooper Creek Village Property; or

7.1.4.2 If the gondola or Ski Connection Trail have not been completed within twenty (20) years following the date of annexation of the Cooper Creek Village Property, or completed within thirty (30) years following the date of such annexation in the event the Town extends the full period of vested rights for all of the FDP Properties to be a total of thirty (30) years following the date of annexation of the Cooper Creek Village Property.

7.1.4.3 If the easements described in Sections 7.1.2 and 7.1.3 are vacated, the Owners of the Cooper Creek Village Property shall be required to satisfy the Town's 5% public open space requirement as a condition of completing the vacation and reversion of title to the affected Owners.

7.2 Conveyance of Public Active Open Space.

7.2.1 General Dedication Requirement. Except as set forth below, each application for final subdivision plat approval of any portion of the FDP Properties which includes

or borders a portion of the Public Active Open Space shall provide for the dedication of the entire area of that particular Public Active Open Space as public open space upon approval, execution and recordation of the subdivision plat, unless otherwise provided herein or agreed to by the Parties. Except for the Town, which shall be permitted to construct trail connections within the proposed easements for the Dedicated Trails, nothing contained herein shall be deemed to authorize any other person or party to enter upon any portion of the Public Active Open Space or use the same other than JAC or any other applicable Owner prior to creation and conveyance of the Public Active Open Space to the Town.

7.2.2 Conveyance of Public Trail System. The Dedicated Trails depicted on the Final Open Space and Trails Plan are conceptual in nature and are intended to ensure that key connections between the Town, existing neighborhoods, the Project, and surrounding properties are maintained. The Dedicated Trails shall include the following approximate locations, widths, and uses.

7.2.2.1 Ski Connection Trail. The Ski Connection Trail shall be improved and located within the relocatable Ski Trail Connection Easement Area that shall be comprised of a minimum twenty foot (20') wide trail, together with additional widths for cuts, fills and/or retaining walls necessary for the safe establishment of the Ski Trail Connection, the final dimensions of which shall be determined at the time of final design and construction and confirmed upon the filing of the final subdivision plat of a portion or portions of the FDP Properties that includes the Ski Trail Connection segment; provided, however, that the portion of the Ski Connection Trail that consists of the bridge over the Union Pacific Railroad right-of-way will be dedicated to the Town following completion and preliminary acceptance by the Town. Neither Owners, as applicable, nor Developer shall be responsible for paying for the cost, for the design, construction, and maintenance of the Ski Connection Trail.

7.2.2.2 Single Track Trail Easement. The Single Track Trail shall be situated within the Single Track Trail Easement Area and dedicated to the Town following completion and preliminary acceptance of the bridge over the Union Pacific Railroad right-of-way. The final dimensions and alignment of the Single Track Trail Easement Area shall be confirmed not later than preliminary acceptance of the bridge over the Union Pacific Railroad right-of-way. The Town shall be responsible, at its sole cost, for the design and construction of any improvements in the Single Track Trail Easement Area. JAC may, in connection with development of the Project and in its sole discretion, relocate any portion of the Single Track Easement Area. In the event JAC relocates any portion of the Single-Track Trail Easement Area, relocation of the affected portion of the Single Track Trail shall be at JAC's sole cost and JAC shall be responsible for amending the recorded instruments governing the Single-Track Trail Easement Areas to reflect such relocation.

7.2.3 Study of Trail Corridors. JAC and the Town shall flag the rough locations of the Dedicated Trails. Upon completion of field verification and within 90 days, JAC shall convey to the Town, one or more relocatable easements for the location, construction, improvement, maintenance, repair, and replacement of the Dedicated Trails. More specific alignments of the Dedicated Trails within each portion of the FDP Properties will be determined at the time of first

final subdivision platting of any portion of the Project, and those alignments shall be depicted on the applicable final subdivision plat(s), subject, however, to an appropriate plat note indicating the relocatable nature of the easement containing the Dedicated Trails. Actual field-constructed alignments of the Dedicated Trails will be evaluated at the time of construction against site constraints such as wetlands, steep slopes, and rock outcroppings, and following construction, the Dedicated Trails may thereafter be relocated from time to time to facilitate forest management, construction, and maintenance activities so long as reasonably equivalent substitute trails are provided. In the event that any change in the as-constructed location of the Dedicated Trails occurs such that the Town's then-current easement grant does not include the as-constructed location of the Dedicated Trails, or any portion thereof, then JAC shall amend the Dedicated Trails Easement as necessary to grant the Town comparable easement rights for the as-constructed location of the Dedicated Trails.

7.3 Uses. Recreational facilities within the Active Open Space, including parking lots and restrooms, and all utilities and infrastructure shall be a Use by Right. The Town shall maintain facilities located within Dedicated Trails and parcels.

Section 8. Subdivision Platting of Property

8.1 Development in Phases. Due to the size and complexity of the development contemplated by the Final Development Plan, the time required to complete development, and the possible impact of economic cycles and varying market conditions which will occur during development of the Project, the Town acknowledges and agrees that development of the Project may proceed in Phases.

8.2 Subdivision of Phases. The Town shall process approval of the subdivision plat(s) presented by JAC in accordance with this Final Development Plan, the Town's Subdivision Regulations (Title 8 of the Town Code), the Town's Design Review Regulations and Guidelines (Title 6, Chapter 3 of the Town Code), the Town's Landscape Design Regulations and Guidelines and all other Town ordinances and regulations which are in effect and uniformly applied throughout the Town's municipal boundaries as of the date of final approval of the Final Development Plan, except to the extent such ordinances and regulations conflict with the terms and conditions of the Final Development Plan, in which case the terms and conditions of the Final Development Plan shall control.

8.3 Re-Subdivision of Previously Approved Subdivision Plats. The Town acknowledges and agrees that certain portions of the Project described in the Final Development Plan are permitted to be developed with multiple-family structures. The Town further acknowledges and agrees that pursuant to the Final Development Plan, these areas are permitted to be subdivided and further re-subdivided into a total number of lots and/or units equal to the approved number of DUs and OAU's designated in the Final Development Plan.

Section 9. Reimbursement for Off-Site Improvements. It is anticipated that Adjacent Projects may, in the future be developed in such a manner and at such an intensity of use which may require such properties to utilize certain off-site Public Improvements constructed by the

District, and more fully described in the Annexation Agreement. At the time of completion of each such off-site Public Improvement, the Town and any of the Owners or the District, as applicable, may enter into a cost recovery agreement. The formula for collection and distribution of such proportionate share of the cost of each off-site Public Improvement shall be determined pursuant to a development improvements agreement entered between the Town and the applicable Owner.

Section 10. Enforcement, Assignment of Rights and Obligations. The rights and obligations of the Town and JAC under the Final Development Plan shall be enforceable and assignable as follows:

10.1 Right to Enforce the FDP. The provisions of the Final Development Plan shall run in favor of the Town and shall be enforceable, at law or in equity, by the Town, any of the Owners, the Developer and the District.

10.2 Vested Rights. The Parties intend that the Vested Property Rights conferred by the Annexation Agreement shall attach to and run with the Owners in their capacities as landowners of the FDP Properties and Developer in its capacity as master developer of the Project. Thus, the Vested Property Rights granted by the Agreement and as further defined herein shall attach to and run with the FDP Properties and be enforceable by the Owners and their successors and assigns in interest as landowner(s) of all or any portion of the FDP Properties and shall further attach to and run with the FDP Properties and be enforceable by the Owners, Developer and their successors and assigns in interest. No assignment of the Vested Property Rights shall be required in order for any successor landowner to any Owner or any successor master developer to Developer to be a beneficiary of the Vested Property Rights. Any assignment of an Owner's rights in and to the Vested Property Rights in Owner's capacity as landowner and in Developer's capacity as master developer of the Project shall be made in accordance with Section 10.3 below.

10.3 Assignment of Rights and Obligations. Except as described above in Section 10.2, the rights and obligations set forth in this Final Development Plan are solely the obligations of the Owners and Developer and shall not, except as otherwise set forth in this Section 10.3, run with the land or inure to any purchaser of all or any portion of the FDP Properties. Notwithstanding the foregoing, the Owners and Developer may, in their sole discretion, assign the rights or obligations, or any portion thereof, described in this Final Development Plan or in the Annexation Agreement to any third party, whether or not such third party obtains any interest in the FDP Properties. In the event of any such assignment and subsequent assumption by such third party, any Owner or Developer as assignor shall, as more fully described in such assignment, be relieved of any further liability with respect to the obligations of this Final Development Plan described in such assignment, and the assignee shall thereafter be liable for fulfillment of the assigned obligations. Any such assignment shall be immediately effective as against the parties thereto and the Town upon the recording of a written instrument evidencing such assignment in the real property records of Grand County, Colorado. Any assigning Owner

or Developer shall notify the Town of any assignment pursuant to this Section 10.3, but the Town's consent to any such assignment shall not be required.

Section 11. Rights Which are Vested. As further provided in the Annexation Agreement, the entire Final Development Plan for the FDP Properties, including every provision of this Agreement and the Final Development Plan attached hereto as Exhibit 1, is hereby deemed a part of the Site-Specific Development Plan and any right of or benefit conferred upon the Owners, or any of them, and the Developer, as described herein shall constitute a Vested Property Right. Without limiting the generality of the foregoing sentence, the Vested Property Rights include the right of the Owners and Developer to submit and for the Town to process development applications in accordance with the procedures set forth in the Town Code (as the same was in effect on the Approval Date). Any amendment to the Town Code approved after the Approval Date that creates generally applicable submittal requirements, procedural requirements, or approval criteria which conflict with or are in addition to the terms and conditions of the Agreement, the Final Development Plan, or the Town Code will not apply to the FDP Properties or the Project. In recognition of the size and complexity of the Project contemplated under the Final Development Plan, the time required to complete development, the need for development to proceed in phases, and the possible impact of economic conditions and economic cycles and varying market conditions during the course of development, the Owners have the right to develop the FDP Properties in such order and at such rate and at such time as the market dictates consistent with the Final Development Plan.

Section 12. Miscellaneous.

12.1 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.

12.2 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

If to JAC, CCWP or SWP:

Charles J. Johnson
747 Sheridan Blvd., #7D
Lakewood, CO 80214

With a copy to:

Johnson & Repucci LLP
850 W. South Boulder Road, Suite 100
Louisville, CO 80027
Attn: Michael J. Repucci

If to WPT:

Robin Wirsing
P.O. Box 3233
Winter Park, CO 80482

If to District No. 1:

Cooper Creek Village Metropolitan District No. 1
c/o Icenogle Seaver Pogue, P.C.
4725 S. Monaco St., Suite 360
Denver, CO 80327

With a copy to:

Alan Pogue, Esq.
Icenogle Seaver Pogue, P.C.
4725 S. Monaco St., Suite 360
Denver, CO 80327

If to District No. 2:

Cooper Creek Village Metropolitan District No. 2
c/o Icenogle Seaver Pogue, P.C.
4725 S. Monaco St., Suite 360
Denver, CO 80327

With a copy to:

Alan Pogue, Esq.
Icenogle Seaver Pogue, P.C.
4725 S. Monaco St., Suite 360
Denver, CO 80327

If to District No. 3:

Cooper Creek Village Metropolitan District No. 3
c/o Icenogle Seaver Pogue, P.C.
4725 S. Monaco St., Suite 360
Denver, CO 80327

With a copy to:

Alan Pogue, Esq.
Icenogle Seaver Pogue. P.C.
4725 S. Monaco St., Suite 360
Denver, CO 80327

If to District No. 4:

Cooper Creek Village Metropolitan District No. 4
c/o Icenogle Seaver Pogue, P.C.
4725 S. Monaco St., Suite 360
Denver, CO 80327

With a copy to:

Alan Pogue, Esq.
Icenogle Seaver Pogue. P.C.
4725 S. Monaco St., Suite 360
Denver, CO 80327

If to District No. 5:

Cooper Creek Village Metropolitan District No. 5
c/o Icenogle Seaver Pogue, P.C.
4725 S. Monaco St., Suite 360
Denver, CO 80327

With a copy to:

Alan Pogue, Esq.
Icenogle Seaver Pogue. P.C.
4725 S. Monaco St., Suite 360
Denver, CO 80327

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.

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

12.4 Assignment. Any Owner may assign to one or more successor developers or a District all or any part of its obligations and rights under this Agreement in accordance with the terms and conditions of this Agreement, any applicable service plan for the 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 in accordance with the terms and conditions of this Agreement, any applicable service plan for the District, and applicable law. Where used in this Agreement or in the FDP, the term “JAC,” “CCWP,” “SWP,” “WPT” or “District” shall also mean any of the lawful successors or assigns of JAC, CCWP, SWP, WPT and/or the District, and all such successors and assigns shall be bound by and have the right to enforce this Agreement.

12.5 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.

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

12.7 Conflict with Other Provisions of the Town Code. In the event any provision of this Agreement conflicts with any provision of the Town Code, this Agreement shall control the determination of the rights and obligations of the Parties with respect to such conflicting matter.

12.8 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.

12.9 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.

12.10 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.

12.11 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 its officers, attorneys or employees.

12.12 Rights and Remedies. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

12.13 Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

[Remainder of page left intentionally blank]

EXHIBIT 1

FINAL DEVELOPMENT PLAN