AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Fifth Addendum to the Development Improvements Agr

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: BOCC and ND Enterprises

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Attached please find the Fifth Addendum to the Development Improvements Agreement for Skyland Filing III, Phase II. This Addendum extends the work completion date to 11/30/19.The original work completion date pursuant to the DIA was 11/30/07. We are holding security in the form of a

Fiscal Impact: 0

Submitted by: Office of the County Attorney **Submitter's Email Address:** rmagruder@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 12/29/2016

County Attorney Review: ( ) Required (●) Not Required

Comments:

Reveiwed by: Discharge Date: Certificate of Insurance Required

Yes ( ) No ( )

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 1/4/2017

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 1/10/2017

Revised April 2015

Community Banks of Colorado
A division of NBH Bank, Member FDIC
Where common sense lives.

December 7, 2016

Letter of Credit #: 3007202

Applicant: **GK Investments, LLC**
PO Box 2601
Crested Butte, CO 81224

Board of County Commissioners of the County of Gunnison, Colorado
200 East Virginia Avenue
Gunnison, CO 81230

Ladies and Gentlemen:

This Letter of Credit has been amended as follows:

(1) The name of the Bank is amended to Community Banks of Colorado, a division of NBH Bank.

(2) The Amount is increased from $495,836.25 to $620,000.00.

(3) The Expiration Date is extended from November 30, 2017, to December 1, 2020.

(4) The items that must accompany the drafts (i.e., the bullet points) are amended as follows:

- A written statement addressed to us, purportedly signed by an authorized representative of Beneficiary stating: "The amount represented by the draft accompanying this statement is the amount required to be paid to the Board of County Commissioners of the County of Gunnison, Colorado (the "Board") because GK Investments, LLC ("GKI") has defaulted on its obligations to the Board as agreed under the Development Improvement Agreement and associated addendums thereto between GKI and the Board originally filed December 29, 2004, bearing Reception No. 549685."
- This original Letter of Credit and any amendments that may be in existence.

All other terms and conditions of this Letter of Credit remain unchanged.

This amendment is to be considered as part of the above Letter of Credit and must be attached thereto.

Sincerely,

Jennifer Senderson
Vice President

Community Banks of Colorado
A division of NBH Bank, Member FDIC
Where common sense lives.

ACCEPTED, AGREED TO, AND AUTHORIZED:

Applicant:

GK Investments, LLC

By: _____ Dated: 12/13/16

Print Name: RICHARD DIVINE

Title: MGR

ACCEPTED, AGREED TO, AND AUTHORIZED:

Beneficiary:

Board of County Commissioners of the County of Gunnison, Colorado

By: _____ Dated: _____

Print Name: _____

Title: _____

FIFTH ADDENDUM TO THE DEVELOPMENT IMPROVEMENTS AGREEMENT FOR SKYLAND FILING III, PHASE II

This Fifth Addendum to the Development Improvements Agreement for Skyland Filing III, Phase II modifies that certain Development Improvements Agreement by and between the Board of County Commissioners of the County of Gunnison, Colorado ("Gunnison County") and N.D. Enterprises, L.L.C., a Colorado limited liability company, recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on December 29, 2004, bearing Reception No: 549685 ("Agreement") and the following Addendums thereto:

1. Addendum to Development Improvements Agreement by and between Gunnison County and GK Investments, L.L.C., a Colorado limited liability company, ("GK Investments") recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on June 4, 2008, bearing Reception No: 584252 ("First Addendum"); and

2. Second Addendum to Development Improvements Agreement by and between Gunnison County and GK Investments, recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on May 14, 2010, bearing Reception No: 598461("Second Addendum"); and

3. Third Addendum To Development Improvements Agreement by and between Gunnison County and GK Investment, recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on January 1, 2012, bearing Reception No: 610758 ("Third Addendum"); and

4. Fourth Addendum To Development Improvements Agreement by and between Gunnison County and GK Investment, recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on November 15, 2013, bearing Reception No: 623860 ("Fourth Addendum").

The Agreement and Addendums thereto referenced above were entered into pursuant to the approval of Land Use Change No: 2002-56 for the development of Skyland Filing III, Phase II, a subdivision consisting of 12 single family residential lots (Lots 184 through 195) as identified on the plat titled "Final Plat Skyland-Third Filing, Phase II located in the NE1/4NW1/4 & NE1/4 of Section 1, Township 14 South, Range 86 West of the Sixth Principal Meridian, County of Gunnison, State of Colorado", recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on December 29, 2004, bearing reception No: 549684.

The Agreement and Addendums thereto are hereby modified as follows:

1. Work Completion Date.

Relevant to paragraphs 3 and 6 of the Agreement, paragraph 3 of the First Addendum, paragraph 1 of the Second Addendum and paragraph 1 of the Fourth Addendum, the current work completion date for the construction of improvements as identified in paragraph 7 of the Agreement is November 30, 2016. The work completion date is hereby extended to November 30, 2019.

2. Adequate Security to be Provided. Relevant to paragraphs 5 and 7.C of the Agreement, paragraph 2 of the Second Addendum, paragraph 2 of the Third Addendum and paragraph 2 of the Fourth Addendum, GK Investments, L.L.C. reaffirms, understands and agrees that 125 percent of the estimated cost of improvements for the development of Skyland Filing III, Phase II shall be provided to Gunnison County in a form and content satisfactory to Gunnison County to the benefit of Gunnison County to be held as security for the completion of the said improvements. GK Investments, L.L.C. shall ensure that this security is current at all times and, at the direction of Gunnison County, shall extend the security to the date identified by Gunnison County.

This Fifth Addendum to the Development Improvements Agreement shall not be effective until it is recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado.

Except as modified herein, the terms and conditions of Agreement and Addendums thereto are hereby reaffirmed and ratified.

APPROVED this _____ day of January, 2017.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By: _____
Paula Swenson, Chairperson

ATTEST:

_____
Deputy County Clerk

GK Investments, L.L.C.,
a Colorado limited liability company

By: _____
Richard D. Divine, General Manager

STATE OF COLORADO)
) ss.
County of Gunnison)

The foregoing was acknowledged before me this 24th day of October, 2016, by Richard D. Divine, General Manager of GK Investments, L.L.C., a Colorado limited liability company.

Witness my hand and official seal.
My commission expires: 7/8/2017

MICHAEL C. DAWSON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #19974004237
My Commission Expires July 8, 2017

_____
Notary Public
Address: