AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Sixth Addendum; DIA - Skyland Filing III

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

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

Summary:

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

Fiscal Impact:

Submitted by: Lauren Hibbard **Submitter's Email Address:** lhibbard@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

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: 10/31/2019

○ Consent Agenda ◉ Regular Agenda ○ Worksession Time Allotted: 10 minutes

Agenda Date: 11/5/2019

Revised April 2015

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

This Sixth 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, LLC, 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 Investments, 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 Investments, 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").

5. Fifth 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 January 11, 2017, bearing Reception No: 644311 ("Fifth 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. Transfer of Ownership.

a. The real property and development rights for the Project were conveyed from N.D. Enterprises to GK Investments, LLC, a Colorado limited liability company by General Warranty Deed and Assignment of Development Rights both of which were recorded with the Gunnison County Clerk and Recorder's Office on July 14, 2005, at Reception Numbers: 555178 and 555719; and

b. GK Investments, LLC wishes to convey the real property and development rights for the Project to GP Crested Butte Holdings, LLC, a Delaware limited liability company by Special Warranty Deed and an Assignment of Development Rights, attached as Exhibit A; and

c. The Agreement is binding upon successors and assigns of the Developer, pursuant to paragraph 12. However, pursuant to paragraph 12 of the Agreement, the transfer or assignment of any of the rights or obligations of the Developer under the Agreement are not permitted without the prior approval of the County.

d. The County hereby approves and transfers the rights and obligations of the Agreement under all terms and conditions of the Agreement to GP Crested Butte Holdings, LLC, a Delaware limited liability company whose address is 555 California St., Suite 3450, San Francisco, CA 94104.

2. Work Completion Date. Relevant to paragraphs 3 and 6 of the Agreement, paragraph 3 of the First Addendum, paragraph 1 of the Second Addendum, paragraph 1 of the Fourth Addendum, and paragraph 1 of the Fifth Addendum, the current work completion date for the construction of improvements as identified in paragraph 7 of the Agreement is November 30, 2019. The work completion date is hereby extended to November 30, 2022.

3. 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, paragraph 2 of the Fourth Addendum, and paragraph 2 of the Fifth Addendum, GP Crested Butte Holdings, LLC reaffirms, understands and agrees that 125 % 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. GP Crested Butte Holdings, LLC shall provide this security by December 31, 2019. Upon GP Crested Butte Holdings, LLC's provision of this security, Gunnison County shall release the security provided by GK Investments, LLC to GK Investments, LLC.

This Sixth 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 November, 2019.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By: _____
Jonathan Houck, Chairperson

ATTEST:

_____
Deputy County Clerk

GK INVESTMENTS, LLC, a Colorado limited liability company

By:_____
Name: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by _____ as _____of GK INVESTMENTS, LLC, a Colorado limited liability company on this ___ day of _____, 2019. WITNESS my hand and official seal. My commission expires: _____.

_____
Notary Public

GP CRESTED BUTTE HOLDINGS, LLC, a Delaware limited liability company

By:_____
Name: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by _____ as _____of GP CRESTED BUTTE HOLDINGS, LLC, a Delaware limited liability company on this ___ day of _____, 2019. WITNESS my hand and official seal. My commission expires: _____.

EXHIBIT A

ASSIGNMENT OF DEVELOPMENT RIGHTS

GK INVESTMENTS, LLC, a Colorado limited liability company whose address is 1616 14th Street, Denver, CO 80202 ("Assignor"), for good and valuable consideration, hereby assigns, transfers, and conveys to GP CRESTED BUTTE HOLDINGS, LLC, a Delaware limited liability company whose address is c/o PCCP LLC, 10100 Santa Monica Boulevard, Suite 1000, Los Angeles, California 90067 ("Assignee"), all of Assignor's development rights for Skyland Third Filing, Phase II, including but not limited to: (1) all of Assignor's rights acquired in the Assignment of Development Rights recorded at Reception No. 555719[1]; (2) all of Assignor's rights according to the plat recorded December 29, 2004 at Reception No. 549684 (the "Real Property"); (3) all of Assignor's rights reserved by the Declarant under the Declaration of Protective Covenants of Skyland, Initial Filing recorded in Book 574 at page 141, the Notice of Amendment of Declaration of Protective Covenants recorded in Book 789 at page 710, and the Special Covenants of Skyland - Third Filing recorded at Reception No. 500523 of the records of Gunnison County, Colorado (collectively the "Declaration"); (4) all of Assignor's rights to construct, develop, expand, enlarge and supplement the units within the Real Property; (5) any other Declarant rights of Assignor as defined by Declaration or by the Common Interest Ownership Act as set forth in C.R.S. 38-33.3-101 *et seq.* regarding the Real Property; (6) all of Assignor's rights under that certain Development Improvements Agreement with Gunnison County Colorado recorded Reception No. 549685, and all amendments thereto; and (7) any other rights of Assignor regarding, concerning, or otherwise related to the Real Property (collectively, the "Development Rights").

Assignor represents and warrants to Assignee that (i) Assignor is the sole owner of the Development Rights and this conveyance of the Development Rights is free and clear of any liens and encumbrances; (ii) this assignment is duly authorized and executed and is the legal, valid and binding obligation of Assignor; and (iii) Assignor has not previously assigned or terminated the Development Rights as to the Real Property.

Dated this ____ day of _____, 2019

GK INVESTMENTS, LLC, a Colorado limited liability company

By:_____
Name: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

[1] All references to reception numbers contained herein refer to the reception number of the recorded instrument in the Office of the Gunnison County Clerk and Recorder.

The foregoing instrument was acknowledged before me by _____ as _____of GK INVESTMENTS, LLC, a Colorado limited liability company on this ___ day of _____, 2019. WITNESS my hand and official seal. My commission expires: _____.

_____
Notary Public

GP CRESTED BUTTE HOLDINGS, LLC, a Delaware limited liability company

By:_____
Name: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by _____ as _____of GP CRESTED BUTTE HOLDINGS, LLC, a Delaware limited liability company on this ___ day of _____, 2019. WITNESS my hand and official seal. My commission expires: _____.

_____
Notary Public