

TOWN OF GYPSUM, COLORADO

RESOLUTION NO. 12 (SERIES 2024)

A RESOLUTION OF THE TOWN OF GYPSUM, COLORADO APPROVING AN ASSIGNMENT OF SUBDIVISION IMPROVEMENT AGREEMENT AND AGREEMENT FOR SUBSTITUTE SECURITY

WHEREAS, the Town of Gypsum ("Town") is a home rule municipality duly organized and existing under Article XX of the Colorado Constitution and the Town's Home Rule Charter effective October 21, 1982; and

WHEREAS, the Town entered into a Subdivision Improvement Agreement with Phase 7 Buckhorn Valley, LLC dated June 15, 2023; and

WHEREAS, Mountain Valley Homes, LLC purchased the property and will be replacing the current warranty security in the amount of \$56,231.82 paid by Phase 7 Buckhorn Valley, LLC being held in the form of cash by the Town; and

WHEREAS, upon payment from Mountain Valley Homes, the Town will pay Phase 7 Buckhorn Valley, LLC \$56,231.82;

NOW, THEREFORE, be it resolved by the Town Council of the Town of Gypsum, Colorado that:

Approval of Assignment. The Town hereby approves the assignment, identified on Exhibit A attached hereto and incorporated herein (the "Assignment").

Severability. If any part, section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining provisions.

Effective Date. This Resolution shall take effect and be enforced immediately upon its approval by the Town Council.

INTRODUCED, READ AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF GYPSUM, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF GYPSUM ON THE 28th DAY OF May, 2024, BY A VOTE OF 5 IN FAVOR AND 0 AGAINST.

EXHIBIT A

Assignment Agreement

**ASSIGNMENT OF SUBDIVISION IMPROVEMENT AGREEMENT
AND
AGREEMENT FOR SUBSTITUTE OF SECURITY**

This ASSIGNMENT OF SUBDIVISION IMPROVEMENT AGREEMENT AND AGREEMENT FOR SUBSTITUTE OF SECURITY (this "Assignment") is made and entered into as of the date of the last signature hereto (the "Effective Date"), by and between Mountain Valley Homes, LLC ("MVH"), Phase 7 Buckhorn Valley, LLC ("P7BV"), and the Town of Gypsum, Colorado (the "Town") (individually, a "Party"; collectively, the "Parties").

RECITALS

- A. P7BV is the Developer of Buckhorn Valley PUD Phase 7 and a party to the Subdivision Improvement Agreement Buckhorn Valley PUD Phase 7 dated June 15, 2023 (the "SIA").
- B. P7VB has completed the construction of public improvements required by the SIA (the "Public Improvements") and conveyed the same to the Town via the Bill of Sale approved and accepted by the Town by Resolution No. 16, Series of 2023 (the "Bill of Sale").
- C. Pursuant to the SIA and as recited in the Bill of Sale, P7BV has posted cash security to repair defects to the Public Improvements arising during the warranty period, which is held by the Town as the "Warranty Security" under the SIA (the "Existing Warranty Security").
- D. Pursuant to this Assignment, P7BV wishes to assign its remaining rights and obligations under the SIA to MVH and, accordingly, MVH will provide cash to the Town in amount equal to the Existing Warranty Security as a substitute Warranty Security ("Substitute Warranty Security") and the Town will release to P7BV the Existing Warranty Security.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, the receipt and sufficiency of which is hereby acknowledge, the Parties agree as follows:

- 1. Incorporation of Recitals. The foregoing recitals are incorporated herein and made a material part of this Assignment.
- 2. Assignment. P7BV hereby assigns and transfers to MVH all of its right, title, interest, and obligations under the SIA and the Bill of Sale, which is accepted by MVH. This Assignment is contingent upon the Town's release of Existing Warranty Security to P7BV and upon MVH providing Substitute Warranty Security.
- 3. Warranty Security. Within 7 days of the Effective Date, MVH will provide to the Town the Substitute Warranty Security to be held by the Town pursuant to the SIA. Contemporaneous therewith, the Town shall release to P7BV the Existing Warranty Security. The Substitute Warranty Security shall act as the "Warranty Security" under the

SIA, as the term is defined therein. Such Warranty Security shall be held by the Town and released to MVH in accordance with the SIA.

4. Indemnification. P7BV further agrees with MVH that notwithstanding anything to the contrary set forth in this Assignment, if the Town pursuant to the terms of the SIA requests that MVH perform any work or undertake any corrective action for anything done or anything the Town claims was not done pursuant to the SIA by the P7BV during the time in which the P7BV was responsible for performance under the SIA, P7BV will indemnify, defend and hold harmless MVH with regard to all such matters.
5. Further Assurances. The Parties shall execute and deliver from time to time hereafter, upon reasonable request of the other party, all such further documents and instruments, and shall do and perform all such acts as may be necessary or reasonably requested by the other party, to give full effect to the intent and meaning of this Assignment.
6. Successors. This Assignment shall be binding upon the Parties hereto and their heirs, legal representatives, successors, and assigns.
7. Miscellaneous. This Assignment shall be governed by and construed in accordance with the laws of the State of Colorado, without reference to conflict of laws principles. Any suit to enforce this Assignment shall be brought in Eagle County District Court. The parties hereby submit to the exclusive personal jurisdiction of such courts and waive any venue objection. No amendment, modification or waiver of the terms or conditions of this Assignment shall be binding unless the same shall be in writing and duly executed by the Parties. No failure or delay by either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof for such occurrence or in the future. If any provision of this Assignment shall be held by a court of competent jurisdiction to be unenforceable, the remaining provisions shall remain in full force and effect. This Assignment contains the complete and entire understanding between the Parties on the subject matter agreed upon and supersedes all discussions, proposals, understandings or agreements, oral or written, relating to the same subject matter. This Assignment may be executed in counterparts, each of which shall be deemed to be an original agreement, and all of which constitutes one agreement. Electronic or digital signatures will be of equal effect and validity as signatures on original copies.

{Signatures on following page, remainder of this page intentionally blank}