TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 3, SERIES 2019

A RESOLUTION APPROVING ASSIGNMENT, ASSUMPTION, AND ADDENDUM TO
AMENDED AND RESTATED
SUBDIVISION IMPROVEMENT AGREEMENT FOR
SERRATOGA FALLS FILING NO. 2 AND FUTURE FILINGS

WHEREAS, the Town Council of the Town of Timnath (the "Town") pursuant to C.R.S. § 31-15-103, has the power to pass resolutions; and

WHEREAS, attached hereto as Exhibit A is the Assignment, Assumption, and Addendum to the Amended and Restated Subdivision Improvement Agreement for Serratoga Falls Filing No. 2 and Future Filings (the "Agreement"); and

WHEREAS, the Town Council is familiar with the Agreement and finds it to be in the best interest of the Town, its residents, and the general public.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO AS FOLLOW:

Section 1. Approval
The Agreement is hereby approved in substantially the form as attached hereto as Exhibit A, with such modifications and additions as the Town Manager, in consultation with Legal Counsel, determines to be necessary and appropriate to protect the interests of the Town or effectuate the purposes set forth herein and not otherwise inconsistent with this Resolution.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON JANUARY 8, 2019.

TOWN OF TIMNATH, COLORADO

[Signature]
Jill Grossman-Belisle, Mayor
ATTEST:

[Signature]
Milissa Peters-Garcia, CMC
Town Clerk
EXHIBIT A

Agreement
ASSIGNMENT, ASSUMPTION, AND ADDENDUM TO
AMENDED AND RESTATE
SUBDIVISION IMPROVEMENT AGREEMENT FOR
SERRATOGA FALLS FILING NO. 2 AND FUTURE FILINGS

This Assignment, Assumption, and Addendum to the Amended and Restated Subdivision Improvement Agreement for Serratoga Falls Filing No. 2 and Future Filings (the “Agreement”) is entered into as of the 8th day of January, 2019 by and between the TOWN OF TIMNATH, COLORADO, a Colorado municipal corporation (the “Town”); and KITCHEL LAKE PARTNERS LLC, a Colorado limited liability company (the “Subsequent Developer”). Collectively, the Town and the Developer are referred to herein as the “Parties.”

RECAPITALS

WHEREAS, the Town and Serratoga Falls, LLC (the “Developer”) are parties to that certain Amended and Restated Subdivision Improvement Agreement for Serratoga Falls Filing No. 2 and Future Filings dated August 11, 2015 (the “SIA”);

WHEREAS, Section 33 of the SIA states there shall be no transfer or assignment of any of the rights or obligations of the Developer under this Agreement without the prior written approval of the Town;

WHEREAS, the Subsequent Developer has purchased or intends to purchase lots within Serratoga Falls Phases 1 and 2 which are located within Serratoga Falls Filing No. 2 and are subject to the terms of the SIA;

WHEREAS, the Town and the Developer hereby consent to the assignment of the SIA from the Developer to the Subsequent Developer;

WHEREAS, due to the timing of construction the Subsequent Developer is requesting the Town immediately enter into this Agreement assigning the SIA and clarifying Initial Acceptance for sidewalks within a Phase;

WHEREAS, the SIA sets forth the process for Initial Acceptance of Public Improvements which have been substantially completed in accordance with the Approved Plans;

WHEREAS, according to the SIA, the sidewalks in any given phase must be completely installed prior to the Town engineer issuing an Initial Acceptance Letter;

WHEREAS, the Subsequent Developer has requested that the Town engineer issue an Initial Acceptance Letter for Public Improvements in Kitchel Lake, Phases 1 and 2, a/k/a Serratoga Falls Phases 1 and 2 notwithstanding the fact that the sidewalks are not complete; and
WHEREAS, in consideration for this accommodation on the part of the Town, the Subsequent Developer is willing to make various sidewalk construction commitments to the Town as set forth below.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the Parties agree as follows:

1. **Assignment.** The Developer hereby assigns to the Subsequent Developer all of the Developer’s right, title, and interest in and to, as well as all of the Developer’s obligations under the SIA.

2. **Acceptance of Assignment.** The Subsequent Developer hereby assumes Developer’s right, title, and interest in and to, as well as all of the Developer’s obligation under the SIA. The Subsequent Developer agrees to indemnify and hold the Developer harmless from all obligations of the Developer under the SIA following the Effective Date of this Agreement.

3. **Town Consent.** The Town hereby consents to the assignment of the SIA from the Developer to the Subsequent Developer.

4. **Addendum to SIA Regarding Sidewalks.** The Parties hereby agree to this addendum to the SIA: “Town agrees to accept the installation of sidewalks in Kitchel Lake, Phases 1 and 2 a/k/a Serratoga Falls Phases 1 and 2 after Final Acceptance, but prior to the issuance of the Certificate of Occupancy for any residence, under the following terms and conditions:

   a. A proof roll of the sidewalk subgrade will be performed to the satisfaction of the Town Engineer.

   b. Frost must be removed or the ground heated to remove all frost from the subgrade. All sidewalk poured in cold temperatures will require blanketing.

   c. Freshly poured sidewalk shall be protected from damage for several days to assure adequate cure and structural strength.

   d. The Town will retain a portion of the Completion Security sufficient to ensure the cost of installing the sidewalk until all the sidewalk is installed.

   e. The Town Engineer may issue an Initial Acceptance Letter for a Phase notwithstanding that the sidewalks are not complete. The 2 year Warranty Period for any Phase will not start until all the sidewalk for the Phase is completed, i.e. there will not be multiple warrantee periods for a Phase.

   f. Sidewalks will be placed in one continuous pour for each side of the street and for each individual block to minimize cold joints.
g. Nothing contained in this Agreement shall relieve the Subsequent Developer from the responsibility for placement of Town sidewalks, and no Certificate of Occupancy will be issued for any home where the sidewalk is not completely installed for the entire block containing that residence.”

5. **Effective Date.** This Sidewalk Agreement shall be effective January 8, 2019 (the “Effective Date”).

6. **Prior Provisions Effective.** Except as expressly modified by this Agreement, all other provisions of the SIA shall remain in full force and effect.

7. **Capitalized Terms.** Capitalized terms used and not otherwise defined in this Agreement shall have the meanings given to such terms in the SIA.

*[Signature Pages Follow]*
IN WITNESS WHEREOF, the Parties have executed this Agreement. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

TOWN:

THE TOWN OF TIMNATH, a home rule municipal corporation and political subdivision of the State of Colorado

[Signature]

Jill Grossman-Belisle, Mayor

ATTEST:

[Signature]

Milissa Peters-Garcia, CMC
Town Clerk
SUBSEQUENT DEVELOPER:

KITCHEL LAKE PARTNERS LLC, a Colorado limited liability company

Printed Name: ______________________

Title: _____________________________

STATE OF COLORADO                )
 ) ss.
COUNTY OF ____________            )

The foregoing instrument was acknowledged before me this ___ day of ___________, 2019, by ___________________________ of Kitchel Lake Partners LLC.

WITNESS my hand and official seal.

My commission expires: _____________________________

(SEAL)

Notary Public
DEVELOPER:

SERRATOGA FALLS LLC, a Colorado limited liability company

Printed Name: ____________________________

Title: ____________________________

STATE OF COLORADO

COUNTY OF ____________

) ss

The foregoing instrument was acknowledged before me this ___ day of ____________, 2019, by ____________________________ of Serratoga Falls, LLC.

WITNESS my hand and official seal.

My commission expires: ____________________________

(S E A L)

Notary Public