

**TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 9, SERIES 2022**

**A RESOLUTION APPROVING AN AMENDMENT 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 (“Town”) pursuant to C.R.S. § 31-15-103, has the power to pass resolutions;

WHEREAS, the Parties entered into an Amended and Restated Subdivision Improvement Agreement for Serratoga Falls Filing No. 2 and Future Filings on August 11, 2015 (the “SIA”);

WHEREAS, the Parties desire to amend the SIA with respect to Filing No. 3 and future filings only (the terms of the SIA shall not be amended with respect to Filing No. 1 nor Filing No. 2);

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, subject to technical or otherwise non-substantive modifications, as deemed necessary by the Town Manager in consultation with the Town Planner, Engineer, Legal Counsel, and other applicable staff or consultants.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON FEBRUARY 22, 2022.

TOWN OF TIMNATH, COLORADO



~~Mark J. Soukup, Mayor~~

Rick L. Collins Mayor Retain

ATTEST:



Milissa Peters-Garcia, CMC
Town Clerk



EXHIBIT A

Agreement

**AMENDMENT TO
AMENDED AND RESTATED SUBDIVISION IMPROVEMENT AGREEMENT FOR
SERRATOGA FALLS FILING NO. 2 AND FUTURE FILINGS BETWEEN

THE TOWN OF TIMNATH, COLORADO
AND
KITCHEL LAKE F3 LLC**

THIS AMENDMENT is made and entered into as of this 22 day of February, 2022, by and between the TOWN OF TIMNATH, a home-rule municipal corporation of the State of Colorado (“**Town**”), and KITCHEL LAKE F3 LLC, a Colorado limited liability company (the “**Developer**”). The Town and Developer are collectively referred to herein as the “**Parties**”.

RECITALS

WHEREAS, the Parties entered into an Amended and Restated Subdivision Improvement Agreement for Serratoga Falls Filing No. 2 and Future Filings on August 11, 2015 (the “**SIA**”);

WHEREAS, the Parties desire to amend the SIA with respect to Filing No. 3 and future filings only (the terms of the SIA shall not be amended with respect to Filing No. 1 nor Filing No. 2);

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

COVENANTS AND AGREEMENTS

1. Section 2, Definitions is hereby amended by adding the following definition:

“L. ‘Street Tree’ shall mean any tree to be planted within the right of way along any street pursuant to the the approved landscape plan.”

2. Section 4, Fees is hereby amended by deleting Subsections 4.B. and 4.C. in their entirety.
3. Section 5, Completion of Public Improvements and Landscaping is hereby amended by inserting “including Street Trees” in the first sentence of Section 5, which will now read as follows:

“Developer shall install all public Improvements and Landscaping, including Street Trees, in compliance with the requirements of this Agreement at Developer’s expense.”

4. Section 7, Building Permits is hereby amended by deleting the second sentence in its entirety and will now read as follows:

“There shall be no issuance of any building permits by the Town for lots within any defined Phase until all Public Improvements within that Phase but excluding Landscaping, irrigation, and signage, have been granted Initial Acceptance, as defined below, by the Town as provided for in the Code. As a limited exception to the requirements contained in this Paragraph, the Town hereby agrees that up to eight (8) building permits for model homes may be issued and outstanding at any given time for the entirety of the Property upon the completion of water and sanitary sewer improvements, which have been approved by all applicable regulatory entities, and completion of an all-weather surface on streets within the applicable Phase of the Property.”

5. Section 8, Performance Guarantee – Public Improvements is hereby amended by deleting Section 8.A. in its entirety and replacing it with the following in lieu thereof:

“See current Timnath Land Use Code for security requirements. In addition, Street Trees will require separate security at the same rate as the infrastructure security.”

6. Section 12, Initial Acceptance of Public Improvements, is hereby amended as follows:

“Upon substantial completion of construction by Developer of the applicable Phase of such Public Improvements, except landscaping, irrigation, signage, and upon notification thereof to Town by Developer, the Town engineer shall inspect such Public Improvements and certify with specificity their conformity or lack thereof with the Approved Plans. At such time, Developer shall make all corrections necessary to bring the Public Improvements into conformity with such Approved Plans. Upon satisfactory completion of the initial inspection and completion of corrections by Developer, and after submission of required documents to Town, including written and electronic record plans and the applicable Warranty Security, Town shall certify Initial acceptance of the Public Improvements except landscaping, irrigation, and signage and evidence the same by issuance of letter of initial acceptance from Town engineer to Developer specifying in detail the Public Improvements being initially accepted (“**Initial Acceptance Letter**”). All landscaping, irrigation, and signage must be complete within one year of initial acceptance. Initial Acceptance for any Phase shall be deemed to have occurred upon the issuance of the applicable Initial Acceptance Letter. The two (2) year Warranty Period (the “**Warranty Period**”) for the applicable Phase shall commence on the date set forth in set forth in the Initial Acceptance letter and landscape initial acceptance letter. Except as otherwise set forth herein, Initial Acceptance of all Public Improvements by Town for any Phase shall be an express condition to the issuance of any certificates of occupancy for such Phase of the Property for which such Public Improvements are required.”

7. Section 13, Final Acceptance of Public Improvements is hereby amended to read as follows:

“Upon expiration of the Warranty set forth in any Initial Acceptance Letter for Public Improvements for the applicable Phase. Developer shall provide notice to Town engineer that the Public Improvements are ready for final inspection. Upon satisfactory completion of the final inspection, and after conveyance of the Public Improvements as provided herein, and after payment of all fees due Town related to the Property. Town shall certify Final Acceptance of the Public Improvements and evidence the same by issuance of letter of Final Acceptance from Town engineer to Developer specifying in detail the Public Improvements being finally accepted

and the Warranty Security for such Phase shall be released (“**Final Acceptance**”). If upon final inspection by Town, significant defects are discovered, Town may elect to issue a supplemental letter of Initial Acceptance (instead of Final Acceptance) specifying corrective work to be completed and additional Warranty Period in accordance with paragraph 8 above. All such corrective work shall be the sole expense of Developer.”

8. Section 17, Trails, is hereby amended to read as follows:

“The plans for the Property include trails to be open to the public. Such trails shall be constructed with the Public Improvements of the Property as identified on the applicable Exhibits. In addition, Developer shall construct any trails designated on the Property by the Town Parks, Recreation, Open Space, and Trails Master Plan, per the current comprehensive plan, as amended and updated from time to time (the “PROST Plan”) in compliance with all then-required width, materials, and thickness requirements.”

9. Ratification of Prior Agreement. Except as expressly modified by this Amendment, all of the terms and provisions of the SIA are hereby ratified and confirmed and shall be binding upon the parties hereto, their successors and permitted assigns.

10. Counterpart Execution. This Amendment may be executed in counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

[Signature Page Follows]


KITCHEL LAKE F3 LLC a Colorado limited liability company

By: 
Manager


Attest:


Secretary

TOWN OF TIMNATH, COLORADO

By: 
~~Mark J. Soukup, Mayor~~
Rick L. Collins, Mayor Pro Tem

Attest:

By: 
Milissa Peters-Garcia, CMC
Town Clerk

APPROVED AS TO LEGAL FORM:

DocuSigned by:

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Lori L. Graham

Town Attorney

ASSIGNMENT

This Assignment, dated April 15, 2021 (the "Assignment"), is by and between Serratoga Falls, LLC, a Colorado limited liability company ("SF" or "Assignor"), KITCHEL LAKE F3 LLC, a Colorado limited liability company ("KLF3" or "Assignee"), KITCHEL LAKE DEVELOPMENT CORPORATION, a Colorado corporation ("KLDC"), and Kitchel Lake Partners LLC, a Colorado limited liability company ("KLP").

WHEREAS, on the date hereof, Assignor sold to Assignee that certain real property in Larimer County, Colorado, legally described on Exhibit A attached hereto (the "KLF3 Property").

WHEREAS, pursuant to that certain Purchase and Sale Agreement, dated April 14, 2017, as amended (the "Agreement"), by and between SF and KLF3 (pursuant to an assignment from KLDC, pursuant to assignment from KLP), Assignor agreed to assign and Assignee agreed to assume all rights and obligations of Assignor in and to all "Entitlement Documents" (listed on Exhibit B attached hereto) pertaining to the KLF3 Property.

NOW, THEREFORE, in consideration of the terms and conditions of this Assignment, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, Assignor hereby assigns to Assignee, and Assignee hereby assumes from Assignor, all of Assignor's rights, obligations, and interest, in and to the Entitlement Documents pertaining to the KLF3 Property.

In addition, Assignor hereby assigns to Assignee, and Assignee hereby assumes from Assignor, the obligation to complete all infrastructure required as part of Case No. 2018CW3166 (the "K/G Litigation"), including the plans approved per the Court Orders issued in the Case; and also the infrastructure on the south side of Prospect Road required by the Town of Timnath (which south side improvements were not covered by the Court Orders) (collectively, the "K/G Infrastructure").

Assignee shall be responsible for: (i) processing any assignments of Entitlement Documents for the KLF3 Property as required by governmental authorities; (ii) paying or posting any financial assurances, bonding, platting fees, and other fees for the KLF3 Property; and (iii) completing all infrastructure, construction, and other development work for the KLF3 Property.

As part of the First Parcel Closing under the Agreement, Assignor assigned certain Entitlement Documents to KLP, pertaining to certain real property legally described therein (the "KLP Property").

As part of the Second Parcel Closing under the Agreement, Assignor assigned certain Entitlement Documents to KLDC, pertaining to certain real property legally described therein (the "KLDC Property").

KLP, KLDC, and KLF3 are affiliated entities, and shall coordinate with one another to the extent required to effectuate the assignment of the Entitlement Documents related to the KLF3 Property, KLDC Property, and KLP Property. Specifically, and without limiting the foregoing,

KLF3, KLDC, and KLP have assumed, and hereby assume, all rights and obligations arising under that certain Agreement Concerning Installation of Water Line with ELCO, dated December 21, 2016 and recorded December 22, 2016 at Reception No. 20160089263, real property records of Larimer County, Colorado; and Assignor shall not have any obligations under such agreement.

Assignor shall not have any further obligations under any of the Entitlement Documents or related to the K/G Infrastructure. Assignee is responsible for confirming proper placement of all infrastructure pursuant to the Entitlement Documents and K/G Litigation, and Assignee shall pay all costs for such infrastructure. Assignee shall indemnify, defend and hold Assignor harmless from and against all liability, loss, damage, costs, or expenses, including reasonable attorneys' fees and costs, on account of any claims of any nature whatsoever, including claims for work performed, arising by through or under Grantee or persons claiming under Grantee.

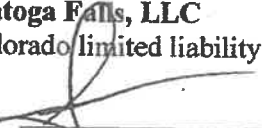
Each party agrees to deliver such additional documents and affidavits that, consistent with the terms of this Assignment, are customary or as may be reasonably requested by the other party or any governmental authorities. This Assignment may be executed in counterparts, all of which taken together shall constitute one instrument.

[Signatures appear on the following page]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the date first written above.

ASSIGNOR:

Serratoga Falls, LLC
A Colorado limited liability company

By: 
Name: Naren M. Patsch
Title: Authorized Representative

ASSIGNEE:

KITCHEL LAKE F3 LLC
A Colorado limited liability company

By: _____
Name: _____
Title: _____

KLP:

Kitchel Lake Partners LLC
A Colorado limited liability company

By: _____
Name: _____
Title: _____

KLDC:

Kitchel Lake Development Corporation
A Colorado corporation

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the date first written above.

ASSIGNOR:

Serratoga Falls, LLC
A Colorado limited liability company

By: _____
Name: _____
Title: Authorized Representative

ASSIGNEE:

KITCHEL LAKE F3 LLC
A Colorado limited liability company

By: Capri Colorado Holdings, LLC,
a Colorado limited liability
company, its managing member

By: _____
Name: JAMES RIGHEIMER
Title: MANAGING MEMBER

KLP:

Kitchel Lake Partners LLC
A Colorado limited liability company

By: _____
Name: JAMES RIGHEIMER
Title: MANAGER

KLDC:

Kitchel Lake Development Corporation
A Colorado corporation

By: _____
Name: JAMES RIGHEIMER
Title: MANAGER

Exhibit A
KLF3 Property

Tracts O and P, Serratoga Falls – Second Filing, County of Larimer, State of Colorado.

Exhibit B
Entitlement Documents

1. Serratoga Falls Sketch Plan.
2. Amended and Restated Subdivision Improvement Agreement for Serratoga Falls Filing No. 2 and Future Filings, dated August 11, 2015 and Resolution recorded December 15, 2016 at Reception No. 20160087297, real property records of Larimer County, Colorado.
3. Construction plans for on- and off-site improvements required for the Serratoga Falls – Second Filing Plat, including in that certain Off-site Improvement Plans Serratoga Falls Second Filing, dated February 2017, prepared by Northern Engineering.
4. All obligations related to the Relocation of Inlet Canal as set forth in that certain Easement Deed and Agreement, dated November 23, 2016 and recorded December 14, 2016 at Reception No. 20160087141; and all obligations to install stormwater facilities as set forth in that certain Agreement and Covenant to Allow Discharge of Stormwater, dated November 23, 2016 and recorded December 15, 2016 at Reception No. 20160087295, all in the real property records of Larimer County, Colorado.
5. Together with all other contracts relating to provision of utility services to the KLF3 Property, all governmental permits, licenses, and authorizations relating to the KLF3 Property, and planning and engineering work previously completed for KLF3 Property.