

**TOWN COUNCIL
TOWN OF GYPSUM, COLORADO**

RESOLUTION NO. 11 (SERIES 2023)

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN
OF GYPSUM REPEALING RESOLUTION NO. 03 (SERIES
2023) AND REPEALING THE TOWN'S CONSENT TO THE
ASSIGNMENT OF VARIOUS AGREEMENTS FOR THE
BRIGHTWATER PLANNED UNIT DEVELOPMENT
TO SIENA DEV, LLC.**

WHEREAS, the Town of Gypsum, Colorado ("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 various agreements with prior developments of the subdivision known as the Brightwater Planned Unit Development, including a Subdivision Improvement Agreement Valagua P.U.D. dated as of May 24, 2003 and First Amendment to Subdivision Improvements Agreement Valagua P.U.D. dated April 12, 2005 (collectively the "SIA"), Raw Water Lease Agreement dated September 9, 2005 ("Raw Water Agreement"), and Amended and Restated Annexation Agreement dated as of March 14, 2000 ("Annexation Agreement" and collectively with the SIA and Raw Water Agreement, the "Brightwater Agreements"); and

WHEREAS, Siena Dev, LLC has purchased certain property from Gypsum Creek Holdings, LLC, as identified in Resolution No. 03-2023, attached hereto as Exhibit A and incorporated herein by this reference; and

WHEREAS, Siena Dev, LLC and Gypsum Creek Holdings, LLC requested that the Town consent to an assignment of the Brightwater Agreements; and

WHEREAS, at its Regular Meeting held on February 15, 2023, the Town Council approved of the requested assignment of the Brightwater Agreements from Gypsum Creek Holdings, LLC to Siena Dev, LLC via Resolution No. 03 (Series 2023); and

WHEREAS, as of July 25, 2023, Gypsum Creek Holdings, LLC and Siena Dev, LLC have not executed the Assignment of Agreements Related to the Brightwater Planned Unit Development ("Assignment Agreement") attached as Exhibit B to Resolution No. 03-2023 and are in disagreement as to the language of the Assignment Agreement; and

EXHIBIT A

Town Resolution No. 03-2023

TOWN OF GYPSUM, COLORADO

RESOLUTION NO. 03 SERIES 2023

A RESOLUTION OF THE TOWN OF GYPSUM, COLORADO APPROVING AN ASSIGNMENT OF AGREEMENTS FOR THE BRIGHTWATER PLANNED UNIT DEVELOPMENT

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 various agreements with prior developments of the subdivision known as the Brightwater Planned Unit Development, including a Subdivision Improvement Agreement Valagua P.U.D. dated as of May 24, 2003 and First Amendment to Subdivision Improvements Agreement Valagua P.U.D. dated April 12, 2005 (collectively the "SIA"), Raw Water Lease Agreement dated September 9, 2005 ("Raw Water Agreement"), and Amended and Restated Annexation Agreement dated as of March 14, 2000 ("Annexation Agreement" and collectively with the SIA and Raw Water Agreement, the "Brightwater Agreements"); and

WHEREAS, Siena Dev, LLC has purchased the property identified on Exhibit A, attached hereto and incorporated herein (the "Property") from Gypsum Creek Holdings, LLC; and

WHEREAS, Siena Dev, LLC has requested the Town's approval of the assignment of the Brightwater Agreements from Gypsum Creek Holdings, LLC to Siena Dev, LLC; and

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

1. **Approval of Assignment.** The Town hereby approves the assignment, identified on Exhibit B attached hereto and incorporated herein (the "Assignment") of the Brightwater Agreements to Siena Dev, LLC, which shall assume all rights and obligations of the "Developer", "Applicant" or "Imprimis" under the Annexation Agreement and SIA, and of the "Lessee" under the Raw Water Agreement.
2. **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.

3. **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 15 DAY OF February, 2023, BY A VOTE OF 5 IN FAVOR AND 0 AGAINST.

TOWN OF GYPSUM

By:



~~Stephen M. Carver, Mayor~~

Tam Edwards, Mayor Pro Tem

Attest:


Becky Close, Town Clerk

EXHIBIT A

Legal Description of Property

The Land referred to herein below is situated in the County of Eagle, State of Colorado, and is described as follows:

PARCEL 1:

LOTS 45, 46, AND LOTS 63 THROUGH 68, INCLUSIVE; AND TRACTS AA THROUGH LL, BRIGHTWATER CLUB FILING 2, ACCORDING TO THE PLAT RECORDED JUNE 20, 2005 AT RECEPTION NO. 919836, COUNTY OF EAGLE, STATE OF COLORADO.

PARCEL 2:

LOTS 1 THROUGH 4, BLOCK K, INCLUSIVE; LOT 11, BLOCK K; LOTS 16 AND 17, BLOCK K; AND LOTS 23 THROUGH 40, BLOCK K, INCLUSIVE;

AND TRACTS 3E THROUGH 3F, BRIGHTWATER CLUB FILING 3, ACCORDING TO THE PLAT RECORDED SEPTEMBER 14, 2005 AT RECEPTION NO. 929490, COUNTY OF EAGLE, STATE OF COLORADO.

PARCEL 3:

LOTS 1, 3, 4 AND LOTS 6 THROUGH 12, AND LOTS 15, 16, 20 AND LOTS 22 THROUGH 29, AND LOT 35, AND LOTS 45 THROUGH 48 AND LOTS 53 THROUGH 58, BLOCK J, BRIGHTWATER CLUB FILING 3, ACCORDING TO THE PLAT RECORDED SEPTEMBER 14, 2005 AT RECEPTION NO. 929490, COUNTY OF EAGLE, STATE OF COLORADO.

PARCEL 4:

LOTS 36, 37, 38, 39 AND 46, BLOCK J, BRIGHTWATER CLUB FILING 3, ACCORDING TO THE PLAT RECORDED SEPTEMBER 14, 2005 AT RECEPTION NO. 929490, COUNTY OF EAGLE, STATE OF COLORADO.

PARCEL 5:

LOTS 5 THROUGH 9, INCLUSIVE, AND LOTS 18, 19, 21 AND 22, BLOCK K, BRIGHTWATER CLUB FILING 3, ACCORDING TO THE PLAT RECORDED SEPTEMBER 14, 2005 AT RECEPTION NO. 929490, COUNTY OF EAGLE, STATE OF COLORADO.

PARCEL 6:

LOTS 2, 3, 5, 23, 24,

AND

TRACTS MM, NN, AND RR,

BRIGHTWATER CLUB FILING 4, ACCORDING TO THE PLAT RECORDED APRIL 13,
2006 AT RECEPTION NO. 200609481, COUNTY OF EAGLE, STATE OF COLORADO.

AND

LOTS 26 THROUGH 50 AND TRACTS OO, PP, QQ, AND SS BRIGHTWATER CLUB
FILING NO. 4A, RECORDED JUNE 9, 2008 UNDER RECEPTION NO. 200819155,
COUNTY OF EAGLE, STATE OF COLORADO.

PARCEL 7:

LOTS 1 THROUGH 44, AND 46 THROUGH 49; LOTS 54, 57, AND 59;

AND TRACTS TT, UU AND VV, BRIGHTWATER CLUB FILING 5, ACCORDING TO THE
PLAT RECORDED MAY 10, 2006 AT RECEPTION NO. 200612175, COUNTY OF EAGLE,
STATE OF COLORADO.

PARCEL 8:

TRACTS CI, C2, M AND P,

BRIGHTWATER CLUB FILING 1, TRACTS A AND B PARCELS C-1, C-2, M AND P
RECORDED JUNE 27, 2008 UNDER RECEPTION NO. 200813606, COUNTY OF EAGLE,
STATE OF COLORADO.

AND

PARCELS C3, AND O, INCLUSIVE, ALL IN BRIGHTWATER CLUB FILING 1,
ACCORDING TO THE PLAT RECORDED MAY 18, 2005 AT RECEPTION NO. 916179,
COUNTY OF EAGLE, STATE OF COLORADO.

PARCEL 9:

LOT 2, BRIGHTWATER CLUB FILING NO. 6, RECORDED SEPTEMBER 4, 2008 UNDER
RECEPTION NO. 200819156, COUNTY OF EAGLE, STATE OF COLORADO.

EXHIBIT B

Assignment Agreement

**ASSIGNMENT OF AGREEMENTS RELATED TO THE BRIGHTWATER
PLANNED UNIT DEVELOPMENT**

THIS ASSIGNMENT OF AGREEMENTS RELATED TO THE BRIGHTWATER PLANNED UNIT DEVELOPMENT (this "Assignment") is entered into as of February 15, 2023 (the "Effective Date"), by and between Gypsum Creek Holdings, LLC ("Assignor"), and Siena Dev, LLC, whose address is 3570 Juniper Hills Road, Aspen, CO 81611 ("Assignee"); and consented to by the Town of Gypsum, Colorado ("Town" or "Gypsum").

RECITALS:

A. Assignor is the successor-in-interest to Imprimis, LLC under that certain Amended and Restated Annexation Agreement dated as of March 14, 2000 (the "Annexation Agreement") under which Assignor has certain rights and obligations concerning the development of property within the Brightwater Planned Unit Development ("Brightwater Development").

B. Assignor is the successor-in-interest to Imprimis Corporation under that certain Subdivision Improvement Agreement Valagua P.U.D. dated as of May 24, 2003 and First Amendment to Subdivision Improvements Agreement Valagua P.U.D. dated April 12, 2005 (collectively, the "SIA") under which Assignor has certain rights and obligations concerning the development of the Brightwater Development.

C. Assignor is the successor-in-interest to Clearwater Development Corporation under that certain Raw Water Lease Agreement dated September 9, 2005 ("Raw Water Agreement") under which the Town agreed to lease certain water rights to Assignor for use in the Brightwater Development.

D. The Annexation Agreement, SIA, and Raw Water Agreement are referred to herein as the "Brightwater Agreements".

E. Assignor is the "Seller" under that certain Agreement of Purchase and Sale dated as of November 25, 2019, as amended and assigned (collectively, the "PSA"), under which Assignor, as "Seller", has agreed to sell, and Assignee, as "Purchaser", has agreed to purchase, certain real property as described in the PSA, and that property is impacted by the Agreement.

F. The Brightwater Agreements require Gypsum's consent to their assignment. As evidenced by its signature hereto, Gypsum consents to this Assignment.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants contained in this Assignment and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Assignor and Assignee covenant and agree as follows:

1. **Assignment.** As of the Effective Date, Assignor hereby assigns, transfers and conveys to Assignees all of Assignor's right, title, interest in and obligations under the Brightwater Agreements.
2. **Acceptance of Assignment.** As of the Effective Date, Assignee hereby assumes, joint and severally, and agrees to keep, perform and fulfill all of the obligations of the Brightwater Agreements.
3. **Consent to Assignment.** In accordance with Section 8 of the Raw Water Agreement, Section 7.9 of the Annexation Agreement, and Section 28 of the SIA, Gypsum consents to the assignment and the substitution in the Brightwater Agreements of Assignee for Assignor.
4. **Capitalized Terms.** Capitalized terms used and not otherwise defined herein shall have the meanings attributed to such terms in the Brightwater Agreements.

[Signature page follows]

IN WITNESS WHEREOF, Assignor and Assignees have executed this Assignment this as of the dates written above.

ASSIGNOR:

By: _____

Title: _____

Name: _____

Date: _____

ASSIGNEE:

By: _____

Title: _____

Name: _____

Date: _____

Consented to this _____ day of _____, 2023 by Gypsum.

TOWN OF GYPSUM

By: _____

Title: _____

Attest:

Becky Close, Town Clerk

WHEREAS, the Town Council hereby determines that due to the five-month delay in signing the Assignment Agreement, it is in the best interest of the Town to repeal Resolution No. 03-2023.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF GYPSUM, STATE OF COLORADO, THAT:


1. Repeal of Resolution No. 03-2023. Resolution No. 03-2023 is hereby repealed in its entirety and is of no further force or effect. Any authorization to execute the Assignment Agreement is also repealed.

2. 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.

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

MOVED, READ AND ADOPTED by the Town Council of the Town of Gypsum, State of Colorado, at its regular meeting held on July 25, 2023

TOWN OF GYPSUM, COLORADO

By: 
Stephen M. Carver, Mayor

ATTEST:


Becky Close, Town Clerk

