

TOWN COUNCIL TOWN OF GYPSUM, STATE OF COLORADO

RESOLUTION NO. 19 (SERIES 2019)

**A RESOLUTION ACCEPTING THE DEDICATION OF PUBLIC IMPROVEMENTS
WITHIN THE MOUNTAIN GATEWAY AT BUCKHORN VALLEY SUBDIVISION**

WHEREAS, the Town of Gypsum ("Gypsum") has approved the Mountain Gateway at Buckhorn Valley ("Subdivision") on the condition that certain public improvements as listed in the Bill of Sale and Exhibit A attached hereto and incorporated herein ("Public Improvements") be constructed, conveyed and dedicated to Gypsum consistent with the plans approved by Gypsum; and

WHEREAS, The Subdivision Improvement Agreement recorded as Reception No. 737976 of the Eagle County records on August 20, 2019, including Mountain Gateway at Buckhorn Valley, LLC as successor and assignee ("Developer"), required the construction of said public improvements by Developer and their conveyance and dedication to Gypsum; and

WHEREAS, Developer has completed construction and has tendered a bill of sale for requesting that Gypsum accept the Public Improvements, and has signed this Resolution consenting to the terms of such conveyance and dedication; and

WHEREAS, the Town Engineer has reviewed and inspected the Public Improvements and has determined that they have been constructed in compliance with Gypsum specifications; and


WHEREAS, the Developer has provided reproducible as-built mylar and AutoCAD drawings, an affidavit affirming payment for all materials and work related to the construction of these Public Improvements, and provided warranty security for all construction related to the Public Improvements;

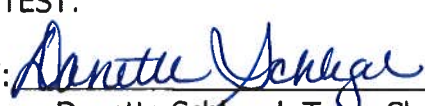
WHEREAS, the Developer agrees, per the Town's Public Works Manual, to complete a second TV inspection of all sewer mains prior to expiration of the one-year warranty period; and

NOW, THEREFORE, be it resolved and agreed by the Town Council of the Town of Gypsum, Colorado, and the Developer that the Public Improvements located within the Subdivision, as listed in the Bill of Sale and Exhibit A, are hereby dedicated and conveyed to, and accepted by, Gypsum, subject to the following conditions:

1. The Developer shall indemnify and hold Gypsum harmless from and against any and all liability, loss, damages, costs and expenses, including reasonable attorney's fees arising from any and all claims relating to defects in materials or workmanship in the construction of the Public Improvements.
2. During the period of one (1) year after the effective date of this acceptance for any water, sewer, street signs, or street light improvements or during the period of three (3) years after the effective date of this acceptance for any road, path or sidewalk improvement, the Developer shall, at its sole cost and expense make all needed and necessary repairs and replacements to the Public Improvements due to defective materials, design and/or workmanship, breach of contract or failure to abide by Gypsum approved plans or standards. If after thirty (30) days from mailing of a written notice to the Developer requesting repairs, which thirty (30) days shall be extended for weather conditions preventing such work, the Developer shall not have undertaken with due diligence to make such maintenance or repairs, then Gypsum may make the same at the Developer's expense, either by bid or negotiated price. In case of emergency, such thirty (30) day period is waived.
3. The Developer has posted warranty security to repair defects to the Public Improvements arising within the one and three year warranty periods. Should defects arise during the warranty periods, the Developer shall extend the warranty security so as to provide a full one year warranty period following the repair of the defect to Gypsum's reasonable satisfaction. Should the Town, because of weather or otherwise be prohibited from making proper inspection of the improvements to determine their acceptance prior to the expiration of the warranty period, the warranty period and security shall be extended for such time as is reasonably necessary to allow inspection. This paragraph 3 shall not limit Gypsum's right to pursue any other legal means to collect the costs incurred to repair any defects during the warranty period, including withholding building permits, certificates of occupancy, or any other approvals requested by the Developer or for any phase of the Subdivision.
4. This Resolution shall be binding upon the Developer, the owners of properties within the Subdivision, and their successors and assigns.
5. This Resolution shall be effective and deemed a contract between Gypsum and the Developer upon the written acceptance by the Developer and approval by the Town Council.

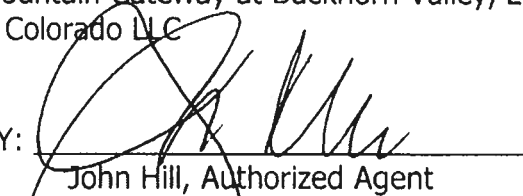
INTRODUCED, READ AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF GYPSUM, COLORADO AT ITS REGULAR MEETING HELD AT THE TOWN OF GYPSUM ON THE 14th DAY OF MAY, 2019 BY A VOTE OF 7 IN FAVOR, 0 AGAINST.

TOWN OF GYPSUM
BY: 
Stephen M. Carver, Mayor

ATTEST:
BY: 
Danette Schlegel, Town Clerk

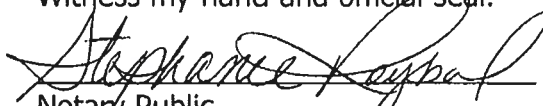


IN WITNESS WHEREOF, the Developer has caused its name to be hereunto subscribed this 14 day of May, 2019.

Developer
Mountain Gateway at Buckhorn Valley, LLC
A Colorado LLC
BY: 
John Hill, Authorized Agent

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was subscribed and sworn to before me this 25 day of April, 2019, by John Hill, as Authorized Agent of Mountain Gateway at Buckhorn Valley, LLC.

Witness my hand and official seal.

Notary Public

My Commission expires: 02-05-2021

STEPHANIE ROYBAL
Notary Public
State of Colorado
Notary ID # 20144005920
My Commission Expires 02-05-2021

EXHIBIT A
BILL OF SALE

BILL OF SALE
MOUNTAIN GATEWAY AT BUCKHORN VALLEY

KNOW ALL MEN BY THESE PRESENTS: MOUNTAIN GATEWAY AT BUCKHORN VALLEY, LLC, ("Developer"), for and in consideration of the mutual promises and assurances made herein, the sufficiency of which is hereby acknowledged, and other valuable consideration by the TOWN OF GYPSUM, COLORADO, a home rule municipality organized pursuant to Article XX of the Colorado Constitution, ("Gypsum"), according to the terms and conditions contained hereon has bargained and sold and by these presents does dedicate, grant and convey unto Gypsum, its successors and assigns, the following property:

The water and sewer main lines, and related appurtenances (excluding services), and a portion of road and sidewalk improvements known as Comanche Way, including all related real and personal property, as described in Exhibit A, attached hereto and incorporated herein ("Public Improvements"), which were constructed or otherwise acquired by Developer to serve the property generally known as Mountain Gateway at Buckhorn Valley.

To have and to hold the same, unto Gypsum, its successors and assigns forever, and Developer, for itself, its successors or assigns, covenants and agrees to and with Gypsum, its successors and assigns, to warrant and defend the sale of said Public Improvements, hereby made unto Gypsum, its successors and assigns, against all and every person or persons whomsoever, and warrants that the conveyance of the Public Improvements to Gypsum, its successors and assigns, is made free from any claim or demand whatsoever.

The Developer further agrees and assures:

1. That all the Public Improvements described herein were installed in substantial compliance with Gypsum's Ordinances, Rules and Regulations and applicable construction standards, and that they are in first-class working order, free from any defect whatever.
2. That no charges for materials or labor are due and payable on any of the Public Improvements described herein, and that Developer shall indemnify, defend, and hold Gypsum and its agents, employees, engineers and attorneys, harmless from and against all claims, damages, judgments, losses, and expenses of every nature, including reasonable attorney's fees, arising at any time out of defects in materials or workmanship of Developer and its employees, subcontractors and their employees, and all other persons directly or indirectly performing work for Developer on the Public Improvements described herein.
3. During the period of one (1) year for water and sewer improvements and three (3) years for road and sidewalk improvements after the effective date of this acceptance, Developer shall, at its sole cost and expense make all needed and necessary repairs and replacements to the Public Improvements due to defective materials, design and/or workmanship, breach of contract or failure to abide by Gypsum approved plans or standards. If after thirty (30) days from mailing of a written notice to

Developer requesting repairs, which thirty (30) days shall be extended for weather conditions preventing such work, Developer shall not have undertaken with due diligence to make such maintenance or repairs, then Gypsum may make the same at Developer's expense, either by bid or negotiated price. In case of emergency, such thirty (30) day period is waived.

- 4. Developer has posted a letter of credit to repair defects to the Public Improvements arising within the one and three year warranty period. Should defects arise during the warranty periods, Developer shall extend the letter of credit so as to provide a full one year warranty period following the repair of the defect to Gypsum's reasonable satisfaction. Should the Town, because of weather or otherwise be prohibited from making proper inspection of the improvements to determine their acceptance prior to the expiration of the warranty period and security, the warranty period and security shall be extended for such time as is reasonably necessary to allow inspection. This paragraph shall not limit Gypsum's right to pursue any other legal means to collect the costs incurred to repair any defects during the warranty period, including withholding building permits, certificates of occupancy, or any other approvals requested by Developer or for any phase of the Subdivision.

IN WITNESS WHEREOF, the Developer has caused its name to be hereunto subscribed this 25th day of April, 2019.

DEVELOPER

MOUNTAIN GATEWAY AT BUCKHORN VALLEY, LLC

BY: [Signature]
John V. Hill, Authorized Agent

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was subscribed and sworn to before me this 25th day of April, 2019, by John V. Hill as Vice- President of BV DEVCO, LLC.

Witness my hand and official seal.

[Signature]
Notary Public



My Commission expires: 12/31/2020