

## Madison County Board of Commissioners Meeting

10:00 am Tuesday, March 24, 2026, until concluded

First Floor Public Meeting Room  
Administrative Office Building, Virginia City, Montana

WebEx Login:

<https://madisoncounty.my.webex.com/madisoncounty.my/j.php?MTID=m41ec260e52fb051a5b5abad7194ef5ac>

Meeting Number: 2557 256 7614 Password: VCMadison

Join by Phone: 1-650-479-3208 Password: 82623476

Press \*6 to mute or unmute

Duke Gilman, District 1 Commissioner  
Ron Nye, District 2 Commissioner, Chairman  
Bill Todd, District 3 Commissioner

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### CALL TO ORDER, PLEDGE OF ALLEGIANCE, ROLL CALL

### PUBLIC COMMENT (PLEASE LIMIT TO 5 MINUTES PER PERSON)

### CONSENT AGENDA

- Minutes for March 16, 2026 Work Session Meeting
- Minutes for March 16, 2026 Special Meeting
- Minutes for March 17, 2026 Regular Meeting
- Minutes for March 17, 2026 Special Meeting
- Approval of Claims

### REPORTS OF COMMITTEES

- None

### UNFINISHED BUSINESS

- None

### NEW BUSINESS

- Madison Street - TRMCC ADA Improvements Payment #4 \$29,528.41
- Moonlight Basin Lee's Pool 1 Subdivision- SIA Extension
- Moonlight Basin Lee's Pool 2 Subdivision- SIA Extension
- Master Contract for the Provision of Public Health Services
- Courthouse Final Move-out Date
- Courthouse Contract Terms – AIA Document
- MOA EPA Brownfields Coalition

### ANNOUNCEMENTS AND CALENDARS

Mar 30, 2026	Planning Board Meeting 6:00 PM Annex Building Public Meeting Room
Mar 27, 2026	Housing Advisory Board Meeting 9:00 AM Online Meeting
Apr 6, 2026	Mental Health Local Advisory Council 2:00 PM TBD
Apr 9, 2026	Library Board Meeting 9:30 am Thompson-Hickman Library
Apr 13, 2026	Airport Board Meeting 6:00 PM Annex Building Public Meeting Room
Apr 15, 2026	Fair Board Meeting 7:00 PM Fairgrounds
May 21, 2026	Safety Committee Meeting 10:00 AM Public Meeting Room

### ADJOURNMENT

**Madison County  
Commissioners Special Meeting**

March 16, 2026, 12:00 pm Mountain Time until concluded  
103 W Wallace St, Virginia City, MT 59755, United States  
First Floor Public Meeting Room  
Administrative Office Building, Virginia City, Montana

**Present:**

Duke W. Gilman, Commissioner District 1  
Ronald E. Nye, Commissioner District 2, Chairman  
William A. Todd, Commissioner, District 3

**In Attendance:**

Ryan Wolter, IT Support Specialist, administered the Webex connection  
Sarah Carlson, Commissioners' / Airport Assistant, was present to take minutes

**Attendee List:**

Colton Lauer, Madison County Attorney  
Megan Ellis, Clerk and Recorder's

**1. Call to Order and Roll Call**

**2. Public Comment (Please Limit to 5 Minutes Per Person)**

None

**3. New Business**

**3.1. Joint Request for Clarification on Consent Judgement**

Colton Lauer, the Madison County Attorney, attended and elucidated the purpose and necessity of the clarification.

**RESOLVED:** Commissioner Gilman moved to approve the Joint Request for Clarification on Consent Judgement. Commissioner Nye seconded the motion.

For: Ron Nye, Duke Gilman. Against: William Todd. Motion passed.

Comment: Lauer. Discussion: Commissioner Todd, Commissioner Nye, and Commissioner Gilman.

**Adjournment**

**RESOLVED:** Commissioner Todd moved to adjourn the meeting. Commissioner Gilman seconded the motion.

For: William Todd, Duke Gilman, and Ron Nye. Motion passed.

With no further discussion, the meeting was adjourned at 12:03 pm.

The upcoming Regular Commissioner meeting is scheduled for Tuesday, March 24, 2026, at 10:00 am, in the Public Meeting Room of the Administrative Building in Virginia City, Montana.

**Signed:** .....  
**Ronald E. Nye, Commissioner, Chairman**  
**Date Approved: March 24, 2026**

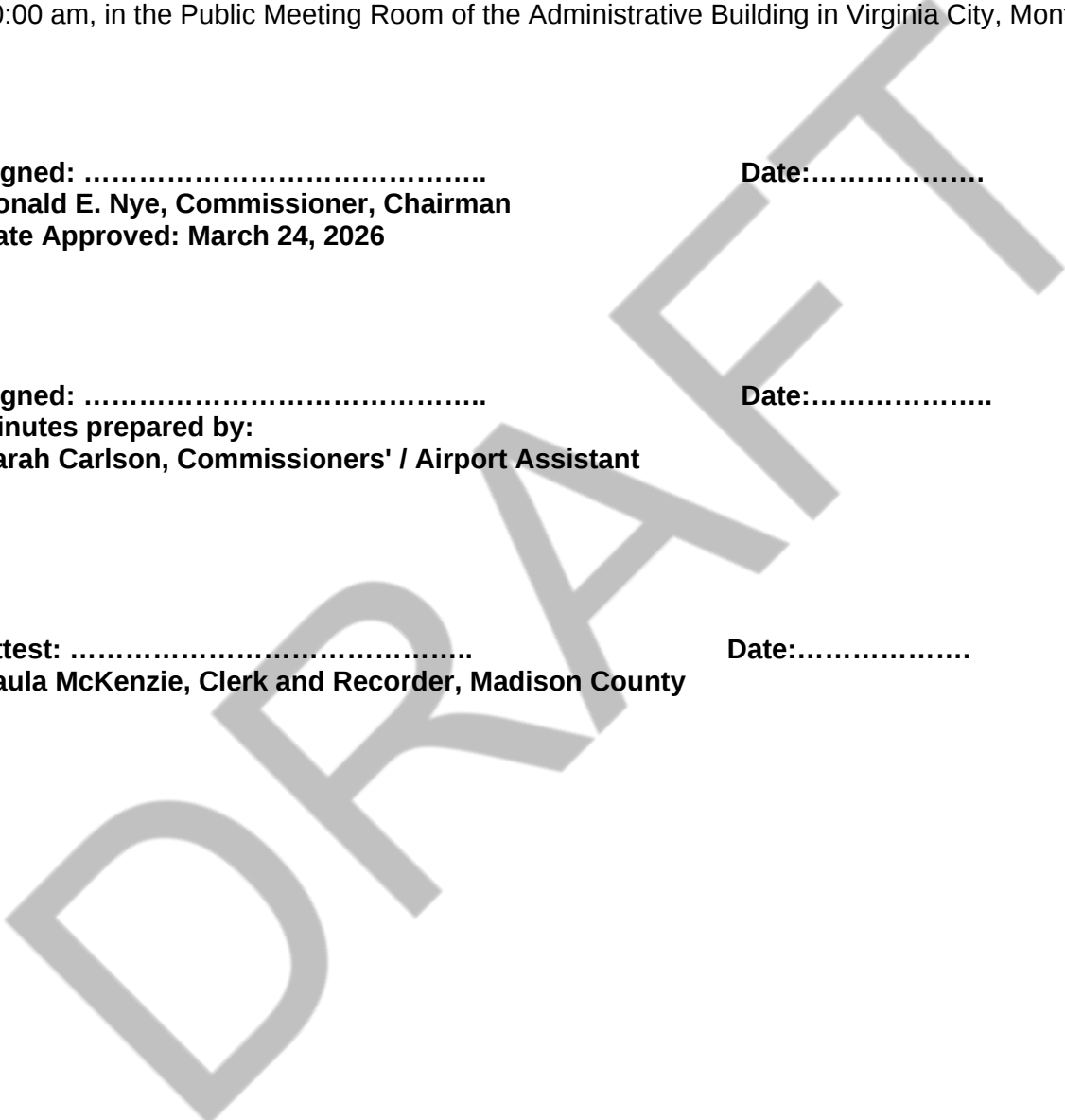
**Date:**.....

**Signed:** .....  
**Minutes prepared by:**  
**Sarah Carlson, Commissioners' / Airport Assistant**

**Date:**.....

**Attest:** .....  
**Paula McKenzie, Clerk and Recorder, Madison County**

**Date:**.....



**Madison County  
Commissioners Regular Meeting**

March 17, 2026, 10:00 pm Mountain Time until concluded  
103 W Wallace St, Virginia City, MT 59755, United States  
First Floor Public Meeting Room  
Administrative Office Building, Virginia City, Montana

**Present:**

Duke W. Gilman, Commissioner District 1  
Ronald E. Nye, Commissioner District 2, Chairman  
William A. Todd, Commissioner, District 3

**In Attendance:**

Ryan Wolter, IT Support Specialist, administered the Webex connection  
Sarah Carlson, Commissioners' / Airport Assistant, was present to take minutes

**Attendee List:**

Cody Marxer, Planning Director  
Colton Lauer, Madison County Attorney  
Shawna Lutgen, Grants Manager  
Joe Brummell, DES  
Dave Blank, Madison County Senior Bus Driver  
David Clark  
Dan High  
Sherrie High

- 1. Call to Order, Pledge of Allegiance, Roll Call**
- 2. Public Comment (Please Limit to 5 Minutes Per Person)**
- 3. Consent Agenda**
  - 3.1. Minutes for March 9, 2026, Work Session**
  - 3.2. Minutes for March 10, 2026, Regular Meeting**
  - 3.3. Minutes for March 12, 2026, Special Meeting**
  - 3.4. Minutes for March 12, 2026, Emergency Meeting**
  - 3.5. Courthouse Hazardous Material Removal Bidding Documents**
  - 3.6. Mag Chloride Bid**

**3.7. Chip Sealing Hardrives Construction Inc. \$200,048.75**

**3.8. Sheridan MT Lease Extension**

**3.9. Brownfields Letter of Support – Madison County Inventory Project**

**3.10. Termination of Examining Land Surveyor Contract - (Moved to New Business)**

**3.11. Approval of Claims**

**RESOLVED:** Commissioner Todd moved to approve the Consent Agenda as read. Seconded by Commissioner Gilman.

For: Ron Nye, Duke Gilman, William Todd. Motion passed.

Comment: None. Discussion: Commissioner Todd, Commissioner Nye, and Commissioner Gilman.

**4. Reports of Committees**

None

**5. Unfinished Business**

None

**6. New Business**

**6.0. Termination of Examining Land Surveyor Contract**

Cody Marxer, the Director of Planning for Madison County, and Colton Lauer, the County Attorney of Madison County, advised dispatching a formal letter to the Land Surveying Company.

**RESOLVED:** Commissioner Todd moved to send a letter to the surveyor company outlining the county's concerns. Commissioner Gilman seconded the motion.

For: Ron Nye, Duke Gilman, William Todd. Motion passed.

Comment: Marxer and Lauer. Discussion: Commissioner Todd, Commissioner Nye, and Commissioner Gilman.

**6.1. Request for Funds from the CDBG Grant Awarded to Madison County for Harrison's Phase 2 Wastewater Improvements Project \$1,462.00**

Shawna Lutgen, the Grants Manager for Madison County, provided an update on the project.

**RESOLVED:** Commissioner Todd moved to approve the Request for Funds from the CDBG Grant Awarded to Madison County for Harrison's Phase 2 Wastewater Improvements Project \$1,462.00.

For: Ron Nye, Duke Gilman, William Todd. Motion passed.

Comment: Lutgen. Discussion: Commissioner Todd, Commissioner Nye, and Commissioner Gilman.

### **6.2. Great West Engineering Task Order #37 – Judy Lane Bridge PER and MCEP Grant Application**

Shawna Lutgen, the Grants Manager for Madison County, provided an update on the project.

**RESOLVED:** Commissioner Todd moved to approve Great West Engineering Task Order #37 – Judy Lane Bridge PER and MCEP Grant Application. Commissioner Gilman seconded the motion.

For: Ron Nye, Duke Gilman, William Todd. Motion passed.

Comment: Lutgen. Discussion: Commissioner Todd, Commissioner Nye, and Commissioner Gilman.

### **6.3. Exempt Amended Plat: Family Transfer within Baxter Minor Subdivision Tract 5A-2**

Cody Marxer, Madison County Planning Director, gave information on the landowner proposal of Tract 5-A2 of Baxter Minor Subdivision, which seeks to utilize the Family Transfer subdivision exemption (MCA 6-3-207(2)(b)(i)(C)) to divide Tract 5-A2 into two tracts, Tract 1 and Tract 2. It is recommended that the Madison County Commissioners approve and sign the Amended Plat of Baxter Minor Subdivision Tract 5-A2.

**RESOLVED:** Commissioner Gilman moved to approve Exempt Amended Plat: Family Transfer within Baxter Minor Subdivision Tract 5A-2. Commissioner Todd seconded the motion.

Comment: Marxer. Discussion: Commissioner Todd, Commissioner Nye, and Commissioner Gilman.

### **6.4. Amended Draft RFP for Capital Improvements Plan**

Cody Marxer, the Madison County Planning Director, provided information regarding the revised wording for the RFP.

**RESOLVED:** Commissioner Todd moved to approve the Amended Draft RFP for the Capital Improvements Plan. Commissioner Gilman seconded the motion.

For: Ron Nye, Duke Gilman, William Todd. Motion passed.

Comment: Marxer. Discussion: Commissioner Todd, Commissioner Nye, and Commissioner Gilman.

### **6.5. Resolution 16-2026 A Resolution Declaring a Vehicle Surplus Property and Donating Such Vehicle to the Madison Valley Rural Fire District**

**RESOLVED:** Commissioner Todd moved to approve Resolution 16-2026, A Resolution Declaring a Vehicle Surplus Property and Donating Such Vehicle to the Madison Valley Rural Fire District. Commissioner Gilman seconded the motion.

For: Ron Nye, Duke Gilman, William Todd. Motion passed.

Comment: Brummell. Discussion: Commissioner Todd, Commissioner Nye, and Commissioner Gilman.

### **6.6. LEPC New Bylaws**

**RESOLVED:** Commissioner Todd moved to approve LEPC New Bylaws. Commissioner Gilman seconded the motion.

For: Ron Nye, Duke Gilman, William Todd. Motion passed.

Comment: Brummell. Discussion: Commissioner Todd, Commissioner Nye, and Commissioner Gilman.

**6.7. Northwestern Energy Emergency Action Plan Functional Exercise/Tabletop Exercise**

Joe Brummell, representing the Madison County Department of Emergency Services, provided information regarding the Tabletop Exercise.

**RESOLVED:** Commissioner Todd moved to approve the Northwestern Energy Emergency Action Plan Functional Exercise/Tabletop Exercise. Commissioner Gilman seconded the motion.

For: Ron Nye, Duke Gilman, William Todd. Motion passed.

Comment: Brummell. Discussion: Commissioner Todd, Commissioner Nye, and Commissioner Gilman.

**6.8. Purchase of Vehicle for the Senior Citizens**

**RESOLVED:** Commissioner Todd moved to approve the purchase of the most affordable AWD vehicle for the Senior Citizens based on the information provided.

For: Ron Nye, Duke Gilman, William Todd. Motion passed.

Comment: Blank. Discussion: Commissioner Todd, Commissioner Nye, and Commissioner Gilman.

**7. 12:00 PM CLOSED SESSION - EMPLOYEE RELATIONS**

Commissioner Todd announced that the Closed Session Meeting scheduled for 12:00 pm has been canceled.

**Adjournment**

**RESOLVED:** Commissioner Todd moved to adjourn the meeting. Commissioner Gilman seconded the motion.

For: Duke Gilman, Ron Nye, and William Todd. Motion passed.

With no further discussion, the meeting was adjourned at 10:32 am.

The upcoming Regular Commissioner meeting is scheduled for Tuesday, March 24, 2026, at 10:00 am, in the Public Meeting Room of the Administrative Building in Virginia City, Montana.

**Signed:** .....  
**Ronald E. Nye, Commissioner, Chairman**  
**Date Approved: March 24, 2026**

**Date:**.....

**Signed:** .....

**Date:**.....

**Minutes prepared by:**

**Sarah Carlson, Commissioners' / Airport Assistant**

**Attest:** .....

**Date:**.....

**Paula McKenzie, Clerk and Recorder, Madison County**

DRAFT

**Madison County  
Commissioners Special Meeting**

March 17, 2026, 1:00 pm Mountain Time until concluded  
103 W Wallace St, Virginia City, MT 59755, United States  
First Floor Public Meeting Room  
Administrative Office Building, Virginia City, Montana

**Present:**

Duke W. Gilman, Commissioner District 1

**In Attendance:**

Ryan Wolter, IT Support Specialist, administered the Webex connection  
Sarah Carlson, Commissioners' / Airport Assistant, was present to take minutes

**Attendee List:**

Colton Lauer, Madison County Attorney  
Pat Jacobs, Architecture Trio  
Doug Oswood, Oswood Construction CO.  
Marcus Stadia, Richis Floorway  
Anthony Mazzuroles, Long Building Tech  
Joe Schindler, Manhattan plumbing Excavation  
Rachel Townsend, Pierce Flooring  
James Pengra, Total Fire Protection  
Mike Hendrickson, West Electric, Inc.  
Kurt Thomas Stanley Engering  
Nicki Alduch, Diamond Construction  
Solomon Martin, Zoula Masonry Service  
CJ Bailey, Benchmerle Masonry  
Robert Kamienski, Demo Pros  
Brian Germane, Jackson Contractor  
Camron Phillips, Carpets Plus Bozeman  
Kyle Marsh, Ennis Building Center  
Michael Shea, Mookarieh Construction  
Philip Nuschler, Williams Plumbing and Heating  
Rod Warnstron, ARE Electric  
Óscar Mercado, S.M.C. Demolition  
Jim Parker, Parker Environmental  
Jason Macoronal, Premier Plumbing Inc  
Troy Oswood, Oswood Construction  
Todd Savage, Sherwin-Williams  
Patrick Ressler, Environmental Contractors  
Terry Morland, TCS Northwest LLC  
Michael Palmer, Ever-Green Construction and Roofing

Rob Abbott, Abbott Plumbing  
Tyler Hubbard, Stampede Contracting  
Steve Horster, Jackson  
Duncan Elice, Mountain States Civil  
Jason Wilson, Western States Fire Prot  
Dairiel Cara, Standard Drywall Inc  
Darren Brady, PRG Commercial  
Sam Barnes, R.R. Taylor Construction  
Core Plute, Mile High Painting  
Ben Kolodka, Kolodka Masonry  
Adam Braddock, Montana Cabinet Works  
Jacob Carter, PrG Commercial  
Scott Lokan, Loken Historic Preservation  
Gabe Lokan, Loken Historic Preservation  
Frank Bryant, Hollowtop Heating and Cooling  
Daniel Eaton, Ezexteriors  
Jared Eaton, Exexteriors  
Philip Munson, Crucible  
Zak Tesoro, Zak Tesoro Masonry Inc  
Hunter Knabt, Local Demo  
Bob McKissack, Cornstone Mngt Services  
Eli Smith, Preserve Montana  
Stephen Banker, Joshua Tree Cabinetry  
Henry Olsen, Ingraham Environmental  
Steve Hoesten, Cripe

### **1. Call to Order**

### **2. Public Comment (Please Limit to 5 Minutes Per Person)**

None

### **3. Courthouse Pre-Bid Meeting for Contractors**

Pat Jacobs, representing Architecture Trio, convened the meeting and provided information regarding the Courthouse project. She also furnished details on the bid requirements and submission deadlines, as well as bid bond requirements. She stated that all questions regarding the project should be submitted via email. All representatives received the agenda and bid packet. After receiving bid information, the meeting proceeded to the courthouse for bidders to conduct a walkthrough.

Comment: Jacobs and Lauer. Discussion: None.

### **Adjournment**

The meeting was subsequently adjourned at 1:25 pm without further discussion, after which all participants proceeded to the Courthouse for a pre-bid walk-through.

The upcoming Regular Commissioner meeting is scheduled for Tuesday, March 24, 2026, at 10:00 am, in the Public Meeting Room of the Administrative Building in Virginia City, Montana.

**Signed:** .....  
**Ronald E. Nye, Commissioner, Chairman**  
**Date Approved: March 24, 2026**

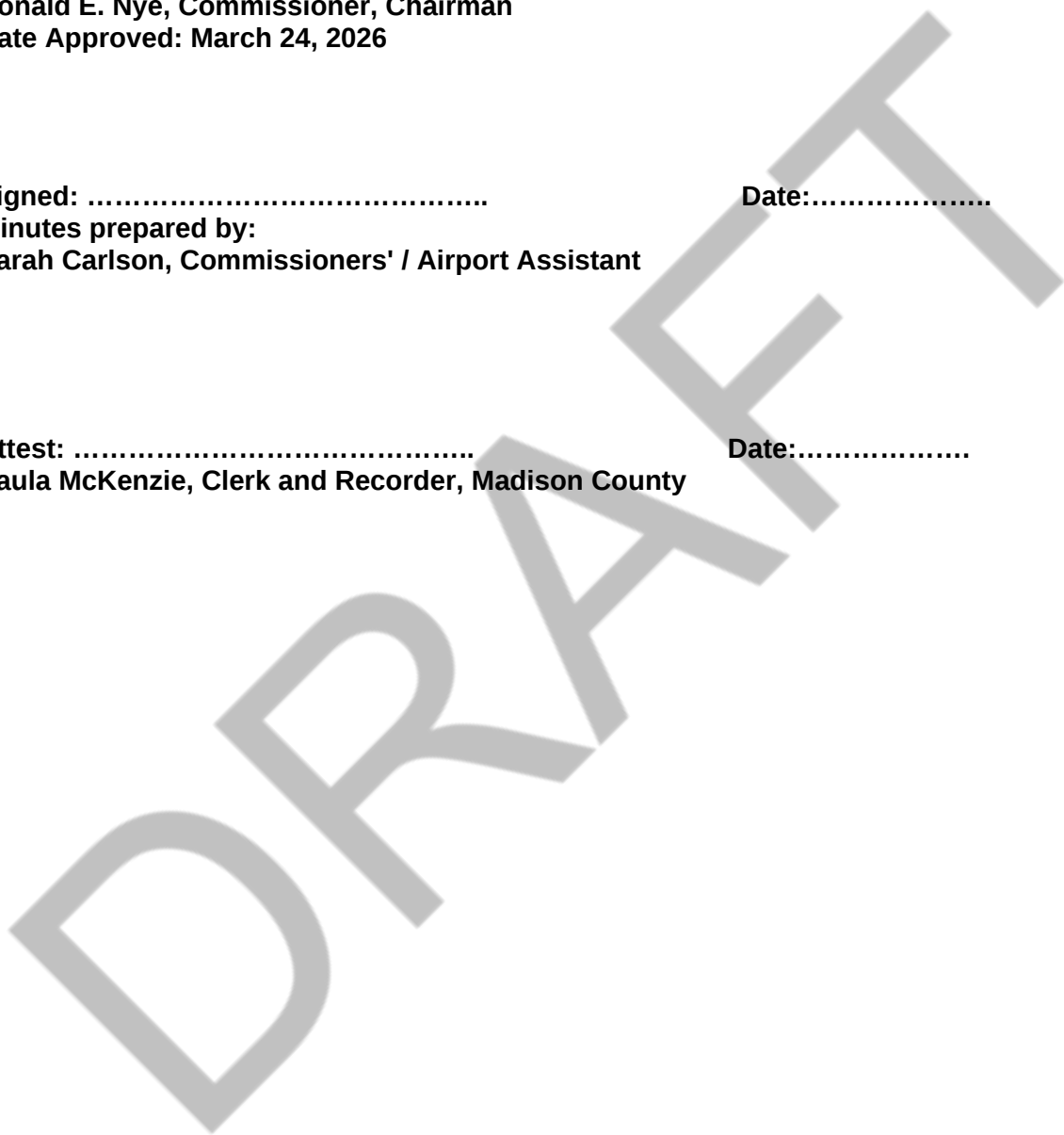
**Date:**.....

**Signed:** .....  
**Minutes prepared by:**  
**Sarah Carlson, Commissioners' / Airport Assistant**

**Date:**.....

**Attest:** .....  
**Paula McKenzie, Clerk and Recorder, Madison County**

**Date:**.....



**Contractor's Application for Payment**

<b>Owner:</b> <u>Madison County</u>	<b>Owner's Project No.:</b> _____
<b>Engineer:</b> <u>Great West Engineering</u>	<b>Engineer's Project No.:</b> <u>1-21175-TO28</u>
<b>Contractor:</b> <u>Williams Civil Construction</u>	<b>Contractor's Project No.:</b> <u>2545</u>
<b>Project:</b> <u>Madison County - Madison Street - TRMCC ADA Improvements</u>	
<b>Contract:</b> _____	
<b>Application No.:</b> <u>04</u>	<b>Application Date:</b> <u>2/27/2026</u>
<b>Application Period:</b> <b>From</b> <u>1/28/2026</u> <b>to</b> <u>2/27/2026</u>	

1. Original Contract Price	\$ 739,485.00
2. Net change by Change Orders	\$ 91,381.64
3. Current Contract Price (Line 1 + Line 2)	\$ 830,866.64
4. Total Work completed and materials stored to date (Sum of Column G Lump Sum Total and Column J Unit Price Total)	\$ 495,019.10
5. Retainage	
a. <u>5%</u> X \$ 495,019.10 Work Completed	\$ 24,750.96
b. <u>5%</u> X \$ - Stored Materials	\$ -
c. Total Retainage (Line 5.a + Line 5.b)	\$ 24,750.96
6. Amount eligible to date (Line 4 - Line 5.c)	\$ 470,268.15
7. Less previous payments (Line 6 from prior application)	\$ 440,441.47
8. Gross Amount due this application	\$ 29,826.68
9. 1% MT Gross Receipts Tax (1% x Line 8)	\$ 298.27
10. Unscheduled Employment of the Engineer	\$ -
11. Current Payment Due (less MT GRT)	\$ 29,528.41
12. Balance to finish, including retainage (Line 3 - Line 4)	\$ 335,847.54

**Contractor's Certification**


The undersigned Contractor certifies, to the best of its knowledge, the following:

(1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;

(2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such liens, security interest, or encumbrances); and

(3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

**Contractor:** WILLIAMS CIVIL CONSTRUCTION - DEREK DEJONG

**Signature:**  **Date:** 2/27/26

<b>Recommended by Engineer</b>	<b>Approved by Owner</b>
<b>By:</b> _____	<b>By:</b> _____
<b>Title:</b> <u>Project Manager</u>	<b>Title:</b> _____
<b>Date:</b> <u>3-12-26</u>	<b>Date:</b> _____
<b>Approved by Funding Agency</b>	
<b>By:</b> _____	<b>By:</b> _____
<b>Title:</b> _____	<b>Title:</b> _____
<b>Date:</b> _____	<b>Date:</b> _____

**Progress Estimate - Unit Price Work**

**Contractor's Application for Payment**

<b>Owner:</b> Madison County	<b>Owner's Project No.:</b>	
<b>Engineer:</b> Great West Engineering	<b>Engineer's Project No.:</b>	1-21175-TO28
<b>Contractor:</b> Williams Civil Construction	<b>Contractor's Project No.:</b>	2545
<b>Project:</b> Madison County - Madison Street - TRMCC ADA Improvements		
<b>Contract:</b>		

Application No.: 04 Application Period: From 01/28/26 to 02/27/26 Application Date: 02/27/26

A Bid Item No.	B Description	C Item Quantity	D Units	E Contract Information		G Work Completed		I Materials Currently Stored (not in G) (\$)	J Work Completed and Materials Stored to Date (H + I) (\$)	K % of Value of Item (I / F) (%)	L Balance to Finish (F - J) (\$)
				F Unit Price (\$)	F Value of Bid Item (C X E) (\$)	G Estimated Quantity Incorporated in the Work	H Value of Work Completed to Date (E X G) (\$)				
<b>Original Contract</b>											
101	Mobilization	1.00	LS	13,430.00	13,430.00	1.00	13,430.00		13,430.00	100%	-
102	Construction Staking	1.00	LS	8,000.00	8,000.00	1.00	8,000.00		8,000.00	100%	-
103	Site Demolition	1.00	LS	10,000.00	10,000.00	1.00	10,000.00		10,000.00	100%	-
104	Unclassified Excavation & Embankment	1.00	LS	5,755.00	5,755.00	1.00	5,755.00		5,755.00	100%	-
105	Reinforced Concrete ADA Ramps	75.00	SY	300.00	22,500.00	75.00	22,500.00		22,500.00	100%	-
106	Pedestrian Rail	260.00	LF	220.00	57,200.00	260.00	57,200.00		57,200.00	100%	-
107	New Door w/ ADA Hardware	3.00	EA	5,800.00	17,400.00	3.00	17,400.00		17,400.00	100%	-
108	New Electrical Access Control for New Door	3.00	EA	700.00	2,100.00	3.00	2,100.00		2,100.00	100%	-
201	Mobilization	1.00	LS	48,100.00	48,100.00	0.50	24,050.00		24,050.00	50%	24,050.00
202	Construction Staking	1.00	LS	14,519.00	14,519.00	0.50	7,259.50		7,259.50	50%	7,259.50
203	Site Demolition	1.00	LS	15,771.00	15,771.00	1.00	15,771.00		15,771.00	100%	-
204	Unclassified Excavation & Embankment	1.00	LS	36,300.00	36,300.00	1.00	36,300.00		36,300.00	100%	-
205	12" SDR 35 PVC Storm Sewer	157.00	LF	65.00	10,205.00	157.00	10,205.00		10,205.00	100%	-
206	15" SDR 35 PVC Storm Sewer	86.00	LF	115.00	9,890.00	86.00	9,890.00		9,890.00	100%	-
207	48" Manhole	2.00	EA	7,000.00	14,000.00	2.00	14,000.00		14,000.00	100%	-
208	Type II Curb Inlet w/ Concrete Apron	4.00	EA	6,000.00	24,000.00	4.00	24,000.00		24,000.00	100%	-
209	Stormtech SC-800 Infiltration Chambers	1.00	LS	33,000.00	33,000.00	1.00	33,000.00		33,000.00	100%	-
210	Water Main Crossing	2.00	EA	6,100.00	12,200.00	2.00	12,200.00		12,200.00	100%	-
211	Concrete Curb & Gutter	645.00	LF	55.00	35,475.00	-	-		-	0%	35,475.00
212	4" Concrete Surfacing	344.00	SY	115.00	39,560.00	-	-		-	0%	39,560.00
213	6" Concrete Surfacing	31.00	SY	125.00	3,875.00	-	-		-	0%	3,875.00
214	Asphalt Pavement	2,837.00	SY	65.00	184,405.00	1,419.00	92,235.00		92,235.00	50%	92,170.00
301	Mobilization	1.00	LS	2,100.00	2,100.00	-	-		-	0%	2,100.00
302	Signing/Striping	1.00	LS	19,800.00	19,800.00	-	-		-	0%	19,800.00
401	Mobilization	1.00	LS	2,800.00	2,800.00	-	-		-	0%	2,800.00
402	New Light Poles/Electrical Service	3.00	EA	25,200.00	75,600.00	-	-		-	0%	75,600.00
501	Mobilization	1.00	LS	2,150.00	2,150.00	-	-		-	0%	2,150.00
502	Unclassified Excavation & Embankment	1.00	LS	6,590.00	6,590.00	-	-		-	0%	6,590.00
503	4" Concrete Surfacing	40.00	SY	190.00	7,600.00	-	-		-	0%	7,600.00
504	Pedestrian Rail	24.00	LF	215.00	5,160.00	-	-		-	0%	5,160.00
				<b>Original Contract Totals</b>	<b>\$ 739,485.00</b>		<b>\$ 415,295.50</b>	<b>\$ -</b>	<b>\$ 415,295.50</b>	<b>56%</b>	<b>\$ 324,189.50</b>

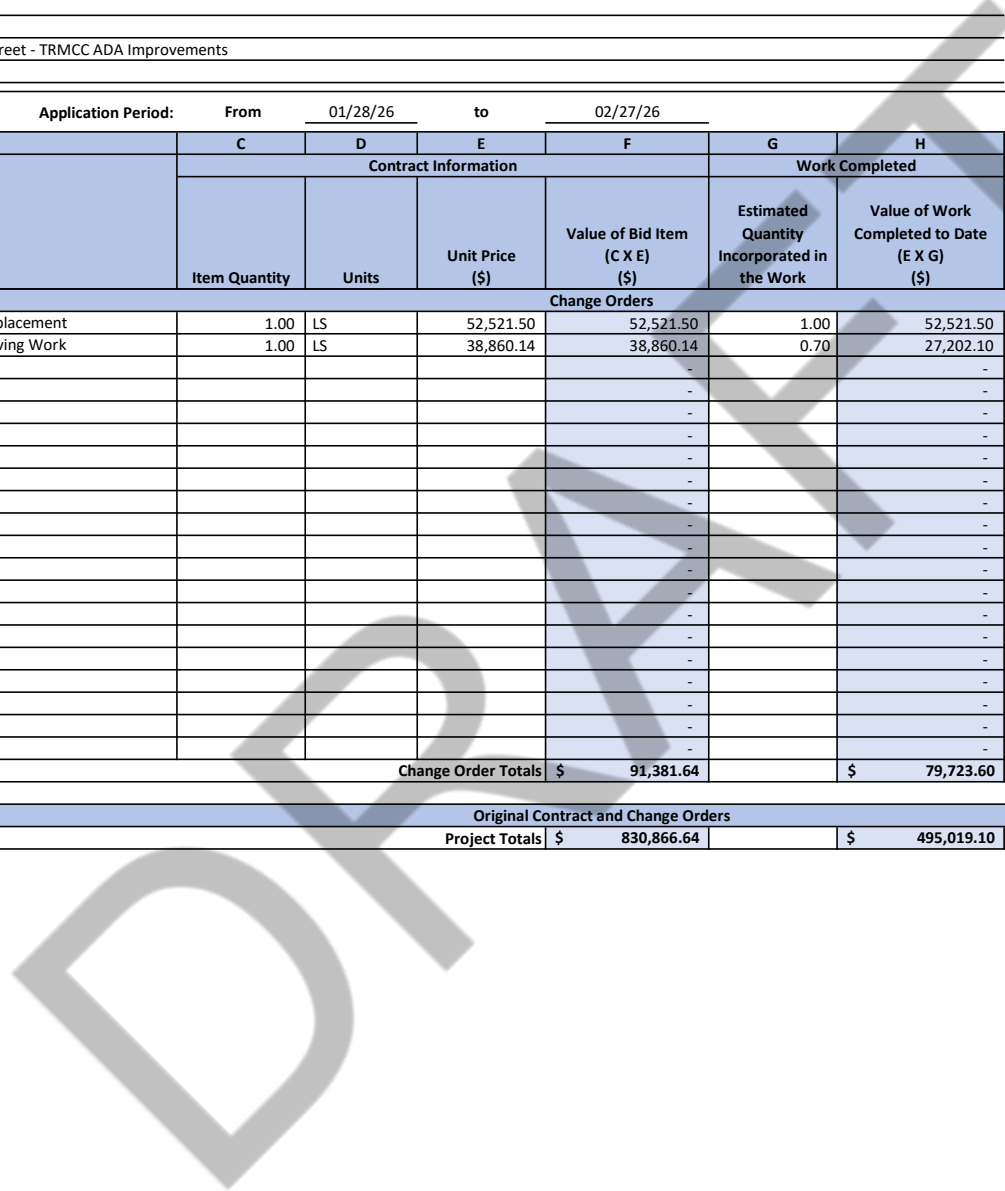
**Progress Estimate - Unit Price Work**

**Contractor's Application for Payment**

<b>Owner:</b>	Madison County	<b>Owner's Project No.:</b>	
<b>Engineer:</b>	Great West Engineering	<b>Engineer's Project No.:</b>	1-21175-TO28
<b>Contractor:</b>	Williams Civil Construction	<b>Contractor's Project No.:</b>	2545
<b>Project:</b>	Madison County - Madison Street - TRMCC ADA Improvements		
<b>Contract:</b>			

Application No.: 04 Application Period: From 01/28/26 to 02/27/26 Application Date: 02/27/26

A Bid Item No.	B Description	C Contract Information				G Work Completed		I Materials Currently Stored (not in G) (\$)	J Work Completed and Materials Stored to Date (H + I) (\$)	K % of Value of Item (J / F) (%)	L Balance to Finish (F - J) (\$)					
		C Item Quantity	D Units	E Unit Price (\$)	F Value of Bid Item (C X E) (\$)	G Estimated Quantity Incorporated in the Work	H Value of Work Completed to Date (E X G) (\$)									
<b>Change Orders</b>																
CO 01	ADA Hardware Changes & Culvert Replacement	1.00	LS	52,521.50	52,521.50	1.00	52,521.50		52,521.50	100%	-					
CO 02	Storm Drain Changes & Additional Paving Work	1.00	LS	38,860.14	38,860.14	0.70	27,202.10		27,202.10	70%	11,658.04					
<b>Change Order Totals</b>					\$	91,381.64		\$	79,723.60	\$	-	\$	79,723.60	87%	\$	11,658.04
<b>Original Contract and Change Orders</b>																
<b>Project Totals</b>					\$	830,866.64		\$	495,019.10	\$	-	\$	495,019.10	60%	\$	335,847.54



**MADISON COUNTY PLANNING DEPARTMENT****Memorandum**

**To:** Madison County Commissioners  
**From:** Cody Marxer, Planning Director  
**Date:** March 19, 2026

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**Subject:** **SIA Request for Extension – Moonlight Basin Lee’s Pool Phase I (One & Only) Subdivision**

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**History**

- April 20, 2021 - Subdivision Improvements Agreement (SIA) for Lees’ Pool Phase I Subdivision (Lee’s Pool Subdivision PUD) signed by Madison County. Backed by bond number 1001130668 in the amount of \$9,042,166.88.
- May 9, 2023 – Partial release of \$6,583,351.69 from bond number 1001130668 approved, leaving \$2,458,815.19 as the remaining bond amount.
- August 14, 2024 – Site inspection was conducted; Involved improvements appear to be completed and in working order.
- August 27, 2024 – Partial release of 1,275,498.00 of bond number 1001130668 approved, leaving \$1,183,317.19 remaining.
- March 18, 2025 – Extension of remaining SIA of bond number 1001130668 approved through December 31, 2025.

**Request**

This request is for the granting of an extension for the completion of subdivision improvements. Although a timeline for completion of improvements was not specified by Madison County within the subdivision approval, Exhibit A of the Subdivision Improvements Agreement (Section 6(a)), drafted by the developer, states that the improvements should be completed within two years from the date of the original SIA approval, unless an extension is granted. The request is to extend the SIA, backed by bond number 1001130668, through December 31, 2027.

**Recommendation:**

It is recommended that the Madison County Board of Commissioners:

- a. Grant the extension of the Moonlight Basin Lee’s Pool Phase I (One & Only) Subdivision SIA, backed by bond number 1001130668.

Submitted by:



Cody Marxer  
Madison County Planning Director



March 12, 2026

Madison County Planning and Madison County Commissioners  
Virginia City, MT 59755

*Sent via email to Madison County Planning with hard copy to follow*

Re: Moonlight Basin – Lee’s Pool Phase 1 (LP1) and Lee’s Pool Phase 2 (LP2) Subdivisions (One&Only), Subdivision Improvements Agreement (SIA): Request for Extensions

Dear Madison County Planning:

Per Section 6(a) of the respective Subdivision Improvements Agreements (SIAs); the subdivision improvements agreements is valid for two years after final plat approval; unless an extension is granted. Although this is not a County requirement, the final plat approval does reference the actual SIA, so we believe we should be consistent with the SIA. We are requesting that the Madison County Commissioners grant extensions for each of these SIAs, as described below. The recorded SIAs are attached.

Lee’s Pool 1 Subdivision: The final plat for Lee’s Pool 1 Subdivision was approved on April 20, 2021. Our previous request to extend this SIA, backed by bond number 1001130668, through December 31, 2025; was granted by the Commissioners in March 2025. However, we should have requested a longer extension. We expect to submit a full release request before the end of this year (2026), as the improvements were completed in 2025 and a 90% release was approved on December 9, 2025. *We are requesting an extension of this SIA, backed by bond number 1001130668 to be extended through December 31, 2026.*

Lee’s Pool 2 Subdivision: The final plat for the Lee’s Pool 2 Subdivision was approved on October 24, 2023. A partial SIA release was approved on August 27, 2024, which authorized a bond release of approximately 48.5% with \$596,441.40 remaining. *We are requesting an extension of this SIA, backed by bond number 1001130692 to be extended through December 31, 2027.*

It might be helpful to note that when the Moonlight Basin West Subdivision SIA was submitted and ultimately approved in June of 2025, we made sure the SIA “expiration” was more in line with specific expectations (six years after final plat approval). If you have any questions or require further clarification, please contact me directly. Thank you for your efforts on this request.

Sincerely,

Planning and Entitlement Manager

*Enclosures: Recorded SIAs for Lee’s Pool 1 and Lee’s Pool 2 Subdivisions*

After Recording Return To:  
Crowley Fleck PLLP  
Attn: Nate Good  
PO Box 10969  
Bozeman, MT 59719

**SUBDIVISION IMPROVEMENTS AGREEMENT  
FOR  
LEE'S POOL SUBDIVISION P.U.D.**

THIS SUBDIVISION IMPROVEMENTS AGREEMENT FOR LEE'S POOL SUBDIVISION P.U.D. (the "Agreement") is made by and between MB Hotel Owner LLC ("Moonlight"), a Montana limited liability company, of P.O. Box 160040, Big Sky, MT 59716, and Madison County (the "County"), with an address for purposes of this Agreement of P.O. Box 278, Virginia City, MT 59755.

**RECITALS**

A. Moonlight is the developer of the Lee's Pool Subdivision P.U.D. (the "Subdivision"), a proposed platted subdivision in Madison County, Montana. The Subdivision is within the Moonlight Basin Community development, a recreational and residential development consisting of private land, various lodging accommodations, administration buildings, ski and golf resort facilities, and other facilities related to the development.

B. As part of its process for improving the Subdivision, the County requires that Moonlight enter into this Agreement. The purpose of this Agreement is to protect the County. The parties do not intend this Agreement to benefit contractors, suppliers, laborers or others who provide work, services or materials to the Subdivision or for the benefit of purchasers or lot or condominium unit owners within the Subdivision.

C. The mutual promises, covenants and obligations contained in this Agreement are authorized by Montana law and the County's subdivision regulations.

## TERMS AND CONDITIONS

NOW THEREFORE, the parties agree as follows:

1. **Terminology.** For purposes of this Agreement, the term “Subdivision” refers to the Lee’s Pool Subdivision P.U.D. The term “Subdivision Improvements” refers only to those improvements that are required by Madison County as a condition to the approval of the Subdivision.

2. **Effective Date.** The effective date of this Agreement shall be the date of approval and recordation of the final plat of the Subdivision by the County.

3. **Moonlight’s Obligations.**

3.1 *Agreement to Construct.* Subject to and in accordance with the terms and conditions of this Agreement, Moonlight agrees to cause the construction and installation of the Subdivision Improvements. The Subdivision Improvements are listed on Exhibit A to this Agreement, which is incorporated by reference.

3.2 *Final Plat Approval as Condition.* Moonlight’s obligation to construct and complete the Subdivision Improvements is conditioned upon and shall arise only upon approval and recordation of the final plat of the Subdivision by the County. Moonlight’s obligation to complete the Subdivision Improvements shall not be conditioned upon commencement of construction of the development or sale of any lots or improvements within the Subdivision and shall be independent of any obligations of the County contained in this Agreement.

3.3 *Construction Standards.* The Subdivision Improvements shall be constructed in accordance with the County’s ordinances, resolutions, and regulations.

3.4 *Warranty.* Moonlight warrants that the Subdivision Improvements will be installed in a good and workmanlike manner and in substantial compliance with this Agreement and shall be substantially free of defects in materials and workmanship. These warranties of Moonlight shall remain in force and effect as to the Subdivision Improvements until the lapse of one year after the County accepts the completion (the “Warranty Period”).

4. **Security for Moonlight’s Obligation.**

4.1 *Financial Assurance.* To secure the performance of Moonlight’s obligations under this Agreement, Moonlight shall provide the County with a financial assurance instrument (the “Financial Assurance”) in the form of a bond payable to the County (“Bond”). The final plat for the Subdivision shall not be filed, nor shall any conveyance or transfer of title to any

tract or tracts of land within the Subdivision be made, nor any building permit issued, unless the Financial Assurance has been delivered to the County.

4.2 *Bond.* The Bond shall be issued by [U.S. Specialty Insurance Company]. The Bond shall be in the form as is attached as Exhibit B. The Bond shall provide for an amount equal to 125% of the estimated cost to construct the Subdivision Improvements. If at any time the County delivers to [U.S. Specialty Insurance Company] a signed statement or affidavit declaring an Event of Default (defined herein) under this Agreement, then the Bond shall be payable (up to the estimated costs to construct the uncompleted Subdivision Improvements) to the County in accordance with the Bond. Moonlight may substitute the Bond with another Bond, Letter of Credit or other security at its discretion.

5. **County's Obligations.**

5.1 *Periodic Reduction in Bond.* The following procedures shall apply to the Bond:

a. At any time, but not more often than once a month, Moonlight may submit to the County an application for acceptance of a portion of the Subdivision Improvements and a reduction of the amount of the Bond in an amount covering the accepted Subdivision Improvements as of the date of the application and accompanied by appropriate supporting documentation.

b. Within 14 days after receipt of each application for reduction, the County will either deliver to Moonlight an approval of the acceptance and reduction in the form of Exhibit C ("Partial Release") or return the application to Moonlight indicating in writing the County's reasons for refusing to approve the reduction. As part of its review of the application, the County may perform an inspection to verify completion of the work specified in the notice. If the County refuses to deliver a Partial Release, Moonlight may make the necessary corrections and resubmit the application. If the County fails to approve the reduction within 14 days after receipt of an application for reduction, the application shall be deemed approved and upon Moonlight's request, the County shall deliver a Partial Release to Moonlight.

c. Upon receipt of a Partial Release, or an application for reduction that has been deemed approved through expiration of time, Moonlight may submit to the issuer of the Bond the Partial Release and the issuer shall reduce the amount that the County may draw on the Bond pursuant to this Agreement by the amount specified in Partial Release (which amount shall retain 10% to be held as the Warranty Security).

d. If the County incurs fees or expenses to verify approval of an application, it may charge reasonable fees or expenses to Moonlight.

e. Delivery of a Partial Release does not constitute a waiver by the County of the right to draw on the reduced Bond in the event, prior to the expiration of the Warranty Period, of defects in or failure of any improvement listed in the Partial Release.

5.2 *Final Inspection and Certification.* Upon final completion of the Subdivision Improvements, Moonlight shall submit a written notice of completion to the County. Within 14 days of receipt of a notice of completion from Moonlight, the County shall inspect the Subdivision Improvements specified in the notice and, if the County finds that the specified Subdivision Improvements have been completed substantially in accordance with the requirements of this Agreement, the County shall, within 14 days after inspection, issue a letter in the form of Exhibit D certifying acceptance of the Subdivision Improvements (“Certification Letter”). The County’s delivery of a Certification Letter does not constitute a waiver by the County of the right to draw funds under the Financial Assurance in the event, prior to expiration of the Warranty Period, of defects in or failure of any Subdivision Improvement.

5.3 *Notice of Defect.* If, upon inspection of the completed Subdivision Improvements, or if at any time during the Warranty Period, the County finds that the specified Subdivision Improvements have not been completed in accordance with the requirements of this Agreement, the County shall issue a written notice of defect within 14 days after the inspection specifying the respects in which the completed Subdivision Improvements have not been completed in accordance with the requirements of this Agreement. Upon receipt of any such notice of defect, Moonlight shall have 30 days (the “Remedy Period”) to cure any defect identified in the notice and, upon curing the defect, shall provide a new notice of completion to the County. The Remedy Period may be extended beyond 30 days for good cause, as determined by the County. Upon the giving of such a new notice of completion, the provisions of Section 5.3 shall be applicable.

5.4 *Reduction of Security.* The Certification Letter contains a written release of the total amount of the Bond less 10% of the total costs of the Subdivision Improvements to be withheld as warranty security (“Warranty Security”). The Warranty Security shall remain in effect for the one year Warranty Period plus an additional 30 days. Upon expiration of the Warranty Period (plus an additional 30 days), the County shall deliver to Moonlight a release letter in the form of Exhibit E.

5.5 *Use of Proceeds.* The County shall use funds drawn, if any, under the Bond only for the purposes of completing the Subdivision Improvements or correcting defects in the Subdivision Improvements.

**6. Default.**

6.1 *Events of Default.* A default by Moonlight (“Event of Default”) shall exist after notice, opportunity to cure, and opportunity for a hearing, if:

- a. Moonlight fails to complete construction of the Subdivision Improvements within two years of final plat approval; provided, however, that this two-year period may be extended for good cause, as reasonably determined by the County;
- b. Moonlight fails to remedy any defect identified in a notice of defect within the Remedy Period;
- c. Moonlight becomes insolvent or files a voluntary petition in bankruptcy; or
- d. There is a foreclosure of the property that makes up the Subdivision or an assignment or conveyance of such property in lieu of foreclosure.

6.2 *Notice of Default.* Upon discovery by the County of an occurrence of an Event of Default, the County must give notice of such Event of Default to Moonlight. In order to be effective, a notice of an Event of Default as to the Subdivision Improvements must be delivered prior to expiration of the Warranty Period for the Subdivision Improvements. Upon receipt of an effective notice of an Event of Default, Moonlight shall have thirty (30) days from the date the notice is issued to remedy the defect. The County may not declare an Event of Default under this Agreement during the thirty (30) day remedy period unless Moonlight gives notice to the County that Moonlight does not intend to correct the defect. If, within the thirty (30) day remedy period, Moonlight fails to correct the defect stated in the notice, then the County may declare that an Event of Default exists, in which case the County shall be entitled to (a) make a draw on the Bond for the amount necessary to cure the Event of Default in a manner consistent with the approved Plans up to the then current amount of the Bond; and (b) suspend final plat approval during which time Moonlight shall have no right to sell, transfer or otherwise convey additional lots within the Subdivision without the express written approval of the County or until the Subdivision Improvements are completed and certified by the County; provided, however, that nothing in this paragraph shall prevent purchasers of property within the Subdivision from selling such property to third parties. The right of the County to complete or cause completion of the Subdivision Improvements shall include the following rights: The County shall have the right to complete the Subdivision Improvements, in substantial accordance with the plans, the estimated construction costs, and other requirements of this Agreement, either itself or by contract with a third party or by assignment of its rights to a successor developer who has acquired the Subdivision by purchase, foreclosure, or otherwise. Any funds obtained by the County under the Bond shall only be used by the County to pay the costs of completion of the Subdivision Improvements substantially in accordance with the plans and other requirements of this Agreement. Moonlight shall be

responsible for any amounts necessary to complete the Subdivision Improvements in excess of the funds available under the Bond.

6.3 *Protection of Innocent Purchasers.* The Bond furnished to the County under this Agreement is designed to assure completion of the Subdivision Improvements and to protect the County from bearing the cost of completing the Subdivision Improvements. Accordingly, the County shall have recourse only under the Bond and shall not have recourse against third parties who purchase lots or condominium units or acquire interests in the Subdivision.

## 7. **Miscellaneous.**

7.1 *Indemnification.* Moonlight agrees to indemnify and hold the County harmless for and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work under this Agreement, except to the extent that such claims, costs or liability arise out of the negligence or intentional misconduct of the County. Nothing in this paragraph shall be intended to waive any immunity that exists by statute or common law.

7.2 *Third Party Beneficiaries.* Except as provided in this Agreement, no person or entity, other than a party to this Agreement, shall have any right of action under this Agreement, including, but not limited to, lenders, lot or condominium unit buyers and materialmen, laborers or others providing work, services, or materials for the Subdivision Improvements.

7.3 *Assignability.* Moonlight's obligations under this Agreement may not be assigned without the consent of the County, which consent shall not be withheld unreasonably, and a grantee or transferee of Moonlight shall not be obligated to fulfill any of the obligations of Moonlight under this Agreement unless such grantee or transferee is the successor or assignee of Moonlight in its capacity as developer of the Subdivision. Nothing in this paragraph shall prevent Moonlight from conveying interests in lots or condominiums units in the ordinary course of business.

7.4 *Notices.* Any written notice required to be given under this Agreement shall be completed when personally delivered or when such notice has been deposited in the United States mail, first class, certified mail, return receipt requested, postage prepaid, addressed to the other party at the address set forth on the first page of this Agreement. A party wishing to change its address shall do so by providing notice in writing to the other party.

7.5 *Further Assurances.* At any time, and from time to time, upon request of either party, the other party agrees to make, execute and deliver or cause to be made, executed and delivered to the requesting party any and all further instruments, certificates and documents consistent with the provisions of this Agreement as may, in the reasonable opinion of the

requesting party, be necessary or desirable in order to effectuate, complete or perfect the right of the parties under this Agreement.

7.6 *Governing Law.* This Agreement shall be construed in accordance with Montana laws. Venue for any dispute arising between the parties shall be in Montana's Fifth Judicial District Court, Madison County.

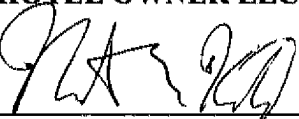
7.7 *Force Majeure.* Neither party shall be liable for failure to perform under this Agreement if such failure is the result of Force Majeure and any time limit expressed in this Agreement shall be extended for the period of any delay resulting from any Force Majeure. "Force Majeure" shall mean causes beyond the reasonable control of a party such as, but not limited to, weather conditions, acts of God, strikes, work stoppages, unavailability of or delay in receiving labor or materials, fire or other casualty, or action of government authorities. Nothing in this paragraph shall be construed to relieve Moonlight of its obligation to complete the Subdivision Improvements.

7.8 *Entire Agreement.* This Agreement and any agreement or document referred to herein, constitutes the entire understanding between the parties with respect to the subject matter hereof and all other prior understandings or agreements shall be deemed merged in this Agreement.


\* \* \* \* \*

IN WITNESS WHEREOF, the parties have read, considered and signed this Agreement effective as of the date specified above.

**MB HOTEL OWNER LLC**

By:   
Matthew E. Kidd, Authorized Signatory

**MADISON COUNTY**

By:   
Its: Commission Chairman

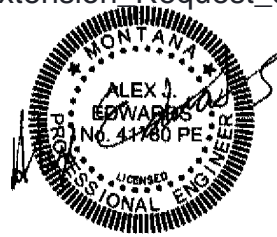


**EXHIBIT A**

**DESCRIPTION OF SUBDIVISION IMPROVEMENTS  
AND ESTIMATED COSTS**

DRAFT

Lee's Pool Subdivision P.U.D.  
 Engineer's Opinion of Probable Cost  
 December 21, 2020



**LEE'S POOL - SUBDIVISION IMPROVEMENTS COST ESTIMATE**

Item No.	Description	Construction Quantity	Units	Unit Price	Construction Amount	Quantity Completed	Completed Cost
<b>General</b>							
100	Mobilization	1	LS	\$ 344,483.50	\$ 344,483.50	0.00	\$ -
101	Clearing & Grubbing	14.14	AC	\$ 6,800.00	\$ 96,182.00	0.00	\$ -
102	Excavation & Embankment	1	LS	\$ 683,379.00	\$ 683,379.00	0.00	\$ -
103	Restoration & Hydroseed	6.63	AC	\$ 21,000.00	\$ 139,230.00	0.00	\$ -
104	Rock Excavation & Disposal	180	CY	\$ 80.00	\$ 12,000.00	0.00	\$ -
<b>Sewer</b>							
200	Connect to Existing Gravity Network	3	EA	\$ 2,000.00	\$ 6,000.00	0.00	\$ -
201	2" Polyethylene (PE) Pipe - 2'	708	LF	\$ 30.00	\$ 21,240.00	0.00	\$ -
202	SDR 35 Sewer Pipe - 4" Dia	1,268	LF	\$ 26.00	\$ 32,968.00	0.00	\$ -
203	SDR 35 Sewer Pipe - 8" Dia	12473	LF	\$ 50.00	\$ 623,650.00	0.00	\$ -
204	SDR 35 Pre-Insulated Sewer Pipe - 8" Dia	111	LF	\$ 120.00	\$ 13,320.00	0.00	\$ -
205	Sanitary Sewer Service Connection	44	EA	\$ 850.00	\$ 37,400.00	0.00	\$ -
206	Sanitary Sewer Manhole - 48" Dia	90	EA	\$ 4,500.00	\$ 405,000.00	0.00	\$ -
207	Sanitary Sewer Drop Manhole - 80" Dia	4	EA	\$ 6,500.00	\$ 26,000.00	0.00	\$ -
208	Extra Depth Sanitary Sewer Manhole	452.5	VF	\$ 400.00	\$ 181,000.00	0.00	\$ -
209	4" Wide XPS Insulation - 4" Thick	633	LF	\$ 20.00	\$ 10,660.00	0.00	\$ -
210	Impermeable Trench Plug	7	EA	\$ 2,500.00	\$ 17,500.00	0.00	\$ -
211	Lift Station - 60" Dia	1	LS	\$ 140,000.00	\$ 140,000.00	0.00	\$ -
212	Valve Vault - 48" Dia	1	LS	\$ 8,000.00	\$ 8,000.00	0.00	\$ -
213	Portable Crane Pad with Crane	1	LS	\$ 2,000.00	\$ 2,000.00	0.00	\$ -
214	2" Mueller Ball Valve w/Curb Box	1	EA	\$ 350.00	\$ 350.00	0.00	\$ -
215	Excavatable Flowable Fill	24	CY	\$ 230.00	\$ 5,520.00	0.00	\$ -
216	Buried Utility Crossing	2	EA	\$ 1,000.00	\$ 2,000.00	0.00	\$ -
217	Woven Geotextile Fabric (Restoration)	693	SY	\$ 2.50	\$ 1,482.50	0.00	\$ -
218	Subbase - 5" Minus (Restoration)	198	CY	\$ 60.00	\$ 9,900.00	0.00	\$ -
219	Crushed Base - 1.5" Minus (Restoration)	99	CY	\$ 55.00	\$ 5,445.00	0.00	\$ -
220	Remove & Replace Asphalt (Restoration)	396	SY	\$ 46.00	\$ 18,216.00	0.00	\$ -
221	Sewer Aerial Crossing	1	LS	\$ 30,000.00	\$ 30,000.00	0.00	\$ -
<b>Water</b>							
300	Connect to Existing Water Supply Network	6	EA	\$ 1,500.00	\$ 9,000.00	0.00	\$ -
301	DR-7 Polyethylene Pipe - 1.5" Dia	1,580	LF	\$ 38.00	\$ 60,040.00	0.00	\$ -
302	C-900 PVC, DR 14 Water Pipe - 6" Dia	281	LF	\$ 55.00	\$ 13,805.00	0.00	\$ -
303	C-900 PVC, DR 14 Water Pipe - 8" Dia	18071	LF	\$ 50.00	\$ 903,550.00	0.00	\$ -
304	1.5" Water Service Connections	44	EA	\$ 375.00	\$ 16,500.00	0.00	\$ -
305	8" Gate Valve	43	EA	\$ 1,980.00	\$ 83,650.00	0.00	\$ -
306	8"x4" Tee	1	EA	\$ 420.00	\$ 420.00	0.00	\$ -
307	8"x6" Tee	25	EA	\$ 560.00	\$ 13,760.00	0.00	\$ -
308	6" 11.25-Degree Bend	1	EA	\$ 500.00	\$ 500.00	0.00	\$ -
309	6" 45-Degree Bend	3	EA	\$ 500.00	\$ 1,500.00	0.00	\$ -
310	8" 11.25-Degree Bend	61	EA	\$ 525.00	\$ 42,525.00	0.00	\$ -
311	8" 22.5-Degree Bend	91	EA	\$ 525.00	\$ 47,775.00	0.00	\$ -
312	8" 45-Degree Bend	7	EA	\$ 525.00	\$ 3,675.00	0.00	\$ -
313	8" 90-Degree Bend	11	EA	\$ 525.00	\$ 5,775.00	0.00	\$ -
314	8" M.J. Cap	7	EA	\$ 400.00	\$ 2,800.00	0.00	\$ -
315	Curb Stop & Blow-off Assembly	3	EA	\$ 3,000.00	\$ 9,000.00	0.00	\$ -
316	Fire Hydrant Assembly (Variable Bury Depth)	25	EA	\$ 5,000.00	\$ 125,000.00	0.00	\$ -
317	Impermeable Trench Plug	11	EA	\$ 2,500.00	\$ 27,500.00	0.00	\$ -
318	4" Wide XPS Insulation - 4" Thick	300	LF	\$ 20.00	\$ 6,000.00	0.00	\$ -
319	Excavatable Flowable Fill	72	CY	\$ 230.00	\$ 16,560.00	0.00	\$ -
320	Woven Geotextile Fabric (Restoration)	2,787	SY	\$ 2.80	\$ 8,967.60	0.00	\$ -
321	Subbase - 5" Minus (Restoration)	1393	CY	\$ 50.00	\$ 69,650.00	0.00	\$ -
322	Crushed Base - 1.5" Minus (Restoration)	619	CY	\$ 55.00	\$ 34,045.00	0.00	\$ -
323	Remove & Replace Asphalt (Restoration)	760	SY	\$ 46.00	\$ 34,960.00	0.00	\$ -
324	Pressure Relief Vault (PRV)	1	EA	\$ 80,000.00	\$ 80,000.00	0.00	\$ -
325	Buried Utility Crossing	21	EA	\$ 1,000.00	\$ 21,000.00	0.00	\$ -
<b>Storm Drain</b>							
400	8" SDR-35 PVC Pipe	166	LF	\$ 80.00	\$ 8,400.00	0.00	\$ -
401	10" SDR-35 PVC Pipe	170	LF	\$ 62.00	\$ 8,840.00	0.00	\$ -
402	12" SDR-35 PVC Pipe	86	LF	\$ 62.00	\$ 4,472.00	0.00	\$ -
403	16" SDR-35 PVC Pipe	48	LF	\$ 54.00	\$ 2,682.00	0.00	\$ -
404	18" CMP Culvert	120	LF	\$ 35.00	\$ 4,200.00	0.00	\$ -
405	18" CMP Culvert	703	LF	\$ 42.00	\$ 29,526.00	0.00	\$ -
406	30" CMP Culvert	48	LF	\$ 80.00	\$ 3,840.00	0.00	\$ -
407	36" CMP Culvert	120	LF	\$ 125.00	\$ 15,000.00	0.00	\$ -
408	48" CMP Culvert	137	LF	\$ 150.00	\$ 20,550.00	0.00	\$ -
409	18" RCP Pipe	32	LF	\$ 120.00	\$ 3,840.00	0.00	\$ -
410	14"x22" ARCP Culvert	170	LF	\$ 110.00	\$ 18,700.00	0.00	\$ -
411	27"x44" ARCP Culvert	66	LF	\$ 140.00	\$ 12,040.00	0.00	\$ -
412	60" CMP Culvert	46	EA	\$ 220.00	\$ 10,960.00	0.00	\$ -
413	48"x36" Bottomless Culvert	1	LS	\$ 62,000.00	\$ 62,000.00	0.00	\$ -
414	Culvert Outfall Protection Pads (Rip-Rap)	387	CY	\$ 63.00	\$ 24,381.00	0.00	\$ -
415	Turf Reinforcement Mat	4,080	SF	\$ 1.20	\$ 4,896.00	0.00	\$ -
416	Erosion Control Ditch	3,781	LF	\$ 6.00	\$ 22,686.00	0.00	\$ -
417	1" Thick Rip-Rap Ditch	1,009	LF	\$ 14.00	\$ 14,126.00	0.00	\$ -
418	48" Catch Basin	2	EA	\$ 4,000.00	\$ 8,000.00	0.00	\$ -
419	48" Stormwater Detention Structure	7	EA	\$ 4,575.00	\$ 32,025.00	0.00	\$ -
420	Stormwater Detention Pond	7	EA	\$ 2,800.00	\$ 19,600.00	0.00	\$ -
<b>Roadway Improvements</b>							
500	Woven Geotextile Fabric	34,584	SY	\$ 2.50	\$ 86,460.00	0.00	\$ -
501	Subbase Input - 5" Minus	20,900	CY	\$ 60.00	\$ 1,045,000.00	0.00	\$ -
502	Crushed Base Input - 1.5" Minus	3,769	CY	\$ 55.00	\$ 207,745.00	0.00	\$ -
503	3" Thick Asphalt Surface Course	25,718	SY	\$ 26.00	\$ 668,668.00	0.00	\$ -
504	4-Way Duct Bank	612	LF	\$ 64.00	\$ 32,768.00	0.00	\$ -
505	Dry Utility Trench (Elec. & Fiber)	9,520	LF	\$ 11.00	\$ 104,720.00	0.00	\$ -
506	Erosion Control Blanket CT25BN (6'x8')	12,715	LF	\$ 5.00	\$ 63,575.00	0.00	\$ -
507	Traffic Signs	10	EA	\$ 650.00	\$ 6,500.00	0.00	\$ -
508	Utility Bridge Package	1	LS	\$ 280,000.00	\$ 280,000.00	0.00	\$ -
					Total Cost of Remaining Improvements		
					Amount to be Financially Guaranteed with Bond (125% of Total Costs)		

**EXHIBIT B**

**BOND**

DRAFT



Bond Number: 1001130668  
Initial Premium: \$135,632.50

**Subdivision Improvement Faithful Performance Bond**

**KNOW ALL PERSONS BY THESE PRESENTS:**

That we, MB Hotel Owner LLC, a Delaware Limited Liability Company  
\_\_\_\_\_ as Principal, and  
U.S. Specialty Insurance Company  
\_\_\_\_\_ a corporation organized and existing under the laws of the State of Texas and authorized to  
transact a general surety business in the State of Montana, as Surety, are held and firmly bound  
unto \_\_\_\_\_  
Madison County, Montana

\_\_\_\_\_ as Obligee, in the amount of \_\_\_\_\_  
Nine Million Forty Two Thousand Once Hundred Sixty Six and Eighty Eight Cents Dollars  
(\$ 9,042,166.88) lawful money of the United States of America, for the payment whereof, well and truly  
to be made, we hereby bind ourselves, our heirs, executors, administrators, jointly and severally, firmly by these  
presents.

**THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH, that**

**WHEREAS**, The Board of Supervisors of the County of Madison (or the City Council of the  
City of \_\_\_\_\_), State of Montana, and the Principal have entered into an agreement  
whereby principal agrees to install and complete certain designated public improvements described as \_\_\_\_\_  
Lee's Pool Subdivision P.U.D. subdivision improvements

In Tract Number / Parcel Map No. \_\_\_\_\_

**WHEREAS**, said Principal is required by the Obligee to furnish a bond for the faithful performance of the subject  
improvements.

**NOW, THEREFORE**, if the above-bounded Principal shall install the offsite improvements as indicated above in  
accordance with the plans approved by the Obligee, then this obligation shall be null and void, otherwise to  
remain in full force and effect.

Signed and sealed this 25th day of January, 2021.

Principal (s):

MB Hotel Owner LLC

By:

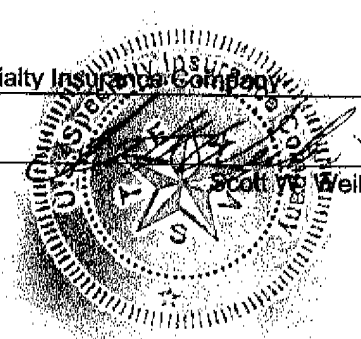
Matthew E. Kidd, Authorized Signatory

Surety:

U.S. Specialty Insurance Company

By:

Scott W. Weiler Attorney-In-Fact





TOKIO MARINE  
HCC

**POWER OF ATTORNEY**

**AMERICAN CONTRACTORS INDEMNITY COMPANY TEXAS BONDING COMPANY  
UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY**

KNOW ALL MEN BY THESE PRESENTS: That American Contractors Indemnity Company, a California corporation, Texas Bonding Company, an assumed name of American Contractors Indemnity Company, United States Surety Company, a Maryland corporation and U.S. Specialty Insurance Company, a Texas corporation (collectively, the "Companies"), do by these presents make, constitute and appoint:

William M. Rowe, III., Robert B. McGehee, H. Smith McGehee or Scott William Weiler of Clayton, Missouri

its true and lawful Attorney(s)-in-fact, each in their separate capacity if more than one is named above, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include riders, amendments, and consents of surety, providing the bond penalty does not exceed \*\*\*\*\*Seventy Five Million\*\*\*\*\* Dollars

(~~75,000,000.00~~). This Power of Attorney shall expire without further action on April 23<sup>rd</sup>, 2022. This Power of Attorney is granted under and by authority of the following resolutions adopted by the Boards of Directors of the Companies:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings, including any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts, and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, The Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 1<sup>st</sup> day of June, 2018.

**AMERICAN CONTRACTORS INDEMNITY COMPANY TEXAS BONDING COMPANY  
UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY**

State of California  
County of Los Angeles



By:   
Daniel P. Aguilar, Vice President

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On this 1<sup>st</sup> day of June, 2018, before me, Sonia O. Carrejo, a notary public, personally appeared Daniel P. Aguilar, Vice President of American Contractors Indemnity Company, Texas Bonding Company, United States Surety Company and U.S. Specialty Insurance Company who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (seal)



I, Kio Lo, Assistant Secretary of American Contractors Indemnity Company, Texas Bonding Company, United States Surety Company and U.S. Specialty Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect, furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Los Angeles, California this 25<sup>th</sup> day of September, 2021.

Corporate  
Bond No.  
Agency



Kio Lo, Assistant Secretary

**EXHIBIT C**  
**Form of Partial Release**

\_\_\_\_\_

Attn: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MB Hotel Owner LLC

Attn: \_\_\_\_\_

\_\_\_\_\_

RE: Partial Release of Bond No. \_\_\_\_\_

Dear \_\_\_\_\_ and \_\_\_\_\_:

On \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_, the Madison County Board of Commissioners made and passed a motion to accept the Subdivision Improvements listed on the attached Exhibit A and authorize the release of \$ \_\_\_\_\_ from Bond No. \_\_\_\_\_ issued by \_\_\_\_\_ and filed in the Madison County Clerk and Recorder's Office as Document No. \_\_\_\_\_, for subdivision improvements for the Lee's Pool Subdivision P.U.D. ("Bond"). The amount which shall now be held and firmly bound unto the County pursuant to the Bond shall be \$ \_\_\_\_\_.

Thank you,

\_\_\_\_\_

Board of Commissioners  
Madison County

STATE OF MONTANA )  
 )  
:ss.  
County of Madison )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of Madison County, Montana.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date first above written.

\_\_\_\_\_  
Notary Public for the State of Montana

\_\_\_\_\_  
(Printed Name)

Residing at: \_\_\_\_\_

(City/State)

My commission expires: \_\_\_\_\_, 20\_\_

( S E A L )

**EXHIBIT D**

(form of Certification Letter)

\_\_\_\_\_

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: Partial Release of Bond No. \_\_\_\_\_

Dear \_\_\_\_\_:

On \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_, the Madison County Board of Commissioners made and passed a motion (1) confirming the completion of all Subdivision Improvements listed in that certain Subdivision Improvement Agreement for the Lee's Pool Subdivision P.U.D. filed in the Madison County Clerk and Recorder's Office as Document No. \_\_\_\_\_ and (2) authorizing the release of \$ \_\_\_\_\_ from Bond No. \_\_\_\_\_ issued by \_\_\_\_\_ and filed in the Madison County clerk and Recorder's Office as Document No. \_\_\_\_\_ ("Bond"). The amount which shall now be held and firmly bound unto the County pursuant to the Bond shall be \$ \_\_\_\_\_ (*insert 10% of the total costs of the Subdivision Improvements*).

Thank you,

\_\_\_\_\_  
Board of Commissioners  
Madison County

STATE OF MONTANA )  
 )  
:ss.  
County of Madison )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of Madison County, Montana.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date first above written.

\_\_\_\_\_  
Notary Public for the State of Montana

(Printed Name)

Residing at: \_\_\_\_\_

(City/State)

My commission expires: \_\_\_\_\_, 20\_\_\_\_

( S E A L )

**EXHIBIT E**

(form of Full Release Letter)

\_\_\_\_\_, \_\_\_\_\_

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: Full Release of Bond No. \_\_\_\_\_

Dear \_\_\_\_\_:

On \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_, the Madison County Board of Commissioners made and passed a motion (1) confirming the expiration of the Warranty Period under that certain Subdivision Improvement Agreement for the Lee's Pool Subdivision P.U.D. filed in the Madison County Clerk and Recorder's Office as Document No. \_\_\_\_\_ and (2) authorizing the full release of Bond No. \_\_\_\_\_ issued by \_\_\_\_\_ and filed in the Madison County clerk and Recorder's Office as Document No. \_\_\_\_\_ ("Bond"). Pursuant to such Bond, the obligation of the issuer of the Bond to Madison County is now null and void, and such issuer shall be discharged and released from any and all liability and responsibility upon and from such Bond or matters arising therefrom.

Thank you,

\_\_\_\_\_  
Board of Commissioners  
Madison County





**Doc #: 196661**    **Pages: 21**    **Book: Page:**  
STATE OF MONTANA MADISON COUNTY    KOT: IMPROVE AGREE  
Recorded 4/22/2021 2:30 PM  
Paula McKenzie, CLERK & RECORDER  
Fee: \$ 5.00  
BY: Paula McKenzie  
To: FILE 107-B,

DRAFT

After Recording Return To:  
Crowley Fleck PLLP  
Attn: Nate Good  
PO Box 10969  
Bozeman, MT 59719

**SUBDIVISION IMPROVEMENTS AGREEMENT  
FOR  
LEE'S POOL SUBDIVISION P.U.D. PHASE 2**

THIS SUBDIVISION IMPROVEMENTS AGREEMENT FOR LEE'S POOL SUBDIVISION P.U.D. PHASE 2 (the "Agreement") is made by and between MB Hotel Owner LLC ("Moonlight"), a Montana limited liability company, of P.O. Box 160040, Big Sky, MT 59716, and Madison County (the "County"), with an address for purposes of this Agreement of P.O. Box 278, Virginia City, MT 59755.

**RECITALS**

A. Moonlight is the developer of the Lee's Pool Subdivision P.U.D. Phase 2 (the "Subdivision"), a proposed platted subdivision in Madison County, Montana. The Subdivision is within the Moonlight Basin Community development, a recreational and residential development consisting of private land, various lodging accommodations, administration buildings, ski and golf resort facilities, and other facilities related to the development.

B. As part of its process for improving the Subdivision, the County requires that Moonlight enter into this Agreement. The purpose of this Agreement is to protect the County. The parties do not intend this Agreement to benefit contractors, suppliers, laborers or others who provide work, services or materials to the Subdivision or for the benefit of purchasers or lot or condominium unit owners within the Subdivision.

C. The mutual promises, covenants and obligations contained in this Agreement are authorized by Montana law and the County's subdivision regulations.

## TERMS AND CONDITIONS

NOW THEREFORE, the parties agree as follows:

1. **Terminology.** For purposes of this Agreement, the term “Subdivision” refers to the Lee’s Pool Subdivision P.U.D. Phase 2. The term “Subdivision Improvements” refers only to those improvements that are required by Madison County as a condition to the approval of the Subdivision.

2. **Effective Date.** The effective date of this Agreement shall be the date of approval and recordation of the final plat of the Subdivision by the County.

3. **Moonlight’s Obligations.**

3.1 *Agreement to Construct.* Subject to and in accordance with the terms and conditions of this Agreement, Moonlight agrees to cause the construction and installation of the Subdivision Improvements. The Subdivision Improvements are listed on Exhibit A to this Agreement, which is incorporated by reference.

3.2 *Final Plat Approval as Condition.* Moonlight’s obligation to construct and complete the Subdivision Improvements is conditioned upon and shall arise only upon approval and recordation of the final plat of the Subdivision by the County. Moonlight’s obligation to complete the Subdivision Improvements shall not be conditioned upon commencement of construction of the development or sale of any lots or improvements within the Subdivision and shall be independent of any obligations of the County contained in this Agreement.

3.3 *Construction Standards.* The Subdivision Improvements shall be constructed in accordance with the County’s ordinances, resolutions, and regulations.

3.4 *Warranty.* Moonlight warrants that the Subdivision Improvements will be installed in a good and workmanlike manner and in substantial compliance with this Agreement and shall be substantially free of defects in materials and workmanship. These warranties of Moonlight shall remain in force and effect as to the Subdivision Improvements until the lapse of one year after the County accepts the completion (the “Warranty Period”).

4. **Security for Moonlight’s Obligation.**

4.1 *Financial Assurance.* To secure the performance of Moonlight’s obligations under this Agreement, Moonlight shall provide the County with a financial assurance instrument (the “Financial Assurance”) in the form of a bond payable to the County (“Bond”). The final plat for the Subdivision shall not be filed, nor shall any conveyance or transfer of title to any tract or tracts of land within the Subdivision be made, nor any building permit issued, unless the Financial Assurance has been delivered to the County.

4.2 *Bond.* The Bond shall be issued by U.S. Specialty Insurance Company. The Bond shall be in the form as is attached as Exhibit B. The Bond shall provide for an amount equal to 125% of the estimated cost to construct the Subdivision Improvements. If at any time the County delivers to U.S. Specialty Insurance Company a signed statement or affidavit declaring an Event of Default (defined herein) under this Agreement, then the Bond shall be payable (up to the estimated costs to construct the uncompleted Subdivision Improvements) to the County in accordance with the Bond. Moonlight may substitute the Bond with another Bond, Letter of Credit or other security at its discretion.

## 5. **County's Obligations.**

Bond: 5.1 *Periodic Reduction in Bond.* The following procedures shall apply to the

a. At any time, but not more often than once a month, Moonlight may submit to the County an application for acceptance of a portion of the Subdivision Improvements and a reduction of the amount of the Bond in an amount covering the accepted Subdivision Improvements as of the date of the application and accompanied by appropriate supporting documentation.

b. Within 14 days after receipt of each application for reduction, the County will either deliver to Moonlight an approval of the acceptance and reduction in the form of Exhibit C ("Partial Release") or return the application to Moonlight indicating in writing the County's reasons for refusing to approve the reduction. As part of its review of the application, the County may perform an inspection to verify completion of the work specified in the notice. If the County refuses to deliver a Partial Release, Moonlight may make the necessary corrections and resubmit the application. If the County fails to approve the reduction within 14 days after receipt of an application for reduction, the application shall be deemed approved and upon Moonlight's request, the County shall deliver a Partial Release to Moonlight.

c. Upon receipt of a Partial Release, or an application for reduction that has been deemed approved through expiration of time, Moonlight may submit to the issuer of the Bond the Partial Release and the issuer shall reduce the amount that the County may draw on the Bond pursuant to this Agreement by the amount specified in Partial Release (which amount shall retain 10% to be held as the Warranty Security).

d. If the County incurs fees or expenses to verify approval of an application, it may charge reasonable fees or expenses to Moonlight.

e. Delivery of a Partial Release does not constitute a waiver by the County of the right to draw on the reduced Bond in the event, prior to the expiration

of the Warranty Period, of defects in or failure of any improvement listed in the Partial Release.

5.2 *Final Inspection and Certification.* Upon final completion of the Subdivision Improvements, Moonlight shall submit a written notice of completion to the County. Within 14 days of receipt of a notice of completion from Moonlight, the County shall inspect the Subdivision Improvements specified in the notice and, if the County finds that the specified Subdivision Improvements have been completed substantially in accordance with the requirements of this Agreement, the County shall, within 14 days after inspection, issue a letter in the form of Exhibit D certifying acceptance of the Subdivision Improvements (“Certification Letter”). The County’s delivery of a Certification Letter does not constitute a waiver by the County of the right to draw funds under the Financial Assurance in the event, prior to expiration of the Warranty Period, of defects in or failure of any Subdivision Improvement.

5.3 *Notice of Defect.* If, upon inspection of the completed Subdivision Improvements, or if at any time during the Warranty Period, the County finds that the specified Subdivision Improvements have not been completed in accordance with the requirements of this Agreement, the County shall issue a written notice of defect within 14 days after the inspection specifying the respects in which the completed Subdivision Improvements have not been completed in accordance with the requirements of this Agreement. Upon receipt of any such notice of defect, Moonlight shall have 30 days (the “Remedy Period”) to cure any defect identified in the notice and, upon curing the defect, shall provide a new notice of completion to the County. The Remedy Period may be extended beyond 30 days for good cause, as determined by the County. Upon the giving of such a new notice of completion, the provisions of Section 5.3 shall be applicable.

5.4 *Reduction of Security.* The Certification Letter contains a written release of the total amount of the Bond less 10% of the total costs of the Subdivision Improvements to be withheld as warranty security (“Warranty Security”). The Warranty Security shall remain in effect for the one year Warranty Period plus an additional 30 days. Upon expiration of the Warranty Period (plus an additional 30 days), the County shall deliver to Moonlight a release letter in the form of Exhibit E.

5.5 *Use of Proceeds.* The County shall use funds drawn, if any, under the Bond only for the purposes of completing the Subdivision Improvements or correcting defects in the Subdivision Improvements.

## 6. **Default.**

6.1 *Events of Default.* A default by Moonlight (“Event of Default”) shall exist after notice, opportunity to cure, and opportunity for a hearing, if:

- a. Moonlight fails to complete construction of the Subdivision Improvements within two years of final plat approval; provided, however, that this

two-year period may be extended for good cause, as reasonably determined by the County;

b. Moonlight fails to remedy any defect identified in a notice of defect within the Remedy Period;

c. Moonlight becomes insolvent or files a voluntary petition in bankruptcy; or

d. There is a foreclosure of the property that makes up the Subdivision or an assignment or conveyance of such property in lieu of foreclosure.

6.2 *Notice of Default.* Upon discovery by the County of an occurrence of an Event of Default, the County must give notice of such Event of Default to Moonlight. In order to be effective, a notice of an Event of Default as to the Subdivision Improvements must be delivered prior to expiration of the Warranty Period for the Subdivision Improvements. Upon receipt of an effective notice of an Event of Default, Moonlight shall have thirty (30) days from the date the notice is issued to remedy the defect. The County may not declare an Event of Default under this Agreement during the thirty (30) day remedy period unless Moonlight gives notice to the County that Moonlight does not intend to correct the defect. If, within the thirty (30) day remedy period, Moonlight fails to correct the defect stated in the notice, then the County may declare that an Event of Default exists, in which case the County shall be entitled to (a) make a draw on the Bond for the amount necessary to cure the Event of Default in a manner consistent with the approved Plans up to the then current amount of the Bond; and (b) suspend final plat approval during which time Moonlight shall have no right to sell, transfer or otherwise convey additional lots within the Subdivision without the express written approval of the County or until the Subdivision Improvements are completed and certified by the County; provided, however, that nothing in this paragraph shall prevent purchasers of property within the Subdivision from selling such property to third parties. The right of the County to complete or cause completion of the Subdivision Improvements shall include the following rights: The County shall have the right to complete the Subdivision Improvements, in substantial accordance with the plans, the estimated construction costs, and other requirements of this Agreement, either itself or by contract with a third party or by assignment of its rights to a successor developer who has acquired the Subdivision by purchase, foreclosure, or otherwise. Any funds obtained by the County under the Bond shall only be used by the County to pay the costs of completion of the Subdivision Improvements substantially in accordance with the plans and other requirements of this Agreement. Moonlight shall be responsible for any amounts necessary to complete the Subdivision Improvements in excess of the funds available under the Bond.

6.3 *Protection of Innocent Purchasers.* The Bond furnished to the County under this Agreement is designed to assure completion of the Subdivision Improvements and to protect the County from bearing the cost of completing the Subdivision Improvements. Accordingly, the County shall have recourse only under the Bond and shall not have recourse

against third parties who purchase lots or condominium units or acquire interests in the Subdivision.

## 7. **Miscellaneous.**

7.1 *Indemnification.* Moonlight agrees to indemnify and hold the County harmless for and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work under this Agreement, except to the extent that such claims, costs or liability arise out of the negligence or intentional misconduct of the County. Nothing in this paragraph shall be intended to waive any immunity that exists by statute or common law.

7.2 *Third Party Beneficiaries.* Except as provided in this Agreement, no person or entity, other than a party to this Agreement, shall have any right of action under this Agreement, including, but not limited to, lenders, lot or condominium unit buyers and materialmen, laborers or others providing work, services, or materials for the Subdivision Improvements.

7.3 *Assignability.* Moonlight's obligations under this Agreement may not be assigned without the consent of the County, which consent shall not be withheld unreasonably, and a grantee or transferee of Moonlight shall not be obligated to fulfill any of the obligations of Moonlight under this Agreement unless such grantee or transferee is the successor or assignee of Moonlight in its capacity as developer of the Subdivision. Nothing in this paragraph shall prevent Moonlight from conveying interests in lots or condominiums units in the ordinary course of business.

7.4 *Notices.* Any written notice required to be given under this Agreement shall be completed when personally delivered or when such notice has been deposited in the United States mail, first class, certified mail, return receipt requested, postage prepaid, addressed to the other party at the address set forth on the first page of this Agreement. A party wishing to change its address shall do so by providing notice in writing to the other party.

7.5 *Further Assurances.* At any time, and from time to time, upon request of either party, the other party agrees to make, execute and deliver or cause to be made, executed and delivered to the requesting party any and all further instruments, certificates and documents consistent with the provisions of this Agreement as may, in the reasonable opinion of the requesting party, be necessary or desirable in order to effectuate, complete or perfect the right of the parties under this Agreement.

7.6 *Governing Law.* This Agreement shall be construed in accordance with Montana laws. Venue for any dispute arising between the parties shall be in Montana's Fifth Judicial District Court, Madison County.

7.7 *Force Majeure.* Neither party shall be liable for failure to perform under this Agreement if such failure is the result of Force Majeure and any time limit expressed in this

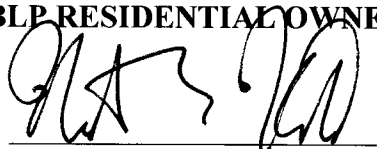
Agreement shall be extended for the period of any delay resulting from any Force Majeure. “Force Majeure” shall mean causes beyond the reasonable control of a party such as, but not limited to, weather conditions, acts of God, strikes, work stoppages, unavailability of or delay in receiving labor or materials, fire or other casualty, or action of government authorities. Nothing in this paragraph shall be construed to relieve Moonlight of its obligation to complete the Subdivision Improvements.

7.8 *Entire Agreement.* This Agreement and any agreement or document referred to herein, constitutes the entire understanding between the parties with respect to the subject matter hereof and all other prior understandings or agreements shall be deemed merged in this Agreement.

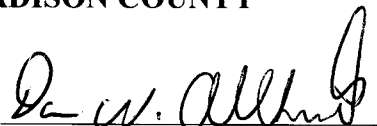
\* \* \* \* \*

IN WITNESS WHEREOF, the parties have read, considered and signed this Agreement effective as of the date specified above.

**MBLP RESIDENTIAL OWNER LLC**

By:   
Matthew E. Kidd, Authorized Signatory

**MADISON COUNTY**

By:   
Its: Chairman

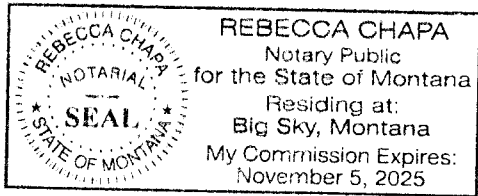
STATE OF Montana )  
COUNTY OF Gallatin ) :SS

This instrument was acknowledged before me on October 3, 2023 by Matthew E. Kidd, as Authorized Signatory of MBLP Residential Owner LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date first above written.

Rebecca Chapa [signature]  
Notary Public for the State of Montana  
Rebecca Chapa  
(Printed Name)  
Residing at: Big Sky, Montana  
(City) (State)  
My commission expires: 11/5/2025  
(Month/Day/Year)

(SEAL)



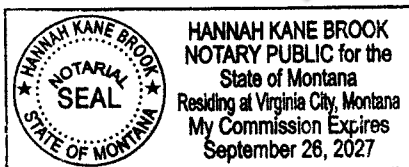
STATE OF MONTANA )  
County of Madison ) :SS.

This instrument was acknowledged before me on Oct 24, 2023, by Dan Amundson, as COMMISSIONER of Madison County, Montana.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date first above written.

Hannah Kane Brook  
Notary Public for the State of Montana  
HANNAH K. BROOK  
(Printed Name)  
Residing at: Virginia City  
(City/State)  
My commission expires: SEP 24, 2027

(SEAL)



**EXHIBIT A**

**DESCRIPTION OF SUBDIVISION IMPROVEMENTS  
AND ESTIMATED COSTS**

DRAFT

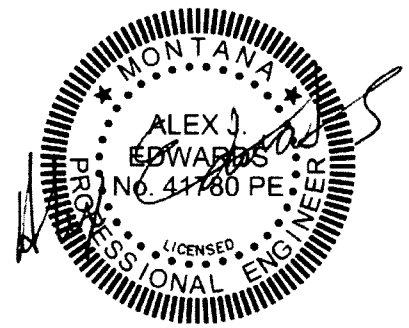
Lee's Pool 2 Subdivision P.U.D.  
 Engineer's Opinion of Probable Cost  
 September 20, 2023



**LEE'S POOL 2 SUBDIVISION**

Item No.	Description	Construction Quantity	Units	Unit Price	Construction Amount	Quantity Completed	Completed Cost	Remaining Cost
<b>General</b>								
101	Mobilization	1	LS	\$ 46,839.91	\$ 46,839.91	0.00	\$ -	\$ 46,839.91
102	Excavation & Embankment	1	LS	\$ 108,000.00	\$ 108,000.00	0.00	\$ -	\$ 108,000.00
<b>Sewer</b>								
201	Connect to Existing Gravity Network	1	EA	\$ 9,000.00	\$ 9,000.00	0.00	\$ -	\$ 9,000.00
202	SDR 35 Sewer Pipe - 8" Dia	161	LF	\$ 55.00	\$ 8,855.00	0.00	\$ -	\$ 8,855.00
203	Sanitary Sewer Manhole - 48" Dia	2	EA	\$ 5,200.00	\$ 10,400.00	0.00	\$ -	\$ 10,400.00
204	Extra Depth Sanitary Sewer Manhole	5.33	VF	\$ 210.00	\$ 1,119.30	0.00	\$ -	\$ 1,119.30
205	Sanitary Sewer Service Connection	2	EA	\$ 1,800.00	\$ 3,600.00	0.00	\$ -	\$ 3,600.00
206	Lift Station	1	EA	\$ 48,800.00	\$ 48,800.00	0.00	\$ -	\$ 48,800.00
<b>Water</b>								
301	1.5" Water Service Connection	2	EA	\$ 3,000.00	\$ 6,000.00	0.00	\$ -	\$ 6,000.00
302	8" 11.25-Degree Bend	3	EA	\$ 470.00	\$ 1,410.00	0.00	\$ -	\$ 1,410.00
303	8" 22.5-Degree Bend	7	EA	\$ 470.00	\$ 3,290.00	0.00	\$ -	\$ 3,290.00
304	8" 45-Degree Bend	17	EA	\$ 470.00	\$ 7,990.00	0.00	\$ -	\$ 7,990.00
305	8" 90-Degree Bend	2	EA	\$ 470.00	\$ 940.00	0.00	\$ -	\$ 940.00
306	8" Gate Valve	3	EA	\$ 2,100.00	\$ 6,300.00	0.00	\$ -	\$ 6,300.00
307	8"x6" Reducer	2	EA	\$ 450.00	\$ 900.00	0.00	\$ -	\$ 900.00
308	DR-14 C900 Water Pipe - 6" Dia	4	LF	\$ 55.00	\$ 192.50	0.00	\$ -	\$ 192.50
309	DR-14 C900 Water Pipe - 8" Dia	1,210	LF	\$ 55.00	\$ 66,534.05	0.00	\$ -	\$ 66,534.05
<b>Storm Drain</b>								
401	18" CMP Culvert	30	LF	\$ 75.00	\$ 2,250.00	0.00	\$ -	\$ 2,250.00
402	Culvert Outfall Protection Pads (Rip-Rap)	6	CY	\$ 150.00	\$ 900.00	0.00	\$ -	\$ 900.00
403	Detention Pond	1	EA	\$ 10,000.00	\$ 10,000.00	0.00	\$ -	\$ 10,000.00
404	Stormtech Retention Systems	12	1K FT <sup>3</sup>	\$ 10,000.00	\$ 121,230.00	0.00	\$ -	\$ 121,230.00
<b>Roadway Improvements</b>								
501	Subbase Import - 5" Minus	4,655	CY	\$ 55.00	\$ 256,044.03	0.00	\$ -	\$ 256,044.03
502	Crushed Base Import - 1.5" Minus	956	CY	\$ 70.00	\$ 66,894.52	0.00	\$ -	\$ 66,894.52
503	3" Thick Asphalt Surface Course	7,544	SY	\$ 26.00	\$ 196,148.74	0.00	\$ -	\$ 196,148.74
Total Cost of Remaining Improvements								\$ 983,638.04
Amount to be Financially Guaranteed with Bond 125%								\$ 1,229,547.55

DRAFT



Bond No: 1001130692

## SUBDIVISION PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, THAT MBLP Residential Owner LLC, A Montana limited liability Company located at PO Box 160040, Big Sky MT, 59716, as Principal, and U.S. SPECIALTY INSURANCE COMPANY, a Texas corporation, authorized to do business in the State of Montana, as Surety, are, effective upon the recording of the final plat of Lee's Pool Subdivision PUD Phase 2 with the Madison County Clerk and Recorder, held and firmly bound unto Madison County, Montana located at 103 W. Wallace St. – First Floor, Virginia City, MT 59755, as Obligee, in the penal sum of One Million Two Hundred Twenty-Nine Thousand, Five Hundred Forty-Seven and 55/100 (\$1,229,547.55) for the payment of which sum well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors and assigns, jointly and severally, firmly by theses presents.

WHEREAS, the above bounded principal has been granted approval by the above named obligee for final plat approval of Lee's Pool Subdivision PUD Phase 2 as set forth at a meeting of the Madison County Commissioners.

WHEREAS, Principal and Obligee entered into a Subdivision Improvements Agreement for the Lee's Pool Subdivision Phase 2 ("SIA") which obligates Principal to construct and install those improvements listed on Exhibit A attached ("Subdivision Improvements")

NOW, THEREFORE, the condition of the above obligation is such, that if the said Principal shall complete the Subdivision Improvements and all other obligations to Obligee in accordance with the SIA or the Obligee delivers a release, then this obligation shall be null and void, otherwise to remain in full force and effect; provided, however, upon Surety's receipt of a partial release from Obligee, the amount the Surety shall be held and firmly bound unto Obligee shall be reduced from \$1,229,547.55 to the amount stated in such partial release.

THE FOREGOING OBLIGATION, however, is limited by the following express conditions, the performance of which shall be a condition precedent to any rights of claims or recovery hereunder;

1. Upon the discovery by the Obligee, or by the Obligee's agent or representative, of any act or omission that shall or might involve a loss hereunder, the Obligee shall endeavor to give written notice thereof with the fullest information obtainable at the time to the Surety at its office at 8 Forest Park Drive, Farmington, CT 06032.
2. Obligee shall not be entitled to recover any amounts hereunder until an Even of Default (as defined in the SIA) has occurred and the 30 day remedy period has expired without cure by Principal.
3. Legal proceedings for recovery hereunder may not be brought unless begun within twelve (12) months from the date of the discovery of the act or omission of the Principal on account of which claim is made.

4. The Principal shall be made a party of any suit or action for recovery hereunder, and no adjustment shall be rendered against the Surety in excess of the penalty of this instrument.
5. No right of action shall accrue hereunder to or for the benefit of anyone other than that Obligee, and the Obligee's right hereunder, may not be assigned without the written consent of the Surety.

IN WITNESS WHEREOF, this instrument has been executed by the duly authorized representative of the Principal and Surety.

SIGNED, SEALED AND DATED: September 26, 2023

MBLP Residential Owner LLC

By: 

Matthew E. Kidd, its Authorized Signatory

U.S. SPECIALTY INSURANCE COMPANY

By: 

John B. Rowe, Attorney-in-Fact



**TOKIO MARINE  
HCC**

**POWER OF ATTORNEY**

**AMERICAN CONTRACTORS INDEMNITY COMPANY TEXAS BONDING COMPANY  
UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY**

KNOW ALL MEN BY THESE PRESENTS: That American Contractors Indemnity Company, a California corporation, Texas Bonding Company, an assumed name of American Contractors Indemnity Company, United States Surety Company, a Maryland corporation and U.S. Specialty Insurance Company, a Texas corporation (collectively, the "Companies"), do by these presents make, constitute and appoint:

Robert B. McGehee, H. Smith McGehee, Michael Misuraca, John B. Rowe, William M. Rowe, III  
or Kurt Zimmerman of Clayton, Missouri

its true and lawful Attorney(s)-in-fact, each in their separate capacity if more than one is named above, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include riders, amendments, and consents of surety, providing the bond penalty does not exceed \*\*\*\*\*Seventy Five Million\*\*\*\*\* Dollars ( \*\*\*75,000,000.00\*\* ). This Power of Attorney shall expire without further action on January 31<sup>st</sup>, 2024. This Power of Attorney is granted under and by authority of the following resolutions adopted by the Boards of Directors of the Companies:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings, including any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts, and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, The Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 23<sup>rd</sup> day of September, 2021.

**AMERICAN CONTRACTORS INDEMNITY COMPANY TEXAS BONDING COMPANY  
UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY**

State of California  
County of Los Angeles



By: [Signature]  
Daniel P. Aguilar, Vice President

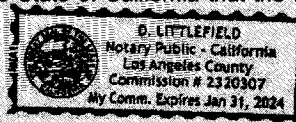
A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

On this 23rd day of September, 2021, before me, D. Littlefield, a notary public, personally appeared Daniel P. Aguilar, Vice President of American Contractors Indemnity Company, Texas Bonding Company, United States Surety Company and U.S. Specialty Insurance Company who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature] (seal)



I, Kio Lo, Assistant Secretary of American Contractors Indemnity Company, Texas Bonding Company, United States Surety Company and U.S. Specialty Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Los Angeles, California this 26<sup>th</sup> day of SEPTEMBER, 2023.

Corporate Seals  
Bond No. 1001130692  
Agency No. 16570



[Signature]  
Kio Lo, Assistant Secretary

**Kan't Kopy® K1  
Security Paper**

- Hidden Pantograph
- Color Match
- Artificial Watermark
- Anti-Copy Coin Rub
- Erasure Protection
- Security Features Box
- Microprint Protection
- Acid Free

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- Anti-Copy Coin Rub
- Erasure Protection
- Security Features Box
- Microprint Protection
- Acid Free

DRAFT

**EXHIBIT C**  
Form of Partial Release

\_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MBLP Residential Owner LLC  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: Partial Release of Bond No. \_\_\_\_\_

Dear \_\_\_\_\_ and \_\_\_\_\_:

On \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_, the Madison County Board of Commissioners made and passed a motion to accept the Subdivision Improvements listed on the attached Exhibit A and authorize the release of \$ \_\_\_\_\_ from Bond No. \_\_\_\_\_ issued by \_\_\_\_\_ and filed in the Madison County Clerk and Recorder's Office as Document No. \_\_\_\_\_, for subdivision improvements for the Lee's Pool Subdivision P.U.D. Phase 2 ("Bond"). The amount which shall now be held and firmly bound unto the County pursuant to the Bond shall be \$ \_\_\_\_\_.

Thank you,

\_\_\_\_\_  
Board of Commissioners  
Madison County

STATE OF MONTANA )  
 :ss.  
County of Madison )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of Madison County, Montana.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date first above written.

\_\_\_\_\_  
Notary Public for the State of Montana

\_\_\_\_\_  
(Printed Name)

Residing at: \_\_\_\_\_

(City/State)

My commission expires: \_\_\_\_\_, 20\_\_

( S E A L )

**EXHIBIT D**

(form of Certification Letter)

\_\_\_\_\_, \_\_\_\_\_

Attn: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

RE: Partial Release of Bond No. \_\_\_\_\_

Dear \_\_\_\_\_:

On \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_, the Madison County Board of Commissioners made and passed a motion (1) confirming the completion of all Subdivision Improvements listed in that certain Subdivision Improvement Agreement for the Lee's Pool Subdivision P.U.D. Phase 2 filed in the Madison County Clerk and Recorder's Office as Document No. \_\_\_\_\_ and (2) authorizing the release of \$ \_\_\_\_\_ from Bond No. \_\_\_\_\_ issued by \_\_\_\_\_ and filed in the Madison County clerk and Recorder's Office as Document No. \_\_\_\_\_ ("Bond"). The amount which shall now be held and firmly bound unto the County pursuant to the Bond shall be \$ \_\_\_\_\_ (*insert 10% of the total costs of the Subdivision Improvements*).

Thank you,

\_\_\_\_\_  
Board of Commissioners  
Madison County

STATE OF MONTANA )  
 :ss.  
County of Madison )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of Madison County, Montana.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date first above written.

\_\_\_\_\_  
Notary Public for the State of Montana

\_\_\_\_\_  
(Printed Name)

Residing at: \_\_\_\_\_

(City/State)

My commission expires: \_\_\_\_\_, 20\_\_\_\_

( S E A L )

**EXHIBIT E**

(form of Full Release Letter)

\_\_\_\_\_, \_\_\_\_\_

Attn: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

RE: Full Release of Bond No. \_\_\_\_\_

Dear \_\_\_\_\_:

On \_\_\_\_\_, \_\_\_\_\_, 20\_\_, the Madison County Board of Commissioners made and passed a motion (1) confirming the expiration of the Warranty Period under that certain Subdivision Improvement Agreement for the Lee's Pool Subdivision P.U.D. Phase 2 filed in the Madison County Clerk and Recorder's Office as Document No. \_\_\_\_\_ and (2) authorizing the full release of Bond No. \_\_\_\_\_ issued by \_\_\_\_\_ and filed in the Madison County clerk and Recorder's Office as Document No. \_\_\_\_\_ ("Bond"). Pursuant to such Bond, the obligation of the issuer of the Bond to Madison County is now null and void, and such issuer shall be discharged and released from any and all liability and responsibility upon and from such Bond or matters arising therefrom.

Thank you,

\_\_\_\_\_  
Board of Commissioners  
Madison County

STATE OF MONTANA )  
 :ss.  
County of Madison )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of Madison County, Montana.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date first above written.

\_\_\_\_\_  
Notary Public for the State of Montana

\_\_\_\_\_  
(Printed Name)

Residing at: \_\_\_\_\_

(City/State)

My commission expires: \_\_\_\_\_, 20\_\_\_\_

( S E A L )



Doc #: 212113 Pages: 22 Book: Page:  
 STATE OF MONTANA MADISON COUNTY  
 Recorded 10/24/2023 2:10 PM KOL: IMPROVE AGREE  
 Paula McKenzie, CLERK & RECORDER  
 Fee: \$ 5.00  
 BY: Paula McKenzie  
 FILE 107,,

DRAFT

**MADISON COUNTY PLANNING DEPARTMENT****Memorandum**

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**To:** Madison County Commissioners  
**From:** Cody Marxer, Planning Director  
**Date:** March 19, 2026

---

**Subject:** **SIA Request for Extension – Moonlight Basin Lee’s Pool Phase 2 (One & Only) Subdivision**

---

**History**

- October 24, 2023 - Subdivision Improvements Agreement (SIA) for Lees’ Pool Phase 2 Subdivision (Lee’s Pool Subdivision PUD) signed by Madison County. Backed by bond number 1001130692 in the amount of \$1,229,547.55.
- August 14, 2024 – Site inspection was conducted; Involved improvements appear to be completed and in working order.
- August 27, 2024 – Partial release of \$596,441.40 from bond number 1001130692 approved by Madison County, leaving \$633,106.14 remaining.

**Request**

This request is for the granting of an extension for the completion of subdivision improvements. Although a timeline for completion of improvements was not specified by Madison County within the subdivision approval, Exhibit A of the Subdivision Improvements Agreement (Section 6(a)), drafted by the developer, states that the improvements should be completed within two years from the date of the original SIA approval, unless an extension is granted. The request is to extend the SIA, backed by bond number 1001130692, through December 31, 2027.

**Recommendation:**

It is recommended that the Madison County Board of Commissioners:

- a. Grant the extension of the Moonlight Basin Lee’s Pool Phase 2 (One & Only) Subdivision SIA, backed by bond number 1001130692.

Submitted by:



Cody Marxer  
Madison County Planning Director



March 12, 2026

Madison County Planning and Madison County Commissioners  
Virginia City, MT 59755

*Sent via email to Madison County Planning with hard copy to follow*

Re: Moonlight Basin – Lee’s Pool Phase 1 (LP1) and Lee’s Pool Phase 2 (LP2) Subdivisions (One&Only), Subdivision Improvements Agreement (SIA): Request for Extensions

Dear Madison County Planning:

Per Section 6(a) of the respective Subdivision Improvements Agreements (SIAs); the subdivision improvements agreements is valid for two years after final plat approval; unless an extension is granted. Although this is not a County requirement, the final plat approval does reference the actual SIA, so we believe we should be consistent with the SIA. We are requesting that the Madison County Commissioners grant extensions for each of these SIAs, as described below. The recorded SIAs are attached.

Lee’s Pool 1 Subdivision: The final plat for Lee’s Pool 1 Subdivision was approved on April 20, 2021. Our previous request to extend this SIA, backed by bond number 1001130668, through December 31, 2025; was granted by the Commissioners in March 2025. However, we should have requested a longer extension. We expect to submit a full release request before the end of this year (2026), as the improvements were completed in 2025 and a 90% release was approved on December 9, 2025. *We are requesting an extension of this SIA, backed by bond number 1001130668 to be extended through December 31, 2026.*

Lee’s Pool 2 Subdivision: The final plat for the Lee’s Pool 2 Subdivision was approved on October 24, 2023. A partial SIA release was approved on August 27, 2024, which authorized a bond release of approximately 48.5% with \$596,441.40 remaining. *We are requesting an extension of this SIA, backed by bond number 1001130692 to be extended through December 31, 2027.*

It might be helpful to note that when the Moonlight Basin West Subdivision SIA was submitted and ultimately approved in June of 2025, we made sure the SIA “expiration” was more in line with specific expectations (six years after final plat approval). If you have any questions or require further clarification, please contact me directly. Thank you for your efforts on this request.

Sincerely,



Planning and Entitlement Manager

*Enclosures: Recorded SIAs for Lee’s Pool 1 and Lee’s Pool 2 Subdivisions*

After Recording Return To:  
Crowley Fleck PLLP  
Attn: Nate Good  
PO Box 10969  
Bozeman, MT 59719

**SUBDIVISION IMPROVEMENTS AGREEMENT  
FOR  
LEE'S POOL SUBDIVISION P.U.D.**

THIS SUBDIVISION IMPROVEMENTS AGREEMENT FOR LEE'S POOL SUBDIVISION P.U.D. (the "Agreement") is made by and between MB Hotel Owner LLC ("Moonlight"), a Montana limited liability company, of P.O. Box 160040, Big Sky, MT 59716, and Madison County (the "County"), with an address for purposes of this Agreement of P.O. Box 278, Virginia City, MT 59755.

**RECITALS**

A. Moonlight is the developer of the Lee's Pool Subdivision P.U.D. (the "Subdivision"), a proposed platted subdivision in Madison County, Montana. The Subdivision is within the Moonlight Basin Community development, a recreational and residential development consisting of private land, various lodging accommodations, administration buildings, ski and golf resort facilities, and other facilities related to the development.

B. As part of its process for improving the Subdivision, the County requires that Moonlight enter into this Agreement. The purpose of this Agreement is to protect the County. The parties do not intend this Agreement to benefit contractors, suppliers, laborers or others who provide work, services or materials to the Subdivision or for the benefit of purchasers or lot or condominium unit owners within the Subdivision.

C. The mutual promises, covenants and obligations contained in this Agreement are authorized by Montana law and the County's subdivision regulations.

## TERMS AND CONDITIONS

NOW THEREFORE, the parties agree as follows:

1. **Terminology.** For purposes of this Agreement, the term “Subdivision” refers to the Lee’s Pool Subdivision P.U.D. The term “Subdivision Improvements” refers only to those improvements that are required by Madison County as a condition to the approval of the Subdivision.

2. **Effective Date.** The effective date of this Agreement shall be the date of approval and recordation of the final plat of the Subdivision by the County.

3. **Moonlight’s Obligations.**

3.1 *Agreement to Construct.* Subject to and in accordance with the terms and conditions of this Agreement, Moonlight agrees to cause the construction and installation of the Subdivision Improvements. The Subdivision Improvements are listed on Exhibit A to this Agreement, which is incorporated by reference.

3.2 *Final Plat Approval as Condition.* Moonlight’s obligation to construct and complete the Subdivision Improvements is conditioned upon and shall arise only upon approval and recordation of the final plat of the Subdivision by the County. Moonlight’s obligation to complete the Subdivision Improvements shall not be conditioned upon commencement of construction of the development or sale of any lots or improvements within the Subdivision and shall be independent of any obligations of the County contained in this Agreement.

3.3 *Construction Standards.* The Subdivision Improvements shall be constructed in accordance with the County’s ordinances, resolutions, and regulations.

3.4 *Warranty.* Moonlight warrants that the Subdivision Improvements will be installed in a good and workmanlike manner and in substantial compliance with this Agreement and shall be substantially free of defects in materials and workmanship. These warranties of Moonlight shall remain in force and effect as to the Subdivision Improvements until the lapse of one year after the County accepts the completion (the “Warranty Period”).

4. **Security for Moonlight’s Obligation.**

4.1 *Financial Assurance.* To secure the performance of Moonlight’s obligations under this Agreement, Moonlight shall provide the County with a financial assurance instrument (the “Financial Assurance”) in the form of a bond payable to the County (“Bond”). The final plat for the Subdivision shall not be filed, nor shall any conveyance or transfer of title to any

tract or tracts of land within the Subdivision be made, nor any building permit issued, unless the Financial Assurance has been delivered to the County.

4.2 *Bond.* The Bond shall be issued by [U.S. Specialty Insurance Company]. The Bond shall be in the form as is attached as Exhibit B. The Bond shall provide for an amount equal to 125% of the estimated cost to construct the Subdivision Improvements. If at any time the County delivers to [U.S. Specialty Insurance Company] a signed statement or affidavit declaring an Event of Default (defined herein) under this Agreement, then the Bond shall be payable (up to the estimated costs to construct the uncompleted Subdivision Improvements) to the County in accordance with the Bond. Moonlight may substitute the Bond with another Bond, Letter of Credit or other security at its discretion.

5. **County's Obligations.**

5.1 *Periodic Reduction in Bond.* The following procedures shall apply to the Bond:

a. At any time, but not more often than once a month, Moonlight may submit to the County an application for acceptance of a portion of the Subdivision Improvements and a reduction of the amount of the Bond in an amount covering the accepted Subdivision Improvements as of the date of the application and accompanied by appropriate supporting documentation.

b. Within 14 days after receipt of each application for reduction, the County will either deliver to Moonlight an approval of the acceptance and reduction in the form of Exhibit C ("Partial Release") or return the application to Moonlight indicating in writing the County's reasons for refusing to approve the reduction. As part of its review of the application, the County may perform an inspection to verify completion of the work specified in the notice. If the County refuses to deliver a Partial Release, Moonlight may make the necessary corrections and resubmit the application. If the County fails to approve the reduction within 14 days after receipt of an application for reduction, the application shall be deemed approved and upon Moonlight's request, the County shall deliver a Partial Release to Moonlight.

c. Upon receipt of a Partial Release, or an application for reduction that has been deemed approved through expiration of time, Moonlight may submit to the issuer of the Bond the Partial Release and the issuer shall reduce the amount that the County may draw on the Bond pursuant to this Agreement by the amount specified in Partial Release (which amount shall retain 10% to be held as the Warranty Security).

d. If the County incurs fees or expenses to verify approval of an application, it may charge reasonable fees or expenses to Moonlight.

e. Delivery of a Partial Release does not constitute a waiver by the County of the right to draw on the reduced Bond in the event, prior to the expiration of the Warranty Period, of defects in or failure of any improvement listed in the Partial Release.

5.2 *Final Inspection and Certification.* Upon final completion of the Subdivision Improvements, Moonlight shall submit a written notice of completion to the County. Within 14 days of receipt of a notice of completion from Moonlight, the County shall inspect the Subdivision Improvements specified in the notice and, if the County finds that the specified Subdivision Improvements have been completed substantially in accordance with the requirements of this Agreement, the County shall, within 14 days after inspection, issue a letter in the form of Exhibit D certifying acceptance of the Subdivision Improvements (“Certification Letter”). The County’s delivery of a Certification Letter does not constitute a waiver by the County of the right to draw funds under the Financial Assurance in the event, prior to expiration of the Warranty Period, of defects in or failure of any Subdivision Improvement.

5.3 *Notice of Defect.* If, upon inspection of the completed Subdivision Improvements, or if at any time during the Warranty Period, the County finds that the specified Subdivision Improvements have not been completed in accordance with the requirements of this Agreement, the County shall issue a written notice of defect within 14 days after the inspection specifying the respects in which the completed Subdivision Improvements have not been completed in accordance with the requirements of this Agreement. Upon receipt of any such notice of defect, Moonlight shall have 30 days (the “Remedy Period”) to cure any defect identified in the notice and, upon curing the defect, shall provide a new notice of completion to the County. The Remedy Period may be extended beyond 30 days for good cause, as determined by the County. Upon the giving of such a new notice of completion, the provisions of Section 5.3 shall be applicable.

5.4 *Reduction of Security.* The Certification Letter contains a written release of the total amount of the Bond less 10% of the total costs of the Subdivision Improvements to be withheld as warranty security (“Warranty Security”). The Warranty Security shall remain in effect for the one year Warranty Period plus an additional 30 days. Upon expiration of the Warranty Period (plus an additional 30 days), the County shall deliver to Moonlight a release letter in the form of Exhibit E.

5.5 *Use of Proceeds.* The County shall use funds drawn, if any, under the Bond only for the purposes of completing the Subdivision Improvements or correcting defects in the Subdivision Improvements.

**6. Default.**

6.1 *Events of Default.* A default by Moonlight (“Event of Default”) shall exist after notice, opportunity to cure, and opportunity for a hearing, if:

- a. Moonlight fails to complete construction of the Subdivision Improvements within two years of final plat approval; provided, however, that this two-year period may be extended for good cause, as reasonably determined by the County;
- b. Moonlight fails to remedy any defect identified in a notice of defect within the Remedy Period;
- c. Moonlight becomes insolvent or files a voluntary petition in bankruptcy; or
- d. There is a foreclosure of the property that makes up the Subdivision or an assignment or conveyance of such property in lieu of foreclosure.

6.2 *Notice of Default.* Upon discovery by the County of an occurrence of an Event of Default, the County must give notice of such Event of Default to Moonlight. In order to be effective, a notice of an Event of Default as to the Subdivision Improvements must be delivered prior to expiration of the Warranty Period for the Subdivision Improvements. Upon receipt of an effective notice of an Event of Default, Moonlight shall have thirty (30) days from the date the notice is issued to remedy the defect. The County may not declare an Event of Default under this Agreement during the thirty (30) day remedy period unless Moonlight gives notice to the County that Moonlight does not intend to correct the defect. If, within the thirty (30) day remedy period, Moonlight fails to correct the defect stated in the notice, then the County may declare that an Event of Default exists, in which case the County shall be entitled to (a) make a draw on the Bond for the amount necessary to cure the Event of Default in a manner consistent with the approved Plans up to the then current amount of the Bond; and (b) suspend final plat approval during which time Moonlight shall have no right to sell, transfer or otherwise convey additional lots within the Subdivision without the express written approval of the County or until the Subdivision Improvements are completed and certified by the County; provided, however, that nothing in this paragraph shall prevent purchasers of property within the Subdivision from selling such property to third parties. The right of the County to complete or cause completion of the Subdivision Improvements shall include the following rights: The County shall have the right to complete the Subdivision Improvements, in substantial accordance with the plans, the estimated construction costs, and other requirements of this Agreement, either itself or by contract with a third party or by assignment of its rights to a successor developer who has acquired the Subdivision by purchase, foreclosure, or otherwise. Any funds obtained by the County under the Bond shall only be used by the County to pay the costs of completion of the Subdivision Improvements substantially in accordance with the plans and other requirements of this Agreement. Moonlight shall be

responsible for any amounts necessary to complete the Subdivision Improvements in excess of the funds available under the Bond.

6.3 *Protection of Innocent Purchasers.* The Bond furnished to the County under this Agreement is designed to assure completion of the Subdivision Improvements and to protect the County from bearing the cost of completing the Subdivision Improvements. Accordingly, the County shall have recourse only under the Bond and shall not have recourse against third parties who purchase lots or condominium units or acquire interests in the Subdivision.

## 7. **Miscellaneous.**

7.1 *Indemnification.* Moonlight agrees to indemnify and hold the County harmless for and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work under this Agreement, except to the extent that such claims, costs or liability arise out of the negligence or intentional misconduct of the County. Nothing in this paragraph shall be intended to waive any immunity that exists by statute or common law.

7.2 *Third Party Beneficiaries.* Except as provided in this Agreement, no person or entity, other than a party to this Agreement, shall have any right of action under this Agreement, including, but not limited to, lenders, lot or condominium unit buyers and materialmen, laborers or others providing work, services, or materials for the Subdivision Improvements.

7.3 *Assignability.* Moonlight's obligations under this Agreement may not be assigned without the consent of the County, which consent shall not be withheld unreasonably, and a grantee or transferee of Moonlight shall not be obligated to fulfill any of the obligations of Moonlight under this Agreement unless such grantee or transferee is the successor or assignee of Moonlight in its capacity as developer of the Subdivision. Nothing in this paragraph shall prevent Moonlight from conveying interests in lots or condominiums units in the ordinary course of business.

7.4 *Notices.* Any written notice required to be given under this Agreement shall be completed when personally delivered or when such notice has been deposited in the United States mail, first class, certified mail, return receipt requested, postage prepaid, addressed to the other party at the address set forth on the first page of this Agreement. A party wishing to change its address shall do so by providing notice in writing to the other party.

7.5 *Further Assurances.* At any time, and from time to time, upon request of either party, the other party agrees to make, execute and deliver or cause to be made, executed and delivered to the requesting party any and all further instruments, certificates and documents consistent with the provisions of this Agreement as may, in the reasonable opinion of the

requesting party, be necessary or desirable in order to effectuate, complete or perfect the right of the parties under this Agreement.

7.6 *Governing Law.* This Agreement shall be construed in accordance with Montana laws. Venue for any dispute arising between the parties shall be in Montana's Fifth Judicial District Court, Madison County.

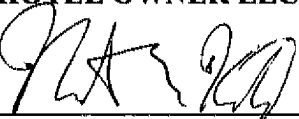
7.7 *Force Majeure.* Neither party shall be liable for failure to perform under this Agreement if such failure is the result of Force Majeure and any time limit expressed in this Agreement shall be extended for the period of any delay resulting from any Force Majeure. "Force Majeure" shall mean causes beyond the reasonable control of a party such as, but not limited to, weather conditions, acts of God, strikes, work stoppages, unavailability of or delay in receiving labor or materials, fire or other casualty, or action of government authorities. Nothing in this paragraph shall be construed to relieve Moonlight of its obligation to complete the Subdivision Improvements.

7.8 *Entire Agreement.* This Agreement and any agreement or document referred to herein, constitutes the entire understanding between the parties with respect to the subject matter hereof and all other prior understandings or agreements shall be deemed merged in this Agreement.


\* \* \* \* \*

IN WITNESS WHEREOF, the parties have read, considered and signed this Agreement effective as of the date specified above.

**MB HOTEL OWNER LLC**

By:   
Matthew E. Kidd, Authorized Signatory

**MADISON COUNTY**

By:   
Its: Commission Chairman

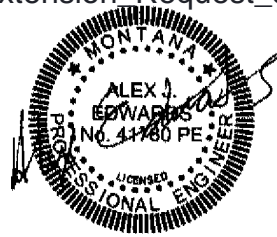


**EXHIBIT A**

**DESCRIPTION OF SUBDIVISION IMPROVEMENTS  
AND ESTIMATED COSTS**

DRAFT

Lee's Pool Subdivision P.U.D.  
 Engineer's Opinion of Probable Cost  
 December 21, 2020



**LEE'S POOL - SUBDIVISION IMPROVEMENTS COST ESTIMATE**

Item No.	Description	Construction Quantity	Units	Unit Price	Construction Amount	Quantity Completed	Completed Cost
<b>General</b>							
100	Mobilization	1	LS	\$ 344,483.50	\$ 344,483.50	0.00	\$ -
101	Clearing & Grubbing	14.14	AC	\$ 6,800.00	\$ 96,182.00	0.00	\$ -
102	Excavation & Embankment	1	LS	\$ 683,379.00	\$ 683,379.00	0.00	\$ -
103	Restoration & Hydroseed	6.63	AC	\$ 21,000.00	\$ 139,230.00	0.00	\$ -
104	Rock Excavation & Disposal	180	CY	\$ 80.00	\$ 12,000.00	0.00	\$ -
<b>Sewer</b>							
200	Connect to Existing Gravity Network	3	EA	\$ 2,000.00	\$ 6,000.00	0.00	\$ -
201	2" Polyethylene (PE) Pipe - 2'	708	LF	\$ 30.00	\$ 21,240.00	0.00	\$ -
202	SDR 35 Sewer Pipe - 4" Dia	1,268	LF	\$ 26.00	\$ 32,968.00	0.00	\$ -
203	SDR 35 Sewer Pipe - 8" Dia	12473	LF	\$ 50.00	\$ 623,650.00	0.00	\$ -
204	SDR 35 Pre-Insulated Sewer Pipe - 8" Dia	111	LF	\$ 120.00	\$ 13,320.00	0.00	\$ -
205	Sanitary Sewer Service Connection	44	EA	\$ 850.00	\$ 37,400.00	0.00	\$ -
206	Sanitary Sewer Manhole - 48" Dia	90	EA	\$ 4,500.00	\$ 405,000.00	0.00	\$ -
207	Sanitary Sewer Drop Manhole - 80" Dia	4	EA	\$ 6,500.00	\$ 26,000.00	0.00	\$ -
208	Extra Depth Sanitary Sewer Manhole	452.5	VF	\$ 400.00	\$ 181,000.00	0.00	\$ -
209	4" Wide XPS Insulation - 4" Thick	633	LF	\$ 20.00	\$ 10,660.00	0.00	\$ -
210	Impermeable Trench Plug	7	EA	\$ 2,500.00	\$ 17,500.00	0.00	\$ -
211	Lift Station - 60" Dia	1	LS	\$ 140,000.00	\$ 140,000.00	0.00	\$ -
212	Valve Vault - 48" Dia	1	LS	\$ 8,000.00	\$ 8,000.00	0.00	\$ -
213	Portable Crane Pad with Crane	1	LS	\$ 2,000.00	\$ 2,000.00	0.00	\$ -
214	2" Mueller Ball Valve w/Curb Box	1	EA	\$ 350.00	\$ 350.00	0.00	\$ -
215	Excavatable Flowable Fill	24	CY	\$ 230.00	\$ 5,520.00	0.00	\$ -
216	Buried Utility Crossing	2	EA	\$ 1,000.00	\$ 2,000.00	0.00	\$ -
217	Woven Geotextile Fabric (Restoration)	693	SY	\$ 2.50	\$ 1,482.50	0.00	\$ -
218	Subbase - 5" Minus (Restoration)	198	CY	\$ 60.00	\$ 9,900.00	0.00	\$ -
219	Crushed Base - 1.5" Minus (Restoration)	99	CY	\$ 55.00	\$ 5,445.00	0.00	\$ -
220	Remove & Replace Asphalt (Restoration)	396	SY	\$ 46.00	\$ 18,216.00	0.00	\$ -
221	Sewer Aerial Crossing	1	LS	\$ 30,000.00	\$ 30,000.00	0.00	\$ -
<b>Water</b>							
300	Connect to Existing Water Supply Network	6	EA	\$ 1,500.00	\$ 9,000.00	0.00	\$ -
301	DR-7 Polyethylene Pipe - 1.5" Dia	1,580	LF	\$ 38.00	\$ 60,040.00	0.00	\$ -
302	C-900 PVC, DR 14 Water Pipe - 6" Dia	281	LF	\$ 55.00	\$ 13,805.00	0.00	\$ -
303	C-900 PVC, DR 14 Water Pipe - 8" Dia	18071	LF	\$ 50.00	\$ 903,550.00	0.00	\$ -
304	1.5" Water Service Connections	44	EA	\$ 375.00	\$ 16,500.00	0.00	\$ -
305	8" Gate Valve	43	EA	\$ 1,980.00	\$ 83,650.00	0.00	\$ -
306	8"x4" Tee	1	EA	\$ 420.00	\$ 420.00	0.00	\$ -
307	8"x6" Tee	25	EA	\$ 560.00	\$ 13,760.00	0.00	\$ -
308	6" 11.25-Degree Bend	1	EA	\$ 500.00	\$ 500.00	0.00	\$ -
309	6" 45-Degree Bend	3	EA	\$ 500.00	\$ 1,500.00	0.00	\$ -
310	8" 11.25-Degree Bend	81	EA	\$ 525.00	\$ 42,525.00	0.00	\$ -
311	8" 22.5-Degree Bend	91	EA	\$ 525.00	\$ 47,775.00	0.00	\$ -
312	8" 45-Degree Bend	7	EA	\$ 525.00	\$ 3,675.00	0.00	\$ -
313	8" 90-Degree Bend	11	EA	\$ 525.00	\$ 5,775.00	0.00	\$ -
314	8" M.J. Cap	7	EA	\$ 400.00	\$ 2,800.00	0.00	\$ -
315	Curb Stop & Blow-off Assembly	3	EA	\$ 3,000.00	\$ 9,000.00	0.00	\$ -
316	Fire Hydrant Assembly (Variable Bury Depth)	25	EA	\$ 5,000.00	\$ 125,000.00	0.00	\$ -
317	Impermeable Trench Plug	11	EA	\$ 2,500.00	\$ 27,500.00	0.00	\$ -
318	4" Wide XPS Insulation - 4" Thick	300	LF	\$ 20.00	\$ 6,000.00	0.00	\$ -
319	Excavatable Flowable Fill	72	CY	\$ 230.00	\$ 16,560.00	0.00	\$ -
320	Woven Geotextile Fabric (Restoration)	2,787	SY	\$ 2.80	\$ 8,967.60	0.00	\$ -
321	Subbase - 5" Minus (Restoration)	1393	CY	\$ 50.00	\$ 69,650.00	0.00	\$ -
322	Crushed Base - 1.5" Minus (Restoration)	619	CY	\$ 55.00	\$ 34,045.00	0.00	\$ -
323	Remove & Replace Asphalt (Restoration)	760	SY	\$ 46.00	\$ 34,960.00	0.00	\$ -
324	Pressure Relief Vault (PRV)	1	EA	\$ 80,000.00	\$ 80,000.00	0.00	\$ -
325	Buried Utility Crossing	21	EA	\$ 1,000.00	\$ 21,000.00	0.00	\$ -
<b>Storm Drain</b>							
400	8" SDR-35 PVC Pipe	166	LF	\$ 80.00	\$ 8,400.00	0.00	\$ -
401	10" SDR-35 PVC Pipe	170	LF	\$ 62.00	\$ 8,840.00	0.00	\$ -
402	12" SDR-35 PVC Pipe	86	LF	\$ 62.00	\$ 4,472.00	0.00	\$ -
403	16" SDR-35 PVC Pipe	48	LF	\$ 54.00	\$ 2,682.00	0.00	\$ -
404	18" CMP Culvert	120	LF	\$ 35.00	\$ 4,200.00	0.00	\$ -
405	18" CMP Culvert	703	LF	\$ 42.00	\$ 29,526.00	0.00	\$ -
406	30" CMP Culvert	48	LF	\$ 80.00	\$ 3,840.00	0.00	\$ -
407	36" CMP Culvert	120	LF	\$ 125.00	\$ 15,000.00	0.00	\$ -
408	48" CMP Culvert	137	LF	\$ 150.00	\$ 20,550.00	0.00	\$ -
409	18" RCP Pipe	32	LF	\$ 120.00	\$ 3,840.00	0.00	\$ -
410	14"x22" ARCP Culvert	170	LF	\$ 110.00	\$ 18,700.00	0.00	\$ -
411	27"x44" ARCP Culvert	66	LF	\$ 140.00	\$ 12,040.00	0.00	\$ -
412	60" CMP Culvert	46	EA	\$ 220.00	\$ 10,960.00	0.00	\$ -
413	48"x36" Bottomless Culvert	1	LS	\$ 62,000.00	\$ 62,000.00	0.00	\$ -
414	Culvert Outfall Protection Pads (Rip-Rap)	387	CY	\$ 63.00	\$ 24,381.00	0.00	\$ -
415	Turf Reinforcement Mat	4,080	SF	\$ 1.20	\$ 4,896.00	0.00	\$ -
416	Erosion Control Ditch	3,781	LF	\$ 6.00	\$ 22,686.00	0.00	\$ -
417	1" Thick Rip-Rap Ditch	1,009	LF	\$ 14.00	\$ 14,126.00	0.00	\$ -
418	48" Catch Basin	2	EA	\$ 4,000.00	\$ 8,000.00	0.00	\$ -
419	48" Stormwater Detention Structure	7	EA	\$ 4,575.00	\$ 32,025.00	0.00	\$ -
420	Stormwater Detention Pond	7	EA	\$ 2,800.00	\$ 19,600.00	0.00	\$ -
<b>Roadway Improvements</b>							
500	Woven Geotextile Fabric	34,584	SY	\$ 2.50	\$ 86,460.00	0.00	\$ -
501	Subbase Import - 5" Minus	20,900	CY	\$ 60.00	\$ 1,045,000.00	0.00	\$ -
502	Crushed Base Import - 1.5" Minus	3,769	CY	\$ 55.00	\$ 208,745.00	0.00	\$ -
503	3" Thick Asphalt Surface Course	25,715	SY	\$ 26.00	\$ 668,698.00	0.00	\$ -
504	4-Way Duct Bank	512	LF	\$ 64.00	\$ 32,768.00	0.00	\$ -
505	Dry Utility Trench (Elec. & Fiber)	9,525	LF	\$ 11.00	\$ 104,720.00	0.00	\$ -
506	Erosion Control Blanket CT25BN (6'x8')	12,715	LF	\$ 5.00	\$ 63,575.00	0.00	\$ -
507	Traffic Signs	10	EA	\$ 650.00	\$ 6,500.00	0.00	\$ -
508	Utility Bridge Package	1	LS	\$ 280,000.00	\$ 280,000.00	0.00	\$ -
					Total Cost of Remaining Improvements		
					Amount to be Financially Guaranteed with Bond (125% of Total Costs)		

**EXHIBIT B**

**BOND**

DRAFT



Bond Number: 1001130668  
Initial Premium: \$135,632.50

**Subdivision Improvement Faithful Performance Bond**

**KNOW ALL PERSONS BY THESE PRESENTS:**

That we, MB Hotel Owner LLC, a Delaware Limited Liability Company  
\_\_\_\_\_ as Principal, and  
U.S. Specialty Insurance Company  
\_\_\_\_\_ a corporation organized and existing under the laws of the State of Texas and authorized to  
transact a general surety business in the State of Montana, as Surety, are held and firmly bound  
unto \_\_\_\_\_  
Madison County, Montana

\_\_\_\_\_ as Obligee, in the amount of \_\_\_\_\_  
Nine Million Forty Two Thousand Once Hundred Sixty Six and Eighty Eight Cents Dollars  
(\$ 9,042,166.88) lawful money of the United States of America, for the payment whereof, well and truly  
to be made, we hereby bind ourselves, our heirs, executors, administrators, jointly and severally, firmly by these  
presents.:

**THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH, that**

**WHEREAS**, The Board of Supervisors of the County of Madison (or the City Council of the  
City of \_\_\_\_\_), State of Montana, and the Principal have entered into an agreement  
whereby principal agrees to install and complete certain designated public improvements described as \_\_\_\_\_  
Lee's Pool Subdivision P.U.D. subdivision improvements

In Tract Number / Parcel Map No. \_\_\_\_\_

**WHEREAS**, said Principal is required by the Obligee to furnish a bond for the faithful performance of the subject  
improvements:

**NOW, THEREFORE**, if the above-bounded Principal shall install the offsite improvements as indicated above in  
accordance with the plans approved by the Obligee, then this obligation shall be null and void, otherwise to  
remain in full force and effect.

Signed and sealed this 25th day of January, 2021.

Principal (s):

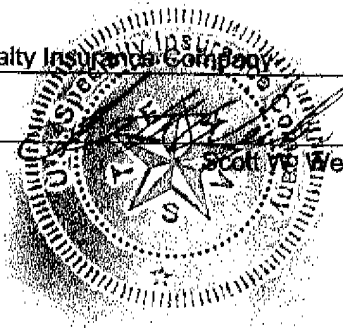
MB Hotel Owner LLC

By: [Signature]  
Matthew E. Kidd, Authorized Signatory

Surety:

U.S. Specialty Insurance Company

By: [Signature]  
Scott W. Weiler Attorney-In-Fact





TOKIO MARINE  
HCC

**POWER OF ATTORNEY**

**AMERICAN CONTRACTORS INDEMNITY COMPANY TEXAS BONDING COMPANY  
UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY**

KNOW ALL MEN BY THESE PRESENTS: That American Contractors Indemnity Company, a California corporation, Texas Bonding Company, an assumed name of American Contractors Indemnity Company, United States Surety Company, a Maryland corporation and U.S. Specialty Insurance Company, a Texas corporation (collectively, the "Companies"), do by these presents make, constitute and appoint:

William M. Rowe, III., Robert B. McGehee, H. Smith McGehee or Scott William Weiler of Clayton, Missouri

its true and lawful Attorney(s)-in-fact, each in their separate capacity if more than one is named above, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include riders, amendments, and consents of surety, providing the bond penalty does not exceed \*\*\*\*\*Seventy Five Million\*\*\*\*\* Dollars

(~~75,000,000.00~~). This Power of Attorney shall expire without further action on April 23<sup>rd</sup>, 2022. This Power of Attorney is granted under and by authority of the following resolutions adopted by the Boards of Directors of the Companies:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings, including any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts, and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, The Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 1<sup>st</sup> day of June, 2018.

**AMERICAN CONTRACTORS INDEMNITY COMPANY TEXAS BONDING COMPANY  
UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY**

State of California  
County of Los Angeles



By:   
Daniel P. Aguilar, Vice President

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On this 1<sup>st</sup> day of June, 2018, before me, Sonia O. Carrejo, a notary public, personally appeared Daniel P. Aguilar, Vice President of American Contractors Indemnity Company, Texas Bonding Company, United States Surety Company and U.S. Specialty Insurance Company who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

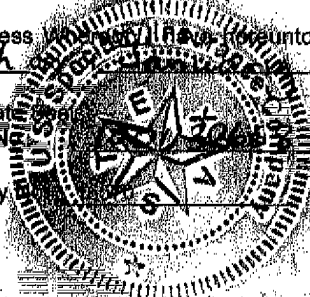
Signature (seal)



I, Kio Lo, Assistant Secretary of American Contractors Indemnity Company, Texas Bonding Company, United States Surety Company and U.S. Specialty Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect, furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Los Angeles, California this 25<sup>th</sup> day of September, 2021.

Corporate Seal  
Bond No.  
Agency



Kio Lo, Assistant Secretary

**EXHIBIT C**  
**Form of Partial Release**

\_\_\_\_\_

Attn: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MB Hotel Owner LLC

Attn: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

RE: Partial Release of Bond No. \_\_\_\_\_

Dear \_\_\_\_\_ and \_\_\_\_\_:

On \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_, the Madison County Board of Commissioners made and passed a motion to accept the Subdivision Improvements listed on the attached Exhibit A and authorize the release of \$ \_\_\_\_\_ from Bond No. \_\_\_\_\_ issued by \_\_\_\_\_ and filed in the Madison County Clerk and Recorder's Office as Document No. \_\_\_\_\_, for subdivision improvements for the Lee's Pool Subdivision P.U.D. ("Bond"). The amount which shall now be held and firmly bound unto the County pursuant to the Bond shall be \$ \_\_\_\_\_.

Thank you,

\_\_\_\_\_

Board of Commissioners  
Madison County

STATE OF MONTANA )  
 )  
:SS.  
County of Madison )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of Madison County, Montana.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date first above written.

\_\_\_\_\_  
Notary Public for the State of Montana

\_\_\_\_\_  
(Printed Name)

Residing at: \_\_\_\_\_

(City/State)

My commission expires: \_\_\_\_\_, 20\_\_

( S E A L )

**EXHIBIT D**

(form of Certification Letter)

\_\_\_\_\_

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: Partial Release of Bond No. \_\_\_\_\_

Dear \_\_\_\_\_:

On \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_, the Madison County Board of Commissioners made and passed a motion (1) confirming the completion of all Subdivision Improvements listed in that certain Subdivision Improvement Agreement for the Lee's Pool Subdivision P.U.D. filed in the Madison County Clerk and Recorder's Office as Document No. \_\_\_\_\_ and (2) authorizing the release of \$ \_\_\_\_\_ from Bond No. \_\_\_\_\_ issued by \_\_\_\_\_ and filed in the Madison County clerk and Recorder's Office as Document No. \_\_\_\_\_ ("Bond"). The amount which shall now be held and firmly bound unto the County pursuant to the Bond shall be \$ \_\_\_\_\_ (*insert 10% of the total costs of the Subdivision Improvements*).

Thank you,

\_\_\_\_\_  
Board of Commissioners  
Madison County

STATE OF MONTANA )  
 )  
:ss.  
County of Madison )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of Madison County, Montana.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date first above written.

\_\_\_\_\_  
Notary Public for the State of Montana

\_\_\_\_\_  
(Printed Name)

Residing at: \_\_\_\_\_  
(City/State)

My commission expires: \_\_\_\_\_, 20\_\_\_\_

( S E A L )

**EXHIBIT E**

(form of Full Release Letter)

\_\_\_\_\_, \_\_\_\_\_

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: Full Release of Bond No. \_\_\_\_\_

Dear \_\_\_\_\_:

On \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_, the Madison County Board of Commissioners made and passed a motion (1) confirming the expiration of the Warranty Period under that certain Subdivision Improvement Agreement for the Lee's Pool Subdivision P.U.D. filed in the Madison County Clerk and Recorder's Office as Document No. \_\_\_\_\_ and (2) authorizing the full release of Bond No. \_\_\_\_\_ issued by \_\_\_\_\_ and filed in the Madison County clerk and Recorder's Office as Document No. \_\_\_\_\_ ("Bond"). Pursuant to such Bond, the obligation of the issuer of the Bond to Madison County is now null and void, and such issuer shall be discharged and released from any and all liability and responsibility upon and from such Bond or matters arising therefrom.

Thank you,

\_\_\_\_\_  
Board of Commissioners  
Madison County





**Doc #:** 196661 **Pages:** 21 **Book:** Page:  
STATE OF MONTANA MADISON COUNTY  
Recorded 4/22/2021 2:30 PM KOT: IMPROVE AGREE  
Paula McKenzie, CLERK & RECORDER  
Fee: \$ 5.00  
BY: Paula McKenzie  
To: FILE 107-B,

DRAFT

After Recording Return To:  
Crowley Fleck PLLP  
Attn: Nate Good  
PO Box 10969  
Bozeman, MT 59719

**SUBDIVISION IMPROVEMENTS AGREEMENT  
FOR  
LEE'S POOL SUBDIVISION P.U.D. PHASE 2**

THIS SUBDIVISION IMPROVEMENTS AGREEMENT FOR LEE'S POOL SUBDIVISION P.U.D. PHASE 2 (the "Agreement") is made by and between MB Hotel Owner LLC ("Moonlight"), a Montana limited liability company, of P.O. Box 160040, Big Sky, MT 59716, and Madison County (the "County"), with an address for purposes of this Agreement of P.O. Box 278, Virginia City, MT 59755.

**RECITALS**

A. Moonlight is the developer of the Lee's Pool Subdivision P.U.D. Phase 2 (the "Subdivision"), a proposed platted subdivision in Madison County, Montana. The Subdivision is within the Moonlight Basin Community development, a recreational and residential development consisting of private land, various lodging accommodations, administration buildings, ski and golf resort facilities, and other facilities related to the development.

B. As part of its process for improving the Subdivision, the County requires that Moonlight enter into this Agreement. The purpose of this Agreement is to protect the County. The parties do not intend this Agreement to benefit contractors, suppliers, laborers or others who provide work, services or materials to the Subdivision or for the benefit of purchasers or lot or condominium unit owners within the Subdivision.

C. The mutual promises, covenants and obligations contained in this Agreement are authorized by Montana law and the County's subdivision regulations.

## TERMS AND CONDITIONS

NOW THEREFORE, the parties agree as follows:

1. **Terminology.** For purposes of this Agreement, the term “Subdivision” refers to the Lee’s Pool Subdivision P.U.D. Phase 2. The term “Subdivision Improvements” refers only to those improvements that are required by Madison County as a condition to the approval of the Subdivision.

2. **Effective Date.** The effective date of this Agreement shall be the date of approval and recordation of the final plat of the Subdivision by the County.

3. **Moonlight’s Obligations.**

3.1 *Agreement to Construct.* Subject to and in accordance with the terms and conditions of this Agreement, Moonlight agrees to cause the construction and installation of the Subdivision Improvements. The Subdivision Improvements are listed on Exhibit A to this Agreement, which is incorporated by reference.

3.2 *Final Plat Approval as Condition.* Moonlight’s obligation to construct and complete the Subdivision Improvements is conditioned upon and shall arise only upon approval and recordation of the final plat of the Subdivision by the County. Moonlight’s obligation to complete the Subdivision Improvements shall not be conditioned upon commencement of construction of the development or sale of any lots or improvements within the Subdivision and shall be independent of any obligations of the County contained in this Agreement.

3.3 *Construction Standards.* The Subdivision Improvements shall be constructed in accordance with the County’s ordinances, resolutions, and regulations.

3.4 *Warranty.* Moonlight warrants that the Subdivision Improvements will be installed in a good and workmanlike manner and in substantial compliance with this Agreement and shall be substantially free of defects in materials and workmanship. These warranties of Moonlight shall remain in force and effect as to the Subdivision Improvements until the lapse of one year after the County accepts the completion (the “Warranty Period”).

4. **Security for Moonlight’s Obligation.**

4.1 *Financial Assurance.* To secure the performance of Moonlight’s obligations under this Agreement, Moonlight shall provide the County with a financial assurance instrument (the “Financial Assurance”) in the form of a bond payable to the County (“Bond”). The final plat for the Subdivision shall not be filed, nor shall any conveyance or transfer of title to any tract or tracts of land within the Subdivision be made, nor any building permit issued, unless the Financial Assurance has been delivered to the County.

4.2 *Bond.* The Bond shall be issued by U.S. Specialty Insurance Company. The Bond shall be in the form as is attached as Exhibit B. The Bond shall provide for an amount equal to 125% of the estimated cost to construct the Subdivision Improvements. If at any time the County delivers to U.S. Specialty Insurance Company a signed statement or affidavit declaring an Event of Default (defined herein) under this Agreement, then the Bond shall be payable (up to the estimated costs to construct the uncompleted Subdivision Improvements) to the County in accordance with the Bond. Moonlight may substitute the Bond with another Bond, Letter of Credit or other security at its discretion.

## 5. **County's Obligations.**

Bond: 5.1 *Periodic Reduction in Bond.* The following procedures shall apply to the

a. At any time, but not more often than once a month, Moonlight may submit to the County an application for acceptance of a portion of the Subdivision Improvements and a reduction of the amount of the Bond in an amount covering the accepted Subdivision Improvements as of the date of the application and accompanied by appropriate supporting documentation.

b. Within 14 days after receipt of each application for reduction, the County will either deliver to Moonlight an approval of the acceptance and reduction in the form of Exhibit C ("Partial Release") or return the application to Moonlight indicating in writing the County's reasons for refusing to approve the reduction. As part of its review of the application, the County may perform an inspection to verify completion of the work specified in the notice. If the County refuses to deliver a Partial Release, Moonlight may make the necessary corrections and resubmit the application. If the County fails to approve the reduction within 14 days after receipt of an application for reduction, the application shall be deemed approved and upon Moonlight's request, the County shall deliver a Partial Release to Moonlight.

c. Upon receipt of a Partial Release, or an application for reduction that has been deemed approved through expiration of time, Moonlight may submit to the issuer of the Bond the Partial Release and the issuer shall reduce the amount that the County may draw on the Bond pursuant to this Agreement by the amount specified in Partial Release (which amount shall retain 10% to be held as the Warranty Security).

d. If the County incurs fees or expenses to verify approval of an application, it may charge reasonable fees or expenses to Moonlight.

e. Delivery of a Partial Release does not constitute a waiver by the County of the right to draw on the reduced Bond in the event, prior to the expiration

of the Warranty Period, of defects in or failure of any improvement listed in the Partial Release.

5.2 *Final Inspection and Certification.* Upon final completion of the Subdivision Improvements, Moonlight shall submit a written notice of completion to the County. Within 14 days of receipt of a notice of completion from Moonlight, the County shall inspect the Subdivision Improvements specified in the notice and, if the County finds that the specified Subdivision Improvements have been completed substantially in accordance with the requirements of this Agreement, the County shall, within 14 days after inspection, issue a letter in the form of Exhibit D certifying acceptance of the Subdivision Improvements (“Certification Letter”). The County’s delivery of a Certification Letter does not constitute a waiver by the County of the right to draw funds under the Financial Assurance in the event, prior to expiration of the Warranty Period, of defects in or failure of any Subdivision Improvement.

5.3 *Notice of Defect.* If, upon inspection of the completed Subdivision Improvements, or if at any time during the Warranty Period, the County finds that the specified Subdivision Improvements have not been completed in accordance with the requirements of this Agreement, the County shall issue a written notice of defect within 14 days after the inspection specifying the respects in which the completed Subdivision Improvements have not been completed in accordance with the requirements of this Agreement. Upon receipt of any such notice of defect, Moonlight shall have 30 days (the “Remedy Period”) to cure any defect identified in the notice and, upon curing the defect, shall provide a new notice of completion to the County. The Remedy Period may be extended beyond 30 days for good cause, as determined by the County. Upon the giving of such a new notice of completion, the provisions of Section 5.3 shall be applicable.

5.4 *Reduction of Security.* The Certification Letter contains a written release of the total amount of the Bond less 10% of the total costs of the Subdivision Improvements to be withheld as warranty security (“Warranty Security”). The Warranty Security shall remain in effect for the one year Warranty Period plus an additional 30 days. Upon expiration of the Warranty Period (plus an additional 30 days), the County shall deliver to Moonlight a release letter in the form of Exhibit E.

5.5 *Use of Proceeds.* The County shall use funds drawn, if any, under the Bond only for the purposes of completing the Subdivision Improvements or correcting defects in the Subdivision Improvements.

## 6. **Default.**

6.1 *Events of Default.* A default by Moonlight (“Event of Default”) shall exist after notice, opportunity to cure, and opportunity for a hearing, if:

- a. Moonlight fails to complete construction of the Subdivision Improvements within two years of final plat approval; provided, however, that this

two-year period may be extended for good cause, as reasonably determined by the County;

b. Moonlight fails to remedy any defect identified in a notice of defect within the Remedy Period;

c. Moonlight becomes insolvent or files a voluntary petition in bankruptcy; or

d. There is a foreclosure of the property that makes up the Subdivision or an assignment or conveyance of such property in lieu of foreclosure.

6.2 *Notice of Default.* Upon discovery by the County of an occurrence of an Event of Default, the County must give notice of such Event of Default to Moonlight. In order to be effective, a notice of an Event of Default as to the Subdivision Improvements must be delivered prior to expiration of the Warranty Period for the Subdivision Improvements. Upon receipt of an effective notice of an Event of Default, Moonlight shall have thirty (30) days from the date the notice is issued to remedy the defect. The County may not declare an Event of Default under this Agreement during the thirty (30) day remedy period unless Moonlight gives notice to the County that Moonlight does not intend to correct the defect. If, within the thirty (30) day remedy period, Moonlight fails to correct the defect stated in the notice, then the County may declare that an Event of Default exists, in which case the County shall be entitled to (a) make a draw on the Bond for the amount necessary to cure the Event of Default in a manner consistent with the approved Plans up to the then current amount of the Bond; and (b) suspend final plat approval during which time Moonlight shall have no right to sell, transfer or otherwise convey additional lots within the Subdivision without the express written approval of the County or until the Subdivision Improvements are completed and certified by the County; provided, however, that nothing in this paragraph shall prevent purchasers of property within the Subdivision from selling such property to third parties. The right of the County to complete or cause completion of the Subdivision Improvements shall include the following rights: The County shall have the right to complete the Subdivision Improvements, in substantial accordance with the plans, the estimated construction costs, and other requirements of this Agreement, either itself or by contract with a third party or by assignment of its rights to a successor developer who has acquired the Subdivision by purchase, foreclosure, or otherwise. Any funds obtained by the County under the Bond shall only be used by the County to pay the costs of completion of the Subdivision Improvements substantially in accordance with the plans and other requirements of this Agreement. Moonlight shall be responsible for any amounts necessary to complete the Subdivision Improvements in excess of the funds available under the Bond.

6.3 *Protection of Innocent Purchasers.* The Bond furnished to the County under this Agreement is designed to assure completion of the Subdivision Improvements and to protect the County from bearing the cost of completing the Subdivision Improvements. Accordingly, the County shall have recourse only under the Bond and shall not have recourse

against third parties who purchase lots or condominium units or acquire interests in the Subdivision.

## 7. **Miscellaneous.**

7.1 *Indemnification.* Moonlight agrees to indemnify and hold the County harmless for and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work under this Agreement, except to the extent that such claims, costs or liability arise out of the negligence or intentional misconduct of the County. Nothing in this paragraph shall be intended to waive any immunity that exists by statute or common law.

7.2 *Third Party Beneficiaries.* Except as provided in this Agreement, no person or entity, other than a party to this Agreement, shall have any right of action under this Agreement, including, but not limited to, lenders, lot or condominium unit buyers and materialmen, laborers or others providing work, services, or materials for the Subdivision Improvements.

7.3 *Assignability.* Moonlight's obligations under this Agreement may not be assigned without the consent of the County, which consent shall not be withheld unreasonably, and a grantee or transferee of Moonlight shall not be obligated to fulfill any of the obligations of Moonlight under this Agreement unless such grantee or transferee is the successor or assignee of Moonlight in its capacity as developer of the Subdivision. Nothing in this paragraph shall prevent Moonlight from conveying interests in lots or condominiums units in the ordinary course of business.

7.4 *Notices.* Any written notice required to be given under this Agreement shall be completed when personally delivered or when such notice has been deposited in the United States mail, first class, certified mail, return receipt requested, postage prepaid, addressed to the other party at the address set forth on the first page of this Agreement. A party wishing to change its address shall do so by providing notice in writing to the other party.

7.5 *Further Assurances.* At any time, and from time to time, upon request of either party, the other party agrees to make, execute and deliver or cause to be made, executed and delivered to the requesting party any and all further instruments, certificates and documents consistent with the provisions of this Agreement as may, in the reasonable opinion of the requesting party, be necessary or desirable in order to effectuate, complete or perfect the right of the parties under this Agreement.

7.6 *Governing Law.* This Agreement shall be construed in accordance with Montana laws. Venue for any dispute arising between the parties shall be in Montana's Fifth Judicial District Court, Madison County.

7.7 *Force Majeure.* Neither party shall be liable for failure to perform under this Agreement if such failure is the result of Force Majeure and any time limit expressed in this

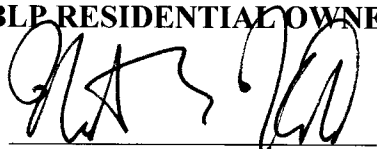
Agreement shall be extended for the period of any delay resulting from any Force Majeure. “Force Majeure” shall mean causes beyond the reasonable control of a party such as, but not limited to, weather conditions, acts of God, strikes, work stoppages, unavailability of or delay in receiving labor or materials, fire or other casualty, or action of government authorities. Nothing in this paragraph shall be construed to relieve Moonlight of its obligation to complete the Subdivision Improvements.

7.8 *Entire Agreement.* This Agreement and any agreement or document referred to herein, constitutes the entire understanding between the parties with respect to the subject matter hereof and all other prior understandings or agreements shall be deemed merged in this Agreement.

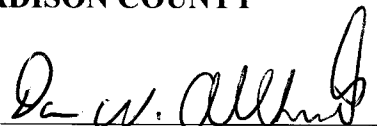
\* \* \* \* \*

IN WITNESS WHEREOF, the parties have read, considered and signed this Agreement effective as of the date specified above.

**MBLP RESIDENTIAL OWNER LLC**

By:   
Matthew E. Kidd, Authorized Signatory

**MADISON COUNTY**

By:   
Its: Chairman

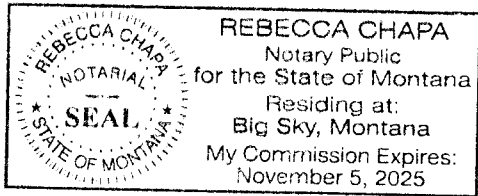
STATE OF Montana )  
COUNTY OF Gallatin ) :SS

This instrument was acknowledged before me on October 3, 2023 by Matthew E. Kidd, as Authorized Signatory of MBLP Residential Owner LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date first above written.

Rebecca Chapa [signature]  
Notary Public for the State of Montana  
Rebecca Chapa  
(Printed Name)  
Residing at: Big Sky, Montana  
(City) (State)  
My commission expires: 11/5/2025  
(Month/Day/Year)

(SEAL)



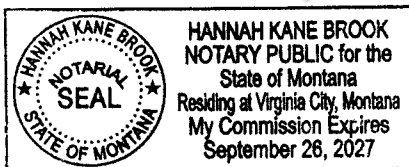
STATE OF MONTANA )  
County of Madison ) :SS.

This instrument was acknowledged before me on Oct 24, 2023, by Dan Amundson, as COMMISSIONER of Madison County, Montana.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date first above written.

Hannah Kane Brook  
Notary Public for the State of Montana  
HANNAH K. BROOK  
(Printed Name)  
Residing at: Virginia City  
(City/State)  
My commission expires: SEP 24, 2027

(SEAL)



**EXHIBIT A**

**DESCRIPTION OF SUBDIVISION IMPROVEMENTS  
AND ESTIMATED COSTS**

DRAFT

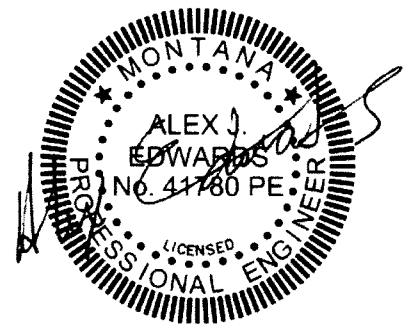
Lee's Pool 2 Subdivision P.U.D.  
 Engineer's Opinion of Probable Cost  
 September 20, 2023



**LEE'S POOL 2 SUBDIVISION**

Item No.	Description	Construction Quantity	Units	Unit Price	Construction Amount	Quantity Completed	Completed Cost	Remaining Cost
<b>General</b>								
101	Mobilization	1	LS	\$ 46,839.91	\$ 46,839.91	0.00	\$ -	\$ 46,839.91
102	Excavation & Embankment	1	LS	\$ 108,000.00	\$ 108,000.00	0.00	\$ -	\$ 108,000.00
<b>Sewer</b>								
201	Connect to Existing Gravity Network	1	EA	\$ 9,000.00	\$ 9,000.00	0.00	\$ -	\$ 9,000.00
202	SDR 35 Sewer Pipe - 8" Dia	161	LF	\$ 55.00	\$ 8,855.00	0.00	\$ -	\$ 8,855.00
203	Sanitary Sewer Manhole - 48" Dia	2	EA	\$ 5,200.00	\$ 10,400.00	0.00	\$ -	\$ 10,400.00
204	Extra Depth Sanitary Sewer Manhole	5.33	VF	\$ 210.00	\$ 1,119.30	0.00	\$ -	\$ 1,119.30
205	Sanitary Sewer Service Connection	2	EA	\$ 1,800.00	\$ 3,600.00	0.00	\$ -	\$ 3,600.00
206	Lift Station	1	EA	\$ 48,800.00	\$ 48,800.00	0.00	\$ -	\$ 48,800.00
<b>Water</b>								
301	1.5" Water Service Connection	2	EA	\$ 3,000.00	\$ 6,000.00	0.00	\$ -	\$ 6,000.00
302	8" 11.25-Degree Bend	3	EA	\$ 470.00	\$ 1,410.00	0.00	\$ -	\$ 1,410.00
303	8" 22.5-Degree Bend	7	EA	\$ 470.00	\$ 3,290.00	0.00	\$ -	\$ 3,290.00
304	8" 45-Degree Bend	17	EA	\$ 470.00	\$ 7,990.00	0.00	\$ -	\$ 7,990.00
305	8" 90-Degree Bend	2	EA	\$ 470.00	\$ 940.00	0.00	\$ -	\$ 940.00
306	8" Gate Valve	3	EA	\$ 2,100.00	\$ 6,300.00	0.00	\$ -	\$ 6,300.00
307	8"x6" Reducer	2	EA	\$ 450.00	\$ 900.00	0.00	\$ -	\$ 900.00
308	DR-14 C900 Water Pipe - 6" Dia	4	LF	\$ 55.00	\$ 192.50	0.00	\$ -	\$ 192.50
309	DR-14 C900 Water Pipe - 8" Dia	1,210	LF	\$ 55.00	\$ 66,534.05	0.00	\$ -	\$ 66,534.05
<b>Storm Drain</b>								
401	18" CMP Culvert	30	LF	\$ 75.00	\$ 2,250.00	0.00	\$ -	\$ 2,250.00
402	Culvert Outfall Protection Pads (Rip-Rap)	6	CY	\$ 150.00	\$ 900.00	0.00	\$ -	\$ 900.00
403	Detention Pond	1	EA	\$ 10,000.00	\$ 10,000.00	0.00	\$ -	\$ 10,000.00
404	Stormtech Retention Systems	12	1K FT <sup>3</sup>	\$ 10,000.00	\$ 121,230.00	0.00	\$ -	\$ 121,230.00
<b>Roadway Improvements</b>								
501	Subbase Import - 5" Minus	4,655	CY	\$ 55.00	\$ 256,044.03	0.00	\$ -	\$ 256,044.03
502	Crushed Base Import - 1.5" Minus	956	CY	\$ 70.00	\$ 66,894.52	0.00	\$ -	\$ 66,894.52
503	3" Thick Asphalt Surface Course	7,544	SY	\$ 26.00	\$ 196,148.74	0.00	\$ -	\$ 196,148.74
Total Cost of Remaining Improvements								\$ 953,538.04
Amount to be Financially Guaranteed with Bond 125%								\$ 1,229,547.55

DRAFT



Bond No: 1001130692

## SUBDIVISION PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, THAT MBLP Residential Owner LLC, A Montana limited liability Company located at PO Box 160040, Big Sky MT, 59716, as Principal, and U.S. SPECIALTY INSURANCE COMPANY, a Texas corporation, authorized to do business in the State of Montana, as Surety, are, effective upon the recording of the final plat of Lee's Pool Subdivision PUD Phase 2 with the Madison County Clerk and Recorder, held and firmly bound unto Madison County, Montana located at 103 W. Wallace St. – First Floor, Virginia City, MT 59755, as Obligee, in the penal sum of One Million Two Hundred Twenty-Nine Thousand, Five Hundred Forty-Seven and 55/100 (\$1,229,547.55) for the payment of which sum well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors and assigns, jointly and severally, firmly by theses presents.

WHEREAS, the above bounded principal has been granted approval by the above named obligee for final plat approval of Lee's Pool Subdivision PUD Phase 2 as set forth at a meeting of the Madison County Commissioners.

WHEREAS, Principal and Obligee entered into a Subdivision Improvements Agreement for the Lee's Pool Subdivision Phase 2 ("SIA") which obligates Principal to construct and install those improvements listed on Exhibit A attached ("Subdivision Improvements")

NOW, THEREFORE, the condition of the above obligation is such, that if the said Principal shall complete the Subdivision Improvements and all other obligations to Obligee in accordance with the SIA or the Obligee delivers a release, then this obligation shall be null and void, otherwise to remain in full force and effect; provided, however, upon Surety's receipt of a partial release from Obligee, the amount the Surety shall be held and firmly bound unto Obligee shall be reduced from \$1,229,547.55 to the amount stated in such partial release.

THE FOREGOING OBLIGATION, however, is limited by the following express conditions, the performance of which shall be a condition precedent to any rights of claims or recovery hereunder;

1. Upon the discovery by the Obligee, or by the Obligee's agent or representative, of any act or omission that shall or might involve a loss hereunder, the Obligee shall endeavor to give written notice thereof with the fullest information obtainable at the time to the Surety at its office at 8 Forest Park Drive, Farmington, CT 06032.
2. Obligee shall not be entitled to recover any amounts hereunder until an Even of Default (as defined in the SIA) has occurred and the 30 day remedy period has expired without cure by Principal.
3. Legal proceedings for recovery hereunder may not be brought unless begun within twelve (12) months from the date of the discovery of the act or omission of the Principal on account of which claim is made.

4. The Principal shall be made a party of any suit or action for recovery hereunder, and no adjustment shall be rendered against the Surety in excess of the penalty of this instrument.
5. No right of action shall accrue hereunder to or for the benefit of anyone other than that Obligee, and the Obligee's right hereunder, may not be assigned without the written consent of the Surety.

IN WITNESS WHEREOF, this instrument has been executed by the duly authorized representative of the Principal and Surety.

SIGNED, SEALED AND DATED: September 26, 2023

MBLP Residential Owner LLC

By: 

Matthew E. Kidd, its Authorized Signatory

U.S. SPECIALTY INSURANCE COMPANY

By: 

John B. Rowe, Attorney-in-Fact



**TOKIO MARINE  
HCC**

**POWER OF ATTORNEY**

**AMERICAN CONTRACTORS INDEMNITY COMPANY TEXAS BONDING COMPANY  
UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY**

KNOW ALL MEN BY THESE PRESENTS: That American Contractors Indemnity Company, a California corporation, Texas Bonding Company, an assumed name of American Contractors Indemnity Company, United States Surety Company, a Maryland corporation and U.S. Specialty Insurance Company, a Texas corporation (collectively, the "Companies"), do by these presents make, constitute and appoint:

Robert B. McGehee, H. Smith McGehee, Michael Misuraca, John B. Rowe, William M. Rowe, III  
or Kurt Zimmerman of Clayton, Missouri

its true and lawful Attorney(s)-in-fact, each in their separate capacity if more than one is named above, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include riders, amendments, and consents of surety, providing the bond penalty does not exceed \*\*\*\*\*Seventy Five Million\*\*\*\*\* Dollars ( \*\*\*75,000,000.00\*\* ). This Power of Attorney shall expire without further action on January 31<sup>st</sup>, 2024. This Power of Attorney is granted under and by authority of the following resolutions adopted by the Boards of Directors of the Companies:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

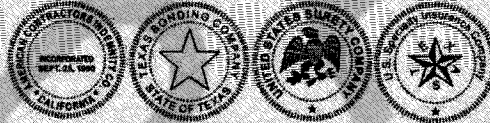
Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings, including any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts, and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, The Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 23<sup>rd</sup> day of September, 2021.

**AMERICAN CONTRACTORS INDEMNITY COMPANY TEXAS BONDING COMPANY  
UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY**

State of California  
County of Los Angeles



By:   
Daniel P. Aguilar, Vice President

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

On this 23rd day of September, 2021, before me, D. Littlefield, a notary public, personally appeared Daniel P. Aguilar, Vice President of American Contractors Indemnity Company, Texas Bonding Company, United States Surety Company and U.S. Specialty Insurance Company who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (seal)



I, Kio Lo, Assistant Secretary of American Contractors Indemnity Company, Texas Bonding Company, United States Surety Company and U.S. Specialty Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Los Angeles, California this 26<sup>th</sup> day of SEPTEMBER, 2023.

Corporate Seals  
Bond No. 1001130692  
Agency No. 16570



  
Kio Lo, Assistant Secretary

**Kan't Kopy® K1  
Security Paper**

- Hidden Pantograph
- Color Match
- Artificial Watermark
- Anti-Copy Coin Rub
- Erasure Protection
- Security Features Box
- Microprint Protection
- Acid Free

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- Artificial Watermark
- Anti-Copy Coin Rub
- Erasure Protection
- Security Features Box
- Microprint Protection
- Acid Free

DRAFT

**EXHIBIT C**  
Form of Partial Release

\_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MBLP Residential Owner LLC  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: Partial Release of Bond No. \_\_\_\_\_

Dear \_\_\_\_\_ and \_\_\_\_\_:

On \_\_\_\_\_, \_\_\_\_\_, 20\_\_, the Madison County Board of Commissioners made and passed a motion to accept the Subdivision Improvements listed on the attached Exhibit A and authorize the release of \$ \_\_\_\_\_ from Bond No. \_\_\_\_\_ issued by \_\_\_\_\_ and filed in the Madison County Clerk and Recorder's Office as Document No. \_\_\_\_\_, for subdivision improvements for the Lee's Pool Subdivision P.U.D. Phase 2 ("Bond"). The amount which shall now be held and firmly bound unto the County pursuant to the Bond shall be \$ \_\_\_\_\_.

Thank you,

\_\_\_\_\_  
Board of Commissioners  
Madison County

STATE OF MONTANA )  
 :ss.  
County of Madison )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of Madison County, Montana.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date first above written.

\_\_\_\_\_  
Notary Public for the State of Montana

\_\_\_\_\_  
(Printed Name)

Residing at: \_\_\_\_\_

(City/State)

My commission expires: \_\_\_\_\_, 20\_\_

( S E A L )

**EXHIBIT D**

(form of Certification Letter)

\_\_\_\_\_, \_\_\_\_\_

Attn: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

RE: Partial Release of Bond No. \_\_\_\_\_

Dear \_\_\_\_\_:

On \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_, the Madison County Board of Commissioners made and passed a motion (1) confirming the completion of all Subdivision Improvements listed in that certain Subdivision Improvement Agreement for the Lee's Pool Subdivision P.U.D. Phase 2 filed in the Madison County Clerk and Recorder's Office as Document No. \_\_\_\_\_ and (2) authorizing the release of \$ \_\_\_\_\_ from Bond No. \_\_\_\_\_ issued by \_\_\_\_\_ and filed in the Madison County clerk and Recorder's Office as Document No. \_\_\_\_\_ ("Bond"). The amount which shall now be held and firmly bound unto the County pursuant to the Bond shall be \$ \_\_\_\_\_ (*insert 10% of the total costs of the Subdivision Improvements*).

Thank you,

\_\_\_\_\_,  
Board of Commissioners  
Madison County

STATE OF MONTANA )  
 :ss.  
County of Madison )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of Madison County, Montana.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date first above written.

\_\_\_\_\_  
Notary Public for the State of Montana

\_\_\_\_\_  
(Printed Name)

Residing at: \_\_\_\_\_

(City/State)

My commission expires: \_\_\_\_\_, 20\_\_\_\_

( S E A L )

**EXHIBIT E**

(form of Full Release Letter)

\_\_\_\_\_, \_\_\_\_\_

Attn: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

RE: Full Release of Bond No. \_\_\_\_\_

Dear \_\_\_\_\_:

On \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_, the Madison County Board of Commissioners made and passed a motion (1) confirming the expiration of the Warranty Period under that certain Subdivision Improvement Agreement for the Lee's Pool Subdivision P.U.D. Phase 2 filed in the Madison County Clerk and Recorder's Office as Document No. \_\_\_\_\_ and (2) authorizing the full release of Bond No. \_\_\_\_\_ issued by \_\_\_\_\_ and filed in the Madison County clerk and Recorder's Office as Document No. \_\_\_\_\_ ("Bond"). Pursuant to such Bond, the obligation of the issuer of the Bond to Madison County is now null and void, and such issuer shall be discharged and released from any and all liability and responsibility upon and from such Bond or matters arising therefrom.

Thank you,

\_\_\_\_\_  
Board of Commissioners  
Madison County



Doc #: 212113 Pages: 22 Book: Page:  
STATE OF MONTANA MADISON COUNTY  
Recorded 10/24/2023 2:10 PM KOL: IMPROVE AGREE  
Paula McKenzie, CLERK & RECORDER  
Fee: \$ 5.00  
BY: *Paula McKenzie*  
FILE 107,,



DRAFT



## **Memorandum of Agreement Limited Participation in Brownfields Coalition Activities Madison County & Headwaters RC&D**

### **Purpose**

This Memorandum of Agreement (MOA) establishes a limited, project-specific partnership between Madison County and Headwaters Resource Conservation & Development Area, Inc. (Headwaters RC&D) to support select Brownfields-related activities in Madison County. This agreement reflects Madison County's interest in advancing specific priority projects while maintaining a measured pace and local control over future decisions.

### **Scope of Participation**

Madison County agrees to participate in Brownfields coalition activities on a limited and project-specific basis, focused on properties where the County and community partners have already expressed interest in receiving assistance.

Initial priority projects include:

- Children's Center – Twin Bridges
- Madison County Shop
- Virginia City Old Schoolhouse
- Pony Old Schoolhouse (basement abatement asbestos/coal)

Additional projects may be considered by mutual agreement.

### **Roles and Responsibilities**

#### **Headwaters RC&D will:**

- Provide community listening, coordination, and technical assistance
- Assist in identifying environmental conditions and information gaps
- Support access to Brownfields assessment, planning, and funding resources
- Coordinate with Montana DEQ Brownfields and EPA Brownfields as appropriate
- Direct assessment and planning dollars toward priority projects identified by Madison County to help remove barriers, guide projects toward investment readiness, and move difficult sites forward
- Explore, at the request of Madison County and project partners, potential interim stewardship or ownership tools that could help stabilize high-priority properties and prepare them for future reuse
- Work alongside EPA and Montana DEQ Brownfields to test and refine approaches that better fit the realities of frontier and micro-rural communities
- Respect Madison County's priorities, timeline, and desired level of engagement

#### **Madison County will:**

- Identify and communicate priority properties and community interests

- Provide reasonable access to sites, where authorized
- Participate in discussions related to project-specific needs and next steps
- Maintain full discretion over project decisions and level of participation

**Nature of Agreement**

- This MOA reflects limited participation and does not obligate Madison County to:
  - Accept funding
  - Undertake cleanup or redevelopment
  - Participate in broader coalition governance
- Participation is voluntary, non-binding, and may evolve over time
- Madison County retains full local control over land use and redevelopment decisions

**Term**

This agreement will remain in effect for the duration of the applicable Brownfields grant period or until terminated by either party with written notice.

**Benefits**

Through this limited participation, Madison County may:

- Receive technical assistance on complex and high-priority sites
- Better understand environmental conditions affecting key properties
- Position projects for future funding opportunities
- Engage state and federal partners at a pace aligned with community readiness

**Signatures****Madison County Board of Commissioners**

By: \_\_\_\_\_

Name: Ronald E. Nye

Title: Chair

Date: \_\_\_\_\_

**Headwaters RC&D**

By: \_\_\_\_\_

Name: Kelly M. Sullivan

Title: Executive Director

Date: \_\_\_\_\_