

TOWN OF LYONS BOARD OF TRUSTEES MEETING  
VIRTUAL MEETING  
LYONS TOWN HALL, 432 5<sup>TH</sup> AVENUE, LYONS, COLORADO

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DRAFT AGENDA  
**THURSDAY, JANUARY 6, 2022**

4:00 PM BOARD OF TRUSTEES SPECIAL MEETING

- I. Roll Call And Pledge Of Allegiance
- II. Reflective Moment Of Silence
- III. Approval Of The Agenda
- IV. General Business
  - IV.1. RESOLUTION 2022-03 - A RESOLUTION OF THE TOWN OF LYONS, COLORADO APPROVING A DEVELOPMENT PLAN AGREEMENT BETWEEN LYONS VALLEY TOWNHOMES, LP AND THE TOWN OF LYONS BY APPROVING A FIFTH AMENDMENT TO THE SUBDIVISION IMPROVEMENT AGREEMENT FOR LYONS VALLEY PARK FILING 8

Documents:

[RESO 2022-03\\_APPROVING A DEVELOPMENT PLAN AGREEMENT WITH LYONS VALLEY TOWNHOMES LP AMENDMENT 5 \(DITTMAN DRAFT 1-5-2022\) \(002\).PDF](#)  
[SUMMIT 5TH AMENDMENT SIA \(DITTMAN DRAFT 12-30-2021\).PDF](#)  
[LYONS GUARANTY AGREEMENT BY SUMMIT CONSTRUCTION GROUP \(DITTMAN DRAFT 1-5-2021\).PDF](#)  
[20220105\\_224541\\_756919\\_ARTICLE\\_13\\_\\_SUBDIVISION\\_IMPROVEMENTS\\_AGREEMENT.PDF](#)

- V. Summary Of Action Items
- VI. Adjournment

"The Town of Lyons will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities. Persons needing accommodations or special assistance should contact the Town at [hr@townoflyons.com](mailto:hr@townoflyons.com) as soon as possible, but no later than 72 hours before the scheduled event."

**TOWN OF LYONS, COLORADO  
RESOLUTION 2022-03**

**A RESOLUTION OF THE TOWN OF LYONS, COLORADO APPROVING A  
DEVELOPMENT PLAN AGREEMENT BETWEEN LYONS VALLEY TOWNHOMES,  
LP AND THE TOWN OF LYONS BY APPROVING A FIFTH AMENDMENT TO THE  
SUBDIVISION IMPROVEMENT AGREEMENT FOR LYONS VALLEY PARK FILING 8**

**WHEREAS**, the Town of Lyons (the “Town”) has the authority to enter into contracts for any lawful municipal purpose pursuant to C.R.S. § 31-15-101; and

**WHEREAS**, Lyons Valley Townhomes, LP (“Developer”) wishes to develop an affordable housing project on Lyons Valley Park Filing 8 (the “Project”); and

**WHEREAS**, pursuant to Section 16-70-30(b) of the Lyons Municipal Code (“LMC”), the Town may require that a developer requesting a development plan execute a development plan agreement; and

**WHEREAS**, the Developer submitted an application for Development Plan (“Application”) to the Town for approval in accordance with the procedure set forth in Article 17 of Chapter 16 of the LMC; and

**WHEREAS**, on December 3, 2020, the Board of Trustees conducted a public hearing on the Application pursuant to LMC § 16-17-30(h), following the provision of lawfully required notice to the public; and

**WHEREAS**, the Board of Trustee’s approval of the application through Town of Lyons Resolution 2020-184 was conditioned upon execution of a Development Plan Agreement between the Developer and the Town; and

**WHEREAS**, the Town of Lyons Board of Trustees previously approved: a subdivision improvement agreement dated December 15, 2008 (“Filing No. 8 SIA”) at the time of approval of the final plat for Filing No. 8 of Lyons Valley Park; an Amendment to the Filing No. 8 SIA dated December 7, 2015 (“First Amendment”); a Second Amendment to the Filing No. 8 SIA dated April 29, 2020, (“Second Amendment”); and a Third dated January 19, 2020 (“Third Amendment”) which replaced the Second Amendment in its entirety, and a Fourth Amendment to the Filing No. 8 SIA dated July 19, 2021 (“Fourth Amendment”); and

**WHEREAS**, collectively the Filing 8 SIA, First Amendment, Third Amendment, and Fourth Amendment constitute the “Development Agreement”; and

**WHEREAS**, the Developer has requested a modification to Section 9 of the Development Agreement to allow for a corporate guaranty as a permitted form of surety required by that Section; and

**WHEREAS**, the Town and the Developer have negotiated a Fifth Amendment to the Filing No. 8 SIA (“Fourth Amendment”), attached hereto as **Exhibit A** and incorporated by reference which modifies Section 9 of the Development Agreement to read as follows:

Security for Public Improvements. Prior to issuing a building permit, the development shall provide the Town with surety in the form a bond, Irrevocable Letter of Credit, or guaranty from an entity with sufficient financial resources for the Cost Estimate plus 15%” as surety for the Project.

; and

**WHEREAS**, rights, duties, obligations, responsibilities, and benefits of Filing No. 8 SIA remain in full force in effect with regard to the Developer any other party subject to Filing No. 8 SIA except as specifically modified by the First, Third, Fourth, and Fifth Amendments with regard to the Developer’s rights, duties, obligations, responsibilities, and benefits; and

**WHEREAS**, the Town’s Board of Trustees desires to approve the Fifth Amendment thereby satisfying the Developer’s obligation to execute a Development Plan Agreement.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF LYONS, COLORADO, THAT:**

Section 1. The above recitals are hereby incorporated by reference.

Section 2. The Board of Trustees hereby:

- a) Approves the Fifth Amendment with the Developer, in substantially the form attached to this Resolution.
- b) Authorizes the Town Administrator in consultation with the Town Attorney to make non-substantial changes to the Fifth Amendment that do not increase the financial obligations of the Town.
- c) Authorizes the Mayor or Mayor Pro Tem to execute the Fifth Amendment and the Town Clerk to attest the Mayor’s signature.
- d) Authorizes the Town Administrator to take all actions consistent with this resolution to ensure compliance of the Developer with the obligations of the Fifth Amendment.

Section 3. This Resolution shall become effective immediately upon adoption by the Board of Trustees.

**ADOPTED THIS 6<sup>TH</sup> DAY OF JANUARY 2022.**

**TOWN OF LYONS**

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Nicholas Angelo, Mayor

ATTEST:

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Dolores M. Vasquez, CMC,  
Town Clerk

**TOWN OF LYONS, COLORADO  
LYONS VALLEY PARK FILING 8  
FIFTH AMENDMENT TO SUBDIVISION IMPROVEMENT AGREEMENT**

This Fifth Amendment to Subdivision Improvement Agreement Filing No. 8 ("Fifth Amendment") is entered into and made effective this \_\_\_\_\_ day of \_\_\_\_\_ 2022, by and between the **TOWN OF LYONS**, a municipal corporation of the State of Colorado ("Town") and **LYONS VALLEY TOWNHOMES, LP**, a Colorado limited partnership ("Developer"). The Town and Developer are collectively referred to as "Parties," or occasionally in the singular as "Party." This Agreement includes the attached **Exhibits A-F**.

**RECITALS:**

**WHEREAS**, Developer owns certain real property in fee simple located within the Town as more particularly described in **Exhibit A** ("Property"); and

**WHEREAS**, the Town's Board of Trustees (the "Board") previously approved that certain subdivision improvement agreement dated December 15, 2008, attached hereto as **Exhibit B** and incorporated herein ("Filing No. 8 SIA") at the time of approval of the final plat for Filing No. 8 of Lyons Valley Park, and that certain Amendment to the Filing No. 8 SIA dated December 7, 2015, attached hereto as **Exhibit C** and incorporated herein ("First Amendment"). On April 13, 2020 the Board approved a Second Amendment to Subdivision Improvement Agreement ("Second Amendment"). On January 19, 2021, the Board approved the Third Amendment to Subdivision Improvement Agreement, attached hereto as **Exhibit D** and incorporated herein ("Third Amendment"). The Third Amendment replaced the Second Amendment in its entirety, but otherwise did not Modify Filing No. 8 SIA as modify by the First Amendment. On July 19, 2021m the Board approved the Fourth Amendment to the Subdivision Agreement, attached hereto as Exhibit E and incorporated herein ("Fourth Amendment") which modified the Filing 8 SIA, as modified by the First and Third Amendments, in order to reduce overall Summit Housing project ("Project") costs; and

**WHEREAS**, Collectively, the Filing No. 8 SIA as modified by the First, Third, and Fourth Amendment shall be known as the "Agreement."

**WHEREAS**, Section 6 of the Agreement requires the dedication, construction, installation, and/or improvement of sanitary sewer facilities, water line facilities, electric utility infrastructure, drainage facilities, streets, and/or other public facilities and improvements as identified on the Development Plan in Public Improvements Engineer's Cost Estimates attached to Amendment 3 as Exhibit B, ("Public Improvements"); and

**WHEREAS**, Section 9 of the Agreement requires the Developer to "provide the Town with surety in the form of a bond or irrevocable letter of credit for the Cost Estimate plus 15%"; and

**WHEREAS**, obtaining a performance bond or irrevocable letter of credit will increase overall project costs; and

**WHEREAS**, Section 17-30-20(1) provides that subdivisions agreements shall contain a surety for public improvements in the form of “including but not limited to collateral or financial security in the form of an irrevocable letter of credit ..., performance bond, property bond, *private* or escrow *agreements*, loan commitments, liens on property, deposit of certified funds **or other similar surety agreement in a form approved by the Town Attorney**” (emphasis added); and

**WHEREAS**, Summit Construction Group of Missoula, MT, a Montana Corporation, (hereinafter referred to as the “Guarantor”) is an affiliated corporate entity to Developer and has the financial resources to guarantee the construction and payment of the public improvements agreed to by Developer and detailed in the Cost Estimate provided for in Schedule B of Amendment 3; and

**WHEREAS**, execution of the Completion Guaranty Agreement, attached hereto as **Exhibit E** and incorporated by reference, satisfies the requirements of Section 17-30-20(1); and

**WHEREAS**, the Completion Guaranty Agreement will be executed simultaneously with the approval of this Fifth Amendment; and

**WHEREAS**, by the approval of this Fifth Amendment, the Town in no way abrogates or modifies the assignment of the rights, duties, obligations, responsibilities and benefits of Filing No. 8 SIA as modified by the First, Third, and Fourth Amendments to the Developer except as specifically provided for in this Fifth Amendment; and

**WHEREAS**, the Town and Developer mutually acknowledge and agree that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by the Town in consideration of its approval and execution of the Development Plan, and that such matters are necessary to protect, promote, and enhance the public welfare; and

**NOW, THEREFORE**, in consideration of these premises, the mutual obligations herein contained, and the Town’s approval and execution of the Development Plan, the Filing No. 8 SIA, as amended, is hereby further amended as follows:

1. Incorporation of Recitals. The Recitals above are fully incorporated herein and made a part hereof.
2. Other Amendments Remain in Effect. Except as specifically set forth in this Fifth Amendment, the Filing No. 8 SIA, First Amendment, Third Amendment, and Fourth Amendment remain in full force and effect.
3. Conflict. In the event of any conflict between this Fifth Amendment and the Filing No. 8 SIA, First Amendment, Third Amendment, and Fifth Amendment the terms of this Fifth Amendment shall control.
4. Section 9 of the Agreement, as reflected in Section 9 of the Third Amendment is hereby amended to read as follows:

9. Security for Public Improvements. Prior to issuing a building permit, the development shall provide the Town with surety in the form a bond, Irrevocable Letter of Credit, or guarantee from an entity with sufficient financial resources for the Cost Estimate plus 15%” as surety for the Project.

5. No Third-Party Beneficiaries. Nothing contained in this Fifth Amendment is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third-party. Absolutely no third-party beneficiaries are intended by this Third Amendment. All benefits, obligation, rights, and responsibilities contained within the third Amendment are exclusive to the Developer. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

6. Binding Effect. The Parties agree that this Fifth Amendment, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section shall not modify the assignment requirements of the Agreement, as amended.

**IN WITNESS WHEREOF**, the Parties hereto have set their hands and seals the day and year first above written.

**TOWN OF LYONS, COLORADO**

\_\_\_\_\_  
Nicholas Angelo, Mayor

—  
**ATTEST**

\_\_\_\_\_  
Dolores M. Vasquez, CMC, Town Clerk

**OWNER/DEVELOPER:**

LYONS VALLEY TOWNHOMES, LP, a Colorado  
general partnership

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

Its: \_\_\_\_\_

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF \_\_\_\_\_        )

The foregoing instrument was acknowledged before me this day of \_\_\_\_\_,  
2022, by \_\_\_\_\_ as \_\_\_\_\_ of Lyons Valley Town Homes, LP  
a Colorado limited liability company. Witness my hand and official seal:

My Commission expires:\_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Notary

\_\_\_\_\_  
Address of Notary

[S E A L]



## COMPLETION GUARANTY AGREEMENT

**IN CONSIDERATION** of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, this **COMPLETION GUARANTY AGREEMENT** (“Agreement”), is made on the \_\_\_ of January, 2022, by **SUMMIT CONSTRUCTION GROUP OF MISSOULA, MT**, a Montana Corporation, (“Guarantor”) to and for the benefit of **LYONS VALLEY TOWNHOMES L.P.**, a Colorado Limited Partnership (“Developer”), and to the **TOWN OF LYONS, COLORADO**, a statutory municipality of the State of Colorado (the “Town”) for the completion of public improvements detailed on Schedule B of the executed Third Amendment to Subdivision Agreement (hereinafter referred to as the “Development Agreement”) dated 29, January of 2021 between the Town and the Developer, attached hereto as **Exhibit A** and incorporated by reference, as modified by the Fourth Amendment to Subdivision Agreement and Fifth Amendment to the Subdivision of the Agreement. The Guarantor and the Town may individually be referred to as a “Party” or collectively as the “Parties.”

### RECITALS

1. The Developer has contracted with the Town to develop a Low-Income Tax Credit property comprising of forty (40) affordable units in Lyons, Colorado (the “Project”).
2. As a condition of the land use approval of the Project, Developer was required to execute a negotiated development agreement with the Town.
3. The Development Agreement was executed on January 29, 2021.
4. Pursuant to Section 6 of the Development Agreement, the Developer has agreed to provide public infrastructure items as part of the project. These infrastructure items are detailed in Schedule B of the attached agreement dated 4/6/2020 from Scott, Cox and Associates and have a projected cost of **TWO MILLION FOUR HUNDRED EIGHTY-ONE THOUSAND FIVE HUNDRED FORTY-THREE DOLLARS AND SEVENTY-FIVE CENTS (\$2,481,543.75)** including a five percent (5%) contingency (the “Cost Estimate”).
5. Pursuant to Section 9 of the Development Agreement, the Developer is required to “provide the Town with surety in the form of a bond or irrevocable letter of credit for the Cost Estimate plus 15%.”
6. The Fourth Amendment to Subdivision Agreement did not modify the Developer’s obligation to construct the public infrastructure items or the obligation to provide surety to the Town.
7. Concurrently with this execution of this Agreement, the Town executed the Fifth Amendment to the Subdivision Agreement which amends Section 9 of the Development Agreement to permit “a bond, irrevocable letter of credit, or *guarantee from an entity with sufficient financial resources* for the Cost Estimate plus 15%” as surety for the Project.

8 The Guarantor is an affiliated corporate entity to Developer and has the financial resources to guarantee the construction of the public improvements agreed to by Developer and detailed in the Cost Estimate provided for in Schedule B.

9. By the execution of this Agreement, the Parties intend for the Guarantor to assume the obligation of Developer in the event of the Developer's default of Section 9 of the Development Agreement to construct the public improvements detailed in the Cost Estimate or pay the Town **TWO MILLION EIGHT HUNDRED FIFTY-THREE THOUSAND SEVEN HUNDRED SEVENTY-FIVE DOLLARS AND THIRTY-ONE CENTS (\$2,853,775.3125)**.

9. Pursuant to the Fifth Amendment to the Subdivision Agreement, the Town and Developer have agreed that the execution of this Agreement satisfies the Developer's obligations in Section 9 of the Agreement.

### **GUARANTY**

10. Guarantor unconditionally and absolutely guarantees to the Town that if the Developer shall fail to complete the required public infrastructure items agreed to in Schedule B of the Development Agreement, then the Guarantor shall assume the responsibilities outlined in Section 6 the Development Agreement for the completion of the public infrastructure detailed in Schedule B and shall, at the Guarantor's own cost, fully, promptly, and completely perform such obligations to the satisfaction of the Town.

11. In the event Developer and Guarantor fails to construct the required public improvements, the Guarantor shall be financially responsible for the public improvements and shall pay the Town a "Guaranty Payment" of **TWO MILLION EIGHT HUNDRED FIFTY-THREE THOUSAND SEVEN HUNDRED SEVENTY-FIVE DOLLARS AND THIRTY-ONE CENTS (\$2,853,775.3125)**, an amount equal to the cost estimate provided for in Schedule B to the Development Agreement plus fifteen percent (15%) in satisfaction of Section 9 of the Development Agreement as modified by the Fifth Amendment to the Subdivision Agreement. The Guaranty Payment shall be made payable to the Town within thirty (30) days written notification from the Town of a default of Section 10 of this Agreement.

12. To the fullest extent permitted by law, Guarantor agrees to waive all available defenses, counterclaims, or offsets legally available to Guarantor in law or equity with respect to Guarantor's obligation for the payment of the Guaranty Payment to the Town in the event of a default of Section 10 of this Agreement.

### **MISCELLANEOUS**

13. **Remedies Non-Exclusive.** The Parties agree that all rights, remedies, and recourses afforded to the Town by reason of this Guaranty are separate and cumulative and may be pursued separately, successively, or concurrently, as occasion therefore shall occur, and are non-exclusive and shall in no way limit or prejudice any other legal or equitable right, remedy, or recourse which the Town may have against either the Developer or the Guarantor.

14. **Development Agreement.** No provision of this Agreement shall be construed to alter or amend the executed Development Agreement between the Developer and the Town, as amended, or to relieve Guarantor of any duties or obligations under the Agreement.

15. **Binding Effect.** The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section shall not authorize assignment.

16. **No Third-Party Beneficiaries.** Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third-party, including any agent, sub-consultant or sub-contractor of the Guarantor or Developer. Except for Guarantor's guaranty on behalf of Developer, absolutely no third-party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

17. **No Waiver of Governmental Immunity.** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the Town, its elected and appointed officials, employees, contractors, or agents, or any other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

18. **Governing Law, Venue, and Enforcement.** This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Boulder County, Colorado. The Parties agree that the rule that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement. In the event this Guaranty must be enforced against Guarantor, Guarantor shall be responsible to the Town for all reasonable costs and expenses including attorney's fees.

19. **Survival of Terms and Conditions.** The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

20. **Integration and Amendment.** This Agreement represents the entire and integrated agreement between the Town and the Guarantor and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this Agreement must be in writing and be signed by both the Town and the Guarantor.

21. **Severability.** Invalidity of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

22. **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or

registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States Mail properly addressed to the intended recipient.

**If to the Town:**

**If to the Guarantor:**

Town Administrator Lyons Town Hall P.O. Box 49 432 5th Ave, Lyons, CO 80540	SUMMIT CONSTRUCTION GROUP OF MISSOULA, MT
With Copy to:  Town Attorney Kissinger & Fellman, P.C. 3773 Cherry Creek N Dr, Suite 900 Denver, CO 80209	

23. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

**AUTHORITY**

24. The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of Town and the Guarantor and bind their respective entities. THIS AGREEMENT is executed and made effective as provided above.

*[Signature Page Follows]*

Guarantor:

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

Paul Capps  
President  
Summit Construction Group

Developer:

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

Paul Capps  
VP  
Lyons Valley Townhomes LP

Town of Lyons:

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

Victoria Simonsen, Town Administrator

## **ARTICLE 13 Subdivision Improvements Agreement**

### **Sec. 17-13-10. Subdivision improvements agreement required.**

For any subdivision for which public improvements are to be constructed (either on-site or off-site), no subdivision approval shall be granted by the Town unless and until a subdivision improvement agreement executed by the landowner, applicant and developer is completed and presented to the Board of Trustees for review and consideration.

### **Sec. 17-13-20. Form of agreement.**

Each subdivision improvements agreement shall be in the general form approved by the Board of Trustees. The form of subdivision improvements agreement shall be adopted by resolution of the Board of Trustees and shall be subject to revision of the form as deemed appropriate by the Board of Trustees. At a minimum, a subdivision improvements agreement shall include the following:

- (1) Provisions to ensure timely and proper financing and completion of the public improvements, including but not limited to collateral or financial security in the form of an irrevocable letter of credit (see Appendix 17-D to this Chapter), performance bond, property bond, private or escrow agreements, loan commitments, liens on property, deposit of certified funds or other similar surety agreement in a form approved by the Town Attorney. Where the amount of financial security is based upon the estimated cost of completion of the public improvements, the estimate shall be prepared by the developer and shall be subject to review and approval by the Public Works Director. For purposes of determining the amount of financial guarantee, the estimate of cost shall be increased by ten (10) percent for improvements with a projected completion date of less than two (2) years from the date of subdivision approval and twenty (20) percent for all other public improvements.
- (2) Provisions to ensure the performance and enforcement of all terms and conditions of the agreement by the landowner, applicant, developer and their successors and assigns.