

**TOWN OF LYONS, COLORADO
RESOLUTION 2021-72**

**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 FOURTH 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 Trustees' 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 Amendment to the Filing No. 8 SIA dated January 19, 2020 ("Third Amendment") which replaced the Second Amendment in its entirety; and

WHEREAS, collectively the Filing 8 SIA, First Amendment, and Third Amendment constitute the "Development Agreement"; and

WHEREAS, due to construction cost increases caused by the Corona Virus 2019 the Developer has requested amendments to the Development Agreement to help with financial viability of the project; and

WHEREAS, in lieu of a separate Development Agreement, the Town and the

WHEREAS, the Town consented to the assignment of the rights, duties, obligations, responsibilities and benefits of Filing No. 8 SIA, as modified to the Developer pursuant to the resolution approving the Second Amendment; and

WHEREAS, by the approval of this Fourth 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 and Third Amendments to the Developer except as specifically provided for in this Forth Amendment; and

WHEREAS, the Parties agree that except for those Public Improvements identified Amendment 3 as further modified by this 4th Amendment, all Public Improvements obligations of the Developer that may apply to the Property pursuant to any previous subdivision improvement agreement, including but not limited to Lyons Valley Park Filing No. 1 as amended ("Original SIA"), Lyons Valley Park Filing No. 2 as amended, Lyons Valley Park Filing No. 3 as amended, Lyons Valley Park No. 4 as amended, Lyons Valley Park No. 5 as amended, Lyons Valley Park No. 6 as amended, and Lyons Valley Park No. 7 as amended have been fully satisfied; and

WHEREAS, the Parties intend that this Agreement addresses all remaining Public Improvements obligations of the Developer as they apply to the Property, subject to all the requirements, terms and conditions of the ordinances, rules, regulations and standards of the Town including but not limited to the Town's engineering specifications, the Lyons Municipal Code, commonly accepted engineering practices, the Town's Manual for the Design and Construction of Public Improvements, and all other governing regulations (collectively, the "Standards") in effect at the time Construction Plans are approved by the Town; 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. Effect as specifically set forth in this Fourth Amendment, the Filing No. 8 SIA, First Amendment, and Third Amendment remain in full force and effect.
3. Conflict. In the event of any conflict between this Fourth Amendment and the Filing No. 8 SIA, First Amendment, and Third Amendment, the terms of this Third Amendment shall control.

Developer have negotiated a Fourth Amendment to the Filing No. 8 SIA ("Fourth Amendment"), attached hereto as **Exhibit A** and incorporated by reference which modifies certain obligations of the Development Agreement; 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, and Fourth 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 Fourth 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 Fourth 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 Fourth Amendment that do not increase the financial obligations of the Town.
- c) Authorizes the Mayor or Mayor Pro Tem to execute the Fourth 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 Fourth Amendment.

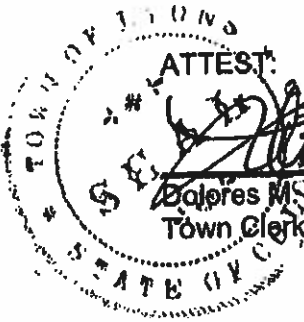
Section 3. This Resolution shall become effective immediately upon adoption by the Board of Trustees.

ADOPTED THIS 19TH DAY OF JULY 2021.

TOWN OF LYONS



Nicholas Angelo, Mayor



ATTEST:

Dolores M. Vasquez

Dolores M. Vasquez, CMC,
Town Clerk

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

This Fourth Amendment to Subdivision Improvement Agreement Filing No. 8 ("Fourth Amendment") is entered into and made effective this ____ day of _____ 2021, by and between the **TOWN OF LYONS**, a municipal corporation of the State of Colorado ("Town") and **LYONS VALLEY TOWNHOMES, LP**, a Colorado general 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-D**.

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; and

WHEREAS, due to the increases in construction costs caused by the Corona Virus 2019 pandemic the Board desires to further modify the Filing 8 SIA, as modified by the First and Third Amendments, in order to reduce overall Summit Housing project ("Project") costs. This Fourth Amendment to the Subdivision Agreement ("Fourth Amendment"), will further the modify the Filing 8 SIA, as modified by the First and Third Amendments. Collectively, the Filing No. 8 SIA as modified by the First, Third, and Fourth Amendment shall be known as the "Agreement."

WHEREAS, the Developer desires to develop the Property and has submitted construction plans ("Construction Plans") and a site development plan ("Development Plan") to the Town for review and approval by the Town; and

WHEREAS, the Development Plan may require 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

4. **Landscaping.** The Parties agree to revise the landscaping plan shown on the Development Plan to reduce the cost of landscaping. Such revisions shall not modify the Developer's obligation to design, furnish, construct, install and maintain all landscaping illustrated on the approved Development Plan at Developer's sole cost and in accordance with applicable Town ordinances and regulations.
5. **Waiver of Use Tax.** The Town agrees to waive the collection of approximately \$65,250 in general fund use tax and \$32,635 in parks fund use tax to be paid by the Developer. Such waiver shall occur in the form of a rebate equal to the total amount of use tax due to the Town which shall be applied to the other waivable fees due to the Town pursuant to the Agreement.
6. **Waiver of Town Review Fees.** The Town agrees to waive Town Staff plan review fees for all submissions required as part of the Project including approximately \$34,644 in review fees previously invoiced to the Developer. The Developer will continue to be responsible for professional review fees related to the Project including, but limited to, attorney's fees and engineering review fees.
7. **Property in Lieu of Parks Impact Fees.** In lieu of the parks impact fees due to the Town pursuant to Lyons Municipal Code § 18-14-10 *et seq.*, the Developer shall transfer to the Town in fee simple via quitclaim deed the three undeveloped lots legally described as Lots 17, 39 and 40 and identified in the attached **Exhibit E** attached hereto and incorporated by reference. The Parties recognize and agree that Lyons Municipal Code § 18-14-10 *et seq.* does not currently permit the Town to accept in-kind payments in lieu of park impact fees. The Town agrees to take reasonable efforts to amend the Lyons Municipal Code to permit in-kind payments subject to final approval by the Board.
8. **Modifications to Plans to Permit Carports with Storage.** The Parties agree that the Construction Plans and Development Plan shall be modified to allow for one car carports with storage on single family residences as opposed to enclosed two car garages.
9. **Contribution of Town funds to Offset Increased Utility Costs.**
 - (a) The Town agrees to offset up to, and not to exceed, \$150,000 in Town funds to offset increases in utility related costs (not including tap fees and utility dedications) and utility related construction ("Offset Funds"). Offset Funds shall be appropriated from American Rescue Plan ("ARP"), P.L. 177-2, funds. The Developer understands that such Offset Funds can only be used for utility purposes as described in this Section. Any use of such Offset Funds for any other purpose shall be considered a breach of the Agreement by the Developer. Offset Funds shall be made available to offset increased utility construction costs since the execution of the Third Amendment, as reflected in the Construction Cost Projections attached hereto as **Exhibit G** and incorporated by reference, lines 1-14 (Site and Utilities Allowances in the April column).

(b) The Town shall provide Offset Funds to the Developer at the following times in the following amounts:

- (i) \$50,000.00 upon issuance of a building permit for the Summit housing project (the "Project");
- (ii) \$50,000.00 upon completion of the public utilities identified in lines 1-14 of Exhibit G; and
- (iii) \$50,000 upon issuance of a Certificate of Occupancy for the final living unit of the Project.

(c) The amount of Offset Funds made available to Developer shall be subject to adjustment as follows:

- (i) The Engineering New-Record Construction Cost Index ("ENR CCI") shall be used to determine any adjustment in the amount of Offset Funds.
- (ii) The ENR CCI as of the end of the second calendar quarter of 2021 shall be used as the starting point to measure construction cost changes during construction of the Project.
- (iii) The ENR CCI as of the end of the calendar quarter immediately preceding issuance of the final Certificate of Occupancy for a living unit in the Project shall be used as the end point to measure construction cost changes during construction of the Project.
- (iv) If the ENR CCI as of the end point is equal to or greater than the ENR CCI as of the starting point, no adjustment shall be made in the amount of Offset Funds.
- (v) If the ENR CCI as of the end point is less than the ENR CCI as of the starting point, then the amount of Offset Funds shall be reduced by the percentage decline in the ENR CCI between such points and such amount shall be subtracted from the maximum \$150,000 of Offset Funds and retained by the Town. For example, if the final Certificate of Occupancy for a living unit in the Project is issued in the final quarter of 2022, the amount of offset funds provided to Developer would be adjusted as follows:

ENR CCI Second Quarter 2021 = 100

ENR CCI Third Quarter 2022 = 80

Index decline = 20%

$\$150,000 \times .20 = \$30,000$

Town would retain \$30,000 of Offset Funds from final disbursement

(d) Developer shall bear the cost of obtaining ENR CCI data for the starting point and end point and shall provide copies of the relevant data to the Town when the final Certificate of Occupancy for the Project is requested.

10. **No Third-Party Beneficiaries.** Nothing contained in this Third 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.

11. **Binding Effect.** The Parties agree that this Third 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.

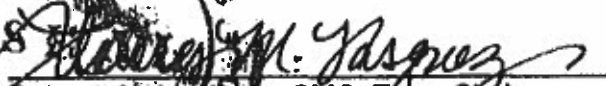
IN WITNESS WHEREOF, the Parties hereto have set their hands and seals the day and year first above written.

TOWN OF LYONS, COLORADO



Nicholas Angelo, Mayor




Dolores M. Vasquez, CMC, Town Clerk

OWNER/DEVELOPER:

LYONS VALLEY TOWNHOMES, LP, a Colorado
general partnership

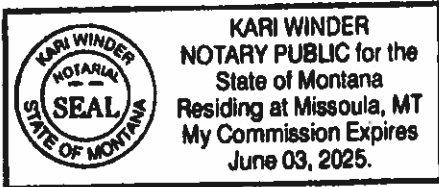
By: Erik West

Its: VP

STATE OF Montana)
COLORADO)
COUNTY OF Missoula) ss.

The foregoing instrument was acknowledged before me this day of 7/28/21,
2021, by Erik West as Vice President of Lyons Valley Town Homes, LP,
a Colorado limited liability company. Witness my hand and official seal:

My Commission expires: June 3, 2025



Kari Winder
Signature

Kari Winder
Name of Notary

2535 Palmer

Missoula MT 59808
Address of Notary

[SEAL: