

DID NOT PASS

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 6TH DAY OF JANUARY 2022.

TOWN OF LYONS

Nicholas Angelo, Mayor

ATTEST:

Dolores M. Vasquez, CMC,
Town Clerk