

**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-E**.

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, 2021 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 7 of Amendment 4 to the Agreement requires the Developer to dedicate to the Town certain properties in lieu of a Parks Impact Fee; and

WHEREAS, lot 17, previous agreed by the Developer to be dedicated to the Town, is necessary to complete the Project; and

WHEREAS, the Town agrees to not require the dedication of lot 17; 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, Fourth Amendment, and Fifth Amendment the terms of this Fifth Amendment shall control.
4. Section 7 of the Agreement, as reflected in Section 9 of the Third Amendment is hereby amended to read as follows:

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 two undeveloped lots legally described as Lots 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.

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]