

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT IS ENTERED THIS ____ DAY OF JANUARY 2020, BETWEEN LYONS PROPERTIES, LLC (“LP”), AND THE TOWN OF LYONS, COLORADO (THE “TOWN”), HEREAFTER COLLECTIVELY REFERRED TO AS THE “PARTIES.”

RECITALS

WHEREAS, the Town of Lyons (the “Town”) is a Colorado statutory municipality organized and existing pursuant to Colo. Rev. Stat. §§ 31-1-101 to -207.

WHEREAS, Lyons Properties LLC (“LP”) is a Colorado Limited Liability Company in good standing, organized and existing pursuant to Colo. Rev. Stat. §§ 7-80-101 to -408.

WHEREAS, LP owns three properties identified as parcels 501, 503, and 517 W. Main Street, Lyons, Colorado 80540 (the “LP Property”).

WHEREAS, on January 12, 2016, LP and the Town entered into a Memorandum of Agreement (“MOA”) with respect to the LP Property.

WHEREAS, the MOA was subsequently amended on May 22, 2016, and May 25, 2016.

WHEREAS, LP and the Town have asserted various claims and counterclaims with respect to the LP Property and the MOA that resulted in a lawsuit captioned: *Town of Lyons v. Lyons Properties, LLC*, No. 2019CV030521 (Dist. Ct., Boulder County, Div. 3) (the “Lawsuit”).

WHEREAS, LP and the Town wish to avoid the expense and vagaries of litigation, and wish to settle this dispute regarding the Lawsuit, the MOA, and any other claims on the terms specified in this Release and Settlement Agreement without any admission of liability or wrongdoing.

IN CONSIDERATION of the understandings expressed in the foregoing Recitals and the terms and arrangements expressed within this Release and Settlement Agreement below, LP and the Town agree as follows:

1. RELEASE

A. LP, by and on behalf of itself, as well as all of its members, managers, employees, successors, administrators, servants, agents, heirs and assigns, hereby releases, acquits and forever discharges the Town, and all former and current elected officials, appointees, employees, agents, departments, agencies, divisions, insurers, contractors and attorneys, without prejudice, from any and all claims, causes of action, allegations, liabilities, injuries, harms, expenses, costs and damages of any kind or nature that LP could have as counterclaims in the Lawsuit. Without

limiting the generality of the foregoing, LP releases any act or omission by the Town, and all former and current elected officials, appointees, employees, agents, departments, agencies, divisions, insurers, contractors and attorneys, arising out of, or relating to any aspect of the Lawsuit. Specifically, but not by way of limitation, this Release by LP includes all claims under:

- Any federal or state civil rights statute or constitutional provision.
- Any claim under the Colorado Governmental Immunity Act in Colo. Rev. Stat. §§ 24-10-101 to -120.
- Any other state or federal law pertaining to governmental liability or immunity.
- Any claim in tort, contract, or for violation of the covenant of good faith and fair dealing.
- Any other claims of any type arising out of federal common law, the common law of any state, any state statute, or local law.
- Any claim seeking declaratory, injunctive, or equitable relief.

B. The Town, by and on behalf of itself, as well as all of its former and current elected officials, employees, successors, administrators, servants, agents, attorneys, successors and assigns, hereby releases, acquits and forever discharges LP, and all former and current members, managers, employees, agents, insurers, contractors and attorneys, with prejudice, from any and all claims, causes of action, allegations, liabilities, injuries, harms, expenses, costs and damages of any kind or nature that the Town could have asserted in the Lawsuit. Without limiting the generality of the foregoing, the Town releases any act or omission by LP, as well as all of its members, managers, employees, successors, administrators, servants, agents, heirs, and assigns, arising out of or relating to any aspect of the Lawsuit. Specifically, but not by way of limitation, this Release by the Town includes all claims under:

- Any claim in tort, contract, or for violation of the covenant of good faith and fair dealing.
- Any other claims of any type arising out of the federal or state constitutions, federal common law, the common law of any state, any state statute or local law.
- Any claim seeking declaratory, injunctive, or equitable relief.

C. This Release, to the broadest extent possible, includes claims for attorneys' fees, costs, disbursements, fees, interest, or other payments; and all other common law, legal, equitable or statutory claims (whether based on a contract, tort, or other theory) that each Party now has, ever had, or may hereafter have, against the other Party, and all former and current elected officials, appointees, employees, agents, departments, agencies, divisions, insurers, contractors, members, managers, and attorneys, occurring at any time up to and including the date of this Release and Settlement Agreement, except for claims arising out of the enforcement of this Release and Settlement Agreement.

2. COVENANT NOT TO SUE

LP and the Town each further agrees and covenants that, it has not commenced any other civil action against the other Party, or any of its former and current elected officials, appointees, employees, agents, departments, agencies, divisions, members, managers, insurers, contractors and attorneys. Nothing herein shall prevent LP or the Town to sue to enforce this Agreement or to enforce the terms of the MOA.

3. FURTHER INTENT AND UNDERSTANDING

LP and the Town each understands and acknowledges that no promise or inducement was offered by the Town or LP except as expressly set forth herein; that this Release and Settlement Agreement is executed without any reliance on any statement or representation by any person or party released or their representatives, attorneys, insurers or anyone else concerning the nature or extent of any injury or damage, or legal liability for any such matter, or for any tax implications or respecting any other fact or matter; that the representatives of each Party are of lawful age and legally competent to execute this Release and Settlement Agreement, and to accept full responsibility for the consequences of such action. Each Party also assumes all risk of any mistake of fact, whether any such fact or facts is past, presently existing, or arises in the future, as to the extent of any injuries, disabilities, damages, loss of income, loss of earning potential, expenses or damages the undersigned incurred or which may be incurred as a result of any physical, emotional, or psychological injury or harm allegedly sustained by any person or entity whose interests are represented by each Party, even if such injuries, losses, or damages were not earlier known, disclosed, or discovered prior to the execution of this Release and Settlement Agreement. Each Party also acknowledges that a portion of the consideration received by it in exchange for this Release and Settlement Agreement is provided to obtain a release of all unknown and/or undiagnosed injuries, that either occurred in the past and are known, as well as any that occurred in the past but are currently unknown. Each Party also acknowledges that a portion of the consideration received by it as recited here is paid for its voluntary and knowing assumption of the risk of all unknown or undiscovered injuries, damages, and losses in terms of future complications, including future damages and losses caused by any actions or omissions prior to the date of this Release and Settlement Agreement, and that it shall, under no circumstances, seek to reopen and present further claims against any person or entity released under the provisions of this Release and Settlement Agreement.

4. NO ADMISSION OF LIABILITY

Each Party acknowledges and understands that the consideration described herein is not to be construed in any way as any admission of liability on the part of the other Party or any other released entity or person, but on the contrary, it is understood that all released entities and persons specifically deny any liability on account of the Lawsuit the MOA, any claim in question, or otherwise.

5. COSTS AND ATTORNEYS' FEES

Each Party agrees that it shall bear all of its own costs and attorneys' fees associated with the Lawsuit, negotiating this Release and Settlement Agreement, and for all representation in the events that preceded this Release and Settlement Agreement, if any.

6. SOLE OWNERS OF CLAIMS

Each Party hereby represents that it is the sole owner of all claims released and purported to be released hereby, and that it made no assignment or transfer of any claim released herein to any third party. Each Party hereby represents that it has conducted a diligent investigation to uncover any other persons or entities that could have asserted any claims released by this Release and Settlement Agreement, and that it has no knowledge or awareness of any other person or entity that could have asserted any claims released by the Release and Settlement Agreement. Each Party further represents and warrants that no third party is subrogated to the interest in claims released in this Release and Settlement Agreement, including but not limited to insurers, parent companies, subsidiary companies, or members subrogated by reason of payment of costs or expenses, or, if any third party was by some means subrogated to its interest, that the interest of any subrogee was settled, compromised, and extinguished as a specific and direct term and condition of this Release and Settlement Agreement. Each Party hereby agrees to defend and indemnify all persons and entities released hereby and to hold every such entity and individual harmless against any claim of any other person, entity, assignee, or subrogee respecting any claim released hereby that may hereafter be asserted. Each Party likewise agrees that to any extent that any valid lien of any variety associated with any event pertinent to the released claims identified above is asserted by any third party, each Party shall be solely responsible for the satisfaction of any such lien in full. Each Party further agrees that to any extent that any such claim or lien is asserted in connection with any part of this Release and Settlement Agreement or the Lawsuit or the MOA underlying this Release and Settlement Agreement, as against the other Party or anyone associated with the other Party, then the Party first-mentioned shall indemnify and hold such other Party, or such person or entity associated with the other Party, harmless in every respect from any such lien or the assertion of a lien.

7. OPEN RECORDS ACT AND OTHER RELEASES PROVIDED BY LAW

LP understands and agrees that, upon a valid request made pursuant to applicable public disclosure laws, including, without limitation, the provisions of the Colorado Open Records Act, Colo. Rev. Stat. §§ 24-72-101, *et seq.*, all as presently or subsequently amended, the Town may be obligated to provide the requesting person a copy of this Release and Settlement Agreement. LP also agrees that it will make no attempt whatsoever to hold the Town or any of its agencies, departments or divisions, as well as any of its current or former administrators, officers, elected officials, agents, employees and attorneys for any such entity, liable on any basis for any release of any documentation or information in compliance with any applicable law.

8. TAXATION

The Parties do not anticipate that the consideration set forth in paragraph 9 below is a taxable event in part, but not limited to, the fact that LP is relinquishing its claim for 31 water taps as part of its consideration. Notwithstanding the foregoing, the Town makes no representation as to the taxability or non-taxability of the consideration described in paragraph 9 below and LP will be solely responsible for all tax liability if any such liability arises or exists as a result of the provisions of this Release and Settlement Agreement or the underlying consideration described in paragraph 9, below. Additionally, to any extent that the Town or any of its agencies, departments or divisions, as well as any of its current or former administrators, officers, elected officials, agents, employees and attorneys is or are ever determined to be responsible for any tax liability arising from any failure on the part of LP to satisfy any tax liability pertaining to any consideration provided in effectuation of this Release and Settlement Agreement or the underlying settlement, LP hereby agrees to defend, indemnify and hold the Town, and/or any of its agencies, departments or divisions, as well as any of its current or former administrators, officers, elected officials, agents, employees and attorneys harmless with respect to any such claim of liability, including any interest or penalties assessed on such amount. This Release and Settlement Agreement is not intended to be used by any taxpayer for avoiding any taxes, penalties, or interest that may be imposed on any person or entity by the Internal Revenue Service or other taxing authority.

9. CONSIDERATION

In consideration of the agreements, commitments and approvals provided by each Party to the other Party in this Release and Settlement Agreement, including without limitation the release of all existing claims and counterclaims, the Parties agree as follows:

A. LP agrees to pay \$70,000 to the Town as full and complete satisfaction of LP's obligations under ¶ 45 of the MOA to provide one additional water share that is acceptable to the City of Longmont for water provided to 501 W. Main St., Lyons, CO 80540.

B. The Town agrees to dismiss with prejudice its claims in the Lawsuit. LP agrees to dismiss without prejudice its counterclaims in the Lawsuit. The parties agree to a Stipulation for Dismissal consistent with a form consistent herewith and mutually acceptable to the Parties' counsel

C. After the Court dismisses the claims, counterclaims, and affirmative defenses in the Lawsuit, the Town may consider an invitation from LP to reopen the terms of the MOA for renegotiation. The Town agrees to consider the invitation in good faith. LP agrees to consider any amendments proposed by the Town in good faith. The Town and LP may, or may not, ultimately come to new terms for the MOA. The Town will approve any amendments to the MOA only through the Town's usual and customary procedures for contracts with the Town.

D. After the Court dismisses the claims, counterclaims, and affirmative defenses in the Lawsuit, the Parties will continue negotiations in good faith to reach a mutual agreement

regarding the final plat for the planned unit development (“PUD”) of the LP Property. Such mutual agreement must be consistent with the Town’s prior approval of the PUD on May 2, 2016.

10. **TIMING OF CONSIDERATION**

The Town, through the Board of Trustees, must approve this Release and Settlement Agreement before both the Town and LP executes this Release and Settlement Agreement. LP understands, acknowledges, and agrees that the Town must follow this usual and customary process before the Town becomes bound by this Release and Settlement Agreement. Upon execution of this Release and Settlement Agreement by the Board of Trustees and LP, LP will pay the consideration under ¶ 9(A) within seven (7) calendar days.

GENERAL PROVISIONS

11. **INTEGRATION.** The Parties understand, acknowledge and agree that this Release and Settlement Agreement constitutes the entire agreement of the Parties regarding the subject matter and transactions referred to herein. The Parties understand, acknowledge, and agree that the terms of this Release and Settlement Agreement are contractual in nature and not mere recitals. As such, the Parties understand, acknowledge, and agree that this Release and Settlement Agreement is fully integrated and supersedes all previous oral or written agreements of the Parties.

12. **CONFIDENTIALITY.** Except as provided in paragraph 8 above, and as may be necessary in furtherance of performance of this Release and Settlement Agreement, or as may be required by tax, securities, financial, or accounting laws and practices, or as may be required or compelled by law, or to enforce this Release and Settlement Agreement, the terms of this Release and Settlement Agreement are confidential. Notwithstanding the foregoing sentence, the terms of this Release and Settlement Agreement may be shared by the Parties with their members, staffs, and financial, accounting, and/or legal advisors.

13. **BINDING EFFECT.** This Release and Settlement Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, and heirs of the Parties.

14. **GOVERNING LAW.** This Release and Settlement Agreement shall be governed by, construed and enforced in accordance with, the internal laws of the State of Colorado, without giving effect to principles and provisions thereof relating to conflict or choice of laws and irrespective of the fact that any one of the Parties is now or may become a resident of a different state. The Parties hereby consent to the personal jurisdiction of the competent courts of Boulder County, State of Colorado, for any legal or equitable proceeding arising out of or in connection with this Release and Settlement Agreement. The Parties expressly understand, acknowledge, and agree that the covenants and agreements to be rendered and performed by the Parties pursuant to this Release and Settlement Agreement are special, unique, and are of an extraordinary character, and in the event of any default or breach, the other Party shall have the

right to enforce this Release and Settlement Agreement and any of its provisions by injunction, specific performance or other equitable relief, without bond, and without prejudice to any other rights and remedies that the Party may have for a breach of this Release and Settlement Agreement. Nothing herein shall be construed as prohibiting either Party from pursuing any other remedies available for such breach or threatened breach, including recovery of damages. If any legal or equitable action arises relating to the enforcement of this Agreement, the prevailing Party shall be awarded all court costs, expenses, and reasonable attorneys' fees.

15. HEADINGS. The headings used in this Release and Settlement Agreement are for the convenience of the Parties only. As such, these headings shall not have any legal effect whatsoever or, in any other way alter or modify the meaning or interpretation of this Release and Settlement Agreement.

16. ADDITIONAL ASSURANCES. This Release and Settlement Agreement is intended to be self-operative. Notwithstanding the foregoing, all Parties agree that, at the reasonable request of the other Party, they shall execute any further documents or instruments reasonably necessary to effectuate the transactions contemplated by this Release and Settlement Agreement.

17. SEVERABILITY. If any provision of this Release and Settlement Agreement should be declared to be unenforceable, with the exception of the release of all claims and counterclaims as identified above in this Release and Settlement Agreement, then the remainder of this Release and Settlement Agreement shall continue to be binding upon the Parties.

18. EXECUTION IN COUNTERPARTS. This Release and Settlement Agreement may be executed in counterparts, each of which shall have full force and effect upon execution by all Parties to this Release and Settlement Agreement.

19. WARRANTIES. The Parties expressly warrant that they have carefully and completely read the terms of this Release and Settlement Agreement. The Parties expressly warrant that they have had the opportunity to consult with counsel prior to executing this Release and Settlement Agreement, that they fully understand the terms of this Release and Settlement Agreement, and that they enter into this Release and Settlement Agreement knowingly and voluntarily, and without coercion, duress or undue influence. The Parties expressly acknowledge that they believe the terms of this Release and Settlement Agreement are appropriate to reach a full and final settlement of all claims and counterclaims in the Lawsuit and all claims between the Parties before the execution of this Release and Settlement Agreement. The Parties expressly understand, acknowledge, and agree that signing of this Release and Settlement Agreement shall be forever binding, and no rescission, modification, or release of the Parties from the terms of this Release and Settlement Agreement will be made for mistake or any other reasons. The Parties represent that they are legally competent to execute this Release and Settlement Agreement. The Parties further warrant and acknowledge that no promise or inducement has been offered except as set forth herein and that this Release and Settlement Agreement was executed by them without reliance upon any statement or representation by the persons or parties

released or their representatives concerning the nature or extent of any damages or any legal liability therefore.

20. AMENDMENT. This Release and Settlement Agreement may not be amended except in a writing setting forth such amendment and executed by all Parties.

WHEREFORE, the Parties agree to and accept the terms of this Release and Settlement Agreement on the date reflected next to their signatures.

CAUTION: THIS IS A RELEASE. READ BEFORE SIGNING.

EACH OF THE UNDERSIGNED REPRESENTATIVES OF THE PARTIES HAS READ THE FOREGOING RELEASE AND SETTLEMENT AGREEMENT. EACH OF THE UNDERSIGNED REPRESENTATIVES FULLY UNDERSTAND THAT THIS AGREEMENT HAS IMPORTANT LEGAL CONSEQUENCES. EACH OF THE REPRESENTATIVES OF THE PARTIES REALIZES THAT HE, SHE, OR IT IS RELEASING ANY AND ALL CLAIMS THAT EACH OF THE PARTIES MAY HAVE AGAINST THE OTHER PARTY AND OTHER RELEASEES AS SET FORTH ABOVE. EACH OF THE UNDERSIGNED REPRESENTATIVES ALSO REPRESENTS AND ASSERTS THE CAPACITY AND CAPABILITY OF EVALUATING THIS MATTER AND DECIDING HOW TO PROCEED. EACH OF THE PARTIES WAS AFFORDED THE OPPORTUNITY TO OBTAIN A LAWYER'S ADVICE AND IN FACT RECEIVED SUCH ADVICE RESPECTING THE MEANING, INTENT, SCOPE, AND PURPOSE OF THIS AGREEMENT BEFORE SIGNING THE AGREEMENT.

LYONS PROPERTIES, LLC

DATE

By: _____
Its: _____

TOWN OF LYONS, COLORADO

DATE

By: _____
Connie Sullivan, Mayor

ATTEST: _____
Dolores Vasquez, Town Clerk

APPROVED AS TO FORM:

BY: _____
Steven Bushong, Esq.
Porzak Browning & Bushong LLP
2120 13th Street
Boulder, Colorado 80302
Telephone: 303-443-6800
Facsimile: 303-443-6864
Sbushong@pbblaw.com
ATTORNEY FOR LYONS PROPERTIES, LLC

BY: _____
Paul D. Godec, Esq.
Kissinger & Fellman, PC
3773 Cherry Creek N. Drive, Suite 900
Denver, Colorado 80209
Telephone: 303-320-6100
Facsimile: 303-327-8601
Email: Paul@kandf.com
ATTORNEY FOR THE TOWN OF LYONS