



Boulder County Clerk, CO RESOLUTION R 76.00 D 0.00

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**TOWN OF LYONS, COLORADO
RESOLUTION NO. 1997-36**

**A RESOLUTION APPROVING A SUBDIVISION IMPROVEMENT AGREEMENT FOR
LYONS VALLEY PARK FILING NO. 5**

WHEREAS, the Town of Lyons has the authority to enter into contracts; and

WHEREAS, the Lyons Municipal Code requires a subdivision improvement agreement for every new final plat and subdivision.

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

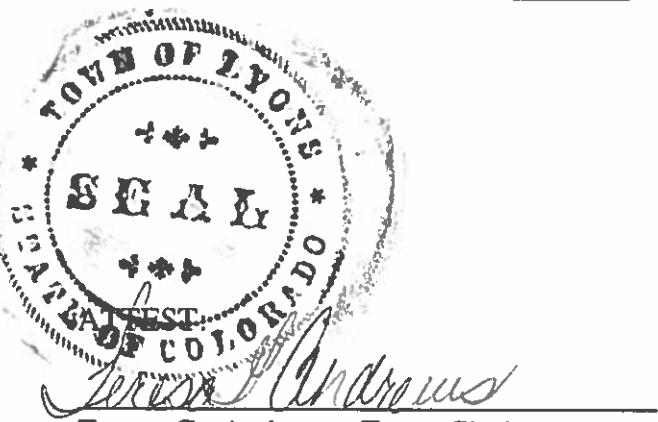
Section 1. A Subdivision Improvement Agreement, in a form substantially similar to that attached to this Resolution and as amended by the Board of Trustees in the motion to approve the Lyons Valley Park Filing No. 5 Subdivision, is hereby approved.

Section 2. Following confirmation by the Town Attorney that the Agreement is complete and contains the necessary revisions approved by the Board of Trustees in its motion to approve the Lyons Valley Subdivision Filing No. 5, the Mayor is hereby authorized to execute the Agreement and the Town Clerk is authorized to attest the execution.

ADOPTED THIS 21ST DAY OF July, 1997.

TOWN OF LYONS, COLORADO

By: Glenn Klepel
Glenn Klepel, Mayor



Teresa G. Andrews, Town Clerk



Boulder County Clerk, CO RESOLUTION

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**TOWN OF LYONS
SUBDIVISION IMPROVEMENT AGREEMENT**

FINAL PLAT FOR LYONS VALLEY PARK FILING NO. 5 SUBDIVISION

THIS SUBDIVISION IMPROVEMENT AGREEMENT ("Agreement") is entered into and made between **LYONS VALLEY PARK, INC.**, whose address is c/o Keith Bell, President, 1728 16th Street, #1, Boulder, Colorado 80302, hereinafter referred to as the "Owner/Developer," and the **TOWN OF LYONS, COLORADO**, a Colorado municipal corporation whose address is 432 Fifth Avenue, Lyons, Colorado 80540, hereinafter referred to as the "Town" or "Lyons." The Owner/Developer and the Town shall collectively be referred to as the "Parties." This Agreement shall be effective following execution by the Owner/Developer and immediately upon the date of recordation of this Agreement with the recordation of the approved plat for LVP Filing No. 5.

Except as otherwise expressly stated herein, nothing in this Agreement is intended to supersede, modify, alter, delete, or otherwise amend any provision, obligation, or requirement of the "Subdivision Agreement for Lyons Valley Park Filing No. 1 and Subdivision Agreement Relating to Subdivider's Obligations in the Lyons Valley Park Subdivision" (hereinafter "Original SIA") recorded at Reception No. 00804403 on November 12, 1986, in the records of the clerk and recorder for Boulder County, Colorado. This Agreement is intended to provide supplemental provisions not addressed in the Original SIA which are specifically related to the subdivision and development of LVP Filing No. 5 or to clarify certain terms and conditions contained within the Original SIA.

RECITALS AND REPRESENTATIONS:

WHEREAS, The Owner/Developer represents that it is the sole owner of the following described property located in the Town of Lyons, County of Boulder, State of Colorado:

SEE ATTACHED EXHIBIT A

hereinafter referred to as "LVP Filing No. 5."

WHEREAS, the Owner/Developer is planning development of LVP Filing No. 5 and the Owner/Developer's development plans may require the dedication, construction, installation, and/or improvement of sanitary sewer facilities, water line facilities, drainage facilities, irrigation structures, public thoroughfares and streets, and other public facilities and improvements to serve the proposed development of LVP Filing No. 5.

WHEREAS, the Owner/Developer has submitted to the Town a Final Plat entitled "Lyons Valley Park Filing No. 5" (hereinafter "Final Plat") and supporting documentation including



construction, grading/drainage, utility, street improvement, sanitary and storm sewer, and other plans (collectively the "Construction Plans"). Once approved by the Town, the Final Plat shall be recorded with the clerk and recorder for Boulder County, Colorado. The Construction Plans and the Final Plat shall be recorded with the Town and available for inspection at the Town Hall, 432 Fifth Avenue, Lyons, Colorado, during regular business hours. The Final Plat and Construction Plans, as approved by the Town, are incorporated into this Agreement for all purposes including illustration and interpretation of the terms and conditions of this Agreement.

WHEREAS, it is the intent of this Agreement that the Owner/Developer shall be responsible for and shall pay all costs and expenses associated with the proposed development of LVP Filing No. 5 and that the Town shall only be obligated for payment of those costs and expenses which are specifically set forth as obligations of the Town in this Agreement and the existing Original SIA referenced above dated ~~December 12, 1986.~~

12/10/1997 TA

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements of the Parties, the approval by the Town of Lyons of the Final Plat and Construction Plans, the dedication of certain land to the Town for public purposes, and other good and valuable considerations, the sufficiency and adequacy of which are hereby acknowledged by the Parties, the Parties hereto agree as follows:

1.0 DELIVERY OF FINAL PLAT. The Owner/Developer shall, upon the Town's approval of the Final Plat, immediately deliver the original of the Final Plat, containing all revisions and amendments required by motion of the Town Board prior to Final Plat approval and containing all necessary signatures other than those of the Town's or Boulder County's officials and employees, to the Town Clerk. The Owner/Developer shall also deliver to the Town Clerk an amount equal to \$11.00 per sheet of the Final Plat and \$5.00 per page of this Agreement and per page of any other document to be recorded as part of the Final Plat approval to cover recordation costs. In addition, the Owner/Developer shall deliver to the Town Clerk along with the executed Final Plat five (5) sets of complete and final Construction Plans each bearing the signature of a licensed Colorado engineer. No approval of the Construction Plans is conferred by this Agreement and approval shall be independently made by the Town Engineer following Town staff review and comment and the Town Engineer determines that the Construction Plans meet all applicable Town engineering specifications, commonly accepted engineering practices, and all applicable codes, ordinances, and state and local laws.

2.0 RECORDATION OF PLAT. The Owner/Developer shall pay all costs associated with recordation of this Agreement and the Final Plat for LVP Filing No. 5 with the Clerk and Recorder of Boulder County, Colorado. It is the Owner/Developer's obligation to prepare and submit to the Town Clerk the Final Plat



in a form and upon material acceptable for recordation by the Boulder County Clerk and Recorder. Failure of the Owner/Developer to submit an acceptable Final Plat to the Town Clerk within forty-five (45) days of the date of this Agreement shall, upon the enactment of a resolution by the Board of Trustees finding that the Final Plat submittal was untimely, void Final Plat approval for LVP Filing No. 5 and shall void this Agreement.

3.0 DEDICATION OF WATER RIGHTS. In accordance with the Original SIA, the Owner/Developer is obligated to dedicate to the Town at no cost or expense a total of twelve (12) shares of water from the Northern Colorado Water Conservancy District ("NCWCD") based on the formula for residential dwelling uses as presented in the Original SIA (.77 shares x 15 residential dwelling units/lots). Such shares are referred to as "CBT water."

3.1 The Owner/Developer shall not be permitted to pay a fee-in-lieu of the required water dedication.

3.2 Water rights dedication shall be made prior to recordation of the Final Plat.

3.3 The Parties understand and acknowledge that the dedication of water pursuant to this paragraph and the Original SIA is based on the development of each lot for a single residential dwelling unit and that such a residential unit will require a 3/4 inch water tap (maximum annual metered use of 270,000 gallons). Use of any lot within LVP Filing No. 5 for purposes other than a single residential dwelling unit and a 3/4 inch water tap may require additional dedication of water in accordance with Lyons Municipal Code § 10-1-7(C). Absent conformance with additional water dedication requirements pursuant to the Municipal Code, any obligation of the Town to provide water to any lot within LVP Filing No. 5 is limited to a 3/4 inch tap and a maximum annual metered use of 270,000 gallons.

4.0 UNDERGROUNDING OF ALL UTILITIES. The Owner/Developer shall underground all gas, telephone, telecommunication, and cable utility lines within the boundaries of LVP Filing No. 5.

5.0 SUBDIVISION MONUMENTATION. In accordance with the applicable provisions of the Colorado Revised Statutes, as amended, and the Lyons Municipal Code, as amended, the Owner/Developer shall establish all subdivision monumentation and have the monumentation approved by the Town prior to issuance of any certificate of occupancy within the LVP Filing No. 5.



6.0 STREET MAINTENANCE PENDING ACCEPTANCE OF DEDICATION.

The Parties understand and agree that until such time that the Town accepts the dedication of the completed public streets within LVP Filing No. 5, the Owner/Developer shall be obligated and responsible for the ongoing maintenance of streets within LVP Filing No. 5. The Owner/Developer therefore shall maintain, in a reasonable, suitable and proper condition for travel, ingress, and egress, all streets located within LVP Filing No. 5 until such time as the streets are completed and the offer of dedication of the streets is accepted by the Town in accordance with this Agreement.

7.0 DRAINAGE AND DETENTION FACILITIES. The Owner/Developer shall construct all drainage facilities in accordance with the Construction Plans approved by the Town Engineer. Prior to issuance of the third (3) building permit for any residential structure within LVP Filing No. 5, the Owner/Developer shall complete the construction of two (2) existing but unfinished surface drainage inlets located near the intersection of Second Avenue and McConnell Drive. Except for the existing type and quality of construction of the inlets which is acknowledged as constructed of concrete block, all further improvement of the inlets shall conform to the *Manual of Design Criteria and Standard Specifications for the Construction of Public Improvements* for the Town of Lyons.

8.0 CONSTRUCTION OF PUBLIC IMPROVEMENTS. The Owner/Developer has offered to and shall design, furnish, construct, and install all public improvements as illustrated on the Final Plat and/or on the approved Construction Plans ("Public Improvements") at the Owner/Developer's cost and expense. The Public Improvements include, but are not necessarily limited to, the following specifically mentioned items which comprise the major public improvements for LVP Filing No. 5:

8.1 All public streets, curb, gutter, and sidewalks within LVP Filing No. 5 shall be constructed within the time requirements set forth in the Original Agreement.

8.2 The full width of McConnell Drive from a point connecting with existing Colorado State Highway 66/36 and the southernmost boundary of the segment of McConnell Drive as illustrated on the Construction Plans and terminating at approximately the southern boundary of Lyons High School, including curb, gutter, and sidewalks on both sides of McConnell Drive (hereinafter "McConnell Drive"). The Town hereby agrees to postpone the required installation of only that segment of curb, gutter, and sidewalk planned for the eastern side of McConnell Drive beginning at a point south of the southernmost line of the intersection of Second Street and McConnell Drive and extending to the southern boundary of Lyons Junior/Senior High School. The



installation of such postponed curb, gutter, and sidewalk shall be completed at the earlier of: (1) the construction of any street improvements located on the eastern side of McConnell Drive and which connect to McConnell Drive; or (2) two years following the date of execution of this Agreement by the Town.

8.3 Bridge at McConnell Drive connecting Colorado State Highway 66/36 with McConnell Drive. The Owner/Developer's completion of the improvements required by subsection 8.2 and this subsection 8.3 shall terminate and supersede any requirements contained in paragraph 5 of the Original SIA dated ~~December 12, 1986~~, upon the acceptance of the completed improvements required by subsection 8.2.

8.4 Drainage improvements.

8.5 Water, sanitary sewer, gas, and other public utilities necessary to serve all lots within LVP Filing No. 5.

8.6 A twelve (12) inch water main located and extending within the McConnell Drive right-of-way which is capable of later extension and connection with the Town's existing water main located at the southern side of U.S. Highway 66/36 at approximately the eastern-most boundary of Lyons Valley Park as illustrated on the Preliminary Plan for Lyons Valley Park on file with the Town Clerk. At the time of construction of McConnell Drive, the water main within McConnell Drive required by this paragraph shall be extended and "stubbed" at a point on the eastern side of, and outside of, the McConnell Drive right-of-way. The point of such extension and stub shall be made at a location which, in the opinion of both the Owner/Developer and the Town Public Works Director, will best facilitate later extension and connection of the water main with the Town's existing water main located at the southern side of U.S. Highway 66/36. At the time of this Agreement, such point of extension and stub is anticipated to be within a distance of fifty (50) feet of the northern-most boundary of Lyons Valley Park. The Owner/Developer shall construct all Public Improvements in conformance with all applicable federal or state accessibility requirements, such as the federal Americans with Disabilities Act. The Town shall not be obligated to accept any public facility not constructed in accordance with the Town's Construction Design Standards, the Municipal Code, or any applicable federal or state law.

9.0 Second Avenue Bridge and Bridge at McConnell Drive. Certain landowners and the Town of Lyons executed contemporaneously with the annexation of the property now known as Lyons Valley Park an annexation agreement dated January 18, 1971 (the "Annexation Agreement"). Paragraphs A(4), A(5), B(2) of the Annexation



Agreement required the landowners or their successors-in-interest to improve the "Second Avenue Bridge" located to the west of LVP Filing No. 5 and required the Town to participate in an attempt to seek federal or state funding for such bridge improvements. Such bridge improvements have not been completed. The Parties hereby acknowledge and agree that, paragraphs A(4), A(5), B(2) of the Annexation Agreement shall be terminated and each party shall release the other from obligations imposed by such paragraphs upon satisfaction of all of the following events: (1) The Owner/Developer's completion of construction of the bridge located within the McConnell Drive right-of-way at the Owner/Developer's cost and expense, and the construction of such bridge as required by this Agreement and as illustrated on the Construction Plans; and (2) the Town's written acceptance of such bridge construction.

The construction of the bridge improvements at McConnell Drive shall conform to the current standards and specifications adopted by the State of Colorado, Department of Transportation. The parties recognize and understand that the Town has not promulgated bridge construction standards.

10.0 COMPLETION OF MCCONNELL DRIVE BRIDGE IMPROVEMENTS. The Owner/Developer shall complete the McConnell Drive Bridge improvements connecting McConnell Drive with U.S. Highway 36/66. The McConnell Drive Bridge improvements shall be considered and included as part of the required improvements of LVP Filing No. 5 under Section II of the Original SIA and shall therefore be subject to the guarantees (and expressly including a letter of credit) referenced in and required by Section V, paragraph 2 of the Original SIA. The Owner/Developer shall complete said bridge improvements not later than one year from the issuance of the first building permit within LVP Filing No. 5 pursuant to Section II of the Original SIA. The bridge improvements within the floodway and floodplain shall be subject to and built in accordance with the applicable flood control regulations. The parties understand and agree that inclusion of the McConnell Drive Bridge improvements in the guarantees referenced in and required by Section V, paragraph 2 of the Original SIA shall not limit the Town's available remedy for breach of the Owner/Developer's obligation to construct the bridge to retention or collection of amounts held as guarantee for such improvements.

11.0 MCCONNELL DRIVE SIDEWALKS. Sidewalks located along McConnell Drive as approved with the Final Plat are shown on the Construction Plans; however, such sidewalks may be redesigned by the Owner/Developer so that such sidewalks "meander" or are located at a varying distance from the curbline of McConnell Drive. Any such redesign shall be subject to administrative approval only of the Town Administrator following review and approval of the Town Planner. Any approval must be evidenced in writing issued before initiation of construction of such sidewalks with copies of the written approval delivered to the Town Board of Trustees.



12.0 **FUTURE STREETS.** Designation and illustration of any "Future Street" located outside of LVP Filing No. 5 on any Construction Plan or other documentation submitted with the LVP Filing No. 5 Final Plat is not approved or consented to by the Town of Lyons as part of approval of the Final Plat or Construction Plans for LVP Filing No. 5. Street locations shall be reviewed and considered as part of processing of subdivision plat(s) for properties served by such proposed future streets.

13.0 **CONSTRUCTION ACCESS.** Any requirement for secondary construction access imposed by the "Subdivision Agreement for Lyons Valley Park Filing No. 1 and Subdivision Agreement Relating to Subdivider's Obligations in the Lyons Valley Park Subdivision" (the "Original Agreement") is hereby waived by the Parties for the construction of LVP Filing No. 5 only. This waiver does not waive any breach of any term or provision of the Original Agreement or of this Agreement and shall not operate or be construed as a waiver of any subsequent breach by either party.

14.0 **DEDICATION OF PUBLIC IMPROVEMENTS.** All public improvements shall be subject to inspection, review, and dedication in accordance with the Original SIA. Prior to acceptance of the dedication of the Public Improvement(s), the Owner/Developer shall provide to the Town at the Owner/Developer's cost and expense the Owner/Developer's sworn affidavit and documentary evidence that there exist no lien or encumbrance upon or against the Public Improvement resulting from unpaid amounts owing to contractors, subcontractors, material persons, or other persons involved or engaged in the construction or installation of the Public Improvement. The Owner/Developer shall promptly remedy at the Owner/Developer's cost and expense any condition or conditions which prevent the Town from accepting the dedication of the Public Improvement as provided by this paragraph. Any offer to dedicate a Public Improvement shall be made in writing delivered to the Town and shall identify the particular Public Improvement(s) being offered for dedication. Such Public Improvements shall become the property of the Town immediately upon acceptance of the improvements by an adopted resolution of the Town Board.

15.0 **PUBLIC IMPROVEMENT ESCROW ACCOUNT.** The Owner/Developer shall comply with all requirements for guarantee or escrow of funds to ensure completion of all Public Improvements as required by the Original SIA. No building permit shall be issued for any lot within LVP Filing No. 5 unless and until the required guarantee or escrow of funds is made for all Public Improvements by the Owner/Developer in accordance with the Original SIA.

16.0 **ISSUANCE OF CERTIFICATE OF OCCUPANCY.** Certificate(s) of occupancy for residential structures within LVP Filing No. 5 will be issued by the Town if:



16.1 The Owner/Developer is in conformance with all state and local requirements for issuance of a certificate of occupancy, including but not limited to complete conformance with the Lyons Municipal Code; and

16.2 The Owner/Developer is not in breach of any provision of this Agreement.

17.0 **PARK FEE**. In accordance with Lyons Municipal Code § 8-6-1 (also known as Ordinance No. 586 of 1995), the Owner/Developer shall pay a park fee in an amount established by Municipal Code § 8-6-1 and effective at the time of payment. The park fee associated with each lot within LVP Filing No. 5 shall be paid as a pre-condition of the issuance of a building permit for the primary residential structure on such lot.

18.0 **CONDITIONS OF APPROVAL OF FINAL PLAT**. Nothing in this Agreement is intended to prevent or preclude the Town Board of Trustees from imposing reasonable conditions upon the approval of the Final Plat as permitted by the Lyons Municipal Code. Any such conditions shall be supplemental to this Agreement; provided, however, where any direct conflict exists between this Agreement and such conditions of approval, this Agreement in the form executed by the parties shall control.

19.0 **PAYMENT OF FEES AND CHARGES**. The Owner/Developer shall comply with all ordinances, rules, and regulations of the Town and shall pay all fees and other charges in a timely manner as required by the Town including, but not limited to, building permit fees, inspection fees, tap or connection fees, and plan review fees which are imposed by the Town by ordinance, rule, resolution, motion, agreement, or by the terms and conditions of this Agreement. In addition to any other remedy available to the Town, the Town may withhold and deny issuance of any building permit, certificate of occupancy, or other permit or approval until all due and outstanding fees are paid by the Owner/Developer.

20.0 **FORM OF PAYMENT OF ALL FEES AND CHARGES**. Unless otherwise agreed to by the Town Administrator on a case by case basis, the Owner/Developer's payment of fees and charges specified by this Agreement shall be made in the form of certified funds, cashier's check, or cash delivered to the Town of Lyons, 432 Fifth Avenue, Lyons, Colorado 80540.

21.0 **CONTRACTOR LICENSING**. Before proceeding with any of the work contemplated herein and if required by Town ordinance, the Owner/Developer shall ensure that all contractors and/or subcontractors employed by the Owner/Developer shall be licensed with and/or registered with by the Town before the contractor and/or



subcontractor may commence work on any of the improvements contemplated herein; provided, however, that any contractor who holds a valid contractor's license from another Colorado municipality and who meets all requirements for registration and issuance of a license from the Town of Lyons shall not be arbitrarily refused registration and/or licensing.

22.0 CONSTRUCTION STANDARDS. Except as otherwise provided by this Agreement, the Lyons Municipal Code, Zoning Ordinance, Subdivision Regulations, and the *Manual of Design Criteria and Standard Specifications for the Construction of Public Improvements* (the "Manual"), all as enacted and adopted by the Town of Lyons and as such enactments may be later amended, are made applicable to LVP Filing No. 5. The parties agree to delete the following paragraphs of the Manual from application to LVP Filing No. 5: Section 5.2.3(1) pertaining to "vitrified clay pipe" and Section 5.2.3(2) pertaining to "manhole brick." The parties further adopt for purposes of the lift station to be constructed in LVP Filing No. 5 that the lift station shall conform to the specifications identified in "Engineering Data, Smith & Loveless Wet Well Mounted Submersible Pump Station With Duplex Non-Clog Submersible Pumps" dated February 1986 ("Lift Station Standards"), submitted to the Town by the Owner/Developer as part of the supporting documentation for the Final Plat. The Lift Station Standards shall supersede any requirement of the Manual that require a "wet/dry" lift station for new development.

23.0 DELAYS. The Parties have executed this contract such that completion of the improvements shall be subject to strikes, accidents, acts of God, weather conditions which justify a delay of construction in light of standard practices in the building profession, inability to secure labor, fire regulations or restrictions imposed by any government or governmental agency, or other delay resulting from events which are beyond the control of the delaying party and which are agreed to by the Parties as justifying delay.

24.0 WAIVER. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party. The Town may waive obligations of the Owner/Developer imposed by this Agreement where such waiver will directly serve the health, safety, and welfare of the public; provided that no waiver shall be effective unless in writing signed by the Mayor or Mayor Pro Tem following approval of the Board of Trustees. The Parties understand and agree that nothing contained in the Final Plat is intended to waive or modify any applicable provision of state or local law. The Owner/Developer specifically understands that, absent authority expressly granted by this Agreement, no Town employee, including the Town Administrator, Town Attorney, or Town Engineer, may waive any requirement of the Municipal Code or this Agreement.



25.0 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 of Lyons, its officials, employees, contractors, or agents, or any other person acting on behalf of the Town 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.

26.0 BINDING EFFECT. The Parties hereto agree that this Subdivider's Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns thereof and shall constitute covenants running with the described property. To the extent permitted by law, the Owner/Developer and all future successors, heirs, legal representatives, and assigns of the Owner/Developer shall be jointly and severally responsible for all terms, conditions, and obligations set forth in this Agreement.

27.0 NO THIRD PARTY BENEFICIARIES. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Town and Owner/Developer, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person on such Agreement. It is the express intention of the Town and Owner/Developer that any person other than the Town or Owner/Developer receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

28.0 GOVERNING LAW, VENUE, AND ENFORCEMENT. This Agreement shall be governed by the laws of the State of Colorado. Venue for any action arising from this Agreement shall lie with any appropriate court within Boulder County, Colorado. The Parties agree and acknowledge that this Agreement may be enforced at law or in equity, including an action for damages or specific performance. In addition to any other available remedies, it is understood and agreed that the Town may, at its sole discretion, withhold or refuse to issue any permits or certificates requested by the Owner/Developer, including but not limited to building permits for any lot within LVP Filing No. 5 in the event of a breach of this Agreement by the Owner/Developer. Nothing herein shall be construed as authorization to deny the issuance of a certificate of occupancy for a residential structure after a building permit has been issued for such structure and all conditions for issuance of a certificate of occupancy have been met.

29.0 ATTORNEY'S FEES. If the Owner/Developer breaches this Agreement, the Owner/Developer shall pay the Town's reasonable costs and attorney's fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement.



30.0 ASSIGNMENT AND RELEASE. All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by the Owner/Developer without the express written consent of the Town of Lyons. Any such written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by resolution of the Town Board of Trustees. No assignment shall release the Owner/Developer from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment. Prior to approving any release of the Owner/Developer, the Town may, at its sole discretion, require the party assuming any duty, obligation, or responsibility of the Owner/Developer to provide to the Town written evidence of financial or other ability or capability to meet the particular duty, obligation, or responsibility being assumed by the party.

31.0 VESTED RIGHTS. The Parties acknowledge and understand that the approval of this Final Plat was not processed or approved in accordance with or pursuant to Title 11 of the Lyons Municipal Code entitled "Vested Rights."

32.0 PARAGRAPH CAPTIONS. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

33.0 SEVERABILITY. Invalidation 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.

34.0 INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties.

35.0 INCORPORATION OF EXHIBITS. Unless otherwise stated in this Agreement, exhibits referenced in this Agreement shall be incorporated into this Agreement for all purposes. Construction documentation referenced herein is a public record on file and available for review at the Town of Lyons, Town Hall, 432 Fifth Avenue, Lyons, Colorado.

36.0 REVIEW OF REFERENCED DOCUMENTS. The Owner/Developer hereby understands and acknowledges that the public documents referenced in this Agreement, including but not limited to the Lyons Municipal Code, Zoning Ordinance, Subdivision



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Boulder County Clerk, CO RESOLUTION R 76.00 D 0.00

Regulations, the *Manual of Design Criteria and Standard Specifications for the Construction of Public Improvements*, and engineering specifications were prior to the execution of this Agreement, and are presently, available for review and inspection at the Lyons Town Hall, 432 Fifth Avenue, Lyons, Colorado during regular business hours. The Owner/Developer has reviewed such documentation, or elected not to review such documentation, prior to execution of this Agreement.

37.0 **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 above, or at such other address as has been previously furnished in writing, to the other party or Parties. Such notice shall be deemed to have been given when deposited in the United States Mail.

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Boulder County Clerk, CO RESOLUTION

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R 76.00 D 0.00

DATED THIS 16th DAY OF June, 1997.

TOWN OF LYONS, a Colorado municipal corporation

Glenn Klepel
Glenn Klepel, Mayor

ATTEST:

Teresa G. Andrews
Teresa G. Andrews, Town Clerk/Treasurer

OWNER/DEVELOPER
LYONS VALLEY PARK, INC.

Keith Bell
By: Keith Bell, President

STATE OF COLORADO)

COUNTY OF Boulder)

)

) ss.

)

Acknowledged before me this 29 day of July, 1997, by
Keith Bell, President of Lyons Valley Park, Inc.

Shirley F. Johnson
Notary

My Commission Expires: 9-10-2000





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EXHIBIT A -- LEGAL DESCRIPTION

Lots 1 through and including Lot 14, Lyons Valley Park Filing No. 5 Final Plat, such Final Plat being recorded contemporaneously with and on the same date as this Subdivision Improvement Agreement in the office of the clerk and recorder for Boulder County, Colorado.