



2129385
Page: 1 of 6
03/20/2001 03:36P

Boulder County Clerk, CO AMEND AGREE R 30.00 D 0.00

TOWN OF LYONS

THIRD AMENDMENT OF THE SUBDIVISION IMPROVEMENT AGREEMENT FOR LYONS VALLEY PARK FILING NO. 5 SUBDIVISION

THIS THIRD AMENDMENT OF THE SUBDIVISION IMPROVEMENT AGREEMENT FOR LYONS VALLEY PARK FILING NO. 5 ("Third Amendment") 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 Amendment shall be effective following execution by the Owner/Developer and immediately upon the date of execution by the Mayor or Mayor Pro Tem for the Town of Lyons, Colorado.

Except as otherwise expressly stated herein, nothing in this Third Amendment is intended to supersede, modify, alter, delete, or otherwise amend any provision, obligation, or requirement of: (1) 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. 0080440, on December 12, 1986, in the records of the clerk and recorder for Boulder County, Colorado, or (2) the Subdivision Improvement Agreement for Lyons Valley Park Filing No. 5 ("Filing No. 5 SIA") approved by the Board of Trustees for the Town of Lyons by Resolution No. 1997-36 on June 16, 1997, which is recorded in the records of the clerk and recorder for Boulder County, Colorado, or (3) any amendment of the Filing No. 5 SIA.

RECITALS AND REPRESENTATIONS:

WHEREAS, the Owner/Developer is the owner of property described in that subdivision plat entitled "Final Plat for Lyons Valley Park Filing No. 5" and is the owner of property generally located south of US Highway 36/66 and east of McConnell Drive. Such property is commonly known as Lyons Valley Park and is more fully described in the Original SIA.;

WHEREAS, the Town Board of Trustees approved the Original SIA which included obligations for public improvements within Lyons Valley Park including a bridge over the St. Vrain River connecting US Highway 36/66 with a collector street commonly known as McConnell Drive;

WHEREAS, the Town Board of Trustees approved a Subdivision Improvement Agreement for Lyons Valley Park Filing No. 5 ("Filing No. 5 SIA") on June 16, 1997,



2129385

Page: 2 of 6

03/20/2001 03:3

Boulder County Clerk, CO AMEND AGREE R 38.00 D 0.00

by adoption of Resolution 1997-36;

WHEREAS, the Original SIA and the Filing No. 5 SIA requires by its terms the completion of street improvements including a bridge and street connecting U.S. Highway 36/66 with Second Avenue via McConnell Drive within the Lyons Valley Subdivision;

WHEREAS, the Town Board of Trustees approved a First Amendment of the Filing No. 5 SIA pertaining to dedication of water rights;

WHEREAS, the Town Board of Trustees approved a Second Amendment of the Filing No. 5 SIA ("Second Amendment") pertaining to procedures for the design and construction of the bridge and street connecting U.S. Highway 36/66 with Second Avenue via McConnell Drive within the Lyons Valley Subdivision;

WHEREAS, the Town and the Owner/Developer have engaged in the dispute resolution process provided by paragraph 10.5 of the Second Amendment and now desires to amend the Second Amendment to the Filing No. 5 SIA to permit the Owner/Developer an opportunity to design and construct the Bridge Improvements and Encroachments commonly known as the McConnell Bridge and McConnell Drive to a size and standard that will adequately serve the Lyons Valley Park subdivision and the Town of Lyons;

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises, covenants, and agreements of the Parties hereinafter set forth, and other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged by the Parties, the Parties hereto agree as follows:

The Filing No. 5 SIA is hereby amended to add a new section 10.5.1 to read as follows:

10.5.1 Following the dispute resolution process provided by section 10.5, the Parties shall employ the following additional process in an effort to reach agreement on a design for the Bridge Improvements and Encroachments:

- 26/1* *RH* *TKD.*
- A. Prior to 5:00 p.m. on March 19, 2001, the Owner/Developer shall deliver to the Town Hall, 432 Fifth Avenue, Lyons, Colorado, one original and three (3) copies of the following professionally prepared documentation:
1. Construction documents in a form suitable to commission the construction of the Bridge Improvements and Encroachments contemplated by the Original SIA and the Filing No. 5 SIA between the Town and the Owner/Developer, as amended. The



2129385

Page: 3 of 6

03/20/2001 03:31

Boulder County Clerk, CO AMEND AGREE R 38.00 D 0.00

construction documents shall bear the professional stamp of a professional engineer licensed in the State of Colorado.

2. An engineering analysis and assessment of the rise in water surface elevation and impact on the St. Vrain River floodway and floodplain caused by or resulting from the Bridge Improvements and Encroachments within the floodplain. The analysis and assessment shall bear the stamp of a professional engineer licensed in the State of Colorado. Although the Town's local building standard prohibits overtopping of collector streets by surface flows, the Town is prepared to waive or take such steps as are necessary to reasonably waive such a requirement provided that a professional engineer certifies the bridge design and the construction documents in accordance with (3) below.
 3. A written and explicit representation made to the Town of Lyons by a professional engineer licensed in the State of Colorado that the documents and analysis identified in (1) and (2) above satisfy commonly accepted engineering standards and practices as such standards and practices are employed by Colorado licensed engineers customarily engaged in the design of bridge improvements. Specifically, the engineer shall represent to the Town that the Bridge Improvements and Encroachments, as proposed by the Owner/Developer's construction documentation, will satisfy and conform with the engineering standards applicable to construction within the St. Vrain River floodway and flood plain including standards related to the acceptable rise in water surface elevations.
- B. Within ten (10) business days from the date of the Owner/Developer's submission to the Town of the documentation identified in paragraph 1 above, the Town of Lyons and its consulting engineer(s) will review the submission and either hand deliver or deposit in the U.S. Mail to Keith Bell, as the representative of the Owner/Developer one of the following:
1. A statement that the submission is complete and that the representation of the Owner/Developer's professional engineer concerning the adequacy of bridge design is accepted by the Town; or
 2. A statement that the submission is complete but that specified revisions are necessary to bring the documents into conformance with commonly accepted engineering standards and practices as such standards and practices are employed by Colorado licensed



2129385
Page: 4 of 6
03/28/2001 03:38P
Boulder County Clerk, CO AMEND AGREE R 30.00 D 0.00

engineers customarily engaged in the design of bridge and street improvements. Prior to the issuance of such statement, the Town shall set a date and time at which the Parties shall meet at the Lyons Town Hall, 432 Fifth Avenue, Lyons, Colorado, to discuss the proposed revisions. The Town shall provide at least 24 hours notice to the Owner/Developer of the date and time of the meeting. Such statement shall provide the Owner/Developer five (5) business days to correct the documents and to resubmit properly stamped construction documentation together with a new statement of representation required by paragraph (A) (3) above for the revised documents; or

3. A statement that the submission is incomplete together with either: (1) a statement of the specific information necessary to complete the submission and a deadline for supplementation not to exceed five business days; or (2) a statement that the incomplete submission, together with the past conduct of the Owner/Developer, is declared by the Town to constitute a breach of the subdivision improvements agreement between the Parties and that the Town will abandon its offer to work with the Owner/Developer as outlined in this letter. Prior to the issuance of such statement, the Town shall set a date and time at which the Parties shall meet at the Lyons Town Hall, 432 Fifth Avenue, Lyons, Colorado, to discuss the proposed statement. The Town shall provide at least 24 hours notice to the Owner/Developer of the date and time of the meeting.
- C. Upon a finding by the Town that the submission is complete and that the representation of the Owner/Developer's professional engineer concerning the adequacy of bridge design is accepted by the Town, the Owner/Developer shall deliver to the Town Clerk an estimate of construction costs for the Bridge Improvements and Encroachments as provided by paragraph 10.8.4; provided, however, that this estimate shall be delivered to the Town within ten (10) business days of the date of the Town's finding referenced in this paragraph. The estimate of cost will be prepared by a professional engineer with experience in construction cost estimating and will bear the stamp of a professional engineer licensed in the State of Colorado. The engineer will also deliver to the Town a representation that the cost estimate is reasonably accurate in the professional opinion of the engineer.
- D. Within ten (10) business days from the date of the Owner/Developer's submission of a cost estimate to the Town, the Town and its engineers will review the estimate and either hand deliver or deposit in the U.S.



2129385
Page: 5 of 6
03/20/2001 03:36

Mail to Keith Bell as the representative of the Owner/Developer one of the following:

1. A statement that the cost estimate is reasonably complete and that the Town has accepted the representation from the professional engineer that the cost estimate is reasonably accurate; or
 2. A statement that the cost estimate is incomplete or inaccurate together with specified revisions that are necessary to bring the submission into conformance with commonly accepted engineering standards and practices as such practices are employed by Colorado licensed engineers customarily engaged in estimating construction costs; such statement will provide the Owner/Developer three (3) business days to resubmit a revised cost estimate. Prior to the issuance of such statement, the Town shall set a date and time at which the Parties shall meet at the Lyons Town Hall, 432 Fifth Avenue, Lyons, Colorado, to discuss the proposed revisions. The Town shall provide at least 24 hours notice to the Owner/Developer of the date and time of the meeting; or
 3. A statement that the submission is incomplete and that the submission, together with the past conduct of the Owner/Developer, is declared by the Town to constitute a breach of the subdivision improvements agreement between the Parties and that the Town will abandon its offer to work with the Owner/Developer as outlined in this letter. Prior to the issuance of such statement, the Town shall set a date and time at which the Parties shall meet at the Lyons Town Hall, 432 Fifth Avenue, Lyons, Colorado, to discuss the proposed statement. The Town shall provide at least 24 hours notice to the Owner/Developer of the date and time of the meeting.
- E. Following a finding by the Town that the cost estimate is complete and that the representation of the Owner/Developer's professional engineer concerning the accuracy of the estimate is accepted by the Town, the Owner/Developer will cause to be issued a letter of credit as required by paragraph 10.8.4. The letter of credit shall be issued within thirty (30) calendar days of the date of the Town's finding that the cost estimate is complete as referenced in this paragraph.
- F. The Bridge Improvements and Encroachments shall be completed within the time requirements of paragraph 10.7 of the Second Amendment of the SIA for Filing No. 5.



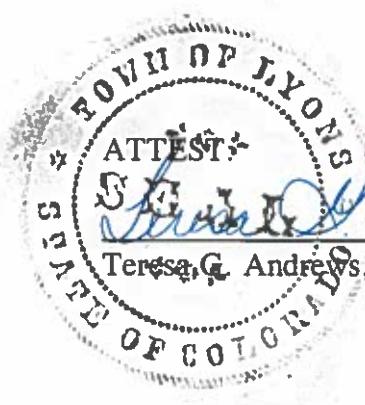
2129385
Page: 6 of 6
03/20/2001 03:36P
Boulder County Clerk, CO AMEND AGREE R 30.00 D 0.00

DATED THIS 5th DAY OF March, 2001.

TOWN OF LYONS, a Colorado
municipal corporation

Richard Hinshaw

Richard Hinshaw, Mayor



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 14th day of March, 2001, by
Keith Bell, President of Lyons Valley Park, Inc.

LOIS E. HEIN
Notary

1600 Canyon Blvd
Boulder, CO 80302

My Commission Expires: August 5, 2002

