

EXHIBIT A

DEVELOPMENT PLAN AGREEMENT

This **DEVELOPMENT PLAN AGREEMENT** (this "Agreement") executed this ____ day of September 2024 (the "Effective Date"), between **Lyons Properties LLC**, a Colorado limited liability company (the "Developer"), and the **Town of Lyons, Colorado**, a Colorado statutory municipal corporation ("Town"). The Developer and the Town may individually be referred to as a "Party" or collectively the "Parties."

RECITALS

A. Developer owns the property located at 501 West Main Street, Lyons, Colorado, located in a PUD-C District, as more particularly described on Exhibit A attached hereto and made a part hereof by this reference (the "Property"). On July 1, 2024, the Town received the development plan application by Developer (the "Development Plan Application") and is in the process of Administrative review of the Development Application. The Development Plan Application is under consideration for administrative approval (the "Plan Approval"); and

B. The Developer intends to redevelop the Property to include a 6,000 ft event space, ten (10) primitive tent camping sites, and ten (10) tiny homes (collectively, referred to as the "Project"), and;

C. Section 8 of the Plan Approval obligates the parties to negotiate and prepare this Agreement, wherein the Developer agrees to enter into various arrangements for the benefit of the Project; and

D. On January 12, 2016, the Parties entered into a Memorandum of Agreement concerning the development and operations of 501, 503, and 517 West Main Street, Lyons, Colorado ("Memorandum of Agreement"); and

E. The Agreement supersedes the Memorandum of Agreement in all respects, except as provided for by this Agreement; and

F. The Town and Developer have negotiated in good faith to reach the terms provided for herein consistent with the Plan Approval. Town and Developer acknowledge that this Agreement meets the requirements of the Plan Approval.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and the covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged by the parties, Developer and Town agree as follows:

ARTICLE I

INTERACTION WITH MEMORANDUM OF AGREEMENT

1.1 Developer agrees that the Memorandum of Agreement and any other agreement, written or oral, concerning the development of the River Bend Property (501 West Main Street) and 503 and 517 West Main Street, Lyons, Colorado and the rights, duties, obligations, responsibilities and benefits contained therein are replaced and superseded by this Agreement, except as follows:

- a. The Water Control Structure Easement and Agreement required as part of the Memorandum of Agreement shall remain in full force and effect and remain recorded with Boulder County's real property records.
- b. The Potable Water and Wastewater Line Easement and Agreement shall remain in full force and effect and remain recorded with Boulder County's real property records.
- c. All other duties and obligations of the Parties contained within the Memorandum of Agreement are deemed satisfied.
- d. This Agreement does not modify the Plan Approval or approval of the PUD-C overlay for the Property.

ARTICLE II

OPERATIONAL AND DEVELOPMENT TERMS

It is the intent of this Operational and Development portion of this Agreement is establish the terms of development, to limit the types of uses of uses on the Property, and to establish the terms and conditions of the use of the Property including, without limitation, the sound created by use of the Property. This Agreement shall not supersede or in any way modify the requirements of the Lyons Municipal Code.

2.1 General Event Standards.

a. The following general standards shall apply to all events (weddings, conferences, meetings, etc.) held on the Property by the Developer or the Developer's agents and assigns:

i. Responsibilities of DJs and Musicians. All hired DJs and musicians at Lyons River Bend are expected to know, understand, and abide by the policies applicable under this Agreement. The Developer is responsible for hired DJs and Musicians' compliance with these policies.

ii. Amplified sound is permitted outdoors from 8:00 a.m. to 8:00 p.m. unless a special permit allowing such at an event is applied for by either the Developer, the Developer on behalf of a client, or a client of the Developer directly and issued at the discretion of the Town Administrator.

iii. Permits may be granted for special events, including but not limited to community-wide events, fundraisers, benefits, etc. These applications shall be made in

writing to the Town Administrator at least five (5) business days in advance of the event unless it is an emergency situation. In approving or denying a permit, consideration shall be given to the effective dates and anticipated impact on adjacent land uses. The Town Administrator will notify neighbors if special events are being considered for approval. Special events may allow outdoor amplification until 10:00 p.m. if specified and approved. For the purposes of this Agreement, weddings shall not be considered a “special event.”

iv. No time restrictions are applied to indoor amplified sound pursuant to this Agreement. All music, whether amplified or not, shall not be permitted after 10:00 p.m. unless performed indoors and in compliance with the Town’s noise ordinance.

v. All sound and noise at the Property is subject to the requirements of the generally applicable noise standards of the Lyons Municipal Code, currently codified at L.M.C. Sec. 10-11-10 *et seq.*, and as may be amended by the Board of Trustees from time to time.

vi. Outdoor “quiet hours” shall be from 10:00 p.m. to 8:00 a.m. During quiet hours, no amplified sound will be permitted outside except as provided for by this Agreement.

vii. No parties shall be permitted outdoors during quiet hours.

viii. Developer shall have on-duty venue management available to respond to noise complaints during events on the Property. Developer shall abide by the following complaint process: First, complaints will be reported to the Developer and/or on-duty venue manager, who will respond to the situation and immediately remediate the issue, if the complaint is reasonable and validated. If verified complaints are not responded to, complaints will be reported to the Boulder County Sheriff’s Office to enforce the Lyons Municipal Code. The venue manager or owner will document complaints and follow the internal policy regarding policy violations.

ix. Venue staff shall provide direct contact info to on-duty venue management upon request by the Town Employees, Boulder County Sheriff’s Office, or other Town-designated representatives.

x. Developer shall have a designated neighborhood contact number to permit neighborhood notification of alleged noise issues.

xi. The developer is limited to one (1) event per day unless the town permits additional events at its sole discretion.

b. Additionally, the Town agrees that:

i. Town construction and repairs around the Property and Project will not be performed during scheduled event hours unless required due to an emergency that threatens life or property;

ii. Town will work in good faith to coordinate such construction and repairs around the Property and Project directly with Developer. If construction and repairs around the Property and Project are required due to an emergency, the Town shall not be required to coordinate with the Developer, but shall provide notice to the Developer of such work as soon as practicable; and

iii. Such construction and repair equipment will be stored in a mutually agreed upon area during scheduled events unless the construction and repair being conducted is in response to an emergency.

2.2 **Specific Standards Regarding Use of Amplified Sound and Music.**

- a. Use of all amplified sound on the Property is subject to the following restrictions:
 - i. All bands and DJs shall follow rental agreement rules.
 - ii. Non-electronic drum sets are not permitted; electronic drum sets are permitted in compliance with the requirements of this Agreement and within the Town's noise ordinance
 - iii. Subwoofers are permitted indoors; however, they must be set at a volume that does not violate the Lyons Municipal Code.
 - iv. The Venue Manager shall have the authority to turn off subwoofer(s) or reduce the overall volume of sound at any time the Venue Manager deems necessary, in response to verified neighbor complaints or at the request of the Town or Boulder County Sheriff's Office.
 - v. Music may be amplified outdoors during the ceremony, cocktail hour, dinner, and first dance ceremony only.
 - vi. After the first dance ceremony or 8:00 p.m., whichever occurs first, all outdoor music must be played acoustically without amplification. *See Section b. i.*
 - vii. Silent discos are permitted indoors or outdoors but are limited to no more than ten (10) silent discos per calendar year.
 - viii. Amplified music is permitted inside during outdoor quiet hours. Inside music must be played at a reasonable volume, and sound levels must comply with the Lyons Municipal Code.
 - ix. All doors and windows to the venue shall remain closed during which time amplified music is being played.
 - x. Neither amplified nor non-amplified brass horns (saxophone, trumpet, trombone, etc.) can be used on the Property. Clarinets and flutes are allowed.
 - xi. No Karaoke, yelling, or loud chanting shall be permitted outdoors.

b. The Limited Use of Outdoor Microphone Amplification After 8:00 p.m. Shall Be Subject to the Following Additional Restrictions:

- i. Use of one amplified microphone shall be permitted outdoors until 10:00 p.m., subject to the conditions of this section. After 10:00 p.m., no amplification shall be permitted outdoors of any kind.
- ii. There shall be no mic'd instruments and no instruments plugged into an amplifier of any sort.
- iii. One microphone shall be permitted for vocals. Multiple singers shall share a single microphone.
- iv. Dynamic microphones (like Shure SM58, for example) are required.
- v. Condenser microphones also pick up instrument sounds and are not permitted. If a microphone is found to be picking up instrument sounds, microphones shall not be permitted.
- vi. A total of fifty (50) events will be permitted per calendar year with a single outdoor amplified microphone between 8:00 pm and 10:00 p.m.

2.3 **Camping**

- a. Camping operations shall be permitted from April 15th to October 15th.
- b. Only ten (10) tent sites shall be permitted.
- c. Camping shall not occur within 50' of North Saint Vrain Creek.
- d. No individual fire pits shall be allowed within the camping area.

2.4 **Emergency Evacuation**

- a. In a flood emergency, Developer shall follow the Emergency Evacuation Plan attached as **Exhibit B**.

2.5 **Utilities**

- a. The Developer shall dedicate to the Town six (6) additional shares of Lake Macintosh Reservoir Stock (or \$66,000 cash in lieu) to satisfy all of the water shares dedication requirements for 501, 503, and 517 W. Main St. Such dedication or payment shall be made prior to the issuance of a building permit for new construction.

- b. The Developer's previous payment of \$70,000 shall be considered payment of the tap fees for the use of a 1" tap equivalency of water at 501 Main St., a 3/4 inch equivalency of water at 503 Main St., and a 3/4 inch equivalency of water at 517 Main St.

c. Any proposed future development on 501, 503, and 517 W. Main not the subject of this Agreement may be subject to Lyons Municipal Code Sec. 13-1-110, modification of existing connection or tap license, as may be modified from time to time.

d. Developer agrees that all new electric service lines on the Property shall be installed underground in accordance with the requirements of the Lyons Municipal Code.

2.6 **Fire Requirements**

a. Developer has met and will continue to meet and coordinate with the Lyons Fire Protection District concerning fire-related requirements for the Project. Upon completion of construction, the Project shall comply with all requirements of the Lyons Fire Protection District regulations applicable to the Project.

2.7 **Commercial Design Standards and Lighting**

a. Developer shall meet the commercial development design standards as set forth in Lyons Municipal Code Sec. 16-6-10 *et. seq.*, commercial design standards, as may be modified from time to time and which at the time of execution of the agreement may be accessed online at (https://library.municode.com/co/lyons/codes/municipal_code?nodeId=CH16ZO_ART6CODE_ST)

b. In particular, Developer shall comply with Lyons Municipal Code Sec. 16-6-70 which provides that "...[l]ighting should be designed, directed and shielded in such a manner that direct light does not leave the perimeter of the site and the nighttime sky is preserved." The one exception to this will be a single spotlight pointed to the rock wall on Town property as depicted in **Exhibit D**.

c. The single permitted spotlight shall be limited to no more than 12,000 lumens and no more than 3,000 Kelvin color temperature. Such light shall be non-moving and only a warm white color. The permitted spotlight may only be operated two (2) hours after sunset, at which time it will be shut off. Use of the spotlight will not be permitted during eagle nesting season (February 1 – July 1).

2.8 **Diversion Area and Limitation on Liability**

a. The Town owns and operates a public park known as LaVern Johnson Park, located at 601 Park Dr, Lyons, CO 80540 (the "Park"). The Park includes an area adjacent to and within the North Saint Vrain Creek (aka North Saint Vrain River) at a location where there is a pool of water historically used as a beach area and next to a diversion structure, as depicted on the attached **Exhibit C** (the "Diversion Area"). The Diversion Area is adjacent to the Property and Developer shall not prohibit access to the Diversion Area.

b. The Developer or any individual who has scheduled an event with the Developer may apply to the Town for a "Permit Application & Agreement for Special Use/Large Group/Shelter or Park Facilities with the Town of Lyons Department of Parks, Recreation, and Cultural Events" ("Application") to receive a Special Use Permit to reserve the Diversion Area between the

hours of 4:00 p.m.. and 8:00 p.m. Nothing in this paragraph shall prevent the Town from accepting other Applications from other individuals or entities wishing to receive a Special Use Permit to reserve the Diversion Area.

c. The Parties agree that the Developer has no responsibilities or obligation related to the Diversion Area, Implied or otherwise, and the Developer disclaims such responsibilities or obligations related to the Diversion Area, except as may be expressly identified in the Agreement.

d. Subject to the terms of Section 2.1.b.1 above, the Parties agree that the Town or anyone the Town permits to access the Diversion Area through the Park, whether expressly or not physically preventing such access for the use (licit or illicit), operation maintenance, design, construction, or existence of the Diversion Area including any acts, activities, or omissions to act by the Town or its agents or employees, and Developer disclaims all such liability except for liability caused by and resulting directly from the grossly negligent or intentional acts of the Developer, its agents, employees, successors, and assigns. The Parties further agree that Developer assumes no responsibilities or obligations related to the Diversion Area, implied or otherwise, and Developer disclaims such responsibilities or obligations except as may be expressly identified in this Agreement. Except, Developer remains liable for any damage to the Town's portion of the Diversion Area caused by and resulting from the negligent or intentional acts of the Developer its agents, employees, successors, and assigns.

e. Insurance Policy. The Parties further agree that the Town, in a lawsuit or otherwise, shall bear full responsibility for the Diversion Area, provided Developer does not make any changes or alterations to the Diversion Area. The Town agrees to maintain the Developer as an additional insured on the Town's insurance policy, which would provide the Town with the same coverage provided to the Town for both liability and defense of any claims arising from or related to the Diversion Area, including any portion of the Diversion Area where the Developer may own the underlying land. It is the Parties understanding that this insurance policy provides sufficient coverage to fully cover the Developer against any loss, damage, injury, or liability in any way resulting from or because of the Diversion Area, including without limitation claims by third parties and the defense of such claims.

f.

ARTICLE III TERM

3.1 **Effective Date and Term.** This Agreement shall be effective as of the Effective Date and run with the land in perpetuity unless terminated or repealed earlier.

3.2 **Early Termination.** This Agreement shall terminate upon the occurrence of any of the following unless extended by the written consent of Town and Developer:

a. By mutual agreement, executed in writing, of the Parties hereto.

b. At any time by a Party not in default under this Agreement (the "Non-Defaulting Party") giving written notice to the party in default under this Agreement (the "Defaulting Party") of such termination if the Defaulting Party (i) commits an Event of Default or (ii) otherwise breaches a material provision of this Agreement and fails to cure such

breach within thirty (30) days after receipt by the Defaulting Party of written notice thereof from the Non-Defaulting Party, or, if such breach is not capable of being cured within such thirty-day period, fails to commence in good faith the curing of such breach forthwith upon receipt of written notice thereof from the Non-Defaulting Party and to continue to diligently pursue the curing of such breach thereafter until cured within ninety(90) days after receipt of the notice.

c. Upon thirty (30) days' written notice from Developer if the Project is damaged or destroyed by a casualty and the damaged portion of the Project cannot be reasonably repaired or restored within thirty (30) months of the occurrence of the event (without implying any obligation of Town or Developer to rebuild or repair), or if Developer determines in its reasonable judgment that the Project cannot cost-effectively be restored to a condition substantially **like** the condition prior to the casualty or damage.

d. Upon thirty (30) days written notice from Developer if the entire Property is taken in a condemnation or similar proceeding, or a portion of the Property is taken such that Developer determines in its reasonable judgment that the Project cannot thereafter be cost-effectively completed or restored.

e. With respect to any of the specific obligations set forth in Section 2.5, the date on which Town and Developer agree in writing that such obligations have been met in full and all payments or dedications made in full, in which case this Agreement shall terminate with respect to such identified obligations or Section only.

ARTICLE IV **COVENANTS OF TOWN AND DEVELOPER**

4.1 **Covenants of Town.** Town covenants and agrees as follows:

a. The Town shall give written notice to Developer whenever Town becomes aware of any matter relating to the Property that would be material to Developer in the performance of its services hereunder, including, but not limited to, covenants, conditions, and restrictions as they impact Developer's services and/or obligations under this Agreement.

b. The Town shall appoint Victoria Simonsen, Town Administrator, or her successor or designee, as the designated representative for Town, and whose authority to act on behalf of Town Developer shall be entitled to rely upon in connection with all matters related to this Agreement, unless a matter requires approval from the Board of Trustees. Such representative shall have the authority to provide Town's consent and/or approval and to make binding commitments relative to the Project and the Town's commitments hereunder, on behalf of Town if so authorized the Code provided, however, such representative may be changed by Town from time to time upon written notice to Developer.

c. The Town shall cooperate with Developer in respect to all matters contemplated by or within the scope of this Agreement and furnish all documents and information necessary or desired by Developer in furtherance of the development of the Project, and all other matters subject to this Agreement.

d. **Release and Covenant Not to Sue.** In consideration of Developer's satisfaction of its obligations under Section 2.5.a., Section 2.5.b., and Section 3.2.e. hereof, the Town hereby releases and forever discharges Developer, its officers, directors, members, parents, affiliates, employees, volunteers, agents, representatives, successors and assigns, from any and all action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liability, claims, demands, damages, loss, cost or expense, of any nature whatsoever, known or unknown, fixed or contingent (hereafter called "Claims"), which Town may have or may hereafter have against Developer, by reason of any matter, cause, or thing whatsoever from the beginning of time to the date hereof for any Claims arising out of, based upon, or relating to the terms of Sections 2.5a., 2.5b., and 3.2e. of this Agreement.

This release applies to and includes all unknown, unforeseen, unanticipated and unsuspected damages, loss and liability, and the consequences thereof, as well as those now disclosed and known to exist. The provision of any state, federal or local law or statute providing in substance that releases shall not extend to claims, demands, injuries or damages which are unknown or unsuspected to exist at the time to the Town is hereby expressly waived.

The Town agrees and covenants never to institute a claim against or to sue the Developer concerning any potential Claim identified above. If the Town commences, joins in, or in any manner seeks relief through any means (including but not limited to filing a legal action) arising out of, based upon, or relating to any of the Claims released hereunder, or in any manner asserts against the Developer any of the Claims released hereunder, then the Town shall be in breach of this Agreement. If these circumstances were to occur, the Town shall pay the Developer, in addition to any other damages caused to the Developer, all attorneys' fees incurred by the Developer in defending or otherwise responding to said suit or Claim(s). The Parties agree that this Section does not apply to any and all Claims (whatever their designation) that cannot be released as a matter of law.

It is further agreed and understood that said consideration is not to be construed as an admission of any liability on the part of Developer.

4.2 **Covenants of Developer.** Developer covenants and agrees as follows:

a. The Developer shall fully cooperate with Town with respect to all matters contemplated by or within the scope of this Agreement.

b. The Developer shall give prompt written notice via email delivery to Town whenever Developer becomes aware of any matter relating to the Property, the Project that it believes would be significant to Town for the purposes related to this Agreement.

c. Developer shall appoint Chris Legh (or his designee) as the designated representative for Developer, and whose authority to act on behalf of Developer, and the Town shall be entitled to rely upon, in connection with all matters related to this Agreement. Such representative shall have the authority to provide Developer's consent and/or approval and to make binding commitments relative to the Project behalf of Developer, to the extent necessary; provided, however, such representative may be changed by Developer from time to time upon written notice to Town.

ARTICLE V INDEMNITY

5.1 **Indemnification of Town.** Developer agrees to hold harmless, indemnify and defend the Town from all expenses, liabilities, losses, judgments, damages and actions, including reasonable attorneys' fees, which Town may incur or suffer in connection with: (a) the gross negligence, willful misconduct, or material actions taken by Developer outside the scope of Developer's authority hereunder; and (b) Developer's breach of this Agreement, beyond all available notice and cure periods hereunder. It is expressly understood and agreed that the provisions of Sections 5.1 shall survive the termination of this Agreement to the extent the cause arose prior to the Termination Date.

ARTICLE VI DEFAULTS AND REMEDIES

6.1 **Developer Default.**

a. The Town may, at its option, terminate this Agreement pursuant to Section 3.2 herein, and/or exercise any other remedies that may be provided by law or in equity, in the event of a Developer Default of this Agreement, upon thirty (30) business days' prior written notice and subject to the cure periods set forth herein. Upon termination of this Agreement, all duties and authorities of Developer shall be immediately terminated.

b. **"Developer Default"** shall mean the occurrence of any of the following events:

(i) the filing by Developer of a voluntary petition in bankruptcy or insolvency or the consent to an involuntary petition in bankruptcy, which is not dismissed within 120 days of filing, or if not dismissed; or

(ii) the entering of an order, judgment or decree with respect to Developer by any court of competent jurisdiction, on the application of a creditor, adjudicating such party a bankrupt or insolvent or approving a petition seeking reorganization or appointing a receiver, trustee, conservator or liquidator of all or a substantial part of such party's assets and such order, judgment or decree remains in effect for more than ninety (90) days; or

(iii) in the event of any material breach of this Agreement by Developer, if Town shall deliver to Developer a written notice specifying in reasonable detail such breach, and if the breach so specified by such notice shall not be removed or cured for a period of thirty (30) days after the date of delivery of such notice or without Developer having commenced to remove or cure such breach (and thereafter proceeding with reasonable diligence to completely remove or cure such breach within ninety (90) days after receipt of notice), then in such event Developer shall be in default under this Agreement and Town shall have the right at Town's election to exercise any of the remedies hereinafter set forth.

c. Notwithstanding anything to the contrary set forth in this Agreement, Developer shall not be in default, nor shall Town have any right to exercise any of its remedies for a Developer Default if such Developer Default is the result of a default or breach by Town.

6.2 **Town Default.**

a. Developer may, at its option, terminate this Agreement pursuant to **Section 3.2** herein, and/or exercise any other remedies that may be provided by law or in equity, in the event of a Town Default of this Agreement, upon thirty (30) business days' prior written notice and subject to the cure periods set forth herein.

b. "**Town Default**" shall mean the occurrence of any of the following events:

(i) failure of Town to remedy any breach of this Agreement within the notice and cure periods set forth herein; or

(ii) in the event of any material breach of this Agreement by Town (other than a breach covered by **Section 6.2b.(i)** above), if Developer shall deliver to Town a written notice specifying in reasonable detail such breach, and if the breach so specified by such notice shall not be removed or cured for a period of thirty (30) days after the date of delivery of such notice or without Town having commenced to remove or cure such breach (and thereafter proceeding with reasonable diligence to completely remove or cure such breach within ninety (90) days after receipt of notice), then in such event Town shall be in default under this Agreement and Developer shall have the right at Developer's election to exercise any of the remedies hereinafter set forth.

c. Notwithstanding anything to the contrary set forth in this Agreement, Town shall not be in default nor shall Developer have any right to exercise any of its remedies for a Town Default if such Town Default is the result of a default or breach by Developer.

6.3 **Additional Remedies.** In addition to the parties' respective rights to terminate this Agreement as provided herein, the parties shall have all other rights and remedies available to them at law or in equity as a result of a Developer Default, or a Town Default, as the case may be.

6.4 **Attorneys' Fees, Liability Survives Termination.** In the event of the occurrence and continuance of a Developer Default or a Town Default hereunder or of the termination of this Agreement pursuant to **Section 3.2**, to the extent permitted under applicable law, the prevailing party (Developer or Town, as the case may be) shall, in addition to its other rights and remedies hereunder, have the right to recover from the party in default all reasonable costs and expenses incurred by the prevailing party in enforcing its rights and remedies hereunder, including reasonable attorneys' fees, court costs, and investigation costs. The termination of this Agreement by either Developer or Town by reason of default by the other party, as aforesaid, shall not relieve either party of any of its obligations theretofore accrued under this Agreement prior to the effective date of such termination, except as otherwise provided herein.

ARTICLE VII MISCELLANEOUS

7.1 **Notice.** Any notice provided in or permitted under this Agreement shall be made in writing and may be given or served by (i) delivering the same in person to the party to be notified, (ii) depositing the same in the U.S. mail, postage prepaid, registered or certified with return receipt requested, and addressed to the party to be notified at the address herein specified, (iii) by nationally recognized overnight courier

or (iv) when sent by email at the address below, provided that such email is sent during the normal business hours of the party to whom it was sent, and written confirmation of the receipt of such email is received or obtained. If notice is deposited in the mail pursuant to clause (ii) of this Section 7.1, it will be deemed received on the second business day after it is so deposited. Notice given in any other manner shall be deemed received only if and when actually received or refused by the party to be notified. For the purpose of notice, the address of the parties shall be, until changed as hereinafter provided for, as follows:

If to Developer: Lyons Properties, LLC 720 938 1715
 PO Box 1972 Lyons
 CO, 80540

With a copy to: Holden J. Bank
 Inside/Out Advisors, LLC
 1384 Northpark Drive
 Lafayette, CO 80026
 303-241-4248
 holden@hblaw.guru

If to Town: Town of Lyons, Colorado 432 5th Avenue
 P.O. Box 49
 Lyons, CO 80540
 303-823-6622
 Email: vsimonsen@townoflyons.com; and
 dvasquez@townoflyons.com

With a copy to: Brandon Dittman, Town Attorney
 Wilson Williams Fellman Dittman
 314 Main St Suite 101
 Louisville, CO 80027
 303-376-8510
 Email: Brandon@wwfdlaw.com

The Parties shall have the right from time to time and at any time to change their respective addresses, and each shall have the right to specify, as its address, any other address by at least fifteen (15) days prior written notice to the other party. Each Party shall have the right from time to time to specify additional parties to whom notice hereunder must be given by delivering to the other party fifteen (15) days prior written notice thereof, setting forth the address of such additional parties.

7.2 **Captions** The titles or captions contained in this Agreement are for convenience only and shall neither restrict nor amplify the provisions hereof.

7.3 **Entire Agreement/Amendment.** This Agreement, together with the Plan Approval, and PUD approval constitute the entire agreement between the Parties relating to the subject matter hereof and supersedes any prior agreement between the Parties whether written or oral including, without limitation,

any actual or alleged agreement concerning water or sewer taps or water share dedications for the Property and 503 and 517 West Main Street. This Agreement shall not be amended or changed except by written instrument signed by both parties hereto.

7.4 **Severable Provisions.** If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, the provision in question to any other extent, and the application thereof to any other person or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

7.5 **Governing Law and Venue.** Although this Agreement shall be performable in the State of Colorado, it shall be governed by and construed in accordance with the laws of the State of Colorado, without regard to the principles of conflicts of law. Venue for any action arising under this Agreement shall be in the appropriate court for Boulder County, Colorado.

7.6 **Attorneys. Fees.** In addition to the provisions of Section 6.4. in the event of any controversy, claim or dispute between the parties affecting or relating to the subject matter or performance of this Agreement, to the extent permitted by law the prevailing party shall be entitled to recover from the non-prevailing party of all its reasonable expenses, including reasonable attorneys' expert witnesses', and accountants' fees and costs.

7.7 **No Waiver of Governmental Immunity.** Nothing in this Agreement shall constitute a waiver or limits the rights of the Town, its employees, contractors, agents, and elected officials under the Colorado Governmental Immunity Act, C.R.S. § 24-20-101, *et. seq.*

7.8 **Article X, Section 20 / TABOR.** The Parties understand and acknowledge that the Town is subject to Article X, § 20 of the Colorado Constitution ("**TABOR**"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the Town are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Town's current fiscal period ending upon the next succeeding December 31. Financial obligations of the Town payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the Town, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.

7.9 **Waiver of Rights.** With the exception of payments made by Developer in accordance with the provisions of Sections 2.5 and 3.2e. hereof, acceptance by either Developer or Town of any payment or performance made by the other party hereunder shall constitute neither a waiver of the right of such recipient to contest whether or not the full amount due shall have been paid, nor a waiver of any other rights hereunder. Failure by either Developer or Town to complain of any action, non-action, or default of the other party shall not constitute a waiver of any rights hereunder, nor shall the waiver of any right occasioned by a default in any one or more instances constitute a waiver of any right occasioned by either a subsequent default of the same obligation or by any other default.

7.10 **Binding Agreement.** This Agreement shall, except as otherwise herein expressly provided, be binding upon and inure to the benefit of Town and Developer and their respective successors and permitted assigns. Developer shall not, without Town's prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed, assign any of its rights or obligations under this Agreement except for an assignment: (a) to an Affiliate of Developer which will take title to the Property and undertake the development of the Project and shall be bound by the terms of this Agreement; or (ii) in connection with the sale of the Property, all of which assignments may be undertaken by Developer without the consent of Town, but following written notice to Town of such assignment. For the purposes of this section, an "**Affiliate**" or "**Affiliates**" shall mean, with respect to any person or entity, any other person or entity which, directly or indirectly, is in control of, is controlled by, or is under common control with, such person or entity. For purposes of this definition, "**control**" and "**controlled**" with respect to a person or entity means the power, directly or indirectly, either to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities or equity interests, by contract or otherwise.

7.11 **Time is of the Essence.** Time is of the essence of each and every provision herein contained.

7.12 **No Joint Venture: Employment.** Nothing contained in this Agreement shall constitute or be construed to create any partnership, joint venture, or similar relationship between Town and Developer. Nothing contained in this Agreement shall constitute or be construed to create any employment relationship between Town and Developer. Developer agrees to handle the payroll for its employees and make all withholdings and payments with respect to such employees as required by law.

7.13 **Consequential Damages.** Neither Town nor Developer shall bear any liability to the other for loss of production, loss of profits, loss of business or any other indirect or consequential damages, but neither party waives any right to make any claim against the other party for any actual or direct damages alleged to have been caused by a breach of any of the provisions of this Agreement.

7.14 **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement, intended or otherwise.

7.15 **Event Date.** If any date upon which performance is to be rendered by either party falls upon a weekend or legal holiday, such performance shall be deemed to be timely if it is rendered or performed on the next following business day.

7.16 **Recordation.** Town and Developer agree to record this Agreement in the counties in which the Property is located.

7.17 **Counterparts: PDF Signatures.** This Agreement may be executed in any number of original counterparts which together shall constitute the agreement of the parties. Signatures transmitted by PDF shall be deemed to be original signatures and binding on the parties hereto.

EXECUTED and effective as of the Effective Date.

DEVELOPER:

**LYONS PROPERTIES, LLC, a Colorado
limited liability company**

By: _____

Name: _____

Title: _____

THE STATE OF COLORADO

:

COUNTY OF BOULDER

Before me, the undersigned, on this day personally appeared, proved to me through the presentation of a valid driver's license to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed. _____ furthermore attested that he is signing this Agreement in his capacity as _____.
Seal:

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this ____ day of August 2024.

My Commission Expires:

Notary Public in and for the State of Colorado

TOWN:

**TOWN OF LYONS, COLORADO, a
municipal corporation**

By: _____

Name: _____

Title: _____

THE STATE OF COLORADO

:

COUNTY OF BOULDER

Before me, the undersigned, on this day personally appeared, proved to me through the presentation of a valid driver's license to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed. _____ Furthermore, attested that s/he is signing this Agreement in their capacity as _____.

Seal:

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of September 2024.

My Commission Expires:

Notary Public in and for the State of Colorado

EXHIBIT A
Legal Description of Property

EXHIBIT B
Evacuation Plan

EXHIBIT C
Diversion Area

EXHIBIT D
Spot Light Area