

**TOWN OF LYONS, COLORADO LYONS
VALLEY PARK FILING 8**

SECOND AMENDMENT TO SUBDIVISION IMPROVEMENT AGREEMENT

This Second Amendment to Subdivision Improvement Agreement Filing No. 8 ("Second Amendment") is entered into and made effective this ____ day of _____, 2020, by and between the **TOWN OF LYONS**, a municipal corporation of the State of Colorado ("Town") and **LYONS VALLEY TOWNHOMES, LP**, a Colorado general partnership ("Developer"). The Town and Developer are collectively referred to as "Parties," or occasionally in the singular as "Party." This Agreement includes the attached **Exhibits A-D**.

RECITALS:

WHEREAS, Developer owns certain real property in fee simple located within the Town as more particularly described in **Exhibit A** ("Property"); and

WHEREAS, the Town's Board of Trustees previously approved that certain subdivision improvement agreement dated December 15, 2008, attached hereto as **Exhibit C** and incorporated herein ("Filing No. 8 SIA") at the time of approval of the final plat for Filing No. 8 of Lyons Valley Park, and that certain Amendment to the Filing No. 8 SIA dated December 7, 2015, attached hereto as **Exhibit D** and incorporated herein ("First Amendment"). Collectively, the Filing No. 8 SIA and the First Amendment shall be known as the "Agreement."

WHEREAS, the Developer desires to develop the Property and has submitted construction plans ("Construction Plans") and a site development plan ("Development Plan") to the Town for administrative review and approval by the Town; and

WHEREAS, the Development Plan may require the dedication, construction, installation, and/or improvement of sanitary sewer facilities, water line facilities, drainage facilities, streets, and/or other public facilities and improvements as identified on the Development Plan and detailed herein on the Public Improvements Engineer's Cost Estimates attached hereto as **Exhibit B**, ("Public Improvements"); and

WHEREAS, the Parties agree that except for those Public Improvements identified in the Agreement as amended by this Second Amendment, any and all Public Improvements obligations of the Developer that may apply to the Property pursuant to any previous subdivision improvement agreement, including but not limited to Lyons Valley Park Filing No. 1 as amended ("Original SIA"), Lyons Park Filing No. 2 as amended, Lyons Valley Park Filing No. 3 as amended, Lyons Valley Park No. 4 as amended, Lyons Valley Park No. 5 as amended, Lyons Valley Park No. 6 as amended, and Lyons Valley Park No. 7 as amended have been fully satisfied; and

WHEREAS, the Parties intend that the SIA addresses all remaining Public Improvements obligations of the Developer as they apply to the Property, subject to all the requirements, terms and conditions of the ordinances, rules, regulations and standards of the Town including but not limited to the Town's engineering specifications, the Municipal Code, commonly accepted engineering practices, the Town's Manual for the Design and Construction of Public Improvements, and all other governing regulations (collectively, the "Standards") in effect at the time the Construction Plans are approved by the Town; and

WHEREAS, the Town and Developer mutually acknowledge and agree that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by the Town in consideration of its approval and execution of the Development Plan, and that such matters are necessary to protect, promote, and enhance the public welfare; and

NOW, THEREFORE, in consideration of these premises, the mutual obligations herein contained, and the Town's approval and execution of the Development Plan, the Filing No. 8 SIA and the First Amendment are hereby amended as follows:

1. Incorporation of Recitals. The Recitals above are fully incorporated herein and made a part hereof.
2. Conflict. In the event of any conflict between this Second Amendment and the Agreement, the terms of this Second Amendment shall control. Except as specifically modified herein, the terms of the Agreement shall remain unchanged and in full force and effect.

3. Water Dedications. Section 3 of the First Amendment is hereby deleted in its entirety and replaced with the following:

The parties agree that the following water rights dedications shall satisfy the water requirements for the Development:

- (a) 49 Lake McIntosh Credits, or
- (b) 35 Central Big Thompson (CBT) Shares.

It is acknowledged that one CBT share is equal to 1.4 Lake McIntosh Shares. All water right dedication shall be made prior to a building permit issuance.

4. Construction of Public Improvements. Sections 9.0-9.5 of the Filing No. 8 SIA are hereby deleted in their entirety and replaced with the following:

The Developer shall design, furnish, construct and install all Public Improvements as illustrated on the approved Development Plan at the Developer's cost and expense pursuant to **Exhibit B**. 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.

The Public Improvements may be constructed in specified phases subject to the Town's prior approval of a phasing plan submitted by Developer ("Phasing Plan"). The Town shall not approve a Phasing Plan unless it is assured that each phase of development shall be an integrated, self-contained project consisting of all Improvements necessary to serve the phased portion of the property. Phasing shall not be used to provide for construction of Improvements on a piecemeal basis. The development anticipates the general phasing of construction to be as follows:

1. Marking of Layout
2. Excavation, grading, road work/base and utilities
3. Foundation Work
4. Construction of Walls or vertical construction
5. Lintel
6. Roofing
7. Doors and Windows
8. Mechanical, Electrical and Plumbing Work
9. Cover-up / Sheetrock
10. Painting
11. Flooring

12. Mechanical Electrical and plumbing finish work
 13. Landscaping
 14. Concrete flatwork and final asphalt
5. Dedication of Parks and Open Space. The Parties agree that Section 11.0 of the Filing No. 8 SIA has been fully satisfied and no further dedication of parks and/or opens space is required.
 6. Landscaping. At Developer's sole cost, Developer shall design, furnish, construct, install and maintain all landscaping illustrated on the approved Development Plan pursuant to **Exhibit B**.
 7. Construction Standards. Section 19.0 of the Filing No. 8 SIA is hereby deleted in its entirety and replaced with the following:

The Public Improvements shall be constructed and installed in accordance with the Construction Plans and in accordance with applicable provisions of the Standards and all other applicable ordinances, resolutions and regulations, including but not limited to all building, fire, plumbing, and safety codes, in effect at the time of construction. If the Town reasonably determines that construction or installation is not in compliance with the approved Construction Plans or applicable ordinances, rules and regulations, it shall notify Developer of the required corrections, which Developer shall make within ten (10) business days of receipt of such notification or, if the nature of the corrections is such that the same cannot be reasonably completed within ten (10) business days, then Developer shall undertake such corrections within ten (10) business days and shall diligently prosecute the same to completion.
 8. Security for Public Improvements. Prior to issuing a building permit, the development shall provide the Town with surety in the form a bond or an Irrevocable Letter of Credit. The Amount of the Security shall be the amount of the Cost Estimate plus 15%."
 9. Town Right to Access Private Improvements for Maintenance The development anticipates private roadways and drives and private storm drainage facilities as shown on the Development Plan ("Private Improvements"). It shall be the responsibility of the Owner or its designee to adequately maintain the Private Improvements for the benefit of residents. In the event that the Town believes that the Private Improvements are not being adequately maintained, the Town reserves the right, but not the obligation, to enter the private property on which the Private Improvements are located for the express purpose of providing required maintenance. Prior to the Town exercising this right, it shall first notify the Owner detailing the maintenance issue and giving the Owner ten (10) working days to rectify the issue. In the event that the Town exercises the right to provide maintenance, it shall be entitled to recover its actual costs upon presenting the Owner with an invoice itemizing the charges.
 10. Plan Approval. Notwithstanding anything herein to the contrary, approval of the drainage, storm water and erosion control plans by the Town is a prerequisite to obtaining a building permit from the Town.
 11. Wildland Urban Mitigation. The Parties hereto agree to work cooperatively with the Fire Department to formulate and implement best practice standards to identify and create defensible spaces and open spaces within the development to mitigate against wildfires.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals the day and year first above written.

TOWN OF LYONS, COLORADO

By: _____, Mayor

ATTEST:

By: _____
_____, Town Clerk

DRAFT

OWNER/DEVELOPER:

LYONS VALLEY TOWNHOMES, LP, a Colorado
general partnership

By: _____

Its: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020,
by _____ as _____ of Downtown Lyons Development, LLC, a
Colorado limited liability company. Witness my hand and official seal:

My Commission expires: _____.

Signature

Name of Notary

Address of Notary

[S E A L]

EXHIBIT A
PROPERTY LEGAL DESCRIPTION

Lots 17 through 42, inclusive, Block 2, and Tract A, Lyons Valley Park
Filing No. 8, County of Boulder, State of Colorado.

DRAFT

EXHIBIT B
PUBLIC IMPROVEMENT
ENGINEER'S COST ESTIMATE

DRAFT

EXHIBIT C
SUBDIVISION IMPROVEMENT AGREEMENT
FINAL PLAT FOR LYONS VALLEY PARK FILING NO. 8 SUBDIVISION



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TOWN OF LYONS
SUBDIVISION IMPROVEMENT AGREEMENT

FINAL PLAT FOR LYONS VALLEY PARK FILING NO. 8 SUBDIVISION

THIS SUBDIVISION IMPROVEMENT AGREEMENT ("Agreement") is made and entered into between **LYONS VALLEY PARK, INC.**, whose address is c/o Keith Bell, President, 5757 Central Avenue, Suite 400, Boulder, Colorado 80301, 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 Lyons Valley Park Filing No. 8.

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 Improvement Agreement for Lyons Valley Park Filing No. 1 and Subdivision Agreement Relating to Subdivider's and Town's obligations in the Lyons Valley Park Subdivision" (hereinafter the "Original SIA"), recorded at Reception No. 00804403 on November 12, 1986, in the records of the Clerk and Recorder for Boulder County, Colorado, as such Original SIA has been amended. This Agreement is intended to provide supplemental provisions not addressed in the Original SIA which are specifically related to the subdivision and development of Lyons Valley Park Filing No. 8.

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:

All property depicted within that plat titled "Lyons Valley Park Filing No. 8 Final Plat," (the Final Plat describing Block 1, Lots 1 through and including Lot 36, Block 2, Lots 1 through and including Lot 47, and Block 3, Lots 1 through and including Lot 7 and Tract A, with associated outlots and public rights-of-way, easements, and other real property) 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.

Hereinafter referred to as "LVP Filing No. 8."

WHEREAS, the Owner/Developer is planning development of LVP Filing No. 8 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, public thoroughfares and streets, and other public facilities and improvements to serve the proposed development of LVP Filing No. 8.



WHEREAS, the Owner/Developer has submitted to the Town a Final Plat entitled "Lyons Valley Park Filing No. 8" (hereinafter "Final Plat" or "LVP Filing No. 8") 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 filed 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, the Final Plat has been reviewed in accordance with Title 10 of the Lyons Municipal Code and has been found by the Board of Trustees to generally or substantially conform to the applicable requirements.

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. 8 and that the Town shall only be obligated for payment of those costs and expenses that are specifically set forth as obligations of the town in this Agreement and in the existing Original SIA referenced above and recorded on November 12, 1986, as such Original SIA has been amended by the Parties.

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 THE 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 of Trustees 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 a determination by the Town Engineer 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. 8 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



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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. 8 and shall void this Agreement.

3.0 DEDICATION OF WATER RIGHTS. The parties agree that the following water rights dedications shall apply, which shall be in complete satisfaction and discharge of this Agreement and the Original SIA: The water required to be dedicated pursuant to this Section 3.0 shall be represented as units of Colorado-Big Thompson Project, which units shall be referred to as "CBT water." The required CBT Water dedications are as follows:

(a) 3 units of CBT water, representing water rights dedications required in connection with Filings 1-7 that have not yet been dedicated, to be delivered at or prior to the recording of the final plat.

(b) 1 Unit of CBT water for each single family dwelling unit in Filing 8, for a total of 90 CBT Units, to be dedicated in accordance with the schedule set forth in Section 3.2. The number of CBT Units to be dedicated shall be adjusted to correspond directly with any change in the number of single family dwelling units in Filing 8. The Owner/Developer acknowledges and agrees that this formula shall apply for any and all future filings as well.

(c) .7 Units of CBT water for each multi family dwelling unit that may be subsequently approved in connection with the Lyons Valley Park subdivision, it being anticipated that such development may take place on Tract A of LVP filing No. 8.

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

3.2 The water rights dedication required by Section 3.0(b) and (c) shall be made by the Owner/Developer as follows:

(a) seven (7) CBT Units at or prior to recordation of the Final Plat, which shall be deemed to satisfy the water dedication requirements with respect to the first seven single family dwelling units of Phase One and the building permits therefor;

(b) twelve (12) additional CBT Units, representing one (1) CBT Unit for each of the additional twelve single family dwelling units in Phase One of Filing 8, to be dedicated upon and as a condition to the building permit application for the eighth building permit for single family dwelling unit(s) in Phase One of Filing 8..

(c) one (1) CBT Unit for each single family dwelling unit in each subsequent phase of Filing 8 dedicated as follows. CBT Units will be dedicated in fifteen unit blocks within each phase which shall reflect and relate to the permits for construction of fifteen single family dwelling units in that phase. The first fifteen



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CBT Units for each phase are required to be dedicated upon and as a condition to the building permit application for the first building permit for a single family dwelling unit in such phase. The next fifteen CBT Units will be required to be dedicated in the same fashion upon and as a condition to the building permit application for the first building permit for a single family dwelling unit in the next fifteen unit block in that phase. Dedications will be required on the same basis throughout the phase. To the extent the last group of single family units in a phase, after all prior dedications, is less than fifteen units, CBT units equal to the total number of remaining single family units in that phase are required to be dedicated upon and as a condition to the building permit application for the first building permit for a single family dwelling unit in connection with such remaining units. The Phases for Filing 8 are defined in Section 9.5.

(d) .7 CBT units for each multi-family dwelling unit upon at or prior to the building permit application for each building containing multi-family units.

(e) TRACT A. While the Preliminary Plat indicates that Tract A may be developed for up to 43 multifamily units, the parties understand and acknowledge that all details of development on Tract A, including the type, nature and number of dwelling units, buildings or lots to be located on Tract A, are not defined, remain to be determined in subsequent proceedings, and may be substantially different than as indicated on the preliminary plat or other prior approvals. Any single family unit approved for Tract A shall require a dedication of 1 CBT Unit. To the extent Tract A is approved for single family development, all required CBT Units for single family units in Tract A shall be dedicated upon and as a condition to the building permit application for the first building permit for a single family dwelling unit in Tract A. Dedications of CBT Units for multi-family dwelling units shall be required in accordance with 3.2(d).

(f) The parties acknowledge that the dedication requirements set forth above represent a variance from Section 10-16-2 of the Municipal Code.

Dedications shall be deemed to have been made upon execution and submittal by the Owner/Developer of all transfer documents required by Northern Colorado Water Conservancy District to the Town. Owner/Developer shall execute all documents and take all steps necessary to timely complete the transfers.

3.3 The Parties understand and acknowledge that the dedication of water pursuant to this section and the Original SIA is based on the development of each lot for a single residential unit and that such a residential unit will require a $\frac{3}{4}$ inch water tap (maximum annual metered use of 270,000 gallons). Use of any lot within LVP Filing No. 8 for purposes other than a single residential dwelling unit and a $\frac{3}{4}$ inch water tap may require additional dedication of water in accordance with Title 10, Chapter 16 of the Lyons Municipal Code, as it may be amended. 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. 8 is limited to a $\frac{3}{4}$ inch tap and a maximum annual metered use of 270,000 gallons.



4.0 UNDERGROUNDING OF ALL UTILITIES. The Owner/Developer shall underground all municipal public utilities and shall grant such private easements as are necessary to allow all other utilities, including but not limited to gas, telephone and telecommunications (including cable television) (collectively, "utilities") within the boundaries of LVP Filing No. 8 or which are required to be relocated pursuant to this Agreement or as a condition of approval of LVP Filing No. 8 to be undergrounded. The Town agrees that all franchises, licenses, or permits that it grants to such utility providers to utilize dedicated public utility easements within LVP Filing No. 8 shall require the service provider to locate its facilities underground. All utilities providing public services from the Town of Lyons and its municipal utility systems to Filing No. 8 shall be located within dedicated and platted public utility easements or public street rights-of-way which shall be approved and subject to acceptance by the Town.

4.1 Pursuant to the Second Amendment to Subdivision Agreement dated March 18, 1996, the Town shall, at its own expense, furnish all electrical service to Filing No. 8 according to the Master Electrical Plan and Construction Drawings and Specifications approved by the parties. Timing of the installation shall be coordinated with the Owner/Developer. The Town shall immediately be responsible for maintenance of the lines that it installs. There shall be no rebate to the Owner/Developer.

5.0 UNDERDRAINS TO BE PRIVATE IMPROVEMENTS. Any underdrains within Filing No. 8 (drains installed to manage subsurface water on and within private lots and properties) shall be privately owned, operated, and maintained by either the property owner or, at the Owner/Developer's election and subject to properly recorded documentation, by a homeowners' association serving Filing No. 8. The Town of Lyons shall have no obligation or responsibility to install, operate, or maintain any underdrain within Filing No. 8 regardless of the location of such underdrain. Underdrains shall not conflict with the operation, maintenance or use of public water, sewer or electrical services.

The Owner/Developer may design and construct private underdrains serving Filing No. 8 within the public rights-of-way and utility or drainage easements where such design and construction is approved by the Town and performed in accordance with the applicable provisions of the Lyons Municipal Code (including the Town's *Manual of Design Criteria and Standard Specifications for the Construction of Public Improvements*). The Town's approval for use of the public rights-of-way and easements for private underdrains shall not be unreasonably withheld.

6.0 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 each developed phase of LVP Filing No. 8.

7.0 STREET MAINTENANCE PENDING ACCEPTANCE OF DEDICATION. The Parties understand and agree that until such time that the Town accepts by



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resolution of the Board of Trustees the dedication of the constructed and properly completed public streets within LVP Filing No. 8, the Owner/Developer shall be obligated and responsible for the ongoing maintenance of streets within LVP Filing No. 8. 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. 8 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. Acceptance by the Town may be requested at the end of the one-year warranty period and acceptance shall not be unreasonably denied.

- 8.0 DRAINAGE FACILITIES. The Owner/Developer shall construct all drainage facilities in accordance with the Construction Plans approved by the Town Engineer. All improvements shall conform to the *Manual of Design Criteria and Standard Specifications for the Construction of Public Improvements* for the Town of Lyons.
- 9.0 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 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. 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. 8:
- 9.1 All public streets, curb, gutter, and sidewalks within LVP Filing No. 8 shall be constructed within the time requirements set forth in the Original SIA. Notwithstanding a lesser standard depth for curb, gutter and sidewalk concrete required by any Town-adopted building standard, all curb, gutter and sidewalks adjacent to and bordering cul-de-sacs shall be constructed with a minimum concrete depth of six (6) inches. Such construction is necessary in order to permit a reduced cul-de-sac radius of forty-five (45) feet where a 50-foot radius is otherwise required by the applicable Town standard. Provided that curb, gutter and sidewalks are constructed with a concrete depth of six (6) inches, the corresponding cul-de-sac radius may be not less than forty-five (45) feet.
- 9.2 Drainage improvements.
- 9.3 Water, sanitary sewer, gas, and other public utilities, except electrical and cable television utilities, required to be installed by the Owner/Developer necessary to serve all lots within LVP Filing No. 8.
- 9.4 Removal of knapweed plants and use of an herbicide to sterilize the soil against knapweed infestation.
- 9.5 The Public Improvements shall be constructed generally in three phases. It is anticipated that Phase I will consist of Lots 23 through 36, Block 1; and Lots 43-47, Block 2; Phase II will consist of Lots 1 through 22, Block 1, Lots 1 through 14, Block 2, and Lots 1 through 7, Block 3; Phase III will consist of Lots 15 through 42, Block 2, and Tract A, Block 3. The foregoing allocation of Phases



may be reasonably modified by Owner/Developer to accommodate changes to the development plan, subject to the prior written approval of the Town. The foregoing phasing shall apply to the construction and dedication of Public Improvements under paragraphs 9.0 and 10.0, and the provision of Public Improvement Security under paragraph 11. In connection with the recording of the Plat, Owner/Developer shall commit to construct and provide Public Improvements Security for all Public Improvements for Phase I. No construction permits shall issue for Phase II until Owner/Developer has committed to construct and provide Public Improvements Security for Phase II. No construction permits shall issue for Phase III until Owner/Developer has committed to construct and provide Public Improvements Security for Phase III. Release of Public Improvements Security shall be handled separately for each Phase as Public Improvements for the respective Phases are complete. Owner/Developer may apply for partial releases of Public Improvements Security for a particular Phase as separate systems of such Public Improvements are completed, which may be granted in the discretion of the Town. Public Improvements shall be dedicated as particular Phases are completed. Certificates of Occupancy may be granted within a Phase even if all Public Improvements for that Phase have not been completed, as long as the Public Improvements necessary to reasonably serve that Phase have been completed.

The parties agree and acknowledge that no public improvements required by this Agreement shall be constructed or installed until the grade of the public right-of-way has been brought up to the sub-grade level, unless otherwise approved in writing by the Town Engineer. In addition, the Owner/Developer agrees to work with the Town Engineer throughout the construction drawing process and through subsequent Phases to identify the public improvements, such as water main installations, sewer main installations, grading for drainage, electrical distribution that may be required to supplement each Phase of construction.

- 10.0 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 exists no lien or encumbrance upon or against the Public Improvement(s) 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(s). 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(s) 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.
- 11.0 DEDICATION OF PARKS AND OPEN SPACE. The Owner/Developer agrees, not later than March 31, 2009, to comply with all remaining obligations regarding the dedication of land for parks and open space under Section III of the Original



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SIA, including but not limited to dedicating by General Warranty Deed Outlot A of Filing 7 and the parcels known as Tracts and to transfer any such lands in a physical condition, graded and with topsoil, so that the "Park Plan" required by Section III.2 of the Original SIA can be easily accomplished.

- 12.0 PUBLIC IMPROVEMENT SECURITY. 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, as amended by this Agreement. No building permit shall be issued for any lot within LVP Filing No. 8 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, as amended by this Agreement, including the phasing plan set forth above. A letter of credit issued by a Colorado banking institution shall be deemed to be an acceptable guaranty. The parties agree that the final calculation of the amount of the public improvements guaranty will be agreed upon following submittal of all required engineering documents and cost estimates. The parties shall proceed with due diligence to finalize and establish the amount of the Public Improvement Security and shall endeavor to establish this amount not later than seventy five days from the recording of the final plat.
- 13.0 PARK FEE. In accordance with Lyons Municipal Code § 8-6-1 (also known as Ordinance No. 586 of 1995), as amended, 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. 8 shall be paid as a pre-condition of the issuance of a building permit for the primary residential structure on such lot. Accounting and expenditure of such park fees shall be made or conducted in accordance with Section III(3) of the Original SIA.
- 14.0 CONSTRUCTION ACCESS. Construction access will be from existing Town roads. As such, the Owner/Developer agrees to protect such facilities and improvements from damage by the Owner/Developer and its employees, agents, representatives, contractors and subcontractors. Any damage to existing Town improvements or private improvements caused by or on behalf of the Owner/Developer shall be repaired by the Owner/Developer in accordance with the Town's Construction Standards and as approved by the Town Engineer. The Owner/Developer further agrees to use reasonable measures to control dust resulting from construction vehicles and to mitigate the impact of such dust on nearby residential properties. Any requirement for secondary construction access imposed by the Original SIA is hereby waived by the Parties for the construction of LVP Filing No. 8 only. This waiver does not waive any breach of any term or provision of the Original SIA or of this Agreement and shall not operate or be construed as a waiver of any subsequent breach by either party.
- 15.0 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, that where any direct conflict exists between this Agreement and such conditions of approval, this Agreement in the form executed by the Parties shall control.



- 16.0 PAYMENT OF FEES AND CHARGES. The Owner/Developer shall comply with all applicable ordinances, rules, and regulations of the Town. The Owner/Developer shall pay any applicable fees and other charges in a timely manner as required by the applicable ordinances, rules, and regulations of the Town. In addition to any other remedy available to the Town, the Town may withhold and deny issuance of any building permit or other permit or approval until all due and outstanding fees are paid by the Owner/Developer.
- 17.0 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.
- 18.0 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 are licensed and/or registered with 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 licenses from the Town of Lyons shall not be arbitrarily refused registration and/or licensing.
- 19.0 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, are made applicable to LVP Filing No. 8. The Parties agree to delete the following paragraphs of the Manual from application to LVP Filing No. 8: Section 3.1.3(1.8) pertaining to 100-foot tangents between reverse curves, Section 5.2.3(1) pertaining to "vitrified clay pipe" and Section 5.2.3(2) pertaining to "manhole brick." In addition the following modifications are permitted: Section 3.1.3(1)(e) pertaining to maximum 3% intersection grade is modified to allow for a 4% grade for Flood Court stopped condition at McConnell Drive and to allow a 3.4% grade for Carter Drive stopped condition at McConnell Drive and to allow for a through street at intersection to allow continuation of centerline grade on Carter Drive at Lively Court. Otherwise (i), no intersection grade may exceed three percent (3%) unless the Owner/Developer can demonstrate to the satisfaction of the Town Engineer that the intersection will function safely with the increased grade, considering the proposed configurations and traffic volumes of the intersection and (ii) in no event shall any intersection grade exceed four percent (4%).
- 20.0 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 by 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.

- 21.0 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 by or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.
- 22.0 BINDING EFFECT. The Parties hereto agree that this 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.
- 23.0 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 enforcements, shall be strictly reserved to the Town and the Owner/Developer, and nothing contained in this Agreement shall give or allow any such claim or right of action on such Agreement by any other third person. It is the express intention of the Town and the Owner/Developer that any person other than the Town or the Owner/Developer receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
- 24.0 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 requested by the Owner/Developer, including but not limited to building permits for any lot within LVP Filing No. 8, 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 for construction has been issued for such structure and all conditions for issuance of a certificate of occupancy have been met.



- 25.0 ATTORNEYS' FEES. If either party breaches this Agreement, the breaching party shall pay the non-breaching party its reasonable costs and attorneys' fees incurred in the enforcement of the terms, conditions and obligations of this Agreement.
- 26.0 ASSIGNMENT AND RELEASE. Except for the assignment to Lyons Valley, LLC of which the Town is aware, the Owner/Developer shall not assign all or any part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement 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, in 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. Lyons Valley, LLC may, to the extent of any interest in Filing 8 it has or may acquire, perform any obligation hereunder, including the provision of Public Improvements Security, and receive the benefits hereunder. Such rights and obligations shall apply only to the extent Lyons Valley LLC has or acquires property comprising the Subdivision
- 27.0 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."
- 28.0 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.
- 29.0 SEVERABILITY. Invalidity 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.
- 30.0 INTEGRATION AND AMENDMENT. Except as otherwise indicated in this Agreement, this Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings pertaining to LVP Filing No. 8. This Agreement may be amended only by an instrument in writing signed by the Parties. The Parties understand that there exist other agreements governing development of other filings of Lyons Valley Park and associated public improvements that are not invalidated or affected by this Agreement unless specifically stated in this Agreement.
- 31.0 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 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.

- 32.0 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.

DATED THIS 15th DAY OF December, 2008.

TOWN OF LYONS, a Colorado municipal corporation

By: Brian Donnell
Brian Donnell, Mayor Pro Tem

ATTEST:

By: Debra K. Anthony, cmc
Debra K. Anthony, Town Clerk

APPROVED AS TO FORM:

By: Timothy P. Cox
Timothy P. Cox, Town Attorney



Boulder County Clerk, CO AG

R 56.00

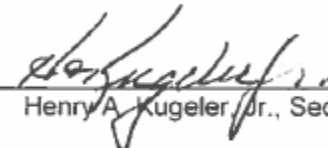
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OWNER/DEVELOPER
LYONS VALLEY PARK, INC.

By: 
Keith Bell, President

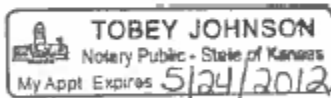
ATTEST:

By: 
Henry A. Kugeler, Jr., Secretary

STATE OF ~~COLORADO~~ Kansas)
COUNTY OF Butler) ss.

Acknowledged before me this 17 day of December, 2008,
by Keith Bell, President of Lyons Valley Park, Inc.

My Commission Expires: 5/24/2012



[SEAL]


Notary

**EXHIBIT D
AMENDMENT TO FILING NO. 8 SIA**



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**TOWN OF LYONS, COLORADO
RESOLUTION NO. 2015- 133**

**A RESOLUTION APPROVING AN AMENDMENT TO THE SUBDIVISION IMPROVEMENT
AGREEMENT FOR LYONS VALLEY PARK, FILING NO. 8 REGARDING FILING 8 WATER
DEDICATION REQUIREMENTS**

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 where public improvements are necessitated by such subdivision; and

WHEREAS, the Town's Board of Trustees previously approved a subdivision improvement agreement at the time of approval of the final plat for Filing No. 8 of Lyons Valley Park; and

WHEREAS, Filing No. 8 has not yet been built out, and the developer has applied to re-plat the area to better fit the proposed lots into the existing topography; and


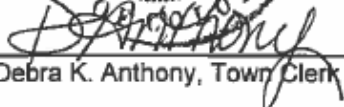
WHEREAS, the developer and the Town have negotiated an amendment to the subdivision improvement agreement for Filing No. 8 modifying the manner in which the developer must dedicate shares of water; and

WHEREAS, the Town's Board of Trustees therefore desires to approve the Amendment to the Subdivision Improvement Agreement for Lyons Valley Park, Filing No. 8 Regarding Filing No. 8 Water Dedication Requirements, approval of the Amendment being expressly conditioned upon approval of the new final plat for Filing No. 8.


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

The Amendment to Subdivision Improvement Agreement for the Lyons Valley Park, Filing No. 8 Regarding Water Dedication Requirements, is hereby approved in substantially the form attached hereto. The Amendment shall be deemed effective only upon approval by the Town's Board of Trustees of the new Final Plat for Filing No. 8. The Mayor or Mayor Pro Tem are authorized to execute the Amendment to the Subdivision Improvement Agreement and the Town Clerk is authorized to attest the signatures on behalf of the Town of Lyons.

ADOPTED THIS 7TH DAY OF DECEMBER 2015.


ATTEST:

Debra K. Anthony, Town Clerk

TOWN OF LYONS, COLORADO


John E. O'Brien, Mayor

TOWN OF LYONS
LYONS VALLEY PARK FILING 8
AMENDMENT TO SUBDIVISION IMPROVEMENT AGREEMENT
REGARDING FILING 8 WATER DEDICATION REQUIREMENTS

This Amendment To Subdivision Improvement Agreement Regarding Filing 8 Water Dedication Requirements (the "Amendment") is made this 17th day of December, 2015 by and between (i) the Town of Lyons, Colorado, a Colorado Municipal Corporation whose address is 432 Fifth Avenue, Lyons, CO 80540 (the "Town"); (ii) Lyons Valley Park, Inc., whose address is 557 Central Ave #400 Boulder, CO 80301 (LVPI) and (iii) Lyons Valley, LLC, whose address is 5723 Arapahoe Avenue, Boulder, CO 80303 (Lyons Valley).

The Parties recite the following facts as the basis of this Amendment:

1. This Amendment relates to Filing 8 of Lyons Valley Park Subdivision ("Filing 8").
2. The Town and LVPI entered into a Subdivision Improvement Agreement-Final Plat for Lyons Valley Park Filing No. 8 Subdivision, recorded January 12, 2009 at Reception No. 22972955 (the "Filing 8 SIA").
3. Lyons Valley has acquired and developed substantial portions of Filing 8 and is currently the principal entity involved in further development of Filing 8. However, LVPI continues to own certain portions of Filing 8.
4. The purpose of the Amendment is to amend and clarify water dedication requirements with respect to the future development of Filing 8.

TERMS

1. Applicability. The Amendment applies to all further development of Filing 8.
2. Water Dedications. Water dedication requirements remain at 1 CBT unit for each single family lot and .7 CBT Units for each multi family unit as set forth in paragraphs 3.0 (b) and (c) of the Filing 8 SIA. The parties recite that the dedication requirements set forth in 3.0 (a), 3.2 (a) and (b), and 3.2 (c) with respect to all current building permits issued for Filing 8 have been duly satisfied.
3. Timing of Future Dedications-Single Family. Paragraph 3.2 (c) shall be modified to read as follows with respect to all future development of Filing 8:

(c) One (1) CBT Unit for each single family dwelling unit in each subsequent phase of Filing 8 to be dedicated for each such dwelling unit on the issuance of a building permit for such dwelling unit. Such dedications are not required upon the filing of each applicable plat or approval, and the requirement for dedication in fifteen unit blocks is eliminated.

4. Timing of Future Dedications-Multi-Family. Paragraph 3.2 (d) shall be modified to read as follows with respect to all future development of Filing 8:

(d) .7 CBT Unit for each multiple family dwelling unit in each subsequent phase of Filing 8 to be dedicated for each building containing multiple dwelling units on the issuance of a building permit for the such building. Such dedications are not required upon the filing of each applicable plat or approval and the requirement for dedication in fifteen unit blocks is eliminated.

5. Timing of Future Dedications-Tract A. Paragraph 3.2 (e) shall be modified to read as follows with respect to all future development of Filing 8:

(e) While the Preliminary Plat indicates that Tract A may be developed for up to 43 multifamily units, the parties understand and acknowledge that all details of development on Tract A, including the type, nature and number of dwelling units, buildings or lots to be located on Tract A, are not defined, remain to be determined in subsequent proceedings, and may be substantially different than as indicated on the preliminary plat or other prior approvals. Any single family unit approved for Tract A shall require a dedication of 1 CBT Unit to be dedicated as set forth in paragraph 3.2(c) as modified in the Amendment. Any multi family unit approved for Tract A shall require a dedication of .7CBT Units to be dedicated as set forth in paragraph 3.2(d) as modified in the Amendment.

6. Reservation. Except as modified by the Amendment the Filing 8 SIA remains in effect.

DATED this 17th day of December, 2015.

TOWN OF LYONS, a Colorado Municipal Corporation

By: _____

[Signature]



[Signature]
[FURTHER SIGNATURE ON FOLLOWING PAGE]

LYONS VALLEY PARK, INC.

By *Keith Bell*
Keith Bell, President

LYONS VALLEY LLC
By *Michael Markel*
Michael Markel, Manager

State of Colorado)
) ss.
County of Boulder)

The foregoing instrument was acknowledged before me this 4th day of Jan., 2016,
by Keith Bell as President of Lyons Valley Park, Inc.

Witness my hand and seal.
My commission expires:

DEBRA A. KAMINITZ
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20014007648
My Commission Expires Mar. 12, 2017

Debra A. Kaminitz
Notary Public

State of Colorado)
) ss.
County of Boulder)

The foregoing instrument was acknowledged before me this 4 day of January, 2016,
by Michael Markel as Manager of Lyons Valley, LLC.

Witness my hand and seal.
My commission expires:

JANET WILBERS
Notary Public
State of Colorado
Notary ID 20104009419
My Commission Expires Mar 9, 2018

Janet Wilbers
Notary Public