

PERMANENT DRAINAGE AND STORMWATER DETENTION POND EASEMENT

THIS PERMANENT DRAINAGE AND STORM WATER DETENTION POND EASEMENT ("Easement") is granted this _____ day of _____, 2020, by **LYONS VALLEY TOWNHOMES, LP**, whose legal address is 283 West Front Street, Suite 1, Missoula, MT 59802, (the "Owner"), to the **TOWN OF LYONS**, a statutory municipality of the State of Colorado, whose legal address is 432 5th Avenue 80540 (the "Town").

For and in consideration of the sum of Ten Dollars (\$10.00), the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged of which is hereby acknowledged by the Owner, the Owner hereby grants to the Town, its contractors, agents, representatives, employees, successors, and assigns a permanent, non-exclusive right to access and maintain the detention pond and related drainage facilities located on the property described on the attached **Exhibit A**.

The parties covenant and agree as follows:

- 1. Easement Property.** The term "Property" shall mean the real property located in the County of Boulder, State of Colorado, more particularly described in **Exhibit A** which shall be encumbered with the Easement.
- 2. Description of Use of Easements.** Upon development of the Property pursuant to that Development Plan submitted and accepted to the Town of Lyons on March 10, 2020 ("Development Plan"), Owner shall install a storm water detention pond and related drainage facilities on the Property, as shown on **Exhibit B**.
- 3. Duties of Owner.** It shall be the responsibility of Owner to install the storm water detention pond and related drainage facilities ("Storm Water Detention Pond") in accordance with the Development Plan. Owner will be responsible for all maintenance of the Storm Water Detention Pond including, but not limited to, clearing out debris and keeping the earth and dam around the pond in good order, and maintaining any vegetation overgrowth.
- 4. Construction of Improvements.** Owner shall commence installation of the Storm Water Detention Pond in accordance with all governmental rules, regulations, laws or ordinances. All construction shall be completed in a good and workmanlike manner.
- 5. Operation and Maintenance.**

a. The operation and maintenance of the Storm Water Detention Pond and related facilities on the Property shall be the responsibility of the Owner, provided, however, that the Town shall have the right to access and maintain the Storm Water Detention Pond located on the Property in the event that the Owner fails to adequately maintain the Storm Water Detention pond in accordance with the notice provisions provided below.

b. If Owner fails to adequately maintain the Storm Water Detention Pond located on the Property, and within fourteen (14) days after the date of written notice from the Town, fails to correct the maintenance problem, or fails to begin to clean, cure or correct such problem within fourteen (14) days, or if such problem cannot be reasonably cleaned, cured or corrected within fourteen (14) days and Owner fails to diligently prosecute such cleaning, cure or correction to completion, then the Town may do so as provided herein. Notwithstanding the forgoing, the Town may, in the event of an emergency, as determined by the Town in its sole discretion, clean, cure or correct any damages caused by Owner's failure to adequately maintain the Storm Water Detention Pond located within the Property. If the Town cleans, cures, maintains, or corrects the Storm Water Detention Pond on Owner's behalf, as provided herein, Owner shall be responsible for reimbursing the Town for its reasonably incurred costs. All reimbursable costs shall be paid by Owner to the Town within thirty (30) days of a written invoice from the Town.

6. Indemnification. Owner shall indemnify and hold the Town harmless from and against any and all losses, claims, suits, rights, causes of action, damage, liability or expense, including, without limitation, attorneys' fees and court costs, arising from or in connection with the construction of the Storm Water Detention Pond and mechanics and materialmen's liens and claims that might be filed as the result of the performance of or in connection with the construction of the storm water detention pond, except as may be caused by the negligence or willful misconduct of the Town. The Parties' obligations under this paragraph shall survive the term or expiration of this Agreement.

7. Covenants Running with the Land. The Parties agree that the covenants and agreements set forth herein shall be binding upon and inure to the benefit of their respective successors, assigns, tenants, employees, licensees and invitees, and shall run with the land. This Agreement shall be recorded in the real property records of Boulder County, Colorado, and shall serve as notice to and shall be binding upon and inure to the benefit of the Parties and upon the successive owners of Owner's property.

8. Notices. Any notice, request or demand under this Agreement shall be in writing and shall be deemed given, received and served (a) upon personal delivery or upon transmission by telecopier or similar facsimile transmission device, or (b) on the third

business day after mailing, postage prepaid, by registered or certified mail, return receipt requested, in each case addressed as follows:

If to Owner:

If to the Town of Lyons:

Town of Lyons
Attn: Town Administrator
PO Box 49, Lyons, CO 80540

9. Governing Law. The terms and provisions of this Agreement shall be construed and enforced in accordance with the laws of the State of Colorado. Venue shall be considered proper in the District Court of Boulder County.

10. Modification and Integration. This Agreement represents the entire and integrated agreement between the Town and Owner and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this Agreement must be in writing and be signed by both the Owner and the Town and recorded in the real property records of Boulder County.

12. Right to Enter into this Agreement. The Owner covenants and agrees that, as of the date hereof, the Owner is well seized of the property underlying the premises conveyed hereby, and has full power and authority to grant and convey the same as aforesaid, and that the same are free and clear of all former grants, bargains, sales, liens, delinquent taxes or assessments, or any other encumbrances or restrictions of any kind. The Owner hereby warrants title in the conveyed premises to the Town, its successors and assigns, against the claims and demands of any persons lawfully claiming the same.

[Signature Pages Follow]

OWNER:

Date

Title:

STATE OF MONTANA)
) §
COUNTY OF _____))

The foregoing instrument was acknowledged before me this _____ day of
_____, 2020, by _____.

Witness my hand and seal.

My commission expires: _____

[S E A L]

Notary Public

EXHIBIT A – Property Description

EXHIBIT B – Easement Drawing