

COMPLETION GUARANTY AGREEMENT

IN CONSIDERATION of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, this **COMPLETION GUARANTY AGREEMENT** (“Agreement”), is made on the ___ of January, 2022, by **SUMMIT CONSTRUCTION GROUP OF MISSOULA, MT**, a Montana Corporation, (“Guarantor”) to and for the benefit of **LYONS VALLEY TOWNHOMES L.P.**, a Colorado Limited Partnership (“Developer”), and to the **TOWN OF LYONS, COLORADO**, a statutory municipality of the State of Colorado (the “Town”) for the completion of public improvements detailed on Schedule B of the executed Third Amendment to Subdivision Agreement (hereinafter referred to as the “Development Agreement”) dated 29, January of 2021 between the Town and the Developer, attached hereto as **Exhibit A** and incorporated by reference, as modified by the Fourth Amendment to Subdivision Agreement and Fifth Amendment to the Subdivision of the Agreement. The Guarantor and the Town may individually be referred to as a “Party” or collectively as the “Parties.”

RECITALS

1. The Developer has contracted with the Town to develop a Low-Income Tax Credit property comprising of forty (40) affordable units in Lyons, Colorado (the “Project”).
2. As a condition of the land use approval of the Project, Developer was required to execute a negotiated development agreement with the Town.
3. The Development Agreement was executed on January 29, 2021.
4. Pursuant to Section 6 of the Development Agreement, the Developer has agreed to provide public infrastructure items as part of the project. These infrastructure items are detailed in Schedule B of the attached agreement dated 4/6/2020 from Scott, Cox and Associates and have a projected cost of **TWO MILLION FOUR HUNDRED EIGHTY-ONE THOUSAND FIVE HUNDRED FORTY-THREE DOLLARS AND SEVENTY-FIVE CENTS (\$2,481,543.75)** including a five percent (5%) contingency (the “Cost Estimate”).
5. Pursuant to Section 9 of the Development Agreement, the Developer is required to “provide the Town with surety in the form of a bond or irrevocable letter of credit for the Cost Estimate plus 15%.”
6. The Fourth Amendment to Subdivision Agreement did not modify the Developer’s obligation to construct the public infrastructure items or the obligation to provide surety to the Town.
7. Concurrently with this execution of this Agreement, the Town executed the Fifth Amendment to the Subdivision Agreement which amends Section 9 of the Development Agreement to permit “a bond, irrevocable letter of credit, or *guarantee from an entity with sufficient financial resources* for the Cost Estimate plus 15%” as surety for the Project.

8 The Guarantor is an affiliated corporate entity to Developer and has the financial resources to guarantee the construction of the public improvements agreed to by Developer and detailed in the Cost Estimate provided for in Schedule B.

9. By the execution of this Agreement, the Parties intend for the Guarantor to assume the obligation of Developer in the event of the Developer's default of Section 9 of the Development Agreement to construct the public improvements detailed in the Cost Estimate or pay the Town **TWO MILLION EIGHT HUNDRED FIFTY-THREE THOUSAND SEVEN HUNDRED SEVENTY-FIVE DOLLARS AND THIRTY-ONE CENTS (\$2,853,775.3125)**.

9. Pursuant to the Fifth Amendment to the Subdivision Agreement, the Town and Developer have agreed that the execution of this Agreement satisfies the Developer's obligations in Section 9 of the Agreement.

GUARANTY

10. Guarantor unconditionally and absolutely guarantees to the Town that if the Developer shall fail to complete the required public infrastructure items agreed to in Schedule B of the Development Agreement, then the Guarantor shall assume the responsibilities outlined in Section 6 the Development Agreement for the completion of the public infrastructure detailed in Schedule B and shall, at the Guarantor's own cost, fully, promptly, and completely perform such obligations to the satisfaction of the Town.

11. In the event Developer and Guarantor fails to construct the required public improvements, the Guarantor shall be financially responsible for the public improvements and shall pay the Town a "Guaranty Payment" of **TWO MILLION EIGHT HUNDRED FIFTY-THREE THOUSAND SEVEN HUNDRED SEVENTY-FIVE DOLLARS AND THIRTY-ONE CENTS (\$2,853,775.3125)**, an amount equal to the cost estimate provided for in Schedule B to the Development Agreement plus fifteen percent (15%) in satisfaction of Section 9 of the Development Agreement as modified by the Fifth Amendment to the Subdivision Agreement. The Guaranty Payment shall be made payable to the Town within thirty (30) days written notification from the Town of a default of Section 10 of this Agreement.

12. To the fullest extent permitted by law, Guarantor agrees to waive all available defenses, counterclaims, or offsets legally available to Guarantor in law or equity with respect to Guarantor's obligation for the payment of the Guaranty Payment to the Town in the event of a default of Section 10 of this Agreement.

MISCELLANEOUS

13. **Remedies Non-Exclusive.** The Parties agree that all rights, remedies, and recourses afforded to the Town by reason of this Guaranty are separate and cumulative and may be pursued separately, successively, or concurrently, as occasion therefore shall occur, and are non-exclusive and shall in no way limit or prejudice any other legal or equitable right, remedy, or recourse which the Town may have against either the Developer or the Guarantor.

14. **Development Agreement.** No provision of this Agreement shall be construed to alter or amend the executed Development Agreement between the Developer and the Town, as amended, or to relieve Guarantor of any duties or obligations under the Agreement.

15. **Binding Effect.** The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section shall not authorize assignment.

16. **No Third-Party Beneficiaries.** Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third-party, including any agent, sub-consultant or sub-contractor of the Guarantor or Developer. Except for Guarantor's guaranty on behalf of Developer, absolutely no third-party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

17. **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, its elected and appointed officials, employees, contractors, or agents, or any other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

18. **Governing Law, Venue, and Enforcement.** This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Boulder County, Colorado. The Parties agree that the rule that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement. In the event this Guaranty must be enforced against Guarantor, Guarantor shall be responsible to the Town for all reasonable costs and expenses including attorney's fees.

19. **Survival of Terms and Conditions.** The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

20. **Integration and Amendment.** This Agreement represents the entire and integrated agreement between the Town and the Guarantor 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 Town and the Guarantor.

21. **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.

22. **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 below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States Mail properly addressed to the intended recipient.

If to the Town:

If to the Guarantor:

Town Administrator Lyons Town Hall P.O. Box 49 432 5th Ave, Lyons, CO 80540	SUMMIT CONSTRUCTION GROUP OF MISSOULA, MT
With Copy to: Town Attorney Kissinger & Fellman, P.C. 3773 Cherry Creek N Dr, Suite 900 Denver, CO 80209	

23. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

AUTHORITY

24. The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of Town and the Guarantor and bind their respective entities. THIS AGREEMENT is executed and made effective as provided above.

[Signature Page Follows]

Guarantor:

By: _____ Date: _____

Paul Capps
President
Summit Construction Group

Developer:

By: _____ Date: _____

Paul Capps
VP
Lyons Valley Townhomes LP

Town of Lyons:

By: _____ Date: _____

Victoria Simonsen, Town Administrator