

**TOWN OF LYONS, COLORADO
LYONS VALLEY PARK FILING 8
FIFTH AMENDMENT TO SUBDIVISION IMPROVEMENT AGREEMENT**

This Fifth Amendment to Subdivision Improvement Agreement Filing No. 8 ("Fifth Amendment") is entered into and made effective this _____ day of _____ 2022, by and between the **TOWN OF LYONS**, a municipal corporation of the State of Colorado ("Town") and **LYONS VALLEY TOWNHOMES, LP**, a Colorado limited 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-F**.

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 (the "Board") previously approved that certain subdivision improvement agreement dated December 15, 2008, attached hereto as **Exhibit B** 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 C** and incorporated herein ("First Amendment"). On April 13, 2020 the Board approved a Second Amendment to Subdivision Improvement Agreement ("Second Amendment"). On January 19, 2021, the Board approved the Third Amendment to Subdivision Improvement Agreement, attached hereto as **Exhibit D** and incorporated herein ("Third Amendment"). The Third Amendment replaced the Second Amendment in its entirety, but otherwise did not Modify Filing No. 8 SIA as modify by the First Amendment. On July 19, 2021m the Board approved the Fourth Amendment to the Subdivision Agreement, attached hereto as Exhibit E and incorporated herein ("Fourth Amendment") which modified the Filing 8 SIA, as modified by the First and Third Amendments, in order to reduce overall Summit Housing project ("Project") costs; and

WHEREAS, Collectively, the Filing No. 8 SIA as modified by the First, Third, and Fourth Amendment shall be known as the "Agreement."

WHEREAS, Section 6 of the Agreement requires the dedication, construction, installation, and/or improvement of sanitary sewer facilities, water line facilities, electric utility infrastructure, drainage facilities, streets, and/or other public facilities and improvements as identified on the Development Plan in Public Improvements Engineer's Cost Estimates attached to Amendment 3 as Exhibit B, ("Public Improvements"); and

WHEREAS, Section 9 of the Agreement requires the Developer to "provide the Town with surety in the form of a bond or irrevocable letter of credit for the Cost Estimate plus 15%"; and

WHEREAS, obtaining a performance bond or irrevocable letter of credit will increase overall project costs; and

WHEREAS, Section 17-30-20(1) provides that subdivisions agreements shall contain a surety for public improvements in the form of “including but not limited to collateral or financial security in the form of an irrevocable letter of credit ..., performance bond, property bond, *private* or escrow *agreements*, loan commitments, liens on property, deposit of certified funds **or other similar surety agreement in a form approved by the Town Attorney**” (emphasis added); and

WHEREAS, Summit Construction Group of Missoula, MT, a Montana Corporation, (hereinafter referred to as the “Guarantor”) is an affiliated corporate entity to Developer and has the financial resources to guarantee the construction and payment of the public improvements agreed to by Developer and detailed in the Cost Estimate provided for in Schedule B of Amendment 3; and

WHEREAS, execution of the Completion Guaranty Agreement, attached hereto as **Exhibit E** and incorporated by reference, satisfies the requirements of Section 17-30-20(1); and

WHEREAS, the Completion Guaranty Agreement will be executed simultaneously with the approval of this Fifth Amendment; and

WHEREAS, by the approval of this Fifth Amendment, the Town in no way abrogates or modifies the assignment of the rights, duties, obligations, responsibilities and benefits of Filing No. 8 SIA as modified by the First, Third, and Fourth Amendments to the Developer except as specifically provided for in this Fifth Amendment; 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, as amended, is hereby further amended as follows:

1. Incorporation of Recitals. The Recitals above are fully incorporated herein and made a part hereof.
2. Other Amendments Remain in Effect. Except as specifically set forth in this Fifth Amendment, the Filing No. 8 SIA, First Amendment, Third Amendment, and Fourth Amendment remain in full force and effect.
3. Conflict. In the event of any conflict between this Fifth Amendment and the Filing No. 8 SIA, First Amendment, Third Amendment, and Fifth Amendment the terms of this Fifth Amendment shall control.
4. Section 9 of the Agreement, as reflected in Section 9 of the Third Amendment is hereby amended to read as follows:

9. Security for Public Improvements. Prior to issuing a building permit, the development shall provide the Town with surety in the form 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.

5. No Third-Party Beneficiaries. Nothing contained in this Fifth Amendment is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third-party. Absolutely no third-party beneficiaries are intended by this Third Amendment. All benefits, obligation, rights, and responsibilities contained within the third Amendment are exclusive to the Developer. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

6. Binding Effect. The Parties agree that this Fifth Amendment, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section shall not modify the assignment requirements of the Agreement, as amended.

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

TOWN OF LYONS, COLORADO

Nicholas Angelo, Mayor

—
ATTEST

Dolores M. Vasquez, CMC, Town Clerk

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 _____,
2022, by _____ as _____ of Lyons Valley Town Homes, LP
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]