

**TOWN OF LYONS, COLORADO
RESOLUTION 2021-12**

**A RESOLUTION OF THE TOWN OF LYONS, COLORADO APPROVING A
DEVELOPMENT PLAN AGREEMENT BETWEEN LYONS VALLEY TOWNHOMES,
LP AND THE TOWN OF LYONS BY APPROVING A THIRD AMENDMENT TO THE
SUBDIVISION IMPROVEMENT AGREEMENT FOR LYONS VALLEY PARK FILING 8**

WHEREAS, the Town of Lyons (the "Town") has the authority to enter into contracts for any lawful municipal purpose pursuant to C.R.S. § 31-15-101; and

WHEREAS, Lyons Valley Townhomes, LP ("Developer") wishes to develop an affordable housing project on Lyons Valley Park Filing 8 (the "Project"); and

WHEREAS, pursuant to Section 16-70-30(b) of the Lyons Municipal Code ("LMC"), the Town may require that a developer requesting a development plan execute a development plan agreement; and

WHEREAS, the Developer submitted an application for Development Plan ("Application") to the Town for approval in accordance with the procedure set forth in Article 17 of Chapter 16 of the LMC; and

WHEREAS, on December 3, 2020, the Board of Trustees conducted a public hearing on the Application pursuant to LMC § 16-17-30(h), following the provision of lawfully required notice to the public; and

WHEREAS, the Board of Trustee's approval of the application through Town of Lyons Resolution 2020-184 was conditioned upon execution of a Development Plan Agreement between the Developer and the Town; and

WHEREAS, the Town of Lyons Board of Trustees previously approved: a Second Amendment to the Filing No. 8 SIA dated April 29, 2020, attached hereto as **Exhibit B** and incorporated herein ("Second Amendment"); a 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 an Amendment to the Filing No. 8 SIA dated December 7, 2015, attached hereto as **Exhibit D** and incorporated herein ("First Amendment"); and

WHEREAS, in lieu of a separate Development Agreement, the Town and the Developer have negotiated a Third Amendment to the Filing No. 8 SIA ("Third Amendment"), attached hereto as **Exhibit A** and incorporated by reference; and

WHEREAS, the Developer has purchased the majority of Filing 8 as part of the Project; and

WHEREAS, the Third Amendment creates the Development Plan obligations to

develop necessary public improvements such as sewer, water, storm water, and electric infrastructure, secure necessary easements, and addresses the respective responsibilities of the Town and Developer at the various stages of development; and

WHEREAS, the Town consents to the assignment of the rights, duties, obligations, responsibilities, and benefits of Filing No. 8 SIA, as modified by the Third Amendment by approving this Resolution approving the Third Amendment; and

WHEREAS, rights, duties, obligations, responsibilities, and benefits of Filing No. 8 SIA remain in full force in effect with regard to the Developer any other party subject to Filing No. 8 SIA except as specifically modified by the Third Amendment with regard to the Developer's rights, duties, obligations, responsibilities, and benefits; and

WHEREAS, the Town's Board of Trustees desires to approve the Third Amendment thereby satisfying the Developer's obligation to execute a Development Plan Agreement.

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

Section 1. The above recitals are hereby incorporated by reference.

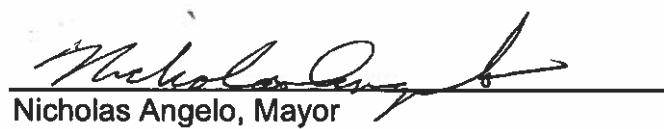
Section 2. The Board of Trustees hereby:

- a) Approves the Third Amendment with the Developer, in substantially the form attached to this Resolution.
- b) Authorizes the Town Administrator in consultation with the Town Attorney to make non-substantial changes to the Third Amendment that do not increase the financial obligations of the Town.
- c) Authorizes the Mayor or Mayor Pro Tem to execute the Agreement and the Town Clerk to attest the Mayor's signature.
- d) Authorizes the Town Administrator to take all actions consistent with this resolution to ensure compliance of the Developer with the obligations of the Third Amendment.

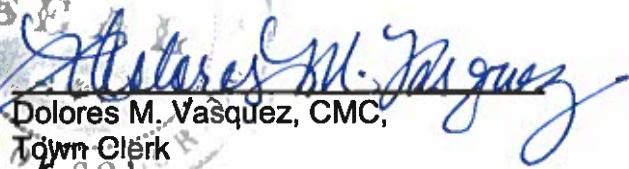
Section 3. This Resolution shall become effective immediately upon adoption by the Board of Trustees.

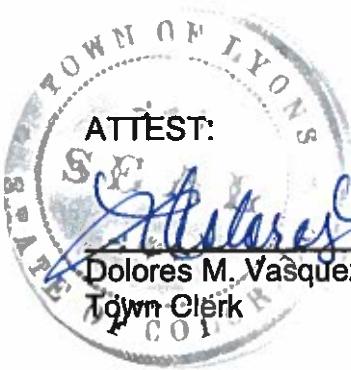
ADOPTED THIS 19TH DAY OF JANUARY 2021.

TOWN OF LYONS


Nicholas Angelo, Mayor

ATTEST:


Dolores M. Vasquez, CMC,
Town Clerk



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

This Third Amendment to Subdivision Improvement Agreement Filing No. 8 ("Third Amendment") is entered into and made effective this 30th day of January 2021, 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"). On April 13, 2020 the Town Board of Trustees approved a Second Amendment to Subdivision Improvement Agreement ("Second Amendment"). This Third Amendment is intended to replace the Second Amendment in its entirety. 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 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, electric utility infrastructure, 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 Town consented to the assignment of the rights, duties, obligations, responsibilities and benefits of Filing NO. 8 SIA, as modified by the Second Amendment, to the Developer pursuant to the resolution approving this Second Amendment; and

WHEREAS, by the approval of this Third Amendment, the Town in no way abrogates or modifies the assignment of the rights, duties, obligations, responsibilities and benefits of Filing NO. 8 SIA to the Developer except as specifically provided for in this Third Amendment; and

WHEREAS, the Parties agree that except for those Public Improvements identified in the Agreement as amended by this Third 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 Valley 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 this Agreement 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 Lyons 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 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, 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. Repeal. The Second Amendment is hereby repealed in its entirety to be replaced by this Third Amendment.
3. Conflict. In the event of any conflict between this Third Amendment and the Agreement, the terms of this Third Amendment shall control. Except as specifically modified herein, the terms of the Agreement shall remain unchanged and in full force and effect.
4. Water Dedication. 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 first forty (40) units of the Development, which includes 24 single family and 16 multifamily units:

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

The above water share dedication requirements shall be applicable only to the first forty (40) affordable housing units of the Development developed by the Developer. Additional units developed on the Property by Developer, or any other successor or assign, shall comply with the water dedication requirements of the Town of Lyons Municipal Code.

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

5. Undergrounding of Utilities. Section 4.1 of Filing No. 8 SIA is hereby deleted in its entirety and replaced with the following:

Developer shall design, furnish, construct and install, at its own expense, all electrical service to Filing 8 according to the Master Electrical Plan and construction drawings and specifications provided by the parties. Timing of the installation shall be coordinated with the Town. The Town shall immediately be responsible for the maintenance of the installed lines and associated infrastructure.

6. 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. Lintels
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

6. Dedication of Parks and Open Space. The Parties agree that Section 11.0 of Filing No. 8 SIA has been fully satisfied and no further dedication of parks and/or open space is required by Developer.
7. 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** and in accordance with applicable Town ordinances and regulations.
8. 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 in the Standards and all

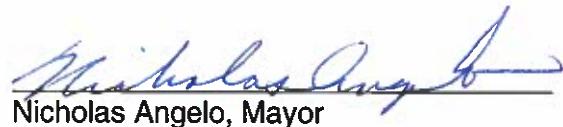
other applicable ordinances, resolutions and regulations, including but not limited to all building, fire, plumbing, and safety codes, in effect at the time of construction. If the Town reasonably determines that construction or installation is not in compliance with the approved Construction Plans or 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.

9. Security for Public Improvements. Prior to issuing a building permit, the development shall provide the Town with surety in the form of a bond or an Irrevocable Letter of Credit. The Amount of the Security shall be the amount of the Cost Estimate plus 15%.
10. 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. Except as required to address emergency conditions which threaten health, safety, welfare, or the environment, the Town shall first notify the Owner detailing the maintenance issue and give the Owner ten (10) working days to rectify the issue prior to exercising its rights herein. 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. The Town's right to access private improvements and maintenance may be further described and modified in easements recorded on the property.
11. 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.
12. Wildland Urban Mitigation. The Parties hereto agree to work cooperatively with the Fire Protection District to formulate and implement best practice standards to identify and create defensible spaces and open spaces within the development to mitigate against wildfires.
13. Required Easements. The Parties hereto agree to execute easements encumbering Developer's property to the benefit to the Town for required utilities serving the property, drainage and a stormwater detention pond, and access easement from Carter Drive to the adjacent property with the address 12993 N. Foothills Highway, Lyons, Colorado (collectively the "Required Easements"). The Parties acknowledge and understand that some of the Required Easements may not be recorded at the time of execution of this Agreement, and that the obligation to record such easements shall extend after execution of this Agreement.
14. Conditions of Development Plan Approval. The Developer shall comply with all conditions of the Development Plan Approval as held in Town of Lyons, Colorado Resolution #2020-184.

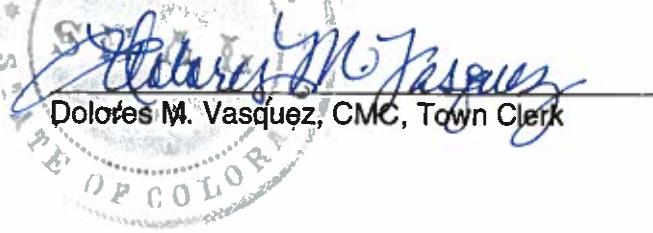
15. **Guarantee of Permanent Affordability.** In connection with the Owner's purchase of the Property, and financing requirements associated with its proposed affordable housing project, the Owner shall execute a standard Land Use Restrictive Agreement ("LURA") that runs with the land, recorded against the Property, that requires that housing associated therewith comport with national affordability standards and ensures that said standards shall encumber the Property in the event of sale or transfer.
16. **Stream Bank Restoration.** The Parties hereto agree to cooperate in good faith and use their best efforts to seek to obtain state, federal, and/or other financial assistance, at no cost to the Owner, to restore the stream bank along the length of Owner's Property ("Shoring Funds"). In the event that the Town obtains the Shoring Funds, Owner will accept the shoring improvements associated therewith, subject to reasonable terms and accommodations regarding access and use of Owner's Property. Said terms will be included in a temporary construction and access easement between the Parties, whose consent shall not be unreasonably withheld.
17. **Short-Term Rentals Prohibited.** Developer will prohibit the use of the dwelling units as short-term rentals ("STRs").
18. **No Third-Party Beneficiaries.** Nothing contained in this Third 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.
19. **Binding Effect.** The Parties agree that this Third 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 SIA, 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

