

FIRST AMENDMENT TO MEMORANDUM OF AGREEMENT

THIS FIRST AMENDMENT TO MEMORANDUM OF AGREEMENT (this “Amendment”) is made and entered into as of this ____ day of _____, 2016, by and between the TOWN OF LYONS, a statutory municipality of the State of Colorado (the “Town”) and LYONS PROPERTIES, LLC, a Colorado limited liability company (“LP”). The Town and LP may be referred to individually as a “Party” and collectively as “Parties.”

RECITALS:

A. The Town and LP previously entered into that certain Memorandum of Agreement, dated January 12, 2016 (the “MOA”), with respect to correcting property boundary line disputes between the Parties, and otherwise setting forth certain rights and responsibilities for the Parties after the major flood that occurred in 2013 on the North St. Vrain Creek, which flood caused a shift in the course of the North St. Vrain Creek. For purposes of this Amendment, all capitalized terms used herein shall have the meanings ascribed to them in the MOA, unless otherwise defined herein.

B. The parties hereto now desire to amend the MOA as set forth below.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties hereto, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference as though set forth in full.
2. Amendments.
 - (a) There is hereby added a new paragraph 8.1 to read in its entirety as follows:

“In addition to the surveyor finalizing the exhibits to the various easements contemplated in this MOA, the surveyor shall prepare a survey clearly highlighting and designating the boundary between the LP Property and Meadow Park (the “Boundary Survey”), in order to assist with the resolution of boundary line gaps and variances as between the properties owned by the Parties only. The primary purpose of the Boundary Survey will be to allow the Parties to jointly petition the Boulder County District Court (“District Court”) to permanently establish the boundary line between the LP Property and Meadow Park as referenced and shown in the Boundary Survey, in accordance with the process set forth in Article 44 of Title 38, C.R.S., or, alternatively, to enter into a boundary line agreement as authorized by C.R.S. § 38-44-112.”

(b) Paragraph 9 of the MOA is hereby amended in its entirety to read as follows:

“The Boundary Survey and any resulting boundary line changes proposed must be approved by both Parties. The surveyed metes and bounds legal descriptions of all easements referenced in this MOA must also be approved by both Parties. For purposes of this MOA, the document containing the agreed-upon surveyed metes and bounds legal descriptions of all easements referenced herein shall be known as the “Final Easement Descriptions.” The Parties agree to negotiate in good faith regarding any disputes relating to the Boundary Survey or the Final Easement Descriptions. The Parties agree that no action may be instituted in the Boulder County District Court pursuant to Article 44, Title 38, C.R.S. or no boundary line agreement shall be entered into until such time as the Parties have agreed to the form and content of the Boundary Survey and the Final Easement Descriptions.”

(c) Section V of the Agreement is hereby amended in its entirety to read as follows:

“V. ESTABLISHMENT OF PERMANENT BOUNDARIES

25. Once the Parties have agreed upon the form and content of the Boundary Survey in accordance with Paragraph 9 above, and in order to establish the permanent boundary between Meadow Park and the LP Property, the Parties agree to enter into a boundary line agreement as authorized by C.R.S. § 38-44-112 or, if necessary, to jointly petition the District Court in accordance with C.R.S. §§ 38-44-101 *et. seq.* to establish the permanent boundary between Meadow Park and the LP Property in accordance with the boundary as designated in the Boundary Survey. Within ten (10) calendar days following the effective date of the boundary line agreement entered into pursuant to C.R.S. §38-44-112 or entry of an order of the District Court approving the Boundary Survey, the Town agrees to convey to LP any claim of ownership that the Town may have to the Crescent which has as its southern boundary line the centerline of the North St. Vrain Creek. The Town shall deliver a quitclaim deed to LP in the form attached as **Exhibit 5**, that specifically identifies the Crescent by reference to the Boundary Survey.

26. LP agrees to convey to the Town any claim of ownership whatsoever that LP may have to land lying south of the boundary line as set forth in the Boundary Survey. Within ten (10) calendar days following the effective date of the boundary line agreement entered into pursuant to C.R.S. §38-44-112 or entry of an order of the District Court approving the Boundary Survey, LP agrees to convey to the Town any claim of ownership that LP may have to land lying south of the boundary line as set forth in the Boundary Survey. LP shall deliver a quitclaim deed to the Town in the form attached as **Exhibit 6**, that specifically

identifies the property interests to be quitclaimed by reference to the Boundary Survey.

27. The boundary line between Meadow Park and the LP Property shall be established by the Boundary Survey. Should the North St. Vrain Creek shift in the future, the boundary line will not shift with it.

28. Each Party agrees to record the quitclaim deed delivered to said Party in the real property records of the Boulder County Clerk & Recorder's Office within thirty (30) days of the date on which the order of the District Court is entered of record. Each Party shall provide the other Party with a copy of the quitclaim deed so recorded. The Parties also acknowledge and agree that the boundary line agreement entered into pursuant to C.R.S. § 38-44-112 or the order of the District Court entered pursuant to Article 44 of Title 38, C.R.S., if necessary, shall establish the permanent boundary between the LP Property and Meadow Park and shall be binding on the successor and assigns of the Parties."

(d) In line 3 of paragraph 12, the phrase "Final Land Survey is" shall be replaced with "Final Easement Descriptions are".

(e) Paragraph 13 of the MOA is hereby amended in its entirety to read as follows:

"The Parties will have thirty (30) days from the date on which the Final Easement Descriptions are approved to finalize the Water Control Structure Easement & Agreement and execute and record the Water Control Structure Easement & Agreement with the Boulder County Clerk & Recorder's Office."

(f) In line 3 of paragraph 17, the phrase "Final Land Survey is" shall be replaced with "Final Easement Descriptions are".

(g) Paragraph 18 of the MOA is hereby amended in its entirety to read as follows:

"The Parties will have thirty (30) days from the date on which the Final Easement Descriptions are approved to finalize the Potable Water and Wastewater Line Easement & Agreement and execute and record the Potable Water and Wastewater Line Easement & Agreement with the Boulder County Clerk & Recorder's Office."

(h) Notwithstanding anything in the MOA to the contrary, the MOA shall be amended such that all references in the MOA to the "MOA" shall refer to the MOA, as amended by this Amendment.

3. Conflict. This Amendment is and shall be construed as a part of the MOA. In case of any inconsistency between this Amendment and the Agreement, the provisions containing such

inconsistency shall first be reconciled with one another to the maximum extent possible, and then to the extent of any remaining inconsistency, the terms of this Amendment shall be controlling.

4. Force and Effect. Except as set forth in this Amendment, the terms and conditions of the MOA shall remain unchanged and in full force and effect.

5. Counterparts; Facsimile or Electronic Signature; Authority. The parties hereto agree that this Amendment may be executed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. The parties further agree that this Amendment may be executed by facsimile or electronic signature, and that any facsimile or electronic signature shall be binding upon the party providing such signature as if it were the party's original signature.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date set forth above.

TOWN:

TOWN OF LYONS, a statutory
municipality of the State of Colorado

By: _____
Connie Sullivan, Mayor, authorized
pursuant to Resolution

LP:

LYONS PROPERTIES, LLC,
a Colorado limited liability company

By: _____
Jerry Moore, Manager