

**THIRD AMENDMENT TO THE COVENANT AND AGREEMENT
RESPECTING THE BRADFORD HOMESTEAD AND USE OF LOT 1**

This Third Amendment to the Covenant and Agreement Respecting the Bradford Homestead and Use of Lot 1 (the "Third Amendment") is entered into by and between the Town of Lyons, Colorado, a Colorado municipal corporation operating at 432 5th Avenue, Lyons, Colorado 80540 (the "Town") and James A. Carroll and Kathleen P. Carroll, who each reside at 330 Bradford Street, Lyons, Colorado 80540 (together the "Carrolls"). The Town and the Carrolls are individually referred to as a "Party", and are collectively referred to herein as the "Parties". This Agreement shall be effective as of the date of mutual execution by the Parties (the "Effective Date").

RECITALS

A. The Town and the Carrolls entered into a Covenant and Agreement Respecting the Bradford Homestead and Use of Lot 1 dated May 16, 2005 (the "2005 Agreement"), which 2005 Agreement was recorded at Reception Number 2723843 in the Boulder County Clerk and Recorder's Office. The 2005 Agreement, which followed a partial exchange of real property between the Town and the Carrolls, memorialized certain covenants regarding the maintenance and preservation of the Bradford Homestead and Use of Lot 1, as those terms are defined in the 2005 Agreement.

B. The Parties entered into a First Amendment to Covenant and Agreement Respecting the Bradford Homestead and Use of Lot 1 dated March 5, 2015 ("First Amendment") pursuant to the Town of Lyons Resolution 2015-18, which First Amendment was recorded at Reception Number 3440262 in the Boulder County Clerk and Recorder's Office. The First Amendment amended certain use restrictions pertaining to the northern portion of Lot 1 (defined herein as the "Northern Portion") and to Lot E.

C. The Parties entered into a Second Amendment to Covenant and Agreement Respecting the Bradford Homestead and Use of Lot 1 dated March 26, 2018 ("Second Amendment") pursuant to the Town of Lyons Resolution 2018-32, which Second Amendment was recorded at Reception Number 03647385 in the Boulder County Clerk and Recorder's Office. The Second Amendment amended certain use restrictions pertaining to Lot 1 and to Lot E.

D. The 2005 Agreement as amended by the First Amendment and the Second Amendment shall hereinafter be referred to as the "Agreement".

AGREEMENT

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

1. Article II, Section 2.5. Section 2.5 of Article II (Use of Lot 1) of the Agreement is hereby amended to include the following additional provision:

The Parties further agree and acknowledge that the Town may construct, use, maintain, and permit the use of a non-lighted solar energy generation and storage system and all

related appurtenances in the area that is southwest of the existing bike park, as depicted in **Exhibit A**.

- The system shall be designed such that its height shall not exceed 9 feet.
- No trees shall be removed from the area shown in **Exhibit A** or from the adjacent berms to the south.
- The fence surrounding the solar energy generation and storage system shall be of an agricultural style similar to that depicted in **Exhibit B**.
- Public access shall be prohibited to the area south of the solar energy and generation storage system. The Town agrees to prohibit such access by installing a locking gate between the West side of the solar facility and the property/fence to the west with the exact location of the gate to be determined during the design of the facility upon mutual agreement of the Parties.
- The Town agrees that permanent "no trespassing" signs shall be posted at the northwest and southeast corners of the facility. Exact locations to be determined during the design of the facility upon mutual agreement of the Parties.
- Due to safety considerations in the event of an emergency, the position of the system and system fencing shall not impede ingress/egress by a passenger vehicle from the Carroll property into Bohn Park in the area located between the two existing berms.

2. Reimbursement of Legal Fees. The Town agrees to pay legal fees incurred by the Carrolls in connection with this third amendment, as per **Exhibit C**, within thirty (30) days of receipt of written evidence of such fees.

3. Force and Effect of Third Amendment. Except as set forth in this Third Amendment, all other provisions of the Agreement shall remain unchanged and in full force and effect.

4. Conflict. This Third Amendment is and shall be construed as a part of the Agreement. In case of any inconsistency between this Third Amendment and the Agreement, the provisions containing such inconsistency shall be first reconciled with one another to the maximum extent possible, and then to the extent of any remaining inconsistency, the terms of this Third Agreement shall be controlling.

5. Counterparts; Facsimile or Electronic Signature, Authority. The parties hereto agree that this Third Amendment may be executed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. The parties further agree that this Third 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 Parties have executed this Third Amendment to be effective as of the Effective Date.

Remainder of page left intentionally blank; signature page follows

SIGNATURE PAGE

CARROLL:

James A. Carroll
James A. Carroll

Date 1/12/22

Kathleen P. Carroll
Kathleen P. Carroll.

Date 1/12/2022

STATE OF COLORADO)

) ss.

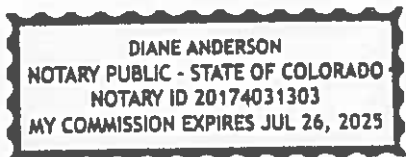
COUNTY OF Boulder)

The foregoing instrument was acknowledged before me this January day of 12, 2022, by James A. Carroll and Kathleen P. Carroll.

Witness my hand and seal.

My commission expires: July 26, 2025

[SEAL]



Diane Anderson

Notary Public

TOWN:

Nicholas Angelo, Mayor

Date _____

ATTEST:

Dolores Vasquez, CMC, Town Clerk

Date _____

STATE OF COLORADO)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 202_, by _____.

Witness my hand and seal.

My commission expires: _____

[SEAL]

Notary Public

Exhibit A

Bohn Park – Proposed Solar Generation and Location – near Bike Park

Exhibit B

Example of Agricultural Style Fence

Exhibit C

Reimbursement letter from Victoria Simonsen dated December 9, 2021,

THIRD AMENDMENT TO THE COVENANT AND AGREEMENT RESPECTING THE BRADFORD HOMESTEAD AND USE OF LOT 1

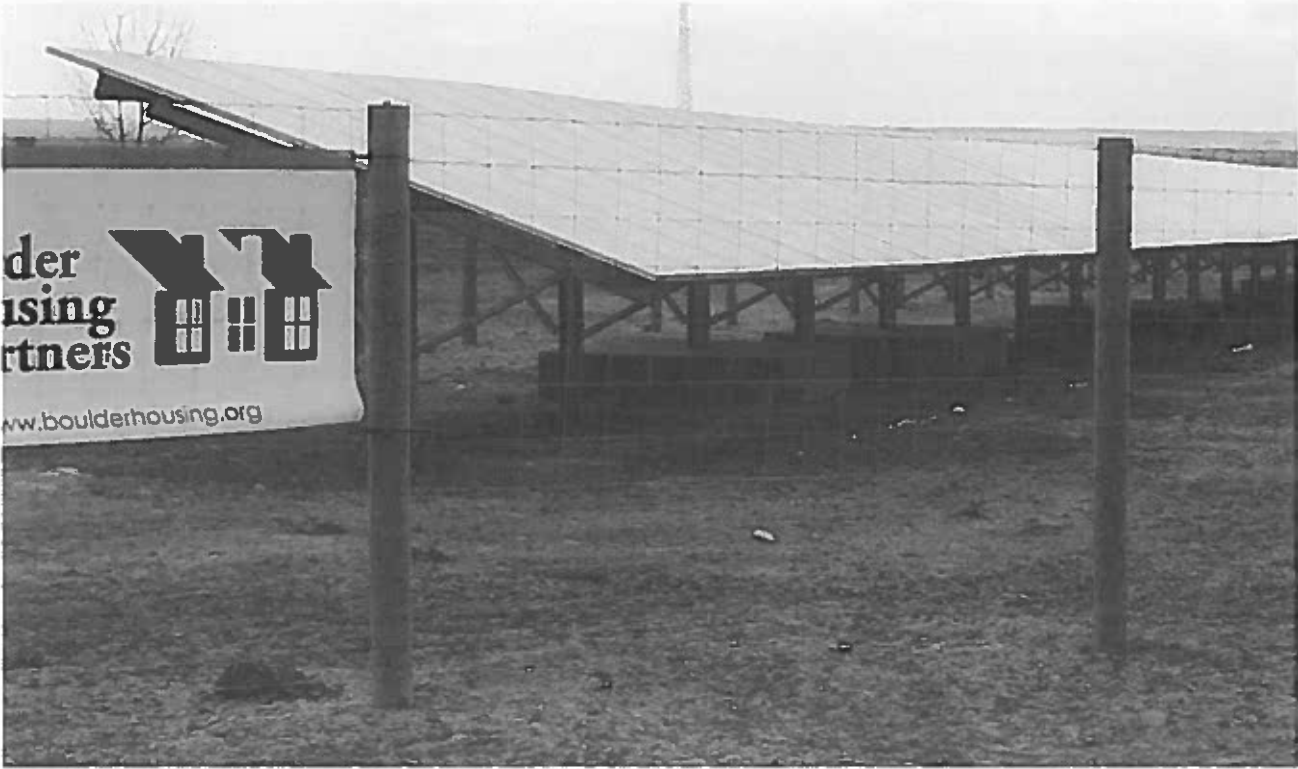
EXHIBIT A



**THIRD AMENDMENT TO THE COVENANT AND AGREEMENT
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EXHIBIT B

EXAMPLE OF AGRICULTURAL STYLE FENCE



**THIRD AMENDMENT TO THE COVENANT AND AGREEMENT
RESPECTING THE BRADFORD HOMESTEAD AND USE OF LOT 1
EXHIBIT C**



December 9, 2021

James and Kathleen Carroll
330 Bradford St.
Lyons, CO 8040

Dear Kathy and Jim:

The Town agrees to pay all attorney fees incurred by Kathy and Jim Carroll to reach an agreement on the Third Amendment to the Covenant and Agreement Respecting the Bradford Homestead and Use of Lot 1 within thirty (30) days of receipt of written evidence of such fees.

The Town may request that negotiations stop if an agreement cannot be reached in a timely manner. Such request may be sent via email and upon acknowledgment of receipt of such request Kathy and Jim Carroll will request their attorney to stop the further review and a final invoice will be submitted to the town.

This agreement will end with the signing of the Third Amendment or a request to discontinue negotiations.

Sincerely,

Victoria Simonsen

Victoria Simonsen
Town Administrator
Town of Lyons

DOUBLE GATEWAY
TO THE ROCKIES

TELEPHONE

303.823.6622

FACSIMILE

303.823.8257

432 5TH AVENUE • P.O. BOX 49
LYONS • COLORADO 80540

TOWNOFLYONS.COM