

**TOWN OF LYONS, COLORADO
RESOLUTION 2022-08**

**A RESOLUTION OF THE TOWN, of LYONS, COLORADO
APPROVING A THIRD AMENDMENT TO THE COVENANT AND AGREEMENT
RESPECTING THE BRADFORD HOMESTEAD AND USE OF LOT 1**

WHEREAS, the Town of Lyons ("Town") and James A. Carroll and Kathleen P. Carroll (collectively 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 Records Office; and

WHEREAS, 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 historic Bradford Homestead and the use of Lot 1, as those terms are defined in the 2005 Agreement; and

WHEREAS, the Town and the Carrolls entered into a First Amendment to the Covenant and Agreement Respecting the Bradford Homestead and the Use of Lot 1 dated March 5, 2015 (the "First Amendment") pursuant to Resolution 2015-28, which amended certain use restrictions pertaining to the northern portion of Lot 1 and to Lot E; and

WHEREAS, after the Town and the Carrolls entered into the First Amendment, the Town engaged in a public flood recovery planning process regarding the type and location of amenities to be placed on Lot 1 and the use of Lot E; and

WHEREAS, the outcome of this planning process was that the public desired additional amenities and uses on Lot 1 and Lot E pursuant to the use of such lots as public recreational space; and

WHEREAS, due to conflicts between the results of the planning process and the First Amendment, the Town and the Carrolls met and held extensive discussions regarding possible modifications to the 2005 Agreement, as amended, regarding the permissible uses and amenities on Lot 1 and use of Lot E; and

WHEREAS, on or about November 16, 2015, the Town Board of Trustees adopted Resolution 2015-117 ("Resolution"), which Resolution approved a purported second amendment to the Agreement through a document entitled "Memorandum of Agreement" ("MOA"); and

WHEREAS, the Carrolls signed the MOA on February 11, 2016, the Town signed the MOA on March 2, 2016, and the MOA was recorded on March 4, 2016 at Reception Number 03504673 in the Boulder County Clerk and Recorder's Office; and

WHEREAS, the Town and the Carrolls recognize that the MOA did not properly amend the 2005 Agreement, and negotiated a proposed Second Amendment to the 2005 Agreement .("Second Amendment") regarding the permissible uses and amenities on Lot 1 and use of Lot E and the related rights and responsibilities of the Town and Carroll; and

WHEREAS, the Town and Carroll entered into the Second Amendment to the Covenant and Agreement Respecting the Bradford Homestead and the 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.

WHEREAS, pursuant to Ordinance 1107, the Town Board of Trustees referred a ballot question to the voters of the Town on whether a solar generation and battery storage facility would be permitted on Lot 1; and

WHEREAS, the registered voters of the Town approved the use of Lot 1 for a solar generation and battery storage facility at the November 5, 2021 election; and

WHEREAS, the Town's Board of Trustees desires to approve a Third Amendment to the Covenant and Agreement Respecting the Bradford Homestead and the Use of Lot 1 (the "Third Amendment") further amending the permissible uses and amenities to specifically permit the use of a solar generation and battery storage facility as substantially reflected in **Exhibit A**, attached hereto and incorporated by reference.

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

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

Section 2. The Board of Trustees hereby:

- 1) Approves the Third Amendment attached hereto as **Exhibit A**.
- 2) Authorizes the Town Administrator, in consultation with the Town Attorney and the Mayor, to make non-substantial changes to the Third Amendment which do not increase the financial obligations of the Town.
- 3) Authorizes the Mayor or Mayor Pro Tem to execute the Third Amendment and for the Clerk to attest to the signature.

Section 3. This resolution shall take effect immediately upon adoption.

ADOPTED THIS 18th DAY OF January 2022.

TOWN OF LYONS

Nicholas Angelo, Mayor

ATTEST:

Dolores M. Vasquez, CMC
Town Clerk