

AGREEMENT REGARDING RAW WATER DEDICATION REQUIREMENT

This **AGREEMENT REGARDING RAW WATER DEDICATION REQUIREMENT** (this “**Agreement**”) is made and entered as of October __, 2023 (the “**Effective Date**”), by and between **Pedcor Investments, a Limited Liability Company**, a Wyoming limited liability company, and its successors and assigns (“**Developer**”) and the **City of Brighton, Colorado**, a home rule municipality of the County of Adams, State of Colorado (the “**City**”).

RECITALS:

WHEREAS, Developer owns the real property legally described on Exhibit A attached hereto and incorporated herein (the “**Property**”); and

WHEREAS, Developer intends to develop the Property into affordable multi-family housing with one hundred percent (100%) of such units being set-aside at an area median income of 60% (the “**60% AMI**”) to be known as The Retreat at Brighton Ridge Apartment Homes, and consisting of approximately 264 units in 11 buildings with approximate unit sizes ranging from 775 to 1,368 square feet (the “**Development**”). The parties acknowledge that the final unit count, number of buildings, and sizes of units are subject to final approval by the City in accordance with the City’s *Land Use and Development Code* (the “**Code**”); and

WHEREAS, in connection with the Development, Developer is required to meet the raw water dedication requirements of the City pursuant to Section 13-4-10 of the *Brighton Municipal Code* (the “**Water Dedication Requirements**”); and

WHEREAS, under the Water Dedication Requirements, the Developer is required to dedicate 75.15 acre-feet of raw water to the City for the Development (“**Required Dedication Amount**”), which includes 71.28 acre-feet for the 264 units, 3.63 acre-feet for irrigation, 0.06 acre-feet for the clubhouse, and 0.18 acre-feet for the pool. Developer intends to dedicate 31.21 acre-feet of raw water to the City (the “**Intended Dedication**”), which leaves a balance of the Required Dedication Amount in the amount of 43.94 acre-feet (the “**Dedication Balance**”); and

WHEREAS, because the Development is an affordable multi-family housing project with 60% AMI, the City determined in Resolution No. _____ that Developer may satisfy the Water Dedication Requirements by paying a fee-in-lieu for the Dedication Balance, as described in this Agreement; and

WHEREAS, the parties hereto desire to document their agreement regarding satisfaction of the Water Dedication Requirements for the Development.

AGREEMENT:

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

1. **Recitals**. The foregoing Recitals are hereby incorporated into this Agreement as part of the agreement between Developer and the City.

2. **Water Dedication Requirement**. The Required Dedication Amount is the full amount of raw water that is required for the Development under the Water Dedication Requirements. Provided that Developer makes the Intended Dedication to the City, Developer shall have the right to pay a fee-in-lieu in the amount of \$2,077,338.36 (the “**Dedication Fee-In-Lieu**”) in satisfaction of the Dedication Balance. Upon dedication of the Intended Dedication and payment in full of the Dedication Fee-In-Lieu to the City, Developer shall have satisfied all Water Dedication Requirements for the Development, and no additional raw water shall be required for the Development.

3. **Effect of Agreement**. This Agreement shall only pertain to the Development. If a development other than the Development is proposed or constructed on the Property, this Agreement shall not apply and such development shall have to comply with the Water Dedication Requirements applicable to such development.

4. **Assignment**. This Agreement shall inure to the benefit of and bind the parties hereto and their respective successors and assigns. Developer shall have the right to assign this Agreement to any successor-in-title to the Development.

5. **Integration, Amendments, Waivers**. This Agreement shall constitute the entire agreement between Developer and the City and supersedes any other written or oral agreements between Developer and the City with regard to the subject matter hereof. This Agreement may be modified only by written agreement executed by both parties. No waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced. No waiver of any provision shall be deemed a continuing waiver of such provision or of this Agreement or a waiver of any other provision of this Agreement.

6. **Counterparts**. This Agreement may be executed in one or more counterparts, each of which will constitute an original, and all of which together shall constitute one and the same agreement.

7. **Partial Invalidity**. If any provision of this Agreement is determined to be unenforceable, such provision shall be reformed and enforced to the maximum extent permitted by law. If it cannot be reformed, it shall be stricken from and construed for all purposes not to constitute a part of this Agreement, and the remaining portions of this Agreement shall remain in full force and effect and shall, for all purposes, constitute this entire Agreement.

8. **Further Assurances**. Developer and the City will make, execute, and deliver such documents and undertake such other and further acts as may be reasonably necessary to complete

the transaction contemplated herein.

9. **Notice.** All notices and other communications required or permitted hereunder (“**Notices**”) shall be in writing, sent to the addresses below, and shall be: (a) personally delivered with a written receipt of delivery; (b) sent by a nationally recognized overnight delivery service requiring a written acknowledgement of receipt or providing a certification of delivery or attempted delivery; or (c) sent by email. Any Notice shall be deemed received upon actual receipt or refusal of delivery, and email read or delivery receipt notifications shall be deemed irrefutable evidence of receipt. Each party shall be entitled to change its address for Notices from time to time by delivering to the other party Notice thereof.

If to City:

City of Brighton
Attn: City Manager
500 S. 4th Avenue
Brighton, CO 80601

With a copy to:

City of Brighton
Attn: City Attorney
500 S. 4th Avenue
Brighton, CO 80601

If to Developer:

Pedcor Investments, A Limited Liability
Company
Attn: Jeremy Buchanan
770 Third Avenue S.W.
Carmel, IN 46032
Email: jeremyb@pedcor.net

With a copy to:

Brownstein Hyatt Farber Schreck, LLP
675 15th Street, Suite 2900
Denver, CO 80202-4432
Attn: Charlie Smith
Email: cjsmith@bhfs.com

[The remainder of this page has been left blank intentionally. Signatures appear on the following page.]

IN WITNESS WHEREOF, Developer and the City have executed this Agreement as of the Effective Date.

CITY:

CITY OF BRIGHTON, COLORADO
a Colorado home rule municipal corporation

MICHAEL MARTINEZ, City Manager

ATTEST:

NATALIE HOEL, City Clerk

APPROVED AS TO FORM:

YASMINA GIBBONS, Deputy City Attorney

[DEVELOPER SIGNATURE PAGE FOLLOWS]

DEVELOPER:

**PEDCOR INVESTMENTS, A LIMITED
LIABILITY COMPANY,**
a Wyoming limited liability company

By: _____
Name: Jared M. Houser
Title: Executive Vice President

STATE OF INDIANA)
) ss.
COUNTY OF HAMILTON)

The foregoing Water Use Reduction Agreement was acknowledged before me this _____
day of _____ 2023, by Jared M. Houser, in his capacity as Executive Vice President of
Pedcor Investments, A Limited Liability Company, a Wyoming limited liability company.

Witness my hand and official seal:

Notary Public
My commission expires:

Exhibit A

Legal Description of Property

LOT 1,
LOT 2,
TRACT F AND,
TRACT G,
BRIGHTON RIDGE SUBDIVISION FILING NO. 1,
RECORDED AT RECEPTION NO. 2023000029595,
CITY OF BRIGHTON,
COUNTY OF ADAMS,
STATE OF COLORADO.