

AGREEMENT REGARDING ROADWAY IMPROVEMENTS

THIS AGREEMENT REGARDING ROADWAY IMPROVEMENTS (this “Agreement”), dated as of March 6, 2018, is between Brookfield Residential (Colorado) LLC (the “Developer”), with an address at 6465 Greenwood Plaza Boulevard, Suite 700, Centennial, Colorado 80111, and the City of Brighton, Colorado (the “City”), with an address at 500 South 4th Avenue, Brighton, Colorado 80601.

WHEREAS, the Developer owns certain real property totaling approximately 136.5 acres within the boundaries of the City described, generally, as a portion of the southeast corner of Section 3, Township 1 South, Range 66 West of the 6th P.M (the “Property”); and

WHEREAS, in connection with the entitlement and development of such Property, the Developer and the City desire to enter into an agreement with respect to the design and construction by the Developer, of certain remaining unimproved portions of the collector roadway sections for 45th Avenue and Longs Peak Street (west of 50th Avenue and north of Bridge Street), as further set forth herein (collectively, the “Roadway Improvements”).

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

1. The Developer is currently working with the City on the following: (a) certain amendments to the existing plat for Brighton Crossing Filing No. 2, as referred to by the parties hereto as the 5th Amendment and 6th Amendment to said plat (collectively, the “Amendments”); (b) the final approval of the service plan (the “Service Plan”) for Brighton Crossing Metropolitan District Nos. 5-8 (the “Districts”), which Service Plan was conditionally approved by the City Council of the City (the “City Council”) on September 19, 2017; and (c) certain other City Approvals (as defined in the Service Plan) relating to the Amendments. The parties acknowledge that the City’s final approval of the Amendments and the Service Plan is within the sole discretion of the City.

2. Within fifteen (15) days from the time at which the City finally approves both the Amendments and the Service Plan, Developer shall submit to the City initial cost estimates for constructing the Roadway Improvements. Unless otherwise agreed to in writing by the City, the Roadway Improvements shall consist of improvements to Longs Peak Street totaling approximately 2,100 linear feet (between North 45th Avenue and North 50th Avenue), and improvements to North 45th Avenue totaling approximately 2,000 linear feet (between Bridge Street and Longs Peak Street) of curb, gutter, any unbuilt portions of the median, and roadway necessary to meet the minimum requirements as outlined in the City’s Master Transportation Plan for travel lane, bike lane and parking lane. The City shall have the right to review and approve the initial cost estimates provided by the Developer. The parties acknowledge that the City’s initial cost estimate for the Roadway Improvements is approximately \$2,600,000. Within forty-five (45) days of the City’s approval of the cost estimates, which approval shall not be unreasonably withheld, conditioned or delayed, the Developer shall provide payment and performance bonds or other financial guaranties acceptable to the City, in an amount not less

than one hundred fifteen percent (115%) of the initial cost estimates as approved by the City, issued by a qualified and reputable commercial surety or financial institution (the "Surety"), securing to the City the full, faithful, and timely performance of Developer's obligations to design and construct the Roadway Improvements, and the full payment of all contractors, subcontractors, vendors, suppliers, laborers and material-men needed to complete construction of the Roadway Improvements. Failure by the Developer to provide the Surety required herein shall constitute an event of default hereunder.

3. Upon the City's final approval of both the Amendments and the Service Plan, Developer shall commence the design and platting process with respect to the Property and shall submit an initial plat (the "Initial Plat") to the City for review prior to December 31, 2018. The Initial Plat shall specifically identify the Roadway Improvements and provide connection to the larger regional transportation network of the City, in a manner consistent with the City's adopted Master Transportation Plan. The Developer shall work cooperatively with the City with respect to the design of the Roadway Improvements and shall submit engineered plans and designs for the Roadway Improvements to the City no later than December 31, 2018. The City shall have the right to review such plans and designs, which approval shall not be unreasonably withheld, conditioned or delayed. Upon approval of the engineered plans and designs, if the final cost estimates for the Roadway Improvements are less than or exceed the initial cost estimates, the amount of the Surety shall be decreased or increased, accordingly, to 115% of such final cost estimates, as approved by the City. In the event that the Initial Plat is not submitted to the City by December 31, 2018 or the Developer has not submitted engineered plans and designs for the Roadway Improvements by December 31, 2018, this shall constitute an event of default hereunder and the City may call on the Surety to pay the costs associated with the design of the Roadway Improvements.

4. The City shall use good faith efforts to review the Initial Plat, and the City and the Developer agree to work cooperatively so that the Initial Plat may be presented to the City Council for consideration within 6 - 8 months after the Developer submits a complete application for the Initial Plat. The parties acknowledge that the City's final approval of the Initial Plat by the City Council is within the sole discretion of the City Council.

5. Upon the City Council's final and non-appealable approval of the Initial Plat, Developer shall thereafter commence permitting of the Roadway Improvements and secure bids for the construction of the Roadway Improvements in accordance with the Initial Plat and the final design of the Roadway Improvements, as approved by the City. In the event that the Developer has not initiated physical construction of the Roadway Improvements within ninety (90) days after final and non-appealable approval of the Initial Plat, this shall constitute an event of default under this Agreement and the City may call upon the Surety to complete performance, including the Surety's payment of all costs associated with constructing the Roadway Improvements, subject to Force Majeure. For purposes of this Agreement, "Force Majeure" shall include: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints issued by the government of the United States of America, the State of Colorado or any of their departments, agencies or officials, or any civil or military authority; riot; insurrection; landslides; earthquakes; fires; storms; droughts; floods; explosions; or any similar cause or event not within the reasonable control of the performing party. In this

Agreement, “initiating physical construction” shall mean, at minimum, that a grading permit has been issued to the Developer to start moving ground and that such activity has commenced.

6. The Developer shall use good faith efforts to substantially complete the construction of the Roadway Improvements within eighteen (18) months following City Council approval of the Initial Plat, subject to Force Majeure. Based on the estimated timelines set forth in this Agreement, the Roadway Improvements are expected to be substantially completed no later than December 31, 2020, subject to Force Majeure. For purposes of this Agreement, “substantially complete” shall mean the Roadway Improvements are usable, open and drivable for the public.

7. Upon the occurrence of an event of default hereunder, the non-defaulting party shall give the defaulting party written notice specifying the nature of the event of default, and the defaulting party shall have 30 calendar days from such written notice to cure the event of default. If the event of default allows the City to call on the Surety, the City shall also provide such written notice to the Surety. If the event of default is not cured within such 30 day period, then the non-defaulting party may pursue remedies hereunder, including without limitation, the right of the City to call on the Surety. No act, event or omission shall be an event of default hereunder if the defaulting party’s failure to perform is caused by Force Majeure or by any act, omission or event of default by the other party, or so long as the defaulting party has in good faith commenced and is diligently pursuing efforts to correct the condition specified in such notice.

8. Upon the occurrence and continuation of an event of default hereunder, the non-defaulting party’s remedies shall be limited to the right to enforce the defaulting party’s obligations hereunder by an action for injunction or specific performance, including an action to compel the Surety’s payment and performance obligations hereunder, but no party shall be entitled to claim damages for lost profits, economic damages, or incidental, consequential, punitive or exemplary damages. In any proceeding brought to enforce the provisions of this Agreement, the prevailing party therein shall be entitled to an award of reasonable attorneys’ fees, actual court costs and other expenses incurred.

9. This Agreement may be amended, modified, changed, or terminated in whole or in part only by a written agreement duly authorized and executed by the parties hereto. It is the intent of the Parties that the provisions of this Agreement may be incorporated into a future Development Agreement for the Property, which would include provisions concerning additional public improvements, surety requirements and release of the same, in which case this Agreement shall be terminated.

10. The laws of the State of Colorado shall govern the interpretation and enforcement of this Agreement. The parties hereby submit to the jurisdiction of and venue in the district court in Adams County, Colorado.

11. Neither the City nor the Developer shall assign their rights or delegate their duties hereunder without the prior written consent of the other party. Any such assignment or delegation without the required prior written consent shall be deemed null and void and of no effect. Notwithstanding, the Parties agree that a Title 32 metropolitan district organized to serve

the Property may undertake the Developer obligations herein with respect to design and construction of the Roadway Improvements and the Parties agree that such obligations may be assigned and delegated to such metropolitan district without further consent of the City, provided, however, that the Developer shall provide written notice to the City of any such assignment and the Developer shall obtain any necessary consent from the provider of the Surety.

12. This Agreement and the rights and obligations created hereby shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

13. This Agreement may be executed in counterparts and/or facsimile counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have set forth their respective hands as of the date first written above.

BROOKFIELD RESIDENTIAL (COLORADO)
LLC, a Nevada limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

CITY OF BRIGHTON, COLORADO

ATTEST:

Natalie Hoel, City Clerk

By: _____
Kenneth J. Kreutzer, Mayor

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney