

AGREEMENT REGARDING LICENSE TO MODIFY GOODHUE DITCH

This Agreement Regarding License to Modify the Goodhue Ditch (“Modification Agreement”) is entered into this ____ day of _____, 2024, between the **GOODHUE DITCH AND RESERVOIR COMPANY**, a mutual ditch company (“Goodhue”), whose legal address is P.O. Box 276, Louisville, Colorado 80027, and **REDTAIL RIDGE PORTFOLIO, LLC** (“Redtail Ridge”), whose legal address is 1555 Blake St., Suite 210, Denver, Colorado 80202 (each a “Party” and together the “Parties”).

Recitals

- A. Goodhue is a mutual ditch and reservoir company, as recognized under Article 42 of Title 7 of the Colorado Revised Statutes. Goodhue is the owner and operator of the Goodhue Ditch.
- B. Redtail Ridge has requested Goodhue’s permission to modify the Goodhue Ditch and its easement in the vicinity of South 96th Street and proposed Campus Drive in Louisville for the purposes of straightening the route of the ditch and its easement and having the water flow under proposed Campus Drive and under South 96th Street through a 54" Round Concrete Pipe (“Ditch Modification Project”).
- C. The segment of the Goodhue Ditch and its easement that will be modified by the Ditch Modification Project is shown on attached **Exhibit A** (“Goodhue Ditch Irrigation Culvert Plan and Profile” or “Modification Plans”).
- D. The segment of the Goodhue Ditch shown in the Goodhue Ditch Irrigation Culvert Plan and Profile is primarily open.
- E. Article XI, Sections 1 through 4 of the Bylaws of the Goodhue Ditch and Reservoir Company (“Goodhue Bylaws”) establish the terms and conditions on which Goodhue may approve applications for changes in or encroachments on ditch rights-of way.
- F. The Parties enter into this Modification Agreement to set forth the terms and conditions on which Goodhue will grant Redtail Ridge a license to conduct the Ditch Modification Project in accordance with Article XI, Sections 1 through 4 of the Goodhue Bylaws.

NOW, THEREFORE, in consideration of the mutual promises and subject to the limitations and conditions contained in this Modification Agreement, Goodhue and Redtail Ridge agree as follows:

1. **Payment of Modification fee and Goodhue’s additional expenses.** As provided in Article XI, Section 2 of the Goodhue Bylaws, at the time of execution of this Modification Agreement, Redtail Ridge has paid Goodhue a fee of \$1,000 as a minimum initial, **non-refundable** payment to cover Goodhue’s preliminary expenses in preparing this

Modification Agreement. Should Goodhue's documented expenses, including without limitation legal or engineering expenses, arising from consideration, preparation, and execution of this Modification Agreement exceed \$1,000, Goodhue shall email Redtail Ridge a written invoice for the amount of such excess, and Redtail Ridge shall pay such invoice within 28 days of the date on which the invoice was emailed.

2. **Authorization for Ditch Modification Project.** Subject to and in accordance with the provisions of this Modification Agreement, Goodhue hereby authorizes Redtail Ridge to conduct the Ditch Modification Project consistent with the plans attached as **Exhibit A**.
3. **License.** Goodhue grants Redtail Ridge a license to access the Goodhue Ditch and its easement as necessary to construct the Ditch Modification Project. Goodhue further grants Redtail Ridge a license to construct the Ditch Modification Project in accordance with the Modification Plans.
4. **Construction and operation.** Redtail Ridge shall construct, install, and perform the Ditch Modification Project in accordance with the requirements of this Agreement, as follows:
 - a. **No cost to Goodhue.** Redtail Ridge shall construct, install, and perform the Ditch Modification Project and shall construct the Ditch Modifications at no cost to Goodhue.
 - b. **Minimum requirements.** The Ditch Modifications must be constructed so as not to interfere with Goodhue's access to its easement for operation, maintenance, repair, and replacement of the Goodhue Ditch or its infrastructure.
 - c. **Timing.** Construction of the Ditch Modification Project will be conducted to avoid interference with the operations of the Goodhue Ditch from April 1 through October 1, which is defined as the "Irrigation Season" solely for purposes of this Modification Agreement. Any construction, installation, or performance of the Ditch Modification Project during the Irrigation Season must occur wholly outside of the ditch's existing easement and must not impact the operations or the existing infrastructure of the Goodhue Ditch. Before initiating any such construction, installation, or performance activities during the Irrigation Season, Redtail Ridge must obtain Goodhue's written authorization, which may include additional terms and conditions necessary to prevent interference with Goodhue's operations.
 - d. **Advance notice.** Redtail Ridge shall notify Goodhue by email at least five business days before beginning construction of the Ditch Modification Project.
 - e. **Diligent work on project.** Redtail Ridge agrees that construction and installation of the Ditch Modification Project will proceed with reasonable diligence from the initiation of construction to its completion.
 - f. **Goodhue's continuing access to its easement.** In addition to Goodhue's continuing rights of access arising under its easement for operation, maintenance, repair, and

replacement of the Goodhue Ditch, Goodhue may access the area of the Ditch Modification Project to observe and inspect construction of the Ditch Modification Project on reasonable advance emailed notice to Redtail Ridge.

- g. Permits. Redtail Ridge warrants that it has obtained or will obtain all necessary permits, approvals, and/or authorizations before beginning any work contemplated under this Modification Agreement.
- h. Flows in the ditch. Goodhue will not intentionally convey flows through the area of the Ditch Modification Project during the non-Irrigation Season while the Ditch Modification Project is under construction; however, Redtail Ridge is hereby notified and advised that storm water and other run-off may enter the Goodhue Ditch year-round.
- i. No interruption of Goodhue operations during construction and no interest in the Goodhue Ditch. Redtail Ridge shall perform construction in a manner that does not disrupt Goodhue's operation and maintenance of the Goodhue Ditch and does not interrupt or diminish the flow of water in the ditch. **Nothing** herein grants or is to be construed as granting Redtail Ridge any ownership or other interest in the Goodhue Ditch.
- j. Compaction. Where compacting of earth materials is required for Redtail Ridge to construct and install the Ditch Modification Project, Redtail Ridge shall ensure that the materials are compacted in accordance with standards required by the City of Louisville and the plans attached as **Exhibit A**.
- k. Restoration of easement, ditch, and infrastructure. Any and all portions of Goodhue's easement and of the Goodhue Ditch's channel, sides, banks, and infrastructure that are disturbed by the construction or installation of the Ditch Modification Project, but that are not encompassed by the Ditch Modification Project as described herein, must be restored to pre-project condition promptly following completion of the project. During any such restoration, all terms and conditions of this paragraph 4 will continue to apply.
- l. No interruption of Goodhue operations during operation, maintenance, and repair; inclusion of Ditch Modifications on final plat. Following completion of the Ditch Modification Project, Redtail Ridge shall operate, maintain, repair, and replace the Ditch Modifications in a manner that does not disrupt Goodhue's operation and maintenance of the Goodhue Ditch and does not interrupt or diminish the flow of water in the ditch. **Goodhue** acknowledges that under Redtail Ridge's approved plat, responsibility for operation, maintenance, repair, and replacement of the Ditch Modifications may be imposed upon the City of Louisville or a special district. On the final plat, Redtail Ridge shall depict and label the Ditch Modifications and shall include a note referencing this Modification Agreement, including any recording information.

- m. Liability for interruption in Goodhue's operations. Redtail Ridge shall be liable to Goodhue and its shareholders for damages arising from any cessation in flow resulting from construction of the Ditch Modification Project or Redtail Ridge's subsequent operation, maintenance, repair, or replacement of the Ditch Modifications to the extent Redtail Ridge or any agent of Redtail Ridge, including without limitation any contractor or sub-contractor, is directly responsible for the cessation in flow.
5. **Land use.** The lands covered by the license described in this Modification Agreement are part of the Goodhue Ditch system.
- a. There is reserved to Goodhue and its successors and assigns the right to use of any such lands to construct, operate, maintain, repair, and replace all structures and facilities associated with the Goodhue Ditch system, including but not limited to canals, wasteways, laterals, ditches, dams, dikes, and pipelines, without any payment made by Goodhue or its successors or assigns for such right.
 - b. There is also reserved to Goodhue the right of its directors, officers, agents, employees, licensees, and permittees, at all proper times and places, freely to have ingress to, passage over, and egress from all lands covered by the license described in this Modification Agreement, for the purpose of exercising, enforcing, and protecting the rights granted or reserved to Goodhue herein.
 - c. Redtail Ridge agrees that it shall reimburse Goodhue for any expense Goodhue incurs to maintain, repair, or replace the Goodhue Ditch as a result of the Ditch Modification Project, to the extent such maintenance, repair, or replacement is directly attributable to and made necessary by construction, operation, maintenance, repair, or replacement of the Ditch Modification Project. In the event that Goodhue incurs such expense, Goodhue shall email Redtail Ridge written documentation of and an invoice for such expense, and Redtail Ridge shall pay such invoice within 28 days of the date on which the invoice was emailed.
6. **Indemnification – release.** Redtail Ridge shall indemnify and hold Goodhue and its directors, officers, employees, agents, and shareholders harmless from any liability or claim thereof for any injury to person or property arising from or in connection with the Ditch Modification Project, including without limitation by virtue of any damage to other segments of the Goodhue Ditch, or the Goodhue's easement. Redtail Ridge, for itself and for its heirs, personal representatives, agents, successors, and assigns, releases Goodhue and its directors, officers, agents, employees, and shareholders from any liability or claims that may result from any leaking, seepage, or other releases or disturbances of water or flows from the Goodhue Ditch caused by the actions of Redtail Ridge or its agent(s) in carrying out the Ditch Modification Project. For purposes of this indemnification and release, the term "Ditch Modification Project" includes Redtail Ridge's, or any successor's

or assign's, subsequent operation, maintenance, repair, and replacement of the Ditch Modifications.

Additional Provisions

7. **Plans and drawings.** Redtail Ridge shall deliver to Goodhue full sets (including both paper and digital copies) of all as-constructed plans and drawings required under this Modification Agreement. All final plans and drawings required under this Modification Agreement must be prepared and stamped by a professional engineer.
8. **Dispute resolution.** If there is a dispute arising under this Modification Agreement, the Parties shall proceed as follows:
 - a. The aggrieved Party shall provide written notice to the other Party of the aggrieved Party's intent to invoke the dispute resolution process.
 - b. The Parties will attempt in good faith to resolve any dispute by direct negotiations for twenty-eight days from the date of the notice.
 - c. If the Parties are unable to resolve the dispute within twenty-eight days, the Parties, on mutual agreement, may refer the dispute for non-binding mediation. The mediator must be mutually agreed to by the Parties. The Parties will equally divide the cost of the mediation.
 - d. In the event the Parties decide to forgo mediation, or the mediation fails to resolve the dispute, the Parties preserve all rights and remedies available at law and in equity, including without limitation the remedy of specific performance.
9. **Notices.** Notices provided for in this instrument must be served by regular mail at the addresses stated above, with copies by email as follows:

To Redtail Ridge: epesonen@sterlingbay.com

To Goodhue: cpeterson@louisvilleco.gov; and jdilalla@mwhw.com
10. **Goodhue's continuing rights.** Notwithstanding any other provision of this Modification Agreement, Goodhue will have the right to make full use of the Goodhue Ditch and its associated easement to the extent necessary or convenient to Goodhue's operations.
11. **Warranty of authority.** Each signatory for each Party warrants that he or she is authorized to execute this Modification Agreement on behalf of the respective Party and to bind that Party to the obligations described in this Modification Agreement.
12. **Entire agreement.** The Parties agree that this Modification Agreement embodies the entire understanding and agreement of the Parties with respect to the subject hereof.

13. **Incorporation of exhibit.** “Exhibit A” referred to in this Modification Agreement is hereby expressly incorporated into the Modification Agreement.
14. **Binding on successors.** This Modification Agreement extends to, benefits, and binds the Parties and their respective heirs, personal representatives, agents, and successors and assigns.
15. **Amendments.** This Modification Agreement may be altered or amended only on the agreement of the Parties by a duly executed written instrument.
16. **Governing law.** The laws of the State of Colorado govern the interpretation and enforcement of this Agreement.
17. **No waiver.** Any waiver of a breach of this Modification Agreement will not be and is not to be construed as a waiver of any other or subsequent breach of this Modification Agreement. All remedies afforded in this Modification Agreement are to be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.
18. **Severability.** If any provision of this Modification Agreement is found to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity and enforceability of the remaining provisions will not in any way be affected or impaired thereby.
19. **Headings.** Headings in this Modification Agreement are for convenience or reference only and are not to be used in the interpretation or construction of this Agreement.
20. **Counterparts.** This Modification Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which together will be deemed to be a single agreement.
21. **Further assurances.** The Parties shall execute such further documents and do any and all such further things as may be necessary to implement and carry out the intent of this Modification Agreement.
22. **Electronic signatures and electronic records.** Each Party consents to the use of electronic signatures by the other Party. The Modification Agreement and any other documents requiring a signature hereunder may be signed electronically by either Party. The Parties agree not to deny the legal effect or enforceability of the Modification Agreement solely because it is in electronic form or because an electronic record was used in its formation.

[Signature page follows. Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Modification Agreement as of the day and year first written above.

**GOODHUE DITCH AND RESERVOIR
COMPANY**

By: _____

Name: Cory Peterson

Title: President

REDTAIL RIDGE PORTFOLIO, LLC

By: _____

Name: _____

By: _____

Name: _____