

## IMPROVEMENTS AGREEMENT

This Improvements Agreement (the “Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_, 202\_\_ (the “Effective Date”), by and between HDC 4147 W 64<sup>th</sup> Avenue, LLLP, a Colorado limited liability limited partnership (“Developer”), whose address is c/o Highland Development Company, 2100 Downing Street, Denver, Colorado 80205, Attn: Clay Iman, and the Board of County Commissioners of the County of Adams, State of Colorado (“County”), whose address is 4430 S. Adams County Parkway, Brighton, CO 80601. County and Developer may be referred to in this Agreement collectively as “Parties.”

### **I. General**

I.1 Purpose. The purpose of this Agreement is to provide for the completion of the Improvements as hereinafter defined, for the Subdivision as herein after defined.

#### I.2 Recitals.

- a. Developer is the contract purchaser and subdivider of the property described in Exhibit “A” attached hereto, and by this reference made part hereof (“Property”), and has presented a final plat of the Subdivision executed by the current owner of the Property to the County for approval concurrently with this Agreement.
- b. The subdivision statutes of the State of Colorado, Section 30-28-137, C.R.S., and the Adams County Development Standards and Regulations authorize the execution of an agreement with the County to construct required public and/or private improvements, to provide security for completion of said improvements, and, to the extent set forth on the Subdivision (defined below), dedicate land for public purposes or right-of-way.
- c. This Agreement will provide for the completion of the Improvements within the Subdivision and will protect the County from the cost of completing the Improvements, as follows:
  1. This Agreement requires Developer to deposit the collateral more particularly described in Section III.1 below as a condition precedent to the recording of such final plat for the Subdivision, and in any event, prior to commencing any construction or other work, including, without limitation, earthmoving and grading work, within the Property; and
  2. In connection with the approval of the final plat for the Subdivision, the County imposed a condition of approval that requires such collateral to be delivered in accordance with this Agreement; and

3. Should the Developer fail to deposit such collateral in accordance with the terms and conditions of this Agreement and the condition of approval imposed by the County with respect to the final plat of the Subdivision, both the final plat of the Subdivision and this Agreement shall automatically terminate as of midnight on September 1, 2025.

I.3 Subdivision. The “Subdivision” shall mean the Hardin Subdivision Final Plat, Project No. PLT2023-0046, with respect to the Property.

I.4 Improvements. The “Improvements” shall mean the street, drainage, and other improvements listed on the attached Exhibit “B” attached hereto, and by this reference made part hereof.

I.5 Plans. The “Plans” shall mean the Improvement plans approved by the County in Engineering Subdivision Review case number EGR2023-00041.

## **II. Design and Construction of Improvements**

II.1 Engineering Services. Developer shall furnish, at its own expense, all engineering and other services in connection with the design and construction of the Improvements.

II.2 Drawings and Estimates. The Developer has furnished drawings and cost estimates for all Improvements for approval by the County, as set forth in the Plans and cost estimate attached hereto as Exhibit “B”. Upon request, the Developer shall furnish one set of reproducible “as built” drawings and a final statement of construction costs to the County for the Improvements.

II.3 Construction. The Developer shall furnish and construct, at its own expense, the Improvements. The Improvements shall be constructed in accordance with the Plans approved by the County, and to the extent not otherwise provided in the Plans, in accordance with the County’s applicable ordinances, resolutions and regulations.

II.4 Right to Access. At all times during construction/installation of the Improvements, and any warranty period therefor, the County, and its employees, contractors, and agents, shall have the right to access the Property to inspect the Improvements and any other inspections required hereunder.

II.5 Time for Completion. The Improvements shall be completed according to the terms of this Agreement within the “Construction Completion Date” appearing in Exhibit “B”. The Director of the Community and Economic Development Department may, for good cause, grant extension of the time for completion for the Improvements. Any extension greater than 180 days may be approved only by the Board of County Commissioners. All extensions of time shall be in written form only.

II.6 Warranties of Developer. Developer warrants that the Improvements shall be installed in good workmanlike manner and in substantial compliance with the Plans and requirements of this Agreement and shall be substantially free of defects in materials and workmanship. These warranties of the Developer shall remain in effect until Final Acceptance of the Improvements by the County.

### **III. Guarantee of Completion of Improvements.**

III.1 Deposit of Collateral. To secure performance of the obligations of the Developer under this Agreement to complete the Improvements, the Developer shall deposit with the County a letter of credit, payment and performance bond, cash escrow deposit or other acceptable collateral deemed adequate by the County. Said collateral shall be in the amount of \$651,684.99 as set forth in Exhibit “B”, which includes twenty percent (20%) to cover administration and five percent (5%) per year based on the Construction Completion Date to cover inflation. If the Construction Completion Date is amended pursuant to Section II.5 of this Agreement, the Developer shall deposit additional collateral to cover inflation in the amount of five percent (5%) per year.

a. Collateral shall be furnished in the amount required and in a form acceptable to the Board of County Commissioners prior to the approval of any building permits for the Improvements or any other portion of the Property, including, without limitation, any grading permits. Without limiting the foregoing, Developer acknowledges and agrees that the County will **not** record the final plat for the Subdivision unless and until Developer has deposited such collateral in accordance with this Article III. Developer agrees to use commercially reasonable efforts to deposit the collateral promptly following the date upon which the Board of County Commissioners has approved the final plat for the Subdivision and this Agreement. Notwithstanding anything to the contrary in this Agreement, if the County has not received the required collateral as of September 1, 2025, then this Agreement will automatically terminate and be of no further force and effect; Developer will be deemed to have waived any and all vested rights that it may have acquired by virtue of this Agreement, the approved final plat of the Subdivision, State law, the Adams County Development Standards and Regulations, or otherwise; and neither party shall have any further rights or obligations pursuant to this Agreement.

b. As a condition precedent to the issuance of any building permit for any dwelling units within the Property, the following Improvements will be completed as shown on the Plans: (a) Improvements needed for the delivery of potable water and irrigation water to residents and property owners within the Property; (b) Improvements needed for the collection and treatment of wastewater within the Property and for the discharge of treated wastewater; and (c) Improvements needed for public streets within the Property, including, but not limited to, curbs, gutters, sidewalks, drainage facilities, medians, parkways, and other related

improvements and appurtenances, other than sidewalks and the top lift of asphalt. Notwithstanding anything to the contrary set forth above, building permits for up to two model homes located on the southern portion of the Property may be issued prior to Preliminary Acceptance of Improvements provided that Developer has provided (i) two points of all-weather emergency access, which may be gravel or aggregate base course, and (ii) an adequate water system with functional hydrants.

c. No certificates of occupancy shall be issued until the Subdivision has been approved and all Improvements described in Exhibit “B” have been Preliminarily Accepted by the Director of the Public Works Department in accordance with Section IV.1 of this Agreement. Notwithstanding the foregoing, certificates of occupancy may be issued at such point that the only remaining Improvements to be completed are any (a) landscaping, including without limitation plantings, trees, shrubs, sod and ground cover, irrigation lines, sprinkler systems and other landscape features, (b) sidewalks, and (c) the top lift of asphalt for streets.

III.2 Recording of Agreement. After approval of the Subdivision by the County, this Agreement may be recorded in the office of the Clerk and Recorder of Adams County. Upon Final Acceptance of all Improvements by the County, the County shall record a resolution notating that Final Acceptance, releasing the Developer from the obligations under this Agreement.

#### **IV. Acceptance and Maintenance of Improvements**

IV.1 Preliminary Acceptance. Upon the satisfactory completion of all the Improvements, the Developer may request Preliminary Acceptance be granted by the Department of Public Works.

a. Upon request for Preliminary Acceptance, the County shall inspect the completed Improvements, and if the County finds that the Improvements have been completed in accordance with the Plans and the requirements of this Agreement, the County shall issue Preliminary Acceptance. Completion of said Improvements shall be determined solely by the County pursuant to the foregoing standards.

b. Upon issuance of Preliminary Acceptance, the Developer shall begin the one (1) year guaranty period with respect to such Improvements. During the guaranty period, the Developer shall be responsible for all maintenance and repairs to such Improvements. Failure by the Developer to maintain and repair such Improvements during this period shall be cause for the Department of Public Works to extend the guaranty period until such work is completed.

IV.2 Release of Collateral. Upon Preliminary Acceptance in accordance with this Agreement and Section 5-02-05-01 of the County’s Development Standards and

Regulations, the collateral shall be released. Notwithstanding the foregoing, a reasonable part of said collateral, up to twenty percent (20%) may be retained to guarantee maintenance of such Improvements for a period of one year from the date of Preliminary Acceptance.

IV.3 Final Acceptance. Upon the completion of the one-year guarantee period the Developer may request Final Acceptance of the Improvements.

a. Upon request for the Final Acceptance for the Improvements, the County shall inspect the Improvements, and all repairs or replacements of failed materials, specifications, or workmanship that have been completed. If after inspection, the condition of the Improvements meets County standards and complies with the Plans and requirements of this Agreement, as determined solely by the County, the Department of Public Works shall recommend that the Board of County Commissioners grant Final Acceptance of the Improvements.

b. Upon Final Acceptance by the Board of County Commissioners, all Improvements designated as “public” on Exhibit “B” shall be public facilities and become property of the County or other public agencies upon acceptance.

c. Upon Final Acceptance by the Board of County Commissioners, the remaining collateral shall be released.

## **V. Defaults and Remedies**

V.1 Default by Developer. A default by the Developer shall exist if (a) Developer fails to construct the Improvements in substantial compliance with the Plans and the other requirements of this Agreement; (b) Developer fails to complete construction of the Improvements by the Construction Completion Date provided herein as the same may be extended; (c) Developer fails to cure any noncompliance specified in any written notice of noncompliance within a reasonable time after receipt of the notice of noncompliance; (d) Developer otherwise breaches or fails to comply with any obligation of Developer under this Agreement.

V.2 Remedies of County. If the County, after notice, determines that a default by Developer exists, and if Developer fails to cure such default within the time specified by the County, the County shall be entitled to (a) make a draw on the collateral for the amount reasonably determined by the County to be necessary to cure the default in a manner consistent with the approved Plans up to the face amount of the collateral; and (b) sue the Developer for recovery of any amount necessary to cure the default over and above the amount available in the collateral provided.

V.3 County Right to Completion of Improvements. The right of the County to complete or cause completion of the Improvements as herein provided shall include the right to complete the Improvements, in substantial accordance with the Plans, the estimated costs,

and other requirements of this Agreement, either itself or by contract with a third party or by assignment of its rights to a successor developer who has acquired the Property by purchase, foreclosure, or otherwise.

V.4 Use of Funds by County. Any funds obtained by the County through collateral or recovered by the County from Developer by suit or otherwise, shall be used by the County to pay the costs of completion of the Improvements substantially in accordance with the Plans and other requirements of this Agreement and to pay the reasonable costs and expenses of the County in connection with the default by the Developer, including reasonable attorneys' fees.

## **VI. Miscellaneous**

VI.1 Indemnifications. Developer shall indemnify and save harmless the County from (a) any and all suits, actions, claims, judgments, obligations, or liabilities of every nature and description which arise from an event or occurrence prior to the date of Final Acceptance and which are caused by, arise from or on account of the construction and installation of the Improvements; and (b) any and all suits, actions, claims or judgments which both arise from an event or occurrence prior to the date of Final Acceptance and are asserted by or on behalf of Developer's contractors or subcontractors working in the Subdivision, lot owners in the Subdivision, or third parties claiming injuries to the extent resulting from defective Improvements constructed by the Developer (collectively, "Claims"). This indemnification shall not apply to claims arising from the negligent acts or omissions, or intentional misconduct, of the County or anyone acting by, through, or under the County. Developer shall pay any and all judgments rendered against the County on account of any such Claims, together with all expenses and attorneys' fees incurred by the County in defending such Claims. The County shall, within fifteen days after being served with any such Claim, provide the Developer with a copy of the complaint. The County agrees that the Developer may also, on its own behalf, become a party to any such action and the County agrees to execute any documents as may be necessary to allow the Developer to be a party.

VI.2 No Third Party Beneficiaries. Except as herein provided, no person or entity, other than a party to this Agreement, shall have any right of action under this Agreement including, but not limited to, lenders, lot or home buyers and materialmen, laborers or others providing work, services, or materials for the Improvements.

VI.3 Notices. Any and all notices, demands, or other communications desired or required to be given under any provision of this Agreement shall be given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid or by email address as follows:

To Developer:

HDC 4147 W 64<sup>th</sup> Avenue, LLLP  
c/o Highland Development Company  
2100 Downing Street  
Denver, Colorado 80205  
Attn: Clay Iman  
Email: ciman@highlanddevelopmentco.com

To Adams County:

Director, Adams County Community and Economic Development  
4430 S. Adams County Parkway  
1<sup>st</sup> Floor, Suite W2000A  
Brighton, CO 80601

With a Copy to:

Adams County Attorney  
4430 S. Adams County Parkway  
5<sup>th</sup> Floor, Suite C5000B  
Brighton, CO 80601

VI.4 Successors and Assigns. This Agreement shall be binding upon the heirs, executors, personal representatives, successors, and assigns of the Developer and shall be deemed a covenant running with the Property; provided, however, that in no event will the purchaser of any lot established by the Subdivision upon which a dwelling has been constructed be deemed to be a successor to Developer hereunder. Notwithstanding the foregoing, Developer may, upon written notice to and prior written approval of the County, acting by and through its Board of County Commissioners, assign its rights and obligations under this Agreement, in whole or in part, to (a) one or more districts organized to serve the Property pursuant to Title 32, C.R.S., and/or (b) any successor developer or homebuilder for any portion of the Property. Following any such assignment of this Agreement by Developer, and delivery to the County of written evidence of such assignment and assumption by such assignee approved in advance by the County, Developer will be relieved of any obligations and liabilities so assigned, and the County will accept performance of the obligations set forth in this Agreement by the party so assigned such obligations in accordance with this Section.

VI.5 Governmental Immunity. Nothing herein shall be deemed by a waiver of the rights, defenses, and limitations afforded to the County in accordance with the Colorado

Governmental Immunity Act, Section 24-10-101, C.R.S., *et seq.*, as may be amended from time to time.

VI.6 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

VI.7 Waiver. No waiver of one or more terms of this Agreement shall constitute a waiver of the other terms. No waiver of any provision of this agreement in any instance shall constitute a waiver of such provision in other instances.

VI.8 Severability. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, it shall not affect the validity of this Agreement as a whole, or any part thereof, other than the part declared to be invalid.

VI.9 Consent to Jurisdiction and Venue. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement with respect to this Agreement shall be proper only if such action is commenced in the District Court for Adams County, Colorado.

VI.10 Amendment. This agreement may only be modified, amended, or changed in whole or in part by a separate agreement in writing duly authorized and executed by the Parties hereto with the same formality as this Agreement.

IN WITNESS WHEREOF, the County and Developer have caused this Agreement to be duly executed effective as of the Effective Date.

**Developer:**

HDC 4147 W 64<sup>th</sup> Avenue, LLLP,  
a Colorado limited liability limited partnership

By: HDC 4147 W 64<sup>th</sup> Avenue GP, LLC  
a Colorado limited liability company,  
its General Partner

By: Highland Development Company, LLC,  
a Colorado limited liability company,  
its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



CITY OF \_\_\_\_\_ )  
STATE OF COLORADO ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of Highland Development Company, LLC, a Colorado limited liability company, as Manager for HDC 4147 W 64<sup>th</sup> Avenue GP, LLC, a Colorado limited liability company, as General Partner for HDC 4147 W 64<sup>th</sup> Avenue, LLLP, a Colorado limited liability limited partnership.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

APPROVED BY resolution at the meeting of \_\_\_\_\_, 20\_\_\_\_.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
ADAMS COUNTY, COLORADO

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Chair

**EXHIBIT A**

**Legal Description:**

A PARCEL OF LAND WITHIN THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, ADAMS COUNTY, STATE OF COLORADO DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 6, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN BEING A FOUND 2" ALUMINUM CAP (ILLEGIBLE) IN A RANGE BOX WHENCE THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER SECTION 6, BEING A FOUND 3.25" ALUMINUM CAP STAMPED PLS 36070 IN RANGE BOX BEARS NORTH 89 52'58" EAST A DISTANCE OF 2640.30 FEET; THENCE NORTH 89 52'58" EAST A DISTANCE OF 741.56 FEET TO THE POINT OF BEGINNING;

THENCE DEPARTING THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SECTION 6, NORTH 0105'51" EAST, A DISTANCE OF 1152.72 FEET TO A POINT ON THE SOUTH LINE OF LOT 14, BLOCK 2 OF LAKE SHORE SUBDIVISION AS SHOWN ON THAT CERTAIN MAP RECORDED IN THE ADAMS COUNTY CLERK AND RECORDERS OFFICE IN FILE 10, MAP 298;

THENCE ALONG THE SOUTH LINE OF LOTS 12, 13, AND 14, OF BLOCK 2, SAID LAKE SHORE SUBDIVISION, NORTH 84 52'19" EAST, A DISTANCE OF 186.64 FEET TO A POINT ON THE SOUTH LINE OF LOT 12, BLOCK 2 SAID LAKE SHORE SUBDIVISION, SAID POINT BEING THE NORTHWEST CORNER OF LOT 4, BLOCK 5, RESUBDIVISION OF FALBO ESTATES SECOND FILING AS SHOWN ON THAT CERTAIN MAP RECORDED IN THE ADAMS COUNTY CLERK AND RECORDERS OFFICE IN FILE 11, MAP 180;

THENCE DEPARTING SOUTH LINE OF SAID LOT 12, ALONG THE WEST LINE OF LOTS 1 THROUGH 4 INCLUSIVE, BLOCK 5, RESUBDIVISION OF FALBO ESTATES SECOND FILING AND THE WEST LINE OF LOTS 1 THROUGH 10, BLOCK 1 OF FALBO ESTATES AS SHOWN ON THAT CERTAIN MAP RECORDED IN THE ADAMS COUNTY CLERK AND RECORDERS OFFICE IN FILE 11, MAP 142, SOUTH 01 00'50" WEST, A DISTANCE OF 1168.99 FEET TO THE SOUTHWEST CORNER OF SAID FALBO ESTATES AND THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 6;

THENCE ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SECTION 6, SOUTH 89 52'58" WEST, A DISTANCE OF 187.29 FEET TO THE POINT OF BEGINNING.

## **EXHIBIT B**

### **Public Improvements:**

4147 W. 64TH AVE., ARVADA, CO

<u>Description</u>	<u>Est. Quantity</u>	<u>Est. Unit Cost</u>	<u>Est. Construct. Cost</u>
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#### Construction Costs

Item	Quantity	Unit Cost	Unit	Cost
Vehicle Tracking Pad	1	2280	EACH	\$2,280.00
Silt Fence	1400	2.5	LIN FT	\$3,500.00
Inlet Protection	8	300	EACH	\$2,400.00
Check Dams	200	18	LIN FT	\$3,600.00
Concrete Washout Area	1	2000	EACH	\$2,000.00
Sediment Basin (per acre)	4.96	18500	ACRE	\$91,760.00
Erosion Control Blankets	210	3.25	SQ YD	\$682.50
Diversion Dikes/Ditches	500	15	LIN FT	\$7,500.00
Mulching (Straw)	3.9	1000	ACRE	\$3,900.00
Outlet Protection (Type L Riprap)	2	150	CU YD	\$300.00
Temporary seeding	3.9	750	ACRE	\$2,925.00
Grading	4430	5	CU YD	\$22,150.00
Grading (Import)	1495	12	CU YD	\$17,940.00
Grading (Export)	0	2.5	CU YD	\$0.00
Compacting	4430	2.5	CU YD	\$11,075.00
Permanent Seeding	3.9	2750	ACRE	\$10,725.00
Seedbed Preparation	3.9	2250	ACRE	\$8,775.00
Topsoil (Import)	20	32	CU YD	\$640.00
		Subtotal:		\$192,152.50

#### On-Site Drainage

Item	Quantity	Unit Cost	Unit	Cost
Type 'C' Inlet	3	3950	EACH	\$11,850.00
Inlets Type R, 10'	1	8000	EACH	\$8,000.00
Inlets Type R, 15'	1	9000	EACH	\$9,000.00
Cleanout	35	75	EACH	\$2,625.00
Storm Sewer RCP 12"	235	80	LIN FT	\$18,800.00
Storm Sewer RCP 18"	215	89	LIN FT	\$19,135.00
Storm Sewer RCP 24"	45	99	LIN FT	\$4,455.00
Concrete End Sections (size)	1	2000	EACH	\$2,000.00

Manholes (size) 5'X5' slab	1	4250	EACH	\$4,250.00
Riprap 6" (VL)	5	120	CU YD	\$600.00
Subtotal:				\$80,715.00

#### Storm Drainage (Circulation)

Item	Quantity	Unit Cost	Unit	Cost
Manholes (size) 5'X5' slab	1	4250	EACH	\$4,250.00
Subtotal:				\$4,250.00

#### On-Site Storm Sewer

Item	Quantity	Unit Cost	Unit	Cost
8" PVC Sewer Line (Main)	1000	76.5	LIN FT	\$76,500.00
6" PVC Sewer Line	0	71.5	LIN FT	\$0.00
4" PVC Sewer Line	750	70	LIN FT	\$52,500.00
Fittings (size, type)	0	40	LIN FT	\$0.00
Manholes 4"	4	4250	EACH	\$17,000.00
Subtotal:				\$146,000.00

#### PUBLIC STREET CIRCULATION

Item	Quantity	Unit Cost	Unit	Cost
Pavement Rotomilling	25	8.5	SQ YD	\$212.50
Hot Bituminous Pavement-(8")	10	87.5	TON	\$875.00
Aggregate Base Course	0	53.5	CU YD	\$0.00
Cross Pans 8'	70	71	LIN FT	\$4,970.00
6" Vertical Curb and Gutter	100	39	LIN FT	\$3,900.00
Detached Sidewalks (5' width)	50	42	LIN FT	\$2,100.00
ADA Ramps	4	4250	EA	\$17,000.00
Subtotal:				\$29,057.50

#### Detention Pond

Item	Quantity	Unit Cost	Unit	Cost
Outlet Structure	1	9250	EACH	\$9,250.00
Pond grading	0.2	18500	ACRE	\$3,700.00
Trickle Channel	100	40	LIN FT	\$4,000.00
Subtotal:				\$16,950.00

Cost Total

Construction Costs	\$192,152.50
On-Site Storm Sewer	\$146,000.00
On-Site Drainage	\$80,715.00
PUBLIC STREET CIRCULATION	\$29,057.50
Storm Drainage (Circulation)	\$4,250.00
Detention Pond	\$16,950.00

Subtotal: \$469,125.00

20% Administration Cost \$93,825.00

Subtotal: \$562,950.00

5% per year Inflation \$88,734.99

Grand Total: \$651,684.99

**Construction Completion Date:** September 30, 2027

Initials or signature of Developer: \_\_\_\_\_

\_\_\_\_\_