WATER AND/OR SEWER MAIN IMPROVEMENT AGREEMENT FOR

Douglas 234 filing 1, Lot 11, B10 (Childcare Facility)

(NAME OF DEVELOPMENT)

THIS WATER AND/OR SEWER MAIN IMPROVEMENT AGREEMENT is made and executed this 7th day of July, 2021, by and between **THE PARKER WATER AND SANITATION DISTRICT**, a Colorado special district (hereafter referred to as the **"District"**), and New Horizon Real Estate Development 6, LLP (hereafter referred to as the **"Owner").**

WHEREAS Owner is the owner of certain real property located within the boundaries of the District, which real property is more particularly described in **Exhibit A;** which is attached hereto and incorporated herein; and

WHEREAS Owner wishes to develop all or a portion of said real property, which development shall include the installation of water and/or sanitary sewer mains pursuant to the plan which is attached hereto as **Exhibit B;** and

WHEREAS the District wishes to grant permission to the Owner to develop such improvements pursuant to the Rules and Regulations of the District and the terms and provisions of this Agreement.

NOW THEREFORE, in and for consideration of the performance of the covenants and promises set forth herein, the parties agree as follows:

1. The District hereby approves the plan attached hereto as **Exhibit B,** and authorizes the Owner to construct said improvements in accordance therewith. All such improvements shall be constructed, completed and maintained in conformity both with said plan and the Rules and Regulations of the District. The parties agree that the improvements shall be completed in accordance with the time schedule attached hereto as **Exhibit C.**

2. At the time of commencement of construction of the improvements identified in **Exhibit B,** the Owner, or his agent/contractor, shall comply with the provisions of Section 6.4 of the Rules and Regulations of the District as adopted by Resolution No. 1995-16A. Specifically, the Owner, or his agent/contractor shall deposit with the General Manager of the District, or his designee, security in the form of an irrevocable Letter of Credit in a form and drawn on a financial institution acceptable to the General Manager of the District, in the amount of 120% of the estimated cost of the construction identified in **Exhibit D,** a copy of which is attached hereto. All costs set forth in said **Exhibit D** shall be approved by the District's Engineer. The purpose of such security is to enable the District to undertake or complete such construction utilizing the District's own forces or contractors in the event the Owner or his agent/contractor fails to complete the construction in either a timely or workmanlike

manner. Any Letters of Credit, which are delivered to the District as the required security provided for herein, shall remain in full force and effect, until probationary acceptance by the District of the improvements. At the time of such probationary acceptance of such construction, and upon presentation of evidence of full payment therefore by the Owner or his agent/contractor, 100% of the actual costs of construction of the improvements shall be reduced to the Owner, with the District retaining the remaining 20% until the expiration of the two-year warranty period described herein. At the completion of such two-year warranty period, the Owner shall convey to the District by bill of sale the improvements constructed by Owner and/or his contractor and identified in **Exhibit B.** At the time of receipt of the above described bill of sale, District shall return to the Owner or his agent/contractor all amounts remaining in possession of the District which have not been required to be expended by the District in repair or maintenance of said construction.

If cash-in-lieu is provided, the terms of the Cash in Lieu of Letter of Credit Financial Guarantee Agreement shall govern releases by the District.

3. In the event that Owner shall at any time prior to final acceptance by the District of the construction of the improvements specified in **Exhibit B** allow any Letter of Credit to lapse or otherwise become not valid, enforceable, and in the possession of the District, the District shall withhold the provision of water and/or sewer service to any and all properties which are contemplated to be served by the improvements identified in **Exhibit B** to this Water and/or Sewer Main Improvement Agreement.

4. The Owner shall warrant any and all improvements identified in **Exhibit B** for a period of two years following completion of construction by the Owner or his agent/contractor, and preliminary acceptance of such improvements by the General Manager of the District, subject to the prior occurrence of the following:

a) Installation of all water/or sewer mains or other improvements identified in **Exhibit B** has been approved in writing by the District's Engineer, and the District has received two full sets of "reproducible as-builts;" and

b) The District has received a bill of sale conveying to it said water/sewer mains or other improvements identified in **Exhibit B** free and clear of all liens, restrictions, reservations and encumbrances whatsoever; and

c) The District has received from the Owner a written agreement, or has been presented with evidence of reservation of an easement within any approved right-of-way on any plat approved by the Town of Parker, Colorado, granting the District the right to use, together with possession and control of, such water/sewer mains and other improvements during any period of time commencing with completion of construction and extending to the date of actual acceptance of and conveyance of bill of sale evidencing title to such mains by the District.

At the conclusion of such two-year warranty period, Owner's warranty shall expire, and all such improvements shall be accepted for maintenance by the District.

5. The District shall have the right, but not the duty, to make reasonable engineering observations at the Owner's expense as the District may reasonably request. Observation, acquiescence in, or approval by any engineering observer of the construction of improvements at any time shall not constitute approval by the District of any portion of the construction of such improvements. Such approval shall be made by the District only after completion of construction and in the manner set forth in the District's Rules and Regulations.

6. For the period commencing with the commencing of construction and ending upon the termination of the Owner's warranty period, the owner does hereby indemnify and hold the District, its employees, agents, contractors and consultants, harmless for or on account of any act or omission, including the design and/or construction of the improvements identified in **Exhibit B**, of the Owner, his employees, contractors and/or agents, with respect to the design and construction of the improvements identified in said **Exhibit B**, and the Owner shall pay any and all claims asserted or judgments rendered against the District as the result of any suit, action, or claim together with all reasonable expenses and attorney fees incurred by the District or its agents or employees or contractors in defending any such suit, action, or claim.

7. In the event Owner shall convey all or any portion of the real property described in **Exhibit A** at any time prior to the date of final acceptance by the District of the improvements identified in **Exhibit B**, the grantee or successor of Owner shall become and shall be bound by all the provisions hereof, and shall in addition: continue in full force and effect the security required in paragraph 2 hereof, or shall cause to be put in place replacement security in the same required amount, subject to acceptance by the District as to the amount and the form of the security and the identity of the institution issuing the same; and shall honor and adhere to all warranties and promises made and covenanted to by Owner herein.

8. The District agrees to cooperate with the Owner, and the Owner agrees to cooperate with the District, in the timely filing and approval of all plans and requests made of one party to the other.

9. This Water and/or Sewer Main Improvement Agreement constitutes the entire agreement between the parties, and supersedes all other agreements, whether written or verbal, which may exist between the parties, except as specified in paragraph 10 hereof.

10. In the event of a dispute between the parties regarding the terms hereof, which terms shall be construed pursuant to Colorado law, the same shall be resolved in the courts of Douglas County, Colorado, which courts shall have exclusive jurisdiction.

11. Notwithstanding the provisions of this Water and/or Sewer Main Improvement Agreement, all of the provisions of the Rules and Regulations of the

Parker Water and Sanitation District, as the same presently exist or as they may in the future be amended, are applicable to Owner and/or his agent/contractor in construction and completion of the improvements identified in **Exhibit B**. To the extent there should be a discrepancy between any provision of this Agreement and any of the provisions of the District's then-current Rules and Regulations, the provision which imposes the greater restriction or the higher duty or standard of performance on the Owner or his agent/contractor shall apply.

12. Remedies/Cure Period. In the event of a material breach of a provision of this Agreement by Owner, in addition to any other remedy available at law or equity, the District shall have the following rights:

a) Withhold the provision of water and/or sewer service to any and all properties which are contemplated to be served by the improvements identified in **Exhibit B** to this Water and/or Sewer Main Improvement Agreement.

b) Require Owner, at Owner's expense, to cure the breach.

c) If Owner has failed to complete or if the District reasonably believes Owner will fail to complete the improvements set forth in **Exhibit B** in accordance with the time schedule set forth in **Exhibit C**, the District shall have the right to draw on the letter of credit.

Unless the deadline for exercising any remedy set forth above would render such remedy unavailable, prior to seeking any such remedy, the District shall notify the Owner in writing of the nature of the breach and the measures that must be taken to cure the breach, and give the owner an opportunity to cure the breach as set forth herein. Owner shall have fifteen (15) days to cure the breach or if the breach cannot be cured within fifteen (15) days, exercise reasonable and continued diligence to cure the breach as rapidly as possible, but in no event shall Owner have more than ninety (90) days to cure the breach.

Owner:

New Horizon Real Estate Development 6, LLP

3405 Annapolis Lane North, Suite 100

Plymouth, MN 55447

By: 7/7/21

Heidi A. Pross, Sr. Dir. of Construction & Facilities

Printed Name & Title

District:

PARKER WATER AND SANITATION DISTRICT
18100 E. Woodman Drive
Parker CO 80134

By:_____
Ron R. Redd, P.E., District Manager

Attest:_____