

FACILITIES FUNDING AND ACQUISITION AGREEMENT

This FACILITIES FUNDING AND ACQUISITION AGREEMENT (“Agreement”) is made and entered into this 12th day of May, 2010, with an effective date of January 11, 2010, by and between **LAKEVIEW METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”) and **LAKEVIEW DEVELOPMENT CORPORATION**, a Colorado corporation (the “Developer”) (collectively, the “Parties”).

RECITALS

WHEREAS, Developer is the developer of a project located in the City of Loveland, Colorado, commonly known as the Lakeview Subdivision (the “Property”); and

WHEREAS, the Property is within the Service Area of the District; and

WHEREAS, the District was organized on January 11, 2010 (“Organization Date”); and

WHEREAS, pursuant to the authority granted to the District by its Service Plan, as approved by the City Council of the City of Loveland on August 18, 2009, as it may be amended from time to time (the “Service Plan”), the District intends to acquire certain public improvements to benefit properties within its Service Area; and

WHEREAS, in order for the Property to be developed, the Improvements need to be constructed and/or acquired; and

WHEREAS, the District does not currently have sufficient monies available to fund the cost of construction of the Improvements or to acquire the Improvements; and

WHEREAS, funds related to the design, testing, engineering, and construction of the Improvements together with the related consultant and management fees associated with the construction of the Improvements have been and/or will be expended by the Parties (“Construction Related Expenses”); and

WHEREAS, it is anticipated that the District will issue bonds, the proceeds of which may be utilized in part to reimburse the Developer for Organization Expenses, Construction Related Expenses, and/or acquisition of Improvements; and

WHEREAS, in order to encourage development within the District, the District and the Developer have determined that until bonds are issued it is in the best interests of the District for the Developer to advance funds to the District for the Construction Related Expenses and/or for the District’s acquisition of the Improvements upon completion, and the Developer is willing to so proceed; and

WHEREAS, the District desires to reimburse the Developer for the Construction Related Expenses and to acquire such Improvements completed by the Developer; and

WHEREAS, the Developer has incurred expenses for the organization of the District (the "Organization Expenses"); and

WHEREAS, the District desires to reimburse the Developer for the Organization Expenses; and

WHEREAS, the District and the Developer desire to set forth the rights, obligations, and procedures for the acquisition of the Improvements and for the District to reimburse the Developer as provided herein.

NOW, THEREFORE, in consideration of the foregoing and the respective agreements of the Parties contained herein, the Parties agree as follows:

COVENANTS AND AGREEMENTS

ARTICLE I FUNDING OF ORGANIZATION EXPENSES

1.1 Acknowledgement of and Reimbursement for Organization Expenses. District acknowledges that Developer has expended funds for the Organization Expenses. Developer shall provide written documentation relative to the Organization Expenses to the District's accountant, such documentation to be satisfactory to the District. Upon the District's accountant's verification of the documentation in determining the amount of the Organization Expenses, such amount shall be reimbursable to the Developer. Subject to the receipt of funding pursuant to Article 4 herein, the Developer shall be reimbursed for those Organization Expenses that have been verified and approved by the District's accountant, as well as amounts advanced to the District by the Developer to pay for the costs incurred by the District for such review, verification and approval, together with interest thereon which shall accrue from the Organization Date at the rate of eight percent (8%) per annum.

ARTICLE II FUNDING OF IMPROVEMENTS TO BE CONSTRUCTED BY THE DISTRICT

2.1 Improvements Constructed by the District. The Parties currently anticipate that the Foundation will design, construct and complete certain Improvements and incur Construction Related Expenses, and that the District will acquire such Improvements in accordance with the provisions of Article III. In the event that the District proceeds with the design, construction and completion of any Improvements, the District shall comply with the provisions of this Article II.

2.2 Acknowledgement of Anticipated Shortfall. In the event that the District is to design, construct, and complete certain Improvements, the District shall prepare and deliver to the Developer a proposed budget for such Improvements (the "Improvement Budget"). If and to the extent that available District revenues are insufficient to pay all of the anticipated Construction Related Expenses, the difference between the available revenues and anticipated Construction Related Expenses shall be the shortfall amount (the "Shortfall Amount"). The Developer shall have thirty (30) days to review and approve the Improvement Budget. The Developer's written approval of the Improvement Budget shall constitute the Developer's agreement to fund any Shortfall Amount, which shall be designated "Developer Advance" in the Improvement Budget, and the Developer's representation that it has sufficient available funds to

fulfill such obligation to fund such Shortfall Amount. In the event that, within such thirty-day period, the Developer does not communicate in writing to the District its approval of or objection to the Improvement Budget, the Developer shall be deemed to have rejected the Improvement Budget. In such event, the Developer and the District shall enter into discussions in an attempt to agree on an Improvement Budget.

2.3 Payment of Shortfall. In the event that the Developer approves the District's budget as provided in Section 2.2 above, the District shall prepare and deliver to the Developer by the twenty-fifth (25th) day of each month a report of (i) all Construction Related Expenses then payable, (ii) the amount, if any, of revenue from all sources the District has received and deposited during the previous month in the District's account ("Account") which are available for payment of Construction Related Expenses, and (iii) a request that the Developer advance to the District all or any portion of the Shortfall Amount necessary to pay such then payable Construction Related Expenses. Within ten (10) business days following Developer's receipt of all of the items set forth in this Subsection 2.3(i) through (iii) above, the Developer shall deposit in the Account an amount of good funds equal to the requested Shortfall Amount. For the purposes of this Agreement, each such deposit of funds by the Developer shall hereafter be referred to as a "Developer Advance."

2.4 Accounting. The District shall keep an accounting of each Developer Advance, including the accrued and unpaid interest thereon, and shall provide unaudited financial statements reflecting this accounting to the Developer on a quarterly basis.

ARTICLE III CONSTRUCTION OF IMPROVEMENTS TO BE ACQUIRED BY THE DISTRICT

3.1 Improvements Acquired by District. The Parties acknowledge that the Developer has or will design, construct, and complete certain Improvements in accordance with the provisions of this Article III for District acquisition upon completion. Developer agrees that the Improvements it has constructed or the Improvements it undertakes to construct shall be constructed in full conformance with the design standards and specifications as established and in use by the District or other appropriate jurisdiction and in accordance with the provisions of this Agreement and the District's Service Plan.

3.2 Construction Contract Requirements. The Developer agrees that any construction contract for all or any portion of the Improvements shall require the contractor to provide a warranty from the date of initial acceptance of the completed Improvement and a security mechanism to secure the warranty approved by the District or as required by the applicable government entity to which the Improvements shall be dedicated.

3.3 Verification of Costs. The Developer agrees that prior to the District acquiring the Improvements pursuant to this Agreement, the District, shall obtain a certification of an independent engineer that the costs for the design, construction and completion of the Improvements are reasonable and comparable for similar projects as constructed in Northern Colorado, and verification from the District's accountant that the Construction Related Expenses are reimbursable ("Verified Costs") based on the copies of the invoices, bills, and requests for payment provided to the District pursuant to Section 3.5 herein. The Developer shall provide the District with written evidence of the date that payment was made by the Developer for all

Verified Costs. The Developer shall advanced to the District funds necessary to pay the costs incurred by the District for such review and cost verification, including legal, accounting, management and engineering expenses.

3.4 Periodic Reports. If the District so requests, Developer will provide periodic reports on the status of completion of the Improvements and/or accounting of Construction Related Expenses.

3.5 Acquisition of the Improvements. Subject to the receipt of funding pursuant to Article 4 herein, the District shall acquire the Improvements after preliminary acceptance from the appropriate accepting jurisdiction and prior to final acceptance upon receipt, review and approval by the District's accountant and engineer, as applicable, of the following:

- (a) As-built drawings for the Improvements to be conveyed by the Developer;
- (b) Lien waivers and indemnifications from each contractor verifying that all amounts due to contractors, subcontractors, material providers, or suppliers have been paid in full, in a form acceptable to the District;
- (c) An assignment from the Developer to the District of any warranties associated with the Improvements, in a form acceptable to the District;
- (d) Copies of all contracts, pay requests, change orders, invoices, the final AIA payment form (or similar form approved by the District), canceled checks, and any other requested documentation to verify the amount requested;
- (e) Such other documentation, records and verifications as may reasonably be required by the District.

ARTICLE IV REIMBURSEMENT OF DEVELOPER

4.1 Reimbursement of Developer. Subject to the receipt of funding pursuant to Section 4.3 herein and all other applicable provisions hereof, the District agrees to make payment to the Developer for all Developer Advances and/or Verified Costs, including amounts advanced to the District by the Developer to pay for the costs incurred by the District for such cost verification, together with interest thereon. Developer and District acknowledge the existence of limitations on the District's ability to make such payments as a result of Section VII.C.4 of the Service Plan.

4.2 Interest and Payment Priority. Simple interest shall accrue on Organization Expenses and Construction Related Expenses at the rate of eight percent (8%) per annum until paid. For Organization Expenses, simple interest shall accrue from the Organization Date. For Construction Related Expenses, simple interest shall accrue as follows:

- (a) On each Developer Advance, from the date of deposit into the District's account.

(b) On Verified Costs for amounts expended by the Developer for Construction Related Expenses incurred prior to the Organization Date, to the extent the Service Plan allows reimbursement for such Improvements, from the Organization Date.

(c) On Verified Costs for amounts expended by the Developer for Improvements constructed after the Organization Date, from the date Verified Costs were incurred by the Developer.

The Parties agree that payments by the District to the Developer shall credit first against accrued and unpaid interest and then to the principal amount due.

4.3 Funding Requirement. The Parties agree that no payment shall be required of the District hereunder unless and until the District issues bonds in an amount sufficient to reimburse the Developer for all or a portion of the Organization Expenses, Developer Advances and/or Verified Costs. The District agrees to exercise reasonable efforts to issue bonds to reimburse the Developer subject to the limitations herein. In addition, the District agrees to utilize any available moneys not otherwise pledged to payment of bonds, used for operation and maintenance expenses, or otherwise encumbered, to reimburse the Developer. It is hereby agreed and acknowledged that this Agreement evidences an intent to reimburse the Developer hereunder, but that this Agreement shall not constitute a debt or indebtedness of the District within the meaning of any constitutional or statutory provision, nor shall it constitute a multiple fiscal year financial obligation, and the making of any reimbursement hereunder shall be at all times subject to annual appropriation by the District. By acceptance of this Agreement, Developer agrees and consents to all of the limitations in respect of the payment of the principal and interest due hereunder and in the District's Service Plan.

ARTICLE V GENERAL PROVISIONS

5.1 Representations. Developer hereby represents and warrants to and for the benefit of the District as follows:

(a) The Developer is a Colorado corporation in good standing under the law of the State of Colorado.

(b) Developer has the full power and legal authority to enter into this Agreement. Neither the execution and delivery of this Agreement nor the compliance by the Developer with any of its terms, covenants or conditions is or shall become a default under any other agreement or contract to which Developer is a party or by which Developer is or may be bound. Developer has taken or performed all requisite acts or actions which may be required by its organizational or operational documents to confirm its authority to execute, deliver and perform each of its obligations under this Agreement.

(c) Developer represents that it has sufficient available funds to fulfill its obligations under this Agreement, as required pursuant to Section 2.2.

(d) The foregoing representations and warranties are made as of the date hereof and shall be deemed continually made by Developer to District for the entire term of this Agreement.

5.2 Term; Repose. Notwithstanding anything set forth in this Agreement to the contrary, the District shall not be obligated to make any payments to the Developer for Organization Expenses, Construction Related Expenses and/or Verified Costs incurred by the Developer but not invoiced (as evidenced by the delivery of the documents described in Article 3 above) to the District within twelve (12) months of the date incurred. In the event the District has not paid or reimbursed the Developer for any Organization Expenses, Construction Related Expenses and/or Verified Costs by December 31, 2050, whether invoiced or not invoiced by such date, any amount of principal and accrued interest outstanding on such date shall be deemed to be forever discharged and satisfied in full.

5.3 Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by courier delivery via Federal Express or other nationally recognized overnight air courier service, by electronically-confirmed facsimile transmission, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To District: Lakeview Metropolitan District
c/o Pinnacle Consulting Group, Inc.
5110 Granite Street, Suite C
Loveland, CO 80538
Attention: Jim Worley
Phone: 970-669-3611
Fax: 970-669-3612
Email: jimw@pinnacleconsultinggroupinc.com

With a Copy To: McGeady Sisneros, P.C.
450 17th Avenue, Suite 400
Denver, CO 80203-1214
Attention: MaryAnn McGeady
Phone: 303-592-4380
Fax: 303-592-4385
Email: mmcgeady@mcgeadysisneros.com

To Developer: Lakeview Development Corporation
5251 DTC Parkway, Suite 1185
Englewood, CO 80111
Attention: David Summers
Phone: 303-221-8883
Fax: 303-221-8832
Email: lakeviewcorp@aol.com

All notices, demands, requests or other communications shall be effective upon such personal delivery, one (1) business day after being deposited with United Parcel Service or other nationally recognized overnight air courier service, on the date of transmission if sent by confirmed facsimile or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the

provisions hereof, each of the Parties shall have the right from time to time to change its address or contact information.

5.4 Assignment. The Developer shall not assign any of its rights or delegate any of its duties hereunder to any person or entity. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

5.5 Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and the Developer any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and the Developer shall be for the sole and exclusive benefit of the District and the Developer.

5.6 Default/Remedies. In the event of a breach or default of this Agreement by either Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity. In the event of any litigation, arbitration or other proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall obtain as part of its judgment or award its reasonable attorneys' fees.

5.7 Governing Law and Jurisdiction. This Agreement shall be governed and construed under the laws of the State of Colorado. Venue for any legal action relating to this Agreement shall be exclusive to the District Court in and for the City and County of Denver, Colorado.

5.8 Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

5.9 Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

5.10 Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.


5.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

5.12 Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

5.13 Amendment. This Agreement may be amended from time to time by agreement between the Parties hereto, provided, however, that no amendment, modification, or alteration of the terms or provisions hereof shall be binding upon the District or the Developer unless the same is in writing and duly executed by the Parties hereto.

IN WITNESS WHEREOF, the Parties have executed this Facilities Funding and Acquisition Agreement as of the day and year first set forth above.


LAKEVIEW METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

By: 
David Summers, President

Attest:


Jim Worley, Secretary

LAKEVIEW DEVELOPMENT CORPORATION, a Colorado corporation

By: 
Name: DAVID M. SUMMERS
Its: PRESIDENT

ADDENDUM

(Illegal Alien Addendum)

By execution of this addendum (“Addendum”) to that certain Facilities Acquisition Agreement dated May 12, 2010, by and between Lakeview Metropolitan District (the “District”) and Lakeview Development Corporation (the “Contractor”) (“Agreement”), the parties to the Agreement further agree as follows:

1. Pursuant to the requirements of Section 8-17.5–102(1), C.R.S., the Contractor hereby certifies to the District that the Contractor does not knowingly employ or contract with an illegal alien who will perform work under the Agreement and that it will participate in the E-Verify Program or Department Program (as defined in Sections 8-17.5-101(3.3) and (3.7), C.R.S.) in order to confirm the employment eligibility of all employees of the Contractor who are newly hired to perform work under the Agreement.
2. In accordance with Section 8-17.5-102(2)(a), C.R.S., the Contractor shall not:
 - a. Knowingly employ or contract with an illegal alien to perform work under the Agreement; or
 - b. Enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
3. The Contractor represents and warrants it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in either the E-Verify Program or the Department Program.
4. The Contractor is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while the Agreement is in effect.
5. If the Contractor obtains actual knowledge that a subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, the Contractor shall:
 - a. Notify the subcontractor and the District within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
 - b. Terminate the subcontract with the subcontractor if within three days of receiving the notice the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

6. The Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment ("Department") made in the course of an investigation that the Department is undertaking, pursuant to the law.
7. If the Contractor violates any provision of this Addendum, the District may terminate the Agreement immediately and the Contractor shall be liable to the District for actual and consequential damages of the District resulting from such termination, and the District shall report such violation by the Contractor to the Colorado Secretary of State, as required by law.

IN WITNESS WHEREOF, the Parties have executed this Addendum on May 12, 2010.


LAKEVIEW METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

By: 
David Summers, President

Attest:


Jim Worley, Secretary

LAKEVIEW DEVELOPMENT CORPORATION, a Colorado corporation

By: 
Name: DAVID M. SUMMERS
Its: PRESIDENT