# 2011 OPERATION FUNDING AGREEMENT

This **OPERATION FUNDING AGREEMENT** ("Agreement") is made and entered into this 8th day of December, 2010, with an effective date of January 1, 2011, 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") (individually, each a "Party" and collectively the "Parties").

## RECITALS

WHEREAS, Developer is the owner of property within a project located in the City of Loveland, County of Larimer, Colorado, commonly known as the Lakeview Subdivision (the "Property"); 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 construct and/or acquire certain public improvements and provide certain services to benefit properties within its boundaries (the "District Services"); and

WHEREAS, the District Services will benefit the Property; and

WHEREAS, in order for the public improvements to be constructed and/or acquired it is necessary for the District to be able to pay its ongoing operations and maintenance expenses which enable it to provide the District Services; and

WHEREAS, the District anticipates that it will not have sufficient revenues to make payment of its operations and maintenance expenses for fiscal year 2011; and

WHEREAS, in order to enable the District to provide District Services, Developer is willing to advance funds to the District or to pay consultants directly for operations and maintenance expenses pursuant to the terms of this Agreement; and

WHEREAS, the District and the Developer have entered into the 2010 Operation Funding Agreement dated May 12, 2010 and effective January 1, 2010 (the "2010 OFA"); and

WHEREAS, in connection therewith the Parties desire to prioritize their payment of outstanding funds advanced under the 2010 OFA, and the funds to be advanced under this Agreement; and

WHEREAS, the District's Service Plan authorizes the repayment of amounts advanced for operations and maintenance expenses, together with interest thereon, by the District; and

WHEREAS, the District and the Developer desire to set forth the rights, obligations and procedures for the Developer to advance funds and for the District to reimburse the Developer for the advances made hereunder.

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

**COVENANTS AND AGREEMENTS**

1. Acknowledgement of Anticipated Shortfalls. The District anticipates a shortfall in revenues available for operations and maintenance expenses to be incurred for fiscal year 2011 in an aggregate amount of One-Hundred Fifty Thousand Dollars ($150,000) (the "Shortfall Amount").

2. Payment of Shortfall. The Developer shall advance funds necessary to fund the District's operations and maintenance expenses on a periodic basis as needed for the fiscal year 2011 up to the Shortfall Amount. The District shall, from time to time, provide written notice to the Developer that an advance of all or part of the Shortfall Amount is required. The Developer shall make an advance of funds to the District within fifteen (15) days of receipt from the District of any such written notice that an advance of funds is required ("Developer Advance").

3. Request for Additional Developer Advance. If the District requires additional advances above the Shortfall Amount from the Developer in order to meet its operation and maintenance expenses, the District shall request such additional funds in writing. Such request shall be accompanied by written explanation regarding the reasons additional funds are required. The Developer shall provide such additional funds within fifteen (15) days of receipt of notice requesting such funds. The amount of the additional funds shall be added to and included in the Shortfall Amount.

4. Accounting. The District shall keep an accounting of each advance made by the Developer, including the accrued and unpaid interest on such advances, and shall provide unaudited financial statements reflecting this accounting to the Developer on a quarterly basis.

5. Repayment. The District hereby agrees that it is its intention to repay the amounts the Developer has advanced pursuant to this Agreement, to the extent it has funds available from the imposition of its taxes, fees, rates, tolls, penalties, and charges and from any other revenue legally available, after the payment of its annual debt service obligations and annual operations and maintenance expenses, which repayment is subject to annual budget and appropriation. Simple interest shall accrue on each Developer Advance from the date of deposit into the District's account, until paid, at the rate of eight percent (8%) per annum. 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 in its absolute discretion. The Developer acknowledges the District may elect to be inactive in any one or more of the years this Agreement is in effect, and the Developer and the District agree that, during the period of inactivity: the District shall have no financial obligations outstanding or contracts in effect that require performance by the District; the District shall not impose a mill levy for tax collection; the District shall not anticipate any receipt of revenue and shall have no planned expenditures, except for statutory compliance, in said fiscal year(s); the District shall have no operation or maintenance

responsibility for any facilities; and the District shall file an initial notice of inactive status pursuant to Section 32-1-104, C.R.S., and each year thereafter that the District continues to be inactive, the District shall file a notice of inactive status pursuant to Section 32-1-104(4). By acceptance of this Agreement, Developer agrees that during any period of District inactivity, the District shall have no obligation to make repayments under this Agreement and shall not be required to take any other actions hereunder. Further, 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.

6. Priority of Payments. Subject to the provisions of Section 5 above, payments to reimburse the Developer shall be made from time to time and shall be applied as follows: (a) first to the 2010 OFA accrued and unpaid interest and then to the 2010 OFA principal amount due; and then (b) first to the accrued and unpaid interest and then to the principal amount due pursuant to this Agreement.

7. 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.

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.

8. Term/Repose. The term of this Agreement shall commence on the date hereof and shall expire on December 31, 2051, unless terminated earlier by the mutual agreement of the Parties. Any obligation of Developer to advance funds will expire on March 15, 2012. Any obligation of District to reimburse Developer shall expire on December 31, 2051. In the event the District has not reimbursed the Developer for any Developer Advance(s) made pursuant to this Agreement on or before December 31, 2051, any amount of principal and accrued interest outstanding on such date shall be deemed to be forever discharged and satisfied in full.

9. 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<br>c/o Pinnacle Consulting Group, Inc.<br>5110 Granite Street, Suite C<br>Loveland, CO 80538<br>Attention: Jim Worley<br>Phone: 970-669-3611<br>Fax: 970-669-3612<br>Email: jimw@pinnacleconsultinggroupinc.com |
| With a Copy To: | McGeady Sisneros, P.C.<br>450 17th Avenue, Suite 400<br>Denver, CO 80203-1214<br>Attention: MaryAnn McGeady<br>Phone: 303-592-4380<br>Fax: 303-592-4385<br>Email: mmcgeady@mcgeadysisneros.com |
| To Developer: | Lakeview Development Corporation<br>5251 DTC Parkway, Suite 1185<br>Englewood, CO 80111<br>Attention: David Summers<br>Phone: 303-221-8883<br>Fax: 303-221-8832<br>Email: lakeviewcorp@aol.com |

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with Federal Express or other nationally recognized overnight air courier service, upon electronic confirmation of facsimile transmission, 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.

10. 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.

11. 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.

12. 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 litigation, arbitration or other proceeding shall obtain as part of its judgment or award its reasonable attorneys' fees.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

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

19. 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 Agreement as of the day and year first set forth above.

**[SIGNATURE PAGE FOLLOWS]**

**[SIGNATURE PAGE TO 2011 OPERATION FUNDING AGREEMENT]**

**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