

**ADVANCE AND REIMBURSEMENT AGREEMENT
FOR OPERATION AND MAINTENANCE COSTS
BY AND BETWEEN
LAKEVIEW METROPOLITAN DISTRICT
AND
BH DEVELOPERS**

This **ADVANCE AND REIMBURSEMENT AGREEMENT FOR OPERATION AND MAINTENANCE COSTS** (the "Agreement") is entered into this 17th day of February, 2023 by and between the **LAKEVIEW METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District"), and (the "Developer") individually referred to herein as the "Party" and collectively referred to herein as the "Parties".

RECITALS

WHEREAS, the District was organized pursuant to the Special District Act, § 32-1-101, *et seq.*, C.R.S., as amended, for the purpose of providing certain public improvements, facilities and services to and for the use and benefit of the District, its residents, users, property owners and the public; and

WHEREAS, pursuant to § 32-1-1001(1)(d)(I), C.R.S., as amended, the Board of Directors of the District (the "Board") is empowered to enter into contracts and agreements affecting the affairs of the District; and

WHEREAS, the District and Developer agree that the advance of funds to the District, or on behalf of the District, for operation and maintenance costs, including, but not limited to, legal, accounting, design, engineering and management costs relating thereto, associated with the provision of certain public improvements, facilities and services (the "Advance(s)") is consistent with the public objects and purpose of the District; and

WHEREAS, the Board has determined that the best interests of the District, its residents, users, property owners and the public will be served by the District's receipt of and benefit from the Advances; and

WHEREAS, the Board has determined that the best interests of the District, its residents, users, property owners and the public will be served by the District's acknowledgement of the Advances; and

WHEREAS, the District and Developer desire to enter into this Agreement setting forth their understanding with respect to the Advances and the reimbursement therefor.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

TERMS AND CONDITIONS

1. PURPOSE. The purpose of this Agreement is to establish the terms and conditions pursuant to which Developer makes the Advances to the District and the District makes reimbursement to Developer for the Advances.

2. ADVANCES. Upon application therefor by the Board, Developer may provide Advances to the District, on terms as may be mutually agreed upon by the Parties, for use by the District for operations and maintenance purposes. Upon the request of Developer, the District shall provide substantiation of the need for such Advances. Upon the request of the District, Developer shall provide documentation to the District evidencing the total amount of any Advances claimed owed to Developer, which may include, without limitation, invoices, check registries, cancelled checks, and bank statements.

3. REIMBURSEMENT. The District shall reimburse Developer for the Advances plus accrued interest. Simple (non-compounding) interest on sums advanced shall accrue annually at the higher of either seven percent (7%), or the U.S. Prime Rate plus two percent (2%). Interest shall accrue as of the date each Advance is made to the District; provided, however, that no interest shall begin to accrue on any Advance made to the District prior to the date the Order and Decree of the District was recorded in the Larimer County Clerk and Recorder's Office, the date on which the District was officially formed. The District shall make payment for the Advances, subject to annual appropriation and budget approval, from funds available within any fiscal year and not otherwise required for operations, capital improvements and debt service costs and expenses of the District. Developer understands and acknowledges that the District's obligation to reimburse Developer under this Agreement is not a multiple fiscal year obligation. Payments by the District shall be applied first to interest on, then to principal of the Advances in chronological order to their effective date. This reimbursement obligation is and shall be subordinate to any bonded indebtedness of the District now in existence or hereafter created.

4. ACCOUNTING OF FUNDING. Whenever Developer makes an Advance to the District, the Parties shall record the same on the Outstanding Advance & Reimbursement Payment Obligations agreement (the "Outstanding Obligations Agreement"), a form of which is attached hereto as **Exhibit A** and incorporated herein by this reference. The Parties also agree to execute the Outstanding Obligations Agreement between January 1st and January 31st of each year throughout the term of this Agreement; notwithstanding the foregoing, the failure of the Parties to mutually execute the Outstanding Obligations Agreement in any year or years shall not nullify or waive any accrued Advances. Further, the District shall direct its accountant to account for any Advances in such fashion that the amounts thereof shall be readily ascertainable as to principal of and total amounts outstanding, and Developer may request an inspection of the accounting of such funds.

5. TERM OF AGREEMENT. This Agreement shall continue until fully performed or terminated by the mutual agreement of the Parties.

6. NOTICES. Any notices, demands or other communications required or permitted to be given, shall be given in writing, delivered personally or sent by U.S. Mail, addressed to the Parties at the addresses set forth below or at such other address as either Party may hereafter or from time to time designate by written notice to the other Party given in accordance herewith.

To District: Lakeview Metropolitan District
c/o Pinnacle Consulting Group Inc.
550 W Eisenhower Blvd.
Loveland, CO 80537
Attn: Tiffany Skoglund

With a copy to: Miller Law pllc
1555 California Street, No 505
Denver, Colorado 80202
Attn: Dianne Miller

To Developer: BH DEVELOPERS
212E. 4th Street
Loveland, CO 80537
Attn: Jeff Brines

7. ASSIGNMENT AND DELEGATION. The rights, or any parts thereof, granted to the Parties herein may be assigned only with the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld. The obligations, or any parts thereof, of the Parties may not be delegated to any third party without the prior written consent of the non-delegating Party, which consent shall not be unreasonably withheld.

8. NO THIRD PARTY BENEFICIARIES. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the Parties that any person other than Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

9. AMENDMENT AND MODIFICATION. This Agreement may be amended or modified only in writing signed by both Parties.

10. BINDING EFFECT. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors and assigns of the Parties hereto.

11. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the Parties relating to the Advances and reimbursement therefor and sets forth the rights, duties and obligations of each Party to the other as of this date. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect. This Agreement may not be modified except by a writing executed by the Parties.

12. SEVERABILITY. If any provision of this Agreement is determined to be unenforceable or invalid, the unenforceable or invalid part shall be deemed severed from this Agreement, and the remaining portions of this Agreement shall be carried out with the same

force as if the severed portions had not been part of this Agreement, provided that the Parties both agree that the severed provision does not alter the intent and/or purpose of the Agreement.

13. CONTROLLING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado and exclusive jurisdiction and venue shall lie in the District Court within which the boundaries of the District are located.

14. NO WAIVER. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

15. GOVERNMENTAL IMMUNITY. Nothing herein shall be construed as a waiver of the rights and privileges of the District pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as amended from time to time.

16. CONDITION SUBSEQUENT. It shall be a condition subsequent to this Agreement that, to the extent necessary, it be submitted to the Securities Commissioners pursuant to the requirements of the Colorado Municipal Bond Supervision Act, §11-59-101, C.R.S., as amended, (the "Act"), and that it receives an exemption or other clearance from the registration requirements of the Act pursuant to §11-59-110, C.R.S., as amended.

17. COUNTERPART EXECUTION. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

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EXHIBIT A
Outstanding Advance & Reimbursement Obligation Form

OUTSTANDING ADVANCE & REIMBURSABLE PAYMENT OBLIGATIONS

In accordance with Paragraph 4 of the *Advance and Reimbursement Agreement*, dated February 17, 2023, the Parties agree that the information set forth below represents the outstanding Advance obligations between the Parties as of the date indicated.


DATE: February 17, 2023

ADVANCE:


Advance made by Developer as of the above date: \$204,217

Total current outstanding Advance balance: \$0

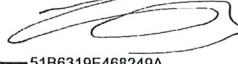
LAKEVIEW METROPOLITAN DISTRICT

DocuSigned by:

99E59E60228C4D0...
By: _____
Its: President

ATTEST:

DocuSigned by:

25C8D313DD52490...
By: _____
Its: Secretary/Treasurer

[DEVELOPER]

DocuSigned by:

51B6319E468249A...
By: _____
Its: _____