

**FIRST AMENDMENT TO  
REDEVELOPMENT AND REIMBURSEMENT AGREEMENT**

---

This FIRST AMENDMENT TO REDEVELOPMENT AND REIMBURSEMENT AGREEMENT (this “**First Amendment**”) is made and entered into as of October 24, 2023, by and among LONGMONT URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado (the “**Authority**”), the CITY OF LONGMONT, COLORADO, a municipal corporation (the “**City**”), NMMS TWIN PEAKS, LLC, a California limited liability company (the “**Developer**”), and TWIN PEAKS METROPOLITAN DISTRICT, a quasi-municipal corporation organized and existing in accordance with Title 32, Article 1, C.R.S. (the “**District**”). The parties to this First Amendment are also referred to herein collectively as the “**Parties**” or individually as a “**Party**.”

**RECITALS**

WHEREAS, the Parties have previously entered into a Redevelopment and Reimbursement Agreement executed as of January 8, 2013 (the “**Original Agreement**”) attached as “Exhibit A,” pursuant to which, among other things, (a) the Developer agreed to finance and construct certain infrastructure improvements within the District and the Authority agreed to reimburse the Developer for the costs of such improvements up to a specified amount from the proceeds of bonds issued by the either the City or the Authority, (b) the District agreed to impose the District Debt Service Mill Levy (as defined in the Original Agreement) and pledge the revenue therefrom and the District Specific Ownership Tax Revenues to the payment of such bonds issued by the City or the Authority, and (c) the Authority pledged the incremental District Operating Revenue (as defined in the Original Agreement) it receives to the District; and

WHEREAS, the Parties have determined and hereby determine to enter into this First Amendment to clarify the provisions of the Original Agreement relating to the Authority’s pledge of the incremental property taxes imposed by the District; and

**COVENANTS**

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

**ARTICLE I**

**AMENDMENTS TO ORIGINAL AGREEMENT**

**Section 1.01. Amendment to Section 2.0 of the Original Agreement.** The definition of “District Operating Revenue” in Section 2.0 of the Original Agreement is hereby deleted in its entirety and replaced with the following:

“District Non-Pledged Revenue” means revenue produced by the District’s imposition of any mill levy other than the District Debt Service Mill Levy.

All references in the Original Agreement to “District Operating Revenue” shall be replaced with “District Non-Pledged Revenue.”

**Section 1.02. Amendment to Section 8.3 of the Original Agreement.** The last sentence of Section 8.3 of the Original Agreement is hereby deleted in its entirety and replaced with the following:

“The District shall use the District Non-Pledged Revenue to pay its normal and reasonable operating and maintenance expenses or for any other lawful purpose.”

## ARTICLE II

### MISCELLANEOUS

**Section 2.01. Confirmation of Original Agreement.** The Original Agreement is in all respects ratified and confirmed, subject to the amendments provided herein, and the Original Agreement and this First Amendment shall be read, taken and construed as one and the same instrument so that, except as expressly amended by this First Amendment, all of the rights, remedies, terms, conditions, covenants and agreements of the Original Agreement shall remain in full force and effect.

**Section 2.02. Governing Law and Venue.** This First Amendment shall be governed by the laws of the State of Colorado and exclusive venue for any litigation shall be the District Court of Boulder County.

**Section 2.03. Counterparts.** This First Amendment 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.

**Section 2.04. Effective Date.** This First Amendment shall become effective as of the date hereof.

[Signatures appear on following page]

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the day and year first set forth above.

**THE LONGMONT URBAN RENEWAL AUTHORITY:**

\_\_\_\_\_  
Chair

Attest:

\_\_\_\_\_  
Secretary

**CITY OF LONGMONT, COLORADO:**

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PROOFREAD

\_\_\_\_\_  
DATE

APPROVED AS TO FORM AND CONTENT:

\_\_\_\_\_  
ORIGINATING DEPARTMENT

\_\_\_\_\_  
DATE

CA File: 23-002454

[Signature Page to First Amendment to Redevelopment and Reimbursement Agreement]



**TWIN PEAKS METROPOLITAN DISTRICT:**

\_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

**NMMS Twin Peaks, LLC,**  
a California limited liability company

By: **NewMark Merrill Mountain States, LLC,**  
a California limited liability company

Its: Manager

By: **NewMark Merrill Companies, LLC,**  
a California limited liability company

Its: Manager

By: **Sigal Investments, LLC,**  
a California limited liability company

Its: Manager

By: \_\_\_\_\_  
Sanford Sigal, Manager

[Signature Page to First Amendment to Redevelopment and Reimbursement Agreement]

# Exhibit A

EXECUTION COPY

## REDEVELOPMENT AND REIMBURSEMENT AGREEMENT

1.0 PARTIES The parties to this Redevelopment and Reimbursement Agreement (the "Agreement") are the LONGMONT URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado (the "Authority"), the CITY OF LONGMONT, COLORADO, a municipal corporation (the "City"), NMMS TWIN PEAKS, a California limited liability company (the "Developer"), and TWIN PEAKS METROPOLITAN DISTRICT, a quasi-municipal corporation organized and existing in accordance with Title 32, Article 1, C.R.S. (the "District"). The Parties are also referred to herein collectively as the "Parties" or individually as a "Party."

2.0 DEFINITIONS In this Agreement, unless a different meaning clearly appears from the context

"Acquisition Costs" has the meaning set forth in the Agreement to Negotiate and means that portion of the costs incurred and to be incurred by the Authority in connection with the acquisition of certain Property Interests that have been or will be advanced by the Developer to the Authority pursuant to the terms and conditions of the Agreement to Negotiate

"Act" means the Colorado Urban Renewal Law, Part 1 of Article 25 of Title 31 of the Colorado Revised Statutes

"Agreement" means this Redevelopment and Reimbursement Agreement, as it may be amended or supplemented in writing. References to sections or exhibits are to this Agreement unless otherwise qualified

"Agreement to Negotiate" means the Agreement to Negotiate between the Authority and the Developer dated as of November 20, 2012

"Authority" means the Longmont Urban Renewal Authority, a body corporate and politic of the State of Colorado, and its successors and assigns

"Authority Administrative Fee" means a fee up to a maximum of 5.0% of the gross Property Tax increment revenue received by the Authority from the Boulder County Treasurer each year, which fee includes all amounts required to pay collection, enforcement, disbursement, and administrative fees and costs required to carry out the Plan, including, without limitation, collection and disbursement of the Pledged Property Tax Increment Revenue and the Pledged Sales Tax Increment Revenue

"Bond Documents" means, collectively, the documents pursuant to which the Bonds are issued

"Bond Indenture" means any indenture or similar documents pursuant to which the Bonds are issued



“Bond Trustee” means the trustee under the Bond Indenture

“Bonds” means, collectively, bonds, certificates of participation, other obligations or securities issued by the Authority or the City to finance or refinance the Eligible Costs in accordance with the terms and provisions of this Agreement, including any bonds, certificates of participation, other obligations or securities issued by the Authority or City to refund any such Bonds

“City” means the City of Longmont, Colorado, a home rule municipal corporation

“City Moral Obligation Pledge” means a non-binding pledge of the City to replenish any amounts drawn on a reserve fund established to secure Bonds issued by the Authority Any such replenishment of the reserve fund shall be subject to annual appropriation by the City

“Commence Construction” or “Commencement of Construction” means the visible commencement by the District or the Developer of actual physical construction and operations on the Property for the erection of any of the Improvements, including, without limitation, obtaining all required permits and licenses and installation of a permanent required construction element, such as a caisson, footing, foundation or wall

“Complete Construction” or “Completion of Construction” for any of the Private Improvements means the issuance of a certificate of occupancy or a temporary certificate of occupancy by the City so that the Private Improvement described in such certificate may open for permanent occupancy and utilization for its intended purposes, and for any Eligible Public Improvement means construction acceptance in accordance with applicable laws, ordinances, and regulations of the City, the District, and any other governmental entity or public utility with jurisdiction, subject to any applicable conditions of maintenance and warranty

“Costs of Issuance” means (a) with respect to the Bonds, the reasonable and necessary costs incurred in connection with the issuance of the Bonds, including without limitation, reserve funds, capitalized interest, underwriter’s compensation, financial consultant fees, fees and expenses of bond counsel, counsel to the underwriter, counsel to the Authority, counsel to the City, credit enhancement fees and expenses, fees and expenses of the Bond Trustee, bond registrar, paying agent, transfer agent, remarketing agent and rating agency fees, and (b) with respect to the District Bonds, the reasonable and necessary costs incurred in connection with the issuance of the District Bonds, including without limitation, reserve funds, capitalized interest, underwriter’s compensation, financial consultant fees, fees and expenses of bond counsel, counsel to the underwriter, counsel to the District, credit enhancement fees and expenses, fees and expenses of the Bond Trustee, bond registrar, paying agent, transfer agent, remarketing agent and rating agency fees Costs of Issuance shall be approved by the City Manager and bond counsel to the City or the Authority

“Default” or “Event of Default” means any of the events described in Section 20.0, provided, however, that such events shall not give rise to any remedy until effect has been given to all grace periods, cure periods and periods of enforced delay provided for in this Agreement

“Design Guidelines” means the guidelines that may be adopted by the Authority as authorized in the Plan

“Developer” means NMMS Twin Peaks, a California limited liability company and any successors and assigns approved in accordance with this Agreement

“Developer Advances” means, collectively, amounts advanced or incurred by the Developer to pay any Eligible Costs, provided that the principal amount of any such Developer Advances that are eligible to be reimbursed from proceeds of the Bonds, District Bonds or Pledged Revenues shall not exceed \$27,500,000. Developer Advances shall include, without limitation, (a) Eligible Costs paid directly or advanced by the Developer, (b) advances to the District for design and construction by the District of Eligible Public Improvements, and (c) advances to the Authority for Acquisition Costs or Purchase Price Funds in compliance with the requirements of the Agreement to Negotiate

“Developer Amortization Schedule” means the amortization schedule for payment of Developer Advances if the City and Authority do not issue Bonds in accordance with Section 6.3 hereof and if the District does not issue District Bonds in accordance with Section 7.3 hereof. The methodology for preparing the Developer Amortization Schedule is set forth as Exhibit G hereto

“Development and Financing Plan” means a plan, containing the required information set forth in Exhibit D, prepared by the District and Developer for review and approval by the City and the Authority in accordance with Exhibit D.

“District” means the Twin Peaks Metropolitan District, formed pursuant to Sections 32-1-101, *et seq*, C.R.S., and its successors and assigns

“District Administrative Account” means an account established by the Authority into which the Authority shall deposit all of the incremental District Operating Revenue received by the Authority from time to time pursuant to Section 31-25-107(9)(a)(II) of the Act and the rules and regulations of the Property Tax Administrator of the State of Colorado

“District Bond Documents” means, collectively, the documents pursuant to which the District Bonds are issued.

“District Bond Trustee” means the trustee in connection with the issuance of any District Bonds

“District Bonds” means any bonds that may be issued by the District in accordance with Section 7.3 hereof and any District Refunding Bonds issued in accordance with Section 7.4 hereof

“District Debt Service Mill Levy” means a property tax levy of twenty five (25) mills levied by the District on the taxable property of the District. The District Debt Service Mill Levy

rate may be adjusted to take into account legislative or constitutionally imposed adjustments in assessed values or their method of calculation so that, to the extent possible, the revenue produced by such District Debt Service Mill Levy is neither diminished nor enhanced as a result of such changes

“District Operating Revenue” means revenue produced by the District’s imposition of a mill levy to pay the operations and maintenance expenses of the District

“District Pledged Revenue” means, collectively, the revenue produced by (a) the District Debt Service Mill Levy, and (b) the District Specific Ownership Tax Revenues. The District Pledged Revenue shall be pledged to the payment of the debt service requirements of the Bonds or District Bonds, as the case may be, or pledged to the repayment of Developer Advances and Eligible Accrued Interest on Developer Advances to the extent not paid from the proceeds of the Bonds or District Bonds

“District Specific Ownership Tax Revenues” means the specific ownership tax revenues received by the District in each year that is attributable to the dollar amount of ad valorem taxes generated from the District Debt Service Mill Levy

“Eligible Accrued Interest on Developer Advances” means the amount of accrued interest that will be due and payable to the Developer on unreimbursed Developer Advances in the event that the Authority and the City do not issue Bonds in accordance with Section 6.3 hereof and the District does not issue District Bonds in accordance with Section 7.3 hereof. Any such interest on Developer Advances will begin to accrue on the later of (a) the day all conditions set forth in Section 6.2 have been satisfied, (b) the date such Developer Advances are approved as constituting Eligible Costs by the Authority in accordance with Exhibit E hereto, and (c) the date the Developer Amortization Schedule becomes effective. Interest shall accrue at a simple per annum interest rate and shall not compound. There shall be no obligation to pay or reimburse Eligible Accrued Interest on Developer Advances during any period of time that the Developer is in default under this Agreement or the Agreement to Negotiate

Interest on unreimbursed Developer Advances shall accrue at the following interest rate (a) if the Developer borrows money to make such Developer Advances, interest shall accrue at the actual rate of interest that the Developer is paying to the Developer’s lender under the applicable loan documents, at a maximum interest rate not exceeding 9.00% per annum, and (b) if the Developer does not borrow money to make such Developer Advances, interest shall accrue at an interest rate equal to the actual interest cost paid to an equity investor, that is not the Developer, a principal of the Developer or an affiliate of the Developer, in an amount not to exceed 12.00% per annum. The Developer shall notify the City and the Authority in writing as to the interest rate that will apply to unreimbursed Developer Advances. Notwithstanding the foregoing, or any other provision set forth in this Agreement to the contrary, in the event that the Developer notifies the City and the Authority that the interest rate to accrue on unreimbursed Developer Advances will exceed 9.00% per annum, the City and the Authority shall thereafter have thirty days from the date of receipt of such notice to terminate this Agreement pursuant to Section 22.0 hereof



In the event that the Authority or the City issues Bonds in accordance with the terms and provisions set forth in Section 6.3 hereof or the District issues District Bonds in accordance with Section 7.3 hereof, any interest that has accrued on unreimbursed Developer Advances related to Eligible Costs incurred prior to the issuance of such Bonds or District Bonds shall be payable solely from the proceeds of such Bonds or District Bonds, as the case may be, and shall be counted against the maximum reimbursement obligation of \$27,500,000 of Eligible Costs to be paid or reimbursed by the Authority.

“Eligible Costs” means, collectively, (a) the reasonable and customary expenditures for design and construction of Eligible Public Improvements, including necessary and reasonable soft costs, as certified and approved in accordance with Exhibit E, (b) Land Acquisition Costs, and (c) all Acquisition Costs and Purchase Price Funds to be reimbursed to the Developer in accordance with the terms and provisions of the Agreement to Negotiate. The maximum amount of Eligible Costs to be paid or reimbursed pursuant to this Agreement shall be \$27,500,000.

“Eligible Public Improvements” means the public improvements described in Exhibit C.

“Financing Costs” means, (a) with respect to the Bonds, reasonable costs and expenses, other than Costs of Issuance, incurred in connection with the financing or refinancing of the Eligible Public Improvements, including without limitation, reasonable fees and expenses of counsel to the District and counsel to the Developer, and (b) with respect to the District Bonds, reasonable costs and expenses, other than Costs of Issuance, incurred in connection with the financing or refinancing of the Eligible Public Improvements, including without limitation, reasonable fees and expenses of counsel to the City and counsel to the Authority. Financing Costs do not include interest on any obligations incurred in connection with financing or refinancing the Eligible Public Improvements. Financing Costs shall be subject to approval by the City Manager and bond counsel.

“Gross Leasable Area” means the area within the Private Improvements for which each tenant pays rent or (if the Private Improvements are owned) that are devoted to business and commercial uses that produce municipal sales taxes or are ancillary to such uses.

“Improvements” means, collectively, the Private Improvements and the Eligible Public Improvements.

“Land Acquisition Costs” means the costs incurred by the Developer or the District in connection with the acquisition of land required for the Eligible Public Improvements, except that Land Acquisition Costs shall not include Acquisition Costs or Purchase Price Funds as such terms are defined in the Agreement to Negotiate.

“Party” or “Parties” means one or all of the parties to this Agreement.

“Plan” and “Urban Renewal Plan” mean the Twin Peaks Mall Area Urban Renewal Plan adopted and approved by the City Council of the City on July 28, 2009, as amended on October 23, 2012, and as may hereinafter be amended from time to time.

“Pledged Property Tax Increment Revenue” means the annual ad valorem property tax revenue received by the Authority from the Boulder County Treasurer in excess of the amount produced by the levy of those taxing bodies that levy property taxes against the Property Tax Base Amount in the TIF Area in accordance with the Act and the regulations of the Property Tax Administrator of the State of Colorado, but not including, (a) the District Operating Revenue, (b) the Authority Administrative Fee, (c) mill levy override payments approved by the electors of Saint Vrain Valley School District Re-1J in 2012 and subsequent years, and (d) any offsets collected by the Boulder County Treasurer for return of overpayments or any reserve funds retained by the Authority for such purposes in accordance with Sections 31-25-107(9)(a)(III) and (b) of the Act

“Pledged Revenue” means, collectively, the Pledged Property Tax Increment Revenue, the Pledged Sales Tax Increment Revenue, the District Pledged Revenue, and Recovered Costs

“Pledged Sales Tax Increment Revenue” means, for each year, that portion of the Sales Tax revenue received by the City equal to the product of the Pledged Sales Tax Rate *times* the amount of the taxable transactions subject to the Sales Tax in the TIF Area, less the Sales Tax Base Amount

“Pledged Sales Tax Rate” means the Pledged Sales Tax Rate as calculated each year substantially in compliance with the formula set forth in Exhibit F hereto, provided, however, that the Pledged Sales Tax Rate shall never exceed 2.00%

“Private Improvements” means all or any part of the taxable retail commercial building improvements which the Developer intends to construct on the Property as described in Exhibit B, and as further set forth in the Developer and Financing Plan. If the final site plan includes the square footage presently operated as a Dillard’s retail store, then the Private Improvements are anticipated to contain approximately 470,000 square feet of Gross Leasable Area. If the final site plan does not include the square footage presently operated as a Dillard’s retail store, then the Private Improvements are anticipated to contain approximately 376,000 square feet of Gross Leasable Area.

“Project Fund” means the fund to be created pursuant to the Bond Indenture into which net proceeds of the Bonds in the maximum amount of \$27,500,000 shall be deposited to pay Eligible Costs

“Property” means the real property owned by the Developer and described in Exhibit A1

“Property Interests” means the interests in real property that must be acquired by the Developer or the Authority to accomplish redevelopment of the TIF Area in accordance with the Plan

“Property Tax Base Amount” means \$6,181,553, the total certified assessed value of property subject to ad valorem property taxes in the TIF Area as of October 23, 2012, the date of adoption of the Plan amendment implementing TIF Financing. The Property Tax Base Amount and increment value shall be calculated and adjusted from time to time by the Boulder County

Assessor in accordance with Section 31-25-107(9) of the Act and the rules and regulations of the Property Tax Administrator of the State of Colorado

“Purchase Price Funds” has the meaning set forth in the Agreement to Negotiate and means the purchase price of certain required Property Interests that have been advanced by the Developer to the Authority pursuant to the terms and conditions of the Agreement to Negotiate

“Recovered Costs” means any funds obtained or resulting from federal, state, or local government sources (other than the District) by or on behalf of the Parties or cost savings achieved or actually recovered by the Parties or the City (other than from Developer Advances) as reimbursement for any and all expenditures for the Eligible Public Improvements, including without limitation, any amounts recovered from public utility companies, other metropolitan districts, and other developers or property owners

“Sales Tax” means the municipal sales tax of the City on sales of goods and services that are subject to municipal sales taxes

“Sales Tax Base Amount” means \$441,770, the total collection of Sales Taxes levied at the rate of 2.00% within the TIF Area for the twelve-month period prior to and including October 31, 2012

“Service Plan” means the service plan for the District approved by the City on August 14, 2012 as such plan may be modified or amended from time to time

“Special Fund” means the fund defined in Section 107(9)(a)(II) of the Act

“Substantially Complete Construction” or “Substantial Completion of Construction” with respect to any of the Private Improvements means the Completion of Construction of at least 85% of the total Gross Leasable Area for the Private Improvements

“TIF Area” means that part of the urban renewal area described in the Plan as described and depicted in Exhibit A2, within which the tax increment provisions of Section 31-25-107(9) of the Act apply

“Village” means the approximately 64,000 square foot portion of the Project located in the center of the Property along the frontage of Hover Road at the proposed new signalized entry, designed with a walkable, pedestrian-friendly village character. The Village will contain small shops, restaurant uses and public amenities

“Warranty Holdback Amount” means the amount required to be retained by the City during the applicable one-year warranty period for any of the Eligible Public Improvements subject to a security requirement for performance of warranty work as set forth in the City code and City ordinances. The Warranty Holdback Amount shall be retained from amounts due to be reimbursed to the Developer for Land Acquisition Costs until the expiration of the applicable warranty period



3 0 RECITALS The following Recitals to this Agreement are incorporated herein by this reference as though fully set forth in the body of this Agreement

3 1 The Urban Renewal Plan The Authority is carrying out the Urban Renewal Plan The District is expected to provide services and facilities to assist the Authority in carrying out the Urban Renewal Plan

3 2 The District and the Service Plan The District was organized by Order and Decree Creating District The City approved the Service Plan of the District on August 14, 2012

3 3 The Private Improvements This Agreement contemplates that the Developer will develop the Property by constructing the Private Improvements and constructing or causing the District to construct the Eligible Public Improvements

3 4 Exhibits The following Exhibits are attached to and made a part of this Agreement

- Exhibit A1 Legal Description of the Property
- Exhibit A2 Description of TIF Area
- Exhibit B Description of Private Improvements
- Exhibit C Eligible Public Improvements
- Exhibit D Form of Development and Financing Plan
- Exhibit E Procedure for Documenting, Certifying and Paying Eligible Costs
- Exhibit F Form of Pledged Sales Tax Rate Certificate
- Exhibit G Preparation of Developer Amortization Schedule

4 0 AGREEMENT In consideration of the mutual covenants and promises of the Parties contained herein, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as set forth in this Agreement

5 0 DEVELOPER

5 1 Acquisition of Property Interests The acquisition of the Property Interests is necessary for the redevelopment of the TIF Area The Agreement to Negotiate sets forth the terms and conditions related to acquisition of the Property Interests and the advancement of Acquisition Costs and Purchase Price Funds to the Authority by the Developer Unless otherwise specifically stated to the contrary herein, the terms and conditions of the Agreement to Negotiate shall govern and apply to the acquisition of the Property Interests and inclusion of Acquisition Costs and Purchase Price Funds in Eligible Costs



5.2 Disposition of Property Interests If Developer fails to acquire the Property Interests and the Authority acquires the Property Interests pursuant to the Agreement to Negotiate, the Parties agree that the Authority is required to and shall dispose of such Property Interests in accordance with the land disposition requirements of Section 31-25-106 of the Act. The Authority shall consider any and all proposals it may receive, the financial and legal ability of the party or parties making such proposals to carry them out in accordance with the requirements of the Act, the Plan (including the objectives for the redevelopment of the TIF Area), any Design Guidelines adopted by the Authority, and other requirements required by the Act. The Authority may enter into any agreement or agreements that it deems necessary to comply with the objectives of the Plan for the redevelopment of the TIF Area.

5.3 Development and Financing Plan The Developer and the District shall prepare and deliver to the Authority the Development and Financing Plan in accordance with the requirements of Exhibit D, including any proposal to provide Developer Advances to carry out the Development and Financing Plan. The Parties acknowledge that the Developer has already incurred costs that will qualify as Developer Advances under this Agreement when documented and certified in accordance with Exhibit E.

5.4 Construction of Improvements The Developer, in accordance with the provisions of this Agreement, shall be responsible for financing and constructing or causing the construction of, all Eligible Public Improvements and for compliance in all respects with the City requirements and payment of fees related to redevelopment of the Property and the Property Interests. The Developer shall finance and construct the Private Improvements, subject to the ability to obtain financing for such Private Improvements as required by Exhibit D. Such Private Improvements are described in Exhibit B, and, subject to agreement by the Authority, may be constructed in phases in accordance with one or more approved Development and Financing Plans. The Developer agrees to Commence Construction or cause Commencement of Construction of any of the Improvements in accordance with such approved Development and Financing Plan or phase thereof, and to diligently and reasonably proceed with or require such construction until Completion of Construction of such Improvements in accordance with such approved Development and Financing Plan.

5.5 Commencement of Construction Except as hereinafter provided, on or prior to December 31, 2013, (a) the Developer shall Commence Construction of Private Improvements containing a minimum of 178,000 square feet of Gross Leasable Area of retail uses on the Property identified in Paragraph 2 of Exhibit D, or (b) the Developer shall sell or lease property to a third party retailer who shall Commence Construction of at least 100,000 square feet of Private Improvements and the Developer shall Commence Construction of additional square feet equal to the difference between such construction commenced by such third party retailer and 178,000 square feet.

Notwithstanding the foregoing, however, the Developer shall be allowed to extend the Commencement of Construction date up to an additional six months, with Commencement of Construction in any event occurring no later than June 30, 2014, subject to the following conditions:



(a) the Developer shall provide written notice of the number of days of the extension of the Commencement of Construction to the City and the Authority,

(b) in the event that the conditions precedent set forth in Section 6.2 have been satisfied, the amount of time that the City or the Authority have to issue Bonds in compliance with Section 6.3 hereof shall be automatically extended by the same number of days as the extension of the Commencement of Construction date,

(c) the Developer shall certify to the City and the Authority that the delay in the Commencement of Construction is being caused by conditions that are not within the reasonable control of the Developer, and

(d) no Bonds have been issued by the City or the Authority and no binding contract has been executed by the City or the Authority relating to the sale of any such Bonds

The Developer shall not be eligible to be paid or reimbursed for Eligible Costs until it has complied with the provisions of this Section 5.5, except as provided in Section 10.1 hereof

In the event that the Developer has not Commenced Construction in accordance with this Section 5.5, this shall not constitute an Event of Default hereunder, but the Parties shall have the option to terminate this Agreement pursuant to Section 22.0 hereof. Any Bonds issued by the City or the Authority may contain a provision that upon any such termination of this Agreement that all Bond proceeds on deposit with the Trustee in any funds or accounts created under the Bond Indenture may be applied to the mandatory redemption of such Bonds

5.6 Substantial Completion of Construction The Developer shall Substantially Complete Construction of the Improvements on or prior to December 31, 2015. In the event that the Developer has not complied with this provision, this shall not be deemed to be an Event of Default hereunder, but interest shall cease to accrue on any unreimbursed Developer Advances beginning January 1, 2016 through the date of Substantial Completion of Construction of the Improvements

5.7 Compliance with Design and Construction Regulations, Payment of Fees and Costs The design and construction of all Private Improvements and Eligible Public Improvements shall comply with all applicable codes and regulations of entities having jurisdiction, including the City, and with any Design Guidelines adopted by the Authority as authorized in the Plan. As required by code, the Developer shall enter into a Public Improvement Agreement with the City. Also, the Developer shall pay or cause to be paid all required fees and costs, including those imposed by the City, in connection with the design, construction, applicable warranty requirements, and use of the Improvements

5.8 Access to Property The Developer shall permit representatives of the Authority access to the Property and the Improvements at reasonable times during regular business hours as necessary for the purpose of carrying out or determining compliance with the Agreement, the Plan, or any City code or ordinance, including, without limitation, inspection of any work being

conducted thereon. No compensation shall be payable for the access provided in this section. The Authority shall restore the Property and any of the Improvements to its condition prior to any tests or inspections made by the Authority and shall, to the extent permitted by law, indemnify and hold harmless the Developer or any third party owning the affected part of the Property for any loss or damage or claim for loss or damage (including reasonable legal fees) resulting from any such entrance, tests and surveys.

6.0 REIMBURSEMENT OF ELIGIBLE COSTS

6.1 Reimbursement of Eligible Costs Subject to the terms, provisions and limitations of this Agreement, the Authority hereby covenants and agrees that it shall reimburse the Developer for Eligible Costs up to a maximum amount of \$27,500,000. All reimbursements or payments of Eligible Costs shall be made in accordance with the requisition process set forth in Exhibit E hereto. Such reimbursement shall be made solely from the following sources of revenue:

(a) from the net proceeds of Bonds issued by either the City or the Authority in accordance with Section 6.3 hereof,

(b) if the City or the Authority do not issue Bonds in accordance with Section 6.3 hereof, then such reimbursement of Eligible Costs shall be made from the net proceeds of the District Bonds issued in accordance with Section 7.3 hereof, and the Authority shall pledge the Pledged Revenues to the payment of such District Bonds, or

(c) if neither the Bonds nor the District Bonds are issued in accordance with the provisions hereof, then the Authority shall apply the Pledged Revenues to the repayment of the Developer Advances plus Eligible Accrued Interest on Developer Advances in accordance with the Developer Amortization Schedule, provided however, that in the event that neither the Bonds nor the District Bonds are issued in accordance with the provisions hereof, the City, the Authority and the Developer shall meet in good faith to discuss the status of the Project prior to the Developer incurring additional Developer Advances that are to be reimbursed with Pledged Revenues.

In the event that the Parties determine that the Eligible Costs shall be financed by a combination of Bonds, District Bonds and/or Developer Advances, the Parties hereby agree that the reimbursement of Developer Advances shall be subordinate to the payment of any Bonds or District Bonds issued in accordance herewith.

6.2 Conditions Precedent to Authority's Obligation to Reimburse Eligible Costs The Authority's obligation to reimburse the Developer for Eligible Costs in accordance with Section 6.1 hereof is subject to the following conditions precedent:

(a) Amendment of Service Plan The Service Plan shall be amended in form acceptable to the Parties ("Service Plan Amendment"). The City agrees to cooperate with the Developer and District in reviewing, scheduling hearings for, and scheduling the Service Plan Amendment for approval by the City Council. The City shall schedule a public hearing on the Service Plan Amendment within thirty (30) days of receiving the Service Plan Amendment from the Developer or the District.

(b) Approval of Development and Financing Plan The District and Developer shall submit and the Authority shall approve a Development and Financing Plan that complies with the requirements listed in Exhibit D. The Authority agrees that it shall consider approval of the Development and Financing Plan within thirty (30) days of receiving the Development and Financing Plan from the Developer.

6.3 Issuance of Bonds Upon satisfaction of the conditions precedent set forth in Section 6.2 hereof, the City or the Authority shall then have one hundred twenty (120) days to issue Bonds in an amount sufficient to pay or reimburse the following amounts: (a) Costs of Issuance, (b) Financing Costs, and (c) Eligible Costs in the principal amount of \$27,500,000. Upon the issuance of the Bonds, the City or the Authority, as the case may be, shall cause net proceeds of the Bonds in the amount of \$27,500,000 to be deposited with the Bond Trustee in the Project Fund. The Bond Indenture shall contain provisions that allow the Developer to requisition moneys on deposit in the Project Fund to pay or reimburse Eligible Costs substantially in accordance with the procedures set forth in Exhibit E hereof.

In the event that the City or the Authority is not able to issue Bonds in a sufficient aggregate principal amount equal to the Costs of Issuance, plus Financing Costs, plus \$27,500,000, but would be able to issue Bonds that would result in Bond proceeds in an amount less than \$27,500,000 being deposited in the Project Fund, the City or the Authority, as the case may be, shall notify the Developer and the District of the amount of net proceeds of the Bonds that would be available to be deposited in the Project Fund. Within thirty (30) days of receipt of such notice, the Developer shall then determine whether (a) the City or the Authority shall thereupon proceed to issue such Bonds in such amount, or (b) whether the Developer will exercise its option to be reimbursed for Eligible Costs from the net proceeds of District Bonds or directly from Pledged Revenues in accordance with Section 6.1(b) and 6.1(c) set forth above, or (c) whether the Developer will exercise its option to terminate this Agreement in accordance with Section 22.0 hereof.

In the event that the City or the Authority do not issue Bonds within such time period, or in an aggregate principal amount sufficient to make the deposits, payments or reimbursements set forth above, this shall not constitute an Event of Default hereunder, but the Authority shall then be obligated as follows: (a) in the event that the District issues District Bonds in accordance with Section 7.3 hereof, to pledge the Pledged Revenues to the payment of the debt service requirements of the District Bonds, or (b) in the event that the District does not issue District Bonds, to apply the Pledged Revenues to the repayment of Developer Advances plus Eligible Accrued Interest on Developer Advances in accordance with the Developer Amortization Schedule, upon receipt of a requisition from the Developer complying with the requirements set forth in Exhibit E hereto.

#### 7.0 THE DISTRICT

7.1 Compliance with Service Plan and Applicable Law At all times the District shall comply with the requirements of the Service Plan as it may be amended from time to time. To the extent authorized by its Service Plan, the District may design, construct, finance, own, acquire, maintain, and operate Eligible Public Improvements in accordance with all applicable laws, ordinances, standards, policies, and specifications of the State of Colorado, the City, and any other entity with jurisdiction.

7.2 District Pledged Revenue The District hereby covenants to impose the District Debt Service Mill Levy for so long as any Bonds or District Bonds remain outstanding or for so long as any Developer Advances remain unreimbursed. The District hereby further covenants that so long as any Bonds remain outstanding, that the District shall remit all District Specific Ownership Tax Revenues to the Bond Trustee for such outstanding Bonds. In the event that District Bonds are issued, the District hereby covenants that so long as such District Bonds remain outstanding, that the District shall remit all District Specific Ownership Tax Revenues to the District Bond Trustee for any such outstanding District Bonds. In the event that Developer Advances are not paid in full with the proceeds of the Bonds and District Bonds, the District hereby covenants to remit all District Specific Ownership Tax Revenues to the Developer to pay such Developer Advances and any Eligible Accrued Interest on Developer Advances in accordance with the Developer Amortization Schedule upon receipt of a requisition meeting the requirements of Exhibit E hereof. Notwithstanding expiration of the time or times that the Pledged Property Tax Increment Revenue and Pledged Sales Tax Increment Revenue may be collected pursuant to the Act, the District agrees that the full amount of the District Debt Service Mill Levy shall at all times remain pledged to the payment of any outstanding Bonds to the extent required by the Bond Documents or to the payment of any outstanding District Bonds to the extent required by the District Bond Documents.

7.3 District Bonds If the Authority or the City do not issue Bonds in accordance with Section 6.3 hereof, the District may issue District Bonds to pay or reimburse the Developer for Eligible Costs and the Authority shall pledge the Pledged Revenue to the payment of such District Bonds. The net proceeds of such District Bonds shall not exceed \$27,500,000, plus Costs of Issuance and Financing Costs and the net effective interest rate on the District Bonds shall not exceed 9.00% per annum. The net proceeds of such District Bonds shall be subject to requisition by the Developer to pay or reimburse Eligible Costs upon receipt of a requisition substantially in accordance with the requirements set forth in Exhibit E hereto.

Prior to the issuance of any District Bonds, the City Attorney shall be permitted to review the District Bond Documents to confirm that they comply with this Agreement. The City Attorney shall have ten (10) business days after receipt of such District Bond Documents by the City Attorney to notify the District in writing if it objects to any provisions set forth in such District Bond Documents upon the basis of non-compliance with this Agreement. If the City Attorney does not object in writing to the District Bond Documents within such 10 business day period, the City shall be deemed to have consented to the form of such District Bond Documents.

7.4 District Refunding Bonds In the event that Bonds are issued by the City or the Authority in accordance with Section 6.3 hereof or District Bonds are issued by the District in accordance with Section 7.3 hereof, the District shall have the right to issue District Bonds that refund such Bonds or District Bonds, subject to the terms and provisions of such Bonds and District Bonds, and provided further that (a) the final maturity date of such District Refunding Bonds shall not extend the final maturity date of such Bonds or District Bonds being refunded, and (b) the debt service requirements on such District Refunding Bonds shall not exceed the debt service requirements in any year on the Bonds or District Bonds being refunded.

7.5 District Operating Revenue The District shall use the District Operating Revenue to pay its normal and reasonable operating and maintenance expenses or for any other lawful purpose

7.6 No Impairment The District shall not enter into any agreement or transaction that impairs the rights of the Parties under this Agreement, including, without limitation, the right to receive and apply Pledged Revenue to payment of the Authority Bonds

8.0 THE AUTHORITY The Authority agrees to carry out the Plan and to comply with the following provisions

8.1 Special Fund, Application of Pledged Revenues In accordance with the provisions of this Agreement and the Act, the Authority agrees to establish the Special Fund and deposit the Pledged Property Tax Increment Revenues and the Pledged Sales Tax Increment Revenues into the Special Fund upon receipt. All moneys on deposit in the Special Fund, and any other Pledged Revenues received by the Authority, shall be applied as follows: (a) such amounts shall be remitted to the Bond Trustee in accordance with the terms and provisions of the Bond Indenture so long as any Bonds remain outstanding, (b) such amounts shall be remitted to the District Bond Trustee for the District Bonds in accordance with the terms and provisions of the District Bond Documents so long as any District Bonds remain outstanding, or (c) in the event that no Bonds or District Bonds are issued or outstanding, such amounts shall be remitted to the Developer to reimburse the Developer for unreimbursed Developer Advances and Eligible Accrued Interest on Developer Advances in accordance with the Developer Amortization Schedule upon receipt of a requisition substantially complying with the requirements set forth in Exhibit E hereto

8.3 District Operating Revenue The Authority hereby irrevocably pledges the incremental District Operating Revenue it receives to the District. The incremental District Operating Revenue, when and as received by the Authority shall be subject to the lien of such pledge without any physical delivery, filing, or further act. The Authority shall deposit into the District Administrative Account all of the incremental District Operating Revenue received by the Authority from time to time in accordance with Section 31-25-107(9)(a)(II) of the Act and the rules and regulations of the Property Tax Administrator of the State of Colorado from the levy of the District on taxable property within the TIF Area. The Authority shall transfer all of the revenue in the District Administrative Account to the District on or before the 20<sup>th</sup> day of each month. The obligation of the Authority to make deposits in the District Administrative Account and to transfer such revenue to the District shall expire when the Authority's right to receive such revenue expires pursuant to the Act. The District shall use the District Operating Revenue to pay its normal and reasonable operating and maintenance expenses

8.4 Multi-Fiscal Year Obligation The Parties acknowledge that, according to the decision of the Colorado Court of Appeals in Olson v. City of Golden, 53 P.3d 747 (2002), an urban renewal authority is not a local government and therefore is not subject to the provisions of Article X, Section 20 of the Colorado Constitution. Accordingly, the Authority's obligation to remit the Pledged Revenue under this Agreement is a multiple-fiscal year obligation that is not subject to annual appropriation





8 5 Authority Obligations Pursuant to the Agreement to Negotiate If approved by the Authority's bond counsel, the Authority may reimburse itself for its costs incurred pursuant to the Agreement to Negotiate from the proceeds of the Bonds, provided, however that any such reimbursement shall not be made from moneys on deposit in the Project Fund or reduce the deposit to be made into the Project Fund below \$27,500,000

8 6 No Impairment The Authority shall not enter into any agreement or transaction that impairs the rights of the Parties under this Agreement, including, without limitation, the right to receive and apply Pledged Revenue in accordance with the terms and provisions of this Agreement

8 7 Cooperation with District and Developer If the City and the Authority do not issue Bonds in accordance with the provisions set forth in Section 6 3 hereof, the Authority agrees to cooperate in a reasonable manner to assist the District in issuing District Bonds and to pledge the Pledged Revenue to the payment of such District Bonds in the manner provided in Section 7 3 of this Agreement or, if the District does not issue District Bonds for any reason, to pay the Pledged Revenue to the Developer to payment of certified and approved Developer Advances plus Eligible Accrued Interest on Developer Advances in accordance with the Developer Amortization Schedule

9 0 THE CITY

9 1 Agreement of City and Authority Regarding Sales Tax Increment Revenues In accordance with Section 8 2 of the Plan, the City and the Authority hereby agree that so long as this Agreement is in effect, the Sales Taxes in excess of the Sales Tax Base Amount that shall be allocated to and, when collected, paid into the Special Fund shall be an amount equal to the Pledged Sales Tax Incremental Revenues

9 2 Remittance of Pledged Sales Tax Increment Revenues to Authority The City hereby agrees that it shall collect and remit the Pledged Sales Tax Increment Revenues to the Authority as soon as practicable after the receipt thereof by the City

9 3 City Moral Obligation Pledge to Secure Authority Bonds The City agrees that, in the event that the Authority issues Bonds in accordance with Section 6 3 hereof, that it will present to the City Council for its consideration a resolution authorizing the City to provide the City Moral Obligation Pledge in connection with the issuance of such Bonds The City Council shall have sole discretion to determine whether or not it shall approve any such resolution and in the event that the City Council determines that it will not provide such City Moral Obligation Pledge in connection with the issuance of Bonds by the Authority, such determination shall not be deemed to be an Event of Default hereunder For the avoidance of doubt, the City shall not be required to consider a City Moral Obligation Pledge to secure any District Bonds

10 0 REIMBURSEMENT OF ELIGIBLE COSTS Upon compliance with the conditions precedent set forth in Section 6 2 hereof, and upon compliance with the requisition process set forth in Exhibit E hereto, the Developer or District shall be paid or reimbursed for Eligible Costs



in accordance with the terms and provisions hereinafter set forth. Any such payment or reimbursement of Eligible Costs pursuant to this Agreement shall be made solely from the proceeds of the Bonds, proceeds of District Bonds or Pledged Revenues as further set forth in Section 6.1 hereof.

**10.1 Reimbursement of Eligible Costs Prior to Commencement of Construction** Upon compliance with the conditions precedent set forth in Section 6.2 hereof, and prior to the Commencement of Construction, the Developer shall be eligible to receive reimbursement for Eligible Costs up to a maximum amount of \$500,000, upon the earliest to occur of (a) the issuance of Bonds pursuant to Section 6.3 hereof, (b) the issuance of District Bonds pursuant to Section 7.3 hereof, or (c) the receipt of Pledged Revenues by the Authority in an amount sufficient to make such reimbursement payments. Notwithstanding the foregoing, however, the Developer shall not be eligible for reimbursement for Land Acquisition Costs except as provided in Section 10.3 hereof.

**10.2 Reimbursement of Eligible Costs Upon Commencement of Construction** Upon the Commencement of Construction in accordance with Section 5.5 hereof, the Developer shall be eligible to receive reimbursement for Eligible Costs in the maximum principal amount of \$27,500,000, provided however that all reimbursements made or to be made to the Developer or the District for Land Acquisition Costs in accordance with Section 10.3 hereof shall be counted toward this maximum amount of \$27,500,000. All Land Acquisition Costs shall be reimbursed only in accordance with Section 10.3 hereof. Any such reimbursement under this Agreement shall be made solely from the net proceeds of Bonds, the net proceeds of District Bonds or Pledged Revenues.

**10.3 Reimbursement for Land Acquisition Costs** The Developer shall provide the Authority and the City with written notice as to the amount of Land Acquisition Costs incurred by the Developer. The Developer shall be eligible to receive reimbursement for Land Acquisition Costs as follows:

(a) Upon the Commencement of Construction in accordance with Section 5.5 hereof, the Developer shall be eligible to receive reimbursement for 50% of Land Acquisition Costs.

(b) Upon Completion of Construction of the Eligible Public Improvements listed in paragraph 2(a)(i) and 2(a)(ii) of Exhibit D and Completion of Construction of 75% of the Village, the Developer shall be eligible to receive reimbursement for an additional 25% of Land Acquisition Costs.

(c) Upon Substantial Completion of Construction of the Private Improvements defined as the Natural Grocery Store in paragraph 2(b) of Exhibit D and Substantial Completion of Construction of 100% of the remaining Private Improvements, the Developer shall be eligible to receive reimbursement for all the Land Acquisition Costs, reduced by the Warranty Holdback Amount. Upon expiration of the warranty period for the Warranty Holdback Amount, the Developer shall be eligible to receive reimbursement for all Land Acquisition Costs. Notwithstanding the foregoing, however, if the Developer is not able to obtain a sale or lease with a Natural Grocery Store after eighteen months of commercially reasonable efforts, the Developer shall nonetheless be

eligible to receive reimbursement for all remaining Land Acquisition Costs, reduced by the Warranty Holdback Amount as set forth above, upon Completion of Construction of a replacement tenant or combination of tenants for the Natural Grocery Store so long as such replacement tenant or tenants are new to the City of Longmont and projected to generate taxable sales substantially equivalent to the taxable sales projected to be generated by such Natural Grocer, as agreed to in writing by the Authority

(d) Notwithstanding the foregoing or any other provision of this Agreement to the contrary, in the event the City and the Authority do not issue Bonds in accordance with Section 6.3 hereof and the District does not issue District Bonds in accordance with Section 7.3 hereof, and the Developer obtains alternative funding as contemplated by Section 6.1(c) hereof, then the Developer shall be eligible to receive reimbursement for Land Acquisition Costs upon complying with the certification process set forth in Exhibit E hereto, except for any applicable Warranty Holdback Amount, subject to the availability of sufficient Pledged Revenues to make any such reimbursement

Any Acquisition Costs or Purchase Price Funds that are incurred in accordance with the Agreement to Negotiate shall not be considered Land Acquisition Costs for purposes of this Section 10.3 and shall be eligible for reimbursement from Pledged Revenues upon complying with the certification process set forth in Exhibit E hereto

10.4 Certification of Eligible Costs All Eligible Costs shall be certified by the District or the Developer in accordance with procedures set forth in Exhibit E or as otherwise approved in writing by the Parties. Cost savings in the line items listed in Exhibit C may be allocated to cost overruns in any other line item. All Eligible Costs shall be paid or reimbursed once only, and any duplicate recovery of Eligible Costs from any other source shall be Recovered Costs under this Agreement and shall be Pledged Revenues hereunder

10.5 Developer Amortization Schedule If the Authority and the City do not issue Bonds in accordance with Section 6.3 hereof and the District does not issue District Bonds in accordance with Section 7.3 hereof, Developer Advances and Eligible Accrued Interest on Developer Advances shall be paid or reimbursed directly to the Developer, in accordance with the procedure and Developer Amortization Schedule described in Exhibit G. The Authority's obligation to repay any such Developer Advances and Eligible Accrued Interest on Developer Advances shall be limited to Pledged Revenues that have been received by the Authority

11.0 BOOKS AND ACCOUNTS, FINANCIAL STATEMENTS The Authority and District will keep proper and current itemized records, books, and accounts in which complete and accurate entries shall be made of the receipt and use of all amounts of revenue received from any and all sources and such other calculations required by this Agreement, the Bond Documents, and any applicable law or regulation. The Authority and the District shall prepare after the close of each fiscal year, a complete financial statement prepared in accordance with generally accepted accounting principles accepted in the United States of America for such year in reasonable detail covering the above information, and if required by statute, certified by a public accountant, and shall furnish a copy of such statement to the other Parties within Two Hundred and Ten (210) days after the close of each fiscal year of the Authority and the District or upon such earlier date as may be required by the Bond Documents

11.1 Inspection of Records All books, records and reports (except those allowed or required by applicable law to be kept confidential) in the possession of the City, the Authority, and the District, including, without limitation, those relating to the Pledged Revenue, the Authority Administration Fee, Eligible Public Improvements, Eligible Costs, District Pledged Revenue, District Operating Revenue, the Bonds and District Bonds, including the books and accounts described in Section 11.0, shall at all reasonable times be open to inspection by such accountants or other agents as the respective Parties may from time to time designate

12.0 RECOVERED COSTS The Parties shall make reasonable efforts to collect Recovered Costs. If Bonds are issued by the City or the Authority pursuant to Section 6.3 hereof, any Party that receives Recovered Amounts shall remit any and all such Recovered Amounts to the Bond Trustee so long as any such Bonds remain outstanding. If District Bonds are issued pursuant to Section 7.3 hereof, any Party that receives Recovered Amounts shall remit any and all such Recovered Amounts to the District Bond Trustee for such District Bonds as long as any such District Bonds remain outstanding. In the event that no Bonds or District Bonds are outstanding, any Party that receives Recovered Amounts shall remit any and all such Recovered Amounts to the Developer to be applied by the Developer to the repayment of unreimbursed Developer Advances and Eligible Accrued Interest on Developer Advances in accordance with the Developer Amortization Schedule.

13.0 INSURANCE At all times prior to Completion of Construction of the Improvements, the District and the Developer, within ten (10) days after request by the Authority, will provide the Authority with proof of payment of premiums and certificates of insurance showing that the District and the Developer are carrying, or causing prime contractors to carry, builder's risk insurance (if appropriate), commercial general liability, automobile, and worker's compensation insurance policies in commercially reasonable amounts and coverages approved by the Executive Director of the Authority. Such policies of insurance shall be placed with financially sound and reputable insurers, require the insurer to give at least thirty (30) days advance written notice of cancellation to the Authority and will include the Authority as an additional insured on such policies.

14.0 INDEMNIFICATION The Developer agrees to indemnify, defend and hold harmless the City and the Authority, its officers, agents and employees, from and against all liability, claims, demands, and expenses, including fines imposed by any applicable state or federal regulatory agency, court costs and attorney fees, on account of any injury, loss, or damage, which arise out of or are in any manner connected with any of the work to be performed by the Developer, the District, any subcontractor of the Developer or the District, or any officer, employee, agent, successor or assign of the Developer under this Agreement, if such injury, loss, or damage is caused in whole or in part by, the negligent act or omission, error, professional error, mistake, accident, or other fault of the Developer or the District, any subcontractor of the Developer or the District, or any officer, employee, agent, successor or assign of the Developer or the District, but excluding any injuries, losses or damages which are due to the gross negligence, breach of contract or willful misconduct of the City or the Authority, as the case may be.

15 0 REPRESENTATIONS AND WARRANTIES

15 1 Representations and Warranties by the Authority The Authority represents and warrants as follows

(a) The Authority is a body corporate and politic of the State of Colorado, duly organized under the Act, and has the power to enter into and has taken all actions to date required to authorize this Agreement and to carry out its obligations hereunder

(b) The Authority knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the Authority or its officials with respect to this Agreement that has not been disclosed in writing to the Parties

(c) The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (a) conflict with or contravene any law, order, rule or regulation applicable to the Authority or to its governing documents, (b) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the Authority is a party or by which it may be bound or affected, or (c) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the Authority

(d) The Pledged Property Tax Increment Revenue and the Pledged Sales Tax Increment Revenue are not subject to any other or prior pledge or encumbrance, and the Authority will not pledge or encumber it except as specified herein or as may be provided in the Bond Documents or the documents related to the issuance of any District Bonds

(e) This Agreement constitutes a valid and binding obligation of the Authority, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity

15 2 Representations and Warranties by the District The District represents and warrants as follows

(a) The District is a quasi-municipal corporation and political subdivision of the State of Colorado, organized and existing in accordance with Title 32, Article 1, C R S , and has the legal capacity and the authority to enter into and perform its obligations under this Agreement and the documents to be executed and delivered pursuant hereto

(b) The execution and delivery of this Agreement and such documents and the performance and observance of their terms, conditions and obligations have been duly and validly authorized by all necessary action on its part, and such documents and such performance and observance are valid and binding upon the District

(c) The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (a)

conflict with or contravene any law, order, rule or regulation applicable to the District or to the District's governing documents, (b) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the District is a party or by which it may be bound or affected, or (c) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the District

(d) The District knows of no litigation, proceeding, initiative, referendum, or investigation or threat of any of the same contesting the powers of the Authority, the District or any of its officials with respect to this Agreement that has not been disclosed in writing to the Parties

(e) The District Pledged Revenue is not subject to any other or prior pledge or encumbrance, and the District will not pledge or encumber it except as specified herein or as may be provided in the Bond Documents or the documents related to the issuance of the District Bonds

(f) This Agreement constitutes a valid and binding obligation of the District, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity

15.3 Representations and Warranties by the Developer The Developer represents and warrants as follows

(a) The Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California and in good standing and authorized to do business in the State of Colorado and has the legal and financial capacity and the authority to enter into and perform in a timely manner its obligations under this Agreement and the documents to be executed and delivered pursuant hereto

(b) The execution and delivery of this Agreement and such documents and the performance and observance of their terms, conditions and obligations have been duly and validly authorized by all necessary action on its part to make this Agreement and such documents and such performance and observance are valid and binding upon the Developer

(c) The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (a) conflict with or contravene any law, order, rule or regulation applicable to the Developer or to the Developer's governing documents, (b) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the Developer is a party or by which it may be bound or affected, or (c) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the Developer

(d) The Developer knows of no litigation, proceeding, initiative, referendum, or investigation or threat or any of the same contesting the powers of the Parties or any of its

principals or officials with respect to this Agreement that has not been disclosed in writing to the other Parties

(e) The Developer has the necessary legal ability to perform its obligations under this Agreement and has the necessary financial ability, subject to obtaining financing through customary and traditional sources in accordance with Exhibit D. This Agreement constitutes a valid and binding obligation of the Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity

15.4 Representations and Warranties by the City The City represents and warrants as follows

(a) The City is a body corporate and politic and a home rule municipality of the State of Colorado, and has the power to enter into and has taken all actions to date required to authorize this Agreement and to carry out its obligations hereunder

(b) The City knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the City or its officials with respect to this Agreement that has not been disclosed in writing to the Parties

(c) The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (a) conflict with or contravene any law, order, rule or regulation applicable to the City or to its governing documents, (b) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the City is a party or by which it may be bound or affected, or (c) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the City

(d) This Agreement constitutes a valid and binding obligation of the City, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity

16.0 CONFLICTS OF INTEREST None of the following shall have any personal interest, direct or indirect, in this Agreement: A member of the governing body of the Authority or the City, an employee of the Authority or of the City who exercises responsibility concerning the Plan, or an individual or firm retained by the City or the Authority who has performed consulting services to the Authority in connection with the Plan, this Agreement, or the Authority Financing. None of the above persons or entities shall participate in any decision relating to the Agreement that affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested

17.0 ANTIDISCRIMINATION The Developer, for itself and its successors and assigns, agrees that in the construction of the Improvements provided for in the Agreement and in the use and occupancy of the Property and the Private Improvements, the Developer will not

discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual preference, disability, marital status, ancestry, or national origin

18 0 NOTICES Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if delivered in person, by prepaid overnight express mail or overnight courier service, by certified mail or registered mail, postage prepaid return receipt requested, addressed to the Party to whom such notice is to be given at the address set forth on the signature page below or at such other or additional addresses as may be furnished in writing to the other Parties. Additionally, the Parties agree to provide concurrent notice via electronic mail

19 0 DELAYS, FORCE MAJEURE Subject to the following provisions, time is of the essence. Any delays in or failure of performance by any Party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, earthquake, strikes, labor disputes, regulation or order of civil or military authorities, or other causes, similar or dissimilar, which are beyond the control of such Party

20 0 EVENTS OF DEFAULT The following events shall constitute an Event of Default under this Agreement

(a) Failure by the Authority to pledge the Pledged Revenue to any outstanding Bonds, District Bonds or payment of Developer Advances in accordance with the terms and provisions of this Agreement, or failure to remit such Pledged Revenues within five (5) business days of the date they are required to be paid or remitted,

(b) Failure by the District to impose the District Debt Service Mill Levy or failure to pledge the District Pledged Revenues to any outstanding Bonds, District Bonds or payment of Developer Advances in accordance with the terms and provisions of this Agreement, or failure to remit the District Pledged Revenues within five (5) business days of the date they are required to be paid or remitted,

(c) Any representation or warranty made by any Party in this Agreement proves to have been untrue or incomplete in any material respect when made and which untruth or incompleteness would have a material adverse effect upon any other Party,

(d) Any Party fails in the performance of any other covenant in this Agreement, (except for those events allowing the termination of this Agreement as set forth in Section 22.0 hereof) and such failure continues for thirty (30) days after written notice specifying such default and requiring the same to be remedied is given by a non-defaulting Party to the defaulting Party. If such default is not of a type which can be cured within such thirty (30) day period and the defaulting Party gives written notice to the non-defaulting Party or Parties within such thirty (30) day period that it is actively and diligently pursuing such cure, the defaulting Party shall have a reasonable period of time given the nature of the default following the end of such thirty (30) day period to cure such default, provided that such defaulting Party is at all times within such additional time period actively and diligently pursuing such cure in good faith





21 0 REMEDIES Upon the occurrence and continuation of an Event of Default hereunder, the non-defaulting Party's remedies shall be limited to the right to enforce the defaulting Party's obligations hereunder by an action for injunction, specific performance, or other appropriate equitable remedy or for mandamus, or by an action to collect and enforce payment of sums owing hereunder, and no other remedy, and no Party shall be entitled to or claim damages for an Event of Default by the defaulting Party, including, without limitation, lost profits, economic damages, or actual, direct, incidental, consequential, punitive or exemplary damages. In the event of any litigation or other proceeding to enforce any of the terms, covenants or conditions hereof, the prevailing party in such litigation or other proceeding shall obtain, as part of its judgment or award, its reasonable attorneys' fees and costs. The occurrence and continuation of an Event of Default hereunder shall not affect the obligation of the Authority or the District to collect and remit Pledged Revenues in accordance with the terms and provisions of this Agreement or the obligation of the Authority to remit the District Operating Revenue to the District in accordance with the terms and provisions of this Agreement.

22 0 TERMINATION Upon the occurrence of any of the following events, this Agreement may be terminated in accordance with the provisions hereinafter set forth:

(a) In the event that the conditions precedent to the Authority's obligation to reimburse Eligible Costs set forth in Section 6.2 have not been satisfied on or prior to December 31, 2013, then any Party shall have the option to terminate this Agreement.

(b) If the provisions related to the Commencement of Construction set forth in Section 5.5 have not been satisfied on or prior to December 31, 2014, then any Party shall have the option to terminate this Agreement.

(c) If the City or the Authority do not issue Bonds in accordance with Section 6.3 hereof or in the event that the net proceeds of any such Bonds to be deposited in the Project Fund and used to pay Eligible Costs would be less than \$27,500,000, then the Developer shall have the option to terminate this Agreement.

(d) If the Developer notifies the City and the Authority that the interest rate to accrue on Eligible Accrued Interest on Developer Advances will exceed 9.00% per annum in accordance with the Developer Amortization Schedule, then the City and the Authority shall have the option to terminate this Agreement within thirty (30) days after receipt of such notice, provided that no Bonds or District Bonds are outstanding at the time of such termination.

In order to terminate this Agreement, a Party shall provide written notice of such termination to the other Parties. Such termination shall be effective thirty (30) days after the date of such notice unless prior to such time, the Parties are able to negotiate in good faith to reach an agreement to avoid such termination. Upon such termination, this Agreement shall be null and void and of no effect, and no action, claim or demand may be based on any term or provision of this Agreement. In addition the Parties agree to execute a mutual release or other instruments reasonably required to effectuate and give notice of such termination.

23 0 NONLIABILITY OF OFFICIALS, AGENTS, MEMBERS, AND EMPLOYEES Except for willful or wanton actions, no trustee, board member, commissioner, official, employee, consultant, manager, member, shareholder, attorney or agent of any Party, nor any





Lender to any Party or to the Project, shall be personally liable under the Agreement or in the event of any default or for any amount that may become due to any Party

24 0 ASSIGNMENT Except for a Bond Trustee in connection with issuance of the Bonds, or a District Bond Trustee in connection with the issuance of District Bonds, this Agreement shall not be assigned in whole or in part by any Party without the prior written consent of the other Parties, provided, however, the following assignments and transfers shall not require any such consent (a) the Developer may assign to the District upon the District's Service Plan Amendment, (b) the Developer may lease or sell space in the Private Improvements to third parties in the ordinary course of the business of the Developer and (c) subject to written notice to the Authority from the Developer containing the name and address of the lender or other party, the Developer may pledge, collaterally assign or otherwise encumber all or any part of its rights under this Agreement, including its right to receive any payment or reimbursement hereunder, to any lender or other party that provides acquisition, construction, working capital, tenant improvement or other financing to the Developer in connection with development of the Property, acquisition of the Property Interests, and/or construction of the Improvements. The Authority recognizes that the Developer may form a separate, special purpose entity to develop, own and operate the Property and the improvements to be constructed thereon and that one or more assignments may be required in connection with such activities. Provided assignment of this Agreement to such entity conforms with the requirements of this Agreement approval of any such assignment shall not be unreasonably withheld, conditioned, or delayed by the Authority

25 0 COOPERATION REGARDING DEFENSE In the event of any litigation or other legal challenge involving this Agreement, the Bonds, the validity of the Plan, the District, or any other material part or provision of this Agreement or the ability of any Party to enter into this Agreement, the Parties will cooperate and jointly defend against such action or challenge, to the extent permitted by law

26 0 SECTION CAPTIONS The captions of the sections are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement

27 0 ADDITIONAL DOCUMENTS OR ACTION The Parties agree to execute any additional documents or take any additional action, including but not limited to estoppel documents requested or required by lenders, that is necessary to carry out this Agreement or is reasonably requested by any Party to confirm or clarify the intent of the provisions hereof and to effectuate the agreements herein contained and the intent hereof. If all or any portion of this Agreement, or other agreements approved in connection with this Agreement are asserted or determined to be invalid, illegal or are otherwise precluded, the Parties, within the scope of their powers and duties, shall cooperate in the joint defense of such documents and, if such defense is unsuccessful, the Parties will use reasonable, diligent good faith efforts to amend, reform or replace such precluded items to assure, to the extent legally permissible, that each Party substantially receives the benefits that it would have received under this Agreement

28 0 AMENDMENT This Agreement may be amended only by an instrument in writing signed by the Parties

29 0 WAIVER OF BREACH A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement must be in writing and shall not operate or be construed as a waiver of any subsequent breach by any Party

30 0 GOVERNING LAW This Agreement shall be governed by the laws of the State of Colorado and exclusive venue for any litigation shall be the District Court of Boulder County

31 0 BINDING EFFECT This Agreement shall inure to the benefit of and be binding upon the Parties and their respective legal representatives, successors, heirs, and assigns, provided that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein

32 0 EXECUTION IN COUNTERPARTS This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument

33 0 LIMITED THIRD-PARTY BENEFICIARIES Except for any Bond Trustee or the District Bond Trustee for any District Bonds, or credit enhancement provider for the Bonds or District Bonds, this Agreement is intended to describe the rights and responsibilities only as to the Parties hereto This Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a Party hereto

34 0 NO PRESUMPTION The Parties to this Agreement and their attorneys have had a full opportunity to review and participate in the drafting of the final form of this Agreement Accordingly, this Agreement shall be construed without regard to any presumption or other rule of construction against the Party causing the Agreement to be drafted

35 0 SEVERABILITY If any provision of this Agreement as applied to any Party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this Agreement, the application of any such provision in any other circumstances or the validity, or enforceability of the Agreement as a whole

36 0 MINOR CHANGES This Agreement has been approved in substantially the form submitted to the governing bodies of the Parties The officers executing this Agreement are authorized to make and may have made, minor changes to this Agreement and attached exhibits as they have considered necessary So long as such changes were consistent with the intent and understanding of the Parties at the time of approval by the governing bodies, the execution of the Agreement shall constitute the approval of such changes by the respective Parties

37 0 DAYS If the day for any performance or event provided for herein is a Saturday, a Sunday, a day on which national banks are not open for the regular transactions of business, or a legal holiday pursuant to Section 24-11-101(1), C R S , such day shall be extended until the next day on which such banks and state offices are open for the transaction of business

38 0 GOOD FAITH OF PARTIES In the performance of this Agreement or in considering any requested approval, consent, acceptance, or extension of time, the Parties agree that each will

act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement

39.0 PARTIES NOT PARTNERS Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the Parties shall not be deemed to be partners or joint venturers, and no Party shall be responsible for any debt or liability of any other Party

40.0 NO WAIVER OF IMMUNITY Nothing contained in this Agreement constitutes a waiver of sovereign immunity or governmental immunity by any Party under applicable state law

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto in their respective names as of January 8, 2013

THE LONGMONT URBAN RENEWAL AUTHORITY

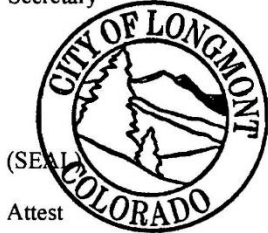
ATTEST

Dennis L Coombs  
Chair

Notice Address  
Civic Center Complex  
408 Third Street  
Longmont, CO 80501  
Attention Chair

[Signature]  
Secretary

CITY OF LONGMONT, COLORADO



By Dennis L Coombs  
Mayor

Valeria D. Stath  
City Clerk

Eugene Mai  
CITY ATTORNEY

6/11/13  
DATE

Notice Address  
City of Longmont  
350 Kimbark Street  
Longmont, Colorado 80501  
Attention City Manager

[Signature]  
LURA001304

TWIN PEAKS METROPOLITAN  
DISTRICT

  
\_\_\_\_\_  
President

ATTEST

  
\_\_\_\_\_  
Secretary

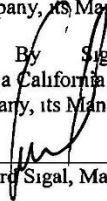
Notice Address  
450 E 17<sup>th</sup> Avenue  
Suite 400  
Denver, CO 80203

NMMS TWIN PEAKS, LLC, a California  
limited liability company

By NewMark Merrill Mountain States,  
LLC, a California limited liability company,  
its Manager

By NewMark Merrill  
Companies, LLC, a California limited  
liability company, its Manager

By Sigal Investments,  
LLC, a California limited liability  
company, its Manager

By   
\_\_\_\_\_  
Sanford Sigal, Manager

Notice Address  
Allen Ginsborg  
NMMS Twin Peaks, LLC  
2720 Council Tree Avenue #230  
Fort Collins, CO 80525

LURA001305

EXHIBIT A1

LEGAL DESCRIPTION OF THE PROPERTY

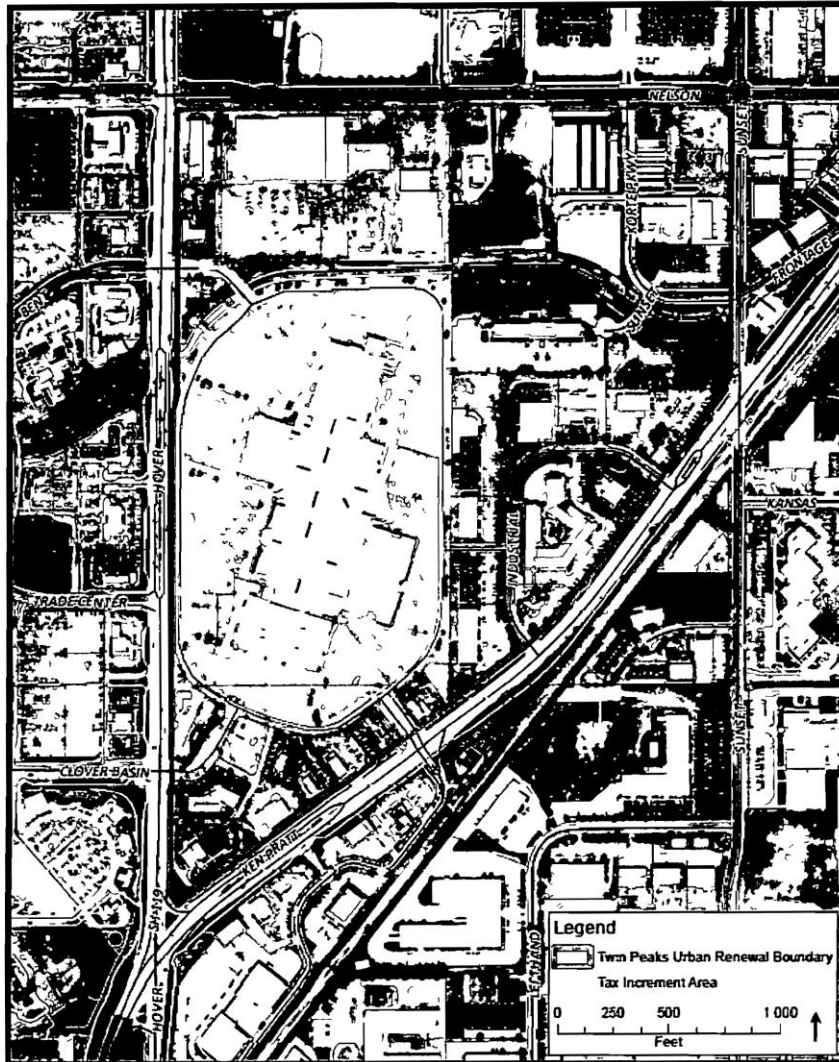
LOT 2H, TWIN PEAKS MALL SUBDIVISION REPLAT "H", THE PLAT OF WHICH IS RECORDED AS PLAN FILE P-39 F-4 #21 AND #22, COUNTY OF BOULDER, STATE OF COLORADO

LOTS 4A, 7A, 8A AND 13A, TWIN PEAKS MALL SUBDIVISION REPLAT "A", RECORDED ON FILM 1355, RECEPTION NO 690304 IN THE RECORDER'S OFFICE OF BOULDER COUNTY, COLORADO

also known by street address as 2000 Ken Pratt Blvd, and 1250 and 1254 S Hover Street, Longmont, Colorado 80501

EXHIBIT A2

DESCRIPTION OF TIF AREA



LEGAL DESCRIPTION OF THE TAX INCREMENT AREA

A tract of land located in the W1/2 of the SW1/4 of Section 9 and the W1/2 of the NW1/4 of Section 16, T2N, R69W of the 6th P M , County of Boulder, State of Colorado, described as follows

ALL OF Lots 4A, 7A, 8A and 13A inclusive, Twin Peaks Mall Subdivision Replat "A" according to the plat recorded May 24, 1985 in Plan File P-17 F-4 #37 and 38 of the Boulder County records,

TOGETHER WITH Lot 1C, Twin Peaks Mall Subdivision Replat "C" according to the plat recorded April 4, 1988 in Plan File P-22 F-1 #25 of the Boulder County records,

TOGETHER WITH Lots 1H and 2H inclusive, Twin Peaks Mall Subdivision Replat "H" according to the plat recorded May 2, 1997 in Plan File P-39 F-4 #21 and 22 of the Boulder County records,

The perimeter of the above being more particularly described as follows

COMMENCING at the W1/4 corner of said Section 9, from which the Southwest Corner of said Section 9 bears S00°00'26"W, 2650 85 feet (Basis of Bearing), thence S00°00'26"W, 719 64 feet along the West Line of said SW1/4 of Section 9, thence S89°59'34"E, 80 00 feet to the Northwest Corner of said Lot 2H, Twin Peaks Mall Subdivision Replat "H" and the POINT OF BEGINNING.

Thence Easterly along the Northerly Line of said Lot 2H, Twin Peaks Mall Subdivision Replat "H" the following seven (7) courses

- 1) N89°45'01"E, 134 91 feet to a point of curve to the right,
- 2) 29 89 feet along the arc of said curve, said arc having a radius of 180 00 feet, a central angle of 9°30'46", and being subtended by a chord which bears S85°29'36"E, 29 85 feet to a point of non-tangency,
- 3) S00°45'01"W, 20 25 feet to a point of non-tangent curve to the right,
- 4) 111 46 feet along the arc of said curve, concave to the Southwest, said arc having a radius of 160 00 feet, a central angle of 39°54'49", and being subtended by a chord which bears S59°42'23"E, 109 22 feet to a point of tangency,
- 5) S39°44'59"E, 68 19 feet to a point of non-tangent curve to the right,





- 6) 222 91 feet along the arc of said curve, concave to the South, said arc having a radius of 430 00 feet, a central angle of 29°42'07", and being subtended by a chord which bears N72°53'58"E, 220 42 feet,
- 7) N87°45'01"E, 710 00 feet to the Northeast Corner of said Lot 2H and a point on the East Line of said W1/2 of the SW1/4 of Section 9,

Thence S00°07'36"W, 1791 82 feet along said East Line of the W1/2 of the SW1/4 of Section 9 being also the Easterly Line of said Lot 2H to the Southeast Corner thereof being also the Northeast Corner of said Lot 13A, Twin Peaks Mall Subdivision Replat "A",

Thence S00°07'36"W, 100 00 feet continuing along said East Line of the W1/2 of the SW1/4 of Section 9 to the Southeast Corner thereof being also the Easterly Line of said Lot 13A to an angle point thereon,

Thence S00°00'16"W, 98 81 feet continuing along said Easterly Line of said Lot 13A being also the East Line of said W1/2 of the NW1/4 of Section 16 to the Northerly Right-of-Way Line of Ken Pratt Boulevard (Colorado State Highway No 119) as shown on Twin Peaks Mall Subdivision according to the Plat recorded October 19, 1984 in Plan File P-16 F-4 #15 & 16 of the Boulder County records,

Thence N36°34'54"W, 204 90 feet, leaving said Northerly Right-of-Way Line and along the Westerly Line of said Lot 13A to the Northwesterly Corner thereof being also a non-tangent point of curve to the right on the Southerly Line of said Lot 2H, Twin Peaks Mall Subdivision Replat "H",

Thence Westerly along said Southerly Line of Lot 2H the following ten (10) courses

- 1) 78 93 feet along the arc of said curve, concave to the Northwest, said arc having a radius of 419 50 feet, a central angle of 10°46'50", and being subtended by a chord which bears S48°01'41"W, 78 82 feet to a point of tangency,
- 2) S53°25'06"W, 54 04 feet to a point of curve to the left,
- 3) 47 91 feet along the arc of said curve, said arc having a radius of 30 50 feet, a central angle of 90°00'00", and being subtended by a chord which bears S08°25'06"W, 43 13 feet to a point of tangency,
- 4) S36°34'54"E, 167 00 feet to said Northerly Right-of-Way Line of Ken Pratt Boulevard (Colorado State Highway No 119),

- 5) S53°25'06"W, 94 00 feet along said Northerly Right-of-Way Line,
- 6) N36°34'54"W, 167 00 feet leaving said Northerly Right-of-Way Line to a point of curve to the left,
- 7) 47 91 feet along the arc of said curve, said arc having a radius of 30 50 feet, a central angle of 90°00'00", and being subtended by a chord which bears N81°34'54"W, 43 13 feet to a point of tangency,
- 8) S53°25'06"W, 109 84 feet to a point of curve to the right,
- 9) 214 16 feet along the arc of said curve, said arc having a radius of 268 50 feet, a central angle of 45°42'00", and being subtended by a chord which bears S76°16'06"W, 208 53 feet to a point of compound curve,
- 10) 122 95 feet along the arc of said curve, said arc having a radius of 1145 01 feet, a central angle of 6°09'09", and being subtended by a chord which bears N77°48'19"W, 122 89 feet to a point of reverse curve on the Easterly Line of said Lot 7A, Twin Peaks Mall Subdivision Replat "A",

Thence Southwesterly along said Easterly Line of Lot 7A the following five (5) courses

- 1) 27 91 feet along the arc of said curve, said arc having a radius of 18 00 feet, a central angle of 88°51'09", and being subtended by a chord which bears S60°50'41"W, 25 20 feet to a point of tangency,
- 2) S16°25'07"W, 224 95 feet to a point of curve to the right,
- 3) 51 79 feet along the arc of said curve, said arc having a radius of 212 00 feet, a central angle of 13°59'45", and being subtended by a chord which bears S23°24'59"W, 51 66 feet to a point of tangency,
- 4) S30°24'51"W, 123 88 feet to a point of curve to the left,
- 5) 19 82 feet along the arc of said curve, said arc having a radius of 25 00 feet, a central angle of 45°25'55", and being subtended by a chord which bears S07°41'51"W, 19 31 feet to the Southeasterly Corner of said Lot 7A,

Thence N89°35'09"W, 55 37 feet along the Southerly Line of said Lot 7A to a point of tangent cusp on a Westerly Line of said Lot 7A,

Thence Northeasterly along said Westerly Line of Lot 7A the following four (4) courses

- 1) 26 18 feet along the arc of said curve, said arc having a radius of 25 00 feet, a central angle of  $59^{\circ}59'59''$ , and being subtended by a chord which bears  $N60^{\circ}24'52''E$ , 25 00 feet to a point of tangency,
- 2)  $N30^{\circ}24'53''E$ , 147 72 feet to a point of curve to the left,
- 3) 3 33 feet along the arc of said curve, said arc having a radius of 184 00 feet, a central angle of  $1^{\circ}02'17''$ , and being subtended by a chord which bears  $N29^{\circ}53'43''E$ , 3 33 feet to a point of compound curve,
- 4) 28 58 feet along the arc of said curve, said arc having a radius of 18 00 feet, a central angle of  $90^{\circ}57'28''$ , and being subtended by a chord which bears  $N16^{\circ}06'10''W$ , 25 67 feet to a point of tangency on a Southerly Line of said Lot 7A,

Thence Northwesterly along said Southerly Line of Lot 7A the following two (2) courses

- 1)  $N61^{\circ}34'54''W$ , 148 72 feet to a point of curve to the left,
- 2) 30 56 feet along the arc of said curve, said arc having a radius of 48 00 feet, a central angle of  $36^{\circ}29'02''$ , and being subtended by a chord which bears  $N79^{\circ}49'25''W$ , 30 05 feet to a non-tangent point of curve to the right on said Southerly Line of Lot 2H, Twin Peaks Mall Subdivision Replat "H",

Thence Southwesterly, Northeasterly and Northwesterly along said Southerly Line of Lot 2H the following eighteen (18) courses

- 1) 33 06 feet along the arc of said curve, concave to the Northwest, said arc having a radius of 356 50 feet, a central angle of  $5^{\circ}18'49''$ , and being subtended by a chord which bears  $S42^{\circ}39'32''W$ , 33 05 feet to a point of tangent,
- 2)  $S45^{\circ}18'56''W$ , 20 11 feet to a point of curve to the right,
- 3) 79 74 feet along the arc of said curve, said arc having a radius of 101 53 feet, a central angle of  $45^{\circ}00'00''$ , and being subtended by a chord which bears  $S67^{\circ}48'56''W$ , 77 71 feet to a point of tangency,
- 4)  $N89^{\circ}41'04''W$ , 60 21 feet,



- 5) S45°21'54"W, 24 25 feet to the Easterly Right-of-Way Line of Hover Road as shown on said plat of Twin Peaks Mall Subdivision,
- 6) N00°24'51"E, 121 36 feet along said Easterly Right-of-Way Line,
- 7) S44°38'07"E, 24 02 feet leaving said Easterly Right-of-Way Line,
- 8) S89°41'04"E, 31 16 feet to a point of curve to the left,
- 9) 38 88 feet along the arc of said curve, said arc having a radius of 49 50 feet, a central angle of 45°00'00", and being subtended by a chord which bears N67°48'56"E, 37 89 feet to a point of tangency,
- 10) N45°18'56"E, 20 11 feet to a point of curve to the left,
- 11) 76 75 feet along the arc of said curve, said arc having a radius of 263 50 feet, a central angle of 16°41'20", and being subtended by a chord which bears N36°58'16"E, 76 48 feet to a point of tangency,
- 12) N28°37'36"E, 60 53 feet,
- 13) N42°07'21"E, 51 42 feet,
- 14) N28°37'36"E, 38 19 feet to a point of curve to the left,
- 15) 47 28 feet along the arc of said curve, said arc having a radius of 30 50 feet, a central angle of 88°48'41", and being subtended by a chord which bears N15°46'38"W, 42 68 feet to a point of reverse curve,
- 16) 16 39 feet along the arc of said curve, said arc having a radius of 1145 01 feet, a central angle of 0°49'13", and being subtended by a chord which bears N59°46'30"W, 16 39 feet to a point of tangency,
- 17) N59°21'54"W, 39 99 feet to a point of curve to the right,
- 18) 34 67 feet along the arc of said curve, said arc having a radius of 320 50 feet, a central angle of 6°11'53", and being subtended by a chord which bears N56°15'57"W, 34 65 feet to the Northeasterly Corner of said Lot 1C, Twin Peaks Mall Subdivision Replat "C",

Thence S26°13'01"W, 243 44 feet along the Easterly Line of said Lot 1C to the Southeasterly Corner thereof,

Thence N89°35'09"W, 28 16 feet along the Southerly Line of said Lot 1C to the Southwesterly Corner thereof on said Easterly Right-of-Way Line of Hover Road,

Thence Northerly along said Easterly Right-of-Way Line the following five (5) courses

- 1) N00°24'51"E, 250 34 feet being also the Westerly Line of said Lot 1C to the Southwesterly Corner of said Lot 2H, Twin Peaks Mall Subdivision Replat "H",

The following four (4) courses being also along the Westerly Line of said Lot 2H,

- 2) N00°24'51"E, 0 42 feet,
- 3) N00°00'26"E, 1241 07 feet,
- 4) N15°57'09"E, 72 80 feet,
- 5) N00°00'26"E, 234 06 feet to an angle point on said Westerly Line of Lot 2H,

Thence leaving said Easterly Right-of-Way Line of Hover Road and continuing Northeasterly, Northwesterly and Westerly along said Westerly Line of Lot 2H the following six (6) courses

- 1) S89°59'34"E, 13 31 feet to a non-tangent point of curve to the right,
- 2) 223 61 feet along the arc of said curve, concave to the Southwest, said arc having a radius of 580 00 feet, a central angle of 22°05'22", and being subtended by a chord which bears N39°12'20"E, 222 23 feet to a point of tangency,
- 3) N50°15'01"E, 75 82 feet,
- 4) N39°44'59"W, 38 21 feet to a point of curve to the left,
- 5) 59 49 feet along the arc of said curve, said arc having a radius of 67 50 feet, a central angle of 50°30'00", and being subtended by a chord which bears N64°59'59"W, 57 59 feet to a point of tangency,
- 6) S89°45'01"W, 135 41 feet to said Easterly Right-of-Way Line of Hover Road,



Thence N00°00'26"E, 112.50 feet along said Easterly Right-of-Way Line being also said  
Westerly Line of Lot 2H to the POINT OF BEGINNING

Area = 2,553,581 square feet (58.622 acres), more or less

EXHIBIT B

PRIVATE IMPROVEMENTS



The Developer plans to redevelop the Twin Peaks Mall into a community retail destination, focusing on entertainment and sense of place, celebrating and showcasing the community. It will be a local gathering place as much as a shopping destination.

The redeveloped Twin Peaks Mall is proposed to include a state of the art movie theater, large format club warehouse retailer, natural grocer and several smaller anchor tenants and local and national restaurants, boutiques and services. The heart of the project will be a village-style open air shopping area, with public gathering spaces, pedestrian amenities, children's activities and local character. Additionally, the new Twin Peaks Mall will have outdoor play areas, fountains, and lush native Colorado landscaping.

In total, the Twin Peaks Mall will have approximately 470,000 square feet of retail space, including restaurants and entertainment destinations, featuring high quality architecture and a Colorado National Park feel. The Developer estimates that the total project cost will be approximately \$80 million, although firm construction pricing has not yet been finalized and such estimates are subject to change.





EXHIBIT C -ELIGIBLE PUBLIC IMPROVEMENTS

<p>The following are estimated costs. The reimbursements will be based on actual costs for the Eligible Public Improvements after they have been certified in accordance with the Procedure for Documenting, Certifying and Paying Eligible Costs as outlined in and Exhibit E to the Agreement. Regardless of the total actual cost of the Eligible Public Improvements, the total amount to be reimbursed under this Agreement shall not exceed \$27,500,000. Reimbursements for any line item may exceed the estimated cost so long as the reimbursement total does not exceed \$27,500,000.</p>	Estimated Cost
<p><b>A LAND ACQUISITION COSTS</b> The costs incurred by the District in connection with the acquisition of land required for the Eligible Public Improvements. These costs will be subject to the holdback provisions in Section 10.3 of the Agreement.</p>	\$8,500,000
<p><b>B ACQUISITION COSTS / PURCHASE PRICE FUNDS</b> Costs incurred by the Developer pursuant to the terms and conditions of the Agreement to Negotiate. Such costs are not subject to the holdback provisions in Section 10.3 of the Agreement.</p>	To be determined
<p><b>C SITE DEVELOPMENT COSTS</b> Including the cost of construction, architecture and engineering fees, reasonable and customary development and construction management fees, and other reasonable and necessary soft costs for the following improvements:</p> <ul style="list-style-type: none"> <li>• Demolition</li> <li>• Offsite Improvements</li> <li>• Onsite Improvements</li> <li>• Public Spaces</li> <li>• Suit Preparation</li> <li>• Landscaping and Open Space</li> <li>• Monument Sign(s)</li> </ul>	\$15,100,000
<p><b>D BUILDING COSTS</b> Including building façade improvements to be calculated at 1/3 of the total vertical construction cost, including the cost of construction, architecture and engineering fees, reasonable and customary development and construction management fees, and other reasonable and necessary soft costs.</p>	\$10,300,000
<p>Total of the Above Cost Estimates for the Eligible Public Improvements (excluding item B, above)</p>	\$33,900,000
<p>Maximum Eligible Reimbursement regardless of the total cost of the Eligible Public Improvements</p>	\$27,500,000
<p>Note: The body of the Development and Reimbursement Agreement shall prevail in the event of any conflict with this Exhibit C.</p>	

LURA0013A 

EXHIBIT D

REQUIREMENTS OF DEVELOPMENT AND FINANCING PLAN

The Development and Financing Plan prepared by the Developer, submitted to the Authority, and approved in writing by the Authority shall establish to the reasonable satisfaction of the Authority that

1 There is expected to be sufficient revenue derived from construction of the Private Improvements to pay the debt service requirements on the Bonds. If the final site plan includes the square footage presently operated as a Dillard's retail store, then the Private Improvements are anticipated to contain a total square footage of approximately 470,000 square feet of Gross Leasable Area. If the final site plan does not include the square footage presently operated as a Dillard's retail store, then the Private Improvements are anticipated to contain a total square footage of approximately 376,000

2 At the time of approval of the Development and Financing Plan, the following minimum requirements with respect to the Private Improvements shall be satisfied

(a) The Developer shall have obtained executed leases or sale agreements with the following types of tenants

(i) A large format general merchandise retailer occupying at least 100,000 square feet of Gross Leasable Area and which is projected to generate at least \$400 of taxable sales per square foot of Gross Leasable Area,

(ii) A stadium-style film theater with a minimum of 12 screens containing at least 50,000 square feet of Gross Leasable Area and which is projected to generate at least \$35 of taxable sales per square foot of Gross Leasable Area

(b) The Developer shall have obtained one of the following

(i) An executed lease or sale agreement with a grocery store that is commonly classified as a natural grocer within the grocery industry containing at least 28,000 square feet of Gross Leasable Area and which is projected to generate at least \$540 of taxable sales per square foot of Gross Leasable Area (the "Natural Grocery Store"), or

(ii) (a) A letter of intent from the Natural Grocery Store or a letter of intent from another tenant occupying at least 25,000 square feet of Gross Leasable Area, plus (b) executed leases or sale agreements with tenants in the Village occupying at least 22,500 square feet of Gross Leasable Area, of which at least 10,000 square feet of such Gross Leasable Area shall be occupied by restaurants

3 Commitments such as construction loans or other evidence that shows the Developer will be able to achieve Completion of Construction of the required Improvements under this Agreement on or before December 31, 2015

4 With the exception of the Private Improvements described in Paragraph 2 above, the Developer shall use commercially reasonable efforts to assure that 80% of the uses in the remaining Private Improvements shall be new to the City of Longmont

5 The schedule of construction of the Private Improvements described in Paragraph 2, above and the Eligible Public Improvements required to construct such Private Improvements

6 Cost estimates, including all reasonable and necessary soft costs necessary to construct the Private Improvements listed in Paragraph 2 above and the Eligible Public Improvements required to construct such Private Improvements

7 Dates for Commencement of Construction and Completion of Construction of the Private Improvements listed in Paragraph 2 above and the Eligible Public Improvements required to construct such Private Improvements, which schedule makes reasonable best efforts to assure the accuracy of the cost estimates in Paragraph 6, above, and

8 Construction financing and funding commitments in amounts and form establishing to the reasonable satisfaction of the City Manager of the City that the District or the Developer will be able to Complete Construction of all of the Private Improvements listed in Paragraph 2 above and the Eligible Public Improvements required to construct such Private Improvements

9 A list of all contingencies and conditions that must be satisfied or waived prior to the initial and ongoing financing and funding required for construction of the Private Improvements listed in Paragraph 2 above and the Eligible Public Improvements required to construct such Private Improvements, including the requirements of any lenders or equity investors

EXHIBIT E  
PROCEDURE FOR DOCUMENTING, CERTIFYING AND PAYING ELIGIBLE COSTS

1 Applicability All capitalized terms that are not specifically defined in this Exhibit E shall have the same meaning as defined in the Agreement. The Parties recognize and acknowledge that in connection with issuance and sale of Bonds or District Bonds, the Bond Documents or bond documents related to such District Bonds may establish a different procedure for the requisition of Bond proceeds or District Bond proceeds, as the case may be, in which event that procedure shall be substituted for the procedure in this Exhibit E to the extent that they conflict with the procedures in this Exhibit E, provided, however, the Parties agree to cooperate so that the Bond Documents or bond documents related to District Bonds will include a procedure for certifying the Eligible Costs payable under in-process construction and other contracts to permit Bond proceeds or District Bond proceeds, as the case may be, to be applied to direct payments under such contracts.

2 Engineer The Authority and the District will jointly select an independent licensed engineer experienced in the design and construction of public improvements in the Longmont metropolitan area (the "Engineer"). The Engineer shall be responsible for reviewing, approving, and providing the certificate required by paragraph 3 hereof.

3 Documentation The District or the Developer shall be responsible for documenting all Eligible Costs. Eligible Costs may be certified when a pay application has been submitted by a contractor that complies with the procedure set forth in this Exhibit or upon Completion of Construction of an Eligible Public Improvement. All such submissions shall include a certification signed by both the Engineer and an authorized representative of the District or the Developer, as applicable. The certificate shall state that the information contained therein is true and accurate to the best of each individual's information and belief and, to the best knowledge of such individual, qualifies as Eligible Costs. Such submissions shall include copies of backup documentation supporting the listed cost items, including bills, statements, pay request forms from first-tier contractors and suppliers, conditional lien waivers, and copies of each check issued by the District or the Developer for each item listed on the statement. Unless required by a District or Developer construction contract then being performed, statements for payment of Eligible Costs shall not include advance payments of any kind for unperformed work or materials not delivered and stored on the Property.

4 Verification, Submission, and Payment Each payment request will be submitted to the applicable District representative, the Executive Director of the Authority, and the Bond Trustee or the District Bond Trustee, as applicable, for review within ten (10) business days. Such review is for the purpose of verifying that the work represented in each payment request and supporting documentation complies with the requirements of this Agreement. Upon the earlier of approval of such documentation or expiration of the 10-business day period, the Bond Trustee or the District Bond Trustee, as the case may be, shall allocate the Eligible Costs to the Eligible Public Improvements according to the category for each listed in Exhibit C and compile an aggregate running total of the Eligible Costs in each category. Thereafter, the Bond Trustee or District Bond Trustee, as the case may be, will make payments of Eligible Costs plus any accrued and unpaid interest to the District or the Developer as provided in this Agreement. So



long as the payment request is properly certified according to this procedure payment shall be made within twenty days of submission of the payment request

In the event that no Bonds or District Bonds have been issued and Eligible Costs are to be remitted directly to the Developer or its designated payees in accordance with the provisions of this Agreement, each payment request shall be submitted to the applicable District representative and the Executive Director of the Authority for review within ten (10) business days. Such review is for the purpose of verifying that the work represented in each payment request and supporting documentation complies with the requirements of this Agreement. Upon the earlier of approval of such documentation or expiration of the 10-business day period, the Authority shall allocate the Eligible Costs to the Eligible Public Improvements according to the category for each listed in Exhibit C and compile an aggregate running total of the Eligible Costs in each category. Thereafter, the Authority shall remit Pledged Revenues on deposit in the Special Fund to pay or reimburse the Developer for Eligible Costs and Eligible Accrued Interest on Developer Advances in accordance with the Developer Amortization Schedule. In the event that there are insufficient Pledged Revenues on deposit in the Special Fund to pay such requisition, any insufficiency shall be paid in connection with the next requisition submitted by the Developer, to the extent of available Pledged Revenues. So long as the payment request is properly certified according to this procedure payment shall be made within twenty days of submission of the payment request.

The Developer shall submit no more than one payment request per month

If a requisition is made by the Developer in accordance with this Exhibit E and the Bond Trustee, District Bond Trustee, District or Authority object that the requisition does not comply with the provisions of this Agreement, and the objection is made on the basis of incomplete or insufficient documentation, the Developer shall promptly provide complete and sufficient documentation in a good faith effort to facilitate resolution. The Parties shall cooperate in good faith to resolve any dispute concerning the payment or reimbursement of Eligible Costs, but without being obligated to waive or relinquish any rights hereunder. If the Parties have not satisfactorily resolved any such dispute within ten (10) business days, the Bond Trustee, District Bond Trustee or Authority, as applicable, may withhold the amounts in dispute from payment and shall process and pay the remainder of the undisputed Eligible Costs, and the Parties shall continue in good faith to resolve any remaining dispute.

EXHIBIT F  
FORM OF PLEDGED SALES TAX RATE CERTIFICATE

1	<u>Estimated Debt Service Requirements</u> _____  (calculated as the principal coming due on the Bonds, or the District Bonds, as the case may be, or due and payable to the Developer in accordance with the Developer Amortization Schedule in the following fiscal year, multiplied by the coverage ratio of 110%)
2	<u>Available Funds</u> _____  Any amounts on deposit under the Bond Indenture available to pay Debt Service on the Bonds in the following fiscal year, or, if applicable, to pay the District Bonds or Developer Advances in accordance with the Developer Amortization Schedule
3	<u>Projected Pledged Revenues (Other than Pledged Sales Tax Increment Revenues)</u> _____  Projected Pledged Property Tax Increment Revenue, plus  Projected District Pledged Revenue, plus  Projected Recovered Costs, if any
4	<u>Required Sales Tax Increment Revenues</u> _____  (1 minus 2 minus 3)
5	<u>Total Prior Year Gross Sales</u> _____
6	<u>Pledged Sales Tax Rate for following Sales Tax Rate Period (not to exceed 2.0%)</u> _____  (4 divided by 5)  Rounded up to the nearest 10%

EXHIBIT G

CALCULATION OF DEVELOPER AMORTIZATION SCHEDULE

In the event that Eligible Costs are to be paid or reimbursed directly to the Developer in accordance with Section 6.3(c) of this Agreement, the Parties shall establish the Developer Amortization Schedule to repay Developer Advances in accordance with the following procedure:

The Eligible Costs to be repaid to the Developer will be evidenced by a drawdown note (the "Developer Note") in the maximum principal amount of \$27,500,000, which will bear interest in the maximum amounts set forth in the definition of Eligible Accrued Interest on Developer Advances. Principal on the Developer Note will be considered to be drawn down (a) after compliance with the provisions of Section 6.2 have been met and (b) in the amounts and on the dates that Eligible Costs have been certified by the Developer in accordance with Exhibit E to this Agreement. Once the principal amount for each Eligible Cost has been certified, interest will begin to accrue on such amount at the interest rates determined in accordance with the definition of Eligible Accrued Interest on Developer Advances.

Each month, the Developer will provide the following accounting to the City and the Authority with respect to the Developer Note:

- o Previous balance of Developer Note
- + Additional Certified Eligible Costs for such month
- + Amortized Interest for the current period
- Credit for Pledged Revenues received by the Developer as payment on the Developer Note
- = New Balance of Developer Note

The principal amount of the Developer Note will be payable based on the Developer Amortization Schedule, which will be established annually on the first business day of each year, until the full amount of the \$27,500,000 has been drawn down on the Developer Note. Once the full amount of the \$27,500,000 has been drawn down on the Developer Note, there shall be established the final Developer Amortization Schedule. The Developer Amortization Schedule shall provide that payments on the Developer Note shall be made monthly from Pledged Revenues and shall be calculated to produce equal monthly payments of principal and interest on the Developer Note through 2037. The Developer shall produce the Developer Amortization Schedule on the first business day of each year, and shall produce the final Developer Amortization Schedule after the full amount of the \$27,500,000 has been drawn down on the Developer Note, and shall remit such Schedule to the City and the Authority for its review. The City and the Authority shall have the right to approve that the Developer Amortization Schedule

3

complies with the provisions of this Agreement

Notwithstanding the foregoing or any other provision to the contrary herein, all payments to be made by the Authority on the Developer Note shall be made solely from Pledged Revenues. To the extent that there are not sufficient Pledged Revenues to make any payments due on the Developer Note in accordance with the Developer Amortization Schedule, this shall not constitute an event of default, but interest shall continue to accrue on any unpaid amounts and shall be paid from the next available Pledged Revenues. Interest shall accrue at a simple per annum interest rate and shall not compound.

PUBFIN/1598892 1

47

  
LURA001324