

SILVER PEAKS EAST METROPOLITAN DISTRICT

141 Union Boulevard, Suite 150
Lakewood, Colorado 80228-1898
Tel: 303-987-0835 • 800-741-3254
Fax: 303-987-2032

AGENDA

<u>Board of Directors:</u>	<u>Office:</u>	<u>Term/Expiration:</u>
Matt Napier	President	2022/May 2022
Bryan Reid	Treasurer	2022/May 2022
Lars Monson	Assistant Secretary	2023/May 2022
VACANT		2023/May 2022
VACANT		2023/May 2022
Matt Cohrs	Secretary	

DATE: **July 19, 2021**

TIME: **9:00 A.M.**

PLACE: Best Western Plus Hudson Hotel
301 E Bison Hwy
Hudson, CO 80642

THERE WILL BE ONE PERSON PRESENT AT THE ABOVE-REFERENCED PHYSICAL LOCATION.

DUE TO CONCERNS REGARDING THE SPREAD OF THE CORONAVIRUS (COVID-19) AND THE BENEFITS TO THE CONTROL OF THE SPREAD OF THE VIRUS BY LIMITING IN-PERSON CONTACT, THIS MEETING WILL ALSO BE HELD BY VIDEO/TELEPHONIC MEANS.

Join Zoom Meeting

<https://us02web.zoom.us/j/82607833473?pwd=Q2g3UnNNMFZsbFpYV1VaNmxsSFVrdz09>

Meeting ID: 826 0783 3473

Passcode: 239921

Dial In: 1-253-215-8782

I. ADMINISTRATIVE MATTERS

A. Present Conflict Disclosures.

B. Approve Agenda, and confirm quorum; confirm location of the meeting and posting of meeting notices.

II. FINANCIAL MATTERS

- A. Consider approval of Resolution Authorizing the Issuance of General Obligation Limited Tax Bonds, Series 2021(3), in the maximum principal amount not to exceed \$5,410,000, together with related bond documents (to be distributed).
-

III. LEGAL MATTERS

- A. Consider approval of Infrastructure Acquisition and Funding Agreement between the District and Forestar (USA) Real Estate Group, Inc. (enclosure).
-

- B. Consider approval of Operating Reimbursement Agreement between the District and Forestar (USA) Real Estate Group, Inc. (enclosure).
-

- C. Conduct Public Hearing on Inclusion of Property into the District and Adoption of Order for Inclusion of Real Property (to be distributed).
-

IV. PUBLIC COMMENT

- A. _____

V. OTHER MATTERS

- A. _____

VI. ADJOURNMENT **THERE ARE NO MORE REGULAR MEETINGS SCHEDULED FOR 2021.**

INFRASTRUCTURE ACQUISITION AND FUNDING AGREEMENT

This Infrastructure Acquisition and Funding Agreement (this “**Agreement**”) is made and entered into to be effective as of _____, 2021, by and between Silver Peaks East Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and Forestar (USA) Real Estate Group, Inc., a Delaware corporation (the “**Company**”), individually referred to herein as a “**Party**” and collectively referred to herein as the “**Parties.**”

RECITALS

A. The District was organized under Article 1, Title 32, C.R.S. for the purpose of financing, planning, design, engineering, acquiring, constructing, installing, completing and maintaining water, streets and roadway, parks and recreation, sanitation and drainage and other public improvements, infrastructure and facilities within and without the boundaries of the District (the “**Public Infrastructure**”), in accordance with, and subject to the limitations set forth in the Service Plan (the “**Service Plan**”) of Silver Peaks East Metropolitan District approved by the Town of Lochbuie (the “**Town**”).

B. Pursuant to Section 32-1-1001(1)(f) and (h), C.R.S., the District has the power to acquire real and personal property, including rights and interests in property and easements necessary for District functions or operations, and to acquire, construct and install the public improvements, infrastructure and facilities authorized in the Service Plan.

C. At an organizational/TABOR Election held by the District on November 8, 2016, a majority of the eligible electors voting at such election voted in favor of, among other matters, the District incurring indebtedness and other multiple-fiscal year financial obligations to finance the planning, design, engineering, acquisition, construction, installation and completion of the Public Infrastructure.

D. At present the District does not have sufficient funds available to finance the planning, design, engineering, acquisition, construction, installation and completion of the Public Infrastructure.

E. The Company, in its sole and absolute discretion, may either advance funds to the District to plan, design, engineer, acquire, construct, install and complete certain Public Infrastructure or may plan, design, engineer, acquire, construct, install and complete certain Public Infrastructure and then to transfer such Public Infrastructure to the District, the Town or other governmental entity for public use.

F. The Parties agree that such Public Infrastructure will benefit the residents, property owners and taxpayers of the District, and the planning, design, engineering,

acquisition, construction, installation and completion of the Public Infrastructure is in the public interest and will contribute to the health, safety and welfare of its citizens.

G. The District has determined it is in the public interest of the residents, property owners and taxpayers of the District for the District to plan, design, engineer, acquire, construct, install and complete the Public Infrastructure and/or facilitate the planning, design, engineering, acquisition, construction, installation and completion of the Public Infrastructure and, when financially feasible, to pay the Company or its assignee for the costs of the Public Infrastructure (the “Costs”) through and by means of the issuance of the District’s bonds and other legally available funds in accordance with all limitations set forth in the Service Plan.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and sufficient consideration, the Parties agree to the terms discussed hereinafter.

COVENANTS AND AGREEMENTS

1. Representations, Warranties and Covenants Relating to Public Infrastructure Constructed by the Company. With respect to any Public Infrastructure planned, designed, engineered, acquired, constructed, installed and completed by the Company hereunder, the Company, represents, warrants and covenants to its actual current knowledge as follows:

a. All such Public Infrastructure has been or will be planned, designed, engineered, acquired, constructed, installed and completed in conformance with all duly approved designs, plans and specifications and the requirements, standards and specifications of the District, the Town or other governmental entity, as applicable, and will be conveyed, transferred or dedicated to the District, the Town or other governmental entity for public use, free of all liens, encumbrances and obligations of every nature, except those of record and those a survey or inspection thereof would disclose.

b. The foregoing representations, warranties and covenants are made as of the date of this Agreement and shall be deemed to be continuing for all purposes for the Warranty Period (hereinafter defined), unless otherwise approved in writing by the District.

2. Transfer of Public Infrastructure Constructed by the Company. The Company shall convey, transfer or dedicate the Public Infrastructure to the District or, if so directed by the District, the Town or other governmental entity upon completion and acceptance of the Public Infrastructure by the District, the Town or other governmental entity, as applicable as follows:

a. The Public Infrastructure shall conform to the requirements, standards and specifications of all public and/or private agencies to which the Public Infrastructure may be or is required to be conveyed, transferred or dedicated by the District, including without limitation, the Town or other governmental entity, in addition to any standards or requirements adopted by the District. At its discretion and request, the District may require the Company to arrange for the work to be inspected by the District's engineers, at the District's sole cost and expense, so that the engineers will be able to advise and certify to the District that all work was performed to their satisfaction and in compliance with the applicable drawings, standards and specifications.

b. As a precondition to the conveyance, transfer or dedication of any Public Infrastructure to the District, the Town or other governmental entity for ownership, maintenance and repair, the Company shall provide the District, the Town or other governmental entity, as applicable, with a guarantee, to secure performance of warranty obligations against defects in materials, workmanship, construction and installation of the Public Infrastructure all for a two-year period (the "**Warranty Period**"). This requirement shall not apply to any Public Infrastructure for which the Company satisfies all the requirements of the entity to which the improvement, infrastructure or facility will ultimately be conveyed, transferred or dedicated if that entity agrees to take title and to release the District from any ongoing responsibility.

c. The Company shall provide to the District or, if so directed by the District, to the Town or other governmental entity: (i) a bill of sale, special warranty or quitclaim deed conveying, transferring or dedicating the Company's interests in the Public Infrastructure, free and clear of all liens, encumbrances and obligations of every nature, except those of record and those a survey or inspection thereof would disclose, and (ii) if applicable, a partial release of its interests in the Public Infrastructure from any lender that has loaned funds to complete the Public Infrastructure, together with any easements and rights-of-way necessary for the convenient construction, operation, repair, replacement or maintenance of any Public Infrastructure located on any property owned by the Company and that has not been conveyed, transferred or dedicated to the District, the Town or other governmental entity, in a commercially reasonable form.

d. The Company shall also provide to the District or the Town or other governmental entity, as applicable, "as-built" drawings of all Public Infrastructure or a certification signed by a licensed professional engineer confirming the location and extent of the Public Infrastructure, together with supporting maps and other documentation as may be reasonably required by the District, or the Town or other governmental entity, at the District's sole cost and expense, including without limitation any appraisals, surveys, environmental reports, permits, assignments of construction warranties, lien waivers, releases and other documentation relating to the Public Infrastructure or the transfer thereof.

e. The District shall not accept conveyance, transfer or dedication of any Public Infrastructure, or any portion thereof, or be obligated to pay interest for any such Public Infrastructure until such Public Infrastructure is completed. Upon completion of any Public Infrastructure, or any portion thereof, in conformance with all applicable requirements, standards and specifications of the Service Plan and all public and/or private agencies to which such Public Infrastructure may be or are required to be conveyed, transferred or dedicated to the District, including without limitation, the Town or other governmental entity, in addition to any standards or requirements adopted by the District, such Public Infrastructure may be accepted for ownership by the District.

3. Cost Certification. The Costs of any Public Infrastructure subsequently acquired by or conveyed, transferred or dedicated to the District, the Town or other governmental entity shall be determined based upon actual costs verified by the District, subject to the limitations detailed in Section 5(c) herein.

a. The Costs shall include all construction costs, planning, design, engineering, surveying, construction management, legal and other consulting services, and any other allowable capital expense relating to the Public Infrastructure.

b. Before any payment of any Costs are made hereunder, the Company shall provide a schedule of such Costs and the District shall have such Costs reviewed or audited by an independent public accountant, professional engineer, appraiser or valuation consultant, which may include the District's engineer and/or accountant, selected and by the District and paid for by the Company, substantiating the amount of the Costs.

4. Capital Advances. The Company has advanced or may in the future, in its sole discretion, provide advances to the District (the "**Advances**") as requested from time to time in writing by the District to pay certain costs related to the planning, design, engineering, construction, installation and completion of the Public Infrastructure, including without limitation, soft costs, such as those related to engineering, architectural, surveying or construction planning. Such Advances shall be treated as Costs herein and paid, to the extent certified as Costs, as provided in Section 3 herein. In connection with any Public Infrastructure for which an Advance is provided:

a. The Company may request, and the District shall promptly provide to the Company, a certified statement of all design, testing, engineering, construction, related consultant fees and construction management (based on the bids it receives, and prepared by its engineer) of any Public Infrastructure for which an Advance is provided.

b. The District agrees that it will enter into contracts for construction of the Public Infrastructure with the lowest responsive and responsible bidder (subject to District's discretion) (the "**Contracts**"). References to the Contracts herein shall refer to the Contracts as may be constituted or modified by the parties thereto and shall refer to both singular and plural.

c. The District agrees that it will plan, design, engineer, acquire, construct, install and complete the Public Infrastructure in full conformance with the design standards and specifications as established and in use by the District and other government entities pursuant to the provisions of this Agreement and if applicable approved by a professional engineer licensed in the State of Colorado.

d. Within forty-five (45) days of final payment on any Contract awarded pursuant to this Agreement, the District shall conduct an accounting of the funds received pursuant to this Agreement. In the event Advances deposited hereunder exceeds the actual costs and expenses incurred for the Public Infrastructure, the District shall within thirty (30) days of such accounting refund such excess amounts to the Company or shall apply the remaining amounts to the unpaid balance of any other Contract.

5. Payment of Costs.

a. If and to the extent the District (i) receives bond proceeds for the acquisition or completion of the Public Infrastructure or (ii) has other legally available revenue which is not otherwise appropriated, obligated, pledged or reserved for any current or future purpose in any fiscal year, the District will, from such available sources, pay to the Company for all the Costs and other amounts actually advanced hereunder, together with interest thereon at 6.0% per (cumulatively, the “**Infrastructure Repayment Amount**”) from the date (i) of transfer to the District or the Town or other governmental entity for Public Infrastructure completed and transferred after the date hereof, or (ii) of an Advance, pursuant to Section 4 herein.

b. The District will undertake commercially reasonable efforts to issue its tax-exempt bonds and to generate sufficient revenue to repay to the Company all of the Infrastructure Repayment Amount, subject to all conditions and limitations set forth herein and other applicable law. If requested, the District will also take all necessary action to recognize that interest paid to the Company on the Costs will, to the extent possible under federal tax regulations, be treated as exempt from federal income taxation. Any decision by the Board of Directors of the District to appropriate the Infrastructure Repayment Amount, however, shall be purely discretionary and non-obligatory.

c. All of the Infrastructure Repayment Amount and any other obligation hereunder shall be: (i) limited to sums authorized in the Service Plan; (ii) limited to sums authorized via and ballot questions or TABOR election’s conducted by the District; and (iii) limited to sums that may be available from the proceeds of any District bond offering and as limited under any related bond indenture or bond resolution and (iv) non-transferable or assignable, except to a person or entity (or its lender) which the District reasonably believes is engaged, either alone or with others, in the business of developing or improving property in the District for use, sale, lease or transfer to others.

6. Waiver of Covenants. The District, in its discretion, may waive any of the covenants of the Parties set forth herein by written notice to the Company; provided,

however, that such waiver shall not constitute a general waiver of all covenants, nor shall any such waiver prevent the District from enforcing other terms of this Agreement.

7. Integrated Agreement and Amendments. This Agreement constitutes the entire agreement of the Parties with respect to the District's payment obligation for the Costs of any Public Infrastructure and the other matters set forth herein and replaces in their entirety any prior agreements, understandings, warranties or representations made by or between the Parties with respect to the subject matter hereof. This Agreement may be amended only by the mutual written agreement of the Parties, which agreement shall be executed with the same formalities as this Agreement shall have been executed.

8. Notice. Any notices, demands, or other communications required or permitted to be given in writing hereunder shall be delivered personally or sent by registered mail, postage prepaid, return receipt requested, addressed to the Parties at the addresses set forth below, or at such other address as either Party may hereafter or from time to time designate by written notice to the other Party given in accordance herewith. Notice shall be considered given when personally delivered or mailed and shall be considered received by the Party to whom it is addressed on the third day after such notice is given.

To the District:

Silver Peaks East Metropolitan District
c/o Special District Management Services, Inc.
141 Union Boulevard, Suite 150
Lakewood, Colorado 80228-1898
Attention: Matt Cohrs

with a copy to:

Silver Peaks East Metropolitan District
c/o Collins Cockrel & Cole, P.C.
390 Union Boulevard, Suite 400
Denver, Colorado 80228
Attention: Matt Ruhland

To the Company:

Matthew Napier
Forestar (USA) Real Estate Group Inc.
9555 South Kingston Court, Suite 200
Englewood, Colorado 80112
Phone: 303-754-3219
E-mail: matthewnapier@forestar.com

With a copy to:

Matthew Stark
Forestar (USA) Real Estate Group Inc.
10700 Pecan Park Boulevard, Suite 150
Austin, Texas 78750
Phone: (512) 433-5212
E-mail: mattstark@forestar.com

9. Assignment. This Agreement, and each and every of its rights and obligations, may not be assigned by either Party except with the written consent of the non-assigning Party. This Agreement shall inure to the mutual benefit of the Parties and their respective successors and authorized assigns. Notwithstanding the foregoing, no Party may make an assignment of this Agreement that would result in a failure to comply with Interpretive Order No. 06-IN-001 (the “**Interpretive Order**”), and any such assignment shall be deemed void *ab initio*.

10. Severability. If any clause or provision of this Agreement shall be adjudged to be invalid and unenforceable by a court of competent jurisdiction or by operation of law, such clause or provision shall not affect the validity of this Agreement as a whole or of its other clauses and provisions.

11. Enforcement. This Agreement shall inure to the mutual benefit of the Parties, their respective heirs, successors and permitted assigns, subject to Section 9 hereof, and shall be enforceable according to its terms and conditions under the laws of the State of Colorado. In this regard, the Parties hereto agree that this Agreement may be enforced in law or in equity, by decree of specific performance or damages, or pursuant to such other legal and/or equitable relief as may be available under the laws of the State of Colorado.

12. Default / Remedies. In the event of any breach or default of this Agreement, each Party shall be entitled to exercise any remedy available in equity or at law. In this regard, this Agreement may be enforced by specific performance or injunction, or pursuant to such other legal and/or equitable relief as may be available under the laws of the State. The prevailing Party shall be entitled to reasonable attorney fees and costs. Absent bad faith or fraud by the District, no penalty shall be imposed

upon the District because of its inability to pay any portion of the Infrastructure Repayment Amount to the Company. There shall be no acceleration in the payment of any outstanding balances of the Infrastructure Repayment Amount in the event of any default. Nothing contained herein shall allow recovery for consequential or punitive damages. Venue for any judicial action shall be in the State District Court for Weld County.

13. Counterpart Execution. This Agreement may be executed in multiple counterparts, and the signature of a Party affixed to a counterpart signature of the other Party shall be deemed to constitute execution of the Agreement.

14. Term. The term of this Agreement shall end on the date that the Infrastructure Repayment Amount has been paid in full to the Company or its assignee in accordance with the terms hereof or 40 years from the date hereof, whichever date occurs first in time. Any Infrastructure Repayment Amount remaining unpaid under this Agreement as of the date of termination shall be considered discharged and satisfied in full.

15. Agreement Not an Indebtedness or Multiple Fiscal Year Financial Obligation. The payment obligations under this Agreement shall be subject to annual appropriation by the Board of Directors of the District in its sole and absolute discretion. The terms and conditions of this Agreement shall not be construed as a multiple-fiscal year direct or indirect district debt or other financial obligation within the meaning of Article X, Section 20 of the Colorado Constitution.

16. Governmental Immunity. Nothing herein shall be construed as a waiver of the rights and privileges of the District pursuant to the Colorado Governmental Immunity Act.

17. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Colorado.

18. Authority. By its execution hereof, each Party represents and warrants that its representative signing hereunder has full power and lawful authority to execute this document and bind the respective Party to the terms hereof.

19. Subordinate to District Bonded Indebtedness. The obligations of the District hereunder to pay the Infrastructure Repayment Amount are subordinate in all respects to any bonded indebtedness of the District and the provisions of any indenture, loan agreement, pledge agreement or other similar financial agreement executed in connection with the issuance of such bonded indebtedness.

20. Conflicting Provisions. To the extent that any conflict exists between the terms of this Agreement and the terms of the Service Plan, the provisions of the Service Plan shall control.

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OPERATING REIMBURSEMENT AGREEMENT

This Operating Reimbursement Agreement (this “**Agreement**”) is made and entered into to be effective as _____, 2021, by and between Silver Peaks East Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and Forestar (USA) Real Estate Group, Inc., a Delaware corporation (the “**Company**”), individually referred to herein as a “**Party**” and collectively referred to herein as the “**Parties**.”

RECITALS

A. The District was organized under Article 1, Title 32, C.R.S. for the purpose of financing, planning, designing, engineering, acquiring, constructing, installing, completing and maintaining water, streets and roadway, parks and recreation, sanitation and drainage and other public improvements, infrastructure and facilities within and without the boundaries of the, in accordance with, and subject to the limitations set forth in the Service Plan (the “**Service Plan**”) of Silver Peaks East Metropolitan District approved by the Town of Lochbuie.

B. At present the District does not have sufficient funds available to pay its operating, maintenance, and administrative expenses.

C. The Company, in its sole and absolute discretion, may advance funds as requested from time to time by the District to pay such expenses with the expectation of eventually being reimbursed by the District pursuant to this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and sufficient consideration, the Parties agree to the terms discussed hereinafter.

COVENANTS AND AGREEMENTS

1. Advances.

a. The District was organized by an Order and Decree granted by the Weld County District Court on November 16, 2016 and recorded with the Weld County Clerk & Recorder at Reception Number 4258228 on December 1, 2016. The Company, in its sole and absolute discretion, may, but shall not be obligated to in any manner, advance funds (the “**Advances**”) as requested from time to time by the District to pay any future operating, maintenance, and/or administrative expenses in accordance with the terms of this Agreement.

b. If the District determines that it will not have sufficient funds available to pay the District’s anticipated operating, maintenance, and/or administrative expenses for the next fiscal year, the District shall calculate the anticipated amount of

such funding shortfall (the “**Funding Shortfall**”), which shall be classified by nature of use.

c. The District may submit written requests on a quarterly basis to the Company to deposit with the District’s bank the amount of the Funding Shortfall anticipated to be needed for the next fiscal quarter. The Company, after reasonable verification of such Funding Shortfall, may, in its sole and absolute discretion, make an Advance and fund the Funding Shortfall for the next fiscal quarter after such request from the District. To the extent any Advance is not spent by the District in the fiscal quarter for which it was requested, the unspent amount of the Advance shall be applied to reduce any Funding Shortfall anticipated for the subsequent fiscal quarter.

d. Within 45 days after the end of each fiscal year during the term of this Agreement, the District shall complete an accounting of any funds advanced pursuant to this Agreement, which shall be classified by nature of use. In the event that the funds advanced hereunder exceed the actual costs and expenses incurred by the District for operation, maintenance, and/or administration, the District shall refund such excess amounts to the Company within 30 days of such accounting and a written request from the Company.

e. The District and the Company have entered into an Infrastructure Acquisition and Funding Agreement, dated as of today’s date, to memorialize the Parties understanding related to the planning, design, engineering, acquisition, construction, installation and completion of the public improvements and infrastructure (the “IAFA”). In the event the District issues tax-exempt obligations and uses a portion of the resulting proceeds to pay the Company related to public improvements and infrastructure under the IAFA, the Company agrees to make an Advance to the District in the amount of \$200,000 for use by the District to fund any future Funding Shortfalls. This Advance shall be completed within 30 days of the first payment made by the District to the Company under the IAFA.

2. Reimbursement.

a. If and to the extent the District has legally available revenue which is not otherwise appropriated, obligated, pledged or reserved for any current or future purpose in any fiscal year, the District will, from such available sources, reimburse the Company for all Advances, together with interest thereon at 6.0% per annum (cumulatively, the “**Operating Reimbursement Amount**”) commencing as of the date of each Advance, but in no event prior to the date the District was organized.

b. Any decision by the Board of Directors of the District to appropriate the Operating Reimbursement Amount, however, shall be purely discretionary and non-obligatory.

c. The Parties acknowledge that no proceeds of tax-exempt obligations of the District shall be used to reimburse the Company for the Operating Reimbursement Amount.

d. Payments by the District for the Operating Reimbursement Amount shall be applied first to interest on, then to principal of the Advances in chronological order to their effective date.

e. The District's obligation to reimburse the Company shall be automatically suspended for any period in which the District is on inactive status under Section 32-1-104(3)(a), C.R.S., and shall automatically revive upon the District returning to active status under Section 32-1-104(3)(b), C.R.S. While on inactive status, interest on any Operating Reimbursement Amount shall continue to accrue as provided in Section 2(a).

3. Waiver of Covenants. The District, in its discretion, may waive any of the covenants of the Parties set forth herein by written notice to the Company; provided, however, that such waiver shall not constitute a general waiver of all covenants, nor shall any such waiver prevent the District from enforcing other terms of this Agreement.

4. Integrated Agreement and Amendments. This Agreement constitutes the entire agreement of the Parties with respect to the District's payment obligation for operating expenses and the other matters set forth herein and replaces in their entirety any prior agreements, understandings, warranties or representations made by or between the Parties with respect to the subject matter hereof. This Agreement may be amended only by the mutual written agreement of the Parties, which agreement shall be executed with the same formalities as this Agreement shall have been executed.

5. Notice. Any notices, demands, or other communications required or permitted to be given in writing hereunder shall be delivered personally or sent by registered mail, postage prepaid, return receipt requested, addressed to the Parties at the addresses set forth below, or at such other address as either Party may hereafter or from time to time designate by written notice to the other Party given in accordance herewith. Notice shall be considered given when personally delivered or mailed and shall be considered received by the Party to whom it is addressed on the third day after such notice is given.

To the District:

Silver Peaks East Metropolitan District
c/o Special District Management Services, Inc.
141 Union Boulevard, Suite 150
Lakewood, Colorado 80228-1898
Attention: Matt Cohrs

with a copy to:

Silver Peaks East Metropolitan District
c/o Collins Cockrel & Cole, P.C.
390 Union Boulevard, Suite 400
Denver, Colorado 80228
Attention: Matt Ruhland

To the Company:

Matthew Napier
Forestar (USA) Real Estate Group Inc.
9555 South Kingston Court, Suite 200
Englewood, Colorado 80112
Phone: 303-754-3219
E-mail: matthewnapier@forestar.com

With a copy to:

Matthew Stark
Forestar (USA) Real Estate Group Inc.
10700 Pecan Park Boulevard, Suite 150
Austin, Texas 78750
Phone: (512) 433-5212
E-mail: mattstark@forestar.com

6. Assignment. This Agreement, and each and every of its rights and obligations, may not be assigned by either Party except with the written consent of the non-assigning Party. This Agreement shall inure to the mutual benefit of the Parties and their respective successors and authorized assigns. Notwithstanding the foregoing, no Party may make an assignment of this Agreement that would result in a failure to comply with Interpretive Order No. 06-IN-001, and any such assignment shall be deemed void *ab initio*.

7. Severability. If any clause or provision of this Agreement shall be adjudged to be invalid and unenforceable by a court of competent jurisdiction or by operation of law, such clause or provision shall not affect the validity of this Agreement as a whole or of its other clauses and provisions.

8. Enforcement. This Agreement shall inure to the mutual benefit of the Parties, their respective heirs, successors and permitted assigns, subject to Section 6 hereof, and shall be enforceable according to its terms and conditions under the laws of the State of Colorado. In this regard, the Parties hereto agree that this Agreement may be enforced in law or in equity, by decree of specific performance or damages, or pursuant to such other legal and/or equitable relief as may be available under the laws of the State of Colorado.

9. Default / Remedies. In the event of any breach or default of this Agreement, each Party shall be entitled to exercise any remedy available in equity or at law. In this regard, this Agreement may be enforced by specific performance or injunction, or pursuant to such other legal and/or equitable relief as may be available under the laws of the State. The prevailing Party shall be entitled to reasonable attorney fees and costs. Absent bad faith or fraud by the District, no penalty shall be imposed upon the District because of its inability to pay any portion of the Operating Reimbursement Amount to the Company. There shall be no acceleration in the repayment of outstanding Operating Reimbursement Amount in the event of any default. Nothing contained herein shall allow recovery for consequential or punitive damages. Venue for any judicial action shall be in the State District Court for Weld County.

10. Counterpart Execution. This Agreement may be executed in multiple counterparts, and the signature of a Party affixed to a counterpart signature of the other Party shall be deemed to constitute execution of the Agreement.

11. Term. The term of this Agreement shall end on the date that the Operating Reimbursement Amount has been paid in full to the Company or its assignee in accordance with the terms hereof or 40 years after the date hereof, whichever date occurs first in time. Any Operating Reimbursement Amount remaining unpaid under this Agreement as of the date of termination shall be considered discharged and satisfied in full.

12. Agreement Not an Indebtedness or Multiple Fiscal Year Financial Obligation. The payment obligations under this Agreement shall be subject to annual appropriation by the Board of Directors of the District in its sole and absolute discretion. The terms and conditions of this Agreement shall not be construed as a multiple-fiscal year direct or indirect district debt or other financial obligation within the meaning of Article X, Section 20 of the Colorado Constitution.

13. Governmental Immunity. Nothing herein shall be construed as a waiver of the rights and privileges of the District pursuant to the Colorado Governmental Immunity Act.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Colorado.

15. Authority. By its execution hereof, each Party represents and warrants that its representative signing hereunder has full power and lawful authority to execute this document and bind the respective Party to the terms hereof.

16. Conflicting Provisions. To the extent that any conflict exists between the terms of this Agreement and the terms of the Service Plan, the provisions of the Service Plan shall control.

[Remainder of page intentionally left blank]

