

THE SECURITIES ACT

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Order No. 5222

)

Section 20(1)

)

November 8, 2006

## LAKEVIEW MANAGEMENT INC.

### WHEREAS:

(A) Lakeview Management Inc. ("Lakeview") has applied to the Manitoba Securities Commission (the "Commission") pursuant to Section 20 (1) of the Act for an Order that Lakeview be exempted from the requirements of sections 6 and 37 of the Act for the purpose of soliciting expressions of interest from members of the public for investment in a development being considered for construction in downtown Winnipeg;

(B) Lakeview has represented to the Commission that:

1. Lakeview is a corporation incorporated under the laws of Manitoba and has a head office in Winnipeg, Manitoba.
2. Lakeview is not a reporting issuer in Manitoba or in any other province or territory of Canada;
3. Lakeview is proposing the development and construction of a mixed-use project (the "Project" or the "Building") to be located at the southwest corner of St. Mary Avenue and Edmonton Street, Winnipeg, Manitoba.

The property is located within the area controlled by the City of Winnipeg's Downtown Winnipeg Zoning By-law No. 100/2004. Under the Zoning By-law, the property is zoned Multiple-Use Sector which permits hotels and dwelling units. The By-law does not impose any restriction on building height, but there is a maximum permitted Floor Area Ratio of 12.

The design of the Building is subject to review by the Downtown Design Review Board of the City of Winnipeg.

4. The Project presently being proposed is a 15 storey building which will be registered as a condominium under The Condominium Act R.S.M. 1987 c. C170. The building will be operated as a full service hotel consisting of approximately 136 investor condominium units ("Hotel Condo Units") and approximately 36 owner-occupied residential condominium units (the "Residential Condo Units"), the Hotel Condo Units and the Residential Condo Units together are referred to in this order as the "Condominium".

It is anticipated that the Building will be connected by a skywalk link from the 3rd Floor of the Building to the Winnipeg Convention Centre as well as to 400 St. Mary Avenue to the west.

### **The Condominium**

5. The Condominium will be comprised of the following:

(a) approximately 136 Hotel Condo Units located on the 1st to 11th Floors of the Building;

(b) approximately 36 Residential Condo Units located on the 12th to 15th Floors of the Building;

(c) portions of the ground floor level of the Building, where a ground floor lobby and elevators serving the Building will be located;

(d) a restaurant and bar facility, meeting room facilities, lobby facilities, front desk area, a concierge area, hotel management offices, housekeeping closets on each floor of the Building, laundry facilities, stairwells and certain other common element areas and facilities located in the Building, and other facilities customarily associated with a first-class hotel operation;

(e) a one level, below grade parking garage to service and provide some of the owners of Residential Condo Units with parking facilities and services, which parking spaces will be sold to owners of Residential Condo Units.

6. The Ground Floor lobby will serve both the Hotel Condo Units and the Residential Condo Units. One of the three elevators included in the Building will service the Residential Condo Units.

### **Hotel Condo Units and Hotel Operations**

7. The Hotel Condo Units shall be used for occupancy by guests of the hotel pursuant to a reservation program that will make the Hotel Condo Units available to the public for rental (the "Reservation Program").

8. Operation and management of the hotel will be carried out by Lakeview as the "Hotel Operator" under a hotel management agreement (the "Hotel Management Agreement").

9. Under the terms of the Hotel Management Agreement, the Hotel Operator will be responsible for all operations of the Hotel Condo Units as a first class hotel. From the gross revenues of the first class hotel, the Hotel Operator shall deduct and pay all the operating costs, fees and expenses incurred in operating and maintaining the Project as a first class hotel. The Hotel Operator shall, on a quarterly basis, account and distribute the net revenue to the owners of the Hotel Condo Units. The owners of the Hotel Condo Units shall, on a proportionate basis, be liable for and remit any shortfall in gross revenues to the Hotel Operator, to be calculated and adjusted within 90 days following the last day of the fiscal year end of the hotel.

10. Revenues collected by the Hotel Operator are not specific to any Hotel Condo Unit.

11. Each Hotel Condo Unit holder will be entitled to receive externally reviewed annual financial statements and interim financial statements for the operation of the hotel.

12. The Applicant will have the right [and purchasers of Hotel Condo Units will be advised of such right in the Offering Memorandum (defined below)] to increase or reduce the number of Hotel Condo Units in the Condominium by splitting or combining one or more proposed Hotel Condo Units and/or changing the style or configuration and types of Hotel Condo Units contained in the Condominium in its sole discretion. In the event of such changes, the condominium declaration and the condominium budget will be amended accordingly and such changes shall not be construed as material amendments to the Offering Memorandum (defined below) with respect to the Condominium.

13. It is intended that each Hotel Condo Unit shall be used for short-term transient hotel occupancy or for longer-term occupancy as may be required.

14. Purchasers of a Hotel Condo Unit will be advised in the Offering Memorandum (defined below) that, as a condition of ownership of a Hotel Condo Unit, each purchaser of a Hotel Condo Unit (a "Hotel Condo Unit Owner") is required to authorize and grant a power of attorney to the condominium corporation to execute the Hotel Management Agreement.

15. Each Hotel Condo Unit Owner may occupy his/her Hotel Condo Unit for up to thirty days in any calendar year, provided that such Hotel Condo Unit Owner pays to the Hotel Operator an amount equal to one-half of the then rack rate in effect for such Hotel Condo Unit and provided that the required notice is given to the Hotel Operator.

16. The Hotel Operator will establish rental rates ("Rack Rates") for the Hotel Condo Units. Hotel Condo Unit Rack Rates will be adjusted by the Hotel Operator from time to time depending upon seasonal and other demands, the type and size of the Hotel Condo Unit, location of the Hotel Condo Unit and the views available.

17. The Applicant is proposing to have the Hotel operate under the name, "Signature Suites by Lakeview", or a similar trade name pursuant to a revocable license agreement with the holder of the legal right to use the name "Signature Suites by Lakeview" and any variation thereof.  
Condominium Act

18. The Project will be registered under The Condominium Act. Sales and purchases of the Residential Condo Units will be subject to the requirements of The Condominium Act.

19. Residential Condo Units will be solely for use and occupancy by the owner and/or their invitees and will not be used in the Reservation Program.

20. The Condominium will enter into a Condominium Management Agreement with the Hotel Operator, pursuant to which the Hotel Operator is to be the sole and exclusive representative and managing agent of the Condominium subject to overall control of the Condominium for an initial term of 25 years. In addition to its general condominium management duties, the Hotel Operator

will manage the operations of the hotel component pursuant to the Hotel Management Agreement.

### **Offering of Hotel Condo Units and Residential Condo Units**

21. Hotel Condo Units and Residential Condo Units will be offered for sale in Manitoba through:

(a) Lakeview; and/or

(b) Agents of Lakeview registered under The Real Estate Brokers Act, R.S.M. 1987, c.R20.

22. The Applicant will deliver to an initial purchaser of a Hotel Condo Unit or a Residential Condo Unit, before an agreement of purchase and sale is entered into, an Offering Memorandum (the "Offering Memorandum"). The Offering Memorandum will include additional information in the body of the Offering Memorandum relating to the real estate securities aspects of the offering prepared substantially in accordance with the form and content requirements of The Securities Act (Manitoba), including, but not limited to:

(a) description of the project and the offering of Hotel Condo Units and Residential Condo Units;

(b) a summary of the material features of the Hotel Management Agreement to be entered into between the Condominium Corporation on behalf of a purchaser (as owner) of a Hotel Condo Unit and the Hotel Operator relating to the operations of the hotel component;

(c) a description of the continuous reporting obligations of the Applicant or Hotel Operator, as the case may be, to owners;

(d) a description of the risk factors that make the offering of Hotel Condo Units and Residential Condo Units a risk or speculation;

(f) a description of the statutory right of action available to purchasers of Hotel Condo Units and Residential Condo Units; and

(g) a certificate signed by the president or chief executive officer of the Applicant and by a director of the Applicant in the following form:

"The foregoing contains no untrue statement of a material fact and does not omit to state a material fact that is required to be stated or that is necessary to prevent a statement that is made from being false or misleading in the circumstances in which it was made."

23. The Offering Memorandum will describe the statutory right of action, including any defences available to the Applicant, the limitation periods applicable to the exercise of the statutory right of action, and will indicate that the rights are in addition to any other right or remedy available to

the purchaser.

24. A purchaser of a Hotel Condo Unit will not be provided with rental or cash flow guarantees or any other form of financial projection or commitment on the part of the Applicant, but a purchaser of a Hotel Condo Unit or a Residential Condo Unit will be provided with the budget that must be delivered to an initial purchaser of a Hotel Condo Unit or a Residential Condo Unit pursuant to the Condominium Act.

25. Each initial purchaser of a Hotel Condo Unit will have a statutory right under The Condominium Act to rescind an agreement to purchase within 48 hours of signing the Offering Memorandum or a material amendment to the Offering Memorandum and all documentation required to be provided by Lakeview, as vendor, under The Condominium Act. In addition, each purchaser of a Hotel Condo Unit will also have all rights available

26. The Purchase Agreement will impose an irrevocable obligation on the initial purchaser, the Applicant or the Hotel Operator to deliver the Offering Memorandum to a subsequent purchaser of a Hotel Condo Unit upon receiving reasonable notice of a proposed sale of the Hotel Unit that is to take place either prior to, or within twelve months of, the issuance of permission to occupy that Hotel Condo Unit. It will also require the Offering Memorandum or a summary of the Offering Memorandum, as the case may be, to be delivered to a subsequent prospective purchaser before an agreement of purchase and sale has been entered into.

### **Expressions of Interest**

27. While developments similar to what has been proposed in the Project have been completed outside of Manitoba, this type of development is new to the Winnipeg market.

28. In order to determine whether there is sufficient interest in the Project and/or to proceed with the preparation of an Offering Memorandum under the Act, as well as construction and ultimate registration of the condominium and documentation required under The Condominium Act, Lakeview proposes soliciting expressions of interest from potential investors ("Expression of Interest") in the form of a fully refundable \$10,000.00 deposit to be held at the Steinbach Credit Union Limited (the "Credit Union").

29. Each fully refundable deposit to be held at the Credit Union will be held in the name of the potential purchaser in a bank account of the Credit Union or a Guaranteed Investment Certificate ("GIC") of the Credit Union as the purchaser shall, from time to time, direct. The fully refundable deposit shall be fully refundable to the potential purchaser upon demand if on deposit in a bank account of the Credit Union, or upon expiry of the term of the GIC, if held in a GIC of the Credit Union.

30. A potential investor providing an Expression of Interest will in no way be obligated to purchase a Hotel Condo Unit or a Residential Condo Unit and will clearly be advised in writing.

31. Lakeview will be entitled to be notified by the Steinbach Credit Union if a potential purchaser requests a refund of the Expression of Interest. Lakeview will have no other right,

ownership interest or entitlement to the monies deposited unless a potential purchaser purchases a Hotel Condo Unit or a Residential Condo Unit.

(C) The Commission is of the opinion that it would not be prejudicial to the public interest to grant the Order requested.

**IT IS ORDERED:**

**1. THAT** pursuant to Section 20 (1) of the Act, Lakeview be exempt from the requirements of sections 6 and 37 of the Act for the purposes of soliciting Expressions of Interest in the manner described in this order, provided that every initial purchaser of a Condo Hotel Unit or a Residential Hotel Unit receives, prior to completion of the purchase transaction, a copy of the Offering Memorandum and a copy of this Order.

**2. THAT** this order shall expire on May 31, 2007.

**3. THAT** the fee for this order shall be \$1000.

**BY ORDER OF THE COMMISSION**

**Director - Legal**