

**PRELIMINARY FUNDING AGREEMENT**

This **PRELIMINARY FUNDING AGREEMENT** (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the **CITY OF ST. JOSEPH, MISSOURI** (the “City”), and \_\_\_\_\_, a Missouri \_\_\_\_\_ (the “Developer”).

**RECITALS**

**WHEREAS**, the City is a Constitutional Charter city incorporated and exercising governmental functions and powers pursuant to the Constitution and the Revised Statutes of the State of Missouri; and

**WHEREAS**, the Developer is a Missouri \_\_\_\_\_ and is authorized to conduct business in the State of Missouri; and

**WHEREAS**, the City has been requested by the Developer to consider a petition to establish a community improvement district (the “Petition”) within the City, in accordance with the Community Improvement District Act, Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri (the “CID Act”); and

**WHEREAS**, the City may be requested to provide such other services and assistance as may be required to implement and administer the Petition through its consideration by the City’s governing body (“City Council”); and

**WHEREAS**, the City does not have a source of funds to finance costs incurred by it, in the form of additional legal, financial, planning, transportation and engineering and other consultants, or for direct out-of-pocket expenses and other costs resulting from services rendered to the Developer to review, evaluate, process and consider the Petition; and

**WHEREAS**, in order for the City to fully consider and evaluate the Petition, the Developer seeks to deposit funds with the City to be used by the City to pay for actual out-of-pocket expenses necessary to perform a full evaluation of the Petition and engage consultants as needed for such evaluation.

**NOW THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Services to be Performed by the City.** The City shall:

A. Consult with the Developer on the preparation and consideration of a Petition in accordance with the provisions of the CID Act and other applicable laws, give all notices, make all publications and hold hearings as required by the CID Act and other applicable laws;

B. Provide necessary staff, legal, financial, and planning assistance to prepare and present the Petition to the City and to prepare and present required ordinances to the City Council;

C. If the City Council approves the establishment of the proposed District, provide the necessary staff and legal, financial and planning assistance to prepare and negotiate a definitive agreement between the Developer and the City for implementation of the proposed district (“CID Cooperative Agreement”);

D. Provide the necessary staff and legal, financial and planning assistance to consider a proposed funding district in connection with consideration and approval of the Petition; and

E. If a CID Cooperative Agreement is entered into, provide the necessary staff, legal, financial and planning assistance to administer such agreement.

2. **Initial Deposit.** The City acknowledges receipt of \_\_\_\_\_ Thousand Dollars (\$\_\_\_\_,000.00) (the “Deposit”) from the Developer. The City shall disburse the Deposit as set forth in **Section 4** and shall bill the Developer pursuant to **Section 3** to re-establish the Deposit so that there is always a minimum cash balance of \_\_\_\_\_ Thousand Dollars (\$\_\_\_\_,000.00) available, from which additional disbursements may be made as required.

3. **Additional Funding.**

A. The City shall submit an itemized statement for actual out-of-pocket expenses necessary to perform its obligations hereunder or for any additional obligations or expenditures incurred by the City. Such statements shall be submitted on a regular periodic basis, but no more often than monthly. The Developer shall pay the City the amounts set forth on such statements (the “Additional Funds”) within thirty (30) days of receipt thereof. If such funds are not so received, the unpaid balance shall be subject to a penalty of two percent (2%) per month until paid, but in no event shall such penalty exceed twenty-four percent (24%) per annum, and City shall be relieved of any and all obligations hereunder until paid or may terminate this Agreement pursuant to **Section 6**. Developer shall supply the Additional Funds in a timely manner so that City activities may continue without interruption.

B. The City and the Developer agree that the Developer shall reimburse the City for its actual out-of-pocket expenses necessary to perform the City’s obligations hereunder, using the consultant Williams & Campo, P.C. for special legal counsel. The City shall advise the Developer in writing if it intends to utilize the services of any other consultant to perform its obligations under the terms of this Agreement. Such written notice shall include the name of the consultant, the service to be performed and an estimate of the cost expected. Within five (5) business days from receipt of the City’s notice, if the Developer, in writing, objects to either the consultant named or the service to be performed, the City and Developer shall negotiate in good faith to resolve the Developer’s objections. If the City and Developer cannot agree on the

consultant to be used or the service to be performed, the City shall have no obligation to perform that service under the terms of this Agreement and the Developer shall have no obligation to pay for such service under the terms of this Agreement.

C. The Deposit and all Additional Funds shall be treated as funds that may be reimbursed from CID revenue; provided, that the Petition is approved and the Developer and the City enter into a CID Cooperative Agreement.

4. **Disbursement of Funds.** The City shall disburse the Deposit and Additional Funds for reimbursement of costs to the City on or before the thirtieth (30th) day of each month, and for consulting fees and the payment of all out-of-pocket expenses incurred by the City in connection with the performance of its obligations under this Agreement as payment for such expenses become due. The City shall send to the Developer a copy of the record for each disbursement made to the Developer pursuant to this Agreement.

5. **Petition Administration.** In addition to the services set forth in **Section 1**, the City may be required to provide services from time to time for the continuing administration of the Petition, if approved by the City. Upon appropriate itemization, the City shall be reimbursed by the Developer for actual meeting expenses and other expenses that are reasonable or incidental to the general operations of the City with respect to administration of the Petition and any development that results from the Petition. The provisions of this section shall apply until such time as the City and the Developer agree to and execute a CID Cooperative Agreement between the Developer and the City.

6. **Termination.**

A. In the event the Developer fails to perform any of its obligations herein, the City may terminate this Agreement, and any other agreement between the parties, at its sole discretion if the Developer fails to cure the default within ten (10) business days after written notice to the Developer of the default. Termination by the City shall also terminate any duties and obligations of the City with respect to this Agreement, including, but not limited to, the City's processing of Developer's Petition. Upon such termination, the City shall retain the Deposit and Additional Funds, if any, necessary to reimburse the City for all expenses incurred under this Agreement to the date of termination and any monies due and owing to the City pursuant to any other agreement.

B. The parties hereto acknowledge that the Developer may determine to abandon the Petition. Upon written notice of abandonment by the Developer, this Agreement shall terminate and the City may terminate any other agreement between the parties and shall retain the Deposit and Additional Funds, if any, necessary to reimburse the City for all expenses incurred under this Agreement to the date of termination and any monies due and owing to the City pursuant to any other agreement.

C. Upon termination of this Agreement, in the event the Deposit and Additional Funds are insufficient to reimburse the City for the outstanding expenses of the City payable

hereunder, the Developer shall reimburse the City as set forth in **Section 3**. After termination of this Agreement, any amounts remaining from the Deposit and the Additional Funds after all amounts have either been paid as directed by, or reimbursed to, the City shall be returned to the Developer.

D. This Agreement may be terminated by mutual agreement of the City and the Developer pursuant to a CID Cooperative Agreement to be executed after the Petition is approved.

7. **Notice.** Any notice, approval, request or consent required by or asked to be given under this Agreement shall be deemed to be given if in writing and mailed by United States mail, postage prepaid, or delivered by hand, and addressed as follows:

To the City:

City Manager  
City of St. Joseph, Missouri  
City Hall, Room 305  
1100 Frederick Avenue  
St. Joseph, Missouri 64501

To the Developer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

With a copy to:

City Attorney  
City of St. Joseph, Missouri  
City Hall, Room 307  
1100 Frederick Avenue  
St. Joseph, MO 64501

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

AND

Chris Williams  
Williams & Campo, P.C.  
225 NW Blue Parkway, Suite 202  
Lee's Summit, MO 64063

Each party may specify that notice be addressed to any other person or address by giving to the other party ten (10) business days prior written notice thereof.

8. **City Requirements and Prior Approval.** The Developer agrees to comply with all applicable laws and City ordinances, including, but not limited to, the City's zoning ordinances, subdivision regulations and all planning or infrastructure requirements related to the development of Developer's property. The parties agree that execution of this Agreement in no way constitutes a waiver of any requirements of applicable City ordinances or policies with

which the Developer must comply and does not in any way constitute prior approval of any future proposal for development, including the Petition. The parties understand that the City may not lawfully contract away its police powers and that approval of the Petition and any zoning, subdivision and similar development applications cannot be contractually guaranteed. This Agreement does not alter or diminish the City's ability to exercise its legislative discretion to consider the Petition in accordance with the CID Act and all applicable laws any other applications with respect to development of Developer's property.

*[Remainder of this Page Intentionally Left Blank]*

The parties hereto have caused this Agreement to be executed by their duly authorized representatives the day and year first above written.

**CITY OF ST. JOSEPH, MISSOURI**

By: \_\_\_\_\_  
City Manager

(SEAL)

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_ **DEVELOPMENT,** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF MISSOURI     )  
  )  ss.  
COUNTY OF BUCHANAN )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_, the City Manager of the City of St. Joseph, Missouri, a City duly incorporated and existing under and by virtue of the laws of the State of Missouri, who are personally known to me to be the same person who executed, as such official, the within instrument on behalf of and with the authority of said City, and such person duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_

[SEAL]

STATE OF MISSOURI    )  
  ) ss.  
COUNTY OF BUCHANAN )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a Missouri \_\_\_\_\_, who is personally known to me to be the same person who executed the within instrument on behalf of \_\_\_\_\_, and such person duly acknowledged the execution of the same to be the act and deed of \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_

[SEAL]