

FUNDING AGREEMENT  
BETWEEN PINETREE VILLAGE HOMES ASSOCIATION, INC.,  
AND THE CITY OF LEE'S SUMMIT, MISSOURI  
FOR THE PINETREE STORM SEWER DEVELOPMENT

THIS AGREEMENT (“**Agreement**”) is made this 20 day of MARCH, <sup>2017</sup>2016, by and between Pinetree Village Homes Association, Inc., a Missouri corporation (“**Association**”) and the City of Lee’s Summit, Missouri, a Missouri constitutional charter city (the “**City**”).

WHEREAS, the Association, and the platted subdivision identified as Pinetree Village (the “**Subdivision**”) for which the Association has been created to maintain, is located entirely within the corporate limits of the City, and

WHEREAS, the Association has experienced stormwater drainage issues within its common areas (“**Common Areas**”) legally described on the attached **Exhibit A**, as have some individually owned residential units located along the northern boundary of the Subdivision during significant storm events; and

WHEREAS, in an attempt to address the stormwater drainage problems encountered by the Association within its Common Areas and on some individually owned residential units, the Association has contracted the professional engineering services of Matt Schlicht, principal member of Engineering Solutions of Lee’s Summit, Missouri, and

WHEREAS, Mr. Schlicht has completed certain engineering designs (“**Engineering Designs**”) for infrastructure improvements (“**Infrastructure Improvements**”) to be constructed within the Subdivision in order to address and alleviate the stormwater drainage issues occurring on the Association’s Common Areas and on some individually owned residential units, and

WHEREAS, the Association has passed two special assessments (“**Special Assessments**”) the first approved by its membership on the 18<sup>th</sup> day of January, 2010, and the second approved by its membership on the 2<sup>nd</sup> day of October, 2012, whereby the Association imposed two separate special assessments each of Three Hundred and Thirty-Three (\$333.00) against each of its fifty-six (56) members to pay for the Engineering Designs and Infrastructure Improvements within the Subdivision for a total of Thirty-Seven Thousand Two Hundred Ninety-Six and 00/100 Dollars (\$37,296.00), and

WHEREAS the Association has collected the Special Assessments from all of its fifty-six (56) members at this time and is currently maintaining a total of Thirty-Seven Thousand Two Hundred Ninety-Six and 00/100 Dollars (\$37,296.00) in a segregated account for the payment of the Engineering Designs and the Infrastructure Improvements, and

WHEREAS, the Association and the City desire to enter into this written agreement in order to incorporate the Engineering Designs into the City’s current stormwater infrastructure improvements project (Project #5433813) scheduled for installation/construction further

downstream (“Downstream Improvements”) from the Subdivision, with the City to construct the Infrastructure Improvements as part of said project. and

WHEREAS, the Association and the City, by the terms of this written agreement, will be able to share the costs of construction of the Infrastructure Improvements in coordination with the Downstream Improvements of the City, and

WHEREAS, the parties have freely negotiated in good faith and this Agreement reflects the desires of the parties.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Association Responsibilities and Obligations

A. The Association agrees that it shall be responsible for, and fully obligated to pay Engineering Solutions for the completion of the Engineering Designs, it being contemplated that the Association shall first and foremost utilize the funds collected by its Special Assessments for the payment of these expenses, as billed.

B. The Association shall be responsible for submitting final sealed Engineering Designs from Engineering Solutions for approval by the City Engineer.

C. Upon approval of the Engineering Designs by the City Engineer, the Association shall request a final statement (“Final Statement”) itemizing all of the professional services charged by Engineering Solutions, and shall pay Engineering Solutions any remaining sums owed for said professional services in the completion of the Engineering Designs.

D. The Association agrees that it shall submit a copy of the Final Statement produced by Engineering Solutions in the completion of the Engineering Designs to the City, along with copies of any receipts for payments made, and a lien release (“Lien Release”) provided by representatives of Engineering Solutions. The Association will also provide, or cause Engineering Solutions to provide, documentation confirming that the City has full ownership interest in the Engineering Designs and the right to use the same without other or further compensation (“Engineering Designs Release”).

E. Following submission of the Final Statement, Lien Release, the Engineering Designs Release, and any other documentary evidence reasonably requested by the City to confirm payment of the fees charged by Engineering Solutions in the completion of the Engineering Designs, the Association agrees that it shall submit payment to the City of all remaining funds (“Remainder”) collected by the Association from its Special Assessments at the earlier of the

following: (a) within two (2) weeks of receiving documentation from the City confirming completion of the Infrastructure Improvements, or (b) January 1, 2018. Nothing herein shall be deemed to prohibit payment of the Remainder earlier than either of the two (2) foregoing events.

F. Subject to appropriation from the City's governing body for funding in excess of the Remainder, the Remainder shall be paid over by the Association and utilized by the City to assist with payment of the costs associated with the construction of the Infrastructure Improvements within the Subdivision as shown on the Engineering Designs produced by Engineering Solutions. Failure to obtain appropriation from the City's governing body for funding in excess of the Remainder shall result in the termination of this Agreement.

G. The Association agrees to cooperate with the City and the City's contractors in the completion of the Infrastructure Improvements including the execution and delivery of reasonably required easements upon the property owned by the Association within the Subdivision for grading, maintenance, construction, and stormwater utility installations ("Easements") and (upon completion of the Infrastructure Improvements) any dedications ("Dedications") of the Infrastructure Improvements to the City.

H. The Association agrees to pay the costs of recording any written Dedications of the Infrastructure Improvements to the City.

## 2. City Responsibilities and Obligations

A. The City agrees that, subject to prior review and approval and the provisions of this Agreement, it shall incorporate the Engineering Design completed by Engineering Solutions for the Infrastructure Improvements into its Downstream Improvements, to be completed and constructed in conjunction with the Downstream Improvements.

B. The City shall take steps pursuant to its normal procurement process, to bid and award a contract for the construction of the Downstream Improvements which will include the Infrastructure Improvements.

C. The City shall provide written notification to the Association within thirty (30) days of its approval of the Engineering Designs and the incorporation of the same into the plans and design documents for the Downstream Improvements.

D. The City shall provide to the Association a copy of the Notice to Proceed for the Downstream Improvements project at the same time that the Notice to Proceed is provided to the project contractor.

E. The City shall provide any written Easements on City owned property reasonably required for the completion of the Infrastructure Improvements or the incorporation of the same into the Downstream Improvements, along with any documentation on the Dedications of the Infrastructure Improvements which may be recorded.

F. The City shall undertake the construction, installation, and future maintenance or repair of the Infrastructure Improvements, incorporating the same into its stormwater infrastructure system.

G. The City shall apply any funds received from the Association pursuant to this Agreement towards the costs of completing the Infrastructure Improvements or Downstream Improvements. In the event that the City does not proceed with the Downstream Improvements project, it shall return any such funds to the Association within thirty days of the decision to not proceed with the Downstream Improvements project.

H. Subject to appropriation by the City's governing body, any costs associated with the completion of the Infrastructure Improvements or the Downstream Improvements beyond the funds paid the Association from its Special Assessments shall be paid by the City.

3. Representation and Warranties

The City and the Association make the following representations and warranties set forth below, and acknowledge that each has relied thereon in entering into this Agreement. Otherwise, the City and the Association have entered into this Agreement based upon their own information and discretion.

A. There are no promises or agreements regarding the payment of funds from the Association's Special Assessments, or the City's construction of the Infrastructure Improvements that are not explicitly provided for in this Agreement.

B. The individuals signing this Agreement on behalf of the parties are fully authorized and empowered to do so.

4. Utility Relocation. The parties agree that all costs associated with relocating any existing utilities from any existing public or private easement, as a result of construction of the Infrastructure Improvements within the Subdivision shall be paid by the Association, to the extent that there are any remaining funds from the Special Assessments following payment of the costs incurred by Engineering Solutions for completion of the Engineering Design, and shall

otherwise be the responsibility of the City to the extent that third parties are not otherwise responsible for such costs.

5. Remedies; Specific Performance. Each party to this Agreement agrees that if it fails to perform when due any act required by this Agreement to be performed, then, shall be free to pursue any remedies available at law. No right or remedy conferred upon or reserved to any party in this Agreement is intended to be exclusive of any rights or remedies, and each and every right and remedy shall be cumulative and shall be in addition to every right and remedy given now or hereafter existing at law or in equity.

6. City Requirements and Prior Approval. 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 Association must comply and does not in any way constitute prior approval of any future proposal for development.

7. City's Reservations. The City's obligations under this Agreement are subject to: 1) annual appropriation of funds necessary to complete the Downstream Improvements and the Infrastructure Improvements; and 2) the legislative determination of the City Council to proceed with the project described herein and award a contract for completion of the work associated with said Improvements. Nothing in the Agreement shall be construed as limiting the legislative discretion of the City Council, nor shall any provision of this Agreement have such effect.

8. Representations. The Association represents that it owns the real property described in Exhibit A on the date that this Agreement. Each party represents and warrants that it (a) has made due and diligent inquiry into the facts and matters which are the subject matter of this Agreement; (b) fully understands the legal effect of this Agreement; (c) is duly authorized and empowered to execute, deliver and perform this Agreement according to its terms and conditions; and (d) has not assigned or transferred any claim against the other party that is the subject of this Agreement.

9. No Waiver of Breach. No waiver of any condition or covenant contained in this Agreement or any breach thereof shall be taken to constitute a waiver of any subsequent condition, covenant or breach.

10. Notices. Except as may be otherwise provide herein, all notices, documents, information, property, receipts, or correspondence required by this Agreement, or related to the subject matter of this Agreement, shall be in writing and shall be deemed to have been sufficiently given or served for all purposes, when personally delivered by a commercial delivery service or other party who provides a written certification of delivery, or if mailed by certified mail, return receipt requested, to the parties to this Agreement at their respective addresses that appear below:

If to City:  
Works

Dena E. Mezger, P.E. Director of Public  
City of Lee's Summit Public Works Dept.

220 S.E. Green Street  
Lee's Summit, Missouri 64063

With a copy to:

Brian W. Head, City Attorney  
City of Lee's Summit Law Dept.  
220 S.E. Green Street  
Lee's Summit, Missouri 64063

If to Association:

Pinetree Village Homes Association, Inc.  
c/o Jennifer Secrest  
FirstService Residential  
11125 Ambassador Drive, Ste. 200  
Kansas City, MO 64153

With a copy to:

Joe F. Willerth  
KAPKE & WILLERTH, LLC  
3304 N.E. Ralph Powell Road  
Lee's Summit, Missouri 64064

Or such other address of which any party shall have notified the other parties in writing.

11. Rules of Construction. Each party to this Agreement has received independent legal advice from its attorneys of choice with respect to entering this Agreement and the advisability of agreeing to the provisions herein. Because each party has had its respective legal counsel review the terms of this Agreement, the normal rules of construction to the effect that any ambiguities in its terms be resolved against the drafting party shall not be employed with regard to issues of its validity, interpretation, performance or enforcement.

12. No Assignment. The Agreement may not be assigned or transferred, in whole or part, to any other person, firm, corporation, or entity without the prior, express, written consent of the other parties.

13. Cure. Prior to filing any pleading or instituting any legal actions, related to a breach of this Agreement, a party whose rights, powers, privileges or interests have been harmed by said breach, shall provide the breaching party with written notice of the breach, the manner in which the breach may be cured, and ten (10) days in which to cure the breach, before filing the threatened pleading or instituting the contemplated legal action.

14. Severability. In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been included.

15. Headings. The headings in this Agreement are for convenience of reference only and shall be given no effect in the interpretation of this Agreement.

16. Binding Agreement. This Agreement shall be binding on, and shall inure to the benefit of the parties and their respective heirs, personal representatives, successors and permitted assigns and designees.

17. Cooperation. The City and Association agree to cooperate in good faith to effectuate the terms of this Agreement, including the execution of any additional documents necessary to transfer the interests as contemplated by this Agreement or to effectuate the Infrastructure Improvements, or collect and pay the Special Assessments subject to any necessary approvals by either parties respective governing body..

18. Entire Agreement. This Agreement and the acts provided for herein is the entire agreement between the parties with respect to the subject matter hereof, the terms and provisions of this Agreement are contractual and not mere recitals and no alterations, amendment, modification, or interpretation hereof shall be binding unless in writing and signed by all parties. The underline paragraph headings are for the convenience of the reader, and are not intended to modify, expand or limit the material terms of each section or subsection in this Agreement. All Exhibits referenced in this Agreement are incorporated into this Agreement by such reference as if set forth in full in the text of this Agreement.

19. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the date first above written.

CITY OF LEE'S SUMMIT, MISSOURI

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

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

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

Attest:

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

Approved as to form:

\_\_\_\_\_, Chief of Litigation

PINETREE VILLAGE HOMES ASSOCIATION, INC.

By: , President

Printed Name: SECRETARY MARQUARDT



**EXHIBIT A**

Pinetree Village Homes Association, Inc.  
City of Lee's Summit Missouri

Legal Description of Subdivision Property

*[Insert legal description of Common Areas upon which the Infrastructure Improvements will be constructed.]*