

FUNDING AGREEMENT
FOR THE SUMMIT ORCHARD PROJECT

This **FUNDING AGREEMENT** (“**Funding Agreement**”) is entered into this ____ day of _____, 2018, between the **CITY OF LEE’S SUMMIT, MISSOURI** (the “**City**”), and **SUMMIT ORCHARDS PARTNERS, LLC**, a Missouri limited liability company (the “**Developer**”).

RECITALS

WHEREAS, the City is a charter city incorporated and exercising governmental functions and powers pursuant to the Constitution and the Revised Statutes of the State of Missouri, with its legislative power residing in the City Council; and

WHEREAS, the Developer is a Missouri limited liability company and is authorized to conduct business in the State of Missouri; and

WHEREAS, pursuant to the Missouri Community Improvement District Act, Section 67.1401 through 67.1571 of the Revised Statutes of Missouri (the “**CID Act**”), the Developer proposes that the City consider and approve a community improvement district to facilitate the development of the property located generally at Chipman Road and Ward Road on the north side of Chipman Road in the City which is proposed to be developed with approximately 133,000 square feet of new development and associated public improvements (the “**Project**”) (the Developer’s request for the CID approval is referenced herein as the “**Application**”); and

WHEREAS, the City does not have a source of funds to finance costs incurred for additional legal, financial and other consultants or for direct out-of-pocket expenses and other costs resulting from services rendered to the Developer to review, evaluate, consider and process the Application; and

WHEREAS, it is the City’s policy that a Developer who desires assistance from the City in a public-private partnership through the use of economic incentive tools shall demonstrate the financial ability to allow for the full and fair evaluation by the City of all development proposals and requests for economic incentives from the City; and

WHEREAS, in order for the City to fully consider and evaluate the Developer’s Application, the Developer seeks to deposit funds with the City to be used by the City to pay for actual and reasonable out-of-pocket expenses necessary to perform a full evaluation of the Application.

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. Prepare or consult with the Developer on the preparation and consideration of the Application;
 - B. Give all notices, make all publications and hold hearings as may be required by applicable laws in order to consider the Application;

C. Provide necessary staff, legal, financial, and planning assistance to prepare, evaluate and present the requested actions to the City and to prepare and present required ordinances to the City Council for the Application;

D. If the Developer's requested actions are approved, 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 Application (the "**CID Agreement**"), which may also include related contracts for other approved public funding sources;

E. If a CID Agreement is executed, provide the necessary staff, legal, financial and planning assistance to administer the approved public funding mechanisms and any contracts executed to provide for the operation and administration of the approved public funding tools.

2. **Initial Deposit.** The City acknowledges receipt of Ten Thousand Dollars (\$10,000.00) (the "**Deposit**") from the Developer in connection with this Funding Agreement. The Deposit shall be treated as a deposit with the City pursuant to the terms and conditions of this Funding Agreement. The City shall disburse the Deposit as set forth in **Section 3** and shall bill the Developer pursuant to **Section 4** to re-establish the Deposit so that there is always a minimum cash balance of Ten Thousand Dollars (\$10,000.00) available, from which additional disbursements may be made as required.

3. **Disbursement of Funds.** The City shall disburse the Deposit and Additional Funds (as defined below) for reimbursement to the City of actual and reasonable costs incurred by the City in connection with the performance of its obligations under this Funding Agreement. Such disbursements shall occur on or before the thirtieth (30th) day of each month.

4. **Additional Funding.** Following any disbursements pursuant to **Section 3**, the City shall submit to the Developer an itemized statement evidencing the actual and reasonable costs paid by the City to perform its obligations hereunder, including copies of invoices for such expenditures. The Developer shall pay the City the amounts set forth on such statements (the "**Additional Funds**") within thirty (30) days of receipt thereof, provided that before a vote by the City Council for approval or disapproval of the CID or the CID Agreement, or any other measure associated with the Application, the Developer shall deposit with the City, upon notice from the City, sufficient Additional Funds to pay all outstanding expenses incurred hereunder and replenish the amount on deposit with the City to the amount set forth in **Section 2**. 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 the City shall be relieved of any and all obligations to perform hereunder until paid or the City may terminate this Funding Agreement pursuant to **Section 7**.

5. **Consultants.** The City and the Developer agree that the City will use Gilmore & Bell, P.C. as its special legal counsel to assist with the performance of its services hereunder. In the event the City seeks to engage other consultants to assist with the performance of its services hereunder, the City shall advise the Developer in writing. Such written notice shall include the name of the consultant, the service to be performed, and an estimate of the costs expected. If the Developer, in writing, within five (5) business days from receipt of the City's notice, 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, then this Funding Agreement shall be subject to termination under **Section 7**. The parties acknowledge that, prior to the effective date of this Agreement, work has already been performed by consultants for the City in the process of receiving Developer's Financial Incentive Pre-Application Worksheet, reviewing the requested incentive and conducting other work that is consistent with the Services described in **Section 1**, and that such work is eligible to be reimbursed pursuant to this Agreement.

6. **Term.** The provisions of this Funding Agreement shall apply until such time as (i) the City and the Developer execute a CID Agreement which provides for the termination of this Funding Agreement and the terms and conditions under which the City's ongoing services shall be funded or (ii) this Funding Agreement is terminated pursuant to **Section 7**.

7. **Termination.**

A. **Termination by the City.** In the event the Developer fails to perform any of its obligations herein, the City may terminate this Funding Agreement, and any other agreement between the parties, at its sole discretion if the Developer fails to cure the default within ten (10) 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 Funding Agreement, including, but not limited to, the City's processing of Developer's Application. Upon such termination, the Deposit and any Additional Funds shall be disbursed as set forth in paragraph C of this Section.

B. **Termination by the Developer.** The parties hereto acknowledge that the Developer may determine to abandon the Application. Upon written notice of abandonment by the Developer, this Funding Agreement shall terminate and the City may terminate any other agreement between the parties. Upon such termination, the Deposit and any Additional Funds shall be disbursed as set forth in paragraph C of this Section.

C. **Wrap-Up After Early Termination.** Upon termination pursuant to paragraphs A or B of this Section, the City shall retain the Deposit and Additional Funds, if any, necessary to reimburse the City for all actual and reasonable expenses incurred under this Funding Agreement to the date of termination and any monies due and owing to the City pursuant to any other agreement with the Developer. Upon such termination, 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 4**. After termination of this Funding Agreement pursuant to paragraphs A or B of this Section, any amounts remaining from the Deposit and the Additional Funds after all amounts have either been paid as directed by the City, or reimbursed to the City, shall be returned to the Developer.

8. **Notice.** Any notice, approval, request or consent required by or asked to be given under this Funding 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 of Lee's Summit
City Hall, 220 SE Green Street
Lee's Summit, Missouri 64063
Attn: City Manager

To the Developer:

Summit Orchards Partners, LLC
Attn: Dave Christie
7387 W. 162nd St. Ste 200
Stilwell KS 66085

With a copy to:

City of Lee's Summit
City Hall, 220 SE Green Street
Lee's Summit, Missouri 64063
Attn: City Attorney

With a copy to:

Christie Development Associates, LLC
Attn: Ferd Niemann
7387 W. 162nd St. Ste 200
Stilwell KS 66085

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

9. **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 Funding 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. The parties understand that the City may not lawfully contract away its police powers and that approval of the Application and any zoning, subdivision and similar development projects cannot be contractually guaranteed. This Funding Agreement does not alter or diminish the City's ability to exercise its legislative discretion to consider the Application and approvals for the Application in accordance with all applicable laws any other projects with respect to development of the redevelopment area and Developer's property.

10. **Legal Representation.** The Developer understands and acknowledges that this arrangement is an accommodation to the Developer in which the City's special legal counsel is not providing legal representation to the Developer and that no attorney-client relationship between the Developer and the City's special legal counsel shall exist by any reason including, but not limited to, the Developer's payment of the City's expenses under this Funding Agreement. Developer further understands that legal counsel paid pursuant to this Funding Agreement is legal counsel for the City and acknowledges the duties of confidentiality and loyalty to the City.

11. **Subsequent Developers.** In the event the City selects another developer of record pursuant to a request for proposals to carry out the Application, the City shall require the subsequent developer to assume all obligations of the Developer under this Funding Agreement as of the date that the subsequent developer is designated as the developer of record and to reimburse the Developer for its expenditures under this Funding Agreement.

12. **Assignment.** This Funding Agreement may not be assigned by any party without the prior written consent of the other party. No assignment, unless specifically provided for in such consent, shall relieve the assigning party of any liability pursuant to this Funding Agreement. This Funding Agreement shall be binding upon the parties and their successors and permitted assigns.

[Remainder of this Page Intentionally Left Blank]

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

CITY OF LEE'S SUMMIT, MISSOURI

By: _____
William A. Baird, Mayor

(SEAL)

ATTEST:

Trisha Fowler Arcuri, City Clerk

SUMMIT ORCHARDS PARTNERS, LLC

By: _____

Name: David J. Christie

Title: Manager