

FUNDING AGREEMENT

THIS FUNDING AGREEMENT (“Agreement”) is entered into this ____ day of April, 2023 by **CITY OF LEE'S SUMMIT, MISSOURI** (the “City”), and **RED LEE'S SUMMIT EAST, LLC**, a Missouri limited liability company (the “Company”).

RECITALS

A. The City is a constitutional charter city incorporated and exercising governmental functions and powers pursuant to the Constitution and the Statutes of the State of Missouri. The principal office of the City is located at the City Hall, 220 SE Green St., Lee's Summit, Missouri 64063.

B. The Company is a limited liability company engaged in the business of land development with registered office address at One East Washington Street, Suite 300, Phoenix, AZ 85004.

C. The City approved the Lee’s Summit East Amended and Restated Tax Increment Financing Plan through the adoption of Ordinance No. 6620 on April 17, 2008 (the “Redevelopment Plan”) and subsequently entered into the Amended and Restated Tax Increment Financing Contract dated May 27, 2008 (as amended, the “Redevelopment Contract”).

D. To provide financing in support of the Redevelopment Plan, the City issued its Special Obligation Tax Increment and Special District Refunding and Improvement Bonds (Summit Fair Project), Series 2017 (the “Bonds”).

E. The City has been requested by the Company to consider amending the Redevelopment Contract (the request by the Company referenced herein as the “Request”), which would require the consent of the bondholders of the Bonds pursuant to Section 1102 of the Trust Indenture dated December 1, 2017 between the City and UMB Bank, N.A. (the “Indenture”).

F. The City does not have a source of funds to finance costs incurred by it, in the form of additional City staff time, legal, fiscal, planning, consultants, direct out-of-pocket expenses and other costs, resulting from services rendered in connection with the review, evaluation, and processing related to the Request.

AGREEMENT

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

a. Prepare or consult with the Company on the preparation of and consideration of the Request and review all information, reports and analyses received from third-party consultants;

b. Provide necessary staff, legal, and consultants to prepare and present the Request to the City Council (including all staff reports, consultant reports and other third-party reports, analysis and other information) and to permit consideration of the Request by the City Council, and to prepare and present required ordinances to the City Council of the City;

c. Prepare or review any documents related to amending the Redevelopment Contract, and to prepare or review any agreements between the Company and the City for implementation of the Request;

Final for Council Packets

- d. Participate in and provide necessary assistance with obtaining consent of bondholders of the Bonds pursuant to the Indenture;
- e. Engage a firm to prepare a revenue study for the Request;
- f. Provide any other assistance requested by the Company and agreed to by the City in connection with the Request, and engage the appropriate outside consultants and attorneys to carry out the tasks necessary.

2. **Initial Deposit.** The City acknowledges receipt of an initial deposit of funds (the “**Deposit**”) from the Company in the amount equal to \$30,000. The City shall disburse the Deposit as set forth in Section 4 and shall bill the Company pursuant to Section 3 to re-establish the Deposit to the Deposit amount. Further, prior to consideration or approval by the City Council of any ordinance, Company shall deposit with the City an amount equal to an amount determined by City staff to be sufficient to cover costs incurred during the City Council process from which additional disbursements may be made as required.

The Company will be billed for those items that are authorized to be paid pursuant to Section 4 for services as set forth in Section 1. The City shall bill the Company monthly, or at such other interval or times as City shall determine to be appropriate, pursuant to Section 3 to re-establish the Deposit.

3. **Additional Funding.** The City shall submit from time to time an itemized statement for administrative expenses, internal legal expenses, and actual out-of-pocket expenses necessary to perform its obligations hereunder or for any additional obligations or expenditures incurred by the City, including the fees and expenses related to Columbia Capital Management, LLC, as financial advisor to the City, Gilmore & Bell, P.C., as bond counsel to the City, and other consultants and third-parties related to determining the bondholders of the Bonds and receiving their consent to the actions requested by Company, and any firm engaged to produce a revenue study pursuant to Section 5. The Deposit shall be replenished as provided below in this section to the full balance until termination of this Agreement.

Subject to the remaining provisions of this Section 3, such statements may be submitted upon execution of consultant contracts or as expenses are incurred by the City in connection with the City's review and consideration of the Request. The Company may be billed in advance for the full amount of third party consultant contracts expenses or internal expenses upon approval of the contract by the City Manager or the City Council.

The Company shall pay the City the amounts set forth on such statements (the “**Additional Funds**”) within ten (10) days of receipt thereof. As to any amounts billed in advance for any contract or consultant fees, City shall have the right to elect not to execute any such contract or to engage or authorize such consultant, contractor or other person or entity to proceed until such advance billing amount is paid by the Company. Company has reviewed the internal legal expense rate and agrees it is reasonable and that the City is entitled to seek full reimbursement of said expenses based on the hours that internal legal Counsel spends on the Company's Request.

If any such amounts are not so paid when due, the unpaid balance shall accrue interest at the rate of two percent (2%) per month from the date billed until paid, but in no event shall such interest rate exceed twenty-four percent (24%) per annum. Further the City shall be relieved of any and all obligations hereunder (including without limitation any obligation to review or consider the Request) until all such amounts (with interest) are paid, or the City may terminate this Agreement pursuant to Section 6.a.

In addition, if such funds (including any advance-billed costs) are not so received, all work by staff and consultants shall cease until full payment is made, including penalties, and the fund balance is restored

to the Deposit amount as set forth in Section 2 or, prior to any consideration or approval by the City Council, an amount sufficient to cover anticipated costs incurred during final consideration process is deposited as provided herein. Company acknowledges and agrees that the City shall have the right to delay final consideration of the Request, or consideration or approval by the City Council of any ordinances with respect to the Request until all outstanding expenses have been paid and the fund balance is sufficient to cover all remaining cost anticipated to be incurred by or on behalf of the City through the anticipated conclusion of such final consideration process, including but not limited to meeting expenses, attorneys' fees and other third party consultant preparation and attendance.

4. **Disbursement of Funds.** The City shall disburse the Deposit and Additional Funds for payment or reimbursement for costs to the City on or before the thirty (30th) day of each month, which shall cover internal costs and external consulting fees and expenses 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. Upon reasonable notice, the City shall make its records available for inspection by Company with respect to such disbursements.

5. **Revenue Study Fees.** The City shall submit an itemized statement for expenses incurred or to be incurred to engage a firm to prepare a revenue study for the Project. If necessary, such statements shall be submitted on a regular periodic basis, but no more often than monthly. Developer shall pay the City the amounts set forth on such statements within ten (10) days of receipt thereof.

6. **Termination.**

a. **Termination by City.** In the event the Company 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 upon ten (10) days written notice to the Company. Termination by the City shall also terminate any duties and obligations of the City with respect to this Agreement. Upon such termination, the Deposit and any Additional Funds shall be disbursed as set forth in paragraph c of this Section.

b. **Termination for Abandonment of Request.** The parties hereto acknowledge that the Company or the City may determine to abandon the Request. Upon notice of abandonment by the Company, this 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.

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 it is in writing and mailed by United States mail, postage prepaid, or delivered by hand, and addressed as follows:

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To the City:

City Manager
City of Lee's Summit, Missouri
220 SE Green St.
Lee's Summit, MO 64063

With a copy to:

City Attorney
City of Lee's Summit, Missouri
220 SE Green St.
Lee's Summit, MO 64063

To the Company:

RED Lee's Summit East, LLC
One East Washington Street
Suite 300
Phoenix, AZ 85004

With a copy to:

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.

8. **City Requirements and Prior Approval.** This Funding Agreement does not alter or diminish the City's ability to exercise its legislative discretion to consider the Request and approvals for the Request in accordance with all applicable laws any other projects with respect to development of the redevelopment area and Company's property.

10. **Legal Representation.** The Company understands and acknowledges that this arrangement is an accommodation to the Developer in which the City's legal counsel is not providing legal representation to the Company and that no attorney-client relationship between the Company and the City's 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. Company further understands that legal counsel and the financial advisory paid pursuant to this Funding Agreement are legal counsel and financial advisor for the City and acknowledges the duties of confidentiality and loyalty to the City.

[Remainder of this page intentionally left blank]

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

CITY OF LEE'S SUMMIT, MISSOURI

By: _____
Mark Dunning
City Manager

[SEAL]

ATTEST:

Trisha Fowler Arcuri
City Clerk

Approved as to form:

David Bushek,
Chief Counsel of Economic Development & Planning

RED LEE'S SUMMIT EAST, LLC

By: VENTURE WEST II, LC, Manager

By: _____

Name: _____

Title: _____