

CASH ESCROW AGREEMENT REGARDING OUTSTANDING PRIVATE IMPROVEMENTS

RECITALS

WHEREAS, this Cash Escrow Agreement Regarding Outstanding Private Improvements (the “Escrow Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_ 2016 by the City of Lee’s Summit, Missouri, a Missouri constitutional charter city (the “City”) whose address is 220 SE Green St., Lee’s Summit, MO 64063, and NorthPoint Development, LLC , a Missouri Limited Liability Company (“NorthPoint” or the “Developer” interchangeably), whose principal address is 6300 N. Revere Suite 225, Kansas City, MO 64151. The City and the Developer are collectively known as the “Parties”.

WHEREAS, The Developer is developing residential apartments known as the “Residences at New Longview Apartments”, consisting of a 309 dwelling unit multi-family apartment complex and clubhouse/leasing office (the “Project”) located at 3301 – 3371 SW Kessler Drive, in Lee’s Summit, Missouri, and desires to provide the City a financial guarantee in the form of a cash escrow to assure the completion of the following private improvements:

- Final grading of detention basin;
- Replacement of four (4) damaged concrete sidewalk panels south of the detention basin;
- Establishment of vegetation in and around the detention basin

(the “Outstanding Private Improvements”), in order to gain a Certificate of Occupancy from the City for the Clubhouse structure, which is a part of the Project.

WHEREAS, upon receipt of a cash escrow of a sufficient amount to cover the completion of the Outstanding Private Improvements, the City agrees to issue a Certificate of Occupancy for the Clubhouse structure; and

WHEREAS, The Developer promises to complete the required Outstanding Private Improvements and hereby promises to deposit money with the City of Lee’s Summit to be held in trust (the “Escrow Account”) for such purpose.

NOW, THEREFORE, in consideration of the foregoing premises, the Parties hereto state the Escrow Account shall be subject to the following terms and conditions,

GENERAL PROVISIONS

1. Incorporation of Recitals. The recitals set forth above are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.
2. Incorporation of Exhibits. The following documents are referred to in this Escrow Agreement and are attached hereto and made a part of this Escrow Agreement by this reference.

*Exhibit A – List of remaining scope of work and estimated valuations*

3. Amount of Funds Necessary for Adequate Assurance. The Parties agree that the estimated cost of the required Outstanding Private Improvements calculated at 150% of estimated cost is Fourteen thousand- two hundred fifty Dollars (\$14,250) based on Exhibit A attached hereto.

4. Deposit of Funds. All funds funding this Escrow Account shall be deposited with the Finance Department of the City, located at 220 SE Green Street, Lee's Summit, MO 64063, to be held in Trust by the City.

5. Issuance of Certificate of Occupancy. Upon deposit of \$14,250 into the Escrow Account, the City shall issue a Certificate of Occupancy for the Project.

6. Escrow Funds Deposit and Restrictions. The Escrow Account Funds on deposit with the City shall be deposited by the City in a segregated interest bearing account and shall only be used as payment for the required Outstanding Private Improvements pursuant to this Escrow Agreement. All interest shall accrue to the City as payment for administrative time and fees expended in connection with this agreement, not to exceed \$100, with any additional interest accruing to Developer, at such times as interest is paid, but shall remain in trust, unless such interest is necessary to fund any remaining balance of the cost of the Outstanding Private Improvements.

The Escrow Funds on deposit with City's Finance Department shall only be used as payment for the required Outstanding Private Improvements pursuant to this Escrow Agreement.

The deposit of the Escrow Funds will be made to assure the City that funds are available to the City for withdrawal by the City in the event it becomes necessary for the City to withdraw the funds to complete construction of the required Outstanding Private Improvements. The Escrow Funds shall not be used or pledged by the Developer for any purpose during the period the Escrow Account is in effect. Upon completion of the required Outstanding Private Improvements and issuance of the Certificate of Final Acceptance, as shall be determined by the City Engineer or his designee in writing, all money in the Escrow Account shall be immediately released to the Developer, minus the City's administrative fees described herein.

In the event the Developer fails to complete the required Outstanding Private Improvements within the specified time period and upon notice by the City to the Developer, the Escrow Account Funds shall be immediately, without further action withdrawn by the City for use in completion of the required Outstanding Private Improvements.

7. Termination of Obligation. If the required Outstanding Private Improvements are not complete on or before November 15, 2016, then all Escrow Account Funds shall be released to the City to assure the appropriate completion of the required Outstanding Private Improvements. The City shall not thereafter, and does not by entering into this Escrow Agreement, assume any duty to complete the required Outstanding Private Improvements beyond the availability of the Escrow

Account Funds in the Escrow Account. The City shall not be obligated to repay the funds disbursed to it from the Escrow Account. Should any Escrow Account Funds, and accrued interest, held by the City exceed the cost to the City of completing the required Outstanding Private Improvements, the excess shall be returned after completion of the required Outstanding Private Improvements to the Developer.

8. Breach and Remedy. In the event of a breach of this Escrow Agreement by either party, such breach shall be corrected within seventy-two (72) hours of notice of occurrence. In the event the breach is not corrected within seventy-two (72) hours, the Escrow Agreement is canceled and any and all money and documents deposited with the Escrow Account Funds shall be released to the City to assure the appropriate completion of the required Outstanding Private Improvements. The City shall hold the Escrow Account Funds pending completion of the required Outstanding Private Improvements as required. Notice of a breach is considered given when sent by facsimile to the party in breach of the Escrow Agreement.

**City:** 816-969-1113

**Developer:** 816-888-7399

9. Rights and Remedies Non-Exclusive. 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.

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

11. Effective Date. This Escrow Agreement shall be effective when executed by both Parties.

12. Headings. The description headings of the paragraphs of this Escrow Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

13. Assignment prohibited. No part of this Agreement may be assigned by either party.

14. Entire Agreement. This Escrow Agreement constitutes the entire Agreement between the Parties and shall not be changed or added to. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, other than specifically incorporated herein by reference, are superseded by this Agreement.

15. Severability. If any provision of this Escrow Agreement is declared void or unenforceable, the provisions shall be severed from this Agreement, the remainder of the Agreement shall otherwise remain in full force and effect, provided that the overall intent of the Parties is not materially vitiated by such severability.

16. Governing Law. This Escrow Agreement is entered into in the State of Missouri and shall be construed and interpreted under the laws of the State of Missouri, with venue being proper in Jackson County, Missouri.

17. Authority. The Developer represents and warrants to the City (1) that it is duly formed and validly existing under the laws of the State of Missouri; and (2) that the individual executing this Escrow Agreement on behalf of the Developer is authorized and empowered to bind the Developer.

THIS ESCROW AGREEMENT IN ALL PARTS APPLIES TO, INURES TO THE BENEFIT OF, AND BINDS ALL PARTIES HERETO, THEIR SUCCESSORS AND ASSIGNS.

THIS ESCROW AGREEMENT MAY BE EXECUTED IN ANY NUMBER OF COUNTERPARTS, EACH OF WHICH SHALL BE CONSIDERED AN ORIGINAL, AND BE EFFECTIVE AS SUCH.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement as of the day and year written above in Section eight (8).

NORTHPOINT DEVELOPMENT, LLC

CITY OF LEE'S SUMMIT

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_

STATE OF Missouri)

)ss.

County of Jackson )

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_, for and on behalf thereof.

\_\_\_\_\_

Notary Public

My Commission Expires:

\_\_\_\_\_