

**CASH ESCROW DEPOSIT AGREEMENT GUARANTEEING INSTALLATION
OF SUBDIVISION IMPROVEMENTS**

**THIS CASH ESCROW DEPOSIT AGREEMENT GUARANTEEING
INSTALLATION OF SUBDIVISION IMPROVEMENTS** ("Deposit Agreement"), is made and entered into this ____ **day of** _____ **2016**, by TOWNSEND SUMMIT, LLC, a Missouri limited liability company, (hereinafter referred to as the "Developer") and the CITY OF LEE'S SUMMIT, MISSOURI (hereinafter referred to as the as "City").

RECITALS

WHEREAS, the Developer has submitted plans, information and data to the City as part of Application #PL2016-120 for the creation and development of a Final Plat for a subdivision to be known as the Summit Orchard, 1st Plat, Lots 1-4 & Tract A Final Plat Subdivision (hereinafter referred to as the "Subdivision"), and a copy of the proposed Final Plat is attached hereto and incorporated by reference as Exhibit 'A'; and

WHEREAS, engineering plans for the Subdivision have been submitted to the City together with the estimated costs of construction, installation and completion of certain subdivision-related public improvements ("Subdivision Improvements") required by the City's Unified Development Ordinance ("UDO") and Code of Ordinances, all in accordance with the City's subdivision regulations set forth in Article 16 of the UDO, and have been approved; and

WHEREAS, Section 16.330 of the UDO requires that the Subdivision Improvements must be constructed prior to approval of the Final Plat for the Subdivision, unless satisfactory security is provided in accordance with Section 16.340 of the UDO; and

WHEREAS, the Developer desires to establish security for the Subdivision Improvements by deposit of a cash escrow in the manner set forth in this Deposit Agreement.

NOW, THEREFORE, in consideration of the covenants, promises and agreements herein provided, **IT IS HEREBY MUTUALLY AGREED:**

1. The Developer, has deposited with the City the sum of \$1,098,000.90 (the "Deposit Sum") to be held in escrow for the purpose of guaranteeing the construction, installation, and completion of all required Subdivision Improvements, all in accordance with the plans approved by the City and on file with the City's Public Works Department (the "Approved Improvement Plans") and in accordance with the City ordinances regulating the same. The Deposit Sum shall consist of an amount equal to the *estimated* costs of the construction, completion, and installation of the Subdivision Improvements ("Estimated Costs") as set forth on the Estimate Sheet which is attached hereto as Exhibit 'B' and incorporated herein by reference. Nothing in the estimates or specification of component items shall in any way limit the City or require release based on each line item, and Developer agrees it continues to be obligated to complete and guarantee completion of all Subdivision Improvements. The City and Developer agree that the Deposit Sum shall guarantee the construction, installation and completion of the required subdivision-related public improvements in the Subdivision, all in accordance with the approved plans

therefore and in accordance with the ordinances of the City regulating the same. The City and Developer further agree that the Deposit Sum shall be held by the City in an interest bearing account, and that the City shall retain the right to any accrued interest in order to help defray the cost of administering this Deposit Agreement.

2. The Deposit Sum guarantees the construction, installation, and completion of all Subdivision Improvements in accordance with the Approved Improvement Plans which are incorporated in this Deposit Agreement by reference and as summarized in the attached Exhibit 'B' and as required by the ordinances and regulations of the City. Any release of part of or a portion of the Deposit Sum is only an accommodation to the Developer and is not a waiver of any kind by the City of its rights under the Deposit Agreement that the entire Deposit Sum guarantees each and every improvement.

3. The Developer guarantees that all Subdivision Improvements will be installed, constructed and completed in accordance with the Approved Improvement Plans and the ordinances of the City not later than **two years** after the date of this Agreement Date appearing on the signature page below ("Completion Date").

4. (a) That the City shall, through written authorization of the City Engineer, release or reduce portions of the Deposit Sum upon completion of components within categories and shall release corresponding portions of the Deposit Sum upon completion of categories of improvements provided that a qualified, licensed engineer employed by the Developer certifies to the City the completion of such work; PROVIDED FURTHER that in no event shall the City release any part of the Deposit Sum except as provided herein:

(b) In order to obtain such written authorization for a release, upon completion of any such category of improvement the Developer shall first make written request for inspection, and include therewith a certification by the Developer's engineer, to the City Engineer. Upon receipt of the Developer's written request for inspection and certification by the Developer's engineer, the City (or the appropriate inspecting authority) shall (i) inspect the construction, installation and completion of the Improvement(s) that have been certified complete by the Developer. Upon receipt of the inspection report, the City Engineer will review the report, verify that the Subdivision Improvement complies with all laws and requirements of the City, and authorize such release.

(c) No category of any Subdivision Improvement shall be eligible for release until each and every component and requirement that makes up that category of Subdivision Improvement is deemed complete by the City. No category of Subdivision Improvement may be deemed to be complete until there is a certification by the City that the category of Subdivision Improvement is complete. No certification shall be issued by the City unless all of the following takes place: (i) the Developer submits a written request to the City for inspection of the Subdivision Improvements; (ii) the inspection is completed by the City's inspector who determines that the Subdivision Improvement are complete and recommends to the City Engineer that it be released; and (iii) the City Engineer reviews the City Inspector's inspection report, determines that the Subdivision Improvement complies with all laws and requirements of the City, and authorizes such release.

(d) Upon certification by the City Engineer that the construction and installation of a category of Subdivision Improvement is complete (in accordance with §4(b) and (c) above), the

City shall authorize the release of the Estimated Cost originally retained for that category as set forth on Exhibit B minus a maximum retention of five percent (5%), with said release of funds to take place within five (5) days of the City's Engineer's certification as provided for in Section 16.340.D of the UDO. The Developer shall not be released of any responsibility for installation, construction, completion, or maintenance for the required improvements, irrespective of any release that may have been issued based on specific improvements or inspections, prior to final approval of all improvements and release of the entire Deposit Sum for all categories.

(e) IN NO EVENT SHALL the City be required to release, disburse or otherwise dispose of more than ninety-five percent (95%) of the Deposit Sum, until the City has certified as provided herein that all categories of Subdivision Improvements have been completed in accordance with the Approved Improvement Plans and the regulations and ordinances of the City.

5. The Developer shall in all respects comply with all applicable laws and regulations pertaining to the construction, completion, dedication and installation of the Subdivision Improvements. This Deposit Agreement shall not be deemed to create any commitment by the City to accept any improvement for dedication and maintenance.

6. Upon completion of the final category of Subdivision Improvements and compliance with all ordinances, laws and regulations relating to dedication of the Subdivision Improvements to the City, any and all remaining portion of the Deposit Sum shall be released within five (5) days of certification of completion by the City Engineer.

7. In the event the Developer shall be in default or abandon the Subdivision, or fail to complete the obligations herein, including, but not limited to, the failure to complete the Subdivision Improvements by the Completion Date, the Developer shall forfeit to the City the then current balance of the Deposit Sum or any portion thereof, which funds the City shall thereafter use to complete the Subdivision Improvements or otherwise rectify the Developer's failure hereunder. The City may further apply such necessary amount of the Deposit Sum to remedy any failure of the Developer to perform its maintenance obligations in the Subdivision. For the purpose of this Agreement and the City's rights hereunder, any and all of the remaining Deposit Sum may be applied to completion or maintenance of any Subdivision Improvements, and no limitation of any kind shall be implied from the line item calculations of separate Subdivision Improvements.

8. Exercise or waiver by City of any enforcement action under this Deposit Agreement or the City's Code of Ordinances does not waive or foreclose any other or subsequent enforcement action whatsoever. The Deposit Sum placed under this Deposit Agreement shall be governed by the provisions of the City's Code of Ordinances, including, without limitation, the UDO and the subdivision regulations contained therein, and the Developer agrees to the provisions thereof as if set forth herein. The City shall be entitled to its costs, including reasonable attorneys' fees, in enforcement of Developer's obligations under this Agreement.

9. The City and Developer hereby accept this agreement as a lawful and satisfactory Deposit Agreement.

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: _____
Stephen A. Arbo, *City Manager*

Approved as to form:

City Attorney, *Brian W. Head*

TOWNSEND SUMMIT, LLC

By: _____
Its: _____

Notary for City of Lee's Summit

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

BE IT REMEMBERED, that on this ____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Stephen A. Arbo, the City Manager of the City of Lee's Summit, 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 persons 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]

Notary for Townsend Summit, LLC

STATE OF _____)
) ss.
COUNTY OF _____)

BE IT REMEMBERED, that on this ____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____, the _____ of Townsend Summit, LLC, who is personally known to me to be the same person who executed the within instrument on behalf of Townsend Summit, LLC, and such person duly acknowledged the execution of the same to be the act and deed of Townsend Summit, LLC.

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]

EXHIBIT 'A' – FINAL PLAT
[see attached]

EXHIBIT 'B' – ESTIMATE SHEET
[see attached]