

INITIAL FUNDING AGREEMENT

THIS INITIAL FUNDING AGREEMENT (this "Agreement") is made and entered into as of the _____ day of _____, 20____, by and between the **[City/Village]** of _____, a Missouri municipal corporation having a principal office at _____ (the "**[City/Village]**"), and _____, a Missouri _____ having a principal office at _____ ("Developer").

RECITALS

A. Developer is the owner of improved real property comprising a total of approximately ____ acres located in _____, generally known and numbered as _____, (the "Property") and wishes to develop _____ (the "Development").

B. To promote the Development, Developer wishes to have the **[City/Village]** facilitate consideration by the **[Council/Board]** of the **[City/Village]** of the legality and appropriateness of use of certain public financing incentives available under Missouri law including, without limitation, _____ (e.g. *tax abatement through Chapter 353; creation of a community improvement district; etc.*) (the "Local Incentives") for the Property and the Development.

C. Subject to the terms of this Agreement, the **[City/Village]** is willing to assist Developer and to facilitate the consideration by the **[Council/Board]** of the Local Incentives subject to Developer's advancing to the **[City/Village]** certain initial funds to allow the **[City/Village]** to pay certain costs associated with the consideration and structuring of the Local Incentives, and Developer wishes to advance such initial funds and to obtain the **[City/Village]**'s assistance in accordance with the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Advance Funds. The **[City/Village]** hereby acknowledges receipt from Developer of funds in the amount of _____ and 00/100 Dollars (\$_____.00) to be held by the **[City/Village]** and used as advance funding of the **[City/Village]**'s costs and fees in connection with consideration by the **[Council/Board]** of the legality, appropriateness, and desirability of the Local Incentives, as set forth in the Recitals and in this Agreement (the "Advanced Funds"). The **[City/Village]** shall allocate and use the Advanced Funds as a source of reimbursement of actual costs previously incurred and to be incurred by or on behalf of the **[City/Village]** and for all costs related to the consideration of the Local Incentives

and the Development, including, without limitation, legal, professional, and consulting costs associated with review and refinement of the Local Incentives and the Development to assure compliance with statutory requirements; preparation and negotiation of a definitive development agreement between the **[City/Village]** and Developer; and preparation of other associated documentation, authorizing ordinances and other approving documents (collectively, the "Work Program"). All components of the Work Program shall be performed by **[City/Village]** staff, attorneys, or professional consultants at their respective regular rates, (collectively, the "Fees") and the **[City/Village]** shall pay for such work only in accordance with paragraph 2 below.

2. Disbursement. The **[City/Village]** shall hold and disburse the Advance Funds to pay the Fees on a monthly basis for any month in which the Fees have been actually incurred. Disbursements shall be made only upon receipt of: (i) invoices for work reasonably and actually performed; (ii) receipts for any and all direct out of pocket expenditures incurred by the **[City/Village]** staff, attorneys, or professional consultants in connection with such work; and (iii) such other supporting documentation as may be reasonably requested by or on behalf of the **[City/Village]** (collectively, a "Disbursement Request"). The _____ of the **[City/Village]** (the "Administrator") shall examine each Disbursement Request and all disbursements made shall be over the signature of the Administrator. The Administrator shall use reasonable care in ascertaining that all amounts charged pursuant to each Disbursement Request are fair and reasonable amounts for the work represented on each Disbursement Request.

3. Copies of Disbursement Requests. Upon written request of Developer, the **[City/Village]** shall within a reasonable time following actual receipt of such request forward a written summary of any Disbursement Request received to Developer, as set forth herein. In the event Developer has questions regarding any such summary Disbursement Request, Developer shall direct such questions to the Administrator; *provided, however*, that neither the Administrator nor the **[City/Village]** shall be required to obtain Developer's approval for payment of any Disbursement Request; and *provided further* that in no event shall Developer be entitled to obtain copies of actual invoices.

4. **DEVELOPER UNDERSTANDS AND ACKNOWLEDGES THAT THE ARRANGEMENT PROVIDED FOR IN THIS AGREEMENT IS SOLELY AN ACCOMMODATION TO DEVELOPER IN WHICH NEITHER THE [CITY/VILLAGE] NOR ITS CONSULTANTS ARE REPRESENTING THE DEVELOPER. [INSERT ADDITIONAL PROVISIONS AS APPLICABLE TO ENSURE CITY/VILLAGE IS NOT WAIVING ANY PRIVILEGES.]**

5. Negotiation of Development Agreement. The parties hereto anticipate a good faith negotiation and consideration by the **[Council/Board]** of a mutually acceptable definitive development agreement containing a proposal for local incentives; *provided, however* that nothing in this Agreement shall be deemed to obligate the **[Council/Board]** or the **[City/Village]** to approve the Local Incentives or any of them, and the parties acknowledge and agree that all such decisions and determinations are

and shall remain within the sole discretion of the **[Council/Board]**, pursuant to the applicable enabling legislation respecting the Local Incentives. Notwithstanding anything to the contrary in the foregoing, in the event the **[Council/Board]** for any reason refuses to consider or fails to approve any of the Local Incentives, this Agreement shall be deemed terminated and any unexpended Advanced Funds, after payment of any costs or Fees incurred, shall be promptly refunded to Developer.

6. Right of Termination. The **[City/Village]** or Developer shall have the further right to terminate this Agreement at anytime in their sole discretion upon giving the other party ten (10) days written notice; whereupon ten (10) days following receipt by the **[City/Village]** of Developer's notice or within ten (10) days of the date of notice to Developer by the **[City/Village]**, this Agreement shall be deemed terminated. The **[City/Village]** shall pay to Developer within thirty (30) days of the date of termination the then-existing balance of the Advanced Funds remaining after payment by the **[City/Village]** of the Fees and any invoices for work performed by any attorney, professional or consultant through the date of termination.

7. Excess Funds. In the event the Advanced Funds are not expended as provided herein on or before _____, 20__, the **[City/Village]** shall immediately return the remainder of the Advanced Funds to Developer in cash or by cashier's check. The Advanced Funds are assumed adequate to pay all costs associated with the Work Program. In the event that the Advanced Funds are not adequate to pay all such costs, the **[City/Village]** may request in writing the necessary additional funds and, upon such request, Developer shall promptly provide such necessary additional requested funds within thirty (30) days of such request; *provided, however,* the **[City/Village]** shall in no event be obligated to incur any cost in excess of the Advanced Funds actually received by the **[City/Village]** or to assist in or facilitate the consideration of the Local Incentives or any of them either within or at a greater cost than the amount of the Advanced Funds.

8. Notices. All notices and correspondence hereunder shall be in writing and shall be delivered by hand delivery, facsimile or first class mail, postage prepaid, to the parties as set forth below:

If to Developer:

If to the **[City/Village]**:

9. Miscellaneous.

a. Governing Law; Counterparts. This Agreement and its performance shall be governed by and construed under the laws of the State of Missouri applicable to contracts made and to be performed wholly within such state, without regard to choice or conflict of laws provisions. This Agreement may be signed in counterparts.

b. Severability. If any provision of this Agreement shall be unenforceable, the remainder of this Agreement shall be enforced as if such provision were not contained herein.

c. No Waiver. Failure of any party hereto to enforce its rights hereunder at any time shall not be deemed a waiver of any such rights.

d. Successors and Assigns. This Agreement may not be assigned by any party hereto without the prior written consent of all other parties. No assignment, unless specifically provided for in the consent thereto, shall relieve the assigning party of any liability hereunder. This Agreement shall be binding upon the parties hereto and their heirs, successors, and permitted assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

“Developer”

By: _____
Title: _____

The “[City/Village]”

By: _____
Title: _____