

SPONORED BY: _____
INTRODUCED BY: _____

RESOLUTION #-01-15-2025A

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PRELIMINARY FUNDING AGREEMENT ON BEHALF OF THE CITY OF ELLISVILLE WITH ELLISVILLE MARKEPTLACE LLC IN CONNECTION WITH THE ELLISVILLE MARKETPLACE COMMUNITY IMPROVEMENT DISTRICT.

WHEREAS, the City of Ellisville approved and established the Ellisville Marketplace Community Improvement District (the “CID”) via Ordinance No. 3414 on February 18, 2015, to provide public improvements and services within the boundaries of the CID, approximately 8.23 acres of land generally located at 15678 and 15698 Manchester Road located within the City (the “Property”); and

WHEREAS, the owner of the Property, Ellisville Marketplace LLC (the “Developer”) wishes to amend certain terms of the CID petition to provide for further development of the Property (the “CID Amendment”); and

WHEREAS, in order to allow the City to fully consider and evaluate the CID Amendment, the City and Developer wish to enter into a Preliminary Funding Agreement reimburse the City for the City’s actual out-of-pocket expenses necessary to perform a full evaluation of the CID Amendment and engage consultants as needed for such evaluation; and

WHEREAS, a copy of this Resolution has been provided for public inspection prior to consideration by the Council.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ELLISVILLE, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

SECTION 1: The City of Ellisville hereby authorizes the Mayor to sign and execute the Preliminary Funding Agreement, in substantially the form attached hereto and incorporated herein as Exhibit A, with Ellisville Marketplace LLC to assist with the City’s actual out-of-pocket expenses in connection with the proposed CID Amendment.

SECTION 2: The Mayor and City Manager are hereby authorized and directed to take such further action as may be reasonably necessary to effectuate the intent of this Resolution.

SECTION 3: This Resolution shall be in full force and effect from and after its passage and approval by the Council.

THIS RESOLUTION READ IN FULL AND ADOPTED BY THE COUNCIL OF THE CITY OF ELLISVILLE, ST. LOUIS COUNTY, MISSOURI, ON THIS 15th DAY OF JANUARY, 2025.

	AYE	NAY	ABSTAIN
COMPTON	_____	_____	_____
NIEBLING	_____	_____	_____
SANBORN	_____	_____	_____
CAHILL	_____	_____	_____
BOGGS	_____	_____	_____
HILDEBRAND	_____	_____	_____
ROEMERMAN	_____	_____	_____

CITY OF ELLISVILLE

MAYOR

Approved as to form:

City Attorney

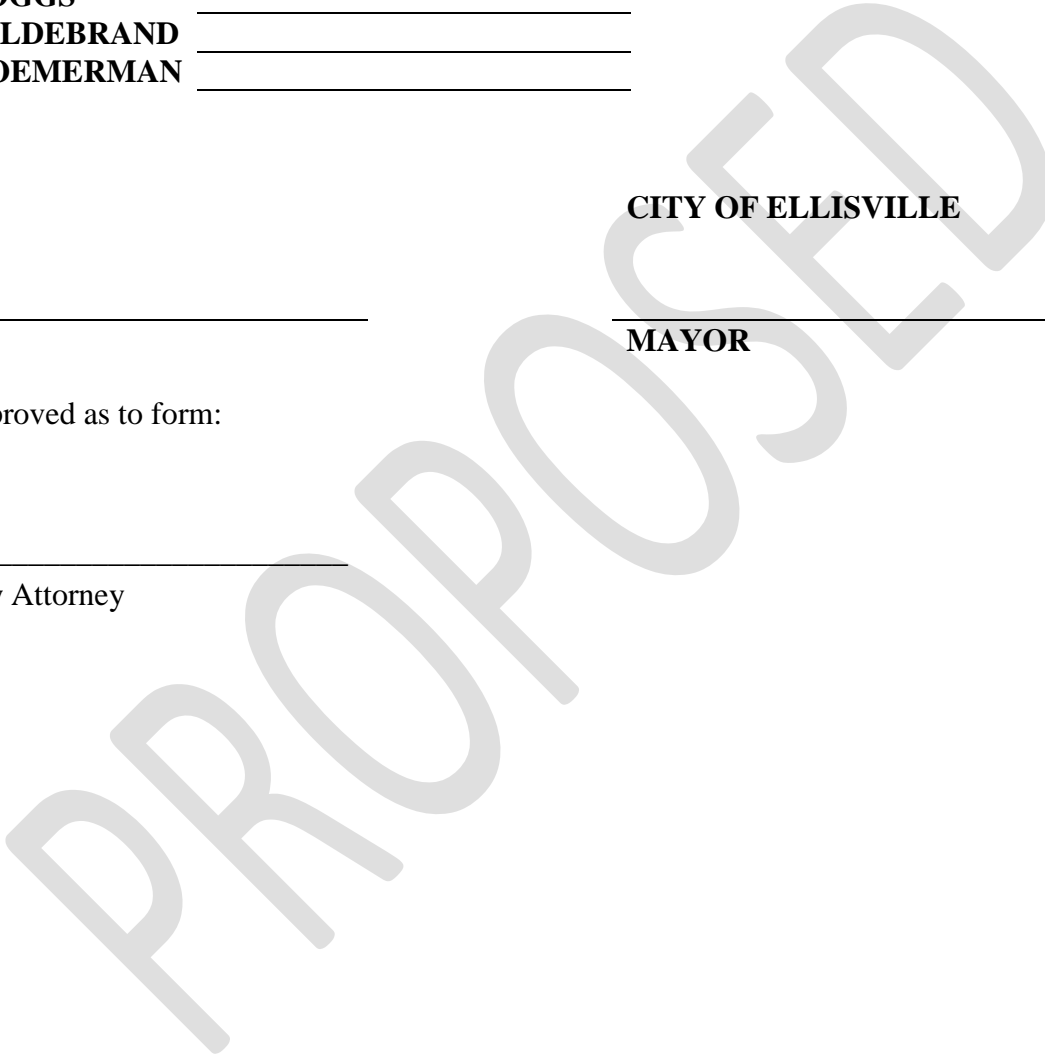


EXHIBIT A

PRELIMINARY FUNDING AGREEMENT

This **PRELIMINARY FUNDING AGREEMENT** (this “**Agreement**”) is made and entered into as of January __, 2025, by and between the **CITY OF ELLISVILLE, MISSOURI** (the “**City**”) and **ELLISVILLE MARKETPLACE LLC**, a Missouri limited liability company (the “**Company**”).

RECITALS

A. The Ellisville Marketplace Community Improvement District (the “**CID**”) was established pursuant to Section 67.1401 to 67.1571 of the Revised Statutes of Missouri (“**RSMo**”) by Ordinance No. 3414 of the City of Ellisville, Missouri on February 18, 2015. The CID was created to provide public improvements and services within the boundaries of the CID, approximately 8.26 acres of land generally located at 15676, 15678 and 15698 Manchester Road located within the City (the “**Property**”), as outlined in the original petition.

B. In connection with the Company’s proposed redevelopment of the Property, the Company has advised the City that the costs of redeveloping the Property will be extraordinarily high and, to make the redevelopment of the Property financially feasible, has requested that the City consider an amendment to the existing CID to include the addition of [\$500,000 to \$750,000] to the total sizing of the CID (the “**CID Amendment**”).

C. The Company has advised the City that even with the CID Amendment, in order to make the redevelopment of the Property financially feasible the Company may request at a later date that the City consider certain additional economic development incentives for the Property.

D. In order for the City to fully consider and evaluate the CID Amendment, the City has requested the Company deposit funds with the City to be used by the City to pay for the City’s actual out-of-pocket expenses necessary to perform a full evaluation of the CID Amendment and engage consultants as needed for such evaluation.

NOW THEREFORE, in consideration of the covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Reimbursement of Expenses. The Company shall reimburse the City for Reimbursable Expenses (as defined herein) incurred by the City in connection with the Project, such reimbursement to not initially exceed \$10,000 (the “**Initial Reimbursement Amount**”), and thereafter, in an additional amount to be agreed upon by the City and Company in the manner described in Section 4 of this Agreement. Within ten calendar days of executing this Agreement, the Company shall deposit \$7,500 of the Initial Reimbursement Amount with the City, for use in payment of the City’s Reimbursable Expenses. “Reimbursable Expenses” include paying or

reimbursing the City for payment of actual out-of-pocket costs and expenses incurred by the City for services provided by such consultants and advisors (including, but not limited to, attorneys (including both Lashly & Baer, P.C. as City Attorney, and Gilmore & Bell as Bond Counsel), administrators, and planners) associated with the redevelopment of the Property; including, but not limited to, preparation and review of resolutions, ordinances, agreements, and other related documents, and for fees and expenses incurred by the City (such as mailing, publication and similar costs) in connection with the foregoing. Subject to the terms hereof, the Company shall provide reimbursement to the City for Reimbursable Expenses incurred from time to time within ten (10) days after delivery by the City of request for reimbursement together with copies of invoices for such Reimbursable Expenses. Notwithstanding anything to the contrary herein, neither the City, the City Attorney nor Bond Counsel shall have any obligation to refund any funds or other City costs to Company, except to the extent of any excess funds remaining after the payment of expenses of the City.

2. Consideration of CID Amendment. The City agrees to work with the Company and attempt to agree upon a mutually acceptable CID Amendment, and take all other reasonable actions precedent to the favorable consideration by the City Council of the approval of the CID Amendment; provided, that nothing herein shall obligate the City to approve a CID Amendment. Notwithstanding the foregoing, the parties acknowledge and agree that the ultimate determination of the formation and approval of the CID Amendment is in the sole discretion of the Mayor and City Council.

3. Company's Right of Termination. The Company may terminate this Agreement at any time in its sole discretion upon giving the City ten (10) days' written notice, whereupon ten (10) days following the Company's delivery of said notice this Agreement shall be deemed terminated. Upon receipt of such notice, the City shall cease incurring expenditures under this Agreement as soon as reasonably possible. Upon termination, the Company shall pay to the City all then outstanding, unpaid Reimbursable Expenses incurred by the City through the date of termination, such amount to be paid within twenty (20) days after delivery to Company of invoices documenting such outstanding amount.

4. City's Right of Termination. The City may terminate this Agreement upon giving the Company ten (10) days' written notice if the City has incurred expenses up to the Initial Reimbursement Amount and the Company does not agree to additional reimbursement above the Initial Reimbursement Amount within fourteen (14) days after written request for such increase from the City.

5. No Third Party Beneficiaries. This Agreement constitutes a contract solely between the City and Company. No third party has any beneficial interest in or derived from this Agreement.

6. Notices. All notices or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given and received when (i) mailed by registered or certified mail, postage prepaid, or (ii) sent by overnight delivery or other delivery service which requires written acknowledgment of receipt by the addressee, addressed as follows:

If to the City:

Ellisville City Hall
1 Weis Avenue
Ellisville, Missouri 63011
Attn: Bill Schwer, City Manager
Email: bschwer@ellisville.mo.us

If to Company:

Ellisville Marketplace LLC
Attn: Andy Patel
15678-15686 Manchester Road
Manchester, MO 63011
Email: andy.patel@appleig.com

or to such other address with respect to any party as that party may, from time to time, designate in writing and forward to the other parties. All such notices or other communications shall be deemed given three business days following deposit in the United States of America mail with respect to registered or certified letters or earlier upon receipt, and one business day following deposit if delivered to an overnight courier guaranteeing next day delivery. Attorneys for each party shall be authorized to give and receive notices for each such party.

7. City Requirements and Prior Approval. The Company 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 the Property. The parties agree that execution of this Agreement in no way constitutes a waiver of any requirements of applicable City ordinances or policies with which the Company must comply and does not in any way constitute prior approval of any future proposal for development, including the CID or its Amendment. The parties understand that the City may not lawfully contract away its police powers and that approval of the CID Amendment cannot be contractually guaranteed. This Agreement does not alter or diminish the City's ability to exercise its legislative discretion to consider the CID in accordance with the Community Improvement District Act, Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri, as amended, and all applicable laws and any other applications with respect to development of the Property.

8. Miscellaneous.

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

b. 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.

c. Representations and Warranties. The Company and the City each represent that (i) this Agreement has been duly executed by them or on their behalf, as the case may be, pursuant to due authorization, and is not in violation of any such party's governing documents, charter or ordinances, as the case may be, (ii) no consents are necessary for the execution, delivery, and performance of this Agreement by such party, and (iii) this Agreement is valid, binding and enforceable against such party in accordance with its terms.

d. Assignment. This Agreement may not be assigned by either party without the written consent of the other.

e. Counterparts; Electronic Transmission. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The City and the Company agree that the transactions described herein may be conducted and related documents may be received or stored by electronic means. Copies, telecopies, facsimiles, electronic files, and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action, or suit in the appropriate court of law.

f. Modification. The terms, conditions, and provisions of this Agreement can be neither modified nor eliminated except in writing and by mutual agreement among the parties. Any modification to this Agreement as approved shall be attached hereto and incorporated herein by reference.

g. Governing Law. This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

h. Limitation of Liability. Notwithstanding any provision hereof to the contrary, the City and its officials, officers, agents, employees and representatives shall not be liable to the Company for damages or otherwise if this Agreement, any prospective adoption of any economic development incentive or plan or agreement relating thereto, is declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either the City is prevented from performing any of the covenants and agreements herein or the Company is prevented from enjoying the rights and privileges contemplated hereunder.

[Remainder of Page Intentionally Left Blank.]

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

CITY OF ELLISVILLE, MISSOURI

By: _____
Name: _____
Title: _____

ELLISVILLE MARKETPLACE LLC

By: _____
Name: _____
Title: _____

PROPOSED