

Bill No. 1324

Ordinance No. 1279

**AN ORDINANCE APPROVING AND AUTHORIZING EXECUTION OF A PRELIMINARY FUNDING AGREEMENT WITH 201 EVANS, LLC.**

**WHEREAS**, 201 Evans, LLC (the "Company") has initiated discussions with the City of Cool Valley for the redevelopment of an area generally bounded by North Hills Lane on the west, Hawkesbury Drive on the north, South Florissant Road on the east and Evans Avenue on the south (the "Area"); and

**WHEREAS**, the City is willing to explore the feasibility of financing a portion of the costs of redeveloping the Area through the use of economic development incentives, if the Company shall be responsible for payment of the City's costs of exploring such incentives.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF COOL VALLEY, MISSOURI, AS FOLLOWS:**

**Section One:** The Board of Aldermen hereby approves, and authorizes the Mayor to execute, on behalf of the City of Cool Valley, a Preliminary Funding Agreement with 201 Evans, LLC in substantially the form attached hereto as **Exhibit A**, with such reasonable changes therein consistent with the intent and purposes hereof as shall be approved by the Mayor and the City Attorney. The Mayor and other appropriate City officials are further authorized to execute such additional documents referenced in or contemplated by the Contract and to execute such other additional documents to take any and all actions necessary, desirable, convenient or prudent in order to carry out the intent of this Ordinance and the transaction contemplated hereby.

**Section Two:** This ordinance shall be in full force and effect both from and after the date of its passage by the Board of Aldermen and approval by the Mayor.

**PASSED BY THE BOARD OF ALDERMEN FOR THE CITY OF COOL VALLEY THIS 26th DAY OF May, 2021.**

AYES:  
NAYS:  
ABSENT:

\_\_\_\_\_  
Presiding Officer

Attest:

\_\_\_\_\_  
Deborah Jones-Daniels, City Clerk

**APPROVED THIS 26th DAY OF May, 2021.**

\_\_\_\_\_  
Jayson Stewart, Mayor

Attest:

\_\_\_\_\_  
Deborah Jones-Daniels, City Clerk

## PRELIMINARY FUNDING AGREEMENT

**THIS PRELIMINARY FUNDING AGREEMENT** (the “Agreement”) is made and entered into as of the 26th day of May, 2021, by and between the **CITY OF COOL VALLEY, MISSOURI** (the “City”) and **201 Evans, LLC** (the “Company”).

### RECITALS

1. The Company has submitted a proposal to the City for the redevelopment of an area generally bounded by North Hills Lane on the west, Hawkesbury Drive on the north, South Florissant Road on the east and Evans Avenue on the south (the “Area”); and
2. The City is willing to explore the feasibility of financing a portion of the costs of redeveloping the Area through the use of economic development incentives, if the Company shall be responsible for payment of the City’s costs of exploring such incentives.

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

1. **City’s Costs.** (a) The Company shall, subject to the terms hereof, pay directly to consultants or reimburse the City for payment of actual out-of-pocket costs incurred by the City for services provided by such consultants and advisors (including, but not limited to, attorneys, planners and financial consultants) as the City reasonably deems advisable regarding the City’s review of plans and related documents and negotiation of a redevelopment agreement, and for expenses incurred by the City (such as mailing, publication and similar costs) in connection with the foregoing (collectively, the “Work Program”). The Work Program specifically includes legal fees for attorneys to attend and participate in City meetings for the next six (6) months for any reason whatsoever and including exploring the incentives and the City requirements to effectuate such incentives. After such six (6) month period, the Company shall only be responsible for legal fees related to the Company’s efforts to redevelop the Area. The parties acknowledge that the costs incurred could be a substantial sum and agree to use their best efforts to work together to reduce the total costs to be incurred towards the Work Program. Except for information subject to attorney-client privilege, the City will provide the Company with copies of the work product from any of the consultants engaged by the City in connection with the Work Program.

(b) The City has engaged or will engage the following consultants and attorneys to work with the City and perform the Work Program: Gilmore & Bell, P.C. (special counsel), Kevin O’Keefe, Esq. (City Attorney) and PGAV Planners, LLC (development consultant). The City will provide reasonable prior notice to the Company of any additional consultants to be engaged to perform the Work Program.

2. **Payment.** Before directing payment for any third-party consultant or advisor (excluding the City Attorney) under this Agreement, the City shall provide copies of such consultant or advisor contracts to the Company. The Company shall be responsible for fees and expenses incurred in connection with the Work Program or to reimburse the City for fees and expenses previously paid by the City in connection with the Work Program upon receipt of (a) invoices for work reasonably and actually performed by the selected consultants and advisors in accordance with the Work Program, (b) invoices and/or receipts for out-of-pocket expenses incurred by such parties or the City for the planning, legal and financial work in connection with the Work Program, and (c) such other supporting documentation as may be requested by the Company (collectively, a “Payment Request”). In addition, the consultants may

send its invoices directly to the Company for payment. The Company shall pay the Payment Request or invoices, as applicable, within ten (10) days of receipt to the relevant parties. The City shall use reasonable care in ascertaining that all fees and expenses charged to the City are fair and reasonable amounts for the work represented in each Payment Request.

**3. Consideration of Incentives.** Nothing herein shall obligate the City to approve any financial incentives for the Company's proposed project.

**4. Right of Termination.** Either party may terminate this Agreement at any time in its sole discretion upon giving the other party 10 days' written notice; whereupon 10 days following the delivery of said notice, this Agreement shall be deemed terminated. Upon receipt or delivery of such notice, the City will cease incurring expenditures under this Agreement as soon as reasonably possible. The Company shall pay to the City or its consultants, within 30 days after the receipt or delivery of notice of termination under this Section for all work performed through the date of termination.

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

**6. Notices.** All notices and correspondence hereunder shall be in writing and shall be delivered by hand delivery, e-mail, or overnight mail, postage prepaid, to the parties as set forth below:

**If to the City:**

City of Cool Valley  
100 Signal Hill Drive  
St. Louis, Missouri 63121  
Attention: Jason Stewart and Deborah Daniels  
Email: [cvmayorstewart@yahoo.com](mailto:cvmayorstewart@yahoo.com) and [cvcityclerk@yahoo.com](mailto:cvcityclerk@yahoo.com)

with a copy to:

Curtis, Heinz, Garrett & O'Keefe, P.C.  
130 South Bemiston, Suite 200  
St. Louis, Missouri 63105  
Attention: Kevin O'Keefe  
[kokeefe@chgolaw.com](mailto:kokeefe@chgolaw.com)

**If to the Company:**

201 Evans, LLC  
c/o Seneca CRE, LLC  
1401 S. Brentwood Blvd., Suite 625  
Brentwood, Missouri 63144  
Attention: Larry Chapman  
[lchapman@seneca-cre.com](mailto:lchapman@seneca-cre.com)

with a copy to:

Schott & Hamilton, LLC  
1610 Des Peres Road, Suite 385  
St. Louis, Missouri 63131  
Attention: Stephen M. Schott  
[stephen@schotthamilton.com](mailto:stephen@schotthamilton.com)

**7. 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 and warrant 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.** This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

**8. Limitation of Liability.** Notwithstanding any provision hereof to the contrary, the City and its officials, agents, employees and representatives shall not be liable to the Company for damages or otherwise if this Agreement, any prospective adoption of any incentive plan or agreement related 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 COOL VALLEY, MISSOURI**

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

**201 Evans, LLC**

By: \_\_\_\_\_  
Larry Chapman, Manager