

**AGREEMENT
GUARANTEEING CONSTRUCTION
OF IMPROVEMENTS**

THIS AGREEMENT ("AGREEMENT"), is made and entered into this _____ **day of** _____ **20** __, by _____ (hereinafter referred to as the "DEVELOPER") and the CITY OF WENTZVILLE, MISSOURI (hereinafter referred to as the as "CITY").

WITNESSETH:

WHEREAS, the DEVELOPER has submitted plans, information and data to the CITY for the creation and development of a subdivision to be known as _____ (hereinafter referred to as the "Subdivision") and simultaneously herewith is receiving approval of them; and

WHEREAS, a Preliminary Plat for the Subdivision (the "Preliminary Plat") and the improvement plans for the Subdivision ("Subdivision Improvements") have been submitted to the CITY together with the estimated costs of construction, installation and completion of the Subdivision Improvements, all in accordance with the CITY's subdivision regulations; and

WHEREAS, the establishment of a guarantee of completion of the Subdivision Improvements is required as a condition of the final plat for the Subdivision; and

WHEREAS, the DEVELOPER desires to establish the Subdivision Improvement guarantees in the form of this AGREEMENT and accompanying DEPOSIT Guarantee which shall secure completion of such improvements within two (2) years hereof, unless otherwise extended by the Board of Alderman; and,

NOW, THEREFORE, in consideration of the covenants, promises and agreements herein provided,

IT IS HEREBY MUTUALLY AGREED:

1. The DEVELOPER, has deposited:
 - Cash Escrow- Check No. _____
 - Letter of Credit No. _____
 - Surety Bond No. _____

with the CITY in the sum of _____
_____/100 dollars (\$_____._____) (the "DEPOSIT") payable to the CITY and guaranteeing the construction, installation, maintenance, and completion of all required Subdivision Improvements, all in accordance with the plans approved by the CITY and on file

with the Director of Public Works (the "Approved Improvement Plans") and in accordance with the CITY ordinances regulating the same. The amount of the DEPOSIT shall equal 110% of the *estimated* costs of the construction, completion, and installation of the Subdivision required improvements ("ESTIMATED COSTS") as set forth on the Costs Estimate Sheet attached as Exhibit 1. Nothing in the estimates or specification of component items shall in any way limit the City or require release based strictly on each line item where such a release would jeopardize the City's assurance of completion. DEVELOPER agrees that it continues to be obligated to complete and guarantee completion of all Subdivision Improvements. The CITY and DEVELOPER agree that the DEPOSIT shall guarantee the construction, installation, completion and maintenance of the required subdivision improvements in the Subdivision, all in accordance with the approved plans therefore and in accordance with the ordinances of the CITY regulating the same.

2. The DEPOSIT guarantees the construction, installation, completion, and maintenance of all Subdivision Improvements in accordance with the Approved Improvement Plans and CITY's Engineering Design Criteria which are incorporated in this AGREEMENT by reference and as required by the ordinances and regulations of the City. Any release of part or a portion of the DEPOSIT is an accommodation to the DEVELOPER and is not a waiver of any kind by the CITY of its rights under the AGREEMENT that the entire DEPOSIT guarantees each and every improvement.

3. In the event the amount of the DEPOSIT herein provided is insufficient to complete the Subdivision Improvements as reasonably determined by the CITY, the DEVELOPER will, upon demand by the CITY accompanied by a detailed itemization of the requested additional amount, establish with the CITY additional monies or an additional DEPOSIT which amount, in the opinion of the CITY, will be required to complete the Subdivision Improvements, and said additional sum shall be subject to the terms of this AGREEMENT. In the event that the DEVELOPER does not deposit the additional monies with the CITY within 10 days or does not request a hearing from the CITY within that time, the Subdivision shall be deemed in default and/or abandoned as set forth in paragraph 8.

4. The DEVELOPER guarantees: (a) that all required utilities and improvements will be installed, constructed and completed in accordance with the Approved Improvement Plans, the City of Wentzville Engineering Construction Specifications, and the ordinances of the CITY not later than **two (2) years** after the date of this AGREEMENT appearing on the signature page below ("Completion Date"), and (b) that the Subdivision, including all lots, common ground, streets, and improvements, and all adjacent streets used for the hauling of construction equipment, materials and supplies will be safeguarded, protected and kept free of associated mud, trash, weeds, and debris during the construction period and otherwise properly maintained, and constructed all in accordance with City Code and approved plans.

5. (a) That the CITY may, through written authorization of the Director of Public Works, reduce the DEPOSIT amount upon completion of improvement categories; PROVIDED FURTHER that in no event shall the CITY release any part of the DEPOSIT except as provided herein:

(b) 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 pursuant to Section 410.140(G) of the Subdivision Regulations. The City will perform an inspection within twenty (20) business days of the Public Works Department receiving a written request for inspection from the Developer. The written inspection request must be in a form acceptable to the Department and shall reference the category or categories of improvements reflected in the AGREEMENT that are to be included in the inspection, as well as a statement from the Developer that the category or categories of improvements in the request are properly constructed and installed to the satisfaction of, and with no Deficiencies as determined by, the City.

(c) Except for discretionary releases that may be granted by the Director of Public Works in the public interest, 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 or subdivision may be deemed to be complete until there is a certification by the CITY that (1) through the inspection process the City has determined that all components within a category or categories of improvements have been constructed and installed in compliance with all laws and requirements of the CITY with no Deficiencies in the subdivision or specified phase; (2) the Developer is not in default or in breach of any obligation to the City under this Section including, but not limited to, the Director's request for maintenance or the deposit of additional funds; and (3) the results of the above mentioned process including the inspection and document review have been approved in writing by the Director.

(d) Upon certification by the CITY that the construction and installation of a category of Subdivision Improvement is complete (in accordance with §5(b) and (c) above), the CITY shall authorize the reduction of the amount of the DEPOSIT in an amount equivalent to the ESTIMATED COST originally retained for that category *minus* a maximum retention of five percent (5%), as otherwise provided in this Section 5. 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 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 original DEPOSIT AMOUNT, until the CITY has certified as provided herein that all categories of Subdivision Improvements have been completed in accordance with the Approved Improvement Plans, the CITY Design Criteria and the regulations and ordinances of the CITY and the "as built drawings" have been approved by the CITY.

6. Upon completion of all of the Subdivision Improvements and prior to final release, the DEVELOPER shall submit to the CITY copies of "as built" drawings which show the actual installation of the said improvements, and that if after the CITY reviews the "as built" drawings submitted it reasonably determines that all of the improvements have been completed and, as applicable, accepted by the respective utilities, then the CITY shall approve the "as built"

drawings. This Agreement shall not be deemed to create any commitment by the CITY to accept any improvement for dedication and maintenance.

7. Prior to the CITY's final release of the final 5% of the DEPOSIT AMOUNT established hereunder, the DEVELOPER shall establish a separate Maintenance Deposit in the amount of five percent (5%) of the engineer's approved cost estimate to guarantee that continuing maintenance obligations are fulfilled after improvements have been accepted by the CITY. The DEVELOPER may convert the remaining 5% of the DEPOSIT AMOUNT to be used for the Maintenance Deposit. The Maintenance Deposit shall be used for the maintenance of those improvements and related development items, including undeveloped lots, streets, sidewalks, utilities, subdivision amenities, common areas, and storm and drainage facilities, until 24 months after dedication or build-out of ninety-five percent (95%) of the lots within the subject subdivision is complete.

Prior to the CITY'S final release the DEVELOPER must also establish Water Quality/Stormwater Post-Construction Guarantee Deposit. This deposit will be released once all BMP's have been installed and vegetation is established. Installation of water quality BMP's is not permitted until at least 90% of the homes in the watershed tributary to each water quality improvement are complete.

8. 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, or the failure to properly maintain the improvements, including keeping the Improvements free of mud, debris, erosion, or otherwise, whichever occurs first, the DEVELOPER shall forfeit to the CITY the then current balance of the DEPOSIT or any portion thereof, along with any additional sums deposited pursuant to paragraph 3 above, which funds the CITY shall thereafter use to complete the Subdivision Improvements or otherwise rectify the DEVELOPER's failure hereunder. Although the CITY may use such funds to complete the Subdivision Improvements, it is not required to do so and it may pursue other remedies against DEVELOPER to ensure that DEVELOPER or its successor completes the Subdivision Improvements. The CITY may further apply such necessary amount of the DEPOSIT 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 AMOUNT may be applied to completion or maintenance of any improvements, and no limitation of any kind shall be implied from the line item calculations of separate improvements. If the CITY is required to remedy any failure of the DEVELOPER to perform its Maintenance Obligations during this Agreement, the CITY may also require DEVELOPER to deposit with the CITY additional monies as may be needed as set forth in paragraph 3 herein.

9. Exercise or waiver by CITY of any enforcement action under this Agreement or the CITY's Code does not waive or foreclose any other or subsequent enforcement action whatsoever. The DEPOSIT and/or any additional deposit placed under this Agreement shall be governed by the provisions of the Wentzville Subdivision Code, Chapter 410, 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.

10. The CITY and DEVELOPER hereby accept this Agreement as a lawful and satisfactory AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and affixed their seals this _____ day of _____, 20__ (“Agreement Date”).

ACCEPTED:

CITY OF WENTZVILLE, MISSOURI

DEVELOPER:

By: _____
Nickolas Guccione, Mayor

By: _____

Dated: _____

ATTESTED:

Kathryn Bowman, City Clerk

APPROVED as to form:

James C. Hetlage, City Attorney

STATE OF MISSOURI)
) ss:
COUNTY OF ST. LOUIS)

On this _____ day of _____ 20__, before me appeared _____, personally known, who being by me duly sworn, did say that he is the _____ of _____, a corporation of the State of Missouri, and that the foregoing instrument was signed and sealed on behalf of said corporation, by authority of its Board of Directors, and said _____ acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires:

Exhibit 1
Costs Estimate Sheet