

**AGREEMENT
GUARANTEEING MAINTENANCE
OF SUBDIVISION 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

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 Maintenance of the Subdivision
Improvements ("Subdivision Improvements Maintenance Guarantee") is required as a condition
of the release of the final Construction Deposit and dedication of the Subdivision Improvements
to the CITY; and

WHEREAS, Section 410.140(G) of the Municipal Code provides that a maintenance
deposit "shall be (established) in the amount of five percent (5%) of the engineer's approved
estimate of the cost of the construction, completion and installation of the required
Improvements" ("Subdivision Improvements Maintenance Deposit"); and

WHEREAS, the DEVELOPER desires to establish the Subdivision Improvements
Maintenance Guarantee in the form of this Agreement and to pay to the CITY the required
Subdivision Improvements Maintenance Deposit which shall secure maintenance of the
Subdivision Improvements until the latter of (1) 12 months after adoption of an ordinance for the
dedication of all Subdivision Improvements by the Board of Alderman; or (2) 90% of all homes
have been constructed and the corresponding Final Occupancy Permits have been issued (the
"Maintenance Period"). To cover ongoing obligations during building construction, the
DEVELOPER may choose to retain the Subdivision Improvements Maintenance Deposit with
the City until 100% build out or instead use the Individual Lot Deposit for the final 10% of
homes constructed or those constructed more than 12 months after Dedication; 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 "Subdivision Improvements Maintenance Deposit") payable to the CITY and guaranteeing the maintenance 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 Subdivision Improvements Maintenance Deposit shall equal to 5% of the *estimated* costs of the construction, completion, and installation of the Subdivision Improvements ("ESTIMATED COSTS") as set forth on the Costs Estimate Sheet attached as Exhibit 1. The CITY and DEVELOPER agree that the Subdivision Improvements Maintenance Deposit shall guarantee the 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. During the Maintenance Period the DEVELOPER shall be responsible for the replacement or repair of any deficient or defective Subdivision Improvements including, but not limited to, broken, failing, displaced, or settling street slabs, sanitary sewers, storm sewers, leaking water mains, or other failures of constructed Improvements as well as any broken, failing, and or damaged subdivision amenities. This maintenance shall also include, but is not limited to, repairs or replacements to address damage to streets, street signs, fire hydrants, manholes, subdivision amenities or other public Improvements that may occur due to vehicular traffic, construction equipment, or other construction activities as well as abatement of nuisances caused by or related to such Improvements, such as removal of mud and debris from streets, erosion control, grass cutting, removal of construction materials (except materials to be used for construction or as otherwise permitted). The DEVELOPER must provide a minimum of twenty-four hours (24) notice prior to beginning any maintenance work during this Maintenance Period so that a City Representative may be present to verify that all work is completed in accordance with the approved improvement plans and all City Standards. The Subdivision Improvements Maintenance Deposit will be subject to withdrawal by the City to reimburse or defray the cost of maintenance that may be assumed by the Department. However, except in emergency circumstances or when action is required before written notice can be provided, the Director of Public Works shall provide the DEVELOPER with a written notice and the opportunity to complete the work prior to any work being completed by the Department.

3. After the construction of all homes is complete and issuance of final occupancy permits, the Director of Public Works will cause a final inspection to be made of the required

Subdivision Improvements and Subdivision amenities. If there are no outstanding maintenance items or other deficiencies found and all other obligations are shown to be satisfied on inspection thereof, or at such time thereafter as any maintenance, defects or deficiencies are corrected with the permission of, and within the time allowed by, the Director of Public Works, then the maintenance deposit and obligations shall then be released. This release shall in no way be construed to release any person from any civil liability that may exist for or waive any right of the CITY to pursue a remedy for any defects or damages caused by any construction, improvement or development for which any deposit has been released.

4. 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 Subdivision Improvements Maintenance 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.

5. The CITY and DEVELOPER hereby accept this Agreement as a lawful and satisfactory agreement between the parties and agree to be fully bound by its terms. The CITY and DEVELOPER further acknowledge that all necessary approvals and authorizations have been obtained by their governing boards or officers to enter into this 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)
)
COUNTY OF ST. CHARLES) ss:

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