

**AGREEMENT
GUARANTEEING GRADING, SEDIMENT AND EROSION CONTROL
BEST MANAGEMENT PRACTICES**

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 grading of a tract of land to be known as _____ (hereinafter referred to as the "Site") and simultaneously herewith is receiving approval of them, and

WHEREAS, the Stormwater Pollution Prevention Plans ("SWPPP") have been submitted to the CITY together with the estimated costs of construction, installation and completion of the Sediment and Erosion Control, all in accordance with the CITY's Erosion and Sediment Control regulations; and

WHEREAS, the City Code, Section 515.010: GENERAL PROVISIONS, requires the DEVELOPER to file a performance guarantee with the CITY, in a form acceptable to the CITY, and in an amount to ensure performance of any obligations of the DEVELOPER to perform all work as shown upon the Erosion Control Plan, and

WHEREAS, the DEVELOPER desires to establish the performance 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 (\$_____.____) payable to the CITY and guaranteeing the

construction, installation, maintenance, and completion of all required Site Grading, Sediment and Erosion Control Best Management Practices (the "Site BMPs"), all in accordance with the plans approved by the CITY and on file with the Director of Public Works (the "SWPPP") 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 cost estimate for Sediment and Erosion Control ("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 Site BMPs. The CITY and DEVELOPER agree that the DEPOSIT shall guarantee the construction, installation, completion and maintenance of the required Site BMPs in the Site, 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 Site BMPs in accordance with the Approved SWPPP and CITY's Engineering Design Criteria document and Standard Specifications and Construction Details document 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 Site BMPs 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 Site BMPs, 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 ten (10) days or does not request a hearing from the CITY within that time, the Site shall be deemed in default and/or abandoned as set forth in paragraph 6.

4. The DEVELOPER guarantees: (a) that all required Site BMPs will be installed, constructed and completed in accordance with the Approved SWPPP, the City of Wentzville Engineering Construction Specifications document and Standard Specification and Construction Details document, 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 Site, 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 final site stabilization; 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 installation of all Site BMPs the DEVELOPER shall first make written request for inspection. 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 Site BMPs reflected in the AGREEMENT that are to be included in the inspection, as well as a statement from the Developer that the Site BMPs in the request are properly constructed and installed to the satisfaction of, and with no Deficiencies as determined by, the City.

(c) Upon request, the CITY will release ninety percent (90%) of the original DEPOSIT AMOUNT provided all Site BMPs are in installed per the Approved SWPPP and to the satisfaction of, and with no Deficiencies as determined by, the City.

(d) IN NO EVENT SHALL the CITY be required to release, disburse or otherwise dispose of more than a portion of the original DEPOSIT AMOUNT which results in the remaining performance guarantee amount being less than the ESTIMATED COSTS, until the CITY has certified as provided herein that all grading activities are completed and final stabilization has occurred.

(e) Prior to the City's final release of the remaining 10%, the Site must reach final stabilization. The Site may not be deemed complete until there is a certification by the CITY that (1) through the inspection process the CITY has determined that the Site has reached final stabilization; (2) the DEVELOPER is not in default or breach of any obligation to the City under this Section including, but not limited to, the results of the above mentioned process including the inspection and document review have been approved in writing by the Director.

6. In the event the DEVELOPER shall be in default or abandon the Site, or fail to complete the obligations herein, including, but not limited to, the failure to complete the Site BMPs 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 Site BMPs, it is not required to do so and it may pursue other remedies against DEVELOPER to ensure that DEVELOPER or its successor completes the Site BMPs. 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 sediment and erosion control measures, and no limitation of any kind shall be implied from the line item calculations of separate sediment and erosion control measures. 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.

7. 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 515, 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.

8. 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