

**AGREEMENT
GUARANTEEING INSTALLATION
OF SUBDIVISION WATER QUALITY/POST-CONSTRUCTION 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 Water Quality/Post-Construction Improvements, all in accordance with the CITY's subdivision regulations; and

WHEREAS, the establishment of a guarantee of completion and maintenance of the Subdivision Water Quality/Post-Construction Improvements is required as a condition of the final plat or improvement dedication for the Subdivision; and

WHEREAS, the DEVELOPER desires to establish the Subdivision Water Quality/Post Construction Improvement guarantee in the form of this Agreement and accompanying DEPOSIT Guarantee which shall secure completion and maintenance of such improvements until final acceptance; 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 Water Quality/Post-Construction Improvements, all in accordance with the plans approved by the CITY and on file with the Public Works Director (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 Water Quality/Post-Construction Improvements ("ESTIMATED COSTS") as set forth on the Costs Estimate Sheet attached as Exhibit 1. The DEVELOPER agrees that it continues to be obligated to complete and guarantee completion of all Subdivision Water Quality/Post-Construction Improvements. The CITY and DEVELOPER agree that the DEPOSIT shall guarantee the construction, installation, completion and maintenance of the required Water Quality/Post-Construction 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 installation of the water quality Improvements upon completion of the build out of a minimum of 90% of lots in the subdivision's watershed that are tributary to each water quality improvement or as approved by the Director of Public Works. The required water quality features may include but are not limited to plantings, filters and forebays.

3. Water Quality/Stormwater Post-Construction Guarantee Deposit Release - Upon the DEVELOPER'S request, the Director of Public Works shall cause a final inspection to be made of the required water quality Improvements. Funds shall only be released when BMP and drainage area vegetation are stabilized and there are no defects or deficiencies found and all other obligations are shown to be satisfied upon inspection thereof, or at such time thereafter as any defects or deficiencies are cured under the supervision of, and within the time allowed by the Director of Public Works and provided that the Director of Public Works has received an acceptable maintenance agreement from the homeowner's association or property owner(s) ensuring the future maintenance of the water quality Improvements. In no case will the DEPOSIT be released prior to development of at least 90% of the subdivision's watershed that is tributary to each water quality improvement.

4. 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 or the failure to properly maintain the Subdivision Water Quality/Post-Construction Improvements, including keeping said 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 Water Quality/Post-Construction Improvements or otherwise rectify the DEVELOPER's failure hereunder. Although the CITY may use such funds to complete the Subdivision Water Quality/Post-Construction 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 Water Quality/Post-Construction 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.

5. 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.

6. 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