

**DEPOSIT AGREEMENT GUARANTEEING SITE PLAN IMPROVEMENTS WITH CASH ESCROW**

THIS DEPOSIT AGREEMENT GUARANTEEING SITE PLAN IMPROVEMENTS WITH CASH ESCROW (the "AGREEMENT") is made and entered into as of the \_\_\_\_day of \_\_\_\_\_20\_\_ by and among \_\_\_\_\_, herein called DEVELOPER, and the CITY OF COTTLEVILLE, MISSOURI, a city of the fourth class in St. Charles County, Missouri, herein called CITY.

WHEREAS, the DEVELOPER has submitted a SITE PLAN to the CITY for the development of certain real property known as \_\_\_\_\_ (the "SITE"), and has requested approval of the same by the City; and

WHEREAS, the SITE PLAN has been approved by the City's Planning and Zoning Commission and all inspection fees owed to the City have been paid; and

WHEREAS, the development plans for the SITE have been approved by the CITY's Planning and Zoning Commission and/or the DIRECTOR OF PUBLIC WORKS, and the DEVELOPER has engaged a qualified, licensed engineer to reasonably estimate and determine that the cost of construction, installation and completion of the improvements of the aforesaid SITE (the "IMPROVEMENTS") to be the sum of \_\_\_\_\_ DOLLARS, (\$ \_\_\_\_\_), and the DIRECTOR OF PUBLIC WORKS has approved the aforesaid estimated cost of construction; and

WHEREAS, the DEVELOPER is seeking the CITY's approval of a construction permit; and

WHEREAS, the CITY's Municipal Code requires that the DEVELOPER must establish a satisfactory security to guaranty the satisfactory construction of the IMPROVEMENTS;

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

**IT IS HEREBY MUTUALLY AGREED:**

1. That the DEVELOPER hereby deposits with the Treasurer of the CITY, the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), in lawful money of the United States of America, called CONSTRUCTION DEPOSIT, with the CITY, as a deposit guaranteeing the construction, installation and completion of the IMPROVEMENTS required by the approved SITE PLAN together with the cost of restoration of the Site in case of failure of the DEVELOPER to complete the IMPROVEMENTS so approved once land disturbance has commenced, all in accordance with the ordinances of the CITY regulating the same, and timely payment of CITY engineering inspections of the SITE, and a separate deposit the sum of \_

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), in lawful money of the United States of America, called MAINTENANCE DEPOSIT, with the CITY, as a deposit guaranteeing maintenance, repair and replacement, if necessary of all IMPROVEMENTS required by the approved SITE PLAN, together with the cost of restoration of the SITE in case of failure of the DEVELOPER to maintain the IMPROVEMENTS so approved once land disturbance has commenced, all in accordance with the ordinances of the CITY regulating the same, both deposits being for the IMPROVEMENTS shown on the approved SITE PLAN approved by the DIRECTOR OF PUBLIC WORKS.

2. That all invoices for CITY engineering inspections shall be paid by the DEVELOPER within thirty (30) days of the date of the invoice.

3. That the CONSTRUCTION DEPOSIT and the MAINTENANCE DEPOSIT will be held by the CITY in two separate interest-bearing deposit accounts, with all interest accruing to the CITY to offset administrative and other costs of maintaining the deposit accounts.

4. That the CONSTRUCTION DEPOSIT shall guarantee the timely construction, installation and completion of the IMPROVEMENTS required by the approved Site Plan, and shall be in the amount of one hundred ten percent (110%) of the DIRECTOR OF PUBLIC WORKS' estimate of the cost of the construction, completion and installation of the IMPROVEMENTS, dated \_\_\_\_\_, a copy of which is attached hereto and made a part hereof as Exhibit "A", and as per plans and specifications for the SITE which have been filed with CITY and approved by the DIRECTOR OF PUBLIC WORKS on \_\_\_\_\_, all of which are also made a part hereof as though set forth herein word for word as Exhibit "B".

5. That the MAINTENANCE DEPOSIT shall guarantee the maintenance and repair, if necessary, of all IMPROVEMENTS associated with the SITE, and shall be in the amount of ten percent (10%) of the DIRECTOR OF PUBLIC WORKS' estimate of the cost of the construction, completion and installation of the IMPROVEMENTS, dated \_\_\_\_\_, a copy of which is attached hereto and made a part hereof as Exhibit "A".

6. That in the event the CONSTRUCTION DEPOSIT is insufficient to complete the IMPROVEMENTS and/or guarantee timely payment for CITY engineering inspections of the SITE, or the MAINTENANCE DEPOSIT is insufficient for the maintenance and repair obligations of the DEVELOPER, the DEVELOPER will deposit with the CITY such additional sums in lawful money of the United States of America as will be required to complete the IMPROVEMENTS and guarantee timely payment of CITY engineering inspections, or to fulfill the maintenance obligations of the DEVELOPER, of the aforesaid development/subdivision; said additional sums shall also be subject to the terms of this DEPOSIT AGREEMENT.

7. That, except as otherwise provided in this Section, the DEVELOPER guarantees that all required IMPROVEMENTS, as shown on the approved SITE PLAN, which have not been installed to date, will be installed, constructed and completed within two (2) years from date of the issuance by the CITY of a construction permit therefore ("COMPLETION DATE"), and the DEVELOPER shall appoint a qualified, licensed engineer to supervise the construction, installation and completion of the IMPROVEMENTS, as shown on the approved SITE PLAN, and shall furnish to the CITY upon the completion of the IMPROVEMENTS a Certificate of Completion by said appointed engineer. Certificate of Completion shall be in the form attached hereto as Exhibit "C". If,

after the COMPLETION DATE, all the IMPROVEMENTS have not been completed, the DEVELOPER may request in writing, and the DIRECTOR OF PUBLIC WORKS has the discretion to grant, an extension to the COMPLETION DATE for a period of up to two (2) years if, after review by the DIRECTOR OF PUBLIC WORKS, such longer period is deemed reasonably necessary to facilitate adequate and coordinated provisions for transportation, water, sewerage, schools, parks, playgrounds or other public IMPROVEMENTS, facilities or requirements so long as all guarantees are extended and approved by the CITY Attorney. The DIRECTOR OF PUBLIC WORKS, in his/her sole discretion, may require, as a condition of the extension, execution of a new DEPOSIT AGREEMENT, recalculation of deposit amounts or satisfaction of new code requirements or other reasonable conditions as may be needed to ensure compliance with Section 410.330 of the CITY's Municipal Code.

8. Due to the costs of administering this AGREEMENT and compliance with changing State regulations relating thereto, the DEVELOPER shall pay the CITY upon execution of this AGREEMENT an additional fee of five hundred dollars (\$500.00) that shall be used by the CITY to defray costs of administration, legal review, procedural changes, and other costs not otherwise reimbursed to the CITY resulting from the CITY's acceptance of this AGREEMENT. The DEVELOPER shall be obligated to reimburse the CITY for any additional costs, including, but not limited to, reasonable attorneys' fees, above such deposited fee arising in any way from the CITY's acceptance of this AGREEMENT, in lieu of completion of the IMPROVEMENTS. The DEVELOPER may request a refund of any principal amounts of any initial or supplemented deposit above the costs attributable to the development during the period of the escrow by written request made within thirty (30) days after the DEVELOPER has received CITY approval of the IMPROVEMENTS.

9. That prior to a request for deposit release, the DEVELOPER shall submit a written request for inspection of the IMPROVEMENTS for which the deposit is being held. In the event CITY determines that any of the IMPROVEMENTS are deficient in any respect, CITY will issue a written notice to DEVELOPER specifying the deficiency(s) ("DEFAULT NOTICE"). If DEVELOPER has not, within fifteen (15) days after the date on which such DEFAULT NOTICE is received by DEVELOPER, begun and pursued, with all best efforts, correction of all deficiency(s) noted, then CITY may without any further notice to DEVELOPER, withdraw such amount from the appropriate Deposit Account as CITY reasonably deems necessary to correct such deficiency(s) or to protect CITY from damages resulting from such deficiency(s).

10. That the DEVELOPER shall submit a written request for approval of release of the CONSTRUCTION DEPOSIT as to all or any part of the DEVELOPER'S obligation only after construction, completion and installation of some phase of work on the IMPROVEMENTS as indicated on the approved SITE PLAN, receipt of the requisite written notification from the appropriate inspecting public authority, and approval by the DIRECTOR OF PUBLIC WORKS and only in the amounts permitted herein.

11. That after an inspection of the IMPROVEMENTS, the Board of Aldermen of the CITY may, upon a recommendation from the DIRECTOR OF PUBLIC WORKS, release up to ninety-five percent (95%) of the CONSTRUCTION DEPOSIT for the IMPROVEMENTS. Irrespective of any discretionary prior releases that may be authorized by the DIRECTOR OF PUBLIC WORKS after completion of any component of the guaranteed IMPROVEMENTS (i.e., less than all of the IMPROVEMENTS in a given category), the remaining amount held for any category of

IMPROVEMENTS for the entire subdivision shall be released within thirty (30) days of completion of all of the IMPROVEMENTS in such category of IMPROVEMENTS, minus a retention of five percent (5%) which shall be released only upon completion of all IMPROVEMENTS for the subdivision. The DIRECTOR OF PUBLIC WORKS shall establish the Improvement categories, which may consist of Improvement components or line items, to be utilized for calculation of deposit amounts, but such categories, components, and line items shall in no way modify or reduce the DEVELOPER's obligations hereunder as to all required IMPROVEMENTS, irrespective of any release or completion of any category, or underlying component or line item. All IMPROVEMENTS in a category shall be deemed complete only when:

- a. Each and every component and line item within a category for the entire subdivision has been constructed and completed as required,
- b. The DEVELOPER has notified the DIRECTOR OF PUBLIC WORKS in writing of the completion of all components of the category, provided all necessary or requested documentation, and requests an inspection,
- c. The DEVELOPER is not in default or in breach of any obligation to the CITY including, but not limited to, the DIRECTOR OF PUBLIC WORKS' demand for maintenance or for deposit of additional sums for the subdivision, and
- d. The inspection has been completed and the results of the inspection have been approved in writing by the DIRECTOR OF PUBLIC WORKS.

12. That the DEVELOPER shall continue to be responsible for defects, deficiencies and damage to public streets and other required IMPROVEMENTS during development of the subdivision. No inspection approval or release of funds from the CONSTRUCTION DEPOSIT as to any component or category shall be deemed to be CITY approval of IMPROVEMENTS or otherwise release the DEVELOPER of its obligation relating to the completion of the IMPROVEMENTS until the final subdivision release on all IMPROVEMENTS and maintenance is issued declaring that all IMPROVEMENTS have in fact been constructed as required. Inspection and approval of CONSTRUCTION DEPOSIT release, or any partial releases, of any or all required IMPROVEMENTS shall not constitute acceptance of the IMPROVEMENTS by the CITY as a public improvement for which the CITY shall bear any responsibility or be deemed to have accepted for maintenance.

13. That no approval of required IMPROVEMENTS shall be granted for IMPROVEMENTS that fail to meet the specifications established herein, by CITY ordinance, or otherwise adopted by the DIRECTOR OF PUBLIC WORKS.

14. That upon final inspection and approval of all IMPROVEMENTS, the remaining amount of the CONSTRUCTION DEPOSIT shall be released; provided, that no such funds shall be released on a final inspection until the development of the subdivision is complete as determined by the DIRECTOR OF PUBLIC WORKS.

15. That upon commencement of installation of the IMPROVEMENTS within the subdivision, the DEVELOPER shall be responsible for maintenance of the IMPROVEMENTS, including undeveloped lots, streets, sidewalks, common areas and storm and drainage facilities, until

the sooner of the (1) expiration of eighteen (18) months after acceptance for public dedication of the specific IMPROVEMENT by the CITY or (2) expiration of eighteen (18) months after occupancy permits have been issued on ninety-five percent (95%) of all of the lots in the subdivision plat(s) subject to this DEPOSIT AGREEMENT. Maintenance shall include repair or replacement of all defects, deficiencies and damage to the IMPROVEMENTS that may exist or arise, abatement of nuisances caused by such IMPROVEMENTS, removal of mud and debris from construction, erosion control, grass cutting, removal of construction materials (except materials to be used for construction on the lot or as permitted by site plan) and street de-icing and snow removal. All repairs and replacement shall comply with CITY specifications and standards. Any maintenance on IMPROVEMENTS accepted by the CITY for public dedication shall be completed under the supervision of and with the prior written approval of the DIRECTOR OF PUBLIC WORKS. The maintenance obligation for required IMPROVEMENTS to existing public roads or other existing public infra-structure already maintained by a public governmental entity shall terminate on and after the date such IMPROVEMENTS have been inspected, deposit released and accepted by the Governing Body of the governmental entity for dedication. Irrespective of other continuing obligations, the DEVELOPER's street de-icing and snow removal obligations shall terminate on the date a street is accepted by the CITY for public maintenance.

16. That the MAINTENANCE DEPOSIT shall be retained by the CITY to guarantee maintenance and/or repair and replacement of the required IMPROVEMENTS and shall be subject to the immediate order of the DIRECTOR OF PUBLIC WORKS to defray or reimburse any cost to the CITY of maintenance or repair of IMPROVEMENTS related to the subdivision which the DEVELOPER fails or refuses to perform. Such costs shall include off-site damage caused by deficiencies in the IMPROVEMENTS or failure of maintenance. Except in emergency circumstances or where action is otherwise required before written notice can be provided, the DIRECTOR OF PUBLIC WORKS shall provide the DEVELOPER with a written demand and opportunity to perform the maintenance before having such maintenance performed by the CITY. The DIRECTOR OF PUBLIC WORKS shall have the authority to require the maintenance deposit to be replaced or replenished by the DEVELOPER in any form permitted for an original deposit where the amount remaining is determined to be insufficient or where the maintenance deposit was already drawn upon by the CITY for maintenance, repair or replacement.

17. That in determining the amount of MAINTENANCE DEPOSIT that shall continue to be held, portions of the deposit amount that were attributable to IMPROVEMENTS that have been accepted by any third party governmental entity or utility legally responsible for the maintenance of the IMPROVEMENT may be released upon such acceptance of the IMPROVEMENT by the entity. The DIRECTOR OF PUBLIC WORKS may approve such further releases if it is determined in his/her discretion, after inspection of the IMPROVEMENTS, that the total maintenance amount retained is clearly in excess of the amount necessary for completion of the maintenance obligation, after all reasonable contingencies are considered.

18. That upon expiration of the maintenance obligations established herein, the DIRECTOR OF PUBLIC WORKS shall cause a final inspection to be made of the required IMPROVEMENTS. Funds shall then be released if there are no defects or deficiencies found and all other obligations are shown to be satisfied on inspection thereof or at such time thereafter as any defects or deficiencies are cured with the permission of and within the time allowed by the DIRECTOR OF PUBLIC WORKS. This release shall in no way be construed to indemnify or release

any person from any civil liability that may exist for defects or damages caused by any construction, IMPROVEMENT or development for which any deposit has been released.

19. The DIRECTOR OF PUBLIC WORKS shall inspect each category of IMPROVEMENTS or utility work within twenty (20) business days after a request for such inspection has been filed with the DIRECTOR OF PUBLIC WORKS by the DEVELOPER and no inspection shall be required until such request is received by the DIRECTOR OF PUBLIC WORKS. For purposes of this Section, an "inspection request" shall constitute and occur only on a completed written request on a form that shall include:

- a. The category of IMPROVEMENTS reflected in this DEPOSIT AGREEMENT that is requested to be inspected; and
- b. A verified statement from the representative officer of the DEVELOPER attesting that the information in the inspection request is true and accurate.

Nothing herein shall preclude the DIRECTOR OF PUBLIC WORKS from completing additional inspections at its discretion or as a courtesy to the DEVELOPER.

20. That the obligation of the DEVELOPER to construct, complete, install and maintain the IMPROVEMENTS indicated on the approved SITE PLAN and provide for street maintenance shall not cease until the DEVELOPER shall be finally released by the DIRECTOR OF PUBLIC WORKS, nor shall this DEPOSIT AGREEMENT be assignable by DEVELOPER. Furthermore, in the event of default, abandonment, or failure of the DEVELOPER to complete the IMPROVEMENTS, no other person, firm, entity shall acquire (whether by contract, judicial foreclosure or other means) any rights to the remaining escrow funds as a developer without entering into a separate deposit agreement with the CITY. If, after the COMPLETION DATE or after a later period as extended pursuant to Section 7, the IMPROVEMENTS are not constructed, completed, installed, accepted and maintained as required or if the DEVELOPER shall violate any provision of the DEPOSIT AGREEMENT, the DIRECTOR OF PUBLIC WORKS may notify the DEVELOPER to show cause within not less than ten (10) days why the DEVELOPER should not be declared in default. Unless good cause is shown, no building or other permit shall be issued to the DEVELOPER in the subdivision during any period in which the DEVELOPER is in violation of the DEPOSIT AGREEMENT or Chapter 410 of the Municipal Code. If the DEVELOPER fails to cure any default or present a compelling reason why no default should be declared, the DIRECTOR OF PUBLIC WORKS shall declare the DEVELOPER in default and may take any one (1) or more of the following acts:

- a. Deem the balance under the DEPOSIT AGREEMENT not theretofore released as forfeited to the CITY, to be then placed in an appropriate trust and agency account subject to the order of the DIRECTOR OF PUBLIC WORKS for such purposes as letting contracts to bring about the completion or maintenance of the IMPROVEMENTS indicated on the approved SITE PLAN or other appropriate purposes in the interest of the public safety, health and welfare; or
- b. Require the DEVELOPER or surety to pay to the CITY the balance of the surety not theretofore released; or

c. Require the DEVELOPER to submit an additional cash sum sufficient to guarantee the completion or maintenance of the IMPROVEMENTS indicated on the approved SITE PLAN after recalculation in order to allow for any inflated or increased costs of constructing or maintaining the IMPROVEMENTS.

The failure of a DEVELOPER to complete the IMPROVEMENTS within the time provided by this DEPOSIT AGREEMENT (or any extension granted by the CITY), and including the payment of funds to the CITY due to such failure, shall be deemed an automatic act of default entitling the CITY to all remedies provided in Section 410.330 of the Municipal Code without further or prior notice. It shall be the sole responsibility of the DEVELOPER to timely request an extension of any DEPOSIT AGREEMENT if the IMPROVEMENTS are not completed in the original time period provided by the DEPOSIT AGREEMENT and no right to any extension shall exist or be assumed.

21. That if the DEVELOPER or surety fails to comply with the DIRECTOR OF PUBLIC WORKS' requirements for payment as described above or fails to complete the IMPROVEMENTS or otherwise violates the DEPOSIT AGREEMENT provisions and there is a risk that development will continue in the subdivision without the timely prior completion of IMPROVEMENTS or compliance with DEPOSIT AGREEMENT provisions, the DIRECTOR OF PUBLIC WORKS may in addition or alternatively to other remedies:

a. Suspend the right of the DEVELOPER to build or construct on the UNDEVELOPED PORTION of the subdivision. For the purpose of this Subsection the UNDEVELOPED PORTION of the subdivision means all lots other than lots which have been sold for personal use and occupancy or are under bona fide contract for sale to any person for personal use or occupancy. The DIRECTOR OF PUBLIC WORKS shall give the DEVELOPER ten (10) days' written notice of an order under this Subsection with copies to all sureties, as appropriate, who have outstanding obligations for any UNDEVELOPED PORTION of the subdivision and shall record an affidavit of such notice with the Recorder of Deeds. If, within the ten (10) day period after notice is given, the DIRECTOR OF PUBLIC WORKS is not convinced by compelling evidence that completion of the IMPROVEMENTS is adequately assured and maintenance of streets assured as provided herein, the DIRECTOR OF PUBLIC WORKS shall order construction suspended on the UNDEVELOPED PORTION of the subdivision. The order shall be served upon the DEVELOPER with a copy to the issuer of the surety, as appropriate, and a copy recorded with the Recorder of Deeds. The notice shall contain the following minimum language, which may be supplemented at the discretion of the DIRECTOR OF PUBLIC WORKS.

1. If said notice is for a Site or subdivision:

THIS SUBDIVISION, (name of subdivision), HAS BEEN DECLARED IN DEFAULT BY THE CITY OF COTTLEVILLE DIRECTOR OF PUBLIC WORKS. NO DEVELOPMENT, CONSTRUCTION, BUILDING OR DEMOLITION IN ANY MANNER SHALL TAKE PLACE WITHIN THE LIMITS OF THIS SUBDIVISION UNTIL SUCH TIME AS THE CITY OF COTTLEVILLE DIRECTOR OF PUBLIC WORKS REMOVES THIS PROHIBITION. ANY DEVELOPMENT, CONSTRUCTION, BUILDING OR DEMOLITION IN ANY MANNER WHILE THIS PROHIBITION IS IN EFFECT IS ILLEGAL AND SHALL BE ENFORCED PURSUANT TO CHAPTER 410 OF THE MUNICIPAL CODE OF THE CITY OF COTTLEVILLE.

2. If said notice is for a lot:

THIS LOT, (lot number), HAS BEEN DECLARED IN DEFAULT BY THE CITY OF COTTLEVILLE DIRECTOR OF PUBLIC WORKS. NO DEVELOPMENT, CONSTRUCTION, BUILDING OR DEMOLITION IN ANY MANNER SHALL TAKE PLACE WITHIN THE LIMITS OF THIS LOT UNTIL SUCH TIME AS THE CITY OF COTTLEVILLE DIRECTOR OF PUBLIC WORKS REMOVES THIS PROHIBITION. ANY DEVELOPMENT, CONSTRUCTION, BUILDING OR DEMOLITION IN ANY MANNER WHILE THIS PROHIBITION IS IN EFFECT IS ILLEGAL AND SHALL BE ENFORCED PURSUANT TO CHAPTER 410 OF THE MUNICIPAL CODE OF THE CITY OF COTTLEVILLE, MISSOURI.

The DIRECTOR OF PUBLIC WORKS shall not thereafter authorize construction, building or demolition activity to take place contrary to the DIRECTOR OF PUBLIC WORKS' order. The suspension shall be rescinded in whole or in part only when the DIRECTOR OF PUBLIC WORKS is convinced that completion of the IMPROVEMENTS is adequately assured in all or an appropriate part of the subdivision and a guarantee of public street maintenance has been provided; or

b. Suspend the rights of the DEVELOPER or any RELATED ENTITY to construct structures in any development platted after the effective date of such suspension throughout CITY of Cottleville and such incorporated areas as are under CITY's jurisdiction. The DIRECTOR OF PUBLIC WORKS shall give the DEVELOPER ten (10) days' written notice of an order under this clause with a copy to sureties known to the DIRECTOR OF PUBLIC WORKS to have obligations outstanding on behalf of the DEVELOPER or RELATED ENTITIES and shall record an affidavit of such notice with the Recorder of Deeds. If, within the ten (10) day period after notice is given, the DIRECTOR OF PUBLIC WORKS is not convinced by compelling evidence that completion of the IMPROVEMENTS is adequately assured and maintenance of streets assured as provided herein, the DIRECTOR OF PUBLIC WORKS shall order construction suspended. The order shall be served upon the DEVELOPER, and a copy recorded with the Recorder of Deeds. The DIRECTOR OF PUBLIC WORKS shall not thereafter authorize construction, building or demolition activity to take place contrary to the DIRECTOR OF PUBLIC WORKS' order. The suspension shall be rescinded only when the DIRECTOR OF PUBLIC WORKS is convinced that completion of the IMPROVEMENTS is adequately assured and public street maintenance as assured. A DEVELOPER is a RELATED ENTITY of another person:

1. If either has a principal or controlling interest in the other; or
2. If any person, firm, corporation, association, partnership or other entity with a controlling interest in one has a principal or controlling interest in the other.

22. That if DEVELOPER or any RELATED ENTITY is in default, as determined by the DIRECTOR OF PUBLIC WORKS, the rights of the DEVELOPER or any RELATED ENTITY to receive development approval, which approval shall include, but not be limited to, approval of any plat or DEPOSIT AGREEMENT for new or further development in the CITY, shall be suspended. The suspension shall be rescinded only when the DIRECTOR OF PUBLIC WORKS is convinced that completion and maintenance of the IMPROVEMENTS is adequately assured.



23. That if DEVELOPER or any RELATED ENTITY fails to comply with any obligation of this DEPOSIT AGREEMENT, the DIRECTOR OF PUBLIC WORKS may recommend that the CITY Attorney take appropriate legal action and may also withhold any building or occupancy permits to DEVELOPER or RELATED ENTITIES until such compliance is cured. The CITY shall also have the right to partially or wholly remedy DEVELOPER's deficiencies or breached obligations by set-off of any funds or assets otherwise held by the CITY of the DEVELOPER to the maximum extent permitted by law. Such set-off shall occur upon written notice of such event by the DIRECTOR OF PUBLIC WORKS to the DEVELOPER after the DEVELOPER has failed to timely cure the deficiencies. The DEVELOPER shall pay the CITY's costs, including reasonable attorney's fees, of enforcing this DEPOSIT AGREEMENT in the event that the DEVELOPER is judicially determined to have violated any provision of this DEPOSIT AGREEMENT.

24. In addition to all other remedies available hereunder, in the event that the DEVELOPER shall abandon the development of the SITE or fail to timely complete the IMPROVEMENTS, whichever shall occur first, the CITY may thereafter complete, or have completed, said IMPROVEMENTS and may apply the remaining CONSTRUCTION DEPOSIT therefor. DEVELOPER further agrees to indemnify and hold harmless the CITY from and of any and all costs and expenses incurred by the CITY in completing the IMPROVEMENTS.

25. In addition to all other remedies available hereunder, in the event that the DEVELOPER shall abandon the development of the SITE or fail to maintain the IMPROVEMENTS, whichever shall occur first, the CITY may thereafter maintain, repair or replace the IMPROVEMENTS and may apply the remaining MAINTENANCE DEPOSIT therefor. DEVELOPER further agrees to indemnify and hold harmless the CITY from and of any and all costs and expenses incurred by the CITY in maintaining and/or repairing and replacing the IMPROVEMENTS.

26. That the CITY hereby accepts this DEPOSIT AGREEMENT as a satisfactory DEPOSIT AGREEMENT under the provisions and any requirements of the CITY's Municipal Code.

IN WITNESS WHEREOF, THE PARTIES hereunto have set their hands and seals.

\_\_\_\_\_  
DEVELOPER

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name Title

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Telephone Facsimile



**Exhibit "A"**

[ATTACH APPROVED COST ESTIMATE]

**Exhibit "B"**

[ATTACH OR REFERENCE PLANS AND SPECIFICATIONS FOR SITE PLAN]

**Exhibit "C"**

**CERTIFICATE OF COMPLETION**

Project Name: \_\_\_\_\_

City of Cottleville Project Number: \_\_\_\_\_

I certify that all engineering designs and construction work on the above-listed development have been completed in accordance with City of Cottleville, Missouri, Municipal Code and the site improvement construction plans approved by the Director of Public Works.

I further certify that the construction of improvements has been completed to acceptable tolerances, and any variations from the originally approved construction plans are noted in the "as-built" plans that have been provided to the City of Cottleville, Missouri, for above-listed development.

\_\_\_\_\_  
Project Engineer (printed)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Telephone Facsimile



