

**DEPOSIT AGREEMENT FOR MAINTENANCE OF SITE PLAN IMPROVEMENTS  
WITH CASH ESCROW**

This Deposit Agreement for Maintenance of Site Plan Improvements with Cash Escrow (the "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of St. Peters, Missouri, a city of the fourth class in St. Charles County, Missouri, herein called City, and \_\_\_\_\_, a Missouri \_\_\_\_\_, herein called Developer.

WITNESSETH:

WHEREAS, Developer has submitted a Site Plan to the City for the development of certain real property known as \_\_\_\_\_ ("Site"); 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, in accordance with the provisions of Section 405.460 F. Public Improvements Installed or Guaranteed in all Zoning Districts of the St. Peters City Code, the City Engineer has estimated the cost of construction, installation, and completion of all Improvements required by the approved Site Plan, together with the cost of restoration of the Site in the case of failure of the Developer to complete the Improvements so approved once land disturbance has commenced, to be \$ \_\_\_\_\_; and

WHEREAS, Section 405.460 F. Public Improvements Installed or Guaranteed in all Zoning Districts of the St. Peters City Code requires that a "maintenance deposit shall be established prior to the final construction deposit release;" and

WHEREAS, Section 405.460 F. further provides that the maintenance deposit "shall be in the amount of fifteen percent (15%) of the City Engineer's estimate of the cost of the construction, completion and installation of the required Improvements, plus 100% of the Restoration Sum."

NOW, THEREFORE, in consideration of the covenants, promises, and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Developer agree as follows:

1. The Developer hereby deposits with the Treasurer of the City, to be held in an interest-bearing account dedicated for that purpose, with all interest accruing to the City to offset administrative and other costs of maintaining such cash deposit, the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in lawful money of the United States of America, herein called the "Maintenance Deposit", guaranteeing the maintenance and repair 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.

2. The Maintenance Deposit guarantees the maintenance and repair, if necessary, of all Improvements required by the approved Site Plan in accordance with the report of the City Engineer dated \_\_\_\_\_, a copy of which is attached hereto and made a part hereof as Exhibit No. 1, and as per plans and specifications set forth on the approved Site Plan which have been filed with City and approved on \_\_\_\_\_, all of which are also made a part hereof as though set forth herein word for word as Exhibit No. 2.

3. In the event the Maintenance Deposit is insufficient to maintain and repair, if necessary, the Improvements, the Developer will deposit with the City an additional Maintenance Deposit in such amount that will be required to maintain or repair the Improvements, said additional Maintenance Deposit to be subject to the terms of this Agreement.

4. Maintenance Guarantee.

(a) Scope and duration. Upon commencement of installation of the required Improvements within the subject Site, the Developer shall be responsible for the maintenance of all required Improvements, including undeveloped lots, streets, sidewalks, common areas, and storm and drainage facilities, until the sooner of: (1) the expiration of twelve (12) months after final release of the construction deposit by the City, or (2) expiration of twelve (12) months after occupancy permits have been issued on ninety-five percent (95%) of the Site or ninety-five percent (95%) of all of the lots in the subdivision plat(s) subject to the construction deposit agreement, whichever is earlier. 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. 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, and dedication and maintenance of the Improvements has been accepted by the Board of Alderman. 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.

(b) Maintenance deposit--amount--use.

1. The maintenance deposit shall be retained by the City to guarantee maintenance and/or repair and replacement of the required Improvements and, in addition to being subject to the remedies of Subsection (6) below and other remedies set forth in this Agreement or the St. Peters City Code, shall be subject to the immediate order of the City Engineer to defray or reimburse any cost to the City of maintenance or repair and replacement of Improvements related to the Site or 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 and repair or replacement. Except in emergency circumstances or where action is

otherwise required before written notice can be provided, the City Engineer shall provide the Developer with a written demand and opportunity to perform the maintenance, repair or replacement, before having such work performed by the City. The City Engineer 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.

2. In determining the amount of the maintenance deposit that shall continue to be held, portions of the deposit amount that are attributable to Improvements that have been accepted for maintenance 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 that entity.

(c) Final maintenance deposit release. Upon expiration of the maintenance obligations established herein, the City Engineer 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 City Engineer. 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.

(d) Appeals. If the Developer believes that a release or certificate of completion has been improperly denied, an appeal shall be filed pursuant to Section 405.800-405.810 of the St. Peters City Code, and no such denial shall be deemed final until such appeal procedure has been exhausted.

5. Inspections. The City Engineer shall inspect each category of Improvement within twenty (20) business days after a request for such inspection has been filed with the City Engineer by the Developer, and no inspection shall be required until such request is received by the City Engineer. For purposes of this Section, an "inspection request" shall constitute and occur only on a completed written request form that shall include:

(a) The category of Improvement reflected in this Agreement that is requested to be inspected;

(b) A certification from a professional engineer registered in the State of Missouri that the category of Improvement has been installed and is being maintained in conformance with the final approved Site Plan and all applicable requirements thereto, and is therefore ready for inspection; and

(c) A verified statement from a representative officer of the Developer attesting that the information in the inspection request is true and accurate.

Nothing herein shall preclude the City Engineer from completing additional inspections at his or her discretion or as a courtesy to the Developer.

6. Failure to Maintain Improvements. The obligations of the Developer to maintain the required Improvements indicated on the approved Site Plan shall not cease until the Developer shall be finally released by the City Engineer and accepted for maintenance by the City, nor shall any deposit agreements or obligations hereunder be assignable or transferable by Developer. Furthermore, in the event of a default, abandonment, or failure of the Developer to maintain, repair or replace the Improvements, no other person, firm, entity shall acquire (whether by contract, judicial foreclosure or other means) any rights to any remaining Deposits or deposit agreements of the Developer without entering into a new, separate deposit agreement with the City. If, after the Improvement maintenance period, the Improvements indicated on the approved Site Plan have not been maintained and accepted for maintenance by the City as required, or if the Developer shall violate any provision of this Agreement, the City Engineer 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 for the Site during any period in which the Developer is in violation of this Agreement or Sections 405.570-405.705 of the St. Peters City Code relating to the Site. If the Developer fails to cure any default or present compelling reasons in the opinion of the City Engineer why no default should be declared, the City Engineer shall declare the Developer in default and may take any one (1) or more of the following acts:

(a) Deem the balance of the Maintenance Deposit under this Agreement, not theretofore released, as forfeited to the City, to be then placed in an appropriate trust account subject to the order of the City Engineer for such purposes as letting contracts to bring about the repair or replacement of the Improvements required on the approved Site Plan or other appropriate purposes in the interest of the public safety, health and welfare; and

(b) Require the Developer to submit an additional sum sufficient to maintain, repair and replace, if necessary, the Improvements indicated on the approved Site Plan after recalculation in order to allow for any inflated or increased costs of maintaining, repairing or replacing the Improvements.

Anything to the contrary contained in this Agreement notwithstanding, the failure of the Developer to maintain, repair or replace the Improvements during the time provided by this Agreement including the payment of additional funds to the City to maintain, repair or replace the Improvements, shall be deemed an automatic act of default entitling the City to all remedies provided in this Agreement without further or prior notice. If the Improvements are not maintained in the original time period provided by this Agreement, no right to any extension shall exist or be assumed.

7. Other Remedies for Default. If the Developer fails to comply with the City Engineer's requirements for payment as described above, fails to maintain, repair or replace the Improvements as required, or otherwise violates this Agreement's provisions, and there is a risk that development will continue in the subdivision or on the Site without the maintenance, repair

or replacement of all required Improvements or compliance with any Agreement provisions, the City Engineer may, with the City Administrator's approval, in addition or alternatively to other remedies:

(a) Suspend the right of anyone to build or construct on the Site or any undeveloped portion thereof. For the purpose of this Subsection the "undeveloped portion" of a Site means for a subdivision all lots other than lots which have been sold for use and occupancy or are then under bona fide contract for sale to any person for use or occupancy. The City Engineer shall give the Developer ten (10) days' written notice of an order under this Subsection, 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 City Engineer is not convinced by compelling evidence that maintenance, repair or replacement of the Improvements is adequately assured as provided herein, the City Engineer shall order construction suspended on the Site or the undeveloped portion of the subdivision. The order shall be served upon the Developer, and a copy recorded with the Recorder of Deeds. Public notice of said order shall be conspicuously and prominently posted by the City Engineer at the Site or subdivisions or lots subject to said order. The notice shall contain the following minimum language, which may be supplemented at the discretion of the City Engineer.

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

THIS [SITE] SUBDIVISION, (name of [site] subdivision), HAS BEEN DECLARED IN DEFAULT BY THE CITY OF ST. PETERS CITY ENGINEER. NO DEVELOPMENT, CONSTRUCTION, BUILDING OR DEMOLITION IN ANY MANNER SHALL TAKE PLACE WITHIN THE LIMITS OF THIS [SITE] SUBDIVISION UNTIL SUCH TIME AS THE CITY OF ST. PETERS CITY ENGINEER 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 THE PROVISIONS OF THE ST. PETERS CITY CODE.

2. If said notice is for a lot:

THIS LOT, (lot number), HAS BEEN DECLARED IN DEFAULT BY THE CITY OF ST. PETERS CITY ENGINEER. 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 ST. PETERS CITY ENGINEER 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 THE PROVISIONS OF THE ST. PETERS CITY CODE.

The City shall not thereafter authorize construction, building or demolition activity to take place contrary to the City Engineer's order. The suspension shall be rescinded in whole or in part only when the City Engineer is convinced that timely maintenance, repair or replacement of the Improvements is adequately assured in all or an appropriate part of the Site or subdivision; or

(b) Suspend the rights of the Developer, or any related entity, to construct structures in any Development preliminarily platted after the effective date of such suspension throughout City of St. Peters. The City Engineer shall give the Developer ten (10) days' written notice of an order under this clause, 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 City Engineer is not convinced by compelling evidence that timely maintenance, repair or replacement of the Improvements is adequately assured as provided herein, the City Engineer shall order construction suspended. The order shall be served upon the Developer, and a copy recorded with the Recorder of Deeds. The City shall not thereafter authorize construction, building or demolition activity to take place contrary to the City Engineer's order. The suspension shall be rescinded only when the City Engineer is convinced that timely maintenance, repair or replacement of the Improvements is adequately assured.

8. Additional Remedies. If the Developer fails to comply with any of its obligations under this Agreement, the City Engineer may, with the City Administrator's approval, recommend that the City's Special Counsel take appropriate legal action and may also withhold any building or occupancy permits to a Developer or related entities until such compliance is cured. The City shall also have the right to partially or wholly remedy a Developer's deficiencies or breached obligations under this Agreement by set-off against 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 City Engineer 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 Agreement in the event that the Developer is judicially determined to have violated any provision herein. The Developer may appeal any decision taken pursuant to this Section by filing an appeal under Section 405.800-405.810 of the St. Peters City Code.

9. Related Entities. For purposes of this Agreement, a "related entity" has the following meaning: a Developer is a "related entity" of another person:

(a) If either has a controlling interest in the other, or

(b) If any person, firm, corporation, association, partnership, or other entity with a controlling interest in one has controlling interest in the other.

The identification of related entities may be supported by documentation from the Missouri Secretary of State's Office, Jefferson City, Missouri.

10. Draw on Maintenance Deposit. 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.

11. The City hereby accepts this Agreement as a satisfactory escrow agreement under the provisions and requirements of Section 407.460 F. of the St. Peters City Code.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands as of the date first written above.

Developer:

\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, President

STATE OF MISSOURI            )  
                                          ) ss.  
COUNTY OF ST. CHARLES    )

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

IN TESTIMONY 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:

CITY OF ST. PETERS, MISSOURI,  
A Municipal Corporation

By \_\_\_\_\_  
City Engineer

SEAL

By \_\_\_\_\_  
City Administrator

Attest:

\_\_\_\_\_  
City Clerk

STATE OF MISSOURI            )  
                                          ) ss.  
COUNTY OF ST. CHARLES    )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that she is the City Engineer of the City of St. Peters, Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and that said instrument was signed and sealed in behalf of said City, by authority of its Board of Aldermen; and said City Engineer acknowledged said instrument to be the free act and deed of said City.

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

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF MISSOURI                    )  
                                                  ) ss.  
COUNTY OF ST. CHARLES            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he is the City Administrator of the City of St. Peters, Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and that said instrument was signed and sealed in behalf of said City, by authority of its Board of Aldermen; and said City Administrator acknowledged said instrument to be the free act and deed of said City.

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

\_\_\_\_\_  
Notary Public

My Commission Expires:

EXHIBIT NO. 1

[ATTACH CITY ENGINEER REPORT]

EXHIBIT NO. 2

[ATTACH OR REFERENCE PLANS AND SPECIFICATIONS FOR SITE PLAN]