

Dardenne Prairie Project Number: _____

**DEPOSIT AGREEMENT GUARANTEEING LAND DISTURBANCE IMPROVEMENTS
WITH CASH**

THIS DEPOSIT AGREEMENT GUARANTEEING IMPROVEMENTS WITH CASH (the "AGREEMENT") made and entered into as of the _____ day of _____, 20__ by and among _____, herein called PERMITTEE, and the CITY OF DARDENNE PRAIRIE, MISSOURI, herein called CITY.

WHEREAS, the PERMITTEE has submitted a LAND DISTURBANCE PERMIT APPLICATION 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 STORM WATER POLLUTION PREVENTION PLAN (the "SWPPP") has been approved by the City Engineer and all inspection fees owed to the City have been paid; and

WHEREAS, the performance guarantee has be determined from the estimated land disturbance acreage rounded up to the nearest tenth (0.1) of an acre times the cost per acre according to the CITY's "Land Disturbance Acreage/Cost per Acre" schedule or the PERMITTEE has engaged a qualified, licensed engineer to reasonably estimate and determine that the cost of all erosion and sediment controls and other proposed construction items of the aforesaid SWPPP (the "IMPROVEMENTS") to be the sum of _____ DOLLARS (\$ _____) "ENGINEER'S ESTIMATE", and the CITY Engineer has approved the aforesaid estimated cost of erosion and sediment control and other construction costs; and

WHEREAS, the PERMITEE is seeking the CITY's approval of a land disturbance permit; and

WHEREAS, the CITY's Municipal Code requires that the PERMITTEE must establish a satisfactory security to guaranty the satisfactory construction of the IMPROVEMENTS pursuant to the SWPPP including revegetation of the SITE;

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

IT IS HEREBY MUTUALLY AGREED:

1. That the PERMITTEE hereby deposits with the City Treasurer the sum of _____

_____ DOLLARS (\$ _____), in lawful money of the United States of America, called CONSTRUCTION DEPOSIT, with the CITY, guaranteeing the construction, installation and completion of the IMPROVEMENTS of the aforesaid SWPPP together with the cost of restoration of the SITE in case of failure of the PERMITTEE 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, together with the cost of restoration of the SITE in case of failure of the PERMITTEE 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 SWPPP.

2. That all invoices for CITY engineering inspections shall be paid by the PERMITTEE 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 associated with the SWPPP, and shall be in the amount of one hundred ten percent (110%) of the CITY Engineer's 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 the SWPPP for the SITE which has been filed with CITY and approved by the CITY Engineer 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 SWPPP, and shall be in the amount of ten percent (10%) of the CITY Engineer's 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 PERMITTEE, the PERMITTEE 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 PERMITTEE, of the aforesaid SWPPP; said additional sums shall also be subject to the terms of this DEPOSIT AGREEMENT.

7. That, except as otherwise provided in this Section, the PERMITTEE guarantees that all required IMPROVEMENTS, 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 land disturbance permit therefore ("COMPLETION DATE"), and the PERMITTEE shall appoint a qualified, licensed engineer to supervise the construction, installation and completion of the IMPROVEMENTS 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 PERMITTEE may request in writing, and the CITY Engineer has the discretion to grant, an extension to the COMPLETION DATE for a period of up to two (2) years if the CITY Engineer reasonably determines that the extension is necessary to facilitate adequate and coordinated provisions for the proposed IMPROVEMENTS, facilities or requirements so long as all deposit agreements are extended and approved by the CITY Attorney. The CITY Engineer, 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 the CITY's Municipal Code.

8. Due to the costs of administering this DEPOSIT AGREEMENT and compliance with State regulations relating thereto, the PERMITTEE shall pay the CITY upon execution of this DEPOSIT 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 DEPOSIT AGREEMENT. The PERMITTEE 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 DEPOSIT AGREEMENT.

9. That prior to a request for deposit release, the PERMITTEE 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 PERMITTEE specifying the deficiency(s) ("DEFAULT NOTICE"). If PERMITTEE has not, within fifteen (15) days after the date on which such DEFAULT NOTICE is received by PERMITTEE, begun and pursued, with all best efforts, correction of all deficiency(s) noted, then CITY may without any further notice to PERMITTEE, 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 PERMITTEE shall submit a written request for approval of release of the CONSTRUCTION DEPOSIT as to all or any part of the PERMITTEE's obligation only after construction, completion and installation of some phase of work on the IMPROVEMENTS indicated on the approved SWPPP, receipt of the requisite written notification from the appropriate inspecting public authority, and approval by the CITY Engineer.

11. That after an inspection of the IMPROVEMENTS, the Board of Aldermen of the CITY may, upon a recommendation from the CITY Engineer, release up to ninety-five percent (95%) of the CONSTRUCTION DEPOSIT for the IMPROVEMENTS. Irrespective of any discretionary prior releases that may be authorized 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 SWPPP 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 SWPPP. The CITY Engineer 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 PERMITTEE'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 SWPPP has been constructed and completed as required,
- b. The PERMITTEE has notified the CITY Engineer in writing of the completion of all components of the category, provided all necessary or requested documentation, and requests an inspection,
- c. The PERMITTEE is not in default or in breach of any obligation to the CITY including, but not limited to, the CITY Engineer's demand for maintenance or for deposit of additional sums for execution of the SWPPP, and
- d. The inspection has been completed and the results of the inspection have been approved in writing by the CITY Engineer.

12. That the PERMITTEE shall continue to be responsible for defects, deficiencies and damage to public streets and other required IMPROVEMENTS during execution of the SWPPP. 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 PERMITTEE of its obligation relating to the completion of the IMPROVEMENTS until the final release on all IMPROVEMENTS and maintenance is issued declaring that all IMPROVEMENTS have in fact been constructed as required. Inspection, approval CONSTRUCTION DEPOSIT release, or any partial releases, of any or all required IMPROVEMENTS shall not constitute acceptance of the IMPROVEMENTS by the CITY.

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 CITY Engineer.

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 execution of the SWPPP is complete as determined by the CITY Engineer.

15. That upon commencement of installation of the IMPROVEMENTS within the SITE, the PERMITTEE shall be responsible for maintenance of the IMPROVEMENTS 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 execution of the SWPPP as permitted by SWPPP). 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 CITY Engineer. 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 by the City Engineer and deposit released by the Governing Body.

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 CITY Engineer to defray or reimburse any cost to the CITY of maintenance or repair of IMPROVEMENTS related to the SWPPP which the PERMITTEE 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 CITY Engineer shall provide the PERMITTEE with a written demand and opportunity to perform the maintenance before having such maintenance performed by the CITY. The CITY Engineer shall have the authority to require the maintenance deposit to be replaced or replenished by the PERMITTEE 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. The CITY Engineer 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, and after the CITY has received written request for final inspection from the PERMITTEE, 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.

19. The CITY Engineer shall inspect each category of IMPROVEMENTS within twenty (20) business days after a request for such inspection has been filed with the CITY Engineer by the PERMITTEE, 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 DEPOSIT 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 SWPPP and all applicable requirements thereto, and is therefore ready for inspection; and

(c) A verified statement from a representative officer of the PERMITTEE 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 PERMITTEE.

20. That the obligation and rights of the PERMITTEE to construct, complete, install and maintain the IMPROVEMENTS indicated on the approved SWPPP shall not cease until the PERMITTEE shall be finally released by the CITY Engineer, nor shall this DEPOSIT AGREEMENT be assignable or transferable by PERMITTEE. Furthermore, in the event of a default, abandonment, or failure of the PERMITTEE to timely complete 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 PERMITTEE without entering into a new, separate deposit agreement with the CITY. If, after the COMPLETION DATE or after a later period as extended pursuant to Section 8, the IMPROVEMENTS are not constructed, completed, installed, accepted and maintained as required or if the PERMITTEE shall violate any provision of the DEPOSIT AGREEMENT, the CITY Engineer must notify the PERMITTEE to show cause within not less than ten (10) days why the PERMITTEE should not be declared in default. Unless good cause is shown, no construction or other permit shall be issued to the PERMITTEE for the SITE during any period in which the PERMITTEE is in violation of the DEPOSIT AGREEMENT or the Municipal Code. If the PERMITTEE fails to cure any default or present a compelling reason why no default should be declared, the CITY Engineer shall declare the PERMITTEE 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 CITY Engineer for such purposes as letting contracts to bring about the completion or maintenance of the IMPROVEMENTS indicated on the approved SWPPP or other appropriate purposes in the interest of the public safety, health and welfare; or

b. Require the PERMITTEE, letter of credit provider or surety to pay to the CITY the balance of the surety not theretofore released; or

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

The failure of a PERMITTEE 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 410.130 of the Municipal Code without further or prior notice. It shall be the sole responsibility of the PERMITTEE 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 PERMITTEE or surety fails to comply with the CITY Engineer's 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 construction will continue on the SITE without the timely prior completion of IMPROVEMENTS or compliance with DEPOSIT AGREEMENT provisions, the CITY Engineer may in addition or alternatively to other remedies:

a. Suspend the right of the PERMITTEE to build or construct on the SITE. The CITY Engineer shall give the PERMITTEE ten (10) days' written notice of an order under this Subsection with copies to all sureties, as appropriate, who have outstanding obligations for any portion of the SITE 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 completion of the IMPROVEMENTS is adequately assured as provided herein, the CITY Engineer shall order construction suspended on the SITE. The order shall be served upon the PERMITTEE 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 CITY Engineer.

THIS SITE, HAS BEEN DECLARED IN DEFAULT BY THE CITY OF DARDENNE PRAIRIE CITY ENGINEER. NO DEVELOPMENT, CONSTRUCTION, BUILDING OR DEMOLITION IN ANY MANNER SHALL TAKE PLACE WITHIN THE LIMITS OF THIS SITE UNTIL SUCH TIME AS THE CITY OF DARDENNE PRAIRIE 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 MUNICIPAL CODE OF THE CITY OF DARDENNE PRAIRIE.

The City shall not thereafter authorize construction, building or demolition activity to take place on the SITE 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 completion of the IMPROVEMENTS is adequately assured in all or an appropriate part of the SWPPP has been provided; or

b. Suspend the rights of the PERMITTEE or any RELATED ENTITY to construct structures in any development platted after the effective date of such suspension throughout CITY of Dardenne Prairie and such incorporated areas as are under CITY's jurisdiction. The CITY Engineer shall give the PERMITTEE ten (10) days' written notice of an order under this clause with a copy to any sureties known to the CITY Engineer to have obligations outstanding on behalf of the PERMITTEE 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 CITY Engineer is not convinced by compelling evidence that completion of the IMPROVEMENTS is adequately assured as provided herein, the CITY Engineer shall order construction on the SITE suspended. The order shall be served upon the PERMITTEE, and a copy recorded with the Recorder of Deeds. The CITY shall not thereafter authorize construction, building or demolition activity to take place on the SITE contrary to the CITY

Engineer's order. The suspension shall be rescinded only when the CITY Engineer is convinced that completion of the IMPROVEMENTS is adequately assured. A PERMITTEE 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 PERMITTEE or any RELATED ENTITY is in default, as determined by the CITY Engineer, the rights of the PERMITTEE 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 CITY Engineer is convinced that completion and maintenance of the IMPROVEMENTS is adequately assured.

23. That if PERMITTEE or any RELATED ENTITY fails to comply with any obligation of this DEPOSIT AGREEMENT, the CITY Engineer may recommend that the CITY Attorney take appropriate legal action and may also withhold any building or occupancy permits to PERMITTEE or RELATED ENTITIES until such compliance is cured. The CITY shall also have the right to partially or wholly remedy PERMITTEE's deficiencies or breached obligations by set-off of any funds or assets otherwise held by the CITY of the PERMITTEE to the maximum extent permitted by law. Such set-off shall occur upon written notice of such event by the CITY Engineer to the PERMITTEE after the PERMITTEE has failed to timely cure the deficiencies. The PERMITTEE shall pay the CITY's costs, including reasonable attorney's fees, of enforcing this DEPOSIT AGREEMENT in the event that the PERMITTEE 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 PERMITTEE 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. PERMITTEE 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 PERMITTEE shall abandon the diligent pursuit of completing the IMPROVEMENTS of the SWPPP or fail to maintain, repair or replace the IMPROVEMENTS, the CITY may thereafter maintain, repair or replace said IMPROVEMENTS and may apply the remaining MAINTENANCE DEPOSIT. PERMITTEE further agrees to indemnify and hold harmless the CITY from and of any and all costs and expenses incurred by the CITY in maintaining, repairing or 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.

APPROVED BY:

City Engineer (printed)

Signature

Date

Mayor (printed)

Signature

Date

Attest:

City Clerk (printed)

Signature

Date

EXHIBIT A

[ATTACH APPROVED COST ESTIMATE]

EXHIBIT NO. B

[ATTACH OR REFERENCE SWPPP FOR SITE]

Title of SWPPP: _____

Prepared by: _____

Dated: _____

With the Latest Revision Date: _____

