

Dardenne Prairie Project Number: \_\_\_\_\_

**DEPOSIT AGREEMENT GUARANTEEING IMPROVEMENTS  
WITH LETTER OF CREDIT**

THIS DEPOSIT AGREEMENT GUARANTEEING IMPROVEMENTS WITH LETTER OF CREDIT (the "AGREEMENT") made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and among \_\_\_\_\_, herein called DEVELOPER, and the CITY OF DARDENNE PRAIRIE, 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 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 CITY Engineer 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 City an irrevocable standby letter of credit in substantially the form attached hereto and marked as Exhibit No. 1, with such other terms as approved by the City Engineer, in favor of City for 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 development/subdivision 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, 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.

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 associated with the SITE, 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 2, and as per the SITE PLAN 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 3.

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 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 2.

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, 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 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 4.

8. The CITY Engineer may reduce the obligation secured under the letter of credit upon completion, inspection and approval by the CITY Engineer of all required IMPROVEMENTS within a category of IMPROVEMENTS, or as work may occur from time to time on specific IMPROVEMENTS and is completed, inspected and approved, provided however, that:

(a) The CITY shall release or reduce the letter of credit 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 and receipt of requisite written notification from the CITY Engineer, but only in the amounts permitted herein.

(b) If, after the COMPLETION DATE, all the IMPROVEMENTS have not been completed, the DEVELOPER 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 transportation, water, sewerage, schools, parks, playgrounds or other public 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 Section 410.130 of the CITY's Municipal Code.

9. The DEVELOPER hereby represents and warrants to the CITY that the letter of credit deposited is not drawn on any financial institution where the DEVELOPER or a related person, directly or indirectly, voluntarily or involuntarily, owns, operates, controls through stock ownership or otherwise, or has become employed by, advises, consults with or represents in any capacity, such financial institution; provided however, nothing contained herein shall be construed to prohibit the DEVELOPER from (i) investing in any such financial institution, so long as he does not own or control ten percent (10%) or more of such financial institution's ownership interests, or ten percent (10%) or more of any class of securities of such financial institution, provided when the DEVELOPER is a financial institution, it may issue its own letter of credit. The letter of credit shall provide that the issuing institution will pay, on demand, to the CITY such amounts as the CITY may require to fulfill the DEVELOPER's obligations herein, as the same may be reduced from time to time in writing by the CITY Engineer. The letter of credit shall be irrevocable for least one (1) year, and shall state that any balance remaining at its expiration shall automatically be deposited in cash with the Treasurer of the CITY, unless a new letter of credit is issued and agreed to by the CITY or the CITY issues to the financial institution a written release of the obligations for which the letter of credit was deposited. The DEVELOPER shall pay a non-refundable fee of two hundred dollars (\$200.00) to the CITY with submission of an initial letter of credit and one hundred dollars (\$100.00) for any amendment or extension thereto, to partially reimburse the CITY's administration and review costs in accepting and maintaining such letter of credit.

10. Due to the costs of administering this DEPOSIT AGREEMENT and compliance with

State regulations relating thereto, the DEVELOPER 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 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 DEPOSIT AGREEMENT in lieu of completion of IMPROVEMENTS prior to recording the Record Plat.

11. 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).

12. 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 indicated on the approved SITE PLAN, receipt of the requisite written notification from the appropriate inspecting public authority, and approval by the CITY Engineer.

13. 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 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 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 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 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 DEVELOPER 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 the subdivision, and
- d. The inspection has been completed and the results of the inspection have been approved in writing by the CITY Engineer.

14. 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, approval 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.

15. 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.

16. 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 CITY Engineer.

17. 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 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, 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.

18. 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 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 CITY Engineer shall provide the DEVELOPER 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 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.

19. 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 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.

20. That 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.

21. 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 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 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.

22. That the obligation and rights 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 CITY Engineer, nor shall this DEPOSIT AGREEMENT be assignable or transferable by DEVELOPER. Furthermore, in the event of a default, abandonment, or failure of the DEVELOPER 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 DEVELOPER 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 DEVELOPER shall violate any provision of the DEPOSIT AGREEMENT, the CITY Engineer must 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 CITY Engineer 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 CITY Engineer 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, letter of credit provider 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 or an expiration of a letter of credit, 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 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.

23. That if the DEVELOPER or letter of credit provider 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 development will continue in the subdivision 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 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 CITY Engineer shall give the DEVELOPER ten (10) days' written notice of an order under this Subsection with copies to all letter of credit providers, 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 CITY Engineer is not convinced by compelling evidence that completion of the IMPROVEMENTS is adequately assured and maintenance of streets assured as provided herein, the CITY Engineer 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 letter of credit, 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.

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 DARDENNE PRAIRIE 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 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 CHAPTER 410 OF THE MUNICIPAL CODE OF THE CITY OF DARDENNE PRAIRIE.

2. If said notice is for a lot:

THIS LOT, (lot number), 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 LOT 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 CHAPTER 410 OF THE MUNICIPAL CODE OF THE CITY OF DARDENNE PRAIRIE.

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 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 Dardenne Prairie and such incorporated areas as are under CITY's jurisdiction. The CITY Engineer shall give the DEVELOPER ten (10) days' written notice of an order under this clause with a copy to any letter of credit providers known to the CITY Engineer 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 CITY Engineer is not convinced by compelling evidence that completion of the IMPROVEMENTS is adequately assured and maintenance of streets assured as provided herein, the CITY Engineer shall order construction suspended. The order shall be served upon the DEVELOPER, with a copy to the letter of credit providers as appropriate, 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 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.

24. That if DEVELOPER or any RELATED ENTITY is in default, as determined by the CITY Engineer, 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 CITY Engineer is convinced that completion and maintenance of the IMPROVEMENTS is adequately assured.

25. That if DEVELOPER, letter of credit provider 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 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 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 DEPOSIT AGREEMENT in the event that the DEVELOPER is judicially determined to have violated any provision of this DEPOSIT AGREEMENT.

26. 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 by delivering to the Letter of Credit Bank a Draw Request in the form of Exhibit 1, accompanied by its irrevocable letter of credit, any amendments thereto, and the appropriate signed form of certificate of drawing referenced therein. 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, including, but not limited to, the payment of any transfer charge of the Letter of Credit Bank in the event CITY should transfer its rights under the Letter of Credit to any transferee.

27. 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, repair or replace the IMPROVEMENTS, the CITY may thereafter maintain, repair or replace said IMPROVEMENTS and may apply the MAINTENANCE DEPOSIT therefor by delivering to the Letter of Credit Bank a Draw Request in the form of Exhibit 1, accompanied by its irrevocable letter of credit, any amendments thereto, and the appropriate signed form of certificate of drawing referenced therein. 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, repairing or replacing the IMPROVEMENTS, including, but not limited to, the payment of any transfer charge of the Letter of Credit Bank in the event CITY should transfer its rights under the Letter of Credit to any transferee.

28. 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.

29. In the event the IMPROVEMENTS are not completed prior to the expiration of the Letter of Credit, and the Letter of Credit has not been renewed, then the CITY shall make a Draw Request in the form of Exhibit B to Exhibit No. 1 attached hereto.

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

[remainder of this page intentionally left blank]

\_\_\_\_\_  
DEVELOPER

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Email Address

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

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Facsimile

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

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:

APPROVED BY:

---

City Engineer (printed)

---

Signature

Date

---

Mayor (printed)

---

Signature

Date

Attest:

---

City Clerk (printed)

---

Signature

Date

Exhibit No. 1

FORM OF LETTER OF CREDIT

\*\*\*NAME OF ISSUING BANK\*\*\*

\*\*\*Bank Address\*\*\*

\_\_\_\_\_, 20\_\_\_\_

IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_

City of Dardenne Prairie, Missouri  
City Hall  
2032 Hanley Road  
Dardenne Prairie, Missouri 63368  
Attn: City Administrator

Dear Sir:

We hereby establish in your favor, (upon the application of and) for the account of \*\*\*Account Party\*\*\*, \*\*\*Account Party Address\*\*\* (the "Account Party") our transferable irrevocable standby letter of credit (the "Letter of Credit") in the amount of \$ \_\_\_\_\_ (the "Maximum Available Credit"), subject to reduction as hereinafter set forth.

For information only: This letter of credit is issued with respect to a site in Dardenne Prairie, Missouri, known and numbered as \_\_\_\_\_ (the "Site").

Subject to all of the terms and conditions of this Letter of Credit, the Maximum Available Credit shall be made available to you by your draft(s) at sight drawn on us, accompanied by this letter of credit and any amendments thereto for presentation, and by the following documents:

1. Your signed certificate, in the form attached hereto as Exhibit A, dated not more than ten days prior to its presentation to us; or
2. Your signed certificate, in the form attached hereto as Exhibit B, dated not more than ten days prior to its presentation to us.

No draft will be paid if the amount thereof is in excess of the Maximum Available Credit hereunder as of the date such draft is to be paid.

Multiple drawings may be presented under this Letter of Credit, which, in the aggregate and subject to the limitations set forth herein, shall not exceed the Maximum Available Credit then in

effect and each such drawing honored by us hereunder shall reduce the Maximum Available Credit by the amount of such drawing. The draft(s) drawn under this Letter of Credit must be drawn and presented to our offices at \*\*\*Bank Address\*\*\*, Attention: \_\_\_\_\_ (or such other officer, department or address designated in writing by us to you at your address shown above or at such other address as you shall advise us of in writing) by hand delivery or by delivery by courier between 9:00 a.m. and 4:30 p.m. (St. Louis, Missouri time) on a Business Day. As used in this Letter of Credit, "Business Day" shall mean any day other than a Saturday, Sunday or a day on which banking institutions in the State of Missouri are authorized or required by law to close.

We hereby agree that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored by us upon delivery of any of the certificate(s) specified above and if presented at our aforesaid offices on or before the Expiration Date (as defined below).

If demand for payment is made hereunder in strict conformity with the terms and conditions of this Letter of Credit before 11:00 a.m. (St. Louis, Missouri time) on any Business Day, payment of the amount demanded shall be made in immediately available funds not later than 1:00 p.m. (St. Louis, Missouri time) on the third succeeding Business Day.

Payment under this Letter of Credit to you shall be made by wire transfer of immediately available funds per your instructions.

Only you or a transferee may make drawings under this Letter of Credit. Upon payment as provided above of the amount specified in a sight draft drawn hereunder, the Maximum Available Credit of the Letter of Credit shall be reduced by the amount of the payment.

If demand for payment does not conform to the terms and conditions of this Letter of Credit, we will promptly notify you thereof and of the reasons therefor, such notice to be promptly confirmed in writing to you, and we shall hold all documents at your disposal or return the same to you, if directed by you.

This Letter of Credit is effective immediately and expires on (the "Expiration Date") the earliest of (i) 4:00 p.m. (St. Louis, Missouri time) on \_\_\_\_\_, as such date may be extended as hereinafter provided, (ii) when you have drawn and we have paid to you the Maximum Available Credit of this Letter of Credit, or (iii) the day on which this Letter of Credit is surrendered to us for cancellation; provided, however, notwithstanding the termination by expiration of this Letter of Credit our payment obligation shall survive such expiration with respect to any sight drafts accompanied by a certificate in the form of Exhibit A or Exhibit B, as the case may be, presented to us for payment prior to the expiration of this Letter of Credit. It is a condition of this Letter of Credit that it shall be deemed automatically extended, without amendment for one year from the present or any future Expiry Date hereof and may not be surrendered to us for cancellation at any time, unless at least 60 days prior to any such date, we shall send you, in the form attached hereto as Exhibit C, notice that this Letter of Credit shall expire on the effective date contained in such notice.

Upon our receipt, from time to time, from you of a written reduction certificate in the form

attached as Exhibit D, we are authorized to reduce the Maximum Available Credit hereunder by the amount stated in such certificate, any such reduction to be effective only at our close of business on the date on which we receive such written reduction certificate.

This Letter of Credit shall be governed by the internal laws of the State of Missouri, but subject, however, to the Uniform Custom and Practices for Documentary Credits, 1993 Revision, International Chamber of Commerce Commission Publication No. 500, but excluding the provisions of Article 41 thereof.

Any communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at \*\*\*Bank Address\*\*\* Attention: \_\_\_\_\_, specifically referring thereon to Irrevocable Letter of Credit No. \_\_\_\_\_.

You may transfer your rights under this Letter of Credit in their entirety (but not in part) to any transferee. Transfer of your rights under this Letter of Credit to any such transferee shall be effected only upon the presentation to us of this Letter of Credit accompanied by a transfer letter in the form attached hereto as Exhibit E, and we consent to such transfer without charges or fees of any kind. Upon such transfer, the transferee shall have no further rights to transfer this Letter of Credit.

This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement. Exhibits A through E hereto are incorporated herein by reference as an integral part of this Letter of Credit.

Very truly yours,

\*\*\*NAME OF ISSUING BANK\*\*\*

By \_\_\_\_\_  
Authorized Officer

EXHIBIT A  
TO LETTER OF CREDIT  
FORM OF CERTIFICATE FOR "A" DRAWING

\_\_\_\_\_, 20\_\_\_\_

\*\*\*Name of Issuing Bank\*\*\*

\*\*\*Bank Address\*\*\*

Attention:

Re: Your Letter of Credit No. \_\_\_\_\_ in Favor of the City of Dardenne Prairie, Missouri for \_\_\_\_\_ (the "Site")

Gentlemen:

The undersigned, a duly authorized official of the City of Dardenne Prairie, Missouri (the "Beneficiary"), hereby certifies to \*\*\*Name of Issuing Bank\*\*\* (the "Bank"), with reference to Irrevocable Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit"; any capitalized terms used herein and not defined shall have their respective meanings as set forth in the said Letter of Credit) issued by the Bank in favor of the Beneficiary, that:

1. The Account Party has failed to complete all Site Improvements by \_\_\_\_\_.
2. The draft in the sum of \$ \_\_\_\_\_ accompanying this Certificate is not in excess of the Maximum Available Credit of the Letter of Credit and shall result in a reduction of the Maximum Available Credit of the Letter of Credit.

Transfer the funds as stated above to the credit of the City of Dardenne Prairie to: \*\*\*Name of City Depository\*\*\* for the account of ABA \_\_\_\_\_, Attention \_\_\_\_\_, Reference \_\_\_\_\_.

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this Certificate this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CITY OF DARDENNE PRAIRIE, MISSOURI

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

EXHIBIT B  
TO LETTER OF CREDIT  
FORM OF CERTIFICATE FOR "B" DRAWING

\_\_\_\_\_, 20\_\_

\*\*\*Name of Issuing Bank\*\*\*

\*\*\*Bank Address\*\*\*

Attention:

Re: Your Letter of Credit No. \_\_\_\_\_ in  
Favor of the City of Dardenne Prairie, Missouri for \_\_\_\_\_  
(the "Site")

Gentlemen:

The undersigned, a duly authorized official of the City of Dardenne Prairie, Missouri (the "Beneficiary"), hereby certifies to \*\*\*Name of Issuing Bank\*\*\* (the "Bank"), with reference to Irrevocable Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit"; any capitalized terms used herein and not defined shall have their respective meanings as set forth in the said Letter of Credit) issued by the Bank in favor of the Beneficiary, that:

1. The Expiration Date of the Letter of Credit is \_\_\_\_\_, and

EITHER

2. The Beneficiary has not received written notification of any amendment to the Letter of Credit which extends the Expiration Date,

OR

2. The Beneficiary has received written notification that the Letter of Credit will not be renewed.

3. The draft in the sum of \$ \_\_\_\_\_ accompanying this Certificate is not in excess of the Maximum Available Credit of the Letter of Credit, and shall result in a reduction of the Maximum Available Credit of the Letter of Credit.

Transfer the funds as stated above to the credit of the City of Dardenne Prairie to: \*\*\*Name of City Depository\*\*\* for the account of ABA \_\_\_\_\_, Attention \_\_\_\_\_, Reference \_\_\_\_\_.

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this Certificate this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CITY OF DARDENNE PRAIRIE, MISSOURI

By \_\_\_\_\_

City Engineer

EXHIBIT C  
TO LETTER OF CREDIT  
FORM OF NOTICE OF EXPIRATION

\_\_\_\_\_ , \_\_\_\_\_

City of Dardenne Prairie, Missouri  
City Hall  
2032 Hanley Road  
Dardenne Prairie, Missouri 63368  
Attention: City Engineer

Re: Our Letter of Credit No. \_\_\_\_\_ in Favor of the City of  
Dardenne Prairie, Missouri  
Amount:  
Expiration Date:  
For \_\_\_\_\_ (the "Site")

Gentlemen:

Please consider this letter as our notification that the above-referenced letter of credit will expire in full and finally on the above-mentioned date.

Very truly yours,

\*\*\*NAME OF ISSUING BANK\*\*\*

By \_\_\_\_\_  
Authorized Officer

cc: \*\*\*Account Party\*\*\*  
\*\*\*Account Party Address\*\*\*

EXHIBIT D  
TO LETTER OF CREDIT  
FORM OF REDUCTION CERTIFICATE

\_\_\_\_\_, 20\_\_

\*\*\*Name of Issuing Bank\*\*\*

\*\*\*Bank Address\*\*\*

Attention:

LETTER OF CREDIT NUMBER: \_\_\_\_\_

IN ORIGINAL AMOUNT OF: \$ \_\_\_\_\_

For \_\_\_\_\_ (the "Site")

Gentlemen,

This certificate authorizes reduction in the amount of \$ \_\_\_\_\_  
of the above Letter of Credit. The remaining maximum available credit for this Letter of Credit is  
\$ \_\_\_\_\_.

CITY OF DARDENNE PRAIRIE, MISSOURI

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

EXHIBIT E  
TO LETTER OF CREDIT  
FORM FOR FULL TRANSFER OF LETTER OF CREDIT

\_\_\_\_\_ , \_\_\_\_\_

\*\*\*Name of Issuing Bank\*\*\*

\*\*\*Bank Address\*\*\*

Attention:

Re: Your Letter of Credit No. \_\_\_\_\_ in Favor of the  
City of Dardenne Prairie, Missouri for \_\_\_\_\_  
\_\_\_\_\_ (the "Site")

Gentlemen:

The undersigned, City of Dardenne Prairie, Missouri ("Transferor") has transferred and assigned (and hereby confirms said transfer and assignment) all of its rights in and under the above-referenced Letter of Credit to (name and address of Transferee) ("Transferee"). Transferor confirms that it no longer has any rights under or interest in said Letter of Credit, and that you shall have no further responsibility to make payment under said Letter of Credit to Transferor.

Transferor hereby surrenders said Letter of Credit to you and requests that you note the transfer of said Letter of Credit and deliver the Letter of Credit, amended or endorsed to reflect said transfer, to Transferee.

CITY OF DARDENNE PRAIRIE, MISSOURI      (NAME OF TRANSFEEE)

By \_\_\_\_\_  
Name and Title of  
Authorized Official of  
Transferor

By: \_\_\_\_\_  
Name and Title of  
Authorized Officer of  
Transferee

EXHIBIT NO. 2

[ATTACH APPROVED COST ESTIMATE]

EXHIBIT NO. 3

[ATTACH OR REFERENCE PLANS AND SPECIFICATIONS FOR SITE]

Title of Plans: \_\_\_\_\_

Prepared by: \_\_\_\_\_

Dated: \_\_\_\_\_

With the Latest Revision Date: \_\_\_\_\_

EXHIBIT NO. 4

CERTIFICATE OF COMPLETION

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

City of Dardenne Prairie Project Number: \_\_\_\_\_

I certify that all engineering designs and construction work on the above-listed development have been completed in accordance with City of Dardenne Prairie, Missouri, codes and the site improvement construction plans approved by the City Engineer.

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 Dardenne Prairie, Missouri, for above-listed development.

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

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

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

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

