

# Subdivision and Public Improvement Guarantees:

## *Recent developments, statutory mandates, and practical measures to reduce risk*

PREPARED AND PRESENTED BY:

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Missouri statutes authorize cities to allow for guarantees “in lieu” of completing a project prior to plat approval and recording, but subject to specific procedural requirements and developer remedies. This outline summarizes the statutory requirements, recommended procedures to reduce risk and cost to municipalities, and proven strategies for improvement guarantee implementation.

### **I. IMPROVEMENT GUARANTEES – SUMMARY:**

#### **A. GENERAL.**

- (1). **Subdivision Improvement regulations.** R.S.Mo. § 89.410 authorizes regulations establishing conditions for street and utility improvements as a condition of subdivision platting. [See **ATTACHMENT 1.**] Other improvements commonly included in such regulations include conditions as to grading, erosion control, stormwater detention, street lights, street trees, commonground and other improvements -- both public and private— that reasonably relate to the authority provided in 89.410 to regulate subdivisions. Compliance with local improvement requirements are by statute a “condition precedent to the approval of the plat.” R.S.Mo. § 89.410.2.
- (2). **“In lieu” guarantees authorized but not required to be offered.** Cities may authorize improvement guarantees to be posted “in lieu” of immediate completion of the specified subdivision improvements. R.S.Mo. § 89.410.2. As such, guarantees are a convenience to the developer in that they allow for delay in completion of improvements that otherwise must be completed prior to recording of the plat. While guarantees are commonplace now, the practice in many locales historically, and still today in some locations has been to complete the roads, utilities and other improvements prior to recording the plat. Given that guarantees are a convenience for development not required by law, municipalities are certainly authorized to choose whether guarantees should be offered, and if so, what conditions should exist to ensure that the public does not bear the risk of unfinished or defective improvements.

- (3). **Benefits of Guarantees.** Guarantees “in lieu” of completion prior to plat recording may address the following concerns:
- (a). Risk of financial collapse of developer;
  - (b). Risk of faulty or defective work by developer;
  - (c). Need to promote development by increasing cash flow or liquidity of developer (where bond or letter of credit is used) otherwise required for upfront improvements; and
  - (d). Maintenance during and/or after construction.
- (4). **Risks.** The risks of using guarantees include, but are not limited to:
- (a). **Litigation costs and risks** – use of guarantees (versus requiring prior completion) imposes a greater risk of litigation and liability regarding compliance with statutory procedures, timing and amount of guarantee releases, and changed circumstances regarding the delayed improvements (changed standards, etc.);
  - (b). **Estimate Risks** – risk to public treasury where the guarantee amounts are insufficient and public funds may be needed to complete basic infrastructure; and
  - (c). **Administration costs** – legal and staff costs and public resources to negotiate, review, provide estimate amounts for and approve appropriate guarantees.

## II. TYPES OF IMPROVEMENT GUARANTEES.

### A. PURPOSE OF GUARANTEE: CONSTRUCTION V. MAINTENANCE OR OTHER BONDS.

- (1). **Subdivision Construction Escrows Must Comply with § 89.410 R.S.Mo.** Any escrow held by a city “to secure actual construction and installation of each component of the improvements” for subdivision related improvements must conform with the requirements of subsections 2 to 4 of § 89.410 R.S.Mo.
- (2). **Maintenance Bonds.** City is “within its authority under section 89.410 to require and hold separate maintenance deposits.” Home Builders Ass’n of Greater St. Louis, Inc. v. City of Wildwood (“HBA”), 107 S.W.3d 235 (Mo. 2003)(10% separate maintenance deposit upheld). Also, “[p]erformance, maintenance and payment bonds” are exempt from the requirements of subsections 2 to 4 of § 89.410 R.S.Mo. Typical maintenance periods range from 1 to 2 years from completion of improvements or build-out of subdivision. Maintenance guarantees in Missouri municipalities generally range from 10% to 50% of the improvement construction cost. Maintenance guarantees may include items such as grass cutting, removal of construction debris and mud, to more fundamental services such as snow removal until the streets or improvements are accepted for public maintenance.

- (3). **Performance and Payment Bonds.** Bonds ensuring payment to subcontractors (such as required by R.S.Mo. § 107.170), bid bonds, or other bonds not designed to secure the “actual construction” of subdivision improvements are exempt from the procedural requirements of R.S.Mo. § 89.410. See R.S.Mo. § 89.410.6
- (4). **Maintenance Guarantees unrelated to Subdivisions.** Independent of subdivision platting, cities may require maintenance of public improvements by utilities or others that use the Public right of way (“ROW”). Public ROW Guarantee (unrelated to subdivision) may be required. See R.S.Mo. § 67.1834.1 (“[e]very right-of-way user to whom a right-of-way permit has been granted **shall guarantee for a period of four years** the restoration of the right-of-way in the area where such right-of-way user conducted excavation and performed the restoration.”)

**B. CHOICE OF TYPES OF GUARANTEE METHOD.** Cash or letter of credit (“LOC”) must be offered “at option of Developer” if “in lieu” guarantees are authorized, while City “may” accept a surety bond. R.S.Mo. § 89.410.2.

- (1). **Letter of Credit.** Generally, a LOC is a commitment, usually from a bank, extending the issuer’s credit to honor drafts or other demands of payment upon full compliance with the terms and conditions in the letter of credit. LOC is typically an “irrevocable standby” letter of credit to ensure unconditional payment based on mere draw letter or other trigger event, without requirement for proof of a claim to a surety or fiduciary.
  - (a). **Traditional.** A traditional LOC requires any draw or payment demand to be made before the expiration of the term of the LOC. Failure to draw by the expiration voids the guarantee.
  - (b). **Autopay.** The LOC issuer (bank) is required to pay upon expiration of the LOC. The autopay provision shifts the risk of expiration away from cities and incentivizes developers to monitor completion of the improvements and securitization closely. [See form LOC – **ATTACHMENT 2**]
- (2). **Escrow Fund (Cash).** An escrow fund is an account established by contract for the purpose of holding funds on the behalf of a principal (primary party performing contractual obligation) until, for the benefit of an obligee, the consummation or termination of a transaction (i.e., completion of improvement). Escrow can be held by a third party or by the City directly. Provisions should be made for any interest to be paid to the City to cover administrative costs and risks.
- (3). **Surety Bond.** A surety bond is a guarantee in the form of a contract among at least three parties: the principal (primary party performing contractual obligation); the obligee (recipient party of the obligation); and the surety (third party guarantor of principal’s obligation).

- (a). **Structure.** The Deposit Agreement should be **expressly incorporated by reference into the bond.** Missouri courts have stated that “[i]t is well settled that matters incorporated into a contract by reference are as much as part of the contract as if set out in haec verba.” Trantham v. Old Republic Ins. Co., 797 S.W.2d 771, 774 (Mo.Ct.App. 1990) (where rental agreement referred to a specific statute).

### C. IMPLEMENTATION OF GUARANTEE.

- (1). **Amount of Guarantee.** The guarantee amount is based on the “actual construction and completion” of the improvements. The amount is to be based on a reasonable estimate which may include inflation and other unexpected costs (such as defects, repairs, etc.). HBA, 107 S.W. 3d 235 (Mo. Banc 2003) (110% of estimated actual construction costs upheld as permissible under R.S.Mo. § 89.410).
- (2). **Use of Deposit Agreement.** A Deposit Agreement is an agreement between a city and a developer governing the terms of the developer’s guarantee and the use and release procedures of the LOC, Bond or Escrow (“Security”). [See Sample – **ATTACHMENT 3**]
- (a). **Limits City Liability.** Contractually commits to lawfulness of the proposed guarantee and estoppel of claims against cities regarding the guarantee, deposit agreement or procedures implemented (subject of course to any superseding statutory provision).
- (b). **Enforcement costs** – may provide for attorneys fees or other remedies for breach of the guarantee or agreement.
- (c). **Clarification.** Defines and clarifies the “improvements” that are subject to the Security.
- (3). **Local Ordinance Procedures: “Other Reasonable Conditions.”** R.S.Mo. § 89.410.2 authorizes “other reasonable conditions” in bond requirements. *See also HBA*, 107 S.W.3d 235 (Mo. 2003). Such conditions or requirements to consider include:
- (a). **Multiple Plats.** Procedures for multiple plats to ensure that interconnected improvements apply to all plats;
- (b). **Administrative Costs.** Administrative costs, such as interest earned on cash escrows, fees for each LOC or Surety Bond to address review costs, etc.; and

- (c). **Estimate Forms/Categories.** Provide established “categories” to ensure that statutory releases are based on predetermined “categories” of improvements. Ensure that ordinance and deposit agreement guarantee all improvements irrespective of individual estimates assigned to each item of improvement. For example, street estimate of \$100,000 should not preclude use of more than \$100,000 from Guarantee fund if needed to complete the street at issue simply because that individual item exceeded the estimate for that item. [See **ATTACHMENT 4**]
- (4). **Release Procedures.** Section R.S.Mo. § 89.410.4 provides mandatory inspection and release procedures required to be in the ordinance establishing the guarantee process.
- (a). **Inspection Requirements.** Ordinances are required to provide for inspections to determine when improvements are complete. Upon request by the developer for an inspection of improvements, the city must inspect each category of work **within 20 days of request** for such inspection.

Cities should establish procedures and forms to provide certainty as to the process for inspection and release of funds. [See Sample Ordinance, **ATTACHMENT 5**]. Procedural requirements to consider include:

- (i). Establish written inspection request form [See **ATTACHMENT 6**];
- (ii). Require an engineering certificate certifying completion of the category requested to be inspected and released; and
- (iii). Require sworn statement or verification of developer confirming improvement completion per specifications and Deposit Agreement.
- (b). **Mandatory Releases.** Guarantee funds “shall be released within thirty days of completion of each **category** of improvement or utility work to be installed, minus a maximum retention of five percent.” R.S.Mo. § 89.410.4. Release effective when funds are “duly posted with the United States Postal Service” or other described methods. Id.
- (c). **Penalties and remedies.** If a city fails to timely inspect or release funds within thirty (30) days of improvement completion, statutory costs and penalties may result. Developers or owners are entitled to interest on unreleased escrow funds or bonds at the rate of one and one-half percent per month (or 18% annually). Also, costs of litigating the release of escrow funds or related litigation, including reasonable attorneys’ fees, may be recoverable by the “prevailing party or the city.” See R.S.Mo. § 89.410.5.

### III. RECENT CASE LAW.

**A. HBA V. CITY OF WILDWOOD.** Upheld City of Wildwood’s right to establish subdivision improvement construction escrows in amounts exceeding estimated total construction costs. A standard city may establish construction escrow in any reasonable amount, including amounts for inflation, prevailing wage or amounts sufficient to cover unexpected conditions. Specifically, 110% of construction cost estimate upheld. Also, held that maintenance bonds are exempt from 89.410 procedures and City had authority to require and hold separate maintenance guarantees (i.e., subdivision improvement construction escrow, separate maintenance bond, etc.). **HBA**, 107 S.W.3d 235 (Mo. 2003).

**B. ESSEX CONTRACTING, INC. V. JEFFERSON COUNTY.** Held that “causation” need not be proved by local government where guarantee period had expired. The County had sent deficiency notices and the record showed that pavement thickness deficiencies existed as of expiration of period allowed for completion. Regarding fault, “[t]he issue was not an evaluation of causation...but instead was whether [Developer] conformed to the requirements of the Guarantee by creating [improvements]...that passed...inspection prior to the full release of the bond.” The failure to meet the time period is enough: “Because [developer] failed to complete the necessary improvements within the mandated time frame, the trial court’s judgment that the amount of money remaining in the bonds should be released to the county is affirmed.” Essex Contracting, Inc. v. Jefferson County, 277 S.W.3d 647, 654 (Mo. banc 2009).

### IV. OTHER CONSIDERATIONS/RESOURCES.

#### A. OTHER § 89.410 PROVISIONS.

- (1). **Prevailing Wage**. Improvements that are secured by an escrow, letter of credit, or bond “shall not be subject to the terms of sections 290.210 to 290.340 RSMo, unless they are paid for wholly or in part out of public funds.” R.S.Mo. § 89.410.9.
- (2). **Assignment**. If a developer sells a subdivision the “municipality shall accept a replacement escrow or letter of credit from the successor” and upon receipt of a replacement shall “release the prior developer from all further obligations.” See R.S.Mo. § 89.410.3.

#### B. RESOURCES.

- (1). <http://municipalfirm.com> – This presentation and electronic copies of the attachments and forms are available at the Cunningham, Vogel & Rost, P.C. web site. Once you are on the firm’s home page, click on the “Municipal Issue Reports & Seminars” link in the left hand column under the heading **“Quick Links”**.

- (2). **Law of Performance Bonds.** The ABA announced the publication of the Second Edition of The Law of Performance Bonds which is probably the most comprehensive analysis available, covering the topic in 924 pages. In Mr. Wright's view, questions involving performance bonds and suretyship do not occur with sufficient frequency for the general municipal practitioner to master the details of this obscure area of the law. A primer on this area of the law could be very useful at a price of \$129.95 or \$99.95 for section members. You can purchase this book at [www.ababooks.org](http://www.ababooks.org). (COURTESY AND RECOMMENDATION OF Howard Wright).

<http://www.abanet.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=5190446>

- (3). **Surety Bonds Resource.** For a primer on surety bonds visit JW Surety at <http://www.jwsuretybonds.com/info/surety-bonds-101.htm>.

## V. ATTACHMENTS.

1. **R.S.MO. § 89.410.**
2. **FORM LETTER OF CREDIT (AUTOPAY).**
3. **SAMPLE DEPOSIT AGREEMENT (LETTER OF CREDIT).**
4. **ESTIMATE FORM WITH MAINTENANCE OBLIGATION**
5. **SAMPLE IMPLEMENTATION ORDINANCE PROVISIONS.**
6. **SAMPLE INSPECTION FORM**

## ATTACHMENT 1

### **Regulations governing subdivision of land, limitations, contents --public hearing--escrow funds, when released.**

89.410. 1. The planning commission shall recommend and the council may by ordinance adopt regulations governing the subdivision of land within its jurisdiction. The regulations, in addition to the requirements provided by law for the approval of plats, may provide requirements for the coordinated development of the city, town or village; for the coordination of streets within subdivisions with other existing or planned streets or with other features of the city plan or official map of the city, town or village; for adequate open spaces for traffic, recreation, light and air; and for a distribution of population and traffic; provided that, the city, town or village may only impose requirements for the posting of bonds, letters of credit or escrows for subdivision-related improvements as provided for in subsections 2 to 5 of this section.

2. The regulation may include requirements as to the extent and the manner in which the streets of the subdivision or any designated portions thereto shall be graded and improved as well as including requirements as to the extent and manner of the installation of all utility facilities. Compliance with all of these requirements is a condition precedent to the approval of the plat. The regulations or practice of the council may provide for the tentative approval of the plat previous to the improvements and utility installations; but any tentative approval shall not be entered on the plat. The regulations may provide that, in lieu of the completion of the work and installations previous to the final approval of a plat, the council shall accept, at the option of the developer, an escrow secured with cash or an irrevocable letter of credit deposited with the city, town, or village. The city, town, or village may accept a surety bond, and such bond shall be in an amount and with surety and other reasonable conditions, providing for and securing the actual construction and installation of the improvements and utilities within a period specified by the council and expressed in the bond. The release of any such escrow, letter of credit, or bond by the city, town or village shall be as specified in this section. The council may enforce the escrow or bond by all appropriate legal and equitable remedies. The regulations may provide, in lieu of the completion of the work and installations previous to the final approval of a plat, for an assessment or other method whereby the council is put in an assured position to do the work and make the installations at the cost of the owners of the property within the subdivision. The regulations may provide for the dedication, reservation or acquisition of lands and open spaces necessary for public uses indicated on the city plan and for appropriate means of providing for the compensation, including reasonable charges against the subdivision, if any, and over a period of time and in a manner as is in the public interest.

3. The regulations shall provide that in the event a developer who has posted an escrow, or letter of credit, or bond with a city, town, or village in accordance with subsection 2 of this section transfers title of the subdivision property prior to full release of the escrow, letter of credit, or bond, the municipality shall accept a replacement escrow or letter of credit from the successor developer in the form allowed in subsection 2 of this section and in the amount of the escrow or letter of credit held by the city, town, or village at the time of the property transfer, and upon receipt of the replacement escrow or letter of credit, the city, town, or village shall release the original escrow or letter of credit in full and release the prior developer from all further obligations with respect to the subdivision improvements if the successor developer assumes all of the outstanding obligations of the previous developer. The city, town, or village may accept a surety bond from the successor developer in the form allowed in subsection 2 of this section and in the amount of the bond held by the city, town, or village at the time of the property transfer, and upon receipt of the replacement bond, the city, town, or village shall release the original bond in full, and release the prior developer from all further obligations with respect to the subdivision improvements.

4. The regulations shall provide that any escrow or bond amount held by the city, town or village to secure actual construction and installation on each component of the improvements or utilities shall be released within thirty days of completion of each category of improvement or utility work to be installed, minus a maximum retention of five percent which shall be released upon completion of all improvements and utility work. The city, town, or village shall inspect each category of improvement or utility work within twenty business days after a request for such inspection. Any such category of improvement or utility work shall be deemed to be completed upon certification by the city, town or village that the project is complete in accordance with the ordinance of the city, town or village including the filing of all documentation and certifications required by the city, town or village, in complete and acceptable form. The release shall be deemed effective when the escrow funds or bond amount are duly posted with the United States Postal Service or other agreed-upon delivery service or when the escrow funds or bond amount are hand delivered to an authorized person or place as specified by the owner or developer.

5. If the city, town or village has not released the escrow funds or bond amount within thirty days as provided in this section or provided a timely inspection of the improvements or utility work after request for such inspection, the city, town or village shall pay the owner or developer in addition to the escrow funds due the owner or developer, interest at the rate of one and one-half percent per month calculated from the expiration of the thirty-day period until the escrow funds or bond amount have been released. Any owner or developer aggrieved by the city's, town's or village's failure to observe the requirements of this section may bring a civil action to enforce the provisions of this section. In any civil action or part of a civil action brought pursuant to this section, the court may award the prevailing party or the city, town or village the amount of all costs attributable to the action, including reasonable attorneys' fees.

6. Nothing in this section shall apply to performance, maintenance and payment bonds required by cities, towns or villages.

7. Before adoption of its subdivision regulations or any amendment thereof, a duly advertised public hearing thereon shall be held by the council.

8. The provisions of subsection 2 of this section requiring the acceptance of an escrow secured by cash or an irrevocable letter of credit, rather than a surety bond, at the option of the developer, all of the provisions of subsection 3 of this section, and the provisions of subsections 4 and 5 of this section regarding an inspection of improvements or utility work within twenty business days shall not apply to any home rule city with more than four hundred thousand inhabitants and located in more than one county.

9. Notwithstanding the provisions of section 290.210, RSMo, to the contrary, improvements secured by escrow, letter of credit, or bond as provided in this section shall not be subject to the terms of sections 290.210 to 290.340, RSMo, unless they are paid for wholly or in part out of public funds.

(L. 1963 p. 146 § 12, A.L. 1999 S.B. 20, A.L. 2004 H.B. 795, et al.)

ATTACHMENT 2

FORM OF LETTER OF CREDIT

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

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

\_\_\_\_\_, 200\_

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

City of

[address/official]

Dear Sir:

We hereby establish in favor of the CITY OF [ \_\_\_\_\_ ], 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 the reduction as hereinafter set forth.

For information only: This letter of credit is issued with respect to a subdivision of land in the City of [ \_\_\_\_\_ ], Missouri, known as \_\_\_\_\_ Subdivision Plat dated \_\_\_\_\_ issued by you for the benefit of the Account Party (the "Plat Approval").

Subject to all of the terms and conditions of this Letter of Credit, the Maximum Available Credit shall be made available 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 C, 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 defined below). 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 office 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 next 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 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 (collectively, the "Expiration Date"); 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 Exhibits A, or C, as the case may be, presented to us for payment prior to the expiration of this Letter of Credit; and further provided that upon such expiration, or if automatically extended upon expiration of the last extension, we shall immediately transfer the balance of the Maximum Available Credit to you at the following account:

**[bank account numbers]**

or such other account subsequently designated by you, unless you authorize in writing a release of our obligations under this Letter of Credit or authorize a replacement of the 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 Expiration Date hereof, unless at least 75 days prior to any such date, we shall send you, in the form attached hereto as Exhibit D, notice that we elect not to consider this Letter of Credit renewed for such additional one-year period. Notwithstanding any automatic extensions, this letter of credit shall expire fully and finally not later than \_\_\_\_\_.

Upon our receipt, from time to time, from you of a written reduction certificate in the form attached as Exhibit E, 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 Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Commission Publication No. 500, but excluding the provisions of Article 41 thereof (the "UCPDC").

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 F, 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 (including, without limitation, the Plat Approval, but excluding the UCPDC), and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement. Exhibits A,C,D,E and F attached hereto are incorporated herein by reference as an integral part of this Letter of Credit. (Exhibit B intentionally omitted).

Very truly yours,

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

By:

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

\*\*\*Date\*\*\*

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

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

Attention:

Re: Your Letter of Credit No. \_\_\_\_\_  
In Favor of City of [                    ], Missouri

Gentlemen:

The undersigned, a duly authorized official of City of [                    ], 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 improvements or fulfill all obligations required by the Subdivision Code, Improvement plans, or any Deposit Agreement.
2. The draft in the sum of \$\_\_\_\_\_ accompanying this Certificate is not in excess of the Maximum Available Credit under the Letter of Credit and shall result in a reduction of the Maximum Available Credit under the Letter of Credit.

Transfer the funds as stated above to the credit of the City of [                    ], Missouri to  
[INSERT BANK Account #\_\_\_\_\_], Attention: Finance Officer.

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

CITY OF [                    ], MISSOURI

By:

City Administrator

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

\*\*\*Date\*\*\*

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

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

Attention:

Re: Your Letter of Credit No. \_\_\_\_\_ in Favor of City of [ \_\_\_\_\_ ], Missouri

Gentlemen:

The undersigned, a duly authorized official of City of [ \_\_\_\_\_ ], 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. Funds in the amount of the accompanying draft are now due to the City to satisfy warranty and/or maintenance obligations relating to the Subdivision Improvements.
2. The draft in the sum of \$\_\_\_\_\_ accompanying this Certificate is not in excess of the Maximum Available Credit under the Letter of Credit and shall result in a reduction of the Maximum Available Credit under the Letter of Credit.

Transfer the funds as stated above to the credit of the City of [ \_\_\_\_\_ ], Missouri to [INSERT BANK Account #\_\_\_\_\_], Attention: Finance Officer.

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

CITY OF [ \_\_\_\_\_ ], MISSOURI

By:

City Administrator

EXHIBIT D  
TO LETTER OF CREDIT  
FORM OF NOTICE OF EXPIRATION

\*\*\*Date\*\*\*

City of [            ], Missouri

Attention: \_\_\_\_\_

Re:    Our Letter of Credit No. \_\_\_\_\_ in Favor of City of [            ], Missouri

Amount:

Expiration Date:

Gentlemen:

Please consider this letter as the Bank's notification that the Bank does not intend to renew the above-reference letter of credit and, therefore, it 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 E  
TO LETTER OF CREDIT  
FORM OF REDUCTION CERTIFICATE

Department of Planning, City of [            ]  
City Hall  
[address]

\*\*\*Date\*\*\*

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

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

Attention:

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

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

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 [            ], MISSOURI

By: \_\_\_\_\_

City Administrator  
Acting City Administrator or  
Director of Planning

Memo to Developer: for information only

(This portion will be provided for developer's information and will not form a part of the reduction certificate.)

|

EXHIBIT F

TO LETTER OF CREDIT

FORM FOR FULL TRANSFER OF LETTER OF CREDIT

\*\*\*Date\*\*\*

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

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

Attention:

Re: Your Letter of Credit ("Letter of Credit") No. \_\_\_\_\_ in favor of City of [ ],  
Missouri

Gentlemen:

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

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

CITY OF [ ], MISSOURI

[NAME OF TRANSFEREE]

By: \_\_\_\_\_

By: \_\_\_\_\_

City Administrator or

[Name and Title of

Authorized Officer of Transferee]

ATTACHMENT 3

**LETTER OF CREDIT DEPOSIT AGREEMENT  
GUARANTEEING INSTALLATION  
OF SUBDIVISION IMPROVEMENTS**

**THIS DEPOSIT AGREEMENT** ("DEPOSIT AGREEMENT"), is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 200\_, by \_\_\_\_\_ (hereinafter referred to as the "DEVELOPER") and the CITY OF \_\_\_\_\_, MISSOURI (hereinafter referred to as the "CITY").

**WITNESSETH:**

**WHEREAS**, the DEVELOPER has submitted plans, information and data to the CITY for the creation and development of a subdivision to be known as \_\_\_\_\_ (hereinafter referred to as the "Subdivision") and simultaneous herewith is receiving approval of them, and

**WHEREAS**, a Preliminary Plat for the Subdivision (the "Preliminary Plat") and the improvement plans for the Subdivision have been submitted to the CITY together with the estimated costs of construction, installation and completion of the Subdivision Improvements, all in accordance with the CITY's subdivision regulations; and

**WHEREAS**, the establishment of a guarantee of completion of the Subdivision Improvements is required as a condition of the final plat for the Subdivision;

**WHEREAS**, the DEVELOPER desires establish the Subdivision Improvement guarantees in the form of this DEPOSIT AGREEMENT and accompanying letter of credit which shall required completion of such improvements within two years hereof, unless otherwise extended by the Board of Alderman; and,

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

**IT IS HEREBY MUTUALLY AGREED:**

1. The DEVELOPER, has deposited an irrevocable standby letter of credit with the CITY in the sum of \_\_\_\_\_ (\$\_\_\_\_\_.00) (the "DEPOSIT SUM") payable to the CITY and guaranteeing the construction, installation, maintenance, and completion of all required Subdivision improvements, all in accordance with the plans approved by the CITY and on file with the City Clerk (the "Approved Improvement Plans") and in accordance with the CITY ordinances regulating the same. The DEPOSIT SUM shall consist of an amount equal to the *estimated* costs of the construction, completion, and installation of the Subdivision required improvements ("ESTIMATED COSTS") as set forth on the attached Estimate Sheet. Nothing in the estimates or specification of component items shall in any way limit the City or require release based on each line item, and DEVELOPER agrees it continues to be obligated to compete and guarantee completion of all Subdivision Improvements. The CITY and DEVELOPER agree that the DEPOSIT SUM shall guarantee the construction,

installation, completion and maintenance of the required subdivision improvements in the Subdivision, all in accordance with the approved plans therefore and in accordance with the ordinances of the CITY regulating the same.

2. The DEPOSIT SUM guarantees the construction, installation, maintenance, and completion of all Subdivision Improvements in accordance with the Approved Improvement Plans which are incorporated in this DEPOSIT AGREEMENT by reference and as summarized in the attached Exhibit A and as required by the ordinances and regulations of the City. Any release of part of or a portion of the DEPOSIT SUM is only an accommodation to the DEVELOPER and is not a waiver of any kind by the CITY of its rights under the DEPOSIT AGREEMENT that the entire DEPOSIT SUM guarantees each and every improvement.

3. In the event the DEPOSIT SUM herein provided is insufficient to complete Subdivision Improvements as reasonably determined by the CITY, the DEVELOPER will, upon demand by the CITY accompanied by a detailed itemization of the requested additional sum, deposit with the CITY additional monies which, in the opinion of the CITY, will be required to complete Subdivision Improvements, and said additional sum shall be subject to the terms of this DEPOSIT AGREEMENT. In the event that the DEVELOPER does not deposit the additional monies with the CITY within 10 days or does not request a hearing from the CITY within that time, the Subdivision shall be deemed in default and/or abandoned as set forth in paragraph 8.

4. The DEVELOPER guarantees: (a) that all required utilities and improvements will be installed, constructed and completed in accordance with the Approved Improvement Plans and the ordinances of the CITY not later than **two years** after the date of this Agreement Date appearing on the signature page below (“Completion Date”), and (b) that the Subdivision, including all lots, common ground, streets, and improvements, and all adjacent streets used for the hauling of construction equipment, materials and supplies will be safeguarded, protected and kept free of associated mud, trash, weeds, and debris during the construction period and otherwise properly maintained, and constructed all in accordance with City Code and approved plans.

5. (a) That the CITY may, through written authorization of the Commissioner of Public Works, release or reduce portions of the DEPOSIT SUM upon completion of components within categories and shall release corresponding portions of the DEPOSIT SUM upon completion of categories of improvements as provided that a qualified, licensed engineer employed by the DEVELOPER certifies to the CITY the completion of such work; PROVIDED FURTHER that in no event shall the CITY release any part of the DEPOSIT SUM accept as provided herein:

(b) In order to obtain such written authorization for a release, upon completion of any such category of improvement the DEVELOPER shall first make written request for inspection, and include therewith a certification by the DEVELOPER's engineer, to the appropriate inspecting authority, with a copy to the City Clerk. Upon receipt of the DEVELOPER's written request for inspection and certification by the DEVELOPER's engineer, the CITY (or the appropriate inspecting authority) shall (i) inspect the construction, installation and completion of the Improvement(s) that have been certified compete by the DEVELOPER. Upon receipt of the inspection report, the CITY's Board of Aldermen will review the report,

verify that the Subdivision Improvement complies with all laws and requirements of the CITY, and authorize such release.

(c) Except for discretionary releases that may be granted by the Commissioner of Public Works in the public interest, no category of any Subdivision Improvement shall be eligible for release until each and every component and requirement that makes up that category of Subdivision Improvement is deemed complete by the City. No category or subdivision may be deemed to be complete until there is a certification by the CITY that the project is complete. No certification shall be issued by the CITY unless all of the following takes place: (i) the DEVELOPER submits a written request to the CITY for inspection of the Subdivision Improvements; (ii) the inspection is completed by the CITY's inspector who determines that the Subdivision Improvement are complete and recommends to the CITY's Board of Aldermen that it be released; and (iii) the CITY's Board of Aldermen reviews the CITY Inspector's inspection report, determines that the Subdivision Improvement complies with all laws and requirements of the CITY, and authorizes such release.

(d) Upon certification by the CITY that the construction and installation of a category of Subdivision Improvement is complete (in accordance with §5(b) and (c) above), the CITY shall authorize the release of the ESTIMATED COST originally retained for that category *minus* a maximum retention of five percent (5%), as otherwise provided in this Section 5. The DEVELOPER shall not be released of any responsibility for installation, construction, completion, or maintenance for the required improvements, irrespective of any release that may have been issued based on specific improvements or inspections, prior to final approval of all improvements and release of the entire DEPOSIT SUM for all categories.

(e) IN NO EVENT SHALL the CITY be required to release, disburse or otherwise dispose of more than ninety-five percent (95%) of the DEPOSIT SUM, until the CITY has certified as provided herein that all categories of Subdivision Improvements have been completed in accordance with the Approved Improvement Plans and the regulations and ordinances of the CITY and the "as built drawings" have been approved by the CITY.

6. Upon completion of all of the Subdivision Improvements and prior to final release the DEVELOPER shall submit to the CITY three (3) copies of "as built" drawings which show the actual installation of the said improvements, and that if after the CITY reviews the "as built" drawings submitted it reasonably determines that all of the improvements have been completed and, as applicable, accepted by the respective utilities, then the CITY shall approve the "as built" drawings. This Agreement shall not be deemed to create any commitment by the CITY to accept any improvement for dedication and maintenance.

7. Upon approval of the "as built" drawings and completion of the final improvements and certifications required, the final DEPOSIT SUM amounts shall be released not later than the sooner of (1) expiration of eighteen (18) months after acceptance of the improvements by the city or expiration of eighteen (18) months after occupancy permits have been issued on 90% of the all of the lots in the subdivision plats subject this agreement.

8. In the event the DEVELOPER shall be in default or abandon the Subdivision, or fail to complete the obligations herein, including, but not limited to, the failure to complete the

Subdivision Improvements by the Completion Date, or the failure to properly maintain the improvements, including keeping the Improvements free of mud, debris, erosion, or otherwise, whichever occurs first, the DEVELOPER shall forfeit to the CITY the then current balance of the DEPOSIT SUM or any portion thereof, along with any additional sums deposited pursuant to paragraph 3 above, which funds the CITY shall thereafter use to complete the Subdivision Improvements or otherwise rectify the DEVELOPER's failure hereunder. The CITY may further apply such necessary amount of the DEPOSIT SUM to remedy any failure of the DEVELOPER to perform its maintenance obligations in the Subdivision. For the purpose of this Agreement and the CITY's rights hereunder, any and all of the remaining DEPOSIT SUM may be applied to completion or maintenance of any improvements, and no limitation of any kind shall be implied from the line item calculations of separate improvements. If the CITY is required to remedy any failure of the DEVELOPER to perform its Maintenance Obligations during this agreement, the CITY may also require DEVELOPER to with the CITY additional monies as may be needed as set forth in paragraph 3 herein.

9. Exercise or waiver by CITY of any enforcement action under this agreement or the CITY's Code does not waive or foreclose any other or subsequent enforcement action whatsoever. The DEPOSIT SUM and/or deposit placed under this Agreement shall be governed by the provisions of the Subdivision Code, Chapter 410, and the DEVELOPER agrees to the provisions thereof as if set forth herein. The CITY shall be entitled to its costs, including reasonable attorneys' fees, in enforcement of DEVELOPER'S obligations under this Agreement.

10. The CITY and DEVELOPER hereby accept this agreement as a lawful and satisfactory DEPOSIT AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and affixed their seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (“Agreement Date”).

ACCEPTED:

DEVELOPER:

CITY OF \_\_\_\_\_, MISSOURI

\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

By: \_\_\_\_\_

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

ATTESTED:

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

APPROVED as to form:

\_\_\_\_\_

\_\_\_\_\_, City Attorney

STATE OF MISSOURI     )  
  )  
COUNTY OF \_\_\_\_\_ )     ss:

On this \_\_\_\_ day of \_\_\_\_\_ 200\_, before me appeared \_\_\_\_\_, personally known, who being by me duly sworn, did say that he is the President of \_\_\_\_\_, a corporation of the State of Missouri, and that the foregoing instrument was signed and sealed on behalf of said corporation, by authority of its Board of Directors, and said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said corporation.

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

Notary Public

My Commission Expires:

\_\_\_\_\_

ATTACHMENT 4

**LETTER OF ESTIMATED COST OF IMPROVEMENTS**  
**[SUBDIVISION NAME] (Ward )**  
**[Specify Number of Lots or Replacement Estimate]**

CITY OF [ \_\_\_\_\_ ], MISSOURI

	units	description	cost/unit	total
Category 1	<b>Construction of Streets</b>			<b>\$0.00</b>
	<b>95 percent (subject to initial releases)</b>			<b>\$0.00</b>
	<b>5 percent (final release)</b>			<b>\$0.00</b>
	0 cu. yds.	Grading	@ \$2.25 p/cu/yd	\$0.00
	0 lin. ft.	Sawcutting	@ \$4.50 p/lin/ft	\$0.00
	Public R-O-W at 26' wide:			
	0.00 sq. yds.	Asphaltic Concrete (8" including base)	@ \$24.00 p/sq/yd	\$0.00
	Private Lanes at 14' wide:			
	0.00 sq. yds.	Asphaltic Concrete (8" including base)	@ \$24.00 p/sq/yd	\$0.00
	0 -----	Turnaround Residential (asphalt)	@ \$9,000.00 each	\$0.00
	<b>Road Widening/Removal &amp; Replacement</b>			<b>\$0.00</b>
	0.00 sq. yds.	Asphaltic Concrete (8" including base)	@ \$24.00 p/sq/yd	\$0.00
	0 -----	Temporary Turnaround (asphalt)	@ \$5,250.00 each	\$0.00
	0 -----	Barricades - Temporary	@ \$200.00 each	\$0.00
	0.00 sq. yds.	Temporary Entry Removal	@ \$45.00 p/sq/yd	\$0.00
	<b>Sidewalks</b>			<b>\$0.00</b>
	0 sq. ft.	Sidewalk 4" thick - 4' wide	@ \$3.00 p/sq/ft	\$0.00
	0 sq. ft.	Sidewalk 4" thick - 5' wide	@ \$3.00 p/sq/ft	\$0.00
	0 -----	Concrete Handicap Ramp	@ \$700.00 each	\$0.00
	<b>Street Trees</b> [per Approved Landscape Plan or every 30' on center]			<b>\$0.00</b>
0 -----	3.0" caliper	@ \$254.00 each	\$0.00	
0 -----	2.5" caliper	@ \$206.00 each	\$0.00	
0 -----	2.0" caliper	@ \$158.00 each	\$0.00	
<b>Street Lights</b>			<b>\$0.00</b>	
0 Street light	(16' typical height)	@ \$600.00 each	\$0.00	
<b>Street Signs</b>			<b>\$0.00</b>	
0 -----	Street Signs	@ \$200.00 each	\$0.00	
0 -----	Stop Signs	@ \$200.00 each	\$0.00	
Category 2	<b>Storm Sewers (escrowed at 90% of below total)</b>			<b>\$0.00</b>
	<b>95 percent (of 90%) storm in right of way</b>			<b>\$0.00</b>
	<b>5 percent (of 90%) storm in right of way</b>			<b>\$0.00</b>
	0.00 lin.ft.	12" RCP	@ \$16.00 p/lin/ft	\$0.00
	0.00 lin.ft.	15" RCP	@ \$17.50 lin./ft.	\$0.00
	0.00 lin.ft.	18" RCP	@ \$22.00 p/lin/ft	\$0.00
	0.00 lin.ft.	21" RCP	@ \$27.00 lin./ft.	\$0.00
	0.00 lin.ft.	24" RCP	@ \$30.00 lin./ft.	\$0.00
	0.00 lin.ft.	27" RCP	@ \$35.00 lin./ft.	\$0.00
	0.00 lin.ft.	30" RCP	@ \$39.00 lin./ft.	\$0.00
	0.00 lin.ft.	33" RCP	@ \$50.00 lin./ft.	\$0.00
	0.00 lin.ft.	36" RCP	@ \$55.00 lin./ft.	\$0.00
	0.00 lin.ft.	42" RCP	@ \$67.00 lin./ft.	\$0.00
0.00 lin.ft.	48" RCP	@ \$79.50 lin./ft.	\$0.00	

[Estimate Form - With Maintenance Obligation]

	0.00 lin.ft.	54" RCP	@	\$99.50 lin./ft.	\$0.00
	0.00 lin.ft.	60" RCP	@	\$121.00 lin./ft.	\$0.00
	0.00 lin.ft.	66" RCP	@	\$154.00 lin./ft.	\$0.00
	0.00 lin.ft.	72" RCP	@	\$210.00 lin./ft.	\$0.00
	0.00 lin.ft.	78" RCP	@	\$220.00 lin./ft.	\$0.00
	0.00 lin.ft.	84" RCP	@	\$290.00 lin./ft.	\$0.00
	0.00 lin.ft.	90" RCP	@	\$300.00 lin./ft.	\$0.00
	0	----- Storm Manhole	@	\$1,100.00 each	\$0.00
	0	----- Grated Inlet, single	@	\$1,210.00 each	\$0.00
	0	----- Curb Inlet, single	@	\$1,020.00 each	\$0.00
	0	----- Area Inlet, single	@	\$1,020.00 each	\$0.00
	0	----- Curb Inlet, double	@	\$2,000.00 each	\$0.00
	0	----- Area Inlet, double	@	\$1,800.00 each	\$0.00
	0	----- Curb Inlet, triple	@	\$2,100.00 each	\$0.00
	0	----- Area Inlet, triple	@	\$2,010.00 each	\$0.00
	0	----- Flared End Section (12")	@	\$450.00 each	\$0.00
	0	----- Flared End Section (18")	@	\$550.00 each	\$0.00
	0	----- Flared End Section (21")	@	\$600.00 each	\$0.00
	0	----- Flared End Section (24")	@	\$650.00 each	\$0.00
	0	----- Flared End Section (30")	@	\$820.00 each	\$0.00
	0	----- Flared End Section (54")	@	\$1,610.00 each	\$0.00
	0	----- Outfall Structure	@	\$5,000.00 each	\$0.00
	0	----- Concrete Collar (24")	@	\$325.00 each	\$0.00
	0	----- End Pipe	@	\$600.00 each	\$0.00
	0	----- Corrugated Metal Pipe	@	\$2.25 p/lin/ft	\$0.00
	0	----- Energy Dissipator	@	\$3,500.00 each	\$0.00
	0	----- Junction Chamber	@	\$10,000.00 each	\$0.00
	0 sq. yds.	Riprap / Revet. - Heavy Stone	@	\$27.00 p/sq/yd	\$0.00
	0 sq. ft.	Paved Concrete Swale [6" thick X W']	@	\$4.75 p/sq/ft	\$0.00
	0 cu. yds.	Box Culvert	@	\$600.00 p/cu/yd	\$0.00
	0 lots	Granular Fill	@	\$170.00 per lot	\$0.00
	<b>Detention/Retention Basin</b>				
	0 units	Detention (\$6,350.00)	+	\$205.00 p/unit	<b>\$6,350.00</b>
	<b>Grading/Siltation and Erosion Control</b>				<b>\$5,595.00</b>
	0 lots	Grading (\$2,550.00)	+	\$260.00 p/lot	\$2,550.00
	0 lots	Siltation Control (\$2,030.00)	+	\$130.00 p/lot	\$2,030.00
	0 lots	Erosion Control (\$1,015.00)	+	\$305.00 p/lot	\$1,015.00
	<b>Common Ground Sod/Plantings</b>				<b>\$0.00</b>
	0 sq.yds.	Common Ground sodding	@	\$5.50 p/sq/yd	\$0.00
	0	----- Cul de sac sodding	@	\$490.00 each	\$0.00
	0 trees	3" caliper	@	\$244.00 each	\$0.00
	0 trees	2.5" caliper	@	\$201.00 each	\$0.00
	0 trees	2" caliper	@	\$158.00 each	\$0.00
	0 trees	1.5" caliper	@	\$115.00 each	\$0.00
	0 trees	Conifer - 10' minimum	@	\$160.00 each	\$0.00
	0 trees	Conifer - 8' minimum	@	\$130.00 each	\$0.00
	0 trees	Conifer - 6' minimum	@	\$100.00 each	\$0.00
	<b>Landscaping Costs</b>				<b>\$0.00</b>
	<b>Bufferyard "A" landscaping</b>			[1 plant unit each/150'X15']	
	0 trees	3" caliper	@	\$254.00 each	\$0.00
	0 trees	2.5" caliper	@	\$206.00 each	\$0.00
	0 trees	2" caliper	@	\$158.00 each	\$0.00
	0 trees	1.5" caliper	@	\$110.00 each	\$0.00
	0 trees	Conifer - 10' minimum	@	\$160.00 each	\$0.00

**[Estimate Form - With Maintenance Obligation]**

Category 4

0 trees	Conifer - 8' minimum	@	\$130.00 each	\$0.00
0 trees	Conifer - 6' minimum	@	\$100.00 each	\$0.00
0 shrubs	24" in height	@	\$50.00 each	\$0.00
<b>Bufferyard "B" landscaping</b>				
		[2 plant units each/150'X15']		
0 trees	3" caliper	@	\$254.00 each	\$0.00
0 trees	2.5" caliper	@	\$206.00 each	\$0.00
0 trees	2" caliper	@	\$158.00 each	\$0.00
0 trees	1.5" caliper	@	\$110.00 each	\$0.00
0 trees	Conifer - 10' minimum	@	\$160.00 each	\$0.00
0 trees	Conifer - 8' minimum	@	\$130.00 each	\$0.00
0 trees	Conifer - 6' minimum	@	\$100.00 each	\$0.00
0 shrubs	24" in height	@	\$50.00 each	\$0.00
<b>Bufferyard "C" landscaping</b>				
		[3 plant units each/150'X20']		
0 trees	3" caliper	@	\$254.00 each	\$0.00
0 trees	2.5" caliper	@	\$206.00 each	\$0.00
0 trees	2" caliper	@	\$158.00 each	\$0.00
0 trees	1.5" caliper	@	\$110.00 each	\$0.00
0 trees	Conifer - 10' minimum	@	\$160.00 each	\$0.00
0 trees	Conifer - 8' minimum	@	\$130.00 each	\$0.00
0 trees	Conifer - 6' minimum	@	\$100.00 each	\$0.00
0 shrubs	24" in height	@	\$50.00 each	\$0.00
<b>Bufferyard "D" landscaping</b>				
		[4 plant units each/150'X20']		
0 trees	3" caliper	@	\$254.00 each	\$0.00
0 trees	2.5" caliper	@	\$206.00 each	\$0.00
0 trees	2" caliper	@	\$158.00 each	\$0.00
0 trees	1.5" caliper	@	\$110.00 each	\$0.00
0 trees	Conifer - 10' minimum	@	\$160.00 each	\$0.00
0 trees	Conifer - 8' minimum	@	\$130.00 each	\$0.00
0 trees	Conifer - 6' minimum	@	\$100.00 each	\$0.00
0 shrubs	24" in height	@	\$50.00 each	\$0.00
<b>Bufferyard "E" landscaping</b>				
		[5 plant units each/150'X20']		
0 trees	3" caliper	@	\$254.00 each	\$0.00
0 trees	2.5" caliper	@	\$206.00 each	\$0.00
0 trees	2" caliper	@	\$158.00 each	\$0.00
0 trees	1.5" caliper	@	\$110.00 each	\$0.00
0 trees	Conifer - 10' minimum	@	\$160.00 each	\$0.00
0 trees	Conifer - 8' minimum	@	\$130.00 each	\$0.00
0 trees	Conifer - 6' minimum	@	\$100.00 each	\$0.00
0 shrubs	24" in height	@	\$50.00 each	\$0.00
<b>Bufferyard "S" landscaping</b>				
		[2 plant units each/150'X10']		
0 trees	3" caliper	@	\$254.00 each	\$0.00
0 trees	2.5" caliper	@	\$206.00 each	\$0.00
0 trees	2" caliper	@	\$158.00 each	\$0.00
0 trees	1.5" caliper	@	\$110.00 each	\$0.00
0 trees	Conifer - 10' minimum	@	\$160.00 each	\$0.00
0 trees	Conifer - 8' minimum	@	\$130.00 each	\$0.00
0 trees	Conifer - 6' minimum	@	\$100.00 each	\$0.00
0 shrubs	24" in height	@	\$50.00 each	\$0.00
<b>Entry landscaping</b>				
0 trees	3" caliper	@	\$254.00 each	\$0.00
0 trees	2.5" caliper	@	\$206.00 each	\$0.00
0 trees	2" caliper	@	\$158.00 each	\$0.00
0 trees	1.5" caliper	@	\$110.00 each	\$0.00
0 trees	Conifer - 10' minimum	@	\$160.00 each	\$0.00
0 trees	Conifer - 8' minimum	@	\$130.00 each	\$0.00
0 trees	Conifer - 6' minimum	@	\$100.00 each	\$0.00
0 shrubs	24" in height	@	\$50.00 each	\$0.00

**Estimated cost of cul-de-sac landscaping**

Category 4

**[Estimate Form - With Maintenance Obligation]**

**Category 5**

0 trees	3" caliper	@	\$254.00 each	\$0.00
0 trees	2.5" caliper	@	\$206.00 each	\$0.00
0 trees	2" caliper	@	\$158.00 each	\$0.00
0 trees	1.5" caliper	@	\$110.00 each	\$0.00
0 trees	Conifer - 10' minimum	@	\$160.00 each	\$0.00
0 trees	Conifer - 8' minimum	@	\$130.00 each	\$0.00
0 trees	Conifer - 6' minimum	@	\$100.00 each	\$0.00
0 shrubs	24" in height	@	\$50.00 each	\$0.00
<b>Mulch</b>				
0.00 cu. yds.	bark mulch	@	\$3.95 p/cu/yd	\$0.00

**Water Mains**

Water Mains per installation bid

**Monuments**

**\$0.00**

0 -----	Survey Monuments - first 4	@	\$750.00 each	\$0.00
0 -----	Survey Monuments - over 4	@	\$175.00 each	\$0.00

**Retaining Walls**

0 sq.ft.	VersaLok Wall (H'xL')	@	\$17.00 p/sq/ft	<b>\$0.00</b>
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**Garden Walls**

0 sq.ft.	VersaLok Wall (H'xL')	@	\$17.00 p/sq/ft	<b>\$0.00</b>
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**Multi-use Trail**

0 sq.ft.	Asphaltic Conc. (5" thick @ 8' wide x L')	@	\$3.75 p/sq/ft	<b>\$0.00</b>
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**Fencing**

0 lin.ft.	Sight Proof - PVC - 6' high	@	\$32.00 p/lin/ft	<b>\$0.00</b>
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ESTIMATED TOTAL COST OF IMPROVEMENTS\* \$11,945.00

TEN (10%) PERCENT INFLATION FACTOR \$ 1,194.50

**ESTIMATED COST OF CONSTRUCTION LETTER OF CREDIT \$ 13,139.50**

**ESTIMATED MAINTENANCE BOND REQUIREMENT \*\* \$ 1,194.50**  
 (2nd separate Letter of Credit required)

Prepared By: \_\_\_\_\_ Date: \_\_\_\_\_  
 [\_\_\_\_], Planner - Subdivision

Approved By: \_\_\_\_\_ Date: \_\_\_\_\_  
 [\_\_\_\_], Director of Planning

\* Cost estimates within categories are estimates and not for release purposes.  
 \*\* The Maintenance Deposit will be held for a total of eighteen (18) months from either the date of FINAL acceptance of ALL PUBLIC IMPROVEMENTS by the City or after 95% of ALL occupancy permits have been issued.

- Category 1 = Street Improvements
- Category 2 = Stormwater Improvements
- Category 3 = Grading/Erosion Requirements
- Category 4 = Landscaping Improvements
- Category 5 = Miscellaneous Improvements

ATTACHMENT 5**SECTION 420.080: IMPROVEMENTS INSTALLED AND GUARANTEED**

A. *Improvement Guarantee Required.* After the improvement plans have been approved and all inspection fees paid, but before approval of the record subdivision plat, the developer shall guarantee the completion of improvements required by the approved improvement plans ("required improvements") and guarantee maintenance of such improvements as required herein. Except provided in Subsection (B), the developer shall either:

1. Complete the improvements in accordance with the approved improvement plans under the observation and inspection of the appropriate public agency and establish a maintenance agreement and provide a deposit to guarantee maintenance of such improvements as required herein; or

2. Establish a deposit under a deposit agreement with the City of Wildwood guaranteeing the construction, completion, and installation ("construction deposit"), and a separate deposit amount for maintenance obligations ("maintenance deposit"), as required herein and for the improvements shown on the approved improvement plans within the improvement completion period approved by the Director, which shall not exceed two (2) years.

B. *Exceptions.*

1. No guarantee or deposit is required with the City for sanitary and storm sewers required by MSD if MSD confirms that its requirements for assurance of completion are satisfied. This provision shall not affect the intent or enforcement of any existing guarantee, escrow or renewal, extension or replacement thereof.

2. The Director of Planning or Public Works may require any specific improvement to be installed prior to approval of the record plat where fail to install such improvement prior to further development could result in damage to the site or surrounding properties.

C. *Deposit Options.* Deposits required by this Section shall be in conjunction with a deposit agreement and may be in the form of cash or letter of credit as follows:

1. Cash deposited with the City Clerk 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 the cash deposits;

2. An irrevocable letter of credit drawn on a local financial institution acceptable to and in a form approved by the City Attorney and the Director of Planning or Public Works. The instrument may not be drawn on any financial institution with whom the developer or a related entity has any ownership interest or with whom there is any joint financial connection that creates any actual or potential lack of independence between the institution and the developer. 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 obligations herein and may be reduced from time to time by a writing of the City Administrator. The letter of credit shall be irrevocable for least one (1) year and shall state that any balance remaining at the expiration shall automatically be deposited in cash with the City Clerk, unless a new letter of credit is issued and agreed to

by the City or the City issues to the 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 a 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.

3. Due to the costs of administering deposit guarantees/escrows and the compliance with changing State regulations relating thereto, any developer that elects to use a construction escrow in lieu of completing the improvements, as otherwise provided for in this Chapter and Section 89.410, RSMo., shall deposit an additional fee of five hundred dollars (\$500.00) that shall be used by the City to defray costs of administration, legal costs, procedural changes, and other costs not otherwise reimbursed to the City resulting from the City's acceptance of such deposit guarantees. The developer shall be obligated to reimburse the City for any additional costs, including, but not limited to, reasonable attorneys fees, above such deposit amount arising in any way from the City's acceptance of a deposit/escrow in lieu of completion of improvements. The developer may request a refund of any principal amounts, if any, of any initial or supplemented deposit above the costs attributable to the development during the period of the escrow by written request made within thirty (30) days after the developer has received a City approval of all categories of improvements subject to such escrow.

D. *Amount Of Deposit.* The amount of the deposit required by this Section shall be calculated as follows:

1. *Construction deposit.* The deposit required of a developer establishing a deposit agreement pursuant to Subsection (A)(2) shall be, in addition to the separate maintenance deposit sum, in the amount of one hundred ten percent (110%) of the Department of Public Works estimate of the cost of the construction, completion and installation of the required improvements. The Director of Public Works shall adopt, to the extent practical, schedules reflecting current cost estimates of typically required improvements.

2. *Maintenance deposit.* The deposit required of a developer pursuant to Subsection (A)(1) and (A)(2) for maintenance obligations shall be in the amount of ten percent (10%) of the Department of Public Works estimate of the cost of the construction, completion and installation of the required improvements. The maintenance deposit shall be established by cash sum or submission of a separate letter of credit.

3. Where certain improvements are required to be installed prior to approval of the record plat pursuant to Subsection (B)(2), the gross deposit amount for the construction deposits shall be reduced by the estimated cost of such improvements.

E. *Deposit Agreement--Releases.* The deposit agreement shall be entered into with the City of Wildwood, shall require the developer to agree to fulfill the obligations imposed by this Section, and shall have such other terms as the City Attorney may require consistent with this Section. The agreement shall authorize the Director of Planning to release the cash or reduce the obligation secured under the letter of credit as permitted herein. Such releases or reductions may occur upon completion, inspection and approval by the Director of Planning of all required improvements within a category of improvements, or

may occur from time to time, as work on specific improvements is completed, inspected and approved, provided however, that:

1. *Releases--general.* The Director shall release the cash or release the letter of credit as to all or any part of its obligation only after construction, completion and installation of some phase of work on the improvements indicated on the approved improvement plans, receipt of requisite written notification from the appropriate inspecting public authority, and approval by the Department; and only in the amounts permitted herein.

2. *Extension of completion period.* If, at the end of the improvement completion period, all the improvements shown on the approved improvement plans have not been completed, the developer may request and the Director may grant an extension to the improvement completion period for a period of up to two (2) years if after review by the Department such longer period is deemed necessary to facilitate adequate and coordinated provisions for transportation, water, sewerage, schools, parks, playgrounds, or other public improvements, facilities or requirements so long as all guarantees are extended and approved by the City Attorney; provided, that the Director may require as a condition of the extension execution of a new agreement, recalculation of deposit amounts, or satisfaction of new code requirements or other reasonable conditions as may be needed to ensure that the extended agreement fully complies with the terms of [Section 420.080](#).

3. *Construction deposit releases.* After an inspection of any specific improvements, the Director may at the Director's discretion release up more than ninety five percent (95%) of the original sum deposited for the construction of such specific required improvements. Irrespective of any discretionary prior releases that may be authorized by the Director 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 improvement, minus a retention of five percent (5%) which shall be released only upon completion of all improvements for the subdivision. The Director 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 guarantee 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 (1) each and every component and line item within a category for the entire subdivision has been constructed and completed as required, (2) the developer has notified the Director in writing of the completion of all components of the category, provided all necessary or requested documentation, and requests an inspection, (3) the developer is not in default or in breach of any obligation to the City under this Section including, but not limited to, the Director's demand for maintenance or for deposit of additional sums for the subdivision, (4) the inspection has been completed and the results of the inspection have been approved in writing by the Director. Releases of the maintenance deposit amounts shall be as provided elsewhere in this Section for maintenance deposits.

4. *Effect of release--continuing obligations.* 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 improvement or otherwise release the

developer of its obligation relating to the completion of the improvements until the final subdivision release on all improvements and maintenance is issued declaring that all improvements have in fact been constructed as required. Inspection and approval of any or all required improvements shall not constitute acceptance of the improvement by the City as a public improvement for which the City shall bear any responsibility.

5. *Deficient improvements.* No approval of required improvements shall be granted for improvements that fail to meet the specifications established herein or otherwise adopted by the Department of Public Works.

6. *Final construction deposit release.* Upon final inspection and approval of all required improvements, the remaining amount of the construction deposit shall be released; provided, that no such funds shall be released on a final inspection until the development of the subdivision is complete, as determined by the Director of Planning.

7. *Appeals.* If the developer believes that a release or certificate of completion has been improperly denied including, but not limited to, under Subsections (E) or (F), an appeal shall be filed pursuant to the City's Administrative Code, [Chapter 150](#), and no such denial shall be deemed final until such appeal procedure has been exhausted.

8. The Department of Public Works shall inspect each category of improvement or utility work within twenty (20) business days after a request for such inspection has been filed with the department by the developer and no inspection shall be required until such request is received by the department. For purposes of this Section, an "inspection request" shall constitute and occur only on a completed written request on a form that shall include:

a. The category of improvement reflected in the deposit agreement that is requested to be inspected;

b. An engineer's certification that the category of improvement has been installed and on the date of inspection application is maintained and in conformance with the final approved improvement plans and all applicable requirements thereto and is therefore ready for inspection; and

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

Nothing herein shall preclude the Department from completing additional inspections at its discretion or as a courtesy to the Developer.

F. *Maintenance Guarantee.*

1. *Scope and duration.* Upon commencement of installation of the required improvements within the subject subdivision, the developer shall be responsible for the 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 the deposit

agreement. Maintenance shall include repair or replacement of all defects, deficiencies and damage to the improvements that may exist or arise, abatement of nuisances caused by such improvements, removal of mud and debris from construction, erosion control, grass cutting, removal of construction materials (except materials to be used for construction on the lot or as permitted by site plan), and street de-icing and snow removal. All repairs and replacement shall comply with City specifications and standards. Any maintenance on improvements accepted by the City for public dedication shall be completed under the supervision of and with the prior written approval of the Director of Public Works. The maintenance obligation for required improvements to existing public roads or other existing public infra-structure already maintained by a public governmental entity shall terminate on and after the date such improvements have been inspected, deposit released, and accepted by the Governing Body of the governmental entity for dedication. Irrespective of other continuing obligations, the developer's street de-icing and snow removal obligations shall terminate on the date a street is accepted by the City for public maintenance.

2. *Maintenance deposit--amount--use.*

a. The maintenance deposit shall be retained by the City to guarantee maintenance of the required improvements and, in addition to being subject to the remedies of Subsection (G) and other remedies of this Code, shall be subject to the immediate order of the Director of Public Works or Planning to defray or reimburse any cost to the City of maintenance or repair of improvements related to the subdivision which the developer fails or refuses to perform. Such costs shall include off-site damage caused by deficiencies in the improvements or failure of maintenance. Except in emergency circumstances or where action is otherwise required before written notice can be provided, the Director of Planning shall provide the developer with a written demand and opportunity to perform the maintenance before having such maintenance performed by the City. The Director shall have the authority to require the maintenance deposit to be placed 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 drawn upon by the City for maintenance.

b. In determining the amount of maintenance deposit that shall continue to be held, portions of the deposit amount that were attributable to improvement that have been accepted by any third-party governmental entity or utility legally responsible for the maintenance of the improvement may be released upon such acceptance of the improvement by the entity. The Director of Planning may approve such further releases if it is determined in his or 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.

3. *Final maintenance deposit release.* Upon expiration of the maintenance obligations established herein, the Director of Planning 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 Directors of Public Works and Planning. 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.

G. *Failure To Complete Improvements.* The obligation of the developer to construct, complete, install and maintain the improvements indicated on the approved improvement plans and provide for street maintenance shall not cease until the developer shall be finally released by the Director, nor shall any deposit agreements or obligations hereunder be assignable by developer. If, after the initial improvement completion period, or after a later period as extended pursuant to this Section, the improvements indicated on the approved improvement plans are not constructed, completed, installed, accepted and maintained as required, or if the developer shall violate any provision of the deposit agreement, the Director may notify the developer to show cause within not less than ten (10) days why the developer should not be declared in default. Unless good cause is shown, no building or other permit shall be issued to the developer in the subdivision during any period in which the developer is in violation of the deposit agreement or Subdivision Code relating to the subdivision. If the developer fails to cure any default or present compelling reason why no default should be declared, the Director shall declare the developer in default and may take any one (1) or more of the following acts:

1. Deem the balance under the deposit agreement not theretofore released as forfeited to the City, to be then placed in an appropriate trust and agency account subject to the order of the Director of Public Works or Planning for such purposes as letting contracts to bring about the completion or maintenance of the improvements indicated on the approved improvement plans or other appropriate purposes in the interest of the public safety, health and welfare; or

2. Require the developer or surety to pay to the City the balance of the surety not theretofore released; or

3. Require the developer to submit an additional cash sum sufficient to guarantee the completion or maintenance of the improvements indicated on the approved improvement plans 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 improvement obligations within the time provided by the 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 this Section 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.

H. *Other Remedies For Default.* If the developer or surety fails to comply with the Director's requirements for payment as described above or fails to complete the improvements as required or otherwise violates the deposit agreement provisions, and there is a risk that development will continue in the subdivision without the timely prior completion of improvements or compliance with deposit agreement provisions, the Director may in addition or alternatively to other remedies:

1. Suspend the right of anyone to build or construct on the undeveloped portion of the subdivision. For the purpose of this Subsection the "*undeveloped portion*" of the subdivision means all lots other than lots which have been sold for personal use and occupancy or are under bona fide contract for sale to any person for personal use or occupancy. The Director shall give the developer ten (10) days' written notice of an order under this Subsection, with copies to all sureties, as appropriate, who have outstanding

obligations for any undeveloped portion of the subdivision, and shall record an affidavit of such notice with the Recorder of Deeds. If, within the ten (10) day period after notice is given, the Director is not convinced by compelling evidence that completion of the improvements is adequately assured and maintenance of streets assured as provided herein, the Director shall order construction suspended on the undeveloped portion of the subdivision. The order shall be served upon the developer, with a copy to the issuer of the surety as appropriate, and a copy recorded with the Recorder of Deeds. Public notice of said order shall be conspicuously and prominently posted by the Director at the subdivisions or lots subject to said order. The notice shall contain the following minimum language, which may be supplemented at the discretion of the Director.

- a. If said notice is for a subdivision:

THIS SUBDIVISION, (name of subdivision), HAS BEEN DECLARED IN DEFAULT BY THE CITY OF WILDWOOD DIRECTOR OF PLANNING. NO DEVELOPMENT, CONSTRUCTION, BUILDING OR DEMOLITION IN ANY MANNER SHALL TAKE PLACE WITHIN THE LIMITS OF THIS SUBDIVISION UNTIL SUCH TIME AS THE CITY OF WILDWOOD DIRECTOR OF PLANNING 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 420](#), CITY OF WILDWOOD REVISED ORDINANCES.

- b. If said notice is for a lot:

THIS LOT, (lot number), HAS BEEN DECLARED IN DEFAULT BY THE CITY OF WILDWOOD DIRECTOR OF PLANNING. 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 WILDWOOD DIRECTOR OF PLANNING 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 420](#), CITY OF WILDWOOD REVISED ORDINANCES.

The Director of Public Works shall not thereafter authorize construction to take place contrary to the Director's order. The suspension shall be rescinded in whole or in part only when the Director 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 provided; or

2. 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 Wildwood and such incorporated areas as are under City of Wildwood jurisdiction. The Director shall give the developer ten (10) days' written notice of an order under this clause, with a copy to sureties known to the Director to have obligations outstanding on behalf of the developer or related entities and shall record an affidavit of such notice with the Recorder of Deeds. If, within the ten (10) day period after notice is given, the Director is not convinced by compelling evidence that completion of the improvements is adequately assured and maintenance of streets assured as provided herein, the Director shall order construction suspended. The order shall be served upon the developer, with a copy to the surety as appropriate, and a copy recorded with the Recorder of Deeds. The Director of Public Works shall not thereafter authorize

construction to take place contrary to the Director's order. The suspension shall be rescinded only when the Director is convinced that completion of the improvements is adequately assured and public street maintenance as assured.

I. *Suspension Of Development Rights.* From and after the effective date of this Section if a developer, or any related entity, has a subdivision development improvement guarantee that is in default, as determined by the Director, including any escrow or bond under any prior version of this Section,

1. The Director shall be authorized, but not be limited, to thereafter pursue the remedies of Subsection (H) of this Section; and

2. The rights of the Developer, or any related entity, to receive development approval, which approval shall include, but not be limited to, approval of any plat or deposit agreement for new or further development in the City, shall be suspended. The suspension shall be rescinded only when the Director is convinced that completion and maintenance of the improvements is adequately assured.

J. *Additional Remedies.* If any party fails to comply with any obligation of this Section, the Director may recommend that the City Attorney take appropriate legal action and may also withhold any building or occupancy permits to this 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 Code by set-off of any funds or assets otherwise held by the City of the Developer to the maximum extent permitted by law. Such set-off shall occur upon written notice of such event by the Director of Planning or Director of Public Works to the Developer after the Developer has failed to timely cure the deficiencies. It shall be deemed a provision of every deposit agreement authorized under this Chapter that the developer shall pay the City's costs, including reasonable attorney's fees, of enforcing such agreement in the event that the developer is judicially determined to have violated any provision herein or in such agreement. The developer may appeal any decision taken pursuant to this Section by filing an appeal under the City's administrative review procedure.

K. *Related Entities.* For purposes of this Section, "related entity" has the following meaning: 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.

The identification of related entities shall be supported by documentation from the Secretary of State's Office, Jefferson City, Missouri. (Ord. No. 209 §1005.080, 2-26-96; Ord. No. 555 §1, 8-23-99; Ord. No. 675 §§1--2, 1-8-01; Ord. No. 1108 §§1--2, 8-23-04)

ATTACHMENT 6

CITY OF \_\_\_\_\_  
DEPARTMENT OF PLANNING  
Escrow Inspection Release Request Form

Section \_\_\_\_\_ of the Municipal Code of the City of \_\_\_\_\_, Missouri (the "City") sets forth the requirements for subdivision inspection requests and related releases. These requirements and this FORM are intended to ensure the responsibility of the developer to complete the improvements set forth in the approved plans for the respective plat has been fully met BEFORE seeking an inspection and release. NOTE: Request Forms that are not complete, nor in full compliance with these requirements, shall not be considered as submitted requests for release.

Developer's Statement

I, \_\_\_\_\_, an authorized representative of the developer of \_\_\_\_\_, Plat \_\_\_\_\_, do hereby attest and certify, under penalty of perjury that I have inspected all items of improvement(s) for category \_\_\_\_\_ {insert applicable category name or "Final Subdivision Release" if all categories have previously been released}, as such "category" or subdivision is identified in the deposit agreement with the City of \_\_\_\_\_ dated \_\_\_\_\_ and to the best of my knowledge and belief that: (1) all such improvements have been installed and completed fully according to the approved improvement plans of the City; and (2) certify they are in acceptable and completed condition to be inspected for release by the Department of Public Works, Department of Planning, and/or other applicable agency or entity.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST (seal):

\_\_\_\_\_  
[Name of Development entity]

By: \_\_\_\_\_

Title: \_\_\_\_\_

Type name:

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notary seal, the day and year above written.

(SEAL)

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

My commission expires \_\_\_\_\_

Engineer's/Surveyor's Statement

I, \_\_\_\_\_, do hereby acknowledge and certify that, at the request of the developer of this project for the category of improvements or item(s) contained therein, an as-built survey was completed of them/it and said survey meets the State of Missouri's standards and requirements for this type of product and accurately reflects the current location of the category of improvements or item(s) now herein considered for release.

\_\_\_\_\_  
Name and Company:

\_\_\_\_\_  
Signature of Registered Professional Engineer  
and/or Professional Surveyor

Address:  
\_\_\_\_\_  
\_\_\_\_\_

Seal:

Telephone Number: (\_\_\_\_) \_\_\_\_\_