

**AN ORDINANCE AMENDING THE CITY OF CHESTERFIELD SUBDIVISION ORDINANCE §1005.080 RELATING TO SUBDIVISION DEVELOPMENT REGULATIONS BY ENACTING A NEW §1005.080, AND BY AMENDED §1005.240 RELATING TO SUBDIVISION IMPROVEMENTS BY IDENTIFYING A TIME WHEN SAID IMPROVEMENTS MUST BE COMPLETED AND CODIFYING THE SAME AS REGULATIONS FOR THE CITY OF CHESTERFIELD, MISSOURI.**

WHEREAS, the City Council of the City of Chesterfield (the "City") is authorized under state law to control and regulate the division and redivision of land within the City to protect the public interest; and

WHEREAS, the City has experienced problems with improvements to subdivision enforcement and costs of maintaining improvements to subdivisions after the completion of project; and

WHEREAS, the City has also experienced problems with having all improvements as required by the Subdivision Code, completed either at the time the subdivision is being built or immediately upon its completion based lacking any specific requirement within the Subdivision Code as to when the improvements are to be completed; and

WHEREAS, after due notice and a public hearing before the Chesterfield Planning Commission, and in accordance with Chapter 89 of the Revised Statutes of Missouri and other law, the Council now desires to amend the Subdivision Ordinance and the City of Chesterfield Municipal Code (the "Code") entitled "Subdivision Regulations" by adopting the Codified Code with amendments relative to the requirement to establish a land subdivision and maintenance bond to guarantee the proper installation of infrastructures and to set specific requirements as to when said improvements are to be completed.

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CHESTERFIELD, AS FOLLOWS:**

**Section 1.** The Subdivision Ordinance (as amended) and the City Code is hereby amended by repealing section 1005.080, and enacting in its place the attached section 1005.080, marked Exhibit A attached and incorporated herein by this reference and hereby enacted by this ordinance.

**Section 2.** The Subdivision Ordinance, §1005.240 is amended by deleting in its entirety §1005.240.2 and substituting therefore a new §1005.240.2, which will read as follows:

"The owner of the tract may prepare and secure tentative approval of a final subdivision plat of the entire tract, but the improvements shall be either installed or guaranteed in the form of a land subdivision bond, or an escrow agreement in a portion of the area for which a record plat is approved for recording. However, all improvements required by the City shall be complete and approved prior to issuance of more than 85% of the building permits of all lots in the subdivision plat."

**Section 3.** Sections 1005.080 and 1005.240.2 amended hereby, are adopted pursuant to the authority granted to the Council by the Constitution of the State of Missouri through the authority granted by Chapter 89 of the Missouri Revised Statutes relating to zoning and subdivision regulation, Missouri Revised Statutes Section 82.190 relating to control of streets and public places, and all such other powers as are granted to regulate the public health, welfare and safety.

**Section 4.** The portions of this Ordinance and attachments hereto shall be severable. In the event that any portion of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of this Ordinance are so essential and inseparably connected with and dependent upon the void portion that it cannot be presumed that the Council would have enacted the valid portions without the invalid ones, or unless the court finds that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the legislative intent. Nothing herein shall limit the enforceability of any amended provision for violations or activities occurring prior to its amendment.

**Section 5.** This ordinance shall be in full force and effect on and after its passage and approval as provided by law.

Passed and approved this 2nd day of FEBRUARY, 2004.

  
MAYOR

ATTEST:

  
CITY CLERK

## Attachment A

### **SECTION 1005.080: 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, including any certifications, engineering findings and reports/observations required by said 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 or escrow agreement approved by the City of Chesterfield, which guarantees the construction, completion, and installation ("construction deposit"), and a separate agreement and deposit amount for maintenance obligations ("maintenance deposit"), as required herein for the improvements shown on the approved improvement plans within the improvement completion period approved by the Public Works Director, which shall not exceed two (2) years.
- B. *Exceptions.*
1. The Director of Planning or Public Works may require any specific improvement to be installed prior to approval of the record plat where failure 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 Director of Finance and Administration 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. 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 be with a local banking institution in the Greater St. Louis Metropolitan Area of Missouri and not Illinois. 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 Director of Public Works. The letter of credit shall be irrevocable for at least two (2) years and shall state that any balance remaining at the expiration, if not renewed, shall automatically be deposited in cash with the Director of Finance and Administration, 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. Certificates of deposit, treasury bill, or other readily negotiable instruments, the type of which has been approved the Department of Planning, endorsed to the City and the cash value of which shall be in an amount not less than the amount specified by the Department of Public Works in its estimate of the cost of the improvements and/or maintenance as reflected by the approved improvements plan.
- 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 all required improvements. The maintenance deposit shall be established by cash sum or submission of a separate letter of credit.
  3. Where certain improvements are installed and approved by the City prior to approval of the record plat pursuant to Subsection (A)(1), the gross 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 Chesterfield, and 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 Public Works 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 Public Works 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 of Public Works 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 of Public Works; 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 of Public Works may grant an extension to the improvement completion period for a period of up to one (1) year if after review by the Department of Public Works such longer period is deemed necessary to facilitate adequate and coordinated provisions for transportation, water, sewerage, schools, parks, playgrounds, or other required improvements, facilities or requirements so long as all guarantees are extended and approved by the City Attorney; provided, that the Director of Public Works may require as a condition of the extension completion of certain items, execution of a new agreement, recalculation of deposit amounts, 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 1005.080.

3. *Construction deposit releases.* After an inspection of any specific improvements, the Director of Public Works may at the Director's discretion release no 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 of Public Works after completion of any component of the guaranteed improvements (i.e. less than all of the improvements in a given category), the remaining amount held for any category of improvements for the entire subdivision shall be released within thirty (30) days of completion of all of the improvements in such category of improvement, minus a retention of five percent (5%) which shall be released only upon completion of all improvements for the subdivision. The Director of Public Works shall establish the improvement categories, which may consist of improvement components or line items, to be utilized for calculation of deposit amounts, but such categories, components, and line items shall in no way modify or reduce the developer's 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 of Public Works 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 of Public Works, (5) the developer has paid any sums due related to the project. 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 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 or City Council.
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 Public Works. Completion is when the particular item has had all documentation and certification filed in a complete and acceptable form, the specific items have been inspected, all identified deficiencies have been corrected and the work has been approved by the City.
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 Public Works Board of Variance, and no such denial shall be deemed final until such appeal procedure has been exhausted.

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, but not limited to: undeveloped lots, streets, sidewalks, trees, common areas, erosion and siltation control, and storm and drainage facilities, until (1) expiration of twelve (12) months after occupancy permits have been issued on eighty percent (80%) of all of the lots in the subdivision plat(s), or (2) twelve (12) months after completion of the subdivision and acceptance/approval of all required improvements by the City, whichever is longer, 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 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 City or appropriate agency for dedication. Irrespective of other continuing obligations,

the developer's 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 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. Except in emergency circumstances or where action is otherwise required before written notice can be provided, the Director of Public Works shall provide the developer with a written demand and opportunity to perform the maintenance before having such maintenance performed by the City, or its agents. Where the amount of maintenance deposit remaining is determined to be insufficient or where the maintenance deposit was drawn upon by the City for maintenance, the Director of Public Works shall have the authority to require the maintenance deposit to be replaced or replenished by the developer in any form permitted for an original deposit.
- b. In determining the amount of maintenance deposit that shall continue to be held, portions of the deposit amount that were attributable to improvements that have been accepted by any third-party governmental entity or utility legally responsible for the maintenance of the improvement may be released upon such acceptance of the improvement by the entity. The Director of Public Works may approve such further releases if it is determined in his 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 Public Works shall cause a final inspection to be made of the required improvements. Funds shall then be released if there are no defects or deficiencies found and all other obligations, including payment of all sums due, are shown to be satisfied on inspection thereof, or at such time thereafter as any defects or deficiencies are cured with the permission of, and within the time allowed by, the Director of Public Works. This release shall in no way be construed to indemnify or release any person from any civil liability that may exist for defects or damages caused by any construction, improvement or development for which any deposit has been released.

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 of Public Works, 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 of Public Works may notify the developer to show cause within not less than ten (10) days why the developer should not be declared in default. Unless good cause is shown, no building or other permit shall be issued to the developer in the subdivision during any period in which the developer is in violation of the deposit agreement or 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 of Public Works shall declare the developer in default and may take any one (1) or more of the following acts:

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

The failure of a developer to complete the improvement obligations within the time provided by the agreement (or any extension granted by the City), 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, or extension granted by the City. 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 of Public Works' requirements for payment as described above, fails to complete the improvements as required or otherwise violates the deposit agreement provisions, the Director of Public Works may in addition or alternatively to other remedies:

1. Suspend the right of anyone to build or construct in the subdivision by issuance of a stop work order. Issuance of a SWO shall result in a suspension of all construction activity on the site, until the cause is resolved to the City's satisfaction. The SWO shall also suspend the right of the permittee, applicant, owner, contractor, developer or any related entity to build or construct any structure or public improvement on any portion of the site. The Director of Public Works and the Director of Planning, upon the issuance of a SWO, are authorized to suspend the issuance of building permits and occupancy permits for structures on any portion of the site, and to suspend all inspections and plan review related to any work on the site, until such time as the cause is resolved to the City's satisfaction. SWO's shall specifically state the provisions of this Chapter being violated. Any person, who shall continue any work in or about the site after a SWO, has been posted, except such work related to remediation of the violation, shall be subject to penalties specified in Chesterfield Code. The Director of Public Works shall give the developer ten (10) days' written notice of an order under this Subsection, with copies to all known sureties, as appropriate, who have outstanding obligations for any undeveloped portion of the subdivision, and shall record an affidavit of such notice with the Recorder of Deeds. If, within the ten (10) day period after notice is given, the Director of Public Works is not convinced by compelling evidence that completion of the improvements is adequately assured and maintenance of streets assured as provided herein, the Director of Public Works shall order construction suspended on the undeveloped portion of the subdivision. The order shall be served upon the developer, with a copy to the issuer/holder 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 of Public Works at the subdivision. The notice shall contain the following minimum language, which may be supplemented at the discretion of the Director of Public Works:

THIS SUBDIVISION, (name of subdivision), HAS BEEN DECLARED IN DEFAULT BY THE CITY OF CHESTERFIELD DIRECTOR OF PUBLIC WORKS. NO DEVELOPMENT, CONSTRUCTION, BUILDING OR DEMOLITION IN ANY MANNER SHALL TAKE PLACE WITHIN THE LIMITS OF THIS SUBDIVISION UNTIL SUCH TIME AS THE CITY OF CHESTERFIELD DIRECTOR OF PUBLIC WORKS REMOVES THIS PROHIBITION. ANY DEVELOPMENT, CONSTRUCTION, BUILDING OR DEMOLITION IN ANY MANNER WHILE THIS PROHIBITION IS IN EFFECT IS ILLEGAL AND SHALL BE ENFORCED PURSUANT TO THE SUBDIVISION ORDINANCE SECTION 1005.080, CITY OF CHESTERFIELD REVISED ORDINANCES.

The Directors of Public Works and Planning shall not thereafter authorize construction to take place contrary to the Director of Public Works' order. The suspension shall be rescinded in whole or in part only when the Director of Public Works is convinced that completion of the improvements is adequately assured *in* all or an appropriate part of the subdivision and a guarantee of public street maintenance 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 the City of Chesterfield. The Director of Public Works shall give the developer ten (10) days' written notice of an order under this clause, with a copy to sureties known to the Director to have obligations outstanding on behalf of the developer or related entities and shall record an affidavit of such notice with the Recorder of Deeds. If, within the ten (10) day period after notice is given, the Director of Public Works is not convinced by compelling evidence that completion of the improvements is adequately assured and maintenance of streets assured as provided herein, the Director of Public Works shall order construction suspended. The order shall be served upon the developer, with a copy to the surety as appropriate, and a copy recorded with the Recorder of Deeds. The Directors of Public Works and Planning shall not thereafter authorize construction to take place contrary to the Director of Public Works' order. The suspension shall be rescinded only when the Director of Public Works is convinced that completion of the improvements is adequately assured and public street maintenance is 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 of Public Works, including any escrow, fees, or bond under any prior version of this Section,
    1. The Director of Public Works 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 of Public Works is convinced that completion and maintenance of the improvements is adequately assured.
- J. *Additional Remedies.* If any party or related entity 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.

## **SECTION 1005.240.2: IMPROVEMENTS**

The owner of the tract may prepare and secure tentative approval of a final subdivision plat of the entire tract, but the improvements shall be either installed or guaranteed in the form of a land subdivision bond, or an escrow agreement in a portion of the area for which a record plat is approved for recording. However, all improvements required by the City shall be complete and approved prior to issuance of more than 85% of the building permits of all lots in subdivision plat.

FORM OF LETTER OF CREDIT

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

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

\_\_\_\_\_ 200\_\_

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

City of Chesterfield  
690 Chesterfield Parkway West  
Chesterfield, Missouri 63017

Dear Sir:

We hereby establish in favor of the CITY OF CHESTERFIELD, 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 Chesterfield, 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 thereof or, 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 \_\_\_\_\_, \_\_\_\_\_, except that unless such date may be extended as hereinafter provided, this letter of credit shall automatically and immediately be paid by wire transfers the balance of the Maximum Available Credit to the City of Chesterfield at the following account: \_\_\_\_\_, or (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/or further provided that upon such expiration, or if automatically extended upon expiration of the last extension, we shall automatically and immediately transfer the balance of the Maximum Available Credit to the City of Chesterfield at the following account:**

**[bank account numbers]**

Planning Commission  
December 8, 2003  
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P.Z. 35-2003 Subdivision Development Regulations  
and Time Requirements for Subdivision Improvements

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

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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 Plot 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 Chesterfield, Missouri

Gentlemen:

The undersigned, a duly authorized official of City of Chesterfield, 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 Chesterfield, Missouri to

[INSERT BANK Account #\_\_\_\_\_], Attention: Finance Officer.

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this certificate this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF CHESTERFIELD, 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 Chesterfield,  
Missouri

Gentlemen:

The undersigned, a duly authorized official of City of Chesterfield, 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 for deposit in a special transit account for the street and associated storm sewer maintenance.
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 Chesterfield, Missouri to

[INSERT BANK Account # \_\_\_\_\_], Attention: Finance Officer.

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this certificate this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF CHESTERFIELD, MISSOURI

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

EXHIBIT D  
TO LETTER OF CREDIT  
FORM OF NOTICE OF EXPIRATION

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

City of Chesterfield, Missouri

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

Re: Our Letter of Credit No. \_\_\_\_\_ in Favor of City of Chesterfield,  
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 Chesterfield  
City Hall  
690 Chesterfield Parkway West  
Chesterfield, Missouri 63017

\*\*\*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 CHESTERFIELD, MISSOURI

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

City Administrator  
Acting City Administrator or  
Director of Planning

(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  
Chesterfield, Missouri

Gentlemen:

The undersigned, City of Chesterfield, 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 CHESTERFIELD, MISSOURI

[NAME OF TRANSFEREE]

Planning Commission  
December 8, 2003  
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P.Z. 35-2003 Subdivision Development Regulations  
and Time Requirements for Subdivision Improvements

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

City Administrator

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

[Name and Title of  
Authorized Officer of Transferee]