

# GRADING ESCROW AGREEMENT

Receipt Number: \_\_\_\_\_

This ESCROW AGREEMENT made and entered into by \_\_\_\_\_ hereinafter called DEVELOPER, and the City of Ballwin, hereinafter called CITY:

WITNESSETH:

WHEREAS, the DEVELOPER has proposed to commence grading and related activities for the development known as \_\_\_\_\_ and is requesting approval of the same: and

WHEREAS, the DEVELOPER has submitted plans, information and data to the CITY OF BALLWIN for the completion and maintenance of the following described activities and improvements, hereinafter called WORK:

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in accordance with all or some of the following: permits, permit applications, drawings, specifications, approvals, statements and understandings at hearings and public meetings, and ordinances approved by the City; all of which are made a part of this agreement; at the property located at \_\_\_\_\_; and requested approval of the same; and

WHEREAS: the DEVELOPER is seeking the issuance from the City of Ballwin of a Grading, Mining, Filling and Clearing Permit, as the same is provided in Chapter 11 of the "Code of Ordinances, City of Ballwin, Missouri" as amended.

WHEREAS: The "Code of Ordinances " of the City of Ballwin provides that said permit shall not be approved unless the DEVELOPER submits a satisfactory ESCRPW guaranteeing said WORK in the sum of 110% of the estimated cost of said WORK; and

WHEREAS: The City Engineer of the City of Ballwin has reviewed all submitted

information and has reasonably estimated and determined that the cost of the WORK, as outlined above and detailed in the attached Exhibit "A" which is made a part hereof, will be in the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_.\_\_\_\_) lawful money of the United States of America; and

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

IT IS HEREBY MUTUALLY AGREED:

1. That the DEVELOPER has escrowed the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_.\_\_\_\_) lawful money of the United States of America with the City Clerk of the City of Ballwin, to guarantee the construction, installation, completion and maintenance of said WORK in accordance with the approved plans therefore and in accordance with the ordinances of the CITY regulating the same.
2. That the DEVELOPER guarantees that all WORK will be completed on or before (provide a specific date)\_\_\_\_\_, which is also the date specified in the Grading, Mining, Filling and Clearing Permit issued for this work, or within the time specified in writing by the CITY for corrective action or restoration, and
3. The DEVELOPER agrees to maintain completed portions of the WORK in good condition as designed and approved for construction until accepted for public maintenance by the Board of Aldermen of the CITY; or, when no Aldermanic acceptance is required, until it is determined by the City and all other reviewing agencies with jurisdiction, that the WORK is fully completed, conforms to the submissions, and this agreement is released in writing, and
4. That the ESCROW will be held by the City of Ballwin and run to the City's favor in that time.
5. That in the event the ESCROW herein provided is insufficient to complete the said WORK, the DEVELOPER, will deposit with the CITY CLERK that additional sum of lawful money of the United States of America equal to 110% of that sum of money that will be required to complete the said WORK; said additional sum to be subject to the terms of this Agreement.
6. That the DEVELOPER guarantees that all required siltation / erosion control will be installed prior to any grading activities, that all rough grading will be completed within nine (9) calendar months of the date of the Grading, Mining, Filling and Clearing Permit, and all seeding / sodding, final grading in finished areas and lots and restoration will be installed, constructed, and completed in good condition and in accordance with the approved grading plan within two (2) years from the date of said permit.

7. The ESCROW amounts hereunder are not divisible, in that such amounts apply to the entire work, notwithstanding that, for planning and estimating purposes, such amounts maybe listed as component parts. The DEVELOPER may furnish periodic requests for the release of escrowed funds provided such requests are accompanied by a sealed statement of completion by the DEVELOPER'S licensed professional engineer familiar with the WORK, or equivalent knowledgeable authority as approved and acceptable to the City Engineer, stating that the WORK associated with the requested escrowed funds release has been completed in accordance with the provisions of this agreement.
8. That in the event the DEVELOPER shall:
  - Fail to maintain significant efforts towards the completion of the WORK for a period of three months, and/or
  - Fail to complete all WORK within the time stipulated in Section 2 above, and/or
  - Fail to maintain the work area and all WORK in a safe and properly functioning manner, and/or
  - Fail to perform off-site repairs, corrective action or restoration within the time specified by the CITY;

Then, at the option of the CITY ENGINEER:

- The CITY shall provide 30 calendar days notice via certified mail sent to the DEVELOPER'S address stipulated in this document of the failure and need to correct said failure; and
- Following the notification period the CITY shall, with no additional notice to the developer, complete the above described WORK, off-site repairs, corrective action or restoration in accordance with the permit, permit application, drawings, specifications, approvals, statements and understandings at hearings and public meetings, and ordinances of the City, at a rate of \$250.00 per hour plus the cost of any equipment rentals or material purchases; or,
- At the CITY'S sole option, obtain a bid or bids for completing the above described WORK in accordance with the referenced permit application, drawings, submittals, specifications, approvals, statements and understandings at hearings and public meetings, and ordinances approved by the City, and upon determination, of the lowest responsible bidder, arrange for a contract between such bidder and the CITY, for the completion of the work.

IT IS ALSO HEREBY MUTUALLY AGREED:

1. That the DEVELOPER grants the CITY, its agents or its assigns, the right of access

to the site for the purpose of inspection and completing the WORK, in accordance with the provisions of Section 8 above; and

2. That the funds provided per this escrow shall be used to complete the WORK in accordance with the provisions of Section 8 above; and
3. That the CITY hereby accepts this agreement as satisfactory under the provisions and requirements of Chapter(s) \_\_\_\_\_ of the Code of Ordinances of the City of Ballwin, Missouri.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that if the DEVELOPER shall promptly and faithfully performed the above-described WORK, in accordance with the provisions of this agreement,

1. The CITY shall release or disburse the ESCROW or portions thereof, but only upon receipt of a written itemized request for funds release from the DEVELOPER that has been signed and authorized by the Mayor or City Administrator of the CITY. It is provided, however, that in no case shall the CITY release, disburse or otherwise dispose of more than ninety five per cent (95%) of each requested release of ESCROW funds, or of the entire ESCROW, until the required written statement(s) of completion is (are) received.
2. No right of action shall accrue on this escrow agreement to or for the use of any person or corporation other than the CITY or its agents, successors, or assigns.
3. The CITY shall be entitled to recover from the ESCROW its actual costs and attorney fees should any action be required to execute on the escrow agreement evidenced by document.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hand and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

In the presence of:

\_\_\_\_\_  
(Developer's Name)

\_\_\_\_\_  
(Witness) Address \_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
(Developer)

(SEAL)

In the presence of:

The City of Ballwin, Missouri  
14811 Manchester Rd. (SEAL)  
Ballwin, Missouri, 63011

\_\_\_\_\_  
(Witness)

By \_\_\_\_\_  
(City Administrator)