

DEVELOPMENT IMPROVEMENTS AGREEMENT

(1-17-17 Revision)

Project Name: _____

THIS AGREEMENT is made this _____ day of _____, 20____, by and between the City of Eureka, a political subdivision of the State of Missouri (herein referred to as "City"), and _____, a _____, whose address is _____ (the "Developer"). The City and Developer are individually referred to herein as a "Party" and jointly referred to herein as the "Parties". The Effective Date of this Agreement shall be the date upon which it is signed by the parties.

RECITALS

A. The Developer is the owner of certain property situated in the City of Eureka, more particularly described in Exhibit "A" hereto and known as _____ (the "Project").

B. The Developer desires to develop "Project", hereinafter referred to as the ("Property") according to the approved final subdivision Plat/Final Site Plan thereof (the "Plat" or "Final Site Plan") showing a proposed subdivision or site layout for said Property.

C. The City has approved the Plat/Final Site Plan submitted by the Developer subject to certain requirements and conditions, which involve the installation and construction of utilities, erosion and sediment devices, storm water management measures, site grading and drainage, landscaping (if applicable), as well as other public and private infrastructure improvements shown on the submitted construction drawings, Plat, Final Site Plan, Landscape Plan (if applicable) and documents for the Property, which is attached as Exhibit "B" ("Site Improvements Plan").

D. In lieu of completing all landscaping and infrastructure improvements prior to Plat/Final Site Plan recordation in accordance with City requirements, Developer may enter into a Development Improvements Agreement with the City.

E. In doing so, the City seeks to protect the health, safety and general welfare of the community by requiring a timely completion of the infrastructure depicted in the Site Improvements Plan and to limit the effects of uncompleted subdivisions, including premature subdivisions which leave property undeveloped and unproductive.

F. The purpose of this Agreement is to protect the City from assuming the cost to complete the utility, landscaping, and infrastructure improvements and is not executed for the benefit of material providers, laborers or others providing work, services or material to the Property or for the benefit of lot or home buyers in the Project.

G. The mutual promises, covenants, and obligations contained herein are authorized by State and local law and regulations.

NOW, THEREFORE, in consideration of the premises and the terms and conditions herein stated and for other valuable consideration, the adequacy of which is acknowledged by the Parties hereto, it is agreed as follows:

DEVELOPER'S OBLIGATION

1. Improvements: The Developer will design, construct, and install, at his own expense, those on-site and off-site utility, landscaping (if applicable), and infrastructure improvements in accordance with the approved Site Improvements Plan and the Cost of Construction Estimate, which is attached at Exhibit "C" (together the Site Improvements Plan and the Cost of Construction Estimate are referred to as the "Improvements"). At a minimum, the Site Improvements Plan shall address erosion and sediment control, water, sewer, electrical power service, natural gas service, telephone service, television service, storm water drainage and control, trails, roads, landscaping and weed control. The Developer's obligation to complete the Improvements will be in conformance with the time schedule defined by this Agreement and will be independent of any obligations of the City contained herein.

2. Improvement Completion Escrow ("Escrow") Options: To secure the construction and installation of the Improvements under this Agreement and the obligations for the warranty as set forth in Paragraph 4 herein, the Developer will deposit with the City as an Escrow, _____% of the Cost of Construction Estimate (which includes a 5% warranty), on or prior to the Effective Date, through one of the following mechanisms:

Option A. Irrevocable Letter of Credit in the amount of \$ _____

The Letter of Credit shall be (a) irrevocable, (b) issued by a financial institution and (c) of a term sufficient to cover the Completion and Warranty Periods. The Letter of Credit will be payable upon demand to the City. The Letter of Credit will be payable to the City in full or in part at any time upon presentation of (i) a sight draft drawn on the issuing financial institution to which the City is entitled to draw pursuant to the terms of this Agreement and the Letter of Credit; (ii) a certification executed by an authorized representative of the City stating that the Developer is in default under this Agreement; and (iii) the original Letter of Credit.

Option B. Cash in the amount of \$ _____, to be escrowed by the City Treasurer or third party escrow agent pursuant to a Cash Bond Escrow Agreement.

Cash in the form of a cashier's check or bank account in the sole ownership of the City will be escrowed with the City Treasurer or third party escrow agent pursuant to a Cash Bond. The City is entitled to draw upon these funds, pursuant to the terms of the Cash Bond. The funds will be disbursed to the City in full or in part, upon presentation of: (i) request for disbursement; and (ii) a certification executed by an authorized representative of the City stating that the Developer is in default under this Agreement; or (iii) as otherwise provided by the Cash Bond.

3. City Standards: The Developer will construct the Improvements according to the approved Site Improvements Plan, general industry standards, this Agreement, and applicable City regulations (the "City Standards"). The Developer shall instruct the contractor or construction manager to provide timely notice to the Developer, contractor, issuer of the Assurance and the Building Commissioner whenever an observation or related construction activity reveals that an Improvement does not conform to the City Standards or is otherwise defective.

4. Warranty Period: The Developer warrants that the Improvements, each and every one of them, will be free from defects in materials or workmanship under normal operation for a period of twelve (12)

months from the date of the issuance of the last building permit for the Project. Developer agrees to promptly correct any deficiencies in order to meet the City Standards, including any component of the site improvements that was previously approved, but that has failed to comply with the warranty herein prior to the expiration of the Warranty Period, solely at the Developer's expense.

5. Commencement and Completion Periods: All Improvements, as outlined in the Cost of Construction Estimate and Site Improvements Plan, will be installed and completed within _____ months/years from Plat or Final Site Plan approval (the "Completion Period"),

6. Damage to Public Improvements: Developer agrees that it shall repair or pay for any damage to any existing public improvements damaged during the construction of new improvements or during the development/construction of the newly created lots and structures. The City shall notify Developer within a reasonable time after discovery of any damage hereunder, and Developer shall have a reasonable period of time within which to repair said damage. If the Developer shall fail to make the required repairs in a timely manner the Building Commissioner shall issue a stop work order for the entire Project.

7. Road Cuts: Developer acknowledges that the City has regulations governing road cuts, the provisions of which shall apply to the alteration of any road necessitated by the installation of any utilities or Improvements described in this Agreement.

8. Weed Control: The Developer agrees to comply with City Codes relative to control and elimination of all weeds and high grass within the Property boundaries at all times during construction. The Developer further agrees to coordinate with the City relative to inspections and importations of weed free project materials.

9. Roads: Developer agrees to construct, at Developer's cost, all public and private roads and public and private road improvements, within the Property, in accordance with the plans and specifications within the Site Improvements Plan. Developer agrees to install any traffic control signs and standard street name signs as required by the City and to revegetate all cuts and fills resulting from construction in a manner which will prevent erosion.

10. Compliance with Law: The Developer shall comply with all relevant federal, state and local laws and regulations in effect at the time of Plat and/or Final Site Plan approval when fulfilling its obligations under this Agreement.

CITY'S OBLIGATION

11. Inspections and Notice of Defect: The City shall comply with RSMo Section 89.410, and in accordance therewith shall conduct inspections of the Improvements from time to time. In the event that there is a deficiency in performance by Developer hereunder (during the Completion or Warranty Periods), the City may issue a Notice of Defect to the Developer and the issuer of the Assurance. The Developer shall have thirty (30) calendar days thereafter to cure the defect (the "Cure Period"). If a defect is not corrected within the Cure Period, a condition of default may be declared and an Affidavit of Lapse of Improvements Agreement may be issued stating that building permits, grading permits and certificates of occupancy will not be issued in connection with any lots within the Plat or Final Site Plan, and the City may request that a court of competent jurisdiction enjoin the sale, transfer or

conveyance of lots within the Plat or Final Site Plan until a new Development Improvements Agreement and Assurance are accepted by the City. If the defect cannot be corrected within the Cure Period, the Developer may request an extension of the Cure Period from the Building Commissioner.

12. Notice of Non-compliance with Completion Date: The City shall issue the Developer a Notice of Noncompliance in the event that the Improvements are not completed by the Developer and accepted by the City within the Completion or Warranty Period. A written request by the Developer indicating cause and reason for an extension shall be submitted to the Building Commissioner not earlier than fourteen (14) calendar days prior to the expiration of the Completion or Warranty Period. The request for extension will be reviewed by the Building Commissioner and may only be granted in such cases where the Escrow is also extended for the life of the modified Completion Period. An approved extension will be executed as a written Addendum to this Agreement. If an extension of time is not approved by the Building Commissioner, an Affidavit of Lapse of Improvements Agreement may be issued stating that building permits, grading permits and certificates of occupancy will not be issued in connection with any lots within the Plat or Final Site Plan, and the Developer may not sell, transfer or convey any lots within the Plat or Final Site Plan until a new Development Improvements Agreement, with modified time lines, and Escrow are approved by the City.

13. Acceptance of Improvements: The City's acceptance of Improvements is conditioned upon (a) the presentation by Developer of the required signatures of acceptance by all entities serving the constructed Improvements, (b) clear documentation and testing that the Improvements have been completed per City Standards, and (c) the presentation by Developer of a document or documents, where appropriate, for the benefit of the City, demonstrating that the Developer owns the Improvements in fee simple title with no liens or encumbrances thereon. Acceptance of any Improvement does not constitute a waiver by the City of any rights it may have on account of any defect in or failure of the Improvement that is detected or which occurs after the acceptance within the Warranty Period. Public Improvements shall be dedicated to the appropriate public entity. Private Improvements serving more than one lot shall be assigned by separate agreement or deed to a Homeowners Association.

14. Reduction of Escrow: As portions of the site Improvements are completed in accordance with this Agreement, City regulations, and the approved Site Improvements Plan, the Developer may make application to the Building Commissioner to reduce the amount of the original Escrow. If the Building Commissioner is satisfied that such portion of the Improvements have been installed and completed in accordance with City Standards, he may cause the amount of the Letter of Credit or Cash Bond to be reduced by such amount that he deems appropriate, so that the remaining amount of the Letter of Credit or Cash Bond adequately insures the completion of the remaining site Improvements in accordance with Missouri law. Following the expiration of the Warranty Period, the full remaining balance which may be drawn under the Letter of Credit or Cash Bond, will be released only Developer is not in default (as defined below) at the end of the Warranty Period.

15. Use of Proceeds: The City will use funds drawn under the Assurance per Paragraph 2 herein only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements.

OTHER PROVISIONS

16. Events of Default: The following conditions, occurrences or actions will constitute a default by the Developer during the Completion Period or Warranty Period:

a. Developer's failure to complete any portion of the Improvements in conformance with the City Standards within the Completion Period, or the failure to cure such default within the Cure Period (or extended Cure Period) after receipt of written Notice of Defect from the City specifying the nature of such defect. The City shall be entitled to undertake such work as may be necessary and appropriate to cure such default and the City shall be reimbursed for the reasonable costs thereof either by payment of such costs within 30 days of delivery of an invoice to Developer or by obtaining funds from the Escrow sums set forth in Paragraph 2 herein.

b. Developer's failure to satisfactorily complete each portion of the Improvements within the Completion Period, as documented by the issuance of a Notice of Noncompliance, or to remedy defects within the Warranty Period, Cure Period or extended Cure Period as the case may be.

c. Notification to City of Developer's insolvency, the appointment of a receiver for the Developer, the filing of a voluntary or involuntary petition in bankruptcy, and the foreclosure of any lien against the Property or a portion of the Property then owned by the Developer.

17. Measure of Damages: The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements, including all professional fees such as engineering and attorney's fees. For Improvements upon which construction has not begun, the estimated costs of Improvements as shown on Cost of Construction Estimate will be prima facie evidence of the minimum cost of completion; however, neither that amount nor the Escrow amount shall establish the maximum amount of Developer's liability.

18. City's Rights Upon Default: When any event of default occurs and is not cured within any applicable Cure Period, the City may exercise its rights and/or contract with a third party for completion of the Improvements, and/or use City crews for the completion of the Improvements. The Developer grants to the City, its successors, assigns, agents, contractors, and employee, a nonexclusive right and easement to enter the Property then owned by the Developer for the purposes of inspecting, constructing, installing, maintaining, and repairing such Improvements. Alternatively, the City may assign the proceeds of the Letter of Credit or Cash Bond to a subsequent party who has acquired the Property by purchase, foreclosure or otherwise for the purpose of completing the Project (not including home buyers), who will then have the same rights of completion as the City, if and only if, the subsequent party agrees in writing to complete the unfinished Improvements and provides reasonable Assurances for the obligation. In addition, the City may also revoke certificates of occupancy with respect to any portion of the Property owned by Developer at the time of such revocation, issue an Affidavit of Lapse of Improvements Agreement, and/or enjoin the sale, transfer, or conveyance of lots within the Plat or Final Site Plan, until the Improvements are completed and accepted. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

19. Indemnification: The Developer expressly agrees to indemnify and hold the City, its employees, agents, and assigns harmless from and against all claims, costs and liability of every kind and nature except those arising out of negligence on the part of the City, its employees, agents, and assigns, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work at the Property pursuant to this Agreement. The Developer further agrees to aid and defend the City with respect to any claim resulting from default hereunder by the Developer.

20. No Waiver: No waiver of any provision of this Agreement will be deemed or constitute a waiver

of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for in a written amendment to this Agreement signed by both the City and Developer; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any Improvement.

21. Amendment or Modification: The Parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City by the Building Commissioner and by the Developer or its authorized officer. Such amendment or modification will be properly notarized and recorded as an amendment to this Agreement, before it may be effective.

22. Vested Rights: The City does not warrant by this Agreement that the Developer is entitled to any other approval(s) required by the City, if any, before the Developer is entitled to commence development of the Property or to transfer ownership of the Property or any portion thereof.

23. Third Party Rights: No person or entity, who or which is not a party to this Agreement, will have any right of action under this Agreement.

24. Scope: This Agreement constitutes the entire agreement between the Parties and no statements, promises or inducements that are not contained in this Agreement will be binding on the Parties.

25. Severability: If any part, term, or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision hereof, and the rights of the Parties will be construed as if the illegal or unenforceable part, term, or provision was never contained within this Agreement.

26. Benefits: The benefits, rights and obligations of this Agreement pertaining to the Developer are personal in nature and may not be assigned without the express written consent of the City. Such consent may not be unreasonably withheld, but any unapproved assignment is voidable at the option of the City.

27. Binding Effect: This Agreement and the covenants contained herein shall run with the land and shall be binding upon and shall inure to the benefit of the Parties hereto and their successors, heirs and assigns; provided that, purchasers of residential lots within the Property or any homeowner's association that receives title to any portion of the Property shall not incur any liability hereunder and no person or entity, including any homeowner's association that receives title to any portion of the Property, may claim to be a third party beneficiary of the terms, conditions, or covenants of this Agreement. This Agreement shall be filed with the City Clerk and be on file with the Building Commissioner.

28. Sale, Transfer or Conveyance: The sale, transfer or conveyance of any lots located within the development by Developer to another builder or homeowner shall not relieve Developer of any of its obligations hereunder, and Developer shall remain subject to the terms of this agreement until released by the City.

29. Notice: Any notice required or permitted by this Agreement will be deemed effective either (a) when personally delivered in writing, or (b) seven (7) calendar days after notice is deposited with the U.S. Postal Service, certified, and return receipt requested, and addressed as follows:

If to Developer:

Developer's Mailing Address

If to City:

City Administrator
City of Eureka
100 City Hall Drive
P.O. Box 125
Eureka, MO 63025

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed per the Effective Date as indicated.

DEVELOPER

Company Name: _____

By: _____

Signature _____

STATE OF MISSOURI)
) ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____.

Witness my hand and official seal.

My commission expires:

Notary Public

CITY OF EUREKA

By: _____

Signature _____

STATE OF MISSOURI)
) ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____.

Witness my hand and official seal.

My commission expires:

Notary Public

EXHIBIT A
PROPERTY LEGAL DESCRIPTION
(Insert Legal Description of the Property after this Page)

EXHIBIT B
SITE IMPROVEMENTS PLAN
(Insert Site Improvements Plan after this Page)

EXHIBIT C
COST OF CONSTRUCTION PE ESTIMATE
(Insert Cost of Construction Estimate after this Page)