

LAKE SAINT LOUIS ESCROW REQUIREMENTS
FOR COMMERCIAL CONSTRUCTION PROJECTS

Below, please find a copy of the Lake Saint Louis standard escrow agreement for projects where installation of improvements is to be guaranteed with a Letter of Credit. The owner or builder must execute the escrow agreement. A bank or financial institution must execute the Letter of Credit.

Please contact the Lake Saint Louis Department of Public Works regarding the estimated cost for the improvements, submit those estimated costs to DPW for review and approval. Once approved by DPW, insert the approved number into the appropriate blanks in the escrow document. That final number is also the amount that the bank will need to guarantee in the Letter of Credit.

That is also the number we use to determine the Inspection Fee for inspection of the site improvements. The fee (not to be confused with the Building Permit Fee) is equal to 3% of the estimated costs. A check for that amount must be submitted to the City before a building permit can be issued.

An Erosion Control Cash Escrow, which is calculated at \$1000 per acre for the site, must also be submitted to the City. For example, the escrow for a 1.32 acre lot would be \$1,320.00. This escrow must be submitted as a separate check for the appropriate amount and, assuming there is no need for the City to use the funds to address erosion control issues during construction, will be refunded (no interest) at the end of the project. Insert the calculated number into the appropriate blanks of the escrow agreement.

Public Works may also charge some separate minor fees. As mentioned above, the Building Permit Fee is a separate charge.

DO NOT change or otherwise alter the agreement or letter of credit other than to fill in appropriate blanks. Changes will cause delay, as the modified document must be reviewed by the City Attorney.

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "Agreement") is made and entered into by and between _____, herein called "DEVELOPER", and THE CITY OF LAKE SAINT LOUIS, MISSOURI, herein called the "CITY":

WITNESSETH:

WHEREAS, the DEVELOPER has submitted plans, information and data to the CITY for the development of a commercial property to be known as _____ (the "Project"), and DEVELOPER is requesting issuance of relevant permits for same; and

WHEREAS, in connection with the issuance of relevant permits for the Project, DEVELOPER has agreed to make certain site improvements, such improvements being more particularly described in the Site Improvement Plan (the "Plan") attached hereto as Exhibit A and incorporated herein (hereinafter, the "Improvements"); and

WHEREAS, in connection with the issuance of relevant permits for the Project, DEVELOPER has agreed to perform and undertake certain erosion control measures, such measures being more particularly described in the Erosion and Sedimentation Control Plan, an element of the Plan (hereinafter, the "Erosion Control Measures");

WHEREAS, the Plan for the Improvements have been reviewed and approved by the CITY ADMINISTRATOR, and the CITY ADMINISTRATOR has reasonably estimated the cost of completing the Improvements in accordance with the Plan reviewed and approved by the CITY and the ordinances of the CITY to be _____ DOLLARS (\$_____); and

WHEREAS, based on Section 415.100.A.4 of the CITY's Municipal Code, the City Administrator has determined that the escrow to guaranty the performance and maintenance of the Erosion Control Measures should be _____ DOLLARS (\$_____); and

WHEREAS, the DEVELOPER has requested that the CITY issue relevant permits for the Project, and, in connection with the issuance of permits, DEVELOPER and CITY have agreed to enter into this Agreement guarantying DEVELOPER'S obligation to complete the Improvements and establish and maintain the Erosion Control Measures, all in accordance with the plans reviewed and approved by the CITY and the ordinances of the CITY.

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

IT IS HEREBY MUTUALLY AGREED:

A. IMPROVEMENTS

1. That the DEVELOPER has deposited with the CITY an irrevocable Letter of Credit with _____ [*insert name of bank*] in the sum of \$ _____ (hereinafter, the "Letter of Credit"), such Letter of Credit naming the CITY as beneficiary, a copy of which Letter of Credit is attached hereto as Exhibit B and incorporated herein. The Letter of Credit guarantees the construction, installation and completion of the Improvements in accordance with the plans reviewed and approved by the CITY and the ordinances of the CITY.

2. The Letter of Credit shall have a one (1) year term from the date of this Agreement but shall provide that it renews automatically for additional one-year terms; in no event shall the Letter of Credit be written to permit it to expire less than 90 days after the Completion Date.

3. DEVELOPER guaranties that the Improvements will be installed, constructed and completed on or before _____, 20____ (the "Completion Date") in accordance with the plans reviewed and approved by the CITY and the ordinances of the CITY. On or before the Completion Date, DEVELOPER (i) shall provide the CITY with a certificate of completion signed by an engineer licensed in the State of Missouri certifying that the Improvements have been completed in accordance with the plans reviewed and approved by the CITY and the ordinances of the CITY, and (ii) shall have received from the CITY final approval of the Improvements after an inspection of the same by the CITY. It is DEVELOPER'S responsibility to request that the CITY perform the inspection of the Improvements keeping in mind that the CITY shall be permitted at least thirty (30) days to complete its inspection after the request for inspection is made by the DEVELOPER. The Completion Date may only be extended by written agreement of the parties hereto.

4. In the event that DEVELOPER shall fail to complete the Improvements in accordance with the plans reviewed and approved by the CITY and the ordinances of the CITY on or before the Completion Date, or if DEVELOPER shall abandon the completion of the Improvements (and it shall be presumed conclusively that DEVELOPER has abandoned the completion of the Improvements if DEVELOPER fails to perform any substantial site work to complete the Improvements for a period of three (3) consecutive months), CITY may make one or more draws on the Letter of Credit, and thereafter use the proceeds thereof for (i) the purpose of paying the actual cost of completing, or having completed, the Improvements, or (ii) in the CITY'S discretion, using the proceeds for such purposes related to the Improvements as CITY may deem reasonably appropriate to ensure the health, safety and welfare of the Project or the surrounding area. Alternatively, if the CITY has already completed the Improvements (or the CITY has completed such reasonably necessary work for purposes related to the Improvements to ensure the health, safety, and welfare of the Project or the surrounding area), it may thereafter make one or more draws on the Letter of Credit to reimburse it for its cost in doing so. Any amounts drawn by CITY on the Letter of Credit in excess of the actual amount incurred by the CITY to complete the Improvements (or to complete such work deemed reasonably necessary by the CITY for purposes related to the Project and to ensure the health, safety and welfare of the Project or the surrounding area) shall be refunded to DEVELOPER in a timely manner by the CITY.

5. During the completion of the Improvements, if, in the reasonable discretion of the CITY ADMINISTRATOR, the amount of \$ _____ shall be deemed to be insufficient to complete the Improvements, DEVELOPER will either: (a) cause the amount of the Letter of Credit to be increased to include such additional amounts necessary to complete the Improvements, or (b) deposit with the CITY such additional amounts, in cash, necessary to complete the Improvements. Amounts deposited with the CITY in accordance with clause (b) of the preceding sentence may be expended by the CITY to complete the Improvements (or to complete such reasonably necessary work for purposes related to the Improvements to ensure the health, safety and welfare of the Project or the surrounding area) if DEVELOPER fails to complete the same on or before the Completion Date in accordance with the plans reviewed and approved by the CITY and the ordinances of the CITY or if DEVELOPER abandons the completion of the Improvements as described in Section 4. The CITY is not liable to DEVELOPER for interest on any amounts being held by the CITY.

6. Upon approval of the Improvements by the CITY as described in paragraph 3 above, and provided that the DEVELOPER faithfully performs its obligation to complete the Improvements in accordance with the plans reviewed and approved by the CITY and the ordinances of the CITY on or before the Completion Date, the Letter of Credit shall be returned to the DEVELOPER or the DEVELOPER'S bank, and any sums escrowed with the CITY pursuant to Section 5(b) hereof shall be returned to the DEVELOPER.

7. Nothing in this Agreement shall be deemed to limit the CITY'S rights against DEVELOPER arising out of the failure on the part of the DEVELOPER to complete the Improvements in accordance with the plans reviewed and approved by the CITY and the ordinances of the CITY.

8. CITY hereby accepts this Agreement as satisfactory under the provisions and requirements of Section 415.100 of the CITY'S Municipal Code.

B. EROSION CONTROL MEASURES

1. That the DEVELOPER has deposited with the CITY the sum of _____ DOLLARS (\$ _____) to guaranty installation and maintenance of the required Erosion Control Measures (hereinafter the "Erosion Control Cash Escrow") for the Project, in accordance with the plans reviewed and approved by the CITY and the ordinances of the CITY and the further requirements of this Agreement. The CITY is not liable to DEVELOPER for interest on any amounts being held by the CITY.

2. DEVELOPER guaranties that the Erosion Control Measures will be installed, constructed and completed in compliance with the project phasing schedule detailed in the Erosion and Sedimentation Control Plan (an element of the Plan reviewed and approved by the CITY), the ordinances of the CITY, with generally accepted best management practices as incorporated into the Erosion and Sedimentation Control Plan, and the further requirements of this Agreement. The DEVELOPER shall be responsible for all work at the site including work by subcontractors, utility companies and other contractors.

3. That in the event that the DEVELOPER shall fail to construct, complete, and maintain the required Erosion Control Measures for the Project in the time and manner required by the preceding paragraph, or if DEVELOPER shall abandon the installation and maintenance of the Erosion Control Measures for the Project (and it shall be presumed conclusively that DEVELOPER has abandoned the installation and maintenance of the Erosion Control Measures for the Project if DEVELOPER fails to perform any substantial work relating to the same for a period of three (3) consecutive months), the CITY may use the Erosion Control Cash Escrow, or any portion thereof, to construct, complete or maintain the Erosion Control Measures so that the site will not impair the public health, safety and welfare of the Project or the surrounding area.

4. That the Erosion Control Cash Escrow will remain in effect until the completion of the Project, vegetation has been established for the Project (in the manner required by the ordinances of the CITY), and all erosion and sediment problems for the Project have been satisfactorily resolved, all to the reasonable satisfaction of the CITY, and in compliance with the ordinances of the CITY. Provided that the DEVELOPER faithfully performs its obligation to complete the Erosion Control Measures in accordance with the plans reviewed and approved by the CITY, the ordinances of the CITY, in compliance with project phasing schedule detailed in the Erosion and Sedimentation Control Plan (an element of the Plan reviewed and approved by the CITY), and the other foregoing requirements of this Agreement, the Erosion Control Cash Escrow shall be released to the DEVELOPER, but only after receipt by the CITY of written request from the DEVELOPER therefor, and inspection and approval by the CITY, of all work done by the DEVELOPER in connection with establishing and maintaining the Erosion Control Measures.

5. Nothing in this Agreement shall be deemed to limit the CITY'S rights against DEVELOPER arising out of the failure on the part of the DEVELOPER to complete the Erosion Control Measures in accordance with the terms of this Escrow Agreement.

6. CITY hereby accepts this Agreement as satisfactory under the provisions and requirements of Section 415.100.A.4 of the CITY's Municipal Code.

[The remainder of this page is intentionally blank—signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the
____ day of _____, 20 ____.

DEVELOPER:

By: _____

Printed Name: _____

Title: _____

Address: _____

Telephone Number: _____

STATE OF MISSOURI)
) SS.
COUNTY OF _____)

On this ____ day of _____, 20__, before me appeared _____
_____, to me personally known, who, being by me duly sworn did say that ____ is the __
_____, of _____, a _____
_____ corporation, and that the seal affixed to the foregoing instrument is the corporate seal of
said corporation, and that said instrument was signed and sealed in 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 on the day and year above written.

Notary Public
Printed Name: _____

My Commission Expires:

CITY:

CITY OF LAKE SAINT LOUIS, MISSOURI

By: _____

Printed Name: _____

Title: _____

Attest:

City Clerk

Approved as to Form:

City Attorney

EXHIBIT A
IMPROVEMENTS

The Improvements include all of the following items, plus any necessary items of work related to the items listed below which are, in the CITY'S reasonable discretion, necessary to comply with the CITY's Municipal Code to preserve the health, safety and welfare of _____ or the surrounding area:

[Schedule of Improvements—either specify individual improvements to be made or refer, as specifically as possible, to site plans approved by the City for the proposed subdivision, for example: All site improvements shown on the Site Plan of _____ Subdivision prepared by ABC Engineering, Inc., with a final revision date of _____, 20____, Job No. _____, and approved by the City of Lake Saint Louis, Missouri on _____, 20____, a copy of which is on file with the Department of Public Works of the City of Lake Saint Louis, Missouri.]

EXHIBIT B

[Potential form of letter of credit; other forms may be acceptable to the City. Letter of credit must be irrevocable, payable on sight, have no other conditions to draw on it except as specified in the letter of credit, provide for automatic renewal and no termination without notice to the City, and be drawn on a local bank or other bank acceptable to the City, and provide for a local office where draw requests may be presented.]

Date: _____, 20____

IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

BENEFICIARY:	APPLICANT:
City of Lake Saint Louis, Missouri 200 Civic Center Drive Lake Saint Louis, Missouri 63367 Attn: _____	<i>[Insert Name and Address of Developer]</i>
MAXIMUM AMOUNT: USD _____ .00	INITIAL EXPIRATION DATE AT [INSERT LOCATION WHERE DRAW ON LETTER OF CREDIT MUST OCCUR]: _____, 20____

We hereby open our Irrevocable Standby Letter of Credit No. _____ (“Letter of Credit”) in your favor, for the account of *[Insert Name of Developer]*, which is available at site up to the amount of USD _____ .00 (the “Maximum Amount”), upon presentation of the following documents:

A) This original Letter of Credit and any subsequent Amendment(s). All Amendment(s) must indicate whether they are accepted or refused by the Beneficiary at time of drawing. **AND**

B-1) Beneficiary’s statement, on its letterhead, completed, dated and signed by an authorized individual, stating: “*[Developer]* has failed to perform the improvements for the Project known as _____, a subdivision of the City of Lake Saint Louis, St. Charles County, Missouri. We are drawing for USD _____, under Letter of Credit No. _____. Please wire proceeds to _____.”

B-2) Beneficiary’s statement, on its letterhead, completed, dated and signed by an authorized individual, stating “*[Name of Bank Issuing Letter of Credit]* has notified us of non-extension of their Letter of Credit No. _____ and an acceptable replacement has not been provided by *[Developer]*, as its obligations are not satisfied, as of the date of this drawing. We are drawing for USD _____. Please wire proceeds to us at: _____.”

The Maximum Amount of this Letter of Credit may be reduced upon the receipt of the City of Lake Saint Louis’ faxed notice, completed in the format attached hereto as Exhibit 1 (Page 3), on its letterhead and signed.

Multiple drawings are allowed. If a drawing is presented and paid, the original Letter of Credit will be endorsed and returned to you. If your drawing exhausts the Maximum Amount, we will retain the Letter of Credit.

It is a condition of this Letter of Credit that it will be automatically extended without amendment for a period of one year from the Expiration Date hereof, or any future Expiration Date, unless at least sixty (60) days prior to such Expiration Date, *[Name of Bank Issuing Letter of Credit]* notifies the Beneficiary in writing by courier at the above address of our election not to extend this Letter of Credit for an additional period. Upon receipt of such notice, you may draw by presentation of documents A and B-2 above.

Presentation and payment of your drawing under this Letter of Credit are restricted to our *[Insert location and address where Letter of Credit must be drawn]*.

This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amplified or limited by reference to any document, instrument or agreement referred to in this Letter of Credit, except only the Uniform Customs and Practice referred to herein, and any such reference shall not be deemed to incorporate herein any reference to a document, instrument or agreement.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500.

Pursuant to U.S. Law, we are prohibited from issuing, transferring, accepting or paying letters of credit to any party or entity identified by the Office of Foreign Assets Control, U.S. Department of Treasury, or subject to the Denial of Export Privileges by the U.S. Department of Commerce.

We agree with you to honor your drawing(s) presented in compliance with the terms of this Letter of Credit when received at our *[Insert location and address where Letter of Credit must be drawn]*, prior to 4:00 P.M., local time, Monday through Friday, on or before the then current Expiration Date, upon which date this Letter of Credit expires even if this original Letter of Credit and Amendment(s), if any, are not returned to our *[Insert location of office where Letter of Credit must be drawn]*.

If you return this original Letter of Credit and Amendment(s) prior to the then current Expiration Date with your intent to terminate same, it must be accompanied by your originally signed letter, addressed and sent directly to *[Name of Bank issuing Letter of Credit]*, indicating you no longer require this Letter of Credit and release *[Name of Bank issuing Letter of Credit]* of our obligation hereunder.

[Name of Bank issuing Letter of Credit]

Authorized Signature

Printed Name of Bank Representative providing Authorized Signature

(Following to appear on the Beneficiary's letterhead, with appropriate blanks completed)

CERTIFICATE FOR REDUCTION TO STANDBY LETTER OF CREDIT NO. _____

Date: _____

TO: *[Name and Address of Bank Issuing Letter of Credit]*

RE: Reduction Certificate No. _____ to Letter of Credit No. _____
Applicant: *[Insert Name of Developer]*

You are irrevocably authorized to reduce the Maximum Amount of this Letter of Credit to USD _____ .00 even though you did not endorse the reverse of the original Letter of Credit for such reduction.

Regards,

City of Lake Saint Louis, Missouri

Authorized Signature/Title

cc: *[Insert Name of Developer]*

If this Certificate reduces the Maximum Amount to USD0.00, please return the original Letter of Credit and all Amendments to us for cancellation.