

Memorandum

Department of Planning



To: Planning and Public Works Committee

From: Shilpi Bharti, Planner

Date: September 22, 2022

RE: **Replacement Construction and Maintenance Deposit Agreements and Sureties for the Alexander Woods Subdivision:** An ordinance amending City of Chesterfield Ordinance 3015 to authorize replacement construction and maintenance deposit agreements and sureties for the Alexander Woods Subdivision (Ward 2)

Summary

On August 6th 2018 the City of Chesterfield City Council approved Ordinance 3015. This ordinance provided the approval of the Record Plat, construction and maintenance deposit agreements and the associated sureties to guarantee the agreements for Alexander Woods Subdivision.

Construction has been ongoing and the development team is now requesting to replace the original construction and maintenance agreements and sureties.

In accordance with the UDC, the replacement construction and maintenance escrows and agreements are being presented to the Planning & Public Works Committee for review and recommendation prior to proceeding to the City Council. Staff has reviewed the request and the existing construction activities and has no concerns with the replacement.

Attached, please find a copy of the Subdivision Improvement Construction and Maintenance Deposit Agreements, along with the check.

Attachments: Subdivision Improvement Construction Deposit Agreement
Subdivision Improvement Maintenance Deposit Agreement

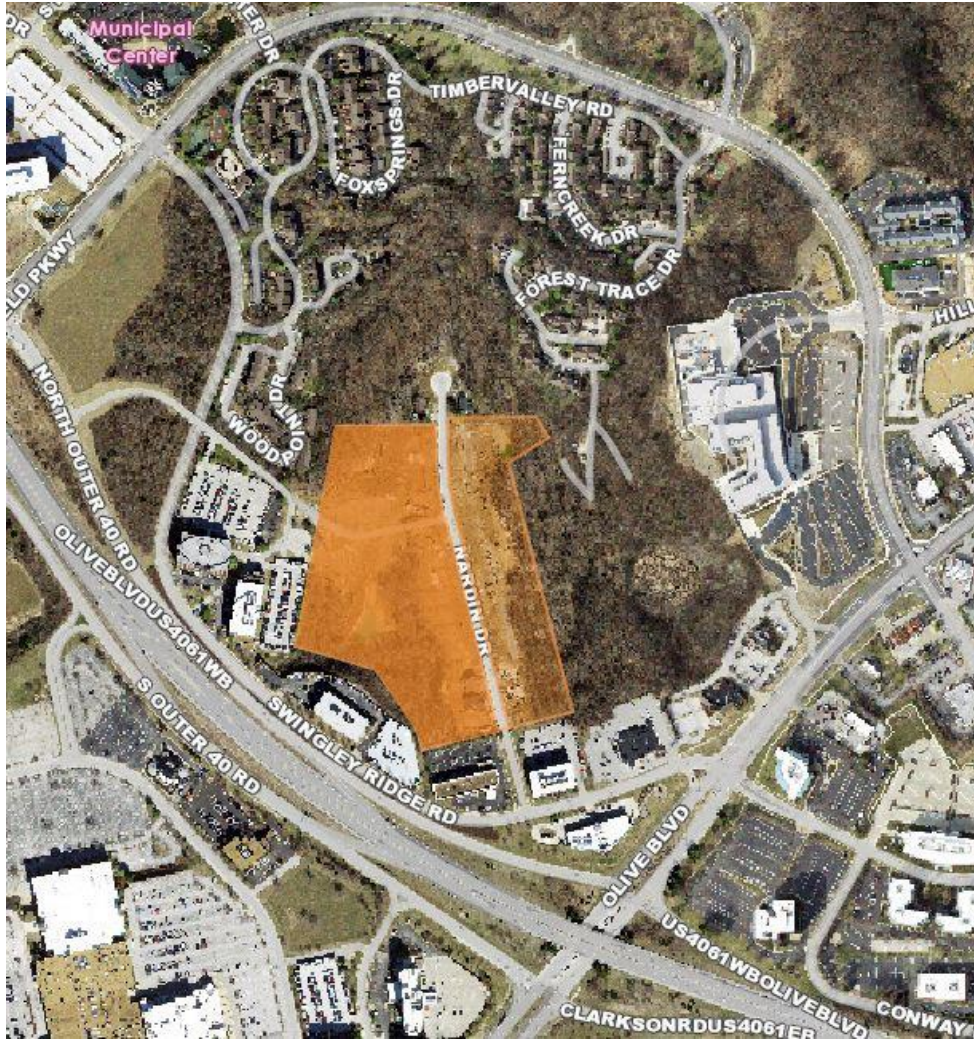


Figure 1: Subject Site Aerial



SUBDIVISION IMPROVEMENT CONSTRUCTION DEPOSIT AGREEMENT

THIS CONSTRUCTION DEPOSIT AGREEMENT made and entered into by
Payne Family Homes, LLC
_____, herein called DEVELOPER,
XX
_____, ~~herein called ESCROW~~
~~HOLDER (strike through this part if cash deposited with City) and the City of Chesterfield,~~
~~Missouri, herein called CITY.~~

WITNESSETH:

WHEREAS, the DEVELOPER has submitted plans, information and data to the CITY
for the creation and development of a subdivision to be known as
Alexander Woods
_____ in accordance with
Ordinance No. 3015, the governing ordinance for the subdivision, and the Subdivision
Regulations of the City of Chesterfield, and has requested approval of same; and

WHEREAS, the subdivision plans have been approved and the CITY has reasonably
estimated and determined that the cost of construction, installation and completion of said
improvements, all in accordance with the provisions of said governing ordinance and
Subdivision Regulations, as amended, will be in the sum of
Three Hundred Ninety Four Thousand One Hundred Fifty Five and 44/100
_____ DOLLARS
(\$ 394,155.44), lawful money of the United States of America; and

WHEREAS, the DEVELOPER is seeking approval from the CITY of the record plat of
the aforesaid subdivision as the same is provided in said governing ordinance and Subdivision
Regulations; and

WHEREAS, the Subdivision Regulations provide inter alia that the commencement of
said subdivision may be approved by the CITY upon the DEVELOPER submitting satisfactory
construction and maintenance deposit agreements guaranteeing the construction and maintenance

of the subdivision improvements in accordance with the approved plans, said governing ordinance and Subdivision Regulations.

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

IT IS HEREBY MUTUALLY AGREED:

1. That the DEVELOPER has established a CONSTRUCTION DEPOSIT in the amount of Three Hundred Ninety Four Thousand One Hundred Fifty Five and 44/100, DOLLARS (\$ 394,155.44) lawful money of the United States of America by: (check one)

- Depositing cash with the City.
- Submitting a Letter of Credit in the form required by the CITY and issued by the ESCROW HOLDER.
- Submitting a _____ (*type of readily negotiable instrument acceptable to the CITY*) endorsed to the City and issued by the ESCROW HOLDER.

Said deposit guarantees the construction, installation and completion of the required subdivision improvements in Alexander Woods Subdivision, all in accordance with the approved plans, the governing ordinance for the subdivision and the Subdivision Regulations of the City of Chesterfield, which are by reference made a part hereof, and in accordance with all ordinances of the CITY regulating same. A cost estimate thereof is attached hereto as "Exhibit A".

2. That the CONSTRUCTION DEPOSIT will be held in escrow by the CITY or the ESCROW HOLDER, as applicable, until such time as releases are authorized by the Department of Planning. The CONSTRUCTION DEPOSIT may be subject to special audit of the CITY from time to time.

3. That the CONSTRUCTION DEPOSIT guarantees the construction, installation and completion of the improvements in the aforesaid subdivision in accordance with the plans and specifications for the said subdivision which have been filed with the CITY, which are made a part hereof by reference as if set forth herein word for word.

4. Pursuant to Revised Statutes of Missouri, 89.410, the amounts set out on Exhibit "A" are identified by separate line item and are subject to release of ninety five percent (95%) of said estimated costs within thirty (30) days of the completion of said specific component of work by DEVELOPER. The Developer shall notify CITY in writing when they consider the specific component ready for release of funds. Accordingly, the CITY may not allow for the reallocation of escrowed funds from one line item to another, without specific written agreement between the DEVELOPER and CITY indicating what specific component or components are being modified. ESCROW HOLDER shall not modify or expend funds from other than the identified line item component without written approval from CITY. Completion is when the particular item has had all documentation and certification filed in a complete and acceptable form and the specific items have been inspected and all identified deficiencies have been corrected and the work has been approved by the City.

5. That in the event the CITY should determine that the ESCROW SUM or any line item thereon as herein provided, is insufficient to complete the said Subdivision Improvements, or the specific line item, the CITY will so notify the DEVELOPER who shall deposit within thirty (30) days of said notice with the ESCROW HOLDER that additional sum of lawful money of the United States of America that will be required to complete the said specific component of the improvement and said additional sum will be subject to the terms of this Escrow Agreement. Failure to provide said sum shall cause for immediate cessation of all work on said subdivision until the additional amount is paid.

6. That the DEVELOPER guarantees that all required utilities and improvements will be installed, constructed and completed within two (2) years from the date of the approval of the said Subdivision Plat and the DEVELOPER shall certify the completion of all said improvements, along with the filing of all documentation and certification, all as provided in the governing ordinance for this subdivision and the Subdivision Regulations of the CITY.

7. That the ESCROW HOLDER, in accordance with paragraph 4 above, shall only release or disburse the ESCROW SUM, or portion thereof, upon receipt and in the amount set forth in a written authorization from the Department of Planning addressed to the ESCROW HOLDER, which authorization may be for the payment of labor and materials used in the construction, installation and completion of the said improvements, as the work progresses, as provided in the Subdivision Regulations or governing ordinance for this subdivision.

8. That in the event the DEVELOPER shall abandon the subdivision or fail to complete the subdivision improvements within two (2) years, from the date of the CITY'S approval of the said subdivision plat or subsequent extension period granted to this DEPOSIT AGREEMENT, whichever shall first occur, the CITY shall present to the ESCROW HOLDER a certified statement from the City Engineer estimating the cost for the completion of the subdivision improvements and require the ESCROW HOLDER to immediately perform on this agreement for completion of the specific components of the project or disburse said funds identified by the City Engineer's estimates directly to the CITY. The CITY may complete, or have completed by outside resources, the said improvements. The ESCROW HOLDER having disbursed the escrow sums therefore as ordered and directed by the CITY, and upon such disbursement shall be relieved of all liability under the terms of this agreement.

9. That in the event of any legal actions taken by the CITY against DEVELOPER or ESCROW HOLDER to enforce the provision of this agreement, the parties agree to pay a reasonable attorney's fee in addition to any other sums due under this agreement

10. That there shall be no assignment by DEVELOPER or ESCROW HOLDER under the terms of this agreement without written approval of the CITY.

11. That if DEVELOPER is unable to meet its obligation hereunder or to provide additional sums to complete the Subdivision improvements as may be determined by the CITY or if the DEVELOPER or ESCROW HOLDER shall go into receivership or file for bankruptcy protection, then in any such event the CITY may declare the DEVELOPER or ESCROW HOLDER (as the case may be) in default and may immediately order the payment of all remaining sums held by ESCROW HOLDER to be paid to the CITY without further legal process, to be used to complete the subdivision improvements as set out under the terms hereof.

12. That the ESCROW HOLDER will immediately inform the City of any changes of address for ESCROW HOLDER or DEVELOPER (known to ESCROW HOLDER) during the period of this Agreement. Failure to do so shall result in a breach of this Agreement and the CITY may declare the DEVELOPER or ESCROW HOLDER (as the case may be) in default and may immediately order the payment of all remaining sums held by ESCROW HOLDER to be paid to the CITY without further legal process, to be used to complete the subdivision improvements as set out under the terms hereof.

13. That no forbearance on the part of the CITY in enforcing any of its rights under this agreement, nor any extension thereof by CITY, shall constitute a waiver of any terms of this Agreement or a forfeiture of any such rights.

14. That the CITY hereby accepts this agreement as a satisfactory ESCROW AGREEMENT under the provisions and requirements of the governing ordinance for this

subdivision and any amendments or revisions thereto and the Subdivision Regulations of the CITY.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the 13th day of September, 2022.

ATTEST: (SEAL)

DEVELOPER: Payne Family Homes

William R. Allen
Type Name: William R. Allen
Title: VP of Land

BY: Joel D. Pottebaum
Type Name: Joel D. Pottebaum
Title: CFO

Firm Address:
10411 Baur Blvd.
St. Louis, MO 63132

~~ATTEST (SEAL)~~
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

~~ESCROW HOLDER: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

~~BY: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
~~Type Name: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
~~Title: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

~~Firm Address:~~
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

CITY OF CHESTERFIELD, MISSOURI

BY _____
Director of Planning

ATTEST: (SEAL)

APPROVED:

City Clerk

Mayor

NB: The signatures of the DEVELOPER and CREDIT HOLDER are to be acknowledged before a Notary Public. In the case of a partnership, all partners must sign. In the case of a corporation, the affidavits of the corporation act must be attached.

LLC EXECUTING OFFICIAL'S ACKNOWLEDGEMENT

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

On this 13th day of September, 2022, before me appeared Joel D. Pottebaum (name) to me personally known, who, being by me duly sworn, did say that he/she is the CFO (title or Executing Official) of Payne Family Homes, LLC, a Missouri Limited Liability Corporation, and that he/she in fact has the authority to execute the foregoing agreement pursuant to the authority given him/her by the Limited Liability Corporation, and that said agreement was signed and sealed by him/her on behalf of the aforesaid L.L.C. by authority of its CFO, (President or title of chief officer), Joel D. Pottebaum (name) as CFO (title of Executing Official) of said L.L.C. acknowledges said agreement to be the lawful, free act and deed of said L.L.C.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, this 13 day of September, 2022.

Sam Simmons
Notary Public

My Commission Expires: 8.14.23



SAM SIMMONS
My Commission Expires
August 14, 2023
St. Louis City
Commission #19110786

EXHIBIT A

Attach: Subdivision Deposit Spreadsheet

CONSTRUCTION DEPOSIT

SUBDIVISION: ALEXANDER WOODS
 PLAT:
 SUBDIVISION CODE: 83
 NO. LOTS: 37
 DATE OF PLAT APPROVAL: 12/2/2019

DEVELOPER: PAYNE FAMILY HOMES, LLC

| CATEGORY | DATE OF RELEASE | % RELEASE | ORIGINAL BALANCE | TOTAL RELEASED | TOTAL % RELEASED | CURRENT BALANCE | % REMAINING |
|---------------------------------------|----------------------|-----------|-----------------------|------------------------------|------------------|---------------------|-------------|
| STREETS | 10/01/20 | 50 | \$364,121.05 | \$182,060.53 \$0.00 | 50 | \$182,060.53 | 50 |
| SIDEWALKS | | | \$18,704.02 | \$0.00 \$0.00 | 0 | \$18,704.02 | 100 |
| STREET SIGNS | 01/25/22 | 95 | \$3,993.00 | \$3,793.35 \$0.00 | 95 | \$199.65 | 5 |
| SANITARY SEWER AND PUMP STATIONS | 10/01/20 01/25/22 | 50 45 | \$133,835.03 | \$66,917.52 \$60,225.76 | 95 | \$6,691.75 | 5 |
| STORM SEWER | 10/01/20 01/25/22 | 50 45 | \$284,469.67 | \$142,234.83 \$128,011.35 | 95 | \$14,223.48 | 5 |
| GRADING | 10/01/20 | 50 | \$256,310.45 | \$128,155.23 \$0.00 | 50 | \$128,155.23 | 50 |
| DETENTION AND WATER QUALITY | 10/01/20 | 50 | \$44,903.78 | \$22,451.89 \$0.00 | 50 | \$22,451.89 | 50 |
| EROSION CONTROL | 10/01/20 | 50 | \$8,252.20 | \$4,126.10 \$0.00 | 50 | \$4,126.10 | 50 |
| SILTATION CONTROL | 10/01/20 | 50 | \$4,579.30 | \$2,289.65 \$0.00 | 50 | \$2,289.65 | 50 |
| COMMON GROUND SEED AND ISLAND SODDING | | | \$4,356.00 | \$0.00 \$0.00 | 0 | \$4,356.00 | 100 |
| MONUMENTATION | 01/25/22 | 95 | \$5,423.00 | \$5,151.85 \$0.00 | 95 | \$271.15 | 5 |
| RETAINING WALLS | | | \$9,108.00 | \$0.00 \$0.00 | 0 | \$9,108.00 | 100 |
| STREET LIGHTS | 01/25/22 | 100 | \$11,880.00 | \$11,880.00 \$0.00 | 100 | \$0.00 | 0 |
| WATER MAINS | 10/01/20 01/25/22 | 50 50 | \$82,684.67 | \$41,342.33 \$41,342.33 | 100 | \$0.00 | 0 |
| FENCE | | | \$1,518.00 | \$0.00 \$0.00 | 0 | \$1,518.00 | 100 |
| TOTALS | | | \$1,234,138.16 | \$839,982.72 | 68 | \$394,155.44 | 32 |



SUBDIVISION IMPROVEMENT MAINTENANCE DEPOSIT AGREEMENT

THIS MAINTENANCE DEPOSIT AGREEMENT made and entered into by
Payne Family Homes, LLC
_____, herein called DEVELOPER,
XX
_____, ~~herein called CREDIT~~
~~HOLDER (to be through this party if cash deposited with City)~~ and the City of Chesterfield,
Missouri, herein called CITY.

WITNESSETH:

WHEREAS, the DEVELOPER has submitted plans, information and data to the CITY
for the creation and development of a subdivision to be known as
Alexander Woods
_____ in accordance with
Ordinance No. 3015, the governing ordinance for the subdivision, and the Subdivision
Regulations of the City of Chesterfield, and has requested approval of same; and

WHEREAS, the subdivision plans have been approved and the CITY has reasonably
estimated and determined that the cost of maintenance of the required improvements, based on
the cost of construction of said improvements, all in accordance with the provisions of said
subdivision governing ordinance and Subdivision Regulations, as amended, will be in the sum
of One Hundred Thirteen Thousand Nine Hundred Fifty Seven and 35/100 DOLLARS
(\$ 113,957.35), lawful money of the United States of America; and

WHEREAS, the DEVELOPER is seeking approval from the CITY of the record plat of
the aforesaid subdivision as the same is provided in said governing ordinance and Subdivision
Regulations; and

WHEREAS, the Subdivision Regulations provide inter alias that the commencement of said subdivision may be approved by the CITY upon the DEVELOPER submitting satisfactory construction and maintenance deposit agreements guaranteeing the construction and maintenance of the subdivision improvements in accordance with the approved plans, said governing ordinance and Subdivision Regulations.

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

IT IS HEREBY MUTUALLY AGREED:

1. That the DEVELOPER has established a MAINTENANCE DEPOSIT in the amount of One Hundred Thirteen Thousand Nine Hundred Fifty Seven and 35/100

DOLLARS (\$ 113,957.35), lawful money of the United States of America by:

(check one)

Depositing cash with the City.

Submitting a Letter of Credit in the form required by the CITY and issued by the CREDIT HOLDER.

Submitting a _____ (type of readily negotiable instrument acceptable to the CITY) endorsed to the City.

Said deposit guarantees the DEVELOPER will perform his maintenance obligations regarding subdivision improvements, including, but not limited to; lots, streets, sidewalks, trees, common ground areas, erosion and siltation control, and storm drainage facilities, in Alexander Woods Subdivision, all in accordance with the approved plans, the governing ordinance for the subdivision and the Subdivision Regulations of

the City of Chesterfield, which by reference are made a part hereof, and in accordance with all ordinances of the CITY regulating same.

2. That the MAINTENANCE DEPOSIT will be held in escrow by the CITY or the CREDIT HOLDER, as applicable, until such time as releases are authorized by the Department of Planning.

3. That the DEVELOPER shall be responsible for, and hereby guarantees, the maintenance of the subdivision improvements, including, but not limited to, lots, streets, sidewalks, trees, common ground 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. In the case of landscaping, the maintenance period shall be twenty-four (24) months after installation is approved by the CITY. 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 of 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 Planning. The maintenance obligation for required improvements to existing public roads or other existing public infrastructure already maintained by a public governmental entity shall terminate on and after the date such improvements have been inspected and accepted by the

appropriate governmental entity and the deposit for same shall be released. 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.

4. That the maintenance deposit shall be retained by the CITY OR CREDIT HOLDER to guarantee maintenance of the required improvements and, in addition to being subject to the remedies of Section 02-12.G of the Unified Development Code and other remedies of the City Code, shall be subject to the immediate order of the Director of Planning to defray or reimburse any cost to the CITY of maintenance or repair of improvements related to the subdivision which the developer fails or refuses to perform. Except in emergency circumstances or where action is otherwise required before written notice can be provided, the Director of Planning shall provide the developer with a written demand and opportunity to perform the maintenance before having such maintenance performed by the CITY, or its agents. The Director of Planning 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, where the amount remaining is determined to be insufficient or where the maintenance deposit was drawn upon by the CITY for maintenance.

5. That 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 Planning may approve such further releases if it is determined in his or her discretion, after inspection of the improvements, that the total maintenance amount

retained is clearly in excess of the amount necessary for completion of the maintenance obligation, after all reasonable contingencies are considered.

6. That in the event the CITY should determine that the MAINTENANCE DEPOSIT, or any line item thereon as herein provided, is insufficient, the CITY will so notify the DEVELOPER who shall, within thirty (30) days of said notice, deposit additional sums with the CITY or have the amount of the letter of credit or other banking instrument increased as will be required to maintain the said specific component of the improvement and said additional sum will be subject to the terms of this MAINTENANCE DEPOSIT AGREEMENT. Failure to provide said sum shall be cause for immediate cessation of all work on said subdivision until the additional amount is paid.

7. That the CREDIT HOLDER, in accordance with paragraphs 2, 4 and 5 above, shall only release or disburse the MAINTENANCE DEPOSIT, or portion thereof, upon receipt and in the amount set forth in a written authorization from the said Department of Planning addressed to the Credit Holder, which authorization may be for payment, as provided in the Subdivision Regulations or governing ordinance for this subdivision.

8. That upon expiration of the maintenance obligations established herein, the Director of Planning shall cause a final inspection to be made of the required improvements. Funds shall then be released if there are no defects or deficiencies found and all other obligations 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 Planning. This release shall in no way be construed to indemnify or release any person from any civil liability that may exist for defects or damages

caused by any construction, improvement or development for which any deposit has been released.

9. That there shall be no assignment by DEVELOPER or CREDIT HOLDER under the terms of this agreement without written approval of the CITY.

10. That if DEVELOPER is unable to meet its obligation hereunder or to provide additional sums to guarantee maintenance of the Subdivision improvements as may be determined by the CITY or if the DEVELOPER shall abandon the subdivision or go into receivership or file for bankruptcy protection, then in any such event the CITY may declare the DEVELOPER in default and may immediately order the payment of all remaining sums held in the MAINTENANCE DEPOSIT to be paid to the CITY without further legal process, to be used to complete and maintain the subdivision improvements as set out under the terms hereof.

11. That the CREDIT HOLDER will immediately inform the City of any changes of address for CREDIT HOLDER or DEVELOPER (known to CREDIT HOLDER) during the period of this Agreement. Failure to do so shall result in a breach of this Agreement and the CITY may declare the DEVELOPER or CREDIT HOLDER (as the case may be) in default and may immediately order the payment of all remaining sums held by CREDIT HOLDER to be paid to the CITY without further legal process, to be used to maintain the subdivision improvements as set out under the terms hereof.

12. That no forbearance on the part of the CITY in enforcing any of its rights under this agreement, nor any extension thereof by CITY, shall constitute a waiver of any terms of this Agreement or a forfeiture of any such rights.

13. That the CITY hereby accepts this agreement as a satisfactory MAINTENANCE DEPOSIT AGREEMENT under the provisions and requirements of the governing ordinance

MAINTENANCE DEPOSIT

SUBDIVISION: ALEXANDER WOODS

PLAT:

SUB CODE: 83

DEVELOPER: PAYNE FAMILY HOMES, LLC

NOTE: Deposit is adjusted to account for 10% of entire sewer costs, and 0% of LOMR/Elev. Cert's, if any)

| CATEGORY | ORIGINAL BALANCE | DATE OF RELEASE | AMOUNT RELEASED | CURRENT BALANCE |
|--------------------------|-----------------------------|----------------------------|----------------------------|----------------------------|
| STREETS | \$36,412.11 | | | \$36,412.11 |
| SIDEWALKS | \$1,870.40 | | | \$1,870.40 |
| STREET SIGNS | \$399.30 | | | \$399.30 |
| SAN. SEWER | \$13,383.50 | | | \$13,383.50 |
| STORM SEWER | \$28,446.97 | | | \$28,446.97 |
| GRADING | \$25,631.05 | | | \$25,631.05 |
| DETENTION AND WQ | \$4,490.38 | | | \$4,490.38 |
| EROSION CONTROL | \$825.22 | | | \$825.22 |
| SILTATION CONTROL | \$457.93 | | | \$457.93 |
| COMMON GR. SEED | \$435.60 | | | \$435.60 |
| MONUMENTATION | \$542.30 | | | \$542.30 |
| RETAINING WALL | \$910.80 | | | \$910.80 |
| STREET LIGHTS | \$1,188.00 | 1/25/2022 | \$1,188.00 | \$0.00 |
| WATER MAINS | \$8,268.47 | 1/25/2022 | \$8,268.47 | \$0.00 |
| FENCE | \$151.80 | | | \$151.80 |
| TOTALS | \$123,413.82 | | \$9,456.47 | \$113,957.35 |