PERFORMANCE GUARANTEE AGREEMENT
HAWTHORNE PLACE SUBDIVISION
SIDEWALK IMPROVEMENTS

This Performance Guarantee Agreement, hereinafter referred to as this "Agreement", is made and entered into this 10th day of August, 2023, by and between A.G. JONES PROPERTIES, L.L.C., a Missouri Limited Liability Company, having its principal office and place of business at 2609 Saddle Ridge Lane, Cape Girardeau, MO 63701, hereinafter referred to as the "Developer", and the CITY OF CAPE GIRARDEAU, MISSOURI, a Municipal Corporation of the State of Missouri, hereinafter referred to as the "City". The Developer and the City collectively are hereinafter referred to as the "Parties".

WITNESSETH:

WHEREAS, the Developer has submitted to the City improvement plans and specifications for Hawthorne Place Subdivision, a proposed subdivision located within the City of Cape Girardeau, Missouri, said plans and specifications having been approved by the City; and

WHEREAS, the Developer has also submitted a record plat for said subdivision, with request that said plat be approved by the City; and

WHEREAS, the Developer proposes to meet the ordinance requirements of the City with respect to the posting of this Agreement prior to the approval by the City of the plat proposed for said subdivision.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises and agreements contained herein, the Parties stipulate and agree as follows:

1. The Developer has submitted to the City, and the City has approved, improvement plans and specifications for public sidewalk improvements in said Hawthorne Place Subdivision, hereinafter referred to as the "Subdivision".

2. First Midwest Bank of Dexter, hereinafter referred to as the "Financial Institution", has issued an Irrevocable Letter of Credit, hereinafter referred to as the "Letter of Credit", for the cost of the sidewalk improvements in the Subdivision. The Letter of Credit is attached to this Agreement as "Exhibit A" and made a part hereof as though fully set out herein. The Letter of Credit is a commitment to the Developer from the Financial Institution that it will serve as the primary lender for the construction of the sidewalk improvements in the Subdivision and commits itself for enough funds to complete said improvements. Further, the Letter of Credit lists the City as the Beneficiary and provides for payment of funds to the City in the event the Developer is found to be in default under this Agreement.

3. A copy of the most recent financial statement of the Financial Institution is made available for the purpose of guaranteeing to the City that the Financial Institution, as the issuer of the Letter of Credit to the Developer, has sufficient resources with which to uphold its guarantee.

4. The City may authorize one or more partial releases of this Agreement (thus reducing the required Letter of Credit amount) as portions of the sidewalk improvements are completed. In no case shall the City release more than ninety-five percent (95%) of the original Letter of Credit amount until such time as all of the sidewalk improvements covered by the Letter of Credit, as shown in the approved improvement plans and specifications, are completed.

5. Upon the full release of this Agreement, the Developer and the Financial Institution shall be released of any further obligation to the City insofar as the provisions of this Agreement are concerned.

6. If, after two (2) years from the date of this Agreement, all of the sidewalk improvements, as shown in the approved improvement plans and specifications, are not completed, then the City may request payment from the Letter of Credit as necessary in order to complete said improvements. Said request for payment shall be per the terms of the Letter of Credit.

7. This Agreement shall not in any fashion be construed to limit the powers, rights, or duties of the City, but shall be construed in the light of the applicable City ordinances.

8. No part of this Agreement may be assigned by the Developer without first obtaining the express written consent of such assignment by the City, but the City agrees to not unreasonably withhold such consent.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the above date.

(Signatures on following pages)

DEVELOPER
A.G. Jones Properties, L.L.C.

Gerald W. Jones, II, Manager

STATE OF MISSOURI)
) SS.
COUNTY OF CAPE GIRARDEAU)

On this 2nd day of June, 2023, before me personally appeared Gerald W. Jones, II, Manager of A.G. Jones Properties, L.L.C., a Missouri Limited Liability Company, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as the free act and deed of said Limited Liability Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the State and County aforesaid, the date first above written.

Carol A. Peters
(Signature)

Carol A. Peters
(Printed Name)

My Commission Expires:

CAROL A. PETERS
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI
MY COMMISSION EXPIRES NOVEMBER 19, 2024
CAPE GIRARDEAU COUNTY
COMMISSION #12684121

CITY
City of Cape Girardeau, Missouri

Dr. Kenneth Haskin, City Manager

ATTEST:

City Clerk

STATE OF MISSOURI)
) SS.
COUNTY OF CAPE GIRARDEAU)

On this this 10th day of July, 2023, before me personally appeared Dr. Kenneth Haskin, City Manager of the City of Cape Girardeau, Missouri, a Municipal Corporation of the State of Missouri, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that the foregoing instrument was signed and sealed on behalf of said City by authority of its City Council, and acknowledged that he executed the same as the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the State and County aforesaid, the date first above written.

(Signature)

Amanda C. McKinney
(Printed Name)

My Commission Expires: 3/3/2026

Amanda L. McKinney
Notary Public-Notary Seal
STATE OF MISSOURI
Commissioned for Cape Girardeau
My Commission Expires: 3/3/2026
ID # 14588193

EXHIBIT A
LETTER OF CREDIT
(on following pages)

0005081791%1470%01182023%030503582

IRREVOCABLE LETTER OF CREDIT

Borrower: AG JONES PROPERTIES, LLC (TIN: 03-0503582)
2609 SADDLE RIDGE LANE
CAPE GIRARDEAU, MO 63701

Lender: FIRST MIDWEST BANK OF DEXTER
CAPE GIRARDEAU FACILITY
1820 NORTH KINGSHIGHWAY
CAPE GIRARDEAU, MO 63701
(573) 335-3682

Beneficiary: CITY OF CAPE GIRARDEAU
44 NORTH LORIMIER
CAPE GIRARDEAU, MO 63701

NO.: 103

EXPIRATION DATE. This letter of credit shall expire upon the earlier of the close of business on 01-18-2025 and all drafts and accompanying statements or documents must be presented to Lender on or before that time, or the day that Lender honors a draw under which the full amount of this Letter of Credit has been drawn (the "Expiration Date").

AMOUNT OF CREDIT. Lender hereby establishes at the request and for the account of Borrower, an Irrevocable Letter of Credit in favor of Beneficiary for a sum of Twenty-three Thousand Five Hundred Thirty-eight & 00/100 Dollars ($23,538.00) (the "Letter of Credit"). These funds shall be made available to Beneficiary upon Lender's receipt from Beneficiary of sight drafts drawn on Lender at Lender's address indicated above (or other such address that Lender may provide Beneficiary in writing) during regular business hours and accompanied by the signed written statements or documents indicated below.

WARNING TO BENEFICIARY: PLEASE EXAMINE THIS LETTER OF CREDIT AT ONCE. IF YOU FEEL UNABLE TO MEET ANY OF ITS REQUIREMENTS, EITHER SINGLY OR TOGETHER, YOU SHOULD CONTACT BORROWER IMMEDIATELY TO SEE IF THE LETTER OF CREDIT CAN BE AMENDED. OTHERWISE, YOU WILL RISK LOSING PAYMENT UNDER THIS LETTER OF CREDIT FOR FAILURE TO COMPLY STRICTLY WITH ITS TERMS AS WRITTEN.

DRAFT TERMS AND CONDITIONS. Lender shall honor drafts submitted by Beneficiary under the following terms and conditions:

Upon Lender's honor of such drafts, Lender shall be fully discharged of Lender's obligations under this Letter of Credit and shall not be obligated to make any further payments under this Letter of Credit once the full amount of credit available under this Letter of Credit has been drawn.

Beneficiary shall have no recourse against Lender for any amount paid under this Letter of Credit once Lender has honored any draft or other document which complies strictly with this Letter of Credit, and which on its face appears otherwise in order but which is signed, issued, or presented by a party or under the name of a party purporting to act for Beneficiary, purporting to claim through Beneficiary, or posing as Beneficiary without Beneficiary's authorization. By paying an amount demanded in accordance with this Letter of Credit, Lender makes no representation as to the correctness of the amount demanded and Lender shall not be liable to Beneficiary, or any other person, for any amount paid or disbursed for any reason whatsoever, including, without limitation, any nonapplication or misapplication by Beneficiary of the proceeds of such payment. By presenting upon Lender or a confirming bank, Beneficiary certifies that Beneficiary has not and will not present upon the other, unless and until Beneficiary meets with dishonor. Beneficiary promises to return to Lender any funds received by Beneficiary in excess of the Letter of Credit's maximum drawing amount.

USE RESTRICTIONS. All drafts must be marked "DRAWN UNDER FIRST MIDWEST BANK OF DEXTER IRREVOCABLE LETTER OF CREDIT NO. 103 DATED 01-18-2023," and the amount of each draft shall be marked on the draft. Only Beneficiary may complete a draft and accompanying statements or documents required by this Letter of Credit and make a draw under this Letter of Credit. This original Letter of Credit must accompany any draft drawn hereunder.

Partial draws are permitted under this Letter of Credit. Lender's honor of a partial draw shall correspondingly reduce the amount of credit available under this Letter of Credit. Following a partial draw, Lender shall return this original Letter of Credit to Beneficiary with the partial draw noted hereon; in the alternative, and in its sole discretion, Lender may issue a substitute Letter of Credit to Beneficiary in the amount shown above, less any partial draw(s).

PERMITTED TRANSFEREES. The right to draw under this Letter of Credit shall be nontransferable, except for:

A. A transfer (in its entirety, but not in part) by direct operation of law to the administrator, executor, bankruptcy trustee, receiver, liquidator, successor, or other representative at law of the original Beneficiary; and

B. The first immediate transfer (in its entirety, but not in part) by such legal representative to a third party after express approval of a governmental body (judicial, administrative, or executive).

TRANSFEREES REQUIRED DOCUMENTS. When the presenter is a permitted transferee (i) by operation of law or (ii) a third party receiving transfer from a legal representative, as described above, the documents required for a draw shall include a certified copy of the one or more documents which show the presenter's authority to claim through or to act with authority for the original Beneficiary.

COMPLIANCE BURDEN. Lender is not responsible for any impossibility or other difficulty in achieving strict compliance with the requirements of this Letter of Credit precisely as written. Beneficiary understands and acknowledges: (i) that unless and until the present wording of this Letter of Credit is amended with Lender's prior written consent, the burden of complying strictly with such wording remains solely upon Beneficiary, and (ii) that Lender is relying upon the lack of such amendment as constituting Beneficiary's initial and continued approval of such wording.

NON-SEVERABILITY. If any aspect of this Letter of Credit is ever declared unenforceable for any reason by any court or governmental body having jurisdiction, Lender's entire engagement under this Letter of Credit shall be deemed null and void ab initio, and both Lender and Beneficiary shall be restored to the position each would have occupied with all rights available as though this Letter of Credit had never occurred. This non-severability provision shall override all other provisions in this Letter of Credit, no matter where such provision appears within this Letter of Credit.

GOVERNING LAW. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Missouri without regard to its conflicts of law provisions, and except to the extent such laws are inconsistent with the 2007 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, ICC Publication No. 600. This Agreement has been accepted by Lender in the State of Missouri.

EXPIRATION. Lender hereby agrees with Beneficiary that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to Lender on or before the Expiration Date unless otherwise provided for above.

Dated: January 18, 2023

LENDER:

FIRST MIDWEST BANK OF DEXTER

By: _____
Authorized Signer

ENDORSEMENT OF DRAFTS DRAWN:

Date	Negotiated By	Amount In Words	Amount In Figures

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