

**AN ORDINANCE OF THE CITY OF WILDWOOD, MISSOURI, AUTHORIZING THE MAYOR OF THE CITY TO NEGOTIATE AND EXECUTE A DEVELOPMENT FINANCE COOPERATION AGREEMENT WITH PAYNE FAMILY HOMES, LLC, FOR DEVELOPMENT FINANCE INCENTIVES PERTAINING TO THE CONSTRUCTION OF MAIN STREET AND IMPROVEMENTS TO STATE ROUTE 109 (Wards - All)**

**WHEREAS**, Payne Family Homes, LLC (the “Developer”) is the owner under contract of an approximately 28.03 acre tract of land located within the City (the “Property”). Developer desires to develop the Property as a single-family residential subdivision consisting of one hundred four (104) detached single-family dwellings on individual lots with common ground and public space consistent with the Site Development Plan, prepared by The Sterling Co., dated 8-9-2016, referencing Job Number 14-04-126, revised as of 8-9-2016, a copy of which is on file in the office of the City Clerk and incorporated by reference herein (the “Site Development Plan”), such development of the Property to be known as “Main Street Crossing” (the “Development”); and

**WHEREAS**, The City Council of the City of Wildwood, Missouri (the “City Council”), on September 14, 2015, pursuant to Ordinance # 2116, approved the change of zoning of the Property from the NU Non-Urban Residence District to the R-4 7,500 Square Foot Residence District, Along with a Planned Residential Development Overlay District (PRD), and setting forth the terms and conditions of the change in zoning and the approval of the PRD. On August 22, 2016, pursuant to Ordinance # 2204, the City Council amended Ordinance # 2116 (Ordinance # 2116, as amended by Ordinance # 2204, hereinafter being collectively referred to as the “Site Specific Ordinance”). Pursuant to the Zoning Regulations of the City, the development of the Property must comply with the terms and conditions of the Site Specific Ordinance and must substantially comply with the Site Development Plan; and

**WHEREAS**, The Site Specific Ordinance sets forth certain terms and conditions for the development of the Property, including, but not limited to certain access and street improvements. Specifically, the Site Specific Ordinance requires that, as a condition of approval of the Development, Developer must construct, at Developers sole expense, the following street and access improvements:

1. Construction of Main Street, including associated streetscape and other improvements, from State Route 109 to Eatherton Road as more particularly described in the Site Specific Ordinance and depicted on the Site Development Plan, the cost of which is estimated to be One Million Four Hundred Seventy-one Thousand Five Hundred Seventeen Dollars (\$1,471,517) (the “Main Street Improvements”); and
2. Construction of a roundabout at the intersection of Missouri State Route 109 and Main Street, including associated right-of-way improvements within the State

right-of-way, such improvements being more particularly described in the Site Specific Ordinance and depicted on the Site Development Plan, the cost of which is estimated to be One Million Five Hundred Eighteen Thousand Two Hundred Twenty-five Dollars (\$1,518,225) (the “Route 109 Improvements”) (the “Main Street Improvements and the Route 109 Improvements hereinafter being collectively referred to as the “Street Improvements”); and

**WHEREAS**, Consistent with the requirements of the City’s Procedures for the Review and Processing of Requests for Development Finance Incentives, the Developer submitted to the City an Application for Development Finance Incentives (the “Application”), requesting development funding assistance for the construction of the Street Improvements. The Application was submitted to the City’s Development Finance Group, and the Development Finance Group submitted recommendation to the City Council on June 13, 2016, such recommendation being on file in the office of the City Clerk and incorporated by reference herein; and

**WHEREAS**, The City and the Developer recognize that the benefits to the City of the construction of the Street Improvements extend beyond the Development, including but not limited to: furthering the development of the City consistent with the Town Center Plan; and spurring additional commercial development within the City. In recognition of these benefits, the City and the Developer desire to enter an agreement for the use of development finance incentives for the construction of the Street Improvements and the completion of the Development; and

**WHEREAS**, Missouri Revised Statutes Sections 70.220 through 70.325, as amended from time to time, authorize political subdivisions to contract and cooperate with any corporation for the planning, development, construction, acquisition, or operation of any public improvement or facility, or for a common service.

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILDWOOD, MISSOURI, AS FOLLOWS:**

**Section One.** That the form, terms, and provisions of the Development Finance Cooperation Agreement, attached hereto, marked as **Exhibit A**, and incorporated by reference herein (the “Agreement”), be and they hereby are approved and the Mayor is hereby authorized, empowered and directed to further negotiate, execute, acknowledge, deliver and administer on behalf of the City such Agreement in substantially the form attached hereto. The City Clerk is hereby authorized and directed to attest to the Agreement and other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of the Agreement and this Ordinance.

**Section Two.** This Ordinance shall be in full force and effect from and after its passage and approval.

**Section Three.** Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Ordinance of the City or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof, unless expressly set forth herein.

**Section Four.** If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the City Council that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

This Bill was passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by the City Council of the City of Wildwood after having been read by title, or in full, two (2) times prior to its passage.

\_\_\_\_\_  
Presiding Officer

\_\_\_\_\_  
The Honorable James R. Bowlin, Mayor

ATTEST:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Clerk

EXHIBIT A

**DEVELOPMENT FINANCE  
COOPERATION AGREEMENT  
Pertaining To  
MAIN STREET CROSSING**

THIS DEVELOPMENT FINANCE COOPERATION AGREEMENT (the “Agreement”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the CITY OF WILDWOOD, MISSOURI (the “City”), and PAYNE FAMILY HOMES, LLC (the “Developer”).

STATEMENT OF BACKGROUND AND PURPOSE

The following statements of background and purpose are an integral part of this Agreement:

A. Developer is the owner under contract of an approximately 28.03 acre tract of land, owned by \_\_\_\_\_ Trust dated \_\_\_\_\_, Mildred E. Schneider, Trustee (the “Owner”), and more particularly described on **Exhibit A**, attached hereto and incorporated by reference herein (the “Property”). Developer desires to develop the Property as a single-family residential subdivision consisting of one hundred four (104) detached single-family dwellings on individual lots with common ground and public space consistent with the Site Development Plan, prepared by The Sterling Co., dated 8-9-2016, referencing Job Number 14-04-126, revised as of 8-9-2016, a copy of which is on file in the office of the City Clerk and incorporated by reference herein (the “Site Development Plan”), such development of the Property to be known as “Main Street Crossing” (the “Development”).

B. The City Council of the City of Wildwood, Missouri (the “City Council”), on September 14, 2015, pursuant to Ordinance # 2116, approved the change of zoning of the Property from the NU Non-Urban Residence District to the R-4 7,500 Square Foot Residence District, Along with a Planned Residential Development Overlay District (PRD), and setting forth the terms and conditions of the change in zoning and the approval of the PRD. On August 22, 2016, pursuant to Ordinance # 2204, the City Council amended Ordinance # 2116 (Ordinance # 2116, as amended by Ordinance # 2204, hereinafter being collectively referred to as the “Site Specific Ordinance”). Pursuant to the Zoning Regulations of the City, the development of the Property must comply with the terms and conditions of the Site Specific Ordinance and must substantially comply with the Site Development Plan.

All references to the “Zoning Regulations” for the City of Wildwood, Missouri refer to Chapter 415 of the Municipal Code of the City of Wildwood, Missouri.

C. The Site Specific Ordinance sets forth certain terms and conditions for the development of the Property, including, but not limited to certain access and street improvements. Specifically, the Site Specific Ordinance requires that, as a condition of approval of the

Development, Developer must construct, at Developers sole expense, the following street and access improvements:

1. Construction of Main Street, including associated streetscape and other improvements, from State Route 109 to Eatherton Road as more particularly described in the Site Specific Ordinance and depicted on the Site Development Plan, the cost of which is estimated to be One Million Four Hundred Seventy-one Thousand Five Hundred Seventeen Dollars (\$1,471,517) (the “Main Street Improvements”); and
2. Construction of a roundabout at the intersection of Missouri State Route 109 and Main Street, including associated right-of-way improvements within the State right-of-way, such improvements being more particularly described in the Site Specific Ordinance and depicted on the Site Development Plan, the cost of which is estimated to be One Million Five Hundred Eighteen Thousand Two Hundred Twenty-five Dollars (\$1,518,225) (the “Route 109 Improvements”) (the “Main Street Improvements and the Route 109 Improvements hereinafter being collectively referred to as the “Street Improvements”).

D. Consistent with the requirements of the City’s Procedures for the Review and Processing of Requests for Development Finance Incentives, the Developer submitted to the City an Application for Development Finance Incentives (the “Application”), requesting development funding assistance for the construction of the Street Improvements. The Application was submitted to the City’s Development Finance Group, and the Development Finance Group submitted recommendation to the City Council on June 13, 2016, such recommendation being on file in the office of the City Clerk and incorporated by reference herein.

E. Pursuant to the Site Specific Ordinance, the Developer is required to contribute to the East Area Traffic Generation Assessment Trust Fund (the “East Area TGA”) established pursuant to Section 140.210 of the Municipal Code of the City of Wildwood, Missouri, (the “Municipal Code”) at a rate of One Thousand Fifty-five and 10/100 Dollars (\$1,055.10), or such other rate as may be established in subsequent years in accordance with the construction cost index as determined by the City’s Department of Public Works, per parking space for Single-family Dwellings. It is anticipated that the Development, if fully constructed in accordance with the Site Development Plan, will require the Developer to pay approximately Two Hundred Fifty Thousand (\$250,000) into the East Area TGA (the “Development TGA Funds”). In addition, it is anticipated that the development of the commercial outlots depicted as “Outlot A” and “Outlot B” on the Site Development Plan and located to the west of the Development (the “Commercial Outlots”) will generate approximately Two Hundred Thousand Dollars (\$200,000) from the East Area TGA (the “Commercial Outlot TGA Funds”).

F. The City submitted an application for federal transportation funding to the East-West Gateway Council of Governments, requesting eighty percent (80%) federal funding of the estimated cost of the Route 109 Improvements (the “Federal Funding”). The City’s 2016 application for Federal Funding was not recommended for approval, and the City intends, subject

to appropriation, to reapply for Federal Funding in 2017.

G. The City and the Developer recognize that the benefits to the City of the construction of the Street Improvements extend beyond the Development, including but not limited to: furthering the development of the City consistent with the Town Center Plan; and spurring additional commercial development within the City. In recognition of these benefits, the City and the Developer desire to enter into this Agreement for the use of development finance incentives for the construction of the Street Improvements and the completion of the Development.

H. Missouri Revised Statutes Sections 70.220 through 70.325, as amended from time to time, authorize political subdivisions to contract and cooperate with any corporation for the planning, development, construction, acquisition, or operation of any public improvement or facility, or for a common service.

#### TERMS AND CONDITIONS

NOW, THEREFORE, the parties hereto agree as follows:

1. Zoning and Subdivision. The Developer contemplates developing a residential subdivision on the Property. Developer agrees that Development will be constructed in accordance with the Site Specific Ordinance and the Site Development Plan as approved, or as may be amended from time to time pursuant to the Zoning Regulations of the City, including the design, layout, calculations, and text notes.

2. Main Street Improvements. The City agrees to provide the following finance incentives in return for Developer's construction of the Main Street Improvements consistent with the design and configuration shown on the Site Development Plan, or as may be otherwise approved in writing by the City, as follows:

- a. Subject to the Developer compliance with the terms of this Agreement and the requirements of the Site Specific Ordinance, the City will credit to the benefit of the Developer an amount up to, but not to exceed, Two Hundred Fifty Thousand Dollars (\$250,000) towards payment required to be made into the East Area TGA pursuant to the Site Specific Ordinance. If the payments required to be made into the East Area TGA pursuant to the Site Specific Ordinance exceed the credit to which the Developer is entitled pursuant to this subparagraph, then Developer will pay the difference.
- b. The City will, subject to annual appropriation, pay to the Developer no later than December 31 of each year beginning in 2018, as reimbursement for actual and reasonable expenditures made by the Developer for the construction of the Main Street Improvements, an amount equal to the amount of funds actually collected by the City from the Commercial Outlot TGA Funds, but collectively not to exceed Two Hundred Thousand Dollars (\$200,000). Such payments shall be made by the City to the Developer, subject to the following:

- i. Promptly after completion of the Main Street Improvements, the Developer shall furnish to the City a Certificate of Substantial Completion, in the form attached hereto as **Exhibit B** and incorporated by reference herein, and shall allow the City to carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be accepted by the City unless the City furnishes the Developer with specific written objections to the status of the Main Street Improvements, describing such objections and the measures required to correct such objections in reasonable detail. Upon acceptance of the Certificate of Substantial Completion, the Developer shall dedicate the Main Street Improvements to the City; and
  - ii. Prior to receipt of any payment under this subsection (b), Developer shall submit to the City a Certificate of Reimbursable Project Costs in substantially the form attached hereto as **Exhibit C** and incorporated by reference herein and other supporting documentation evidencing the actual and reasonable costs incurred by the Developer for the construction of the Main Street Improvements and compliance with Paragraph 4 of this Agreement; and
  - iii. Notwithstanding any other provision of this Agreement to the contrary, on and after January 1, 2023, the City may, upon providing Developer 90 days' written notice, discontinue any further payments to the Developer required pursuant to this subsection (b). Upon the City providing such notice, the City shall not be obligated, nor shall the Developer be entitled, to any further reimbursement for actual and reasonable expenditures made by the Developer for the construction of the Main Street Improvements.
3. **Route 109 Improvements.** The City agrees that, subject to annual appropriation, the City will submit applications for Federal Funding for the construction of the Route 109 Improvements, and, if such Federal Funding is approved, the City will complete the Route 109 Improvements.
4. **Conditions for Use of Public Funds.**
  - a. To the extent that prevailing wage, public bidding, employment of Missouri residents during times of excessive unemployment or other requirements of federal, State and local laws, codes and regulations apply to any portion of the Street Improvements, the Developer covenants and agrees to take all such actions as are necessary to comply with such laws, regulations or requirements. The Developer shall indemnify and hold harmless the City from any liability resulting to either of them from failure of either the Developer or any contractor or subcontractor to pay prevailing wages or to otherwise comply with any public bidding or other requirements of federal, State and local laws, codes and regulations that apply to any portion of the Street Improvements.
  - b. The Developer acknowledges that Section 285.530 of the Revised Statutes of Missouri

prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the state of Missouri, and that, to the extent that the employees of the Developer working in connection with the Street Improvements apply, the Developer is required to comply with the provisions of Section 285.530 of the Revised Statutes of Missouri. At the time of submission of the Certificate of Substantial Completion, the Developer will provide a sworn affidavit and supporting documentation affirming participation in a qualified work authorization program as evidence of its compliance with Section 285.530 of the Revised Statutes of Missouri with respect to the employees of the Developer working in connection with the CID Project.

5. Defaults and Remedies.

- a. *Events of Default.* If either party fails in the performance of any covenant, agreement or obligation imposed or created by this Agreement, and such default continues for sixty (60) days after a non-defaulting party has given written notice to the defaulting party specifying such default and an opportunity to cure, such event shall constitute an “Event of Default” under this Agreement.
- b. *Remedies on Default.* If any Event of Default has occurred and is continuing, then any non-defaulting party may, upon its election or at any time after its election while such Event of Default continues, by mandamus or other suit, action or proceedings at law or in equity, enforce its rights against the defaulting party and its officers, agents and employees, and may require and compel duties and obligations required by the provisions of this Agreement.
- c. *Rights and Remedies Cumulative.* The rights and remedies reserved by the parties under this Agreement and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The parties shall be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.
- d. *Waiver of Breach.* No waiver of any breach of any covenant or agreement contained in this Agreement shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of an Event of Default, a non-defaulting party may nevertheless accept from the defaulting party, any payment or payments without in any way waiving the non-defaulting party’s right to exercise any of its rights and remedies as provided herein with respect to any such default or defaults in existence at the time when such payment or payments were accepted by the non-defaulting party.
- e. *Excusable Delays.* No party shall be deemed to be in default of this Agreement due to delays due to acts of terrorism, acts of war or civil insurrection, strikes, riots, floods,

earthquakes, fires, tornadoes, casualties, acts of God, labor disputes, governmental delays, embargoes, national or regional material shortages, failure to obtain regulatory approval from any federal or State regulatory body, unforeseen site conditions, and material litigation by parties other than a party and not caused by any party's failure to perform; provided, an such delay shall not be excused as to (a) any matter initiated or unreasonably sustained by the party claiming such delay, and (b) unless the party claiming such delay provides written notice to the other party within thirty (30) days after such party has actual notice of the claimed event.

6. Miscellaneous.

- a. *Effective Date.* This Agreement shall become effective against the City and the Developer as of the date hereof following the passage of an ordinance by the City Council approving the same.
- b. *Binding Nature of Agreement.* The parties hereto acknowledge and agree that, as of the effective date all of the terms of this Agreement are legal, binding and enforceable obligations of the City and the Developer as of such date.
- c. *Release and Indemnification.* The indemnifications and covenants contained in this Section shall survive termination or expiration of this Agreement.
  - i. Notwithstanding any other provision of this Agreement to the contrary, the City and its governing body members, officers, agents, servants, employees and independent contractors shall not be liable to the Developer for damages or otherwise if all or any part of any resolution or ordinance adopted in connection with the Site Specific Ordinance, the Site Development Plan, the Street Improvements or this Agreement is declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, or for the failure of the parties hereto to comply with the provisions of Section 107.170 of the Revised Statutes of Missouri, and by reason thereof either the City is prevented from performing any of the covenants and agreements herein or the Developer is prevented from enjoying the rights and privileges hereof.
  - ii. The Developer releases from and covenants and agrees that the City, its governing body members, officers, employees, agents and independent contractors shall not be liable for, and agrees to hold harmless and to indemnify the City, its governing body members, officers, employees, agents and independent contractors, from and against all suits, claims, costs of defense, damages, injuries, liabilities, costs and/or expenses, including court costs and attorney fees and expenses, resulting from, arising out of, or in any way connected with: (1) the negligence or willful misconduct of the Developer, its respective employees, agents or independent contractors in connection with the design management, development, redevelopment and construction of the Street Improvements, (2) the Developer's

failure to comply with any applicable state, federal or local laws, regulations and ordinances as applicable to the Property, and (3) the approval of this Agreement or the implementation or consummation of any activities contemplated therein.

- iii. All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any of its governing body members, officers, agents, servants or employees in their individual capacities.
  - iv. No official, employee or representative of the City shall be personally liable to the Developer (1) in an Event of a Default or breach by any party under this Agreement or (2) for any amount which may become due to any party under the terms of this Agreement.
  - v. No recourse shall be had for any claim based upon any representation, obligation, covenant or agreement in this Agreement maintained against any past, present or future elected official, officer, member, employee, director or agent of the City, or of any successor thereto, as such, either directly or through the City, or any successor thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such elected officials, officers, members, employees, directors or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.
- d. *Successors and Assigns.*
- i. This Agreement shall be binding on and shall inure to the benefit of the parties named herein and their respective successors and assigns.
  - ii. Prior to approval of the Certificate of Substantial Completion by the City, this Agreement may not be assigned without the City's prior written consent, unless such assignment is (i) made for the purpose of a collateral assignment by the Developer to secure loans, advances or extensions of credit to finance or from time to time refinance all or any part of the Development, or (ii) made by the transferee of any such collateral assignment to transfer such interest by foreclosure or transfer in lieu of foreclosure under such collateral assignment; provided that the Developer named herein shall remain liable hereunder for Substantial Completion of the Main Street Improvements and shall be released from such liability hereunder only upon the City's determination that the proposed transferee has the ability to complete the Main Street Improvements in accordance with this Agreement. Such a determination shall be based on the financial ability and previous experience of the proposed transferee.

e. *Entire Agreement.* The headings contained in this Agreement are for purposes of convenience only and shall not be deemed to limit the contents of the provisions contained in this Agreement. The parties agree that this Agreement constitutes the entire agreement among the parties and that no other agreements or representations other than those contained in this Agreement have been made by the parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the parties.

f. *Notices.* Notices required by this Agreement shall be deemed given if deposited in the United States mail, first class, postage prepaid and addressed as hereinafter specified.

(a) To the City:

City of Wildwood, Missouri  
Attention: City Administrator  
16860 Main Street  
Wildwood, MO 63040  
Telephone No.: 636-458-0440

With a copy to:

City of Wildwood, Missouri  
Attention: City Attorney  
200 North Third Street  
St. Charles, MO 63301  
Telephone No.: 636-947-4700  
Fax No. 636-947-1743  
E-mail Address: [jyoung@hamiltonweber.com](mailto:jyoung@hamiltonweber.com)

(b) To Developer:

Payne Family Homes, LLC  
Attention: Thomas Cummings  
10407 Baur Blvd., Suite B  
St. Louis, MO 63132  
Telephone No.: 314-996-0341  
Fax No. 314-996-0309  
E-mail Address: [tec@paynefamilyhomes.com](mailto:tec@paynefamilyhomes.com)

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Telephone No.: \_\_\_\_\_  
Fax No. \_\_\_\_\_  
E-mail Address: \_\_\_\_\_

All notices given as aforesaid shall be deemed duly given as of the first business day following the date so mailed or sent. The City and the Developer may from time to time designate, by notice given hereunder to the other party, another address to which subsequent notices or other communications shall be sent.

- g. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri
- h. *Validity and Severability.* It is the intention of the parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of State of Missouri, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement is deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.
- i. *Execution of Counterparts.* This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- j. *Attorney's Fees.* In the event any party hereto brings an action or proceeding for any alleged breach or default, or for any other acts arising out of this Agreement, the prevailing party(s) to such action shall be entitled to an award of all of its (their) costs, including reasonable attorney's fees, and any court costs incurred in said action or proceeding in addition to other damages or relief awarded, regardless of whether or not final judgment is entered in such action or proceeding.
- k. *Time of the Essence; Mutual Assistance and Cooperation.* Time is of the essence with respect to all obligations under this Agreement. The parties agree to take such actions, including the adoption of ordinances and resolutions, and the execution and delivery of such documents, instruments, petitions and certifications supplemental hereto, as may be necessary or appropriate to carry out the terms, provisions and intent of this and which do not impair the rights of the parties as they exist under this Agreement, and to aid and assist each other in carrying out said terms, provisions and intent. Further, each agrees that they shall not unreasonably withhold or delay any action required to carry out the terms, provisions and intent of this Agreement, provided that nothing herein shall be construed to obligate the City, acting as a party hereto, to grant municipal permits or other

approvals it would not be obligated to grant, acting as a political subdivision, absent this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year first above written.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE TO FOLLOW]

**CITY:**

CITY OF WILDWOOD, MISSOURI

By: \_\_\_\_\_  
James Bowlin, Mayor

**DEVELOPER:**

PAYNE FAMILY HOMES, LLC

By: \_\_\_\_\_  
Thomas Cummings, Its Authorized  
Representative

**EXHIBIT A**

[Insert Legal Description]

## **EXHIBIT B**

### **Form of Certificate of Substantial Completion CERTIFICATE OF SUBSTANTIAL COMPLETION**

To: City Administrator, City of Wildwood, Missouri

Re: Certificate of Substantial Completion

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Development Finance Cooperation Agreement dated as of \_\_\_\_\_, 2016 (the "Agreement"), between the City of Wildwood, Missouri (the "City"), and Payne Family Homes, LLC (the "Developer"). In connection with said Agreement, the undersigned hereby states and certifies that:

1. As of \_\_\_\_\_, 20\_\_\_\_, the Main Street Improvement (as that term is defined in the Agreement) has been substantially completed in accordance with the Agreement.

2. All work associated with the Main Street Improvement has been performed in a workmanlike manner and in accordance with construction plans approved by the City.

3. Lien waivers for applicable portions of the work associated with the Main Street Improvement have been obtained.

4. This Certificate of Substantial Completion is accompanied by the project architect's certificate of substantial completion on AIA Form G-704 (or the substantial equivalent thereof), a copy of which is attached hereto as Appendix A and by this reference incorporated herein), certifying that the Main Street Improvement has been substantially completed in accordance with the Agreement.

5. This Certificate of Substantial Completion is being issued by the Developer to the City in accordance with the Agreement to evidence the Developer's satisfaction of all obligations and covenants with respect to the Main Street Improvement.

6. This Certificate of Substantial Completion is further accompanied by a sworn affidavit and supporting documentation affirming the Developer's participation in a qualified work authorization program pursuant to Section 285.530 of the Revised Statutes of Missouri, as amended.

7. The City's acceptance (below) or the City's failure to object in writing to this Certificate within thirty (30) days of the date of delivery of this Certificate to the City (which written objection, if any, must be delivered to the Developer prior to the end of such 30-day period), and the recordation of this Certificate with the County Recorder, shall evidence the satisfaction of the Developer's agreements and covenants to perform the Main Street Improvement.

This Certificate may be recorded by the Developer in the office of the County Recorder. This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

All certifications or statements made or set forth in this Certificate of Substantial Completion are made solely for the benefit of the City and shall not be relied upon or used for any purpose by any third party in any proceeding, claim or contest of any kind, nature or character.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PAYNE FAMILY HOMES, LLC

By:

Name:

Title:

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ACCEPTED:

[CITY]

By:

Name:

Title:

(Insert Notary Form(s) and Legal Description)

**EXHIBIT C**

**CERTIFICATE OF REIMBURSABLE PROJECT COSTS**

To: City Administrator, City of Wildwood, Missouri  
Re: Certificate of Reimbursable Project Costs

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Development Finance Cooperation Agreement dated as of \_\_\_\_\_, 2016 (the “Agreement”), between the City of Wildwood, Missouri (the “City”), and Payne Family Homes, LLC (the “Developer”). In connection with said Agreement, the undersigned hereby states and certifies that:

1. Each item listed on **Schedule 1** attached hereto is a reasonable and actual cost incurred in connection with the construction of the Main Street Improvement.
2. These costs have been paid by the Developer and are reimbursable under the Agreement.
3. Each item listed on **Schedule 1** has not previously been paid or reimbursed by the City and no part thereof has been included in any other certificate previously filed with the City.
4. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
5. All necessary permits and approvals required for the work for which this certificate relates have been issued and are in full force and effect.
6. All work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.
7. The Developer is not in default or breach of any term or condition of the Agreement, and no event has occurred and no condition exists which constitutes an Event of Default by the Developer under the Agreement.
8. All of the Developer’s representations set forth in the Agreement remain true and correct as of the date hereof.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PAYNE FAMILY HOMES, LLC

By:

[Name], [Title]

Approved for Payment this \_\_\_\_ day of \_\_\_\_\_, 20\_\_:

CITY OF WILDWOOD, MISSOURI

By:

City Administrator