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**VILLAGE OF SUGAR GROVE  
BOARD REPORT**

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**TO:** VILLAGE PRESIDENT & BOARD OF TRUSTEES  
**FROM:** WALTER MAGDZIARZ, COMMUNITY DEVELOPMENT DIRECTOR  
**SUBJECT:** ORDINANCE: SUBDIVISION REGULATIONS AMENDMENT (PERFORMANCE GUARANTEES)  
**AGENDA:** DECEMBER 18, 2018 VILLAGE BOARD MEETING  
**DATE:** DECEMBER 14, 2018

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**ISSUE**

Shall the Village Board approve an Ordinance amending the Village Subdivision Regulations to amend the required form of performance or completion guarantees.

**DISCUSSION**

In the course of administering public improvement guarantees associated with subdivisions and other development in the Village, staff discovered the performance bond form (Exhibit Q) was inexplicably omitted from the last amendment of the Subdivision Regulations. Additionally, Village staff has encountered misunderstandings on the part of the subdivider/developer and/or their financial institution providing financial guarantees for public improvements associated with subdivisions and land development in the Village. Specifically, the problem occurs when the completion bond/guarantee is released, or to be more specific, when the request to release the guarantee is made.

The Village Code requires a performance guarantee to assure that necessary public improvements are provided and completed as required and approved. When the public improvements are completed—and the Village Engineer approves the installation/construction—the subdivider/developer requests the Village Board to release the completion guarantee. But as a condition of releasing the guarantee, the subdivider/developer is required to provide a warranty guarantee (equal to 20% of the original guarantee amount) that has a duration of one year to cover any replacement or repairs to the public improvements that may occur during the one year warranty period following acceptance of the public improvements.

Village staff proposes an amendment of the old Exhibit Q text that would include the warranty period, as well as any costs to the Village, i.e. staff and consultants, in the amount of the completion guarantee. With this approach the Village is assured of having a financial guarantee in place to cover the warranty period even if the original engineer's estimate is released.

**COSTS**

Other than codification expenses, there is no cost to amend the Subdivision Code.

**ATTACHMENTS**

- Proposed Subdivision Regulations amendment (mark-up)
- Ordinance amending Title 12 of the Village Code (Chapter 10, Performance Guarantee)

**RECOMMENDATION**

That the Village Board approve the Ordinance amending Title 12 of the Village Code (Chapter 10, Performance Guarantee), subject to attorney review.

**12-4-5-4: AGREEMENTS AND PERFORMANCE GUARANTEE:**

- A. Construction Guarantee: Construction guarantee for completion of land improvements in one of the following formats, with the form, amount and provider being subject to approval of the Village Board:
1. Cash Deposit: Deposit with the Village, cash in the amount of one hundred twenty percent (120%) of the estimated cost of land improvements, including engineering, remaining to be completed and accepted.
  2. Undertaking; Letter Of Credit: An undertaking by subdivider guaranteeing completion of the land improvements remaining to be completed and accepted, as secured by an irrevocable letter of credit certifying that adequate funds are and will be available at a sound and reputable financial institution authorized to do business in the State of Illinois. Such irrevocable letter of credit shall be in effect for a period of two and one-half (2<sup>1/2</sup>) years with a 90 day notice requirement prior to expiration as provided in Section 12-10-15 from the date of recording the final plat, shall run in favor of the Village and shall indicate there are sufficient funds available for one hundred twenty percent (120%) of the estimated cost of land improvements, including professional services, warranty requirements and enforcement costs and fees (including reasonable attorney's fees) for defaults of the land improvements, and that such funds are held for such purposes. Such undertaking and irrevocable letter of credit shall be in a form ~~to allow the Village to procure the funds to complete the land improvements if their construction is not completed in accordance with the provisions hereof and shall otherwise be in a form acceptable to the Village~~ as provided in Section 12-10-15.
  3. Security: Other good and sufficient security as approved by the Village Attorney to guarantee the proper installation of land improvements.

**12-10-15: PERFORMANCE GUARANTEE:**

*[This is the old Exhibit Q which was omitted in the last major Subdivision Regulations amendment]*

STATE OF ILLINOIS )  
  ): ss.  
COUNTY OF KANE )

WHEREAS, the Statutes of the State of Illinois grant to a municipal corporation the right to require that a developer constructing certain improvements with the community guarantee the construction of such improvements by a Completion Bond or other security acceptable to the community; and

WHEREAS, \_\_\_\_\_ desires to construct a (residential) (commercial (industrial) development within the Village of Sugar Grove, Illinois and that said municipality is willing to accept an undertaking from a financial institution in the nature of an irrevocable commitment in lieu of such Completion Bond,

NOW, THEREFORE, are the following representations made by the owner and/or developer to the Village of Sugar Grove, as follows:

1. That \_\_\_\_\_ is the owner and/or developer of the property legally described in Clause 2 of this undertaking, and shall hereinafter be referred to as "Owner"; and, that the Village of Sugar Grove shall hereinafter be referred to as "Village".
2. That the Owner is the legal title holder or developer of the following described property:

*(insert legal description)*

3. That the Owner shall be required to install at his own cost and expense all necessary materials, labor and equipment to complete the public and private improvements required by the ordinances of the Village, including but not limited to the installation of the following: streets, sidewalks, street lights, street signs, sanitary sewers, storm sewers, detention and retention basins and storm drainage systems, water lines, common landscaping in common areas and grading, ~~and~~ restoration, professional fees (legal, engineering, planning and other related fees) required to be expended by the Village both before and during construction of said development and collection of the amount specified in the approved Letter of Credit in the event of a default under said Letter of Credit, and a sufficient amount to cover a one year warranty in the event an adequate substitute security is not submitted for said warranty period (hereinafter "Public Improvements"). All improvements shall be in accordance with the standards, specifications and requirements of the Village. In order to guarantee that such facilities shall be installed, the Owner shall submit to the Village Engineer such specifications and estimated engineering costs as shall be required to meet with his approval. In aiding the Village Engineer in determining the amount of reasonably anticipated costs for the construction of such improvements, the Owner may submit to the engineer signed contracts for the construction of such improvements. The Village Engineer, upon determining that the design of the required improvements are in accordance with good engineering practices, shall estimate and certify an amount which shall represent one hundred twenty percent (120%) of the reasonably estimated cost of completing those improvements and for which amount the Municipality requires

the posting of a completion guarantee.

4. That the Owner shall furnish qualified field supervision of the installation of all public improvements in the person of a professional engineer registered and licensed in the State of Illinois.
5. That the Owner shall not be entitled to the recording of the final plat or the issuance of Building Permits until and unless said Owner shall submit to the Village an irrevocable financial commitment from a bank, savings and loan or mortgage company approved by the Village in the amount certified by the Village Engineer.
6. That the written irrevocable financial commitment shall be furnished to the Village from a banking or lending institution in the form marked "Appendix A" and appended to this Agreement.
7. That the Owner guarantees the workmanship of the public improvements to be installed upon the site for a period of one year after their donation to the Village. Upon final completion of the public improvements the Owner shall execute a Bill of Sale for those items which are personal property and those items which are intended to be accepted by the Village for maintenance. For a period of one year after the granting of the Bill of Sale in the case of personal property and the acceptance for maintenance of any other public improvements, all necessary repairs to such facilities shall be the responsibility of the Owner.

IN WITNESS WHEREOF, \_\_\_\_\_ has hereunto set his hand and seal this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Owner

Approved by the Village of Sugar Grove this \_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
Village of Sugar Grove

Appendix A

(Letterhead of a Bank, Savings and Loan or Mortgage House)

\_\_\_\_\_, 20\_\_

Village President and Board of Trustee  
Village of Sugar Grove  
10 S. Municipal Drive  
Sugar Grove, IL 60554

Re: Subdivision Name: \_\_\_\_\_  
Letter of Credit No.: \_\_\_\_\_  
For Account of: \_\_\_\_\_  
Amount: \_\_\_\_\_  
Date: \_\_\_\_\_

Gentlemen:

The undersigned (*name of financial institution*) by (*name and title*), its duly authorized agent, hereby establishes and issues this Irrevocable Letter of Credit in favor of the Village of Sugar Grove in the amount of \$\_\_\_\_\_, which represents one hundred twenty percent (120%) of the cost of the improvements described herein. Such credit is available to be drawn upon by said Village upon presentation to this Bank of your demand for payment accompanied by a copy of this Letter of Credit.

This letter of credit is issued for the purpose of securing and paying for the installation of the following public improvements in the aforesaid subdivision:

DIVISION "A" - SANITARY SEWERS	(engineer's estimate = _____)
DIVISION "B" - WATER MAIN	(engineer's estimate = _____)
DIVISION "C" - STORM SEWERS	(engineer's estimate = _____)
DIVISION "D" - STREETS	(engineer's estimate = _____)
DIVISION "E" - DETENTION BASIN	(engineer's estimate = _____)
DIVISION "F" - MISC IMPROVEMENTS	(engineer's estimate = _____)
DIVISION "G" - PROFESSIONAL FEES	(engineer's estimate = _____)
DIVISION "H" - ONE YEAR MAINTENANCE SECURITY	(engineer's estimate = _____)

TOTAL ENGINEER'S ESTIMATE = \_\_\_\_\_

The engineers' estimate is for purposes of the determining the total amount of the Letter of Credit, but in no way limit the demands of the Village under a default. Any and all funds provided for under the Letter of Credit can be used for any and all items covered by the Letter of Credit. The costs of the foregoing improvements are detailed in the attached Engineer's Cost Estimate.

The development is legally described as follows:

*(Insert legal description)*

Said public improvements shall be constructed by (subdivider), our customer, in accordance with the plans, specifications, completion schedules and cost estimates prepared by (subdivider's engineer).

The undersigned agrees that this Irrevocable Letter of Credit shall remain in full force and effect and pertain to any and all amendments or modifications which may be made from time to time to the plans, specifications and cost estimates for said modifications.

This Irrevocable Letter of Credit shall expire on \_\_\_\_\_, 20\_\_\_, provided, however, the undersigned shall notify the Village Clerk, by certified or registered mail, return receipt requested, at least ninety (90) days prior to said expiration date, that said Letter of Credit is about to expire. In no event shall this Irrevocable Letter of Credit or the obligations contained herein expire except upon said prior written notice, it being expressly agreed by the undersigned that the above expiration date shall be extended as required to comply with this notice provision.

This Irrevocable Letter of Credit shall remain in effect until (expiration date), 20\_\_\_, without regard to any default in payment of money owed to the Issuer by our customer and without regard to other claims which the Issuer may have against our customer, and in no event shall terminate without notice as specified above.

This Letter of Credit may be renewed by the Issuer or our customer prior to the above expiration date by submitting a new Letter of Credit of the same form and substance as this Letter of Credit to the Village Clerk in an amount equal to 120% of the estimated cost to complete and pay for the above described improvements.

It is agreed that the following shall be considered a default by our customer and shall entitle the Village to make demand on this Letter of Credit:

- (1) That said Letter of Credit will expire within thirty (30) days and has not been renewed; or
- (2) That the aforesaid improvements have not been completed by the subdivider at least thirty (30) days prior to the aforesaid expiration date; or
- (3) That the owner and/or subdivider has failed to complete or carry on the work of the installation and construction of the required improvements, in accordance with the schedule or at a faster pace if the installation of the private improvements shall be completed before public improvements to service them are available; or
- (4) That the Village of Sugar Grove has determined that the owner and/or subdivider has demonstrated that they will be unable to complete the improvement; or
- (5) That the Village of Sugar Grove has determined that the public improvements or other improvements covered by this commitment have been or are likely to be the subject of liens or other claims by contractors, subcontractors or third parties; or
- (6) That the Village of Sugar Grove has determined that the owner and/or subdivider has failed to post the required guarantees for the required maintenance periods for the public improvements; or

- (7) That if more funds are disbursed at this time on order of the owner and/or subdivider insufficient funds will remain irrevocably committed to guarantee the completion of all improvements, and such certification indicates that the owner and/or subdivider has been notified that the municipality finds that a breach of the owner's and/or subdivider's obligations has occurred and has not been cured within a period of thirty (30) days.

The Issuer's obligation to the Village is based solely on this Irrevocable Letter of Credit engagement between this financial institution and the Village and is not subject to instructions from our customer.

It is recognized that the Village has directed our customer to proceed with the construction of public improvements upon the guarantee of this irrevocable commitment. It is further acknowledged that the consideration for this irrevocable commitment is provided by agreements between this financial institution and our customer.

This Irrevocable Letter of Credit sets forth in full the terms of the undertaking between the Issuer and the Village, and such undertaking shall not in any way be modified, amended, amplified, nor shall it be limited by reference to any document, instrument or agreement referred to herein, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.

Demands on this Letter of Credit shall be made by presenting the Issuer with a letter from the Village Clerk of the Village of Sugar Grove demanding payment accompanied by the certificate of the Village Clerk of the Village of Sugar Grove certifying the basis for the default and demand on this Letter of Credit.

The undersigned agrees that this Letter of Credit shall not be reduced or discharged except upon receipt of a certificate of the Village Clerk of the Village of Sugar Grove certifying that this Letter of Credit may be reduced and the amount by which this Letter of Credit may be reduced. The outstanding balance of this Letter of Credit shall be the face amount of this Letter of Credit less any amount which is discharged upon certificate of the Village Clerk; provided, however, the outstanding balance of this Letter of Credit shall not be reduced to less than 10% of the initial face amount of the Letter of Credit until the Village Board of Trustees accepts the aforementioned improvements, the required guarantees for the required maintenance period have been posted by the owner and/or subdivider and a certificate of the Village Clerk certifying that the Letter of Credit has been released by the Village Board of Trustees of the Village.

All acts, requirements and other preconditions for the issuance of this Irrevocable Letter of Credit have been completed.

The undersigned further agrees and engages that it will be responsible and liable for attorney fees and court costs which may be incurred by the Village in enforcing collection of this Letter of Credit in accordance with its terms.



We hereby engage with you that all demands for payment in conformity with the terms of this Irrevocable Letter of Credit will be duly honored on presentation to us prior to expiration of this Letter of Credit.

BY: \_\_\_\_\_  
\_\_\_\_\_

ATTEST: \_\_\_\_\_

Name: \_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_  
\_\_\_\_\_

Title: \_\_\_\_\_

STATE OF ILLINOIS )  
  ): ss.  
COUNTY OF KANE )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that \_\_\_\_\_, personally known to me to be the (title) of the (name of institution), and \_\_\_\_\_, personally known to me to be the (title) of said institution, and who are personally known to me to be the same persons whose names are subscribed to the foregoing Letter of Credit as such (title) and (title), respectively, and caused the corporate seal of said (name of institution) to be affixed thereto pursuant to authority given by the Board of Directors thereof, as their free and voluntary acts and as the free and voluntary act and deed of said institution.

Given under my hand and official seal this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public



**VILLAGE OF SUGAR GROVE  
KANE COUNTY, ILLINOIS**

**ORDINANCE NO. 2018-1218\_**

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**AN ORDINANCE AMENDING TITLE 12 (SUBDIVISION ORDINANCE) OF THE VILLAGE CODE  
(CHAPTER 10, PERFORMANCE GUARANTEE)**

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Adopted by the Board of Trustees and President of the Village of Sugar Grove  
this 18<sup>th</sup> day of December 2018

Published in pamphlet form by authority of the Board of Trustees of the Village of Sugar Grove  
this 18<sup>th</sup> day of December 2018

**ORDINANCE NO. 2018-1218\_**

**AN ORDINANCE AMENDING TITLE 12 (SUBDIVISION REGULATIONS) OF THE VILLAGE CODE  
(CHAPTER 10, PERFORMANCE GUARANTEE)**

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**WHEREAS**, the Village of Sugar Grove is not a home rule municipality within Article VII, Section 6A of the Illinois Constitution and, pursuant to the powers granted to it under 65 ILCS 5/1-1 *et seq.*; and,

**WHEREAS**, the Village of Sugar Grove currently maintains subdivision and public improvement standards and specifications for the construction of public improvements within the Village; and,

**WHEREAS**, the Village finds that such standards and specifications provide for the safety and well-being of Village inhabitants and benefit the public welfare, safety and morals; and,

**WHEREAS**, the Village seeks to continue to promote these interests, and seeks to amend the Village Code to more fully protect and preserve the safety and well being of such inhabitants; and,

**NOW, THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, as follows:

**SECTION ONE: Title 12 of the Village Code of Ordinance Amended**

- A. That Chapter 4 of Title 12 Subdivision Regulations be, and it is hereby, amended to add a new Section 12-4-5-4-A, Construction Guarantee, which shall hereafter be and read in the form provided in Exhibit A, attached hereto and made a part hereof by this reference.
- B. That Chapter 10 of Title 12 Subdivision Regulations be, and it is hereby, amended to add a new Section 12-10-15, Performance Guarantees, and shall hereafter be and read as follows in Exhibit B, attached hereto and made a part hereof by this reference.

**SECTION TWO: General Provisions**

**REPEALER:** All ordinances or portions thereof in conflict with this ordinance are hereby repealed.

**SEVERABILITY:** Should any provision of this Ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions will remain in full force and effect the same as if the invalid provision had not been a part of this Ordinance.

EFFECTIVE DATE: This Ordinance shall be in full force and effect on and after its approval, passage and publication in pamphlet form as provided by law.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, this 18<sup>th</sup> day of December 2018.

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P. Sean Michels,  
Village President

ATTEST: \_\_\_\_\_  
Cynthia L. Galbreath  
Village Clerk

	Aye	Nay	Absent	Abstain
Trustee Mari Johnson	___	___	___	___
Trustee Ted Koch	___	___	___	___
Trustee Heidi Lendi	___	___	___	___
Trustee Sean Herron	___	___	___	___
Trustee David Paluch	___	___	___	___
Trustee Rick Montalto	___	___	___	___

Exhibit A

**12-4-5-4-A to be and to read as follows:**

- A. Construction Guarantee: Construction guarantee for completion of land improvements in one of the following formats, with the form, amount and provider being subject to approval of the Village Board:
1. Cash Deposit: Deposit with the Village, cash in the amount of one hundred twenty percent (120%) of the estimated cost of land improvements, including engineering, remaining to be completed and accepted.
  2. Undertaking; Letter Of Credit: An undertaking by subdivider guaranteeing completion of the land improvements remaining to be completed and accepted, as secured by an irrevocable letter of credit certifying that adequate funds are and will be available at a sound and reputable financial institution authorized to do business in the State of Illinois. Such irrevocable letter of credit shall be in effect for a period of two and one-half (2<sup>1/2</sup>) years with a 90 day notice requirement prior to expiration as provided in Section 12-10-15 from the date of recording the final plat, shall run in favor of the Village and shall indicate there are sufficient funds available for one hundred twenty percent (120%) of the estimated cost of land improvements, including professional services, warranty requirements and enforcement costs and fees (including reasonable attorney's fees) for defaults of the land improvements remaining to be completed and that such funds are held for such purposes. Such undertaking and irrevocable letter of credit shall be in a form as provided in Section 12-10-15.
  3. Security: Other good and sufficient security as approved by the Village Attorney to guarantee the proper installation of land improvements.



and certify an amount which shall represent one hundred twenty percent (120%) of the reasonably estimated cost of completing those improvements and for which amount the Municipality requires the posting of a completion guarantee.

4. That the Owner shall furnish qualified field supervision of the installation of all public improvements in the person of a professional engineer registered and licensed in the State of Illinois.
5. That the Owner shall not be entitled to the recording of the final plat or the issuance of Building Permits until and unless said Owner shall submit to the Village an irrevocable financial commitment from a bank, savings and loan or mortgage company approved by the Village in the amount certified by the Village Engineer.
6. That the written irrevocable financial commitment shall be furnished to the Village from a banking or lending institution in the form marked "Appendix A" and appended to this Agreement.
7. That the Owner guarantees the workmanship of the public improvements to be installed upon the site for a period of one year after their donation to the Village. Upon final completion of the public improvements the Owner shall execute a Bill of Sale for those items which are personal property and those items which are intended to be accepted by the Village for maintenance. For a period of one year after the granting of the Bill of Sale in the case of personal property and the acceptance for maintenance of any other public improvements, all necessary repairs to such facilities shall be the responsibility of the Owner.

IN WITNESS WHEREOF, \_\_\_\_\_ has hereunto set his hand and seal this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Owner

Approved by the Village of Sugar Grove this \_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
Village of Sugar Grove

Appendix A

(Letterhead of a Bank, Savings and Loan or Mortgage House)

\_\_\_\_\_, 20\_\_

Village President and Board of Trustee  
Village of Sugar Grove  
10 S. Municipal Drive  
Sugar Grove, IL 60554

Re: Subdivision Name: \_\_\_\_\_  
Letter of Credit No.: \_\_\_\_\_  
For Account of: \_\_\_\_\_  
Amount: \_\_\_\_\_  
Date: \_\_\_\_\_

Gentlemen:

The undersigned (*name of financial institution*) by (*name and title*), its duly authorized agent, hereby establishes and issues this Irrevocable Letter of Credit in favor of the Village of Sugar Grove in the amount of \$\_\_\_\_\_, which represents one hundred twenty percent (120%) of the cost of the improvements described herein. Such credit is available to be drawn upon by said Village upon presentation to this Bank of your demand for payment accompanied by a copy of this Letter of Credit.

This letter of credit is issued for the purpose of securing and paying for the installation of the following public improvements in the aforesaid subdivision:

DIVISION "A" - SANITARY SEWERS	(engineer's estimate = _____)
DIVISION "B" - WATER MAIN	(engineer's estimate = _____)
DIVISION "C" - STORM SEWERS	(engineer's estimate = _____)
DIVISION "D" - STREETS	(engineer's estimate = _____)
DIVISION "E" - DETENTION BASIN	(engineer's estimate = _____)
DIVISION "F" - MISC IMPROVEMENTS	(engineer's estimate = _____)
DIVISION "G" - PROFESSIONAL FEES	(engineer's estimate = _____)
DIVISION "H" - ONE YEAR MAINTENANCE SECURITY	(engineer's estimate = _____)

TOTAL ENGINEER'S ESTIMATE = \_\_\_\_\_

The engineers' estimate is for purposes of the determining the total amount of the Letter of Credit, but in no way limit the demands of the Village under a default. Any and all funds provided for under the Letter of Credit can be used for any and all items covered by the Letter of Credit. The costs of the foregoing improvements are detailed in the attached Engineer's Cost Estimate.



The development is legally described as follows:

*(Insert legal description)*

Said public improvements shall be constructed by (subdivider), our customer, in accordance with the plans, specifications, completion schedules and cost estimates prepared by (subdivider's engineer).

The undersigned agrees that this Irrevocable Letter of Credit shall remain in full force and effect and pertain to any and all amendments or modifications which may be made from time to time to the plans, specifications and cost estimates for said modifications.

This Irrevocable Letter of Credit shall expire on \_\_\_\_\_, 20\_\_\_, provided, however, the undersigned shall notify the Village Clerk, by certified or registered mail, return receipt requested, at least ninety (90) days prior to said expiration date, that said Letter of Credit is about to expire. In no event shall this Irrevocable Letter of Credit or the obligations contained herein expire except upon said prior written notice, it being expressly agreed by the undersigned that the above expiration date shall be extended as required to comply with this notice provision.

This Irrevocable Letter of Credit shall remain in effect until (expiration date), 20\_\_\_, without regard to any default in payment of money owed to the Issuer by our customer and without regard to other claims which the Issuer may have against our customer, and in no event shall terminate without notice as specified above.

This Letter of Credit may be renewed by the Issuer or our customer prior to the above expiration date by submitting a new Letter of Credit of the same form and substance as this Letter of Credit to the Village Clerk in an amount equal to 120% of the estimated cost to complete and pay for the above described improvements.

It is agreed that the following shall be considered a default by our customer and shall entitle the Village to make demand on this Letter of Credit:

- (1) That said Letter of Credit will expire within thirty (30) days and has not been renewed; or
- (2) That the aforesaid improvements have not been completed by the subdivider at least thirty (30) days prior to the aforesaid expiration date; or
- (3) That the owner and/or subdivider has failed to complete or carry on the work of the installation and construction of the required improvements, in accordance with the schedule or at a faster pace if the installation of the private improvements shall be completed before public improvements to service them are available; or
- (4) That the Village of Sugar Grove has determined that the owner and/or subdivider has demonstrated that they will be unable to complete the improvement; or
- (5) That the Village of Sugar Grove has determined that the public improvements or other improvements covered by this commitment have been or are likely to be the subject of liens or other claims by contractors, subcontractors or third parties; or
- (6) That the Village of Sugar Grove has determined that the owner and/or subdivider has failed to post the required guarantees for the required maintenance periods for the public improvements; or

- (7) That if more funds are disbursed at this time on order of the owner and/or subdivider insufficient funds will remain irrevocably committed to guarantee the completion of all improvements, and such certification indicates that the owner and/or subdivider has been notified that the municipality finds that a breach of the owner's and/or subdivider's obligations has occurred and has not been cured within a period of thirty (30) days.

The Issuer's obligation to the Village is based solely on this Irrevocable Letter of Credit engagement between this financial institution and the Village and is not subject to instructions from our customer.

It is recognized that the Village has directed our customer to proceed with the construction of public improvements upon the guarantee of this irrevocable commitment. It is further acknowledged that the consideration for this irrevocable commitment is provided by agreements between this financial institution and our customer.

This Irrevocable Letter of Credit sets forth in full the terms of the undertaking between the Issuer and the Village, and such undertaking shall not in any way be modified, amended, amplified, nor shall it be limited by reference to any document, instrument or agreement referred to herein, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.

Demands on this Letter of Credit shall be made by presenting the Issuer with a letter from the Village Clerk of the Village of Sugar Grove demanding payment accompanied by the certificate of the Village Clerk of the Village of Sugar Grove certifying the basis for the default and demand on this Letter of Credit.

The undersigned agrees that this Letter of Credit shall not be reduced or discharged except upon receipt of a certificate of the Village Clerk of the Village of Sugar Grove certifying that this Letter of Credit may be reduced and the amount by which this Letter of Credit may be reduced. The outstanding balance of this Letter of Credit shall be the face amount of this Letter of Credit less any amount which is discharged upon certificate of the Village Clerk; provided, however, the outstanding balance of this Letter of Credit shall not be reduced to less than 10% of the initial face amount of the Letter of Credit until the Village Board of Trustees accepts the aforementioned improvements , the required guarantees for the required maintenance period have been posted by the owner and/or subdivider and a certificate of the Village Clerk certifying that the Letter of Credit has been released by the Village Board of Trustees of the Village.

All acts, requirements and other preconditions for the issuance of this Irrevocable Letter of Credit have been completed.

The undersigned further agrees and engages that it will be responsible and liable for attorney fees and court costs which may be incurred by the Village in enforcing collection of this Letter of Credit in accordance with its terms.

We hereby engage with you that all demands for payment in conformity with the terms of this Irrevocable Letter of Credit will be duly honored on presentation to us prior to expiration of this Letter of Credit.

BY: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_



STATE OF ILLINOIS )  
  ): ss.  
COUNTY OF KANE )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that \_\_\_\_\_, personally known to me to be the (title) of the (name of institution), and \_\_\_\_\_, personally known to me to be the (title) of said institution, and who are personally known to me to be the same persons whose names are subscribed to the foregoing Letter of Credit as such (title) and (title), respectively, and caused the corporate seal of said (name of institution) to be affixed thereto pursuant to authority given by the Board of Directors thereof, as their free and voluntary acts and as the free and voluntary act and deed of said institution.

Given under my hand and official seal this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public