

APPENDIX H

SECURITY REQUIREMENTS

- H-1 Performance Security Required
- H-2 Guaranty Letter of Credit
- H-3 Costs
- H-4 Forms of Letters of Credit
- H-5 Replenishment of Letter of Credit
- H-6 Replacement Letters of Credit
- H-7 Use of Funds in the Event of Breach of Agreement
- H-8 Performance Bonds
- H-9 Retained Personnel/Professional Fees

H-1 PERFORMANCE SECURITY REQUIRED.

As security to the Village for the performance by the developer to construct and complete required public and private improvements (the “Improvements”) and to otherwise faithfully perform its undertakings pursuant to the requirements of this Code, the developer as a condition precedent to the recording of the Final Plat, shall deposit with the Village Treasurer a letter of credit (the “Performance and Payment Letter of Credit”) in a total amount equal to 125 percent of the Village Engineer’s estimate of the costs to construct and complete the Improvements. The Performance and Payment Letter of Credit shall be maintained and renewed by the developer and shall be held in escrow by the Village, until approval and, where appropriate, acceptance of all the Improvements by the Village and the posting of all Guaranty Letters of Credit required by Subsection H-2 below. After such acceptance and posting, the Village shall release the Performance and Payment Letter of Credit.

H-2 GUARANTY LETTER OF CREDIT.

As a condition of the Village’s approval and, where appropriate, acceptance of any or all of the Improvements, the developer shall post one or more new letters of credit in the total amount of 10 percent of the actual total costs of such Improvements as security for the performance of the developer’s obligations to guaranty, maintain, and repair the Improvements (each such letter of credit shall be referred to individually as the “Guaranty Letter of Credit”). The Guaranty Letter of Credit shall be held by the Village in escrow until the end of the required two-year guaranty period or until two years after the proper correction of any defect or deficiency in the Improvements and payment therefor, whichever occurs later. If the Village is required to draw on the Guaranty Letter of Credit by reason of the developer’s failure to fulfill its obligations, then the developer, within 10 days thereafter, shall cause the Guaranty Letter of Credit to be increased to its full original amount.

H-3 COSTS.

The developer shall bear the full cost of securing and maintaining the Performance and Payment Letter of

Credit and the Guaranty Letter of Credit.

H-4 FORM OF LETTERS OF CREDIT.

The Performance and Payment Letter of Credit and the Guaranty Letter of Credit shall each be in a form satisfactory to the Village Attorney and shall each be from a bank acceptable to the Village and having capital resources of at least \$50,000,000, with an office in the Chicago Metropolitan Area and insured by the Federal Deposit Insurance Corporation. Each letter of credit shall, at a minimum, provide that (1) it shall expire no earlier than the later of one year following the date of its issuance or 45 days after delivery to the Village of written notice that such letter of credit will expire; (2) it may be drawn on based upon the Village Treasurer's certification that the developer has failed to fulfill any of the obligations for which the letter of credit is security; (3) it shall not require the consent of the developer prior to any draw on it by the Village; (4) it shall not be canceled without the prior written consent of the Village; and (5) if at any time it will expire within 45 or any lesser number of days, and if it has not been renewed, and if any obligation of the developer for which it security remains uncompleted or unsatisfactory, then the Village, without notice and without being required to take any further action of any nature whatsoever, may call and draw down the letter of credit and thereafter either hold all proceeds as security for the satisfactory completion of all such obligations or employ the proceeds to complete all such obligations and reimburse the Village for any and all costs and expenses, including legal fees and administrative costs, incurred by the Village, as the Village shall determine.

The Performance and Payment Letter of Credit may provide that the aggregate amount of the letter of credit may be reduced once, after at least 50% of the value of the improvements shown on the Final Plans are completed. The amount of the reduction shall be limited to an amount to ensure that the remaining amount is equal to at least 50% of the original performance and payment letter of credit amount. The performance and payment letter of credit shall remain at that amount until such time that the improvements are accepted onto the two-year maintenance period. No such reduction to reimburse the developer for payment of Improvement work satisfactorily completed shall be allowed except upon presentation by the developer of proper contractors' sworn statements, partial or final waivers of lien, as may be appropriate, and all such additional documentation as the Village may reasonably request to demonstrate satisfactory completion of the Improvement in question and full payment of all contractors, subcontractors, and material suppliers.

The Guaranty Letter of Credit shall not be reduced by reason of any cost incurred by the Owner to guaranty, maintain, and repair the Improvements.

Forms for draws, reductions and amendments on said Letter of Credits are provided in annexes 1-4.

H-5 REPLENISHMENT OF LETTER OF CREDIT.

If at any time the Village determines that the funds remaining in the Performance and Payment Letter of Credit are not, or may not be, sufficient to pay in full the remaining unpaid cost of all Improvements and all unpaid or reasonably anticipated Village fees, costs, and expenses, or that the funds remaining in the Guaranty Letter of Credit are not, or may not be, sufficient to pay all unpaid costs of correcting any and all

defects and deficiencies in the Improvements and all unpaid or reasonably anticipated Village fees, costs, and expenses, then, within 10 days following a demand by the Village, the developer shall increase the amount of the appropriate letter of credit to an amount determined by the Village to be sufficient to pay such unpaid fees, costs, and expenses. Failure to so increase the amount of the letter of credit shall be grounds for the Village to draw down the entire remaining balance of the Performance and Payment Letter of Credit and the Guaranty Letter of Credit.

H-6 REPLACEMENT LETTERS OF CREDIT.

If at any time the Village determines that the bank issuing either the Performance and Payment Letter of Credit or the Guaranty Letter of Credit is without capital resources of at least \$50,000,000, is unable to meet any federal or state requirement for reserves, is insolvent, is in danger of becoming any of the foregoing, or is otherwise in danger of being unable or unwilling to honor such letter of credit at any time during its term, or if the Village otherwise reasonably deems itself to be insecure, then the Village shall have the right to demand that the developer provide a replacement letter of credit from a bank satisfactory to the Village. Such replacement letter of credit shall be deposited with the Village not later than 10 days after such demand. Upon such deposit, the Village shall surrender the original letter of credit to the Owner. Failure to provide such a replacement letter of credit shall be grounds for the Village to draw down the entire remaining balance of the Performance and Payment Letter of Credit and the Guaranty Letter of Credit.

H-7 USE OF FUNDS IN THE EVENT OF BREACH OF AGREEMENT.

If the developer fails or refuses to properly complete the Improvements, or fails or refuses to correct any defect or deficiency in the Improvements, or fails or refuses to properly restore property, or in any other manner fails or refuses to meet fully any of its obligations, then the Village, in its discretion, may draw on and retain all or any of the funds remaining in the Performance and Payment Letter of Credit and the Guaranty Letter of Credit and to reimburse itself from the proceeds of the Performance and Payment Letter of Credit and the Guaranty Letter of Credit for all of its costs and expenses, including legal fees and administrative expenses, resulting from or incurred as a result of the developer's failure or refusal to fully meet its obligations under this Agreement. If the funds remaining in the Performance and Payment Letter of Credit and the Guaranty Letter of Credit are insufficient to repay fully the Village for all such costs and expenses, and to maintain a cash reserve equal to the required Guaranty Letter of Credit during the entire time such Guaranty Letter of Credit should have been maintained by the Owner, then the developer shall, upon demand of the Village therefor, immediately deposit with the Village such additional funds as the Village determines are necessary to fully repay such costs and expenses and to establish such cash reserve.

H-8 PERFORMANCE BONDS

If a performance bond is used as the required surety for public improvements in a subdivision, the form attached hereto as Annex 5 shall be used.