

ANNEX 5

PERFORMANCE BOND

WHEREAS, _____ (the “Developer”) is obligated to the Village of Lake in the Hills, an Illinois municipal corporation located in McHenry County, Illinois (the “Village), to construct public improvements and other obligations described herein; and

WHEREAS, the Village seeks a guarantee of the Developer’s faithful performance of such obligations; and

WHEREAS, the Developer wishes to provide the Village with this Performance Bond guaranteeing the construction of the public improvements and other obligations described herein; and

WHEREAS, the Developer has contracted with _____ (the “Surety”) located at _____, a surety chartered and existing under the laws of the State of _____ and authorized to do business in the State of Illinois to act as surety with respect to this Performance Bond.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

1. The Developer and the Surety are held and firmly bound to the Village, its successors and assigns, in the sum of _____, for the payment of which the Developer and the Surety bind themselves, their heirs, personal representatives, successors, assigns and executors, jointly and severally, for the performance of the Developer’s obligations identified on Exhibit A.
2. If the Developer performs its obligations identified on Exhibit A, at the times and in the manner prescribed therein, then the Developer and the Surety shall have no obligations under this Performance Bond.
3. The Surety’s obligations under this Performance Bond shall arise if the Developer defaults with respect to any or all of its obligations as identified in Exhibit A in the manner prescribed and within the time specified therein and after the Village provides written notice of said failure to the Surety.
4. Within fifteen (15) business days from receipt of the notice provided by the Village described in Section 3 above, the Surety shall take one of the following actions:
 - a. Undertake to perform and complete the Developer’s obligations itself, through its agents or independent contractors which are acceptable to the Village and within a time frame and date certain acceptable to the Village; or
 - b. Waive its right to perform and complete the Developer’s obligations and instead tender the amount necessary for the Village to complete the Developer’s

obligations either on its own or through independent contractors. If the Village refuses payment of the tendered amount then the Surety shall complete the Developer's obligations pursuant to Section 4(a) above.

The Surety understands and agrees that if it elects to undertake completion of the Developer's obligations as set forth in Section 4(a) above, it will be bound by all applicable laws, including but not limited to the Prevailing Wage Act. In such event, the Surety agrees that it will bear the costs, including but not limited to engineering, construction, and legal costs, of completing the Developer's obligations under Section 4(a) above.

5. In the event that the Developer defaults with respect to any of the Developer's obligations as identified in Exhibit A, in the manner prescribed and within the times specified therein, the Village, in its sole discretion and in lieu of Section 4 above, may elect to complete the Developer's obligations itself or through independent contractors, and the Surety and the Developer shall be jointly and severally liable for the costs thereof including, but not limited to engineering, construction, legal, internal administrative and contingent costs as well as any damages, either direct or consequential, sustained by the Village in an amount not to exceed the sum set forth in Section 1 herein. In such event, the Surety and the Developer, jointly and severally, shall pay all invoices incurred in the Village's completing the Developer's obligations within ten (10) business days of receipt of the invoice from the Village.

6. To the limit of the amount of this Performance Bond, as set forth in Section 1 herein, the Surety is obligated for:

- a. The responsibilities of the Developer for correction of defective work or completion of the Developer's obligations identified in Exhibit A in the manner and within the time prescribed therein;
- b. Additional engineering, construction, legal, design, internal administrative and other costs resulting from the Developer's default and resulting from the actions or failure to act of the Surety; and
- c. All damages, including direct or consequential, suffered by the Village and caused by the delay in performance or nonperformance of the Developer's obligations.

7. No right of action shall accrue on this Performance Bond to any person or entity other than the Village or its assigns and successors.

8. The Surety hereby waives notice of any changes, including but not limited to, changes of time, to the Developer's obligations in Exhibit A. Any changes in or to Exhibit A and compliance or noncompliance with formalities in connection with Exhibit A or alterations which may be made to the terms of Exhibit A, or in the work to be done pursuant to, or the giving by the Village of any extension of time for the performance of the obligations set forth in Exhibit A, or any other forbearance on the part of the Village, shall not affect the obligations of the

Developer and the Surety, or either of them, their heirs, personal representatives, successors or assigns under this Performance Bond, notice to the Surety of any such changes, alterations, extensions or forbearance being hereby waived.

9. Any proceeding pursuant to or in connection with this Performance Bond shall be brought in the 19th Judicial Circuit, McHenry County, Illinois, and the Surety and the Developer hereby consent to jurisdiction and venue in that Court. This Performance Bond has been negotiated, executed and delivered at and shall be deemed to have been made in the Village of Lake in the Hills, McHenry County, Illinois. This Performance Bond shall be governed by and construed in accordance with the laws of the State of Illinois, regardless of any present or future domicile or principal place of business of the Developer or the Surety. Each of the Developer and the Surety hereby consents and agrees that the Circuit Court of McHenry County, Illinois, or at the Village's option, and in the Village's sole discretion, the United States District Court for the Northern District of Illinois, Eastern Division, shall have exclusive jurisdiction to hear and determine any claims or disputes between the Village and the Developer or the Surety pertaining to this Performance Bond or to any matter arising out of or related to this Performance Bond. Each of the Developer and Surety expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and each of the Developer and the Surety hereby waives any objection which each of the Developer and the Surety may have based upon lack of personal jurisdiction, improper venue or forum non conveniens. Each of the Developer and the Surety hereby waives personal service of the summons, complaint and other process issued in any such action or suit and agrees that service of such summons, complaint and other process may be made by registered or certified mail addressed to each of the Developer and the Surety at the address set forth in this Performance Bond and that service so made shall be deemed completed upon the earlier of each of the Developer and the Surety's actual receipt thereof or three (3) days after deposit in the U.S. mail, proper postage prepaid. Nothing in this Performance Bond shall be deemed or operate to affect the right of the Village to serve legal process in any other manner permitted by law, or to preclude the enforcement by the Village of any judgment or order obtained in such forum or the taking of any action under this Performance Bond to enforce same in any other appropriate forum or jurisdiction.

10. Notices to the Surety, Developer and Village shall be delivered to the following addresses and shall be deemed effective two business days after mailing, with first class postage prepaid. Notices delivered via facsimile or hand delivery shall be deemed effective the same day.

The Village:
The Village of Lake in the Hills
Village Administrator
600 Harvest Gate
Lake in the Hills, IL 60156
Fax: (847) 960-7415

The Developer:

Fax: _____

The Surety:

Fax: _____

11. If the Surety fails to perform any of its obligations under this Performance Bond within five (5) business days from receipt of the written notice from the Village, the Surety shall be deemed in default of this Performance Bond and the Village may exercise any right it may have either at law or in equity. Further, the Surety agrees to pay the Village's cost of enforcing or interpreting this Performance Bond, including but not limited to the Village's reasonable attorney's fees.

12. If any part of this Performance Bond is construed to be invalid or unenforceable by a court of competent jurisdiction, that finding or decision shall not effect the remainder of this Performance Bond and the remaining provisions shall remain in full force and effect.

Time is of the essence of this Performance Bond.

No provision of this Performance Bond shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured or dictated such provision.

Wherever possible, each provision of this Performance Bond shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Performance Bond shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Performance Bond.

This Performance Bond shall be binding upon and inure to the benefit of the successors and assigns of the Village, the Developer and the Surety.

The Village's failure, at any time or times hereafter, to require strict performance by the Developer of any provision of this Performance Bond shall not waive, affect or diminish any right of the Village thereafter to demand strict compliance and performance therewith.

Each of the Surety and the Developer represents to the Village that each has undertaken all corporate or other action necessary for it to execute and bind itself to the obligations of this Performance Bond.

IN WITNESS WHEREOF, this Performance Bond has been duly executed and accepted in Lake in the Hills, McHenry County, Illinois, on the day of the year specified at the beginning hereof.

THE DEVELOPER

THE SURETY

By: _____

By: _____

Its: _____

Its: _____

STATE OF _____)

)

COUNTY OF _____)

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 _____ of _____, personally appeared before me this date and acknowledged that he has signed the within and foregoing Performance Bond as his free and voluntary act for and on behalf of _____.

Given under my hand in a Notary Seal this ____ day of _____, 20____.

Notary Public

STATE OF _____)

)

COUNTY OF _____)

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 _____ of _____, personally appeared before me this date and acknowledged that he has signed the within and foregoing Performance Bond as his free and voluntary act for and on behalf of _____.

Given under my hand in a Notary Seal this ____ day of _____, 20____.

Notary Public

EXHIBIT A