

BANK LETTERHEAD
IRREVOCABLE LETTER OF CREDIT

AMOUNT \$ _____ NO. _____ DATE _____

Village Manager
Village of Hoffman Estates
1900 Hassell Road
Hoffman Estates, IL 60169

SAMPLE DOCUMENT

RE: (Subdivision or Development)

Dear Sir:

We hereby certify that the _____ (Issuing Bank) Bank has established an Irrevocable Letter of Credit in favor of the Village of Hoffman Estates for the account of _____ (Developer or Owner) in the amount of _____ Dollars \$ _____. We hereby authorize you to draw from _____ (Issuing Bank) such Irrevocable Letter of Credit by one or more bank drafts at sight for any sum or sums not exceeding \$ _____. Each draft hereunder must be accompanied by a statement executed by the duly authorized Village Manager of the Village of Hoffman Estates to the effect that such sum is due in accordance with the approved plans for construction of the public improvements and private improvements for the benefit of the public for the _____ (Project Name) development approved by the President and Board of Trustees on the _____ day of _____, 20____. The Irrevocable Letter of Credit funds may also be used for site restoration, clean up, erosion control, any other on-site or off-site development improvements or repairs and any fees required under Chapter 10 and 11 of the Hoffman Estates Municipal Code. All of the Irrevocable Letter of Credit funds shall be available to the Village to remedy any deficiencies related to the development that are not addressed by the developer. The distribution of any amount of the Irrevocable Letter of Credit funds to secure the installation of all improvements and remedy any deficiencies related to the development shall not be limited based upon any prior estimates or reductions in the Irrevocable Letter of Credit and shall not exceed the then current amount of the Irrevocable Letter of Credit. Each draft must bear the clause:

Drawn under _____ (Issuing Bank) Bank
Irrevocable Letter of Credit No. _____, dated _____

The amount of any draft under this Irrevocable Letter of Credit must be endorsed on the reverse side thereof and the presentation of each, if negotiated, shall be a warranty by the negotiating bank that such endorsement has been made. The Village may require a 15% administrative charge in the event the Irrevocable Letter of Credit is used to complete the public and private improvements. But in no event will the total exceed the then current amount of the Irrevocable Letter of Credit.

The principal amount of this Irrevocable Letter of Credit shall not be reduced for any improvements installed unless such reduction is approved by the Village Engineer in his/her sole discretion. The Village may submit its sight drafts as hereinabove provided without consent of _____ (Developer or Owner) or any other party. If within ten days of the date such draft is presented in conformance with the terms of this Irrevocable Letter of Credit, and _____ (Issuing Bank) fails to honor the same, _____ (Issuing Bank) agrees to pay all attorneys' fees, court costs, and other expenses incurred by the Village in enforcing the terms hereof.

We hereby agree with the drawers, endorsers, and bona fide holders of all drafts drawn under and in compliance with the terms of this Irrevocable Letter of Credit that such drafts will be duly honored upon

presentation, if presented to this bank on or before 90 days after the expiration of this Irrevocable Letter of Credit.

This Irrevocable Letter of Credit expires _____, 20 ____.

This Irrevocable Letter of Credit shall be automatically extended for additional periods of one year from the present or each future expiration date unless thirty (30) days prior to such date the _____ (Issuing Bank) Bank shall give written notice to the Village Manager, by certified mail, return receipt requested, that the _____ (Issuing Bank) Bank has elected not to renew this Irrevocable Letter of Credit. The automatic extension shall be documented by sending an amendment with the revised expiration date to the Village Manager.

We further agree to furnish history of withdrawals and payouts in regard to public improvements and private improvements for the benefit of the public referenced by this letter upon request by the Village of Hoffman Estates.

Except so far as otherwise expressly stated herein, this Irrevocable Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (Latest Revision), International Chamber of Commerce Publication No. 500.

Very truly yours,

_____ (Issuing Bank) Bank

By: _____ (President)

December 3, 2015

**VILLAGE OF HOFFMAN ESTATES
PERFORMANCE SURETY BOND**

BOND NO: _____ **DATE BOND EXECUTED:** _____

PRINCIPAL: _____ **BOND AMOUNT:**
(written out & numerically)

CO-PRINCIPAL(S): _____ **DEVELOPMENT DOCUMENTS:**
(list applicable plan titles & dates in the Village Board packet)

SURETY(IES): _____ **PROJECT:** _____

KNOW ALL MEN BY THESE PRESENTS, that we, the Principal(s) and Surety(ies) hereto, recite and declare that:

1. We are held and firmly bound to the obligee Village of Hoffman Estates, Illinois (hereinafter called "Village"), in the sum written above in lawful money of the United States of America, to be paid to the Village, its successors or assigns, for the payment whereof Principal(s), Co-Principals and Surety(ies) bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by this Bond.
2. The condition of this Bond is that if the Principal shall in every respect perform all of its obligations under the Development Documents identified above, which Development Documents are incorporated herein by reference, then this Bond shall be void; otherwise, the Bond shall continuously remain in full force and effect until released by the Village. Development Documents shall also include any annexation agreements, development agreements, plats, zoning approvals, engineering plans, site plans or other Village documents associated with the Project, including any laws, ordinances or governmental regulations related to the Project.
3. Surety waives all of its surety defenses including, but not limited to, the following:
 - a) It shall be the duty of the Principal to notify the Surety of any revision of the plans, profiles and specifications referred to in the Development Documents. The Surety expressly waives any right to receive notice from the obligee or to review or approve any revisions to the plans, profiles and specifications referred to in the Development Documents which are required to meet governmental standards. No such revisions of any kind in the work shall in any way affect the obligation of the Surety under this Bond;

b) The addition or reduction in subdivision lots or area to those shown in the original plat of subdivision, site plan or construction plan referred to in the Development Document shall in no way affect the obligation of the Surety under this Bond;

c) Any extension of time beyond the period provided for in the Development Document for completion of its obligations under the Agreement shall in no way affect the obligation of the Surety under this Bond;

d) The failure or refusal of Village to take any action, proceeding, or steps to enforce any remedy or exercise any right under the Development Document, or that taking or any action, proceeding, or step by Village, acting in good faith upon the belief that same is permitted by the provisions of the Development Documents, shall not in any way release Principal or Surety, or either of them, or their respective executors, administrators, successors, or assigns, from liability under this Bond. Surety hereby waives notice of any amendment, indulgence made, granted or permitted;

e) The Principal, Co-Principal and Surety intend that each provision of this Bond be valid and binding upon them and expressly agree to abide thereby;

f) In the event of a default of this Bond, the Village may terminate whatever rights Principal, Co-Principal and/or Surety may have to perform further work on the Project.

g) The requirement of any other entity to perform any obligations contained in the Development Documents shall in no way affect the obligations of the Surety under this Bond.

4. Default:

a) A default shall be deemed to have occurred on the part of the Principal if Principal shall fail to complete its obligations under the Development Documents within the time set forth therein or any extensions thereof; or, prior to the expiration of such period, if in the sole judgment of the Village, the Principal has:

1) abandoned the performance of its obligations under the Development Documents; or

2) renounced or repudiated its obligations under the Development Documents; or

3) clearly demonstrated through insolvency, or otherwise, that its obligations under the Development Documents cannot be completed within the time allotted under the Development Documents.

b) If the Principal defaults in the performance of all or any part of the obligations specified in the Development Documents, the Village shall give written notice of the default to the Surety, with a copy to the Principal and Co-Principal, if any. In the event of such default and notice, Surety shall, within 45 days of receipt of the default notice, give written notice to the Village stating whether Surety will assume the Development Document obligations and the obligations of the Principal, and should it elect to assume said obligations, Surety shall be required to complete the obligations specified in the Development Documents according to its terms and provisions within 180 days of said notice, but not before expiration of the period provided for under the Development Documents and approved extensions thereof. In the event that Surety elects to assume the obligations of Principal as provided herein and thereafter fails to faithfully perform all or any part of the work, or should it unnecessarily delay all or any part of the work, then the Village may proceed as provided in Paragraph No. 5 of this Bond.

5. Should Surety following notice of default notify the Village that Surety elects not to assume the obligations of Principal under the Development Documents, or fails within 45 days of receipt of the default notice as provided in Paragraph No. 4b) above to notify the Village whether Surety elects to assume the obligations of Principal under the Development Documents, or having elected to assume the obligations of Principal, should it then fail to perform, then in any event the Village may elect any of the following procedures or any combination thereof:

a) Terminate whatever rights the Principal, Co-Principal and/or Surety may have to perform further work on the Project;

b) Take over or relet all or any part of the work under the Development Documents which is not completed and complete the same for the account and at the expense of the Principal and Surety, who shall be jointly and severally liable to Village for the costs incurred in completion of the obligations under the Development Documents and/or correction thereof. Such costs as identified in the Development Documents shall include, but not be limited to, construction, engineering, surveying, maintenance, donations, impact fees, deterioration, administration, supervision, reasonable attorney's fees, and any costs associated or related to any litigation of the Bond agreement and shall be adjusted for inflation. The amount of Village's actual costs for completion and/or correction of the work required under the Development Documents shall be conclusive of the extent of the liability of Principal and Surety and may exceed the Bond Amount;

c) Require the Surety to pay the Bond Amount to the Village as liquidated damages.

6. Should Surety, following notice of default notify the Village within 45 days of the receipt of the default notice choose to pay the Village for completion of the obligation

under the Development Documents, the Surety shall have the right to demand that the Village state a sum constituting the estimated costs at that time, of completion and/or correction of the work required under the Development Documents, such as costs as defined in Paragraph No. 5b). Surety shall then immediately pay over to the Village the sum so stated and be released from any further obligations under this Bond. If funds are paid over under this section and the paid over funds are not sufficient to complete the work, the Village's sole remedy shall be to proceed against the Principal(s) and Co-Principals for any deficiency. If there are any paid over funds not necessary for completion of the work, the Village will return the excess to Surety after completion of the work.

7. If any action or proceeding is initiated in connection with this Bond and any and all obligations arising hereunder the venue thereof shall be in State Court in the County of Cook, State of Illinois, it is further understood and agreed that this contract shall be governed by the laws of the State of Illinois, both as to interpretation and performance.

8. All notices sent to the Principal(s), Co-Principals, and Surety(ies) shall be sent to the address set forth on the signature page unless said Principal(s), Co-Principal(s) and Surety(ies) notify the Village in writing of any change. If the addresses of any of the Principal(s), Co-Principal(s) and Surety(ies) change, the Principal(s), Co-Principal(s) or Surety(ies) shall immediately notify the Village in writing of such change. Failure to notify the Village of any change in address is deemed to be a waiver of any requirement for notice under this Bond to the Principal(s), Co-Principal(s) or Surety(ies). All written notices to the Village required under the Bond shall be sent certified mail to the Village Clerk.

9. If any one or more of the provisions of this Bond are determined to be illegal or unenforceable by a court of competent jurisdiction, all other provisions shall remain effective.

10. No party other than the Village shall have any rights under this Bond as against the Surety.

11. As part of the obligation secured hereby and in addition the Bond Amount specified herein, there shall be included costs, interest and reasonable expenses and fees (including, without limitation, attorneys' fees and costs), incurred by the Village in successfully enforcing such obligations, to be awarded and fixed by the court.

12. Nonpayment of the premiums associated with this Bond will not invalidate this Bond nor shall Village be obligated for the payment thereof. Surety agrees to deliver written notice of non-payment under this Bond or other actions to the Village.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and sealed as of the day and year set forth above.

PRINCIPAL

Type of Organization:

Legal Name of Organization:

State of Incorporation:

Address:

Authorized Signature(s):

By: _____

By: _____

Signature

Signature

(Type name and title)

(Type name and title)

ACKNOWLEDGMENT OF PRINCIPAL(S)

STATE OF _____:

COUNTY/CITY OF _____:

I, _____ Notary Public in and for the State and County/City aforesaid, do hereby certify that _____ whose name is signed to the foregoing bond, this day personally appeared before me in my State and County/City aforesaid and acknowledged the same.

Given under my hand this _____ day of _____, _____.

My commission expires: _____

NOTARY PUBLIC

Surety: _____

Bond No.: _____

CO-PRINCIPAL(S)

Type of Organization:

Legal Name of Organization:

State of Incorporation:

Address:

Authorized Signature(s):

By: _____

By: _____

Signature

Signature

(Type name and title)

(Type name and title)

ACKNOWLEDGMENT OF CO-PRINCIPAL(S)

STATE OF _____:

COUNTY/CITY OF _____:

I, _____ Notary Public in and for the State and County/City aforesaid, do hereby certify that _____ whose name is signed to the foregoing bond, this day personally appeared before me in my State and County/City aforesaid and acknowledged the same.

Given under my hand this _____ day of _____, _____.

My commission expires: _____

NOTARY PUBLIC

Surety: _____

Bond No.: _____

CORPORATE SURETY

Type of Organization:

Legal Name and Address:

Liability Limit:

Address:

Authorized Signature(s):

By: _____

By: _____

Signature

Signature

(Type name and title)

(Type name and title)

ACKNOWLEDGMENT OF CORPORATE SURETY(S)

STATE OF _____:

COUNTY/CITY OF _____:

I, _____ Notary Public in and for the State and County/City aforesaid, do hereby certify that _____ whose name is signed to the foregoing bond, this day personally appeared before me in my State and County/City aforesaid and acknowledged the same.

Given under my hand this _____ day of _____, _____.

My commission expires: _____

NOTARY PUBLIC

Surety: _____

Bond No.: _____