

APPENDIX J

SECURITY REQUIREMENTS

J-1 General

In order to ensure that the work will be completed, all engineering improvements which are proposed in conjunction with a new subdivision must be covered by letters of credit, cash or certificates of deposit with a federally insured bank of Savings and Loan Association with resources of at least \$100 million. In addition, the same types of security will be required to ensure that the improvements in a new subdivision will be maintained for two years after they have been accepted by the Village. If a Letter of Credit is submitted as security, it must be in substantially the form that is set forth in this appendix and must be clean, non-declining and irrevocable, issued by a federally insured bank or Savings and Loan Association with resources of a least \$100 million.

J-2 Amount of Security

The subdivider shall post good and sufficient security with the Village Clerk, copies of same to the Building and Zoning Department, in the penal sum of 125 percent of the engineer's estimate of cost to ensure completion of the work. Good and sufficient security shall include a certificate of deposit, cash or Letter of Credit, as described in Article 11. Each security shall be accompanied by an agreement, as found in Appendix H-4, executed by the subdivider, wherein the subdivider agrees to make and install the improvements in accordance with the plans and specifications accompanying the Final Plat and specifying completion date in accordance with this Subdivision Code. Security provided shall be good for a period of at least two construction seasons.

J-3 Release of Security

No portion of either the construction or maintenance security will be released as the work progresses, but the entire amount deposited must be retained until all work covered by the security is satisfactorily completed. However, as an option, the subdivider may post two good and sufficient securities in the manner prescribed in this appendix. One security shall be in the penal sum of 150 percent of all work except the bituminous surface, concrete surface and/or seeding. The other security shall be in the penal sum of 150 percent of the estimated cost of the bituminous surface, concrete surface and/or seeding.

Prior to the release of the Letter of Credit, cash or certificate of deposit, the engineer in charge of construction of such improvements shall be required to certify that all improvements have been completed in accordance with the approved Engineering Plans and specifications on file with the Village Engineer. Such certification shall cover all engineering aspects of the development including, but not limited to, roads, detention/retention, grading, filling and any topographic changes or adjustments proposed and approved by the Village Engineer. The Village also requires record drawings of the completed development prior to any approval of reductions in the

Letter of Credit. Certification shall be in writing and submitted to the Village Engineer prior to release of the cash, Letter of Credit or certificate of deposit. The Village Engineer shall observe and confirm that all work has been completed.

After the acceptance of the subdivision improvements, the Village will authorize the refund of any residue remaining in the security except for 10 percent of the original deposit of the amount stipulated in the escrow agreement. The retained amount shall be used for maintenance of the improvements for a period of two years after the date of acceptance. Any remaining balance will be refunded upon application by the subdivider.

J-4 Form of Letter of Credit

When letters of credit are used to meet the requirements of this Appendix J, the following form shall be used:

IRREVOCABLE LETTER OF CREDIT

Date: _____
Irrevocable Letter of Credit No.: _____

Beneficiary

Applicant

Village of Johnsburg
1515 Channel Beach Drive
McHenry, IL 60050
Attention: Village Clerk

(Party Requesting Letter of Credit Address)

Amount

(amount)
USD \$ _____

Expiration Date _____

The undersigned, _____, of _____, hereby issues to the
(Bank) (City/State)

Village of Johnsburg, 1515 Channel Beach Drive, McHenry, Illinois 60050 (the "Village"), this irrevocable Letter of Credit in the initial amount of \$ _____, which amount is subject to reduction in accordance with the provisions hereof, and which amount, as in effect on the date hereof or as so reduced hereafter, is hereinafter referred to as the "Stated Amount." The undersigned represents and warrants that the undersigned has full power and authority to issue this Letter of Credit, and that all conditions precedent to the issuance of the Letter of Credit have been satisfied.

1. Draws. Credit may be drawn by the Village by means of presentation to the undersigned of the Village's sight draft substantially in the form of Annex 1.

Draws on said Letter of Credit must also be accompanied by the certificate of the Village substantially in the form of Annex 2 certifying either: (1) that said Letter of Credit is about to expire and has not been renewed; or (2) that work has not been completed in accordance with the plans, specifications and agreements (including any amendments thereof) for the following project (the "Project"):

(Description of Project)

Draws in an amount less than the Stated Amount are permitted. There is no limit on the number of draws the Village may take under this Letter of Credit.

2. Reduction of Stated Amount. The Stated Amount may be reduced upon presentation by the Village of this Letter of Credit and of a certificate substantially in the form of Annex 3. Such certificate shall be appropriately completed, and shall be delivered to the undersigned at the address above along with the original Letter of Credit. Upon receipt of the certificate and the Letter of Credit, the undersigned shall immediately note the reduced amount on the face of the Letter of Credit, or cancel this Letter of Credit and simultaneously reissue a Letter of Credit identical to this Letter of Credit for the reduced Stated Amount.

3. Amendment of Project Description. The Project may be amended upon presentation by the Village of this Letter of Credit and of a certificate substantially in the form of Annex 4. Such certificate shall be appropriately completed, and shall be delivered to the undersigned at the address above along with the original Letter of Credit. Upon receipt of the certificate and the Letter of Credit, the undersigned shall immediately note the amendment to the Project description on the face of this Letter of Credit or cancel this Letter of Credit and simultaneously reissue a Letter of Credit identical to this Letter of Credit with the amended Project description.

4. Expiration. This irrevocable Letter of Credit shall expire on _____; provided,
(date/year)
however, the undersigned shall notify the Village, by certified mail, return receipt requested, at least 35 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 and shall be required to comply with this notice provision. Notice shall be made to the Village of Johnsburg, 1515 Channel Beach Avenue, Johnsburg, Illinois 60050, Attention: Village Clerk.

The undersigned further 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 agreements for the project, with or without notice from the Village of such amendments or modifications.

5. Payment. _____ hereby undertakes and engages that all demands made in conformity with
(Name of Bank)
this irrevocable Letter of Credit will be duly honored and payment shall be made in immediately available funds upon presentation. If, within 10 days of the date any demand (made in conformity with this irrevocable Letter of Credit) is presented, the undersigned fails to honor same, the undersigned agrees to pay all attorney's fees, Court costs and other expenses incurred by the Village in enforcing the terms of this Letter of Credit.

6. Governing Law. This Letter of Credit, and each provision hereof, shall be governed by and construed in accordance with the Uniform Customs and Practice for Documentary Credits (1983 Revisions), International Chamber of Commerce, Publication No. 400 (the "Uniform Customs"). This Letter of Credit shall be deemed a contract made under the laws of the State of Illinois and shall, as to matters not governed by the Uniform Customs, be governed by and construed in accordance with such laws. The undersigned agrees that venue for any actions brought with respect to this Letter of Credit shall be in the 19th Judicial Circuit, McHenry County, Illinois.

By: _____

Attest: _____

Title: _____

Title: _____

ANNEX 1

FORM OF SIGHT DRAFT

\$ _____

At Sight of this Draft

Pay to the order of Village of Johnsburg, Illinois, as beneficiary under the Irrevocable Letter of Credit referred to below, \$ _____ Dollars for value received.

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

To: _____ (Bank)
_____ (Address)

Attention: _____
_____ Village of Johnsburg, Illinois

By: _____

Annex 2

Forms of Certificate for Drawing

The undersigned, the Clerk [or Deputy Clerk] of the Village of Johnsburg, Illinois (the "Village"), with full authority to bind the Village, as beneficiary (the "Beneficiary") under the Letter of Credit referred to below, hereby certifies, with references to its Irrevocable Letter of Credit No. _____ issued by _____ (Bank) (the "Bank"), in favor of the Beneficiary (the "Letter of Credit"), that:

(1) The Letter of Credit is about to expire and has not been renewed;

[or, in the alternative]

(2) The work has not been completed in accordance with the plans, specifications and agreements (including any amendments thereof) for the following project:

_____(Description of Project)_____

IN WITNESS WHEREOF, the beneficiary has executed and delivered this certificate as of the _____ day of _____ (month), _____ (year).

Village of Johnsburg, Illinois

By: _____

Title: Village Clerk [Deputy Clerk]

Annex 3

Form of Certificate for Reduction of Stated Amount

The undersigned, the Clerk [Deputy Clerk] of the Village of Johnsburg, Illinois (the "Village"), with full authority to bind the Village, as beneficiary (the "Beneficiary") under the Letter of Credit referred to below, hereby certifies, with reference to its Irrevocable Letter of Credit No. 594 issued by Home State Bank in favor of the Beneficiary (the "Letter of Credit"), that :

1. Pursuant to the Agreement entered into by and between the Village and North Prairie Enterprises, Inc. (the "Company"), dated May 2, 2000, the amount available to be drawn under the Letter of Credit (the "Stated Amount"), is reduced by \$373,350.14, and effective on your receipt hereof, the Stated Amount shall be reduced to \$53,216.00, and such amount shall thereafter constitute the entire Stated Amount of the Letter of Credit.
2. The undersigned hereby certifies (i) that he or she is authorized to sign this Certificate relating to the Letter of Credit on behalf of the Beneficiary, and (ii) that the Beneficiary has, with the written consent of the Company, reduced the Stated Amount of the Letter of Credit.

Capitalized terms used herein and not otherwise defined are used as defined in the Letter of Credit.

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this certificate as of the 19th day of January, 2004.

Village of Johnsburg, Illinois

By: _____

Title: Village Clerk [Deputy Clerk]

Annex 4

Form of Certificate for Amendment of Project Description

The undersigned, the Clerk [or Deputy Clerk] of the Village of Johnsburg, Illinois (the "Village") with full authority to bind the Village, as beneficiary (the "Beneficiary") under the Letter of Credit referred to below, hereby certifies, with reference to its Irrevocable Letter of Credit No. _____ issued by _____ (Bank) (the "Bank"), in favor of the Beneficiary (the "Letter of Credit"), that:

1. Pursuant to the Agreement entered into by and between the Village and _____ (the "Company"), dated _____ (month) _____, _____ (year) _____, the description of the project as contained in paragraph 1 of the Letter of Credit shall be amended upon the undersigned's receipt of this certificate and the original Letter of Credit. After giving effect to the amendment, the description of the Project shall be as follows:

(Description of Project)

and such Project description shall constitute the Project description for the Letter of Credit unless further amended.

2. The undersigned hereby certifies (i) that he or she is authorized to sign this Certificate relating to the Letter of Credit on behalf of the Beneficiary, and (ii) that the Beneficiary has, with the written consent of the Company, amended the Project description contained in the Letter of Credit.

Capitalized terms used herein and not otherwise defined are used as defined in the Letter of Credit.

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this certificate as of the _____ day of _____ (month) _____, _____ (year) _____.

Village of Johnsburg, Illinois

By: _____

Title: Village Clerk [Deputy Clerk]

J-5 Retained Personnel/Professional Fees

J-5.1 Deposit. In the event that it is necessary for the Village to obtain professional services, including, but not limited to, attorneys, engineers, planners, architects, surveyors, traffic or drainage experts, or other consultants, in connection with any Petitioner's request for the Village to consider or otherwise take action upon any annexation, zoning change, subdivision development, PUD or other improvement or development upon real property, then the Petitioner and Owner of the property shall be jointly and severally liable for the payment of such professional fees plus five percent to cover the Village's administrative expenses. At the time the Petitioner requests action from the Village, he will be required to deposit a sum equal to the following "initial escrow" formula with the Village as an initial deposit to be credited against fees and costs incurred for the above described services.

Initial Escrow Formula:

1. The sum of \$2,000.00 plus \$100.00 for each acre or residential unit proposed, whichever is greater.
2. For Commercial Development, the Initial Escrow Deposit will be determined by the Village Engineers and Village Board dependent upon the scope of the project.

J-5.2 Invoices. The Village shall send a petitioner regular invoices for the fees and costs, and the petitioner shall reimburse the Village within 30 days of said invoice. At all times the petitioner shall maintain a balance not less than the initial escrow with the Village.

J-5.3 Exceptions. For good cause shown by the Petitioner, the Village, in its discretion, may reduce the amount of the initial escrow from that amount as determined by the formula contained in Appendix J-5.1.

J-5.4 Deposit. The deposit shall be paid to the Village at the time a petition is filed or at such time as a proposal to annex is made to the Village.

J-5.5 Retained Personnel Deposit. There shall be no staff review by any Village officials and special meetings until the retained personnel deposit has been made. The owner will be billed periodically for administrative expenses and retained personnel expenses incurred by the Village in connection with the proposed annexation and in the event any bills are not paid within 10 days

of the date of issuance of said statement, said fees and charges shall be paid for from the retained personnel deposit and proceedings shall be stayed until the retained personnel deposit is brought up to the original amount.

J-5.6 Remaining Deposit. Upon the presentation of the final statement of the retained personnel, any balance of the amount deposited remaining in the general account shall be returned and repaid to the property owner.

J-5.7 Form Agreement. The following form of agreement shall be used to meet the requirements of this Appendix J-5:

VILLAGE OF JOHNSBURG
REIMBURSEMENT OF FEES AGREEMENT

Village of Johnsburg Account No. _____

OWNER:

Name of Property Owner: _____

Owner's Address: _____

Telephone
Number: _____ Days _____ Evenings _____

PETITIONER:

Name of
Petitioner: _____

Petitioner's
Address: _____

Telephone Number: _____ Days _____ Evenings _____

LOCATION OF PROPERTY:

General
Location: _____

Total

Acreage: _____ PIN: _____

Legal Description (attach as Exhibit A)

1. Deposit. In the event that it is necessary for the Village to obtain professional services, including, but not limited to, attorneys, engineers, planners, architects, surveyors, traffic or drainage experts, or other consultants, in connection with any Petitioner's request for the Village to consider or otherwise take action upon any annexation, zoning change, subdivision development, PUD or other improvement or development upon real property, the Petitioner and Owner of the property shall be jointly and severally liable for the payment of such professional fees plus five percent to cover the Village's administrative expenses. At the time the Petitioner requests action from the Village he will be required to deposit a sum, in accordance with Appendix J-5.1 of the Johnsburg Subdivision Ordinance, with the Village as an initial deposit to be credited against fees and costs incurred for the above described services.
2. Invoices. The Village shall send a petitioner regular invoices for the fees and costs and the petitioner shall reimburse the Village within 30 days of said invoice. At all times the petitioner shall maintain a balance equal to his initial deposit with the Village.
3. Withdrawal of Petition. A petitioner who withdraws a petition for annexation into the Village may apply in writing to the Village Clerk for a refund of his initial deposit. The Board of Trustees may, in discretion, approve the refund application less any actual fees and costs which the Village has already incurred relative to the petition for annexation.
4. Professional Fees. Any professional fees incurred as a direct or indirect result of the petitioner, owner or their agent requesting a professional opinion or otherwise requesting relief or assistance from the Village, whether or not related to real property, shall be reimbursed in accordance with this Ordinance if, in the discretion of the Village, a professional opinion is desired.
5. Default. Upon the failure of the owner or petitioner to reimburse the Village in accordance with this subsection, no action on any request made by the owner or petitioner will be undertaken by the Board of Trustees, or by any other official, quasi-official or deliberative individual or body thereunder; and such request shall remain in abeyance until all outstanding fees are paid in full. Upon any failure to reimburse the Village in accordance with this Ordinance, the Village may, in its discretion, elect to place a lien against any real property associated with the petitioner's request. Interest in the amount of 1 ½ % per month shall accrue on all sums outstanding for 30 days or more. Such lien shall be in an amount equal to the outstanding amount owed to the Village.
6. Assigning Authority. The President and Board of Trustees and the designated Village staff members are hereby authorized to assign requests for professional services to the Village staff or to consultants as the President deems appropriate.

7. In House Staff. When any professional services contemplated by the Ordinance are rendered by the Village staff, then in such case the party making the request shall reimburse the Village for its cost incurred in providing said professional services. Said reimbursement shall be at the rate of \$100.00 per hour.

8. Remedies. The remedies available to the Village as set forth hereinabove are non-exclusive and nothing herein shall be construed to limit or waive the Village's right to proceed against any or all parties in a court of law of competent jurisdiction.

9. Agreement. At the time the petitioner requests action from the Village, he will be required to enter into an agreement, which is Exhibit A of this Ordinance, with the Village.

10. Refund. Any surplus funds in the account of the petitioner or owner shall be returned three months after approval by the Village Attorney and Village Engineer, upon written request by the petitioner or owner.

By signing this Agreement the petitioner and/or owner acknowledge that each of them has read the foregoing paragraphs and each of them fully understands and agrees to comply with the terms set forth herein. Further, by signing below, each signatory warrants that he/she/it possesses full authority to so sign.

The owner and/or petitioner agree that owner and petitioner shall be jointly and severally liable for payment of fees referred to in applicable sections of the ordinances of the Village of Johnsburg, and as referred to hereinabove.

Village of Johnsburg

Petitioner

President

Owner

ATTEST:

Village Clerk

Date: _____