



CITY OF BATAVIA

MODEL LETTER OF CREDIT CONSTRUCTION

CITY OF BATAVIA
MODEL IRREVOCABLE LETTER OF CREDIT
Mayor Jeffrey Schielke and Members of the City Council
City of Batavia, 100 North Island Avenue, Batavia, Illinois 60510

Letter of Credit Number _____
For Account of _____
Amount \$ _____
Date _____ Expiration Date _____

We hereby establish in your favor this Irrevocable Letter of Credit for the account of _____, (hereinafter "Developer"), up to an aggregate amount of _____ (\$ _____)

which equals One Hundred Ten percent (110%) of the cost of the Public Improvements described herein. We understand that this Irrevocable Letter of Credit is to be used to construct the Land Improvements for the following project, described below to be constructed within the City of Batavia, Illinois.

PUBLIC IMPROVEMENTS _____
Contract proposal or engineer's estimate = (\$ _____).
PLUS 10% - _____ TOTAL = \$ _____

The City of Batavia, through its City Engineer, may authorize modifications of the approved sets of plans and specifications without the consent of the undersigned without invalidating this Irrevocable Letter of Credit.

If [financial institution's name] has been notified by the City of Batavia of a default by the Developer, [financial institution's name] shall disburse the funds for labor and materials furnished by contractors or the City of Batavia in accordance with the sworn statement on order of the Developer that such work has been completed, the submission of proper general contractor's affidavits and lien waivers from the contractors and subcontractors engaged in such work and the signature of the City of Batavia Engineer, or his/her designee, provided however, the total payouts shall not exceed ninety percent (90%) of the estimated cost until a Certificate of Completion is issued by the City.

The required Land Improvements shall be installed and completed in accordance with the following schedule: _____
but no later than two (2) years after the issue date of the Letter of Credit.

If [financial institution's name] receives a resolution of the corporate authorities of the City of Batavia indicating that (1) Developer has failed to satisfactorily complete or carry on the work of the installation and construction of the required improvements, and/or has failed to pay for the completion 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 (2) the corporate authorities believe that Developer will be unable to complete the improvements and/or pay for the cost of completion of the improvements or (3) no new letter of credit has been submitted within sixty (60) days of the scheduled expiration of a prior posted letter of credit, or (4) the City of Batavia Engineer believes that the public improvements or other improvements covered by this agreement have been or are likely to be the subject of liens or other claims by contractors, subcontractors or third parties, or (5) that if more funds are disbursed at this time at the direction of Owner insufficient funds will remain irrevocably committed to guarantee the complete of all improvements, and such resolution indicates that the Developer has been notified that the City finds that a breach of the Developer's obligations has occurred and has not been cured within the period of thirty (30) days after notice to the Developer, then in such case [financial institution's name] shall immediately pay such funds remaining within the irrevocable credit to the City of Batavia or such lesser sums as maybe stated in resolution. The City of Batavia need not request all of the funds on each occasion but each request for funds shall be authorized by a separate certification from the City of Batavia Engineer. Provided, however, if the reason the payment is being required is the failure to furnish a replacement letter of credit the City of Batavia may require the payment of such funds at any time within thirty (30) days of the expiration of the letter of credit without further notice.

The City of Batavia shall make payments for materials and labor to such contractor(s) or subcontractor(s) retained by the City of Batavia or to the City of Batavia if the City of Batavia elects to do the work itself, or contractor(s) or subcontractor(s) retained by the Developer but not paid by the Developer, who have completed the improvements in substantial accordance with the plans and specifications of the Developer, as modified from time to time with the approval of the City of Batavia Engineer that the work has been completed or for the payment for the actual costs of the City of Batavia in enforcing this irrevocable credit. Payment for subdivision improvements shall be made upon the certification of the City of Batavia Engineer that the work has been completed and the submission of proper waiver of lien from the contractor(s) or subcontractor(s). The amount of payouts shall be in accordance with the retention provisions as previously set out. Each waiver shall be accompanied by a draft for said amount marked "Drawn under Letter of Credit Number _____"

This Irrevocable Letter of Credit established by [financial institution's name] shall be in force for a period of two and one-half (2 1/2") years after the issue date of this letter of credit and shall remain in effect without regard to any default in payments of sums owed [financial institution's name] by the Developer and without regard to other claims which [financial institution's name] may have against the Developer. At least ninety (90) days prior to the expiration of this Irrevocable Letter of Credit we shall notify the Corporate authorities of the City of Batavia, by registered letter, certified mail return receipt requested, of the impending expiration date. This Irrevocable Letter of Credit shall not terminate without such notice. If the work covered by this Letter of Credit has not been completed or has been completed but not paid within the time set forth herein, the City of

Batavia may at its option continue drawing funds as otherwise provided until subject construction work has been completed per approved engineering plans and paid. It is recognized that the City is according the Owner and Developer the permission to proceed with the development project expressly upon the guarantee of the irrevocable nature of this Letter of Credit. It is further acknowledged that the consideration for this Irrevocable Letter of Credit is provided by agreements between [financial institution's name] and the Developer.

The sum of this credit shall, however, be reduced in the amount of the disbursements authorized by the City Engineer and made from time to time in accordance with terms under which this credit is extended as set out above. The undersigned institution hereby represents and warrants to the City that it has the full power, right and authority to deliver this Irrevocable Letter of Credit, that the same is within all lending limits of such institution, is in accordance with terms on the undersigned institution.

In the event that [financial institution's name] does not make payouts in accordance with this irrevocable letter of credit and the City of Batavia is required to file a lawsuit to compel compliance with this agreement and shall prevail, [financial institution's name] will be obligated to pay to the City of Batavia its reasonable expenses and costs of litigation including attorneys' fees.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revisions) of the International Chamber of Commerce Publication No. 600 (the "UCP") and to the Uniform Code – Letters of Credit, 810 ILCS 5/5-101 et seq., as amended, as in effect in the State of Illinois (UCC). To the extent the provisions of the UCP and UCC conflict, the provisions of the UCP shall control.

NAME OF THE FINANCIAL INSTITUTION By: _____

Name and Title Attest: _____

Name and 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 the financial institution) who is personally known to me to be the same person

whose name is subscribed to the foregoing Letter of Credit as such _____

(title) and cause the Corporate seal of said _____

(name of the financial institution) to be affixed thereto pursuant to authority given by the

Board of Directors thereof, as his/her free and voluntary act and as free and voluntary

acts and deed of said institution. GIVEN under my hand and official seal this _____

day of _____, 20_____.

Notary Public / my commission expires: _____

(Seal)