



## ORDINANCE 07-10

### AN ORDINANCE ESTABLISHING PERFORMANCE AND MAINTENANCE GUARANTEES

**BE IT ORDAINED** by the President and Board of Trustees of the Northern Moraine Wastewater Reclamation District, Lake and McHenry Counties, Illinois, as follows:

**SECTION 1:** At the time of approval of engineering for a proposed sanitary sewer extension or any other work or improvement (hereinafter collectively referred to as Improvement(s)) by the Northern Moraine Wastewater Reclamation District ("District"), a Performance Guarantee in the form of a letter of credit in the form attached as Exhibit A, , cashier's check made payable to the Northern Moraine Wastewater Reclamation District or cash shall be required in the amount of 125% of the costs of the required Improvements as itemized in writing by the developer's engineer including all information identified within Exhibit B and as approved by the District's engineer.

**SECTION 2:** The Performance Guarantee shall assure the District of the satisfactory completion and installation of any and all Improvements and all related work within two years after the date that the Improvements are approved, in accordance with the approved plans and specifications, District Standards, and according to good engineering and construction practices. Where the required installations have not been installed either within the time required or in accordance with the approved plans and specifications, District Standards or good engineering and construction practices, the District may draw on the Performance Guarantee for use in matters relating to insuring the satisfactory completion of the Improvements , including attorney's fees, engineering and consulting fees and court costs, if any, incurred in connection with the enforcement of the provisions of this Ordinance.

**SECTION 3:** The Performance Guarantee shall be in the form of a letter of credit cashier's check or cash as approved by the District's attorney, or such other form as may be approved by the District's attorney.

**SECTION 4:** The Performance Guarantee may be reduced by the President and Board of Trustees or its representative, upon a written application to the President and Board of Trustees for reduction, in such amount that guarantee funds remaining will always equal 125% of the cost to construct the uncompleted Improvements as determined by the District's engineer. The District shall not approve more than two requests for reductions.

**SECTION 5:** Upon completion of the Improvements and their approval and acceptance for use by the District, , the developer shall substitute a Maintenance Guarantee for the Performance Guarantee, The Maintenance Guarantee shall be in the



form of a letter of credit, in the form attached as Exhibit C, , a cashier's check made payable to the Northern Moraine Wastewater Reclamation District or cash. The Maintenance Guarantee shall be in an amount not less than 20% of the amount of the Performance Guarantee for the Improvements, and shall guarantee the improvements for a period of three years from the date of the approval and acceptance of the Improvements by the District Board of Trustees. In addition to the foregoing Maintenance Guarantee, and notwithstanding whether said Guarantee is in the form of a Letter of Credit, cashier's check, or cash, the developer shall also deposit, in the form of a cashier's check or cash, the amount of money specified under the acceptance procedure in Section 5 of the District's Ordinance relating to construction/acceptance/maintenance procedures and standard specifications and design requirements, Ordinance #07-09, as now in effect or as hereafter amended.


**SECTION 6:** This ordinance shall be in full force and effect upon its passage, approval and publication in pamphlet form, as provided by law.

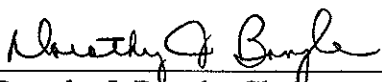
**SECTION 7:** All ordinances and parts of ordinances in conflict herewith are repealed.

**PASSED** this 11<sup>th</sup> day of December, 2007

**APPROVED** this 11<sup>th</sup> day of December, 2007

Ayes: 5  
Nays: 0  
Absent: 0

  
Kenneth A. Michaels, Jr., President

  
Dorothy J. Bangle, Clerk



**EXHIBIT A**

**Performance Letter of Credit**  
 (Financial Institution Letterhead)

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IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_

DATE: \_\_\_\_\_

BENEFICIARY: Northern Moraine Wastewater Reclamation District  
 420 Timber Trail P.O. Box 240  
 Island Lake, IL 60042

FOR THE ACCOUNT OF: \_\_\_\_\_ *(Developer)*

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and

\_\_\_\_\_ *(Owner)*

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RE: \_\_\_\_\_  
 (name of subdivision plat)

\_\_\_\_\_ *(financial institution)* hereby establishes and issues this Irrevocable Letter of Credit No. \_\_\_\_\_ in favor of the Northern Moraine Wastewater Reclamation District ("District") in the amount of \$ \_\_\_\_\_ which is available to be drawn upon by the District upon presentation to us of its demand for payment accompanied by a photocopy of this Irrevocable Letter of Credit.

This Irrevocable Letter of Credit is issued for the purpose of securing and paying for the installation of the following Improvements as shown within the approved Engineering Plans entitled \_\_\_\_\_ and indicated within the following divisions and within "Exhibit A".

DIVISION "A" –SANITARY SEWER SYSTEMS & APPURTENANCES

\$ \_\_\_\_\_ x 125% = \$ \_\_\_\_\_

DIVISION "B" –OFFSITE SANITARY SEWER FACILITIES & APPURTENANCES

\$ \_\_\_\_\_ x 125% = \$ \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

*(Refer to Exhibit B for the Engineer's Opinion of Probable Construction Cost)*

EXHIBIT A

The above divisions shall not preclude the District from drawing on funds allocated for work of one division from another division regardless of whether the work is completed for the division from which the funds are drawn.

Such Improvements shall be constructed by \_\_\_\_\_  
(the "Developer") or \_\_\_\_\_ (the "Owner"), our customers, in  
accordance with plans, specifications and cost estimates prepared by  
\_\_\_\_\_, Professional Engineer, dated  
\_\_\_\_\_.

We hereby agree 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 cost estimates for said Improvements regardless of whether we have been given notice of such amendments or modifications.

This Irrevocable Letter of Credit shall expire at our office as of our close of business on \_\_\_\_\_, *(2 years to the date from the acceptance of this Letter of Credit by the Northern Moraine Wastewater Reclamation District Board)* provided, however, that we notify the District Clerk, at the above address, by certified or registered mail, return receipt requested, at least ninety (90) days prior to said expiration date that said Irrevocable Letter of Credit is about to expire and designate the date of expiration. In no event shall this Irrevocable Letter of Credit, or the obligations contained herein, expire except upon said prior written notice to the District, it being expressly agreed by \_\_\_\_\_ *(financial institution)* that the above expiration date shall be extended as required to comply with this notice provision.

It is agreed that failure of our customers to complete the aforesaid Improvements at least 6 months prior to said expiration date shall be considered a default by our customer and us. It is agreed that failure of \_\_\_\_\_ *(financial institution)* to submit an amendment to this Irrevocable Letter of Credit extending the expiration date in the caption and the body hereof by at least one year as provided herein at least sixty (60) days prior to said expiration date shall also be considered a default by our customer and us.

Demands on this Irrevocable Letter of Credit shall be made by presenting \_\_\_\_\_ *(financial institution)* with a letter from the President, Administrator, attorney, engineer, or other authorized representative (all of whom are hereafter collectively referred to as the "Authorized Representative(s)) of the District demanding payment, accompanied by the certificate of the District, by

## EXHIBIT A

Authorized Representative, or his designee, or by a copy of a resolution of the Northern Moraine Wastewater Reclamation District, stating:

1. That this Irrevocable Letter of Credit will expire within sixty (60) days and has not been amended to extend the expiration date for one year; or;
2. That the aforesaid Improvements have not been completed by the Developer or Owner at least sixty (60) days prior to the aforesaid expiration date, or;
3. That the aforesaid Improvements have not been completed by, the completion date set forth in the undertaking between the Owners, Developers and the Northern Moraine Wastewater Reclamation District, If any, or within a reasonable time as determined by the District, or;
4. That the Developer or Owner is otherwise in default in its obligations to the District.

\_\_\_\_\_ (*financial institution*) agrees that this Irrevocable Letter of Credit shall not be reduced or discharged except upon receipt of a certificate from the District President for the Northern Moraine Wastewater Reclamation District, or his designee, certifying that this Irrevocable Letter of Credit may be reduced and the amount by which it may be reduced. The outstanding balance of this Irrevocable Letter of Credit shall be the face amount of this Irrevocable Letter of Credit less any amount which is discharged upon certification of the District President, or his designee, provided, however, the outstanding balance of this Irrevocable Letter of Credit shall not be reduced to less than 30% of the initial face amount of any particular Division of this Irrevocable Letter of Credit until the Northern Moraine Wastewater Reclamation District has accepted all of the aforementioned Land Improvements and the District Engineer, or his designee, has certified that the Northern Moraine Wastewater Reclamation District has released this Irrevocable Letter of Credit.

In respect to the written certification above, \_\_\_\_\_ (*financial institution*) and any negotiating bank or bankers are authorized to accept the certification as binding and correct without investigation or responsibility for the accuracy, veracity, correctness or validity of the same or any part thereof.

## EXHIBIT A

We hereby engage with you that all demands for payment made in conformity with the terms of this Irrevocable Letter of Credit will be duly honored on presentation to us prior to expiration of this Irrevocable Letter of Credit. Partial drawings and multiple drawings are allowed.

This Irrevocable Letter of Credit sets forth in full terms our undertaking and such an undertaking shall not in any way be modified, amended or amplified by reference to any document, instrument, or agreement except as referred to herein or in which this Irrevocable Letter of Credit relates, and any such reference shall be deemed to be incorporated herein by reference to any document, instrument or agreement, all as previously stated.

The undersigned institution hereby represents and warrants to the Northern Moraine Wastewater Reclamation District 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 full conformity with all state and federal law, and that the same is binding in accordance with its terms on the undersigned institution. All acts, requirements and other preconditions for the issuance of this Irrevocable Letter of Credit have been completed.

We hereby undertake and engage that all demands for payment in conformity with this Irrevocable Letter of Credit will be duly honored upon presentation to us. If, within, three (3) days of the date any such demand in conformity with this Irrevocable Letter of Credit is presented and we fail to honor the same, we then agree to pay all attorney's fees, court costs and other expenses incurred by the District in enforcing the terms of this Letter of Credit.

EXHIBIT A

This credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500.

*(FINANCIAL INSTITUTION)*

BY: \_\_\_\_\_

ATTEST: \_\_\_\_\_

APPROVED BY:  
*(DEVELOPER/APPLICANT)*

BY: \_\_\_\_\_

*(OWNER)*

BY: \_\_\_\_\_

ATTEST: \_\_\_\_\_

**EXHIBIT B**

**Engineer's Opinion of Probable Construction Cost**

Development Name	Date of Approved Plans		
Owner Name (Company)          Owner Contact  Address \ City \ State\ Zip  Phone \ Fax			Seal of Registered Professional Engineer
			Expiration                      Signature and Date

Item Number	Item Description	Quantity	Unit	Unit Price	Extended Cost
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
<b>Total</b>					\$
<b>25% Contingency</b>					\$
<b>Total Letter of Credit Amount</b>					\$



EXHIBIT C

Maintenance Letter of Credit  
(Financial Institution Letterhead)

\_\_\_\_\_  
\_\_\_\_\_

IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_

DATE: \_\_\_\_\_

BENEFICIARY: Northern Moraine Wastewater Reclamation District  
420 Timber Trail P.O. Box 240  
Island Lake, IL 60042

FOR THE ACCOUNT OF:

\_\_\_\_\_  
*(Developer)*

\_\_\_\_\_

\_\_\_\_\_

and

\_\_\_\_\_  
*(Owner)*

\_\_\_\_\_

\_\_\_\_\_

We hereby establish in your favor this Irrevocable Letter of Credit for the account of

\_\_\_\_\_

\_\_\_\_\_ (hereinafter "Owner"), and \_\_\_\_\_ amount  
of \$ \_\_\_\_\_. We understand that this Irrevocable Letter of Credit is to be used to  
guarantee satisfactory performance and maintenance of the described Improvements in the  
development, the Final Plat of which is titled \_\_\_\_\_, which have been  
constructed for the benefit of the District and which are to be or have been accepted by the  
District's Board of Trustees.

DIVISION "A" - OFFSITE SANITARY SEWER SYSTEMS & APPURTENANCES

\$ \_\_\_\_\_ x 1.25 x 20% = \$ \_\_\_\_\_

DIVISION "B" - SANITARY SEWER SYSTEMS AND APPURTENANCES

\$ \_\_\_\_\_ x 1.25 x 20% = \$ \_\_\_\_\_

TOTAL

\$ \_\_\_\_\_

## EXHIBIT C

The satisfactory performance of the described installed and accepted Improvements are guaranteed for a period of three years after the date of acceptance by the Northern Moraine Wastewater Reclamation District Board. If we receive written notice from any Authorized Representative of the District indicating that the Owner or Developer has failed to repair any of the said Improvements and such indicates that the Owner or Developer has been notified in writing by the District of the unsatisfactory performance of such Improvements and such unsatisfactory Improvement has not been repaired to the satisfaction of the District Administrator after notice to Owner or Developer, within a reasonable time as determined by the District Administrator, then in such case the District may make a demand for payment as follows: Demands on this Irrevocable Letter of Credit shall be made by presenting \_\_\_\_\_ (*financial institution*) with a letter from the President, Administrator, Superintendent, Attorney, Engineer, or other authorized representative (all of whom hereafter collectively referred to as the "Authorized Representative(s)" of the District demanding payment, accompanied by the certificate of the District, by its Authorized Representative, or a copy of a resolution of the District, stating: 1) that the Owner or Developer has failed to repair any of the Improvements and that the District has sent the Owner or Developer a notice in writing of the unsatisfactory performance of such Improvements and that such unsatisfactory improvement has not been repaired to the satisfaction of the District within a reasonable time as determined by the District Administrator.

In respect to the written certification above, \_\_\_\_\_ (*financial institution*) and any negotiating bank or bankers are authorized to accept the certification as binding and correct without investigation or responsibility for the accuracy, veracity, correctness or validity of the same or any part thereof. We hereby engage with you that all demands for payments made in conformity with the terms of this Irrevocable Letter will be duly honored on presentation to us prior to expiration of this Irrevocable Letter of Credit. Partial and multiple drawings are allowed.

The initial term of the Irrevocable Letter of Credit shall be three (3) years from the date of acceptance of the Improvements by the District Board and the term will be extended for one (1) year, in the event a defect occurs within the first one-year period which has not been repaired. This Irrevocable Letter of Credit shall remain in effect without regard to any default in payments of sums owed us by the Owner or Developer and without regard to other claims which we may have against the Owner or Developer. This Letter of Credit shall expire at our office as of the close of business three (3) years from the date of acceptance of the Improvements by the District Board unless extended for an additional year by notice from the District Board, as provided for above. Provided, however, we shall notify the District Clerk at the above address, by certified or registered mail, return receipt requested, at least ninety (90) days prior to said expiration date that this Irrevocable Letter of Credit is about to expire, and designating the date of expiration. In no event shall this Irrevocable Letter of Credit, or the obligations contained herein, expire without said prior written notice to the District, it being expressly agreed by \_\_\_\_\_ (*financial institution*) that the above expiration date shall be extended as required to comply with this notice provision.

The undersigned institution hereby represents and warrants to the District 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 full conformity with all state and federal laws, and that the same is binding in accordance with its terms on the undersigned institution.

EXHIBIT C

We hereby undertake and engage that all demands for payment in conformity with this Irrevocable Letter of Credit will be duly honored upon presentation to us. If, within, three (3) days of the date any such demand in conformity with this Irrevocable Letter of Credit is presented and we fail to honor the same, we then agree to pay all attorney's fees, court costs and other expenses incurred by the District in enforcing the terms of this Letter of Credit.

(Bank): \_\_\_\_\_

By: \_\_\_\_\_

Attest: \_\_\_\_\_

\_\_\_\_\_  
(Title)

EXHIBIT C

The development is legally described as follows: (See legal description attached hereto.)