

RESOLUTION NO. 13-50

**WHEREAS**, the downturn in the United States economy over the past several years has resulted in numerous closures of state or federally chartered banking institutions by the Federal Deposit Insurance Corporation ("FDIC"), and

**WHEREAS**, the City's current policy on accepting developer performance obligations entails the evaluation of banks proposing to issue letters of credit in connection with those obligations, and

**WHEREAS**, the City did at one time experience the nullification of a letter of credit as a result of an FDIC-mandated bank closure, and

**WHEREAS**, the City has in the past had no ongoing policy to evaluate banks after issuance of a letter of credit, and

**WHEREAS**, the City has learned of an independent bank-rating service that performs bank ratings on a nation-wide basis, which information is at present furnished without charge, to wit, Bauer Financial, Inc., having a "Star-Rating System" as follows:

Five Stars:	Superior
Four Stars:	Excellent
Three and one-half Stars:	Good
Three Stars:	Adequate
Two Stars:	Problematic
One Star:	Troubled
Zero Stars:	Facing Considerable Challenges

And

**WHEREAS**, the Star Rating System has been reviewed by the City's staff and legal counsel, and has proven to be a valid and impartial measure of bank viability, and

**WHEREAS**, the current economic reality mandates that the City re-examine its policies regarding the acceptance of letters of credit for developer performance surety,

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAM LAKE, ANOKA COUNTY, MINNESOTA, AS FOLLOWS:**

**Allowable Form of Security**

The only form of security acceptable to the City for any performance or maintenance obligation in connection with the subdivision of any land, or in connection with the performance of any other contractual obligation excepting those contracts which are directly entered into between the City and the successful bidder under the Uniform

Contracting Law for any City construction project, shall be a Cash Deposit issued under paragraph B hereof, or a Letter of Credit issued under paragraph C hereof.

**A. Cash Deposits**

The following provisions shall govern the usage of cash deposits for performance or maintenance security:

**1. Placement of Deposit** Cash deposited for a performance or maintenance obligation shall be paid over to the City, by negotiable instrument payable to the City. If an instrument other than a cashier's check, certified check or direct wire transfer is used to tender the deposit, no action shall be taken or permitted on the project until the negotiable instrument has been honored and paid by the drawee bank or financial institution. City shall deposit the cash into its interest-bearing developers escrow trust checking account, which is collateralized per the City's investment policy. Interest shall be accrued to the principal at the interest rate earned by the checking account.

**2. Default in Obligation** If there is a default in an obligation of a developer which would justify City making a claim on all or a portion of the security, City shall so notify the developer. From the date of notice of default, the portion of the cash deposit representing the default amount shall be deemed to be the property of the City, and all accruing interest on said amount shall be the property of the City.

**3. Termination of Obligation** When the developer's obligation has terminated, City shall remit the original principal balance plus all accrued interest, less any amounts previously or at that time claimed by the City, to the depositor.

**4. Reduction in Security** If the particular project is likely to involve a request by the developer to reduce the amount of security as a result of ongoing progress on a project, it shall be developer's sole and exclusive responsibility to notify City of this likelihood prior to executing a development agreement.

**5. Combining Performance and Maintenance Security** Notwithstanding the language of paragraph 1 above, if a maintenance obligation is not expected to commence until a certain time period after placement of a performance security deposit, and in the interim, sufficient work on the improvements is completed such that the amount of performance security needed creates a surplus in the cash security which is equal to or greater than the amount of security needed for maintenance, then the excess performance security so existing may serve as the maintenance security, for redeposit if necessary, when the performance security time deposit matures.

**B. Letters of Credit**

The Letter of Credit will be in the form hereto attached as Exhibit A. No material deviations from the attached form will be accepted, and in the event of an objection by a

bank as to the Letter of Credit form, the decision of the City's attorney shall be final in resolving such objections.

**1. Use of Bauer Financial, Inc. Star Rating System** At the time that any developer or other obligor proposes to use a Letter of Credit from a state or federally chartered banking institution, City staff will investigate the Star Rating of the institution as found on the publicly accessible internet website of Bauer Financial, Inc. If the Star Rating of the subject bank is Two Stars or less, the City staff will inform the developer that the Letter of Credit is not acceptable to the City.

If a Star Rating is Three Stars or better, the Letter of Credit will be acceptable, but City staff will again investigate the Star Rating prior to any renewal of the Letter of Credit. If the Star Rating of the bank has fallen to Two Stars or less, the City staff will notify the developer that a renewal Letter of Credit from that bank will be unacceptable.

**2. Existing Letters of Credit** If, at the time of adoption of this resolution, there are outstanding Letters of Credit from institutions now carrying a Star Rating of Two Stars or less, City staff will encourage developers currently posting such Letters of Credit to obtain replacement Letters of Credit from qualifying institutions at such time as any such Letters of Credit are up for renewal. For good cause shown, such as the presence of an existing note securing a Letter of Credit that cannot be readily refinanced, a renewal of a Letter of Credit may be taken from a bank having a Star Rating of Two or less, but if the terms of the development agreement require a replacement Letter of Credit prior to the expiration of a current Letter of Credit, and if the City can legally make a claim on the current Letter of Credit in lieu of accepting a replacement from a non-qualifying institution, the City shall make a claim and convert the Letter of Credit to cash security.

### **C. Notification to Developers**

A copy of this policy shall be furnished to each developer at the time that the developer requests Sketch Plan approval, which copy shall bear the following acknowledgment, to be signed by the developer:

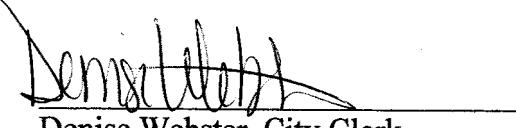
*"Developer acknowledges receipt of a copy of this policy, and developer is aware that the City of Ham Lake will accept only cash security or limited Letters of Credit for performance and maintenance obligations, and that the City of Ham Lake will not accept a corporate or insurance surety bond, a letter of credit from an entity which is not a state or federally chartered bank, or a letter of credit from a bank which has not met the approval criteria as detailed in Resolution number ----.*

**D. Development Agreements**

Development Agreements executed in connection with projects involving the posting of Letters of Credit shall contain clauses and references to the policy expressed by this resolution.

Adopted by a unanimous vote of the Ham Lake City Council this 4th day of November, 2013.

  
Michael G. Van Kirk, Mayor

  
Denise Webster, City Clerk

**EXHIBIT A**

**(Bank Letterhead)**  
**Irrevocable Letter of Credit Number \_\_\_\_\_**

**(Date)**

**To:** The City of Ham Lake  
15544 Central Avenue Northeast  
Ham Lake, Minnesota 55304

Attention: City Clerk:

We hereby authorize you to draw on us from time to time in an aggregate total amount of **(\$ amount of security)** for the account of **(Name of Developer)** pursuant to all obligations of the Developer under that certain Development Agreement with the City of Ham Lake dated **(Date of Development Agreement)**, concerning the project known as **(Name of Plat or project)**.

All drafts drawn under this Letter of Credit will be honored if accompanied by a certified copy of a resolution of the City Council of the City of Ham Lake, Minnesota, stating the conditions of default of the Developer, and stating the amount demanded under this Letter of Credit.

This Letter of Credit is irrevocable and we hereby agree that each draft will be honored if received by presentation of the above mentioned document at our banking house in **(Address of bank)**, not later than 4:00 pm on **(Date of expiration)**.

**(Authorized signature)**