



Roll Call Number

21-0180

Agenda Item Number

13

Date February 8, 2021

RESOLUTION PARTIALLY RELEASING LETTER OF CREDIT SURETY FOR PARKSIDE ESTATES PLAT 1

WHEREAS, on March 11, 2019, by Roll Call Number 19-0353 the City Council conditionally approved the subdivision plat entitled Parkside Estates Plat 1, located in the vicinity of 150 E. County Line Road, to be developed by Solid Ground LLC, Eric Grubb, officer, and accepted Letter of Credit No. 1347 from West Bank, to secure the satisfactory completion and payment of the required public improvements; and,

WHEREAS, the City Engineer has certified that the grading and erosion control and as-built survey have been completed and recommend that the security be reduced to \$74,200;

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, as follows:

- 1. That the Irrevocable Letter of Credit No. 1347 in the amount of \$160,375 from West Bank, is hereby released in part and reduced to the amount of \$74,200 as security for the satisfactory completion of the remaining subdivision improvements.
2. That the City Clerk is hereby directed to notify the Principal and Surety of the release of such security at the following respective addresses:
- West Bank, Attn: John F. McKinney III, 1601 22nd Street, West Des Moines, IA 50266
- Solid Ground LLC, Eric Grubb, Officer, 17369 Berkshire Parkway, Clive, IA 50325.

MOVED by [Signature: Latta] to adopt.

FORM APPROVED:

[Signature: Judy K. Parks-Kruse]
Judy K. Parks-Kruse
Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			
MOTION CARRIED			APPROVED	

J. M. Frank
 Mayor

CERTIFICATE

I, P. Kay Cmelik, City Clerk of said City, hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

P. Kay Cmelik

City Clerk

21-0180
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Department of Engineering
City of Des Moines

CERTIFICATE OF SATISFACTORY COMPLETION
FOR
BONDED SUBDIVISION IMPROVEMENTS

PARTIAL BOND RELEASE FORM

- 1. Subdivision Name: Parkside Estates Plat 1
- 2. Developer: Solid Ground LLC, Eric Grubb Officer
- 3. Letter of Credit #1347 Bank, West Bank
- 4. Council Approval of LOC: 3-11-19 Roll Call 19-0353
- 5. Improvements Covered by Bond: Sidewalk, Grading and Erosion Control, As-Built Survey Costs

6. Improvements Satisfactorily Completed:

A. Improvements Constructed by Public Improvement Contracts

<u>Improvement</u>	<u>Contract No.</u>	<u>Council Acknowledgment of Completion Date</u>	<u>Roll Call</u>
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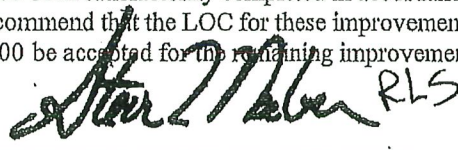
B. Improvements Constructed Without Public Improvement Contracts

<u>Improvement</u>	<u>Inspected By</u>	<u>Date of Inspection</u>
Grading and Erosion Control	B. Stevens	12-30-19
As-Built Survey Costs	M. Folvag	12-30-19

7. Improvements Remaining: 3500 L F 5' Sidewalk

8. Amount of Bond Reduction: Bond Amount:	<u>\$ 160,375.00</u>
Estimated Cost of Bonded Improvements	
Not Satisfactorily Completed	<u>\$ 74,200.00</u>
Recommended Amount of Bond Reduction:	<u>\$ 86,175</u>

9. I hereby certify that to the best of my knowledge the above improvements covered by LOC, 1347 have been satisfactorily completed in accordance with Chapter 106 of the 2000 Municipal Code and hereby recommend that the LOC for these improvements be released and a new LOC or bond in the amount of \$74,200.00 be accepted for the remaining improvements.



City Engineer

1-10-20
Date

I hereby certify that I have reviewed the recommendations of the City Engineer and hereby concur therein


Planning Director

1-22-2020
Date


Assistant City Attorney

2-8-21
Date

21-0180

IRREVOCABLE LETTER OF CREDIT

Borrower: SOLID GROUND, L.L.C.
17389 BERKSHIRE PKWY
CLIVE, IA 50325

Lender: WEST BANK
MAIN BANK
1601 22ND STREET
WEST DES MOINES, IA 50266
(515) 222-2300

Beneficiary:
CITY OF DES MOINES
602 ROBERT D. RAY DRIVE
DES MOINES, IA 50309

NO.: 1347

EXPIRATION DATE. This letter of credit shall expire one (1) year from the date of execution, but shall be renewed automatically for one (1) year on that expiry date and any subsequent expiry date, unless the Lender provides to Beneficiary and Borrower a written notice of its intent not to renew, sent not less than sixty (60) days prior to the then-current termination date. In the event the Lender provides such notice of its intent not to renew, Beneficiary will be permitted to submit a draft under the terms and conditions set forth below, in an amount up to the full amount of this Letter of Credit, less the amount(s) of any partial draws previously paid. Drafts and accompanying statements or documents must be presented to Lender on or before the then-current termination date, or the day that Lender honors a draw under which the full amount of this Letter of Credit has been drawn (the "Expiration Date").

AMOUNT OF CREDIT. Lender hereby establishes at the request and for the account of Borrower, an Irrevocable Letter of Credit in favor of Beneficiary for a sum of Seventy-four Thousand Two Hundred & 00/100 Dollars (\$74,200.00) (the "Letter of Credit"). These funds shall be made available to Beneficiary upon Lender's receipt from Beneficiary of sight drafts drawn on Lender at Lender's address indicated above (or other such address that Lender may provide Beneficiary in writing) during regular business hours and accompanied by the signed written statements or documents indicated below.

WARNING TO BENEFICIARY: PLEASE EXAMINE THIS LETTER OF CREDIT AT ONCE. IF YOU FEEL UNABLE TO MEET ANY OF ITS REQUIREMENTS, EITHER SINGLY OR TOGETHER, YOU SHOULD CONTACT BORROWER IMMEDIATELY TO SEE IF THE LETTER OF CREDIT CAN BE AMENDED. OTHERWISE, YOU WILL RISK LOSING PAYMENT UNDER THIS LETTER OF CREDIT FOR FAILURE TO COMPLY STRICTLY WITH ITS TERMS AS WRITTEN.

DRAFT TERMS AND CONDITIONS. Lender shall honor drafts submitted by Beneficiary under the following terms and conditions: \$500 FEE WILL BE ASSESSED AGAINST THE BORROWER, FOR ANY ADVANCE. ANY ADVANCE AGAINST THE LETTER OF CREDIT WILL BE DUE ON DEMAND FOR: SIDEWALKS \$74,200 (3500LF X \$20/LF) IN PARKSIDE ESTATES, DES MOINES

Upon Lender's honor of such drafts, Lender shall be fully discharged of Lender's obligations under this Letter of Credit and shall not be obligated to make any further payments under this Letter of Credit once the full amount of credit available under this Letter of Credit has been drawn.

Beneficiary shall have no recourse against Lender for any amount paid under this Letter of Credit once Lender has honored any draft or other document which complies strictly with this Letter of Credit, and which on its face appears otherwise in order but which is signed, issued, or presented by a party or under the name of a party purporting to act for Beneficiary, purporting to claim through Beneficiary, or posing as Beneficiary without Beneficiary's authorization. By paying an amount demanded in accordance with this Letter of Credit, Lender makes no representation as to the correctness of the amount demanded and Lender shall not be liable to Beneficiary, or any other person, for any amount paid or disbursed for any reason whatsoever, including, without limitation, any nonapplication or misapplication by Beneficiary of the proceeds of such payment. By presenting upon Lender or a confirming bank, Beneficiary certifies that Beneficiary has not and will not present upon the other, unless and until Beneficiary meets with dishonor. Beneficiary promises to return to Lender any funds received by Beneficiary in excess of the Letter of Credit's maximum drawing amount.

USE RESTRICTIONS. All drafts must be marked "DRAWN UNDER WEST BANK IRREVOCABLE LETTER OF CREDIT NO. 1347 DATED 12-11-2020," and the amount of each draft shall be marked on the draft. Only Beneficiary may complete a draft and accompanying statements or documents required by this Letter of Credit and make a draw under this Letter of Credit. This original Letter of Credit must accompany any draft drawn hereunder.

Partial draws are permitted under this Letter of Credit. Lender's honor of a partial draw shall correspondingly reduce the amount of credit available under this Letter of Credit. Following a partial draw, Lender shall return this original Letter of Credit to Beneficiary with the partial draw noted hereon; in the alternative, and in its sole discretion, Lender may issue a substitute Letter of Credit to Beneficiary in the amount shown above, less any partial draw(s).

PERMITTED TRANSFEREES. The right to draw under this Letter of Credit shall be nontransferable, except for:

- A. A transfer (in its entirety, but not in part) by direct operation of law to the administrator, executor, bankruptcy trustee, receiver, liquidator, successor, or other representative at law of the original Beneficiary; and
- B. The first immediate transfer (in its entirety, but not in part) by such legal representative to a third party after express approval of a governmental body (judicial, administrative, or executive).

TRANSFEREES REQUIRED DOCUMENTS. When the presenter is a permitted transferee (i) by operation of law or (ii) a third party receiving transfer from a legal representative, as described above, the documents required for a draw shall include a certified copy of the one or more documents which show the presenter's authority to claim through or to act with authority for the original Beneficiary.

COMPLIANCE BURDEN. Lender is not responsible for any impossibility or other difficulty in achieving strict compliance with the requirements of this Letter of Credit precisely as written. Beneficiary understands and acknowledges: (i) that unless and until the present wording of this Letter of Credit is amended with Lender's prior written consent, the burden of complying strictly with such wording remains solely upon Beneficiary, and (ii) that Lender is relying upon the lack of such amendment as constituting Beneficiary's initial and continued approval of such wording.

NON-SEVERABILITY. If any aspect of this Letter of Credit is ever declared unenforceable for any reason by any court or governmental body having jurisdiction, Lender's entire engagement under this Letter of Credit shall be deemed null and void ab initio, and both Lender and Beneficiary shall be restored to the position each would have occupied with all rights available as though this Letter of Credit had never occurred. This non-severability provision shall override all other provisions in this Letter of Credit, no matter where such provision appears within this Letter of Credit.


GOVERNING LAW. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Iowa without regard to its conflicts of law provisions, and except to the extent such laws are inconsistent with the 2007 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, ICC Publication No. 600. This Agreement has been accepted by Lender in the State of Iowa.

EXPIRATION. Lender hereby agrees with Beneficiary that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to Lender on or before the Expiration Date unless otherwise provided for above.

Dated: December 11, 2020

LENDER:

WEST BANK

By: 
Authorized Signer



February 10, 2021

West Bank
Attn: John F. McKinney III
1601 22nd Street
West Des Moines, IA 50266

Solid Ground LLC
Eric Grubb, Officer
17369 Berkshire Parkway
Clive, IA 50325

RE: Release Letter of Credit Surety for Parkside Estates Plat 1

The Des Moines City Council, at its meeting of February 8, 2021 by Roll Call No. 21-0183 approved the release of Irrevocable Letter of Credit No. 1347.

Enclosed are copies of Council's action for your records.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Kay Cmelik". The signature is fluid and cursive, with a large initial "P" and "K".

P. Kay Cmelik
City Clerk

Enclosures