

**RESOLUTION NO. 2011-008**

**VILLAGE OF MONTGOMERY**

**RESOLUTION OF DEFAULT AND TO DRAW ON IRREVOCABLE LETTER OF CREDIT NO. 1478-102 ISSUED BY MIDWEST BANK AND TRUST COMPANY IN THE AMOUNT OF \$191,091.46 REGARDING FAIRFIELD WAY TOWNHOMES (MONTALBANO HOMES)**

**WHEREAS**, pursuant to Illinois laws and Village ordinances, and as a condition of subdivision approval, Fairfield Way Townhomes (Montalbano Homes), Fairfield Way Townhomes Subdivision Owner/Developer/Subdivider (hereinafter "Developer") agreed to construct any required public improvements for Fairfield Way Townhomes (Montalbano Homes). The developer provided a Letter of Credit, issued by Midwest Bank And Trust Company, to guarantee performance and completion of said public improvements (See Irrevocable Letter of Credit originally dated October 20, 2003 attached as Group Exhibit A); and

**WHEREAS**, since its original date of issuance, the Letter of Credit has been extended periodically; and

**WHEREAS**, before and since the most recent extension, Village staff has attempted to work with the Developer to resolve outstanding issues regarding construction and completion of the required public improvements for Fairfield Way Townhomes; and

**WHEREAS**, the Developer has failed to complete or carry on the work of the installation and construction 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; and

**WHEREAS**, the Village of Montgomery has determined that the Developer has demonstrated that they will be unable to complete the improvements; and

**WHEREAS**, it is necessary for the health, safety and welfare of the Village of Montgomery citizens, to draw on Letter of Credit No. 1478-102 issued by Midwest Bank And Trust Company and provided by the Developer to guarantee completion of the public improvements for Fairfield Way Townhomes, and to use the funds thus acquired for completion of said public improvements; and

**WHEREAS**, in order to draw on the Letter of Credit, it is necessary to present a letter from the Village Clerk of the Village of Montgomery demanding payment, accompanied by the Certificate of the Village Clerk of the Village of Montgomery, certifying the basis for the default and demand on the Letter of Credit, to effectuate the transaction described herein.

**NOW, THEREFORE BE IT RESOLVED**, that the Board of Trustees of the Village of Montgomery finds it necessary for the health, safety and welfare of the citizens of the Village of Montgomery to “draw” on the Letter of Credit in order to complete the public improvements and thus hereby authorizes the Village Clerk and other appropriate Village staff to draft all necessary documents, demands and drafts and take all appropriate measures, including litigation, if necessary, to draw on the Letter of Credit.

**BE IT FURTHER RESOLVED**, that the Board of Trustees of the Village of Montgomery finds that the work has not been completed in accordance with the plans, specifications and agreements (including any amendments thereof) for the following project Fairfield Way Townhomes (Montalbano Homes).

**BE IT FURTHER RESOLVED**, that Carla Cooper, duly appointed Village Clerk, be and hereby is, authorized on behalf of the Board to execute any and all documents necessary to carry out the intent of the Board as described herein.

DONE THIS 27<sup>th</sup> day of June, 2011, at \_\_\_\_\_.

ATTEST:

By: Carla Cooper  
Carla Cooper, Village Clerk

VILLAGE OF MONTGOMERY

By: Marilyn Michelini  
Marilyn Michelini, Village President





**Engineering  
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Inc.**

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December 27, 2007

Ms. Jane Tompkins  
Director of Community Development  
Village of Montgomery  
1300 South Broadway  
Montgomery, IL 60538

**Re: *Fairfield Way Townhomes  
Punch List and Closeout Status  
Village of Montgomery  
Kane County, IL***

Dear Ms. Tompkins:

Throughout the last few months, EEI has been working with Montalbano Homes and the Village to bring the substantially complete Fairfield Way Townhomes to maintenance period status (acceptance). Per the annexation agreement, the public facilities in a subdivision can be conveyed to the Village, through Village Board resolution, upon issuance of 80% of occupancy permits.

The main purpose of this letter is to provide a status report on outstanding construction and other items that must be satisfied prior to Village acceptance. For clarification, per Village Ordinance, a subdivision unit is accepted by resolution of the Village Board. This resolution will be recommended to the Village by Engineering Enterprises, Inc. after all punch list items are satisfied and after all closeout documentation is assembled. The following is a summary of items that will need to be satisfied prior to acceptance:

#### **CURB & GUTTER, SIDEWALK, AND ROADWAYS**

The sidewalk has the following deficiencies:

1. The southwest corner ramp of Somerset and Candlelight has a slope of 10.8% which exceeds the maximum of 8.33%.
2. 5 sidewalk panels at 1816/1818 Candlelight Circle need to be replaced.
3. The southeast and northeast ramps at Candlelight Circle and Candlelight Lane (formerly Kenilworth Lane) both exceed the maximum slope of 8.33%.

#### **FIRE HYDRANTS**

The valve box at hydrant 3 needs cleaning and realignment.

Through the wear and tear of construction, the condition of the paint on the hydrants is generally poor. All fire hydrants should be painted red by the developer prior to acceptance of the subdivision. Any portion of the fire hydrant that is above grade must be painted red, including risers.

### **B-BOXES**

B-box location and grade is inspected during the review of individual as-built plans. The operability of the b-boxes will be spot-checked prior to acceptance (to be coordinated with Village of Montgomery Public Works).

### **STORM SEWER STRUCTURES**

Storm structures 2 and 35 must have the filter fabric removed for observation.

Flared end section 1 must have rip rap placed according to the plan specifications.

Flared end section 11 must have the rip rap placed according to the plan specifications.

Flared end section 52 must the rip rap placed according to the plan specifications.

### **SANITARY MANHOLES**

Sanitary manhole 12 needs to be raised to match grade.

Sanitary manhole 16 needs to be lowered to match grade.

Sanitary manholes 13, 14, and 16 currently have only to steps. More steps should be instaled so that the manhole is accessible.

### **STREET SIGNAGE**

The First sign at the corner of Candlelight Drive and Simpson Parkway should be raised to 10 feet.

### **PARKWAY TREES**

Parkway trees will be inspected by the Village consultant, Planning Resources, and are not a part of this letter.

### **LETTER OF CREDIT STATUS**

The letter of credit for the Fairfield Way Townhomes has previously been reduced. At the time of acceptance the letter of credit may be released and replaced with a maintenance bond in the amount of 10% of the subdivision improvement costs. No action is required at this time.

**INDIVIDUAL AS-BUILTS AND RECORD DRAWINGS**

Record drawings for the Fairfield Way Townhome plans were reviewed and are in general conformance with Village requirements per EEI's letter dated January 4th, 2005. One Mylar copy, four paper copies, and an electronic copy should have already been provided to the Village under separate cover upon receipt from Cemcon.

Our records indicate that 23 individual lot as-builts have yet to be approved. Closeout and acceptance procedures can't be finalized until as-built submittals and approvals are completed.

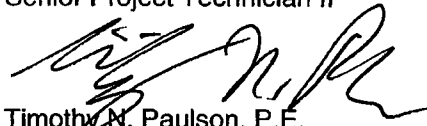
Engineering Enterprises, Inc. will proceed with preparation of the closeout documentation for the Fairfield Way Townhomes. The developer should address the items in this letter and provide appropriate documentation to EEI and the Village. If all the items in this letter and the closeout process are not completed by August 15, 2007 then Village will require additional field punch list inspections prior to subdivision closeout. If you have any questions or require any additional information please contact our office.

Respectfully submitted,

ENGINEERING ENTERPRISES, INC.



Robert C. Watts  
Senior Project Technician II



Timothy N. Paulson, P.E.  
Project Manager

TNP/ktm/arf

pc: Ms. Anne Marie Gaura, Village Manager  
Mr. Mike Pubentz, P.E., Director of Public Works  
Mr. Jeff Zoephel, Acting Director of Community Development  
Mr. Tim Brophy, Director of Building  
Ms. Juli Crane, Planning Resources, Inc.  
Mr. Bill Griffin, Montalbano Builders  
PGW, KTM, EEI