

Chapter 37

ORDINANCE NO. 382 SUPPLEMENTING ORDINANCE NO. 70-(1967);
AUTHORIZING THE ISSUANCE AND AWARDED THE SALE OF
\$1,150,000 SEWAGE SYSTEM REVENUE REFUNDING BONDS AND
PROVIDING FOR THE PAYMENT OF SUCH BONDS AND OTHER
DETAILS AND COVENANTS WITH RESPECT THERETO

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WHEREAS, the Village of Paddock Lake, Kenosha County, Wisconsin (the "Village") owns and operates a sewage system (the "System") which is operated for a public purpose as a public utility by the Village;

WHEREAS, the Village has heretofore issued its \$755,000 Sewage System Mortgage Revenue Bonds, Series of 1967, dated November 1, 1967 (the "1967 Bonds") pursuant to Ordinance No. 70-(1967) entitled: "An Ordinance Providing for the Issuance and Sale of \$755,000 'Sewage System Mortgage Revenue Bonds, Series of 1967,' of the Village of Paddock Lake, Kenosha County, Wisconsin, and Providing for the Payment of Said Bonds and Other Details with Respect Thereto" (the "1967 Ordinance") to pay the cost of constructing the System (the "1967 Project");

WHEREAS, the Village has also heretofore issued \$1,150,000 General Obligation Promissory Notes, dated April 1, 1988 (the "1988 Notes") pursuant to a Resolution adopted by the Village Board on March 16, 1988 entitled: "Resolution Authorizing the Borrowing of \$1,150,000; Providing for the Issuance and Sale of General Obligation Promissory Notes Therefor; and Levying a Tax in Connection Therewith" (the "1988 Resolution") to provide interim financing for extensions, additions or improvements to the System, to wit: constructing and equipping a wastewater treatment facility and paying financing costs, including a portion of the interest cost (the "1988 Project");

WHEREAS, the 1988 Notes mature on October 1, 1991;

WHEREAS, Section 66.066(2)(b), Wisconsin Statutes, provides that revenue bonds, payable only from the revenues of the System, may be issued pursuant to the provisions of Section 66.066, Wisconsin Statutes, to provide funds to refund any outstanding bonds or notes issued for projects such as the 1988 Project;

WHEREAS, Section 8 of the 1967 Ordinance provides that additional bonds may be issued on a parity with the 1967 Bonds upon compliance with certain conditions;

WHEREAS, the Village Board deems it to be necessary, desirable and in the best interest of the Village to issue additional revenue bonds, on a parity with the 1967 Bonds, pursuant to Section 66.066 of the Wisconsin Statutes and Section 8 of the 1967 Ordinance to pay the cost of refinancing

the 1988 Notes with the proceeds of bonds payable only from the revenues of the System to provide permanent financing for the 1988 Project (the "Refunding");

WHEREAS, to the best of the Village's knowledge, information and belief, and in reliance upon the Certificate of Banc One Capital Corporation, attached hereto as Exhibit A and incorporated herein by this reference, the Village complies with the conditions precedent to the issuance of additional bonds;

WHEREAS, other than the 1967 Bonds, no other bonds or notes payable from the revenues of the System are now outstanding;

WHEREAS, for the purpose of paying the cost of the Refunding (including paying legal, financing, engineering and other professional fees in connection therewith and funding a reserve account), the Village Board deems it to be necessary, desirable and in the best interest of the Village to authorize and sell sewage system revenue refunding bonds of the Village on a parity with the 1967 Bonds payable solely from the revenues of the System, which bonds are to be authorized and issued pursuant to the provisions of Section 66.066, Wisconsin Statutes and Section 8 of the 1967 Ordinance and which bonds are to be additionally secured by a mortgage lien upon the System; and

WHEREAS, the Village Board now deems it to be necessary, desirable and in the best interest of the Village to supplement the 1967 Ordinance to provide for the issuance and sale of sewage system revenue refunding bonds on a parity with the 1967 Bonds and to award the sale of such bonds to Banc One Capital Corporation, Milwaukee, Wisconsin.

NOW, THEREFORE, BE IT ORDAINED by the Village Board of the Village that:

Section 1(a). Definitions. The definitions in the 1967 Ordinance apply to and are incorporated into this Ordinance except as expressly amended below or unless the context expressly or by necessary implication requires otherwise. References in the 1967 Ordinance to "Bonds" and "Additional Bonds" shall apply to the Bonds being issued pursuant to this Ordinance unless otherwise amended herein. All references to specific sections in the 1967 Ordinance also apply to the Bonds being issued pursuant to this Ordinance unless otherwise amended herein.

Section 1(b). Additional and Amended Definitions. In addition to and/or in amendment of the terms defined in subsection (a) hereof, the following terms shall have the following meanings in this Ordinance unless the text expressly or by implication requires otherwise:

"Act" means Section 66.066 of the Wisconsin Statutes;

"Annual Debt Service Requirement" means the total amount of principal and interest due on the 1967 Bonds, the Bonds or any Parity Bonds in any Bond Year whether at maturity or pursuant to mandatory redemption thereof;

"Bond Year" means the one-year period ending on a principal payment date for the Bonds;

"Bonds" means \$1,150,000 Sewage System Revenue Refunding Bonds of the Village dated August 1, 1991, authorized to be issued by this Ordinance;

"Code" means the Internal Revenue Code of 1986, as amended;

"Depository" means The Depository Trust Company, New York, New York or its nominee or successor which shall act as securities depository for the Bonds;

"Ordinance" means an ordinance entitled: "Ordinance Supplementing Ordinance No. 70-(1967); Authorizing the Issuance and Awarding the Sale of \$1,150,000 Sewage System Revenue Refunding Bonds and Providing for the Payment of Such Bonds and Other Details and Covenants with Respect Thereto" adopted by the Village Board on July 17, 1991;

"Regulations" means the income tax regulations promulgated under the Code;

"1967 Bonds" means the outstanding balance of the \$755,000 Sewage System Mortgage Revenue Bonds, Series of 1967, of the Village, dated November 1, 1967;

"1967 Ordinance" means Ordinance No. 70-(1967) entitled: "An Ordinance Providing for the Issuance and Sale of \$755,000 'Sewage System Mortgage Revenue Bonds, Series of 1967,' of the Village of Paddock Lake, Kenosha County, Wisconsin, and Providing for the Payment of Said Bonds and Other Details with Respect Thereto" adopted by the Village Board on October 11, 1967, which authorized the 1967 Bonds;

"1988 Notes" means \$1,150,000 General Obligation Promissory Notes of the Village dated April 1, 1988, maturing on October 1, 1991;

"1988 Project" means constructing and equipping a wastewater treatment facility and paying financing costs, including a portion of the interest cost. All elements of the 1988 Project are owned and operated by the Village as part of the System as described in the preamble hereto;

"Original Purchaser" means Banc One Capital Corporation, Milwaukee, Wisconsin;

"Parity Bonds" means any additional bonds issued pursuant to the Act and Section 8 of the 1967 Ordinance;

"Refunding" means refinancing the Village's 1988 Notes; funding a reserve account and paying costs of financing;

"Reserve Account" means a separate account in the Redemption Fund created by the 1967 Ordinance, as amended and supplemented by the Ordinance. There has been deposited in the Reserve Account from revenues of the System the sum of \$62,982 and there shall be deposited from available Village funds the sum of \$107,828. No Bond Proceeds will be used to fund the Reserve Account. The Reserve Account shall be used solely for the purpose of paying principal of and interest on the 1967 Bonds, the Bonds and any Parity Bonds at any time when there shall be insufficient money in the Special Redemption Fund;

"Reserve Requirement" means the sum of \$170,810 or such lesser amount which at no time exceeds an amount equal to the lesser of maximum amount of principal and interest due on the outstanding 1967 Bonds and the Bonds in any Bond Year whether at maturity or pursuant to mandatory redemption thereof or an amount not greater than 125% of the average annual debt service on the outstanding 1967 Bonds and the Bonds. If Parity Bonds are issued, the Reserve Requirement shall be an amount equal to the lesser of the maximum amount of principal and interest due on the outstanding 1967 Bonds, the Bonds and the Parity Bonds in any Bond Year or an amount not greater than 125% of the average annual debt service on the outstanding 1967 Bonds, the Bonds and the Parity Bonds; and

"System" means the entire Sewage System of the Village specifically including that portion of the 1967 Project and the 1988 Project owned by the Village including all property of every nature now or hereafter owned by the Village for the collection, transmission, treatment and disposal of domestic and industrial sewage and waste, including all improvements and extensions thereof made by the Village while any of the 1967 Bonds, the Bonds and Parity Bonds remain outstanding, including all real and personal property of every nature comprising part of or used or useful in connection with such Sewage System and including all appurtenances, contracts, leases, franchises and other intangibles.

Section 2. Authorization of the Bonds. For the purpose of paying the cost of the Refunding (including paying legal and financing fees in connection therewith and paying the cost of funding the Reserve Account), there shall be borrowed on the credit of the income and revenue of the System the sum of \$1,150,000, and registered revenue bonds of the Village are hereby authorized to be issued in evidence thereof to Banc One Capital Corporation, Milwaukee, Wisconsin (the "Original Purchaser") in accordance with the terms and conditions of its

bond purchase proposal attached hereto as Exhibit B and incorporated herein by this reference.

Section 3. Terms of the Bonds. The revenue bonds shall be designated "Sewage System Revenue Refunding Bonds" (the "Bonds"); shall be dated August 1, 1991; shall be in the denomination of \$5,000 or any integral multiple thereof; shall bear interest at the rates set forth below; and shall mature serially on November 1 of each year, in the years and principal amounts as follows:

<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
1992	\$ 15,000	7.50%
1993	40,000	7.50
1994	45,000	6.55
1995	45,000	6.20
1996	50,000	6.40
1997	55,000	6.50
1998	55,000	6.60
1999	60,000	6.70
2000	65,000	6.80
2001	70,000	6.90
2002	75,000	7.00
2003	80,000	7.10
2008	495,000	7.50

Interest on the Bonds shall be payable semi-annually on May 1 and November 1 of each year commencing on May 1, 1992.

It is hereby determined and declared that the above schedule of maturities of the Bonds is such that the requirements each year to pay both the principal of and interest on the Bonds is reasonable in accordance with prudent municipal utility management practices.

At the option of the Village, the Bonds maturing on November 1, 2008 shall be subject to redemption prior to maturity, as a whole or in part by lot, on November 1, 2003 or on any interest payment date thereafter, at the principal amount thereof), plus accrued interest to the date of redemption.

In addition, the Bonds due on November 1, 2008 (the "Term Bonds") are subject to redemption prior to maturity at a redemption price equal to One Hundred Percent (100%) of the principal amount to be redeemed, plus accrued interest to the date of redemption, from redemption fund deposits which are required to be made in an amount sufficient to redeem on November 1 of each year the respective amount of Term Bonds specified below:

<u>Redemption Date</u>	<u>Amount</u>
2004	\$ 85,000
2005	90,000
2006	100,000
2007	105,000
2008	115,000*

*Maturity

Before the redemption of any of the Bonds, the Village shall give notice to the Depository by registered or certified mail not less than thirty (30) nor more than sixty (60) days prior to the date fixed for redemption or in the case of an advanced refunding, the date the proceeds are deposited in escrow. The Bonds shall cease to bear interest on the specified redemption date, provided that federal or other immediately available funds sufficient for such redemption are on deposit at the office of the Depository at that time. Upon such deposit of funds for redemption the Bonds shall no longer be deemed to be outstanding.

The Village shall enter into an agreement with BANK ONE WISCONSIN TRUST COMPANY, NATIONAL ASSOCIATION with respect to the redemption of the Term Bonds. The appropriate officers of the Village are hereby authorized and directed to execute such agreement on behalf of the Village.

Section 4. Parity with 1967 Bonds. The Bonds shall be additional bonds within the meaning of Section 8 of the 1967 Ordinance; are issued on a parity with the 1967 Bonds; and are secured by an equal lien and claim to the revenues and properties of the System, the statutory mortgage lien upon the System and the monies on deposit in the Special Redemption Fund all as set forth in the 1967 Ordinance.

Section 5. Form, Execution, Registration and Payment of the Bonds. The Bonds shall be issued in book-entry form only, shall be registered in the name of the Depository and shall be numbered from 1 consecutively upward. If, for any reason, the relationship with the Depository is terminated, the Village may at its sole discretion establish a relationship with another depository in order to maintain the Bonds in book-entry form. If the Village does not appoint another depository, it shall prepare, authenticate and deliver at its expense fully registered certificated Bonds in the denomination of \$5,000 or any multiple thereof in the aggregate principal amount then outstanding to the beneficial owners of the Bonds, as shown upon the records of the Depository. The book-entry Bonds shall be in the form attached hereto as Exhibit C and incorporated herein by this reference.

The Bonds shall be executed in the name of the Village by the manual or facsimile signatures of the President and Village Clerk provided that at least one of those signatures shall be a

manual signature or if both of those signatures shall be facsimile, the Bonds shall be authenticated by the manual signature of an authorized officer of a bond registrar, and shall be sealed with its official or corporate seal or a facsimile thereof.

As long as the Bonds are in book-entry form, the Bonds are payable as to principal by wire transfer to the Depository or its nominee upon their presentation and surrender to the Village, who shall be the Registrar and Paying Agent with respect to the book-entry Bonds. Payment of each installment of interest shall be made by wire transfer to the Depository or its nominee shown in the registration books on the Record Date on the payment date in lawful money of the United States of America by the Village. The Village shall not be obliged to make any transfer of the Bonds (i) after the Record Date, (ii) during the fifteen (15) calendar days preceding the date of the publication of notice of any proposed redemption of the Bonds, or (iii) with respect to any particular Bond, after such Bond has been called for redemption. With respect to (iii) above, in the event that less than all of the principal amount of a specific interest rate is redeemed, the Registrar shall issue a new Bond in the principal amount outstanding after redemption on the redemption date.

In the event that the Village exercises its right to issue fully registered certificated Bonds, it shall appoint a registrar and fiscal agent pursuant to the provisions of Section 67.10(2), Wisconsin Statutes (the "Bond Registrar").

The Bonds when in certificated form shall be payable as to principal by check or draft issued upon their presentation and surrender at the principal office of the Bond Registrar. Payment of each installment of interest shall be payable by check or draft mailed to the registered owner shown in the registration books on the Record Date at the owner's address as it appears in the registration books kept for such purpose. The Registrar shall not be obliged to make any transfer of the Bonds (i) after the Record Date, (ii) during the fifteen (15) calendar days preceding the date of the publication of notice of any proposed redemption of the Bonds, or (iii) with respect to any particular Bond after such Bond has been called for redemption. With respect to (iii) above, in the event that less than all the principal amount of a specific interest rate is redeemed, the Bond Registrar shall issue a new Bond or Bonds in the principal amount outstanding after redemption on the redemption date. The principal of and interest on the Bonds shall be paid by the Village Treasurer or his agent in lawful money of the United States.

Both the principal of and interest on the Bonds shall be payable in lawful money of the United States of America by the Bond Registrar.

The principal of and premium, if any, on the Bonds will be payable upon presentation and surrender thereof at the principal corporate office of the Bond Registrar.

Payment of each installment of interest shall be made to the registered owner of each Bond who shall appear on the registration books of the Village, maintained by the Bond Registrar, on the Record Date and shall be paid by check or draft of the Bond Registrar mailed to such registered owner at his address as it appears on such registration books or at such other address as may be furnished in writing by such registered owner to the Bond Registrar.

Section 6. Security for the Bonds. The Bonds, together with interest thereon, shall not constitute an indebtedness of the Village nor a charge against its general credit or taxing power. The Bonds, together with interest thereon, shall be payable only out of the Special Redemption Fund created and established pursuant to the 1967 Ordinance, as amended and supplemented by the Ordinance, and shall be a valid claim of any holder thereof only against said Special Redemption Fund and the revenues of the System pledged to such fund. Sufficient revenues have been heretofore pledged to said Special Redemption Fund, and shall be used for no other purpose than to pay the principal of, premium, if any, and interest on the 1967 Bonds, the Bonds and any Parity Bonds as the same becomes due. It is the express intent and determination of the Village Board that the amount of revenues to be set aside in the Special Redemption Fund (including the Reserve Account) shall be sufficient in any event to pay the principal of and interest on the 1967 Bonds, the Bonds and any Parity Bonds and to provide any amounts required to be paid into the Reserve Account to maintain the Reserve Requirement.

Section 7. Funds and Accounts. In accordance with the Act, for the purpose of the application and proper allocation of the revenues of the System, and to secure the payment of the principal of and interest on the 1967 Bonds, the Bonds and any Parity Bonds, certain funds of the System have been created and established pursuant to Section 3 of the 1967 Ordinance which shall be used solely for the purposes set forth in the 1967 Ordinance as amended by the Ordinance as follows:

The fourth paragraph of Section 3 of the 1967 Ordinance is hereby amended and supplemented to read as follows:

"85% of the income and revenues therefrom is necessary and shall be set aside in the fund known and designated as the "Sewage System Mortgage Revenue Bond and Interest Special Redemption Fund" (referred to herein as the "Special Redemption Fund") and applied to the payment of the principal of and interest on the 1967 Bonds, the Bonds and any Parity Bonds as the same becomes due (whether at

maturity or pursuant to mandatory redemption thereof)."

The sixth paragraph and the remainder of Section 3 of the 1967 Ordinance are hereby amended and supplemented to read as follows:

"It is the express intent and determination of the Village Board that the amount of said income and revenues to be set aside and paid into the Special Redemption Fund shall, in any event, be sufficient to pay the interest upon the 1967 Bonds, the Bonds and any Parity Bonds as the same accrues and the principal of said 1967 Bonds, the Bonds and any Parity Bonds as the same matures, notwithstanding the fixed proportion thereof temporarily allocated to such purposes in the manner above provided; and the Village shall, from year to year and out of the income and revenues received from the operation of the System, deposit at least sufficient funds in the Special Redemption Fund to pay promptly all principal and interest falling due on said 1967 Bonds, the Bonds and any Parity Bonds.

The total income and revenues so set aside for payment of the principal of and interest on the 1967 Bonds, the Bonds and any Parity Bonds shall, from month to month, as the same shall accrue and be received, be set apart and shall, on the last day of each month, be paid into the Special Redemption Fund. The amount so deposited each month shall be not less than one-twelfth (1/12) of the minimum amount so required to be deposited for each year ending November 1, such annual minimum amount (the Annual Debt Service Requirement) for the 1967 Bonds to be as set forth on Schedule I attached to the 1967 Ordinance and for the Bonds to be as set forth on Exhibit D attached to this Ordinance and the combined amounts are set forth on Exhibit E. Said Fund shall be kept apart from other moneys, and the same shall be used for no purpose other than the payment of the interest on and principal of said 1967 Bonds, the Bonds and any Parity Bonds promptly as the same becomes due and payable. All money in said Fund shall be deposited in a special account in the bank(s) at which the 1967 Bonds, the Bonds and any Parity Bonds are payable, and such monthly payments above described shall be made directly to such bank(s).

That portion of the Special Redemption Fund set aside for the payment of the principal of and interest on the 1967 Bonds, the Bonds and any Parity Bonds shall be used primarily to achieve proper

matching of revenues and debt service within each Bond Year. Amounts deposited in such fund will be depleted at least once a year except for a reasonable carryover amount which shall not exceed the greater of (a) one year's earnings on such fund, or (b) one-twelfth of the annual debt service of the 1967 Bonds, the Bonds and any Parity Bonds. Other than such fund, the Village has not created or established, and does not expect to create or establish, any other sinking or similar account which is reasonably expected to be used to pay debt service on the 1967 Bonds, the Bonds or any Parity Bonds or which is pledged as collateral for the 1967 Bonds, the Bonds or any Parity Bonds or to replace funds that will be used to pay debt service on the 1967 Bonds, the Bonds and any Parity Bonds. It is the intent of the Village that at all times such fund constitute a "bona fide debt service fund" as defined in the Regulations.

To additionally secure the payment of principal of and interest on the 1967 Bonds, the Bonds and any Parity Bonds herein authorized, there has been established a separate account in the Special Redemption Fund to be known as the "Reserve Account". The Village has heretofore deposited the sum of \$62,982 in the Reserve Account. When the Bonds herein authorized shall have been delivered under the provisions of the 1967 Ordinance, as amended and supplemented by this Ordinance, the additional sum of \$107,828 shall be deposited in the Reserve Account from Village funds. No Bond Proceeds will be deposited in the Reserve Account. The Village has hereby covenanted and agreed that there will be paid monthly into said Reserve Account, beginning as of November 1, 1969, not less than one-twelfth (1/12) of a sum equal to 12-1/2% of the maximum principal and interest requirements for any twelve months' period on the 1967 Bonds, the Bonds and any Parity Bonds, provided that no such payments need be made into the Reserve Account at such times as the funds in said account are equal to the maximum principal and interest requirements for any twelve months' period on the 1967 Bonds, the Bonds and any Parity Bonds, or the remaining principal and interest requirements on the 1967 Bonds, the Bonds and any Parity Bonds, then outstanding, whichever shall be the lesser.

If for any reason there shall be insufficient funds on hand in the Special Redemption Fund to meet principal or interest becoming due on the 1967 Bonds, the Bonds and any Parity Bonds, all sums then held in the Reserve Account shall be used to pay the

portion of interest on or principal of such 1967 Bonds, the Bonds and any Parity Bonds becoming due as to which there would otherwise be default; and thereupon, payments as required by the next preceding paragraph of this Section shall again be made into said Reserve Account until said Reserve Account equals the Reserve Requirement."

At no time shall the amounts in the Reserve Account exceed \$170,810 or such lesser amount which at no time exceeds the lesser of the maximum amount of principal and interest due on the outstanding 1967 Bonds, the Bonds and any Parity Bonds in any Bond Year or 125% of the Average Annual Debt Service on the outstanding 1967 Bonds, the Bonds and any Parity Bonds. Any amounts in the Reserve Account which could cause the amount therein to exceed the amount set forth above will be transferred annually to the interest and principal account of the Special Redemption Fund and expended within one year of receipt. It is the intent of the Village that at all times the Reserve Account constitutes a "reasonably required reserve fund" under the applicable Regulations and Section 148 of the Code.

Section 8. Application of Revenues. After the delivery of any of the 1967 Bonds, the entire gross earnings of the System have been and will continue to be deposited as collected in the Revenue Fund and shall be transferred monthly to the funds listed in the 1967 Ordinance, as amended and supplemented by the Ordinance in the proportion, the order of priority and in the manner set forth in the 1967 Ordinance, as amended and supplemented by the Ordinance.

Section 9. Service to the Village. As stated in the 1967 Ordinance, the reasonable cost and value of services rendered to the Village by the System by furnishing sewer facilities and services for public purposes, shall be charged against the Village and shall be paid by it in monthly installments as the service accrues, out of the current revenues of the Village collected during the process of collection, exclusive of revenues derived from the System, and out of the tax levy of the Village paid by it to raise money to meet its necessary current expenses. The 1967 Ordinance is hereby amended to provide that the reasonable cost and value of such service to the Village in any year shall be in an amount not to exceed \$222,053 or such amount as may be necessary in that year to pay the balance of an amount which, together with the other revenues of the System, will produce earnings equivalent to not less than 1.30 times annual principal and interest requirements on the 1967 Bonds, the Bonds and any Parity Bonds then outstanding after deduction of all operation and maintenance expenses of the System but before deduction of depreciation charges or local tax equivalents. Such compensation for such service shall be paid into the separate and