

RESOLUTION NO. 92-M-22

A RESOLUTION AUTHORIZING RECEIPT FROM THE OWNERS OF THE SOUTH GOLDENROD PINES SUBDIVISION OF IRREVOCABLE LETTERS OF CREDIT ON THE DAY OF ALLOCATION IN THE EASTERN WASTEWATER SERVICE AREA OF WASTEWATER TREATMENT CAPACITY IN LIEU OF IMMEDIATE PAYMENT AT THAT TIME FOR SUCH CAPACITY; DEFERRING SUCH PAYMENT UNTIL TIME OF BUILDING PERMIT APPROVAL; ESTABLISHING CERTAIN PROVISIONS, TERMS AND CONDITIONS ON SUCH DEFERRAL OF PAYMENT AND RECEIPT OF LETTERS OF CREDIT; PROVIDING AN ECONOMIC IMPACT DETERMINATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

PREMISES

1. South Goldenrod Pines is a proposed affordable housing project to consist of 36 single-family houses to be constructed by The Watson Group, Inc. (hereinafter "Developer") near Goldenrod Road on property more particularly described in Exhibit "A" attached hereto, in an area subject to the Eastern Wastewater Service Area Allocation Rules.

2. The Developer wishes to apply for sewer service capacity in the Eastern Wastewater Service Area System on the next designated allocation day and to defer payment of sewer capital charges by submission of letters of credit in lieu of immediate cash payment, as provided for in the Eastern Wastewater Service Area Allocation Rules, codified as Sections 37-401 through 37-408, Orange County Code.

3. The Board of County Commissioners (hereinafter "Board") desires to encourage the development of affordable

1 housing in Orange County, but also wishes to preserve the
2 fiscal integrity of its water and wastewater system, avoid
3 premature, unnecessary rate increases, and avoid unfair cross
4 subsidy of one group of rate payers by another.

5 4. The Board therefore wishes to allow such deferral
6 and receipt of letters of credit to encourage such
7 development, on the conditions that the development be for
8 affordable housing and that such deferral does not affect the
9 fiscal integrity of the wastewater system.

10 BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF
11 ORANGE COUNTY:

12 Section 1. Authorization for Receipt of Letters of
13 Credit. The Board hereby authorizes receipt from the
14 Developer of South Goldenrod Pines of irrevocable letters of
15 credit in substantially the form shown in the attached
16 Exhibit "B", in lieu of immediate payment for wastewater
17 connection fees on the applicable allocation day for the
18 Eastern Wastewater Service Area prior to the issuance of any
19 building permits. If Orange County does not receive payment
20 for the wastewater treatment capacity at the time indicated
21 in Section 2 below, the letters of credit shall be
22 collectable by Orange County in accordance with the terms
23 contained in Exhibit "B" and the affordable housing agreement
24 specified in Section 3 below.

25 Section 2. Deferral of Time for Payment of Charges. The
26 Board hereby defers until the time of building permit

1 approval for the structures built in South Goldenrod Pines
2 the payment of the wastewater connection fees applicable at
3 that point in time for those individual structures. Prior to
4 the actual grant of building permits for the structures in
5 South Goldenrod Pines, the applicable charge for the
6 wastewater connection fee required for the structure shall be
7 paid by the Developer.

8 Section 3. Conditions for Deferral of Payment and
9 Receipt of Letters of Credit. The specifics concerning
10 deferral of payment and receipt of letters of credit shall be
11 conditioned upon the provisions set forth in a developer's
12 affordable housing agreement between the County and the
13 developer/owners of South Goldenrod Pines. The developer's
14 affordable housing agreement shall require that the
15 wastewater connection fees be paid prior to issuance of
16 building permits and shall require that the revenue and
17 maintenance fees be paid in accordance with applicable Orange
18 County codes. The developer's affordable housing agreement
19 shall set forth, but not be limited to, provisions concerning
20 payment of fees, acceptance and number of letters of credit,
21 the amount for each one, exact time and place of delivery for
22 both payments and letters of credit, the purchase price of
23 the housing units, the requisite income level of purchasers,
24 and the number and size of the housing units.

25 Section 4. Economic Impact Determination. The Board
26 does hereby determine and find, pursuant to Section 30-2,

1 Orange County Code, that sufficient information has been
2 provided for the Board to assess the economic impact of this
3 resolution on the development of real property in Orange
4 County. The Board does hereby determine and find that no
5 further economic impact statement or economic impact
6 information is required in this matter.

7 Section 5. Severability of Provisions. If any provision
8 of this resolution or the application thereof to any person
9 or circumstance is held invalid, the invalidity shall not
10 affect other provisions or applications of this resolution
11 which can be given effect without the invalid provisions or
12 application, and to this end, the provisions of this
13 resolution are declared severable.

14 Section 6. Effective Date. This resolution shall take
15 effect upon adoption.

16
17 ADOPTED THIS 5th DAY OF May, 1992.

18
19 ORANGE COUNTY, FLORIDA

20 BY: Bill Diney
21 Linda W. Chapin
22 County Chairman

23 ATTEST: Martha O. Haynie, County Comptroller
24 As Clerk of the Board of County Commissioners

25 BY: Mary Jo Garrison
26 Deputy Clerk

27 LPC615 04/10/92

EXHIBIT "A"

LEGAL DESCRIPTION

The north 1/4 of Lots 1, 2, 3 and 4, Block 17, Los Terrands as recorded in Plat Book P, Page 87 of the Public Records of Orange County, Florida less road right-of-way.

Containing 4.51 acres, more or less.

EXHIBIT "B"

[BANK LETTERHEAD]

IRREVOCABLE LETTER OF CREDIT

_____, 19__

LETTER OF CREDIT NO: _____

EXPIRATION DATE: _____, 19__

Orange County, Florida
c/o its Board of County Commissioners
Attn: Michael Chandler
201 S. Rosalind Avenue
Orlando, Florida 32801

Commissioners:

At the request and for the account of our customer, _____ (the customer), we hereby establish this irrevocable letter of credit in your favor.

We hereby irrevocably authorize you to draw on us in accordance with the terms and conditions hereinafter set forth, by a single draft in the form of Exhibit 1 attached hereto, in an amount not exceeding \$_____ for payment of the _____ due and owing to you pursuant to that certain _____ Agreement (the "Agreement") between you and _____ (the customer) dated _____, 19__.

The draft drawn under this Letter of Credit must state on its face "Drawn under _____ Bank Irrevocable Letter of Credit No. _____ issued _____, 19__" and shall be accompanied by this Letter of Credit and a written and completed certificate signed by the County Chairman or her authorized designee of the Board of County Commissioners (the "Board") and attested by the Orange County Comptroller, which certificate shall be in the form of Exhibit 2 attached hereto (the "Certificate"). Presentation of such draft, this Letter of Credit and the Certificate shall be made at our offices located at _____ in _____, Florida.

Demand for payment may be made by you under this Letter of Credit prior to the expiration hereof at any time during the business hours of _____ Bank at such Bank's address set forth above on a Business Day (as hereinafter

defined). If demand for payment is made by you hereunder on a Business Day, and provided that such demand for payment and the documents presented in connection therewith conform to the terms and conditions hereof, payment shall be made to you of the amount demanded in immediately available funds not later than _____ Bank's close of business on the next succeeding Business Day. As used herein "Business Day" shall mean any day other than a Saturday, Sunday, or a day on which banking institutions in the State of Florida are authorized or required by law to be closed.

If the demand for payment made by you hereunder does not conform to the terms and conditions of this Letter of Credit, _____ Bank will give you prompt notice that the purported negotiation was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor, and that _____ Bank is holding any documents at your disposal or is returning the same to you, as it may elect. Upon being notified that the purported negotiation was not effected in accordance with this Letter of Credit, you may attempt to correct such non-conforming drawing prior to the expiration date hereof if, and to the extent that, you are entitled (without regard to the provisions of this sentence) and able to do so.

This Letter of Credit shall expire at the close of business at _____ Bank's aforesaid address on the earlier to occur of the following dates: (i) the date on which the _____ have been paid in full or (ii) the date on which the drawing hereunder has been made, but in no event shall this Letter of Credit expire on a date beyond _____, 19___. This Letter of Credit shall be promptly surrendered to _____ Bank by you upon such expiration.

This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified, or limited by reference to any document, instrument, or agreement referred to herein (except the Uniform Customs hereinafter referenced) or in which this Letter of Credit is referred to or to which this Letter of Credit relates herein by reference any document, instrument, or agreement.

This Letter of Credit is transferable in its entirety (but not in part) to any transferee who has succeeded you as owner or operator of the Orange County Water and Wastewater System (as defined in the Agreement) without necessity on your part of notifying us. However, presentation of the draft for drawing on this Letter by a transferee shall be accompanied by

certificate of the Orange County Chairman stating the effective date of the transfer and the transferee's name and address.

Only you (or a transferee as permitted by the terms of this Letter of Credit) may make a drawing under this Letter of Credit. Upon the payment to you or your account of the amount specified in the demand for payment hereunder, we shall be fully discharged on our obligation under this Letter of Credit, and we shall not thereafter be obligated to make any further payments under this Letter of Credit to you.

We hereby agree with you that the draft and certificate presented in compliance with the terms of this Letter of Credit will be duly honored upon presentation to _____ Bank.

This Letter of Credit shall be governed by the law in effect in the State of Florida and by the provisions of the Uniform Customs and Practice for Documentary Credits (1983 Revision), International Chamber of Commerce Publication No. 400 (the "Uniform Customers").

Communications and notices with respect to this Letter of Credit shall be in writing and shall be addressed to _____ Bank at its office specified above.

Very truly yours,

_____ Bank

By: _____
Vice President

EXHIBIT 1
SIGHT DRAFT

_____, Florida

Date

For Value Received

Pay to Orange County, Florida

U.S. _____ Dollars (U.S. \$ _____).

Drawn under _____ Bank Irrevocable Letter
of Credit No. _____ issued _____, 19__.

To: [Insert name and address

of the bank]

ORANGE COUNTY, FLORIDA

By: _____
Orange County Chairman

Attest:

Orange County Comptroller

[County Seal]

EXHIBIT 2

[Insert name and address
of the bank]

_____ Date

Re: _____ Bank Irrevocable Letter of Credit
No. _____, issued _____, 19__

Gentlemen:

Pursuant to the Letter of Credit identified above (which defines the terms used herein), Orange County, Florida, hereby certifies to you that:

1. A draft in the amount of \$_____ is being presented to you herewith pursuant to the Letter of Credit.
2. The _____ as defined by and payable by the customer pursuant to the Agreement remain unpaid by the customer and are currently due and owing to Orange County.
3. [Orange County has received application from _____ for a building permit for a dwelling unit the capacity for which no final payment has been made. Orange County has obtained necessary federal and state construction permits and approvals and has sent written notice to the Developer of the County's readiness to provide permanent Treatment and Effluent Disposal Capacity via the _____ Plant, all as contemplated under Subsection _____ of the Agreement.]

OR

[The Letter of Credit expires within 15 days of this date.]

[NOTE: The certificate may have one or both of the above assertions in paragraph no. 3.]

EXHIBIT 2
(Continued)

IN WITNESS WHEREOF, the undersigned have executed and delivered this Certificate as of the ___ day of _____, 19__.

ORANGE COUNTY, FLORIDA

By: _____
Orange County Chairman

Attest:

Orange County Comptroller

[County Seal]