

RESOLUTION NO 96-M-55

A RESOLUTION AUTHORIZING RECEIPT FROM THE OWNERS OF SILVER PINES PHASE II SUBDIVISION OF IRREVOCABLE LETTERS OF CREDIT ON THE DAY OF ALLOCATION IN THE NORTHWEST WASTEWATER SERVICE AREA OF SEWER SERVICE 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. Silver Pines Phase II (hereinafter sometimes the "Project") is a proposed affordable housing development to consist of approximately 92 single-family housing units to be constructed by Housing and Neighborhood Development Services, Inc., a Florida corporation (hereinafter "Developer") on property more particularly described in Exhibit "A" attached hereto, in an area subject to the Northwest Wastewater Service Area Allocation Rules.

2. The proposed project is located in Orange County with Sewer Service Capacity provided by Orange County. Said Developer has met the affordability guidelines established in Administrative Regulation 11.02.06 and is desirous of utilizing a letter of credit to defer payment of sewer capital charges.

3. The Developer wishes to apply for sewer service capacity for the Project in the Northwest Wastewater Service Area 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 Northwest Wastewater Service Area Allocation Rules, codified as Sections 37-401 through 37-408, Orange County Code.

4. The Board of County Commissioners (hereinafter "Board") desires to encourage the development of affordable housing, but also wishes to preserve the fiscal integrity of its water and wastewater system, avoid premature, unnecessary rate increases, and avoid unfair cross subsidy of one group of rate payers by another.

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

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

Section 1. Authorization for Receipt of Letters of Credit. The Board hereby authorizes receipt from the Developer of Silver Pines Phase II of irrevocable Letters of Credit in substantially the form shown in the attached Exhibit "B", in lieu of immediate payment for sewer capital charges for the project on the applicable allocation day for the Northwest Wastewater Service Area prior to the issuance of any building permits. If Orange County does not receive payment for the sewer service capacity at the time indicated in Section 2 below, the Letters of Credit shall be collectable by Orange County in accordance with the terms contained in Exhibit "B".

Section 2. Deferral of Time for Payment of Charges. The Board hereby defers until the time of building permit approval for the structures built in Silver Pines Phase II the payment of the sewer capital charges applicable at that point in time for those individual structures. Prior to the actual grant of building permits for the structures in Silver Pines Phase II the applicable sewer capital

charge required for the structure shall be paid by the Developer.

Section 3. Conditions for Deferral of Payment and Receipt of Letters of Credit.

A. Application and Payment. The developer shall apply for sewer capacity in accordance with applicable allocation rules. Developer shall pay all sewer capital charges for the project in full prior to issuance of the sewer permit unless deferred in accordance with the applicable Wastewater Service Area Allocation Rules and the provision contained herein.

B. Deferral. Developer shall provide the County with an irrevocable letter of credit acceptable to the County in its sole discretion issued by a financial institution having an office in Orange County which guarantees the Developer's payment in full of the sewer capital charges for the project. If at the time of purchase and/or deferral of sewer capacity, a different sewer capital charge is calculated, then the sewer capital charge and/or letter of credit shall be in the amount of the applicable fees per ERU of sewer capacity purchased by Developer pursuant to Orange County rate ordinances and resolutions. The letter of credit shall be duly executed by the Developer and accepted by the County at or before the capacity allocation sale issuance of any sewer permits for the Project.

C. Conditions of Allocation. Orange County will allocate wastewater service capacity to the Developer pursuant to Chapter 37, Orange County Code, accept a letter of credit in lieu of payment at time of allocation and defer such payment until building permit issuance subject to the following conditions:

1. Payment of Applicable Wastewater Fees. All wastewater

fees and charges, including but not limited to revenue and maintenance fees as defined in the applicable Orange County ordinances, shall be paid by Developer in accordance with applicable County regulations and ordinances as expressly provided in this Agreement.

2. Replacement of Letter of Credit. The Developer agrees to replace the letter of credit delivered pursuant to this section and to replace any successor letters of credit thereto with a new letter of credit in the same form as the first, not later than fifteen (15) days prior to its expiration date. Developer's failure to do so shall entitle the County to immediately draw on the expiring letter of credit. Likewise, if the sewer capital charges applicable to a particular housing unit are not paid prior to issuance of a building permit for that housing unit, The County shall be entitled to immediately draw on the existing letter of credit. Any replacement letter of credit delivered to the County by the Developer shall be in the amount previously set forth in this section plus (or minus) the difference between the aggregate of the then applicable unpaid sewer capacity charges, if any, per ERU of wastewater service capacity purchased hereunder and the aggregate of such unpaid charges and fees covered by the previously delivered letter of credit, but reduced by the aggregate of such fees and charges previously paid by the Developer.

3. Connection to Facilities. The Developer shall connect the project to the County's sewer facilities in accordance with all applicable federal, state and local laws, rules, regulations, resolutions, ordinances, permits, approvals and requirements, including but not limited to, the Orange County wastewater System

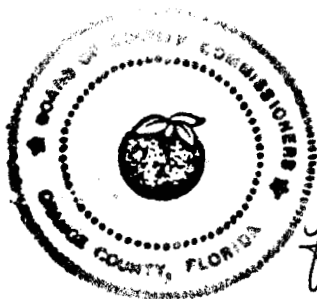
User Rules, County rate resolutions and ordinances as amended from time to time.

Section 4. Economic Impact Determination. The Board does hereby determine and find, pursuant to Section 30-2, Orange County Code, that sufficient information has been provided for the Board to assess the economic impact of this resolution on the development of real property in Orange County. The Board does hereby determine and find that no further economic impact statement or economic impact information is required in this matter.

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

Section 6. Effective Date. This resolution shall take effect upon the date of its adoption.

ADOPTED THIS 8th DAY OF October, 1996



ORANGE COUNTY, FLORIDA

BY: Linda W. Chapin

Linda W. Chapin
County Chairman

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

BY: Deputy Clerk

Deputy Clerk

EXHIBIT "A"

Legal Description Silver Pines Phase II

That portion of the Southwest 1/4 of Section 18. Township 22 South, Range 29 East, Orange County, Florida, described as follows:

Commence at the West 1/4 of said Section 18; thence South 00°33'03" West along the West line of aforementioned Southwest 1/4 of Section 18 for 341.45 feet to the southerly right-of-way line of Huggins Street for a POINT OF BEGINNING; thence continue South 00°33'03" West along aforesaid West line for 1210.69 feet; thence South 89°26'57" East for 160.00 feet; thence North 00°33'03" East for 7.31 feet; thence South 89°26'57" East for 95 feet; thence South 00°33'03" West for 43.00 feet; thence South 89°26'57" East for 168.00 feet; thence North 00°33'03" East for 95.00 feet; thence South 89°26'57" East for 132.41 feet to a point of curvature with a circular curve concave southerly; thence easterly along the arc of said curve having a radius of 275.00 feet and a central angle of 25°29'31" for 122.35 feet to a point of reverse curvature with a circular curve concave northeasterly, thence southeasterly along the arc at said curve having a radius of 275.00 feet and a central angle of 05°36'46" for 26.94 feet; thence South 20°48'15" West for 95.00 feet; thence South 73°24'23" East for 47.94 feet; thence South 80°58'29" East for 52.65 feet; thence South 86°48'38" East for 52.38 feet; thence North 80°32'01" East for 38.46 feet; thence South 32°20'54" East 118.91 feet; thence South 63°06'10" East for 95.00 feet; thence North 26°53'50" East for 56.80 feet; thence South 63°06'10" East for 160.00 feet; thence South 26°53'50" West for 84.27 feet to the Northwest corner of Lot 1, Block "A", ROBINSWOOD HILLS, as recorded in Plat Book W at Page 8 of the Public Records of Orange County, Florida; thence South 62°52'44" East along the northerly boundary of said Lot 1 and the northerly boundary of Lot 2, Block "A" of said ROBINSWOOD HILLS for 196.19 feet to the westerly Right-of-Way line of Sarazen Drive; thence North 19°41'14" East along said westerly right-of-Way line for 168.43 feet to the southerly Right-of-Way line of GOLF CLUB PARKWAY; thence along said southerly Right-of-Way line and the westerly Right-of-Way line of Golf Club Parkway the following courses: run North 70°17'01" West for 286.95 feet to a point of curvature concave northeasterly; thence northwesterly along the arc of said curve having a radius of 356.36 feet, a central angle of 63°00'04" for 391.85 feet to the point of tangency; thence North 07°16'57" West for 247.83 feet to a point of curvature with a circular curve concave westerly; thence northerly along the arc of said curve having a radius of 295.00 feet and a central angle of 20°47'57" for 107.09 feet to a point of tangency; thence North 28°04'54" West for 179.04 feet to a point of curvature with a circular curve concave northeasterly; thence northwesterly along the arc of said curve having a radius of 2413.18 feet and a central angel of 01°59'39" for 83.99 feet to the point of tangency; thence North 26°05'15" West for 100.00 feet to a point of curvature with a circular curvature concave southwesterly; thence northwesterly along the arc of said curve having a radius of 673.48 feet and a central angle of 12°22'04" for 145.38 feet to the point of tangency; thence North 38°27'19" West for 57.28 feet to a point of curvature with a circular curve concave northeasterly; thence northwesterly along the arc of said curve having a radius of 317.51 feet and a central angle of 47°03'58" for 260.82 feet; thence departing aforesaid westerly Right-of-Way line of Golf Club Parkway run North 89°26'57" West for 439.54 feet to the Point of Beginning.

Containing 20.72 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]