

MAR 12 1991 *JCC*

RESOLUTION NO. 91-SW-06

A RESOLUTION AUTHORIZING RECEIPT FROM THE OWNERS OF THE AZALEA COVE 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. The Azalea Cove Subdivision is a proposed subdivision intended by its developer as an affordable housing project to be located on property more particularly described in Exhibit "A" attached hereto, consisting of 33 duplex lots with 66 dwelling units in an area subject to the Eastern Wastewater Service Area Allocation Rules.

2. The Owners of the Azalea Cove Subdivision property wish to apply for sewer service capacity in the Eastern Wastewater Service Area System on the next designated allocation day and submit letters of credit in lieu of immediate payment, deferring that payment as provided for in the above Rules, (See Section 4, Orange County Ordinance No. 84-17 as codified in Orange County Code, Section 28-153 and 28-154).

4. The Board desires to encourage the development of affordable Housing in Orange County, 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 of County Commissioners therefore wishes to allow such deferral and receipt of letter of credit to encourage such development, on the condition that the development is for affordable housing and that it does not affect the fiscal integrity of the wastewater system.

1 BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF
2 ORANGE COUNTY, FLORIDA:

3 Section 1. Authorization for Receipt of Letters of
4 Credit. The Board of County Commissioners hereby authorizes
5 receipt from the developer of the Azalea Cove Subdivision,
6 for wastewater connection fees, of irrevocable letters of
7 credit in lieu of immediate payment, substantially in the
8 form shown in the attached Exhibit "A", on the applicable
9 allocation day for the Eastern Wastewater Service Area prior
10 to the issuance of any building permits. The letters of
11 credit shall be collectable by Orange County according to the
12 terms shown in the Exhibit "A" and in accordance with the
13 agreement specified in Section 3 below, if Orange County does
14 not receive payment for the wastewater treatment capacity at
15 the time indicated in Section 2 below.

16 Section 2. Deferral of Time for Payment of Charges. The
17 Board hereby defers until the time of building permit
18 approval for the structures built in the Azalea Cove
19 Subdivision the payment of the wastewater connection fees
20 applicable at that point in time for those individual
21 structures. Prior to the actual grant of building permits
22 for the structures in that subdivision, the applicable charge
23 for the wastewater connection fee required for the Structure
24 shall be paid.

25 Section 3. Conditions for Deferral of Payment and
26 Receipt of Letters of Credit. The specifics concerning
27 deferral of payment and receipt of letters of credit shall be
28 conditioned upon the provisions set forth in a developer's
29 affordable housing agreement between the County and the
30 developer/owners of the proposed Azalea Cove Subdivision.
31 That developers agreement shall require that the wastewater
32 connection fees be paid prior to final issuance of building
33 permits and shall require that the revenue and maintenance
34 fees be paid in accordance with the applicable Orange County
35 codes. The developer's agreement shall set forth, but not be
36

1 limited to, the specifics about payment of fees, acceptance
2 and number of letters of credit, the amount for each one,
3 exact time and place of delivery for both payments and
4 letters of credit, the purchase price of the homes, the
5 purchaser's income, and the size of the homes.

6 Section 4. Economic Impact Determination. The Board
7 does hereby determine and find, pursuant to Section
8 1-27(2)(b), Orange County Code, that sufficient information
9 has been provided for the Board to assess the economic impact
10 of this resolution on the development of real property in
11 Orange County. The Board does hereby determine and find that
12 no further economic impact statement or economic impact
13 information is required in this matter.

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

21 Section 6. Effective Date. This Resolution shall take
22 effect upon adoption.

23 ADOPTED THIS 12th DAY OF March, 1991.

24
25 ORANGE COUNTY, FLORIDA

26 BY: Vera M. Carter
27 County Chairman

28 DATE: 3/12/91

29 ATTEST: Martha O. Haynie, Comptroller
30 as Clerk to the Board
31 of County Commissioners

32 BY: Maury J. Garrison
33 Deputy Clerk

EXHIBIT "A"

[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 purported signed by the County Chairman 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 _____, 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 Customs").

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: _____
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]

EXHIBIT "A"

LEGAL DESCRIPTION

Commencing at the SW corner of Lot 5 Block "A" of Azalea Park Section 29 as recorded in Plat Book X, Page 3, Public Records of Orange County, Florida. Run S89°32'10"E along the south line of said Azalea Park Section 29, a distance of 29.10 feet to the NW corner of the NE 1/4 of the NW 1/4 of Section 2, Township 23 S, Range 30 E, for a point of beginning; thence continue S89°32'10"E along said south line and along the north line of said NE 1/4 of the NW 1/4, a distance of 673.07 feet, thence departing said north line, run S 10°08'24" E a distance of 122.08 feet; thence N 89°32'10" W a distance of 130 feet to a point on a curve concave northwesterly, having a central angle of 19°16'16" and a radius of 75 feet; thence from a tangent bearing of S 28°16'55" W run southwesterly along the arc of said curve, a distance of 25.23 feet; thence departing said curve, run S 00°21'13" W, a distance of 349.95 feet; thence N 89°11'06" E, a distance of 6.73 feet; thence S 60° 21'39" E, a distance of 74.16 feet; thence N 82°56'25" E, a distance of 77.18 feet; thence S 16° 39'14" E, a distance of 53.54 feet; thence S 03°04'25" E, a distance of 40.45 feet; thence S 03°19'50" W, a distance of 39.93 feet; thence S 19°42'33" W, a distance of 100.87 feet; thence S 10°08'05" E, a distance of 45.85 feet; thence N 89°32'10" W, a distance of 475 feet; thence N 62°52'22" W, a distance of 239.56 feet to a point on the west line of said NE 1/4 of the NW 1/4; then N 00°21'13" E, a distance of 680 feet to the point of beginning. Containing 118 acres, more or less.