

AUG 01 1995

JYW/VLD

RESOLUTION NO 95-S-04

A RESOLUTION AUTHORIZING RECEIPT FROM THE OWNERS OF THE PERCIVAL POINT SUBDIVISION OF IRREVOCABLE LETTERS OF CREDIT ON THE DAY OF ALLOCATION IN THE EASTERN 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. Percival Point is a proposed affordable housing project to consist of approximately eight (8) single-family housing units to be constructed by Palmer Homes, Inc., a Florida Corporation (hereinafter "Developer"). Developer has proposed this development near Lake Pickett 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 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 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.

4. 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 Percival Point of irrevocable letters of credit in substantially the form shown in the attached Exhibit "B", in lieu of immediate payment for sewer capital charges on the applicable allocation day for the Eastern 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" and the affordable housing developer's agreement specified in Section 3 below.

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 Percival Point 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 Percival Point, 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. The specifics concerning deferral of payment and receipt of letters of credit shall be conditioned upon the provisions set forth in an affordable housing developer's agreement between the County and the developer/owners of Percival Point. The affordable housing developer's agreement shall require that the sewer capital charges be paid prior to issuance of building permits and shall require that the revenue and maintenance fees be paid in accordance with applicable Orange County codes. The affordable housing developer's agreement shall set forth, but not be limited to, provisions concerning payment of fees, acceptance and number of letters of credit, the amount for each one, exact time and place of delivery for both payments and letters of credit, the purchase price of the housing units, the requisite income level of purchasers, and the number and size of the housing units.

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 1<sup>st</sup> DAY OF August, 1995

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: Martha O. Haynie  
Deputy Clerk

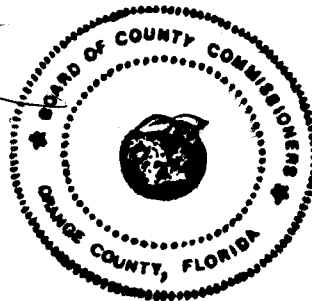


EXHIBIT "A"

LEGAL DESCRIPTION

TRACT B OF COLLEGE HEIGHTS PHASE III, ACCORDING TO THE PLAT THEREOF  
AS RECORDED IN PLAT BOOK 17, PAGE 56, OF THE PUBLIC RECORDS OF ORANGE  
COUNTY, FLORIDA.

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, FL 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 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: [Inset 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.]

EXHIBIT 2  
(Continued)

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

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]