



## Interoffice Memorandum

July 12, 2021

**TO:** Mayor Jerry L. Demings  
-AND-  
County Commissioners

**FROM:** Ed Torres, M.S., P.E., LEED AP, Director  
Utilities Department

A handwritten signature in black ink, appearing to read "Ed Torres", written over the "FROM:" line.

**SUBJECT:** **BCC Agenda Item – Consent Agenda**  
**July 27, 2021 BCC Meeting**  
**Release of Irrevocable Standby Letter of Credit No. 8880006**  
**from One Florida Bank on behalf of Withers, LLC in favor of Orange County**  
**for the Utility Line Construction Reimbursement Agreement for Village I**  
**Phase 3 and the First Amendment to Utility Line Construction**  
**Reimbursement Agreement for Village I Phase 3**  
**Contact Person: Lindy A. Wolfe, P.E., LEED AP, Manager**  
**Utilities Engineering Division**  
**407-254-9918**

Irrevocable Standby Letter of Credit (LOC) No. 8880006, issued by One Florida Bank on behalf of Withers, LLC in favor of Orange County in the amount of \$584,540 and approved by the Board on December 1, 2020 (the "Original Letter of Credit") was to serve as the required security to guarantee compliance with the terms of the Utility Line Construction Reimbursement Agreement for Village I Phase 3 and the First Amendment to Utility Line Construction Reimbursement Agreement for Village I Phase 3 (collectively, the "Reimbursement Agreement").

Withers, LLC conveyed a portion of the Property (as defined in the Reimbursement Agreement) to DRP FL 5, LLC by Special Warranty Deed recorded at Document #20210069448 on February 4, 2021, in the Official Records of Orange County, Florida (the "Deed"). Pursuant to that certain Development Agreement and Grant of Easements recorded at Document #20210069450 on February 4, 2021, in the Official Records of Orange County, Florida (the "Development Agreement"), Withers, LLC concurrently assigned, on a non-exclusive basis, its rights and obligations under the Reimbursement Agreement to DRP FL 5, LLC and required DRP FL 5, LLC to replace the Original Letter of Credit. DRP FL 5, LLC subsequently assigned, on a non-exclusive basis, the obligation to replace the Original Letter of Credit to Toll Bros., Inc. pursuant to that certain Assignment and Assumption between DRP FL 5, LLC and Toll Bros., Inc., dated April 20, 2021 (the "Assignment").

Toll Bros., Inc. provided a new Letter of Credit to Orange County in the amount of \$584,540 (the "Replacement Letter of Credit") to replace the Original Letter of Credit as the required security to guarantee compliance with the terms of the Reimbursement Agreement, which Replacement Letter of Credit was approved by the Board on June 8, 2021. The Utilities Department is now requesting authorization for the Utilities Director or Deputy Director to release the Original Letter of Credit to the issuing institution.

**Action Requested:** **Authorization for the Utilities Director or Deputy Director to release Irrevocable Standby Letter of Credit No. 8880006 from One Florida Bank on behalf of Withers, LLC in favor of Orange County in the amount of \$584,540.**

**District 1.**



**IRREVOCABLE STANDBY LETTER OF CREDIT NO. 8880006**

DATE: NOVEMBER 17, 2020

BENEFICIARY:

ORANGE COUNTY, FLORIDA  
C/O ORANGE COUNTY UTILITIES  
9150 CURRY FORD ROAD  
ORLANDO, FL 32825  
ATTN: ASSISTANT MANAGER,  
CUSTOMER SERVICE DIVISION

APPLICANT: WITHERS, LLC

5956 SHERRY LANE  
SUITE 1000  
DALLAS, TEXAS 75225  
ATTN: DANIEL TRAYLOR, MGR

PROJECT NAME: VILLAGE I PHASE 3

AMOUNT: \$584,540.00 (FIVE HUNDRED EIGHTY-FOUR THOUSAND FIVE HUNDRED FORTY AND 00/100 U.S. DOLLARS)

DATE OF EXPIRY: DECEMBER 1, 2021

AT THE REQUEST AND FOR THE ACCOUNT OF APPLICANT, WE, ONE FLORIDA BANK ("ISSUER"), HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. 8880006, IN FAVOR OF ORANGE COUNTY, A CHARTER COUNTY AND POLITICAL SUBDIVISION OF THE STATE OF FLORIDA ("BENEFICIARY"), AND AUTHORIZE YOU TO DRAW ON ISSUER, IN THE MAXIMUM AGGREGATE AMOUNT OF \$584,540.00 (FIVE HUNDRED EIGHTY-FOUR THOUSAND FIVE HUNDRED FORTY AND 00/100 U.S. DOLLARS) IN UNITED STATES FUNDS, WHICH IS PAYABLE AT SIGHT AGAINST PRESENTATION OF YOUR DEMAND, WHEN ACCOMPANIED BY THIS LETTER OF CREDIT AND ANY OF THE FOLLOWING DOCUMENTS:

1. A STATEMENT SIGNED BY THE ORANGE COUNTY MAYOR OR AUTHORIZED REPRESENTATIVE READING AS FOLLOWS: "THE PERFORMANCE OF APPLICANT'S OBLIGATION HAS NOT BEEN COMPLETED YET AND THE LETTER OF CREDIT WILL EXPIRE WITHIN 45 DAYS FROM THE DATE OF DRAWING WITHOUT BEING EXTENDED OR REPLACED TO THE COUNTY'S SATISFACTION;" OR
2. A STATEMENT SIGNED BY THE ORANGE COUNTY MAYOR OR AUTHORIZED REPRESENTATIVE READING AS FOLLOWS: "ISSUER HAS LOST ITS DESIGNATION AS A 'QUALIFIED PUBLIC DEPOSITORY' PURSUANT TO FLORIDA STATUTES, CHAPTER 280, AND AN ACCEPTABLE REPLACEMENT LETTER OF CREDIT HAS NOT BEEN RECEIVED BY THE COUNTY FOLLOWING NOTICE TO APPLICANT;" OR

3. A STATEMENT SIGNED BY THE ORANGE COUNTY MAYOR OR AUTHORIZED REPRESENTATIVE READING AS FOLLOWS: "THE DRAWING IS DUE TO APPLICANT'S FAILURE TO COMPLY WITH THE TERMS OF THE "UTILITY LINE CONSTRUCTION REIMBURSEMENT AGREEMENT FOR VILLAGE I PHASE 3" AND THE "FIRST AMENDMENT TO UTILITY LINE CONSTRUCTION REIMBURSEMENT AGREEMENT FOR VILLAGE I PHASE 3" APPROVED BY THE ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS ON DECEMBER 18, 2018 AND DECEMBER 1, 2020, RESPECTIVELY. THE LETTER WILL STATE THE SUM DUE UNDER THE TERMS OF THE AGREEMENT.

A SUM NOT TO EXCEED \$584,540.00 (FIVE HUNDRED EIGHTY-FOUR THOUSAND FIVE HUNDRED FORTY AND 00/100 U.S. DOLLARS) SHALL BE AVAILABLE FOR PARTIAL OR FULL DRAW BY PRESENTATION OF YOUR DEMAND AT SIGHT IF ACCOMPANIED BY A WRITTEN STATEMENT AS DESCRIBED IN THE PRECEDING PARAGRAPHS.

THIS LETTER OF CREDIT SHALL BE IN FULL FORCE AND EFFECT UNTIL DECEMBER 1, 2021, AND WILL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ONE NINETY (90) DAY PERIOD UNLESS WE PROVIDE THE BENEFICIARY WITH WRITTEN NOTICE OF OUR INTENT TO TERMINATE THE CREDIT HEREIN EXTENDED, WHICH NOTICE MUST BE PROVIDED AT LEAST THIRTY (30) DAYS PRIOR TO THE EXPIRATION DATE OF THE ORIGINAL TERM HEREOF OR ANY EXTENDED TERM.

DRAWS MUST BE PRESENTED NO LATER THAN DECEMBER 1, 2021, OR ANY EXTENDED EXPIRATION DATE AND MUST BEAR THE CLAUSE: "DRAWN UNDER LETTER OF CREDIT NO. 8880006 OF ISSUER, DATED NOVEMBER 17, 2020."

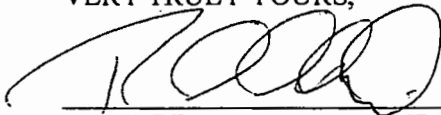
PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED; PROVIDED, HOWEVER, THAT ANY PAYMENT MADE UNDER THIS LETTER OF CREDIT SHALL REDUCE THE AMOUNT AVAILABLE UNDER IT.

WE, ISSUER, HEREBY AGREE THAT ALL DRAWS PRESENTED UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT SHALL BE DULY HONORED UPON PRESENTATION TO ISSUER AT 33 W. PINELOCH AVENUE, SUITE A, ORLANDO, FLORIDA 32806.

THIS LETTER OF CREDIT WILL BE CONSIDERED AS CANCELLED UPON RECEIPT BY US OF THE ORIGINAL LETTER OF CREDIT OR UPON ANY PRESENT OR FUTURE EXPIRY DATE HEREUNDER, WHICHEVER SHALL OCCUR FIRST.

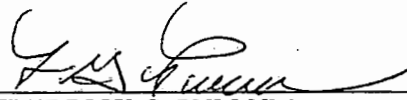
THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998 (ISP98) (INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590) AND TO THE PROVISIONS OF FLORIDA LAW. IF A CONFLICT BETWEEN THE ISP98 AND FLORIDA LAW SHOULD ARISE, FLORIDA LAW SHALL PREVAIL. IF A CONFLICT BETWEEN FLORIDA LAW AND THE LAW OF ANY OTHER STATE OR COUNTRY SHALL ARISE, FLORIDA LAW SHALL PREVAIL.

VERY TRULY YOURS,



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RICHARD A. ANDERSON, JR.  
EXECUTIVE VICE-PRESIDENT  
ONE FLORIDA BANK



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FREDRICK G. PULLUM  
PRESIDENT  
ONE FLORIDA BANK

**ASSIGNMENT AND ASSUMPTION**  
(Letter of Credit Obligations)

THIS ASSIGNMENT AND ASSUMPTION (this "Assignment") made and entered into as of the ~~20<sup>th</sup>~~ day of April, 2021, by and between **DRP FL 5, LLC**, a Delaware limited liability company (the "Assignor"), and **TOLL BROS., INC.**, a Pennsylvania corporation ("Assignee").

**WITNESSETH:**

WHEREAS, pursuant to that certain Special Warranty Deed (Withers South) (the "Deed") executed by Withers, LLC, a Delaware limited liability company ("Withers"), as grantor, in favor of Assignor, as grantee, recorded in Document #20210069448 of the Public Records of Orange County, Florida, Assignor is the current owner of a portion of the Withers Property (as defined in the Oversizing Agreement (defined below)) (the "Property"); and

WHEREAS, pursuant to Section 14.a.ii of that certain Development Agreement and Grant of Easements (Autumn – Withers South) recorded (concurrently with the Deed) at Document #20210069450 of the Public Records of Orange County, Florida (the "Development Agreement"), Assignor is the assignee, on a non-exclusive basis with Withers, of the rights and obligations of the Developer under that certain Utility Line Construction Reimbursement Agreement for Village I Phase 3 recorded at Document #20190054071 in the Public Records of Orange County, Florida, as amended from time-to-time (collectively, the "Oversizing Agreement"); and

WHEREAS, Section 14.a.ii.7 of the Development Agreement requires that Assignor replace the letter of credit in the amount of \$584,540.00 (as more particularly described in the Oversizing Agreement, the "Letter of Credit") originally posted by Withers in favor of Orange County, Florida (the "County") under the Oversizing Agreement; and

WHEREAS, Assignor is serving as a land banker of the Property for Toll Southeast LP Company, Inc., a Delaware corporation ("Toll SE"); and

WHEREAS, Assignee is an affiliate of Toll SE, and Assignee also is the contractor obligated to develop and plat the Property into finished lots for Assignor; and

WHEREAS, Assignee, as such contractor, is the appropriate party to replace the Letter of Credit with the County; and

WHEREAS, Assignor desires to non-exclusively assign to Assignee the obligations and responsibilities under the Oversizing Agreement and Development Agreement regarding the Letter of Credit, and Assignee desires to assume the obligations and responsibilities of Assignor under the Oversizing Agreement and the Development Agreement regarding the Letter of Credit, expressly including, but not limited to, the obligation to replace and thereafter maintain the Letter of Credit with the County in accordance with the Oversizing Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, the sum of Ten Dollars (\$10.00) in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follow:

1. Recitals; Defined Terms. The foregoing recitals are true and correct and are incorporated herein by reference. Unless otherwise expressly set forth herein, any defined terms used in this Assignment shall have the same meanings assigned within the Oversizing Agreement.

2. Assignment and Assumption. Assignor does hereby non-exclusively assign to Assignee the Assignor's obligations and responsibilities under the Oversizing Agreement and Development Agreement regarding the Letter of Credit. Assignee does hereby accept such assignment by Assignor and does hereby agree to be bound by the terms and conditions of the Oversizing Agreement and Development Agreement regarding the Letter of Credit, expressly including, but not limited to, the obligation to replace and thereafter maintain the Letter of Credit with the County in accordance with the Oversizing Agreement. As a non-exclusive assignment, this Assignment does not release the Developer under the Oversizing Agreement from any obligations or responsibilities of the Developer under the Oversizing Agreement.

3. County as Third Party Beneficiary. The County is an intended third party beneficiary of this Assignment. The County may draw upon the Letter of Credit in accordance with the Oversizing Agreement.

4. Successors and Assigns. The terms, covenants, conditions and warranties contained herein and the powers granted hereby shall inure to the benefit of, and shall bind, all parties hereto and their respective successors and assigns.

5. Authority. The person executing this Assignment on behalf of each party represents and warrants to the other party that he/she has full power and authority to fully bind such party to this Assignment without the joinder or consent of any other party.

6. Construction. Whenever used herein and the context requires it, the singular number shall include the plural, the plural the singular, and any gender shall include all genders. In the event an ambiguity or question of intent or interpretation arises, this Assignment shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Assignment.

7. Captions and Headings. The captions and headings in this Assignment are for reference only and shall not be deemed to define or limit the scope or intent of any terms or conditions hereof.

8. Governing Law. The parties agree that the law of the State of Florida shall govern the construction, interpretation and enforcement of this Assignment.

9. Entire Agreement. No variation, modifications or changes herein of hereof shall be binding upon any party hereto, unless set forth in a document duly executed by, or on behalf of, such party. This Assignment contains the entire agreement of the parties hereto with respect to the subject matter hereof.

10. Counterparts. This Assignment may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and such counterparts together constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to physically form one document. A facsimile or electronically transmitted copy of this Assignment and any signature thereon shall be considered for all purposes an original.


[Remainder of Page Intentionally Left Blank; Signature Page to Follow]

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment to be executed and delivered effective as of the date first stated above.

**ASSIGNOR:**

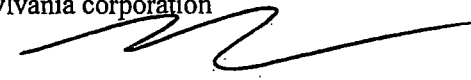
**DRP FL 5, LLC,**  
a Delaware limited liability company

By: DW General Partner, LLC,  
a Delaware limited liability company,  
its Manager

By:   
\_\_\_\_\_  
Print Name: Ryan Mott  
Title: Authorized Signatory

**ASSIGNEE:**

**TOLL BROS., INC.,**  
a Pennsylvania corporation

By:   
\_\_\_\_\_  
Print Name: Brock Farming  
Title: Division President