



Interoffice Memorandum

July 19, 2023

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

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

A handwritten signature in blue ink, appearing to be "Ed Torres", written over a light blue rectangular background.

**SUBJECT: BCC AGENDA ITEM – Consent Agenda
August 8, 2023, BCC Meeting
The Cove at Nona Sound (22-U-028) Wastewater Capital Charge Letter of
Credit Agreement
Contact Person: Lindy A. Wolfe, P.E., LEED AP, Manager
Utilities Engineering Division
407-254-9918**

Pulte Home Company, LLC (Owner) holds fee simple title to and is constructing a new residential subdivision on property within Orange County's wastewater service territory, and the construction will incur wastewater capital charges per Section 37-5 of the Orange County Code. By entering into this Agreement, the Owner agrees to continuously maintain a letter of credit to secure the Owner's obligation to pay future wastewater capital charges attributed to vertical construction on the Owner's property.

The County Attorney's Office and Risk Management Division reviewed this agreement and find it acceptable as to form. Utilities Department staff recommends approval.

Action Requested: Approval and execution of The Cove at Nona Sound (22-U-028) Wastewater Capital Charge Letter of Credit Agreement by and between Pulte Home Company, LLC, and Orange County.

District 4.

BCC Mtg. Date: August 8, 2023

Prepared By and Return To:

Orange County Utilities Department
9150 Curry Ford Road
Orlando, Florida 32825-7600
Attn: Manager, Utilities Customer Service

THE COVE AT NONA SOUND (22-U-028) WASTEWATER CAPITAL CHARGE LETTER OF CREDIT AGREEMENT

This **THE COVE AT NONA SOUND (22-U-028) WASTEWATER CAPITAL CHARGE LETTER OF CREDIT AGREEMENT** (the “Agreement”) is made and entered into as of the date of latest execution below (the “Effective Date”) by and between **Pulte Home Company, LLC**, a Michigan limited liability company authorized to do business in Florida, with offices located at 4901 Vineland Road, Suite 500, Orlando, Florida 32811 (the “Owner”), and **Orange County**, a charter county and political subdivision of the State of Florida, whose address is 201 South Rosalind Avenue, Orlando, Florida 32801 (the “County”). In this Agreement, the Owner and the County may be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, the Owner is the fee simple owner of certain real property located in Orange County, Florida, as such property is more particularly described in **Exhibit “A”** attached hereto and incorporated by this reference (the “Property”); and

WHEREAS, the Property is located within the County’s wastewater service territory and, therefore, the County is the appropriate provider of wastewater service; and

WHEREAS, Section 37-5, Orange County Code (the “Code”), provides for the assessment of wastewater capital charges for new connections to the wastewater system; and

WHEREAS, the Owner is constructing a new residential subdivision (the “Development”) on the Property, which is more particularly shown on **Exhibit “B”** attached hereto and incorporated by this reference; and

WHEREAS, the Owner has submitted to the County construction plans for approval (the “Construction Plans”); and

WHEREAS, all capital charges for new construction shall be paid immediately prior to the issuance of a building permit for vertical construction, as described in subsection 37-5(b)(1) of the Code; and

WHEREAS, the Property is located within the City of Orlando's building permitting jurisdiction and, therefore, the City of Orlando is the appropriate authority to issue vertical building permits; and

WHEREAS, because the City has the authority to issue vertical building permits for the Development, the County's approval of the Construction Plans is conditioned on the Owner entering into this Agreement to secure the Owner's obligation to pay future wastewater capital charges attributed to vertical construction within the Development.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the receipt of which is acknowledged by the Parties, the County and the Owner agree as follows:

SECTION 1. Recitals. The above Recitals are true, and are incorporated in and form a material part of this Agreement.

SECTION 2. Payment of Capital Charges. Immediately prior to any vertical building permit issuance within the Development by the City of Orlando, the Owner shall pay to the County the associated then-current wastewater capital charges. If the Owner fails to pay the wastewater capital charges to the County when due, the County may provide written notice of such failure to the Owner. If the wastewater capital charges are not paid within 10 days following the Owner's receipt of written notice from the County that wastewater capital charges are due, the County may draw on the Letter of Credit or Replacement Letter of Credit required pursuant to Section 3 below.

SECTION 3. Letter of Credit. A Letter of Credit acceptable to the County, in a form substantially similar to the draft letter of credit attached as **Exhibit "C"** and incorporated into this Agreement by this reference, is required for the duration of the Term, as defined in Section 5 below. The Letter of Credit must be drawn on a financial institution having an office for the Letter of Credit presentation in either Orange, Seminole, or Osceola counties, and the financial institution shall be on the State of Florida approved "Qualified Public Depositories" list for local governments, as identified in Chapter 280, Florida Statutes. The Owner has provided this Letter of Credit to the County simultaneous with the execution of this Agreement in the amount of \$89,250. Failure to continuously maintain a Letter of Credit by the Owner shall be a breach of this Agreement by the Owner and may result in the interruption of water and wastewater services to the Property following receipt of written notice from the County and expiration of a 10-day cure period.

SECTION 4. Capital Charge Payments Remain with the Property. Pursuant to Section 37-5 of the Code, wastewater capacity may only be purchased for the property specified in the application for service and may not be transferred to another property. Therefore, any and all wastewater capacity purchased by the Owner is purchased on behalf of the Property, runs with the Property, and may not be transferred to any other property.

SECTION 5. Term of Agreement. The term of this Agreement commences on the Effective Date and will automatically terminate without any action by the Parties on the date that all wastewater capital charges for the Property have been paid (the "Term"). Upon termination of the Agreement and upon the request of the Owner, the County shall (i) execute a notice of termination of this Agreement within 60 days after receipt of such request, which notice shall be recorded in the Public Records of Orange County, Florida, by the Owner at the Owner's expense, and (ii) return the Letter of Credit or Replacement Letter of Credit, as applicable, to the Owner. Notwithstanding anything contained herein to the contrary, (i) upon platting of a portion of the Property, such portion (except for the platted lots and amenity center tract), shall automatically be released from the terms of this Agreement; and (ii) each platted lot and amenity center tract shall automatically be released from the terms of this Agreement upon payment of the wastewater capital charge due for such platted lot or amenity center tract.

SECTION 6. Sale of Property. Except as provided in this Section 6, the Owner's right to sell or transfer the Property, or any portion of its ownership or leasehold interest in the Property, shall not be restricted by this Agreement provided, however, that the County must be provided with 30 days prior notice of such sale or transfer. Provided further that (i) the successor party(s) has caused a replacement Letter of Credit, in form and substance consistent with Section 3 above, and acceptable to the County, to be issued prior to the transfer (the "Replacement Letter of Credit"), and (ii) at the time of the closing of the sale or transfer of all or any portion of the Property, the successor party(s) in ownership shall execute an acknowledgment and agreement whereby the successor party acknowledges the existence of this Agreement and agrees to be bound by the terms of this Agreement (the "Acknowledgement"). The Acknowledgement signed by the successor party must be delivered to the County within 30 days after the date of the sale or transfer, and prior to the expiration of the Owner's Letter of Credit. The Owner will not be released from any obligations and responsibilities arising under or attributable to this Agreement unless and until the County has received the Acknowledgement signed by the successor party and the Replacement Letter of Credit as and when required by this Section. If the successor party does not provide the Replacement Letter of Credit or Acknowledgement to the County as and when required by this Section, then the Owner will be in breach of this Agreement, and the County may pursue those remedies set forth in Section 20. Capital charges run with the Property, as stated in Section 4 above. If the County receives the Acknowledgement signed by the successor party and the Replacement Letter of Credit as and when required by this Section, the successor party will thereafter be the Owner for purposes of this Agreement and be responsible for the satisfaction of all obligations and responsibilities of the Owner arising under or attributable to this Agreement. This Section 6 does not apply to the sale of a platted lot with a completed home thereon.

SECTION 7. Limitation on Assignment. If, pursuant to Section 6 above, the Owner sells, transfers, or assigns all or any portion of its ownership or leasehold interest in the Property or any portion thereof, then the Owner shall assign this Agreement *pro tanto*, and shall cause the transferee to assume to the same extent the rights and obligations of the Owner. Without the express written consent of the County, the Owner shall not assign its

interests in this Agreement to another person or entity. This Section 7 does not apply to the sale of a platted lot with a completed home thereon.

SECTION 8. Recording. The Parties agree that an executed copy of this Agreement, including the Exhibits attached hereto, shall be recorded by the Owner at the Owner's expense in the Public Records of Orange County, Florida. The obligations imposed in this Agreement shall run with the land.

SECTION 9. Notice. Any notice required or allowed to be delivered hereunder shall be in writing and be deemed to be delivered when (a) hand-delivered to the official hereinafter designated; (b) delivered when such notice is sent by Federal Express or other nationally recognized overnight courier service; or (c) received when such notice is sent by the United States mail, postage prepaid, certified mail, return receipt requested, all to be addressed to a Party at the address set forth opposite the Party's name below, or such other address as the Party shall have specified by written notice to the other Party delivered in accordance therewith.

If to the County: Orange County Utilities Department
9150 Curry Ford Road
Orlando, Florida 32825-7600
Attn: Manager, Utilities Customer Service

With copy to: Orange County Administrator's Office
Orange County Administration Building
201 South Rosalind Avenue, 5th Floor
Orlando, Florida 32801-3527
Attn: County Administrator

If to the Owner: Pulte Home Company, LLC
4901 Vineland Road, Suite 500
Orlando, Florida 32811-7383
Attn: Director of Land Development

SECTION 10. Governing Law. The Parties agree that this Agreement was entered into in the State of Florida. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, without giving effect to any choice of law or rules thereof which may direct the application of laws of another jurisdiction.

SECTION 11. Jurisdiction. Any legal proceeding of any nature brought by either Party against the other to enforce any right or obligation under this Agreement, or arising out of any matter pertaining to this Agreement, shall be exclusively submitted for trial before the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida; or, if the Circuit Court does not have jurisdiction, then before the United States District Court for the Middle District of Florida (Orlando Division); or if neither of such

courts shall have jurisdiction, then before any other court sitting in Orange County, Florida, having subject matter jurisdiction. The Parties consent and submit to the exclusive jurisdiction of any such court and agree to accept service of process outside the State of Florida in any matter to be submitted to any such court pursuant hereto and expressly waive all rights to trial by jury for any matters arising under this Agreement.

SECTION 12. Attorneys' Fees and Costs. If either Party files suit or brings a judicial action or proceeding against the other to recover any sum due hereunder or for default or breach of any of the covenants, terms or conditions herein contained, each Party shall be responsible for its costs, fees and expenses incurred (including the fees and expenses of attorneys and paraprofessionals) in connection with such suit, action or proceeding (whether or not such costs, fees and expenses are taxable to the other Party as such by any law) through any and all final appeals arising out of such suit, action or proceeding.

SECTION 13. Headings. The headings or captions of sections and descriptive headings in this Agreement are inserted for convenience only, and shall not affect the construction or interpretation hereof.

SECTION 14. Severability. If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the Parties and if the intention of the parties can continue to be effective. To that end, this Agreement is declared severable.

SECTION 15. No Third-Party Beneficiaries. This Agreement is solely for the benefit of the formal parties hereto and no rights or cause of action shall accrue upon or by reason hereof, to or for the benefit of, any third party not a formal party hereto.

SECTION 16. Entire Agreement. This instrument constitutes the entire Agreement between the Parties and supersedes all previous discussions, understandings, and agreements between the Parties relating to the subject matter of this Agreement.

SECTION 17. Amendment. This Agreement may not be amended or terminated unless the amendment is in writing, executed by the Parties, and approved by the County and the Owner.

SECTION 18. Land Use Approvals. This Agreement does not grant or assure or indicate any future grant of any land use, zoning, subdivision, density, or development approvals, permissions, or rights with respect to the Property, or any other property or land referred to in this Agreement.

SECTION 19. Non-Waiver. The failure of either Party to insist on the other Party's compliance with its obligations under this Agreement in any one or more instances will not operate to release the other Party from its duties to comply with its obligations in all other instances.

SECTION 20. Remedies. No remedy conferred upon the County in this Agreement is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute, Orange County Code, or otherwise. No single or partial exercise by the County of any rights, power, or remedy under this Agreement shall preclude any other or further exercise thereof. For the avoidance of doubt, if the Owner breaches this Agreement, after expiration of the notice and cure period set forth in Section 2, the County may draw on the Letter of Credit or Replacement Letter of Credit, as applicable, as set forth in this Agreement, and in the event that the Letter of Credit or Replacement Letter of Credit is not sufficient to pay the County for all outstanding wastewater capital charges, then the County may lien the portions of the Property for which wastewater capital charges remain unpaid in accordance with the Orange County Code, recover from the Owner any remaining unpaid wastewater capital charges, and/or discontinue service to the portions of the Property for which wastewater capital charges remain unpaid in accordance with the Orange County Code and all other applicable laws, rules, and regulations.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below by their duly authorized representatives.



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

Date: August 8, 2023

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Jennifer Lara-Klimetz*
Deputy Clerk

Print Name: Jennifer Lara-Klimetz

**OWNER: Pulte Home Company, LLC,
a Michigan limited liability company**

By: [Signature]

Print Name: Arion Strommer

Title: Director of Land Development

Date: 6/2/2023

Signed, sealed, and delivered in our presence as witnesses:

Signature: [Signature]
Printed Name: Jeff Farhood

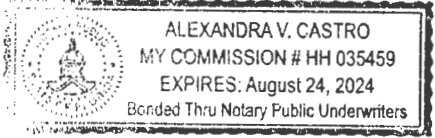
Signature: [Signature]
Printed Name: SEAN BAILLY

STATE OF Florida

COUNTY OF Orange

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 2nd day of June, 2023, by Arion Strommer as Div of Land Dev. of Pulte Home Company, LLC, a Michigan limited liability company authorized to do business in the State of Florida, on behalf of the Company, who is personally known to me or has produced _____ as identification.

(SEAL)



[Signature]
Notary Public
Alexandra V Castro
Name Printed or Stamped

My Commission Expires: 08/24/24

Exhibit A - Legal Description

DESCRIPTION:

The East 1/2 of the Southwest 1/4 of the Southwest 1/4, lying South of County Road, in Section 33, Township 24 South, Range 31 East, Orange County, Florida, described as follows:

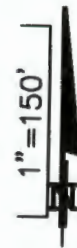
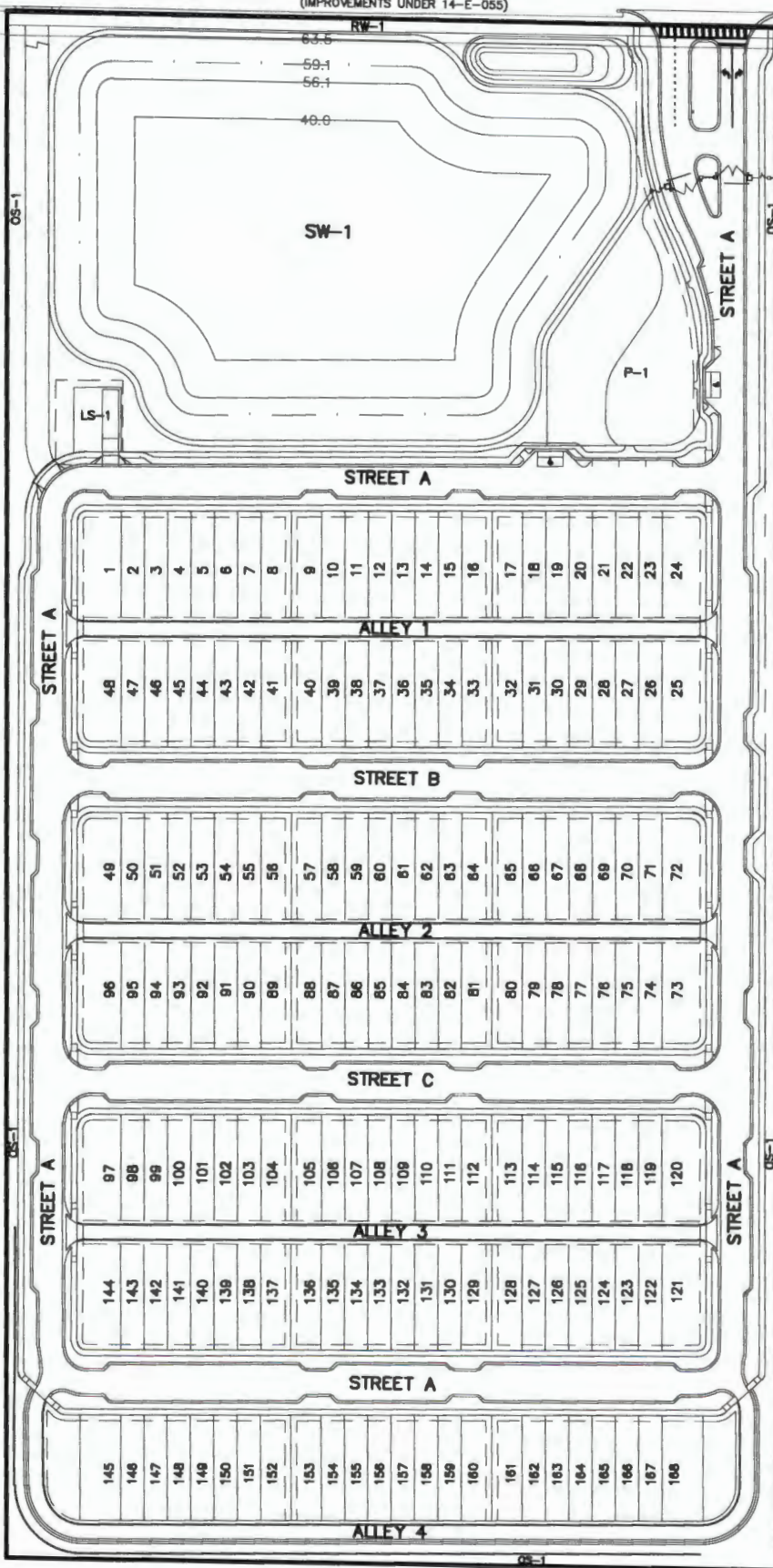
Commence at the Southwest corner of said Southwest 1/4 of Section 33; thence N89°53'24"E along the South line of said Southwest 1/4 of Section 33, for a distance of 660.39 feet to the Southwest corner of said East 1/2 of the Southwest 1/4 of the Southwest 1/4 of Section 33 and the POINT OF BEGINNING; thence continue N89°53'24"E along said South line, 660.39 feet to the Southeast corner of said East 1/2 of the Southwest 1/4 of the Southwest 1/4 of Section 33; thence N00°59'22"W along the East line of said East 1/2 of the Southwest 1/4 of the Southwest 1/4 of Section 33, for a distance of 1324.37 feet to the South right-of-way line of Clapp Simms Duda Road, as described in Deed Book 558, Page 541, of the Public Records of Orange County, Florida; thence departing said East line, run N89°54'42"W along said South right-of-way line, 660.38 feet to the West line of said East 1/2 of the Southwest 1/4 of the Southwest 1/4 of Section 33; thence departing said South right-of-way line, run S00°59'14"E along said West line, 1326.65 feet to the POINT OF BEGINNING. This description is based on Florida State Plane Coordinate System East Zone, NAD 83 Datum (2011 adjustment), average combined scale factor of 0.999947214791, and all distances are grid dimensions.

The above described parcel of land contains 20.094 acres more or less when calculated in ground dimensions.

Being subject to any rights-of-way, restrictions and easements of record.

Exhibit B-The Development

CLAPP SIMS DUDA ROAD
(IMPROVEMENTS UNDER 14-E-055)



DONALD W. MCINTOSH ASSOCIATES, INC.
ENGINEERS PLANNERS SURVEYORS
2200 PARK AVENUE NORTH, WINTER PARK, FL 32789 407.644.4068

DRAWN BY: DSW	DESIGNED BY: DSW	APPROVED BY:	SCALE	JOB NUMBER
DATE: 11-1-22	DATE: 11-1-22	DATE: 11-1-22	1"=150'	21607

Exhibit B
THE COVE AT NONA SOUND
CITY OF ORLANDO, FLORIDA

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EXHIBIT "C"

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [REDACTED]

DATE: [REDACTED], 20 [REDACTED]

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

APPLICANT: [REDACTED]
[REDACTED]
[REDACTED]
ATTN: [NAME AND TITLE] [REDACTED]

PROJECT NAME: [REDACTED]

AMOUNT: \$ [REDACTED] \$, [REDACTED].00 ([REDACTED] THOUSAND AND 00/100 U.S. DOLLARS)

DATE OF EXPIRY: [REDACTED], 20 [REDACTED]

AT THE REQUEST AND FOR THE ACCOUNT OF APPLICANT, WE, [REDACTED] ("ISSUER"), HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. [REDACTED], 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 \$, [REDACTED].00 ([REDACTED] THOUSAND 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 [CONFIRMER]] 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 '[OWNER] [REDACTED] AGREEMENT' APPROVED BY THE ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS ON [REDACTED]". THE LETTER WILL STATE THE SUM DUE UNDER THE TERMS OF THE AGREEMENT.

EXHIBIT "C"

A SUM NOT TO EXCEED \$____.00 (____ THOUSAND 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 _____, 20____, [ONE YEAR FROM ISSUANCE DATE] AND WILL BE AUTOMATICALLY EXTENDED, WITHOUT AMENDMENT FOR ADDITIONAL PERIODS OF ONE (1) YEAR FROM THE PRESENT OR ANY FUTURE EXPIRATION DATE, UNLESS WE NOTIFY THE BENEFICIARY IN WRITING BY CERTIFIED MAIL, OR OVERNIGHT COURIER, SENT TO THE BENEFICIARY AT THE ABOVE ADDRESS AT LEAST SIXTY (60) DAYS PRIOR TO THE THEN PRESENT EXPIRATION DATE, NOTIFYING THE BENEFICIARY THAT WE ELECT NOT TO EXTEND THIS LETTER OF CREDIT FOR AN ADDITIONAL PERIOD OF ONE YEAR.

[IF A CONFIRMING BANK IS TO BE USED, INSERT THIS LANGUAGE: ISSUER NOMINATES _____ [NAME AND ADDRESS OF NOMINATED CONFIRMING BANK] TO CONFIRM THIS STANDBY LETTER OF CREDIT.]

DRAWS MUST BE PRESENTED NO LATER THAN _____, 20____, [EXPIRATION DATE] OR ANY EXTENDED EXPIRATION DATE AND MUST BEAR THE CLAUSE: "DRAWN UNDER LETTER OF CREDIT NO. _____ OF ISSUER, DATED _____, 20____ [ENTER LOC DATE]."

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 [CONFIRMER] AT: [*note: must have tri-county address (Orange, Osceola, Seminole)*].

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,

AUTHORIZED SIGNATURE

ISSUER

AUTHORIZED SIGNATURE

ISSUER