

JAN 23 2023

Approved

AGENDA PLACEMENT FORM

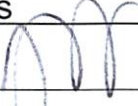
(Submission Deadline – Tuesday, 12:00 PM before Regular Court Meetings)

Date: January 12, 2023

Meeting Date: 1/23/2023

Submitted By: Julie Edmiston

Department/Office: Public Works

Signature of Director/Official: 

Agenda Title: Irrevocable Letter of Credit Approval

Public Description (Description should be 2-4 sentences explaining to the Court and the public what action is recommended and why it is necessary):

Consideration of Approval of Irrevocable Letter of Credit number 3800079281
from Byrd Homes LLC for the sum of 350,000.00, secured by Pinnacle Bank, for the
Construction of Roads, Streets, Drainage, and Signage for Westover Hills, Phase 2, in
Precinct #1-Public Works Department

(May attach additional sheets if necessary)

Person to Present: Jennifer VanderLaan

(Presenter must be present for the item unless the item is on the Consent Agenda)

Supporting Documentation: (check one) PUBLIC CONFIDENTIAL

(PUBLIC documentation may be made available to the public prior to the Meeting)

Estimated Length of Presentation: 10 minutes

Session Requested: Action Item (Action Item, Workshop, Consent, Executive)

Check All Departments Requiring Notification:

County Attorney IT Purchasing Auditor

Personnel Public Works Facilities Management

Other Department/Official (list) Jim Simpson

IRREVOCABLE LETTER OF CREDIT

Borrower: BYRD HOMES LLC
904 CONVEYOR DR
JOSHUA, TX 76058-4834

Lender: Pinnacle Bank
Joshua Branch
466 South Broadway
Joshua, TX 76058

Beneficiary: CHRISTOPHER BOEDEKER, JOHNSON COUNTY JUDGE OR HIS SUCCESSOR IN OFFICE

NO.: 3800079281

EXPIRATION DATE. This letter of credit shall expire upon the close of business on 02-28-2024 and all drafts and accompanying statements or documents must be presented to Lender on or before that time (the "Expiration Date").

AMOUNT OF CREDIT. Lender hereby establishes at the request and for the account of Borrower, an Irrevocable Letter of Credit in favor of Beneficiary for a sum of Three Hundred Fifty Thousand & 00/100 Dollars (\$350,000.00) (the "Letter of Credit"). These funds shall be made available to Beneficiary upon Lender's receipt from Beneficiary of sight drafts drawn on Lender at Lender's address indicated above (or other such address that Lender may provide Beneficiary in writing) during regular business hours and accompanied by the signed written statements or documents indicated below.

WARNING TO BENEFICIARY: PLEASE EXAMINE THIS LETTER OF CREDIT AT ONCE. IF YOU FEEL UNABLE TO MEET ANY OF ITS REQUIREMENTS, EITHER SINGLY OR TOGETHER, YOU SHOULD CONTACT BORROWER IMMEDIATELY TO SEE IF THE LETTER OF CREDIT CAN BE AMENDED. OTHERWISE, YOU WILL RISK LOSING PAYMENT UNDER THIS LETTER OF CREDIT FOR FAILURE TO COMPLY STRICTLY WITH ITS TERMS AS WRITTEN.

DRAFT TERMS AND CONDITIONS. Lender shall honor drafts submitted by Beneficiary under the following terms and conditions: BYRD HOMES, LLC HAS, AFTER DUE NOTICE, FAILED TO CONSTRUCT ROADS, STREET DRAINAGE, DRAINAGE WAYS OR SIGNAGE ON THAT CERTAIN TRACT OF LAND TO BE SUBDIVIDED AS WESTOVER HILLS PHASE 2, AN ADDITION TO JOHNSON COUNTY, TEXAS AS DESCRIBED MORE PARTICULARLY BELOW, BY NOVEMBER 30, 2023, IN ACCORDANCE WITH THE SPECIFICATIONS CONTAINED IN THE SUBDIVISION RULES AND REGULATIONS BY JOHNSON COUNTY, TEXAS AS AMENDED AND APPROVED ON NOVEMBER 14, 2011, AND FURTHER AMENDED THROUGH AUGUST 22, 2022, AND IN CONFORMANCE WITH THE PLAT APPROVED BY THE JOHNSON COUNTY COMMISSIONERS COURT.

THE LAND TO BE DIVIDED AS WESTOVER HILLS PHASE 2 IS DESCRIBED GENERALLY AS APPROXIMATELY 39.542 ACRES OF LAND LOCATED IN ABSTRACT NO. 401 JOHNSON COUNTY, TEXAS: LOTS 5-20, BLOCK 1, LOTS 5 & 6, BLOCK 2, LOTS 9 -12, BLOCK 3, LOTS 1-4, BLOCK 6 WESTOVER HILLS, PHASE 2 JOHNSON COUNTY, TEXAS.

CONSTRUCTION OF ROADS, STREETS, DRAINAGE, DRAINAGE WAYS AND SIGNAGE. ANY AND ALL ROADS, STREETS, DRAINAGEWAYS AND SIGNAGE SHALL BE CONSTRUCTED ON THAT CERTAIN TRACT OF LAND TO BE SUBDIVIDED AS WESTOVER HILLS PHASE 2 BY NOVEMBER 30, 2023, IN ACCORDANCE WITH THE SPECIFICATIONS CONTAINED IN THE SUBDIVISION RULES AND REGULATIONS OF JOHNSON COUNTY, TEXAS AS AMENDED AND APPROVED ON NOVEMBER 14, 2011 AND FURTHER AMENDED THROUGH AUGUST 22, 2022, AND IN CONFORMANCE WITH THE PLAT APPROVED BY THE JOHNSON COUNTY COMMISSIONERS COURT.

Upon Lender's honor of such drafts, Lender shall be fully discharged of Lender's obligations under this Letter of Credit and shall not be obligated to make any further payments under this Letter of Credit once the full amount of credit available under this Letter of Credit has been drawn.

Beneficiary shall have no recourse against Lender for any amount paid under this Letter of Credit once Lender has honored any draft or other document which complies strictly with this Letter of Credit, and which on its face appears otherwise in order but which is signed, issued, or presented by a party or under the name of a party purporting to act for Beneficiary, purporting to claim through Beneficiary, or posing as Beneficiary without Beneficiary's authorization. By paying an amount demanded in accordance with this Letter of Credit, Lender makes no representation as to the correctness of the amount demanded and Lender shall not be liable to Beneficiary, or any other person, for any amount paid or disbursed for any reason whatsoever, including, without limitation, any nonapplication or misapplication by Beneficiary of the proceeds of such payment. By presenting upon Lender or a confirming bank, Beneficiary certifies that Beneficiary has not and will not present upon the other, unless and until Beneficiary meets with dishonor. Beneficiary promises to return to Lender any funds received by Beneficiary in excess of the Letter of Credit's maximum drawing amount.

USE RESTRICTIONS. All drafts must be marked "DRAWN UNDER Pinnacle Bank IRREVOCABLE LETTER OF CREDIT NO. 3800079281- DATED 01-08-2023," and the amount of each draft shall be marked on the draft. Only Beneficiary may complete a draft and accompanying statements or documents required by this Letter of Credit and make a draw under this Letter of Credit. This original Letter of Credit must accompany any draft drawn hereunder.

Partial draws are permitted under this Letter of Credit. Lender's honor of a partial draw shall correspondingly reduce the amount of credit available under this Letter of Credit. Following a partial draw, Lender shall return this original Letter of Credit to Beneficiary with the partial draw noted hereon; in the alternative, and in its sole discretion, Lender may issue a substitute Letter of Credit to Beneficiary in the amount shown above, less any partial draw(s).

PERMITTED TRANSFEREES. The right to draw under this Letter of Credit shall be nontransferable, except for:

- A. A transfer (in its entirety, but not in part) by direct operation of law to the administrator, executor, bankruptcy trustee, receiver, liquidator, successor, or other representative at law of the original Beneficiary; and
- B. The first immediate transfer (in its entirety, but not in part) by such legal representative to a third party after express approval of a governmental body (judicial, administrative, or executive).

TRANSFEREES REQUIRED DOCUMENTS. When the presenter is a permitted transferee (i) by operation of law or (ii) a third party receiving transfer from a legal representative, as described above, the documents required for a draw shall include a certified copy of the one or more documents which show the presenter's authority to claim through or to act with authority for the original Beneficiary.

COMPLIANCE BURDEN. Lender is not responsible for any impossibility or other difficulty in achieving strict compliance with the requirements of this Letter of Credit precisely as written. Beneficiary understands and acknowledges: (i) that unless and until the present wording of this Letter of Credit is amended with Lender's prior written consent, the burden of complying strictly with such wording remains solely upon Beneficiary, and (ii) that Lender is relying upon the lack of such amendment as constituting Beneficiary's initial and continued approval of such wording.

NON-SEVERABILITY. If any aspect of this Letter of Credit is ever declared unenforceable for any reason by any court or governmental body having jurisdiction, Lender's entire engagement under this Letter of Credit shall be deemed null and void ab initio, and both Lender and Beneficiary shall be restored to the position each would have occupied with all rights available as though this Letter of Credit had never occurred. This non-severability provision shall override all other provisions in this Letter of Credit, no matter where such provision appears within this Letter of Credit.

GOVERNING LAW. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Texas without regard to its conflicts of law provisions, and except to the extent such laws are inconsistent with the 2007 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, ICC Publication No. 600. This Agreement has been accepted by Lender in the State of Texas.

EXPIRATION. Lender hereby agrees with Beneficiary that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to Lender on or before the Expiration Date unless otherwise provided for above.

Dated: January 6, 2023

LENDER:

PINNACLE BANK

By: 
Jason Robert DeLaune, Asst. Vice President

ENDORSEMENT OF DRAFTS DRAWN:

| Date | Negotiated By | Amount In Words | Amount In Figures |
|------|---------------|--------------------|----------------------|
|------|---------------|--------------------|----------------------|