

1st Reading:
2nd Reading:

SPONSOR: MAURATH

ORDINANCE NO. _____

BILL NO. 21-82

AN ORDINANCE APPROVING A FIRST AMENDMENT TO THE REPLACEMENT LETTER OF CREDIT DEPOSIT AGREEMENT EXTENDING THE TIME FOR COMPLETION OF IMPROVEMENTS RELATING TO BUILDING VII ON LOT F OF FENTON LOGISTICS PLAT 5, GRANTING A PARTIAL RELEASE OF ESCROW FUNDS, ACCEPTING A REVISED LETTER OF CREDIT, AND GRANTING FURTHER AUTHORITY.

WHEREAS, on September 26, 2019, by Ordinance 3975, the Board of Aldermen approved a variance to allow for a building permit to be approved for proposed Building VII on Lot F of Fenton Logistics Plat 5 in advance of final plat approval with the condition that escrow in the amount of \$619,070.56 be required to guarantee improvements to serve Building VII; and

WHEREAS, in satisfaction of such condition, U.S. Capital Development, LLC (the “Developer”) executed a Letter of Credit Deposit Agreement Guaranteeing Subdivision Improvements on October 24, 2019 (the “Agreement”); and

WHEREAS, pursuant to the Agreement, Developer deposited with the City an Irrevocable Letter of Credit No. 00000745 (the “Letter of Credit”); and,

WHEREAS, on December 21, 2020, the Board released escrow funds in the amount of \$497,063.15 leaving a revised balance in the amount of \$122,007.42; and

WHEREAS, the Letter of Credit is set to expire on October 15, 2021 and the Agreement is set to expire on October 24, 2021; and

WHEREAS, Developer is requesting another partial release of the escrow funds in the amount of \$65,728.27, which would leave a balance of \$56,279.14; and

WHEREAS, based on a field inspection, it appears all such improvements have been completed, however the Developer was unable to provide as-builts for full release under the current Agreement; and

WHEREAS, to provide the Developer time to obtain as-builts for all improvements for full release under the Agreement, the Developer has requested, and the Board desires to approve, an

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amendment to the Agreement to extend the date of completion, and the Developer has submitted a revised Letter of Credit to extend the completion date.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FENTON, MISSOURI, AS FOLLOWS:

Section 1. The First Amended Replacement Letter of Credit Deposit Agreement in substantially the form of **Exhibit A** (“First Amended Replacement Agreement”) is hereby approved in substantially the form of **Exhibit A**, attached hereto and incorporated herein, and the Mayor is authorized to execute same on behalf of the City. Furthermore, as set forth in the First Amended Replacement Agreement, the date for required completion of the improvements is hereby extended to October 24, 2022.

Section 2. As requested by the Developer, the City hereby releases the escrow funds in the amount of \$65,728.27, which leaves a balance of \$56,279.14, and hereby grants the City Administrator further authority to provide a full release of escrow funds to the Developer upon submittal of as-builts for all improvements and full compliance with the Agreement.

Section 3. Furthermore, Associated Bank’s extension of its Irrevocable Letter of Credit No. 00000745 until October 15, 2022, as evidenced by **Exhibit B** (attached hereto and incorporated herein by reference) is accepted.

Section 4. This ordinance shall be in full force and effect from and after the date of its passage and approval.

PASSED this 14th day of October, 2021.

BOB BRASSES, MAYOR

APPROVED this 14th day of October, 2021.

BOB BRASSES, MAYOR

ATTEST:

Jane Hungler, City Clerk

Motion to approve. Roll Call vote:
Ayes:
Nays:
Absent:

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Exhibit A

THIS FIRST AMENDED REPLACEMENT LETTER OF CREDIT DEPOSIT AGREEMENT ("First Amended Deposit Agreement") is made and entered into this ____ day of October, 2021 ("Agreement Date"), by US CAPITAL DEVELOPMENT, LLC (hereinafter referred to as the "Developer") and the CITY OF FENTON, MISSOURI (hereinafter referred to as the "City").

WITNESSETH:

WHEREAS, on September 26, 2019, by Ordinance 3975, the Board of Aldermen approved a variance to allow for a building permit to be approved for proposed Building VII on Lot F of Fenton Logistics Plat 5 in advance of final plat approval with the condition that escrow in the amount of \$619,070.56 be required to guarantee improvements to serve Building VII; and

WHEREAS, in satisfaction of such condition, U.S. Capital Development, LLC (the "Developer") executed a Letter of Credit Deposit Agreement Guaranteeing Subdivision Improvements on October 24, 2019 (the "Agreement"); and

WHEREAS, pursuant to the Agreement, Developer deposited with the City an Irrevocable Letter of Credit No. 00000745 (the "Letter of Credit"); and,

WHEREAS, the Agreement is set to expire on October 24, 2021; and

WHEREAS, to provide the Developer time to obtain as-builts for all improvements for full release under the Agreement, the Developer has requested, and the Board desires to approve, an amendment to the Agreement to extend the date of completion; and

WHEREAS, in consideration for the City extending the Completion Date, the Developer promises to satisfy all requirements of the Agreement by October 24, 2022; and,

NOW, THEREFORE, in consideration of the covenants, promises, and agreements herein provided,

IT IS HEREBY MUTUALLY AGREED:

1. That the Agreement is hereby amended as follows:
 - a. Fourth Paragraph:

The "Completion Date" shall be amended to October 24, 2022.
2. That all other provisions of the Agreement not specifically amended herein shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and affixed their seals on the Agreement Date set forth above.

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ACCEPTED:

CITY OF FENTON, MISSOURI

By: _____

Dated: _____

ATTESTED:

City Clerk

US CAPITOL DEVELOPMENT, LLC

a Missouri limited liability company

By: _____

Dated: _____

STATE OF MISSOURI)
) ss:
COUNTY OF ST. LOUIS)

On this ____ day of _____, 2021, before me appeared _____, personally known, who being by me duly sworn, did say that he is the _____ of _____, a limited liability company of the State of Missouri, and that the foregoing instrument was signed and sealed on behalf of said company, by authority of its Members, and _____ acknowledged said instrument to be the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires:

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Exhibit B

Letter of Credit



**APPLICATION FOR AMENDMENT TO
STANDBY LETTER OF CREDIT**

Trade Services
Tel: 800-230-5506
Fax: 920-405-2798

Date: October 7th 2021

L/C No. 00000745

Please issue an Amendment to an Irrevocable Standby Letter of Credit as set forth below:

BENEFICIARY full name and address	APPLICANT full name and address
City of Fenton, Missouri 625 New Smizer Mill Road Fenton, MO 63026 Attn: Community Development Director	Fenton Land Investors, LLC A1 FLP, LLC B2 FLP, LLC C3 FLP, LLC D4 FLP, LLC E5 FLP, LLC G7 FLP, LLC c/o US Capital Development 7911 Forsyth Blvd Ste 200 St. Louis, MO 63105

Current Amount: 122,007.41
 Type of Change: Increase Decrease
 Amount of Change: 65,728.27
 New LC Amount: 56,279.14

Current Expiration: 10/15/21
 Amended Expiration: 10/15/22

Other changes to original Credit:

For and on behalf of the Applicant:

Corporations, partnerships and other legal entities sign here:

Name of legal entity: (Customer)	Fenton Land Investors, LLC	Name of legal entity: (Customer)	
	A1 FLP, LLC		
	B2 FLP, LLC		
	C3 FLP, LLC		
	D4 FLP, LLC		
	E5 FLP, LLC		
	G7 FLP, LLC		

By: By: _____
 Printed Name: Scott Sachtleben Printed Name: _____
 Title: Manager Title: _____

Individuals and proprietorships sign here:

Printed Name: _____ (Customer) Printed Name: _____ (Customer)
 Printed Name: _____ (Customer) Printed Name: _____ (Customer)

Officer Approval:

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Jessica Brandom
Signature
Jessica Brandom, SVP
Name & Title

Signature
Name & Title

FOR OFFICE USE ONLY

Current Annual Commission: 1% per annum or \$_____ flat	Debit Account No.: <u>2153257270</u>
Is there an agreement referencing Letter of Credit Annual Commission/Fees:	
Signed agreement: <input checked="" type="checkbox"/> No - charge Annual Commission as listed above	
<input type="checkbox"/> Yes - agreement name: _____ agreement date: _____	
Pricing Grid: <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - current tier: _____	

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