

This instrument Prepared by:
Tim D. Haines, Esq.
Gray, Ackerman & Haines, P.A.
211 NW Third Street
Ocala, Florida 34475

and Return To:
City of Ocala
Growth Management Department
201 SE 3rd Street, 2nd Floor
Ocala, Florida 34471
Attn: Karen Cupp, Development Coordinator

DEVELOPER'S AGREEMENT

THIS DEVELOPER'S AGREEMENT is made and entered into on the dates set forth below by and between the **CITY OF OCALA**, a Florida municipal corporation (hereinafter "**City**") and **WEST OAK DEVELOPERS, LLC**, a Florida Limited Liability Company (hereinafter "**Developer**").

WITNESSETH:

WHEREAS, Developer is the owner of the real property described on attached Exhibit "A" (the "**Property**"), which is located within the jurisdictional boundaries of City; and

WHEREAS, Developer has previously filed an application for the approval of "West Oak Phase One", a Planned Development (the "**Subdivision**") of the Property; and

WHEREAS, the Property described on Exhibit "A" constitutes all of the real property in the Subdivision; and

WHEREAS, Developer has previously submitted to City construction plans for the Subdivision, which depict the construction of the Improvements (as defined below) relating to the Subdivision. Copies of the construction plans shall be kept on record at the office of City Engineer of City and are, by reference, made a part of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties do hereby agree as follows, which terms shall be binding upon the parties and their respective successors and assigns, as may be applicable:

1. **INCORPORATION OF RECITALS.** The parties agree and confirm that the above recitals are true and correct and incorporate their terms and provisions herein for all purposes.
2. **DEFINITIONS.** The following definitions shall have the following meanings for the purpose of this Agreement:

- 2.1 “**Agreement**” – shall refer to this Developer’s Agreement, as the same may be subsequently amended, modified, or supplemented pursuant to its terms and provisions.
- 2.2 “**City**” – shall refer to City of Ocala, a municipal corporation existing under the laws of the State of Florida.
- 2.3 “**Code**” – shall refer to City’s Code of Ordinances, as the same may be subsequently amended, modified, or supplemented.
- 2.4 “**Common Areas**” – shall refer to those portions of the Subdivision that will be either owned by or maintained by Homeowners’ Association as set forth in Section 7.
- 2.5 “**Declaration**” – shall refer to that certain Declaration of Covenants, Conditions, Restrictions and Easements for portions of West Oak, a Planned Development, dated December 22, 2022, and recorded in OR Book 7949, at Page 1828, Public Records of Marion County, Florida, as the same may subsequently be amended and modified.
- 2.6 “**Developer**” – shall refer to West Oak Developers, LLC, a Florida Limited Liability Company.
- 2.7 “**Development Regulations**” – shall refer to the Land Development Regulations of City. This definition will include any promulgated construction or design specifications of City.
- 2.8 “**District**” – shall refer to the St. John’s River Water Management District, a public entity created under the laws of the State of Florida.
- 2.9 “**Facility Use Agreement**” – shall mean and refer to that certain Facility Use Agreement dated December 22, 2022, and recorded in OR Book 7950, at Page 487, Public Records of Marion County, Florida.
- 2.10 “**Homeowners’ Association**” – shall refer to West Oak Master Property Owners’ Association, Inc., a Florida not-for-profit Corporation which has been incorporated for the benefit of the owners of Lots in the Subdivision, and will become the owner of the of the Private Improvements for the purposes of ownership and maintenance of the Private Improvements as set forth in the Declaration and the Facilities Use Agreement.
- 2.11 “**Improvements**” – shall refer to those roadways, stormwater conveyance system improvements, stormwater retention areas, sanitary sewer mains, sanitary sewer lines, water mains, water lines, water meters, fire hydrants, traffic control devices, sidewalks and grading and appurtenances which are depicted upon the Plans for the Subdivision which have been filed by Developer with City.

- 2.12 “**Lot**” – shall refer to an individual lot shown on the Plat of the Subdivision.
- 2.13 “**Plans**” – shall refer to the construction plans for the Subdivision, which depict the construction of the Improvements. Copies of the Plans shall be kept on record at the offices of City Engineer, and by reference are made a part of this Agreement.
- 2.14 “**Plat**” – shall refer to the Plat of the Subdivision, after it has been recorded in the Public Records of Marion County, Florida.
- 2.15 “**Property**” – shall refer to the real property located in Marion County, Florida described on attached Exhibit “A”.
- 2.16 “**Public Improvements**” – shall refer to N.W. 21st Avenue stormwater conveyance system improvements, within the dedicated public right of way, sanitary sewer mains, sanitary sewer lines, water mains, water lines, water meters, fire hydrants, traffic control devices, sidewalks, and grading and appurtenances related thereto. Water system improvements will be Public Improvements only to the point of metering. Sanitary sewer system improvements will be Public Improvements with respect to the sanitary sewer mains and manholes, and sanitary sewer lines and services within the dedicated public right of way.
- 2.17 “**Private Improvements**” – shall mean the Common Areas, including the Surface Water and Stormwater Management System, as defined in the Declaration and the Facilities Use Agreement.
- 2.18 “**Subdivision**” – shall refer to the proposed residential/commercial Subdivision located on the Property, which will be named “*West Oak Phase One*”.
- 2.19 “**Tract**” – shall refer to any individual parcel of property designated as a “*Tract*” on the Plat of the Subdivision.
3. **APPROVAL**. City hereby approves the Plans for the Subdivision.
4. **COVENANTS OF DEVELOPER**. In addition to the other covenants and agreements of Developer set forth specifically elsewhere in this Agreement, Developer covenants and agrees:
- 4.1 To construct at its own expense all Improvements for the Subdivision according to the Plans and according to City’s Development Regulations, within a period of two (2) years from the date of this Agreement, unless otherwise provided for herein, provided that additional time may be mutually agreed upon in the event of delays caused or due to Acts of God, strikes, or other circumstances not controlled by Developer.
- 4.2 To amend or modify the Plans as required to comply with future City standards and specification for those Improvements which are not constructed within two

(2) years of the date of this Agreement, should those standards and specifications change prior to the construction of such Improvements.

- 4.3 To provide to City a current title opinion acceptable to City which attests to Developer's ownership of the Property and its right to enter into this Agreement. Developer further agrees not to enter into any Agreement which would affect the validity of such title opinion until such time as this Agreement has been executed and recorded in the Public Records of Marion County, Florida.
- 4.4 To retain a professional engineer registered in the State of Florida to (i) supervise the construction of the Improvements; (ii) provide the required certification of completion in "*As-Built*" drawings; and (iii) act on behalf of and represent Developer in technical matters in all dealings with City; and (iv) to complete transfer of the stormwater system ownership and maintenance per the water management district requirements prior to City acceptance of the system.
- 4.5 To provide a full set of reproducible "*As-Built*" plans for the Improvements, certified to City by Developer's engineer in detail to the extent required by City Engineer, together with actual itemized construction and engineering cost summaries for the Improvements, such itemization to be certified by Developer's engineer and submitted on a form approved by City Engineer.
- 4.6 To obtain and abide by all terms of any and all permits which may be required by the State of Florida, Marion County, the District or City with respect to the Subdivision and the construction of the Improvements, all at no cost to City.
- 4.7 To provide City with complete and legally effective releases or waivers satisfactory to City of all liens arising out of this Agreement and the labor and services performed and the materials and equipment furnished thereunder.
- 4.8 To pay all applicable fees in accordance with City Code.
- 4.9 To furnish or cause to be furnished to City by Developer's contractor a proof of insurance, submitted to City Engineer, confirming the existence of a liability insurance company insurance coverage to protect City within any dedicated rights-of-way or easements during the construction and maintenance period of this Agreement, which insurance shall satisfy all applicable City insurance standards.
- 4.10 To execute and deliver to City, at the request of City, a dedication, assignment or deed conveying to City ownership of all Public Improvements, and to maintain and repair all Public Improvements for a period of one (1) year after the completion of construction thereof and acceptance by City.
- 4.11 To provide to City adequate assurance, in a form acceptable to City, in an amount equal to twenty percent (20%) of the actual costs of the Public Improvements, that Developer will comply with the maintenance obligations regarding the Public Improvements as required under the terms of this Agreement. Said assurance

shall remain in effect for the duration of the one (1) year maintenance period described elsewhere in this Agreement. An eleven (11) month inspection will be conducted, prior to the release of the adequate assurance, of the Public Improvements and should all required corrections not be made prior to the expiration of the one (1) year maintenance period City shall have the right to utilize the adequate assurance to make the necessary corrections to the Public Improvements.

5. **COVENANTS OF CITY.** City covenants and agrees:

- 5.1 To accept and perpetually maintain the Public Improvements within the boundaries of the Subdivision upon the acceptance of the Improvements and after the completion of the one (1) year maintenance period.
- 5.2 That, if the provisions of Sections 6.1, 6.2 and 6.3 below are not applicable, upon completion of the Improvements, and upon approval of the Subdivision by City Council, all of which must be in accordance with the provisions of this Agreement, it will permit connections to City's water and sewer systems with respect to the Lots in the Subdivision.
- 5.3 That, if the provisions of Sections 6.1, 6.2 and 6.3 below are applicable, it will issue building permits for the construction of residences on Lots located in the Subdivision, and will make all customary building inspections during the construction thereof, but City will be authorized to withhold the issuance of certificates of occupancy for building structures constructed on Lots until (i) all supporting improvements for the Lots have been constructed and approved by City; and (ii) the final Plat has been recorded.

6. **RECORDING PLAT.** City will allow the immediate recording of the Plat of the Subdivision, and the conveyance of Lots in the Subdivision (or portions thereof) if Developer complies with the following provisions of this Section. If Developer elects not to provide a Letter of Credit or other acceptable surety to City to guarantee the construction of the Improvements for the Subdivision, the Plat will be recorded upon the completion of the construction of the Improvements in accordance with the Plans, and the acceptance thereof by City. If Developer elects to provide to City a Letter of Credit, or some other acceptable surety, the following provisions will apply:

- 6.1 **Cost Estimate.** Developer will submit to City, and City will review and approve, a "*Cost Estimate*" prepared by Developer's Engineer. The Cost Estimate must be certified to City.
- 6.2 **Letter of Credit.** Upon Developer providing to City a Letter of Credit issued by a financial institution authorized to do business in the State of Florida, or acceptable Escrow Agreement, Tri-Party Agreement, or other security, in the amount of one hundred twenty percent (120%) of the approved Cost Estimate which guarantees to City the performance of Developer's obligations under this Agreement, (which Letter of Credit, Escrow Agreement, Tri-Party Agreement, or

other surety must be in form and content acceptable to City and City's attorney) City will complete the execution of the Plat of the Subdivision and allow the Plat to be recorded in the Public Records of Marion County, Florida. By execution hereof City acknowledges that City, Developer, and David L. MacKay Attorney P.A., a Florida Professional Association ("*Escrow Agent*") had previously entered into an Escrow Agreement dated May 11, 2021, and that the same, including as amended by Agreement signed by Developer, City, and Escrow Agent, has been accepted as, and constitutes, adequate surety and a satisfactory substitute for the Letter of Credit contemplated hereby.

- 6.3 **Sale of Lots or Tracts.** Upon the recording of the Plat Developer will be entitled to convey individual Lots or Tracts in the Subdivision to third party purchasers. The purchasers of any Lots will be entitled to submit building plans and site plans, procure site plan approvals, procure building plan approvals, procure construction permits, and subject to paragraph 5.3 of this Agreement procure Certificates of Occupancy for improvements constructed on Lots in accordance with the normal approval procedures of City as established under City Code. No purchaser of a Lot or Tract in the Subdivision will be obligated to complete the obligations of Developer to City under the terms of this Agreement in order to procure the issuance of a final Certificate of Occupancy by City for the purchaser's improvements constructed on a Lot or Tract in the Subdivision but City shall not be required to issue such Certificate of Occupancy until the conditions in paragraph 5.3 of the Agreement have occurred.
7. **STORMWATER DRAINAGE FACILITIES.** Installation and maintenance of the stormwater drainage facilities (including, without limitation, the improvements previously referred to as the stormwater conveyance system improvements and stormwater retention areas) located in the Subdivision shall be in accordance with the following provisions.
- 7.1 **Construction Standards.** All stormwater drainage facilities, whether or not such facilities are to be dedicated to the public, will be constructed to the construction standards and Development Regulations of City, and the regulations of the District.
- 7.2 **Disclaimer of Responsibility.** City does not assume responsibility for the surface stormwater runoff from individual Lots to adjacent Lots or adjacent properties, the responsibility of which shall be solely that of Developer.
8. **INTERMODAL PATH AND SIDEWALKS.** The plans for the Subdivision include an entrance roadway intermodal path providing pedestrian access from the Subdivision to N.W. 35th Street along N.W. 21st Avenue, and construction of an internal sidewalk system. In addition to those specifications shown on the Plans, the following provisions shall apply with respect to sidewalks to be installed in the Subdivision and the intermodal path along N.W. 21st Avenue:

- 8.1 Developer shall install the intermodal path adjacent to N.W. 21st Avenue. The extent of, and timing of construction of, internal sidewalk system of the Subdivision, shall be determined at the time of site plan approval or replatting of individual portions of the Subdivision.
- 8.2 The intermodal path along N.W. 21st Avenue shall be constructed by Developer simultaneous with the construction of the N.W. 21st Avenue Improvements.
9. **TRAFFIC CONTROL DEVICES.** All traffic control devices to be constructed by Developer shall be constructed in accordance with the construction standards of the City.
10. **ELECTRICAL INFRASTRUCTURE AND SERVICES.** Electric utility infrastructure and service provisions shall follow the policies and procedures in accordance with the City's Code of Ordinances, Sec. 70-541 thru Sec. 70-720.
11. **REPAIR OF DEFECTIVE IMPROVEMENTS:** With respect to any of the improvements which are subject to a one (1) year period of maintenance by Developer, as set forth elsewhere in this Agreement, if during the maintenance period the City provides notice to Developer that the improvement needs repair or replacement, Developer will at its sole expense immediately initiate the repair and replacement of the defective improvements, and pursue the completion of the repair and replacement with due diligence. Such repair or replacement must be completed prior to the City assuming responsibility for permanent maintenance (as to any portion of the improvements for which repair or replacement is underway at the expiration of the one (1) year maintenance period).
12. **GENERAL PROVISIONS.** The following General Provisions shall apply to this Agreement:
- 12.1 **Notices.** Any notices required or permitted hereunder, and all demands and requests given or required to be given by any party hereto to another party, shall be in writing unless otherwise provided herein and shall be deemed given when received, if personally delivered or sent by telex, telegram, or if sent by Federal Express (which term shall be deemed to include within it any other nationally recognized reputable firm or overnight couriers) or if mailed, if such notice has been delivered to the United States Postal Service with postage prepaid and properly marked for certified or registered mail with a request for return receipt.
- 12.2 **Developer's Address.** If given to Developer any notice hereunder shall be addressed and given as follows:

West Oak Developers, LLC
Attn.: Scott Siemens
2201 NW 21st Street
Ocala, FL 34475
Email: ssiemens@siemensgroup.com
(352) 209-8081

With Copy to:

Tim D. Haines, Esq.
Gray, Ackerman & Haines, P.A.
211 NW Third Street
Ocala, FL 34475
Email: thaines@gahlaw.com
(352) 732-8121

12.3 **City's Address.** If given to City:

City of Ocala
Attn: William E. Sexton, City Attorney
110 SE Watula Avenue
Ocala, FL 34471
Email: wsexton@ocalafl.org
(352) 629-2489

City of Ocala
Attn.: Barry Mansfield, Councilmember
110 SE Watula Avenue
Ocala, FL 34471
Email: bmansfield@ocalafl.org
(352) 629-2489

With copy to

City of Ocala
City Engineer's Office
1805 NE 30th Avenue, Building 600
Ocala, FL 34470

Any party hereto may change the address or addresses to which notice is to be sent by giving written notice of such change to all other parties executing this Agreement, in the manner provided herein.

12.4 **Headings.** The heading contained within this Agreement are for identification purposes only, and shall not be construed to amend, modify, or alter the terms of the Agreement.

12.5 **Litigation.** With respect to any litigation arising out of this Agreement, or to resolve any claims or controversies arising out of or in connection with this agreement, then the non-prevailing party pay all reasonable costs incurred by the prevailing party, including reasonable attorneys' fees, suit costs and expenses, which attorneys' fees, suit costs and expenses shall include all such fees, costs

and expenses incurred with respect to any trial level activities, bankruptcy proceedings, appellate proceedings, or post-judgment proceeding related thereto.

- 12.6 **Binding Effect.** The parties to this Agreement represent to each other that each party fully understands the facts surrounding this Agreement and each is signing this Agreement fully and voluntarily, intending to be bound by it. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective spouses, heirs, executors, administrators and assigns. There are no representations or warranties other than those set forth herein.
- 12.7 **Severability.** In the event any provision or Section of this Agreement is determined to be invalid or unenforceable, such determination shall not effect the enforceability or the validity of the remaining provisions of this Agreement.
- 12.8 **Survival of Representations and Warranties.** All representations and warranties contained herein are made in writing by the parties in connection herewith shall survive the execution and delivery of this Agreement.
- 12.9 **Successors and Assigns.** All covenants and agreements in this Agreement made by or on behalf of any parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto, whether so expressed or not.
- 12.10 **Applicable Law.** This Agreement is being delivered in the State of Florida, and shall be construed and enforced in accordance with the laws of the State of Florida. The venue for any legal proceeding arising out of this Agreement shall be Marion County, Florida.
- 12.11 **Counterparts.** This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.
- 12.12 **Gender.** As used in this Agreement, the masculine shall include the feminine and neuter, the singular shall include the plural, and the plural shall include the singular as the context may require.
- 12.13 **Facsimile Copy.** Any party may rely upon receipt of a signed facsimile or copy of this Amendment, signed by that party as though the same were an original.
- 12.14 **City Code.** No provision of this Agreement shall supercede or take precedent over any existing ordinances, regulations or codes of the City.
- 12.15 **Exercise of Rights.** All rights, power and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any law, and are intended to be limited to the extent necessary so that they will not render this Agreement invalid, illegal, or unenforceable under any applicable law.

12.16 **Entire Agreement.** This Agreement shall constitute the entire agreement of the parties hereto; all prior agreements between the parties, whether written or oral, are merged herein and shall be of no force or effect. This Agreement cannot be changed, modified or released orally, but only by an agreement in writing signed by the parties against whom enforcement of said change, modification or discharge is sought.

13. **DEFAULT.** In the event that Developer defaults under this Agreement by, without limitation, failing to construct improvements or pay amounts as and when required hereunder:

13.1 City may pursue all remedies available at law and equity;

13.2 City may withhold issuance of building permits, certificates of occupancy or other City permits, approvals or development orders; and

13.3 If the default consists of the failure to pay money:

13.3.1 City may declare any remaining payments due under this Agreement immediately due and payable by providing written notice of such acceleration to Developer, and Developer will then immediately pay the full amount owed; and

13.3.2 Any unpaid amount shall accrue interest at the maximum rate allowed by law.

IN WITNESS WHEREOF the parties hereto have executed this DEVELOPER'S AGREEMENT on the dates below.

AS TO CITY:

APPROVED AS TO FORM AND
LEGALITY:

WILLIAM E. SEXTON,
City Attorney

**CITY OF OCALA, A FLORIDA MUNICIPAL
CORPORATION**

By: _____
BARRY MANSFIELD, President
Ocala City Council

Date: _____

ATTEST:

Angel B. Jacobs, City Clerk

**STATE OF FLORIDA
COUNTY OF MARION**

The foregoing instrument was acknowledged before me by means of ___ physical presence or ___ online notarization, this _____ day of _____, 2023, by, Barry Mansfield, as President of Ocala City Council, on behalf of the City of Ocala, a Florida municipal corporation.

Notary Public, State of Florida

Name: _____
(Please print or type)

Commission Number:
Commission Expires:

Notary: Check one of the following:

Personally known OR Produced Identification (if this box is checked, fill in blank below).

Type of Identification Produced: _____

Signed and delivered in our presence as witnesses:

Print Name: _____

Print Name: _____

AS TO DEVELOPER:

**WEST OAK DEVELOPERS, LLC, A
FLORIDA LIMITED LIABILITY COMPANY**

**BY: WEST OAK DEVELOPERS II LLC, A
FLORIDA LIMITED LIABILITY COMPANY,
MANAGER**

BY: _____
SCOTT B. SIEMENS, MANAGER

**STATE OF FLORIDA
COUNTY OF MARION**

The foregoing DEVELOPER’S AGREEMENT was acknowledged before me by means of ___ physical presence or ___ online notarization, this _____ day of _____, 2023, by SCOTT B. SIEMENS, MANAGER of WEST OAK DEVELOPERS II LLC, A FLORIDA LIMITED LIABILITY COMPANY, MANAGER of WEST OAK DEVELOPERS, LLC, A FLORIDA LIMITED LIABILITY COMPANY, who is:

Notary: Check one of the following:

Personally known OR Produced Identification (if this box is checked, fill in blank below).

Notary Public, State of Florida

Name: _____
(Please print or type)

Commission Number:
Commission Expires:

Type of Identification Produced: _____

EXHIBIT "A"
LEGAL DESCRIPTION