

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the “**Agreement**”) is made, executed and delivered this _____ day of _____, 2024, by and between **WEST OAK DEVELOPERS, LLC**, a Florida Limited Liability Company (herein “**West Oak**”), **CITY OF OCALA**, a Florida Municipal Corporation (hereinafter “**City**”), and **GRAY, ACKERMAN & HAINES, P.A.**, a Florida Professional Association (hereinafter “**Escrow Agent**”). (Hereinafter together with their successors and assigns, each a “**Party**” and any two (2) or more of them, as the context requires “**Parties**”).

WITNESSETH:

WHEREAS, West Oak has submitted to City, and City has approved, that certain plat of West Oak Phase 2, a planned development (the “**Phase 2 Plat**”); and

WHEREAS, West Oak and City have entered into a Developer’s Agreement providing for the obligations of West Oak with regard to the plat, including the obligation to construct certain Improvements (the “**Developer’s Agreement**”); and

WHEREAS, West Oak, City and Escrow Agent enter into this Agreement to provide acceptable security to the City to guarantee construction of the Improvements as contemplated and required by Section 6 of the Developer’s Agreement, all as is more particularly set forth hereinafter.

NOW, THEREFORE, In consideration of the mutual covenants contained herein, and other good and valuable consideration, the parties do hereby agree as follows:

1. **Incorporation of Recitals.** The Parties confirm and acknowledge that the above recitals are true and correct and incorporate their terms and provisions herein for all purposes.
2. **Definitions.** For the purposes of this Agreement the following terms shall have the following meanings:
 - 2.1. “**Agreement**” – shall mean and refer to this Agreement, as it may from time to time be amended or modified pursuant to its terms and provisions.”
 - 2.2. “**City Engineer**” – shall mean the City Engineer of City, currently Sean Lanier, or a representative of the City Engineering Department designated by the City Engineer in writing as authorized to exercise rights of the City Engineer under this Agreement.
 - 2.3. “**Party**” or “**Parties**” – shall mean and refer, as applicable, to West Oak, City, or Escrow Agent, or any two (2) or all of them, as the context so requires, and with regard to West Oak shall mean its respective successors and assigns.
 - 2.4. “**Project Engineer**” – shall mean and refer to David Tillman, Tillman & Associates Engineering, LLC, 1720 SE 16th Ave., Bldg. 100, Ocala, FL 34471 (352) 387-4540, or other employee of Tillman Engineering, who is employed in its office and is licensed to practice civil engineering in Marion County, Florida, and designated by West Oak.

- 2.5. *"West Oak Phase 2 Costs"* – shall mean and refer to the total cost of completion, to the satisfaction of City, of the West Oak Phase 2 Work. Attached hereto as **Exhibit "A"** is the project engineer's initial estimate of the West Oak Phase 2 Costs, including mobilization costs and supervisory costs, as well as a 20% contingency.
- 2.6. *"West Oak Phase 2 Work"* – shall mean and refer to the required improvements for completion of the Improvements as defined in the Developer's Agreement and pursuant to the Plans for the Subdivision which have been filed by Developer with, and approved by City.
- 2.7. Other capitalized terms set forth herein shall have the meanings ascribed to them under the terms of the Developer's Agreement, unless otherwise set forth herein.
3. **Escrowed Funds.** There has been or will be deposited with Escrow Agent the sum of \$412,115.23 (the ***"Escrowed Funds"***) by West Oak, which will be held and disbursed by Escrow Agent pursuant to the terms hereof and in accordance herewith.
- 3.1. The Escrowed Funds insures or guarantees the completion of the West Oak Phase 2 Work.
- 3.2. The Escrow Agent shall only release or disburse the Escrowed Funds, or portion thereof, upon receipt of and in the amount set forth in a written authorization from City as set forth below.
4. **Required Improvements.**
- 4.1. Upon completion of any portion of the West Oak Phase 2 Work, West Oak shall notify City regarding the same, providing to City as evidence thereof, a signed draw request which shall be attested to by a duly appointed Manager of West Oak and the Project Engineer, and a request for inspection (the ***"Inspection Request"***) of the completed improvements by or on behalf of City. Contemporaneous with the Inspection Request, West Oak will submit a request (the ***"Reimbursement Request"***) to Escrow Agent, with a copy to City and the Project Engineer, for reimbursement of ninety percent (90%) of the cost and expense of the then-completed portion of the West Oak Phase 2 Work. (West Oak shall withhold ten percent (10%) retainage of all Site contractor and Subcontractor payment requests). The following provisions shall govern the Inspection Request and Reimbursement Request:
- 4.1.1. The Reimbursement Request shall be accompanied by supporting invoices or a draw requests in proper format from any site contractor or sub-contractor that may have performed any portion of the West Oak Phase 2 Work and a certification from West Oak that the same represents the actual cost of the portion of the West Oak Phase 2 Work for which reimbursement is requested. Upon request of City, the Reimbursement Request shall be accompanied by partial waivers of lien for work performed through the date of the Reimbursement Request.
- 4.1.2. Within ten (10) days of receipt of the Inspection Request, City Engineer or its designated agent shall inspect, or cause to be inspected, the West Oak

Phase 2 Work to ensure that the work identified in the Inspection Request have been completed and that the West Oak Phase 2 Work has been constructed in accordance with the approved plans and City Code, as well as any other applicable specifications or standards. The City Engineer and Project Engineer shall work together to resolve any issues related to City Engineer's inspection of the West Oak Phase 2 Work. In any case where an issue cannot be reasonably resolved, the provisions of paragraph 6, *infra*, shall govern.

- 4.1.3. Upon verification by City Engineer of the completion of the West Oak Phase 2 Work set forth in an Inspection Request, City shall forward a letter to Escrow Agent containing a written authorization from City for release of the Escrowed Funds related to the completed West Oak Phase 2 Work in the amount set forth in the Reimbursement Request or such lower amount based upon the City Engineer's inspection and agreed to by Project Engineer. Escrow Agent shall only release or disburse the Escrowed Funds in the amount set forth in the written authorization from City.
- 4.1.4. Upon completion of all of the West Oak Phase 2 Work, as set out in a final Inspection Request and City's authorization of a final Reimbursement Request in relation thereto, Escrow Agent shall:
 - 4.1.4.1. Disburse the remainder of the Escrowed Funds to West Oak and be released from further obligation to any Party hereunder; or
 - 4.1.4.2. As set forth in paragraph 7.3.6 of the Sixth Amendment, cause the balance of the West Oak Phase 2 Work Security to be used to provide the maintenance assurance pursuant to Section 114-41(e) of the City Code.
- 4.2. In the event that West Oak fails to comply with the requirements of this Agreement by completing the West Oak Phase 2 Work as required under the Developer's Agreement, then upon written demand from City given in accordance with the terms of the Developer's Agreement, the Escrow Agent agrees to pay to City immediately the balance of the funds held in escrow by the Escrow Agent, as of the date of the written demand, provided that upon payments of such balance to City, City will have executed and delivered to Escrow agent in exchange for such funds a statement to be signed by City Manager or its designee to the effect that:
 - 4.2.1. West Oak, for more than sixty (60) days after written notification of such failure, has failed to comply with the requirements of this Agreement and the Developer's Agreement;
 - 4.2.2. City, or its authorized agent, will complete the West Oak Phase 2 Work or will complete such portion of such work as City, in its sole discretion shall deem necessary in the public interest to the extent of the Escrowed Funds paid to City; and
 - 4.2.3. To the extent of available funds, the Escrowed Funds drawn down by City shall be used for construction of the required improvements, engineering, legal and contingent costs and expenses, and to offset any damages either

direct or consequential, which City may sustain on account of the failure of West Oak to carry out and execute the West Oak Phase 2 Work.

Nothing set forth in the statement to be delivered by City shall obligate City to expend more than the amount of the Escrowed Funds drawn down by City for the foregoing purposes.

5. **Alternative West Oak Phase 2 Security.** Notwithstanding the provisions set forth in this Agreement, West Oak shall have the right at any time prior to completion of the West Oak Phase 2 Work, upon not less than fifteen (15) days prior written notice to City, to substitute an alternate form of West Oak Phase 2 Work Security for completion of the West Oak Phase 2 Work that conforms to requirements of Section 114-41 of City Code and is approved as to form and content by City, in its sole discretion. Such alternate form of West Oak Phase 2 Work Security may include, but shall not be limited to, Bank letter of credit, or commercially acceptable Surety Bond, that guarantees performance/completion of the West Oak Phase 2 Work by a site contractor selected by West Oak and guarantees payment of all amounts by such site contractor to its suppliers and subcontractors.
 - 5.1. West Oak, in giving written notice to City under this Section 5, shall include the form of Bank letter of credit, Surety Bond or such other form of proposed West Oak Phase 2 Security which it seeks to substitute. City shall review and provide comments in its discretion within 10 days following submittal by West Oak. The City shall act reasonably to allow for approval of such request.
 - 5.2. Upon approval by City of the alternate form of West Oak Phase 2 Work Security, City shall provide written authorization to Escrow Agent for termination of this Escrow Agreement and disbursement of all remaining funds to West Oak, whereupon Escrow Agent shall be fully released from liability hereunder by both Parties.
6. **Dispute Resolution.** In the event of any dispute by and between West Oak and City concerning whether all or any portion of the West Oak Phase 2 Work has been completed, or the amount charged therefore constitutes the actual and reasonable cost and expense of the same, the Parties agree to submit any such dispute for resolution by City Engineer and the Project Engineer and to be bound by the reasonable determination of those parties. If City Engineer and the Project Engineer cannot reach a resolution of any such dispute within thirty (30) days following the commencement of the dispute, then either party may seek relief by Court action.
7. **Limited Liability.** The liability of the Escrow Agent, or its successors, is expressly limited so long as Escrow Agent, or its successor, accounts and disburses in good faith and in compliance with this Agreement, the Escrowed Funds. Escrow Agent shall not be liable for errors in judgment, and West Oak agrees to indemnify Escrow Agent, or its successors for any losses it may suffer in the premises. Escrow Agent shall be accountable only for those funds described above as Escrowed Funds.
8. **General Provisions.**
 - 8.1. **Governing Law.** This Agreement shall be construed and enforced under the laws of the State of Florida regardless of who was more responsible for its preparation.

8.2. Amendment. This Agreement shall not be amended or modified except by an amendment in writing, executed by all Parties hereto in the same form as this Agreement.

8.3. Notice.

8.3.1. All notices, requests, consents and other communications (each a "Communication") required or permitted under this Agreement shall be in writing (including emailed communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, emailed or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed as follows or to such other addresses as any party may designate by Communication complying with the terms of this paragraph:

8.3.1.1. If to West Oak: West Oak Developers, LLC
c/o Scott Siemens
2201 NW 21st Street
Ocala, FL 34475
Email: ssiemens@siemensgroup.com

With a Copy To: Gray, Ackerman & Haines, P.A.
Attn.: Tim D. Haines
211 NW Third Street
Ocala, FL 34475
Email: thaines@gahlaw.com

If To Escrow Agent: Gray, Ackerman & Haines, P.A.
Attn.: Tim D. Haines
211 NW Third Street
Ocala, FL 34475
Email: thaines@gahlaw.com

8.3.1.2. If to City: City of Ocala
Attn.: Peter Lee, City Manager
110 SE Watula Avenue
Ocala, FL 34471
Email: plee@ocalafl.org

With a Copy To: William E. Sexton, Esq.
101 SE Watula Avenue
Ocala, FL 34471
Email: WSexton@Ocalafl.org

8.3.2. Each such Communication shall be deemed delivered:

8.3.2.1. On the date of delivery if by personal delivery;

8.3.2.2. On the date of email transmission if by email (subject to paragraph 8.3.7); and

- 8.3.3. If the Communication is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; or (b) the date upon which delivery is refused.
- 8.3.4. Notwithstanding the foregoing, service by personal delivery delivered, or by email sent, after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday.
- 8.3.5. If a Communication is delivered by multiple means, the Communication shall be deemed delivered upon the earliest date determined in accordance with the preceding subparagraph.
- 8.3.6. If the above provisions require Communication to be delivered to more than one person (including a copy), the Communication shall be deemed delivered to all such persons on the earliest date it is delivered to any of such persons.
- 8.3.7. Concerning Communications sent by email:
 - 8.3.7.1. The Communication shall not be deemed to have been delivered if the sender receives a message from the sender's or the recipient's internet service provider or otherwise that the email was not delivered or received but, if the email was sent by the sender on the last day of a deadline or other time period established by this Agreement, the time for the sender to re-send the Communication by a different authorized means shall be extended one (1) business day;
 - 8.3.7.2. If the sender receives an automatic reply message indicating that the recipient is not present to receive the email (commonly referred to as an "out of the office message"), the email shall not be deemed delivered until the recipient returns but, if the email was sent by the sender on the last day of a deadline or other time period established by this Agreement, the time for the sender to re-send the Communication by a different authorized means shall be extended one (1) business day;
 - 8.3.7.3. Any email that the recipient replies to, or forwards to any person, shall be deemed delivered to the recipient;
 - 8.3.7.4. The sender must print the email to establish that it was sent (though it need not do so at the time the email was sent); and
 - 8.3.7.5. The sender shall maintain the digital copy of the email in its email system for a period of no less than one year after it was sent.
- 8.4. Severability. 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. If any term of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity of the other terms of this Agreement shall in no way be affected thereby.

- 8.5. Section Headings. The Section headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning, content or interpretation hereof.
- 8.6. Time of Essence. Time is of the essence with respect to this Agreement.
- 8.7. Multiple Counterpart. This Agreement may be executed in any number of multiple counterparts, each of which shall constitute a complete Agreement and all of which shall constitute the same agreement.
- 8.8. Negation of Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprises. Each Party shall be considered a separate owner, and no Party shall have the right to act as an agent for another Party, unless expressly authorized to do so in this Agreement.
- 8.9. Agreement Shall Continue Notwithstanding Breach. It is expressly agreed that no breach of this Agreement shall entitle any party to cancel, rescind or, otherwise terminate this Agreement. However, such limitation shall not affect in any manner any other rights or remedies which a Party may have hereunder or under any applicable law by reason of any such breach.
- 8.10. Enforcement. All obligations, rights and covenants contained herein shall be enforceable by suit for specific performance and mandatory injunctive relief, in addition to any other remedy provided by law or equity. Failure by any party to observe the covenants and agreements set forth herein shall not result in the termination of the rights granted under the Agreement or in any manner curtail the use of any easements or rights granted herein, the remedy for such failure being limited to equitable relief and an action or actions for damages.
- 8.11. Litigation. In the event of any litigation arising out of this Agreement the prevailing party shall be entitled to recover all reasonable costs and attorneys' fees incurred, whether or not such costs and attorneys' fees are incurred at the trial, appellate or post-judgment level of any litigation, or whether or not such costs and attorneys' fees are incurred with respect to any bankruptcy proceeding related hereto.
- 8.12. Waiver of Jury Trial. By execution hereof the Parties each waive any right to trial by jury and agree that in any litigation arising out of, or related to, this Agreement all matters shall be submitted to a judge sitting as a trier of law and of fact, without a jury.
- 8.13. Additional Provisions. The provisions of the Joinder of Escrow Agent, attached hereto, are incorporated herein by reference.

THEREFORE, the Parties have executed this Escrow Agreement on the day and year first above written.

ATTEST:

CITY

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

Angel B. Jacobs
City Clerk

Barry Mansfield
City Council President

Approved as to form and legality

William E. Sexton
City Attorney

DEVELOPER

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

**By: West Oak Developers II, LLC
Its: Manager**

By: _____
Scott B. Siemens
Its: Manager

ESCROW AGENT

GRAY, ACKERMAN & HAINES, P.A.

By: _____
Tim D. Haines
Its: President

JOINDER OF ESCROW AGENT

1. Duties. Escrow Agent joins herein for the purpose of agreeing to comply with the terms hereof insofar as they apply to Escrow Agent. Escrow Agent shall receive and hold the ESCROWED FUNDS in trust, to be disposed of in accordance with the provisions of this joinder and the foregoing Agreement. The ESCROWED FUNDS shall be held by Escrow Agent in a deposit account at Regions Bank, Ocala, Florida.
2. Limitation on Liability. Escrow Agent shall not be liable to any party except for claims resulting from the negligence or willful misconduct of Escrow Agent. If the escrow is the subject of any controversy or litigation and if Escrow Agent files suit to interplead the Escrowed Funds pursuant to paragraph 3 below, the parties to the Agreement shall jointly and severally indemnify and hold Escrow Agent harmless from and against any and all loss, cost, damage, liability or expense, including costs of reasonable attorneys' fees to which Escrow Agent may be put or which Escrow Agent may incur by reason of or in connection with the interpleader action, except to the extent it is determined that such controversy or litigation resulted from Escrow Agent's negligence or willful misconduct; the prevailing party in connection with the controversy or litigation shall be entitled to recover its attorney's fees from the non-prevailing party pursuant to paragraph 8.11 of this Agreement. Except as set forth in the preceding sentence, West Oak shall pay all costs and expenses incurred by Escrow Agent in performing its duties under this Agreement.
3. Conflicting Demands. If conflicting demands are made upon Escrow Agent or if Escrow Agent is uncertain with respect to the escrow, the parties to the Agreement expressly agree that Escrow Agent shall have the absolute right to do either or both of the following: (i) withhold and stop all proceedings in performance of this escrow and await settlement of the controversy by final appropriate legal proceedings or otherwise as it may require; or (ii) file suit for declaratory relief and/or interpleader and obtain an order from the court requiring the parties to interplead and litigate in such court their several claims and rights between themselves. Upon the filing of any such declaratory relief or interpleader suit and tender of the ESCROWED FUNDS to the court, Escrow Agent shall thereupon be fully released and discharged from any and all obligations to further perform the duties or obligations imposed upon it. The Parties hereto agree to respond promptly in writing to any request by Escrow Agent for clarification, consent or instructions. Any action proposed to be taken by Escrow Agent for which approval of the Parties hereto is requested shall be considered approved by the particular party if Escrow Agent does not receive written notice of disapproval within five (5) business days after a written request for approval is received by the party whose approval is being requested. No notice by any Party hereto to Escrow Agent of disapproval of a proposed action shall affect the right of Escrow Agent to take any action as to which such approval is not required.
4. Continuing Counsel. City of Ocala acknowledges that Escrow Agent is counsel to WEST OAK DEVELOPERS, LLC and CITY agrees that in the event of a dispute hereunder or otherwise between CITY and WEST OAK DEVELOPERS, LLC, Escrow Agent may continue to represent WEST OAK DEVELOPERS, LLC, notwithstanding that it is acting and will continue to act as Escrow Agent hereunder, it being acknowledged by all parties that Escrow Agent's duties hereunder are ministerial in nature.
5. Venue. Escrow Agent acknowledges that the exclusive venue for any action arising under the Escrow Agreement shall be in Marion County, Florida.

"Escrow Agent"

GRAY, ACKERMAN & HAINES, P.A.

By: _____
Tim D. Haines, President

Date: _____