

ESCROW AGREEMENT

Parcel ID # 48399-005-00, 48399-006-00, 48399-007-00

THIS ESCROW AGREEMENT is made and entered into this December 19, 2023 (the "Effective Date"), by and between:

- Marion County, a political subdivision of the State of Florida ("County"); and
- C & K Investments Ocala, LLC, having a mailing address of 3910 SW College Rd, Suite 202, Ocala, FL 34474 ("Seller"); and
- Candace McCoy, Affiliated Title of Central Florida, LTD ("Escrow Agent")

WHEREAS:

- A. County and Seller have contracted for Seller to sell certain property to County pursuant to that Purchase Agreement, **Exhibit A**, attached hereto and incorporated herein by reference (the "Purchase Agreement").
- B. The Purchase Agreement requires Seller to construct a turn lane on County Road 42 for the entrance being developed on the western portion of Parcel ID 48399-007-00.
- C. Seller has not fulfilled the condition of completing the turn lane prior to the scheduled closing date.
- D. The completion of the turn lane is a material condition of the Purchase Agreement and Seller will complete all required construction conditions as soon as practicable.
- E. In order to assure County that the turn lane construction will be performed in a satisfactory and timely manner, Seller agrees that if the turn lane is not completed at the required time, Seller agrees to a deposit in the amount of **three hundred thousand dollars** (\$300,000.00) (the "Escrowed Funds") with Escrow Agent via wire transfer of immediately available funds and shall be held and disbursed by Escrow Agent in accordance with this Agreement.
- F. County and Seller wish to proceed with closing on the property described in the Purchase Agreement, subject to the terms of this Escrow Agreement.

ACCORDINGLY, for and in consideration of the foregoing, the mutual undertakings and agreements, and other good and valuable consideration the receipt and sufficiency of which are acknowledged by the parties, Seller and County hereby covenant and agree as follows:

1. **Recitals.** The provisions of the recitals set forth above are true and correct and form a material part of this Agreement.

2. **Receipt of Escrowed Funds.** Upon receipt of the Escrowed Funds, Escrow Agent shall acknowledge receipt of same. Escrow Agent agrees to hold and disburse the Escrowed Funds in strict accordance with the provisions of this Agreement.
3. **Remedies.** In the event that Seller fails to diligently pursue completion of the turn lane by or before December 31, 2025, Seller shall be in default under this Escrow Agreement. In the event that the County has provided Seller with written notice of the occurrence of default and Seller has failed to cure such a default, within twenty (20) days following the receipt of such notice ("Cure Period"), then the County may, but shall not be obligated to, perform the completion of the turn lane and shall be permitted to draw upon the Escrowed Funds to complete the Remediation Work. In the event the Escrowed Funds are insufficient to fully reimburse County for the construction work, Seller shall be solely liable for any additional amounts in excess of the Escrowed Funds which are required in connection with completion of the construction work by the Seller.
4. **Insurance.** Prior to transferring the property to County, Seller shall: (a) at its sole expense, maintain in full force and effect at all times that it is performing the construction work, insurance with minimum coverage limits, including endorsements, as described herein below and (b) deliver to the County certificates of insurance evidencing that all requisite insurance coverage set forth below is in full force and effect and naming the County as additional insured on all underlying insurance policies, as applicable. Such insurance shall be non-cancelable unless thirty (30) days written notice is given to Seller and County. All insurance required hereunder shall be underwritten by responsible insurance companies with a Best rating of at least A-, X, and such insurance company must be authorized to do insurance business in the State of Florida. Any such insurance required hereunder may be furnished under any blanket policies of the insured.
 - 4.1. **Commercial General Liability.** Seller shall maintain general liability insurance in the amount of at least Two Million Dollars (\$2,000,000) per occurrence for bodily injury and for property damage with respect to the property described in the Purchase Agreement.
 - 4.2. **Environmental/Pollution Liability Insurance.** Seller shall maintain an Environmental/Pollution Liability insurance policy in force for the full period of this Escrow Agreement and Remediation Work and shall cover losses caused by pollution conditions including, but not limited to, any chemical or hazardous material spill, underground pollution or any other environmental impairment. It shall apply to bodily injury (including death); property damage, including loss of use of damaged property that has not been physically injured; cleanup costs; including but not limited to, any costs required under CERCLA; and defense including costs and expenses incurred in the investigation, defense or settlement of claims. Continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years from the execution of this Escrow Agreement. Coverage shall not be less than \$1,000,000 per loss or \$2,000,000 per annual aggregate. Seller shall have provided to County evidence that the premiums for such policy has been paid in full. County shall be named in such environmental insurance as an additional named insured.
5. **No Venture.** Nothing contained in this Agreement shall be deemed or construed, either by the parties hereto or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture or other association between the parties.

6. **Indemnification.** To the extent permitted by law Seller shall indemnify, defend, and hold harmless, release, and forever discharge County and its officers, board members, employees, agents, and instrumentalities, from and against any and all fines, suits, claims, demands, penalties, liabilities, costs or expenses, losses settlements, judgments and awards and action of whatever kind or nature arising out of, relating to, or resulting from the performance of this Escrow Agreement and the construction work, including a reasonable attorney's fees and costs (and a reasonable attorney's fee and costs on appeal as well as for litigating the issue of the amount of fees to be awarded) and damages (including, but not limited to, actual and consequential damages) arising from any negligent, willful or wrongful misconduct, knowing misrepresentation or breach of the Agreement by Seller, its employees, agents, or subcontractors, to the extent that any such claim, damages, loss, or expenses is caused by any acts or omissions of Seller or anyone directly or indirectly employed by Seller. Seller expressly understands and agrees that any insurance protection required by the Agreement or otherwise provided by Seller shall in no way limit the responsibility to indemnify, keep and save harmless and defend County and its officers, board members, employees, agents, and instrumentalities. This Section shall not be construed in any way to alter County's waiver of sovereign immunity or the limits established in Section 768.28, Florida Statutes (2023).
7. **Attorneys' Fees.** Notwithstanding anything to the contrary set forth in the Agreement, if a civil action or other legal proceeding is brought for the enforcement of the Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of the Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses reasonably incurred even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post judgment proceedings), incurred in that civil action or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorney's fees shall include, without limitation, a reasonable attorneys' fees for litigating the issue of the amount of fees to be awarded, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges that would be reasonably billed by the attorney to the prevailing party.
8. **Applicable Law/Jurisdiction/Venue.** The 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. Notwithstanding anything to the contrary set forth in the Agreement, the venue for any legal proceeding arising out of the Agreement, shall be in the State or Federal courts of Marion County, Florida.
9. **Waiver of Jury Trial.** EACH PARTY HEREBY AGREES THAT IN ANY LITIGATION OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF THE AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE HAD BY A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS WAIVER.
10. **Notices.** Any notice under this Agreement shall be delivered to the parties at the addresses or telefax numbers set forth below and shall be delivered in any of the following manners: (a) sent by certified mail, return receipt requested, in which case notice will be deemed delivered three (3) business days after deposit, postage prepaid in the U.S. Mail; (b) sent by overnight delivery using a nationally recognized overnight courier, in which case it will

be deemed delivered one (1) business day after deposit with such courier; (c) sent by telefax, in which case notice will be deemed delivered on the same business day of such transmission provided that confirmation of such transmission is obtained and the original of such notice is sent by overnight courier for next business day delivery; or (d) sent by personal delivery. The below addresses may be changed by written notice to the other parties; provided, however, that no notice of a change of address will be effective until actual receipt of such notice.

Seller: C & K Investments Ocala, LLC, 3910 SW College Rd, Suite 202, Ocala, FL 34471

County: County Administrator, 601 SE 25th Ave., Ocala, FL 34471

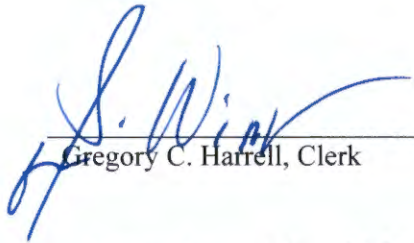
Escrow Agent: Affiliated Title, 2701 SE Maricamp Rd, Ocala, FL 34471

- 11. **Authority to Execute Agreement.** The signature by any person to this Agreement shall be deemed a personal warranty by that person that she/he has the full power and authority to bind the entity for which that person is signing.
- 12. **Entire Agreement.** This Agreement and the attached Purchase Agreement collectively contain the entire agreement between the parties related to the matters specified herein, and supersede any prior oral or written statements or agreements between the parties related to such matters. Any amendment thereto shall be made in writing and signed by all parties.

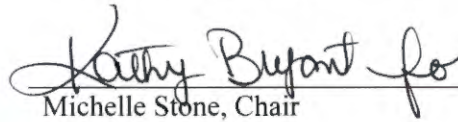
THEREFORE, Seller, County, and Escrow Agent have executed or have caused this Agreement to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

ATTEST:

COUNTY
BOARD OF COUNTY COMMISSIONERS OF
MARION COUNTY, FLORIDA



Gregory C. Harrell, Clerk



Michelle Stone, Chair

December 19, 2023

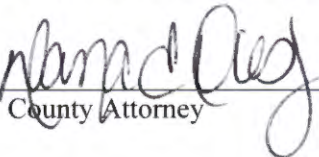
Date

December 19, 2023

Date

**For Reliance of Marion County Only,
Approved as to Form and Legal Sufficiency:**

BCC APPROVED



County Attorney

ACCEPTANCE DATE: December 19, 2023

Date

SELLER

C & K Investments Ocala, LLC

By: Harvey Vandeven
Harvey Vandeven, Manager

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me this 1/8/24,
2023, by Harvey Vandeven, Manager of C & K Investments Ocala, LLC, on behalf of such
company.

Deborah A. Houck
Notary Public, State of Florida
Name: Deborah A Houck
(Please print or type)

Commission Number:
Commission Expires:



DEBORAH A. HOUCK
Notary Public
State of Florida
Comm# HH462033
Expires 11/6/2027

Notary: Check one of the following:

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

Type of Identification Produced: _____

ESCROW AGENT

Affiliated Title of Central Florida

By: *Candace McCoy*
Candace McCoy

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me this 11⁸,
2024, by Candace McCoy of Affiliated Title of Central Florida, LTD, on behalf of
such company.



Theresa Hall
Notary Public, State of Florida
Name: Theresa Hall
(Please print or type)

Commission Number: HH064390
Commission Expires: 1-18-25

Notary: Check one of the following:

- Personally known OR
- Produced Identification (if this box is checked, fill in blanks below).
Type of Identification Produced: _____