

This Instrument Prepared by and Return To:
W. James Gooding III, Esquire
Gooding & Batsel, PLLC
1531 SE 36th Avenue
Ocala, FL 34471

Recording – \$ _____

**DECLARATION GRANTING
EASEMENTS**

THIS DECLARATION GRANTING EASEMENTS is made effective _____,
2024, by:

- The following (individually and collectively “Grantor”):
 - Bahia Oaks, Inc., a Florida corporation, whose mailing address is P.O. Box 1476, Ocala, FL 34478-1476 (“Bahia Oaks”); and
 - Ocala Properties MGR, LLC, a Delaware limited liability company, whose mailing address is 1441 UTE Blvd., Suite 130, Park City, Utah 94098 (“Ocala Properties”).

IN FAVOR OF:

- The following (each a “Grantee”) as to one or more of the Easements¹ listed below:
 - Marion County, a political subdivision of the State of Florida (“County”) as to the Public Access Easement, Water Easement and Wastewater Easement only;
 - Southwest Ocala Utility, Inc, a Florida corporation (“SOU”) as to the Water Easement only; and
 - Southwest Ocala Sewer, Inc, a Florida corporation (“SOS”) as to the Wastewater Easement only.

WHEREAS:

- A. Bahia Oaks and Dirk J. Leeward and Kent A. Leeward, as Co-Personal Representatives of the Estate of James K. Leeward (the “Co-Personal Representatives”) filed an *Application for Road(s)/Alley(s) Closing*, and accompanying *Petition*, (collectively, the “Road Closing Application”) in October 2022, seeking to vacate, abandon, discontinue and close the roads (the “Abandoned Roads”) described as follows:

All of SW 60th Road and SW 60th Court according to the plat of Bahia Oaks Unit No. Four as recorded in Plat Book L, Page 70, Public Records of Marion County, Florida.

- B. At the time they filed the Road Closing Application, Bahia Oaks and Co-Personal Representatives owned all of the real property contiguous to the Abandoned Roads.

¹ Capitalized terms or phrases not previously defined are defined below.

- C. Following the filing of the Road Closing Application, Bahia Oaks and Co-Personal Representatives conveyed to Ocala Properties some of the real property contiguous to the Abandoned Roads.
- D. The County Development Review Committee has reviewed the Road Closing Application and recommended approval subject to Grantor granting the Easements under this Declaration.
- E. On February 6, 2024, the Board of County Commissioners of Marion County, Florida, is considering the Road Closing Application, and Grantor anticipates that, if the County Commission approves the Road Closing Application, it will adopt a resolution (the “Resolution”) requiring Grantor to grant the Easements pursuant to this Declaration, and conveying to Bahia Oaks and Ocala Properties portions of the Abandoned Roads. Therefore, Grantor is executing this Declaration in anticipation of the County Commission adopting such a Resolution which, upon adoption of the Resolution, will then become effective and delivered to County for recording in the Public Records.
- F. Upon County’s adoption of the Resolution, Bahia Oaks and Ocala Properties will be the title holders to the Abandoned Roads, with Bahia Oaks owning the portion of the Abandoned Roads described and depicted on the attached **Exhibit B** and Ocala Properties owning the portion of the Abandoned Roads described and depicted on the attached **Exhibit C**.

NOW, THEREFORE, Grantor declares that the Abandoned Roads shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions.

- 1. **Easements.** Pursuant to this Declaration, Grantor is granting the following Easements, each of which is subject to paragraph 6:
 - 1.1. A Public Access Easement, as defined in, and pursuant, to paragraph 2.
 - 1.2. A Water Easement, as defined in, and pursuant, to paragraph 3.
 - 1.3. A Wastewater Easement, as defined in, and pursuant, to paragraph 4.
- 2. **Public Access Easement.**
 - 2.1. Grantor hereby grants, establishes and grants to County, subject to paragraph 6, a perpetual non-exclusive easement (the “Public Access Easement”) for a perpetual public easement and right of way for vehicular and pedestrian access upon, over and across the Abandoned Roads (the “Public Access Easement Area”).
 - 2.2. No improvements, buildings, or structures, shall be located, constructed, excavated or created within the Public Access Easement Area without the written consent of County, which may be evidenced by a County-approved site plan or similar document approved by County providing for roads, driveways or utilities to be constructed within the Public Access Easement Area.
 - 2.3. For purposes of the Developer’s Agreement recorded in OR Book 3331, Page 704 (adopted in connection with a prior closing of roads within Bahia Oaks plats), by virtue of the Public Access Easement granted pursuant to this paragraph 2, any portion of the Abandoned Roads that are now or hereafter paved, shall be deemed a “paved street or paved roadway.”

3. **Water Easement.**

- 3.1. Grantor hereby grants, establishes and grants to County and SOU, subject to paragraph 6, a perpetual non-exclusive easement (the “Water Easement”) for the construction, operation and maintenance of one or more of the following (individually and collectively, the “Water Facilities”) – water mains and lines and related facilities – over, under, across and on the Abandoned Roads (the “Water Easement Area”).
- 3.2. The Water Easement rights specifically include: (a) the right of perpetual ingress and egress to patrol, inspect, alter, improve, construct, repair, maintain, replace, rebuild, relocate, remove and provide access and service to the Water Facilities; (b) the right to decrease or increase, or to change the quantity and type of, the Water Facilities; (c) the right to clear the Water Easement Area of trees, limbs, undergrowth, and other physical objects (regardless of the location of such trees, limbs, undergrowth and other objects) which, in the opinion of Grantor, endanger or interfere with the safe and efficient installation, operation, or maintenance of the Water Facilities; and (d) all other rights and privileges reasonably necessary or convenient for the safe and efficient installation, operation and maintenance of the Water Facilities and for the enjoyment and use of such Water Easement for the purposes described above.
- 3.3. No improvements, buildings, or structures, shall be located, constructed, excavated or created within the Water Easement Area without the written consent of Grantee.

4. **Wastewater Easement.**

- 4.1. Grantor hereby grants, establishes and grants to County and SOS, subject to paragraph 6, a perpetual non-exclusive easement (the “Wastewater Easement”) for the construction, operation and maintenance of one or more of the following (individually and collectively, the “Wastewater Facilities”) – sanitary sewer lines and related facilities – over, under, across and on the Abandoned Roads (the “Wastewater Easement Area”).
- 4.2. The Wastewater Easement rights specifically include: (a) the right of perpetual ingress and egress to patrol, inspect, alter, improve, construct, repair, maintain, replace, rebuild, relocate, remove and provide access and service to the Wastewater Facilities; (b) the right to decrease or increase, or to change the quantity and type of, the Wastewater Facilities; (c) the right to clear the Wastewater Easement Area of trees, limbs, undergrowth, and other physical objects (regardless of the location of such trees, limbs, undergrowth and other objects) which, in the opinion of Grantor, endanger or interfere with the safe and efficient installation, operation, or maintenance of the Wastewater Facilities; and (d) all other rights and privileges reasonably necessary or convenient for the safe and efficient installation, operation and maintenance of the Wastewater Facilities and for the enjoyment and use of such Wastewater Easement for the purposes described above.
- 4.3. No improvements, buildings, structures, or obstacles shall be located, constructed, excavated or created within the Wastewater Easement Area without the written consent of each Grantee.

5. **Covenant Running With Land.**

- 5.1. The rights of each Grantee under this Declaration, and the benefit of the Easements arising hereunder, shall be deemed covenants personal to such Grantee, thus shall benefit such

Grantee, and its respective successors or assigns. A Grantee may assign the Granted Easement granted to it, in whole or in part to an entity that succeeds in title to the various Facilities for which the Granted Easement is granted. No assignment by a Grantor shall be effective unless recorded in the public records of Marion County, Florida.

- 5.2. The burdens of this Declaration, and the Easements arising hereunder, shall be deemed covenants running with the Abandoned Roads, and thus shall be binding upon each Grantor and its respective legal representatives, heirs, successors or assigns.
6. **Acceptance by Use of Easement.** By accepting or utilizing the Easement(s) granted to it, each Grantee shall be deemed to have agreed to the provisions of this paragraph 6.
- 6.1. Each entity designated as Grantor in this Agreement grants each Easement solely to the extent of the portion of the Abandoned Roads owned by it. Thus, for example, Bahia Oaks grants the Public Access Easement over the portion of the Abandoned Roads owned by Bahia Oaks as described and depicted in the attached **Exhibit B**, and Ocala Properties grants the Public Access Easement over the portion of the Abandoned Roads owned by Ocala Properties as described and depicted in the attached **Exhibit C**.
 - 6.2. Each Grantee agrees to the provisions of this Declaration concerning the Easement granted to it, including the provisions of paragraphs 7 through 12, as if each Grantee had executed this Declaration.
 - 6.3. Grantor retains the right to utilize each Easement Area in any manner, including, without limitation, the construction, maintenance, repair and replacement of additional utilities, so long as such use does not materially interfere with the exercise of the Grantee's rights as to the Easement for such Easement Area.
 - 6.4. All Water Facilities and Wastewater Facilities (collectively the "Facilities") shall be located within the portions of the respective Easement Areas for such Easements as follows:
 - 6.4.1. County may install the Facilities associated with the "Centers Utility Extension Project" within the Abandoned Roads:
 - a. At the locations set forth in the plans and specifications for such Facilities set forth in the _____ prepared by Davis Dinkins Engineering, P.A., and dated _____; or
 - b. If acceptable to County and the Grantor that owns real property contiguous to the Easement Area, at other locations for which such Grantor has granted to County additional easements substantially similar to those arising under paragraphs 3 and 4 of this Grant (depending upon whether they are Water Facilities or Wastewater Facilities).
 - 6.4.2. Thereafter, the Facilities shall be located as determined by Bahia Oaks and, as to the portion of the Easement Area described and depicted in the attached **Exhibit C**, by mutual agreement of Bahia Oaks and Ocala Properties (subject to any other agreements between Bahia Oaks and Ocala Properties concerning approvals of plans and improvements, and other matters).

- 6.5. Each Grantee shall: (a) coordinate with its respective Grantor in connection with the use of the Easement granted to it including the coordination in advance with such Grantor regarding the timing of the Grantee's construction, maintenance, repair or replacement of its Facilities; provided, however, as to the work by County described in paragraph 6.4.1, County may commence such work at any time within the next six (6) months without additional coordination, provided that, if in connection with such work, Ocala Properties is also constructing Facilities within the Easement Area utilizing the same contractor as is performing the work for County, County consents to such contractor coordinating its work with that the contractor is performing on behalf of Ocala Properties; and (b) once construction work is actually commenced, pursue completion of such work with reasonable diligence and in good faith.
- 6.6. In the event that any Grantee, in exercising its rights, damages any improvements located within an Easement Area, it shall promptly repair or restore such improvements to substantially the same condition they existed before the damage.
- 6.7. The provisions of this paragraph 6 are an essential and material part of this Declaration and, if not effective as to a Grantee, the grant of an Easement to such Grantee shall be deemed ineffective. Such consequence shall not adversely impact the grant of an easement to a Grantee that acknowledges the effectiveness of this paragraph 6.
7. **Not a Public Dedication.** Except concerning the Public Access Easement, nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of Grantor or Grantee hereto shall inure to the benefit of any third-party, nor shall any third-party be deemed to be a beneficiary of any of the provisions contained in this Declaration.
8. **Exclusive Venue.** The exclusive venue for any litigation, suit, action, counterclaim, or proceeding, whether at law or in equity, which arises out of concerns, or relates to this Declaration, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby, whether sounding in contract, tort, strict liability, or otherwise, shall be in Marion County, Florida.
9. **JURY WAIVER.** IN ANY LITIGATION, SUIT, ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF CONCERNS, OR RELATES TO THIS DECLARATION, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH LOT OWNER SHALL BE DEEMED TO HAVE IRREVOCABLY WAIVED ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY.
10. **Attorney's Fees.** If any legal action or other proceeding (including, without limitation, appeals) whether at law or in equity, which: arises out of, concerns, or relates to this Declaration, any and all matters contemplated hereunder, the performance hereof, or the relationship created hereby; or is brought for the enforcement of this Declaration, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Declaration, the successful or prevailing party, shall be entitled to recover reasonable attorney's fees, court costs and all expenses taxable as court costs, incurred in that action or proceeding, in addition to any other relief to which such party may be entitled.

11. **Severability Clause.** Provisions contained in this Declaration which are contrary to, prohibited by or invalid under applicable laws or regulations shall be deemed omitted from this document and shall not invalidate the remaining provisions thereof.
12. **Amendments.** The provisions of this Declaration may not be amended, supplemented, waived, or changed orally but only by a writing executed by Grantor and the Grantee of the Easement sought to be amended.

IN WITNESS WHEREOF, Grantor has executed this Declaration effective the day and year first written above.

BAHIA OAKS

Bahia Oaks, Inc., a Florida Corporation

By: _____
Dirk J. Leeward as President

Witness Signature

Witness Printed Name

Print Witness Address: _____

Witness Signature

Witness Printed Name

Print Witness Address: _____

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this _____, 202__, by Dirk J. Leeward as President of Bahia Oaks, Inc., a Florida 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 blanks below).

Type of Identification Produced: _____

OCALA PROPERTIES

Ocala Properties MGR, LLC, a Delaware limited liability company

By: _____
Michael Augustine as Manager

Witness Signature

Witness Printed Name

Print Witness Address: _____

Witness Signature

Witness Printed Name

Print Witness Address: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this _____, 202__, by Michael Augustine as Manager of Ocala Properties MGR, LLC, a Delaware limited liability company.

Notary Public, State of _____
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 blanks below).

Type of Identification Produced: _____

EXHIBIT B
PORTION OF ABANDONED ROADS
OWNED BY BAHIA OAKS

All of SW 60th Road and SW 60th Court according to the plat of Bahia Oaks Unit No. Four as recorded in Plat Book L, Page 70, Public Records of Marion County, Florida.

LESS AND EXCEPT:

A PARCEL OF LAND BEING A PORTION OF SW 60TH COURT IN BAHIA OAKS, UNIT NO. FOUR, ACCORDING TO THE PLAT THERE OF, AS RECORDED IN PLAT BOOK L, PAGE 70 OF THE PUBLIC RECORDS OF MARION COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A NAIL AND DISK STAMPED "GPI SOUTHEAST LB 7560" MARKING THE NORTHEAST CORNER OF SECTION 8, TOWNSHIP 16 SOUTH, RANGE 21 EAST OF SAID COUNTY, THENCE NORTH 89°58'48" WEST, ALONG THE NORTH LINE OF SAID SECTION 8, A DISTANCE OF 330.53 FEET TO THE INTERSECTION OF THE NORTH LINE OF SAID SECTION 8 WITH THE CENTERLINE OF SW 60TH COURT (AS SHOWN ON THE PLAT OF AFOREMENTIONED BAHIA OAKS UNIT 4, AND BAHIA OAKS, UNIT 3, AS RECORDED IN PLAT BOOK L, PAGE 67 OF SAID PUBLIC RECORDS AND HAVING A RIGHT OF WAY WIDTH OF 50 FEET); THENCE DEPARTING THE NORTH LINE OF SAID SECTION 8, SOUTH 0°01'12" WEST, ALONG THE CENTERLINE OF SAID SW 60TH COURT, A DISTANCE OF 195.78 FEET TO THE INTERSECTION OF THE CENTERLINE OF SAID SW 60TH COURT WITH THE CENTERLINE OF SW 64TH STREET (AS SHOWN ON THE PLAT OF SAID BAHIA OAKS UNIT 4 AND HAVING A RIGHT OF WAY WIDTH OF 60 FEET); THENCE CONTINUE ALONG THE CENTERLINE OF SAID SW 60TH COURT, SOUTH 3°32'13" WEST, A DISTANCE OF 30.06 FEET TO THE INTERSECTION OF THE CENTERLINE OF SAID SW 60TH COURT WITH THE SOUTH RIGHT OF WAY LINE OF SAID SW 64TH STREET; THENCE DEPARTING THE CENTERLINE OF SAID SW 60TH COURT, SOUTH 89°58'48" EAST, ALONG SAID SOUTH RIGHT OF WAY LINE, A DISTANCE OF 50.04 FEET TO THE INTERSECTION OF THE SAID SOUTH RIGHT OF WAY LINE WITH THE EAST RIGHT OF WAY LINE OF SAID SW 60TH COURT AND TO THE POINT OF BEGINNING, SAID POINT BEING THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 26.58 FEET AND BEING SUBTENDED BY A CHORD HAVING A BEARING AND DISTANCE OF SOUTH 46°46'43" WEST, 36.42 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID EAST RIGHT OF WAY LINE, THROUGH A CENTRAL ANGLE OF 86°28'59", AN ARC LENGTH OF 40.12 FEET; THENCE CONTINUE ALONG SAID EAST RIGHT OF WAY LINE, SOUTH 3°32'13" WEST, A DISTANCE OF 475.93 FEET; THENCE DEPARTING SAID EAST RIGHT OF WAY LINE, NORTH 89°58'48" WEST, A DISTANCE OF 50.09 FEET TO THE WEST RIGHT OF WAY LINE OF SAID SW 60TH COURT; THENCE NORTH 3°32'13" EAST, ALONG SAID WEST RIGHT OF WAY LINE, A DISTANCE OF 475.92 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 23.51 FEET AND BEING SUBTENDED BY A CHORD HAVING A BEARING AND DISTANCE OF NORTH 43°13'17" WEST, 34.25 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID WEST RIGHT OF WAY LINE, THROUGH A CENTRAL ANGLE OF 93°31'01", AN ARC LENGTH OF 38.37 FEET TO THE SOUTH RIGHT OF WAY OF AFOREMENTIONED SW 64TH STREET; THENCE DEPARTING SAID WEST RIGHT OF WAY LINE, AND ALONG SAID SOUTH RIGHT OF

EXHIBIT C
PORTION OF ABANDONED ROADS
OWNED BY OCALA PROPERTIES

A PARCEL OF LAND BEING A PORTION OF SW 60TH COURT IN BAHIA OAKS, UNIT NO. FOUR, ACCORDING TO THE PLAT THERE OF, AS RECORDED IN PLAT BOOK L, PAGE 70 OF THE PUBLIC RECORDS OF MARION COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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