

project: High Pointe Subdivision
subgrade water main within FECR
property at 65th Street and Old Dixie Highway
guaranty 1-year/115%
warranty 1-year/25%

CASH DEPOSIT AND ESCROW AGREEMENT

THIS AGREEMENT is entered into this ____ day of March, 2020, by and between **GRBK GHO HIGH POINTE, LLC, a Florida limited liability company** (Developer), and INDIAN RIVER COUNTY, a political subdivision of the State of Florida (County):

WITNESSETH:

WHEREAS, the Developer, is desirous of constructing a subgrade water main within the Florida East Coast Railway, LLC property located at 65th Street and Old Dixie Highway associated with its project known as High Pointe Subdivision, and is required to provide to the County surety supporting a Contract for the Construction of Utility Improvements on Florida East Coast Railway, LLC Property and Agreement to Warranty and Guaranty Utility Improvements at Completion and to Provide a Bill of Sale;

NOW, THEREFORE, in consideration of the agreements, promises, and covenants set forth herein, and other good and valuable considerations, the parties hereto agree as follows:

1. The Developer has tendered to the County Office of Management and Budget (Escrow Agent) the sum of One Hundred Sixteen Thousand Six Hundred Fifteen and 01/100 Dollars, U.S. (\$116,615.01), the receipt whereof is hereby acknowledged, which sum shall be held in escrow by said Office, subject to the terms, conditions and covenants of this escrow agreement as assurance that Developer shall perform in all respects the obligations set forth in the aforementioned Contract for the Construction of Utility Improvements on Florida East Coast Railway, LLC Property and Agreement to Warranty and Guaranty Utility Improvements at Completion and to Provide a Bill of Sale, which contract is attached hereto and incorporated herein by reference (Contract).

2. Upon completion, the Developer may obtain a 75% disbursement from the escrow account by making a written request to the Board of County Commissioners of Indian River County through the County's Utilities Services Director. The request shall specify the amount of disbursement desired and shall be accompanied by a sealed certificate from Developer's engineer describing the work completed, the actual cost thereof, and that the work for which disbursement is requested has been completed in accordance with County policies for construction as those policies relate to location, method, and type of construction.

3. Within seven (7) working days after receipt of a disbursement request, the Utilities Services Director shall cause an inspection of the work for which payment is sought. If the Utilities Services Director is satisfied in all respects with the work, the accompanying cost estimates and certifications, Developer must then execute a Warranty and Guaranty Agreement and Bill of Sale to warranty the utility improvements for one year against defects due to faulty field engineering, workmanship or materials. The Utilities Services Director shall then deliver a written notice to disburse 75% of the escrow account (withholding the remaining 25% for the 1-year warranty period) to the County Office of Management and Budget. Upon receipt of the notice to disburse, the Office of Management and Budget shall make the disbursement described therein directly to the party that posted the funds, or its legal representatives, successors or assigns, absent bankruptcy, court order, dissolution or an assignment.

4. Final disbursement from the escrow account of the remaining 25% shall occur only after the 1-year warranty period has ended and County determines that the utility improvements remain acceptable through an inspection just prior to the expiration of the warranty period.

5. Upon default by Developer under the respective Contract, the County may elect to pursue any of the remedies made available therein. All funds remaining in the escrow account at the time default is declared by the County shall be available for use by the County in accordance with the respective Contract. Said funds shall be disbursed to the County upon receipt by the Office of Management and Budget of a letter from the County Administrator or his designee, with approval signatures of the Utilities Service Director or his designee and the County Attorney or his designee, stating that Developer has defaulted under the Contract and that said funds are necessary to complete or repair the utility improvements. All funds disbursed to County in excess of the final amount determined necessary by the County to complete or repair the utility improvements shall be returned to the party that posted the funds, or its legal representatives, successors or assigns, absent bankruptcy, court order, dissolution or an assignment.

6. The funds deposited hereunder exist solely for the protection, use and benefit of the County and shall not be construed or intended in any way, expressly or impliedly, to benefit or secure payment to any contractor, subcontractor, laborer, materialman, architect, engineer, attorney or other party providing labor, material, supplies, or services for construction of the utility improvements, while such funds remain subject to this escrow agreement, unless and until the County shall agree otherwise in writing. The County shall not be liable to any of the aforementioned parties for claims against the Developer relating to the utility improvements.

7. This Agreement is the full and complete understanding of the parties and shall not be construed or amplified by reference to any prior agreement, discussion, or understanding, except as specifically mentioned herein. This Agreement shall not be assigned without the express written approval of the County.

Any amendment, deletion, modification, extension, or revision hereon or hereto shall be in writing, and executed by authorized representatives of each party.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.

**GRBK GHO HIGH POINTE, LLC, a
Florida limited liability company
Developer**

By _____
William N. Handler, Manager

INDIAN RIVER COUNTY, FLORIDA
County

By: _____
Jason E. Brown, County Administrator

Authority: Resolution No. 2020-031

ATTEST: Jeffrey R. Smith, Clerk of
Court and Comptroller

By: _____
Deputy Clerk

OFFICE OF MANAGEMENT AND BUDGET

By: _____
Kristin Daniels, OMB Director

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: _____
Dylan Reingold, County Attorney