

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into this ____ day of July, 2017 by and between INDIAN RIVER COUNTY (“IRC”) and OCULINA BANK (“Oculina”).

WITNESSETH:

WHEREAS, Oculina issued a guaranty Irrevocable Letter of Credit No. 30 (“GLOC”) dated September 14, 2016 in the amount of THREE HUNDRED TWENTY ONE THOUSAND FIVE HUNDRED AND 44/100 DOLLARS (\$321,500.44) in favor of IRC. This GLOC related to the guaranty of Phase 1 construction of required improvements for the Willows Development, LLC (“Willows”). This GLOC expires on December 13, 2017. The Willows construction on Phase 1 is now substantially complete; and

WHEREAS, under section 913.10(4) IRC Code and the Contract for Construction of Required Improvements No. SD-15-09-08 (2006010188-77191), warranty of required improvements is required to be posted and a certificate of completion issued before the GLOC can be released, as outlined below:

A. A warranty letter of credit (“WLOC-utilities”) in the amount of ONE HUNDRED TWENTY FOUR THOUSAND THREE HUNDRED THIRTY THREE AND 89/100 (\$124,333.89) as warranty under the Bill of Sale of Utilities Facilities for Willows Phase 1 project. This WLOC-utilities is to expire on October 18, 2018.

B. A warranty letter of credit for road and drainage (“WLOC-road”) in the amount of NINETY TWO THOUSAND FOUR HUNDRED THIRTY TWO AND 30/100 DOLLARS (\$92,432.30) as the warranty of road and drainage improvements under the Warranty and Guaranty Agreement relating to Willows Phase 1. This WLOC-road is to expire on October 18, 2018.

The WLOC-utilities and WLOC-road respectively listed in paragraphs A and B above will be referred to as “Warranty LOCs”.

WHEREAS, it is anticipated that the Warranty LOCs will be issued approximately thirty (30) days before the GLOC for THREE HUNDRED TWENTY ONE THOUSAND FIVE HUNDRED AND 44/100 DOLLARS (\$321,500.44) is released by IRC due to the fact that the GLOC cannot be released until the applicable acceptable one (1) year warranty postings and appropriate Warranty Agreement and Bill of Sale of Utility Facilities are in place and a certificate of completion issued. With the acceptable Warranty LOCs in place, IRC will be able to issue a Certificate of Completion on Phase 1 of The Willows project.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the parties agree as follows.

1. The above “Whereas” clauses are incorporated into this Agreement.

2. IRC, upon receipt of the acceptable Warranty LOCs, shall hold the THREE HUNDRED TWENTY ONE THOUSAND FIVE HUNDRED AND 44/100 DOLLARS (\$321,500.44) GLOC in escrow for a period of time not to exceed thirty (30) days from the receipt of the acceptable Warranty LOCs, thereupon permitting IRC to issue a certificate of completion, upon which issuance IRC shall release and return the GLOC to Oculina within the 30 days set forth above.

3. IRC, by acting as a party to this agreement as well as the Escrow Agent, shall incur no liability as Escrow Agent except for misfeasance or malfeasance. IRC shall hold the GLOC in escrow during the term of this agreement. The term of this agreement runs from the date of execution of this agreement until 30 days after receipt of the acceptable Warranty LOCs. In the event there are conflicting demands for the return of the GLOC during the term of this agreement or IRC as Escrow Agent has a good faith as to the entitlement of the GLOC, IRC as Escrow Agent may either deposit said GLOC into the Registry of the Court or may continue to hold said GLOC as Escrow Agent until the parties are in agreement or until a Final Judgment from a court of competent jurisdiction shall determine the rights of the parties.

4. In any proceeding between the parties or Escrow Agent, each party shall bear their own attorneys' fees and costs.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

Witnesses:

INDIAN RIVER COUNTY

printed name:_____

By:_____
Jason E. Brown
County Administrator

printed name:_____

BCC approved:_____

approved as to form and
legal sufficiency:

By:_____
Dylan Reingold
County Attorney

OCULINA BANK

printed name:_____

By:_____
Christopher J. Russell, President

printed name:_____