

**OAKWOOD HILLS DEVELOPMENT
ESCROW AGREEMENT FOR PURCHASER DEPOSITS**

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**ESCROW AGREEMENT FOR PURCHASER DEPOSITS
OAKWOOD HILLS DEVELOPMENT**

THIS AGREEMENT ("ESCROW AGREEMENT") made this ____ day of _____, 2017, between **OAKWOOD HILLS, LLC** ("SPONSOR") as sponsor of the offering of interests in the Oakwood Hills Association, Inc., **Benjamin J. Bonarigo, PLLC.** ("ESCROW AGENT") as escrow agent, and _____ ("PURCHASER").

WHEREAS, SPONSOR is the sponsor of an offering of interests in the Oakwood Hills Association, Inc. ("Association") in a subdivision development, known or to be known as the Oakwood Hills Development, ("PROJECT") located in the Town of Batavia, Genesee County, New York; and

WHEREAS, SPONSOR has obtained a letter ("CPS-7 LETTER") from the New York State Department of Law stating that the Department of Law will not take any enforcement action because the offering of interests in the Association does not require the filing of an offering plan in compliance with Section 352-e-2-b of the New York General Business Law; and

WHEREAS, ESCROW AGENT is authorized to act as an escrow agent hereunder in accordance with General Business Law ("GBL") Sections 352-e-2-b and 352-h and the Attorney General's regulations promulgated thereunder; and

WHEREAS, SPONSOR and PURCHASER desire that ESCROW AGENT act as escrow agent for deposits, down payments, and advances (together referred to herein as "Deposit"), pursuant to the terms of this ESCROW AGREEMENT; and

WHEREAS, pursuant to a purchase agreement ("Purchase Agreement"), PURCHASER has contracted to purchase from SPONSOR, Lot ___ in the PROJECT (the "Lot"), which Lot is or will be improved with an attached dwelling unit having an address of _____ and which Lot, as with all other Lots in the PROJECT, includes an interest in the Association.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein and other good and valuable consideration, SPONSOR, PURCHASER and ESCROW AGENT hereby agree as follows:

I. ESTABLISHMENT OF THE ESCROW ACCOUNT.

- 1.1 ESCROW AGENT (*check which*) ___ shall establish X has established an escrow account ("ESCROW ACCOUNT") for the purpose of holding the Deposit made by PURCHASER pursuant to the Purchase Agreement at KeyBank at its branch located at 69 Main Street, Batavia, New York 14020. The title of the ESCROW ACCOUNT is "Benjamin J. Bonarigo, PLLC, Attorney Escrow - IOLA Account."
- 1.2 Benjamin J. Bonarigo, Sr. and Kristie L. DeFreze, attorneys, are the signatories on the ESCROW ACCOUNT. Benjamin J. Bonarigo, PLLC has an address of 18 Ellicott Street, Batavia, New York 14020, and a telephone number of (585) 344-1994.
- 1.3 ESCROW AGENT hereby submits to the jurisdiction of the State of New York and its Courts for any cause of action arising out of the Purchase Agreement or otherwise concerning the maintenance or release of the Deposit from escrow.
- 1.4 Neither ESCROW AGENT nor any authorized signatories on the Escrow Account are the Sponsor, Selling Agent, or Managing Agent for the PROJECT, or any principal thereof, or have any beneficial interest in any of the foregoing.
- 1.5 The ESCROW ACCOUNT is an IOLA account established pursuant to Judiciary Law 497.

II. DEPOSITS INTO THE ESCROW ACCOUNT.

- 2.1 All Deposits received from PURCHASER prior to the closing of title to the Lot that PURCHASER contracted to purchase, whether in the form of checks, drafts, money orders, wire transfers, or other instruments that identify the payor, shall be placed into the ESCROW ACCOUNT. All instruments to be placed into the ESCROW ACCOUNT shall be made payable directly to the order of "Benjamin J. Bonarigo, PLLC, Escrow Agent." Any instrument payable to or endorsed other than as required hereby, and which cannot be deposited into the Escrow Account, shall be promptly returned to PURCHASER, but in no event more than five (5) business days following receipt of such instrument by ESCROW AGENT. In the event of such return of funds, the instrument shall be deemed not to have been delivered to ESCROW AGENT pursuant to the terms of this ESCROW AGREEMENT.
- 2.2 ESCROW AGENT is hereby obligated to send a notice of all Deposits received by ESCROW AGENT to PURCHASER within 10 business days after receipt of same. Such notice shall set forth the Bank, and account number. If PURCHASER does not receive notification of such Deposit within 15 business days after tender of the Deposit, PURCHASER may cancel the Purchase Agreement within 90

days after tender of the Deposit. Complaints concerning the failure to honor such cancellation requests may be referred to the New York State Department of Law, Real Estate Finance Bureau, 120 Broadway, 23rd Floor, New York, NY 10271. Rescission shall not be afforded where proof satisfactory to the Attorney General is submitted establishing that the Deposit was timely placed in the Escrow Account in accordance with the regulations of the New York State Department of Law concerning the Deposit and requisite notice was timely mailed to PURCHASER.

III. RELEASE OF FUNDS.

- 3.1 Under no circumstances shall SPONSOR seek or accept release of the Deposit of PURCHASER to SPONSOR until after the transfer of title to the first Lot in the PROJECT. Such transfer shall not relieve SPONSOR or ESCROW AGENT of any obligation to PURCHASER as set forth in GBL Sections 352-e-2-b and 352-h.
- 3.2 ESCROW AGENT shall release the Deposit to PURCHASER or SPONSOR as directed:
- 3.2.1 pursuant to terms and conditions set forth in the Purchase Agreement and this ESCROW AGREEMENT, upon closing of title to the Lot;
- 3.2.2 in a subsequent writing signed by both SPONSOR and PURCHASER; or
- 3.2.3 by a final, non-appealable order of judgment of a court.
- 3.3 If ESCROW AGENT is not directed to release the Deposit pursuant to Section 3.2 above, and ESCROW AGENT receives a request by either SPONSOR or PURCHASER to release the Deposit, then ESCROW AGENT must give both PURCHASER and SPONSOR prior written notice of not fewer than 30 days before releasing the Deposit. If ESCROW AGENT has not received notice of objection to the release of the Deposit prior to the expiration of the 30-day period, the Deposit shall be released and Escrow Agent shall provide further written notice to both PURCHASER and SPONSOR informing them of said release. If ESCROW AGENT receives a written notice from either PURCHASER or SPONSOR objecting to the release of the Deposit within said 30-day period, ESCROW AGENT shall continue to hold the Deposit until otherwise directed pursuant to Section 3.2 above. Notwithstanding the foregoing, ESCROW AGENT shall have the right at any time to deposit the Deposit contained in the ESCROW ACCOUNT with the Clerk of the County where the PROJECT is located and shall give written notice to both SPONSOR and PURCHASER of such deposit.

3.4 SPONSOR shall not object to the release of the Deposit to:

3.4.1 PURCHASER, if PURCHASER timely rescinds in accordance with an offer of rescission made by SPONSOR; or

3.4.2 PURCHASER after SPONSOR has notified the New York State Department of Law that it is abandoning the build out of the PROJECT. abandoned by SPONSOR.

IV. RECORDKEEPING.

4.1 ESCROW AGENT shall maintain all records concerning the ESCROW ACCOUNT for seven (7) years after release of the Deposit.

4.2 Upon the ESCROW AGENT no longer being in the practice of law within the seven (7) year period set forth in Section 4.01 above, appropriate arrangements shall be made for a successor firm to take over the role as escrow agent and for the Department of Law to be notified of such transfer.

4.3 ESCROW AGENT shall make available to the Attorney General, upon the Attorney General's request, all books and records of ESCROW AGENT relating to the funds deposited and disbursed hereunder.

V. GENERAL OBLIGATIONS OF ESCROW AGENT.

5.1 ESCROW AGENT shall maintain the ESCROW ACCOUNT under ESCROW AGENT'S direct supervision and control.

5.2 A fiduciary relationship shall exist between ESCROW AGENT and PURCHASER and ESCROW AGENT acknowledges its fiduciary and statutory obligations pursuant to GBL Sections 352-e-2-b and 352-h.

5.3 ESCROW AGENT may rely upon any paper or document that may be submitted to it in connection with its duties under the ESCROW AGREEMENT and which is believed by ESCROW AGENT to be genuine and to have been signed or presented by the proper party or parties and shall have no liability or responsibility with respect to the form, execution or validity thereof.

VI. RESPONSIBILITIES OF SPONSOR.

6.1 SPONSOR agrees that SPONSOR and its agents, including any selling agents, shall deliver to ESCROW AGENT the Deposit received by SPONSOR prior to the closing of the purchase of the Lot, within two (2) business days of tender of the Deposit by PURCHASER, USING SUCH TRANSMITTAL FORMS AS REQUIRED by ESCROW AGENT.

6.2 SPONSOR agrees that it shall not interfere with ESCROW AGENT performance of its fiduciary duties and statutory obligations as set forth in GBL Sections 352-e-2-b and 352-h and the regulations of the New York State Department of Law.

6.3 SPONSOR shall obtain or cause the SPONSOR'S selling agent to obtain a completed and signed Form W-9 or W-8, as applicable, from PURCHASER and deliver such form to ESCROW AGENT together with the Deposit and Purchase Agreement.

VII. TERMINATION OF ESCROW AGREEMENT.

7.1 This ESCROW AGREEMENT shall remain in effect unless and until it is cancelled by either:

7.1.1 Written notice given by SPONSOR to ESCROW AGENT of cancellation of the designation of ESCROW AGENT to act in said capacity, which cancellation shall take effect only upon the filing of an amendment to SPONSOR'S application for the NO ACTION LETTER with the Department of Law providing for a successor escrow agent that meets the requirements set forth in applicable regulations of the New York State Department of Law. PURCHASER shall be deemed to have consented to such cancellation;

7.1.2 The resignation of ESCROW AGENT, which shall not take effect until ESCROW AGENT is replaced by a successor escrow agent that meets the requirements set forth in applicable regulations of the New York State Department of Law, and notice is given the PURCHASER of the identity of the successor escrow agent, the Bank in the State of New York where the Deposit is being held, and the account number therefor.

7.2 Upon termination of the duties of ESCROW AGENT as described in Sections 7.1 and 7.2 above, ESCROW AGENT shall deliver the Deposit held by ESCROW AGENT and the Purchase Agreement and any other documents maintained by ESCROW AGENT relating to the Deposit to the successor escrow agent.

VIII. SUCCESSORS AND ASSIGNS.

8.1 This ESCROW AGREEMENT shall be binding upon SPONSOR, ESCROW AGENT and PURCHASER and their successors and assigns.

IX. GOVERNING LAW.

9.1 This ESCROW AGREEMENT shall be construed in accordance with and governed by the laws of the State of New York.

X. ESCROW AGENT'S COMPENSATION

- 10.1 Prior to the release of the Deposit, ESCROW AGENT'S fees and disbursements shall neither be paid by SPONSOR from the Deposit nor deducted from the Deposit by any financial institution under any circumstance.

XI. SEVERABILITY

- 11.1 If any provision of this ESCROW AGREEMENT or the application thereof to any person or circumstance is determined to be invalid or unenforceable, the remaining provisions of this ESCROW AGREEMENT or the application of such provision to other persons or to other circumstances shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

XII. INDEMNIFICATION

- 12.1 SPONSOR agrees to defend, indemnify and hold ESCROW AGENT harmless from and against all costs, claims, expenses and damages incurred in connection with or arising out of this ESCROW AGREEMENT or the performance or non-performance of ESCROW AGENT'S duties under this ESCROW AGREEMENT, except with respect to actions or omissions taken or suffered by ESCROW AGENT in bad faith or in willful disregard of this ESCROW AGREEMENT or involving gross negligence or ESCROW AGENT. This indemnity includes, without limitation, disbursement and attorneys' fees either paid to retain attorneys or representing the hourly billing rates with respect to legal services rendered by ESCROW AGENT to itself.

XIII. ENTIRE AGREEMENT

- 13.1 This ESCROW AGREEMENT, read together with General Business Law, Section 352-e-2-b and 352-h and the Attorney General's regulations, constitutes the entire agreement between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the undersigned have executed this ESCROW AGREEMENT as of the day and year first written above.

ESCROW AGENT

Benjamin J. Bonarigo, PLLC

By: _____
Benjamin Bonarigo

SPONSOR

Oakwood Hills, LLC

By:  _____
Peter H. Zelif, Member/President

PURCHASER(S)

2-15-17