



Interoffice Memorandum

July 14, 2014

APPROVED  
BY ORANGE COUNTY BOARD  
OF COUNTY COMMISSIONERS

JUL 29 2014 KHBS

**TO:** Mayor Teresa Jacobs  
and Board of County Commissioners

**FROM:** Raymond E. Hanson, P. E., Director  
Utilities Department

**SUBJECT: BCC AGENDA ITEM – Consent Agenda  
July 29, 2014 BCC Meeting  
Escrow Agreement for Utility Work Associated with Toscana  
Lake Villas  
Contact Person: Andres Salcedo, P. E., Manager  
Utilities Engineering Division  
407-254-9719**

The developer, Park Square Enterprises, LLC, as part of their infrastructure improvements for Toscana Lake Villas, has constructed utilities through their development.

Section 34-203 of the Orange County Code requires a one-year maintenance security in the amount of ten (10) percent of the construction cost of all the required public improvements which are to be eventually owned and maintained by the County. The purpose of the maintenance security is to guarantee the materials, workmanship, structural integrity, functioning, and maintenance of required public improvements during the one year period following issuance of the certificate of completion. This agreement also provides curative action to obtain a recorded utility easement in favor of the County over the public improvements dedicated to the County.

Orange County Attorney's Office staff reviewed the escrow agreement and finds it legally sufficient. The Comptroller's Office staff reviewed the escrow agreement and finds it acceptable. Utilities Department staff recommends approval.

**Action Requested: Approval of Escrow Agreement Toscana Lake Villas for utility work associated with Toscana Lake Villas by and among Orange County, Orange County Comptroller and Park Square Enterprises, LLC, in the amount of \$5,707.05.**

**District 1.**

APPROVED  
BY ORANGE COUNTY BOARD  
OF COUNTY COMMISSIONERS  
JUL 29 2014 KH/BS

THIS INSTRUMENT WAS PREPARED BY  
AND SHOULD BE RETURNED TO:

James G. Kattelman, Esq.  
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.  
215 North Eola Drive  
Post Office Box 2809  
Orlando, FL 32802-2809  
407-843-4600

Tax ID No(s): 26-23-28-4473-00-010 through 320

**ESCROW AGREEMENT  
Toscana Lake Villas**

**THIS ESCROW AGREEMENT** (“Escrow Agreement”) is made and entered into as of the date of latest execution (“Effective Date”), by and among **Park Square Enterprises, LLC**, a Delaware limited liability company; (“Owner”); **Orange County**, a charter county and political subdivision of the State of Florida (“County”) (Owner and County may collectively be referred to herein as the “Principals”); and the Orange County Comptroller, in its capacity as Escrow Agent (“Escrow Agent”), with all parties’ mailing addresses as noted in Section 14, hereinbelow.

**WITNESSETH:**

**WHEREAS**, Owner is the owner in fee simple of certain real property located in Orange County, Florida (the “Property”), as more particularly described in **Exhibit “A”** attached hereto and incorporated herein by this reference; and

**WHEREAS**, Section 34-203 of the Orange County Code requires Owner to post surety to guarantee the materials, workmanship, structural integrity, functioning and maintenance of required public improvements during the one-year period following issuance of the certificate of completion of same and provide a recorded utility easement to the County over the public improvements dedicated to the County (the “Legal Requirements”); and

**WHEREAS**, in compliance with the Legal Requirements Owner may post a cash surety, in lieu of a letter of credit, to comply with the Legal Requirements; and

**WHEREAS**, Owner has requested to post such surety in the form of a cash escrow; and

**WHEREAS**, County has consented to accept the Escrowed Funds (as defined below) to be held by Escrow Agent in accordance with the terms and provisions of this Escrow Agreement; and

**WHEREAS**, Escrow Agent has agreed to serve as Escrow Agent in accordance with this Escrow Agreement; and

**WHEREAS**, the Principals desire that Escrow Agent shall hold and release the Escrowed Funds subject to the terms and conditions set forth in this Escrow Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto represent, warrant, covenant, and agree as follows:

1. **Recitals**. The above recitals are true and correct and are incorporated herein by this reference.

2. **Establishment of Escrow Relationship; Acceptance by Escrow Agent**. The Principals hereby retain Escrow Agent, at no cost to them, to serve solely in its capacity as escrow agent with respect to the Escrowed Funds and Escrow Agent hereby accepts such retention.

3. **Escrowed Funds**. No later than five (5) business days after the Effective Date, Owner shall deliver funds in the amount of FIVE THOUSAND SEVEN HUNDRED SEVEN AND 05/100 DOLLARS (\$5,707.05) (the "Escrowed Funds") to Escrow Agent to ensure fulfillment of the Legal Requirements to County's satisfaction, in accordance with County standards. Within five (5) business days of receipt, Escrow Agent shall place the Escrowed Funds into an escrow account (the "Escrow Account") to be held, administered, distributed, and released as provided for herein. Escrow Agent shall acknowledge receipt of the Escrowed Funds by providing notice, either in writing or by electronic mail, to each of the Principals within five (5) business days after receipt of the Escrowed Funds.

4. **County Claim(s) on Escrowed Funds**. County may use all or a portion of the Escrowed Funds, as it deems necessary, in the following circumstances and subject to the following conditions:

A. In the event County finds that Owner has not fulfilled the Legal Requirements, then County shall submit written notification to Owner describing such noncompliant status with reasonable particularity, so that Owner may cure such noncompliant state (the "Legal Requirement Notification"). Within thirty (30) days (unless a longer period is agreed upon by the parties) following receipt of a Legal Requirement Notification, Owner shall cure, or cause to be cured, such matter(s) referenced in the Legal Requirement Notification. In the event Owner fails to resolve the matter(s) described in the Legal Requirement Notification to County's satisfaction within the prescribed period of time, then upon ten (10) business days prior written notice by County to Owner, County may withdraw all or a portion, as it deems necessary, of the Escrowed Funds upon presentation to the Escrow Agent of a statement signed by the Orange County Mayor or a duly authorized representative stating (i) Owner has received a Legal Requirement Notification and has failed to cure the matter(s) contained in such Legal Requirement Notification within the prescribed period of time following receipt thereof; (ii) the subject draw request is required due to Owner's failure to maintain the materials, workmanship, structural integrity, and functioning of any of the required public improvements to the satisfaction of the County's Utilities Division and provide a

recorded utility easement to the County over the public improvements dedicated to the County; and (iii) County will draw upon the Escrowed Funds, as necessary, to guarantee the materials, workmanship, structural integrity, functioning, and maintenance of the required public improvements during the one-year period following issuance of the certificate of completion, and to obtain a recorded utility easement in favor of the County over the public improvements dedicated to the County (the "Curative Action"). Any funds not used by County shall be placed back in the Escrow Account or released as provided in Section 6 hereinbelow, as applicable.

B. In the event County finds that there are noncompliant Owner obligations with respect to the Legal Requirements and that such noncompliant items pose a risk of danger to the health, safety, and/or welfare of the people of Orange County, Florida, as determined by County in the County's commercially reasonable discretion, then County shall have the right to use the Escrowed Funds as set forth herein. Where feasible, as determined solely by County, Owner shall be given a Noncompliance Notification and ten (10) days to cure such noncompliant condition; provided, however, such Noncompliance Notification shall not be required if County determines such noncompliant condition poses an imminent danger to the health, safety, and /or welfare of the people of Orange County, Florida. If Owner does not cure such noncompliant condition to County's satisfaction, or if County deems it not feasible to give Owner a Noncompliance Notification, County may withdraw all or a portion, as it deems necessary, of the Escrowed Funds upon presentation to the Escrow Agent of a statement signed by the Orange County Mayor or a duly authorized representative stating (i) that there is a noncompliant condition threatening the health, safety, and/or welfare of the people of Orange County; (ii) the subject draw request is required to correct the noncompliance; and (iii) County will take Curative Action with respect to same. Any funds not used by County shall be placed back in the Escrow Account or released as provided in Section 6 hereinbelow, as applicable.

C. In the event it comes to County's attention that Owner is insolvent, or is in receivership, County shall have the right, following notice to Owner at the last known address of Owner, to use the Escrowed Funds as set forth herein. Evidence of such insolvency or receivership shall be attached to the statement to the Escrow Agent.

D. Use of the Escrowed Funds shall include, but not be limited to, a withdrawal of all or a portion of the Escrowed Funds in order to take Curative Action or retaining all or a portion of the Escrowed Funds with the Escrow Agent as security for the fulfillment of the Legal Requirements by either Owner or its successor in interest. The choice to use the Escrowed Funds is solely in County's discretion. Should County choose to use the Escrowed Funds to take Curative Action it will do so only to the extent the Escrowed Funds are sufficient to complete that task (unless the County chooses to incur the additional cost to complete the task or complete a portion of the task) and shall assume no liability for, and no obligation to, complete the Owner obligations.

5. **Escrow Term and Release of Escrowed Funds.** Notwithstanding anything to the contrary, the Escrowed Funds shall be held by Escrow Agent for a period commencing on the Effective Date and expiring no later than the three hundred sixty-sixth (366th) day from that

date. The escrow established by this Escrow Agreement shall terminate and the balance of the Escrowed Funds shall be disbursed to Owner hereinbelow, within a reasonable period, but in any case no later than (i) thirty (30) days after said 366 day period, or (ii) within thirty (30) days of County's approval of the Legal Requirements, whichever comes first. Notwithstanding the foregoing, the 366 day term shall not apply to any portion of the Escrowed Funds that is subject to any active or pending draw request(s) pursuant to Section 4 above; rather, unused funds subject to any such active or pending draw request(s) shall be disbursed to Owner within a reasonable period of time following County's correction of the incompliance.

6. **Termination.** This Escrow Agreement and all of the parties' rights and obligations pursuant hereto shall automatically terminate upon the earlier of (i) the delivery of all of the Escrowed Funds to the County pursuant to Section 4 hereof, or (ii) the delivery of the balance of the Escrowed Funds to Owner pursuant to Section 5 hereof.

7. **Indemnification of Escrow Agent.** It is agreed that the duties of the Escrow Agent are purely ministerial in nature and shall be expressly limited to the matters herein for which Escrow Agent is expressly obligated. Owner and County hereby indemnify Escrow Agent and agree to hold Escrow Agent harmless from and against any and all claims, liabilities, damages, costs, penalties, losses, actions, suits, or proceedings at law or in equity, and any other expenses, fees, or charges of any character or nature, which Escrow Agent may incur or with which Escrow Agent may be threatened directly or indirectly arising from or in any way connected with this Escrow Agreement, except in the case of gross negligence or willful misconduct of Escrow Agent. In connection therewith, the Principals indemnify Escrow Agent against any and all reasonable expenses, including reasonable attorney fees (pre-litigation, litigation, and appellate) and the cost of defending or prosecuting any action, suit, or proceeding or resisting any claim, whether or not litigation is instituted. Nothing contained herein is intended as, nor shall constitute, a waiver by County of its sovereign immunity protections pursuant to Section 768.28, Florida Statutes.

8. **No Constructive Knowledge.** Escrow Agent shall not be deemed to have knowledge of any matter or thing unless and until Escrow Agent has actually received written notice of such matter or thing, and then shall only be required to act on that knowledge in its capacity as Escrow Agent as further described herein. Escrow Agent shall not be charged with any constructive knowledge whatsoever.

9. **Capacity of Escrow Agent.** It is expressly understood and agreed by the parties that the Escrow Agent shall not act under this Escrow Agreement in any capacity as Clerk to the Board of County Commissioners, but rather in Escrow Agent's capacity as an independent constitutional officer.

10. **Representation of the County with Respect to the Escrow Established Hereby.** County has authority, and agrees, to accept the Escrow Funds in lieu of the Legal Requirements. County hereby consents to and authorizes the funding of the Escrow Account as contemplated by this Escrow Agreement in full satisfaction of the Legal Requirements.

11. **No Obligation to Overdraw.** Notwithstanding any provision of this Escrow Agreement seemingly to the contrary, Escrow Agent shall not be required to make payment of an amount in excess of the balance in the Escrow Account.

12. **No Obligation to Pay Interest.** Notwithstanding any provision of this Escrow Agreement to the contrary, Escrow Agent shall not be required to make any interest payment on any balance in the Escrow Account.

13. **No Liability for Owner Obligations.** The execution of this Escrow Agreement does not relieve Owner of its obligation to complete, to the County's satisfaction, the Improvements or obligate County or Escrow Agent to undertake or complete the Improvements and does not imply or require that either the County or the Escrow Agent assume any liability for the Owner obligations or any other responsibility of the Owner.

14. **Notices.** All notices, consents, approvals, waivers, and elections which any party shall be required or shall desire to make or give under this Escrow Agreement shall be in writing and shall be sufficiently made or given (i) when mailed by certified mail, postage prepaid, return receipt requested, (ii) by hand delivery to the named individuals representing the party to be notified, or (iii) by private parcel delivery services, or facsimile transmission for which receipt is provided to the notifying party. Notices, including notice of change of address, shall be addressed or transmitted to the addresses set forth below or such other address that a party may designate in the manner prescribed herein:

As to Owner: Park Square Enterprises, LLC  
Attn: Drew Abel  
5200 Vineland Road, Suite 200  
Orlando, FL 32811  
Tel.: (407) 529-3046  
E-mail: DAbel@parksquarehomes.com

With a copy to: Lowndes, Drosdick, Doster, Kantor & Reed, P.A.  
Attn: James Kattelman  
215 N. Eola Drive  
Orlando, FL 32801  
Tel.: (407) 843-4600  
Fac: (407) 843-4444  
E-mail: jim.kattelman@lowndes-law.com

As to County: County Administrator  
201 S. Rosalind Avenue  
P.O. Box 1393  
Orlando, FL 32802-1393  
Tel.: (407) 836-7366  
Fac: (407) 836-7399  
E-mail: countyadmin@ocfl.net

With a copy to:

Orange County Utilities Department  
9150 Curry Ford Road  
Orlando, FL 32825  
Attn.: Director  
Tel.: (407) 254-9804  
Fac: (407) 254-9899

As to Escrow Agent:

Orange County Comptroller  
201 S. Rosalind Avenue  
P.O. Box 38  
Orlando, FL 32802-0038  
Attn: Director of Finance and Accounting  
Tel.: (407) 836-5715  
Fac.: (407) 836-5753  
E-mail: paul.wunderlich@occompt.com

Notices, consents, approvals, waivers, and elections given or made as aforesaid shall be deemed to have been given and received on the date of the mailing, delivery, or transmission thereof as aforesaid.

15. **Governing Law.** This Escrow Agreement shall be governed by, and be construed and interpreted in accordance with, the laws of the State of Florida, without regard to choice of law rules. Venue for any action arising out of or in connection with this Escrow Agreement shall lie in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida. Notwithstanding anything seemingly to the contrary, the parties shall comply with all Federal, State and local laws, rules and regulations including all development plans and permits approved or issued with respect to the Property.

16. **Entire Agreement, Modification.** This Escrow Agreement contains the entire understanding and agreement between the parties relating to the subject matter hereof, and all prior or extrinsic agreements, understandings, representations and statements, oral or written, concerning the subject matter hereof are merged herein and/or superseded hereby. There are no other agreements, written or oral, between the parties with respect to the subject matter hereof except those contained in this Escrow Agreement. Neither Escrow Agent nor the principals shall be bound by any modification, cancellation, or rescission of this Escrow Agreement unless in writing and signed by Escrow Agent and principals.

17. **Waiver.** The failure of either party to insist in any one or more cases upon the strict performance of any one of the terms, covenants, conditions, or provisions of this Escrow Agreement shall not be construed as a waiver or a relinquishment of such party's right to insist on strict performance of any such term, covenant, condition, or provision in the future.

18. **Telecopy Execution.** A facsimile, telecopy, or other reproduction of this Escrow Agreement may be executed by the parties (in counterparts or otherwise) and, when so executed, shall be considered valid, binding, and effective for all purposes. At the request of any party, the parties hereto agree to execute an original of this Escrow Agreement, as well as any facsimile, telecopy, or other reproduction.

19. **Counterparts.** This Escrow Agreement may be executed in up to three identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes and all such counterparts shall, collectively, constitute one agreement, but, in making proof of this Escrow Agreement, it shall not be necessary to produce or account for more of such counterparts than are required to show that each party hereto executed at least one such counterpart.

20. **Time.** Time is of the essence in connection with this Escrow Agreement and each provision hereof.

21. **Construction.** All parties to this Escrow Agreement having participated fully and equally in the negotiation and preparation hereof, the fact that one of the parties to this Escrow Agreement, or its attorney, may be deemed to have drafted or structured any provision of this Escrow Agreement shall not be considered in construing or interpreting any particular provision of this Escrow Agreement, either in favor of or against such party.

22. **Settlement of Dispute.** In the event Escrow Agent is joined as a party to a lawsuit by virtue of the fact that it is holding the Escrowed Funds, Escrow Agent shall, at its option, either: (a) tender the Escrowed Funds into the registry of the appropriate court; or (b) disburse the Escrowed Funds in accordance with the court's ultimate disposition of the case. In the event Escrow Agent tenders the Escrowed Funds into the registry of the appropriate court and files an action of interpleader naming Principals and any affected third parties of whom Escrow Agent has received actual notice, Escrow Agent shall be released and relieved from any and all further obligation and liability hereunder or in connection herewith. The Principals agree that Escrow Agent shall not be liable to any party or person whomsoever for the misdelivery to Owner and County or otherwise of any monies except where such misdelivery shall be due to willful misconduct, gross negligence, or breach of trust by Escrow Agent.

**[Remainder of Page Intentionally Left Blank.]**



IN WITNESS WHEREOF, the parties have executed this Escrow Agreement or caused this Escrow Agreement to be executed and delivered by their duly authorized officers on the date(s) noted below.

ATTEST:

COUNTY:

ORANGE COUNTY, FLORIDA

Martha O. Haynie, County Comptroller, as  
Clerk of the Board of County Commissioners

By: Board of County Commissioners

By: *Katie Smith*  
Deputy Clerk

By: *Teresa Jacobs*  
Teresa Jacobs  
Orange County Mayor

Execution Date: *July 29*, 2014



Signed, sealed, and delivered in the presence **OWNER:**  
of:

**PARK SQUARE ENTERPRISES, LLC,**  
a Delaware limited liability company

[Signature]

Name: [Signature]

[Signature]

Name: DREW ABEL

By: [Signature]

Printed Name: Vishal Gupta

Title: President

Execution Date: May 9, 2014

STATE OF FLORIDA  
COUNTY OF ORANGE

SWORN and subscribed to freely and voluntarily for the purposes therein expressed before me by Vishal Gupta, as President of Park Square Enterprises, LLC, a Delaware limited liability company, who is known by me to be the person described herein and who executed the foregoing this 9<sup>th</sup> day of May, 2014.  He/She  who is personally known to me or  who has produced \_\_\_\_\_ as identification and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 9<sup>th</sup> day of May, 2014.

(NOTARY SEAL)

[Signature]  
Notary Public Signature

ALOK SHARMA  
(Name typed, printed or stamped)



**ALOK SHARMA**  
MY COMMISSION # EE 865439  
EXPIRES: February 20, 2017  
Bonded Thru Budget Notary Services




Signed, sealed, and delivered in the presence  
of:

**ESCROW AGENT:**

ORANGE COUNTY COMPTROLLER



Name: CATHERINE DIXON



Name: ANDERA MARSHALL

By:   
Martha O. Haynie  
County Comptroller

Execution Date: 7/29/, 2014

**EXHIBIT "A"**

Lots 1-32, LAKESIDE AT TOSCANA, according to the plat thereof as recorded in Plat Book 86, Pages 31-33, Public Records of Orange County, Florida.