

RETAINAGE ESCROW AGREEMENT

THIS RETAINAGE ESCROW AGREEMENT (the "Agreement"), made and entered into this 15th day of September, 2023, by and among The Town of Ashland City, The Honorable J.T. Smith, Mayor ("Owner"), and Solomon Builders, Inc. ("Construction Contractor"), and PINNACLE BANK ("Escrow Agent"), a Tennessee state-chartered bank, with offices located at 150 Third Avenue South, Suite 900, Nashville, TN 37201.

WITNESSETH:

WHEREAS, the Owner and Construction Contractor have heretofore entered into a construction contract dated the 15th day of September 2023, (the "Contract") whereby the Construction Contractor will make improvements to certain real property of the Owner pursuant to a certain project known as A New City Hall for The Town of Ashland City ("the Project") with such Contract providing that the Owner is to retain a percentage of all trade contractor payment requests made by the Construction Contractor (the "retainage") all as more specifically set forth in such Contract to which specific reference is hereby made;

WHEREAS, T.C.A. § 66-34-104 requires that the retainage be placed in a separate, interest bearing escrow account and that the funds therein shall be, at the time of deposit, the sole and separate property of the trade contractor from whom the retainage is owed;

WHEREAS, Escrow Agent has agreed to act as escrow agent to receive and hold the retainage paid to it until the receipt of a release by the Owner.

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenants and promised hereinafter set forth, the parties hereto agree as follows:

(1) Construction Contractor agrees to establish a separate interest-bearing escrow account with the Escrow Agent and the Owner further agrees to pay all retainage held pursuant to the Contract to the Escrow Agent for deposit in the escrow account.

(2) Said interest-bearing escrow account shall be owned by Construction Contractor and the trade contractors, to whom the retainage is owed.

(3) Upon the satisfactory completion of the Project, or a portion thereof, as evidenced by a written Release, substantially in the form attached hereto as Exhibit A, executed by the Owner and provided to the Escrow Agent, all, or a portion of, the retainage together with interest earned thereon, shall be paid to the Construction Contractor for payment to the trade contractors from whom the retainage was withheld.

(4) Should a dispute arise as between the Owner and Construction Contractor such that the Owner fails to execute and deliver a Release to the Escrow Agent, or in the event that the Owner and the Construction Contractor become involved in litigation over the funds held by the Escrow Agent in escrow,

the Escrow Agent agrees to hold the money and pay the retainage to neither the Owner nor the Construction Contractor until a final order of a court of record in Tennessee so directs the Escrow Agent to whom to pay said funds, or the Escrow Agent is presented with a written agreement between the Owner and Construction Contractor as to how much of the retained funds should be paid to whom. In the event that the parties mutually agree in writing to close the Escrow Account and direct the Escrow Agent as to where the retainage should be sent, the Escrow Agent shall follow such instruction and be released of any further obligation under this Agreement. In the event that litigation ensues between Owner and Construction Contractor, Escrow Agent shall tender into the registry or custody of any court of competent jurisdiction in Davidson County, Tennessee all assets or property held by Escrow Agent pursuant to the terms of this Agreement, together with such pleadings as it deems appropriate, and thereupon be discharged from all further duties and liabilities under this Agreement. EACH PARTY HEREBY EXPRESSLY WAIVES THEIR RIGHT TO A TRIAL BY JURY OF ANY CLAIM ARISING UNDER OR RELATED TO THIS AGREEMENT, WHETHER NOW EXISTING OR HEREAFTER ARISING. Any expenses incurred by Escrow Agent, including but not limited to Escrow Agent's reasonable attorney's fees associated with any litigation, shall immediately upon the Escrow Agent's demand be reimbursed to the Escrow Agent by the Owner and Construction Contractor, each of whom shall be jointly and severally liable for the expenses. Further, Escrow Agent may resign as escrow agent at any time, whereupon Escrow Agent shall transfer the retainage funds to another financial institution selected by the Owner and Construction Contractor.

(5) In the event that a dispute arises as provided in 4. herein, the Escrow Agent shall bear no responsibility to the Construction Contractor or any trade contractor for the nonpayment of the funds to the Construction Contractor for payment to one or more trade contractors.

(6) For an in consideration of the use of the money in the escrow account, the Escrow Agent agrees to hold said funds in an interest-bearing escrow account and to pay over the funds in said escrow account to the appropriate party according to the directions stated herein.

(7) The Escrow Agent may not assign or transfer its responsibility as escrow agent hereunder to another escrow agent without first obtaining the written consent of the Owner and the Construction Contractor.

(8) Owner and Construction Contractor hereto agree to indemnify and hold Escrow Agent harmless from any loss, damages, or liabilities of any kind whatsoever, whether foreseen or unforeseen, whether direct or indirect arising out of or in connection with this Agreement, the retainage, the escrow account, and the funds contained therein, or the performance of the Escrow Agent's obligations hereunder, as allowed by law, except liability resulting from Escrow Agent's gross negligence or willful misconduct. Escrow Agent may rely upon the signatures on any correspondence from either or both of Owner and/or Construction Contractor as being the authentic signatures of the Owner or Construction Contractor or, if the Owner or Construction Contractor are not natural persons, of persons duly authorized to act on behalf of the Owner or Construction Contractor.

(9) This Agreement supplements, rather than replaces, Escrow Agent's deposit account agreement, terms and conditions, and other standard documentation in effect from time to time with respect to the escrow account, as these may be updated or amended by Escrow Agent from time to time in connection therewith (the "Account Documentation"). The Account Documentation will continue to apply to the escrow account and such services, and the respective rights, powers, duties, obligations, liabilities and responsibilities of the parties thereto and hereto, to the extent not expressly conflicting with the provisions of this Agreement (however, in the event of any such conflict, the provisions of this Agreement shall control). Escrow Agent shall have no obligation to specifically notify any other parties hereto of any changes to the Account Documentation, including, without limitation, any changes to Escrow Agent's schedule of fees and charges, each of the parties hereto agrees shall have been deemed received to the extent such changed documentation is made available on Escrow Agent's website.

(10) Escrow Agent shall not be bound by any modification, amendment, termination, cancellation, rescission or supersession of this Agreement unless the same shall be in writing and signed by all of the other parties hereto and hereunder are effected thereby, unless it shall have given prior written consent thereto. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement. Handwritten signatures to this Agreement transmitted by facsimile, email or other similar electronic transmission (for example, through the use of a Portable Document Format or "PDF file) shall be valid and effective to bind the party so signing.

OWNER: The Town of Ashland City, The Honorable J.T. Smith, Mayor

BY: _____

Name and Title:

Construction Contractor: Solomon Builders, Inc.

BY: _____

Name and Title:

Escrow Agent: Pinnacle Bank

BY: _____

Name and Title: _____, SVP

EXHIBIT A

RELEASE

The undersigned, as owner of certain real property located in _____, _____ County, Tennessee which has been improved pursuant to a construction contract with _____, (hereinafter "Contractor"), hereby notifies Pinnacle Bank that Contractor has represented to the undersigned that Contractor has either reached final completion or has substantially completed with regards to the _____, pursuant to such contract. Based on Contractor's representations, the undersigned hereby authorizes Pinnacle Bank to release \$ _____, paid and held in escrow, pursuant to that certain Retainage Agreement between the Contractor, and Pinnacle Bank dated the ____ day of _____, 20___. This RELEASE is executed for the sole purpose of releasing the amount (s) held in escrow as aforesaid and this RELEASE specifically does not, nor shall it be construed to, release, waive or otherwise affect any obligations of Contractor to comply with the construction contract or any claims, causes of action or rights which the undersigned has or may have against Contractor arising out of said contract or relating to the work performed there under.

Name: _____

Title: _____

ATTEST:

STATE OF TENNESSEE)

: ss:)

COUNTY OF _____)

Sworn to before me this the _____ day of _____, 20__.

Notary Public

Commission Expires: _____