

**SUBDIVISION
ESCROW AGREEMENT**

THIS AGREEMENT, executed in triplicate between _____ hereinafter referred to as DEVELOPER, _____, hereinafter referred to as BANK, and the **City of South Burlington**, herein after referred to as MUNICIPALITY.

WITNESSETH:

WHEREAS, DEVELOPER has received final plat approval No. _____ dated _____ the MUNICIPALITY's Development Review Board for the development of a subdivision consisting of _____ lots with related improvements, in a development to be known as "_____", as depicted on and in accordance with the specifications as set forth on the final plat entitled "_____", dated _____, last revised _____, prepared by _____, and recorded at Map Slide _____ of the Land Records of the City of South Burlington (the "Final Plat herein");

WHEREAS DEVELOPER is required by said approvals, at its own expense, to complete the construction of the development site in accordance with the plans approved by the Development Review Board;

WHEREAS the parties to the Agreement wish to establish a mechanism to secure the obligations of the DEVELOPER for the work as set forth below; and

WHEREAS, the BANK executes this Agreement solely in the capacity of escrow agent.

NOW THEREFORE, the parties hereby covenant and agree as follows:

1. DEVELOPER will, at its own expense, complete the following construction as depicted and in accordance with the Final Plat:
 - a. _____
 - b. _____
2. DEVELOPER shall replace or repair any defective or improper work or materials which may be identified as such by the MUNICIPALITY within two (2) years after acceptance of the improvements set forth in Paragraph 1 by the MUNICIPALITY (hereinafter the "Warranty Period"). For the purpose of this Agreement "acceptance" shall be deemed to have occurred when the MUNICIPALITY's legislative body has voted to accept ownership of all the improvements required by this Agreement and applicable deeds of conveyance have been recorded in the Land Records of the City of South Burlington.
3. Upon "acceptance," the CITY shall provide DEVELOPER and BANK written notice of acceptance.
4. For the guaranty of DEVELOPER's performance of all requirements hereinabove set forth, DEVELOPER and BANK agree that cash in the amount of \$_____ shall be held in escrow by the BANK and shall be available for payment to the MUNICIPALITY in accordance with the terms herein set forth. The funds in the escrow account shall not be diverted, applied, set off or disbursed except in accord with the terms hereof. The MUNICIPALITY shall be the sole beneficiary of the escrow account and shall have sole power to draw funds from the account, in accordance with the terms of this agreement. Nothing herein shall relieve the DEVELOPER from the obligation to pay any additional costs, if actual costs exceed the above-stated cost. Nothing herein shall relieve the DEVELOPER from the obligation to pay any additional costs, if actual costs exceed the amount retained in escrow, after the time of acceptance.

5. Upon "acceptance," as defined above in Paragraph 2, the sum required to secure DEVELOPER's obligations under this Agreement shall be reduced to \$_____ and the BANK may withdraw from the escrow account \$_____ and may pay the same to DEVELOPER or to DEVELOPER's order. Nothing herein shall relieve the DEVELOPER from the obligation to pay any additional costs, if actual costs exceed the amount retained in escrow, after the time of acceptance. Following the disbursement contemplated in this paragraph 5, the sum of \$_____ shall be maintained in escrow until completion of the Warranty Period set forth in Paragraph 2 or until Bank is instructed, in writing, by Municipality to disburse some or all of that sum to Municipality, pursuant to Paragraph 6, below.
6. If the MUNICIPALITY files with the BANK a statement that the DEVELOPER is, in the judgment of MUNICIPALITY, in default under the terms of this Agreement, the BANK shall pay monies from said escrow fund to the MUNICIPALITY, in the amount(s) requisitioned by the MUNICIPALITY to complete the Improvements and satisfy the requirements in this Agreement.
7. The MUNICIPALITY will promptly submit to the DEVELOPER a copy of such statement as it files with the BANK. The consent of the DEVELOPER to payments by the BANK to the MUNICIPALITY shall not be required or solicited. The BANK shall incur no liability to the DEVELOPER on account of making such payment to the MUNICIPALITY, nor shall the BANK be required to inquire into the propriety of any claim by the MUNICIPALITY of default on the part of the DEVELOPER or into the use of such funds by the MUNICIPALITY in completing such Improvements.
8. The MUNICIPALITY shall not file with the BANK a statement of default until ten (10) days after notice has been sent by it to the DEVELOPER by certified mail, return receipt requested, setting forth its intention to do so.
9. All monies released by the BANK to the MUNICIPALITY pursuant to Paragraph 4 shall be used by the MUNICIPALITY solely for the purpose of performing obligations imposed upon the DEVELOPER by that portion of this Agreement upon which the DEVELOPER is then in default. Any work to be performed by the MUNICIPALITY pursuant hereto shall be let on a contractual basis, or on a time and material basis or shall be performed by the MUNICIPALITY with its own work force and equipment or shall be accomplished in such a manner as in the judgment of the MUNICIPALITY shall accomplish the work most expeditiously and economically.
10. If monies are released by the BANK to the MUNICIPALITY pursuant to Paragraph 4 and it shall later develop that a portion of the released monies are surplus to the MUNICIPALITY's needs, any such surplus shall be returned by the MUNICIPALITY to the BANK to be held and distributed by the BANK pursuant to the terms of this Agreement.
11. The BANK shall not refuse or delay to make such payments to the MUNICIPALITY when requested by the MUNICIPALITY by an appropriate statement, and DEVELOPER will not interfere with or hinder such payments by the BANK to the MUNICIPALITY.
12. This Agreement shall terminate and shall be of no force or effect upon performance of all requirements contemplated hereby, and the completion of the Warranty Period set forth in Paragraph 2.
13. This Agreement shall not only be binding upon the parties hereto, but also their respective heirs, executors, administrators, successors, and assigns.
14. Upon request of DEVELOPER, but only at the sole discretion of the MUNICIPALITY, the

MUNICIPALITY may agree to reduce the amount required to secure DEVELOPER's obligations under this Agreement if the MUNICIPALITY believes that the full amount of funds escrowed hereunder is no longer necessary to protect its interest, and shall notify the BANK in writing of such reduction in the amount of funds escrowed hereunder.

15. In the event that DEVELOPER furnishes MUNICIPALITY with an Irrevocable Letter of Credit, in form and substance satisfactory to MUNICIPALITY, as replacement security for the funds escrowed hereunder, and the MUNICIPALITY concludes that it is beneficial to the MUNICIPALITY to do so, the MUNICIPALITY may release the funds escrowed by this agreement and accept the Letter of Credit, provided the BANK reconfirms, in writing its commitment to the terms and conditions contained herein.
16. BANK as Escrow Agent.
 - (a) As escrow agent hereunder, BANK, acting in such capacity, shall have no duties or responsibilities except for those expressly set forth herein.
 - (b) DEVELOPER shall indemnify and hold harmless BANK against any loss, damage or liability, including, without limitation, attorney's fees which may be incurred by the BANK in connection with this Agreement, except any such loss, damage or liability incurred by reason of the gross negligence or willful misconduct of BANK. It is further understood by DEVELOPER that if, as the result of any disagreement between it and any other party or adverse demands and claims being made by it or anyone else upon BANK, or if BANK otherwise shall become involved in litigation with respect to this Agreement, DEVELOPER agrees that it shall reimburse BANK on demand for all costs and expenses, including, without limitation, attorney's fees, it shall incur or be compelled to pay by reason of such dispute or litigation, including reasonable compensation for time expended in connection with any such dispute or litigation.
 - (c) DEVELOPER shall indemnify and hold harmless MUNICIPALITY against any claim, loss, damage or liability, including, without limitation, attorney's fees which may be incurred by or brought against MUNICIPALITY in connection with this Agreement, except any such loss, damage or liability incurred by reason of the gross negligence or willful misconduct of MUNICIPALITY.
 - (d) BANK, acting as such, shall not be liable to anyone by reason of an error or judgment, a mistake of law or fact, or for any act done or step taken or omitted in good faith, and this provision shall survive the termination of this Agreement.
 - (e) At the time the last of the escrowed funds are released and disbursed by BANK in accordance with this Agreement, BANK shall be discharged from any obligation under this Agreement.
 - (f) In accordance with the provisions above, BANK may rely upon and shall be protected in acting upon any statement, instrument, opinion, notice, request, order, approval or document believed by it to be genuine and to have been signed or presented by the proper party or parties.
17. Substitution or Resignation of BANK. BANK reserves the right to withdraw from this Agreement and cease serving as escrow agent hereunder at any time by giving ten (10) days written notice thereof to the DEVELOPER and MUNICIPALITY. Upon notice of resignation by BANK, DEVELOPER agrees to find within ten (10) days of such notice a replacement escrow agent acceptable to MUNICIPALITY. BANK agrees to deliver the escrowed funds then held by BANK to such replacement escrow holder and notify all parties hereto. BANK shall thereupon be released from any and all responsibility or

liability to the parties hereto. If the DEVELOPER fails to appoint a replacement escrow agent within such ten (10) day period, BANK shall petition any court having jurisdiction for the appointment of a successor escrow agent or for instructions as to the disposition of the documents and moneys held by it under this Agreement. In any event such court appoints a successor escrow agent, BANK shall deliver the escrowed funds then held pursuant to this Agreement, and all records and other documents held by it under this Agreement, upon payment of all fees and expense reimbursements due to BANK, to such successor escrow agent and BANK shall thereby be released from any and all responsibility or liability to the parties hereto. Pending such appointment or instructions, BANK shall continue to be bound by the terms of this Agreement.

18. IN WITNESS WHEREOF, and intending to be legally bound, the parties have set their hands and seals hereto as of the date or dates written below.

DATED at _____, Vermont, this ____ day of 20____.

IN THE PRESENCE OF: _____

Witness By: _____
Duly Authorized Agent

IN THE PRESENCE OF: _____

Witness By: _____
Duly Authorized Agent

IN THE PRESENCE OF: CITY OF SOUTH BURLINGTON

Witness By: _____
Duly Authorized Agent