

ESCROW AGREEMENT

This AGREEMENT is made this _____ day of _____ 20____, among _____ hereinafter referred to as “Developer” and, _____ hereinafter referred to as “Property Owner”, the Developer and Property Owner collectively referred to as the “Applicant”, the PLANNING BOARD / ZONING BOARD OF THE TOWNSHIP OF CLINTON, hereinafter referred to as “Board”, and the COMMITTEE OF THE TOWNSHIP OF CLINTON, hereinafter referred to as “Township”.

WHEREAS, the Applicant has filed an application dated _____ with the Board under the Land Use Ordinance of the Township as amended from time to time, for approval of a

_____ ; and

WHEREAS, the Applicant, the Board and the Township desire to establish an escrow whereby work required to be performed by professionals employed by the Board and the Township will be reimbursed by the Applicant as required under the relevant provisions of the Ordinance; and

WHEREAS, the Ordinance requires the parties to enter into this Agreement,

NOW, THEREFORE, IT IS mutually agreed upon among the parties as follows:

1. Purposes.

- A. The Applicant authorizes the professional staff of the Board to review, inspect, report and study all plans, documents, statements, improvements and provisions made by the Applicant in conforming to the requirements of the Ordinance cited and referred to above. The Applicant further authorizes the professional staff of the Board to make all oral and/or written reports to the Board of their conclusions and findings derived from the review, study, investigation and like or similar duties performed as elsewhere authorized. The Applicant further authorizes the professional staff of the Board to attend all meetings, including public hearings or meetings, work sessions, sub-committee meetings, site inspections or any other meetings necessary for the proper evaluation of the Applicant’s presentation and to thereby assist the Board in arriving at a valid determination as to the merits of the application. The Applicant agrees to pay all reasonable professional fees, including the fees of the court reporter for attendance at all public hearings and for one complete expedited transcript of the proceedings of the public hearing on the Applicant’s application incurred by the Board for the performance of the duties outlined above.

1. Purposes. *(Continued)*

- B. In addition, the Applicant authorizes the professional staff of the Township to participate in any of the activities outlined in sub-section A above to the extent that the Township may become involved in the application and/or development approval process, including, but not limited to development, sewer or other agreements to be made with the Township, ordinances, dedication and acceptance of roadways, open space, easements or improvements, performance and maintenance bond review and the like. The Applicant agrees to pay all reasonable professional fees incurred by the Township for the performance of the duties outlined above.

- C. The Applicant shall pay for actual out-of-pocket expenses incurred by the professionals, including normal and typical expenses incurred in processing applications and inspecting improvements. The Applicant, however, shall not be charged for municipal clerical or administrative functions, overhead expenses, meeting room charges or any other municipal costs and expenses except as may be permitted under the Municipal Land Use Law, N.J.S.A. 40:55D-53.2 et seq. and any amendments thereto or any other applicable sections.

2. Escrow Established.

The Applicant, Board and Township, in accordance with the provisions of this agreement hereby create an escrow to be established with the Township of Clinton to be administered by the Chief Financial Officer.

3. Escrow Funded.

The Applicant upon execution of this agreement shall pay to the Township such sums as are required by Ordinance; and shall thereafter replenish the escrow account as hereinafter provided.

4. Increase in Escrow Fund.

During the existence of this escrow agreement the funds held by the escrow holder shall be encumbered to cover vouchers submitted by the professional staff upon review and approval by the Board or Township, as the case may be. When the escrow account is encumbered or actually depleted to 50% or less of the initial balance the Applicant shall within ten (10) days from the date of receipt of written notice, deposit additional sums with the escrow holder to replenish the fund to its original opening balance. The written notice referred to in this paragraph shall be sent to the Developer by regular, certified or telefax mail at _____ telefax # _____ with a copy to the Property Owner at _____

4. Increase in Escrow Fund. *(Continued)*

Receipt of regular mail shall be presumed to have occurred three (3) days after mailing; certified mail shall be deemed accepted on the date of mailing; telefax shall be deemed accepted on the date sent if transmitted before 5:00 pm. on a business day, otherwise it shall be deemed accepted on the next business day. The notice required under this paragraph shall be given by the Chief Financial Officer. If the Applicant does not deposit sufficient funds within the ten day period mentioned above, the professional(s) may stop work on the project except for any required health and safety inspections which shall be made and charged back against the replenishment of the funds. Negative escrow balances are subject to interest at 1½% per month on the balance. If the escrow remains insufficient for 15 days after the notice has been sent to the Applicant, such failure to pay shall by virtue of this Agreement constitute a WITHDRAWAL WITHOUT PREJUDICE of the Application for Development. Upon payment of the escrow the Application for Development shall be reinstated without additional non-refundable application fee provided said payment in full is made within forty-five (45) days. Otherwise new non-refundable application fees shall be assessed in addition to the required escrow. The Township may also revoke development permits, without issuance of zoning clearance or certificates of occupancy. An escrow deposit shall be considered insufficient if it has reached fifty (50%) percent of the original amount deposited or if a voucher is received which exceeds the amount currently on deposit whichever is applicable. If the person, place or telefax number of the Applicant changes for the purposes of giving notice, it shall be the Applicant's responsibility to inform the Township Clerk and the Chief Financial Officer of the change, in writing, immediately.

5. Time of Payment

The professionals referred to in this agreement, upon conclusion of their services, or, periodically during the performance of their services, shall submit vouchers to the Township conforming to the requirements established by the Board or the Township, as the case may be, for vouchers of the type and kind referred to under this paragraph. Said vouchers shall include the amounts of all fees and costs incurred as a result of the service set forth under Section 1 of this agreement. At the same time the vouchers are submitted to the Township, a copy of the voucher shall be submitted to the Applicant for information purposes. Vouchers shall be sent to the Applicant to its address at: _____ If Applicant's address should change, it shall be the duty of the Applicant to provide the Township Clerk and the Township Chief Financial Officer with its new address, immediately. Correspondence or inquiries from the Applicant to the Township shall be sent to the attention of the Chief Financial Officer and the Township Clerk, Clinton Township Municipal Building, 1370 Route 31 North, Annandale, New Jersey 08801, with a copy to the secretary of the Municipal Reviewing Agency(ies).

6. Board Review.

The respective Board shall approve the voucher before payment by the Township. Upon making a determination that said services have been performed, the Board shall process said vouchers in the same manner and under the same terms as are normally employed for vouchers submitted for work performed on behalf of the Township. At the conclusion of this proceeding the amount specified in said vouchers shall be deducted by the escrow holder from the escrow established pursuant to this agreement.

7. Applicant's Objection.

The Applicant shall have the right to make reasonable periodic inspections of the records maintained by the escrow holder to determine the then current status of the escrow account by contacting the Chief Financial Officer of the Township for an appointment during normal business hours. Unless the Applicant objects to the payment of any voucher from the escrow fund by notifying the Chief Financial Officer of the Township in writing within seven (7) days from receipt of the informational copy of the professional's voucher, the Applicant shall be deemed to have approved the payment of such voucher by the Township, except that if the professional has not supplied the Applicant with an informational copy of the voucher, the Applicant shall notify the Chief Financial Officer of the Township in writing of its objection to the payment of any voucher or amount set forth therein for which the Applicant was not supplied an informational copy, within ten (10) days from receipt of the Township's statement of activity against the deposit or escrow account, otherwise the Applicant shall be deemed to have approved the payment of all amounts set forth on such vouchers by the Township. The Applicant shall simultaneously provide copies of the Notice to the Chief Financial Officer, the Township or Board, depending on the entity for whom the services were provided, and the professional who rendered the service. The Township or its designee shall have a reasonable time to attempt to resolve the matter. However, if the matter is not resolved within thirty (30) days of the date the Notice is received by the Township, the Applicant may appeal to the County Construction Board of Appeals within forty-five (45) days from receipt of the informational copy of the professional's voucher, or within sixty (60) days from receipt of the Township's statement of activity against the deposit or escrow account, if the informational copy was not sent. The standards of review to be utilized by the Township or its designee in determining whether said payments are proper are: (1) whether the fees were reasonable and (2) whether the work has been performed properly.

8. Interest Allocations and Return of Unused Escrow.

If an amount greater than \$5,000.00 is deposited by an Applicant in escrow, the money, until repaid or applied to the purposes for which it has been deposited, including the Applicant's portion of the interest earned on it, shall continue to be the Applicant's property although held

8. Interest Allocations and Return of Unused Escrow. *(Continued)*

in trust by the Township. The Township may retain interest paid on a deposit which does not exceed \$100.00 for the year to defer the cost of maintaining and administering the escrow account for the Applicant. If the amount of interest earned is greater than \$100.00, the entire amount in excess of \$100.00 shall belong to the Applicant and shall be refunded to him annually or at the time the deposit is repaid or applied to the purposes for which it was deposited, as the case may be, unless the Applicant, in writing, directs otherwise.

Notwithstanding the aforementioned, the Township may retain an amount not to exceed the greater of \$100.00 or one-third of the entire amount of interest for administrative and custodial expenses. In addition, if the escrow account remains insufficient for more than forty-five (45) days, after notification to the Applicant, any and all interest which may result from or arise out of the deposits remaining in escrow shall be applied, if needed, towards the compensation due the professionals as provided elsewhere in this agreement. If any escrow balance is remaining, after the Board has granted final approval and signed the deeds, subdivision plat or site plan, in the case of application reviews and deposits; and after the improvements have been approved and accepted in the case of improvement inspection escrows and deposits, then it shall be returned to the Applicant.

Applicant acknowledges and agrees that all costs for services in relation to the application and inspection shall be paid by Applicant in accordance with this Agreement. Approved plats, plans or deeds shall not be signed nor construction permits issued, nor improvements accepted, until all costs are paid in full. This Agreement shall remain in full force through all phases of the development review process including, but not limited to, follow up on all conditions of approval, inspections or other unforeseen issues. Any inquiry by the Applicant or their professionals to the Township or its professionals shall constitute authorization to bill against the escrow.

9. Reference to Days.

All references to days in this agreement are to calendar days.

10. Duration of Agreement.

This agreement shall survive until all sums due hereunder have been paid in full.

11. Enforcement.

If the Township institutes legal action to enforce the terms of this agreement against the Applicant, the Applicant shall be responsible for reasonable attorney fees and costs of suit. The Applicant consents to sole jurisdiction of any dispute hereunder to being in Hunterdon County, New Jersey. Applicant consents to service of process by certified mail. The Applicant consents to this Agreement being recorded.

12. Severability.

If any portion of this Agreement is declared to be unconstitutional, invalid or inoperative, in whole or in part by a court of competent jurisdiction, such portion shall, but only to the extent it is unconstitutional, invalid or inoperative, be excluded from this agreement, and no such determination shall be deemed to invalidate the remaining portions of this agreement, all of which shall be given full force and effect.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the date first written above.

Notary Public

Applicant Signature

Applicant Printed Name

Property Owner Signature

Property Owner Printed Name

Planning Board / Zoning Board

By _____

Township of Clinton

By _____

STATE OF NEW JERSEY:

: ss.

COUNTY OF HUNTERDON:

I certify that on _____ 20 , before me, the subscriber, personally appeared _____ who I am satisfied is the person named in and who executed the within instrument, and thereupon he/she acknowledged that _____ signed, sealed and delivered the same as _____ act and deed for the purposes therein expressed.

Sworn and subscribed to before me on

STATE OF NEW JERSEY:

: ss.

COUNTY OF HUNTERDON:

I certify that on _____ 20 , before me, the subscriber, personally appeared _____ who I am satisfied is the person named in and who executed the within instrument, and thereupon he/she acknowledged that _____ signed, sealed and delivered the same as _____ act and deed for the purposes therein expressed.

Sworn and subscribed to before me on

STATE OF NEW JERSEY:

:SS.

COUNTY OF HUNTERDON:

I certify that on _____ 20____, Carla Conner, personally came before me and acknowledged under oath, to my satisfaction that she is the Clerk of the Township of Clinton, a municipal corporation; she is the attesting witness to the signing of this Agreement by the proper corporate officer who is John Higgins, the Mayor of the corporation and by Kevin Cimei the Chairman of the Planning Board / Thomas McCaffrey the Chairman of the Zoning Board; this agreement is signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of the corporation; she knows the proper seal of the corporation which is affixed to this Agreement; and that she signed this proof to attest to the truth of these facts.

Attest:
