

**LAKE MICHIGAN VIEW AT DIAMOND POINT
New Buffalo, Michigan**

ESCROW AGREEMENT

THIS AGREEMENT, by and between LAKE MICHIGAN VIEW TOWNHOMES & COTTAGES, LLC, a/k/a LAKE MICHIGAN VIEW AT DIAMOND POINT, a Michigan limited liability company, hereinafter called the "DEVELOPER", and METROPOLITAN TITLE COMPANY, ST. JOSEPH, MICHIGAN, hereinafter called the "ESCROW AGENT";

WITNESSETH:

WHEREAS, the Developer is contemplating the establishment of a residential condominium project to be known as LAKE MICHIGAN VIEW AT DIAMOND POINT, consisting of 26 townhomes and 17 single-family homes in Phase I, and 18 townhomes in Phase II, in the City of New Buffalo, Berrien County, Michigan, hereinafter called the "PROJECT", pursuant to the authority of Act No. 59 of Public Acts of 1978, as amended, hereinafter called the "ACT"; and

WHEREAS, it is the intent of the Developer to enter into Preliminary Reservation Agreements; and upon the establishment of the Project (as defined in the Act), Purchase Agreements with Prospective Purchasers for sites in the Project; and

WHEREAS, the Act requires that all payments made pursuant to the terms of Preliminary Reservation Agreements and Purchase Agreements shall be deposited directly in an escrow account, or shall be deposited by the Developer forthwith in an escrow account; and

WHEREAS, the Escrow Agent is authorized by the Act to serve in the capacity of the Escrow Agent, and the Escrow Agent is ready, willing and able to serve in such capacity; and

WHEREAS, the parties hereto desire to enter into such an Escrow Agreement for the benefit of the Developer and for the benefit of each Prospective Purchaser who makes a deposit under a Preliminary Reservation Agreement and/or Purchase Agreement;

NOW, THEREFORE, it is agreed as follows:

1. **ESCROW AGENT'S COMPENSATION.** The Escrow Agent hereby agrees to serve in such capacity at no fee, in consideration of the Developer from ordering and requiring the Project Master Title Policy and Lender's Policy to be issued by the Escrow Agent.

However, in the event that no Project Master Title Policy shall be issued by the Escrow Agent within one hundred fifty (150) days from the date hereof, the Developer agrees to compensate the Escrow Agent for the performance of services under this Agreement in the sum of TWENTY-FIVE AND NO/100 (\$25.00) DOLLARS per site, per Prospective Purchaser of such site, for which sums are held by the Escrow Agent. Such sum shall be the sole responsibility of the Developer and shall be due or payable before the termination of this Agreement.

2. **REAL ESTATE BROKER.** The Developer agrees that prior to entering into any listing, sale agent, or brokerage agreement with any real estate broker, the Developer will obtain written acknowledgement from such broker that the broker and any of the real estate agents acting under such broker's license are acting in the capacity of agent for the Developer; and as such agree to perform and fulfill all duties and obligations of the Developer set forth in this Escrow Agreement. In particular, all sums received pursuant to a Preliminary Reservation

Agreement or Purchase Agreement shall not be held in the real estate broker's trust account.

3. **ACCEPTED FORMS.** The parties hereto agree that for the purpose of reserving sites in the Project, a Preliminary Reservation Agreement in the form of Exhibit A attached hereto and incorporated herein shall be used exclusively. Further, the Developer agrees that upon recording of the Master Deed the Purchase Agreements to be used for the purchase of the sites in the Project shall be first submitted to the Escrow Agent.

The Developer agrees that it shall not substantially change the terms of the Preliminary Reservation Agreement or the Purchase Agreement without notification to the Escrow Agent.

4. **PAYMENTS PURSUANT TO PRELIMINARY RESERVATION AGREEMENTS AND PURCHASE AGREEMENTS.** Upon the execution of a Preliminary Reservation Agreement and/or a Purchase Agreement for a site in the Project, all sums paid by the Prospective Purchaser pursuant to the terms of such Preliminary Reservation Agreement or Purchase Agreement shall be paid directly to the Escrow Agent herein, or shall be deposited forthwith by the Developer with the Escrow Agent herein. In addition, the Developer shall provide the Escrow Agent with an executed copy of the Preliminary Reservation Agreement or Purchase Agreement pursuant to which deposits are being made; and in the case of a Purchase Agreement, a receipt signed by the Purchaser for the recorded Master Deed, Disclosure Statement, and Condominium Association Bylaws.

All such amounts received pursuant to this Paragraph shall be retained by the Escrow Agent until such time as released pursuant to the provisions contained herein.

5. **INVESTMENT OF ESCROW FUNDS.** All monies delivered to the Escrow Agent hereunder shall be held by it in such manner as is customary for the deposit of escrow funds. The Escrow Agent may invest said monies in savings accounts, time certificates, money market funds available to the Escrow Agent, or in such other manner as may be mutually agreed upon by the Escrow Agent and the Developer; **BUT NEITHER THE DEVELOPER NOR THE ESCROW AGENT SHALL BE UNDER ANY OBLIGATION TO EARN INTEREST UPON THE ESCROWED FUNDS HELD PURSUANT HERETO UNLESS OTHERWISE REQUIRED BY THE MICHIGAN DEPARTMENT OF COMMERCE.** In the event that interest upon such sums is earned, such interest shall be released in the same manner provided for the release of funds deposited in escrow.

6. **RELEASE OF ESCROW FUNDS [OTHER THAN PURSUANT TO SECTION 103(b)].** No part of the escrowed funds received by the Escrow Agent under the terms of this Agreement or any interest earned on said funds shall be released to either the Developer or to any Prospective Purchaser except upon the conditions hereinafter set forth.

- 6.1 **Cancellation of Preliminary Reservation Agreement.** Upon the receipt of the Notice of Cancellation of a Preliminary Reservation Agreement, the Developer shall forthwith notify the Escrow Agent of cancellation and provide the Escrow Agent with a copy of the Notice of Cancellation submitted by the Prospective Purchaser. The Escrow Agent shall within one (1) business day of the receipt of a copy of the Prospective Purchaser's Notice of Cancellation provide the Developer with a draft payable to the canceling Prospective Purchaser in an amount equal to all sums paid pursuant to the canceled Preliminary Reservation Agreement.

- 6.2 **Cancellation of Purchase Agreement.** Upon the receipt of Notice of Withdrawal from a Purchase Agreement, within the time provided by Section 84(2) of the Act, the Developer shall forthwith notify the Escrow Agent of such withdrawal and provide the Escrow Agent with a copy of the Notice of Withdrawal submitted by the

Purchaser. The Escrow Agent shall in one (1) day of the receipt of the copy of the Purchaser's Notice of Withdrawal provide the Developer with a draft payable to the withdrawing Purchaser in an amount equal to all sums paid pursuant to the Purchase Agreement (and, if applicable, any prior Preliminary Reservation Agreement by such Purchaser).

- 6.3 Default of Purchase Agreement.** Upon written notice from the Developer that a Purchaser has defaulted in any obligations under a Purchase Agreement after the agreement becomes binding, and has remained in default for a period of ten (10) days after written notice of such default from the Developer. If, however, the Purchaser files a written objection to the Notice of Default with Escrow Agent claiming an interest in the sums held pursuant to the Purchase Agreement, the Escrow Agent shall hold the funds as provided for in Paragraph 12(E) hereof. In the event the Purchaser shall not file a written objection to the Notice of Default within thirty (30) days of notification by the Developer, the Escrow Agent shall release to the Developer all sums held in escrow pursuant to such Purchase Agreement (and, if applicable, a prior Preliminary Reservation Agreement) not to exceed ten (10%) percent of the site purchase price. Sums in excess of ten (10%) percent of such purchase price (including additions thereto) shall be made payable by bank draft to the Purchaser.
- 6.4 Cancellation of the Project.** In the event the Developer or the Developer and unaffiliated co-owners of the sites in the Project shall decide not to establish the Project pursuant to the provisions of Sections 50 and 51 of the Act, the Developer shall notify the Escrow Agent to release all funds held in escrow pursuant to Preliminary Reservation Agreements or Purchase Agreements. Within two (2) business days of such notice, the Escrow Agent shall provide the Developer with bank drafts made payable to each person who paid sums pursuant to a Preliminary Reservation Agreement and/or a Purchase Agreement. Upon the release of such sums by the Escrow Agent, this Escrow Agreement shall terminate without any further liability whatsoever between the parties hereto.
- 6.5 Failure of Condition Precedent in Purchase Agreement.** In the event that a condition precedent in a Purchase Agreement shall not be complied with and shall render such Purchase Agreement null and void, the Escrow Agent, upon notification jointly from the Developer and the Purchaser, shall release all funds held in escrow pursuant to such Purchase Agreement to the Prospective Purchaser.
- 6.6 Failure to Execute Purchase Agreement.** If the Purchaser has executed a Preliminary Reservation Agreement, but has not executed a Purchase Agreement, and the Developer terminates the Purchaser's reservation right as a result of a default by the Purchaser, or for any reason permitted by the Preliminary Reservation Agreement, the Developer shall notify the Escrow Agent of the default, and all funds deposited pursuant to the Preliminary Reservation Agreement shall be released to the Purchaser.
- 6.7 Failure to Convey Marketable Title.** If the Developer is unable to convey insurable title to the Purchaser within sixty (60) days (1) after the receipt by the Purchaser of a title commitment in respect to the Purchaser's site, or (2) after issuance of occupancy permit for the Purchaser's site, whichever is later; the Purchaser shall notify the Escrow Agent of the Developer's inability to convey insurable title, and all funds deposited pursuant to the Preliminary Reservation Agreement and Purchase Agreement shall be released to the Purchaser.

6.8 Termination of Purchase Agreement for Reason other than Default. If the Developer terminates the Purchaser's rights under the Purchase Agreement for any reason permitted by the Purchase Agreement other than default of the Purchaser, the Developer shall notify the Escrow Agent of the termination, and all funds deposited pursuant to a prior Preliminary Reservation Agreement, if any, and the Purchase Agreement shall be released to the Purchaser.

The term "business day" as used in this Escrow Agreement shall mean a day other than a Saturday, Sunday, or legal holiday.

7. RESPONSIBILITY FOR STATUTORY COMPLIANCE. It is hereby agreed by the Developer that the responsibility for meeting time requirements of Sections 83(3) and 84(4)(a) of the Act shall be the sole responsibility of the Developer; and except as to the case where the Escrow Agent fails to provide the Developer with drafts within the time limit provided for in Paragraph 6 above, the Escrow Agent shall not be liable in any way whatsoever for the Developer's failure to comply with the statutory time requirements of Sections 83(3) and 84(4)(a) of the Act.

8. RELEASE OF ESCROW FUNDS PURSUANT TO SECTION 103(b). Except as provided in Paragraph 6 above, all amounts required to be retained in escrow in connection with the purchase of a site in the condominium project shall be released to the Developer only upon ALL of the following:

8.1 Issuance of a Certificate of Occupancy for the site, if required by local ordinance, and if sold with constructed single family residence or townhome and appurtenances.

8.2 Conveyance of legal or equitable title of the site to the Purchaser;

8.3 Receipt by the Escrow Agent of a certificate signed by a licensed professional engineer or architect either confirming that those portions of the phase of the Project in which the site is located and which on the Condominium Subdivision Plan are labeled "Must be Built" are substantially complete; OR determine the amount necessary for substantial completion thereof; and

8.4 Receipt by the Escrow Agent of a certificate signed by a licensed professional engineer or architect either confirming that recreational or other facilities which on the Condominium Subdivision Plan are labeled as "Must Be Built", whether located within or outside of the phase of the Project in which the site is located, and which are intended for common use, are substantially complete, or determining the amount necessary for substantial completion thereof.

Upon receipt of a certificate pursuant to Paragraphs 8.3 and/or 8.4 determining the amounts necessary for substantial completion, the Escrow Agent may release to the Developer all funds in escrow in excess of the amounts determined by the issuer of such certificate to be necessary for such substantial completion. In addition, upon receipt by the Escrow Agent of a certificate signed by a licensed professional engineer or architect confirming substantial completion in accordance with pertinent plans of an item for which funds have been deposited in escrow, the Escrow Agent shall release to the Developer the amount of such funds specified by the issuer of the certificate as being attributable to such substantially completed item. However, if the amounts remaining in escrow after any such partial release would be insufficient, in the opinion of the issuer of such certificate for the substantial completion of any remaining incomplete items for which funds have been deposited in escrow, only the amount of escrow in excess of such estimated cost to substantially complete shall be released by the Escrow Agent to the Developer.

Notwithstanding the release of escrow funds that is authorized or required by this section, the Escrow Agent may refuse to release funds from an escrow account if the Escrow Agent, in its judgment, has sufficient cause to believe the certificate confirming substantial completion or determining the amount necessary for substantial completion is fraudulent or without factual basis.

In place of retaining funds in escrow under this Paragraph, the Developer may furnish the Escrow Agent with evidence of adequate security, including, without limitation, an irrevocable letter of credit, lending commitment, indemnification agreement, or other resource having value, in the judgment of the Escrow Agent, of not less than the amount to be retained in escrow pursuant to the provisions of this Paragraph.

For the purpose of this Paragraph and Paragraph 9, below, "licensed professional engineer or architect" means a member of those professions who satisfy all requirements of the laws of the State of Michigan for the practice of the profession, and who is not an employee of the Developer or a firm in which the Developer or an officer or a director of the Developer is a principal who holds ten (10%) percent or more of the outstanding shares of that firm.

9. DEFINITION OF SUBSTANTIAL COMPLETION. Substantial completion and the estimated cost for substantial completion for the purposes of Paragraph 8 shall be determined by a licensed professional engineer or architect subject to the following:

9.1 Items referred to in Paragraph 8.3 shall be substantially complete only after all utility mains and leads, all major constructional components, sidewalks, driveways, landscaping and access roads, to the extent such items are designated on the Condominium Subdivision Plan as "Must Be Built", are substantially complete in accordance with appurtenant plans therefore.

9.2 If the estimated cost of substantial completion of any of the items referred to in Paragraphs 8.3 and 8.4 cannot be determined by a licensed professional engineer or architect due to the absence of plans, specifications, or other details that are sufficiently complete to enable such a determination to be made, such costs shall be an estimate of the costs of substantial completion prepared by a licensed professional engineer or architect.

9.3 A structure, facility, or other improvements shall be deemed to be substantially complete when it can be reasonably employed for its intended use, and, for purposes of certification under the Act, shall not be required to be constructed, installed, or furnished precisely in accordance with the specifications for the Project. A certificate of substantial completion shall not be deemed to be a certification as to the quality of the items to which it relates.

10. RELEASE AND ADMINISTRATION OF FUNDS PURSUANT TO NINE MONTH RULE. Pursuant to the provisions of Section 103b(7) of the Act, the following rules shall apply to funds retained in escrow:

10.1 Not earlier than nine (9) months after closing the sale of the first site in a phase of the Project for which escrow funds have been retained under Paragraph 8.3 of this Agreement, the Escrow Agent, upon the request of the Association or any interested co-owner, shall notify the Developer of the amount of funds deposited pursuant to Paragraph 8.3 and of the date determined under Paragraph 10.3 hereof upon which those funds can be released.

10.2 In case of a recreational facility or other facility intended for common use, not earlier than nine (9) months after the date on which the facility was promised in the condominium documents to be completed by the Developer, the Escrow Agent,

upon the request of the Association or any interested co-owner, shall notify the Developer of the amount of funds deposited pursuant to Paragraph 8.4, and of the date determined under Paragraph 10.3 upon which those funds can be released.

10.3 Three (3) months after receipt of a request pursuant to Paragraph(s) 10.1 and/or 10.2 above, the funds held in escrow which have not as yet been released to the Developer may be released by the Escrow Agent for the purpose of completing such incomplete improvements for which the funds were originally retained, or for a purpose specified in a written agreement between . and the Developer entered into after the transitional control date. The agreement may specify that issues relating to the use of funds be submitted to arbitration. Escrow Agent may release funds in the manner provided in such an agreement or may initiate an interpleader action and deposit retained funds with a court competent jurisdiction. In any interpleader action, the circuit court shall be empowered, in its discretion, to appoint a receiver to administer the application of the funds.

11. FUNDS NOT REQUIRED TO BE HELD IN ESCROW. The proceeds due the Developer from the closing of a site sale need not be deposited in escrow if such funds are not required to be retained in escrow pursuant to Section 103(b) of the Act for the completion of those uncompleted structures and improvements labeled under the terms of the Project documents as "Must Be Built".

12. MISCELLANEOUS PROVISIONS. The parties hereto agree to the following miscellaneous provisions:

12.1 The Escrow Agent may require reasonable proof of occurrence of any of the events, actions or conditions stated herein before releasing any sums held by it under this Agreement to a Prospective Purchaser or to the Developer. For purposes hereof, all notices shall be in writing, signed by the party to be charged, and shall be effective upon receipt by the Escrow Agent.

12.2 In the event any controversy arises hereunder or that the Escrow Agent is made a party to or intervenes in any litigation or institutes an action of interpleader relating to the escrow, the Developer shall compensate the Escrow Agent for any extraordinary services rendered by it together with all costs and for all costs and expenses incurred by it, other than those caused by negligence of the Escrow Agent.

12.3 Any change in the terms or conditions hereof may only be made in writing and signed by the parties or there duly authorized representative.

12.4 If the Escrow Agent receives conflicting instructions or claims to the funds, securities, or documents held in escrow pursuant to this Agreement:

A. It may hold all funds, securities, and documents affected by the conflicting instructions or claims in this escrow and take no further action until otherwise directed, either by mutual written instruction from all interested parties or final order of a court of competent jurisdiction; or

B. It may initiate an interpleader action in any Circuit Court in the State of Michigan naming all interested parties as parties and depositing all funds, securities, and documents affected by the adverse claims with the Clerk of such Court in full acquittance of its responsibility under this Agreement.

13. LIABILITY OF ESCROW AGENT.

13.1 The Escrow Agent in the performance of its duties under this Escrow Agreement shall be deemed an independent party not acting as the agent of the Developer, any the Purchaser, co-owner, or other interested party. So long as the Escrow Agent relies upon any certificate, cost estimate, or determination made by a licensed professional engineer or architect, as described in this Escrow Agreement, the Escrow Agent shall have no liability whatever to Developer or to any Purchaser, co-owner, or other interested party for any error in such certificate, cost estimate, or determination, or for any act or omission by the Escrow Agent in reliance thereon. The Escrow Agent shall be relieved of all liability upon release, in accordance with this Escrow Agreement, of all amounts deposited with it hereunder. It is expressly understood that the Escrow Agent's liability is limited by the terms and provisions set forth in this Escrow Agreement, the Escrow Agent is acting in the capacity of a depository, and as such, is not responsible or liable for the sufficiency, correctness, genuineness or validity of the instrument submitted to it, or the marketability of title to any site reserved or sold under any Agreement. The Escrow Agent is not responsible for the failure of any bank used by it as an escrow depository for funds received by it under this Agreement.

13.2 Further, the Escrow Agent is not a guarantor of performance by the Developer under the condominium documents or any Purchase Agreement and the Escrow Agent undertakes no responsibilities whatever with respect to the nature, extent or quality of such performance to the terms of such documents, to the plans and specifications for the Project, to local or state laws or in any other particular. So long as the Escrow Agent relies in good faith upon any certificate, cost estimate or determination of the type described in Section 3, the Escrow Agent shall have no liability whatever to the Developer, any Purchaser or any other party for any error in such certificate, cost estimate or determination.

13.3 Except in instances of gross negligence or willful misconduct, the Escrow Agent's liability hereunder shall in all events be limited to return, to the party or parties entitled thereto, of the funds retained in escrow (or which were placed by security) less any reasonable expenses which the Escrow Agent may incur in the administration of such funds or otherwise hereunder, including, without limitation, reasonable attorneys' fees and litigation expenses paid in connection with the defense, negotiation or analysis of claims against it, by reason of litigation or otherwise, arising out of the administration of such escrowed funds, all of which costs the Escrow Agent shall be entitled without notice to deduct from amounts on deposit hereunder.

14. RESIGNATION OR REMOVAL OF THE ESCROW AGENT. The Escrow Agent may resign as such following the giving of thirty (30) days' prior written notice to the Developer. Similarly, the Escrow Agent may be removed and replaced following the giving of thirty (30) days prior written notice to the Escrow Agent by the Developer. In either event, the duties of the Escrow Agent shall terminate thirty (30) days after the date of such notice (or as of such earlier date as may be mutually agreeable); and the Escrow Agent shall then deliver the balance of the escrow deposit then in its possession to a successor Escrow Agent as shall be appointed by the Developer as evidenced by a written notice filed with the Escrow Agent.

If the Developer shall have failed to appoint a successor prior to the expiration of thirty (30) days following the date of the notice of resignation or removal, the then acting Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent or other appropriate relief; and any such resulting appointment shall be binding upon all of the parties hereto.

Upon acknowledgment by any successor Escrow Agent of the receipt of the then remaining balance of the escrow deposit, the then acting Escrow Agent shall be fully released and relieved of all duties, responsibilities, and obligations under this Agreement.

15. **NOTICES.** Any request, direction, notice, or other services required or permitted to be made or given by any party hereto shall be in writing and shall be deemed sufficiently given or serviced for all purposes if delivered in person or by First Class mail to the parties hereto at the addresses set forth below or at such other address as any party shall specify, from time to time, by written notice given to all other parties hereto, viz:

15.1 In the case of the Developer:

Lake Michigan View Townhomes & Cottages, LLC
a/k/a Lake Michigan View at Diamond Point
c/o Paul D. Oselka and/or David E. Montayne
135 S. Whittaker Street
New Buffalo, MI 49117

with a copy to:
Mark A. LaRose
LaRose & Bosco, Ltd.
200 N. LaSalle Street, Suite 2810
Chicago, IL 60601

15.2 In the case of the Escrow Agent:

Metropolitan Title Company
500 Renaissance Drive
St. Joseph, MI 49085

Attn: Mr. Robert Schmeichel

For the purposes of calculating time periods under the provisions of this Escrow Agreement notice shall be deemed effective upon mailing or personal delivery, whichever is applicable.

16. **CHANGES IN CIRCUMSTANCES.** The disability, bankruptcy, insolvency, or absence of a Prospective Purchaser, the Developer or the Escrow Agent, or any of them, shall not affect or prevent performance by the Escrow Agent of its obligations and instructions hereunder.
17. **NO NOTIFICATION.** If no notification has been received by the Escrow Agent within three (3) years from the date of this Escrow Agreement, the Escrow Agent may, after thirty (30) days written notice to the Developer and Prospective Purchaser, deliver the escrowed assets to the Clerk of the Circuit Court of Berrien County, Michigan.
18. **COPY OF THIS AGREEMENT.** The Developer shall provide each Prospective Purchaser with a copy of this Escrow Agreement.
19. **BINDING EFFECT.** This Agreement shall be binding upon, and inure to the benefit of, the heirs, administrators, executors, successors, and assigns of the parties hereto.
20. **LAWS OF MICHIGAN.** This Escrow Agreement shall be construed and interpreted pursuant to the laws of the State of Michigan.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

LAKE MICHIGAN VIEW AT DIAMOND POINT, a
Michigan limited liability company (Developer)

DATED: _____, 2005

By: _____

METROPOLITAN TITLE COMPANY (Escrow
Agent)

DATED: _____, 2005

By: _____