

Deposit Account Control Agreement

Executive Law Article 21-B

Financial Institution

Name: _____
Address: _____

Depositor

Name: _____
Address: _____

Account:

Account Number: _____
Account Balance: \$ _____
Branch location: _____
Type of Account:
 time account
 savings account
 passbook account
 other deposit account (specify: _____)

Depositor has applied for or received certification as
(check applicable category or categories):

- Manufacturer of manufactured homes
- Retailer of manufactured homes
- Installer of manufactured homes
- Mechanic of manufactured homes

This Deposit Account Control Agreement is made as of the ____ day of _____, 20__ by and between the Financial Institution named above (the "Financial Institution") and the Depositor named above (the "Depositor"). The Financial Institution and the Depositor certify, acknowledge and agree as follows:

1. **Nature of this Deposit Account Control Agreement.** This Deposit Account Control Agreement is to be provided to the New York State Department of State ("NYS DOS") for the purpose of satisfying the financial responsibility requirements under 19 NYCRR Part 1210 ("Part 1210") of the Depositor, as the holder of certificate(s) issued by NYS DOS under Article 21-B of the Executive Law ("Article 21-B") in the category or categories checked above. This Deposit Account Control Agreement is a "security agreement" (as that term is defined in the Uniform Commercial Code [the "UCC"]) under which Depositor grants NYS DOS the security interest described in paragraph 4 below. This Deposit Account Control Agreement is also a control agreement under which the NYS DOS is given "control" (as that term is used in Article 9 of the UCC) of the account described above (the "Account").

2. **Status of the Account.** (a) The Financial Institution and the Depositor certify, acknowledge and agree that as of the of date of this Deposit Account Control Agreement: (i) the Account is maintained with the Financial Institution; (ii) the Account is a "deposit account" (as that term is defined in section 9-102(a)(29) of the UCC); (iii) the Account is open and in good standing; (iv) the Depositor is the sole depositor and the sole owner of the Account; (v) the balance in the Account is the "Account Balance" specified above; (vi) the Account has no stated maturity date; (vii) no person or entity (other than NYS DOS) has control of the Account; and (viii) the Account is not subject to any pledge, security interest, right of recoupment, or right of set off, other than the security interest granted to the NYS DOS by this Deposit Account Control Agreement.

(b) The Depositor certifies, acknowledges and agrees that (i) no funds now in the Account are proceeds in which any person or entity (other than NYS DOS) has a security interest or other lien of any kind; and (ii) no proceeds in which any person or entity (other than NYS DOS) may have a security interest or other lien of any kind will be deposited in the Account at any time hereafter.

(c) The Financial Institution certifies that (i) the Financial Institution is a "bank" (as that term is defined in section 9-102(a)(8) of the UCC); and (ii) the Financial Institution has the State of New York as its jurisdiction for the purposes of section 9-304 of the UCC.

3. **Permitted Applications.** (a) The Financial Institution and the Depositor authorize the NYS DOS to withdraw funds from the Account and to apply such funds toward (i) payment of any claim arising by reason of any failure by the Depositor to comply with any applicable provision of Article 21-B or Part 1210; (ii) payment of any penalty levied or assessed under Article 21-B or Part 1210 against the Depositor; (iii) payment for repairs or other corrective actions directed to be made or taken by any "Article 21-B order" (as that term is defined in Part 1210) made against the Depositor, or payment of such sums as may be required otherwise to satisfy any such Article 21-B order; (iv) payment for repairs or other corrective actions directed to be made or taken by any "Article 21-B judgment" (as that term is defined in Part 1210) entered against the Depositor, or payment of such sums as may be required otherwise to satisfy any such Article 21-B judgment; (v) payment of any claim arising by reason of any failure by any employee of the Depositor holding a "limited certificate" (as that term is defined in Part 1210) to comply with any applicable provision of Article 21-B or Part 1210 while acting as an employee of the Depositor; (vi) payment of any penalty levied or assessed under Article 21-B or Part 1210

against any employee of the Depositor holding a limited certificate in connection with any act or omission of such employee while acting as an employee of the Depositor; (vii) payment for repairs or other corrective actions directed to be made or taken by any Article 21-B order made against any employee of the Depositor holding a limited certificate in connection with any act or omission of such employee while acting as an employee of the Depositor or principal, or payment of such sums as may be required otherwise to satisfy any such Article 21-B order, and (viii) payment for repairs or other corrective actions directed to be made or taken by any Article 21-B judgment entered against any employee of the Depositor holding a limited certificate in connection with any act or omission of such employee while acting as an employee of the Depositor, or such sums as may be required otherwise to satisfy any such Article 21-B judgment (the foregoing applications being hereinafter referred to collectively as the “permitted applications” and individually as a “permitted application”). The Financial Institution and the Depositor agree that funds in the Account will be paid to the NYS DOS, upon written demand by the NYS DOS, to apply toward any such permitted application. NYS DOS is entitled to withdraw all or any part of the funds from the Account at any time without any notice to the Depositor and notwithstanding any instructions to the contrary which may be given at any time by the Depositor or by any other person or entity.

(b) Depositor acknowledges and agrees that Depositor’s obligations under Article 21-B and Part 1210 include, without limitation, the obligation to see that the balance in the Account never falls below the applicable minimum balance at any time, for any reason. Without limiting the provisions of subparagraph 3(a) above or paragraph 7 below, the Financial Institution and the Depositor agree that if the balance in the Account falls below the applicable minimum balance at any time, the entire balance in the Account will be paid to the NYS DOS, upon written demand by the NYS DOS, and the Financial Institution and the Depositor agree that in such event, NYS DOS shall be entitled to withdraw all of the funds from the Account without any notice to the Depositor and notwithstanding any instructions to the contrary which may be given at any time by the Depositor or by any other person or entity. The “applicable minimum balance” is: \$50,000 if the Manufacturer category is checked; \$25,000 if the Retailer category is checked and the Manufacturer category is not checked; \$10,000 if the Installer category is checked and neither the Manufacturer nor the Retailer category is checked; and \$5,000 if only the Mechanic category is checked.

4. Grant of Security Interest. The Depositor grants the NYS DOS a security interest in the Account, and in all funds now or hereafter in the Account (including but not limited to all funds hereafter deposited in the Account, whether by Depositor or by any other person or entity, and all interest hereafter credited to the Account), and in all right, title, and interest now held or hereafter acquired by the Depositor in and to the Account and in and to all funds now or hereafter in the Account, to secure the obligation of the Depositor to pay the claims, pay the penalties, make the repairs, take the corrective actions, and satisfy the “Article 21-B orders” and “Article 21-B judgments” mentioned in paragraph 3 of this Deposit Account Control Agreement, and to secure the right of the NYS DOS to withdraw funds from the Account and to apply such funds toward the permitted applications referred to in paragraph 3 of this Deposit Account Control Agreement. The Financial Institution hereby consents to the creation of such security interest and acknowledges the existence of such security interest.

5. Subordination. The Financial Institution agrees that any security interest now held or hereafter acquired by the Financial Institution in the Account and/or in the funds now or hereafter in the Account is and shall be subject and subordinate to the security interest granted to the NYS DOS by this Deposit Account Control Agreement. The Financial Institution further agrees that any right of recoupment or set off now held or hereafter acquired by the Financial Institution against the Account and/or against the funds now or hereafter in the Account is and shall be subject and subordinate to the security interest granted to the NYS DOS by this Deposit Account Control Agreement. The Depositor hereby consents to such subordination and acknowledges the existence of such subordination.

6. No other Security Interest to be Granted. The Depositor agrees that the Depositor will not grant a security interest in the Account to any person or entity other than NYS DOS. The Financial Institution and the Depositor agree that neither the Financial Institution nor the Depositor will execute any agreement or document of any kind granting “control” (as that term is used in Article 9 of the UCC) of the Account to any person or entity other than NYS DOS.

7. Maintaining the Account. The Financial Institution and the Depositor agree that the Depositor shall not be permitted to close the Account. The Financial Institution and the Depositor further agree that, except for a withdrawal made by or a payment made to the NYS DOS for application by the NYS DOS toward any permitted application(s), no check drawn on the Account shall be honored and no withdrawal or other payment from the Account shall be made for any purpose (including, but not limited to, application toward any debt or obligation secured by or subject to any security interest or right of recoupment or set off now held or hereafter acquired by the Financial Institution), without the express written consent of NYS DOS.

8. Account Statements. The Financial Institution agrees that it will provide the NYS DOS with copies of all statements and all other notices pertaining to the Account which are provided by the Financial Institution to the Depositor.

9. Grant of Control of Account. The Depositor, the NYS DOS, and the Financial Institution agree that the Financial Institution will comply with instructions originated by the NYS DOS directing disposition of the funds in the Account, without further consent by the Depositor. In particular, but not by way of limitation, the NYS DOS is entitled to direct the Financial Institution to stop payment

on any instruments drawn on the Account, and to withdraw or transfer funds, even if such withdrawal or transfer will cause subsequent checks to be dishonored for lack of funds in the Account. The Financial Institution will comply with instructions originated by the NYS DOS without regard to whether the Depositor is or is not then in default under this Deposit Account Control Agreement, and notwithstanding any contrary instructions which may be given by the Depositor or by any other person or entity. In the event of any conflict between any instructions originated by the NYS DOS and any instructions originated by the Depositor or by any other person or entity, the instructions originated by the NYS DOS will control. The Depositor, the NYS DOS, and the Financial Institution acknowledge and agree that the NYS DOS has "control" (as that term is used in Article 9 of the UCC) of the Account, and that its security interest is perfected by reason of such control.

10. Captions / Parties Bound / Termination and Modification. Captions in this Deposit Account Control Agreement are for convenience only, and do not define, limit or expand the provisions contained in the captioned paragraphs. This Deposit Account Control Agreement shall be binding upon the Financial Institution and the Depositor and their respective heirs, personal representatives, successors and assigns. This Deposit Account Control Agreement cannot be terminated or modified except by a written instrument executed by the NYS DOS.

IN WITNESS WHEREOF, the Financial Institution and the Depositor have executed this Deposit Account Control Agreement as of the date of first specified above.

Signature of Financial Institution:

(Type or Print name of Financial Institution)

By: _____
(Signature of Financial Institution's Authorized Officer)

Name/Title: _____
(Print name and title of Financial Institution's Authorized Officer)

Signature of Depositor:

If Depositor is a person, complete this part:

(Signature of Depositor)

(Type or Print Name of Depositor)

If Depositor is a business entity, complete this part:

(Type or Print name of Depositor)

By: _____
(Signature of Depositor's Authorized Officer or Representative)

Name/Title: _____
(Print name and title of Depositor's Authorized Officer or Representative)

The New York State Department of State (the NYS DOS) executes this Deposit Account Control Agreement for the purpose of agreeing to the provisions set forth in paragraph 9 of this Certificate Account Agreement, and to the extent that a secured party is required to agree to any other provision(s) set forth in this Deposit Account Control Agreement in order to make this Deposit Account Control Agreement binding and effective as a security agreement and control agreement, the NYS DOS executes this Deposit Account Control Agreement for the purpose of agreeing to such other provision(s).

NEW YORK STATE DEPARTMENT OF STATE

By: _____

Name/Title: _____