

## **FOREST BAY ESCROW AGREEMENT**

**THIS AGREEMENT** is entered into this 7-th day of June 1990 between Forest Bay Limited Partnership, a Michigan limited partnership ("Developer"), and Security Union Title Insurance Company ("Escrow Agent") through its duly designated representative for this purpose, Philip R Seaver Title Company, Inc.

**WHEREAS**, Developer has established or intends to establish Forest Bay as a residential Condominium Project under applicable Michigan law; and,

**WHEREAS**, Developer is selling Condominium units in Forest Bay and is entering into Purchase Agreements with Purchasers for such Units in substantially the form attached hereto, and each Purchase Agreement requires that all deposits made under such Agreement be held in an escrow account with an Escrow Agent: and,

**WHEREAS**, the parties hereto desire to enter into an Escrow Agreement to establish such an escrow account for the benefit of Developer and for the benefit of each Purchaser (hereinafter called "Purchaser") who makes deposits under a Purchase Agreement; and,

**WHEREAS**, Escrow Agent is acting as an independent party hereunder pursuant to the provisions of this Agreement and the Michigan Condominium Act (Act No 59, Public Acts of 1978, as amended, hereinafter the "Act") for the benefit of Developer and all Purchasers and not as the agent of any one or less than all of such parties,

**NOW, THEREFORE**, it is agreed as follows:

**1. Initial Deposit at Funds.** Developer shall, promptly after receipt, transmit to Escrow Agent all sums deposited with it under a Purchase Agreement, together with a fully executed copy of such Agreement and a receipt signed by the Purchaser for the recorded Master Deed, The Condominium Buyers Handbook and the Disclosure Statement.

**2. Release of Funds.** The sums paid to Escrow Agent under the terms of any Purchase Agreement shall be held and released to Developer or Purchaser only upon the conditions hereinafter set forth:

**A. Upon Withdrawal by Purchaser.** The escrowed funds shall be released to Purchaser under the following circumstances:

(i) If the Purchase Agreement is contingent upon Purchaser obtaining a mortgage and he fails to do so as provided therein and duly withdraws from the Purchase Agreement as a result thereof. Escrow Agent shall release to Purchaser all sums held by it pursuant to said Agreements

(ii) In the event that a Purchaser duly withdraws from a Purchase Agreement prior to the time that said Agreement becomes binding under paragraph 6 of the General Provisions thereof. Escrow Agent shall, within 3 business days from the date of receipt of notice of such withdrawal, release to Purchaser all of Purchase's deposits held thereunder.

**B. Upon Default by Purchaser.** In the event that a Purchaser under a Purchase Agreement defaults in making any payments required by said Agreement or in fulfilling any other obligations thereunder for a period of 10 days after written notice by Developer to Purchaser, Escrow Agent shall release all sums held pursuant to the Purchase Agreement to Developer in accordance with the terms of said Agreement.

**C. Upon Conveyance of Title to Purchaser.** Upon conveyance of title to a Unit from Developer to Purchaser (or upon execution of a land contract between Developer and Purchaser in fulfillment of a Purchase Agreement) Escrow Agent shall release to Developer all sums held in escrow under such Agreement provided Escrow Agent has received a certificate signed by a licensed professional engineer or architect confirming:

(i) That those portions of the phase of the Condominium Project in which such Purchaser's Unit is located and which on the Condominium Subdivision Plan are labeled must be built are substantially complete; and

(ii) That recreational facilities or other similar facilities and all other common elements or facilities intended for common use, wherever located, which on the Condominium Subdivision Plan are labeled must be built, are substantially complete.

If the elements or facilities referred to in paragraphs 2C(i) and 2C(ii) above are not substantially complete, only sufficient funds to finance substantial completion of such elements or facilities shall be retained in escrow and the balance may be released. All funds required to be retained in escrow may be

released, however, if other adequate security shall have been arranged as provided in paragraph 2F below. Determination of amounts necessary to finance substantial completion shall likewise be determined by the certificate of a licensed professional architect or engineer. For purposes of paragraph 2C(i) above, the portion of the Condominium Project in which Purchaser's Unit is located shall be substantially complete when all utility mains and the access roads (to the extent such items are designated on the Condominium Subdivision Plan as must be built) are substantially complete as evidenced by certificates of substantial completion issued by a licensed professional architect or engineer as described in Section 3 below. Improvements of the type described in paragraph 2C(ii) above shall be substantially complete when certificates of substantial completion have been issued therefor by a licensed professional architect or engineer, as described in Section 3.

**D. Release of Funds Escrowed For Completion of Incomplete Improvements.** Upon furnishing Escrow Agent a certificate from a licensed professional architect or engineer evidencing substantial completion in accordance with the pertinent plans and specifications of an improvement, facility or identifiable portion thereof for which funds or other security have been deposited in escrow, Escrow Agent shall release to Developer the amount of such funds or other security specified by the issuer of the certificate as being attributable to such substantially completed item(s); provided, however, that if the amounts remaining in escrow after any such partial release would be insufficient in the opinion of the issuer of such certificate to finance substantial completion of any remaining incomplete items for which funds or other security have been deposited in escrow, only the amount in escrow in excess of such estimated cost to substantially complete shall be released by Escrow Agent to Developer.

**E. Release of Interest Earned Upon Escrowed Funds.** The Escrow Agent shall deposit the escrow funds in an interest bearing account. The interest earned upon such sums shall be and remain the property of the Developer and shall not under any circumstances be returned to Purchaser.

**F. Other Adequate Security.** If Developer requests that all of the escrowed funds held hereunder or any part thereof be delivered to it prior to the time it otherwise becomes entitled to receive the same, Escrow Agent may release all such sums to Developer if Developer has placed with Escrow Agent an irrevocable letter of credit drawn in favor of Escrow Agent in form and substance satisfactory to Escrow Agent and securing full repayment of said sums. or has placed with Escrow Agent such other substitute security as may be permitted by law and approved by Escrow Agent.

**G. In the Event Elements or Facilities Remain Incomplete.** If Escrow Agent is holding in escrow funds or other security for completion of incomplete elements or facilities under §103b(7) of the Act, such funds or other security shall be administered by Escrow Agent in the following manner:

- (i) Escrow Agent shall upon request give all statutorily required notices under §103b(7) of the Act.
- (ii) If Developer, the Forest Bay Association and any other party or parties asserting a claim to or interest in the escrow deposit enter into a written agreement (satisfactory in its terms and conditions to Escrow Agent for Escrow Agent's protection, as determined by Escrow Agent in its absolute and sole discretion), as to the disposition of the funds or security in escrow under §103b(7) of the Act, Escrow Agent shall release such funds or security in accordance with the terms of such written agreement among such parties.
- (iii) Failing written agreement as provided in paragraph 2G(ii) above, Escrow Agent shall be under no obligation whatever to release any such escrowed funds or security, but Escrow Agent may, in its absolute and sole discretion, at any time take either of the following actions:
  - (a) Initiate an interpleader action in any circuit court in the State of Michigan naming the Developer, the Forest Bay Association and all other claimants and interested parties as parties and deposit all funds or other security in escrow under §103b(7) of the Act with the clerk of such court in full acquittance of its responsibilities under this Agreement; or
  - (b) Initiate an arbitration proceeding under the Commercial Arbitration Rules of the American Arbitration Association pursuant to which proceeding both the Developer and the Forest Bay Association shall be named as parties. Escrow Agent shall continue to hold all sums in escrow under §103b(7) of the Act pending the outcome of such arbitration but Escrow Agent shall not be a party to such arbitration. All issues relative to disposition of such escrow deposits or other security shall be decided by the arbitrator or arbitration panel and such decision shall be final and binding upon all parties concerned and judgment thereon may be rendered upon such award by any circuit court of the State of Michigan. Escrow Agent may in any event release all such escrow deposits in accordance with the arbitration decision or may commence an interpleader action with respect thereto as provided above.

**3. Proof of Occurrences; Confirmation of Substantial Completion; Determination of Cost to Complete.** 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 pursuant to any Purchase Agreement either to a Purchaser thereunder or to Developer. Whenever Escrow Agent is required hereby to receive the certification of a licensed professional architect or engineer that a facility, element, improvement or identifiable portion of any of the same is substantially complete in accordance with the pertinent plans therefor, it may base such confirmation entirely upon the certificate of the Developer to such effect coupled with the certificate to the same effect of a licensed professional architect or engineer. Likewise, all estimates and determinations of the cost to substantially complete any incomplete elements, facilities and improvements for which escrowed funds are being specifically maintained under paragraph 2D above shall be made entirely by a licensed professional engineer or architect and the determination of all amounts to be retained or maintained in the escrow account for the completion of any such elements, facilities, improvements or structures shall be based entirely upon such determinations and estimates as are furnished by such engineer or architect. No inspections of the Project or any portion thereof by any representative of Escrow Agent shall be deemed necessary hereunder, nor must any cost estimates or determinations be made by Escrow Agent and Escrow Agent may rely entirely upon certificates, determinations and estimates as described above in retaining and releasing all escrowed funds hereunder.

**4. Limited Liability of Escrow Agent; Right to Deduct Expenses From Escrow Deposits.** Upon making delivery of the funds deposited with Escrow Agent pursuant to any Purchase Agreement and performance of the obligations and services stated therein and herein, Escrow Agent shall be released from any further liability thereunder and hereunder, it being expressly understood that liability is limited by the terms and provisions set forth in such Agreements and in this Agreement, and that by acceptance of this Agreement, Escrow Agent is acting in the capacity of a depository and is not, as such, responsible or liable for the sufficiency, correctness, genuineness or validity of the instruments submitted to it, or the marketability of title to any Unit sold under any other Agreement. 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.

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

Except in instances of gross negligence or willful misconduct, 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 replaced by security) less any reasonable expenses which Escrow Agent may incur in the administration of such funds or otherwise hereunder, including, without limitation, reasonable attorney's fees and litigation expenses paid in connection with the defense, negotiation or analysis of claims against I, by reason of litigation or otherwise, arising out of the administration of such escrowed funds, all of which costs Escrow Agent shall be entitled without notice to deduct from amounts on deposit hereunder.

Notwithstanding any other provision herein to the contrary, Escrow Agent shall be under no obligation to release funds deposited here-under to any party until it can satisfactorily ascertain that it has received, from the party on whom the funds are drawn, final settlement as that term is defined under the provisions of MCL 440.4101, et seq.

**5. Notices.** All notices required or permitted hereunder and all notices of change of address shall be deemed sufficient if personally delivered or sent by registered mail, postage prepaid and return receipt requested, addressed to the recipient party at the address shown below such party's signature to this Agreement or upon the pertinent Purchase Agreement. For purposes of calculating time periods under the provisions of this Agreement, notice shall be deemed effective upon mailing or personal delivery, whichever is applicable.

FOREST BAY LIMITED PARTNERSHIP, a Michigan limited partnership. Developer

SECURITY UNION TITLE INSURANCE COMPANY, Escrow Agent

By: Paul Collom Investments, Inc., a Michigan corporation, General Partner

By: Philip R. Seaver Title Company, Inc., Agent

By: /Paul Collom/  
Paul Collom, President  
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