



Town of Georgia

47 Town Common Road North. • St. Albans, VT 05478
• Phone: 802-524-3524 • Fax: 802-524-3543 • website: townofgeorgia.com

ESCROW AGREEMENT

THIS AGREEMENT, executed in triplicate between **CAX, LLC**, of Colchester, Vermont, hereinafter referred to as "DEVELOPER", **Law Office of Scott R Bortzfield, PLLC** of St. Albans, Vermont, hereinafter referred to as "ESCROW AGENT", and the TOWN OF Georgia, a Vermont municipality in the County of Franklin and State of Vermont, hereinafter referred to as "MUNICIPALITY".

WITNESSETH:

WHEREAS, DEVELOPER has received final site plan/subdivision/PUD approval from MUNICIPALITY's Development Review Board by Notice of Decision dated December 11, 2020, which is incorporated herein by reference, for the development of **Alexander Estates, Phase II** as depicted on and in accordance with the specifications as set forth on the final plan entitled "Boundary & Right of Way Plat Alexander Estates Lot 2, Phase II Senior Housing Development CAX, LLC Volume 288 Page 173 Slide 244, Maps 445, 446 & 447 Ethan Allen Highway (Route 7) Georgia, Vermont" dated August 7, 2017, August 29, 2017, June 23, 2021 and July 15, 2021, Job # GEOR0098-1, prepared by Button Professional Land Surveyors, PC, on file in the Town of Georgia Planning & Zoning department (the "Plan"); and

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

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

WHEREAS, the ESCROW AGENT 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 specifications set forth in said Plan and related documents (hereinafter referred to as the "Improvements"):

a. SIDEWALKS

2. DEVELOPER shall complete the Improvements set forth in Paragraph 1 no later than **July 31, 2023**, and shall notify the MUNICIPALITY in writing when it believes it has completed the Improvements.

3. After receipt of written notice from the DEVELOPER that it believes the Improvements are complete, the MUNICIPALITY shall inspect the Improvements within fourteen (14) days and advise the DEVELOPER in writing within three (3) days whether the Improvements are completed to the MUNICIPALITY's satisfaction or whether work on the Improvements remains prior to completion. For the purposes of this Agreement, "completion" shall be deemed to have occurred when the MUNICIPALITY has inspected and approved the construction of all the Improvements as set forth above and issued written notice to the DEVELOPER as set forth above that the construction is complete. Following issuance of the written notice of completion by the MUNICIPALITY, 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 completion of the Improvements set forth in Paragraph 1.

4. For the guaranty of DEVELOPER's performance of all requirements hereinabove set forth, DEVELOPER and ESCROW AGENT agree that cash in the amount of **Twenty Thousand and 00/100 Dollars (\$20,000.00)** shall be held in escrow by the ESCROW AGENT 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 completion.

5. If the MUNICIPALITY files with the ESCROW AGENT a statement that the DEVELOPER is, in the reasonable judgment of MUNICIPALITY, in default under the terms of this Agreement, the ESCROW AGENT shall pay monies from said escrow fund to the MUNICIPALITY, in the amount(s) requisitioned by the MUNICIPALITY to complete the Improvements or repair of any defective or improper work or materials during the two-year warranty period after completion and satisfy the requirements in this Agreement.

6. The MUNICIPALITY will promptly submit to the DEVELOPER a copy of such statement as it files with the ESCROW AGENT. The consent of the DEVELOPER to payments by the ESCROW AGENT to the MUNICIPALITY shall not be required or solicited. The ESCROW AGENT shall incur no liability to the DEVELOPER on account of making such payment to the MUNICIPALITY, nor shall the ESCROW AGENT 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 or repairing of any defective or improper work or materials during the two-year warranty period after completion.

7. The MUNICIPALITY shall not file with the ESCROW AGENT 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.

8. All monies released by the ESCROW AGENT 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.

9. If monies are released by the ESCROW AGENT to the MUNICIPALITY pursuant to Paragraph 5 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 ESCROW AGENT to be held and distributed by the ESCROW AGENT pursuant to the terms of this Agreement.

10. The ESCROW AGENT 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 ESCROW AGENT to the MUNICIPALITY.

11. 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 3.

12. This Agreement shall not only be binding upon the parties hereto, but also their respective heirs, executors, administrators, successors, and assigns.

13. Upon completion of the Improvements and at such time as MUNICIPALITY delivers written notice to DEVELOPER that the Improvements are complete as set forth in Section 3, above, MUNICIPALITY shall reduce the amount required to secure DEVELOPER's obligations under this Agreement during the two (2) year warranty period to **ZERO** and shall notify the ESCROW AGENT in writing of such reduction in the amount of funds escrowed hereunder, at which time ESCROW AGENT shall release all funds to DEVELOPER. Nothing in this paragraph shall be construed to abrogate MUNICIPALITY'S rights under Section 3 to determine if and when the Improvements are complete.

14. 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 ESCROW AGENT reconfirms, in writing its commitment to the terms and conditions contained herein.

15. ESCROW AGENT as Escrow Agent.

(a) As escrow agent hereunder, ESCROW AGENT, acting in such capacity, shall have no duties or responsibilities except for those expressly set forth herein.

(b) DEVELOPER shall indemnify and hold harmless ESCROW AGENT against any loss, damage or liability, including, without limitation, attorney's fees which may be incurred by the ESCROW AGENT in connection with this Agreement, except any such loss, damage or liability incurred by reason of the negligence or willful misconduct of ESCROW AGENT. 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 ESCROW AGENT, or if ESCROW AGENT otherwise shall become involved in litigation with respect to this Agreement, DEVELOPER agrees that it shall reimburse ESCROW AGENT 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) ESCROW AGENT, 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 ESCROW AGENT in accordance with this Agreement, ESCROW AGENT shall be discharged from any obligation under this Agreement.

(f) In accordance with the provisions above, ESCROW AGENT 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.

16. Substitution or Resignation of ESCROW AGENT. ESCROW AGENT reserves the right to withdraw from this Agreement and cease serving as escrow agent hereunder at any time by giving fifteen (15) days written notice thereof to the DEVELOPER and MUNICIPALITY. Upon notice of resignation by ESCROW AGENT, DEVELOPER agrees to find within ten (10) days of such notice a replacement escrow agent acceptable to MUNICIPALITY. ESCROW AGENT agrees to deliver the escrowed funds then held by BANK to such replacement escrow holder and notify all parties hereto. ESCROW AGENT 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, MUNICIPALITY may file a statement with the ESCROW AGENT that the DEVELOPER is in default under the terms of this Agreement, and the ESCROW AGENT shall pay monies from said escrow fund to the MUNICIPALITY, in the amount(s) requisitioned by the MUNICIPALITY. If MUNICIPALITY fails to file such statement with ESCROW AGENT within fifteen (15) days of written notice of the ESCROW AGENT's resignation, ESCROW AGENT 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, ESCROW AGENT 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 ESCROW AGENT, to such successor escrow agent and ESCROW AGENT shall thereby be released from any and all responsibility or liability to the parties hereto. Pending such appointment or instructions, ESCROW AGENT shall continue to be bound by the terms of this Agreement.

17. This Agreement shall be binding on all parties hereto and their respective heirs, executors, administrators, successors and assigns.

Dated at _____, Vermont, this ____ day of April, 2023.

IN PRESENCE OF:

CAX, LLC

By: _____

Witness

Carl Laroe, Duly Authorized Agent

Dated at _____, Vermont, this ____ day of April, 2023.

IN PRESENCE OF:

TOWN OF GEORGIA

By: _____

Witness

Duly Authorized Agent

Dated at _____, Vermont, this ____ day of April, 2023.

IN PRESENCE OF:

LAW OFFICE OF SCOTT R BORTZFIELD, PLLC

By: _____

Witness

Scott R Bortzfield, Duly Authorized Agent