

## **ESCROW AGREEMENT FOR THE LODGE AT EAST BAY**

This Agreement is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2003, between The Lodge Group, L.L.C., a Michigan limited liability company ("Developer"); and Corporate Title and Escrow Company, a Michigan corporation ("Escrow Agent").

### **1. Factual background.**

A. Developer is developing a condominium project in the Village of Elk Rapids, Antrim County, Michigan known as The Lodge at East Bay;

B. Developer is selling units in the development and is entering into Purchase Agreements and/or Reservation Agreements in substantially the form attached which provide for the sale of such units and which require that deposits be held in an escrow account with Escrow Agent;

C. Escrow Agent is acting as an independent party hereunder pursuant to this Escrow Agreement and the Michigan Condominium Act (being Act No. 59, Public Acts of 1978 as amended, hereinafter referred to as the "Act") for the benefitted Developer and all purchasers and not as the agent of any one or less than all such parties;

D. Escrow Agent will have an exclusive contract with Developer, pursuant to which Developer agrees to and shall seek all title commitments and subsequent title insurance policies through Escrow Agent's title insurance company.

**2. Appointment of Escrow Agent.** Escrow Agent hereby agrees to its appointment for a term of three (3) years, unless earlier terminated, to act as Escrow Agent in connection with the above-referenced development.

**3. Compensation of Escrow Agent.** Escrow Agent shall not be entitled to compensation as such but, rather, pursuant to paragraph 1(D) shall have an exclusive right to provide title insurance for all properties in the development. Escrow Agent hereby agrees that such consideration is good and sufficient compensation hereunder.

**4. Deposit of monies.** Developer shall, promptly after receipt, transmit to Escrow Agent all sums deposited for escrow under a

Purchase Agreement or Reservation Agreement, together with a fully executed copy of such agreement. If a purchaser who has deposited funds under a Reservation Agreement subsequently signs a Purchase Agreement such funds shall be treated as a deposit under the Purchase Agreement. If a purchaser under a Reservation Agreement withdraws from such agreement prior to signing a Purchase Agreement, then the deposit under the Reservation Agreement shall promptly be refunded to such purchaser.

**5. Disposition of funds.** The sums paid to Escrow Agent under the terms of any Purchase Agreement or Reservation Agreement shall be held and released to Developer or purchaser only upon the conditions hereinafter set forth:

A. The escrow funds shall be released to purchaser upon following circumstances:

(i) if the Purchase Agreement is contingent upon purchaser obtaining a mortgage and purchaser diligently pursues a mortgage application but fails to obtain such mortgage, Escrow Agent shall released to purchaser all sums held pursuant to said agreement.

(ii) in the event that purchaser duly withdraws from the Purchase Agreement prior to the time the Agreement becomes binding under paragraph 7 thereof, or withdraws from the Agreement as permitted therein, Escrow Agent shall, within three business days from the date of receipt of written notice of such withdrawal, release to purchaser all of purchaser's deposits held thereunder.

B. After a Purchase Agreement has become binding upon the purchaser, then in the event that purchaser defaults in fulfilling any obligations thereunder for a period of ten days after written notice by Developer to purchaser, Escrow Agent shall release sums held pursuant to the Purchase Agreement to Developer in accordance with the terms of said Agreement.

C. When the Developer conveys the title to a unit to the purchaser and a certificate of occupancy is issued for the unit, the escrow agent shall release to the Developer all sums held in escrow under the agreement once the escrow agent has received a certificate signed by a licensed professional engineer or architect confirming -

- (1) that those portions of the phase of the project in which the purchaser's unit is located and which under the terms of the condominium documents "must be built," are substantially complete and that recreational facilities or other similar amenities and all similar common elements or improvements intended for common use, wherever located and which under the terms of the condominium documents "must be built," are substantially complete, or
- (2) that, if the elements or facilities referred to in Section 5(C)(1) are not substantially complete, sufficient funds to finance substantial completion of such elements or facilities are being retained in escrow or that other adequate security has been arranged as provided.

For the purpose of Section 5(C)(1), the phase of the condominium project in which the purchaser's unit is located and other facilities shall be "substantially complete" when all utility mains and leads, major structural components of buildings, building exteriors, sidewalks, driveways, landscaping, and access roads that are designated in the condominium documents as "must be built" are substantially complete as evidenced by the type of certificates described in Section 6(B).

D. When the Escrow Agent is furnished with a certificate from a licensed professional architect or engineer evidencing substantial completion in accordance with the pertinent plans and specifications of a structure, an improvement, or a facility or an identifiable portion of an improvement for which funds or other security have been deposited in escrow, the Escrow Agent shall release the amount of the funds or other security specified by the issuer of the certificate as being attributable to the substantially completed items to the Developer. However, if the amounts remaining in escrow after any partial release would be insufficient in the opinion of the issuer of the certificate to finance the substantial completion of the remaining incomplete items for which funds or other security have been deposited in escrow, the Escrow Agent shall release only the amount in escrow in excess of the estimated cost to substantially complete the remaining items to the Developer. Notwithstanding any release of escrowed funds authorized or required under this Agreement, the Escrow Agent may refuse to release escrowed funds if, in its judgment, it has sufficient

cause to believe that the certificate confirming substantial completion or determining the amount necessary for substantial completion is fraudulent or without a factual basis.

E. By way of example, the following improvements are labeled in a Disclosure Statement and in the Condominium Subdivision Plans as "must be built": Units and all pertinent limited common elements thereto; drives and parking areas; walking paths; boardwalks; a gazebo; pool house and a pool; exterior lights; and hook-ups to the Village of Elk Rapids water and sewage systems.

F. Escrow Agent shall be under no obligation to earn interest upon the escrowed sums held pursuant hereto. In the event that interest upon such sums is earned, however, all such interest shall be separately accounted for by Escrow Agent and shall be held in escrow and released as and when principal deposits are released hereunder; provided, however, that all interest earned on deposits refunded to purchaser upon such purchaser's withdrawal from a Purchase Agreement shall be paid to Developer. Any interest paid to Developer shall not be credited to a purchaser for any reason.

G. If Developer requests that all or any portion of the escrowed funds held hereunder be delivered to it prior to the time it otherwise becomes entitled to receive such funds, Escrow Agent may release such funds to Developer if Developer has placed with Escrow Agent security in form and substance satisfactory to Escrow Agent securing full repayment of such sums, as may be permitted by law.

H. If Escrow Agent is holding in escrow funds or the security for completion of incomplete elements or facilities under section 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 notices required by the Act.

(ii) If Developer, the condominium 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 section 103b(7) of the Act, Escrow Agent shall

release such funds or security in accordance with the terms of such written agreement among the parties.

(iii) Except as provided above, Escrow Agent shall be under no obligation to release any such escrowed funds or security, but Escrow Agent may, in its absolute and sole discretion, any time take the following action: initiate an interpleader action in the Antrim County Circuit Court in Michigan naming Developer, the condominium association and all other interested parties as defendants, and deposit all funds or other security in escrow under section 103b(7) of the Act with the clerk of such court in full discharge of its responsibilities under this Agreement.

## **6. Proof of facts.**

A. 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 or Reservation Agreement either to a purchaser thereunder or to the Developer. Whenever Escrow Agent is required hereunder to receive a certificate, Escrow Agent may rely entirely upon such certificate. Escrow Agent shall have no duty whatsoever at any time to inspect the condominium or to make any cost estimates or determinations, and Escrow Agent may rely entirely upon such certificates, determinations and estimates as are provided for herein for retaining and releasing escrowed funds.

B. All estimates and determinations of the cost to substantially complete any incomplete elements, facilities, structures, and improvements for which escrowed funds are being specifically maintained under Section 5 may, in Escrow Agent's complete discretion be made by an independent 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 entirely based on such determinations and estimates. The cost of procuring such an independent certification shall be paid by the Developer.

**7. Limitation of Liability.** Upon release of the funds deposited with Escrow Agent pursuant to any Purchase Agreement or Reservation Agreement and this Escrow Agreement, Escrow Agent shall be released from any further liability, it being expressly understood that Escrow Agent's liability is limited by the terms

and provisions set forth in this Escrow Agreement, and that by acceptance of any escrow deposit, Escrow Agent is acting in the capacity of depository and is not, as such, responsible or liable for the sufficiency, correctness or validity of the instruments submitted to it. Escrow Agent shall not be responsible for the failure of any bank used by it as a depository of funds received by it under this Escrow Agreement. Escrow Agent is not a guarantor of performance by Developer under the condominium documents, a Purchase Agreement or Reservation Agreement. Escrow Agent undertakes no responsibilities whatsoever with respect to the nature, extent, or quality of Developer's actions or performance of Developer's obligations. As long as Escrow Agent relies in good faith upon any certificate or proof of facts or determinations provided for herein, Escrow Agent shall have no liability whatsoever to Developer, any purchaser, a co-owner, or any other party for any error in such certificate, facts, or determination; or for any act or omission by Escrow Agent in reliance thereupon. Escrow Agent's liability hereunder shall in all events be limited to the return, to the party or parties entitled thereto, of the funds deposited in escrow less any reasonable expenses which Escrow Agent may incur in the administration of such funds or otherwise hereunder. Such expenses shall include (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 the escrowed funds. All such expenses incurred by Escrow Agent shall be deducted from amounts on deposit hereunder without notice or right to object by any party.

**8. 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 or on the applicable Purchase Agreement or Reservation Agreement. For purposes of calculating time periods under the provisions of this agreement, notice shall be deemed effective upon mailing or personal delivery, whichever method is used.

**9. Termination.** Escrow Agent may immediately terminate this Agreement in the event that Developer breaches the obligation of exclusive placement of title insurance for the development with Escrow Agent. Upon such termination, Escrow Agent may take any

action permitted to it under this Agreement with respect to any funds then held in escrow.

ESCROW AGENT:

Dated: \_\_\_\_\_

\_\_\_\_\_  
, Authorized agent

DEVELOPER:

Dated: \_\_\_\_\_

\_\_\_\_\_  
, Authorized agent