

## ESCROW AGREEMENT

This Agreement is dated June \_\_\_\_, 2014. The parties to this Agreement are:

**HINESBURG CENTER, LLC**  
66 Knight Lane  
Suite 30  
Williston, VT 05495

a Vermont limited liability company (the "Developer");

**TOWN OF HINESBURG**  
10632 Route 116  
Hinesburg, VT 05461

a Vermont municipality (the "Town"); and

**MASCOMA SAVINGS BANK, FSB**  
243 Sykes Avenue  
White River Junction, VT 05001

a federal savings bank (the "Bank").

### *Recitals*

A. The Developer is the owner of a 12-lot subdivision and PUD located on the west side of Route 116 and the north side of Farmall Drive in Hinesburg, Vermont (the "Subdivision").

B. On January 28, 2014, the Hinesburg Development Review Board (the "DRB") required that the Developer establish an escrow or three-party financial agreement with the Town to secure completion of a second pocket park, to be located on Lot 42 in the Subdivision.

C. The design and location of the pocket park on Lot 42 is shown and depicted on two plans by T.J. Boyle Associates: L-100, "Hinesburg Center Base Plan," dated December 10, 2013; and L-101, "Hinesburg Center Base Plan - Focus Area," dated December 11, 2013 (the "Plans").

D. The Developer is willing to provide an escrow to ensure timely construction and completion of the park as approved by the DRB.

### *Promises and Covenants*

NOW, THEREFORE, in consideration of the sum of Ten and more Dollars, the receipt and sufficiency of which is acknowledged by the parties, the parties agree as follows:

#### **Section 1. Defined Terms.**

In this Agreement, the following terms have the following meanings:

Bank - as set forth above

Construction Amount - \$20,000.00

Deadline - June 30, 2015

Developer - as set forth above

DRB - as set forth in Recital B

DRB Landscaping - plantings depicted on the Plans therefor submitted to and approved by the

Landscaping Amount - \$2,000.00

Plans - as set forth in Recital C

Subdivision - as set forth in Recital A

Town - as set forth above

**Section 2. Developer's Construction Obligations.**

The Developer shall,

- (a) at its expense, complete the following improvements in connection with the park:
  - (i) construct and install the improvements as depicted on the Plans therefor submitted to and approved by the DRB;
  - (ii) install the Landscaping and replace dead or diseased Landscaping during the three-year period after installation.
- (b) reimburse the Town for the reasonable costs of an independent professional to verify proper installation of the improvements referred to in subsection (a) immediately preceding and following completion of installation.

**Section 3. Completion.**

- (a) The construction and installation described in Section 1 shall be completed no later than the Deadline.
- (b) On or within 15 days after the Deadline (or earlier, if written notice is provided to the Town by the Developer that the construction and installation described in Section 1 has been completed), the Town shall inspect the improvements and landscaping. If the Developer
  - (i) has complied with its obligations, the Town shall promptly provide written notice thereof to the Bank and the Developer, and the Bank shall then release the Construction Amount and the Landscaping Amount (as appropriate) to the Developer; or
  - (ii) has not complied with its obligations, the Town shall promptly provide written notice thereof to the Bank and Developer, and the Bank shall release the Construction Amount and the Landscaping Amount (as appropriate)

either to the Town pursuant to Section 4 or to the Developer upon receipt of written notice to do so from the Town.

**Section 4. Escrow.**

The Town has determined that the cost of the matters set forth in Section 1 is the Construction Amount. The Town has agreed that the amount to be held to assure availability of funds to replace dead or diseased plantings is the Landscaping Amount; the Landscaping Amount shall be available for two years from completion of installation. For the guaranty of the Developer's performance of the requirements of this Agreement, the Developer and the Bank agree that the Construction Amount and the Landscaping Amount shall be deposited into an account and held in escrow by the Bank to be available for payment to the Town as set forth in this Agreement.

**Section 5. Default.**

(a) If the Town shall deliver to the Bank and the Developer written notice that the Developer has failed to comply with the requirements of Section 1 of this Agreement (after written notice to the Developer and the Developer shall have failed to cure the default within 14 days from receipt of the notice), the Bank shall pay to the Town from the Construction Amount or the Landscaping Amount, as appropriate, such amounts (not exceeding the total) in reimbursement to the Town for the Town's completion of any of the Infrastructure or Landscaping as depicted on the plans.

(b) Any funds released by the Bank to the Town pursuant to this Agreement shall be used solely by the Town for the purpose of completing the improvements and the Landscaping pursuant to the Plans, provided, however, that the Town shall have reasonable flexibility to implement the conceptual design provided by T. J. Boyle Associates. Any surplus funds in the hands of the Town shall be paid to the Developer.

**Section 6. Joint Instructions.**

Anything herein to the contrary notwithstanding, the Construction Amount and the Landscaping Amount or any part of them may be disposed of by the Bank at any time in accordance with instructions received by the Bank in a writing signed by the Developer and the Town.

**Section 7. Protections of Bank.**

To induce the Bank to act hereunder,

(a) The Bank

- (i) shall not be under any duty to give the property held hereunder any greater degree of care than the Bank gives its own similar property, and
- (ii) shall not be required to invest any funds held hereunder unless so directed herein.

(b) The Bank may act in reliance upon any instrument or signature believed to be genuine and may assume that any person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized to do so.

(c) The Bank may act relative hereto upon advice of counsel in reference to any matter

connected herewith, and shall not be liable for any mistake of fact or error or judgment, or for any acts or omissions of any kind unless caused by its willful misconduct or gross negligence.

**Section 8. Termination.**

This Agreement shall terminate and shall be of no further force or effect upon performance by the Developer of its obligations pursuant to Section 1 and written confirmation thereof from the Town and authorization from the Own to release the remaining balance of the Construction Amount and the Landscaping Amount to the Developer.

**Section 9. Recitals.**

The Recitals are a part of this Agreement and incorporated herein.

DEVELOPER:

TOWN:

**HINESBURG CENTER, LLC**

**TOWN OF HINESBURG**

By \_\_\_\_\_

By \_\_\_\_\_

BANK:

**MASCOMA SAVINGS BANK, FSB**

By \_\_\_\_\_

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