

JOINT ESCROW AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2000 by and between _____, residing at _____ (the AOwner@) and THE MICHAELS GROUP, LLC a New York corporation with its principal place of business located at 10 Blacksmith Drive, Malta, NY 12020 (The AContractor@) and J. Stephen Reilly, Esq., Shanley, Sweeney, Reilly & Allen, P.C., 10 Thurlow Terrace, Albany, NY 12203 (the Escrow Agent@).

Introduction

- A. The Owner owns the land on _____ in the Town of _____ and designated on the tax map as _____ (the AProperty@) and the Owner and the Contractor entered into a construction contract dated _____ (the AContract@), under which the Contractor has agreed to construct a single family home (the AHome@) for the Owner on the Property pursuant to the terms and conditions of the Contract.
- B. In accordance with the terms of the contract, the Contractor has agreed to construct the Home upon the Property provided that the parties enter into the Escrow Agreement.
- C. The Owner has agreed to execute this Escrow Agreement and to place with the Escrow Agent a Warranty Deed, and any other instrument necessary to convey title to the Property from the Owner to the Contractor (the ATitle Instruments@). Escrow Agent has agreed to hold said Title Instruments in escrow on the certain terms and conditions contained herein and not to record same.

NOW THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. The Owner shall deliver the Title Instruments to the Escrow Agent and shall confer upon the Escrow Agent the Absolute, irrevocable authority coupled with a power of attorney-in-fact and in the name of an on behalf of the Owner to release the Title Instruments upon receipt by Escrow Agent of a certification signed by both Parties, directing the Escrow Agent as to whom to deliver the Title Instruments or delivery shall be made pursuant to the procedure set forth in Paragraphs 2 and 3 of this Agreement.

2. The Title Instruments shall be held in escrow by the Escrow Agent until such time as the Escrow Agent receives written certification in the form of a copy of the Certificate of Occupancy as proof the Home is complete and receipted copy of the statement of sale as proof Contractor was paid. In the event Contractor/Owner provides Escrow Agent a copy of the Certificate of Occupancy and Contractor or Owner cannot provide proof of payment within fifteen (15) days thereof, Escrow Agent shall deliver the Title Instruments to Contractor.

3. In the event the Title Instruments are delivered by Escrow Agent to Contractor pursuant to the above paragraphs, then the Contractor hereby agrees to pay to the Owner the sum of the sale price to a bona fide third party purchaser, minus construction contract, together with the total of the Owners deposits paid to the Contractor pursuant to the Contract. The Contractor may reduce such sum by any amount necessary to pay off the balance of any existing mortgage which may exist against said property. The Contractor shall use his best efforts to market the property and shall accept any offer received that is within five (5) percent of current market value as determined by an independent appraisal. Contractor shall pay the remainder to Owner within five (5) business days of transfer of title to the Property to a bona fide third party purchaser for value.

4. The Parties acknowledge and it is expressly understood and agreed that title shall remain vested in the Owner during the period of time which the Title Instruments are being held by the Escrow Agent and shall only be delivered from Escrow by the Escrow Agent pursuant to the terms herein.

5. The Owner represents, warrants, covenants and agrees that he shall not sell, convey, mortgage or otherwise encumber or transfer the Property until such time as the Escrow Agent delivers the Title Instruments to the Owner. Notwithstanding the above, both parties acknowledge that there exists against the property a mortgage lien in favor of _____ in the amount of \$ _____ .

6. Owner and Contractor jointly and severally agree to indemnify and hold Escrow Agent harmless from any and all claims, causes of action or damages or expense resulting from any action or inaction of Escrow Agent in the performance of its duties and obligations as Escrow Agent under the terms of this Agreement, unless such action or inaction is caused by the willful malfeasance or gross negligence of Escrow Agent.

7. Escrow Agent shall charge no fee for its services in acting as Escrow Agent.

8. The exercise, failure to exercise or delay in exercising any of its rights, remedies or options under this Escrow Agreement, or any present or future supplements hereto, or any other agreement between the parties hereto, by the Contractor shall not act as a waiver by Contractor or preclude it from exercising any other right, remedy or option hereunder, under any other agreement between the Contractor and any other party hereto, or at law or in equity.

9. Any disputes arising under this Escrow Agreement shall be submitted to arbitration pursuant to the rules of the American Arbitration Association. The Owner, Contractor and Escrow Agent agree that this shall be their sole and exclusive remedy, in the event that any party shall commence a proceeding pursuant to the terms of this Escrow Agreement. For purposes of this paragraph, this Escrow Agreement shall survive the delivery of the Title Instruments and/or the transfer of title to the Property to Contractor.

10. The Escrow Agreement shall be interpreted in accordance with the laws of the State of New York. There are no promises, agreements, terms, conditions warranties, representations, or statements other than contained herein or in the Contract. Any conflict between the terms of this Escrow Agreement and the Contract shall be resolved in favor of the terms of this Escrow Agreement. This Escrow Agreement shall apply to and bind the heirs, legal representatives, successors and assigns of the respective parties hereto. It may not be changed orally.

11. No notice, demand, request or other communication to Escrow Agent in connection herewith shall be binding upon Escrow Agent unless it is in writing, refers specifically to the Escrow Agreement, is addressed to Escrow Agent at the address set forth above, to the attention of J. Stephen Reilly, or to such other address and person as Escrow Agent may at any time, from time to time, designate and is actually received by Escrow Agent at that address.

OWNER:

CONTRACTOR:

ESCROW AGENT:

STATE OF NEW YORK)

SS.:

COUNTY OF)

On the ____ day of _____, in the year _____ before me, the undersigned, a notary public in and for said state, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)

SS.:

COUNTY OF)

On the ____ day of _____, in the year _____ before me, the undersigned, a notary public in and for said state, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual acted, executed the instrument.

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