

BEACHWALK BUILDER'S SECURITY AGREEMENT

NB: Items in bold and areas underlined to be completed before signatures are affixed.

This Security Agreement ("Agreement") is entered into by and among Beachwalk Property Owners Association, an Indiana non-profit corporation ("BPOA"), and

Name of Builder: _____
(Builder") (collectively, "the Parties), agree as follows:

Recitals

1. Whereas BPOA is the homeowner's association that is charged with administering and maintaining the common elements of the association and does so pursuant to the Declarations and Covenants, as amended and supplemented (the "Declarations and Covenants"), and the By-Laws;
2. Whereas BPOA has adopted the following building codes for its various neighborhoods;
3. Whereas BPOA has adopted certain policies regarding construction in Beachwalk;
4. Whereas Beachwalk's Board of Directors ("Board") administers the Beachwalk Building Code and the Beachwalk Building Policies through the Architectural and Ecological Review Committee ("AERC"), members of whom are appointed by the Board and report to the Board;
5. Whereas the AERC has received, reviewed and approved plans ("the Plans") for the construction of a residence at **Address:** _____ ("the Residence");
6. Whereas the owner of **Address :** _____ ("the Owner") has entered into an agreement with Builder to construct the residence in accordance with the Plans, the Beachwalk Building Code and the Beachwalk Building Policies;
7. Whereas Owner and Builder have each agreed with BPOA to construct the residence at **Address:** _____ in full and strict accordance with the Plans, the Beachwalk Building Code and the Beachwalk Building Policies; and
8. Whereas the Board has determined that it is in the best interests of the BPOA to require Builder to fund and provide a security deposit to ensure that Builder; (i) will fully comply with the Plans, the Beachwalk Building Code and the Beachwalk Building Policies; and (ii) will fully repair any and all damage to Beachwalk's common elements caused by Builder.

Security Agreement

The Parties agree as follows:

1. The foregoing Recitals are incorporated herein as through fully set forth.
2. Builder Security Deposit Builder agrees to deposit \$5,000 as security (the "Security Amount") by check payable to the BPOA and delivered to BPOA, P.O. Box 181, New Buffalo, MI 49117 for deposit in a security deposit account with Horizon Bank (the "Security Account") to be held by the BPOA pending completion of the residence to be built by Builder in the Beachwalk development and the occurrence of certain other conditions. This Agreement shall govern the relationship between BPOA, and Builder with respect to the Security Amount.
3. No Damage Limitation. Nothing herein limits the amount the BPOA may recover from Owner or Builder for any damage they cause to the BPOA common elements or from their failure to comply with approved plans.
4. Delivery of Security Amount Simultaneously with the execution of this Agreement, Builder has delivered the Security Amount to the BPOA at BPOA, P.O. Box 181, New Buffalo, MI 49117 (which funds shall be held by the BPOA in the Security Account provided in this Agreement).
5. Conditions of Security. The BPOA shall hold the Security Amount on the following conditions:
 - a. Investment of Security Amount The BPOA shall deposit the Security Amount in the Security Account. BPOA shall not be liable, and all other parties hereto release BPOA from all liability, for any loss or delay in payment of any of the Security Amount caused by the failure of any financial institution in which the Security Amount has been deposited.
 - b. Distribution of Security Amount. The BPOA shall withdraw all or a portion of the Security Amount on the following conditions:
 - i. for payment to BPOA upon written authorization from a representative of the Board certifying that written notice of Builder's failure to:
 1. fully comply with the Plans, the Beachwalk Building Code or the Beachwalk Building Policies;
 2. fully repair any and all damage to Beachwalk's common elements caused by Builder;
 3. pay any costs incurred or fines assessed against Builder in connection with the construction of such residence, has been provided to Builder and Builder has not paid or corrected such failure as of the date of such certification and such certification is at least ten (10) days after written notice of Builder's default was given.

OR

- ii. for payment to Builder upon written authorization from a representative of the Board. The written authorization from the Board must state the amount to be distributed by BPOA from the Security Account. Upon the release of all of the funds held in Security by the BPOA, this Agreement shall terminate and be of no further force and effect. Builder shall have no authority to direct BPOA in the disbursement of the Security Amount.

6. Rights, Privileges, Immunities and Liabilities of BPOA Agent. The following shall govern the rights, privileges, immunities and liabilities of BPOA:

- a. BPOA is not a party to, and is not bound by, any agreements between Owner and Builder.
- b. In the event the BPOA becomes involved in litigation in connection with this Agreement or the Security Amount, Builder agrees to indemnify and hold BPOA harmless from all losses, costs, damages, expenses and attorney's fees ("Losses") suffered or incurred by BPOA as a result thereof; provided that such Losses do not result primarily from actions taken or omitted to be taken by the BPOA due to its gross negligence, bad faith or willful misconduct.
- c. BPOA shall be protected in acting on any written notice, request, waiver consent, certificate, receipt, authorization, power of attorney or other paper or document which BPOA in good faith believes to be genuine and what it purports to be.
- d. BPOA shall not be liable for anything which it may do or refrain from doing in connection herewith provided that it acts in good faith and is not guilty of willful misconduct or gross negligence.
- e. BPOA may, at its own expense, consult with legal counsel in the event of any dispute or question as to the construction of any provision of this Agreement or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in accordance with the opinion and instructions of its counsel.
- f. In the event of any disagreement resulting in adverse claims or demand being made in connection with the Security Amount, or in the event that BPOA, in good faith, shall be in doubt as to what action it should take hereunder, BPOA may, at its option, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and in such event BPOA shall not be or become liable in any way or to any person for its failure or refusal to act, and BPOA shall be entitled to continue to refrain from acting until (i) the rights of all interested parties shall have been fully and finally

adjudicated by a court of competent jurisdiction or (ii) all differences shall have been adjusted and all doubt resolved by agreement among all of the interested parties, and BPOA shall have been so notified in writing signed by all such parties. In such event, and without limiting the generality of the foregoing, the BPOA may, at its election, interplead the Security Amount or any portion thereof within a court of competent jurisdiction in LaPorte County, Indiana, or commence judicial proceedings for declaratory judgment in LaPorte County, Indiana, and the BPOA shall be entitled to recover from Builder its attorneys' fees and costs in connection with any such interpleader or declaratory judgment action. The rights of BPOA under this paragraph are cumulative of all other rights which it may have by law or otherwise.

- g. BPOA, on delivery of the Security Amount pursuant to the terms of this Agreement, shall be discharged from any further obligation hereunder.
- h. This Agreement sets forth the exclusive duties of the BPOA with respect to any and all matters pertinent hereto and no implied duties or obligations of the BPOA shall be read into this Agreement. The BPOA shall not be called upon to advise any party as to its rights and obligations hereunder.
- i. The BPOA is expressly authorized to comply with and obey order, judgment, or decrees of any court with respect to any matter relating to this Agreement. In the event the BPOA obeys or complies with any such order, judgment or decree of any court, the BPOA shall not be liable to any of the parties hereto or to any other person by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

7. Miscellaneous.

- a. Notices. Any notice permitted or required to be given under the terms of this Agreement shall be in writing and shall be deemed given when received by the party to whom it is directed or when deposited in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the party to be notified at the appropriate address specified below. The mailing addresses of the parties are as follows:

To BPOA

Beachwalk Property Owners
Association
P.O. Box 181
New Buffalo, MI 49117

To Builder (Address)

- b. Change of Address. The above addresses may be changed by any party by notice given in the manner provided in Paragraph 6.a.
- c. Effect of Agreement. This Agreement shall be binding on, inure to the benefit of and be enforceable by BPOA and Builder and their respective successors, assigns and legal representatives.
- d. Section and Paragraph Headings. The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- e. Change of Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Indiana.
- f. Counterparts. This Agreement may be executed in multiple counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
- g. Effective Date. The effective date of this Agreement is the date it is executed by BPOA and the Builder.
- h. Unenforceability. If any portion of this Agreement shall be held invalid or unenforceable, then so far as is reasonable and possible, the remainder of this Agreement shall be considered valid and operative and effect shall be given to the intent manifested by the portion held invalid or unenforceable.

This Agreement is executed by **BPOA** on **Date:** _____

BPOA

By: _____

Name: _____

Title: _____

This Agreement is executed by **BUILDER** on **Date:** _____

BUILDER

By: _____

Name: _____

Title: _____

Builder's Tax ID No.: _____

Please complete, Save and Send to AERC@BeachwalkHomeowners.com

