

LAND USE

650 Attachment 8

**Borough of Roselle**

**ESCROW AGREEMENT**

**THIS AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_, between \_\_\_\_\_  
\_\_\_\_\_ hereinafter referred to as  
“Applicant”, and the Borough of Roselle, hereinafter referred to as “Borough”.

**WHEREAS**, the Applicant is proceeding under the Land Use Ordinance for approval of a  
\_\_\_\_\_ ; and

**WHEREAS**, the Ordinance, Section 650-86.1, requires the Applicant to establish an escrow whereby work required to be performed by professionals employed by the Boards will be paid for by the Applicant as required under the provisions of the Ordinance cited above; and

**WHEREAS**, both parties feel that it is appropriate to reduce this understanding to written form.

**WITNESSETH: IT IS** mutually agreed between the parties that:

**Section 1. Purposes**

The Boards authorize its professional staff to review, inspect, report and study all plans, documents, statements, improvements, and provisions made by the Applicant in conforming to the requirements of the Ordinance cited and referred to above. The Boards direct their professional staff to make all oral and/ or written reports to the Board of its conclusions and findings derived from the review, study, and investigation and like or similar duties performed as elsewhere authorized. The Applicant agrees to pay all reasonable professional fees incurred by the Boards for the performance of the duties outlined above.

**Section 2. Escrow Established**

Applicant and Borough, in accordance with the provisions of this agreement, hereby create an escrow to be established with the Chief Financial Officer of the Borough and to be maintained in a banking institution or savings and loan association in this State insured by an agency of the federal government, or in any other fund or depository approved for such deposits by the State, in an account bearing interest at the minimum rate currently paid by the institution or depository on time or savings deposits.

**Section 3. Escrow Funded**

Applicant by execution of this agreement shall pay to the Borough, to be deposited in the depository referred to in Section 2, such sums as are required by the Land Use Ordinance, see Section 650-86.1A.(1) of the Ordinance.

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### **Section 4.** *Increase in Escrow Fund*

If during the existence of this agreement the funds held by the Borough shall be insufficient to cover any voucher or bills submitted by the professional staff and reviewed and approved by the Borough, Applicant shall within five (5) days from the date of receipt of written notice deposit additional sums with the Borough to cover the amount of the deficit referred to above. **During this period the professional staff shall cease all review activities.** The written notice shall be sent by the Land Use Administrator setting forth the amount of the deficit. Unless otherwise shown, receipt of said notice shall be presumed to have occurred within three (3) days after mailing.

### **Section 5.** *Submission of Vouchers by Professional Staff*

The professionals referred to in this agreement, upon the completion of their services or periodically during the performance of their services, shall submit vouchers conforming to the requirements established by the Borough for vouchers of the type and kind referred to under this paragraph. Said vouchers shall include the total of all fees and costs incurred as a result of the services set forth under Section 1 of this agreement and shall contain a brief description of the services, including the address and name of application, which have been rendered by the professional concerning the applicant's application.

### **Section 6.** *Board Review*

The Chief Financial Officer shall review all vouchers to determine whether they have been submitted in the appropriate form. The Chief Financial Officer shall process said vouchers in the same manner and under the same terms as are normally employed for vouchers submitted for work performed on behalf of the Borough. At the conclusion of this processing, the amounts specified in said vouchers shall be deducted by the Borough from the escrow established pursuant to the agreement.

### **Section 7.** *Dispute of Charges*

If the Applicant disputes a charge made by a professional for service rendered to the municipality in reviewing applications for development, then the Applicant shall follow the procedure outlined in N.J.S.A. 40:55D-53.2a. (Municipal Land Use Law).

### **Section 8.** *Interest Allocations*

Except as otherwise set forth hereinafter, all interest earned on money deposited pursuant to this agreement which shall be held in escrow shall become the property of the Borough as compensation for administrative services rendered in connection with this agreement. An Applicant shall be entitled to payment of interest whenever the Applicant shall have deposited an amount of money in excess of \$5,000.00 and the amount of interest paid on that money shall exceed \$100.00 for the year. If the amount of interest exceeds \$100.00, that entire amount shall belong to the Applicant and shall be refunded by the Borough annually or at the time the deposit is repaid or applied to the purposes for which it was deposited, as the case may be, i.e., for professional services rendered to review applications for development, for municipal inspection fees pursuant to N.J.S.A. 40:55D-53 or to satisfy the

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guarantee requirements of 40:55D-53.a., however at that time the Borough shall deduct 33 1/3% of the interest for administrative and custodial expenses incurred by the Borough in fulfilling its obligations pursuant to this agreement.

### **Section 9.**    Refund

Any excess funds shall be returned to the Applicant within ONE HUNDRED AND TWENTY(120) days of the issuance of the final certificate of occupancy for the project which is the subject of the application or receipt of written notice of the abandonment of the application. Prior to the issuance of the final certificate of occupancy for any project for which Board approval has been received or upon receipt of written notice of abandonment of an application, the Chief Financial Officer shall determine from the professional staff whether there are any additional sums required to be paid from the escrow fund. In the event that there are, monies will be held by the Chief Financial Officer until notice is received by the professionals, Land Use Administrator and Construction Code Official that work has been completed.

### **Section 10.**   Failure to Maintain Escrow Fund

In the event that notice has been sent to the Applicant and the Applicant has failed to pay the increased amount into the escrow fund within the time period set forth in Section 4 then the Board shall cease further consideration of the application or of any other then pending application of the Applicant until the additional sum is given to the Chief Financial Officer for deposit into the escrow fund. **The Applicant hereby expressly consents to a continuance of the statutorily mandated period for completion of Board review pursuant to the Municipal Land Use Law for a period of forty-five (45) days from the date of the notice from the Land Use Administrator and hereby expressly consents to an automatic rejection of Applicant's application without prejudice and without any further action by the Board if within said period the additional sum has not been given to the Chief Financial Officer.**

Furthermore, in the event that notice has been sent to the Applicant and the Applicant has failed to pay the increased amount into the escrow fund within the time period set forth in Section 4 and Board review of the application has been completed, the Applicant is hereby placed on notice that the Borough will not cause certificates of occupancy to be issued and may take such further action including, but not limited to, refusing to perform any and all further inspection, issuance of stop work orders and other relief as may be necessary, including a lien on the subject property.

### **Section 11.**   Performance Escrow – Inspections

The provisions of this agreement shall apply to the performance escrow for inspection to be paid to the Borough. The performance escrow shall be posted prior to the start of construction. The amount of the escrow shall be 10% of the cost of improvements as calculated by the Board's Engineer.

The Applicant hereby agrees that the Board Engineer will be notified in writing forty-eight (48) hours prior to the start of any construction. Failure of the Applicant to provide such notice may result in additional inspection costs.

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**Section 12.** Addresses to which Notices are to be Sent

All notices required by this agreement in writing shall be sent to the following addresses:

Borough of Roselle  
Land Use Administrator  
210 Chestnut Street  
Roselle, NJ 07203  
908-245-5600

Address of Applicant:

\_\_\_\_\_  
NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
MUNICIPALITY                      STATE                      ZIP CODE

\_\_\_\_\_  
TELEPHONE NUMBER