STATE OF VERMONT

SUPERIOR COURT **Addison Unit**	**CIVIL DIVISION** **Docket No. 168-9-18 Ancv**

MICHAEL R. KINGMAN and)
PAMELA S. KINGMAN,)
Plaintiffs,)
)
v.)
)
STATE OF VERMONT,)
Defendant.)

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE, together with Exhibits A, B, and C (collectively, the "Agreement"), is made as of this 18th day of OCTOBER, 2019, by and between the Plaintiffs, Michael R. and Pamela S. Kingman (the "Kingmans"), and the Defendant, State of Vermont, acting by and through its Attorney General, Thomas J. Donovan, Jr. (the "State"). The Kingmans and the State are together referred to in this Agreement as the "Parties" and individually referred to as a "Party."

WHEREAS, in September, 2018, the Kingmans filed a declaratory judgment action, seeking a determination of the boundary location between the Parties' lands, with the Vermont Superior Court, Addison Unit, Civil Division, entitled *Michael R. Kingman and Pamela S. Kingman v. State of Vermont,* Docket No. 168-9-18 Ancv;

WHEREAS, the Parties now desire to resolve the above matter via execution of this Agreement and filing with the Court a Joint Stipulation for Dismissal with Prejudice in the form of the attached Exhibit A;

WHEREAS, the Attorney General pursuant to 3 V.S.A. Chapter 7 has the general supervision of matters and actions in favor of the State and may settle such matters as the interests of the State require;

WHEREAS, the Attorney General believes that this settlement is fair, reasonable, and in the State's interest; and

WHEREAS, this Agreement has been negotiated by and between the Parties in good faith, and its implementation will avoid prolonged litigation between the Parties;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and in consideration of the mutual promises, obligations and commitments set forth below, the Kingmans and the State, intending to be legally bound, covenant and agree as follows:

1. The Parties shall request stay of the litigation from the Court for the purpose of formal execution and fulfillment of their obligations under this Agreement, until such time as they either file the Joint Stipulation of Dismissal with Prejudice attached as Exhibit A or move to lift the stay pursuant to the terms of this Agreement.

2. Within five days of the execution of this Agreement by both Parties, the State shall commission (and pay for, if necessary) a Survey of the Parties' agreed new boundary line consistent with the following general description negotiated by the Parties on August 20, 2019, during mediation with Eric Johnson, also as shown on the general drawing attached as Exhibit B:

> The new boundary line, except for the parking cutout described below, shall run parallel with the Kingman north boundary line and shall be located 5 feet to the south of the utility pole which stands on the east side of Route 53 in between the stairwell and retaining wall, placing the entire line to the south of the Kingmans' current stairwell. The parking cutout portion of the new boundary line, intended to provide the Kingmans with right to the current pulloff on the east side of Route 53, shall lie between the centerline of the road (westerly boundary) and within a few feet on the east side of the rock retaining wall (easterly boundary) to provide reasonable clearance for the Kingmans' maintenance of the retaining wall and pulloff as it currently exists. The southern boundary of the parking cutout shall also run parallel with the Kingman north boundary line, similar to the rest of the new boundary line that is located 5 feet to the south of the utility pole mentioned above. The new boundary line shall run between the Kingman western boundary and the Kingman eastern boundary line.

Upon completion, the State shall promptly provide to the Kingmans a copy of the Survey.

3. The Kingmans shall review the Survey and, within ten days of receipt, shall (1) notify the State in writing either (a) of their agreement to the Survey as consistent with the Parties' negotiated new boundary line generally described above in Paragraph 2 and generally drawn on Exhibit B or (b) of any objections to the Survey as inconsistent with the Parties' negotiated new boundary line generally described above in Paragraph 2 and generally drawn on Exhibit B; and (2) provide the State with a proposed quitclaim deed to be executed by the Parties as provided in Paragraphs 5 and 6 below. The State shall reply both to any written objection of the Kingmans to the Survey as well as to the Kingmans' proposed quitclaim deed within ten days of receipt. The Parties shall promptly attempt in good faith to resolve any dispute as to the Survey or the quitclaim deed, being inconsistent with their negotiations, including (if necessary) consulting by phone with Eric Johnson

and splitting any further mediation costs, within twenty days of the State's reply. If the Parties are unable to resolve the dispute within thirty days of the State's reply, either Party shall have the right to terminate this Agreement in writing to the other Party. Upon such written termination, this Agreement shall be of no further force or effect, and the Party terminating the Agreement shall promptly seek lift of the Court's stay of the litigation.

4. If the Kingmans notify the State of their agreement with the Survey, the State shall within five days of receipt of the Kingmans' notice submit to the Salisbury Zoning Administrator the attached Exhibit C joint application to adjust the boundary line consistent with the Survey, and shall include a copy of the Survey. The Parties shall split equally all costs imposed by the Town of Salisbury associated with the submission and processing of the application to adjust the boundary line. The State shall be responsible for the preparation and submission of the joint application attached as Exhibit C for the boundary line adjustment, and the Kingmans shall cooperate with the State as necessary, including prompt delivery to the State their half of the required paperwork and processing fees. The Kingmans' half of the required paperwork and processing fees shall include any necessary variance and/or waiver requests to bring their property (resulting from the Parties' proposed boundary line adjustment) into conformance with the Salisbury Unified Development Regulations. Any State or local land use permits required either as a condition to Town approval of the boundary line adjustment or subsequent to the boundary line adjustment shall be the sole responsibility of the

Party whose land requires the land use permit. For the limited purpose of this Agreement, the State consents to any necessary variance or waiver of the setback requirement arising from the current location of the Kingmans' stairwell.

5. If the Kingmans notify the State of their agreement with the Survey, the Kingmans shall within five days of providing said notice to the State execute a quitclaim deed in favor of the State conveying any and all right, title, and interest they may have in the lands and premises south of the boundary line as depicted on the Survey, which shall be specifically referenced. The said quitclaim deed shall rely upon and incorporate the description of the Property set forth on the Survey. Once executed, the said quitclaim deed shall be held by the Kingmans' attorneys, Lynch & Foley, P.C., pending the Town of Salisbury's decision on the Parties' request for a boundary line adjustment and the State's execution of a quitclaim deed, which must follow the State's formal compliance with 10 V.S.A. § 2606 as indicated by Paragraph 23, including requesting Governor's approval under § 2606(a) and Legislative approval under § 2606(b) of the underlying land transaction.

6. As soon as practicable following the State's receipt of notice that the Kingmans agree to the Survey, the State shall seek to obtain formal compliance with 10 V.S.A. § 2606 as indicated by Paragraph 23, which includes requesting Governor's approval under § 2606(a) and Legislative approval under § 2606(b) of the underlying land transaction. Following the State's receipt of said approvals, the State shall promptly execute a quitclaim deed in favor of the Kingmans conveying

all right, title, and interest the State may have to the lands and premises north of the boundary line as depicted on the Survey, which shall be specifically referenced. The said quitclaim deed shall rely upon and incorporate the description of the Property set forth on the Survey. If, once the said quitclaim deed is executed, the Town of Salisbury has not yet approved or denied the Parties' requested boundary line adjustment, the said quitclaim deed shall be held by the Vermont Attorney General's office pending the Town of Salisbury's decision. If the Town of Salisbury has approved the boundary line adjustment, the Parties shall proceed as set forth in Paragraph 8. If the State is unable to obtain legislative approval by the adjournment of the 2020 Legislative Session, either Party shall have the right to terminate this Agreement in writing to the other Party. Upon such written termination, this Agreement shall be of no further force or effect, and the Party terminating the Agreement shall promptly seek lift of the Court's stay of the litigation.

7. In the event the Town of Salisbury denies the Parties' request for a boundary line adjustment, this Agreement shall terminate and be of no further force and effect. The Parties shall each be entitled to destroy the quitclaim deeds held by their respective attorneys and the Parties shall promptly seek joint lift of the Court's stay of the litigation.

8. In the event the Town of Salisbury approves the Parties' request for a boundary line adjustment, the following events shall occur, in the order set forth below:

a. The Parties shall prepare and submit their respective Vermont Property Transfer Tax Returns in connection with the quitclaim deeds executed by both Parties.

b. The Kingmans shall send the original quitclaim deed executed by them and their completed PTTR to the Vermont Attorney General's office.

c. The State shall send both quitclaim deeds, two copies of the accompanying Survey referenced by each quitclaim deed, and their corresponding PTTRs to the Salisbury Town Clerk for recording and shall pay the recording fees incident thereto.

d. When the State receives from the Salisbury Town Clerk the original quitclaim deed in favor of the Kingmans, the State shall promptly return the same to the Kingmans' attorneys along with a signed copy of the Joint Stipulation for Dismissal with Prejudice in the form of the attached Exhibit A.

e. Upon the Kingmans' receipt of the original recorded quitclaim deed and Joint Stipulation for Dismissal with Prejudice executed by the State, the Kingmans shall sign and file the fully executed Joint Stipulation for Dismissal with Prejudice with the Court.

9. In the interest of avoiding further litigation between the Parties, the State shall pay $3,000.00 to the Kingmans.

10. Within 15 business days after all parties have received executed copies of this Agreement, the State shall deliver the $3,000.00 payment by check or wire transfer to Lynch & Foley, P.C., which sum shall be held by Lynch & Foley, P.C., in escrow until the Joint Stipulation of Dismissal with Prejudice, attached as Exhibit A, is signed and approved by the Court. If the said payment is to be made by wire transfer, the State shall pay all fees incurred as a result of the dispatch or receipt of the transferred funds such that Lynch & Foley will receive $3,000.00 after all such fees are paid.

11. Each Party shall bear its own attorneys' fees, expenses and any and all other costs related to this matter and to the negotiation, preparation, execution and delivery of this Agreement.

12. To the extent that any other actions, including execution and delivery of further documents, are required to be taken by the Parties to effectuate this Agreement, each Party agrees to take such actions as may be reasonably required to carry out the terms of this Agreement.

13. This Agreement is a compromise of disputed claims that fully and finally settles all claims of the Parties in this matter. Neither the provision of any consideration hereunder nor anything contained in this Agreement shall be interpreted or construed to be an admission of liability, or of any fact or point of law on the part of, or to the prejudice of, the Parties to this Agreement. The Parties wish to resolve this lawsuit and their claims to avoid the costs, expense, and uncertainty inherent in the litigation of this matter.

14. To the extent that a Party possessed any claim or claims against the other Party which could have been brought in the above matter, those claims are released by the Parties, including any claims for attorneys' fees, payments, and other costs arising from such claims or the resolution of such claims.

15. The Parties individually represent that they have not sold, assigned, conveyed, disposed of, granted a security interest in or lien on, or otherwise transferred any claim purported to be released by this Agreement.

16. The Parties expressly represent that no other person or governmental or private entity that is not bound by this Agreement has an interest in this Agreement. Nothing in this Agreement shall be construed to create or deny any rights in, or grant or deny any cause of action to, any person not a party to this Agreement.

17. In the event of any future legal proceeding which does not involve both Parties, but concerns the boundary line which is the subject of this Agreement, the involved Party will make reasonable efforts to utilize its own experts and documentary evidence in that proceeding.

18. The Parties intend and agree that this Agreement shall be complete and shall not be subject to the claim of mistake of fact or law by either or any of them and that it expresses a full and complete settlement of the issues involved in this matter. Regardless of the adequacy or inadequacies of the consideration, this Agreement is intended to finally and completely resolve this matter and avoid further litigation.

19. Each Party warrants and represents that it has read and understands this Agreement and has been represented by legal counsel in connection with this Agreement, that before executing and delivering this Agreement each Party has completely read the terms of this Agreement, that the terms of the Agreement are fully understood and voluntarily accepted by it, and that it has authorized its undersigned representative to sign, execute and deliver this Agreement on its behalf as a voluntary act and deed on the date and year in this Agreement after-

mentioned, with all necessary approvals, and without any fraud or under any duress. Each Party has relied solely and completely on its own judgment and the advice of its own legal counsel in making this settlement and executing this Agreement.

20. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter of this Agreement and to the resolution of the above matter. The Parties have not relied on any oral statements, promises or inducements that are not included in this Agreement. Any modifications to this Agreement must be in writing and signed by authorized representatives of the Parties.

21. The terms of this Agreement are contractual, and not recitals only.

22. This Agreement shall be construed and interpreted in accordance with the laws of the State of Vermont, and the Vermont Superior Court, Addison Unit, shall have jurisdiction to hear and resolve any claims made hereunder, including all claims by any Party to enforce or interpret the Agreement.

23. In compliance with 10 V.S.A. § 2606 and the above terms of this Agreement, the State shall seek additional approvals of the underlying land transaction (exchanged quitclaim deeds) from the Commissioner of the Department of Forests, Parks and Recreation, the Governor of the State of Vermont, and the Vermont General Assembly. The State's execution and performance of this Agreement is conditioned upon receipt of those approvals pursuant to 10 V.S.A. §§ 2606(a) and (b).

24. Except as set forth in Paragraph 23, the Attorney General of Vermont, who has executed this Agreement on behalf of the State, represents and warrants that he is duly authorized to do so on behalf of the State and the public trust, and in the public interest, and that its execution of the Agreement is valid and binding. The Attorney General represents and warrants that he has all requisite power to execute, bind, deliver, and perform this Agreement on behalf of the State, and that this Agreement has been duly and validly executed and delivered by him as the State's authorized agent.

25. The Kingmans respectively represent and warrant that they have all requisite power to execute, bind, deliver, and perform this Agreement on their own behalf and that this Agreement has been duly and validly executed and delivered by each of them.

26. The Parties further warrant that they will not challenge or contest the validity of this Agreement and that they forever waive any defense to its validity, including any defense based on any claim the Agreement is *ultra vires*, violative of sovereign immunity, or otherwise void.

27. As used in this Agreement, the singular shall include the plural, and the masculine shall include the feminine and neuter genders.

28. Time is of the essence for each and every provision of this Agreement.

29. The Parties to this Agreement agree that it was negotiated fairly between them at arms' length and that the final terms of this Agreement shall be deemed to have been jointly and equally drafted by them, and that the provisions of

this Agreement therefore should not be construed against a Party on the grounds that the Party drafted or was more responsible for drafting the provision(s).

30. This Agreement may be executed in one or more counterparts. All counterparts will constitute one instrument binding on the signatories upon execution of one or more counterparts by all Parties. An electronic or facsimile signature shall be sufficient to bind the signing Party.

WHEREFORE, the Parties have executed this Settlement Agreement and Release as of the date stated above.

[signature pages follow]

DATED at MONTPELIER, Vermont, this 18th day of OCTOBER, 2019.

STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

By: _____

Megan R.H. Hereth
Justin Kolber
Assistant Attorneys General
109 State Street
Montpelier, Vermont 05609
megan.hereth@vermont.gov
justin.kolber@vermont.gov
(802) 828-3186

DATED at Middlebury, Vermont, this 18th day of October, 2019.

PLAINTIFF
Michael R. Kingman

By: Michael Kingman

Print Name: Michael Kingman

Title: _____

DATED at Middlebury, Vermont, this 17 day of October, 2019.

PLAINTIFF
Pamela S. Kingman

By: Pamela S Kingman

Print Name: Pamela S. Kingman

Title: _____

Approved as to form at Middlebury, Vermont, this 18th day of October, 2019.

PLAINTIFFS' COUNSEL

By: JMM

John M. Mazzuchi
James C. Foley, Jr.
LYNCH & FOLEY, P.C.
7 Washington Street
Middlebury, Vermont 05753
jmazzuchi@lynchandfoley.com
jfoley@lynchandfoley.com
(802) 388-7933

EXHIBIT A

STATE OF VERMONT

SUPERIOR COURT
Addison Unit

CIVIL DIVISION
Docket No. 168-9-18 Ancv

MICHAEL R. KINGMAN and)
PAMELA S. KINGMAN,)
Plaintiffs,)
)
v.)
)
STATE OF VERMONT,)
Defendant.)

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Vermont Rule of Civil Procedure 41(a)(1)(ii), Plaintiffs, Michael R. and Pamela S. Kingman, and Defendant, State of Vermont, hereby stipulate to the voluntary dismissal with prejudice of all claims in this action, with each party bearing its own attorneys' fees and costs, and all rights of appeal waived.

Dated at _____, Vermont, this ____ day of _____, _____.

DEFENDANT

STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

By: _____

Megan R.H. Hereth
Justin Kolber
Assistant Attorneys General
109 State Street
Montpelier, Vermont 05609
megan.hereth@vermont.gov
justin.kolber@vermont.gov
(802) 828-3186

PLAINTIFFS

MICHAEL R. KINGMAN
PAMELA S. KINGMAN

By: _____

John M. Mazzuchi
James C. Foley, Jr.
LYNCH & FOLEY, P.C.
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jmazzuchi@lynchandfoley.com
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(802) 388-7933

EXHIBIT B

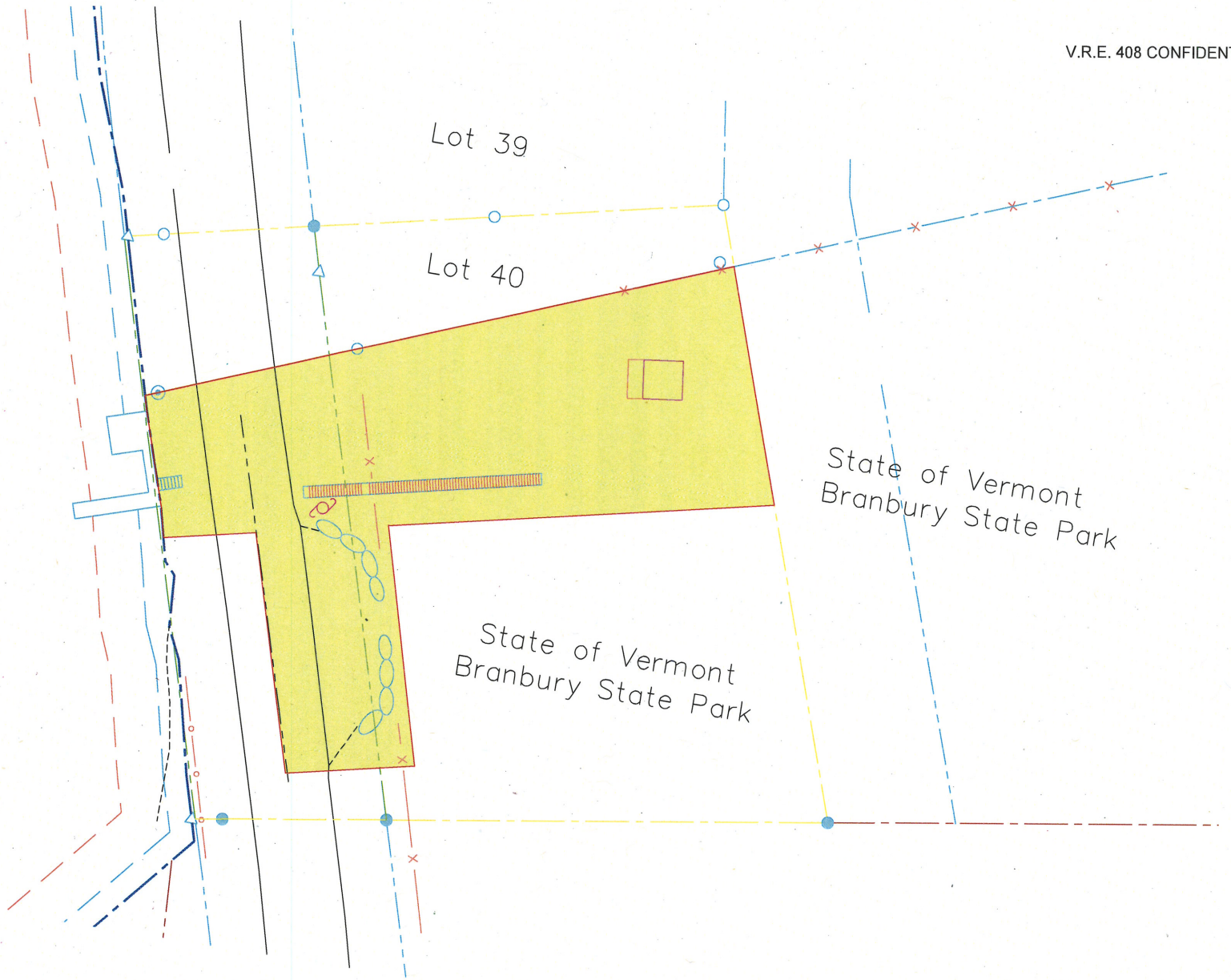
Lot 39
Lot 40
State of Vermont
Branbury State Park
State of Vermont
Branbury State Park

EXHIBIT C

SALISBURY DRB SUBDIVISION APPLICATION

No:_____ Date: _____ Date DRB Received: _____

Applicant: State of Vermont Owner: State of Vermont

Michael R. and Pamela S. Kingman Michael R. and Pamela S. Kingman

Address: 3570 Lake Dunmore Road Address: 3570 Lake Dunmore Road

3333 Lake Dunmore Road 3333 Lake Dunmore Road

Phone: _____ Phone: _____

Please use reverse side if space is needed. Name, mailing address and phone data for all applicants and all owners are required.

Location(s) & Parcel #(s): _____

_____

Type of Application:
Boundary Adjustment ( ) §2.2 ( ) §2.3 ( ) §2.4 ( ) §2.5
Minor Subdivision ( ) §3.2 ( ) §3.3 ( ) §3.4 ( ) §3.5
Major Subdivision ( ) §4.2 ( ) §4.3 ( ) §4.4 ( ) §4.5
Other *specify and give §§* 3.1.3 boundary adjustment to lands within LS1&2 per 2.4.4

Describe proposed activity: By Agreement of the Parties in resolution of Docket No. 168-9-18 Ancv, the co-applicants and co-owners listed above seek to adjust the boundary between their lands identified by the parcels listed above.

Signatures Required for
All Applicants: _____ Date: _____
_____ Date: _____
_____ Date: _____
All Owners: _____ Date: _____
_____ Date: _____
_____ Date: _____

Please use reverse side if more space is needed.

An application is not complete until the following items are received:
(1) A $75 check payable to the "Town of Salisbury" to cover DRB costs.
(2) A copy of the most recent town property map section showing subject and neighboring parcels with a list of neighboring owners' names, mailing addresses and the use(s) made of the property.
(3) See Subdivision Regulation Articles 2, 3 or 4 and §5.3 for other required submissions.

For use by Development Review Board:

Ck received: / / No. _____ Date / / Amt. $_____

Map, names & addresses received: Date / /

Other required material received: Date / /