



**PENN TOWNSHIP
CUMBERLAND COUNTY
BOARD OF SUPERVISORS**

1301 Centerville Road
Newville, PA 17241

Tel: 717-486-3104
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PROFESSIONAL ESCROW AGREEMENT

THIS AGREEMENT, dated this ____ day of _____, 20__, by and between PENN TOWNSHIP, a Township of the Second Class, with its principal place of business being located at 1301 Centerville Road, Newville, PA 17241 (hereinafter referred to as "TOWNSHIP")

AND

(hereinafter referred to as "DEVELOPER/OWNER"),

WITNESSETH:

WHEREAS, DEVELOPER/OWNER, is the equitable/record owner of the subject premises consisting of ____ acres, located in Penn Township, Cumberland County, Pennsylvania, being _____ County Tax Parcel No. _____, and is in the process of requesting subdivision/land development plan approval relative to said premises; and

WHEREAS, DEVELOPER/OWNER has requested to meet and consult with the TOWNSHIP's professionals and consultants, including, but not limited to the Township Engineer, Township Solicitor, and other experts, consultants and professionals employed and/or contracted by the TOWNSHIP relative to said subdivision/land development plan review (hereinafter "Professionals"); and

WHEREAS, DEVELOPER/OWNER recognizes that the administrative overhead of the Township, including but not limited to the staff services of its employees now or hereafter employed (hereinafter "Staff") will be utilized in said review discussions, all to the financial detriment of the Township; and

WHEREAS, DEVELOPER/OWNER further recognized that the TOWNSHIP will incur a certain amount of fees, costs, charges and expenses (collectively "Expenses") on account of said review discussions; and

WHEREAS, DEVELOPER/OWNER realizes that said Expenses will be incurred by the TOWNSHIP relative to review discussions with its Professionals and Staff, and

DEVELOPER/OWNER is willing to be solely responsible for the payment of the same, so long as the same are reasonable.

NOW THEREFORE, intending to be legally bound, the parties hereto do hereby promise, covenant and agree as follows:

1. The "Whereas" clauses above mentioned are incorporated herein by reference as if fully set out and, further, form part of the parties' agreement.
2. DEVELOPER/OWNER hereby warrants and represents that it is the record/equitable owner of the subject Premises, as evidenced by _____ dated _____ between _____ (Sellers) and _____ (Purchaser); and further, that it agrees to be bound by the terms and conditions of the within Agreement.
3. TOWNSHIP, at the request of DEVELOPER/OWNER agrees to allow its Professionals and Staff to meet for review purposes with DEVELOPER/OWNER, so long as the reasonable Expenses incurred by the TOWNSHIP relative to the same are fully paid by DEVELOPER/OWNER. DEVELOPER/OWNER hereby agrees to be solely responsible for the payment of same. DEVELOPER/ OWNER acknowledge that it may not be required by law to reimburse the Township for the Township Solicitor's fees. However, by executing this Agreement, DEVELOPER/ OWNER is requesting that the Township Solicitor participate in the review process and agrees to pay the Township Solicitor's fees related to that review.
4. In consideration for the privilege of DEVELOPER/OWNER meeting with the Professionals and Staff of TOWNSHIP, DEVELOPER/OWNER hereby agrees that this Agreement supplements the TOWNSHIP's Fee Schedule and any other applicable laws, ordinances, rules and regulations governing reimbursement to the TOWNSHIP of said Expenses, including applicant's rights under the Pennsylvania Municipalities Planning Code (MPC). DEVELOPER will deposit, for the sole benefit of the TOWNSHIP, as escrow agent, the initial sum of _____ (\$ _____) Dollars; said monies to be held in the TOWNSHIP name alone, as escrowee, in a non-interest bearing segregated account not co-mingled with its general fund, for the exclusive purposes hereinafter set forth (hereinafter "Escrow"). Receipt of the amount of \$ _____ will be acknowledged by TOWNSHIP when so deposited.
5. DEVELOPER/OWNER agrees that the Escrow account shall be used to reimburse the TOWNSHIP for any and all Expenses, fees and charges of its Professionals and Staff, which may be based on minimum charges for particular services, including Township Solicitor's fees. The TOWNSHIP will provide DEVELOPER/OWNER, on a monthly basis, with an itemized invoice containing copies of all invoices received by the TOWNSHIP from its Professionals and/or Staff during the prior month. Any dispute as to the items contained on said invoices shall be resolved in accordance with the applicable provisions of the MPC.

In the event DEVELOPER/OWNER disputes the amount of any Professional fee, DEVELOPER/OWNER shall notify the TOWNSHIP in writing by certified or registered mail of any disputed fees. Said notification must be received by the TOWNSHIP within ten (10) days from the date the TOWNSHIP issued a summary statement of itemized fees to the DEVELOPER/OWNER.

6. The balance of the Escrow shall at no time be in an amount of less than fifty percent (50%) of the original amount, or _____ (\$ _____) Dollars ("Minimum Balance"). In the event that the balance of the Escrow Account falls below the Minimum Balance, the TOWNSHIP shall request DEVELOPER/OWNER to deposit in the Escrow, immediately upon submission, the difference between the then current balance and the original escrow amount. At its sole discretion, the TOWNSHIP shall review the Escrow on a periodic basis and may require a reasonable increase in the Minimum Balance. At such time after the subdivision/land

development project receives final approval, or Developer/Owner notifies the Township in writing that the project is being terminated, any balance remaining in the Escrow account shall be returned to DEVELOPER/OWNER.

7. **DEVELOPER/OWNER hereby agrees that the 90 day time period for Preliminary/Final plan review imposed by the MPC shall not commence until the date of the regular meeting of the Planning Commission following the date a complete Preliminary/ Final application for approval is filed, including escrow funds. Failure to submit funds for deposit into the escrow account shall result in rejection of the plans.** Further, in the event that the within mentioned Escrow is established prior to the filing of the application for approval, the 90 day time period shall not commence until the next meeting of the Planning Commission following the submission of said application.
8. DEVELOPER/OWNER hereby agrees that the TOWNSHIP shall collect a ten percent (10%) administrative fee on actual costs. Further, DEVELOPER/OWNER agrees that said administrative fee is fair and reasonable given the expenses the TOWNSHIP will incur as a result of the application submitted by DEVELOPER/OWNER.
9. The Escrow established herein shall be deemed Cash Collateral for the sole and exclusive benefit of the TOWNSHIP, as that term is applied in Bankruptcy proceedings. This instrument shall also be deemed a security agreement creating a first-lien security interest in favor of the TOWNSHIP in the Escrow.
10. **If DEVELOPER/OWNER fails at any time, following a request from the TOWNSHIP in accordance with paragraph 6 to replenish the escrow, the parties agree that the TOWNSHIP Professionals and Staff will not be obligated to converse or meet with the DEVELOPER/OWNER or his representatives; and DEVELOPER/OWNER waives any rights it may have under the MPC or any decisional law pertinent thereto, relative to the 90 day time limit for review imposed by Section 508 of the MPC.** The review discussions with the TOWNSHIP Professionals and Staff shall continue at such time as the Escrow is replenished by DEVELOPER/OWNER.
11. The parties agree that the within Escrow Agreement is a professional Escrow only and shall in no way, either expressly or tacitly, be construed as a construction escrow.
12. Either party may terminate this Agreement for any reason by providing a notice of intent to Terminate. It is understood and agreed that, other than for good cause shown, the TOWNSHIP may not terminate this Agreement so long as the DEVELOPER/OWNER is in compliance in all material respects with all of the terms of this Agreement and any other related documentation between the parties, their successors and assigns. Upon receipt of said Notice by the TOWNSHIP, this Agreement shall terminate forty-five (45) days from said date. All Professional Fees due the TOWNSHIP, including those incurred by the TOWNSHIP within the above-referenced time period, shall be paid from the Escrow created herein. Any balance in the Escrow fund shall be paid by the TOWNSHIP to DEVELOPER/OWNER within ten (10) days after the above-mentioned forty-five (45) day time period.
13. Any notice of Intent to Terminate required under this Agreement, to be effective, shall be forwarded by certified mail, return receipt requested, addresses as follows:

IF TO DEVELOPER/OWNER:

WITH COPY TO:

IF TO THE TOWNSHIP, ADDRESSED AS FOLLOWS:

Penn Township Board of Supervisors
1301 Centerville Road
Newville, PA 17241

WITH A COPY TO:

Marcus A. McKnight, III, Esq.
Irwin & McKnight, P.C.
60 West Pomfret Street
Carlisle, PA 17013-3222

14. The invalidity or unenforceability of any particular provision of this Agreement shall not affect any other provision hereof, and the Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
15. No failure to act upon any default or to exercise any right or remedy hereunder shall constitute a waiver of such default or a waiver of any other terms of the within Agreement.
16. This Agreement shall be binding upon the parties hereto, their successors and assigns, and shall not be altered, amended or vacated except by the express written consent of all parties.
17. This Agreement shall be governed and shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.
18. This Agreement may be signed in multiple counterparts and all such counterparts shall be deemed to be one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year aforesaid.

WITNESS:

_____ Title: _____

COMMONWEALTH OF :
: SS:
COUNTY OF :

On this ____ day of _____, 20__, before me, a Notary Public, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the _____ of _____, a Pennsylvania _____, and that he/she, as such officer, being authorized to do so, executed the foregoing Agreement for the purposes herein contained by signing for _____ by himself/herself as such officer.

Notary Public

ATTEST:

PENN TOWNSHIP

_____ Title: _____

(TOWNSHIP SEAL)