

**SOUTHAMPTON TOWNSHIP, FRANKLIN COUNTY
BOARD OF SUPERVISORS**

705 Municipal Drive
Shippensburg, PA 17257

TELEPHONE: (717) 532-9041

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PROFESSIONAL ESCROW AGREEMENT

THIS AGREEMENT, dated this day ____ of _____, 20____ by and between THE TOWNSHIP OF SOUTHAMPTON, with its principal place of business being located at 705 Municipal Drive, Shippensburg, PA 17257 (hereinafter referred to as "TOWNSHIP")

AND

_____, business or individual operating in the State of Pennsylvania, with its principal place of business or residence being located at:

(hereinafter referred to as "**DEVELOPER/OWNER**").

WITNESSETH:

WHEREAS, DEVELOPER/OWNER, is the equitable/record owner of the subject property(s), located in Southampton Township, Franklin County, Pennsylvania, being Franklin County Tax Parcel No.(s) _____, and made application for the following named subdivision/land development plan, project and or improvements also known as:

NAME OF SUBDIVISION/LAND DEVELOPMENT PLAN OR TYPE OF PROJECT OR IMPROVEMENT

and is relative to above said tax parcel(s) property(s); 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 and or improvements review (hereinafter "Professional"); and

WHEREAS, DEVELOPER/OWNER recognizes that the administrative overhead of the Township, including but not limited to staff services of its secretaries, code enforcement officer, zoning officer, and

other TOWNSHIP 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 recognizes 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. DEVELOPER/OWNER hereby warrants and represents that it is the record/equitable owner of the subject Property(s), as evidenced by a written agreement dated ___ between ___ (Sellers) and ___ (Purchaser); and further, that they agree to be bound by the terms and conditions contained within this Agreement.
2. 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.
3. 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 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"), and, further, DEVELOPER agrees that consulting fees include legal fees incurred by the Township. DEVELOPER will deposit, for the sole benefit of the TOWNSHIP, as escrow agent, the initial sum of (\$_) Dollars; said monies to be held jointly in a segregated account administered solely by the Township, for the exclusive purposes hereinafter set forth (hereinafter "Escrow"), Receipt of the initial escrow amount of \$___ will be acknowledged by TOWNSHIP when so deposited.
4. 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, and agrees that the Township's solicitor is deemed to be a professional consultant. At the time of any TOWNSHIP request for additional deposits to attain the "Minimum Balance" or upon request by the DEVELOPER/OWNER, the TOWNSHIP will provide DEVELOPER/OWNER with an itemized invoice containing copies of all invoices received by the TOWNSHIP from its Professionals and/or Staff. Any provision governing reimbursement to the TOWNSHIP of such fees and expenses contained in the MPC or any other applicable law, ordinance, rule or regulation notwithstanding, the parties further agree that, if DEVELOPER/OWNER disputes any Professional Fee, or any other cost associated with the same, said dispute shall be referred, at the DEVELOPER/OWNER's sole expense, to an engineer and/or attorney, depending on the type of fee disputed, licensed in the Commonwealth of Pennsylvania (hereinafter "PROFESSIONAL ARBITRATOR"). The PROFESSIONAL ARBITRATOR shall be chosen by agreement of the parties, The Professional Arbitrator or, if that cannot be accomplished,

by a Judge of the Court of Common Pleas of Franklin County. Within twenty-five (25) days of receipt of said disputed invoice or charge, the PROFESSIONAL ARBITRATOR shall make a final, binding and non-appealable decision as to whether the amount is, in whole or in part, reasonable and necessary to the Project. Within ten (10) days of the determination by said PROFESSIONAL ARBITRATOR, the monies shall be paid in accordance with the PROFESSIONAL ARBITRATOR'S determination. Further, during the time period that elapses while the PROFESSIONAL ARBITRATOR is making his determination, all time constraints imposed upon the TOWNSHIP under the M.P.C. or any other applicable law, ordinance, rule or regulation is hereby waived by the DEVELOPER/OWNER, as further described in paragraph 8 hereof. In the event DEVELOPER/OWNER disputes the amount of any Professional fee, the 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.

5. The balance of the Escrow shall at no time be in an amount less than twenty percent (20%) of original amount, or ___ (\$_) (“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, within ten (10) business days after receipt of notification by the TOWNSHIP, the difference between the then current balance and the Minimum Balance. At its sole discretion, the TOWNSHIP shall review the Escrow on a periodic basis and may require a reasonable increase in the Minimum Balance. In the event the TOWNSHIP requests any additional deposits, it will provide the DEVELOPER/OWNER with a description of the purposes for which such additional deposits will be required. At such time after the DEVELOPER/OWNER's plans and or improvements are finally approved and construction of the required improvements is completed in accordance with said Plans as determined by the Township Engineer, or the Plans have been denied or withdrawn, any balance remaining in the Escrow account shall be returned to the DEVELOPER/OWNER.
6. DEVELOPER/OWNER hereby agrees that the 90-day time period for plan review imposed by the MPC shall not commence until the date of the first regular meeting of the Planning Commission at which the plan is formally considered following the date the plan application for approval is initially filed.
7. The Escrow established herein shall be deemed Cash Collateral for the sale 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.
8. If DEVELOPER/OWNER fails at any time, following a request from the TOWNSHIP in accordance with Paragraph 5 to maintain the Minimum Balance, 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. Any review discussions with the TOWNSHIP Professionals and Staff shall then resume at such time as the Escrow is replenished by DEVELOPER/OWNER.

9. The parties agree the Escrow Agreement is a professional Escrow only and shall in no way, either expressly or tacitly, be construed as a construction for improvements escrow.

10. 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 abovereferenced 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.

11. Any notice of Intent to Terminate required under this Agreement, to be effective, shall be forwarded by certified mail, return receipt requested, addressed as follows:

If to DEVELOPER/OWNER:

With copy to:

If to TOWNSHIP: Southampton Township, Franklin County
 705 Municipal Drive
 Shippensburg, PA 17257

With copy to: Melissa L. Kelso, Esq.
 Kelso Law, LLC
 396 Alexander Spring Road, Suite 1
 Carlisle, PA 17015
 Phone: (717) 422-5323
 Fax: (717) 422-5604

12. 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.

13. 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.

14. 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.
15. This agreement shall be governed and shall be construed and interpreted in Pennsylvania in accordance with the laws of the Commonwealth of Pennsylvania.
16. This agreement may be signed in multiple counterparts and all such counterparts shall be deemed to be one and the same Agreement.
17. The DEVELOPER/OWNER has fully read, completely understands and agrees to the TOWNSHIP Escrow Policies & Procedures as attached herein and signed accordingly.

In consideration of the TOWNSHIP'S acceptance of this agreement and with the intent to be legally bound, the undersigned have executed this agreement on the date beside his/her/it's name.

Authorized Township Representative & Title

Date

(PRINT NAME) Developer/Owner

Developer/Owner Signature

Date

Escrow Policies & Procedures

- Application and escrow fees will be submitted as separate checks, made payable to "Southampton Township".
- All escrow fees must be paid at the time of filing an application. The Applicant is reminded that they will be responsible for payment of all legal, engineering and other invoices or fees necessary to approve the plans by the Township, and is the purpose of the escrow account. All legal, engineering and other township professional costs involved with a specific permit, development or subdivision, including fees associated with recording a plan may be paid from the escrow account. Escrow deposits do not include performance guarantees for completion of improvements.
- The escrow fee shall be payable at the time of the submission to the Township and shall remain in effect through the completion of the review, recording and/or building process.
- The calculation of escrow is merely an estimate of the costs associated with the application. It is possible that additional escrow funds may be necessary that exceed the initial calculation of fees due to engineering, legal, and other invoices and fees.
- Escrow funds will be deposited in a savings account without interest accruing to the applicant.
- An escrow balance going below 20% of the original amount must be replenished back to the original amount for the review process to continue. If escrow accounts go below the minimum amount, no further review will be done.
- The escrow account balance will be refunded approximately forty-five (45) days after the following applicable conditions are met, to include, but are not limited to: Recording of the plan, Completion/termination of the project, and Final engineering sign-off. Escrow account balances will be returned only when all approvals are received, and all invoices related to the project have been processed by the Township. Refunds will be made only to the Applicant.