

TOWNSHIP OF FORKS PROFESSIONAL ESCROW AGREEMENT
NON-RESIDENTIAL LAND DEVELOPMENT – PRELIMINARY OR FINAL

THIS AGREEMENT dated this _____ day of _____ 20____, by and between THE TOWNSHIP OF FORKS, a Township of the Second Class, with its principal place of business being located at 1606 Sullivan Trail, Easton, Northampton County, Pennsylvania, 18040 (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 Forks Township, Northampton County, Pennsylvania, being Northampton County Tax Parcel Number(s):

_____, and made application for the following named subdivision/land development plan, project and/or improvements also known as:

NAME OF SUBDIVISION OR LAND DEVELOPMENT PLAN OR PROJECT

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 "Professionals"); 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, planning officer, zoning officer, and other Township employees now or hereafter employed (hereinafter "Staff") will be 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 "Expense") 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.

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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 \$ 25,000.00 said monies to be held in an account administered solely by the Township, for the exclusive purposes hereinafter set forth (hereinafter "Escrow"). Receipt of the initial escrow amount will be acknowledged by Township when so deposited. The Escrow amount is subject to future modification by terms of the Developer's Improvement Agreement with Township.
4. Developer/Owner agrees that the Escrow account shall be used to reimburse the ownership for any and all Expenses, fees and charges of its Professionals and Staff, which may be based on charges for services, and agrees that the Township's Solicitor is deemed to be a professional consultant. The Township will provide Developer/Owner, monthly, with an invoice containing copies of all invoices received by the Township from its Professionals and/or Staff during the prior month. 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, or, if that cannot be accomplished, by a Judge of the Court of Common Pleas of Northampton County. Within twenty-five (25) days of receipt of said disputed invoice or charge,

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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 MPC 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 of less fifty percent (50%) of the original amount, or \$12,500.00 ("Minimum Balance"). The sums posted shall be replenished by the Developer to the full amount when the escrow is reduced to fifty percent (50%) of the original amount. The developer shall be notified and given ten (10) days in which to replenish the escrow. At its sole discretion, the Township shall review the Escrow on a periodic basis and may require a reasonable increase in the Minimum Balance. The amount of the Escrow is also subject to future modification by terms of the Developer's Improvement Agreement with Township. At such time after the Developer/Owner's plans and/or improvements are finally approved and construction of every required improvement is fully 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 Developer/Owner.
6. 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.
7. 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.
8. The agree that 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.

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9. Either party may terminate this Agreement for any reason by providing a written 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,
10. their successors, and assigns. Upon receipt of said Notice by the other party, 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.
11. Any applications, funding or notices required under this Agreement, to be effective, shall be forwarded as follows:

If to Developer/Owner:

With copy to:

If to Township:

Donna M.ASURE, Township Manager
Forks Township
1606 Sullivan Trail
Easton, PA 18040

With copy to:

Lisa A. Pereira, Esq.
Broughal & DeVito
38 West Market St.
Bethlehem, PA 18018

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.

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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 Owner/Developer has fully read, completely understands, and agrees to the Township Escrow Policies and 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/its name.

TOWNSHIP OF FORKS

By: _____
Township Manager – Signature

Date:

Print Name

DEVELOPER

By: _____
Developer or representative – Signature

Date:

Print Name and Title

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ESCROW POLICIES AND PROCEDURES

- Application and escrow fees will be submitted as separate checks, made payable to "Forks Township".
- All escrow fees must be paid at the time of filing an application. The Applicant is reminded that Applicant 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.
- 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 calculation of fees due to engineering, legal, and other invoices, and fees.
- Monthly statements regarding withdrawals for documented expenses incurred and/or account balances will be **EMAILED** to the **ESCROW CONTACT** listed on the escrow contact form.
- The escrow account balance will be refunded approximately sixty (60) days after the following applicable conditions are met, to include but are not limited to: Recording of the plan, completion/termination of the project, final engineering sign-off, and issuance of the Final Use & Occupancy Permit. 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.

Developer/Owner - signature

Date

Print Name

Email

Phone

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ESCROW ACCOUNT CONTACT INFORMATION

DATE OF APPLICATION: _____

NAME OF PROJECT: _____

ADDRESS OF PROJECT: _____

APPLICANT/OWNER:

Name: _____

Telephone: _____ Fax: _____

Street address: _____

City, State, Zip: _____

Email address: _____

PROJECT CONTACT PERSON: (if different from above)

Name: _____

Telephone: _____ Fax: _____

Street address: _____

City, State, Zip: _____

Email address: _____

ESCROW ACCOUNT CONTACT:

(invoices/statements will be emailed to this person on a monthly basis)

Name: _____

Telephone: _____ Fax: _____

Street address: _____

City, State, Zip: _____

Email address:(REQUIRED) _____