

PROFESSIONAL SERVICES ESCROW AGREEMENT

THIS AGREEMENT, is made this ____ day of _____, 2024, by and between THE TOWNSHIP OF POCONO, a Township of the First Class, with its principal place of business being located at 112 Township Drive, Tannersville, Monroe County, Pennsylvania 18372 (hereinafter referred to as “Township”),

AND

_____, with a mailing address of _____ (hereinafter referred to as “Applicant”).

WITNESSETH:

WHEREAS, Applicant, is the owner of the subject property, located in Pocono Township, Monroe County, Pennsylvania, known as Monroe County Tax Parcel Number _____, and has made an application to the Township requesting a grading permit; and

WHEREAS, Applicant 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 application (hereinafter “Professionals”); and

WHEREAS, Applicant 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 utilized in said review discussions, all to the financial detriment of the Township; and

WHEREAS, Applicant 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, Applicant 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’ agreements. Applicant hereby warrants and represents that it is the owner of the subject property; and further, that Applicant agrees to be bound by the terms and conditions contained within this Agreement.

2. Township, at the request of Applicant, agrees to allow its Professionals and Staff to meet for review purposes with Applicant, so long as the reasonable Expenses incurred by the

Township relative to the same are fully paid by Applicant. Applicant hereby agrees to be solely responsible for the payment of same.

3. In consideration for the privilege of Applicant meeting with the Professionals and Staff of Township, Applicant 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, Applicant agrees that consulting fees include legal fees incurred by the Township. Applicant will deposit, for the sole benefit of the Township, as escrow agent, the initial sum of **\$3,000.00**; 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.

4. Applicant 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 charges for particular services, and agrees that the Township's Solicitor is deemed to be a professional consultant. The Township will provide Applicant, 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 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 Applicant disputes any Professional Fee, or any other cost associated with the same, said dispute shall be referred, at the Applicant'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 Monroe 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 MPC or any other applicable law, ordinance, rule or regulation is hereby waived by the Applicant, as further described in Paragraph 7 hereof. In the event Applicant disputes the amount of any Professional fee, the Applicant 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 Applicant.

5. The balance of the Escrow shall at no time be in an amount of less fifty percent (50%) of the original amount, or **\$1,500.00** ("Minimum Balance"). In the event that the balance of the Escrow Account falls below the Minimum Balance, the Township shall request Applicant to deposit in the Escrow, within ten (10) business days after receipt of notification by the Township, an amount to bring the Escrow balance up to one hundred percent (100%) of 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. The amount of the Escrow is also subject to future modification by terms of the Applicant's Improvement Agreement with Township. At such time after the Township has reviewed and taken final action upon the Applicant's application, any balance remaining in the Escrow account shall be returned to Applicant.

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 Applicant 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 Applicant or his representatives; and Applicant waives any rights it may have under the MPC or any decisional law pertinent thereto, relative to the (ninety) 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 Applicant.

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

9. Either party may terminate this Agreement for any reason by providing a written notice of intent to terminate, and formal plan withdrawal, if applicable. It is understood and agreed that, other than for good cause shown, the Township may not terminate this Agreement so long as the Applicant 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 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 Applicant within ten (10) days after the above-mentioned forty-five (45) day time period.

10. 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 Applicant:

With copy to:

If to Township:

Jerrold Belvin, Township Manager
Pocono Township
112 Township Drive
Tannersville, PA 18372

With copy to:

Leo V. DeVito, Jr., Esq.
Broughal & DeVito, L.L.P.
38 West Market Street
Bethlehem, PA 18018

11. 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.

12. 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.

13. 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.

14. This Agreement shall be governed and shall be construed and interpreted in Pennsylvania in accordance with the laws of the Commonwealth of Pennsylvania.

15. This Agreement may be signed in multiple counterparts and all such counterparts shall be deemed to be one and the same Agreement.

16. The Applicant 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 POCONO

By: _____
Name: _____
Print: _____

Date

APPLICANT

Date

Date

ESCROW ACCOUNT CONTACT & BENEFICIARY INFORMATION

DATE OF APPLICATION: _____

NAME OF PROJECT: _____

APPLICANT/OWNER:

Name: _____

Telephone: _____ Fax: _____

Street Address: _____

City, State, Zip: _____

PROJECT CONTACT PERSON: *(if different from above)*

Name: _____

Telephone: _____ Fax: _____

Street Address: _____

City, State, Zip: _____

PERSON TO CONTACT REGARDING ESCROW ACCOUNT: *(if different from above)*

Name: _____

Telephone: _____ Fax: _____

Street Address: _____

City, State, Zip: _____