

UPPER NAZARETH TOWNSHIP
100 Newport Ave.
Nazareth, Pennsylvania 18064
Telephone: 610-759-5341
Fax: 610-759-4430

SUBDIVISION AND LAND DEVELOPMENT
ESCROW AGREEMENT

1. Required "Initial Escrow Amount": \$ _____
2. Name of Owner: _____
Address of Owner: _____
Telephone Number: _____
E-Mail Address: _____
3. Name of Developer (if different than Owner): _____
Address of Developer: _____
4. Subject Property Address: _____
Tax Parcel ID Number(s): _____
5. Copy of Deed Attached: Yes/No (Circle One)
6. Copy of Agreement of Sale Attached (if no Deed): Yes/No (Circle One)
7. Name of Proposed Plan of Subdivision or Land Development:

This Agreement, dated this _____ day of _____, 20____, by and between the Township of Upper Nazareth, a Township of the Second Class, with its principal place of business being located at 100 Newport Ave., Nazareth, Pennsylvania 18064 (hereinafter referred to as "Township"),

- AND -

The Developer identified above, a business or individual(s) doing business in the Commonwealth of Pennsylvania, with their principal place of business or residence being located at the address set forth above (hereinafter referred to as "Developer").

WITNESSETH:

WHEREAS, Developer is the equitable/record owner of the subject property(s), located in Upper Nazareth Township, Northampton County, Pennsylvania, being the Northampton County Tax Parcel No.(s) identified above, with a street address identified above, and has made (or will be making) application for the subdivision/land development plan, project and/or other proposed improvements (all of which are hereinafter referred to as the "Plan") identified as the proposed plan hereinabove and pertaining to the said tax parcel(s); and –

WHEREAS, Developer hereby warrants and represents that it is the record/equitable owner of the subject Property(s), as evidenced by a Deed or written Agreement of Sale, a copy of which is attached, and further, that Developer agrees to be bound by the terms and conditions contained within this Agreement; and –

WHEREAS, Developer has requested to meet and receive comments and communicate (“communications”) to and 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 concerning the Plan (all of whom are hereinafter referred to as “Professionals”); and –

WHEREAS, Developer acknowledges 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 (all of whom are hereinafter referred to as “Staff”) will be utilized in said communications, at the expense of and to the financial detriment of the Township; and –

WHEREAS, Developer acknowledges that the Township will incur a certain amount of engineering fees, legal fees, consulting fees, costs, charges and expenses (collectively “Expense” or “Expenses”) on account of said communications with the Professionals and Staff; and –

WHEREAS, Developer acknowledges that said Expenses will be incurred by the Township relative to communications with its Professionals and Staff, and Developer is willing to be solely responsible for the payment of the same.

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

1. Incorporation of Whereas Clauses. The “Whereas” paragraphs hereinabove are incorporated herein by reference as if fully set out hereinafter at length and, are a part of this Agreement.
2. Consent of Township to Communications. Township, at the request of Developer agrees to allow its Professionals and Staff to meet, comment and communicate with Developer, so long as Expenses incurred by the Township relative to the same are fully paid by Developer. Developer hereby agrees to be solely responsible for the payment of same.
3. Developer’s Agreement to Pay Expenses. In consideration of the privilege of Developer meeting, commenting and communicating with the Professionals and Staff of Township, Developer 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 (“M.P.C.”), and, further, Developer agrees that Expenses incurred by the Township shall be paid for by Developer. Such expenses shall include any bank service charges or other charges imposed by any bank, and any accounting expense incurred by the Township. Developer will deposit, for the sole benefit of the Township, as escrow agent, the initial escrow sum stated hereinabove on page one as “initial escrow amount”; said monies to

be held in an interest-bearing segregated 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. Any and all interest accrued in the Escrow account will be for the benefit of the Developer.

4. Expenditure of Escrow Funds. Developer agrees that the Escrow account shall be used for payment of and reimbursement to the Township for any and all Expenses which may be based on minimum charges for particular services, and agrees that the Township's Solicitor is deemed to be a professional consultant. The Township will upon request provide Developer 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 M.P.C. or any other applicable law, ordinance, rule or regulation notwithstanding, the parties further agree that, if Developer disputes any Expenses, or any other cost associated with the same, said dispute shall be referred, at the Developer's sole expense, to an engineer and/or attorney depending on the type of Expense 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 after his or her appointment as Professional Arbitrator and his or her receipt of said disputed Expense, the Professional Arbitrator shall make a final, binding and non-appealable decision as to whether the Expense in question is, in whole or in part, reasonable and necessary and whether the Expense is to be paid, in whole or in part, by the Developer. 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/her determination, all time constraints imposed upon the Township under the M.P.C. or any other applicable law, ordinance, rule or regulation are hereby waived by the Developer. In the event Developer disputes the amount of any Expense, the Developer shall notify the Township in writing by certified or registered mail of any disputed Expense. Said notification must be received by the Township within ten (10) days from the date the Township issued an invoice to the Developer, or the right of Developer to dispute same shall be deemed waived.
5. Minimum Balance. The balance of the Escrow shall at no time be in an amount of less than fifty (50%) percent of the initial escrow amount stated hereinabove on page one ("Minimum Balance"). In the event that the balance of the Escrow Account falls below the Minimum Balance, the Township shall request Developer to submit funds to be deposited in the Escrow account, 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 with a general description of the purposes for which such additional deposits will be required. At such time after the Developer'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, and the required maintenance obligation has expired, or the Plans have been denied or withdrawn, any balance remaining in the Escrow account shall be returned to Developer.

6. Commencement of Ninety (90) Day Time Period. Developer hereby agrees that the ninety (90) day time period for plan review imposed by the M.P.C. shall not commence until the date of the regular meeting of the Planning Commission following the date the plan application for approval is initially received, approved and accepted for filing by Township. Further, in the event the Escrow is established prior to the filing of the application for approval, the ninety (90) day time period shall not commence until the next meeting of the Planning Commission following the submission of said application.
7. Escrow as Security. The Escrow established herein shall be deemed Cash Collateral for the sole and exclusive benefit of the Township, as that term is applied in Federal Bankruptcy Law proceedings. This instrument shall be deemed a Security Agreement creating a first-lien security interest in favor of the Township in the Escrow under the Uniform Commercial Code.
8. Failure to Maintain Minimum Balance. If Developer fails at any time, following a request from the Township to maintain the Minimum Balance, the parties agree that the Township Professionals and Staff will not be obligated to communicate or meet with the Developer or its representatives; and Developer waives any and all rights it may have under the M.P.C. or any decisional law pertinent thereto, relative to the ninety (90) day time limit for review imposed by Section 508 of the M.P.C. Any communications with the Township Professionals and Staff shall then resume at such time as the Escrow is replenished by Developer.
9. Professional Services Escrow. 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. Termination. 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 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 Expenses incurred and/or owed by

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 within ten (10) days after the above-mentioned forty-five (45) day time period.

- 11. Issuance of Notice of Intent to Terminate. 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: To the Name and Address of Developer Stated on Page One

If to Township: Upper Nazareth Township
100 Newport Ave.
Nazareth, PA 18064

With a Copy to: Gary N. Asteak, Esquire
726 Walnut St.
Easton, PA 18042

- 12. Severability. 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. Non-Waiver. 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. Binding Effect. 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. Applicable Law. This Agreement shall be governed and shall be construed and interpreted in Pennsylvania in accordance with the laws of the Commonwealth of Pennsylvania. The exclusive venue for the resolution of all disputes hereunder shall be Northampton County, Pennsylvania, only.
- 16. Counterparts. This Agreement may be signed in multiple counterparts and all such counterparts shall be deemed to be one and the same Agreement.
- 17. Full Understanding by Developer. The Developer has fully read, completely understands and agrees to the following Township Escrow Policies and Procedures:

18.

- A. Application and escrow fees will be submitted as separate checks, made payable to “Upper Nazareth Township”.
- B. All escrow fees must be paid at the time of filing an application. The Developer will be responsible for payment of all legal, engineering and other invoices or fees necessary to review and approve or deny the Plan by the Township, and that 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 by the Township from the escrow account.
- C. 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.
- D. The calculation of escrow is merely an estimate of the costs associated with the Plan. It is possible that additional escrow funds may be necessary that exceed the initial calculation of fees for engineering, legal and other invoices and fees.
- E. Escrow funds will be deposited in an interest-bearing account with all interest accrued benefitting the Applicant. Each development or project escrow account shall be maintained separately within a single Master Escrow Account. All required bank documentation for the escrow account must be filed with the Township at the time of application.
- F. An escrow balance going below 50% of the initial escrow amount must be replenished back to the original amount for the review process to continue. If escrow accounts go below the minimum amount, all professional engineering, legal, etc. services will cease until escrow is replenished.
- G. The escrow account balance will be released approximately sixty (60) days after the following applicable conditions are met, to include but not limited to the following: full payment of all expenses, recording of the plan, completion/termination of the project, final engineering sign-off, and/or issuance of the final use and occupancy permit and expiration of the maintenance obligation. Escrow account balances will be released only when all approvals are received, and all expenses related to the project have been paid by the Township. Checks will be made only to the party who funded the escrow.

IN WITNESS WHEREOF, and 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.

ATTEST:

By _____

WITNESS/ATTEST:

By _____

WITNESS/ATTEST:

By _____

UPPER NAZARETH TOWNSHIP:

By _____

Print Name: _____

Title: _____

Date: _____

DEVELOPER:

By _____

Print Name: _____

Date: _____

OWNER:

By _____

Print Name: _____

Date: _____

