

MIDDLETOWN TOWNSHIP
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT made this _____ day of _____, A.D., 20____, by and between **MIDDLETOWN TOWNSHIP**, Delaware County, Pennsylvania, with offices located at 27 N. Pennell Rd., P.O. Box 157, Lima, PA 19037 (hereinafter referred to as "**Township**") and _____ of _____ (hereinafter referred to as "**Developer**") (collectively, the Township and the Developer as sometimes hereinafter referred to as the "**Parties**").

WHEREAS, Developer is the legal or equitable owner or tenant of certain real estate consisting of Delaware County Folio No. _____ located in Middletown Township within the _____ Zoning District (hereinafter referred to as the "**Site**"); and

WHEREAS, Developer has presented to the Township plans for subdivision, land development, grading, stormwater management, erosion control, blasting or other plans and/or proposals for the use, development or rezoning of the Site, including Planned Residential Development (hereinafter referred to as the "**Project**"); and

WHEREAS, Developer has requested and/or requires Township approval for the Project and/or review of Developer's plans and proposals concerning the Project, and the Township is willing to authorize its Professional Consultants to review said plans and proposals concerning the Project upon execution of this Agreement, and upon deposit of an Escrow Account (as hereinafter defined).

NOW, THEREFORE, the Parties agree as follows:

1. Developer and Township hereby authorize and direct Township's Professional Consultants, as defined at Section 107 of the Pennsylvania Municipalities Planning Code, to review Developer's plans and proposals concerning the Project proposed for the Site, and to make such recommendations and comments as may be necessary with respect to the Project in accordance with all applicable Federal, State, County, and Township statutes, ordinances, codes, rules, and regulations.

2. Developer and Township acknowledge that Township will incur costs and fees relating to the review of the Project by Township's Professional Consultants, and Developer agrees to pay and/or reimburse Township for such costs in accordance with this Agreement.

3. Developer shall pay the Professional Consultant's expenses, costs, charges and fees for the following: (a) review of any and all plans, proposals, studies, or other correspondence relating to the Project; (b) attendance at any and all meetings relating to the Project; (c) preparation of any documents related to the Project, including, but not limited to: studies, reports, engineered plans, surveys, appraisals, agreements, deeds, declarations, easements, other legal documents, or other correspondence; (d) monitoring, testing, and inspecting of the work conducted by Developer and/or its agents, contractors, representative, or employees in conjunction with the Project. It is understood that by the execution of this Agreement, Developer specifically acknowledges and accepts the Fee Schedule currently in effect in the Township.

4. Developer hereby agrees to deposit with Township the sum of _____ Dollars (\$ _____), payable as cash in U.S. Dollars or check drawn on a bank authorized to do business in the Commonwealth of Pennsylvania ("**Escrow Account**") as security for the payment of all Township expenses, costs, charges, and fees as set forth in Paragraph 3 above, upon execution of this Agreement, which shall be held in a non- interest-bearing account by the Township. In the event that the Escrow Account shall fall below Fifty Percent (50%) of the original posted amount, Developer shall immediately, upon receipt of written notice from Township, deposit sums with the Township necessary to replenish the Account to its original balance. In the event that there are insufficient funds to pay current Township-incurred expenses, Developer agrees to pay the total amount currently due for Township-incurred expenses without delay in addition to re-establishing the base escrow account balance. Township will use its best efforts to advise Developer of the impending likelihood that its costs have exceeded the required Escrow Account sums as described above. In the event Developer fails to make the initial deposit payment or otherwise fails to provide sufficient funds in the Escrow Account as required herein, Developer shall be in default of this Agreement and no further Professional Consultant reviews of the project will be authorized by the Township.

5. Developer agrees that upon Township's receipt of invoices from Township's Professional Consultants for services, expenses, costs, charges and fees related to the Project, the Township is authorized to pay the Township Professional Consultants' invoices from the Developer's funds in the Escrow Account. Township agrees to send Developer a copy of the Township Professional Consultants' paid invoices at the time the Township sends the payment to the Professional Consultants.

6. Developer and Township agree that all unused portions of the Escrow Account shall be returned to Developer upon written request to the Township once all of the work on the Project is completed by Developer, including the maintenance period, if any, and all Township expenses, costs, charges, and fees as set forth in Paragraph 3 above have been paid.

7. Developer and Township further agree that all fees or costs arising out of this Agreement shall be paid prior to the issuance of any permit, occupancy or otherwise, for the use, improvement, or construction of the buildings as proposed on Developer's final plan. Developer agrees and acknowledges that no permit, occupancy or otherwise, or recordable plans, shall be released by Township until all outstanding professional consultant fees and costs are paid to Township, and provided that Developer is not in default under this Agreement.

8. By execution of this Agreement, Developer acknowledges and agrees that Township employees and professional staff, including Planning Commission members and members of Township Council, may enter upon and inspect the Site upon 48-hours' notice in order to determine compliance with Township ordinances and to facilitate appropriate planning for the Project.

9. Developer may at any time terminate all further obligations under this Agreement by giving fifteen (15) days written notice to the Township that it does not desire to proceed with the development as set forth on the plan. Upon receipt of such written notice by Township, Developer shall only be liable to the Township for the Township expenses, costs, charges, and fees incurred prior to the end of this 15 day notice period.

10. If Township determines that a violation of the terms of this Agreement has occurred, it shall give written notice to Developer of such violation and demand corrective action sufficient to cure the violation. If Developer fails to cure the violation within fifteen (15) days after receipt of notice thereof from Township, Township may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Agreement. Developer and Township further agree that

Township shall have the right and privilege to sue Developer for reimbursement and/or to lien the Site for any Township expense, cost, charge, or fee in excess of the then current balance of the Escrow Account incurred by Township. Township's remedies described in this Agreement shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. The Township's election of its remedies under this paragraph shall not constitute a waiver of any other remedies the Township may have. Developer hereby waives any defense of laches, estoppel, or prescription.

In addition to the above-listed remedies, Township may, upon discovery of a breach or violation of this Agreement, cease to issue any permits for the Project or any portion thereof; revoke any issued permits related in any way to the breach or violation; stop any reviews of the Project; and refuse to issue any necessary approvals. Moreover, if Developer is in violation of this Agreement, it specifically waives any right it may have to claim a deemed approval concerning the Project due to Township refusal to timely issue any permit or approval. Township is not required to provide prior notice to Developer before exercising its rights under this provision.

All reasonable costs incurred by Township in enforcing the terms of this Agreement against Developer, including, without limitation, costs and expenses of suit and reasonable attorneys' fees shall be borne by Developer, if Township prevails.

11. This Agreement shall be binding on and inure to the benefit of the successors and assigns of Developer. Developer shall provide Township with at least thirty (30) days advance written notice of any proposed assignment of Developer's rights and responsibilities under this Agreement.

12. Developer and Township acknowledge that this Agreement represents their full understanding as to Township's reimbursement for Professional Consultant services. If the Project constitutes a subdivision or land development under Township ordinances, the Parties acknowledge that they intend to execute a Development Agreement, Improvement Security Agreement and/or Stormwater Controls and Best Management Practice Operations and Maintenance Agreement in the future. Any such Development Agreement, Improvement Security Agreement and Stormwater Controls and Best Management Practice Operations and Maintenance Agreement may incorporate or replace this Agreement.

13. This Agreement and the Application it is a part of shall be governed by and construed under the laws of the Commonwealth of Pennsylvania and the Ordinances of Middletown Township. Developer and Township hereby consent to the exclusive jurisdiction of the Court of Common Pleas of Delaware County, Pennsylvania regarding any dispute arising out of or in connection with this Agreement.

14. If any provision of this Agreement is determined by a court of competent jurisdiction to be illegal, invalid, unenforceable, unconstitutional, or void, for any reason, only that provision shall be illegal, invalid, unenforceable, unconstitutional, or void and the remainder of this Agreement shall be in full force and effect.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have caused their signatures to be affixed and have affixed their hands and seals the day and year first above written.

DEVELOPER

Date: _____

By: _____

Name:

Title:

MIDDLETOWN TOWNSHIP

Date: _____

By: _____

Township Manager