

COMMERCIAL PROJECTS

SOLEBURY TOWNSHIP
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT made this _____ day of _____, A.D., 20____, by and between ***SOLEBURY TOWNSHIP***, Bucks County, Pennsylvania, with offices located at 3092 Sugan Road, P.O. Box 139, Solebury, PA 18963 (hereinafter referred to as "***Township***") and _____ of _____ (hereinafter referred to as "***Developer***").

WHEREAS, Developer is the legal or equitable owner of certain real estate bearing Bucks County TMP No. _____, and located at _____ within the _____ Zoning District (hereinafter referred to as the "***Site***"); and

WHEREAS, Developer has presented to Township plans and/or proposals for the subdivision, land development, and/or building development of the Site; other plans and/or proposals for the use of the Site; or has applied to the Township for a building permit concerning the Site (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 according to the current Township Fee Schedule.

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 specifications 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 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; and (e) a 10% administrative fee added to all applicable charges invoiced to the escrow account for Township-incurred expenses relating to the administration of this Agreement. In the event that Developer disputes any of the foregoing fees and charges, Developer shall proceed in accordance with Section 510(g) of the Pennsylvania Municipalities Planning Code (53 P.S. §10510(g)). It is understood by the execution of this Agreement that Developer specifically accepts the Fee Schedule currently in effect in the Township.

4. Developer hereby agrees to deposit with Township the sum of Two Thousand Five Hundred Dollars (\$2,500.00), payable as cash in U.S. Dollars or check drawn on a Pennsylvania bank, as security for the payment of all Township expenses, costs, charges, and fees as set forth in Paragraph 3 above ("**Escrow Account**"), 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 Five Hundred Dollars (\$500.00), Developer shall immediately, upon receipt of written notice from Township or its agent(s), deposit sums with the Township necessary to replenish the Account to its original balance. In the event that this is insufficient 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.

If any invoice to Developer from Township for professional consultant services incurred by Township is not paid by Developer within thirty (30) days after presentation, Township is authorized to withdraw monies from the Escrow Fund to cover the costs set forth in such invoice together with a Twenty Dollar (\$20.00) service charge. Furthermore, all sums not paid by Developer within thirty (30) days after presentation of the original invoice shall bear a compound interest charge of fifteen percent (15%) per annum until such sums have been paid, either directly by Developer or through the withdrawal of monies from the Escrow Account.

5. Developer and Township agree that all unused portions of the Escrow Account shall be returned to Developer upon written request to the Township Manager 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.

6. Developer and Township acknowledge that Sections 4.03.C, 4.05.C, and 6.03 of the Township Subdivision and Land Development Ordinance, along with the Township fee schedule, require Developer to pay Township's professional consultant fees relating to this Project, and in the event that Developer fails to provide sufficient funds in the Escrow Account upon fifteen (15) days written notice to Developer or fails to make the initial deposit payment described above within five (5) days of the date of this Agreement, Developer shall be in default of this Agreement and in violation of the above Sections of the Subdivision and Land Development Ordinance.

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 the Board of Supervisors, may enter upon and inspect the Site 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, plus the applicable administrative costs and expenses as outlined in Paragraph 3 above.

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.

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.

Forbearance by Township to exercise its rights under this Agreement in the event of any breach of any term of this Agreement by Developer shall not be deemed or construed to be a

waiver by Township of such terms, or of any subsequent breach of the same, or any other term of this Agreement, or of any of Township's rights under this Agreement. No delay or omission by Township in the exercise of any right or remedy upon any breach by Developer shall impair such right or remedy or be construed as a waiver. Developer hereby waives any defense of laches, estoppel, or prescription.

11. No one other than the parties to this Agreement shall be construed to be a beneficiary under this Agreement. Developer's right to payment, if any, shall be subject and subordinate to the terms and provisions of this Agreement. The parties to this Agreement acknowledge and Developer agrees and covenants that in case of either voluntary or involuntary bankruptcy of Developer, the Escrow Account is not considered to be a part of the estate of Developer, but a separate escrow in the name of Township, subject, nevertheless, to the terms and conditions contained within this Agreement.

12. 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.

13. Developer and Township acknowledge that this Agreement represents their full understanding as to Township's reimbursement for professional or consultant services. This Agreement sets forth the entire understanding between the parties and any representations, oral or written, not contained therein are without effect. If the Project constitutes a subdivision or land development under Township ordinances, the parties acknowledge that they intend to execute Development and/or Financial Security Agreements in the future. Any such Development and Financial Security Agreements may incorporate or replace this Agreement.

14. This Agreement shall be governed by and construed under the laws of the Commonwealth of Pennsylvania and the Ordinances of Solebury Township. Developer and Township hereby consent to the exclusive jurisdiction of the Court of Common Pleas of Bucks County, Pennsylvania regarding any dispute arising out of or in connection with this Agreement.

15. If any ambiguity or ambiguities in this Agreement should be claimed by either Developer or Township, or if any court of competent jurisdiction should determine that any ambiguity exists in this Agreement, any such ambiguity shall be resolved in favor of Township and against Developer.

16. 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.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

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:

By: _____

Name:

Title:

Date: _____

TOWNSHIP:

Approved by Solebury Township on the _____ day of _____, A.D.,
20____.

SOLEBURY TOWNSHIP

By: _____

Dennis H. Carney
Township Manager