

UPPER MERION TOWNSHIP
CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT made this ____ day of _____, 20____, by and between **UPPER MERION TOWNSHIP**, Montgomery County, Pennsylvania, with offices located at 175 West Valley Forge Road, King of Prussia, PA 19406 (hereinafter referred to as "**Township**") and _____ of _____ (hereinafter referred to as "**Applicant**").

WITNESSETH

WHEREAS, Applicant is the legal or equitable owner or tenant of certain real estate consisting of Tax Map Parcel No. _____ located within Upper Merion Township and

WHEREAS, Applicant has presented to the Township plans for grading, subdivision, land development, or other building development of the Site (hereinafter referred to as the "**Project**"); and

WHEREAS, Applicant has requested and/or requires Township approval for the Project and/or review of Applicant'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.

NOW, THEREFORE, the parties agree as follows:

1. Applicant and Township hereby authorize and direct Township's professional consultants, as defined at Section 107 of the Pennsylvania Municipalities Planning Code, to review Applicant'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. Applicant and Township acknowledge that Township will incur costs and fees relating to the review of the Project by Township's professional consultants, and Applicant agrees to pay and/or reimburse Township for such costs in accordance with this Agreement. The Applicant agrees and understands that the professional consultants and Township employees are representing the best interest of the Township, and not the interests of the Applicant. The Applicant cannot and should not rely on any of the information supplied by the professional consultants or Township employees, but rather the Applicant may hire and should hire the Applicant's own professional consultants to advise the Applicant accordingly. At no time shall the Township's professional consultants be deemed to be an agent, employee, independent contractor, or other representative of the Applicant.
3. Applicant 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 Applicant and/or its agents, contractors, representative, or employees in conjunction with the Project. In the event that Applicant disputes any of the foregoing fees and charges, Applicant 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 Applicant specifically accepts the Fee Schedule currently in effect in the Township.

4. Applicant hereby agrees to deposit with Township the sum as determined by the township fee schedule or an initial deposit of \$4,000.00 Dollars ("*Escrow Account*"), payable as cash in U.S. Dollars or check 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 Twenty Five Percent (25%) of the original posted amount, Applicant shall immediately, upon receipt of written or email 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 without delay in addition to re-establishing the base escrow around balance, the Township will use its best efforts to advise Applicant of the impending likelihood that its costs have exceeded the required Escrow Account sums as described above.

If any invoice to Applicant from Township for professional consultant services incurred by Township is not paid by Applicant within thirty (30) days after presentation shall bear a compound interest charge of fifteen percent (15%) per annum until such sums have been paid, either directly by Applicant or through the withdrawal of monies from the Escrow Account.

5. Applicant and Township agree that all unused portions of the Escrow Account shall be returned to Applicant upon written request to the Township once all of the work on the Project is completed by Applicant, including the maintenance period, if any, and all Township expenses, cost, changes and fees as set forth in Paragraph 3 above have been paid.
6. In the event that Applicant fails to provide sufficient funds in the Escrow Account upon written notice to Applicant, Applicant shall be in default of this Agreement and no further Professional Consultant reviews of the project will be authorized by the Township.
7. Applicant 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 Applicant's final plan. Applicant 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 Applicant is not in default under this Agreement.
8. By execution of this Agreement, Applicant acknowledges and agrees that Township employees and professional staff, including Planning Commission members and member of the Board of Supervisors, may enter upon and inspect the site to determine compliance with Township ordinances and to facilitate appropriate planning for the Project.
9. Applicant 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, Applicant 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 and 4 above. If Applicant chooses to pursue a

new or alternate plan for a proposed development on the Property that is sufficiently different from the current plan under this Agreement, Applicant must cure any defaults under this Agreement, enter into a new Professional Services Agreement with Township, and fully fund a new Escrow Account pursuant to this Agreement's terms.

10. This Agreement shall be binding on and inure to the benefit of the successors and assigns of Applicant. Applicant shall provide Township with at least thirty (30) days advance written notice of any proposed assignment of Applicant's rights and responsibilities under this Agreement. If Township, in its sole discretion, determines that a violation of the terms of this Agreement has occurred, it shall give written notice to Applicant of such violation and demand corrective action sufficient to cure the violation. If Applicant fails to cure the violation within fifteen (15) days after receipt of written 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 or to recover against the Applicant. If Applicant is or becomes the legal landowner of the Property, Applicant further agrees that Township shall have the right and privilege to lien the Property as a municipal lien for any Township expense, cost, charge, or fee in excess of the then current balance of the Escrow Account incurred by Township, and Applicant expressly consents to any such lien. The parties agree that in any collection or litigation matter commenced under this Agreement, the Township Solicitor will charge their normal, non-municipal hourly rates.

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 future projects on the Property, or any portion thereof; revoke any issued permits related in any way to the breach or violation; stop any reviews or meetings related to the Project or future projects on the Property; refuse to schedule any necessary hearings; and refuse to issue any necessary approvals for the Project or future projects on the Property. Moreover, if Applicant is in violation of this Agreement, as determined by Township, it specifically waives any right it may have to claim a deemed approval concerning the Project or future projects on the Property, or any other claims or remedies set forth under the Pennsylvania Municipalities Planning Code, due to Township's refusal to timely issue any permit or approval. Township is not required to provide prior notice to Applicant before exercising its rights under this provision.

All reasonable fees and costs incurred by Township in enforcing the terms of this Agreement against Applicant, including, without limitation, costs and expenses of suit, liens, other filing fees, and reasonable attorneys' fees and witness fees shall be borne by Applicant, if Township prevails at court or if Applicant agrees to comply with the Agreement's terms, or otherwise settles the dispute with the Township, after the Township begins an enforcement action under this Agreement. The Township is not required to provide prior notice that may be required under Pennsylvania Municipal Claims and Tax Lien Law, or other applicable debt collection laws, to Applicant before exercising its rights under this provision.

Forbearance by Township to exercise its rights under this Agreement in the event of any breach of any term of this Agreement by Applicant 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 Applicant shall impair such right or remedy or be construed as a waiver. Applicant hereby waives any defense of

laches, estoppel, unjust enrichment, detrimental reliance, or prescription related to the matters covered under this Agreement.

11. Applicant and Township acknowledge that this Agreement represents their full understanding as to Township's reimbursement for professional or consultant services. If the Project constitutes a subdivision or land development, the parties acknowledge that they intend to execute Improvement and/or Financial Security Agreements in the Future.
12. 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 Upper Merion Township. Applicant and Township hereby consent to the exclusive jurisdiction of the Court of Common Pleas of Montgomery County, Pennsylvania regarding any dispute arising out of or in connection with this Agreement.
13. No one other than the parties to this Agreement shall be construed to be a beneficiary under this Agreement. Applicant'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 Applicant agrees and covenants that in case of either voluntary or involuntary bankruptcy of Applicant, the Escrow Account is not considered to be a part of the estate of Applicant, but a separate escrow in the name of Township, subject, nevertheless, to the terms and conditions contained within this Agreement.
14. This Agreement shall be binding on, and inure to the benefit of, the successors and assigns of Applicant. As such, Applicant shall notify any such successors and assigns of their obligations and the Township's rights under this Agreement. Applicant shall provide Township with at least thirty (30) days advance written notice of any proposed succession or assignment of Applicant's rights and responsibilities under this Agreement. Upon the succession or assignment of this Agreement, Applicant shall not be entitled to a return of any monies remaining in the Escrow Account unless and until the Applicant's successor or assignee has entered into a new Professional Services Agreement with Township and has fully funded a new Escrow Account in accordance with this Agreement's terms. Additionally, in the event that the amount in the Escrow Account is insufficient to pay the then-current Township-incurred expenses, Applicant shall pay the total amount currently due for Township-incurred expenses prior to any proposed succession or assignment. In the event that such expenses are not paid or the Escrow Account is not fully replenished, Applicant shall remain liable under this Agreement for any monies currently owed or that may become owed to the Township. Failure to provide the notices under this paragraph or to make any payments necessary shall constitute a default of this Agreement.
15. Applicant 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 and that approval of any such plans are still required by the Township, and such approval may be conditioned. Any such Development and Financial Security Agreements or plan approvals may incorporate or replace this Agreement. However, the terms of this Agreement, and the obligations and responsibilities of the Applicant under this Agreement, shall remain in place if Applicant chooses to not to

proceed to subdivision or land development approvals for the Project or otherwise assigns or transfers the developmental rights to the Property. This Agreement shall not constitute the Township's approval of any Township Code waiver requests or constitute the Township's support for the Project.

16. Applicant shall release, indemnify, protect and save harmless the Township, Township Board of Supervisors, Township Engineer, Township Solicitor, and all Township employees, agents, independent contractors, and professional consultants (collectively the "Indemnified Parties") from all costs or expenses resulting from any and all alleged breach of contract or loss of life, property, injury, or damage to any person, property, association, or corporations resulting from the Project or the Property, except to the extent any liability, or claims of liability are the result of gross negligence or willful misconduct on the part of the Indemnified Parties. It is expressly understood and agreed that the Indemnified Parties do not hereby accept any responsibility, and make no warranties or representations, pertaining to the viability, legality or approvals of the Project, including, but not limited to, the availability of water, sewer, or other utility services for the Property. The Indemnified Parties in no manner assume any liability for the cost, reviews or inspections of the Project. Applicant assumes full responsibility for financial obligations related to the cost, reviews and inspections of the Project. The indemnification provided for herein shall not be deemed a waiver of Township's right to sovereign immunity as a governmental entity in any action against the Township or applicable Indemnified Parties.
17. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania and venue shall be in Montgomery County, Pennsylvania.
18. If any ambiguity or ambiguities in this Agreement should be claimed by either Applicant 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 Applicant.
19. 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.
20. All written notices under this Agreement shall be provided to the following parties via first class mail return receipt requested:

a. If to the Applicant, addressed to:

b. If to the Township, addressed to:

Township Manager
Upper Merion Township
175 West Valley Forge Road
King of Prussia, PA 19406-1802

c. With a copy to Township Solicitor:

John F. Walko, Esq.
Kilkenny Law, LLC.
519 Swede St.
Norristown, PA 19401

21. The remedies given to the Township under this Agreement are cumulative, and the Township shall have them in addition to all other available remedies, including self-help and also those remedies allowed by law and in equity. No delay in exercising or omission of the right to exercise any right or power by the Township shall impair any such right or power or shall be construed as a waiver of any breach or default, or as acquiescence thereto. One or more waivers of any term or condition of this Agreement by the Township shall not be construed by the Applicant as a waiver of a continuing or subsequent breach of the same or any other term or condition of this Agreement.

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.

APPLICANT:

Date: _____

Name: _____

Signature: _____