

**SELLERSVILLE BOROUGH**  
**PROFESSIONAL SERVICES AGREEMENT**

This **Professional Services Agreement** (this "Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2016, among the Borough of Sellersville (the "Borough"), and \_\_\_\_\_ (the "Developer").

**WHEREAS**, the Developer is the legal or equitable owner of real estate in the Borough identified as Tax Map Parcel No(s) 39-\_\_\_\_\_ ; and

**WHEREAS**, the Developer has provided the Borough with plans for subdivision, land development, or has applied for certain zoning relief (as applicable, the "Project"); and

**WHEREAS**, in connection with the Project, the Developer has requested the Borough to review proposed plans and undertake other tasks; and

**WHEREAS**, pursuant to the Municipalities Planning Code (the "MPC") and the Borough's zoning and subdivision ordinances, the Borough has established, by Resolution, a fee schedule and a professional services escrow requirement (the "Borough Fee Schedule") which is incorporated by reference as part of this Agreement; and

**WHEREAS**, pursuant to the Borough Fee Schedule, the Developer is required to enter into this Agreement.

**NOW THEREFORE**, in consideration of the mutual promises made in this Agreement, and intending to be legally bound, the Borough and the Developer hereby agree as follows:

1. Professional Consultants. The Borough and the Developer authorize and direct the Borough's professional consultants, as such term is defined in Section 107 of the MPC ("Professional Consultants"), to review the Developer's plans and to make such recommendations as may be necessary with respect to the Project in accordance with all applicable Borough ordinances and State and Federal statutes, rules, and regulations. Notwithstanding anything to the contrary in this Agreement or elsewhere, the parties recognize and agree that the Professional Consultants have been engaged on behalf of the Borough and shall be responsible and answerable only to the Borough. The Borough's Professional Consultants shall not be considered agents of the Developer, and nothing contained in this Agreement shall be construed as a waiver of the attorney/client privilege, or any other applicable privilege, between the Borough and its Professional Consultants.

2. Developer's Payment of the Borough's Professional Consultants' Services. The Developer shall pay/and or reimburse the Borough for the following fees and costs charged by the Professional Consultants in connection with the Project: (a) review of any development plans, proposals, studies, and correspondence; (b) attendance at any meetings related to the Project (pro-rated if such meetings involve other projects or issues not related to the Project); (c) preparation of any studies, reports, engineered plans, surveys, appraisals, legal documents, and other correspondence; and (d) any other services provided by the Professional Consultants

which are reimbursable under the MPC (collectively, the “Reimbursable Costs”).

3. Escrow. Upon the execution of this Agreement, the Developer shall deposit the sum of \$ \_\_\_\_\_ (the “Initial Escrow”) as security for the payment of Reimbursable Costs which will be held by the Borough in a separate, non-interest bearing escrow account (the “Escrow”).

4. Escrow Replenishment. In the event that the amount of funds in the Escrow is reduced to less than fifty percent of the Initial Escrow, the Developer shall, within five business days of receipt of written notice from the Borough, deposit additional funds with the Borough sufficient to replenish the Escrow to the amount of the Initial Escrow. In the event that such additional funds are not sufficient to satisfy any outstanding invoices for Reimbursable Costs, the Developer shall first satisfy such outstanding invoices and then deposit additional funds in order to replenish the Escrow to the amount of the Initial Escrow. In no event shall the Borough’s failure to demand the Developer to replenish the Escrow pursuant to this Section 4 relieve the Developer of its obligation to pay any Reimbursable Costs.

5. Return of Escrowed Funds. Upon completion of the Professional Consultants’ review of the Project – or, if in the case of subdivision or land development for which a Subdivision/Land Development Financial Security Agreement is required and has been executed by the Borough and the Developer – and upon written request from the Developer, the Borough shall return any unused funds remaining in the Escrow to the Developer within ten business days after receiving final invoices from the Borough’s Professional Consultants.

6. Developer’s Withdrawal of Project. At any time, the Developer may notify the Borough in writing that the Developer does not desire to proceed with the Project and is withdrawing any application(s) related to the Project. In such event, the Developer shall be liable to the Borough for any Reimbursable Costs incurred to the date the Borough receives the Developer’s written request. The Borough shall return any unused funds remaining in the Escrow to the Developer within ten business days after receiving final invoices from the Borough’s Professional Consultants.

7. Draw-Down of Escrow by the Borough. Upon receipt of an invoice from the Borough’s Professional Consultants for Reimbursable Costs, the Borough shall send such invoice (or a summary thereof), redacted to protect any lawful privilege, to the Developer and draw down funds from the Escrow to satisfy such invoice.

8. Default. In the event the Developer fails to perform any act required under this Agreement, or is otherwise in default or breach of this Agreement, the Borough may refuse to issue any permit, grant any requested relief, approve of the Project, or otherwise take any action in furtherance of the Project until such time that the Developer is no longer in default. Nothing contained in this Section 8 shall constitute a waiver of any other legal or equitable rights or remedies available to the Borough as a result of the Developer’s default.

9. Disputes. In the event of a dispute concerning the amount of Reimbursable Costs or whether such costs are lawfully reimbursable, Developer shall continue to be bound by the terms of this Agreement, including the obligation to replenish the Escrow, pending a final resolution of the dispute. Any disputes shall be resolved in accordance with Sections 503 and

510(g) of the MPC, as applicable.

10. Severability. Each provision of this Agreement shall be considered severable and if any provision is ruled to be invalid, void, illegal, or unenforceable for any reason, such ruling shall not affect the validity or enforceability of the remainder of this Agreement.

11. Rules of Construction. Unless the context indicates otherwise, the term “or” shall be deemed to include the term “and” and the singular or plural number shall be deemed to include the other. Whenever the words “include,” “includes,” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” The word “will” shall be construed to have the same meaning and effect of the word “shall.” Captions and headings are intended solely for convenience of reference and shall not be used in the interpretation of this Agreement. The parties waive the application of any law, regulation, holding, or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document. Instead, this Agreement shall be construed as a whole according to its fair meaning. This Agreement may not be amended except by another written Agreement that has been executed by the parties.

12. Governing Law. This Agreement is made and entered into in the Commonwealth of Pennsylvania. The interpretation and construction of this Agreement, and all matters relating to this Agreement, shall be governed by the laws of the Commonwealth of Pennsylvania without reference to its conflict of laws provisions.

13. Assignability. The Developer shall have no right to assign this Agreement or any obligations hereunder without the advance written approval of the Borough (which such approval shall not be unreasonably withheld).

14. Entire Agreement. This Agreement sets forth the entire agreement and understanding between the parties with respect to the subject matter in this Agreement and supersedes all prior written and oral agreements, discussions, or representations.

15. Waiver. The delay or failure of any party at any time to enforce any provision of this Agreement or to exercise any right under this Agreement shall not be construed to be a waiver of such provision nor in any way to affect the validity of this Agreement or the right of any party thereafter to enforce each and every provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

16. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. Execution and delivery of this Agreement by exchange of facsimile copies bearing the facsimile signature of a party, or by e-mail as a PDF document, shall constitute valid and binding execution and delivery of this Agreement by such party.

[Signature Page Follows]

**BOROUGH OF SELLERSVILLE**

Attest: \_\_\_\_\_

By: David J. Rivet, Borough Manager

**DEVELOPER**

Attest: \_\_\_\_\_

By: [print name and title]