

ESCROW AGREEMENT

This Escrow Agreement (the "**Agreement**"), dated this _____ day of _____, 20__ by and among [**Developer**], a [**State of Organization**] [**Organization Type**] of [**Address**] (the "**Developer**").

AND

The Township of Upper St. Clair, a home rule municipality, having its principal address at 1820 McLaughlin Run Road, Upper St. Clair, Pennsylvania 15241, (the "**Township**").

AND

[**Bank**] with its principal address at [**Address**] (the "**Lender**").

WITNESSETH:

WHEREAS, the Developer is undertaking the development of property situated in the Township, known as [**Name of Plan**] for which a plan will be recorded in the Recorder's Office of Allegheny County, Pennsylvania, and has submitted in connection therewith plans for the construction and installation of roads, storm sewers and other public and private improvements, which plans have been approved by the Township (said plans are hereinafter called the "**Development Plan**" and the improvements to be made pursuant thereto are hereinafter called the "**Improvements**"); and

WHEREAS, the Developer has agreed to construct and install the Improvements pursuant to the terms of the [**Tentative and Final Development Agreement or Preliminary and Final Development Agreement**], dated _____, 20__ with the Township (the "**Township Development Agreement**"), and

WHEREAS, the Lender has granted a development loan (the "**Loan**") to Developer to fund *inter alia*, the construction and installation of the Improvements; and

WHEREAS, the parties agree that the sum of _____ AND ___/100 DOLLARS (\$_____) constitutes the amount of the security which the

Township requires of the Developer to guarantee completion of the Improvements (the "**Pledged Funds**"); and

WHEREAS, the Developer and Lender desire to insure the completion of the construction and installation of the Improvements according to the Development Plans and the Township Development Agreement; and

WHEREAS, the Lender covenants that it will act as escrow agent of the Pledged Funds herein.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter stated and intending to be legally bound hereby, the parties agree as follows:

1. Preamble. The foregoing preamble clauses are incorporated herein by reference thereto.
2. Improvements. The Developer agrees to install the Improvements in conformance with the Development Plans and the Township Development Agreement, and the Township's Public and Private Improvements Code.
3. Funds; Account. Lender has on deposit a sum in an amount equal to the Pledged Funds reserved from the Loan granted to Developer which sum is hereby pledged to the Township to guarantee the completion of the Improvements as set forth in the Township Development Agreement. Lender agrees to deposit the Pledged Funds into an escrow account (the "**Escrow Account**") with any release of the Pledged Funds occurring only after the Lender has received written authorization by the Township to release a specific amount from the Escrow Account.
4. Title. The Escrow Account shall be titled as follows: "Escrow Account for the benefit of the Township of Upper St. Clair [**Name of Plan**]" Both Developer and Lender covenant that the Escrow Account shall not be subject to the claims of any creditors of

Developer other than the Township, and shall not constitute a part of Developer's estate for the purpose of any bankruptcy or insolvency proceeding which touches or concerns Developer.

5. Interest. Monies on deposit in the Escrow Account shall earn interest, which said interest shall be retained in the Escrow Account, made a part of the Pledged Funds, and applied and disbursed in accordance with this Agreement.

6. Releases. The Township hereby agrees to permit the construction and installation of said Improvements forthwith and to permit partial releases of funds from the Escrow Agreement upon written request by the Developer after each phase of the Improvements is completed subject to the provisions of Chapter 114 of the Township Code, including Sections 114.17 and 114.04 thereof. No Pledged Funds shall be released from the Escrow Account without the Township's written authorization to the Lender.

7. Default. If after _____, 20____, **[or at any time pursuant to Section ____ of the Township Development Agreement,]** Improvements are not constructed and installed, and approved by the Township, then and in that event the Township may demand, and in the event of such demand, shall immediately receive, payment of any balance remaining in the Pledged Funds. If the Township draws on the Escrow Account, it shall be under no obligation to complete the subject Development or the Improvements.

8. Defeasance. Upon payment in full of the costs of the Improvements as certified by the Developer and approved by the Township in writing, the obligation of Lender to the other parties will cease and the Escrow Account shall be terminated subject to the provisions of Chapter 114 of the Township Code, including Sections 114.17 and 114.23 thereof.

9. Payment to Township. In the event the Township demands payment under this Agreement, Lender shall, without duty of inquiry to the Developer, immediately make the requested payment to the Township and Developer releases Lender from any liability or claim.

10. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been duly given when addressed and mailed by registered or certified United States mail to the Developer, the Lender or the Township, as the case may be, at the following addresses, or to such other places as either of the parties may for themselves designate in writing, from time to time, for the purpose of receiving notices pursuant hereto:

DEVELOPER:

TEMPLATE

Township of Upper St. Clair

LENDER:

TOWNSHIP: The Township of Upper St. Clair

Community Development Department

1820 McLaughlin-Run Road

Upper St. Clair, PA 15241

TO BE REPRODUCED

11. Attachments. The Exhibit attached to this Agreement and the matters contained therein are incorporated herein and deemed a part hereof as if fully recited in this Agreement.

12. Law Governing. This Agreement shall be construed insofar as possible in accordance with the laws of the Commonwealth of Pennsylvania.

13. Successors and Assigns. The words "Developer", "Lender" and "Township" include singular and plural, individual or corporate, and their respective heirs, successors and assigns, as the case may be.

14. Amendments. This Agreement may not be changed, modified or amended, in whole or in part, except in writing, signed by all parties.

15. Severability. If any term or provision of this Agreement or the application thereof shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons, properties and circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby. Each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

16. Capitalized Terms. Capitalized terms used herein shall have the meanings ascribed to them in this Agreement.

17. Captions. The paragraph captions are for convenience only and in no way limit or alter the terms and conditions of this Agreement.

18. Counterparts. This agreement may be executed in different counterparts each of which executed by a party hereto shall be regarded as an original, and all such counterparts shall constitute one Agreement

19. Subject to. This Agreement is subject to the terms of the Township Development Agreement and the Township Code, including the provisions of Chapter 99 (Public and Private Improvements) and Chapter 114 (Subdivision and Land Development) and that the terms of the Township Development Agreement and the Code are incorporated by reference and supercede the provisions of this Agreement.

20. Integration Clause. This Agreement constitutes the entire contract between the parties hereto and there are no other understandings, oral or written, relating to the subject matter hereof other than those specifically incorporated by reference herein.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

WITNESS:

DEVELOPER:

[Name]

Name:

Title

Township of Upper St. Clair

WITNESS:

LENDER:

[Name]

Name:
Title:

WITNESS:

TOWNSHIP:

THE TOWNSHIP OF UPPER ST. CLAIR,
a home rule municipality

LETTERHEAD

By: _____

Name:

Title:

REVISED1-10-2011

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