

LOWER MOUNT BETHEL TOWNSHIP
ESCROW AND REIMBURSEMENT POLICY FOR SUBDIVISION
AND/OR LAND DEVELOPMENT APPLICATIONS

(Duly adopted by the Board of Supervisors on September 9, 2013)

SCOPE:

This policy addresses all applications for which the Township requires the posting of funds in escrow in connection with the filing of a subdivision or land development application pursuant to the Municipalities Planning Code. This policy governs applications for the following:

- Major Subdivision (sketch, preliminary, preliminary/final, or final review)
- Minor Subdivision (sketch, preliminary, preliminary/final, or final review)
- Land Development (sketch, preliminary, preliminary/final, or final review)
- New Commercial Use
- Lot Line Adjustment
- Waiver/modification of applicable standards in connection with a subdivision and land development application

APPLICATION REQUIREMENTS:

In addition to the specific requirements that exist for any particular type of application, at a minimum, every application governed by this policy shall be set forth in writing, and where applicable, shall be on prescribed forms established by the Township, and shall include at a minimum, the following information:

- Name and address of the applicant
- If the applicant is a legal entity other than a natural person, the name and contact information of the contact person(s) for such requesting entity
- Information in sufficient detail so that the application is understandable
- Satisfactory written evidence that the applicant is making the request with the knowledge and approval of the property owner(s) if the application involves one or more parcels of land in the Township and the applicant is not the owner of all such land
- Such other information as may be reasonably required by the Township in order to fully understand and evaluate the application

APPLICATION FEE:

Any application governed by this policy shall be submitted with the applicable application fee, which may change from time to time as established by Resolution of the Board of Supervisors.

ESCROW AND REIMBURSEMENT AGREEMENT:

It is required that the applicant execute an Escrow and Reimbursement Agreement in form prescribed by the Township from time to time before any work by the Township proceeds on applicant's request. Applicant shall place a sum in escrow to be held by the Township in accordance with the Escrow and Reimbursement Agreement. The amount of the escrow will ordinarily be in accordance with the Township's escrow amount schedule established from time to time, provided, however, that the Chairman of the Board of Supervisors shall have the discretionary right to increase or decrease the amount of the escrow based upon the exercise of reasonable judgment that the escrow amount set forth in the schedule will likely be too large or too small based upon the scope of applicant's request. The purpose of the escrow is to reimburse the Township for all out-of-pocket costs incurred by Township in addressing applicant's request, including, without limitation, advertising expenses, filing fees, postage, and all fees and expenses of the Township Engineer, Township Solicitor and any other consultants engaged by the Township in connection with applicant's request. Applicant must complete and execute IRS form W-9, etc. in order to facilitate opening of the Escrow Account. The obligation of applicant to reimburse Township Expenses is not limited to the amount initially placed into the escrow account.

WAIVERS:

Waivers of this Escrow Policy may be granted by the Chairman of the Board of Supervisors. Any decision on a waiver is final.

FINAL ACTION:

Applicant is advised that the Township will ordinarily not take favorable final action on any application governed by this policy unless all fees and expenses have been paid and sufficient escrow has been provided to cover any additional fees and expenses the Township anticipates possibly incurring in connection with the request following action by the Township. Paying an application fee and placing funds in escrow do not guarantee or imply that the Township will take favorable action on any application.

APPLICANT'S ACKNOWLEDGEMENT:

I, the undersigned applicant, have read and understand this Escrow Policy. I have been provided with a copy of this Escrow Policy and the Escrow and Reimbursement Agreement. I agree to their terms. Further, if the applicant is a business or other legal entity, I certify that I have authority to execute this document on behalf of the applicant.

Date:

Applicant:

_____, 201__

Company/Entity Name

*Printed Name (Individual or Company Contact
Person and Title)*

By: _____
Signature

LOWER MOUNT BETHEL TOWNSHIP
ESCROW AND REIMBURSEMENT AGREEMENT
(For Use with Subdivision and/or Land Development Applications)

THIS ESCROW AND REIMBURSEMENT AGREEMENT is made this _____ day of _____, 20____, by and between **LOWER MOUNT BETHEL TOWNSHIP**, a municipal corporation and Township of the Second Class with an address of P.O. Box 257, 2004 Hutchison Ave., Martins Creek, PA, 18063 (hereinafter referred to as "**Township**") and _____ having an address of _____ (hereinafter referred to as "**Applicant**").

BACKGROUND

A. Applicant is the legal or equitable owner of certain real property identified by PIN(s) _____, and located at _____ within the _____ Zoning District (hereinafter referred to as the "**Site**").

B. Applicant has presented to the Township plans for subdivision, land development, or other plans for the use of the Site (hereinafter referred to as the "**Project**").

C. Applicant has requested Township approval and/or review of its Project (hereinafter referred to as the "**Application**"), and the Township is willing to authorize its professional consultants to review the Application upon execution of this Agreement and upon deposit of an escrow.

D. The Lower Mount Bethel Township Escrow and Reimbursement Policy for Subdivision and/or Land Development Applications requires the Applicant to pay certain sums into an escrow account, the purpose of which is to reimburse the Township for all out-of-pocket costs and professional consultant fees incurred by the Township in addressing the Application.

DETAILS OF AGREEMENT

NOW, THEREFORE, intending to be legally bound the parties agree as follows:

1. **Authorization of Review**. Applicant authorizes and directs Township, along with its professional consultants, as defined by Section 107 of the Municipalities Planning Code (53 P.S. § 10107), to review the Application and take any such action as the Township may deem to be necessary or appropriate with respect to the request set forth in the Application.

2. **Reimbursement of Township Expenses**. Applicant acknowledges that the

Township will incur costs and fees relating to the Application (defined below as “Township Expenses”). Applicant hereby agrees to pay and/or reimburse Township for such Township Expenses. This obligation for reimbursement of Township Expenses shall not be limited to the amount placed in escrow with the Township.

3. **Reimbursable Township Expenses.** Applicant shall pay all out of pocket costs incurred by the Township in addressing the request set forth in the Application (“*Township Expenses*”). Township Expenses include but are not limited to filing fees, postage fees, and any and all fees and expenses of the Township’s professional consultants. Professional consultant fees and expenses (“*Professional Consultant Fees*”) may include but are not limited to the following, where applicable: (a) review of any and all plans, proposals, emails, memoranda, studies, correspondence, and other documents, regardless of medium, relating to the Application; (b) attendance at any and all meetings (public or otherwise) relating to the Application; (c) preparation of any documents related to the Application, including, but not limited to: correspondence, emails, memoranda, studies, reports, plans, surveys, agreements, deeds, declarations, easements, and other legal documents; and (d) monitoring, testing, and inspecting of the work conducted by Applicant and/or its agents, contractors, representative, or employees in conjunction with the Application.

4. **Escrow Account.**

(a) Applicant hereby agrees to deposit with Township the sum of _____ Dollars (\$_____.00) as security for the payment of Township Expenses; said sum shall be delivered to the Township upon execution of this Agreement and will be held by the Township in an interest-bearing account (“*Escrow Account*”). The Township reserves the right to demand at any time that the Escrow Account balance be increased if the Township determines in its sole discretion that the remaining balance may be insufficient to cover Township Expenses. Should the Township determine that an increase in the Escrow Account balance is necessary, the Township may elect to stop work on the Application until the Escrow Account balance has been increased.

5. **Withdraw and Replenishment of Escrow Account.**

(a) Upon the Township forwarding to Applicant an invoice for Township Expenses, Township is authorized and shall have the unilateral right to withdraw monies from the Escrow Account to cover the Township Expenses set forth in the invoice. Applicant shall replenish the Escrow Account by promptly paying the invoice. Said payment will be deposited into the Escrow Account.

(b) Any invoices not paid within twenty (20) days of the invoice date shall incur a finance charge of one percent (1%) per month compounded monthly until such sums have been paid.

(c) If at any time the Escrow Account is insufficient to cover all or any part of an invoice for Township Expenses, and the Township informs Applicant of this fact, the Township shall have the unilateral right to withdraw the remaining monies from the Escrow

Account and the Applicant shall pay Township the amount of any such shortfall and also make a payment for the total invoice whereby said monies will be deposited in the Escrow Account. Applicant's obligation to pay invoices for which there are insufficient funds in the Escrow Account is in addition to Applicant's obligation to replenish the Escrow Account balance in accordance with subparagraph (a) above.

(d) In the event that Applicant disputes any Professional Consultant Fees, Applicant shall proceed in accordance with Sections 503(1) and 510(g) of the Pennsylvania Municipalities Planning Code (53 P.S. §§ 10503(1) and 10510(g)). However, in the event that an Applicant disputes the amount of any Professional Consultant Fees, the Applicant shall no later than 30 days after the date of transmittal of the invoice to the Applicant, notify the Township and the Township's professional consultant that such fees are disputed. Applicant's failure to timely notify the Township and the Township's professional consultant within 30 days shall be a waiver of the Applicant's right to dispute said fee and pursue arbitration in accordance with applicable law, including but not limited to Section 503(i) and 510(g) of the Municipalities Planning Code. 53 P.S. §10503(i) & 10510(g). Applicant hereby expressly waives any requirement of the Municipalities Planning Code, or any other applicable law, ordinance, or regulation that allows the Applicant a length of time in excess of 30 days to notify the Township and the Township's professional consultant of a disputed fee in order to preserve its right to arbitration of the disputed fee. It is understood by the execution of this Agreement that Applicant specifically accepts the Fee Schedule currently in effect in the Township.

(e) The Township may elect to have the Escrow Account grow smaller by not requiring replenishment or requiring lesser amounts from the Applicant to replenish the Escrow Account if the Township determines in its sole discretion that its professional consultants' work on a Project is winding down and/or the need for the Escrow Account, for whatever reason, has diminished.

(f) 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 bankruptcy estate of Applicant, but rather a separate escrow in the name of Township, subject, nevertheless, to the terms and conditions contained within this Agreement.

6. **Release of Escrow Funds.** Applicant and Township agree that funds remaining in the Escrow Account shall be returned to Applicant upon written request to the Township after either: (i) all Township work, including without limitation work by its professional consultants concerning the Application, is completed and all Township Expenses have been paid; or (ii) Applicant withdraws the Application and all Township Expenses have been paid.

7. **Final Action.**

(a) Applicant acknowledges and agrees that ordinarily, no final favorable action on the Application will occur until all Township Expenses have been paid.

(b) Applicant acknowledges and agrees that the purpose of this Agreement is to assure the Township that all Township Expenses are paid. It is not in any way a promise or

guarantee to Applicant that the Township will act favorably on the Application in the manner suggested by Applicant, and in fact, it is possible that the Application could be denied in its entirety.

8. **Access to the Property.** By execution of this Agreement, Applicant acknowledges and agrees that Township employees, professional consultants, elected officials and appointed members of Township committees, commissions, boards, etc., may enter upon and inspect the Site for purposes related to the Application. See the Site Visit Authorization form attached hereto as Exhibit "A" which must be signed by the record owner of the property involved with the Application if the Applicant is not the record owner.

9. **Termination of Agreement.** Applicant may at any time terminate all further obligations under this Agreement by giving fifteen (15) days written notice to the Township that Applicant is withdrawing its Application. Upon receipt of such written notice to Township, Applicant shall only be liable to the Township for the Township Expenses for work performed prior to the end of this 15 day notice period, it being recognized that following receipt of such notice the Township will need to notify various persons to stop work on the Application, and that there may be some measure of "closeout" work necessary following notification of the withdrawn Application.

10. **Breach of Agreement**

(a) If Township determines that Applicant has violated this Agreement, it may 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 notice thereof by the Township, Township may bring an action at law or in equity in a court of competent jurisdiction to enforce this Agreement. Applicant and Township further agree that Township shall have the right and privilege to sue Applicant for reimbursement of Township Expenses and/or to impose a municipal lien. Township's remedies 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.

(b) All reasonable costs incurred by Township in enforcing this Agreement, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, shall be the responsibility of Applicant if Township substantially prevails.

(c) Forbearance by Township in exercising any of 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, or prescription.

11. **Binding Effect.** 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. Any assignment by Applicant to a third party shall not relieve Applicant of any obligations under this Agreement, including without limitation the obligation to pay Township Expenses, unless the Township has affirmatively, in writing, agreed to relieve Applicant of such obligations. No such relief of Applicant from obligations to the Township shall be implied by circumstances, invoices, course of conduct, or otherwise; any such relief of the Applicant by the Township, which shall be in the sole discretion of the Township, shall occur only in a writing which explicitly states that Applicant is relieved of its obligations under this Agreement.

12. **Integration.** Applicant and Township acknowledge that this Agreement represents their full understanding as to reimbursement of Township Expenses, and any verbal or written representations or terms not contained herein are without effect.

13. **Choice of Law.** 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 Lower Mount Bethel Township. Applicant and Township hereby consent to the exclusive jurisdiction of the Court of Common Pleas of Northampton County, Pennsylvania regarding any dispute arising out of or in connection with this Agreement.

14. **Interpretation.** 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.

15. **Notices.** All notices, statements, requests, demands, consents, and other communications (each referred to herein as "Notice") permitted or desired to be made relative to this Agreement shall be given by one of the methods described in this paragraph. Notice shall be effective and deemed to have been received as follows: when actually received by any method including hand-delivery and facsimile; one day after deposit for overnight delivery with a nationally recognized courier requiring signature for receipt or providing tracking of delivery to a person at the recipient's address; two days following deposit with the U.S. Postal Service, postage prepaid, certified mail. All Notices shall be directed to the parties at the addresses shown in this Agreement. Any party may change its address for Notices under this Agreement by giving written Notice in like manner to the other party(ies), specifying that the purpose of the Notice is to change the party's address.

16. **Waiver.** Failure or repeated failure by Township to insist upon strict compliance with any of the terms, covenants, or conditions herein shall not be deemed a waiver of such terms, covenants, or conditions; and nor shall any waiver or relinquishment of any right or power hereunder at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times. In addition, if any Township staff member exercises leniency with Applicant in failing to strictly abide by the Township's rights under this Agreement, no such action shall negate or alter the rights of Township under this Agreement.

17. **Severability.** If for any reason one or more of the terms or provisions of this Agreement (or any portion(s) thereof) or their application to any person or circumstance shall be held by a forum of competent jurisdiction to be invalid, illegal, void, or unenforceable in any respect or to any extent, such terms and provisions shall nevertheless remain valid, legal, and enforceable in all other respects, and in all other jurisdictions, and to such extent as may be permissible; any such holding shall not bind any party hereto unless such party also was a party to the proceeding in which such holding was rendered by a forum of competent jurisdiction. In addition, any such offending provision shall not affect any other provision hereof, but this Agreement shall be construed as if such offending provision had never been contained herein and this Agreement shall remain valid and enforceable to the fullest extent permitted by law.

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 set forth above.

Date:

_____, 201__

APPLICANT:

Company/Entity Name

Printed Name (Individual or Company Contact Person and Title)

By: _____
Signature

Pursuant to Lower Mount Bethel Township Board of Supervisors Resolution No. _____, dated _____, 2013 the undersigned is executing this Agreement on behalf of Lower Mount Bethel Township with full authority to do so.

Date:

_____, 201__

LOWER MOUNT BETHEL TOWNSHIP

By: _____

Exhibit "A"

Site Visit Authorization Form

Lower Mount Bethel Township seeks consent and authorization for its employees, professional consultants, elected officials and appointed members of Township committees, commissions, boards, etc., including, but not limited to, the members of its Planning Commission, Board of Supervisors, Code Enforcement Officer(s), Zoning Officer, Engineer and Public Works Director to enter onto your property for the purpose of conducting a site inspection, analysis, measurement, and observation necessary or appropriate to evaluate the property with regards to the Application filed with the Township and review of the Project.

Consent and authorization is also sought for individuals supervising the installation of any required municipal improvements or modifications and enforcement of any condition, agreement, or requirement for plan approval and implementation from the date of execution of this Agreement to and including the term of any Maintenance Agreement.

Such authorization is to remain in full force and effect and to be applicable against all successors in title, heirs, and assigns. Site visits are intended to provide those individuals who visit the site with information which may be significant in reviewing and approving your proposed plan.

PROPERTY OWNERS RELEASE

I / we, being the title owners of the property situated at _____

(MUST BE SIGNED BY OWNER, not to include equitable owners, developers, engineers or representatives of the owner)

which is the subject of a subdivision / land development plan currently pending before the Township Planning Commission and / or Board of Supervisors authorize and specifically release individuals who enter on or about the site during an inspection from any liability, obligation or claim that might arise as a result of their entry onto or travel about the said property.

Property Owner

Property Owner