

RESOLUTION NO. 13 OF 2017

**A RESOLUTION OF THE BOARD OF SUPERVISORS
OF MOUNT JOY TOWNSHIP, ADAMS COUNTY, PENNSYLVANIA, REGARDING
TEMPORARY OCCUPANCY AND USE
PENDING COMPLETION OF REQUIRED PUBLIC IMPROVEMENTS**

WHEREAS, Section 509 of the Pennsylvania Municipalities Planning Code (MPC) enables municipalities to require the posting of financial security to guarantee the construction of public improvements depicted in an approved non-residential subdivision or land development plan; and

WHEREAS, the Township exercises the authority under Section 509 of the MPC as part of its review and approval of subdivision or land development plans; and

WHEREAS, the Township Engineer, pursuant to Section 509 of the MPC, reviews and makes recommendations to the Board of Supervisors as to the sufficiency of financial security for each subdivision or land development plan; and

WHEREAS, the Township Engineer, pursuant to Section 509 of the MPC, inspects improvements as they are constructed and completed; and

WHEREAS, the Township Engineer, pursuant to Section 509 of the MPC, makes recommendations to the Board of Supervisors for the reduction of posted financial security for completed or partially completed improvements; and

WHEREAS, the Township acknowledges the Uniform Construction Code, the duties and authority of the Building Code Inspector, and Section 509(m) of the MPC (issuance of UCC certificate of occupancy); and

WHEREAS, there are limited circumstances during which it may be reasonable to allow the occupancy or use of a building or structure constructed pursuant to an approved subdivision or land development plan prior to the completion of all required public improvements subject to posted financial security; and

WHEREAS, the Board of Supervisors intends that this Resolution be a specific delegation and authorization to the Township Engineer to administratively allow for the temporary occupancy or use of a building or structure subject to the terms stated herein.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of Mount Joy Township that it authorizes the Township Engineer to administratively authorize temporary occupancy or use of a building or structure prior to the completion of required public improvements only upon satisfaction of all of the following terms:

1. Financial security, as allowed by Section 509 of the MPC and in an amount recommended by the Township Engineer, is posted with the Township and has been continuously maintained (without any interruption or lapse) during the duration of the development of the subdivision or land development following plan approval; and
2. Where applicable, potable water supply and sewage management facilities are available to serve the building or structure; and
3. Where applicable, the Building Code Inspector has issued a certificate of occupancy, temporary or permanent, for the building or structure; and
4. The administrative authority granted to the Township Engineer shall apply if:
 - a. At least 90% of the required landscaping, as depicted in the approved subdivision or land development plan, has been installed; provided that, if the request is presented in the period July – August or January – March, the time for completion of the landscaping shall be extended to November 1 or June 1, respectively.
 - b. At least 95% of the required stormwater management facilities, as depicted in the approved subdivision or land development plan, has been installed and completed or are awaiting final conversion from an erosion and sediment control facility.
 - c. Any required street or site access to a non-residential property is improved to a point where all traffic control measures (signage, signal lights, etc.), curbing (if required by the plan), stone subbase, and base course pavement (if required by the plan) are installed and the street or access is in a safe and passable condition.
5. All remaining required public improvements shall be fully completed no later than 60 days after the date of the Township Engineer's approval for temporary use and occupancy; provided, that a request to extend the deadline for completion of the remaining required public improvements shall be made to the Board of

Supervisors, in writing stating the reasons for the requested extension of time and submitted no later than 20 calendar days prior to the expiration of the 60 days; decision on the request for extension of time is at the Board's discretion.

6. The applicant for land development or subdivision has entered into written agreement (substantially in the form attached hereto and marked **APPENDIX A**) with the Township, which agreement shall reserve the Township's rights and remedies under Sections 511, 515.1 and 515.3 of the MPC; shall state the applicant's obligation to complete the required public improvements within 60 days; and shall contain a provision that, in the event of a breach of and action to enforce the agreement, the applicant shall bear all the Township's administrative expenses and attorney's fees.

BE IT FURTHER RESOLVED, the Township Engineer's administrative approval of temporary occupancy or use shall be stated in writing addressed to the subdivision or land development plan applicant. A copy of the written approval shall be concurrently provided to the Township. The Township Engineer shall make a report on all administrative approvals newly issued under this Resolution to the Board of Supervisors at its earliest regularly scheduled meeting following the administrative approval. As part of the monthly Engineer's Report, the Township Engineer shall make a report on the status of all open administrative approvals issued under this Resolution.

ADOPTED this 6th day of July, 2017.

ATTEST:

MT. JOY TOWNSHIP

Sheri L. Moyer, Secretary

By: _____
John Gormont
Chairman, Board of Supervisors

I, Sheri L. Moyer, Secretary for Mount Joy Township, do hereby attest that the foregoing Resolution No. 13 of 2017 was voted upon and approved by unanimous vote of the Board of Supervisors on the 6th day of July 2017.

APPENDIX A

**AGREEMENT FOR
TEMPORARY OCCUPANCY AND USE
PENDING COMPLETION OF REQUIRED PUBLIC IMPROVEMENTS
[IDENTIFY DEVELOPMENT BY NAME]**

THIS AGREEMENT entered into this ___ day of _____, 201__ by and between _____, [an adult individual residing at] [a partnership, corporation having a place of business at] _____ (INSERT Short Name), and MOUNT JOY TOWNSHIP, a second class township organized and existing pursuant to the Second Class Township Code of Pennsylvania and maintaining its principal office at 902 Hoffman Home Road, Gettysburg, Pennsylvania (Township).

WHEREAS, by Resolution No. _____ (Resolution) the Board of Supervisors specifically delegated and authorized the Township Engineer to administratively allow for the temporary occupancy or use of a building or structure subject to the terms stated in the Resolution; and

WHEREAS, on [INSERT plan approval date] [INSERT developer short name] obtained approval for [INSERT plan name, original date, last revised date, and name of plan preparer] for a proposed [describe use, e.g. hotel, restaurant, convenience store] located at [INSERT property address] and identified as PIN _____ (Plan); and

WHEREAS, _____ proceeded with development of the Property, but has not fully completed the required public improvements shown on the Plan; and

WHEREAS, pursuant to the specific delegation and authority of the Resolution, the Township Engineer has made an administrative determination to authorize temporary occupancy and use of the property as shown on the approved Plan prior to the completion of required public improvements (Township Engineer's Approval); and

NOW THEREFORE, in consideration of mutual promises contained herein and intending to be legally bound hereby, the Township and _____ agree as follows:

1. The Township agrees to permit the temporary use and occupancy of the Property prior to completion of required public improvements shown on the Plan, which agreement is subject to the terms set forth in Paragraph 3 below.

2. For purposes of this Agreement, the Township and _____ agree that the effective date of the Township Engineer's Approval is _____, 20__.

3. _____ agrees to the following terms as conditions for temporary occupancy and use of the Property prior to the completion of required public improvements shown on the Plan:

1. financial security, as allowed by Section 509 of the MPC and in an amount recommended by the Township Engineer, has been posted with the Township and continuously maintained (without any interruption or lapse) during the duration of the development of the Property following Plan approval; and
2. all remaining required public improvements shown on the Plan shall be fully completed no later than 60 days after the date of the Township Engineer's Approval for temporary use and occupancy; and
3. a request to extend the deadline for completion of the remaining required public improvements shall be made to the Board of Supervisors, in writing stating the reasons for the requested extension of time and submitted no later than 20 calendar days prior to the expiration of the 60 day; provided, _____ understands and agrees that a decision on the request for extension of time is at the Board's discretion.

4. _____ agrees that Township reserves all rights and remedies under Sections 511, 515.1 and 515.3 of the Pennsylvania Municipalities Planning Code.

5. _____ agrees that in the event of a breach of and action to enforce this Agreement, _____ shall bear all the Township's administrative expenses and attorney's fees related to the enforcement of this Agreement.

6. _____ agrees and understands that the provisions of this Agreement do not impose on the Township any obligations, except as specifically stated herein.

7. _____ agrees and shall hold the Township, its officials and its employees, harmless against any and all claims of damages, losses, or liabilities related to the authorization for temporary use and occupancy of the Property.

8. This Agreement shall be binding on _____ and [his heirs, successors and assigns or its successors and assigns].

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first above written.

MOUNT JOY TOWNSHIP

ATTEST

John Gormont, Chairman
Mount Joy Township Board of Supervisors

Sheri Moyer, Secretary

(TOWNSHIP SEAL)

SIGNATURE PAGE FOR _____ ON SEPARATE PAGE

**AGREEMENT WITH MOUNT JOY TOWNSHIP
FOR TEMPORARY OCCUPANCY AND USE
PENDING COMPLETION OF REQUIRED PUBLIC IMPROVEMENTS**

[PRINT NAME OF DEVELOPER]

[Print Name of Signatory and Title]

ACKNOWLEDGEMENT

Commonwealth of Pennsylvania
County of _____

On this, the ____ day of _____, 201__, before me _____, a notary public, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person__ whose name is/are subscribed to the within instrument and acknowledged that __he__ executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Notary Public

OR INSERT APPROPRIATE ACKNOWLEDGEMENT OF NOTARY LOCATED IN ANOTHER STATE COMPLAINT WITH THAT STATE'S REQUIREMENTS