



**TOWN OF WINCHESTER
MIDDLESEX COUNTY, MASSACHUSETTS
PLANNING BOARD
TOWN HALL
WINCHESTER, MASSACHUSETTS 01890
Phone: 781-721-7162 Fax: 781-721-7166**

FORM E-4

TRIPARTITE AGREEMENT

Agreement made this _____ day of (year) by and between

Name of Developer(s) _____

hereinafter referred to as "the DEVELOPER", the (Name of Bank)

_____ a banking corporation having an usual place of business at (Location of Bank), Commonwealth of Massachusetts hereinafter referred to as "the BANK", and the WINCHESTER PLANNING BOARD, hereinafter referred to as "the BOARD".

WHEREAS, the Town, acting by its Planning Board pursuant to the authority conferred by M.G.L. Chapter 41, has granted an approval of a Definitive Subdivision Plan, dated _____, a copy of which is attached here and marked Exhibit "A" for property on (street name) _____ in Winchester, and

WHEREAS, the Subdivision approval, dated _____, contains conditions that the DEVELOPER shall complete as shown on a certain Plan entitled "(Name of Subdivision)"

(Name of Owner)_____

(Name of Developer)_____

(Name of Surveyor)_____

(Name of Engineer)_____

(Date of Plan)_____

(Scale of Plan)_____

(Number of sheets in the set)_____

which is to be recorded herewith (hereinafter the "Plans".)

WHEREAS the Bank has approved a mortgage loan, totaling (amount of mortgage dollars)_____ to the Developer and has secured mortgage and guarantee, all to secure the performance of the obligations of the Developer to the Bank and

WHEREAS, the Developer desires to secure and guarantee the full and faithful performance that the installation of ways and completion of services will be completed in accordance with said Plans and the Winchester Planning Board Definitive Subdivision Decision dated_____

NOW THEREFORE, it is agreed as follows:

1. In order to secure performance of the DEVELOPER'S obligations hereunder, the BANK hereby agrees to withhold in escrow from the proceeds of its mortgage above-referred-to, the sum of (amount of mortgage dollars) _____ DOLLARS. The BANK agrees to earmark these funds in a special escrow account

for the work referred to above and will not permit any withdrawals except as authorized hereunder.

2. The DEVELOPER agrees to diligently work to complete the construction of and installation of all municipal services and ways as shown on the aforesaid Plans and as per the aforesaid Decision. Upon the completion of the work to the reasonable satisfaction of the Board and Town Engineer, the sums designated for each completed category of work (as attached in Form G - Street Improvement Guarantee Summary Sheet) shall be released by the Town by a written instrument executed by the Board and directed to the Bank and the Developer, and upon receipt thereof the Bank shall be released from any further obligation as it applies to the category of work so released;
3. The Developer will cause the Plans and Planning Board decision to be recorded at the Middlesex South District Registry of Deeds;
4. The Developer will not seek an occupancy permit until and unless the improvements contemplated by said Plans are complete, in accordance with the Board's subdivision decision.
5. Upon the satisfactory completion by the DEVELOPER(S) of the work required by the terms of the Subdivision approval granted by the Board and upon the written request of the Developer, accompanied by a vote of the Board that such work has been completed consistent with the plans and profiles and specifications filed with the Board, or as they have been amended or modified by agreement of the Developer and the Board, the Board shall issue a certificate of completion and shall release the Bank and Developer from all obligations contained herein.

6. The BOARD may release funds, in whole or in part, held pursuant to this agreement.

Form G - Street Improvement Guarantee Summary Sheet, as attached, specifies the partial releases that shall be permitted by the Board.

7. In the event that the Developer defaults upon the performance guaranteed by this Agreement either because of failure to complete the work, failure to complete the work to the reasonable satisfaction of the Board and Town Engineer or failure to complete the work in a timely manner (within two years after the endorsement of the plans), upon written demand of the Board, the Bank will at the Bank's sole option either: (1) complete the items required by the Subdivision approval, or (2) pay over forthwith the balance in said account with interest, if any, to the Board all unreleased funds for the completion of said items.
8. It is understood and agreed by the Developer and the BOARD that should work, at any time, be found deficient or in any manner not in substantial compliance with the Plans, the work shall be corrected at the expense of the Developer. All parties hereto agree that monies from any undisbursed escrow funds may be held and utilized by the BOARD for the purposes of correcting any project deficiencies or uncompleted work.
9. The BOARD shall have recourse to the BANK for all the undisbursed funds, notwithstanding any transfer of title, assignment, bankruptcy or imposition of lien by or against the DEVELOPER.

IN WITNESS WHEREOF, the said parties have executed this Agreement and have hereunto affixed their seals.

(Developer's signature)

(Developer's name)

Date: _____

COMMONWEALTH OF MASSACHUSETTS

Middlesex: SS

On this _____ day of _____, (Date), before me, the undersigned notary public, personally appeared (Developer(s)) _____ proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose names are signed on the preceding document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Notary Public

Bank Name

By: _____
(Designated bank official/ title

Date: _____

COMMONWEALTH OF MASSACHUSETTS

Middlesex: SS

On this _____ day of _____, (year) _____, before me, the undersigned notary public, personally appeared _____ the (title) _____ of the (Bank) _____ proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public

WINCHESTER PLANNING BOARD

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Date: _____

COMMONWEALTH OF MASSACHUSETTS

Middlesex: SS

On this _____ day of _____, (year), before me, the undersigned notary public, personally appeared _____
CHAIRMAN of the WINCHESTER PLANNING BOARD, proved to me through satisfactory evidence of identification, which was _____
_____, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public

Attached Exhibit: Form G- Street Improvement Guarantee Summary Sheet,