



Town Of Ashburnham Planning Board

FORM I

TRI-PARTY LENDERS AGREEMENT

Sample Form – not to be used as original

This Lender's Agreement is entered into this _____ day of _____, 20____ by and among the Town of Ashburnham, a Massachusetts municipal corporation, acting through its Planning Board, hereinafter referred to as the "Board", with an address of 32 Main Street, and _____, with an address of _____ (This should be the record owner of the parcel of land shown on an approved definitive subdivision plan and includes an equitable owner or purchaser on a purchase and sales agreement for the entire parcel or portion of the parcel of land shown on the approved definitive subdivision plan) [hereinafter "owner"]; and _____ (this should be the name of the bank holding a first mortgage on the subdivided parcel of land), a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, and licensed and registered to do business in the Commonwealth of Massachusetts, and with a usual place of business and address of _____

[hereinafter "Lender"]

PREAMBLE

WHEREAS, on _____, based on the owner's application dated _____, and after duly noticed public hearing(s), the Planning Board approved a definitive subdivision plan showing _____ lots, which is entitled: _____, [hereinafter "Subdivision"], by _____ Engineers and Surveyors to be recorded herewith, OR as recorded in Plan Book _____, Plan ____ at the Worcester Northern Registry of Deeds;

WHEREAS, the approved definitive subdivision plan shows the division of a parcel of land located at _____ Ashburnham, Massachusetts, and further described in a deed or deeds dated _____ and recorded at the Worcester Northern Registry of Deeds in Book _____, Page _____; or is registered in _____ as Document No. _____ and noted on Certificate of Title No. _____, in Registration Book _____, Page _____;

WHEREAS, M.G.L., c.41, section 81U requires the planning board to secure construction of ways and the installation of municipal services in an approved subdivision before endorsing its approval on the approved definitive subdivision plan;

WHEREAS, the Applicant and the Board have executed a Form F Covenant as recorded at the Worcester Northern Registry of Deeds in Book _____, Page _____;

WHEREAS, the owner has decided to secure all or a portion (described as _____), of the construction of ways and installation of municipal services in the subdivision by means of a LENDER'S AGREEMENT in which the owner has agreed that the lender may retain funds from the principal sum otherwise due the owner with respect to the first mortgage on the subdivided parcel of land in the amount of _____ dollars;

WHEREAS, the board has determined that the form of the lender's agreement and that the lender and funds to be retained by the lender are sufficient in form and amount to secure the construction of ways and installation of municipal services in the subdivision and hereby accepts the aforesaid method of securing performance in the amount specified;

WHEREAS, the owner's construction of ways and installation of municipal services within the subdivision are subject to the requirements of M.G.L., c.41, § 81K-81GG (The Subdivision Control Law); the board's Subdivision Rules and Regulations applicable to this subdivision; the application submitted for approval of this subdivision; the certificate of approval and all conditions of approval of this subdivision as set forth in the Appendix attached to and made an enforceable part of this lender's agreement; the recommendations, if any, of the board of health; the approved definitive plan; all conditions subsequent to approval of this subdivision due to any amendment, modification, or rescission of the approval of the definitive subdivision plan; all of the provisions set forth in this lender's agreement and any amendments thereto; and the following additional documents

[hereinafter "approval instruments"];

NOW THEREFOR, for and in consideration of the mutual promises set forth below, and after good and valuable consideration, the parties agree as follows:

SECTION 1. INCORPORATION OF PREAMBLE

The Preamble shall be incorporated into and become an enforceable part of this surety agreement.

SECTION 2. EFFECTIVE DATE

This lender's agreement shall be effective upon its execution by all parties hereto, subject to endorsement of approval of the definitive subdivision plan by the Planning Board and the recording or registering of the plan at the Worcester Northern Registry of Deeds at the expense of the owner.

SECTION 3. OBLIGATIONS, DUTIES, AND RIGHTS OF THE PLANNING BOARD

- A. Upon completion of the construction of ways and installation of municipal services in accordance with the approved instruments, the planning board shall release the owner and surety from this lender's agreement and shall issue a certificate of completion and release that shall be executed by a majority of the members of the planning board.
- B. Upon construction of a portion of the ways and installation of a portion of the municipal services in accordance with the approval instruments, the planning board may release the owner and the lender from this lender's agreement, in full or in part, so long as the construction of ways and installation of municipal services are, in the opinion of the planning board, sufficiently secured by another method as provided in M.G.L. c.41, § 81U. A certificate of release shall be executed by a majority of the members of the Planning Board.
- C. The Planning Board may rescind approval of the definitive subdivision plan for breach of any provision of this lender's agreement or any amendments thereto. Said rescission shall be in accordance with M.G.L. c.41, § 81W.

- D. The parties to this lender's agreement, agree to the following construction schedule, which shall also be considered the schedule for releases by the Board and disbursements by the lender to the owner or funds being retained as security:

Stage of construction or installation to be completed	Sum to be disbursed by lender	Sum to be retained by the lender	Date when stage of construction or installation to be completed

- E. The planning board shall notify the lender and the treasurer for the Town of Ashburnham of any release of all or a portion of the security that secures this agreement in full or in part. Upon receipt of a release, the lender agrees to immediately release and disburse such funds to the owner.
- F. If the owner fails to complete the construction of ways and installation of municipal services as provided by the approval instruments, and within the time provided in this lender's agreement, the lender agrees to pay over to the Town of Ashburnham forthwith, the funds it is retaining as security, and the planning board may apply the said funds, in whole or in part, for the benefit of the said city/town to the extent of the reasonable costs to the said city/town to complete the construction of ways and installation of municipal services as provided in the approval instruments. Any portion of the funds that is not applied as set forth above, shall be returned to the lender upon completion of the construction of ways and installation of municipal services by the Town of Ashburnham, and the lender agrees to disburse such excess funds to the owner.

SECTION 4. OBLIGATIONS, DUTIES, AND RIGHTS OF THE OWNER AND LENDER

- A. The lender agrees to retain the principal sum of money specified in this lender's agreement, due to the owner on the basis of a first mortgage granted by the owner to the lender on the subdivision parcel of land. The lenders agree not to disburse any funds it is retaining to the owner until such time as it receives a written release from the Planning Board. The lender agrees that it will remain liable to the Town of Ashburnham for any funds disbursed in breach of this lender's agreement, including payment of any legal costs incurred by the Town of Ashburnham to rectify the breach.
- B. The lender agrees to and is obligated to notify the planning board of any change in the first mortgage granted by the owner to the lender. Failure of the lender to provide such notice or any lapse or release of the portion shall result in automatic rescission of approval of the subdivision. Any grant of subsequent first mortgage shall require execution of a new lender's agreement.
- C. The owner shall complete construction of the ways and installation of the municipal services for this subdivision no later than _____.
- D. The owner and lender agree and understand that the planning board will not release this lender's agreement in full, unless another method of security is provided, until the ways and municipal services have been deemed by the planning board to be constructed and installed in accordance with the

approval instruments, which shall include demonstration of adequate construction and installation over a _____ period of time prior to said release.

- E. No provision of this lender's agreement shall prevent the owner from varying the method of securing the construction of ways and the installation of municipal services from time to time or from securing by one, or in part by one and in part by another of the methods as provided in M.G.L., c.41, § 81U, as long as the Planning Board deems the method chosen for securing the construction of ways and the installation of municipal services as sufficient.
- F. The owner shall at all times provide the Board forthwith (no more than 14 days after transfer of title) with the name of the current owner or owners of this subdivision or portions thereof and the address of the owner or owners. The owner agrees and understands that failure to comply with this provision could result in rescission of approval of the definitive subdivision plan.
- G. The owner shall at all times provide the Board forthwith (no more than 14 days after transfer of title) with the name of any mortgagee or mortgagees of this subdivision or portions thereof and the address of the mortgagee or mortgagees. At the time of executing this surety agreement, the mortgagee(s) of this subdivision is/are _____ whose address is _____. The owner agrees and understands that failure to comply with the provision could result in rescission of approval of the definitive subdivision plan.
- H. The owner shall have the right to take any tax deductions for payments of interest on any note secured by the first mortgage that also secures this lender's agreement.

SECTION 5. BINDING EFFECT

This lender's agreement, and any amendments thereto, shall be binding on the owner, the owner's agents and representatives, and any successors to the owner's title, interest, and rights in the parcel of land constituting this subdivision, including executors, administrators, devisees, heirs, successors and assigns of the owner. This lender's agreement shall also be binding on the lender, its agents, representatives, successors, and assigns. The liability of the owner and lender to the Town of Ashburnham shall be joint and several.

SECTION 6. USE OF TERMINOLOGY

Use of the terms "owner" and "lender" in this lender's agreement is for convenience only and should not be considered as a limitation on those parties who may be subject to and bound by the provisions of this lender's agreement and any amendments thereon. Use of the term "Planning Board or Board" in this covenant is for convenience only and may include agents or representatives of the Planning Board.

OWNER

Signature of Owner

Date

Witness

By:

Its:

Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____, owner, or person duly authorized to execute this covenant on behalf of the owner, and acknowledged the execution of the foregoing instrument to be his/her free act and deed for the purposes provided therein.

Notary Public

My Commission Expires: _____

OWNER'S SPOUSE

Signature of Owner's Spouse

Date

Witness

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____, and acknowledged the execution of the foregoing instrument to be his/her free act and deed for the purposes provided therein.

Notary Public

My Commission Expires: _____

LENDER

Signature of Lender's Representative

Date

Witness

By:

Its:

Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____, person duly authorized to execute this lender's agreement on behalf of the lender, and acknowledged the execution of the foregoing instrument to be his/her free act and deed for the purposes provided therein.

Notary Public

My Commission Expires: _____

PLANNING BOARD

Planning Board Member Date

Planning Board Member Date

Planning Board Member Date

Planning Board Member Date

Planning Board Member Date

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____ and acknowledged the execution of the foregoing instrument to be their free acts and deeds for the purposes provided therein.

Notary Public

My Commission Expires: _____

ASSENT OF MORTGAGEE

_____, of _____, the mortgagee of the parcel of land, or a portion thereof, constituting this subdivision at the time of execution of this agreement, hereby consents to execution of this agreement by the owner, who is the mortgagor of the parcel of land subject to a certain mortgage deed dated _____ and recorded at the _____ in Book _____, Page _____; or registered in _____ as Document No. _____, and noted on Certificate of Title No. _____, in Registration Book _____, Page _____. The mortgagee also agrees to hold the mortgage subject to this agreement and agrees that the mortgage shall be subordinate to the agreement, which agreement shall have the same status, force, and effect as through executed and recorded prior to the conveyance of the mortgage deed by the mortgagor-owner to the mortgagee.

MORTGAGEE

Signature of Mortgagee

Date

Witness

By:

Its:

Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____, person duly authorized to execute this agreement on behalf of the mortgagee, and acknowledged the execution of the foregoing instrument to be his/her free act and deed for the purposes provided therein.

Notary Public

My Commission Expires: _____

APPENDIX

(Conditions of approval of the definitive subdivision plan)