



TOWN OF DOUGLAS PLANNING BOARD

FORM J

Agreement to Secure Performance by Bank Passbook

This Agreement is entered into this _____ day of _____, 20__ by and between the Town of Douglas, a Massachusetts municipal corporation, acting through its Planning Board, with an address of 29 Depot Street, Douglas, Massachusetts [hereinafter "Planning Board"] 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 of 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 is the bank who holds the account for the passbook), a corporation duly organized and existing under the laws of the state of _____, licensed and registered to do business in the Commonwealth of Massachusetts, and with a usual place of business and address of _____ [hereinafter "bank"].

Preamble

WHEREAS, on _____, based on the owner's application dated _____, and after a duly noticed public hearing(s), the Planning Board approved a definitive subdivision plan showing _____ lots, which is entitled: _____ by: _____ to be recorded or registered at the _____;

WHEREAS, the approved definitive subdivision plan shows the division of a parcel of land located at _____ [hereinafter "subdivision"] and further described in a deed or deeds dated _____ and recorded at the _____ in Book(s) _____, Page _____;

WHEREAS, M.G.L., ch. 41 §81U requires the Planning Board to secure the 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 owner has decided to secure all/a portion (described as _____) of the construction of ways and installation of municipal services in the subdivision by means of a DEPOSIT OF MONEY REPRESENTED BY A BANK PASSBOOK in the penal sum of _____ dollars;

WHEREAS, the Planning Board has determined that the form of the bank passbook is sufficient in form and amount to secure the construction of ways and installation of municipal services in the subdivision and hereby accepts the aforesaid deposit of money 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. ch 41 §§81K – 81GG (The Subdivision Control Law); the Planning 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 Surety 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 Agreement and any amendments thereto, and the following additional documents

_____ [hereinafter "approval instruments];



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NOW THEREFORE, 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 Agreement.

SECTION 2. EFFECTIVE DATE

This 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 County 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 from this 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 approved instruments, the Planning Board may release the owner and the bank from this 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., ch 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 Agreement of any amendments thereto. Said rescission shall be in accordance with M.G.L. ch 41 §81W.
- d. The Planning Board shall notify the Treasurer for the Town of Douglas of any release of the bank passbook that secures this Agreement in full or in part. Upon receipt of a release, the Treasurer shall forthwith return the bank passbook, or portion thereof, together with accrued interest, if any, to the owner. The owner shall be obligated to pay taxes on any dividends or capital gains.
- e. If the owner fails to complete the construction of ways and installation of municipal services as provide by the approved instruments, and within the time provide in this Agreement, the Planning Board may apply the funds on deposit in the account represented by the aforesaid bank passbook and drán therein, held by the Treasurer of the Town of Douglas, in whole or in part, for the benefit of the said town to the extent of the reasonable costs to the said town to complete the construction of ways and installation of municipal services as provided in the approval instruments. Any portion of the that is not applied as set forth above, shall be returned to the owner upon completion of the construction of ways and installation of municipal services by the Town of Douglas.



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

- a. The owner shall deliver a bank passbook with an order drawn on the bank, payable to the planning board of the Town of Douglas to the treasurer of the said town, in the amount of _____ for the purpose of securing construction of ways and installation of municipal services in the subdivision.
- b. The bank agrees to and is obligated to prevent any withdrawal from the aforesaid bank passbook, except by the planning board of the Town of Douglas, as set forth in agreement. Failure of the bank to ensure that no withdrawals are agreement shall result in automatic rescission of approval of the subdivision.
- 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 bank agree and understand that the Planning Board will not release this Agreement in full, unless another method of security is provided, or 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 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. ch. 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 Planning Board forthwith (no more than 14 days after transfer of title) with the name of the current owner(s) of this subdivision or portions thereof and the address of the owner(s). 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 Planning Board forthwith (no more than 14 days after transfer of title) with the name of the current owner(s) of this subdivision or portions thereof and the address of the owner(s) . At the time of executing this Agreement, the mortgagee(s) of this subdivision is/are

_____ whose address(es) is/are _____

_____.
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 appoints the planning board as its agent to record or register the approved and endorsed definitive subdivision plan and any other instrument required to be recorded under the approval instruments at the _____ and at the expense of the owner.



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SECTION 5. BINDING EFFECT

This Agreement, and any amendments thereto, shall be binding on the owner, the owner's agent(s) and representative(s), and any successor(s) 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 agreement shall also be binding on the bank, its agents, representatives, successors, and assigns. The liability of the owner and bank to the Town of Douglas shall be joint and several.

SECTION 6. USE OF TERMINOLOGY

Use of the term "owner" in this 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 Agreement and any amendments thereon. Use of the term "Planning Board or "Board" in this Agreement is for convenience only and may include agents or representatives of the Planning Board.

SECTION 7. APPOINTMENT OF AN AGENT

If someone other than the owner will represent the owner, the owner must designate such representative below.

Name of representative: _____

Addres of representative: _____

Tel. #: Days _____ Evenings _____

Relationship of representative to owner: _____

In executing this Agreement, I hereby authorize the person or persons named above to represent my interest before the Planning Board with respect to the subdivision that is the subject of this Agreement.

SECTION 8. AMENDMENTS

This Agrrement may be amended, in writing, by agreement of all of the parties to this Agreement.



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SECTION 9. GOVERNING LAW

This Agreement, and any amendments thereto, shall be governed by the laws of the Commonwealth of Massachusetts.

SECTION 10. SEVERABILITY

If a court of competent jurisdiction determines that any provision of this Agreement is unenforceable, such determination shall not affect the remaining provisions, which shall remain in full force and effect.

IN WITNESS THEREOF, I, the owner, hereby certify under the pains and penalties of perjury that the information contained in this Agreement is true and complete; and we, the parties of this Agreement is true and complete; and we, the parties of this Agreement, set our hands and seals to this Agreement on the date(s) first written below.

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 Agreement 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:



**TOWN OF DOUGLAS
PLANNING BOARD**

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PLANNING BOARD

_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness

COMMONWEALTH OF MASSACHUSETTS

The personally appeared before me the above-named

and acknowledge the execution of the foregoing instrument to be their free acts and deeds for the purposes provided herein.

Notary Public

My commission expires



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ASSENT OF MORTGAGEE

_____, of _____

_____, the mortgage 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 Worcester County Registry of Deeds in Book _____, Page _____; 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 agree 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 to 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 mortgage, 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)