



TOWN OF DOUGLAS PLANNING BOARD

FORM K

Lender's Agreement

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 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 "lender"]; 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 state 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 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 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 (this amount should not exceed \$100,000.00 for any one lender, as bank deposits are only insured up to \$100,000.00);

WHEREAS, the Planning Board has determined that the form of the Lender's Agreement 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



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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];

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 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 approved 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., 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 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 of funds being retained as security:
 - **Stage of construction or installation to be completed**
 - **Sum to be disbursed by lender**
 - **Sum to be retained by 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 Douglas 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 Douglas 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 town to the extent of reasonable costs to the town to complete the construction of ways and installation of municipal services as provided in the approval instruments. Any



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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 Douglas, and the lender agrees to disburse such excess funds to the owner.

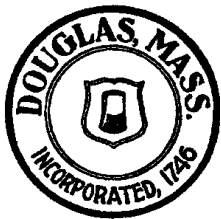
SECTION 4. OBLIGATIONS, DUTIES, AND RIGHTS OF THE OWNER

- 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 subdivided parcel of land. The lender agrees 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 Douglas for any funds disbursed in breach of this lender's agreement, including payment of any legal costs incurred by the Town of Douglas 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 first portion shall result in automatic rescission of approval of the subdivision. Any grant of a 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 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 mortgagee(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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- i. 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 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 Lender's 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: _____

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



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FORM J

Agreement to Secure Performance by Bank Passbook

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:



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FORM J

Agreement to Secure Performance by Bank Passbook

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

