

TOWN OF NORWELL PLANNING BOARD

PERFORMANCE SECURED BY LENDER'S AGREEMENT

Agreement made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the following parties: (1) \_\_\_\_\_ (the "Applicant"), who has a usual place of business at \_\_\_\_\_; (2) \_\_\_\_\_ (the "Lender"), who has a usual place of business at \_\_\_\_\_; and (3) the Town of Norwell, acting by and through the Norwell Planning Board (the "Planning Board"), as set forth below.

KNOW ALL PERSONS by these presents that the Applicant and the Lender hereby bind themselves and their respective executors, administrators, devisees, heirs and successors and assigns, jointly and severally, to the Town of Norwell, acting by and through its Planning Board, in the sum of \$\_\_\_\_\_, in order to secure construction of the ways and installation of the municipal services as shown on a definitive subdivision plan entitled \_\_\_\_\_

\_\_\_\_\_, as prepared by \_\_\_\_\_ and dated \_\_\_\_\_, 20\_\_\_\_, as revised through \_\_\_\_\_ (the "Plan"), and as approved and modified by the Planning Board pursuant to a Certificate of Vote that was duly filed with the Norwell Town Clerk on \_\_\_\_\_, 20\_\_\_\_ and recorded in the Plymouth Registry of Deeds at Book \_\_\_\_\_, Pages \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_, and based upon and in consideration of the facts and circumstances described below.

1. The Planning Board approved the Plan and the Applicant either (circle one):

- A. Has executed an instrument entitled "Performance Guaranteed By a Surety Covenant," dated \_\_\_\_\_, 20\_\_\_\_, recorded in said Deeds Book \_\_\_\_\_, Page \_\_\_\_\_ and the Applicant desires a release or partial release of the Covenant in consideration of the Lender's Agreement; or

- B. Desires the Planning Board now to endorse the Plan in consideration of this Lender's Agreement; and
2. The Applicant has granted to the Lender a first mortgage dated \_\_\_\_\_, 20\_\_\_\_\_, recorded in said Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_ secured by lots numbered \_\_\_\_\_ as shown on the Plan as security for the payment of a certain note in the principal sum of \$\_\_\_\_\_; and
3. The Lender has withheld \$\_\_\_\_\_ of said principal sum, which sum has been determined by the Planning Board to be sufficient to secure construction of the ways and installation of the municipal services, as shown on the Plan and modified by the Planning Board's Certificate of Vote and conditions thereto, and the Lender has agreed with the Applicant and the Lender hereby agrees with the Planning Board and the Applicant that said sum of \$\_\_\_\_\_ shall not be disbursed by the Lender to the Applicant unless and until construction of the ways and the installation the municipal services as shown on the Plan and required under the Planning Board's Rules and Regulations and Certificate of Approval, with conditions, is completed to the satisfaction of the Planning Board; and
4. The parties hereby agree that the required construction of ways and installation of municipal services secured hereunder shall be subject to all of the covenants, agreements, conditions, terms and provisions contained in the following documents:
- A. The Application for Approval of Definitive Plan, executed by the Applicant or the Applicant's predecessor, on \_\_\_\_\_;
- B. The Subdivision Control Law;
- C. The applicable Subdivision Rules and Regulations;
- D. The Planning Board's Certificate of Vote and Conditions, filed with the Town Clerk on \_\_\_\_\_;
- E. The Plan, as modified by the Certificate of Vote and Conditions and Rules and Regulations;
- F. The following additional documents that set forth construction and installation requirements:
- i) The Conservation and Construction Plan, as prepared by \_\_\_\_\_ and dated \_\_\_\_\_ and as revised through \_\_\_\_\_;
- ii) The Grading Plan, entitled \_\_\_\_\_, as prepared by \_\_\_\_\_, and dated \_\_\_\_\_ and as revised through \_\_\_\_\_;
- iii) The Sight Distance Plan, as prepared by \_\_\_\_\_ and dated \_\_\_\_\_ and as revised through \_\_\_\_\_; and
- iv)
- v)
- vi)
- vii)
- viii)
- ix)
- x)

5. The Applicant and the Lender hereby further agree that the aforementioned withheld sum of \$\_\_\_\_\_ shall be made available to the Planning Board upon failure of performance by the Applicant of the construction of the ways and the installation of the municipal services in a manner that is required hereunder in a manner that conforms to all applicable professional standards and is satisfactory to the Planning Board and timely hereunder; and
6. The parties agree that the time for performance (i.e., completion of the construction of the ways and the installation the municipal services shown on the Plan and required under the Rules and Regulations and Certificate of Approval) is completed to the satisfaction of the Planning Board) shall be not later than \_\_\_\_\_, 20\_\_\_\_, unless said time for performance is extended by vote of the Planning Board with the written agreement of the Applicant and the Lender.
7. The parties agree that, if the Planning Board believes that the Applicant is in default of this agreement, the Planning Board shall provide timely written notice of any such determination to the Applicant and the Lender, at the addresses set forth hereunder, and shall allow the Lender a thirty (30) day opportunity to cure the non-performance before the Lender shall be obligated to pay the withheld funds in the amount of \$\_\_\_\_\_ to the Planning Board; and
8. The parties agree that the Planning Board has the right, but not the obligation, to demand, seize and use the withheld funds in the amount of \$\_\_\_\_\_ to cure the Applicant's nonperformance hereunder and further agree that any delay by the Planning Board in exercising its rights hereunder shall not operate as a waiver of its rights; and
9. This agreement shall remain in full force and effect until the Applicant has fully and satisfactorily performed all obligations.
10. Upon satisfactory and timely completion of the obligations as specified herein and as approved by majority vote of the Planning Board, the Board shall permit disbursement by the Lender to the Applicant of the funds set forth in the following schedule:

SUM TO BE RETAINED BY LENDER	STAGE OF CONSTRUCTION OR INSTALLATION TO BE COMPLETED	REQUIRED DATE FOR COMPLETION
\$		
\$		
\$		
\$		
\$		

11. In the event that the performance herein is not completed within the required time as set forth herein or as properly extended or is not completed to the Planning Board's satisfaction, the funds retained by the Lender may be demanded by the Planning Board upon written notice of a determination of default and the Lender, forthwith, shall make said funds available to the Town, by and through the Planning Board, for performance of the work, and the Applicant shall be deemed to have authorized the release of said funds for said purpose.
12. The Applicant and the Applicant's executors, administrators, devisees, heirs and successors and assigns hereby grant to the Town of Norwell and its agents, servants, employees and other designees a license to enter upon the subject land described herein in the event of a default of performance of the secured work and for the purpose of making inspections and performing said work using the default funds and further agree to provide an easement as necessary to support this agreement.
13. In the event of a default and in the event that the Town of Norwell seizes the secured funds and performs the secured work, the Town agrees that, once all of the required work has been satisfactorily performed and fully completed, the Town shall return any excess funds to the Lender and give notice to the Applicant that it has done so.
14. The Obligations of the parties hereunder are to be construed under Massachusetts law and no rights granted thereunder are waived.

IN WITNESS WHEREOF, we set our hands and seals in agreement hereto this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ and for good and valuable consideration, the receipt of which is hereby acknowledged.

Norwell Planning Board:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date of Acceptance Vote:

\_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Plymouth, SS

\_\_\_\_\_, 20\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared the above-named Planning Board members, who are personally known to me/who identified themselves to me to my satisfaction, and signed this document as their free act and deed and for its stated purpose.

\_\_\_\_\_  
Notary Public  
My commission expires:

NOTE: In the event that any signatory hereinafter is a Trustee or an officer of a corporation or manager of a Limited Liability Corporation or a partner in a partnership, each such signatory shall provide the appropriate certificates or affidavits evidencing that the undersigned has the present authority to execute this document.

2. Lender

IN WITNESS WHEREOF, I set my hand and seal in agreement hereto this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and for good and valuable consideration, the receipt of which is hereby acknowledged.

I, \_\_\_\_\_, on behalf of the Lender \_\_\_\_\_, being duly authorized to do so, in accordance with the documentation provided herewith and appended hereto as an exhibit, hereby assent to and execute this Agreement.

SIGNED UNDER THE PENALTIES OF PERJURY THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature

Print Name: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Plymouth, SS. \_\_\_\_\_

20\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned notary public, personally appeared the above-named \_\_\_\_\_, who identified him/herself to me to my satisfaction, and signed this document voluntarily as his/her free act and deed and for the stated purpose.

\_\_\_\_\_  
Notary Public

Print Name:

My commission expires:

3) Applicant

IN WITNESS WHEREOF, I/We set our hands and seals in agreement hereto this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and for good and valuable consideration, the receipt of which is hereby acknowledged.

\_\_\_\_\_  
Signature

(Print Name: \_\_\_\_\_ )

COMMONWEALTH OF MASSACHUSETTS

Plymouth, SS

\_\_\_\_\_, 20\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, before me, the undersigned notary public, personally appeared the above-named \_\_\_\_\_, who identified him/herself to me to my satisfaction, and signed this document voluntarily as his/her free act and deed and for its stated purpose.

\_\_\_\_\_  
Notary Public

Print Name:

My commission expires:

Applicant #2

\_\_\_\_\_  
Signature

(Print Name: \_\_\_\_\_ )

COMMONWEALTH OF MASSACHUSETTS

Plymouth, SS

\_\_\_\_\_, 20\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned notary public, personally appeared the above-named \_\_\_\_\_, who identified him/herself to me to my satisfaction, and signed this document voluntarily as his/her free act and deed and for its stated purpose.

\_\_\_\_\_  
Notary Public

Print Name:

My commission expires: