

**COVENANT**

This covenant is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between the Town of Franklin, a Massachusetts municipal corporation, acting through its Planning Board, with an address of Municipal Building, 355 E. Central Street, Franklin, Massachusetts 02038 [hereinafter "board"] 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), with an address of \_\_\_\_\_ [hereinafter "owner"].

**PREAMBLE**

WHEREAS, on \_\_\_\_\_, based on the owner's application dated \_\_\_\_\_, and after duly noticed public hearing(s), the board approved a definitive subdivision plan showing \_\_\_\_\_ lots, which is entitled:

by: \_\_\_\_\_ to be recorded or registered at the Norfolk County Registry of Deeds;

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 Norfolk County Registry of Deeds in Book(s) \_\_\_\_\_, Page(s) \_\_\_\_\_; or is registered in Norfolk County Land Registry as Document No. \_\_\_\_\_, and noted on Certificate of Title No. \_\_\_\_\_, in Registration Book \_\_\_\_\_, Page \_\_\_\_\_;

WHEREAS, M.G.L., ch. 41, § 81U requires the 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 (provide description based on stations located on the way)

\_\_\_\_\_ of the construction of ways and the installation of municipal services in the subdivision by means of a COVENANT;

WHEREAS, the board has determined that the form of the covenant is sufficient to secure the construction of ways and installation of municipal services in the subdivision;

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 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 covenant; 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 covenant and any amendments thereto; all requirements of the registered professional engineer representing the board; and the following additional documents:

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

[hereinafter "approval instruments"];

NOW THEREFOR, for an in consideration of the mutual promises set forth below, and other 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 covenant.

**SECTION 2. EFFECTIVE DATE**

This covenant shall be effective upon its execution, subject to endorsement of approval of the definitive subdivision plan by the board and the recording or registering of the plan and this covenant by the board at the Norfolk County Registry of Deeds at the expense of the owner. If the definitive subdivision plan shows a phased subdivision, a separate covenant shall be required for each phase. Each covenant shall be effective upon its execution. The board may require the owner to construct a temporary turnaround on a way or ways being constructed in phases.

**SECTION 3. RUNS WITH THE LAND**

This Covenant shall run with the land and shall be binding on all subsequent parties who have any title, interest, or rights in and to the parcel of land subdivided, or a portion thereof. This covenant shall operate as a restriction upon the land until released.

**SECTION 4. OBLIGATIONS, DUTIES AND RIGHTS OF THE BOARD**

- a. Upon completion of the construction of ways and installation of municipal services in accordance with the approval instruments, the board shall release the owner from this covenant and shall issue a certificate of completion and release that shall be executed by a majority of the members of the board and shall be recorded or registered at the Norfolk County Registry of Deeds by the board at the owner's expense.

- 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 board may release the owner from this covenant as to those lots that are adequately served by the ways and municipal services so constructed, so long as the construction of ways and installation of municipal services are, in the opinion of the 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 board and shall be recorded or registered at the Norfolk County Registry of Deeds by the board or its agent at the expense of the owner.
- c. The board may revoke any release under section 4.b for breach of any provision of this covenant or any amendments thereto.
- d. The board may rescind approval of the definitive subdivision plan for breach of any provision of this covenant or any amendments thereto. Said rescission shall be in accordance with M.G.L. ch. 41, § 81W.

#### **SECTION 5. OBLIGATIONS, DUTIES AND RIGHTS OF THE OWNER**

- a. The owner shall not convey or transfer title to any lot within this subdivision, except as otherwise provided in this covenant, until completion of the construction of the ways and installation of the municipal services for this subdivision in accordance with the approval instruments, unless and until the owner provides the board with another method of securing construction of the ways and installation of the municipal services deemed sufficient by the board.
- b. The owner shall not build upon any lot within this subdivision, except as otherwise provided in this covenant, until the completion of the construction of the ways and installation of the municipal services for this subdivision in accordance with the approval instruments, unless and until the owner provides the board with another method of securing construction of the ways and installation of the municipal services deemed sufficient by the board.
- c. The owner shall complete construction of the ways and installation of the municipal services for this subdivision (or phase thereof) no later than four years after execution of this covenant. At the expiration of the four years, the board may renew this covenant.
- d. The owner agrees and understands that failure to complete construction of the ways and installation of the municipal services by the agreed-upon date shall result in automatic rescission of approval of the definitive subdivision plan by the board. The board shall forthwith carry out the rescission as provided in M.G.L. ch. 41, § 81W.
- e. The owner agrees and understands that the board will not release this covenant in full until the ways and municipal services have been deemed by the board to be constructed and installed in accordance with the approval instruments, which shall include

demonstration of adequate construction and installation over a two year period of time prior to said release.

- f. No provision of this covenant 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 board deems the method chosen for securing the construction of ways and the installation of municipal services as sufficient.
- g. 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. The owner shall also provide the board with the name(s) and addresses of any owner(s) of one or more lots, who purchase such lots for the purpose of constructing improvements thereon. The owner agrees and understands that failure to comply with this provision could result in rescission of approval of the definitive subdivision plan.
- h. 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. At the time of executing this covenant, the mortgagee(s) of this subdivision is/are \_\_\_\_\_ whose address is \_\_\_\_\_  
\_\_\_\_\_  
The owner agrees and understands that failure to comply with this provision could result in rescission of approval of the definitive subdivision plan.
- i. The owner appoints the board as its agent to record or register the approved and endorsed definitive subdivision plan; this covenant, upon its execution; and any certificates of release of this covenant, or portions thereof, at the Norfolk County Registry of Deeds; and the owner further agrees to pay the costs of such recordings.
- j. The owner agrees to pay: all costs incurred by the board for engineering review to determine if construction of ways and installation of municipal services are complete in whole or in part, legal costs, and other related expenses. No lot or lots shall be released from this covenant until such costs and expenses are paid.

#### **SECTION 6. MORTGAGEES AND SUCCEEDING OWNERS**

Nothing in this covenant shall preclude the owner from mortgaging the entire parcel of land, or a portion thereof, which constitutes this subdivision. If the mortgagee acquires title to the entire parcel of land, or a portion thereof, shown on the approved definitive subdivision plan, through foreclosure or by other means, such as accepting a deed in lieu of foreclosure, then the mortgagee and any succeeding owner of the land transferred by the mortgagee may sell any lot, subject to that portion of this covenant which provides that no lot shall be built upon until the ways are constructed and the municipal services are installed to serve such lot. Said mortgagee

and any succeeding owner shall be subject to all other applicable provisions of this covenant and any amendments thereto.

**SECTION 7. CONVEYANCE OF LAND OR LOTS SUBJECT TO COVENANT**

Nothing in this covenant shall preclude the owner from conveying by a single deed, the entire parcel of land shown on the approved definitive subdivision plan, or all lots not previously released from the terms of this covenant by the board, so long as the deed provides that the land conveyed is subject to this covenant, and any amendments thereto, with proper reference to the book and page where this covenant, and any amendments thereto, are recorded or registered at the Norfolk County Registry of Deeds. A deed of any part of the subdivision in violation of this covenant, or any amendments thereto, shall be voidable by the grantee prior to the release of this covenant, but not later than three years from the date of such deed.

**SECTION 8. BINDING EFFECT**

This Covenant, 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. Use of the term owner 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 covenant and any amendments thereto. Use of the term board is for convenience only and may include agents or representative of the board.

**SECTION 9. 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 covenant, I hereby authorize the person or persons named above to represent my interests before the board with respect to the subdivision that is the subject of this covenant.

**SECTION 10. AMENDMENTS**

This covenant may be amended, in writing, by agreement of al of the parties to this covenant.

**SECTION 11. GOVERNING LAW**

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

**SECTION 12. SEVERABILITY**

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

IN WITNESS WHEREOF, I, the owner, hereby certify under the pains and penalties of perjury that the information contained in this covenant, set our hands and seals to this covenant on the date(s) written below.

PLANNING BOARD OF THE TOWN OF FRANKLIN

\_\_\_\_\_  
Planning Board member                      Date

\_\_\_\_\_  
Witness



COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, SS. \_\_\_\_\_, 20\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_ (name of document signer), proved to me through satisfactory evidence of identification, which were \_\_\_\_\_ to be the person whose name is signed on the preceding document in my presence.

\_\_\_\_\_  
(Official signature and seal of notary)  
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 covenant, hereby consents to execution of this covenant by the owner, who is the mortgagor of the parcel of land subject to a certain mortgage deed dated \_\_\_\_\_ and recorded at the Norfolk County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_; or registered in Norfolk County Land Registry 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 covenant and agrees that the mortgage shall be subordinate to the covenant, which covenant shall have the same status, force, and effect as though executed and recorded prior to the conveyance of the mortgage deed by the mortgagor to the mortgagee.

MORTGAGEE

\_\_\_\_\_  
Signature of Mortgagee                      Date                      Witness  
By:  
Its:  
Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, SS. \_\_\_\_\_, 20\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_ *(name of duly authorized person to execute this covenant on behalf of the mortgagee)*, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_ to be the person whose name is signed on the preceding document in my presence.

\_\_\_\_\_  
*(Official signature and seal of notary)*  
Notary Public:  
My Commission Expires: \_\_\_\_\_