

Name of Development \_\_\_\_\_

Project Address \_\_\_\_\_

Project # \_\_\_\_\_

**FRAMINGHAM PLANNING BOARD**

**SUBDIVISION PERFORMANCE AGREEMENT**

THIS SUBDIVISION PERFORMANCE AGREEMENT (“the Agreement”) is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by \_\_\_\_\_, (“the Developer”), and the Framingham Planning Board, (“the Planning Board”).

IN CONSIDERATION OF the approval of the Planning Board, of a subdivision plan entitled “ \_\_\_\_\_,” by \_\_\_\_\_, dated \_\_\_\_\_, \_\_\_\_\_, the Developer for itself and its personal representatives, assigns, and other successors in interest, agrees to construct, install and complete all of the physical improvements and facilities necessary to comply with all statutory and other requirements, including all provisions of the Rules and Regulations Governing the Subdivision of Land in Framingham (“Subdivision Rules and Regulations”), including the Framingham Zoning Ordinances, and the conditions of final approval established by the Planning Board Decision (“the Decision”). Any reference in this Agreement to completion or construction of improvements shall be deemed to include all functions, goods and services and design and engineering work necessary to conform to the Decision.

The Developer shall complete all facilities and improvements in conformance with the Decision and in conformance with approved plans and revisions. Approved plans are incorporated as part of this Agreement only to the extent that they meet requirements of the Decision. Facilities and improvements shall be completed within two (2) years of the date of the recording of the subdivision plan, or, in the case of residential subdivision, upon the occupancy of one-third (1/3) of the residences in the subdivision, whichever occurs first. Extensions of time for completion may be granted by the Planning Board in accordance with the Subdivision Rules and Regulations and procedures of Framingham.

If, in the opinion of the Planning Board Administrator (“the Administrator”), the approved plans are inadequate to ensure that construction and development will conform to the Decision, the Developer, upon request of the Administrator, shall submit revised plans conforming to the Decision and shall construct and complete improvements in accordance with the revisions. If in the opinion of the Administrator, the actual improvements made or facilities constructed do not conform to the plans or the Decision, the Developer shall, upon the Administrator's request, design, redesign, construct or reconstruct all such facilities or improvements so as to comply.

**DEVELOPER FURTHER AGREES:**

1. To comply with all requirements of the Subdivision Rules and Regulations and any conditions or requirements imposed by the Framingham Planning Board, including any utility agreements, and to maintain any stormwater management, detention or

Name of Development \_\_\_\_\_

Project Address \_\_\_\_\_

Project # \_\_\_\_\_

retention facilities associated with the development and not either maintained by the Department of Public Works (“DPW”).

2. In the event that the subdivision includes public roads:
  - a) The Developer is responsible for acceptance of the streets and any other improvements needed to a dedicated right-of-way; to comply with all requirements of the street acceptance and to make prompt final application upon completion of the required work for acceptance.
  - b) The Developer shall maintain such road until such time as it is accepted into the system wherever a road intended for public use has not been accepted. The Developer shall furnish to the Framingham Planning Board a maintenance and indemnification bond with surety to secure such maintenance in accordance with the Subdivision Rules and Regulations.
  - c) The Developer shall provide and maintain adequate all weather access, including snow removal and ice control, from all occupied structures to a public roadway, until such time as roads in the subdivision are accepted.
3. The Developer is required to request inspections, file applications and take any other actions that are customarily required of the Developer for the purpose of effecting acceptance or approval of completed improvements by the appropriate governmental entity.
4. The Developer is required to acquire on behalf of the City of Framingham any property rights necessary for completion of all obligations of this Agreement in the event of default by the Developer, or for the purpose of maintenance by a governmental entity, if applicable, or to pay all costs of acquisition of such property rights.
5. The Developer shall submit to the Planning Board Administrator all as-built plans for review and approval to ensure compliance. The Developer understands and agrees that no required construction or public improvement shall be considered complete until it is accepted by the governmental body that is to have ultimate responsibility for its maintenance, and if applicable, approval of the Planning Board has been confirmed by the Administrator that the project is in compliance with the Decision and as-built plans certified by a professional engineer or certified land surveyor.
6. Default shall be deemed to have occurred on the part of the Developer if the Developer shall fail to complete its obligations under this Agreement within the specified time or any extensions; or prior to the expiration of such period, if in the judgment of the Administrator, the Developer has:
  - a) Abandoned the performance of its obligations under the Agreement; or,
  - b) Renounced or repudiated its obligations under the Agreement; or,
  - c) Demonstrated through insolvency, inaction, or otherwise, that its obligations under the Agreement cannot be completed within the time allotted under the Agreement.

Name of Development \_\_\_\_\_

Project Address \_\_\_\_\_

Project # \_\_\_\_\_

7. In the event of default, the Developer shall be responsible for payment of administrative costs of ten percent (10%) of the cost of construction or correction of the improvements, in addition to the cost of construction. The cost of construction or correction shall include all functions, goods and services, and design and engineering work necessary to construct improvements conforming to the Decision.
8. The security shall be provided and maintained in the form of a cash bond, letter of credit or surety bond in an amount and with content acceptable to the Administrator and in a form acceptable to the City to provide and maintain security satisfactory to the City as well as to secure performance of this Agreement.. Evidence of continuing validity of the security shall be provided to the City upon request. In the event all improvements are not completed thirty days prior to the expiration of any bond or letter of credit, the Developer shall provide substitute security documents on that date, or shall be deemed to be in default and shall pay the full cost of completion of those improvements.
9. To defend and indemnify the City and hold the City harmless for all loss or damage to property, or injury, or death of any and all persons; for any suits, claims, liability or demands in connection with the physical improvements and facilities, however caused, including those arising directly or indirectly from construction, failure to maintain, or use of such improvements prior to final acceptance.
10. That no building permits shall be issued within the subdivision if any lot or development of any portion of the subdivision does not meet all requirements of the Subdivision Rules and Regulations, including the Framingham Zoning Ordinances, all other applicable laws, proffered conditions or the terms of any special exception or permit; nor shall any building permits be issued within the subdivision at any time during which the Developer is not in complete compliance with this Agreement, including the requirement that the Developer maintain security satisfactory to the County.

If any clause or portion of this Agreement is found to be invalid and non-binding, the remainder shall continue in full force and effect.

The failure or refusal of the City to take any action, proceedings, or step to enforce any remedy or exercise any right under this Agreement or the taking of any action, proceeding, or step by the City, acting in good faith upon the belief that same is permitted shall not in any way release the Developer from the obligations of this Agreement.

This Agreement shall be administered and interpreted in accordance with the laws of the Commonwealth of Massachusetts. Any actions arising out of this Agreement, bonds or other obligations securing the obligations of this Agreement shall be filed and maintained in the Middlesex South District Registry of Deeds or the Middlesex South Registry District of the Land Court.

The parties, if more than one, collectively referred to in this Agreement as the "Developer", shall each be fully, jointly and severally liable for all obligations of this Agreement, including

Name of Development \_\_\_\_\_

Project Address \_\_\_\_\_

Project # \_\_\_\_\_

performance and payment. This Agreement shall be recorded in the Middlesex South District Registry of Deeds or the Middlesex South Registry District of the Land Court, and shall be binding on the Developer's successors in interest.

The purpose and effect of this Agreement is to secure the completion of all improvements required by the Subdivision Rules and Regulations, the Framingham Zoning Ordinances, and all other applicable statutes. The County does not waive or modify any provision or requirement of those statutes or regulations by this Agreement. Any approved plan or revision referred to anywhere in this Agreement is incorporated for reference purposes only to the extent that it meets, at a minimum, the unmodified requirements of those statutes, ordinances, and/or by-laws.

Any notice required by this Agreement shall be effective only if such notice is given by receipted mail or delivery, to Developer or to the Framingham Planning Board in the name and at the address given below and provided that change of address shall be effective if given in accordance with this paragraph. The Developer agrees to notify the Planning Board immediately of any change of legal status or of address.

The parties have acknowledged this Agreement by their signatures and seals set out below.