

LAND SUBDIVISION - FORM G

Subdivision Covenant Under G.L. c. 41, section 81U

Planning and Economic Development Board – Town of Medway, MA

_____, 20__

This Covenant is granted pursuant to G.L. c. 41, section 81U by [name of owners], (*record owner of certain parcels of land shown on an approved definitive subdivision plan and including 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 subdivision plan*), with an address of _____ (*hereinafter referred to as the "Owner"*) to secure the construction of ways and services in the _____ [name of subdivision] subdivision, approved by the Town of Medway Planning and Economic Development Board (*hereinafter referred to as the "Board"*) as subdivision approval authority under G.L. c.41, section 81U.

PREAMBLE

WHEREAS, on [date]_____, based on the owner's application dated _____ and after a duly noticed public hearing(s), the Board approved a definitive subdivision plan showing _____ house lots, which is entitled [name of plan]_____ to be recorded at the Norfolk County Registry of Deeds.

WHEREAS, the approved definitive subdivision plan shows the subdivision of a parcel of land located at _____, Medway, Norfolk County, Massachusetts, (*hereinafter referred to as the "subdivision"*) and further described in deeds dated _____ and recorded at the Norfolk County Registry of Deeds in Book ___, Page _____ ;

WHEREAS M.G.L., ch. 41, section 81U requires the subdivision applicant 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 elected to secure all of the construction of ways and installation of municipal services in the subdivision by means of a Covenant as described in G.L. c. 41, section 81U;

WHEREAS, the Board has determined that the form of 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., c. 41, sections 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 recommendations, if any, of the Board of Health, the approved and endorsed definitive subdivision 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; and the following additional documents; _____

_____ (*hereinafter referred to as "approval instruments"*);

NOW, THEREFORE, the Owner covenants as follows:

SECTION 1. INCORPORATION OF PREAMBLE

The Preamble is incorporated into and is 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 Owner.

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 release.

SECTION 4. 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 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.

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 no later than three years from this date.

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 as provided in M.G.L., c. 41, section 81W.

E. The Owner agrees and understands that the Board will not release this Covenant in full, unless another method of security is provided, or 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 for six months 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., c. 41, sections 81U, as long as the Board deems the method or methods 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 and the address of such owner or owners, except that lots released from the provisions of this Covenant are exempt. 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 and the address of such mortgagee or mortgages, except that lots released from the provisions of this Covenant are exempt. At the time of executing this Covenant, the mortgagee(s) of this subdivision is _____ 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 shall 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 forthwith provide the Board with written evidence thereof. The Owner further agrees to pay the costs of such recordings.

SECTION 5. 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 6. 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 no later than three years from the date of such deed.

SECTION 7. 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, until such time as the Board has issued a Certificate of Release signed by a majority of the members of the Board and such release has been recorded in the Norfolk County Registry of Deeds.

SECTION 8. USE OF TERMINOLOGY

Use of the term "Owner" in this Covenant 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 thereon. Use of the term "Board" in this Covenant is for convenience only and may include agents or representatives of the Medway Planning and Economic Development 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:

SECTION 10. AMENDMENTS

This Covenant may be amended, in writing, only upon approval of the majority of the members of the Board.

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.

[signature pages follow]

OWNER

Signature of Owner

Date

By: _____

Its: _____
Duly authorized

Signature of Owner

Date

By: _____

Its: _____
Duly authorized

COMMONWEALTH OF MASSACHUSETTS

Norfolk, SS. _____, 20__

On this _____ day of _____, 20__ before me, the undersigned notary public, personally appeared _____, Owner, or person duly authorized to execute this Covenant on behalf of the Owner, proved to me through satisfactory evidence of identification, which was [driver's license], [personal knowledge] to be the person whose name is signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily and for its stated purpose.

Notary Public

My commission expires:

Accepted by:
PLANNING and ECONOMIC DEVELOPMENT BOARD

Board Member

Board Member

Board Member

Board Member

Board Member

Dated:

COMMONWEALTH OF MASSACHUSETTS

Norfolk, SS. _____, 20

On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared the above named _____

proved to me through satisfactory evidence of identification, which was personal knowledge to be the person (s) whose name is signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily and for its stated purpose as members of the Medway Planning and Economic Development Board.

Notary Public
My commission expires:

ASSENT OF MORTGAGEE

_____, of [address], 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 . This 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 through executed and recorded prior to the conveyance of the mortgage deed for the mortgagor-owner to the mortgagee.

MORTGAGEE

Signature of Mortgagee

Date

By: _____

Its: _____

Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

_____, SS. _____

On this _____ day of _____, before me, the undersigned notary public, personally appeared the above named _____, person duly authorized to execute this Covenant on behalf of the mortgagee, proved to me through satisfactory evidence of identification, which was _____ to be the person(s) whose name is signed on the preceding or attached document, and acknowledged to me that _____ signed it voluntary for its stated purpose.

Notary Public

My commission expires:

APPENDIX
(Certificate of Approval of the Definitive Subdivision Plan)