

FORM K
PERFORMANCE SECURED BY
LENDER'S AGREEMENT

_____, 2_____

Billerica, Massachusetts

AGREEMENT made this date between the Town of Billerica, MA and

herein after referred to as "the applicant" of _____;
and _____ hereinafter referred to as "the lender" of _____,
to secure construction of ways and installation of
municipal services on a plan entitled: _____,
by _____,
dated: _____ owned by: _____ address: _____
_____ land and showing the construction
of:

KNOW ALL MEN by these presents that the applicant and the Planning Board of the Town of Billerica have executed a covenant, dated _____, 2_____, recorded in the _____ Registry of Deeds, Book _____, Page _____; that the applicant has recorded a first mortgage with the lender dated _____, recorded in the _____ Registry of Deeds, Book _____, Page; _____ coveting _____ as shown on the above-referenced plan as security for the payment of a certain note in the principal sum of \$_____ dollars; and that the applicant and lender hereby bind and obligate themselves, their, or its executors, administrators, devisees, heirs, successors and assigns, jointly and severally to the Town of Billerica, a Massachusetts municipal corporation, acting through its Planning Board, in the sum of _____ dollars and have secured this obligation by the lender retaining said sum of money of said principal sum otherwise due the applicant to ensure the performance by the applicant of all covenants, conditions, agreement, terms and provisions contained in this agreement and in the following:

1. Application for Approval Definitive Plan (Form B-2) dated: _____
2. The Subdivision Control Law and the Planning Board's Rules and Regulations governing this subdivision and dated _____.

3. Conditions included in the Road Construction Plan Decision by the Planning Board and dated _____.
4. The plan as qualified by the Road Construction Plan Decision:
5. Other document(s) specifying construction or installation to be completed, namely:

The applicant hereby acknowledges and agrees that, for a period of 18 months after the completion of the construction and installation contemplated in this agreement, that the Planning Board retains the right to hold all undisbursed funds pending inspection and supplemental review by the Board as it deems necessary to confirm that all constructed systems/facilities are functioning, performing and operating as intended by the Planning Board and its peer review consultants at the time the plan for such construction and installation was approved. The applicant further acknowledges that in the event of a failure of the of the constructed and installed systems/ facilities to perform as intended, the Planning Board further reserves the right to use any and all funds remaining undisbursed under this agreement to inspect, construct, consult with its peer review consultants and/or repair any and all defects discovered in the constructed/ installed systems or facilities. The applicant hereby acknowledges and accepts that evidence of performance failure and/or defects within the constructed/installed system/facility trump the fact that the project was approved and built according to approved plans.

This agreement shall remain in full force and effect until the applicant has fully and satisfactorily performed all of the obligations contained herein.

Upon completion by the applicant of work within the subdivision and after a satisfactory inspection the interest of the (city/town) in such funds retained by the lender shall be released by a vote of the board, that portion of the agreement covering the specific work shall become void, and the lender may disburse such funds which have been held as security for the specific work, to the applicant. In the event the applicant should fail to complete any construction of ways and installation of municipal services as specified in this agreement and within the time herein specified, or in the event that the completed roadways, services, systems and/or facilities are not functioning as intended by the Planning Board, any funds remaining undisbursed shall be made available in whole, or in part, by the lender to the Planning Board for the benefit of the (city/town) of _____ to the extent of the reasonable cost to the (city/town) of completing such construction or installation as specified in this agreement. Any unused portion of such funds will be released by the Planning Board and may be disbursed by the lender to the applicant upon completion of the work by said _____.

The (city/town) of _____ acting by and through its Planning Board hereby agrees to release the following lots _____ from the operation of the above-referenced covenant given pursuant to Section 81-U of Chapter 41, the Subdivision Control Law without receipt of a bond or deposit of money and further to accept this agreement and the funds in the amount specified herein to be retained by the lender as security for the performance of the project as aforesaid. Upon delivery of this agreement to the Planning Board, said lots shall be released as herein specified. The lender hereby agrees that none of the funds retained as security, as specified herein, shall be disbursed to the applicant without prior written release of said funds by the Planning Board.

Any amendments to this agreement and/or to the aforesaid security shall be agreed upon in writing by all parties to this agreement.

IN WITNESS WHEREOF we have hereunto set our hands and seals this

_____, 2____.

_____	_____
_____	_____
_____	_____

Signatures of the majority of the Planning Board

Signature of Applicant

Signature of Authorized Representative of the Lender

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

_____, 2 _____

Then personally appeared _____ one of the above-named members of the Planning Board of Billerica, Massachusetts, and acknowledged the foregoing instrument to be the free act and deed of said party before me.

Notary Public

My Commission expires: _____

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

_____, 2_____

Then personally appeared _____, the authorized representative of the lender, and acknowledged the foregoing instrument to be the free act and deed of the said parties before me.

Notary Public

My Commission Expires _____

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

_____, 2_____

Then personally appeared_____, the authorized applicant, and acknowledged the foregoing instrument to be the free act and deed of the said party before me.

Notary Public

My Commission Expires_____