

**FORM G**  
**AGREEMENT TO SECURE PERFORMANCE BY A DEPOSIT OF MONEY**

This Agreement is entered into this 26<sup>th</sup> day of February, 2018 by and between the Town of Sutton, a Massachusetts municipal corporation, acting through its Planning Board, with an address of 4 Uxbridge Road, Sutton, Massachusetts (hereinafter "Planning Board" or "Board") and Sutton, LLC with an address of P.O. Box 428, Milford, MA 01757 (hereinafter "owner").

**PREAMBLE**

WHEREAS, on March 24, 2003, based on the owner's application dated September 23, 2002, and after a duly noticed public hearing(s), the Planning Board approved a Special Permit/Site Plan showing 84 condominium units, which is entitled: Forest Edge at Sutton by Guerriere & Halnon. Said Special Permit and Site Plans are recorded at the Worcester District Registry of Deeds at Book 30994 Page 225;

WHEREAS, the approved Special Permit/Site Plan shows the construction of 84 condominium units and related infrastructure (hereinafter "the project") on a parcel of land located at 20 Blackstone Street and further described in deeds and recorded at the Worcester District Registry of Deeds in Book 30994, Page 179 and Book 30994, Page 181;

WHEREAS, Sec. VI.A.9.b requires the Planning Board to secure the construction of ways, installation of services, and land restoration in an approved project before any units can be transferred;

WHEREAS, the owner has decided to secure completion of Phase 1 of the project by means of a DEPOSIT OF MONEY in the penal sum of **\$20,000.00**;

WHEREAS, the Planning Board has determined that the deposit of money is sufficient in form and amount to secure the construction of way and installation of services in the project and hereby accepts the aforesaid deposit of money in the amount specified; project.

WHEREAS, the owner's construction of ways, installation of services, and land restoration within the project are subject to the following approval instruments: the Sutton Zoning Bylaw, Sec VI.A.; the application for approval of this project; the recorded Special Permit and Site Plans and all related conditions and any approved amendments thereto; all of the provisions set forth in this agreement and any project related security and amendments thereto, and the most recent Construction Cost Estimate provided by the Town's consulting engineer;

NOW THEREFORE, for and in consideration of the mutual promises set forth below, and after 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 agreement.

**SECTION 2. EFFECTIVE DATE**

This agreement shall be effective upon its execution by all parties hereto. This agreement shall be recorded within fourteen (14) days of endorsement at the Worcester District Registry of Deeds at the expense of the owner.

### **SECTION 3. RUNS WITH LAND**

This agreement 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 shown on this plan, or apportion thereof. This agreement shall operate as a restriction upon the land until release.

### **SECTION 4. OBLIGATION, DUTIES, AND RIGHTS OF THE PLANNING BOARD**

- a. Upon completion of the construction of ways, installation of services, and land restoration in accordance with the approval instruments, the Planning Board shall release the owner from this agreement and shall issue a certificate of completion and release that shall be executed by a majority of the members of the Planning Board, and shall be recorded at the Worcester District Registry of Deeds at owner's expense.
- b. The Planning Board may rescind approval of the Special Permit for breach of any provision of this agreement or any amendments thereto.
- c. The Planning Board shall notify the Treasurer for the Town of Sutton of any release of the deposit of money that secures this agreement in full or in part. Upon receipt of a release, the Treasurer shall forthwith return the deposit of money, or portion thereof, together with accrued interest, if any, to the owner. The owner shall be obligated to pay all income taxes on any accrued interest.
- d. If the owner fails to complete the construction of ways, installation of services, or land restoration as provided by the approval instruments, and within the time provided in this agreement, the Planning Board may apply the penal sum of the deposit of money held by the Treasurer of the Town of Sutton, in whole or in part, for the benefit of said Town to the extent of the reasonable costs to the said Town to complete the construction of ways, installation of services, or land restoration as provided in the approval instruments. Any portion of the deposit of money, together with accrued interest, if any, that is not applied as set forth above, shall be returned to the owner upon completion of secured work. The owner shall be obligated to pay all income taxes on any accrued interest.

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

- a. The owner shall secure this obligation by depositing with the Treasurer of the Town of Sutton, a deposit of money to be held by the treasurer in an escrow account in the name of the Town of Sutton in the amount of **\$20,000** for the purpose of securing construction of ways, installation of services, and land restoration in the project.
- b. The owner shall complete construction of the ways, installation of services, and land restoration in accordance with the approval instruments for this project no later than **8/1/2018**.
- c. The owner agrees and understands that failure to complete construction of the ways, installation of services, and land restoration by the agreed-upon date may result in rescission of approval of the Special Permit by the Planning Board or the use of funds provided to complete the obligations herein.
- d. The owner agrees and understands that the Planning Board will not release this agreement in full, until the ways and services have been deemed by the Planning Board to be constructed and installed in accordance with the approval instruments.

e. The owner shall at all times provide the Board forthwith (no more than 14 days after transfer of title) with the current owner or owners of this project or portions thereof and the address of the owner(s). The owner agrees and understands that failure to comply with this provision could result in rescission of the Special Permit.

f. The owner shall at all times provide the Board forthwith (not more than 14 days after transfer of title) with the name of any mortgagee(s) of this project or portions thereof and the address of the mortgagee or mortgagees. At the time of executing this agreement, the mortgagee(s) is/are and their address is

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The owner agrees and understands that failure to comply with the provision could result in rescission of approval of the Special Permit.

h. Should it be necessary, the owner appoints the Planning Board as its agent to record this agreement and any other instruments required to be recorded with respect to this project at the Worcester Registry of Deeds and at the expense of the owner.

#### **SECTION 6. BINDING EFFECT**

This agreement, 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 project, including executors, administrators, devisees, heirs, successors and assigns of the owner.

#### **SECTION 7. USE OF TERMINOLOGY**

Use of the term "owner" in this agreement 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 agreement and any amendments thereon. Use of the term "Planning Board or Board" in this agreement is for convenience only and may include agents or representative of the Planning Board.

#### **SECTION 8. 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: \_\_\_\_\_

Phone #: \_\_\_\_\_ Days \_\_\_\_\_ Evenings \_\_\_\_\_

Relationship of representative to owner: \_\_\_\_\_

In executing this agreement, I hereby authorize the person(s) names above to represent my interest before the Planning Board with respect to the project that is the subject of this agreement.

### SECTION 9. AMENDMENTS

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

### SECTION 10. GOVERNING LAW

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

### SECTION 11. SEVERABILITY

If a court of competent jurisdiction determines that any provision of this agreement is unenforceable, such determination shall not affect the remaining provisions, which shall remain 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 agreement is true and complete; and we, the parties to this agreement, set our hands and seals to this agreement on the date(s) first written below.

OWNER

\_\_\_\_\_  
Signature of Owner

By:

Its:

Duly Authorized

PLANNING BOARD

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

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

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

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

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

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

**COMMONWEATH OF MASSACHUSETTS**

Then personally appeared before me the above-named \_\_\_\_\_, owner, or person duly authorized to execute this agreement on behalf of the owner, and acknowledged the execution of the of the foregoing instrument to be his/her free act and deed for the purposed provided therein.

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

My commission expires: \_\_\_\_\_

**COMMONWEALTH OF MASSACHUSETTS**

Then personally appeared before me the above-named \_\_\_\_\_, and acknowledged the execution of the foregoing instrument to be their free acts and deeds for the purposes provided therein.

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

My commission expires: \_\_\_\_\_