

Received: 7:12 pm on 6/27/16

WHEREAS, Brookmeadow Village, LLC ("BV") is the owner and developer of that certain residential subdivision known as Brookmeadow Village ("Premises") located in South Grafton, Worcester County Massachusetts, and

WHEREAS, the Grafton Planning Board on or about May 30, 2006 granted a Major Residential Special Permit 2005-2 (the "Approval") as recorded in Worcester Registry of Deeds in Book 36972 Page 1, which Approval sets forth the terms, provisions and conditions by which the Premises may be constructed, and

WHEREAS, the Definitive Subdivision Plan of the Premises entitled Definitive Plan of Land for Brookmeadow Village (the "Plan") showing all of the lots, streets, drainage systems, detention ponds, open space, utilities and other improvements (the "Improvements") to be constructed pursuant to and in accordance with the Approval is recorded in the said Worcester Registry in Plan Book 856 Plan 106, and

WHEREAS, the Planning Board and BV agreed that BV's obligation to construct the Improvements as set forth in the Approval and as shown on the Plan, would in accord with Section 3.3.8 of the Planning Board's duly adopted Subdivision Rules and Regulations ("SRR") be secured by a Covenant, which Covenant is recorded in Worcester Registry of Deeds Book 41164, Page 64 and by way of a Bond, and

WHEREAS, BV has, pursuant to Section 3.3.11.2 of the SRR applied for a Determination of Completeness for a designated portion of the Improvements specifically identified as: **Brookmeadow Lane, Station 0+00 thru Station 22+00.60; and Taft Mill Road, Station 0+00 thru Station 29+23.38; and Basins # 1, 2, 3 and 4**; all of which are collectively referred to as the "Completed Roadway", and

WHEREAS, BV desires to submit the Completed Roadway for acceptance by the Town of Grafton ("Town"), and

WHEREAS, upon acceptance of the Completed Roadway, that portion of the Bond related to and calculated for the Completed Roadway, would otherwise be returned to the Developer, and

WHEREAS, pursuant to Section 3.3.12.3 (a) of the SRR there is a requirement that an applicant wait 18 months ("Waiting Period") between the date of the Planning Board's issuance of a Determination of Completeness and the date of the Town's acceptance of the Improvements and, further that during the Waiting Period, the Bond must continue to be in full force and effect, and

WHEREAS, BV is requesting that the Planning Board waive the Waiting Period thereby allowing BV to petition the Town for acceptance of the Completed Roadway at the Town Meeting scheduled, or to be scheduled for the Fall of 2016, and

WHEREAS, BV has demonstrated that the grant of a waiver of Section 3.3.12.3 (a) of the SRR will not obviate the intent and purpose of the Subdivision Control Act and at the same time the waiver will serve a Public Interest, to wit the needs of the residents who have purchased homes at the Premises, and

WHEREAS, the Planning Board has expressed concerns that the continued construction of the unfinished portion of the Premises could comprise, or otherwise effect the integrity of the Completed Roadway, then it is agreed as follows:

1. A waiver of Section 3.3.12.3 (a) is hereby granted provided however and as a condition of the waiver that notwithstanding the terms and provisions of Section 3.3.12.3(d) of the SRR, BV shall at all times, material and relevant hereto, maintain the present Bond as same is calculated for the Completed Roadway to a value of not less than as of the date of this Agreement.
2. In the event the Town votes to accept a deed to the Completed Roadway and at any time prior to the Town's acceptance of a deed for all of the Improvements at the Premises there is any damage to the Completed Roadway, which damage is related to or associated with BV's continued use of the Completed Roadway then BV and not the Town shall be responsible to make the repairs necessary to restore the Completed Roadway to the condition it was in (excepting normal wear and tear associated with roadways ) at the time the Planning Board issued its Determination of Completeness.
3. BV shall allow the Town's consulting engineer to include in his inspection reports a summary of the status of the Completed Roadway, which summary shall be submitted to the Planning Board and the Superintendent of Highways. Any additional costs for these inspections shall be the sole responsibility of BV, and shall be paid for in the same manner as those inspections being made on the yet to be completed Improvements located at the Premises.
4. The terms and provisions of the Agreement, unless otherwise modified in writing shall remain in full force and effect until such time as the Planning Board' consultant informs the Planning Board

that all roadway construction activities at the Premises have been completed pursuant to the Approvals, at which time, BV shall as set forth in Section 3.3.12.2(d) be entitled to a return of the bond as same was calculated for the Completed Roadway as of the date of this Agreement.

5. Upon acceptance of the Completed Roadway, the Town shall be responsible for the plowing, sanding and routine maintenance of the Completed Roadway, and shall provide school bus service to the owners of those residences having legal frontage on the Completed Roadway, and do so in the same manner and upon the same terms that school bus service is provided to the residents of Grafton.
6. The Town shall be responsible to make routine repairs to the Completed Roadway provided however if the Planning Board's consulting engineer determines, in his sole and exclusive, discretion that the repairs were caused by the ongoing activities of BV in the completion of Improvements at the Premises, then BV shall be responsible to make those repairs.
7. In the event the Planning Board's consultant determines that BV is required to make repairs, BV upon written notice of same shall cause such repairs to be made, and shall do so upon those terms as directed by the Consultant.
8. In the event BV fails to complete the repair work in the manner directed by the Consultant, then the Planning Board may, by following the procedures set forth in the Approval and the SRR, call upon the Board and use the funds derived therefrom to make any and all necessary repairs.
9. In the event the Planning Board is required to call upon the Bond as set forth in Paragraph 8, and thereafter, the Bond amount is less than the minimum amount set forth in Paragraph 1, as that amount may from time to time be altered as required by Section 3.3.12.2 (c) of the SRR, then BV agrees to provide additional security to meet the requirements.