

## TRIPARTITE AGREEMENT

Agreement made this 11 day of ~~November~~ <sup>DECEMBER</sup> by and between Wills Lane Investments, LLC hereinafter referred to as the "Developer", and the Newburyport Five Cents Savings Bank, banking corporation having a usual place of business at 63 State Street, Newburyport, Massachusetts, hereinafter referred to as the "Bank", and the

THE CITY OF NEWBURYPORT, a municipal corporation located in Essex County, Massachusetts, acting by and through its PLANNING BOARD

Hereinafter referred to as the "Board",

WHEREAS, pursuant to the provisions of The Massachusetts Subdivision Control Law and the Board's Rules and Regulations (together, the "Rules and Regulations") adopted thereunder, the Board has approved a Definitive Plan entitled "Definitive Subdivision of Land Plan", submitted by the Applicant, Wills Lane Investments, LLC, as prepared by Oak Engineers, Inc., with a Scale of 1" = 30', dated September 18, 2007, and recorded with Essex South District Registry of Deeds in Plan Book \_\_\_\_\_, Plan \_\_\_\_\_ (the "Plan"); and

WHEREAS, the Developer has executed and granted a first mortgage covering the same lands subject to the Plan as the security for the payment by the Developer of a certain note, in the principal sum of Six Hundred Seventy-Five Thousand (\$675,000.00) dollars ("Mortgage") to the Bank dated 2/28/08 and recorded with Essex South District Registry of Deeds at Book 27568, Page 19; and

WHEREAS, all parties to this Agreement desire to secure and guarantee the full and faithful construction of the ways and installation of municipal services as shown on the Plan, to the satisfaction of the Board, and in accordance with the applicable Rules and Regulations;

NOW, THEREFORE, for valuable consideration, the adequacy and receipt of which are hereby acknowledged, the parties hereby agree as follows:

1. Developer and Bank hereby bind and obligate themselves, their executors, administrators, devisees, heirs, successors and assigns, jointly and severally, to the Board, under the terms of this Agreement, and in the sum of Three Hundred Twenty-Nine Thousand, Nine Hundred and 00/100 (\$329,900.00) (the "Withheld Funds") and said sum being set aside by Bank from the Mortgage principal otherwise due Developer, to insure the construction and installation of all ways and municipal services as shown on the Plan, together with the performance of all covenants, conditions, agreements, terms and provisions contained in the Application for Approval Definitive Plan dated June 4, 2007, conditions included in the Certificate of Approval issued by the Planning Board and dated September 19, 2007, the Plan as qualified by the Certificate of Approval, and the Rules and Regulations (as applicable thereto) (collectively, "Developer's Obligations").
2. Developer agrees to diligently pursue completion of the Developer's Obligations, with the understanding that upon completion of any portion of the Developer's Obligations, as such portions are itemized in Exhibit A, attached hereto and incorporated within,

3. Upon satisfactory completion by the Developer of the portions of the Developer's Obligations as specified in Exhibit A, the interest of the Board in the Withheld Funds retained by the Bank shall be released by the Board, by majority vote of the Board, which shall be recorded in a written instrument signed by the Chairperson of the Board and sent to the Bank and the Developer. Only upon receipt thereof the Bank may disburse the funds which have been held as security for the specific portion of Developer's Obligations deemed to be satisfactory completed by the Board, if and when a specific stage of work has been satisfactorily completed by the Developer.
4. The Bank hereby agrees that none of the funds retained as security for construction of subdivision ways and installation of municipal services (i.e. the \$329,900.00) shall be disbursed to the Developer without prior written release of said funds by the Board, as voted by a majority of the Board. This Agreement shall remain in full force and effect until the Developer has fully and satisfactorily performed all of the work described in Exhibit A.
5. It is understood and agreed that the Developer's Obligations shall be fully completed no later than January 1, 2010 unless such date be extended by a written amendment hereof entered into by agreement of the parties hereto;
6. In the event the Developer's Obligations are not completed within the time set forth in Paragraph 5 above, or as extended, or if the work undertaken by the Developer pursuant to the Developer's Obligations is not completed in a manner satisfactory to the Board, in accordance with the Rules and Regulations and this Agreement, the Bank shall, upon written request of the Board, release any of the Withheld Funds remaining undisturbed, in whole or in part, to the Board for the completion of the Developer's Obligations. The Developer shall be deemed to have authorized the release of said funds for said purpose.
7. The Developer agrees that prior to the issuance of the occupancy permits, utilities, drainage and the binder course shall be installed in the roadways in accordance with the Plan.
8. The Developer is not restricted by this Agreement from conveying or transferring title to any of the Lots noted on the Plan.
9. Upon completion of the Developer's Obligations, all as satisfactory to the Board, the Board shall execute a written release of this Agreement to the Developer and the Bank.
10. No amendment to or assignment of this Agreement, or the Mortgage or the Withheld Funds may be made except upon written agreement by all parties to this Agreement.
11. Any amendments to this Agreement or to the Mortgage referred to herein shall only be made in writing and upon agreement by all parties of interest to this Agreement.

Executed as sealed instrument the date first above written.

Wills Lane Investments, LLC

By: [Signature]  
Thomas D. Fremont-Smith

Newburyport Five Cents Savings Bank

By: [Signature]  
Duly authorized pursuant to vote attached hereto.

CITY OF NEWBURYPORT  
By its Planning Board

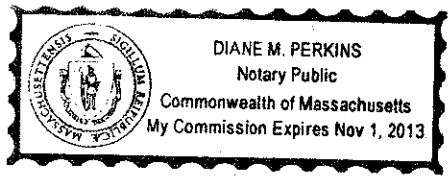
[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this 11<sup>th</sup> day of December, 2007, before me, the undersigned notary public, personally appeared Thomas D. Fremont Smith, proved to me through satisfactory evidence of identification, which were Mass. Drivers License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose, as Manager and Member for Wills Lane Investment, LLC, a corporation.

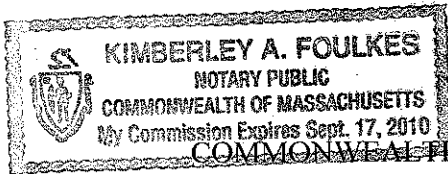
[Signature]  
Notary Public Diane M. Perkins  
My Commission Expires: Nov. 1, 2013



COMMONWEALTH OF MASSACHUSETTS

Essex, ss

On this 13 day of December, 2007, before me, the undersigned notary public, personally appeared Scott Eaton, Newburyport Five Cents Savings Bank being known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose, as Vice President of the Newburyport Five Cents Savings Bank.



Kimberly A. Foulkes  
Notary Public  
My Commission Expires: 9-18-10

COMMONWEALTH OF MASSACHUSETTS

Essex, ss

On this 28<sup>th</sup> day of February, 2008, before me, the undersigned notary public, personally appeared Daniel Bowie, Chairman of the Newburyport Planning Board, being known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose, as Chairman of the Newburyport Planning Board.

Mark F. Janos  
Notary Public - Mark F. Janos  
My Commission Expires: 1-3-14

EXHIBIT A

SUM TO BE  
RETAINED BY  
BANK

WORK TO BE COMPLETED

DATE WHEN  
CONSTRUCTION  
AND INSTALLATION  
IS TO BE  
COMPLETED

1. \$

2. \$

3. \$

4. \$

331304v.2/NBPT/0001

Brown's Lane Bond  
City of Newburyport  
Brown's Lane  
Newburyport,  
MA

Christiansen & Sergi, Inc.  
Philip Christiansen  
7-Nov-07

### Unit Cost Detail Report

LineNumber	Description	Quantity	Unit	Total Incl. O&P	Ext. Total Incl. O&P
<b>Division 02 Existing Conditions</b>					
022113090020	Conventional Surveying, topographical, minimum	2.00	Acre	\$447.57	\$895.14
<b>Division 02 Subtotal</b>					<b>\$895.14</b>
<b>Division 11 Equipment</b>					
113133136451	U Enviro1 Sanitary Pump	4.00	ea	\$0.00	\$14,000.00
<b>Division 11 Subtotal</b>					<b>\$14,000.00</b>
<b>Division 31 Earthwork</b>					
311110100300	Clear and grub, heavy trees, to 24" diameter, cut and chip	2.00	Acre	\$9,828.30	\$19,656.60
311110100350	Clear and grub, heavy stumps, to 24" diameter, grub stumps and remove	2.00	Acre	\$6,068.70	\$12,137.40
311413231420	Loam or topsoil, remove and stockpile on site, 200 HP dozer, 6" deep, 200' haul	5,100.00	C.Y.	\$1.72	\$8,772.00
312216100012	Fine grade, small area, to be paved with grader	1,400.00	S.Y.	\$3.01	\$4,214.00
312216100200	Fine grade, grade subgrade for base course, roadways, large area	1,400.00	S.Y.	\$0.34	\$476.00
312216103300	Fine grade, slopes, gentle, gentle, finish grading	2,250.00	S.Y.	\$0.13	\$292.50
312216103310	Fine grade, slopes, steep, gentle, finish grading	1,071.00	S.Y.	\$0.16	\$171.36
312316420200	Excavating, bulk bank measure, 1 C.Y. capacity equals 75 C.Y./hour, backhoe, hydraulic, crawler mounted	2,600.00	B.C.Y.	\$2.21	\$5,746.00
312316130090	Excavating, trench or continuous footing, common earth, 1/2 C.Y. excavator, 4' to 6' deep, excludes sheeting or dewatering	1,200.00	B.C.Y.	\$4.77	\$5,724.00
312323160200	Bedding, for pipe and conduit, sand, dead or bank, excludes compaction	500.00	L.C.Y.	\$12.28	\$6,140.00
312513101000	Erosion control, silt fence, polypropylene, ideal conditions, 3' high	575.00	L.F.	\$0.58	\$333.50
<b>Division 31 Subtotal</b>					<b>\$63,663.36</b>
<b>Division 32 Exterior Improvements</b>					
323223137180	Retaining walls, interlocking segmental retaining wall system, 4" high x 18" wide x 10" deep, includes pins, and void fill, excludes base	1,240.00	S.F.	\$14.96	\$18,550.40
329219130020	Seeding, mechanical seeding, 215 lb/acre	2.00	Acre	\$921.01	\$1,842.02
329333100500	Evergreen shrubs and trees, hemlock, canadian, B & B, 2-1/2' - 3', in prepared beds	6.00	Ea.	\$46.46	\$278.76
329333100800	Evergreen shrubs and trees, spruce, blue, B & B, 18"-24", in prepared beds	5.00	Ea.	\$53.05	\$265.25
329333202800	Broadleaf evergreen shrubs, dogwood, B & B, 3' - 4', planted in prepared beds	3.00	Ea.	\$71.70	\$215.10

LineNumber	Description	Quantity	Unit	Total Incl. O&P	Ext. Total Incl. O&P
329333203200	Broadleaf evergreen shrubs, forsythia, B & B, 2' - 3', planted in prepared beds	9.00	Ea.	\$32.40	\$291.60
329333204100	Broadleaf evergreen shrubs, quince, B & B, 2' - 3', planted in prepared beds	21.00	Ea.	\$35.82	\$752.22
329333204500	Broadleaf evergreen shrubs, viburnum, B & B, 3' - 4', planted in prepared beds	8.00	Ea.	\$73.50	\$588.00
329333201100	Broadleaf evergreen shrubs, rhododendron, B & B, 18"-24", planted in prepared beds	24.00	Ea.	\$47.92	\$1,150.08
329333200900	Broadleaf evergreen shrubs, mount laurel, B & B, 18" - 24", planted in prepared beds	31.00	Ea.	\$65.38	\$2,026.78
329333200600	Broadleaf evergreen shrubs, holly, B & B, 15"-18", planted in prepared beds	17.00	Ea.	\$24.93	\$423.81
329343200500	Deciduous trees, crabapple, B & B, 6' - 8', in prepared beds	6.00	Ea.	\$249.79	\$1,498.74
329343201600	Deciduous trees, maple, red, B & B, 8' - 10', 1-1/2" caliper, in prepared beds	1.00	Ea.	\$343.83	\$343.83
321123230391	Aggregate base course, for roadways and large paved areas, bank run gravel, spread and compacted, 9" deep	1,250.00	S.F.	\$0.84	\$1,050.00
321123230051	Aggregate base course, for roadways and large paved areas, compacted, 3/4" stone base, to 3" deep	1,250.00	S.F.	\$0.47	\$587.50
321216140500	Paving, asphaltic concrete, parking lots & driveways, base course, 3 "	1,250.00	S.F.	\$1.24	\$1,550.00
321216140900	Paving, asphaltic concrete, parking lots & driveways, sand finish course, 1" thick	1,250.00	S.F.	\$0.46	\$575.00
321619100200	Curbs, asphaltic berm, laid with pavement, 60 L.F./ton, 12" wide, 1-1/2" to 4" high	600.00	L.F.	\$1.96	\$1,176.00
321640131300	Granite, radius curbing, 6" x 18", over 10' radius	400.00	L.F.	\$29.40	\$11,760.00
<b>Division 32 Subtotal</b>					<b>\$44,925.09</b>
<b>Division 33 Utilities</b>					
331113153020	Piping, water distribution, ductile iron, cement lined, tyton push-on joint, no fittings, 18' lengths, 6" diameter, class 50, excludes excavation or backfill	625.00	L.F.	\$17.73	\$11,081.25
331113158400	Fitting, 45 degree bend, ductile iron, cement lined, mechanical joint, 6" diameter, class 50 water piping	2.00	Ea.	\$343.90	\$687.80
331113252100	Water supply, piping Polytvinyl Chloride, 1-1/2" diameter, AWWA C900, Class 160, SDR 26, excludes excavation or backfill, unless specified	120.00	L.F.	\$1.34	\$160.80
331113159620	Fitting, steel sleeve and tap, ductile iron, cement lined, mechanical joint, 6" diameter, class 50 water piping	1.00	Ea.	\$1,095.14	\$1,095.14
331213154150	Piping, water distribution, ductile iron, cement lined, 8" main, 1" to 2" service, class 50 water piping, drill and tap pressurized main (labor only), excludes excavation or backfill	4.00	Ea.	\$331.50	\$1,326.00

LineNumber		Description	Quantity	Unit	Total Incl. O&P	Ext. Total Incl. O&P
331213154650		Piping, water distribution, ductile iron, cement lined, 8" main, 6" branch, class 50 water piping, drill and tap pressurized main (labor only), excludes excavation or backfill	1.00	Ea.	\$536.36	\$536.36
333113252000		Polyvinyl chloride pipe, B & S, 10' lengths, 4" diameter, SDR 35, excludes excavation or backfill	520.00	L.F.	\$5.00	\$2,600.00
333113252080		Piping, drainage and sewage, polyvinyl chloride pipe, B & S, 10' lengths, 8" diameter, SDR 35, excludes excavation or backfill	170.00	L.F.	\$11.91	\$2,024.70
333613101420		Septic tanks, leaching pit, precast concrete, complete, 6' diameter, 3' deep, excludes excavation or piping	2.00	Ea.	\$954.60	\$1,909.20
334113603800		Reinforced concrete pipe (RCP), class 4 mortar joint, 12" diameter	250.00	L.F.	\$23.14	\$5,785.00
334913101110		Manholes, concrete, precast, 4' I.D., 4' deep, excludes base, excavation, backfill, frame and cover	6.00	Ea.	\$1,234.83	\$7,408.98
334913101110	U	Swirl Particle Separator	1.00	Ea	\$0.00	\$7,000.00
335113101540		Polyethylene, joints with coupling, natural gas distribution, 60 PSI, 4" diameter, 40' joints, SDR 11, excludes excavation or backfill	520.00	L.F.	\$18.63	\$9,687.60
<b>Division 33 Subtotal</b>						<b>\$51,302.83</b>



EXHIBIT B

CERTIFICATE OF VOTE



*The*  
**NEWBURYPORT**  
FIVE CENTS SAVINGS  
**BANK**

**NEWBURYPORT FIVE CENTS SAVINGS BANK**

**VOTE OF STOCKHOLDERS AND DIRECTORS**

**CERTIFICATE**

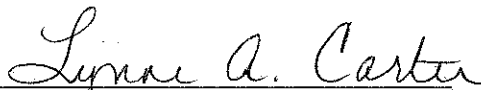
I, Lynne A. Carter do hereby certify that I am the Clerk of Newburyport Five Cents Savings Bank, that at a Meeting of the Board of Investment of the corporation duly called and held at the office of the corporation at Newburyport, Massachusetts, on the 13<sup>th</sup> day of November, 2007, the following resolution was unanimously adopted:

VOTED: That Scott A. Eaton as Vice President of the Corporation be, and any one of them is, hereby authorized and directed in the name and on behalf of the corporation to execute a Tripartite Agreement in the principal amount of \$329,900.00 between the Newburyport Five Cents Savings Bank and Wills Lane Investments, LLC and on behalf of the corporation, to seal with the corporation seal, acknowledge and deliver instruments of every nature, which may be necessary or proper in executing said Tripartite Agreement. This vote shall remain in full force and effect until the Tripartite Agreement and other related documents have been signed or until a new vote shall have been taken.

I DO FURTHER CERTIFY that the above vote has not been altered, amended, rescinded or repealed.

I DO FURTHER CERTIFY THAT the corporation is a duly organized corporation; that the foregoing vote is in accordance with the charter and by-laws of the corporation; that Scott A. Eaton is a duly elected and qualified Vice President of the corporation, and that I am the duly elected and qualified Clerk of the corporation.

Dated at Newburyport, Massachusetts this 10<sup>th</sup> day of February, 2008.

  
Lynne A. Carter, Clerk

THE NEWBURYPORT FIVE CENTS SAVINGS BANK

SIXTY-THREE STATE STREET-NEWBURYPORT, MA 01950-TEL: (978) 462-3136 FAX: (978) 462-9672  
TWENTY-SEVEN HIGH ROAD-NEWBURY, MA 01951-TEL: (978) 462-2645  
CROSSROADS PLAZA-SALISBURY, MA 01952-TEL: (978) 462-8771  
TWENTY-ONE STOREY AVENUE-NEWBURYPORT, MA 01950-TEL: (978) 462-0722  
FORTY FRIEND STREET-AMESBURY, MA 01913-TEL: (978) 388-3157 FAX: (978) 388-3196  
www.newburyportbank.com

EXHIBIT A

18  
175

## MORTGAGE

**SEND TAX NOTICES TO:**

Newburyport Five Cents Savings Bank, P.O. Box 350, 63 State Street, Newburyport, MA  
01950

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**FOR RECORDER'S USE ONLY**

**THIS MORTGAGE** dated February 28, 2008, is made and executed between Wills Lane Investments LLC, whose address is 15 Third Avenue, Burlington, MA 01803 (referred to below as "Grantor") and Newburyport Five Cents Savings Bank, whose address is P.O. Box 350, 63 State Street, Newburyport, MA 01950 (referred to below as "Lender").

**GRANT OF MORTGAGE.** For valuable consideration, Grantor grants to Lender with **MORTGAGE COVENANTS** all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in Essex County, Commonwealth of Massachusetts:

See the exhibit or other description document which is attached to this Mortgage and made a part of this Mortgage as if fully set forth herein.

The Real Property or its address is commonly known as 4 Lots 6 Brown Street, Newburyport, MA 01950.

**PLEASE RETURN TO:**  
**CONNOLLY & CONNOLLY**  
**INDUSTRY BOX 68**