

Subdivision Ordinance of the
Town of Pittston

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Attachment A

Sample Copy of Subdivision Road and Utilities Maintenance Agreement

This agreement is made as of _____, 20____ by the property owners (see attached list) hereto and their successors and assigns with respect to real estate located in the Town of Pittston, in Kennebec County, Maine.

1. Property. This agreement shall apply to the real property (the lots) held by the Owners of 3,4,5,6 in "ABC Subdivision"
2. Owner. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot who has signed this Agreement, and their heirs, successors, assigns, and personal representatives of said Owners, but, notwithstanding any applicable theory of mortgage law, shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title by foreclosure or any proceeding in lieu of foreclosure
3. Road. The purpose of this Agreement is to provide for the maintenance and upkeep of the Road "ABC ROAD" which services the Lots for the use and benefit of all Owners, and shall be binding upon all Owners.
4. Association. "ABC Subdivision" Road Association has cause to be incorporated under Maine law as a nonprofit corporation, the "ABC Subdivision" Road Association, (the "Association"), for purpose of complying with the requirements of this agreement.
5. Member. Every Owner shall be a Member of the Association. When more than one person or entity holds an interest in any Lot, all such persons or entities shall be Members. A person or entity who holds a fee or undivided fee interest merely as security for the performance of an obligation, however, shall not be a member.
6. Voting. All members on the Association shall be voting Members and the Association shall have one (1) class of voting membership. For the purposes of any meeting, a quorum shall consist of Owners of at least one-half (1/2) the Lots being present and voting. Each Lot shall represent one (1) indivisible vote. When more than one Member holds an ownership interest in a Lot, the vote for that Lot shall be exercised as such Members among themselves may determine by majority vote. In no event, however, shall the voting rights for Lot be divided, nor shall more than one (1) vote be cast with respect to any one Lot. If Members who are Owners of a Lot are unable to agree in any instance as to how their vote shall be cast, in any instance, then the vote shall not be counted.
7. Expenses. Each Owner shall be assessed a sum equal to the Road maintenance and upkeep expenses for the ensuing year multiplied by a fraction of which the numerator shall be the number of Lots owned by the Owners and the denominator shall be the total number of all the Lots. Road maintenance and upkeep shall be limited to that required [to remove snow], to repair and prevent erosion, and to repair ordinary wear to the surface of the Road unless otherwise agreed by a unanimous vote of all Owners, but shall include the cost of maintaining the Association as a nonprofit corporation in good standing under the laws of Maine, the cost of enforcing any provision of this Agreement and other costs and expenses necessary and proper for the effective and efficient functioning of the Association. All maintenance and upkeep [including snow removal], will be by competitive bid unless a non-competitive price is accepted by vote of a majority of the Owners present at a meeting duly called for the purpose of voting on the budget of the Association.

9. Lein. Each Owner, by signing this Agreement, does covenant and agree to pay to the Association, within sixty (60) days after the date of notice of an assessment, all assessments made by the Association. Each assessment, together with interest in amounts or at rates specified by the Association and together with costs of collection, shall be a lien and charge upon the Lot against which each such assessment is made which lien shall continue until the assessment is paid and shall be the personal obligation of the Owner. The personal obligation of the Owner to pay such assessments, however, shall remain the personal obligation of the person who was the Owner when the assessment was first due and shall not pass to successors in title unless expressly assumed by such successors.

10. Enforcement. The Association may bring a civil action against the Owner personally obligated to pay an assessment in order to enforce payment of the delinquent assessment or to foreclose the lien against the Lot, and there shall be added to the amount of such assessment due all costs of collection. In the event a judgment is obtained, such judgement shall include interest on the assessment, together with all the Association's attorney's fees and expenses and costs of the action.

11. Subordination. The lien of the assessments provided for shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the Lots. Such subordination, however, shall apply only to the assessment which have become due and payable prior to a sale or transfer of a Lot pursuant to any allowable method of foreclosure, or any other proceeding in lieu of foreclosure. Upon request by an Owner of a mortgagee of a Lot, the Association shall issue such certificates as are necessary to indicate the status of the assessment. Such sale or transfer shall not discharge the lien of the Association of any assessment thereafter becoming due after the date of any such sale or transfer. The lien of the assessment also shall be subordinate to all utility easements which may be placed upon any Lot.

12. Severability. Invalidation of any one provision of this agreement by competent authority shall in no way affect any other provision, which shall remain in full force and effect.

13. Amendment. This Agreement may be amended by a written instrument executed in recordable form and signed by Members entitled to cast at least 75% of the votes allocated to the Lots.

IN WITNESS WHEREOF, the undersigned have executed the Agreement as of the date first above written:

WITNESS

Owner Signature

Owner print name

_____	_____	_____
_____	_____	_____
_____	_____	_____

STATE OF MAINE
COUNTY OF _____, ss.

The foregoing Road Maintenance Agreement was acknowledged before me on _____, 20____
by _____

Notary seal

Signature _____ Print Name _____
Notary Public of Maine
My Commission Expires: _____

Subdivision Ordinance of the Town of Pittston, Maine

Article 1: General Provisions

Section 1-1: Purpose

The purpose of this ordinance is to assure the comfort, convenience, safety, health and welfare of the people of the Town of Pittston, to protect the environment and to promote the development of an economically sound and stable community. To this end, in approving subdivision within the Town of Pittston, Maine, the Planning Board shall consider the following criteria and before granting approval shall make findings of fact that the provisions of this ordinance have been met and that the proposed subdivision will meet the guidelines of Title 30, MRSA, Section 4956, subsection 3. The subdivision:

- 1.1 Will not result in undue water or air pollution. In making this determination, the Board shall at least consider the elevation of the land above sea level and its relationship to the floodplains; the nature of the soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; any applicable State and local regulations.
- 1.2 Has sufficient water available for reasonable foreseeable needs of the development.
- 1.3 Will not cause an unreasonable burden on an existing water supply, if one is to be used.
- 1.4 Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.
- 1.5 Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed.
- 1.6 Will provide for adequate solid and sewage waste disposal showing the area of test pits for each established lot.
- 1.7 Will not cause an unreasonable burden on the ability of municipal services, including schools, maintenance of roads, solid waste disposal, etc.
- 1.8 Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.
- 1.9 Is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any.
- 1.10 The developer has adequate financial and technical capacity to meet the above stated standards.

- 1.11 Will not, alone or in conjunction with existing activities, affect the quality or quantity of ground water.
- 1.12 Will comply with all existing ordinances of the Town of Pittston.
- 1.13 Will submit a Road Maintenance Agreement.

Section 2. Authority & Administration

- 2.1 Authority: This Ordinance is adopted pursuant to and consistent, with Title 30, M.R.S.A., Section 2151-A and Title 30, M.R.S.A., Section 4956, and shall be known and cited as the "Subdivision Ordinance of the Town of Pittston".
- 2.2 Administration: The Planning Board of the Town of Pittston will administer this Ordinance. The Code Enforcement Officer of the Town of Pittston will enforce all provisions of this Ordinance. The provisions of this Ordinance will apply to all of the land area of all proposed subdivisions, as defined, located in the Town of Pittston.

Section 3. Definitions

- 3.1 Abutter: One whose property abuts, is contiguous, or joins the applicant's property at a border or boundary, including the property across the street, road, public way or private way.
- 3.2 Building: Any structure and its attachments which is supported by columns or walls with a roof for housing humans.
- 3.3 Code Enforcement Officer: Person or persons appointed by the Town Officers to administer and enforce Town Ordinances. Reference to the Code Enforcement Officer may be construed to include Building Inspector, Plumbing Inspector, Electrical Inspector, and the like, where applicable.
- 3.4 Dwelling Unit: Any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, apartments and time-share units.
 - a. Single family dwelling will mean any building containing only one dwelling unit for habitation by not more than one family.
 - b. Multi-family dwelling unit will mean a building containing two or more dwelling units, such buildings being designed for residential use and occupied by two or more families living independently of one another, with the number of families not exceeding the number of units.
- 3.5 100 Year Flood: The highest level of flood that, on the average, is likely to occur once every 100 years (that has a one percent chance of occurring in any year)
- 3.6 Lot: A parcel of land as defined by deeds, surveys, or similar legal documents.
- 3.7 Planning Board: The Planning Board of the Town of Pittston. The Planning Board is also

referred to in this ordinance as “the Board”

- 3.8 Road: Public and private ways such as alleys, avenues, boulevards, highways, streets, and other right-of-way, as well as areas on sub-division plans designed as right-of-way.
- 3.9 Subdivision: The division of a contiguous tract or parcel of land in the same ownership.
 - a. Sub-division Major: Any sub-division containing more than 5 lots or dwelling units.
 - b. Sub-division Minor: Any sub-division containing 3, 4 or 5 lots or dwelling units.
- 3.10. Variance: A granting of relief by the Town Appeals Board from a strict interpretation of the terms of an ordinance.

Section 4. Administrative Procedure

- 4.1 Purpose: The purpose of this section and Sections 5 through 13 is to establish an orderly equitable and expeditious procedure for reviewing proposed subdivision(s).
- 4.2 Agenda: In order to avoid unnecessary delays in processing applications for subdivision review, the Board shall prepare an agenda for each regularly scheduled meeting. Applicants will request to be placed on the Board’s agenda at least one week in advance of a regularly scheduled meeting by contacting the Planning Board Secretary. Applicants who attend a meeting and who are not on the Board’s agenda may be heard only after all agenda items have been completed, and then only if a majority of the Board so votes.

Section 5. Pre-application Conference

5.1 Procedure.

- a. Applicant presentation and submission of draft plans.
- b. Question and answer period. Board makes specific suggestions to be incorporated by the applicant into subsequent submissions.
- c. Scheduling of on-site inspection.

- 5.2 Submission. The Pre-application draft plan will show, in simple sketch form, the proposed layout of roads, lots, buildings and other features in relation to existing conditions. The draft plan, which may be a free-hand penciled sketch, should be supplemented with general information to describe or outline the existing conditions of the site and the proposed development. It is recommended that the draft plan be superimposed on or accompanied by a copy of the Tax Map(s) on which the land is located. The draft plan shall be accompanied by a copy of a portion of the U.S.G.S. topographic map of the area showing the outline of the proposed subdivision, unless the proposed subdivision is less than 10 acres in size

- 5.3 Contour Interval and On-Site Inspection: Within 31 days of submitting a draft plan and paying all applicable fees, the Board will determine and inform the applicant of the required contour interval on the Preliminary Plan and hold an on-site inspection of the property. The applicant will place "flagging" at the center line of any proposed roads, and at the approximate intersections of the road center lines and lot corners, prior to the on-site inspection.
- 5.4 Rights not vested. The submittal or review of the pre-application draft plan will not be considered the initiation of the review process for the purposes of bringing the plan under the protection of Title 1, M.R.S.A., 302.
- 5.5 The applicant will provide the Board with a complete list with names and current addresses of all abutting property owners.
- 5.6 Two copies of a complete survey must be submitted for approval.
 - a. For a major sub-division an engineered set of plans will be required with a set (2) Mylar Plans for the Final Plan approval.
- 5.7 All applications will be accompanied by an application fee found in the Subdivision Pre-Application Form, made payable to the Town of Pittston. The applicant will also be responsible for any and all professional review or services deemed necessary by the Board.

Section 6. Site Inspection & Public Hearing

- 6.1 In scheduling a site inspection and public hearing under this ordinance, the Board will publish notice of the site inspection and public hearing at least ten days in advance in a local newspaper, the Town's web site and three public places in the Town of Pittston.
- 6.2 The Board will notify, by certified mail, the applicant and all abutters of the proposed sub-division, including owners of property on the opposite side of the road/street, at least ten days in advance of the site walk and public hearing, with the time and place of the site walk and public hearing.
- 6.3 The owners of property will be considered to be those to whom property taxes are assessed. Failure of any property owner to receive a notice of site walk and public hearing will not necessitate another site walk or hearing or invalidate any action by the Board.
- 6.4 At any public hearing, an applicant may be represented by an agent or attorney. Public hearings will not be continued to another time without a good cause.
- 6.5 The applicant will be heard first. To maintain orderly procedure, each side will proceed without interruption. Questions may be asked through the Chair of the Board. All persons at the hearing will abide by the order of the Boards Chair.
- 6.6 Within 60 days of the public hearing, the Planning Board will reach a decision on the proposed sub-division, and will inform the applicant, Select Board, Code Enforcement Officer and/or Building Inspector in writing within seven days of its decision, stating finding of fact. The Board will prepare written findings of fact, based on all evidence presented, as well as its conclusions and the reasons.

Section 7. Final Plan

- 7.1 Within 180 days after the Site Inspection by the Board, the applicant will submit a final plan at a scheduled meeting of the Board. Failure to do so will require resubmission of the draft plan to the Board. The Final Plan will approximate the layout shown on the draft plan, plus any recommendations made by the Board.
- 7.2 All applications for Final Plan approval for a Sub-division will be accompanied by any additional fee(s) payable to Town of Pittston. If an additional fee(s) is required to cover the costs of advertising and postal notification and/ or professional review or services deemed necessary by the Board, the sub-divider will pay all of those fee(s) at this time.
- 7.3 The applicant, or the duly authorized representative, will attend the meeting of the Board to discuss the Final Plan.
- 7.4 Upon receipt of the Final Plan, the Board will issue a dated receipt to the applicant.
- 7.5 Upon notification of the approved decision of the Board, the Code Enforcement Officer will issue, with conditions prescribed by the Board, a building permit.

Section 8. General Requirements

In reviewing applications for a subdivision, the Board will consider the following general standards and make findings that each has been met prior to the approval of a Final Plan. In all instances, the burden of proof shall be upon the applicant.

- 8.1 Buffer Strip: The Planning Board will require a buffer strip when the proposed subdivision is to be located adjacent to a use where separation is desirable.
- 8.2 Basement Drainage: If lots are being created to accommodate structures with basements, the sub-divider will show that the basement can be drained by gravity to the ground surface, or to drains or by other mechanical means.
- 8.3 Conformance with other Laws, Regulations: The proposed subdivision shall be in conformance with all pertinent local, state, and federal ordinances, statutes, laws and regulations and Pittston's Comprehensive Plan.
- 8.4 Construction Prohibited: No utility installations, no ditching, grading, or construction of roads, no grading of land or lots, and no construction of buildings will be done on any part of the subdivision until a Final Plot Plan, and 2 Mylar copies of the subdivision has been prepared, submitted, reviewed, approved, and endorsed as provided by this Ordinance, nor until an attested copy of the Final Plot Plan so approved and endorsed has been recorded by the applicant in the Registry of Deeds.
- 8.5 Ditches, Catch Basins: The Planning Board may require the installation of ditches, catch basins, piping systems, and other appurtenance for the control, or disposal of surface waters. Adequate drainage will be provided so as to reduce the danger of flooding and erosion.
- 8.6 Easements: The Planning Board may require easements for sewage, drainage, or other utilities.
- 8.7 Lots and Density:
 - a. The lot size, width, depth, shape and orientation and the minimum of 10' setback lines

will be appropriate for the location of the subdivision and for the type of development and use contemplated, and will conform to any local Ordinances, standards, and regulations.

- b. If a lot on one side of a stream, tidal water, road or other similar barrier fails to meet the minimum requirements for lot size, it will not be combined with a lot on the other side of the stream, tidal water, or road to meet the minimum lot size.

8.8 Land Not Suitable for Development: The Planning Board will not approve for buildings or dwellings such portions of any proposed subdivision that are within the 100-year frequency flood plain, unless all principal structures are constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation, or on land which must be filled or drained or on land created by diverting a perennial stream. In no instance shall the Board approve any part of a subdivision located on filled or drained great ponds.

8.9 Sewage Disposal: The developer will submit evidence of soil suitability for subsurface sewage disposal prepared by a person duly licensed by the State to perform such work in full compliance with the requirements of the State of Maine Subsurface Wastewater Disposal Rules. In addition, on lots in which the limiting factor has been identified as being within 24 inches of the surface, a second site with suitable soils will be shown as a reserve area for future replacement of the disposal area. The reserve area will be shown on the plan and restricted so as not to be built upon.

8.10 Roads:

- a. All roads public and private will be constructed pursuant to the Town of Pittston Road Ordinance.
- b. A Subdivision Road and Utilities Maintenance Agreement will be established with all Sub-divisions. (See attachment A)
- c. All entrances will be constructed pursuant to the Town of Pittston Entrance Ordinance.

Section 9. Waivers:

9.1 Where the Planning Board finds that extraordinary and unnecessary hardships may result from strict compliance with any provision of this Ordinance, or where there are special circumstances of a particular plan, it may waive any provision provided that such waiver will not have the effect of nullifying the purpose of this Ordinance, the Comprehensive Plan, the Shoreland Zoning Ordinance, or any other State or Local ordinance or regulations.

9.2 In granting any waiver, the Planning Board will require such conditions as will, in its judgment, secure substantially the objectives of the provisions so waived.

Section 10. Enforcement

10.1 Inspection of Required Improvements:

- a. At least five days prior to commencing each major phase of construction of required improvements, the sub-divider or builder will: Notify the Code Enforcement Officer in writing of the time of the commencement of construction of such improvements to assure that all Town specifications and requirements

will be met during the construction of required improvements, and to assure the satisfactory completion of improvements and utilities required by the Planning Board.

- b. If the CEO finds upon inspection of the improvements that any of the required improvements have not been constructed in accordance with the plans and specifications filed by the sub-divider, the CEO will report in writing to the Select Board, Planning Board, and the sub-divider or builder the necessary improvements to be made. The CEO will take any steps necessary to preserve the Town's rights.
- c. If at any time before or during the construction of the required improvements, it appears to be necessary or desirable to modify the required improvements, the CEO is authorized to approve minor modifications due to unforeseen circumstances such as encountering hidden outcrops of bedrock, natural springs, etc. The CEO will issue any approval under this section in writing and will transmit a copy of the approval to the Planning Board. Revised plans will be filed with the Town. For major modifications, such as relocation of rights-of-way, property boundaries, and changes of grade by more than 1 %, etc., the applicant will obtain permission to modify the plans from the Planning Board.
- d. Upon completion of road construction and prior to a vote by the Select Board to submit a proposed town way to a Town Meeting, a written certification signed by a professional engineer registered in the State of Maine will be submitted to the Select Board at the expense of the applicant, certifying that the proposed town way meets or exceeds the design and construction requirements in the Town of Pittston Road Ordinance.
- e. The developer, builder or home owners association will be required to maintain all improvements and provide for snow removal on roads until acceptance of the improvements by the Town of Pittston, or as specified in the Road Maintenance Agreement.

10.2 Violations and Enforcement:

- a. No plan of a division of land within the Town which would constitute a subdivision shall be recorded in the Registry of Deeds until a Final Plan has been approved by the Planning Board in accordance with this ordinance.
- b. No person, firm, corporation or other legal entity will convey, offer or agree to convey any land in a subdivision which has not been approved by the Board and recorded in the Registry of Deeds.
- c. No person, firm, corporation or other legal entity will convey, offer or agree to convey any land in an approved subdivision which is not shown on the Final Plan as a separate lot.
- d. Any person, firm, corporation or other legal entity who conveys, offers or agrees to convey any land in a subdivision which has not been approved as required by this ordinance will be subject to a fine of not less than \$5,000. for each such conveyance,

offering or agreement. The Town will institute proceedings to enjoin the violation of this section, and may collect attorney's fees and court costs if it is the prevailing party.

- e. No public utility, or any utility company of any kind, will serve any lot in a subdivision for which a Final Plan has not been approved by the Planning Board.
- f. Development of a subdivision without Planning Board approval will be a violation of law. Development includes grading or construction of roads, grading of land or lots, or construction of buildings which require a Final Plan approval as provided in this ordinance and recorded in the Registry of Deeds.
- g. No lot in a subdivision will be sold, leased or otherwise conveyed before the road upon which the lot fronts is completed in accordance with this ordinance up to and including the entire frontage of the lot. No unit in a multi-family development will be occupied before the road upon which the unit is accessed is completed in accordance with this ordinance.

Section 11. Validity, Effective Date, Conflict of Ordinances, Filing:

- 11.1 Validity: Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance, and to this end, the provisions of this Ordinance are hereby declared to be severable.
- 11.2 Effective Date: The effective date of this Ordinance, as amended is
Month / day/year.
- 11.3 Conflict of Ordinances: This Ordinance will not repeal, annul, or in any way impair or remove the necessity of compliance with any other ordinance, rule, regulation, by-law, permit, or provision of law. Where this Ordinance imposes a higher standard for the promotion and protection of public health, safety, and welfare, the provisions of this Ordinance will prevail.
- 11.4 Filing: A certified copy of this Ordinance will be filed with the Register of Deeds, according to the requirements of State law.

Section 12. Appeals

If the Planning Board should disapprove an application for a subdivision or grant approval with conditions that are objectionable to any person, affected directly or indirectly, or when it is claimed that the provision of this Ordinance do not apply, or that the true intent and meaning of this Ordinance have been misconstrued or wrongfully interpreted, any person, affected or indirectly, may appeal in writing from the decision of the Planning Board to the Pittston Board of Appeals. Said appeal must be made within 30 days of the Planning Board's written decision.

Section 13. Amendments

This Ordinance may be amended by a majority vote in a special or regular Town Meeting of Pittston.

We hereby certify that the forgoing is a true copy of the Subdivision Ordinance of the Town of Pittston as enacted at the Special Town Meeting on .

Given under our hand this day of

Roger Linton, Selectperson

Mary Jean Ambrose, Selectperson

Gregory Lumbert, Selectperson

Attest: _____
Deborah Barry, Town Clerk
Town of Pittston, Maine

Date: