



TOWN OF GORHAM

PLANNING OFFICE

75 South Street, Suite 1
 Gorham, Maine 04038
 PHONE: (207) 222-1620

APPLICATION: PERFORMANCE GUARANTEE						
Property Description	Parcel ID	Map		Lot		Date of Final Plan Approval
Project Address						
Subdivision/Project Name						
Applicant's or Applicant's Agent Information	Name			MAILING ADDRESS		
	Phone					
	Fax					
	Email:					
See the "Establishing a Performance Guarantee" attachment in this packet.						
COST ESTIMATE FORM	An interactive COST ESTIMATE Form is available on our website and hard copies are available in the Planning office. The Cost Estimate Form must be completed and submitted with this application.					
PERFORMANCE GUARANTEE INFORMATION						
Type of Guarantee	<input type="checkbox"/> LETTER OF CREDIT		<input type="checkbox"/> SECURITY BOND		<input type="checkbox"/> ESCROW ACCOUNT (Certified Bank or Treasurer's Check)	
Specify Bank or other Institution						
ID #	LOC #:		BOND #:		CHECK #:	
Expiration or Completion Date						

Please note: The amount due for field inspection is automatically calculated on the *Cost Estimate Form* and is 2.5% of the estimated cost. **The Field Inspection Escrow form is included in this packet.**

I certify that the above information is true and accurate to the best of my knowledge.

 SIGNATURE: APPLICANT OR APPLICANT'S AGENT

 DATE

 PRINT NAME

ESTABLISHING A PERFORMANCE GUARANTEE

All Performance Guarantees must be established through the Planning Office and approved by the Town Manager and the Town Attorney **prior to the scheduling of the Pre-Construction meeting.**

STEP ONE The applicant must submit an itemized cost estimate of the work that is to be secured by the Performance Guarantee to the Town Planner. An interactive spreadsheet for cost estimation is available on the Town website. This itemized cost estimate must include all approved public and quasi-public improvements including, but not limited to, road construction, fire ponds, the installation of public sewer and public water, roadway monumentation, and the installation of street trees, required landscaping, etc. The applicant must indicate the date by which all of the improvements will be completed.

STEP TWO The Town Planner will refer the itemized cost estimate for improvements to the Town's Engineer who will review the proposed scope of work and cost estimates. Once the description of the work to be done and the estimated costs have been reviewed by the Town's Engineer, the Town Planner will advise the applicant of any requested changes.

STEP THREE The applicant can then use the approved cost estimate to establish a Performance Guarantee with a local bank or other lending institution of his/her choice. The required Performance Guarantees can be one of several forms:

1. A Letter of Credit from a bank or financial institution that contains all of the items listed on the attached checklist;
2. A Bond from a company licensed to do business in Maine, including the corporate authorization of the person signing the bond on behalf of the company; or
3. A Cash deposit via a certified bank check/treasurers check that is held in an escrow account by the Town of Gorham.

STEP FOUR The proposed form of the Performance Guarantee is submitted to the Town Planner by the applicant. The Planner will forward it to the Town Attorney and the Town Manager for review and advise the applicant if any revisions are necessary.

STEP FIVE When the Town Attorney and the Town Manager have given their final approvals, the Town Planner will notify the applicant who can then ask the lending or bonding institution to prepare and submit a final guarantee document to the Town Planner.

STEP SIX When the Town Manager and the applicant have completed the performance guarantee, the Town Planner will notify the Planning Board that the performance guarantees are met and the Planning Board will sign a mylar of the Final Plan.

STEP SEVEN Prior to the pre-application meeting the applicant must record the Final Plan in the Cumberland County Registry of Deeds and must provide the completed Escrow agreement for field inspection with the escrow amount to the Town Planner.

If you have any questions, please contact the Town Planner at 207-222-1620.

See the Gorham Land Use ordinance for additional information regarding performance guarantees. An excerpt is included at the end of this packet for your convenience.

(Letterhead)

(Name of Bonding company)

Performance Bond No. _____

SAMPLE DOCUMENT

KNOW ALL MEN BY THESE PRESENTS:

That We, (Applicant's Name and Project Name) in the county of _____ and State of Maine), as Principal, (hereinafter called Principal), and _____ Bonding Company as Surety, hereinafter called Surety, are held and firmly bound until the Town of Gorham, Maine, as Obligee, (hereinafter called Obligee), in the penal sum of _____ thousand _____ hundred _____ and _____/100 Dollars (\$_____._____) for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, The Town of Gorham Planning Board issued a _____ approval on _____(date) for _____ (describe what the approval was for) which approval is by reference incorporated herein.

AND WHEREAS, said Town of Gorham is desirous of the Principal furnishing a performance bond, conditioned to guarantee the completion of the improvements set forth in the attached schedule of values, such work to be completed by _____ (date) by the Principal.

NOW THEREFORE, if the Principal completes all required work by the completion date specified, then it shall be released from its obligation hereunder.

PROVIDED, HOWEVER, that the Obligee shall give Principal and Surety notice of unfinished work or observed defects with reasonable promptness.

SIGNED and sealed this _____ day of _____, 20____.

IN THE PRESENCE OF:

(Applicant's Name and Project)

Notary

By: _____

Bonding Company

Witness

By: _____
Attorney-in-Fact

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APPLICANT'S CHECKLIST for ILOC

IRREVOCABLE LETTER OF CREDIT (See sample document next page.)

A proposed Irrevocable Letter of Credit should contain the following:

1. A specific date by which the improvements secured by the Letter of Credit will be completed.
2. The expiration date of the Letter of Credit should be set between sixty and ninety days following the date set for the completion of the improvements.
3. The letter must specify the improvements that are secured by the Letter of Credit. An itemized list of improvements and their cost should be incorporated into the document and must include the 25% retainage.
4. The letter must specify how partial drawings on the Letter of Credit are to be made.
5. The letter must state that the Town may alternatively use funds drawn on the Letter of Credit to restore a subdivision trust.
6. The letter must provide a procedure for resubmission of a sight draft if it should be dishonored by the lender.
7. The letter must state that it shall be the responsibility of the developer and lender to initiate an extension of the Letter of Credit, prior to the expiration date if the improvements cannot be completed by the specified date. (failure to notify may cause the Town of draw the Letter of Credit in order to protect the Town's interest.)
8. All Letters of Credit must be reviewed and approved by the Town Attorney, prior to finalization by the lending authority.
9. When it becomes necessary to extend a Letter of Credit, a new Letter is required.

NOTE: THE ORIGINAL LETTER OF CREDIT WILL REMAIN WITH THE TOWN OF GORHAM UNTIL THE IMPROVEMENTS ARE COMPLETED AND THE LETTER IS RELEASED BY THE TOWN.

IRREVOCABLE LETTER OF CREDIT

Date

Letter of Credit No. _____

Town of Gorham
75 South Street, Suite 1
Gorham, ME 04038

SAMPLE DOCUMENT

Gentlemen:

This letter shall constitute an irrevocable letter of credit verifying that this lending institution ***[insert name of lending institution]*** (the "Lender") has on account and available a sum or sums not less than ***[insert amount]*** for the account ***of [insert name of developer]*** (the "Developer") to be paid to the Town of Gorham upon receipt at the Lender's office at ***[insert address of local branch or office or of local confirming bank for presentment of the draft]*** of your written statement(s), signed by the Town Manager that payment is due based upon the Developer's default or failure to construct or install in a timely and satisfactory manner (including inspection and approval by the Town's Engineer) the improvements listed below on or before the completion date of ***[insert construction completion date, which date shall be no more than two (2) years after the date of this irrevocable letter of credit]***.

[List improvements and amount stated for each improvement here or on a separate sheet]

This obligation, however, shall be reduced by the amounts stated for each of the above-listed improvements upon receipt of written certification from the Town Engineer that the corresponding improvements have been satisfactorily completed, inspected and approved by the Town prior to notice in writing by the Town of any such default or failure by the developer.

In the event that the Lender refuses to honor the Town's draft, the Lender shall provide the Town with written reasons for the dishonor and shall notify the Town of the dishonor within three (3) working days of presentation of the draft, and subsequently shall permit the Town to present a revised draft or drafts hereunder.

In the event that the developer has failed to perform or is in default in timely and satisfactory completion of the improvements referred to above, any funds collected by the Town of Gorham under this obligation shall be used towards completion of said improvements or reasonable restoration of the site.

We hereby agree with the Town of Gorham, its successors and assigns, acting in compliance with the terms of this obligation, that the same shall be duly honored upon notice duly given on or before the termination date of ***[insert a date that is at least sixty to ninety days later than the construction completion date]***.

Very truly yours,

[Authorized official's signature and title]



Parcel ID:	Map		Lot	
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**TOWN OF GORHAM
PLANNING OFFICE**

75 South Street, Gorham, Maine 04038
PHONE: (207) 222-1620 -- FAX: (207) 839-7711

ESCROW AGREEMENT PERFORMANCE GUARANTEE

This AGREEMENT is made this _____ between _____, (the "Developer") that herewith declares to be owner of _____ and the Town of Gorham (the "Town"). Hereafter the Developer and the Town shall be referred to collectively herein as **the parties**.

In consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

- Escrow agent. The Town is herewith appointed Escrowee.
- Establishment of a Non Interest Bearing Escrow Account. Escrow agent shall hold and safeguard the funds deposited in a separate non interest bearing Escrow Account until this Agreement shall terminate in accordance with the terms hereof.
- Payment of Escrow. The Developer herewith delivers to the Escrow agent the sum of _____ (\$ _____ .00) receipt of which is hereby acknowledged by the Escrow agent.
- Withdrawal of Money from the Account. The Town Manager can authorize a drawdown of money from the account for work that the Town's Inspecting Engineer and Town Staff determine is constructed in accordance of the approved plans and specifications. No drawdown shall be authorized if it will bring the amount remaining in the escrow account below the amount estimated to be required for completion of all other improvements covered by the account, plus any required retainage. The Town may withdraw money from the account after forty-eight (48) hours advance notice to the Applicant, for any of the required improvements that have not been constructed in accordance of the approved plans and specifications, or have not been constructed in a timely manner in accordance with the Gorham Land Use and Development Code.
- Remaining Funds. Any excess amount deposited with the Town in advance will be promptly refunded when it is determined that the work has been completed to the satisfaction of the Town after receipt of as-built record drawings.
- Notices. All notices and other communications hereunder shall be made in writing, addressed as follows:

The Applicant	Town Manager	Town's Inspecting Engineer:
	David Cole 75 South Street, Suite 1 Gorham, ME 04038	WOODARD & CURRAN 41 Hutchins Drive Portland, ME 04102

7. Governing Law: This Agreement shall be governed by the laws of the State of Maine and the Town of Gorham Land Use and Development Code.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date first written above.

By: _____
Developer

Date

TOWN OF GORHAM

By: _____
David Cole, Town Manager

Date

Date



Parcel ID:	Map		Lot	
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**TOWN OF GORHAM
PLANNING OFFICE**

75 South Street, Gorham, Maine 04038
PHONE: (207) 222-1620 -- FAX: (207) 839-7711

ESCROW AGREEMENT FIELD INSPECTION

This AGREEMENT is made this _____ between _____, (the "Applicant") that herewith declares to be owner of _____ and the TOWN OF GORHAM (the "Town"). Hereafter the Applicant and the Town shall be referred to herein as **the parties**.

In consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

1. Escrow agent. The Town is hereby appointed Escrow agent. Escrow agent shall hold and safeguard the funds deposited in a separate non-interest bearing Escrow Account until this Agreement shall terminate in accordance with the terms hereof.
2. Establishment of Escrow Account. The Applicant herewith delivers to the Escrow agent the sum of _____ (\$ _____ .00) receipt of which is hereby acknowledged by the Escrow agent. Escrow agent shall hold the Escrow Amount for the account of the Applicant for the purpose of payment of the Town's Inspecting Engineer in accordance with this Agreement, and in accordance with Chapter II, Section VIII of the Town Land Use and Development Code.
3. Remaining Funds. Remaining funds in the account will be returned to the Applicant.
4. Notices. All notices and other communications hereunder shall be made in writing, addressed as follows:

The Applicant	Town Planner	Inspecting Engineer:
	Tom Poirier Town Planner Town of Gorham	WOODARD & CURRAN 41 Hutchins Drive Portland, ME 04102

5. Governing Law: This Agreement shall be governed by the laws of the State of Maine and the Town of Gorham Land Use and Development Code.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date first written above.

By: _____
Applicant

TOWN OF GORHAM

By: _____
Its: Town Planner

CHAPTER II – GENERAL STANDARDS OF PERFORMANCE

I. SUBDIVISION, PRIVATE WAY AND SITE CONSTRUCTION MONITORING OF PUBLIC IMPROVEMENTS

- 1) Grading or construction of roads, grading of land or lots, or construction of buildings which require a final plan as provided in Chapters II, III, or IV of this code is prohibited, until
 - a. the final plan has been duly prepared, submitted, reviewed, approved and endorsed;
 - b. the original copy of the final plan so approved and endorsed by the Planning Board is duly recorded in the Cumberland County Registry of Deeds;
 - c. the Town's engineer has evaluated and verified the estimated costs of improvements;
 - d. an escrow account for field inspection and compliance work equivalent to two and one-half percent (2.5%) of the estimated cost of improvements is established with the Town Planner by the Developer to guarantee payment in advance of actual fees assessed pursuant to this Section; and
 - e. a performance guarantee in the form of a bond, letter of credit, irrevocable letter of credit, and such equivalent to the estimated cost of improvements is evaluated and accepted by the Town Manager.
- 2.) If the balance in the escrow account is drawn down by seventy-five percent (75%), the Developer is required to place an additional amount in escrow to cover the remaining inspection and compliance work. Such monitoring will not in any way hold the Town liable for quality of improvement(s). All grades, materials, engineering and construction techniques are the responsibility of the Developer
- 3) Any excess amount deposited with the Town in advance will be promptly refunded when it is determined that the work has been completed to the satisfaction of the Town after receipt of as-built record drawings.
- 4) If the Town's Engineer finds, upon inspection of the improvements performed before expiration date of the performance guarantee or bond, that any of the required improvements have not been constructed in accordance of plans and specifications filed by the developer, he shall so report to the Town Manager. The Town Manager shall then notify the developer and, if necessary, the bonding company or other financial institution providing the performance guarantee, and take all necessary steps to preserve the Town's rights under the bond or guarantee. The Town shall issue no Certificate of Occupancy for the project until (1) all monitoring fees are paid in full, (2) all required improvements have been constructed in substantial accordance with the approved plans and specifications, except as expressly authorized to the contrary by the Planning Board and the developer has submitted an accurate set of "as built" record drawings that include all improvements constructed to date.

Prior to issuing the final certificate of occupancy, the Developer must submit an accurate final set of "as built" record drawings that include:

- a. public and private roads and sidewalks
 - b. All utilities, including but not limited to, water systems, sewer systems, and electrical systems,
 - c. all fire ponds
 - d. all drainage structures, and
 - e. any work items designated by the Planning Board as a public or quasi-public improvement.
5. If at any time before or during the construction of the required improvements the developer demonstrates to the satisfaction of the Town's Engineer that unforeseen conditions make it necessary or preferable to modify the location or design of such required improvements, the Town's Engineer may authorize modifications, provided that these modifications are within the spirit and intent of the Planning Board's approval, that they do not materially affect the criteria and standards employed by the Planning Board during its review, and that they do not substantially alter the function of any public improvements required by the Board. The Town's Engineer shall issue any authorization under this provision in writing and shall transmit a copy of such authorization to the Planning Board at its next regular meeting.

SECTION VIII - PROCEDURES FOR MAJOR DEVELOPMENTS

Improvement guarantee - The Planning Board may require the posting of an improvement guarantee in such amount as is reasonably necessary to ensure the proper installation and one year of maintenance of all off-site improvements required as conditions of approval. The nature and duration of the guarantee shall be structured to achieve this goal without adding unnecessary costs to the applicant.

a. Application

1. As a condition of final site plan approval, the Planning Board may require and shall accept in accordance with the standards adopted by ordinance, the following guarantees:
 - a. The furnishing of a performance guarantee in an amount equal to one hundred twenty five percent (125%) of the cost of installation for proposed public or quasi-public off-site improvements.

- b. Provision for a maintenance guarantee for a period not to exceed one (1) year after final acceptance of the improvement, in an amount not to exceed fifteen (15%) percent of the cost of the improvement. In the event improvements are covered by a performance or maintenance guarantee to another governmental agency, which guarantee is at least as stringent as that required hereunder, no performance or maintenance guarantee, as the case may be, shall be required by the Planning Board for such improvements.
 - c. The time allowed for installation of the off-site improvements for which the performance guarantee has been provided may be extended by the Planning Board, but for no more than two additional years.
2. Upon substantial completion of all required improvements, the developer shall notify the Planning Board of the completion or substantial completion of improvements, and shall send a copy of such notice to the appropriate municipal officials: the Director of Planning and Zoning, the Fire Chief, and/or the Town Engineer. The respective municipal officials shall inspect all improvements of which such notice has been given and shall file a report with the Planning Board indicating either approval, partial approval, or rejection of such improvements with a statement of reasons for any rejection. The cost of the improvements as approved or rejected shall be set forth.
 3. The Planning Board shall approve, partially approve, or reject the improvements on the basis of the report of the municipal officials.
 4. Where partial approval is granted, the developer shall be released from all liability except for that portion of improvements not yet approved.
 - a. Form of Guarantee

Performance and maintenance guarantees may be provided by a variety of means including, but not limited to, the following which must be approved as to form and enforceability by the Town Manager and Town Attorney:

- 1) Security Bond. The applicant may obtain a security bond from a surety bonding company authorized to do business in the state.
- 2) Letter of Credit. The applicant may provide an irrevocable letter of credit from a bank or other reputable lending institution.
- 3) Escrow Account. The applicant may deposit cash, or other instruments readily convertible into cash at face value into a non interest bearing account with the Town. The applicant shall enter into an escrow agreement with the Town, which shall stipulate that the Town can withdraw the money, upon forty-eight (48) hour advance notice to the applicant.