

**COMMUNITY SEPTIC MANAGEMENT  
PROGRAM BETTERMENT LOANS**

**HOMEOWNER PACKAGE**

# **COMMUNITY SEPTIC MANAGEMENT PROGRAM**

**This package is comprised of seven sections.**

**Section 1: A Summary of the program.**

**Section 2: The Homeowner Package. The third and fourth page of this section, Application Form, must be completed and returned to the Health Department.**

**Section 3: The Betterment Agreement. The first, second and last page of this section must be completed and returned to the Health Department.**

**Section 4: Initial septic Repair Costs. The first page of this section must be completed and returned to the Health Department.**

**Section 5: Homeowner Septic Repair Program. This section gives information for low interest loans from participating lenders.**

**Section 6: Information for tax credits for septic repairs.**

**Section 7: Letter for the Assessor's Office.**

**All parties that are on the mortgage and deed must sign sections 1,2,3,4,7**

## **COMMUNITY SEPTIC MANAGEMENT PROGRAM**

### **GENERAL**

The Town of Middleborough has received approval by Town Meeting vote to enact the Community Septic Management Program. This septic system replacement program, provided through the Department of Environmental Protection (DEP), makes available a loan to homeowners in our community within an environmentally sensitive area, as outlined herein. **TO QUALIFY YOU MUST HAVE A FAILED SEPTIC SYSTEM.**

A failed septic system should have a certification, stating such, issued by a DEP approved system inspector, engineer or Town Health Officer.

### **ELIGIBLE ITEMS**

The loan will consist of combining all costs associated with septic system repair, replacement or upgrading. This includes property line determination, soil evaluation, septic system design and general construction and installation. Any ancillary items that may be required will be determined eligible by the Town of Middleborough or designee.

### **LOAN TERMS**

The loan terms will be a five percent loan, to be paid over 5, 10, 15 or 20 years. Payment will be annually which will be reflected on your Fall real estate bill.

The loan will be secured as a betterment assessment against your property. The betterment assessment may be paid off at any time, or when you sell your home, without penalty. You will be expected to make payment upon receipt of the first tax bill received, after the Certificate of Compliance is issued by the Health Department for the completed and accepted Title 5 designed and installed septic system.\*

### **ENVIROMENTALLY SENSITIVE AREAS**

The Town of Middleborough has determined that the following areas are environmetally sensitive areas.

**\*Note:** The initial bill may be a separate bill. Subsequent bills will be included on your tax bill.

The Town has designated a plan or map in order to provide an outline of environmentally sensitive areas. Other areas, not outlined on the map at this point in time, shall be determined by the Town, on a case-by-case basis until finalization of environmentally sensitive areas are completed.

1. Woods Pond Area
2. Tispaquin Pond Area
3. Pocksha Pond Area
4. Assawompsett Pond Area
5. Areas within Zone II and III of the Town's groundwater wells.
6. Areas within 500 feet of any stream, river, waterway, or resource area.

The Town may designate specific environmentally sensitive areas as having a higher priority than others, based on the number of applications that are received.

### **APPLICATION PROCESS**

Should you, as a resident and homeowner of the Town of Middleborough, qualify, then complete the attached application and submit it to the Health Department. You will be notified of your eligibility. You should be aware that the Town may exhaust available monies, made available by DEP. If so, then you may be placed on a waiting or "Priority List", until additional monies become available.

### **THE PROCESS**

Upon approval of your application, you will be expected to sign a Betterment Agreement with the Town of Middleborough. The Betterment Agreement outlines the terms of the loan and what is expected of both parties. Have your attorney review the Agreement, if you find it necessary.

Once the agreement is signed, then you may proceed as follows:

1. **OBTAIN BIDS**

You **MUST** obtain bids from engineers and/or general contractors (vendors) on your own. It is recommended that you obtain at least three (3) bids. This will allow you to obtain the most effective price. It is up to you, the homeowner, to select the vendor that you feel most comfortable with. It does not necessarily have to be the lowest bidder. You will enter into a signed contract with the vendor(s). You may want to consider having the design engineer serve as the inspector of the general contractor's work and coordinator of submitting bills to the Health Department.

Upon completion of the engineering evaluation and design and the general construction, the Health Department will inspect and issue a Certificate of Compliance for the septic system. This is the end of the project. A final check may be issued to the engineer and general contractor, provided that all work has been performed satisfactorily and an As-Built Plan has been submitted to the Health Department.

**Engineers and general contractors will be expected to submit bills to you. You will be expected to review the bill, approve it and forward it to the Health Department at the Town Financial Office Building.**

**Dear Homeowner:**

**This package provides information for you, the homeowner, to apply for a septic system betterment loan. This loan is provided through the Department of Environmental Protection at a five percent (5%) interest rate for a period of 5, 10 , 15 or 20 years. There is no credit check required. The loan process is reviewed and approved by the Health Department and you will be notified within two (2) weeks of your standing.**

**Attached are various documents for your review. These documents are outlined as follows:**

### **APPLICATION**

**This application must be completed and submitted to the Health Department which will confirm your interest in the program.**

### **HOMEOWNER CHECKLIST FOR ENGINEERING DESIGN:**

**This checklist contains a series of queries to ask an engineer, septic system inspector or a soil evaluator. These disciplines are necessary to initially inspect (System Inspector), perform a soil evaluation and percolation test (Soil Evaluator) and design a septic system (Civil or Sanitary Engineer). ALL MUST BE CERTIFIED AND LICENSED BY THE COMMONWEALTH OF MASSACHUSETTS. Ask to see their license or certification.**

### **HOMEOWNER CHECKLIST FOR A GENERAL CONTRACTOR**

**This checklist allows you to question a general contractor who may be bidding on the Health Department approved septic design plans.**

### **BETTERMENT AGREEMENT**

**The betterment agreement is the signed agreement between you, the homeowner, and the Town of Middleborough. This agreement may be reviewed by your attorney when provided to you by the Health Department. The agreement allows our community to provide you money to pay for the work that is agreed upon.**

# LOCAL SEPTIC MANAGEMENT PROGRAM

## APPLICATION FORM

COMMUNITY OF \_\_\_\_\_

### HOMEOWNERS INFORMATION:

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE (W) \_\_\_\_\_

PHONE (D) \_\_\_\_\_

### GENERAL INFORMATION

YES

NO

1. Has your septic system been failed by a certified inspector?
  - 1a. Does your system need to be pumped more than four (4) times per year?
2. Have you had a soil evaluation test and/or engineering plans for your system completed (or in process)?
3. Have you received estimates for engineering work?  
Have you received estimates for general contractor (installation) work?
4. Can your property lot lines be determined, so that the proposed septic system and soil absorption system be located without intruding on your neighbor's property?
5. Are you in an environmentally sensitive area? (check plan)  
Name of Area \_\_\_\_\_ No. \_\_\_\_\_

6. Can you be connected to our communities existing sewerage collection system?

7. If known, please provide information of the type and costs of the repairs?

Needs:

- a. Need new soil absorption system (SAS)
- b. Need entire new system
- c. Need repairs done to parts of system
- d. Want connection to our communities existing sewer system.

1. Engineering soil evaluation and design \$ \_\_\_\_\_

2. Estimated costs of repair replacement or connection \$ \_\_\_\_\_

3. Contingency amount (20%) \$ \_\_\_\_\_

Total Loan Estimate \$ \_\_\_\_\_

I (we) will agree to sign a betterment/loan agreement with the Town of Middleborough, to pay for the required costs associated with the septic system repair, and am aware that these costs will be treated as a municipal lien on my property tax bill.

This loan is contingent on the Town determining that my property lies within an environmentally sensitive area that is deemed to be fundable by the Town for that fiscal year.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Property Owner)

Board of Health Use Only:

Project Number \_\_\_\_\_

Environmental Area Number \_\_\_\_\_ Env. Area Priority No. \_\_\_\_\_

Date Accepted \_\_\_\_\_ Priority List No. \_\_\_\_\_



## **Local Septic Management Program Homeowner Checklist**

### **ENGINEERING SERVICES**

#### **Design Questions to Ask an Engineer Prior to Completing a Contract.**

**This check list will assist you the homeowner, in asking an engineer, who is proposing to evaluate and design a septic system improvement for you, appropriate questions that should assist you in determining their suitability to perform the work.**

#### **A. General Question**

- 1. Have you performed septic system design work (under the new Title 5 regulations issued by the Commonwealth in 1996) that has been approved by our local Board of Health or other regulating Department?**
- 2. When was the last year and how many septic systems have you submitted and received approval for by our Health Department?**
- 3. Do you have a current professional registration (civil or environmental) engineering registration provided by the Commonwealth of Massachusetts Engineering Board of Registration? Can you provide a copy for our records.**
- 4. Will you provide up to three most recent references for your work, from local community homeowners?**
- 5. Are you insured and do you carry professional liability insurance as required by the Commonwealth of Massachusetts and professional standards, as provided by the American Association of Professional Engineers?**

### **SYSTEM INSPECTOR**

#### **B. Initial Location and Inspection of the Septic System**

**There are numerous septic system inspectors, licensed by the Commonwealth of Massachusetts Department of Environmental Protection. These inspectors are not necessarily engineers, and may be a cost effective alternative to hiring an engineering firm to perform the inspection.**

- 1. We had (or haven't had) our septic system located and inspected. The Inspector deemed that the system has failed and under Title 5 criteria, must be replaced.**

**Will you review this inspection and ensure us that the Commonwealth's Title 5 regulations do indeed require replacement of the entire system or a part of the system.**

- 2. Our septic system has not been inspected, but we are having problems. Will you locate and sketch out the location and present system design and perform an inspection and provide options for us to consider, as outlined under the Title 5 regulations?**
- 3. Will you or a subcontractor perform the inspection?**

## **ENGINEERING DESIGN OF SEPTIC SYSTEM**

### **C. Design Questions**

**There are two components of septic system design. The first consists of noting where your property lines may be so that test holes can be dug. These holes will locate your soil absorption system, which handles the fluid part of septic wastes.**

**The first part also includes actually digging the test holes with a backhoe, performing a soil examination and "perc" test and then submitting the results to you, the homeowner and the Health Department.**

**This part of design does not have to be performed by a professional engineer, but can be done by a certified soil examiner (certified by the Commonwealth of Massachusetts). The results of the soil examination are submitted to the Health Department and you, the homeowner. The homeowner can then submit the results to a chosen registered professional engineering firm for design purposes.**

**These questions can be asked of either the professional design engineer or a chosen certified soil examiner.**

- 1. Will you charge us for determining where our property lines are located, or use general field work as determined from meeting with us today, as part of your design estimate?**
- 2. If you cannot determine from our provided plans, or locations of known property bounds, drill holes, stakes or other property line markings, what will be your limits to determine property lines for location of the septic system components and soil absorption system?**
- 3. How will the soil examination (percolation test) be performed, by you or a subcontractor? Will you be present to show the subcontractor where to dig the holes for location of the soil absorption system. Does the subcontractor and the heavy machine operator work directly for you, and do they carry the necessary liability insurance?**
- 4. Will they be responsible for calling Dig Safe, if required?**

5. Will the dug holes and tractor (tire) damages be filled in, graded and seeded and or left in the general construction state of disrepair?
6. When the soil examination is completed, will you submit a copy to us, the Board of Health and our chosen design engineer?
7. How will billing be performed? We may request that billing be performed in the following manner:

Number	Description	Percent of Cost
1.	Provide a written estimate for all phases of the proposed work:	
	<b>Inspection of System</b>	
	a. Initial inspection, location of system and written evaluation	
	1. Inspection and location	25%
	2. Written and signed evaluation	75%
	<b>Soil Evaluation and Percolation Testing</b>	
	a. Location of lot lines with side line stakes	
	b. Onsite backhoe for soil test with successful percolation test and soil examination	
	c. Written report and confirmation of submittal to local Health Department of certified test	75%
	d. Completion of backyard grading and cleanup	25%
2.	<b>Engineering Design</b>	
	a. Site visit and write up of estimate	
	b. Survey work for plan of work	
	c. Review of soil evaluation test and opinion to us as to the type of systems that could be installed, along with price estimates for each one.	
	d. Draft plans for review and approval of approved septic system. (We will provide permit fee for submittal to our Health Department at that time)	
	e. Final plans submitted to Health Department and a bill from you.	60%
	f. The Health Department approves the plan and we receive four copies for our use. Written specifications will be included with plans.	40%

**3. Engineering Oversight of Construction**

- a. Hourly charge for inspection of contractor's work.**
- b. Estimate of total time estimated for inspection and maximum costs.**
- c. Time to provide written change orders on site, to be included with hourly charge.**
- d. Billing to be done per inspection, with 10 days to pay.**

## Local Septic Management Program

### Homeowner Checklist

#### Questions to ask a General Contractor Prior to Agreeing to a Contract

This check list will assist you, the homeowner, in asking a general contractor questions, prior to signing a written agreement, for the improvement or installation of a septic system or a sewage connection.

#### A. General Questions

1. How many installations have you performed, under the old Title 5 regulations and under the new Title 5 regulations, and how long have you been in business?
2. How many have been done in Middleborough over the past two (2) years?
3. Would you say the Health Department and its agent have been satisfied with your work 100% of the time.
4. Are there any septic systems that you have worked on, or are presently working on that have not been completed? If so, why not?
5. How long will it be before you provide a written estimate, if we provide a set of plans and written specifications right now?
6. If your written estimate is submitted, based on our provided plans and written specifications, how long will it be before you show up on the job?
7. Will you break down the pay estimate in phases as outlined below:

Item	Description	% of Total
a.	Submit a written estimate and if accepted, a contract	
b.	Drop off materials and bring a machine to start digging	
c.	Complete installation of any required septic system components	
d.	Complete the soil absorption system	
e.	Obtain a successful inspection from the Board of Health	80%
f.	Cover the system to grade	
g.	Seed and loam as required	20%

8. Will you provide us three references of homeowners of your last three jobs?

9. **Do you carry insurance? If so, does it consist of:**
  - a. **Property Liability**
  - b. **Vehicle Liability**
  - c. **Workers Compensation (unless self employed)**
10. **How long will our toilets, dishwasher, sinks, etc. be off line (can't be used)?**
11. **How long will this job take from start until completion?**

**TOWN OF MIDDLEBOROUGH**  
**SEPTIC SYSTEM REPAIR PROGRAM**

**BETTERMENT AGREEMENT**

This Agreement is entered into by and between the Town of Middleborough (the "Town"), by the Health Department and Treasurer, and \_\_\_\_\_ (the "Owner(s)") this \_\_\_\_\_ day of \_\_\_\_\_ 20 .

Whereas, the Owner owns residential property, including improvements thereon, known as and numbered \_\_\_\_\_ (Assessors Map \_\_\_\_\_ Lot \_\_\_\_\_) and described in a deed dated \_\_\_\_\_ and recorded with the Plymouth County Registry of Deeds in Book \_\_\_\_\_ Page \_\_\_\_\_ (the "Property") and,

Whereas, the Owner has petitioned the Town to make findings pursuant to Massachusetts General Laws, Chapter 111; and

Whereas, the Health Department has made findings pursuant to M.G.L. c.111, that the on-site subsurface sewage disposal system serving the property (the "Failed System") exhibits one or more of the failure criteria set forth in Title 5 of the State Environmental Code 310CMR 15.000 ("Title 5"), such findings being made by the Health Department prior or during the course of proceedings conducted pursuant to M.G.L. c.111 s.1278 and

Whereas, the Health Department has adopted an Order requiring the Owner to repair, replace or upgrade the Failed System to comply with the requirements of said Title 5, and

Whereas, the Owner has, pursuant to M.G.L. c.111 s.1278 ½, applied to the Town for financial assistance to repair, replace, and/or upgrade the Failed System, and

Whereas, the Department of Environmental Protection ("DEP") has approved the Town's proposed program of offering betterments pursuant to M.G.L. c.111 s.1278 ½ to homeowners to repair, replace and/or upgrade their Failed System for financing under the Local Septic Management Program and the Town has received a State Revolving Fund ("SRF") loan from the Water Pollution Abatement Trust (the "Trust") to finance said betterment program, and

**Whereas, the Town intends to provide financial assistance to the owner in the form of a Betterment Agreement made pursuant to said M.G.L. c.111, §1278 ½ and funded from the SRF loan received by the Town under the Local Septic Management Program, and**

**Whereas, the parties intend by this Betterment Agreement to cause the repair, replacement and/or upgrade the failed system to comply with Title 5 and other applicable public health and environmental laws and to complete other work directly or indirectly related thereto (the “Project”) as described in Paragraph 4 hereof, and**

**Whereas, the parties intend to have the Project performed by one or more persons under contract to complete the project (the “Contractors”), and**

**Whereas, the public purpose of the project is to protect the public health, safety, welfare and the environment by the repair, replacement and/or upgrade of the failed system.**

**Now therefore, the parties, for and in consideration of mutual covenants and other good and valuable consideration, do hereby agree to the terms of this Agreement, as set forth below.**

### **The Agreement**

**The Town hereby agrees to provide financial assistance in an amount up to \$\_\_\_\_\_ to be advanced from time-to-time by the Town to the owner pursuant to the terms of this Agreement. The owner promises to repay, with interest as set forth herein, all sums provided by the Town. Following notice to the owner by the Town Collector of Taxes of the amount of the Betterment assessment an amortization schedule shall be developed and incorporated as an attachment to this Agreement.**

**Interest on the amounts advanced by the Town to owner shall be computed annually at the rate of five percent (5%) per annum on the outstanding principal balance, accruing from the 30<sup>th</sup> day after the Town Assessors commit the betterment assessment to the Town Collector of Taxes. The amount to be repaid shall be included on and paid with the semi-annual municipal tax bill. Interest amounts due prior to the inclusion of amounts due hereunder on the tax bill shall be paid pursuant to an interim bill.**

**Pre-payment in full or in part of all amounts advanced may be made by the owner without penalty.**

**This agreement represents the entire and integrated agreement between the parties and supercedes prior negotiations, representations or agreements, either written or oral. The Agreement may only be amended or modified by a written modification.**



## **Installment Payments**

**The Town shall make advances of funds to owner and contractor, pursuant to the terms of this Agreement from time-to-time to pay for the project. Such advances shall be made solely for the purposes set forth in this Agreement.**

**The obligation of the Town to advance all or any part of the financial assistance for repair, replacement and/or upgrade of the failed system is subject to the following:**

- (A) Inspection of the failed system by a representative of the Health Department or by a DEP Certified Septic System Inspector as deemed necessary by the Health Department:**
- (B) Submission by owner or contractor on behalf of the owner of plans approved by the Health Department for the project. In the event the owners seek an installment payment to pay for field work and preparation of plans for the project, the owner shall (1) solicit a bid or bids for the necessary field work and plan preparation from registered professional engineers or registered sanitarians, (2) shall submit documentation of these bids to the Town and (3) specify owner's choice of an engineer or santarian. The Health Department may approve an installment payment not to exceed the amount of the selected bid. An installment payment for field work and plan preparation shall be made by check payable jointly to the owner and the engineer or sanitarian and shall be payable upon presentation and approval of the plans:**
- (C) Submission to the Health Department by owner of the bid or bids for the project in accordance with the plans from licensed (including but not limited to a Disposal System Installer's Permit) insured septic system contractors, which bids shall contain detailed breakdowns of the cost of the project by tasks:**
- (D) Confirmation by the Health Department that the contractor for the construction of the project (the "Contractor") selected by the owner has a valid Disposal System Installer's Permit in effect for the time period covering the system upgrade financed under this Betterment Agreement.**
- (E) Review by the Health Department of a project budget based on the bid submitted by the contractor.**
- (F) Execution of a construction contract between the owner and the contractor pursuant to the plans and specifications which have been previously approved by the Health Department.**
- (G) Issuance by the Health Department of a Disposal System Construction Permit with respect to the project.**

### **Conditions for Payment**

**Installment payments of the financial assistance are to be made by the Town under the following conditions:**

- (A) An installment payment for field work and preparation of plans shall be made to the owner and engineer or sanitarian in accordance with Subsection (8) of Section 2.**
- (B) A final payment will be made to the owner and the engineer or santarian when the project is completed and an As-Built Plan is submitted and approved by the Health Department.**
- (C) A payment will be made to the owner and the contractor after the work has been completed in accordance with the approved plans and the contractor has submitted a sworn certificate that all materials, contractors, subcontractors and employees have been paid for work on or materials supplied for the project and the Health Department has issued a Certificate of Compliance for the project.**

### **Scope of Work for Project**

**The owner and the contractor, pursuant to the Disposal System Construction Permit issued by the Health Department shall determine the scope of the work necessary to bring the failed system into compliance with Title 5. Such scope of work may include, but not limited to:**

- (A) Performing soil and percolation tests and other necessary site analysis.**
- (B) Specification of the failed system components to be repaired, replaced and/or upgraded.**
- (C) Design of the system or components thereof to be repaired, replaced and/or upgraded.**
- (D) Obtaining all applicable Federal, State and Local Permits and approvals required to complete the work.**
- (E) Seeking bids and awarding contracts for assessment, design, consulting and construction work and materials in accordance with applicable laws, regulations and requirements.**
- (F) Minimizing any disruption of utility service, and reasonably restoring the property to as near its original condition as practicable and**
- (G) Engaging such other services and procuring such other materials shall be reasonably necessary to complete the project in a good and workman like manner.**

All such work shall be performed pursuant to written contracts and agreements, copies of which shall be incorporated by reference into this Agreement.

### **Town's Right to Inspect**

The owner agrees to allow DEP, the Health Department including its Town Manager/Health Agent and other officials, employees or agents to enter onto the property as is reasonably necessary and upon reasonable notice to test, examine and inspect the property to verify the completion and adequacy of the work.

### **Covenant Not to Sue**

The owner covenants and agrees not to sue the Town for any claims of damage to or loss of property of the owner for others, or for breach of warranty regarding the performance or condition of the project, or for injury, illness or death arising out of the performance of any contractors or agents engaged to perform the work. This Covenant Not to Sue provision shall have no application to causes of action which may have arisen prior to the execution of this Agreement or to causes of action that are unrelated to this Agreement or to causes of action against any person or entity other than the Town.

### **Owner's Representative and Warranties to the Town**

The Owner represents and warrants to the Town that:

- (A) **Financial Information:** The Borrower's Affidavit furnished to the Town by the owner is accurate and complete
- (B) **Title:** The owner has good record title to the property, subject to the Encumbrances of Record.
- (C) **Permits and Compliance With Law:** The owner has obtained or will obtain all necessary governmental permits for the project. The On-Site Sewage Disposal System for the dwelling on the property after completion of the project, will comply with all applicable laws, regulations, codes and ordinances, including but not limited to Title 5.
- (D) **Insurance:** The owner and contractor have procured or will procure insurance in such forms and in such amounts as shall be satisfactory to the Town. Certificates of Insurance shall be attached as Exhibits to this Agreement.

Each of the foregoing representations and warranties in this section shall remain in force until the financial assistance is repaid in full. The owner shall indemnify and hold harmless the Town from and against loss, expense, or liability (including costs of defending any claim), directly or indirectly from the falsity, inaccuracy, or breach of any of the above representations and warranties.

## **Owners Obligations**

During the term of the Betterment Agreement, the owner agrees that the owner shall comply with all of the terms and conditions of this and any related Agreement and that the owner shall:

- (A) **Completion of Project:** Cause the project to be promptly completed in a manner in accordance with the approved plans and with the project budget and in compliance with all applicable laws, regulations, codes and ordinances and notify the Town when the project is complete.
- (B) **Records and Cooperation with the Town:** Keep complete records relating to the project which records shall be available for inspection and copying by the Town, and cooperate fully with any audit of the project if so requested by the Town.
- (C) **Performacnce of Other Obligations:** Perform all the owner's obligations and agreements under any present or future Mortgage or other Covenant or Agreement which encumbers the property.
- (D) **Use of Financial Assistance:** The financial assistance is provided for the public purpose of protecting the public health, safety, welfare and the environment. The owner shall use the proceeds of the financial assistance soley for costs included in the project budget and ensure that the proceeds are not used for any other purpose.

## **Events of Default**

The owner shall be in default under this Agreement upon the occurrence of any one or more of the following events:

- (A) **Sale, Transfer or Assignment Without Approval:** The Owner assigns or transfers any money advanced, or to be advanced, to any person or entity not approved by the Town.
- (B) **Cessation of Construction:** The owner or contractor ceases construction of the project for more that 30 consecutive calendar days. The Health Department may waive this event of default upon application of the owner and a demonstration that such cessation occurred because of an Act of God, governmental order or restriction, fire, or other casualty, or other causes beyond the owner's reasonable control.
- (C) **False Representations or Warranties:** Any representations or warranty made herein shall prove to be false or inaccurate in any material respect.
- (D) **Breach of an Obligation:** The owner defaults in the performance of any of owner's obligations contained herein.

### **Town's Right on Default**

Upon owner's default, the Town shall have no further obligation to make any further installment payments and all amounts advanced by the Town to owner shall become immediately due and payable.

### **Notice of Betterment Agreement**

Upon execution of this Agreement by the owner and the Town, a Notice of this Agreement shall be recorded as a betterment and shall be subject to the provisions of M.G.L. c. 80 relative to apportionment, division, reassessment and collection of assessment, abatement and collection of assets, provided however, that the lien which shall arise pursuant to M.G.L. c.111, s1278 ½ shall take effect by operation of law on the day immediately following the due date of such assessment or apportioned part of such assessment. The Betterment Lien, if any, shall be deemed to secure all amounts advanced together with interest thereon, and shall include costs of collection and reasonable attorneys fees.

### **Improvements to the Property**

Any alterations or improvements to the property resulting from the project are the property of the owner, and the Town shall bear no responsibility for the condition of the improvement or its maintenance.

### **Cancellation of the Agreement by the Owner**

The owner may by written notice to the Health Department and the Treasurer of the Town cancel owner's further obligations for repayment under this Agreement at any time prior to the end of ten (10) calendar days following notice, in writing, to the Town of the owner's proposed successful construction bid based on the owner's evaluation of the proposed scope and cost estimate of the system upgrade derived from the field work, project, design and the successful construction bid. However, in the event of such cancellation, the owner shall remain liable for repayment of all sums advanced by the Town to the owner pursuant to this Agreement. All sums advanced by the Town to the owner shall be repaid with interest and within the term set forth in Paragraph 1 herof.

Upon application of the owner, the Health Department may revoke the Order for improvements, provided, however, that the owner shall remain liable to comply with the provisions of Title 5.

## **Personal Obligation of the Owner**

In addition to those remedies available to the Town regarding the assessment and collection of betterments, the owner shall be personally liable for the repayment of the amounts advanced, plus interest thereon and the total direct and indirect costs incurred by the Town in the contemplation and the performance of this Agreement or the project. After written request of the owner in connection with the purchase or transfer of the owner's entire interest in the property, the Town shall permit the assumption of the personal liability by said purchaser or transferee and shall release the personal liability of the owner. The assumption and release of liability shall be in writing and be executed prior to the purchase or transfer by the owner, the purchaser or transferee and the Treasurer of said Town.

## **Notice**

Any notice required to be given under this Agreement shall be made in writing and shall be delivered by either in-hand delivery or by certified return receipt mail.

If notice is made to the Town, it shall be made to:

The Health Department  
20 Centre Street  
Middleborough, MA 02346

If notice is made to the owner, it shall be made to:

Notice shall be deemed given on the day it is hand delivered or three (3) days after the date of posting of certified mailing.

## **Funding for the Agreement**

The obligations of the Town are expressly contingent upon funding. In the event that funding for the Town's obligation is unavailable, upon notice to the owner, this Agreement may be cancelled by the Town and all obligations of the Town shall be null and void.

## **Enforcement of Laws**

Nothing in this Agreement shall be deemed to stop or effect a waiver, or otherwise act as a bar or defense to any legal proceeding by the Town relating to the system or the property.

**Severability**

**In the event that one or more provisions of this Agreement is deemed unenforceable by a court of competent jurisdiction, the Agreement, except as deemed unenforceable, shall remain in full force and effect.**

**Governing Law**

**This Agreement shall be governed by Massachusetts law.**

**IN WITNESS WHEREOF, the undersigned parties have signed this Agreement as an instrument under seal this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.**

**Town of Middleborough  
By Town Manager**

**Owner**

\_\_\_\_\_

\_\_\_\_\_

**As to interest rate  
by Town Treasurer/Collector**

\_\_\_\_\_

**BETTERMENT ATTACHMENT**  
**COMMUNITY SEPTIC MANAGEMENT PROGRAM**  
**TOWN OF MIDDLEBOROUGH**  
**INITIAL SEPTIC REPAIR COSTS**

**HOMEOWNER** \_\_\_\_\_

**ADDRESS** \_\_\_\_\_

**LOAN NO.** \_\_\_\_\_

Based upon the best estimate for repairs, replacement or upgrade to the septic system located at the above address, the following costs are initially authorized as a commitment for the betterment loan.

**Engineering**                    \$ \_\_\_\_\_

**General Construction**        \$ \_\_\_\_\_

**Contingency**                    \$ \_\_\_\_\_

**Total Initial Loan**            \$ \_\_\_\_\_

**Signed** \_\_\_\_\_  
**(For the Town)**

**Signed** \_\_\_\_\_  
**(Homeowner)**

**Date** \_\_\_\_\_

**Date** \_\_\_\_\_

**Note: Attach to Betterment Agreement**



**FINAL BETTERMENT COSTS**

**FOR FORM 29 – STATE TAX FOM**

**HOMEOWNER NAME** \_\_\_\_\_

**ADDRESS** \_\_\_\_\_

**LOAN NO.** \_\_\_\_\_

**FINAL ENGINEERING, GENERAL CONSTRUCTION AND CONTINGENCY COSTS ARE:**

**THE AMOUNT OF** \_\_\_\_\_ **DOLLARS**  
**AND** \_\_\_\_\_ **CENTS** (\$ \_\_\_\_\_)

**SIGNED** \_\_\_\_\_  
**(FOR THE TOWN)**

**SIGNED** \_\_\_\_\_  
**(HOMEOWNER)**

**DATE** \_\_\_\_\_

\_\_\_\_\_





