SENATE DOCKET, NO. FILED ON: 1/16/2009

**SENATE . . . . . . . . . . . . . . No.**

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The Commonwealth of Massachusetts

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

PRESENTED BY:

**Karen E. Spilka**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General
 Court assembled:*

 The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act Relative to a Lien for Architects, Engineers, Land Surveyors, and Site Professionals .

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

PETITION OF:

|  |  |
| --- | --- |
| Name: | District/Address: |

The Commonwealth of Massachusetts

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**In the Year Two Thousand and Nine**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

An Act Relative to a Lien for Architects, Engineers, Land Surveyors, and Site Professionals.

 *Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1: The General Laws are amended by striking out Chapter 254 and hereby inserting in place thereof the following chapter: Chapter 254

Section 1. Labor, Professional Services performed; definitions, limitation on

lien; filing

 (a) As used in this chapter the following words shall, unless the context clearly requires otherwise, have the following meanings:—

(i) “Design professional” means a licensed architect, registered professional

engineer, registered land surveyor, and licensed site professional.

(ii) “Professional services” means those services performed by licensed

architects, registered professional engineers, registered land surveyors and licensed site

professionals and includes design, planning, construction administration and surveying

services.

(b) A person to whom a debt is due for personal labor or professional services performed in the design, planning, construction administration, surveying, erection, alteration, repair or

removal of a building or structure upon land or improvement or alteration to real property, by

virtue of an agreement with, or by consent of, the owner of such building or structure, or of a

person having authority from or rightfully acting for such owner in procuring or furnishing such

professional services or labor, shall, under the provisions of this chapter, other than section four,

have a lien upon such building or structure and upon such interest in such real property, land,

building, structure, or improvement owned by the party authorizing or consenting to said work or

professional services, for not more than thirty days’ work or services actually performed for the

ninety days next prior to his filing a statement as provided in section eight.

A person or his assignee, agent, authorized representative or third party beneficiary, to whom

amounts are due or for whose benefit amounts are computed and due for, or on the basis of, the

personal labor or professional services of such person, may file a lien to secure the payment of

such unpaid amounts including interest and agreed penalties for failure to pay the same.

Section 2. Written contract; notice; time for filing; form

A person entering into a written contract with the owner of any interest in real

property, or with any person acting for, on behalf of, or with the consent of such owner for the

whole or part of the design, planning, construction administration, surveying, erection, alteration,

repair or removal of a building, structure, or other improvement to real property, or for

furnishing material or rental equipment, appliances, or tools therefor, shall have a lien upon such

real property, land, building, structure or improvement owned by the party with whom or on

behalf of whom the contract was entered into, as appears of record on the date when notice of

said contract is filed or recorded in the registry of deeds for the county or district where such

land lies, to secure the payment of all labor, including construction management and general

contractor services, professional services and material or rental equipment, appliances, or tools

which shall be furnished by virtue of said contract. Said notice may be filed or recorded in the

registry of deeds in the county or registry district where the land lies by any person entitled

under this section to enforce a lien, and shall be in substantially the following form:

Notice is hereby given that by virtue of a written contract dated \_\_\_, between \_\_\_, owner, and

\_\_\_, contractor, or \_\_\_\_, design professional, said contractor or design professional is to furnish

or has furnished labor and material or professional services or rental equipment, appliances or

tools for the design, planning, construction administration, surveying, erection, alteration, repair

or removal of a building, structure, or other improvement on a lot of land or other interest in real

property described as follows:

(INSERT DESCRIPTION)

Such person may file or record the notice of contract at any time after execution of the written

contract whether or not the date for performance stated in such written contract has passed and

whether or not the work or services under such written contract has been performed, but not later

than the earliest of: (i) sixty days after filing or recording of the notice of substantial completion

under section two A; or (ii) ninety days after filing or recording of the notice of termination

under section two B; or (iii) ninety days after such person or any person by, through or under

him last performed services or performed labor or furnished labor or materials or both labor and

materials.

Section 2A. Written contract; substantial completion; definitions; notice; filing; form; certified mail

As used in this chapter the following words shall, unless the context clearly requires

otherwise, have the following meaning:—

“Substantial completion”, that work under the written contract is sufficiently complete so that it

can be occupied or utilized for its intended use.

“Written contract”, any written contract enforceable under the laws of the commonwealth.

Upon or after substantial completion of any contract subject to the provisions of section two, the

owner and contractor shall execute and file or record in the appropriate registry of deeds a notice

of substantial completion in substantially the following form:

Notice of Substantial Completion

Notice is hereby given that the work performed by virtue of a written contract dated \_\_\_ between

\_\_\_ as owner, and \_\_\_ \_\_\_ as contractor, for the erection, alteration, repair or removal of a

building, structure, or other improvement of real property described below, has been

substantially completed as of the date of filing or recording of this notice. The lot of land or

other interest in real property which is the subject of such contract is described as follows:

(Insert description)

The undersigned owner hereby states that he has served written notice of the recording or filing

of this notice of substantial completion upon every person who has filed or recorded prior to the

date this notice is filed or recorded notice of contract under section four of chapter two hundred

and fifty-four of the General Laws.

The undersigned contractor hereby states that he has served written notice of the recording or

filing of this notice of substantial completion upon every person who has entered into a written

contract directly with the contractor or who has given written notice of identification to the

contractor prior to the date this notice is filed or recorded as provided in said section four of said

chapter two hundred and fifty-four of the General Laws.

A copy of such notice, indicating the date of filing or recording, shall be mailed by certified mail

return receipt requested by the owner to every person who has filed a notice of contract under

section four and by the contractor to every person who has entered into a written contract

directly with the contractor and every person who has given written notice of identification to the

contractor claiming by, through, or under him as provided in section four.

The failure of the owner or contractor to give notice of the filing or recording of the notice of

substantial completion to those persons so entitled shall not prejudice the rights of third parties

who rely upon said notice of substantial completion in good faith and without actual knowledge

of such failure of notice.

Section 2B. Termination of written contract; notice; filing; form; certified

Mail

If, prior to the filing or recording in the registry of deeds and delivery of the copies

of the notice of substantial completion described in section two A, any contract subject to the

provisions of section two shall have been terminated, the owner shall execute and file or record

in the appropriate registry of deeds a notice of termination in substantially the following form:

Notice of Termination

Notice is hereby given that a written contract dated \_\_\_ between \_\_\_ as Owner and \_\_\_ as

Contractor, or \_\_\_ as Design Professional for the design, planning, construction

administration or surveying services, erection, alteration, repair or removal of a building,

structure or other improvement of real property described below, has been terminated. The lot of

land or other interest in real property which is the subject of such contract is described as

follows:

(Insert description)

The undersigned owner hereby states that he has served written notice of the recording or filing

of this notice of termination upon the contractor or design professional and every person who has

filed or recorded prior to this date a notice of contract under section four of chapter two hundred

and fifty-four of the General Laws.

A copy of such notice, indicating the date of filing or recording, shall be mailed by certified mail

return receipt requested by the owner to every person who has filed or recorded a notice of

contract under section four and to the contractor. Upon receipt of such notice from the owner, the

contractor shall deliver a copy of such notice to every person who has entered into a written

contract directly with the contractor or who has given to the contractor written notice of

identification in accordance with said section four.

The failure of the owner or contractor to give notice of the filing or recording of the notice of

termination to those persons so entitled shall not prejudice the rights of third parties who rely

upon said notice of termination in good faith and without actual knowledge of such failure of

notice.

Section 3. Repealed, 1996, 364

Section 4. Subcontractors; written contract; notice; filing; form; indirect

contractual relationship; notice of identification

Whoever furnishes labor, including subcontractor construction management services,

or who furnishes material, or both labor and material, or furnishes rental equipment, appliances

or tools, under a written contract with a contractor, or with a subcontractor of such contractor,

may file or record in the registry of deeds for the county or district where such land lies a notice

of his contract substantially in the following form:

Notice is hereby given that by virtue of a written contract dated

\_\_\_, between \_\_\_ \_\_\_ contractor (or subcontractor) and \_\_\_ said \_\_\_ is to furnish or has

furnished labor or material, or both labor and material, or is to furnish or has furnished rental

equipment, appliances or tools, in the erection, alteration, repair or removal of a building,

structure or other improvement of real property by \_\_\_, contractor, for \_\_\_, owner, on a lot of

land or other interest in real property described as follows:

(Insert description)

As of the date of this notice, an account of said contract is as follows:

1. contract price \_\_\_\_\_\_\_

2. agreed change orders \_\_\_\_\_\_\_

 (indicate whether addition or subtraction)

3. pending change orders: \_\_\_\_\_\_\_

(indicate whether addition or subtraction)

4. disputed claims \_\_\_\_\_\_\_

(indicate whether addition or subtraction)

5. payments received \_\_\_\_\_\_\_

The regular mailing address of the party recording or filing this notice is as follows: \_\_\_

Such person may file or record the notice of contract at any time after execution of the written

contract whether or not the date for performance stated in such written contract has passed and

whether or not the work under such contract has been performed, but not later than the earliest

of: (i) sixty days after filing or recording the notice of substantial completion under section two

A; or (ii) ninety days after filing or recording of the notice of termination under section two B; or

(iii) ninety days after the last day a person entitled to enforce a lien under section two or anyone

claiming by, through or under him performed or furnished labor or materials or both labor and

materials to the project or furnished rental equipment, appliances or tools.

Such notice may also be filed by a person or his assignee, agent, authorized representative or

third party beneficiary to whom amounts are due or for whose benefit amounts are computed and

due for or on the basis of the labor of that person performing labor under a written contract with

a contractor, or with a subcontractor of such contractor and the person filing such notice shall not

be required to itemize the amount of the contract, the amount of pending changes in the contract,

the amount of outstanding claims or the amount paid in such notice.

Upon filing or recording a notice, as hereinbefore provided, and giving actual notice to the

owner of such filing, the subcontractor shall have a lien upon such real property, land, building,

structure or improvement owned by the party who entered into the original contract as appears of

record at the time of such filing, to secure the payment of all labor and material and rental

equipment, appliances or tools which he is to furnish or has furnished for the building or

structure or other improvement, regardless of the amount stated in the notice of contract. Such

lien shall not exceed the amount due or to become due under the original contract as of the date

notice of the filing of the subcontract is given by the subcontractor to the owner.

If the person claiming a lien under this section has no direct contractual relationship with the

original contractor, except for liens for labor by persons defined in section one of this chapter,

the amount of such lien shall not exceed the amount due or to become due under the subcontract

between the original contractor and the subcontractor whose work includes the work of the

person claiming the lien as of the date such person files his notice of contract, unless the person

claiming such lien has, within thirty days of commencement of his performance, given written

notice of identification by certified mail return receipt requested to the original contractor in

substantially the following form:

Notice of Identification

Notice is hereby given to \_\_\_, as contractor, that \_\_\_, as subcontractor/vendor, has entered into a

written contract with \_\_\_ to furnish labor or materials, or labor and materials, or rental

equipment, appliances or tools to a certain construction project located at\_\_\_ (Street Address), \_\_\_ (Town or City), Massachusetts. The amount or estimated amount of said contract is $\_\_\_. (No amount need be stated for contracts for the rental of equipment, appliances or tools).

The amount stated in any such notice of identification shall not limit the amount of the lien. Any

inaccuracy in the naming of the contractor or other information in such notice shall not affect its

validity provided there shall be actual notice.

Section 4A. Design Professionals; written contract; notice; filing; form; subconsultants

Design professionals who provide professional services under a written contract

with an Owner may file or record in the registry of deeds for the county or district where such

land lies a notice of his contract substantially in the following form:

Notice is hereby given that by virtue of a written contract dated\_\_\_, between \_\_\_ \_\_\_ design professional and \_\_\_ said \_\_\_ has provided design, planning, construction administration or surveying services relating to a building, structure or other improvement of real property by \_\_\_, design professional for \_\_\_, owner, on a lot of land or other interest in real property described as follows:

(Insert description)

As of the date of this notice, an account of said contract is as follows:

1. contract price \_\_\_\_\_\_\_

2. payments received \_\_\_\_\_\_\_

3. amount owed \_\_\_\_\_\_

The regular mailing address of the party recording or filing this notice is as follows: \_\_\_

Such person may file or record the notice of contract at any time after execution of the written

contract whether or not the date for performance stated in such written contract has passed and

whether or not the services under such contract have been provided, but not later than the earliest

of: (i) sixty days after filing or recording the notice of substantial completion under section two

A; or (ii) ninety days after filing or recording of the notice of termination under section two B; or

(iii) ninety days after the last day a person entitled to enforce a lien under section two or anyone

claiming by through or under him performed or furnished labor or materials or both labor and

materials to the project or furnished rental equipment, appliances or tools.

Such notice may also be filed by a person or his assignee, agent, authorized representative or

third party beneficiary to whom amounts are due or for whose benefit amounts are computed and

due for or on the basis of the services of that person providing services under a written contract

and the person filing such notice shall not be required to itemize the amount of the contract, the

amount of outstanding claims or the amount paid in such notice.

Upon filing or recording a notice, as hereinbefore provided, the design professional shall have a

lien upon such real property, land, building, structure or improvement owned by the party who

entered into the original contract as appears of record at the time of such filing, to secure the

payment of all professional services provided for the building or structure or other improvement,

regardless of the amount stated in the notice of contract.

If the person claiming a lien under this section has no direct contractual relationship with the

owner, but is a licensed architect or registered professional engineer acting as a sub-consultant,

the sub-consultant shall, after filing or recording a notice, and giving actual notice to the owner

of such filing, have a lien upon such real property, land, building, structure or improvement

owned by the party who entered into the original contract with the licensed architect or

registered professional engineer.

Section 5. Enforcement of lien; procedure

A lien upon land for the design, planning, construction administration, or surveying

services, erection, alteration, repair or removal of a building or other structure or other

improvement of real property or a lien established under section seventy-six of chapter sixty-three, section six of chapter one hundred and eighty-three A, or subsection (a) of section twenty-nine of chapter one hundred and eighty-three B shall be enforced by a civil action brought in the

superior court for the county where such land lies or in the district court in the judicial district

where such land lies. The plaintiff shall bring his action in his own behalf and in behalf of all

other persons in interest who shall become parties. An attested copy of the complaint, which

shall contain a brief description of the property sufficient to identify it, and a statement of the

amount due, shall be filed in the registry of deeds and recorded as provided in section nine

within thirty days of the commencement of the action, or such lien shall be dissolved. All other

parties in interest may appear and have their rights determined in such action, and at any time

before entry of final judgment, upon the suggestion of any party in interest that any other person

is or may be interested in the action, or of its own motion, the court may summon such person to

appear in such cause on or before a day certain or be forever barred from any rights thereunder.

The court may in its discretion provide for notice to absent parties in interest. The terms “party

in interest” and “person in interest”, as used in this chapter, shall include mortgages and

attaching creditors.

Section 5A. Court order authorizing sale of real estate; procedure

Section 5A. When the amount of a lien under section six of chapter 183A or under section 29 of

chapter 183B has been established by a court, the court shall enter an order authorizing the sale

of the real estate to satisfy such lien. The lienor may do all acts authorized by such order, but no

sale pursuant to such order shall be effectual unless, previous to such sale, notice thereof has

been published once in each of three successive weeks, the first publication to appear not less

than twenty-one days before the date of such sale, in a newspaper published in the town where

the land lies or, if no newspaper is published in such town, in a newspaper published in the

county where the land lies, and this provision shall be implied in every court order for sale

hereunder in which it is not expressly set forth. A newspaper which by its title page purports to

be printed or published in such town, city or county, and having a circulation therein, shall be

sufficient for the purpose.

For a lien under chapter 183A, such form shall be printed in substantially the following form:

SALE OF REAL ESTATE

UNDER GLM 183A:6

By virtue of a Judgment and Order of the \_\_\_ Court (docket no. \_\_\_) in favor of \_\_\_ against \_\_\_

establishing a lien pursuant to GLM 183A:6 on the real estate known as Unit \_\_\_ of the \_\_\_

Condominium for the purpose of satisfying such lien, the real estate will be sold at Public

Auction at \_\_\_ o’clock \_\_\_. M. on the \_\_\_ day of \_\_\_ A.D. (insert year) at \_\_\_\_. The premises to

be sold are more particularly described as follows:

Description: (Describe premises exactly as in the deed, including all references to title,

restrictions, encumbrances, etc.)

Terms of sale: (State the amount, if any, to be paid in cash by the purchaser at the time and place

of the sale, and the time or times for payment of the balance or the whole as the case may be.)

Other terms to be announced at the sale.

(Signed)\_\_\_ \_\_\_

Lienholder

\_\_\_(insert year)

For a lien under chapter 183B, such form shall be printed in substantially the following form:

SALE OF REAL ESTATE

UNDER GLM 183B:29

By virtue of a Judgment and Order of the \_\_\_ Court (docket no, \_\_\_) in favor of \_\_\_ against \_\_\_

establishing a lien pursuant to GLM 183B:29 on the time-share known as \_\_\_ of the

\_\_\_ for the purpose of satisfying such lien, the time-share will be sold at Public Auction at \_\_\_

o’clock \_\_\_.M. on the \_\_\_ day of \_\_\_ A.D. 19\_\_\_ at \_\_\_. The premises to be sold are more

particularly described as follows:

Description: (Describe premises exactly as in the deed, including all references to title,

restrictions, encumbrances, etc.)

Terms of sale: (State the amount, if any, to be paid in cash by the purchaser at the time and place

of the sale, and the time or times for payment of the balance or the whole as the case may be.)

Other terms to be announced at the sale.

(Signed)\_\_\_ \_\_\_

Lienholder

\_\_\_ 19

Such notice of sale in the above form, published in accordance with the provisions of this

section, together with such other or further notice, if any, required by the court, shall be deemed

a sufficient notice of the sale and the premises shall be deemed to have been sold, and the deed

thereunder shall convey the premises, subject to, and with the benefit of, all restrictions,

easements, improvements, outstanding tax titles, municipal or other public taxes, assessments,

and first mortgages recorded prior to the recording of the complaint, whether or not reference to

such restrictions, easements, improvements, outstanding tax titles, municipal or other public

taxes, assessments, or first mortgages is made in the deed; but no purchaser at such sale shall be

bound to complete the purchase if there are encumbrances, other than those included in the

notice of the sale, which are not stated at the sale and included in the auctioneer’s contract with

the purchaser. Notwithstanding the foregoing, the premises shall be deemed to have been sold,

and the deed thereunder shall convey the premises, as otherwise provided above but free of said

first mortgages, if as of the date of such sale there are unpaid common expense assessments,

costs, or reasonable attorneys’ fees the lien for which is given priority over said first mortgages

in subsection (c) of section six of chapter one hundred and eighty-three A. Any sale pursuant to

this section shall convey the premises free of any right of redemption.

The person or entity selling, or their attorney, may cause a copy of the notice and an affidavit,

stating that the requirements of the court order and of this section have been complied with, to be

recorded with a note of reference thereto on the margin of the record of the complaint previously

recorded, and such affidavit or a certified copy of the record thereof shall be admitted as

evidence that the sale was duly executed.

For the purposes of this section, the term “recorded” shall mean recorded in the registry of deeds

or land registration office for the county or district where the land lies.

Section 6. Public property; exemption

No lien shall attach to any land, building or structure thereon owned by the

commonwealth, or by a county, city, town, water or fire district.

Section 7. Mortgages; invalidity of subsequent liens

 (a) No lien under section one shall avail against a mortgage duly registered or

recorded unless the work or labor performed or professional services provided is in

design, planning, construction administration or surveying services, erection, alteration, repair or

removal of a building, structure, or other improvement to real property which design, planning,

construction administration or surveying services, erection, alteration, repair, removal, or

improvement was actually begun prior to the recording of the mortgage.

(b) No lien under section two shall avail as against a mortgage duly registered or recorded to the

extent of amounts actually advanced or unconditionally committed (i) prior to the filing or

recording of the notice of contract, and (ii) after the filing or recording of the notice of contract

but within twenty-five days after the last day of the period stated in an accurate duly executed

partial waiver and subordination of lien in the form required by section thirty-two, except for the

amount of retainage accurately stated in such partial waiver and subordination of lien.

(c) No lien under section four shall avail against a mortgage actually existing and duly registered

or recorded to the extent of the amount actually advanced or unconditionally committed prior to

the filing or recording in the registry of deeds of the notice required by section four.

(d) No lien under section two or four of this chapter shall avail as against a purchaser, other than

the owner or person acting for or on behalf of, or with the consent of such owner who entered

into the written contract on which the lien is based, whose deed or other instrument of title was

duly registered or recorded prior to the filing or recording of such notices under said section two

or four.

Section 8. Statement of amount due; time for filing; dissolution of lien

Liens under sections two and four shall be dissolved unless the contractor, subcontractor, design professional or some person claiming by, through or under them, shall, not later than the earliest of: (i) ninety days after the filing or recording of the notice of substantial completion under section two A; (ii) one hundred and twenty days after the filing or recording of the notice of termination under section two B; or (iii) one hundred and twenty days after the last day a person, entitled to enforce a lien under section two or anyone claiming by, through or under him, performed or furnished labor or material or both labor and materials or provided professional services or furnished rental equipment, appliances or tools, file or record in the registry of deeds in the county or district where the land lies a statement, giving a just and true account of the amount due or to become due him, with all just credits, a brief description of the property, and the names of the owners set forth in the notice of contract. A lien under section one shall be dissolved unless a like statement, giving the names of the owner of record at the time the work was performed or at the time of filing the statement, is filed or recorded in the appropriate registry of deeds within the ninety days provided in said section. Nothing in this section shall prohibit the filing or recording of a statement under this section prior to the filing or recording of

the notices under section two A or two B.

Section 9. Notice or statement; public inspection; recording

Any notice or any statement provided for in this chapter shall remain in the custody of

the register and be open to public inspection. He shall record it in a book kept therefor, but the

items of the account, except the total amount claimed due, may be omitted from the record.

Section 10. Dissolution by notice

The lien of any person may, so far as his interest is concerned, be dissolved by a

notice signed by him, stating that his lien is dissolved, filed in the registry of deeds where the

notice of the contract is filed under which contract the lien is claimed.

Section 11. Action to enforce lien; time to commence; validity of lien

The lien shall be dissolved unless a civil action to enforce it is commenced within

ninety days after the filing of the statement required by section eight. The validity of the lien

shall not be affected by an inaccuracy in the description of the property to which it attaches, if

the description is sufficient to identify the property, or by an inaccuracy in stating the amount

due for labor or material or design, planning, construction administration or surveying services

unless it is shown that the person filing the statement has willfully and knowingly claimed more

than is due him.

Section 12. Written contract; recording of bond; form; enforcement

Any person, including the owner, in interest in connection with a written contract

covered by section two or section four may cause to be recorded in the registry of deeds in the

county or district where the land lies a bond of a surety company authorized to do a surety

business in Massachusetts and in a penal sum equal to the contract sum or, if the contract does

not contain a contract sum, in a penal sum equal to that person’s fair estimate of the contract

sum, all as set forth in the certificate on the bond. The bond shall describe the land in such detail

as is required in a common conveyance of land, and shall be in the following form:—

Know All Men By These Presents:

That we \_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_ in the County of \_\_\_\_\_\_\_\_ and Commonwealth of

Massachusetts, as principal, and \_\_\_\_\_\_\_\_ a surety company organized under the laws of

\_\_\_\_\_\_\_\_ and authorized to do business in the Commonwealth as a surety company, are holden

and stand firmly bound and obliged unto \_\_\_\_\_\_\_\_ Register of Deeds for the \_\_\_\_\_\_\_\_ District,

County of \_\_\_\_\_\_\_\_\_\_\_\_, in the principal sum of \_\_\_\_\_\_\_\_\_\_ Dollars ($ ) to be paid unto said

Register and his successors in said office, to which payment, well and truly to be made, we bind

ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally,

firmly by these presents.

Whereas, said principal is interested in the erection, alteration, repair or removal of a building or

structure on a certain lot of land situated within the \_\_\_ Registry District in the Commonwealth,

bounded and described as follows:

(Insert description)

and desires to free said land from liens for all labor and all labor and materials entitled to lien

protection under chapter 254 and amendments thereto;

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall pay for all

labor and for all labor and materials entitled to lien protection under chapter 254 and

amendments thereto under the contract referred to in the Certificate in this bond, irrespective of

any agreement made between him and the owner or any other persons now interested or who

may hereinafter be interested therein, then the above written obligation shall be null and void,

otherwise to remain in full force and effect.

This bond is made for the use and benefit of all persons entitled to file the documents for lien

protection as provided in Massachusetts General Laws, chapter 254 and they and each of them

are hereby made Obligees hereunder, and in case of the failure of the principal to carry out the

provisions of this bond made for their use and benefit they and each of them may sue hereon in

their own name.

Signed, sealed and delivered this \_\_\_\_ day of \_\_\_\_, (insert year).

Principal

By

Surety

By

Certificate

\_\_\_\_, principal on the above bond, hereby certify that the (estimated) contract price for the

proposed work to be performed on the land described in the above bond under a written contract

between \_\_\_\_ and \_\_\_\_ dated \_\_\_\_, \_\_\_\_, (insert year), is \_\_\_\_ Dollars ($ ).

(Signed)

After the recording of any such bond no lien under this chapter shall thereafter attach in favor of

any person entitled to the benefit of such bond and not named as a principal thereon for labor or

for labor and materials performed under the contract in respect to which such bond is given.

The register of deeds shall refuse to record the said bond if it be defective in form or substance,

but no party to any such bond shall be discharged by any defect therein as against any party who

has in good faith allowed his lien to be dissolved by lapse of time in reliance on the bond. The

bond may be enforced by a civil action in the superior court or district court brought by any party

in interest. An attested copy of the complaint shall be filed and recorded in the registry of deeds.

No suit or action on the bond shall be commenced after the expiration of ninety days after the

claimant filed the statement required by section 8. Such bond shall not create any rights which

the claimant would not have had, or impair any defense which the obligors would have had, in an

action to enforce a lien.

Section 13. Attachments

The rights of an attaching creditor shall not prevail as against a lien under section

one, nor against the claim of a lienor where notice or notices of contract have been filed or

recorded in the registry of deeds under sections two and four prior to the recording of the

attachment. An attachment recorded prior to the filing or recording of the notice of contract shall

prevail against a lien, other than for personal labor or professional services, to the extent of the

value of the buildings and land as they were at the time when the labor was commenced or the

material furnished or professional services were commenced for which the lien is claimed, and in

case of a sale under section eighteen the court shall determine what proportion of the proceeds of

the sale, as derived from the value of the property at such time, shall be held subject to the

attachment. If the attaching creditor recovers judgment, the proceeds so held subject to his

attachment, or as much thereof as may be necessary, shall be applied upon his execution, and the

residue, if any, shall be disposed of in the same manner as if there had been no such attachment.

If the interest of the owner of the property is attached after the filing of the notice, the proceeds

of any sale of the property under said section eighteen, after discharging all prior liens and

claims, shall be applied to satisfy the execution of the attaching creditor, provided the lienor or

the officer making the sale has actual notice of the attachment. Several attaching creditors as

between themselves shall be paid according to the order of their attachments. Liens of a trustee

or trustees of a fund or funds, described in section one, providing coverage or benefits for

persons shall be considered as liens for personal labor.

Section 14. Dissolution by bond recording; labor and materials; form of bond

Any person in interest may dissolve a lien under this chapter by recording or causing

to be recorded in the registry of deeds in the county or district where the land lies, a bond of a

surety company authorized to do business in Massachusetts and in a penal sum equal to the

amount of the lien sought to be dissolved conditioned for the payment of any sum which the

claimant may recover on his claim for labor or labor and materials. Upon the recording of the

bond, the lien shall be dissolved. Notice of the recording shall be given to the claimant by

serving on the claimant a copy of the notice of recording together with a copy of the bond by an

officer qualified to serve civil process or by delivering same to the claimant. The claimant may

enforce the bond by a civil action commenced within ninety days after the later of the filing of

the statement required by section 8 or receipt of notice of recording of the bond, but such bond

shall not create any rights which the claimant would not have had, or impair any defense which

the obligors would have had, in an action to enforce a lien.

The bond shall be in the following form:

Know All Men By These Presents:

That we, \_\_\_ as principal and \_\_\_ duly organized to transact business as a surety within the

Commonwealth of Massachusetts, as surety, are holden and stand firmly bound and obliged unto

\_\_\_ in the penal sum of \_\_\_ Dollars ($\_\_\_), to the payment of which we bind ourselves, our

heirs, successors and assigns, jointly and severally by these presents.

Whereas, under date of \_\_\_, the said obligee recorded a notice of contract in the registry of

deeds, as Instrument #\_\_\_, in Book \_\_\_ at Page \_\_\_ upon premises more fully described in said

notice, and

Whereas, the principal desires to dissolve said lien in accordance with the provisions of section

fourteen of chapter two hundred and fifty-four of the General Laws.

Now, therefore, the condition of this obligation is such that if the said principal shall pay to the

said obligee all sums which shall be adjudged in favor of the said obligee in an action brought

under the provisions of said section fourteen, this obligation shall be void, otherwise to remain in

full force and effect.

In witness whereof, the aforesaid principal and surety have executed this instrument under seal

this \_\_\_ day of \_\_\_ (insert year).

Principal

by\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Surety

by\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Section 15. Dissolution by judgment

If it appears to the court that no person is entitled to a lien, or that every lien has been

discharged by payment thereof, judgment shall be entered to the effect that the lien is dissolved,

and a certificate to that effect shall be sent forthwith by the clerk to the register of deeds. Such

certificate shall be filed and recorded in the manner provided in sections eight and nine.

Section 15A. Application to court for order ruling on or discharging lien

If any person in interest, including but not limited to an owner, contractor, design

professional or mortgage holder, claims (a) that any person who has provided labor or materials

or has agreed to provide funding, financing or payment for labor or materials, refuses to continue

to provide such funding, financing or payments of labor or materials solely because of the filing

or recording of a notice of contract pursuant to section two or a statement of claim referencing a

lien under section one, or (b) it appears from the notice of contract or a statement of account that

the claimant has no valid lien by reason of the character of, or the contract for, the labor or

materials or rental equipment, appliances or tools furnished and for which a lien is claimed, or

(c) that a notice or other instrument has not been filed or recorded in accordance with the

applicable provisions of this chapter, or (d) that for any other reason a claimed lien is invalid by

reason of failure to comply with any provision of this chapter, or (e) that any party’s rights are

foreclosed by a judgment or release, or (f) that any party wrongfully refuses to execute a notice

of completion as required by section two A or improperly files or records a notice of termination

under section two B, such person may apply to the superior court for the county where such land

lies or in the district court in the judicial district where such land lies, for an order (i) ruling on

the matter involved or (ii) summarily discharging of record the alleged lien or notice as the case

may be. The holder of any recorded mortgage upon the affected property shall receive notice of

and be entitled to appear and be heard in any proceeding brought under this section. An order of

notice to appear and show cause why the relief demanded in the complaint should not be granted

shall be served upon the necessary parties no later than seven days prior to the date of the

scheduled hearing. If the necessary parties cannot be found, such service may be made as the

court shall direct. The application shall be made upon a verified complaint accompanied by other

written proof of the facts upon which the application is made. Upon granting or denying the

application, the court shall enter a final judgment on the matter involved or expeditiously order

such further proceedings as are just.

Section 16. Repealed, 1973, 1114, Sec. 322

Section 17. Claims; allowance

A claim due absolutely and without condition, although not payable at the time of

determination, shall be allowed with a rebate of interest to the time when it would become

payable. If the owner has failed to perform his part of the contract and by reason of such failure

the other party is, without his own default, prevented from completely performing his part

thereof, he shall be entitled to a reasonable compensation for as much as he has performed, in

proportion to the price stipulated for the whole.

Section 18. Sale of property

If a lien is established the court shall order a sale of the property to be made by an

officer qualified to serve civil process. The court may order a sale of a part of the property

sufficient to satisfy the claims allowed, if such part can be set off from the residue and sold

without damage to the whole.

Section 19. Notice of sale

The officer shall give notice of the time and place of sale as provided for sales of

land on execution or as ordered by the court.

Section 20. Redemption; limitation

An interest in land sold under this chapter may be redeemed within ninety days after

such sale in the manner provided for sales of land on execution.

Section 21. Distribution of assets

If all the claims against the property covered by the lien were ascertained at the time

of ordering the sale and if the proceeds of the sale are sufficient therefor, the court may order the

officer to distribute them, after deducting all lawful charges and expenses of such officer, to and

among the several creditors to the amount of their respective debts, with interest, or, if

insufficient, to distribute the same among the lien creditors pursuant to this chapter in proportion

to the amount due to each, regardless of the date upon which each such lien creditor filed a

notice of contract. If all the claims were not ascertained at the time of ordering the sale or other

sufficient cause is shown, the court may order the officer to bring the proceeds of the sale into

court to be disposed of according to its decree. If the whole cannot be conveniently distributed at

one time, the court may make successive orders of distribution. If there is a surplus of the

proceeds of the sale after making all payments before mentioned, it shall be paid over to the

owner of the property; but, before it is so paid over, it may be attached or taken on execution in

like manner as proceeds from a sale on execution. Notwithstanding the foregoing, proceeds of

the sale shall be distributed to mortgagees entitled to priority pursuant to this chapter in the

amounts given priority thereunder, before proceeds are distributed to creditors whose liens arise

under this chapter.

Section 22. Costs

Costs shall be in the discretion of the court and shall be paid from the proceeds of the

sale or by any of the parties, as it may order.

Section 23. Original owner; death or conveyance of interest; action to enforce

lien

If the person for whom the labor has been performed or furnished or the material has

been furnished or for whom the professional services have been provided dies or conveys away

his estate or interest before the commencement of a civil action to enforce a lien, it may be

commenced and prosecuted against his heirs or against the persons holding the estate or interest

which he had in the land at the time when the labor or material was performed or furnished. If

the action was commenced in the lifetime of such person, it may be prosecuted against his

executor, administrator, heirs or assigns as if the estate or interest has been mortgaged to secure

the debt.

Section 24. Death of creditor; effect

If the creditor dies without having commenced such action, it may be commenced

and prosecuted by his executor or administrator, or if he dies after having commenced it, it may

be so prosecuted.

GENERAL PROVISIONS

Section 25. Estate less than fee simple; effect of sale

If the person for whom the labor or professional services have been performed or

with whom the original contract has been entered into for the whole or any part of the design,

planning, construction administration, surveying, erection, alteration, repair or removal of a

building or structure upon land, or for furnishing material therefor, has an estate less than a fee

simple in the land or if the property is subject to a mortgage or other encumbrance, the lien shall

bind such person’s whole estate and interest in the property, and such estate or interest may be

sold and the proceeds applied according to this chapter.

Section 26. Remedies

This chapter shall not prevent a person entitled to a lien under it from maintaining a

civil action as if he had no lien.

LIENS ON LAND RAISED OR RECLAIMED BY DREDGING

Section 27. Written contract; form of notice

A person entering into a written contract with the owner of land or flats for

reclaiming or raising the level thereof by suction, hydraulic or any other form of dredging, or for

furnishing material therefor, or the trustee or trustees of any fund or funds, described in section

one, providing coverage or benefits for persons, shall have a lien upon the interest of the owner

in said land or flats as appears of record at the date when notice of said contract is filed or

recorded in the registry of deeds for the county or district where such land or flats lie, to secure

the payment of all labor and material which shall thereafter be furnished by virtue of said

contract. Said notice shall be in substantially the following form:

Notice is hereby given that by virtue of a written contract dated , between , owner, and ,

contractor, said contractor is to furnish labor and material for reclaiming or raising the level of

land or flats described as follows:

Section 28. Subcontractor; written contract; notice; filing; form

Whoever, subsequent to the date of the original contract, furnishes labor or material,

or both labor and material, under a written contract with a contractor contracting as provided in

section twenty-seven, or with a sub-contractor of such contractor, may file in the registry of

deeds for the county or district where such land or flats lie a notice of his contract substantially

in the following form:

Notice is hereby given that by virtue of a written contract dated , between , contractor (or subcontractor), and , said is to furnish labor or material, or both labor and material, in the

reclaiming or raising the level, by , contractor, for , owner, of land or flats described as

follows:

Upon filing a notice, as hereinbefore provided, and giving actual notice to the owner of such

filing, the sub-contractor shall have a lien to secure the payment of all labor and material, which

he shall thereafter furnish, upon the interest of the owner, as appears of record at the time of such

filing, in the lot of land or flats reclaimed or improved in the manner described in section twentyseven.

Such notice may also be filed by a person, or his assignee, agent, authorized representative or

third party beneficiary to whom amounts are due or for whose benefit amounts are computed and

due for or on the basis of that person performing labor under a written contract with a contractor,

or with a subcontractor of such contractor.

Section 29. Laws applicable to Sec. 27 or 28

All the provisions of this chapter relative to liens for the erection, alteration, repair or

removal of a building or structure or for furnishing material therefor, attaching under the

provisions of section two or four, shall apply, so far as apt, to liens attaching under section

twenty-seven or twenty-eight.

Section 30. Recording; duty of register of deeds

All liens for labor and notices of contract, and instruments pertaining thereto, filed as

provided for in this chapter, shall be recorded by the register of deeds, who shall enter the names

of the parties affected thereby in the grantor and grantee indexes.

Any notice or other instrument required or permitted to be filed or recorded by this chapter in the

registry of deeds or in the land registration district of the land court that is in the form required

by this chapter and executed before a notary public, justice of the peace or other officer entitled

by law to take acknowledgements with respect to instruments, whether executed within or

without the commonwealth, by a person purporting to hold the position of president, vice

president, treasurer, clerk, secretary, or any assistant to the foregoing, principal, partner,

proprietor, trustee, attorney or other similar position, of the entity entitled to record or file such

instruments on behalf of such entity acting in its own capacity or as a general partner or coventurer, or as assignee, agent or authorized representative, shall be binding upon such entity and shall be entitled to be recorded or filed, and no vote of the entity affirming such authority shall be required to permit recording or filing. A certificate of the acknowledgement or other proof of due execution shall be endorsed upon or annexed to such instrument, and filed or recorded with it.

Such notices, and all other instruments required or permitted by this chapter to be filed or

recorded in the registry of deeds, affecting registered land shall be filed and registered in the

manner prescribed by section seventy-eight of chapter one hundred and eighty-five. Such

notices, and all other instruments required or permitted by this chapter to be filed or recorded in

the registry of deeds, affecting unregistered land shall be indexed in a separate book to be kept

for that purpose.

If registered land is included with unregistered land in any such notice or other instrument, an

attested copy thereof shall be filed with the assistant recorder and registered.

Section 31. Apportionment; priority; proceedings; public contracts

In the event that a general contractor or a subcontractor on any construction work is

adjudged a bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver

is appointed on account of the insolvency of the general contractor or of a subcontractor, at a

time when there are sums due or which later become due from the person contracting for the

work on account of the work of such general contractor or when there are sums due or which

later become due from the general contractor on account of the work of such subcontractor, each

person furnishing labor or labor and materials to such general contractor or such subcontractor

shall have a lien each in proportion to the amount of his respective claim on all such sums due or

which later become due in connection with the particular construction work, provided, that a lien

on any such sums arising out of the recording or filing of a document or notice in accordance

with the provisions of this chapter or in accordance with any other applicable provisions of the

general laws shall have priority over any lien secured pursuant to this section, and provided

further, that such lien shall not take effect unless written notice thereof is given to the person

owing such sums. Proceedings to enforce a lien secured under this section shall be by a civil

action in the superior court within one year after the adjudication of bankruptcy, or the

assignment for the benefit of creditors or the appointment of a receiver, and the plaintiff shall

bring his action in his own behalf and in behalf of all other persons in interest who shall become

parties. All other parties in interest may appear and have their rights determined in such action,

and, at any time before entry of final judgment, upon the suggestion of any party in interest that

any other person is or may be interested in the action, or of its own motion, the court may

summon such person to appear in said cause on or before a day certain or be forever barred from

any rights thereunder. The court may in its discretion provide for notice to absent parties in

interest. The other provisions of this chapter shall not apply to any such civil action. The

provisions of this section shall not apply to any contract with the commonwealth or with any

political subdivision thereof or any other public instrumentality.

Section 32. Void and unenforceable covenants, promises, etc.; exceptions

A covenant, promise, agreement of understanding in, or in connection with or

collateral to, a contract or agreement relative to the construction, alteration, repair or

maintenance of a building, structure, appurtenance and appliance or other improvement to real

property, including moving, demolition and excavating connected therewith, purporting to bar

the filing of a notice of contract or the taking of any steps to enforce a lien as set forth in this

chapter or purporting to subordinate such rights to the rights of other persons is against public

policy and is void and unenforceable, but this section shall not apply to:

(1) waivers of liens given by any person named as a principal on a lien bond provided under

section twelve in connection with an interim or final payment received by such persons;

(2) statements by persons entitled to file documents under this chapter of amounts due or paid to

them;

(3) dissolutions of liens under section ten;

(4) partial waivers and subordinations of liens given by persons who have filed or recorded

notices of contract under section two substantially in the following form with no material

deviation therefrom:

Partial Waiver and Subordination of Lien

COMMONWEALTH OF MASSACHUSETTS: Date: \_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_ COUNTY Application for Payment No: \_\_\_\_\_\_\_\_\_

OWNER: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CONTRACTOR: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

LENDER/MORTGAGEE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Original Contract Amount: \_\_\_\_\_\_\_\_\_

2. Approved Change Orders: \_\_\_\_\_\_\_\_\_

3. Adjusted Contract Amount: \_\_\_\_\_\_\_\_\_

(line 1 plus 2)

4. Completed to Date: \_\_\_\_\_\_\_\_\_

5. Less Retainage: \_\_\_\_\_\_\_\_\_

6. Total Payable to Date: \_\_\_\_\_\_\_\_\_

(line 4 less line 5)

7. Less Previous Payments: \_\_\_\_\_\_\_\_\_

8. Current Amount Due: \_\_\_\_\_\_\_\_\_

(line 6 less line 7)

9. Pending Change Orders: \_\_\_\_\_\_\_\_\_

10. Disputed Claims: \_\_\_\_\_\_\_\_\_

The undersigned who has a contract with \_\_\_ for furnishing labor or materials or both labor and

materials or rental equipment, appliances or tools for the erection, alteration, repair or removal of

a building or structure or other improvement of real property known and identified as \_\_\_

located in \_\_\_ (city or town), \_\_\_ County, Commonwealth of Massachusetts and owned by \_\_\_,

upon receipt of \_\_\_ ($\_\_\_) in payment of an invoice/requisition/application for payment dated

\_\_\_ does hereby:

(a) waive any and all liens and right of lien on such real property for labor or materials, or both

labor and materials, or rental equipment, appliances or tools, performed or furnished through the

following date: \_\_\_ (payment period), except for retainage, unpaid agreed or pending change orders, anddisputed claims as stated above; and

(b) subordinate any and all liens and right of lien to secure payment for such unpaid, agreed or

pending change orders and disputed claims, and such further labor or materials, or both labor and

materials, or rental equipment, appliances or tools, except for retainage, performed or furnished

at any time through the twenty-fifth day after the end of the above payment period, to the extent

of the amount actually advanced by the above lender/mortgagee through such twenty-fifth day.

Signed under the penalties of perjury this \_\_\_ day of \_\_\_, \_\_\_.

The giving of a partial waiver and subordination of lien by any contractor under this section shall

not affect the lien rights of any other person claiming a lien under any section of this chapter.

Section 33. Mortgagee’s right to withhold funding, financing or payment for

labor and materials

Except with respect to any construction project containing or designed to contain at

least one but not more than four dwelling units, the filing or recording of documents claiming a

lien under section two, or the filing or recording of a statement pursuant to section eight in

furtherance of a lien arising pursuant to section one, shall not itself be grounds for a mortgagee

to withhold sums for the funding, financing or payment for the labor or labor and materials for

which any such notice or statement is filed or recorded or to require dissolution of such notice or

statement before providing further funding, financing or payments, and any covenant, promise,

agreement or understanding relative to the improvement or alteration to real property to withhold

such funding, financing or payment or to require dissolution of such notice or statement before

providing further funding, financing or payments solely on that ground is against public policy

and void and unenforceable; provided, however, that nothing contained in this chapter shall

obligate a mortgagee to disburse sums for the funding, financing or payment for the labor or

labor and materials for which any such notice or statement is filed or recorded unless such

mortgagee has received an accurately completed and valid partial waiver and subordination of

lien in the form set forth in clause (3) of section thirty-two from the person who filed or recorded

such notice or statement; provided, further that nothing in this chapter shall in any manner limit

or restrict the right of any mortgagee to withhold any and all sums for the funding, financing, or

payment for labor or labor and materials based upon: (a) the failure of the owner to comply with

any other terms, conditions or requirements in any agreement providing for the funding of the

loan, the repayment of the loan or of any mortgage securing any such agreement or (b) the filing

or recording of documents claiming a lien under section four, if the right to withhold is contained

in any agreement providing for the funding of the loan, the repayment of the loan, or any

mortgage securing such agreement, except that such right to withhold shall not be effective to

bar the filing of a notice of contract or the taking of any steps to enforce a lien.