

FORM F
CONVENANT

_____, 20 _____

New Bedford, Massachusetts

KNOW ALL MEN by these presents that the undersigned has submitted an application dated _____, to the City of New Bedford Planning Board for approval of a Definitive Plan of a

subdivision of land entitled: _____,

plan by: _____, dated: _____ as revised thru _____
(Designer)

and owned by: _____

address: _____

land located: _____, and showing _____ proposed lots.
(Number)

The undersigned has requested the Planning Board to approve such plan without requiring a performance bond.

IN CONSIDERATION of said Planning Board of New Bedford in the county of Bristol approving said plan without requiring a performance bond, the under-signed hereby covenants and agrees with the inhabitants of the City of New Bedford as follows:

1. The undersigned is the owner* in fee simple absolute of all the land included in the subdivision and that there are no mortgages of record or otherwise on any of the land, except for those described below, and that the present holders of said mortgages have assented to this contract prior to its execution by the undersigned.

** If there is more than one owner, all must sign. "Applicant" may be an owner or his/her agent or representative, or his assigns, but the owner of record must sign the covenant.*

2. The undersigned will not sell or convey any lot in the subdivision or erect or place any permanent building on any lot until the construction of ways and installation of municipal services necessary to adequately serve such lot has been completed in accordance with the covenants, conditions, agreements, terms and provisions as specified in the following:

- a. The Application for Approval of Definitive Plan.
- b. The Subdivision Control Law and the Planning Board’s Rules and Regulations governing this subdivision.
- c. The certificate of approval and the conditions of approval specified therein, issued by the Planning Board, dated _____.
- d. The definitive plan as approved and as qualified by the certificate of approval.
- e. Or until other form(s) of performance guarantee securing any uncompleted ways and services in said subdivision has been accepted by the Planning Board.
- f. Other document(s) specifying construction to be completed, namely:

However, a mortgagee who acquires title to the mortgaged premises by foreclosure or otherwise and any succeeding owner of the mortgaged premises or part thereof may sell or convey any lot, subject only to that portion of this covenant which provided that no lot be sold or conveyed or shall be built upon until ways and services have been provided to serve such lot.

- 3. This covenant shall be binding upon the executors, administrators, devisees, heirs, successors and assigns of the undersigned, and upon their successors in title to the premises shown on said Plan, and shall constitute a covenant running with the land included in the subdivision and shall operate as restrictions upon the land. This Covenant shall take effect upon the approval of said Plan.
- 4. Particular lots within the subdivision may be released from the foregoing conditions upon the recording of a Certificate of Release by the developer executed by a majority of the Planning Board and enumerating the specific lots to be released. No previously released Lot(s) shall be taken back under substitution. Partial releases may only be requested for lots where the required improvements have been completed for that section of roadway beginning at any intersection with a City road and abutting lots up through the last lot to be released. Lots may only be released if they abut the completed portion of the road. No partial release from the covenants will be approved if the total length of roadway, including a temporary turnaround, abutting said designated lots, exceeds the City's maximum allowable length for dead-end streets, unless the Planning Board has already approved within the boundaries of the development, a dead-end street exceeding said limits.
- 5. The undersigned agrees to record this covenant, with reference to such covenant entered upon the said Plan with the Bristol County (S.D) Registry of Deeds, forthwith. Reference to this covenant shall be entered upon the said Plan as approved. Reference to this covenant shall be included on the deed to any lot conveyed prior to a full release of this security.
- 6. A deed of any part of the subdivision in violation of the covenant shall be voidable by the grantee prior to the release of the covenant; but not later than three (3) years from the date of such deed, as provided in Section 81-U, Chapter 41, M.G.L.

7. This covenant shall be executed before endorsement of approval of the definitive plan by the Planning Board and shall take effect upon the endorsement of approval.
8. The Planning Board shall release this covenant by an appropriate instrument, duly acknowledged, upon final completion of the construction of ways, installation of municipal services as specified herein, on or before _____, and receipt of the following from the applicant:
 - a. A certificate, from the project's registered professional engineer, that all work required for the subdivision has been constructed in conformance with the approved construction plans and decisions.
 - b. Letters from all applicable utilities, including the electric, telephone and cable TV companies, stating that the underground systems have been installed to the satisfaction of their respective utilities.
 - c. A set of record construction plans, including roadway acceptance plans. Said plans shall be derived from the Definitive Plan, but show all features "as built". The Planning Board may hire a consultant at the applicant's expense to review these plans prior to their approval.
9. The undersigned and any subsequent assignees and/or owners within the subdivision shall be responsible for maintenance of all ways and infrastructure, including but not limited to storm water controls, within the subdivision until such time as the City accepts the ways and infrastructure. Said maintenance includes, but is not limited to, the removal of snow. In the event that the decisions and approvals listed in Paragraph 2 herein call for the creation of a homeowners' association or similar such entity to own and maintain ways and infrastructure, no more than one half of the lots in the subdivision may be released until such time as such entity has been created, funded and has agreed to undertake maintenance of ways and infrastructure.
10. In the absence of financial performance guarantees, adequate covenants will be held to insure completion of the project, including, as applicable, record plans, street acceptance plans, site inspections, and legal work. In addition, a covenant on two lots which can be built on shall be held until all work in the subdivision, including the signing of all necessary legal documents, has been completed.
11. Failure to complete construction and installation within the time specified herein, or such later date as may be specified by vote of the Planning Board with a written concurrence of the applicant, shall result in automatic rescission of the approval of the plan.
12. Nothing herein shall prohibit the applicant from varying the method of securing the construction of ways, installation of municipal services, and all other requirements in any decision, rules or regulations, from time to time or from securing by one, or in part by one and in part by another of the methods described in M.G.L., Chapter 41, Section 81-U, as long as such security is sufficient, in the sole opinion of the Planning Board, to secure performance of the requirements herein, including completion of the project, as applicable, record plans, street acceptance plans, site inspections, and legal work.

13. For title to the property, see deed from _____, dated _____
recorded in _____ Registry of Deeds, Book _____, Page _____, or registered
(County)
in _____ Land Registry as Document No. _____, and noted on certificate of
(County)
title no. _____, in Registration Book _____, Page _____.

The present holder of a mortgage upon the property is _____ of
(Name)
_____. The mortgage is dated _____ and
(Address)

recorded in _____ Registry of Deeds, Book _____, Page _____, or registered
(County)
in _____ Land Registry as Document No. _____, and noted on certificate of
(County)
title no. _____, in Registration Book _____, Page _____.

The mortgagee agrees to hold the mortgage subject to the covenants set forth above and agrees that the covenants shall have the same status, force and effect as though executed and recorded before the taking of the mortgage and further agrees that the mortgage shall be subordinate to the above covenant.

14. _____, spouse of the undersigned applicant hereby agrees that such interest as I, we, may have in the premises shall be subject to the provisions of this covenant and insofar as is necessary releases all rights of tenancy by the courtesy, dower, homestead and other interests therein.

IN WITNESS WHEREOF we the undersigned applicant/developer, as aforesaid, do (does) hereunto set our hands and seals this (DAY) of (MONTH), (YEAR).

Applicant/Developer

Applicant/Developer Spouse

Print Name

Print Name

Acceptance by a Majority of the New Bedford Planning Board,

Colleen Dawicki, Chair

Kathryn Duff, Vice Chair

Alex Kalife, Clerk

Arthur Glassman

Peter Cruz