



Town Of Ashburnham Planning Board

FORM F
COVENANT

Sample form – not to be used as original

This Covenant is entered into this _____ day of _____, 2__ by and between the Town of Ashburnham, a Massachusetts municipal corporation, acting through its Planning Board, with an address of 32 Main Street, Ashburnham, Massachusetts [hereinafter "planning board"] and _____ (record owner of the parcel of land shown on an approved definitive subdivision plan and including an equitable owner or purchaser on a purchase and sales agreement for the entire parcel or portion of the parcel of land shown on the approved definitive subdivision plan), with an address of _____ [hereinafter "owner"].

PREAMBLE

WHEREAS, on _____, based on the owner's application dated _____, and after a duly noticed public hearing(s), the planning board approved a definitive subdivision plan showing _____ lots, which is entitled: _____
by: _____;
to be recorded or registered at the _____;

WHEREAS, the approved definitive subdivision plan shows the division of a parcel of land located at _____ [hereinafter "subdivision"] and further described in a deed or deeds dated and recorded at the _____ in Book(s) _____, Page(s) _____; or is registered in _____ as Document No. _____, and noted on certificate of title No. _____, in Registration Book _____, Page _____;

WHEREAS, M.G.L., chapter 41, § 81U requires the planning board to secure the construction of ways and the installation of municipal services in an approved subdivision before endorsing its approval on the approved definitive subdivision plan;

WHEREAS, the owner has decided to secure all/a portion (described as of the construction of ways and installation of municipal services in the subdivision by means of a COVENANT;

WHEREAS, the planning board has determined that the form of the covenant is sufficient to secure the construction of ways and installation of municipal services in the subdivision;

WHEREAS, the owner's construction of ways and installation of municipal services within the subdivision are subject to the requirements of M.G.L., chapter 41, §§81K-81GG (The Subdivision Control Law); the planning board's Subdivision Rules and Regulations applicable to this subdivision; the application submitted for approval of this subdivision; the certificate of approval and all conditions of approval of this subdivision as set forth in the Appendix attached to and made an

enforceable part of this covenant; the recommendations, if any, of the board of health; the approved definitive plan;
all conditions subsequent to approval of this subdivision due to any amendment, modification, or rescission of the approval of the definitive subdivision plan; all of the provisions set forth in this covenant and any amendments thereto; and the following additional documents

_____ - [hereinafter "approval instruments"];

NOW THEREFOR, for and in consideration of the mutual promises set forth below, and after good and valuable consideration, the parties agree as follows:

SECTION 1. INCORPORATION OF PREAMBLE

The Preamble shall be incorporated into and become an enforceable part of this covenant.

SECTION 2. EFFECTIVE DATE

This covenant shall be effective upon its execution, subject to endorsement of approval of the definitive subdivision plan by the planning board and the recording or registering of the plan and this covenant at the Northern Worcester County Registry of Deeds at the owner’s expense.

SECTION 3. RUNS WITH THE LAND

This covenant shall run with the land and shall be binding on all subsequent parties who have any title, interest, or rights in and to the parcel of land subdivided, or a portion thereof. This covenant shall operate as a restriction upon the land until released.

SECTION 4. OBLIGATIONS, DUTIES, AND RIGHTS OF THE PLANNING BOARD

- a. Upon completion of the construction of ways and installation of municipal services in accordance with the approved instruments, the planning board shall release the owner from this covenant and shall issue a certificate of completion and release, that shall be executed by a majority of the members of the planning board and shall be recorded or registered at the Northern Worcester County Registry of Deeds at the owner’s expense.

- b. Upon construction of a portion of the ways and installation of a portion of the municipal services in accordance with the approval instruments, the planning board may release the owner from this covenant as to those lots that are adequately served by the ways and municipal services so constructed, so long as the construction of ways and installation of municipal services are, in the opinion of the planning board, sufficiently secured by another method of performance guarantee as provided in M.G.L., chapter 41, §81U. A certificate of release shall be executed by a majority of the members of the planning board and shall be recorded or registered at the Northern Worcester County Registry of Deeds at the owner’s expense.

- c. The planning board may rescind approval of the definitive subdivision plan for breach of any provision of this covenant or any amendments thereto. Said rescission shall be in accordance with M.G.L., chapter 41, §81 W.

SECTION 5. OBLIGATIONS, DUTIES, AND RIGHTS OF THE OWNER

- a. The owner shall not convey or transfer title to any lot within this subdivision, except as otherwise provided in this covenant, until completion of the construction of the ways and installation of the municipal services for this subdivision in accordance with the approval instruments, unless and until the owner provides the planning board with another method of securing construction of the ways and installation of the municipal services deemed sufficient by the board.
- b. The owner shall not build upon any lot within this subdivision, except as otherwise provided in this covenant, until the completion of the construction of the ways and installation of the municipal services for this subdivision in accordance with the approval instruments, unless and until the owner provides the board with another method of securing construction of the ways and installation of the municipal services deemed sufficient by the board.
- c. The owner shall complete construction of the ways and installation of the municipal services for this subdivision no later than _____.
- d. The owner agrees and understands that failure to complete construction of the ways and installation of the municipal services by the agreed-upon date shall result in automatic rescission of approval of the definitive subdivision plan by the planning board. The planning board shall forthwith carry out the rescission as provided in M.G.L., chapter 41, §81W.
- e. The owner agrees and understands that the planning board will not release this covenant in full, unless another method of security is provided, or until the ways and municipal services have been deemed by the board to be constructed and installed in accordance with the approval instruments, which shall include demonstration of adequate construction and installation over a _____ period of time prior to said release.
- f. No provision of this covenant shall prevent the owner from varying the method of securing the construction of ways and the installation of municipal services from time to time or from securing by one, or in part by one and in part by another of the methods as provided in M.G.L., chapter 41, §81U, as long as the planning board deems the method or methods chosen for securing the construction of ways and the installation of municipal services as sufficient.
- g. The owner shall at all times provide the board forthwith (no more than 14 days after transfer of title) with the name of the current owner or owners of this subdivision or portions thereof and the address of such owner or owners. The owner agrees and understands that failure to comply with this provision could result in rescission of approval of the definitive subdivision plan.
- h. The owner shall at all times provide the board forthwith (no more than 14 days after transfer of title) with the name of any mortgagee or mortgagees of this subdivision or portions thereof and the address of such mortgagee or mortgagees. At the time of executing this covenant, the mortgagee(s) of this subdivision is/are _____ whose address is/are _____

The owner agrees and understands that failure to comply with this provision could result in rescission of approval of the definitive subdivision plan.

SECTION 6. MORTGAGEES AND SUCCEEDING OWNERS

Nothing in this covenant shall preclude the owner from mortgaging the entire parcel of land, or a portion thereof, which constitutes this subdivision. If the mortgagee acquires title to the entire parcel of land, or a portion thereof, shown on the approved definitive subdivision plan, through foreclosure or by other means, such as accepting a deed in lieu of foreclosure, then the mortgagee and any succeeding owner of the land transferred by the mortgagee may sell any lot, subject to that portion of this covenant which provides that no lot shall be built upon until the ways are constructed and the municipal services are installed to serve such lot. Said mortgagee and any succeeding owner shall be subject to all other applicable provisions of this covenant and any amendments thereto.

SECTION 7. CONVEYANCE OF LAND OR LOTS SUBJECT TO COVENANT

Nothing in this covenant shall preclude the owner from conveying by a single deed, the entire parcel of land shown on the approved definitive subdivision plan, or all lots not previously released from the terms of this covenant by the board, so long as the deed provides that the land conveyed is subject to this covenant, and any amendments thereto, with proper reference to the book and page where this covenant, and any amendments thereto, are recorded or registered at the _____. A deed of any part of the subdivision in violation of this covenant, or any amendments thereto, shall be voidable by the grantee prior to the release of this covenant no later than three years from the date of such deed.

SECTION 8. BINDING EFFECT

This covenant and any amendments thereto, shall be binding on the owner, the owner's agents and representatives, and any successors to the owner's title, interest, and rights in the parcel of land constituting this subdivision, including executors, administrators, devisees, heirs, successors and assigns of the owner.

SECTION 9. USE OF TERMINOLOGY

Use of the term "owner" in this covenant is for convenience only and should not be considered as a limitation on those parties who may be subject to and bound by the provisions of this covenant and any amendments thereon.

SECTION 10. APPOINTMENT OF AN AGENT

If someone other than the owner will represent the owner, the owner must designate such representative below.

Name of representative: _____

Address of representative: _____

Tel. #: Days _____ Evenings _____

Relationship of representative to owner: _____

In executing this covenant, I hereby authorize the person or persons named above to represent my interest before the planning board with respect to the subdivision that is the subject of this covenant.

SECTION 11. AMENDMENTS

This covenant may be amended, in writing, by agreement of all of the parties to this covenant.

SECTION 12. GOVERNING LAW

This covenant, and any amendments thereto, shall be governed by the laws of the Commonwealth of Massachusetts.

SECTION 13. SEVERABILITY

If a court of competent jurisdiction determines that any provision of this covenant is unenforceable, such determination shall not affect the remaining provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, I, the owner, hereby certify under the pains and penalties of perjury that the information contained in this covenant is true and complete; and we, the parties to this covenant, set our hands and seals to this covenant on the date(s) written below.

We, the owner and his/her spouse, as far as necessary, hereby release all rights of dower, curtesy, or homestead, or any other interests that we may have in the parcel of land that constitutes the subdivision.

OWNER

Signature of Owner

Date

Witness

By:

Its:

Duly authorized

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____,
owner, or person duly authorized to execute this covenant on behalf of the owner, and
acknowledged the execution of the foregoing instrument to be his/her free act and deed
for the purposes provided therein.

Notary Public

My commission expires: _____

OWNER'S SPOUSE

Signature of Owner's Spouse

Date

Witness

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____,
and acknowledged the execution of the foregoing instrument to be his/her free act and
deed for the purposes provided therein.

Notary Public

My commission expires: _____

PLANNING BOARD

_____	_____
Planning Board Member	Date
_____	_____
Planning Board Member	Date
_____	_____
Planning Board Member	Date
_____	_____
Planning Board Member	Date
_____	_____
Planning Board Member	Date

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____
and acknowledged the execution of the foregoing instrument to be their free acts and
deeds for the purposes provided therein.

Notary Public

My commission expires: _____

ASSENT OF MORTGAGEE

_____, of _____, the mortgagee of the parcel of land, or a portion thereof, constituting this subdivision at the time of execution of this covenant, hereby consents to execution of this covenant by the owner, who is the mortgagor of the parcel of land subject to a certain mortgage deed dated _____ and recorded at the _____. in Book _____, Page _____; or registered in _____ as Document No. _____, and noted on certificate of title No. _____, in Registration Book _____, Page _____. The mortgagee also agrees to hold the mortgage subject to this covenant and agrees that the mortgage shall be subordinate to the covenant, which covenant shall have the same status, force, and effect as through executed and recorded prior to the conveyance of the mortgage deed by the mortgagor-owner to the mortgagee.

MORTGAGEE

Signature of Mortgagee

Date

Witness

By:

Its:

Duly authorized

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____, person duly authorized to execute this covenant on behalf of the mortgagee, and acknowledged the execution of the foregoing instrument to be his/her free act and deed for the purposes provided therein.

Notary Public

My commission expires: _____

APPENDIX (Conditions of approval of the definitive subdivision plan)