



## FORM F

PLANNING BOARD  
BERKLEY, MASSACHUSETTS

## COVENANT

\_\_\_\_\_, 20 \_\_\_\_

Know all men by these presents that the undersigned has submitted to the **Berkley Planning Board, 1 N. Main St., Berkley, MA**, an application dated \_\_\_\_\_, for approval of a definitive plan of a subdivision of land entitled: \_\_\_\_\_ dated \_\_\_\_\_, prepared by (Engineer) \_\_\_\_\_, (Address) \_\_\_\_\_ (the "Plan"), which Plan was approved by said Planning Board on \_\_\_\_\_ and is recorded with the Bristol County Registry of Deeds, N.D. in Plan Book \_\_\_\_\_, Page(s) \_\_\_\_\_.

NOW THEREFORE, in consideration of the **Berkley Planning Board** approving the Plan without requiring a performance bond, the undersigned covenants and agrees with the Town of Berkley, acting by and through its Planning Board, as follows:

1. The undersigned represents and covenants it is the owner in fee simple absolute of all the land included in said subdivision (the "Property") and there are no mortgages of record or otherwise on any of the Property except for those described below and the present holders of said mortgages have assented to this Covenant prior to the execution by the undersigned. It is agreed that any subsequent mortgages shall be subordinate to this Covenant. The undersigned further represents that to the best of its knowledge and belief there are no liens or attachments or encumbrances of any nature save the hereinafter subordinated mortgages, any encumbrances appearing on a certificate of municipal liens issued by the Town of Berkley, and such easements as are related to the development of the subject property.
2. The undersigned will not sell or convey any lot in the subdivision or erect or place any permanent building on any such lot until the construction of ways and installation of municipal services, including pipe, loaming and seeding, necessary to adequately serve such lot have been completed in accordance with the covenants, conditions, agreements, terms and provisions as specified in the following:
  - a. Application for Approval of Definitive Plan dated \_\_\_\_\_;
  - b. The Subdivision Laws of the Town of \_\_\_\_\_ and the Planning Board's Rules and Regulations governing this Subdivision;
  - c. The Certificate of Approval and conditions of approval specified therein issued by the Planning Board on \_\_\_\_\_ and filed with the Berkley Town Clerk on \_\_\_\_\_;
  - d. The Plan as qualified by the Certificate of Approval;
  - e. Other document(s) specifying construction or installation 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 in the subdivision, subject only to that portion of this Covenant which provides that no lot be sold or conveyed or shall be built upon until ways and services have been provided to serve such lot, as set forth above.

- 3 This Covenant shall be binding upon the executors, administrators, devisees, heirs, successors and assigns of the undersigned, and shall constitute a covenant running with the land included in the subdivision and shall operate as restrictions upon said land.
4. The particular lots within the subdivision shall be released from the foregoing conditions only upon the recording of a certificate of performance executed by a majority of said Planning Board and enumerating the specific lots to be released.
5. Nothing herein shall be deemed to prohibit a conveyance by a single deed subject to this Covenant of either the entire parcel of land shown on the Plan or of all lots not previously released by the Planning Board.
6. The undersigned agrees to record this Covenant with the *Bristol County Registry of Deeds N.D.* forthwith. Reference to this Covenant shall be entered upon the definitive plan as approved.
7. Upon final completion of the construction of all ways and the installation of all municipal services as specified herein, on or before 24 months from the date that the Plan is endorsed by the Planning Board, and as evidenced by a majority vote of the Planning Board, the Planning Board shall release this Covenant by an appropriate instrument, duly acknowledged. 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.
8. This Covenant shall take effect upon the endorsement of approval of the Plan by the Planning Board.
9. 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 G.L. c. 41, §81U.
10. Nothing herein shall prohibit the applicant from varying the method of securing the construction of ways and 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 described in G.L. c.41, § 81U, as long as such security is sufficient in the opinion of the Planning Board to secure performance of the construction and installation.

For title to the Property see deed from \_\_\_\_\_, dated \_\_\_\_\_, recorded with said Registry in Book \_\_\_\_\_, Page(s) \_\_\_\_\_.

The property is encumbered by a mortgage in the amount of \$\_\_\_\_\_, held by \_\_\_\_\_, (address)\_\_\_\_\_, recorded with the \_\_\_\_\_ Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_. That is the only mortgage on the property. 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.

IN WITNESS WHEREOF, \_\_\_\_\_  
(Applicant Name and Address)

has hereunto set his hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
APPLICANT NAME

TOWN OF BERKLEY,  
By its Planning Board

MORTGAGEE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
MORTGAGEE NAME

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ , before me, the undersigned notary public, personally appeared (*Applicant Name*) \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was a drivers license, to be the person whose name is signed on the preceding or attached document as record owner, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, member(s) of the Berkley Planning Board, as aforesaid, and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the persons whose names they signed on the foregoing instrument as members of the Planning Board, and further acknowledged to me that they signed it voluntarily for its stated purpose as said members.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss

On this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned notary public, personally appeared the above-named (Mortgagee Name) \_\_\_\_\_, as aforesaid, and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name he/she signed on the foregoing instrument in my presence, and further acknowledged to me that he signed it voluntarily for its stated purpose as said representative.

\_\_\_\_\_  
Notary Public  
My Commission Expires