

MARION PLANNING BOARD FORM 2D

COVENANT

If this method is chosen as a Performance Guarantee, file two (2) copies with the Planning Board. After endorsement of the Definitive Plan, one (1) copy will be kept by the Planning Board and the second copy will be returned to the applicant who shall record it at the Plymouth County Registry of Deeds.

The undersigned has submitted an application dated _____, to the Marion Planning Board for approval of a Definitive Plan of a subdivision of land

entitled: _____,

plan by: _____ dated: _____

and owned by: _____

mailing address: _____,

land located: _____,

and showing _____ proposed lots. The undersigned has requested the Planning Board to approve such plan without requiring a performance bond.

IN CONSIDERATION of said, Planning Board of Marion, in the county of Plymouth, Commonwealth of Massachusetts, approving said plan without requiring a performance bond, the undersigned hereby covenants and agrees with the inhabitants of the Town of Marion as follows:

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

That 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 each of the following:

- a. The Application for Approval of Definitive Plan (Form 2C)
- b. The Subdivision Control Law and the Planning Board's Rules and Regulations governing this subdivision.
- c. The Definitive Plan as approved.

d. 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 provides that no lot be sold or conveyed or shall be built upon until ways and services have been provided to serve such lot.

That 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 the land.

That particular lots within the subdivision shall be released from the foregoing conditions upon the recording of a Certificate of Performance executed by a majority of the Planning Board and enumerating the specific lots to be released.

That 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 subdivision plan or of all lots not previously released by the Planning Board

That the undersigned agrees to record this covenant with the Plymouth County Registry of deeds, forthwith, or to pay the necessary recording fee to the said Planning Board in the event the Planning Board shall record this agreement forthwith. Reference to this covenant shall be entered upon the definitive subdivision plan as approved.

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.

That 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.

Upon final completion of the construction of ways and installation of municipal services as specified herein, on or before:

(date when construction and installation is to be completed)

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. Upon performance of this covenant with respect to any lot, the Planning Board may release such lot from this covenant by an appropriate instrument duly recorded.

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 M.G.L., Chapter 41, Section 81-U, as long as such security is sufficient in the opinion of the Planning Board to secure performance of the construction and installation.

For title of the property, see deed from _____, dated _____, recorded in the Plymouth County Registry of Deeds, Book _____, Page _____, or registered by the recorder of the Land Court as Document No. _____, and being on Certificate of Title No. _____, in Registration Book _____, Page _____.

The present holder of a mortgage on the property is _____ of _____.

The mortgage is dated _____ and recorded in the Plymouth County Registry of Deeds, Book _____, Page _____, or registered by the recorder of the Land Court as Document No. _____, and being on certificate of 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.

_____, 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 dower or homestead and other interests therein.

IN WITNESS WHEREOF we have hereunto set our hands and seals this _____ day of _____.

Signature of owner or owners

Then personally appeared before me the above name applicant and acknowledged the foregoing instrument to be (his/her) free act and deed.

Commonwealth of Massachusetts, Notary Public _____
Date _____ My Commission Expires _____

SIGNATURE OF MORTGAGEE OR AUTHORIZED REPRESENTATIVE
(if applicable)

Date _____

Then personally appeared before me the above name applicant and acknowledged the foregoing instrument to be (his/her) free act and deed.

Commonwealth of Massachusetts, Notary Public _____
Date _____ My Commission Expires _____

Acceptance by a Majority of the Planning Board of the Town of Marion, Massachusetts