

AGREEMENT AND VOLUNTARY COVENANT  
FOR LAND DEVELOPMENT

BK 12431 PG 195  
Bristol South  
Registry District

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On: May 04, 2018 at 02:16P

2018 MAY 10 P 2: 2

FAIRHAVEN,  
MASS.

This AGREEMENT and COVENANT, made this 3<sup>rd</sup> day of May, 2018, by and between SCOTT SNOW with an address of Post Office Box 1134, Mattapoisett, MA 02739 (hereinafter the "Presumptive Owner"), John M. Kalisz of New Bedford, Massachusetts ("Owner") and the Town of Fairhaven, a Massachusetts municipal corporation with a principal place of business at 40 Center Street, Fairhaven, Massachusetts through its Planning Board ("Fairhaven") (Owner and Presumptive Owner are hereinafter jointly and singly the "Covenantor"),

WITNESSETH:

WHEREAS Covenantor wants to develop multi-family residences at Huttleston Avenue, Fairhaven, Massachusetts, Assessors Map 31, Lots 115A and 117C (the "Property"), *recorded at Bristol District (S D) Registry of Deeds Book 4359, Page 233;*

WHEREAS Covenantor requests the rezoning of Map 31, Lot 115A and Map 31, Lot 117C from its current Residential (RA) and Business (B) respectively to apartment/multifamily (RC) use;

WHEREAS Said rezoning will allow construction of Covenantor's Project as a matter of right, but will also allow apartments and other multifamily structures; and

WHEREAS it is the present understanding of the Parties that, pursuant to Massachusetts law, a municipality may properly condition a rezoning based upon a commitment by a property owner that its rezoned property will be subject to voluntary restrictions imposed by that property owner (see, e.g. Sylvania Electric Products v. City of Newton, 344 Mass. 428 (1962); McLean Hospital Com, v. Town of Belmont, 8 LCR 155, 160 (2000); and

WHEREAS in reliance on this understanding and in order to alleviate the concerns of the Town of Fairhaven, the Covenantor is willing to limit his right to develop the Property in the event it is rezoned, and instead to place a permanent restriction on his right to develop the Property; by limiting the total number of condominium units in their Project, restricting the number of bedrooms in each unit, and delineating in advance the floor plans therefor

NOW, THEREFORE, in consideration of these presents and other good and valuable consideration, the receipt of which is hereby acknowledged, Covenantor declares as follows:

1. For themselves their heirs, executors, administrators, successors and assigns, Covenantors promise and agree with the Town of Fairhaven that they will limit their Project to a total of not more than twelve (12) condominium units having no more than twenty-four (24) bedrooms total and structures not to exceed two (2) stories..
2. The final floor plans shall be subject to the Town of Fairhaven's Planning Board approval during the Board's Site Review process for the Project.

Return to:  
Michael A Kehoe, Esq  
128 UNION ST, Suite 500  
New Bedford MA 01940

3. These voluntary restrictions will be effected via the Covenantor's submittal of engineering and construction plans to the Town of Fairhaven's Planning Board during the Board's Site Review process for the Project, which plans will request approval for not more than twelve (12) condominium units as described in Paragraph 2 herein, and which will be made a limiting condition for the approval of a special permit for the Project. Further, so long as the zoning change/reclassification is approved, the Covenantor shall not appeal or challenge the incorporation of the terms and conditions of this Agreement into any decision of the Fairhaven Planning Board on the Project.
4. These restrictions are intended to be perpetual in nature, are intended to run with the land, and will be incorporated in the Project's Condominium Documents, which will be reviewed by Town Counsel prior to Project approval. Only the Town of Fairhaven can release these restrictions, and only upon a finding by both the Town's Planning Board and its Board of Selectmen that such release is in the best interests of the Town.
5. These restrictions will take effect only upon the approval of the requested zoning change/reclassification by the Town of Fairhaven Town Meeting and approval of the Commonwealth of Massachusetts Attorney General.
6. Should Town of Fairhaven Town Meeting reject the proposed zoning change/reclassification or should the Commonwealth of Massachusetts Attorney General deny the approval of the same, this covenant shall be of no further force and effect. In such event, the Town of Fairhaven through its Planning Board shall forthwith execute and record a release of this Covenant.

IN WITNESS WHEREOF, the Covenantor has caused this AGREEMENT AND COVENANT FOR LAND DEVELOPMENT to be executed on the date first hereinabove set forth.

OWNER

By: 

John M. Kalisz

PRESUMPTIVE OWNER

By: 

Scott Snow



Accepted by TOWN OF FAIRHAVEN

By: Wayne Hayward

COMMONWEALTH OF MASSACHUSETTS  
BRISTOL, SS.

On this 3<sup>rd</sup> day of May, 2018 before me, the undersigned notary public, personally appeared the above-named John M. Kalisz, and proved to me through satisfactory evidence of identification, i.e. MA. License, to be the person whose name is signed to the foregoing instrument, and acknowledged to me that he signed it voluntarily for its stated purpose.

Quon J. Bon  
Notary Public  
My Commission expires: 11/2/18

COMMONWEALTH OF MASSACHUSETTS  
BRISTOL, SS.

On this 3<sup>rd</sup> day of May, 2018 before me, the undersigned notary public, personally appeared the above-named Scott Snow, and proved to me through satisfactory evidence of identification, i.e. MASS License, to be the person whose name is signed to the foregoing instrument, and acknowledged to me that he signed it voluntarily for its stated purpose.

Joanne A. Conner  
Notary Public  
My Commission expires: 8/3/2023

COMMONWEALTH OF MASSACHUSETTS  
BRISTOL, SS.

On this 3<sup>rd</sup> day of May, 2018 before me, the undersigned notary public, personally appeared the above-named Wayne Hayward on behalf of the Town of Fairhaven, and proved to me through satisfactory evidence of identification, i.e. MASS License, to be the person whose name is signed to the foregoing instrument, and acknowledged to me that he signed it voluntarily for its stated purpose.

Joanne A. Conner  
Notary Public  
My Commission expires: 8/3/2023