



Mead, Talerman & Costa, LLC  
Attorneys at Law

30 Green Street  
Newburyport, MA 01950  
Phone 978.463.7700  
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[www.mtclawyers.com](http://www.mtclawyers.com)

November 24, 2021

John "Marty" Doggett, Chair  
Salisbury Planning Board  
City Hall  
5 Beach Road  
Salisbury, MA 01952



Re: Request for Certificate of Completion  
57 Railroad Avenue, Salisbury, Massachusetts,  
Assessor's Map 32, Lot 86 (the "Property")

Dear Chair and Members of the Board:

Reference is made to the above captioned matter. In that connection I represent David Daly, the Manager of The 57 Railroad Ave. LLC, the developer of the Property (the "Petitioner"). I am writing to request the Board release the FIFTEEN THOUSAND DOLLAR (\$15,000.00) Bond which was held for the completion of final items related to the permit for the project. Attached hereto is the final As- Built Plan.

The Applicant has worked with the Conservation Commission and the Peer Review Engineer to develop a solution to allow long term vegetation growth at the rear of the Property. The Applicant has completed the remaining items that were outstanding at the close of the last meeting as well, including but not limited to installation of new detectable warning pads at the handicap ramps. As you can see from the last letter of your Peer Review engineers, the remaining items were addressed.

As a result, the Applicant requests the Peer Review Engineer undertake its final review and the performance bond be released accordingly.

Please place this on the Board's agenda for December 8, 2021. We thank you for your time and consideration.

Should you have any questions or concerns, please contact me at (978) 463-7700.

Sincerely,

Lisa L. Mead

cc: Client

*Millis Office*

730 Main Street, Suite 1F  
Millis, MA 02054  
Phone 508.376.8400



**Planning Board**  
Town of Salisbury  
5 Beach Road  
Salisbury, MA 01952

Request for Certificate of Completion

Date 11/24/21

1. This request is being made by:

Name: David Daly, Manager, The 57 Railroad Ave. LLC c/o Lisa Mead, mead, Tulane & Castle LLC

Mailing address: 30 Green St., Newburyport, MA 01950

Phone & Fax: 978-463-7700 (phone) 7747 (fax)

E-mail: lisa@mtclawyers.com

2. This request is in reference to the work regulated by:

Name of Plan: Site As Built Plan

Address of Project: 57 Railroad Ave., Salisbury, MA 01952

Date of Approved Plan: 3/16/21

Map/Lot: 32/86

Owner: 57 Railroad Ave LLC

Owner's Address: 229 Steadman St., Lowell, MA 01851

Applicant (if other than owner): —

Applicant's Address: —

3. This request is for certification that:

☒ the work regulated by the Site Plan Approval has been satisfactorily completed

☐ the work regulated by the above site plan approval is substantially completed and the only remaining work shown on the site plan is the landscaping or minor site work.

☐ the above reference approval has expired and therefore is no longer valid and the work was never started.



The undersigned hereby certifies that:

1. S/he is the applicant or engineer representative for the above project;
2. The site developments described by the site plan documents have been installed on the project site;
3. The conditions of the Planning Board's approval have been substantially met. It is understood that a bond will be posted to cover any outstanding issues.

Lisa L. Mead

Printed Name of Applicant/Engineer

11/24/21

Date

SLM/BMZ

Signature of Applicant/Engineer

978-463-7700

Contact phone #

Planning Board's Inspector has 10 calendar days from the filing of this application to conduct a final inspection (Zoning Bylaw Section XVIII. §300-112.H)

Joseph J. Serwatka, P.E.  
Post Office Box 1016  
North Andover, MA 01845  
978-314-8731

June 2, 2021

Ms. Lisa Pearson, Planner  
Salisbury Planning Department  
Town Hall  
Salisbury, MA 01952

Re: 57 Railroad Avenue  
As-Built Review

Dear Ms. Pearson:

I have received a Site As-Built Plan (revised to May 17, 2021) and response letter dated March 24, 2021 for 57 Railroad Avenue, prepared by Landplex. I have conducted a site visit, reviewed the submitted plan relative to my previous letter dated March 22, 2021, and offer the following comments. The previous comments are in regular type, with the latest comments in bold type.

1. The designated snow storage areas of 5.3 C.Y on each side of the site between the buildings may not be accessible due to the placement of gas meters on the sides of each building, near the front. Based on the numbers and areas provided on the approved plans, this may eliminate more than 40% of the designated snow storage area on site. The board may want the engineer to address this potential issue.

**The engineer believes that the area between the buildings will still be accessible for snow storage.**

2. The as-built plan depicts only 4 of the 8 required drywells. Further, all drywell covers should be raised to finish grade to allow for inspection/maintenance. The engineer should address this issue.

**This issue appears to be addressed.**

3. Only 2 of the 4 buildings had gutters and downspouts to the drywells as of our 3/19/21 inspection. The engineer should address this issue.

**This issue appears to be addressed.**

4. The as-built plan should show the piped connection from the area drain to the drywell.

**This issue appears to be addressed.**

5. It appeared only one of the 8 water shutoffs was raised to grade and visible during our 3/19/21 inspection. All water shutoffs are typically visible when the as-built plan is submitted. The engineer should address this.

**This issue appears to be addressed.**

6. The March 16, 2021 labels "proposed" plantings, rather than as-built plantings. An as-built plan should contain only as-built features.

**The plantings appear to be completed.**

7. No landscaping has been installed along Railroad Avenue as shown on the approved plans. The engineer should address this.

**Landscaping appears to be complete.**

8. Some of the as-built ground covers do not match the approved plans. The front of the site is supposed to be a mix of shells and sand, but most of the area is stones. Crushed clam shell areas do not appear complete around the buildings. The designated "sand" areas contain concrete, glass, stone and other debris. The engineer should address these issues.

**These issues appear to be addressed.**

9. The rip rap slope abutting Libby Avenue does not appear to have been installed in a good workman-like manner. Instead of a uniform slope, some areas are moderately sloped, and others are nearly vertical, with undulations throughout. Erosion into the stones is already evident. The engineer should address whether this area needs to be re-worked.

**This area appears to have been addressed.**

10. An odd set of stairs has been installed on the rip rap slope leading up to Libby Avenue. Rather than a continuous set of stairs from low to high, it goes up from the site, to a high point, and then the stairs go down to meet Libby Avenue. The stairs will also interfere with the largest designated snow storage area on the site. The board may want the engineer to address these issues.

**The response states that the unique design was required by the conservation commission.**

11. Sewer inverts should be provided for all the manholes shown on the as-built plan, as is typical.

**This issue appears to be addressed.**

**One issue noted during the most recent site inspection was with the detectable warning pads at the handicapped ramps along Railroad Avenue. Two of the four pads appear to already be cracking. This may be due to insufficient concrete when setting the pads. The developer should go over this issue with DPW to determine a course of action, if any.**

Should you have any questions relative to this letter, please contact me.  
Sincerely,

Joseph J. Serwatka, P.E.

## **RELEASE OF PERFORMANCE AGREEMENT AND SURETY BOND**

**The Planning Board of the Town of Salisbury**, having an address of 5 Beach Road, Salisbury, MA 01952, holding a Performance Agreement and Surety Bond to assure completion of the project located at 57 Railroad Ave., with the Developer, 57 Railroad Ave. LLC, with a principal address of 229 Stedman Street, Lowell, MA 01851, dated April 14, 2021 hereby grants a full and final Release and Discharge of the Performance Agreement and Surety Bond for the following premises:

**Locus: 57 Railroad Avenue, Salisbury, MA 01952**

In witness whereof, the said Chair of the Town of Salisbury Planning Board, by a vote of the Board on December 8, 2021 has caused its signature below as approving the release and discharge of same. This \_\_\_\_\_ day of December, 2021.

Town of Salisbury Planning Board

By: \_\_\_\_\_  
John Doggett, Chair  
Duly Authorized



**Town of Salisbury**  
**Department of Planning and Development**  
**5 Beach Road**  
**Salisbury, Massachusetts 01952**

Department of Planning and Development  
Lisa K. Pearson, Director  
[lpearson@salisburyma.gov](mailto:lpearson@salisburyma.gov)  
(978) 463-2266

Connie Brawders  
Assistant Planning Director  
[asstplanner@salisburyin.gov](mailto:asstplanner@salisburyin.gov)  
(978) 463-2266 x 115

May 21, 2021

Tom Van Berkel, Principal  
NGM Insurance Company  
4601 Touchton Road East, Ste. 3400  
Jacksonville, FL 32246-4486

**Re: Bond No. S-294272**

Dear Mr. Van Berkel,

Please be so kind as to sign, notarize, and return to my attention a copy of the enclosed Performance Agreement-Secured by Surety Bond within ten days of the date of this letter.

Thank you for your attention to this matter.

Sincerely,

Connie Brawders  
Assistant Director of Planning

Cc: 57 Railroad Avenue, LLC, 229 Stedman Street, Lowell, MA 01851

## **PERFORMANCE AGREEMENT – SECURED BY A SURETY BOND**

This Surety Performance Agreement (the “Agreement”) is made as of April 14, 2021 by and among the Town of Salisbury, by and through its Planning Board (the “**Town**” or “**Planning Board**”), 57 Railroad Ave. LLC, with an address of 229 Stedman Street, Lowell, Massachusetts, a Massachusetts limited liability company (the “**Applicant**”), and NGM Insurance Company, a corporation authorized to do business in Massachusetts, with an office at 4601 Touchton Road East, Suite 3400, Jacksonville, Florida (the “**Surety**”), pursuant to and in accordance with the vote of the Planning Board dated March 24, 2021, and pursuant to the Planning Board’s Site Plan Review Decision dated March 14, 2019.

This Agreement shall be and is secured by a bond issued by the Surety (the “Bond”). A true copy of the Bond is attached hereto as Exhibit #1. The purpose of the Agreement and the Bond is to secure completion of a) those items numbered 1 through 11, as set forth in the letter of Landplex, LLC, to Joseph J. Serwatka, P.E., dated March 15, 2021; b) those items contained in the Certificate of Partial Completion issued by the Planning Board on April 7, 2021, and c) the work detailed in the “Sidewalk Improvement Plan,” dated March 17, 2021, said plan prepared by Landplex, LLC (collectively, the “Remaining Matters”).

Know all persons by these presents that the Applicant and the Surety hereby bind and obligate themselves, their respective executors, administrators, devisees, heirs, successors and assigns, jointly and severally, to the Town, to perform and complete the Remaining Matters, said performance and completion being secured by the Bond, in the sum of **FIFTEEN THOUSAND AND NO/100’S DOLLARS (\$15,000.00)**.

The Agreement shall remain in full force and effect unless and until the Applicant has, in the sole opinion of the Planning Board, fully and satisfactorily performed all obligations relating to the Remaining Matters, or has obtained approval from the Planning Board to provide another method of securing performance.

Upon satisfactory completion by the Applicant of all Remaining Matters on or before May 26, 2021, or such later date as may be specified by vote of the Planning Board with a written concurrence of Applicant and the Surety, the interest of the Town in the Bond shall be released, the Bond shall be returned to the Surety, and this Agreement shall become void.

In the event the Applicant should fail to complete the Remaining Matters within the time herein specified, this Agreement and the Bond may be enforced, in whole or in part, by the Planning Board, for the benefit of the Town to the full extent of the cost to the Town of completing such Remaining Matters, up to the Penal Sum of the Bond.

Election by the Planning Board not to enforce this Agreement or the Bond for any period of time shall not be deemed to be a waiver of the right to enforce.

The parties hereby agree and admit that Massachusetts law, without regard to any conflict of laws principles, shall govern the adjudication of any dispute regarding this Agreement. The



parties agree that any dispute concerning this action shall be heard by the Essex County Superior Court or the United States District Court for the District of Massachusetts. The parties further agree to accept service of process by certified mail at the following addresses:

**Town of Salisbury Planning Board**  
5 Beach Road  
Salisbury MA 01952

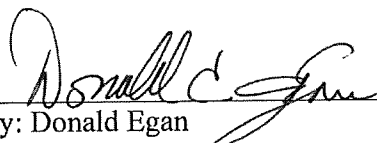
**57 Railroad Avenue LLC**  
229 Stedman Street  
Lowell, MA 01851

**NGM Insurance Company**  
4601 Touchton Road East  
Jacksonville, FL 32246

Any amendments to this Agreement or to the aforesaid Bond shall not be effective until agreed upon in writing by all parties to this Agreement.

[INTENTIONALLY LEFT BLANK – SIGNATURE PAGES TO FOLLOW]

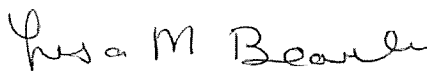
**TOWN OF SALISBURY PLANNING BOARD,**

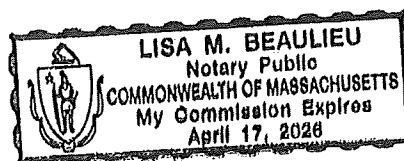
  
By: Donald Egan  
Its: Chair

Dated: 5/20/21

Commonwealth of Massachusetts  
Essex, ss.

On this 20th day of May, 2021, before me, the undersigned Notary Public, personally appeared Donald Egan, as Chair of the Town of Salisbury Planning Board, who proved to me through satisfactory evidence of identification, which was personally known, to be the person whose named is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

  
Notary Public Lisa M Beaulieu  
My commission expires: April 17, 2026



57 RAILROAD AVE, LLC,

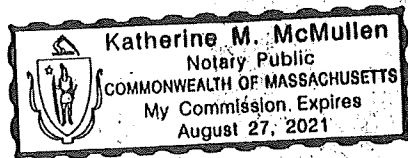
By: David Daly  
Its: Manager

Dated: 5-20-21

Commonwealth of Massachusetts  
Essex, ss.

On this 20<sup>th</sup> day of May, 2021, before me, the undersigned Notary Public, personally appeared David Daly, as Manager for 57 Railroad Ave., LLC, who proved to me through satisfactory evidence of identification, which was Drivers License, to be the person whose named is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Katherine M. McMullen  
Notary Public Katherine M. McMullen  
My commission expires: August 27, 2021



NGM INSURANCE COMPANY,

\_\_\_\_\_  
By:  
Its:

Dated: \_\_\_\_\_

State of \_\_\_\_\_  
\_\_\_\_\_, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, as \_\_\_\_\_ for NGM Insurance Company, who proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose named is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My commission expires:

**COMPLETION BOND**

**BOND NUMBER: S-294272**

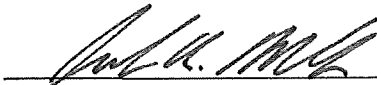
KNOW ALL MEN BY THESE PRESENTS, that we, 57 Railroad Ave LLC (hereinafter "Principal"), as Principal and the NGM Insurance Company (hereinafter "Surety"), of Jacksonville, Florida, as Surety, are holden and stand firmly bound unto the Town of Salisbury, Massachusetts (hereinafter "Obligee") in the full and just sum of Fifteen Thousand and 00/100 Dollars (\$15,000.00) (hereinafter "Penal Sum") to be paid to the said Obligee to the true payment whereof we bind ourselves and each of us, our successors and assigns and our heirs, executors and administrators, jointly and severally by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bounden Principal, its heirs, executors, administrators and assigns, shall complete the subdivision improvements at the 57 Railroad Ave development in the Town of Salisbury, Massachusetts, which improvements are more fully described in a Certificate of Partial Completion issued by the Town of Salisbury Planning Board dated April 7, 2021 attached hereto as Exhibit 'A', then this obligation shall be null and void, otherwise it shall be and remain in full force and effect.

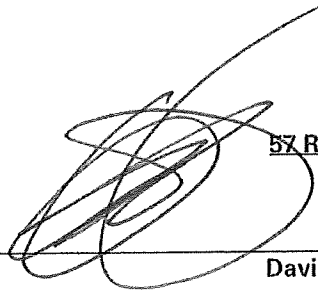
The Surety's liability is limited to claims made during the term of the bond and for a 1-year period following the expiration date of the bond, and shall not exceed in the aggregate the Penal Sum of the bond specified herein.

IT IS FURTHER UNDERSTOOD AND AGREED that the period of this bond shall be from April 8, 2021 to April 8, 2022.

Sealed with our seals and dated the 8<sup>th</sup> day of April, 2021.

  
\_\_\_\_\_  
Witness

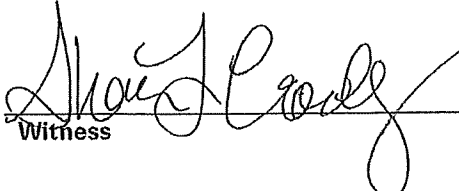
By:



**57 Railroad Ave LLC**

**David Daly, Member**

**NGM Insurance Company**

  
\_\_\_\_\_  
Witness

By:



**Brian M. Rossi, Attorney-in-Fact**



NGM INSURANCE COMPANY  
A member of The Main Street American Group

## POWER OF ATTORNEY

06-03087147

KNOW ALL MEN BY THESE PRESENTS: That NGM Insurance Company, a Florida corporation having its principal office in the City of Jacksonville, State of Florida, pursuant to Article IV, Section 2 of the By-Laws of said Company, to wit:

"Article IV, Section 2. The board of directors, the president, any vice president, secretary, or the treasurer shall have the power and authority to appoint attorneys-in-fact and to authorize them to execute on behalf of the company and affix the seal of the company thereto, bonds, recognizances, contracts of indemnity or writings obligatory in the nature of a bond, recognizance or conditional undertaking and to remove any such attorneys-in-fact at any time and revoke the power and authority given to them. "

does hereby make, constitute and appoint **Christopher A Jannotti, Brian M Rossi, Elisa P Cardone, Shannon L. Crowley** - its true and lawful Attorneys-in-fact, to make, execute, seal and deliver for and on its behalf, and as its act and deed, bonds, undertakings, recognizances, contracts of indemnity, or other writings obligatory in nature of a bond subject to the following limitation:

**1. No one bond to exceed Twenty Million Dollars (\$20,000,000.00)**

and to bind NGM Insurance Company thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of NGM Insurance Company; the acts of said Attorney are hereby ratified and confirmed.

This power of attorney is signed and sealed by facsimile under and by the authority of the following resolution adopted by the Directors of NGM Insurance Company at a meeting duly called and held on the 2nd day of December 1977.

Voted: That the signature of any officer authorized by the By-Laws and the company seal may be affixed by facsimile to any power of attorney or special power of attorney or certification of either given for the execution of any bond, undertaking, recognizance or other written obligation in the nature thereof; such signature and seal, when so used being hereby adopted by the company as the original signature of such office and the original seal of the company, to be valid and binding upon the company with the same force and effect as though manually affixed.

IN WITNESS WHEREOF, NGM Insurance Company has caused these presents to be signed by its Vice President, General Counsel and Secretary and its corporate seal to be hereto affixed this 7th day of January, 2020.

NGM INSURANCE COMPANY By:

*Kimberly K. Law*

Kimberly K. Law  
Vice President,  
General Counsel and Secretary



State of Florida,  
County of Duval.

On this 7th day of January, 2020, before the subscriber a Notary Public of State of Florida in and for the County of Duval duly commissioned and qualified, came Kimberly K. Law of NGM Insurance Company, to me personally known to be the officer described herein, and who executed the preceding instrument, and she acknowledged the execution of same, and being by me fully sworn, deposed and said that she is an officer of said Company, aforesaid; that the seal affixed to the preceding instrument is the corporate seal of said Company, and the said corporate seal and her signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Company; that Article IV, Section 2 of the By-Laws of said Company is now in force.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Jacksonville, Florida this 7th day of January, 2020.

*Lisa K. Penick*



I, Nancy Giordano-Ramos, Vice President of NGM Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by said Company which is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Company at Jacksonville, Florida this

8th day of April, 2021

*Nancy Giordano-Ramos*

WARNING: Any unauthorized reproduction or alteration of this document is prohibited.  
TO CONFIRM VALIDITY of the attached bond please call 1-800-225-5646.

TO SUBMIT A CLAIM: Send all correspondence to 55 West Street, Keene, NH 03431 Attn: Bond Claims.