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DECLARATION
OF
PROTECTIVE COVENANTS
RIVER'S PEAK SUBDIVISION
BARRINGTON, NEW HAMPSHIRE
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PROTECTIVE COVENANTS
RIVER'S EDGE SUBDIVISION
BARRINGTON, NEW HAMPSHIRE

Now comes Cabernet Builders of Stratham, LLC (hereinafter "Cabernet"), P O Box 292, Stratham, New Hampshire, 03885, being the developer of a certain subdivision known as "River's Peak" in Barrington, New Hampshire, County of Strafford, State of New Hampshire; as shown on a plan entitled

"_____, Prepared by Beals Associates, LLC dated _____ through revision dated _____ and recorded in the Strafford County Registry of Deeds as Plan # _____ (hereinafter the "Plan") for the mutual benefit of the present and future owners and mortgagees of said lots, hereby declares the following covenants and restrictions which shall run with the land, subject to the provisions of Paragraph 24 hereof, which are binding upon all present and future owners of said lots, their heirs, successors and assigns. These covenants shall be deemed appurtenant to Lots 1 through 20, inclusive, within the subdivision whether or not they are set out at length in subsequent conveyances.

1. APPROVALS OF PLANS

So long as Cabernet has rights to any lot within the subdivision, no lot owner shall begin to construct a residence until plans have been submitted to Cabernet for review and approval. Plans submitted shall consist of floor plans, elevation plans showing all facades, specifications, exterior color, roof color, garage orientation, landscaping, fencing and any proposed tree cutting.

Construction of homes shall, in Cabernet's sole discretion, include the following architectural features:

- A. Enlarged corner boards, minimum 6 inches in width on colonial style homes;
- B. No pressure treated or pre-cast front steps;
- C. Colonial window heads or pediments over lower street-side windows or satisfactory substitute for shingle style homes;
- D. Mailboxes approved by Cabernet may be attached to the posts at roadside. If the post, street number or mailbox is

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damaged or removed, prompt replacement shall be the responsibility of the lot owner.

- E. Cabernet reserves the right to approve alternate architectural features in keeping with the character and quality of the subdivision.

Cabernet may approve, disapprove or approve with conditions, in its sole and absolute discretion, any plans submitted to it within 20 calendar days after submission. If Cabernet fails to act within said 20 days said plans shall be deemed approved.

No subsequent modifications or improvements, including accessory buildings, in ground swimming pools, fences and/or walls shall hereafter be constructed on any lot, nor shall any substantial alterations to the exterior of the structure (including color, roof color, or landscaping) be made except in conformity with these covenants and restrictions. So long as Cabernet has rights to any lot within the subdivision, approval as provided in this paragraph, shall be required for such changes. Thereafter, such changes shall also require the approval of the Homeowners' Association or any committee thereof.

No approval need be recorded at the Strafford County Registry of Deeds. If a lot owner has violated the provisions of this covenant, Cabernet, so long as it has rights to any lot within the subdivision, may record a notice of violation at the Strafford County Registry of Deeds. Cabernet may also bring an enforcement action provided that, if no enforcement action is commenced in the Strafford County Superior Court with regard to said violation within one year after the recording of the notice of violation, the notice shall be deemed to have expired and be of no further force and effect. In the absence of the recording of such notice all persons may presume that there is no violation of this covenant.

No one, including homeowners or anyone holding by, through or under a homeowner, shall have any right at law or in equity or otherwise against Cabernet, its Agents or Employees arising out of the exercise or non-exercise of its rights pursuant to this paragraph save only for any action taken in bad faith.

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Cabernet shall not be obligated to maintain any plans, specifications, or records of approvals upon the expiration of 60 days after its last sale of a lot within the subdivision.

2. MINIMUM SIZE OF RESIDENCE

No residence shall be constructed with less than 1,800 square feet of living area, excluding garages, basements, porches and barn or storage areas.

3. EXTERIOR SURFACES, COLOR

All structures shall have exterior wall surfaces covered with brick or stone veneer, approved stucco application, or cedar clapboards or shingles or a combination of any of the aforesaid. The use of simulated or artificial brick or stone, composition clapboards, vinyl or aluminum siding or any other similar materials may be allowed at the sole discretion of Cabernet. Roofing materials shall be either wood shingles or "architectural" shingles. All dwellings shall be constructed on poured concrete foundations.

All fireplaces and chimneys visible from the exterior of the dwelling shall be constructed of brick, stone, or approved stucco application.

Exterior color paint chips shall be submitted to Cabernet for approval prior to start of exterior painting. Colors should be chosen in natural, neutral tones.

4. FOUNDATION ELEVATIONS

A maximum of twenty-four (24) inches of foundation may be exposed above the finished landscape grade.

5. STONE WALLS AND FENCES

Stone walls that are in place upon the sale of the lot by Cabernet, shall remain intact unless removal or alterations are approved by Cabernet, so long as it has rights to any lot within said

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subdivision, or the Homeowners' Association (or any committee thereof), thereafter.

All fencing shall be wood, vinyl or natural stone. No chain link fencing is permitted except to enclose swimming pools. No fence exceeding six (6) feet in height shall be permitted on any lot, except as part of an approved tennis court layout or swimming pool enclosure. All fences shall be constructed with finished side facing away from the dwelling.

All proposed fencing must be approved by Cabernet so long as it has rights to any lot within said subdivision, or the Homeowners' Association (or any committee thereof), thereafter. A lot owner wishing to install any fence shall submit a drawing of such fencing and a sample of materials to be used to Cabernet prior to installation.

6. LANDSCAPING

A. Attractive landscaping is an essential element of the maintenance of property values in a subdivision. As such, Cabernet reserves the right for as long as it has rights to any lots in the subdivision, to require landscaping to be utilized which, in its sole discretion, is in keeping with the character of the subdivision and which will maintain property values. All landscaping, as approved in the site plan for approval, will be finished concurrently with substantial completion of the dwelling. Provided however, that if substantial completion does not occur before November 15, the landscaping shall be completed on or before June 15th of the following year.

Landscaping shall include, but not be limited to, front and side lawns, shrubs and plantings and a front walkway, each to be approved as provided herein.

B. Before or at the time of closing, the purchaser of any lot shall be required to make arrangements satisfactory to Cabernet to ensure completion of landscaping in accordance with the approved landscaping plan and in a timely manner as specified in paragraph (A) above. Cabernet has the right to require each lot owner, upon closing of a lot, to deposit a \$4,000.00 escrow to cover the cost of completion of the landscaping. The escrow shall be held in an interest bearing account by the real estate broker designated by

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Cabernet to be released to the lot owner upon completion of landscaping as specified in the approved plan. If the completion of the landscaping is late and not in accordance with paragraph (A) above, Cabernet reserves the right to charge the lot owner a penalty of \$50 per week delay, payable to Cabernet via deducting the late charge from the escrowed funds.

7. TREE REMOVAL

No healthy living trees with a diameter in excess of six (6) inches shall be cut at any time within ten (10) feet of any property line including the lot frontage on the roadway, without the express approval of Cabernet so long as it has rights to any lot within said subdivision or the Homeowners' Association (or any committee thereof), thereafter. The lot plan submitted under these covenants shall indicate the area within which the lot owner desires to cut trees for construction of the dwelling.

Within fourteen (14) days of cutting, any felled trees shall be cut up and the logs stacked neatly. Any stumps or slash shall be buried or removed from the lot. If buried, the location shall be approved by Cabernet so long as it has rights to any lot within said subdivision or the Homeowners' Association (or any committee thereof), thereafter.

8. LAND USE AND BUILDING TYPE

Each lot shall be used only for residential purposes. Such use must conform fully with the Town of Barrington Zoning Ordinance. No dwellings shall be used as boarding houses or tenement houses nor shall the owner of any property offer bed and breakfast accommodations, so-called, or otherwise take in tenants. Nothing herein shall prohibit an accessory apartment to be occupied by a family member(s) only, or home office if allowed by the Town of Barrington Zoning Ordinance, but the use shall otherwise be restricted to single family residences. Nothing herein shall prevent an owner from renting his house in its entirety as a leasehold.

Above ground swimming pools are allowed with the prior consent of Cabernet or the Homeowners Association. All swimming pools shall be properly screened so that the pool is not visible from the roadway.

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No metal buildings are permitted.

No all-terrain vehicles, off road vehicles or snowmobiles shall be used on the premises nor shall any such vehicles nor any commercial vehicles, pleasure or commercial boats, motor homes, campers, trailers, powered or non-powered, be kept on the premises except out of sight of the roadway or stored in a garage or outbuilding conforming to these covenants. Unregistered or uninspected automobiles or automobiles being repaired or refinished over a period in excess of seven (7) consecutive days shall be stored in a garage or other enclosed structure.

9. SUBDIVISION

There shall be no further subdivision of lots except for boundary line adjustments between abutters, which do not create additional buildable lots.

10. EXCLUSIVE RIGHT TO BUILD

Cabernet reserves the right to require a purchaser to utilize Cabernet's preferred builder to construct the home on any lot in the subdivision.

11. TIME FOR CONSTRUCTION

The construction of any building shall be completed within nine (9) months from the time construction is begun. Completion is defined to include, but not be limited to, exterior finishing, landscaping, paving and painting.

12. BUILDING AND SITE MAINTENANCE

During construction, no unsightly condition shall be permitted to exist on the property. Materials shall be neatly stacked on site or placed within the incomplete structure. Stockpiling of materials and parking of construction vehicles and equipment when not in use shall be no closer than 50 feet from the roadway.

Construction debris shall be kept in a dumpster and Cabernet shall have the right to impose additional reasonable controls on construction.

Any disturbance to the land area within the subdivision roadway right of way shall be repaired to include grading, loam and seed, and replacement of any shrubs or plantings which have been damaged or destroyed.

13. ANIMALS AND PETS

- A. No livestock or poultry of any kind shall be kept on any lots. Domestic dogs and cats are permitted provided that no kenneling or breeding for commercial purposes shall be allowed.
- B. No domestic dogs, chained, tethered, roped or otherwise secured outside of any dwelling causing any nuisance by reason of constant or continual barking shall be allowed in the subdivision.

14. YARD MAINTENANCE

All lot owners shall maintain lawns and landscaping in an attractive manner. By way of example, but not of limitation, the front yards shall be kept free of children's swing sets, swimming pools, clotheslines, antennas or satellite dishes with diameters larger than 24 inches, or the like.

15. SIGNS

No signs or billboards shall be erected or displayed on any lot or building thereon except a size not exceeding four (4) square feet as may pertain to the lease or sale of a lot or home.

16. RUBBISH DISPOSAL

No dumping, burning, or burying of rubbish, waste, trash, garbage or other refuse shall be permitted. Garbage, trash and other refuse shall be kept in closed containers which shall be screened from sight or located within a building, and removed at regular intervals.

17. FUEL STORAGE

No external tank for fuel storage shall be maintained unless buried, screened from sight or located within a building.

18. OPEN SPACE AREAS

Cabernet, as owner of Open Space Areas A and B on the Plan (Hereinafter "Open Space Areas"), intends to convey the Open Space Areas to the Town of Barrington acting through its Conservation Commission with the right to preserve and protect the Open Space Areas in perpetuity for conservation.

Cabernet declares the following protective covenants to apply to the Open Space Areas which shall impose the following restrictions and limitations in all deeds and conveyances affecting lots within this subdivision. Cabernet specifically reserves the right to construct common utilities within the Open Space Areas, including, but not limited to, fire cisterns, septic lines, and underground utilities and drainage improvements.

A. USE LIMITATIONS

- i. The Open Space Areas shall be maintained in perpetuity as open space free from industrial or commercial activities.
- ii. The Open Space Areas shall not be further subdivided or otherwise divided into parcels of separate ownership.
- iii. No structure or improvement of any kind, except for ancillary structures such as viewing stands, sheds, garden structures or trail shelters, consistent with conservation purposes, shall be constructed, placed or introduced onto the Open Space Areas.
- iv. No removal, filling, or other disturbances of soils surface, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitat shall be permitted on the Open Space Areas, except:
 - a. Upon the homeowners association's written permission after consultation and with the assent by the Barrington Conservation Commission; and
 - b. As is necessary for the continued maintenance and operation of the Open Space Areas as a conservation area; and

- c. After all necessary federal, state and local permits and approvals are secured.
 - v. No outdoor advertising structures such as signs and billboards shall be displayed in the Open Space Areas.
 - vi. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Open Space Areas except as necessary to maintain the conservation purposes as stated herein.
 - vii. There shall be no dumping, injection, burning or burial of materials of any kind.
 - viii. There shall be no use of motorized vehicles within the Open Space Areas, except as allowed for maintenance activities described herein.
 - ix. There shall be no cutting or removal of any trees except fallen trees, branches or dead trees within any portion of the Open Space Areas, or those trees that pose an imminent threat to person or property.
 - x. There shall be no construction of buildings from which wastewater will be discharged.
 - xi. There shall be no discharging of wastewater to the Open Space Areas.
- B. Notwithstanding the foregoing and as it relates to Open Space Area B only:
- i. Cabernet reserves the right to remove sand, gravel and other earth materials from Open Space Area B. This right shall expire on the earlier of when the last lot in the subdivision has a completed house erected thereon sold to a consumer or the road and other common improvements have been accepted as a completed public road by the Town of Barrington (the "Cessation Date"). Upon the cessation of use of Open Space Area B as a source for sand and gravel and no later than the foregoing Cessation Date, it shall be restored by Cabernet in accordance with the

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Reclamation Plan prepared by Beals Associates, PLLC and on file with the Town of Barrington Planning office.

ii. Cabernet reserves the right to transfer its interests to the Homeowners Association, the date of which assignment shall be at the discretion of Cabernet.

iii. Cabernet also reserves the right to transfer its rights stated in subparagraph i above to a third party for the purpose of expediting the removal of sand, gravel and other earth materials, provided that such transferred rights shall terminate prior to the Cessation Date.

19. HOMEOWNERS' ASSOCIATION.

- A. Cabernet shall create River's Peak Homeowners' Association which shall be a not for profit corporation created no later than the date when Cabernet no longer owns any lot in the subdivision, or at such earlier time as Cabernet deems appropriate. Once created, the Homeowners' Association shall be vested with the authority of Cabernet hereunder.
- B. The purpose for which the association is created will be to 1) preserve and protect in perpetuity the Open Space Areas for the benefit of this generation and generations to come; 2) the voluntary maintenance activities regarding the Open Space Areas A and B and full maintenance of the plowing of the Class V roadway until such a date (if ever) it is accepted by the Town of Barrington Board of Selectmen as a Town maintained roadway and minimal maintenance of the Class VI right of way to New Bow Lake Road ~~until such time as the Town accepts it as a Class VI roadway~~; 3) preparation of an annual budget, 4) and collection of association dues from all lot owners.
- C. In addition to the purposes described above, the Homeowners' Association shall also, after Cabernet no longer has rights to any lots within the subdivision and, provided the provisions of this Declaration are affirmed by a 2/3 majority vote of the lot owners authorizing the Homeowners' Association to perform all of the duties of the Declarant, Cabernet, hereunder.

Commented [SW1]: This does not make sense to me...is this missing some language...?

- D. All purchasers of lots in River's Peak Subdivision shall be members of the Association. The owner named in the deed to a lot shall be the individual (or entity) with the authority to exercise the voting rights for that lot. The lot owner(s) may designate a representative to exercise his/her/its right to vote on any association business by written notice to the Homeowners' Association.
- E. Association business may be carried out at a formal meeting called for that purpose or by written notice to lot owners whose votes shall be submitted in writing as specified in the notice.
- F. Prior to turning over authority for control of the Homeowners' Association, Cabernet shall prepare a set of Bylaws to be utilized by the association until such time as those Bylaws may be altered or amended by vote of the Association.
- G. Cabernet shall have all authority and shall exercise all rights of the Homeowners' Association until such time as it no longer owns any lot in the subdivision or at such earlier time as Cabernet relinquishes any such rights and obligations to the Homeowners' Association. Among the rights which Cabernet may exercise are the right to assess and collect fees from lot owners as provided in these covenants.
- H. Cabernet shall have the right until relinquished to the Homeowners' Association to establish an annual budget for maintenance of the Open Space Areas and the Homeowners' Association shall thereafter have such right. The fees or assessments shall be used for the maintenance, and operation of Open Space Areas, and other common property expenses, including but not limited to, cost of labor, equipment, materials, management and supervision and third party services such as legal and accounting.
- I. The owner of each lot within the property hereby agrees by acceptance of the deed to a lot to all of the terms and conditions of these Covenants and to pay the association:
 - i. annual fee or charges; and

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- ii. special assessments for the purposes set forth above.
- J. All fees and assessments, together with interest and costs of collection shall be the personal obligation of the person who was the owner of a lot at the time when the fee or assessment became due. In the case of co-ownership of a lot, all such co-owners of the lot shall be jointly and severally liable for the entire amount of the fees and assessments.
- K. If the assessment is not paid within thirty (30) days after the due date, interest shall accrue at the rate of 1 ½% per month on the outstanding balance and the Association may bring an action against the owner(s) personally obligated to pay the same and place a lien against the lot, and there shall be added to the amount due all costs and expenses incurred, including reasonable attorneys' fees.

21. ENFORCEMENT

Enforcement shall be by (1) Cabernet, so long as it has rights to any lot within the subdivision; and/or (2) any land owner within the Subdivision; and/or (3) the Homeowners' Association; and/or (4) the Town of Barrington. The Homeowners' Association and/or the Town of Barrington shall enforce violations which include but are not limited to the operation of the Open Space Areas as set forth in Paragraph 18. The enforcement shall be against any person violating or attempting to violate any covenant herein established to enjoin the violation and/or recover damages. The prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

22. SEPARABILITY

Invalidity of any covenant by court order shall not affect the remaining covenants which shall remain in full force and effect.

23. EASEMENTS

Cabernet hereby reserves:

1. A 15' easement off the proposed right of way (or wider as shown on the Plan) for the purpose of Grading, Drainage, Tree Removal and Utilities as shown and noted in Note #14 on said Plan;

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2. A Drainage Easement over a portion of Lot 1.8 as shown and noted on said Plan;

3. A Drainage Easement over portions of Lots 1.17 and 1.18 as shown and noted on said Plan;

4. A "No Cut/No Disturb" Restriction over portions of Lots 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 1.17 and 1.18 as shown and noted on said Plan.

24. TERMS: AMENDMENTS

These covenants shall run with the land and be for the benefit of lots within the subdivision, and shall be binding on all lots, all purchasers of lots, and all parties and all persons claiming thereunder, for a term of Twenty-five (25) years from the date of recording. Provided that, Paragraphs 1, 3, 5, 6 and 7, to the extent that approvals are required, shall terminate upon the point at which Cabernet no longer has rights to any lots unless the Homeowners' Association, as herein been provided is authorized to perform these duties. After the first twenty-five (25) year period, these covenants shall automatically extended for successive ten (10) years periods unless an instrument signed by a two thirds majority of the then owners of the lots has been recorded repealing said covenants.

Cabernet shall have the right in its sole and absolute discretion, to amend these covenants for so long as it has rights to any lot within the subdivision.

After Cabernet no longer has rights to any lots these covenants may be amended, at any time, by an instrument in writing executed with all the formalities of a deed and recorded at the Strafford County Registry of Deeds by the then owners of a two thirds majority of the lots in the subdivision. It is the specific intent of this paragraph that each lot shall have one vote to amend these covenants.

A lot owned in co-tenancy, or by a corporation or by a trust or by other entity recognized by law shall be entitled to one vote, it being the responsibility of the entity owning the lot to select the individual who shall exercise the vote for said lot.

The Provisions of Paragraph 18 and 21 (only in so far as it pertains to enforcement of violations of Paragraph 18 by the

Commented [SW2]: Is this a reference to 19 c...? Is the vesting of the HOA with Cabernet's rights automatic or does it require some affirmative action such as a 2/3 vote?

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Homeowners' Association) shall exist in perpetuity and may not be amended.

In witness of whereof Timothy Mason, Manager of Cabernet Builders of Stratham, LLC, duly authorized, has hereunto set his hand this ____ day of _____, 2014 for the purpose of declaring and establishing these covenants.

Cabernet Builders of Stratham, LLC

By: _____
Timothy Mason, Manager,
Duly Authorized

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State of New Hampshire
County of Rockingham

_____, 2014

Personally appeared Timothy Mason, known to me to be the Manager of Cabernet Builders of Stratham, LLC, and swore that the execution of the foregoing instrument was his voluntary act and deed in said capacity, being first duly authorized.

Before me,

Notary Public/Justice of the Peace

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