

**DECLARATION OF RESTRICTIVE COVENANTS
WINTERBERRY OF NORTH HAMPTON SUBDIVISION**

**Lots Located in
NORTH HAMPTON, NEW HAMPSHIRE**

RECITALS

A. Encumbered Property

The land encumbered by these covenants are the sixteen (16) residential house lots numbered 1 through 16 shown on plan entitled "Boundary Line Adjustment and Subdivision Plan, Winterberry Subdivision," by Jones & Beach Engineers, Drawings No. A1 and A2, both of which plans are recorded at the Rockingham County Registry of Deeds as Plan No. D-27724.

These covenants shall not apply to:

1. Lots No. 17 and 18, which have frontage on Lovering Road and do not have frontage on the subdivision's newly constructed internal roadway, "Winterberry Lane,"
2. The land shown on said plan now owned by Richard and Leslie Bettcher (Tax Map 19, Lot 53), which has frontage on Lovering Road, and

B. Declarants

The Declarants of these covenants are the current property owners.

C. Delegation of Rights to the Winterberry of North Hampton Homeowners Association

All property owners agree that the intent of the approval rights as exercised by Winterberry of North Hampton Homeowners Association are to maintain property values and a relatively uniform character for the subdivision.

RESTRICTIVE COVENANTS

The Winterberry of North Hampton Homeowners Association, or Homeowners Association, hereby submits the Encumbered Property identified in the above recitals to the following Restrictive Covenants, which Covenants shall run with the land, in perpetuity.

1. APPLICABILITY.

- a. Acceptance of a deed or contract for any of the lots encumbered by these covenants shall constitute an agreement by said owner(s) for himself or herself, his or her heirs, executors, administrators, successors or assigns, to become subject to these Restrictive Covenants.
- b. Every purchaser of a lot, as a condition of taking title to the lot, shall sign a "Compliance Agreement" prepared by the Homeowners Association in the form attached to these Restrictive Covenants. This provision shall apply to all purchasers of a lot.

2. USE OF LOTS.

- a. The lots encumbered by these covenants shall be used only for single family residential purposes. Commercial or business use of any nature or kind shall not be permitted unless such use conforms fully with the Town of North Hampton zoning ordinance as a home occupation.
- b. Further subdivision of the lots is expressly prohibited without the written permission of the Homeowners Association and the North Hampton Planning Board.

3. SPECIFIC RESTRICTIONS

- a. Garages. Each single family dwelling shall have a private garage attached to the dwelling unit for not less than two cars.
- b. Addresses and Mailboxes. Each lot is provided with a granite post on which the lot owner will place the lot number or address of the lot in a manner in keeping with the character of the subdivision.
- c. Fuel Storage. No fuel tanks or similar storage receptacles may be exposed to view and may be installed only within a screened area as approved by the Homeowners Association.
- d. All structures shall have exterior wall surfaces covered with brick or stone veneer (with a minimum thickness of three (3) inches), 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 shall not be allowed, nor shall mercury vapor lights be utilized to light any portion of a lot or building.
- e. Roofing materials shall be either wood shingles or "architectural" shingles. The use of certain types of vinyl siding may be approved in the sole discretion of the Homeowners Association. All dwellings shall be constructed on poured concrete foundations.
- f. All dwellings shall have exterior brick chimneys.
- g. All fireplaces and chimneys visible from the exterior of the dwelling shall be constructed of brick, stone, or approved stucco application. The minimum dimensions of any chimney shall be twenty-four (24) inches by forty-two (42) inches.
- h. Fences shall be placed in proximity to any lot line so as to assure an owner's ability to maintain the fence from owner's property. 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. However, under no circumstances shall silver or galvanized chain link fence be approved. No fence shall be constructed between the front plane of any house and the street. All fences shall be constructed with finished side facing away from the dwelling.
- i. Notwithstanding the above, the Homeowners Association may place ornamental posts and fencing along the entrance of the subdivision and portions of the roadway in proximity to the entrance to enhance the esthetics of the road.
- j. No commercial or advertising signs of any kind shall be erected, placed, permitted or maintained on any lot or improvement except for a single sign no larger than two square feet advertising a lot or house for sale.

- k. Mobile homes or homes of modular construction or structures of a temporary character shall not be permitted on any lot except as a temporary shelter during repair or renovation of an existing structure.
- l. No all terrain vehicles, off road vehicles or snow mobiles 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 if the same be kept stored in a garage or outbuilding conforming to these covenants. Unregistered or uninspected automobiles or automobiles being repaired, refinished or restored for a period of more than seven (7) days shall be stored in a garage or other enclosed structure.
- m. No farm animal or fowl shall be maintained on any lot. A reasonable number of household pets shall be allowed, but shall not be bred or maintained for purposes of resale.
- n. No pet shall create unreasonable noise or create a nuisance or annoyance to neighbors.
- o. No healthy living trees with a diameter in excess of six (6) inches shall be cut at any time within thirty (30) feet of any property line including the lot frontage on the roadway, without the express approval of the Homeowners Association.
- p. 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.
- q. Trash, garbage, or other waste materials shall be stored in sanitary containers, which shall not be visible from the street. Structures and grounds on each lot shall be maintained at all times in a neat and orderly manner.
- r. Owners of vacant lots, lots with houses under construction, and lots with finished homes shall at all times keep and maintain their property in an orderly manner, not permit lawns to become overgrown, and prevent any accumulation of rubbish or debris on the premises. Front yards shall be free of unattended lawn chairs, swing sets, swimming pools and the like.
- s. The following are prohibited:
 - 1) Clotheslines;
 - 2) Above-ground swimming pools unless located to the rear of the dwelling;
 - 3) Antennas or satellite dishes with diameters larger than 48 inches;
 - 4) Additions or outbuildings or appurtenances unless prior approval has been obtained;
 - 5) Pesticides may be used only in quantities as directed by the applicable manufacturer or as recommended for application by appropriate professionals.

4. DESIGN AND PLAN APPROVALS.

- a. All buildings and structures shall be architecturally designed in keeping with traditional styles. The responsibility and authority for any architectural approvals in accordance with these restrictive covenants is the responsibility of the Board of Directors of the Homeowners Association or any subcommittee of the Association appointed to perform that task.
- b. No construction of any kind shall be commenced on any lot nor shall any exterior addition or change or alteration be made to any structure nor shall utility lines be erected or installed until plans for the foregoing have been approved in writing by the Homeowners Association.

5. APPROVAL PROCESS.

- a. The Homeowners Association approval of designs, plans and specifications shall be in its sole discretion and shall include the requirement that all permissions, permits and approvals of appropriate governmental authorities have been obtained, as evidenced by such documentation as Homeowners Association may reasonably request. In deciding whether to grant approval, the Homeowners Associations may request reasonable additional plans from the applicant to aid in its determination.
- b. In the event the Homeowners Association has not disapproved of any plans, specifications, or other materials within fifteen (15) days of receipt, the proposed plans shall be deemed to be approved.
- c. In the event that no legal action is brought against the owner of any newly constructed residence or exterior addition or alteration of such residence, challenging compliance with these covenants within thirty (30) days of substantial completion of the exterior of any dwelling, outbuilding or

addition, there shall be established a conclusive presumption that said dwelling, outbuilding or addition complies with these covenants.

- d. The Homeowners Association shall not be liable for any errors of judgment in approving plans later found by a court not to be in conformity with these covenants except for bad faith approval of non-conforming plans by the Homeowners Association.
- e. The Homeowners Association shall not be obligated to retain any plans or specifications for an approved dwelling for more than 60 days after completion of the dwelling including landscaping.

6. EASEMENTS

- a. **EASEMENTS FOR LANDSCAPING:** The Homeowners Association shall have an easement for landscaping on a portion of Lot #1 shown on the Plan. The Association shall have the right to plant flowers and shrubs, to install ornamental fencing and to place one sign no larger than thirty two (32) square feet advertising the subdivision in the easement area. In addition, the Homeowners Association may install landscaping in an easement area on the northeasterly side of the entrance to the subdivision on property of Gilbert & Diane Gagne. The Homeowners Association shall be responsible for maintaining the landscaping in this area.
- b. **DECLARATION OF CONSERVATION RESTRICTIONS:** Lots # 7 through 14 are subject to conservation restrictions on each lot in the location shown on the Plan. The restrictions are set forth in a certain DECLARATION OF CONSERVATION RESTRICTIONS, in substance and form approved by the North Hampton Planning Board as a condition of its December 16, 1999 subdivision approval encumbering said Lots #7 through #14, to be recorded at the Rockingham County Registry of Deeds.
- c. The Association shall obtain reasonable amounts of liability insurance to cover any exposure from use of the easement areas.

7. HOMEOWNERS ASSOCIATION.

- a. The Winterberry of North Hampton Homeowners Association shall be a not for profit corporation.
- b. The purpose for which the association is created will be to assume responsibility for all business affecting the association, including but not limited to; maintaining landscaping and lighting at entrances to the subdivision and along the roadway, preparation of an annual budget, and collection of association dues from all lot owners.
- c. The annual budget, until changed by the Homeowners Association shall run from March 1st to the last day of February of each year. The initial deposit at closing shall be pro-rated from the date of closing to the following end of February.
- d. All purchasers of lots encumbered by these Restrictive Covenants 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. The Homeowners Associations shall have the right to establish an annual budget for management and maintenance of all common areas of the subdivision and the Homeowners Association shall thereafter have such right. The fees or assessments shall be used for the improvement, landscaping, maintenance, and operation of rights-of-way, drainage ways, lighting, signage, security operations and facilities, insect control, vegetation control, drainage systems, and other common expenses, including but not limited to, the purchase of liability and other insurance and for the cost of labor, equipment, materials, management and supervision and third party services such as legal and accounting.
- g. The owner of each lot encumbered by these Restrictive Covenants 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:
 - 1) annual fee or charges; and
 - 2) special assessments for the purposes set forth above.

- h. 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.
- i. 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.

8. GENERAL PROVISIONS.

- a. All of the foregoing covenants, conditions, reservations and restrictions shall continue and remain in full force and effect at all times against the owner of any lot encumbered by these Restrictive Covenants regardless of how title was acquired for a period of twenty-five (25) years from the date of recording hereof, after which time said covenants will be automatically extended for successive periods of ten (10) years.
- b. The foregoing covenants, conditions, reservations, and restrictions may be amended by an instrument signed by the Declarants identified in Recitals Paragraph B above, or their respective assignee, identified by an instrument recorded at the Rockingham County Registry of Deeds. Any amendment will then be by a majority of the then owners of the lots encumbered by these Restrictive Covenants agreeing to change said covenants in whole or in part as provided in the By-laws of the Homeowners Association. Any amendment shall be recorded in the Rockingham County Registry of Deeds.
- c. The Homeowners Association shall have the right, in addition to any other applicable remedies legally available to assess a penalty in the amount of One Hundred (\$100.00) dollars per day for the violation or breach of any of these covenants, conditions, reservations, or restrictions upon failure of a lot owner to cure such violation after notice to the violator is given as required herein, or if not otherwise set forth, within 30 days of such violation.
- d. Invalidity of any one of these covenants by court order shall in no way affect any of the other provisions which shall remain in full force and effect.
- e. These covenants shall be read in conjunction with all other recorded documents affecting the subdivision including recorded plans. In the event of a conflict between these Restrictive Covenants and any other recorded documents affecting use of the lots or subdivision property, the more restrictive provision shall govern the use or activity on the lot or in the subdivision.
- f. Failure to specifically refer to and include or incorporate these covenants in deeds to any lot shall not in any manner affect the validity and effectiveness of these restrictions upon any lot made subject to them.
- g. Any notices provided for in these covenants shall be served by being delivered in hand to the dwelling on any lot, or to such other address or location as a lot owner may have specified in writing to the Association. Such notice shall also be deemed delivered if properly addressed and sent by first class mail except in a case where the penalty assessment provisions of these covenants may be invoked for failure to comply, in which case such notice shall be sent by certified mail, return receipt requested, and shall be deemed received upon signing of the receipt or five (5) days after the first notice of attempt to deliver certified mail.

DATED: .

WINTERBERRY OF NORTH HAMPTON HOMEOWNERS ASSOCIATION

_____ By: _____

Witness Robert Kennedy, Board Member, as aforesaid and not individually

_____ By: _____

Witness Steve Chenard, Board Member, as aforesaid and not individually

_____ By: _____

Witness David Bernier, Board Member, as aforesaid and not individually

_____ By: _____

Witness Gerry Henry, Board Member, as aforesaid and not individually

_____ By: _____

Witness Elaine Thomas, Board Member, as aforesaid and not individually

Before me.

Notary Public/Justice of the Peace
STATE OF NEW HAMPSHIRE