

DEP DECLARATION OF RESTRICTIONS
TIMBER SANDS SUBDIVISION – SCARBOROUGH, MAINE
(Forested Buffer, No Disturbance)

THIS DECLARATION OF RESTRICTIONS is made this 17th day of November, 2008 by **RISBARA PROPERTIES, LLC**, a Maine limited liability company with a place of business in the Town of Scarborough, Maine and a mailing address of 197 U.S. Route 1, P.O. Box 485, Scarborough, Maine 04070-0485 (herein referred to as the “Declarant”, pursuant to a permit received from the Maine Department of Environmental Protection under the Stormwater Management Law to preserve buffer areas on a parcel of land located southerly of Holmes Road in the Town of Scarborough, Maine.

WHEREAS, the Declarant holds title to certain real property situated in the Town of Scarborough, Maine now known as the Timber Sands Subdivision as described in a deed from Risbara Bros. Construction Co., Inc. dated November 16, 2007 and recorded in the Cumberland Registry of Deeds in Book 25626, Page 6, a deed from Joel R. Bicknell dated May 5, 2008 and recorded in said Registry of Deeds in Book 26029, Page 280, excepting property conveyed to Joel R. Bicknell in Book 26029, Page 278 (collectively herein referred to as the “Property”; and

WHEREAS, Declarant desires to place certain restrictions, under the terms and conditions herein, over portion of the Property (hereinafter referred to as the “Restricted Buffer”) described as follows:

The Forested No-Disturb Stormwater Buffer Easement areas “A,” “B,” “C,” “D,” “E 1” and “E 2” located on the Open Space and Lots 1 and 2 as delineated by grey shading on a plan entitled “Final Subdivision Plan, Timber Sands Subdivision” prepared by Northeast Civil Solutions Incorporated dated January 28, 2008 as revised through August 4, 2008 approved by the Scarborough Planning Board and recorded or to be recorded in the Cumberland County Registry of Deeds (the “Plan”), a reduced excerpt of which is attached hereto as Exhibit A;

WHEREAS, pursuant to the Stormwater Management Law, 38 M.R.S.A. Section 420-D, Chapter 500 of rules promulgated by the Maine Board of Environmental Protection (“Stormwater Management Rules”), and the approval dated August 20, 2008 and recorded in said Registry of Deeds in Book 26331, Page 327 Declarant has agreed to impose certain restrictions on the Restricted Buffer areas as more particularly set forth herein and has agreed that these restrictions may be enforced by the Maine Department of Environmental Protection or any successor (hereinafter the “MDEP”),

NOW, THEREFORE, the Declarant hereby declares that the Restricted Buffer areas are and shall forever be held, transferred, sold, conveyed, occupied and maintained subject to the conditions and restrictions set forth herein. These Restrictions shall run with the Restricted Buffer areas and shall be binding on all parties having any right, title or interest in and to the Restricted Buffer areas or any portion thereof, and their heirs, personal representatives, successors, and assigns. Any present or future owner or occupant of the Restricted Buffer areas or any portion thereof, by the acceptance of a deed of conveyance of all or part of the Restricted Buffer areas or an instrument conveying any interest therein, whether or not the deed or instrument shall so express, shall be deemed to have accepted the Restricted Buffer areas subject to the Restrictions

and shall agree to be bound by, to comply with and to be subject to each and every one of the Restrictions hereinafter set forth.

1. Restrictions on Restricted Buffer Areas. Unless the owner of the Restricted Buffer areas or any successors or assigns obtains the prior written approval of the MDEP, the Restricted Buffer areas must remain undeveloped in perpetuity except as otherwise permitted herein. To maintain the ability of the Restricted Buffer areas to filter and absorb stormwater, and to maintain compliance with the Stormwater Management Law and the permit issued thereunder to the Declarant, the use of the Restricted Buffer areas is hereinafter limited as follows.

- a. No soil, loam, peat, sand, gravel, concrete, rock or other mineral substance, refuse, trash, vehicle bodies or parts, rubbish, debris, junk waste, pollutants or other fill material will be placed, stored or dumped on the Restricted Buffer areas, nor shall the topography of the area be altered or manipulated in any way;
- b. No trees may be cut or sprayed with biocides except for the normal maintenance of dead, windblown or damaged trees and for pruning of tree branches below a height of 12 feet provided two thirds of the tree's canopy is maintained;
- c. No undergrowth, ground cover vegetation, leaf litter, organic duff layer or mineral soil may be disturbed except that one winding path that is no wider than six feet and that does not provide a downhill channel for runoff are allowed through each Restricted Buffer area;
- d. No building or other temporary or permanent structure may be constructed, placed or permitted to remain on the Restricted Buffer areas, except for signs, utility poles or fences;
- e. No trucks, cars, dirt bikes, ATVs, bulldozers, backhoes or other motorized vehicles or mechanical equipment may be permitted on the Restricted Buffer areas;
- f. Any level lip spreader directing flow to the Restricted Buffer areas must be regularly inspected and adequately maintained to preserve the function of the level spreader. Any activity on or use of the Restricted Buffer areas inconsistent with the purpose of these Restrictions is prohibited.
- g. Any future alterations or changes in use of the Restricted Buffer areas must receive prior approval in writing from the MDEP. The MDEP may approve such alterations and changes in use if such alterations and uses do not impede the stormwater control and treatment capability of the Restricted Buffer areas or if adequate and appropriate alternative means of stormwater control and treatment are provided.

2. Enforcement. The MDEP may enforce any of the Restrictions set forth in Section 1 above.

3. Binding Effect. The restrictions set forth herein shall be binding on any present or future owner of the Restricted Buffer areas. If the Restricted Buffer areas are at any time owned by more than one owner, each owner shall be bound by the foregoing restrictions to the extent that any of the Restricted Buffer areas is included within such owner's property.


4. Amendment. Any provision contained in this Declaration may be amended or revoked only by the recording of a written instrument or instruments specifying the amendment or the revocation signed by the owner or owners of the Restricted Buffer areas and by the MDEP.

5. Effective Provisions of Declaration. Each provision of this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of this Declaration, shall be deemed a land use restriction running with the land as a burden and upon the title to the Restricted Buffer areas.


6. Severability. Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

7. Governing Law. This Declaration shall be governed by and interpreted in accordance with the laws of the State of Maine.

Witness its hand and seal on the date set forth above.



Witness

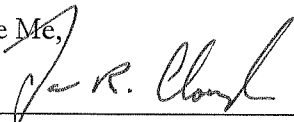
Risbara Properties, LLC
by: 

Rocco C. Risbara III, its Manager

State of Maine
County of Cumberland, ss

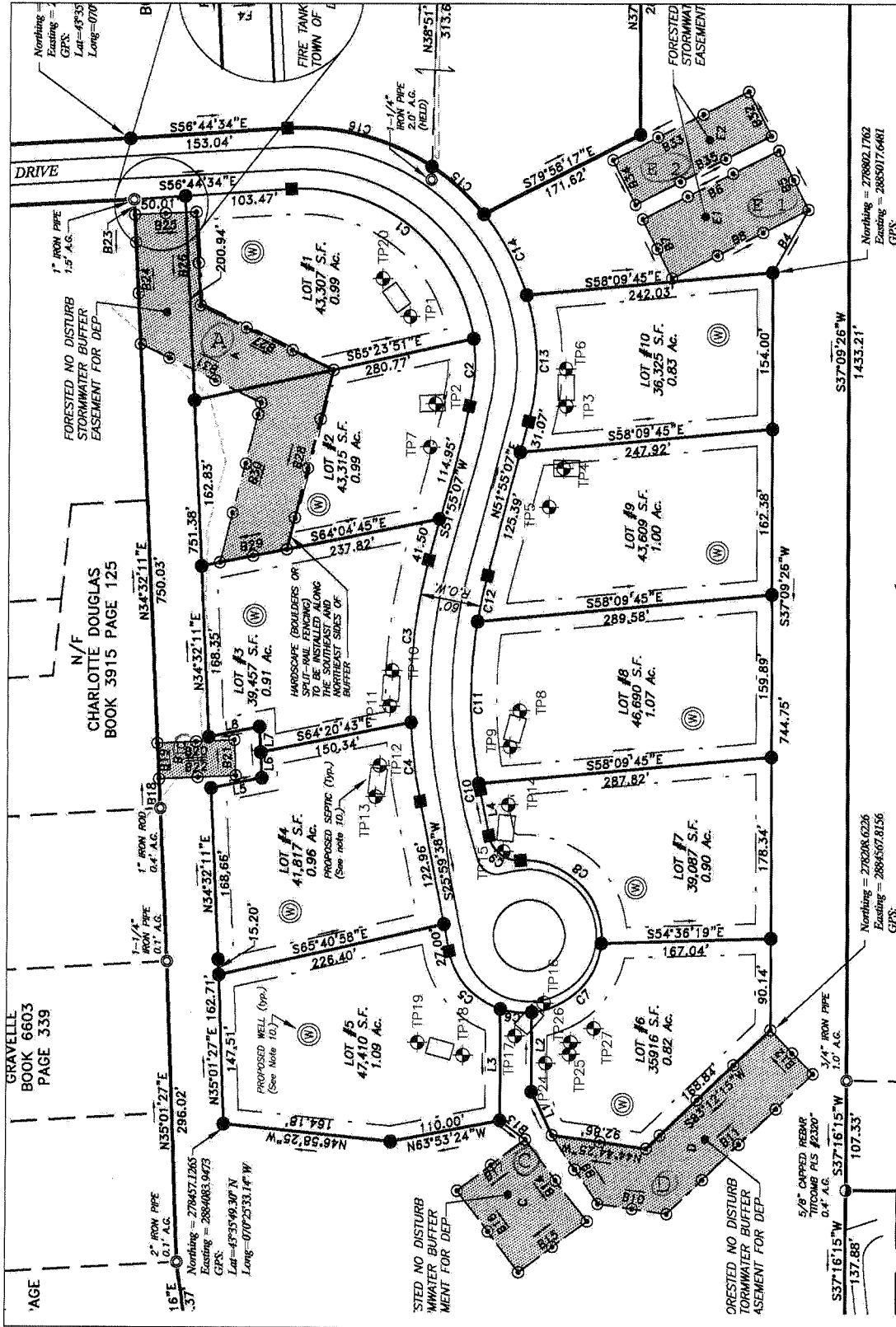
November 20, 2008

Then personally appeared before me the above named Rocco C. Risbara III in his said capacity and acknowledged the foregoing to be his free act and deed and the free act and deed of said limited liability company.

Before Me,


Notary public/Maine Attorney at Law
Name: Lawrence R. Clough

Exhibit A



Received
Recorded Register of Deeds
Nov 20, 2008 03:02:48P
Cumberland County
Pamela E. Lovley