

**DECLARATION OF COVENANTS, COMMON  
EASEMENTS AND RESTRICTIONS**

WITNESS THIS DECLARATION OF COVENANTS, COMMON EASEMENTS AND RESTRICTIONS made this 15 day of September, 2004, by NIAL CONSTRUCTION, INC. of Kittery, Maine (hereinafter referred to as the "Declarant"); and

WHEREAS, Declarant owns certain real property located in the City of Portland, County of Cumberland, and State of Maine, shown upon a certain plan entitled Auburn Estates (hereinafter referred to as the "Subdivision") prepared by Sebago Technics dated July 22, 2004, and recorded in the Cumberland County Registry of Deeds in Plan Book 204, Page 665, (hereinafter referred to as the "Plan"); and

WHEREAS, the Declarant, being about to sell and convey lots in said Subdivision, desires to assure to said purchasers and their heirs, successors, and assigns, owning such lots, the use, benefit and enjoyment of said lots in accordance with a harmonious plan, and to this end desires that said lots in said Subdivision shall be subjected to certain restrictions, reservations, servitudes, covenants, agreements and easements as hereinafter set forth; and

WHEREAS, Declarant desires to assure quality standards for the wholesome development of the Property and to promote the interest and welfare of each Owner of a part of the Property (hereinafter referred to as the "Owners") and therefore desires to subject the Property to protective covenants and common easements as set for the hereinafter; and

WHEREAS, Declarant hereby declares that the Property is and shall be held, occupied, improved, transferred, leased and otherwise used and disposed of subject to the protective covenants and common easements set forth herein, all of which are declared to be in furtherance of a uniform scheme of mutual equitable servitudes upon each and every portion thereof, in favor of each and every other portion thereof, and create the reciprocal acquiring or owning an interest in any portion thereof, which protective covenants and common easements shall be determined to run with the land and be a burden and benefit upon and to, and be enforceable by, all persons having any interest in any portion of the Property.

**ARTICLE I**

1. *Residential Uses.* Subject to the rights of the Declarant to develop and sell the Lots and such other rights of the Declarant as are set forth in this Declaration, each Lot shall be used only as a single-family residence, with the exception of those businesses that are known as "Home Occupation" businesses, which are primarily oriented towards providing services, as outlined in the City of Portland's Zoning Code for Zone R-3.

2. *Residential Buildings.* No structure or building shall be erected, altered, placed, or permitted to remain on any lot other than one single-family dwelling of not less than 1,500 square feet, if constructed entirely on one level; otherwise not less than 1,800 square feet, of heated living space (exclusive of garages, porches, cellars and associated living space) together with auxiliary structures, such as, private garages, storage buildings, barns, cabanas, pergolas, fences or in-ground swimming pools and the like, provided that such auxiliary structures shall be consistent with the residential nature of the lot. All such structures shall possess an attached two-car garage and shall be erected with a continuous foundation. No above-ground pools shall be permitted without approval from the Declarant of location and design. Lot #9 is specifically exempt from this requirement.

3. *Architectural Review.* Plans for the initial dwelling and associated building to be constructed on any lot or parcel of land must have the written approval of the Declarant, its successors or assigns, before construction is commenced, as to location of the dwelling, the type and style of architecture, and the

type and quality of the building materials used. All windows, doors and garage doors shall have crown molding and four inch trim. Crown molding shall be at the top of each window, door and garage door. Four inch trim shall be on the top, sides and bottom of each window. Four inch trim shall be on the top and sides of each door and garage door. Corner boards are also required. Mailbox posts must be granite as sold by Swenson's Granite in Westbrook, Maine. Declarant shall approve such plans if Declarant determines, in its sole discretion, that construction in accordance with such plans will not be detrimental to the Auburn Estates Subdivision development. Upon completion of construction, pursuant to the plans agreed upon by the Declarant, all dwellings shall be deemed to have complied with this paragraph.

4. *Compliance with Ordinance.* No building or structure shall ever be erected on any lot hereby conveyed in violation of municipal ordinance or regulations. Trash, garbage, and other wastes shall be kept in sanitary covered containers, which shall not be visible from the street or from any other lot, except for limited periods coincident with trash collection.

5. *Animals.* No livestock, animals, or poultry other than common household pets shall be kept, maintained, or owned on any of the lots. No boarding or breeding kennels may be kept or maintained on any of the lots. No dogs shall be allowed on runs, hitched or in kennels; however, it is acceptable to have dogs in owner's open yard with family member(s) or restrained with an invisible fence.

6. *Vehicles/Trailers.* No house trailers, recreational vehicles, business or commercial vehicle(s) or similar vehicles shall be brought upon any lot except one registered business vehicle normally used by a lot owner in his/her business. No unregistered vehicles may be kept upon any lot unless such vehicle is stored in a Declarant-approved structure per item #3 above. No tractor-trailers may be stored on any lot. The prohibitions contained herein shall not be construed to prevent the use of trailers, vehicles, or temporary structures during the period of actual construction. All off-season boat storage (September through May) is not allowed.

7. *Inoperable Vehicles.* Residents are prohibited from placing mobile homes on the Property. No junk vehicles or other vehicles that do not display current state motor vehicle registration may be kept or maintained on the Property.

8. *Maintenance.* All lots and buildings thereon shall be maintained in a neat, attractive manner and kept in good repair.

9. *Chimneys and Foundations.* Any fireplace or chimney located on the exterior of the house shall be of brick or stone construction unless otherwise approved by the Declarant during the Architectural Review process. No cinderblock or metal chimneys shall be allowed on the exterior of the house. Each building and structure on the premises shall be supported by a solid masonry foundation or slab, or appropriate alternative foundation as approved by Declarant.

10. *Signs.* No sign of any nature or description shall be displayed or placed upon any part of the premises except for a "For Sale" sign referring only to a lot or residence, or a sign erected by the Declarant to identify the subdivision, or a sign erected by a lot owner to identify their name or home occupation which does not exceed two square feet in size.

11. *Nuisances.* No owner of a lot shall do or permit to be done any act upon the lot, which may be, or is, or may become a nuisance as defined by state or local law, ordinance or regulation.

12. *Construction.* When construction on a lot is begun, work thereon must proceed diligently and must be completed with a reasonable time. All houses and other structures shall be completed on the exterior with one (1) year from start of construction, including two (2) coats of paint, stain or varnish on any exterior wood surface. No buildings shall be occupied until an occupancy permit is granted. All driveways must be paved within one (1) year of the start of construction. All disturbed areas not built upon or landscaped, shall be loamed and seeded at the close of the construction, but, in any event, must be completed within nine (9) months of occupancy.

13. *Driveway Obstructions.* Driveways serving lots 1, 2 and 3 shall at no time be used for storage purposes of any kind. Those respective areas shall at all times remain unobstructed so as to allow vehicles sufficient space to turnaround and exit onto Auburn Street.

14. *Amendments.* The provisions hereof may from time to time be amended by a vote or by written approval of the lot owners of lots to which seventy-five percent (75%) of the votes are allocated. Each lot shall be allocated one (1) vote.

## ARTICLE II

### EASEMENTS

1. *Easements.* The lots shall be sold subject to all easements identified and depicted on the Plan, including but not limited to the following:

A. *Driveway Easement:* Lot #5 shall provide Lot #4 with a right of way for its driveway.

B. *Utilities Easements:* Utilities shall include electrical power, natural gas, telephone and cable television.

C. *Drainage Easements:* Drainage easements as depicted on the Plan shall be part of the overall drainage system of the lots and roadways within the Subdivision. The drainage easements shall be maintained by the owners of the burdened lots to allow the continued unrestricted movement of surface and storm water runoff.

2. *Scope of Easements.* All lot conveyances in the Subdivision shall be and hereby are subject to the reservations by Declarant, its successors and assigns, of the benefits and burdens of all easements referenced herein, together with the following rights, which shall supplement and shall not replace any other rights of record:

A. To install, relocate, modify, repair and maintain improvements incident to any subject easement, including without limitation, removal of vegetation and excavation. Such improvements shall be installed and maintained in the most attractive fashion practicable, and reasonable effort shall be made to restore any such area to its original condition following a disturbance of an easement area incident to a permitted activity. Such restoration shall be conducted in a timely and workmanlike manner entirely at the expense of the party causing any such disturbance of the easement area.

B. Maintain access to and through any subsequent easement consistent with the purpose of such easement.

C. Conduct any other activity related to or within the scope of any specific type of easement.

## ARTICLE III

### DECLARANT'S RIGHTS

The conveyance of the Lots to Owners shall be subject to the following reserved rights:

1. *Binding Effect.* Each of the provisions set forth in Article I of this Declarations shall continue and be binding in perpetuity, subject to change from time to time, as provided below.

2. *Modification.* The Declarant reserves the right until the construction, marketing and sale of all Lots is completed, and upon the Declarant's sale of all interest in the Subdivision, any changes shall require

the consent of sixty-six percent (66%) of the lot owners in addition to the City of Portland Planning Board approval, to:

A. Change the size, number and location of Lots and other improvements, and the size, layout, and location of any Lot for which a purchase and sale agreement has not been executed by the Declarant or with respect to which the purchase is in default under a purchase and sale agreement. The change or changes shall be effective upon the recording by the Declarant of an amendment to the Declaration and the recording by the Declarant of an amended subdivision plan indicating the changes made and upon acceptance of any changes by the City of Portland Planning Board.

B. Locate on the Property, even though not depicted on the survey, and grant and reserve easements and rights of way for the installation, maintenance, repair, replacement and inspection of utility lines, wires, pipes, conduits, and facilities, including, but not limited to, water, electric, telephone, fuel oil, and sewer.

C. Connect with and make use of utility lines, wires, pipes and conduits located on the Property for construction and sole purposes, provided that the Declarant shall be responsible for the cost of service so used.

D. Use the ways shown of the Plan for ingress and egress and use the Property for the storage of construction materials and equipment used in the completion of the project.

E. Install and maintain signs and lighting for sales.

3. *Enforcement.* These covenants, easements and restrictions are imposed as part of a general scheme for the protection and benefit of the Declarant and each subsequent owner of a lot in the Subdivision. The provisions herein set forth shall run with the land and bind Declarant, its successors, grantees, and assigns, and all parties claiming by, through, or under them. Declarant, or its successors, or assigns, the City of Portland and each owner or owners of any of the above land from time to time shall have the right, but not the obligation, jointly and separately to sue for and obtain a prohibitive or mandatory injunction to prevent the breach of, or to enforce the observance of, the provisions above set forth, or any of them, in addition to the right to bring an ordinary legal action for damages and the right to collect attorney's fees associated with the need to bring said suit. In no event shall the failure of Declarant, or its successors or assigns, and such owners to enforce any of the provisions herein set forth as to a particular violation be deemed to be a waiver of the right to do so as to any continuing or subsequent violation.

4. *Evidence of Compliance.* Any consent making changes permitted above shall be effective only if expressed in a written instrument or instruments executed and acknowledged by each of the consenting owners and recorded in the Cumberland County Registry of Deeds. Upon and after the effective date of any such change or changes, it or they, shall be binding upon the lots subject to this Declaration and all persons then owning said lots in the Subdivision and shall run with the land and bind all persons claiming, by, through, or under any one or more of them.

This Article III shall not be amended without the consent of the Declarant so long as the Declarant owns any part of the Property.

#### ARTICLE IV GENERAL PROVISIONS

1. *Waiver.* No delay or omission on the part of Declarant or any Owner in enforcing the covenants set forth herein shall be construed as a waiver of any right to enforce or seek such remedy or acquiescence in such breach.

2. *Severability.* In the event any one or more of the provisions of this Declaration shall be found for any reason by a Court of competent jurisdiction to be unenforceable, or null and void, such judgment of decrees shall not in any manner whatsoever affect, modify, change, abrogate or nullify any other provision of this Declaration.

3. *Pronouns.* Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all gender.

4. *Exemption.* Lot 9 shall be exempt from any and all requirements, restrictions and conditions included herein.

IN WITNESS WHEREOF, the said NIAL Construction, Inc. has caused this DECLARATION OF COVENANT, COMMON EASEMENTS AND RESTRICTIONS to be executed by its President, David Sullivan, on the date and the year above written.

WITNESS:

NIAL CONSTRUCTION, INC.

By: David Sullivan  
Its: President

State of Maine )  
Cumberland County ) ss.

September 15, 2004

Then personally appeared the above-named David Sullivan, President of NIAL Construction, Inc. and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said corporation.

Before me,

Notary Public/Attorney at Law

SEAL

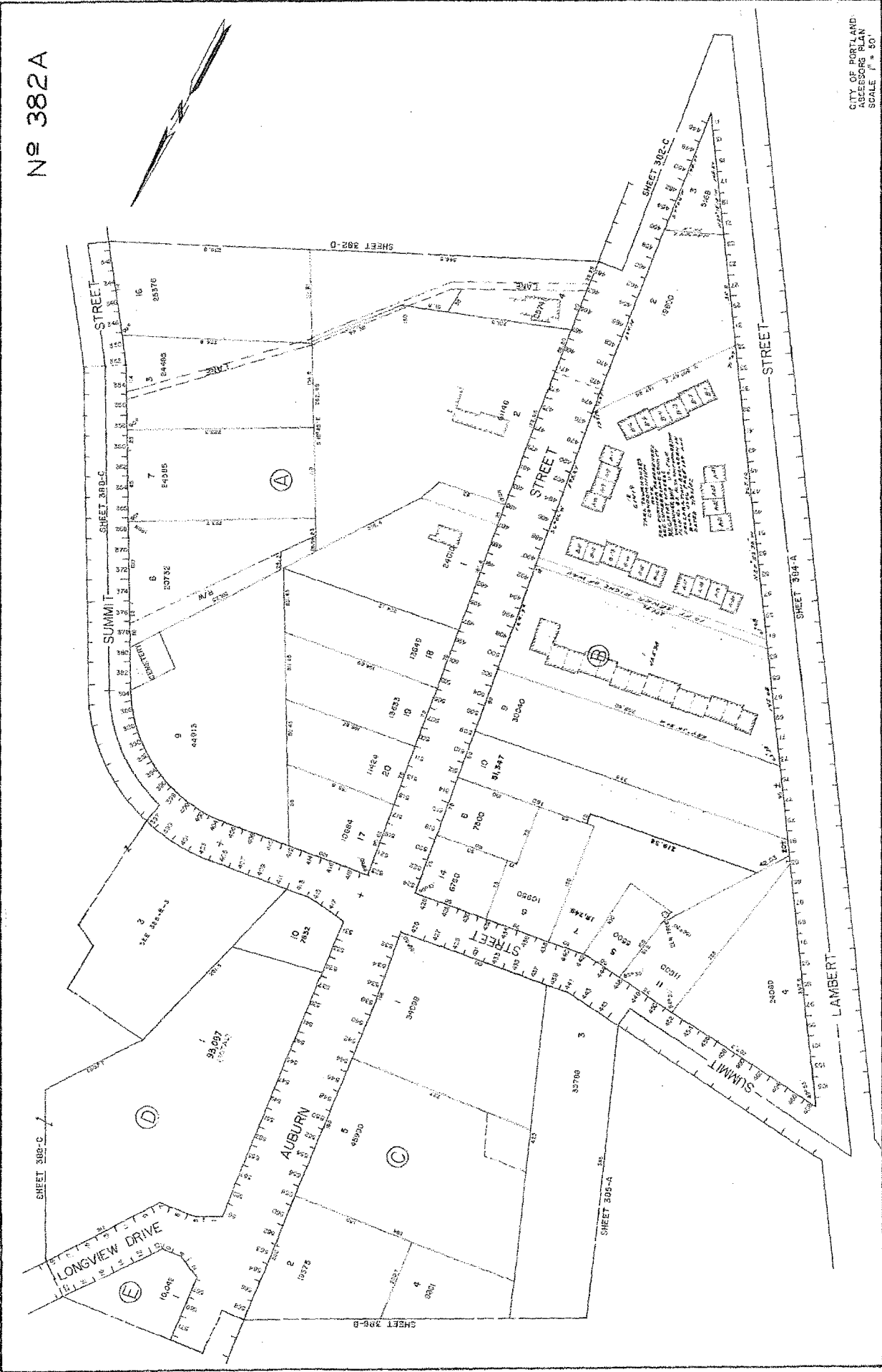
Paul D. Gumpert

8/24/09 - Commission Expires

Received  
Recorded Register of Deeds  
Sep. 16, 2004 12:10:04P  
Cumberland County  
John B O'Brien

RECORDED  
SEP 16 2004  
CUMBERLAND COUNTY

No 382A



CITY OF PORTLAND  
ASSESSING PLAN  
SCALE 1" = 30'  
REDRAWN 6.75

REVISED 1704