

DECLARATION OF RESERVATIONS AND RESTRICTIONS
GOVERNING CASTLE REACH SUBDIVISION
IN WINDHAM, NEW HAMPSHIRE

This Declaration of Restrictive Covenant is made by Mesity Castle Reach, LLC, a New Hampshire limited liability company with a principal place of business at 100 Andover Bypass, North Andover, Massachusetts 01845 (hereinafter collectively referred to as “Castle Reach”), being the owner of land in Windham, Rockingham County, New Hampshire, described in Exhibit A attached hereto.

WHEREAS, Castle Reach intends to create a residential community, to be known as “Castle Reach Subdivision” on said land, together with other amenities therein, including, without limitations, public and/or private ways for circulation and access to residences and utilities services;

WHEREAS, in furtherance thereof, Castle Reach desires and intends to impose certain restrictions on its land;

NOW THEREFORE, Castle Reach does hereby make and declare said lands subject to the following restrictive covenant and provisions:

I. Land Classification

A. Residence Lots.

Referring to each of the lots numbered 1 through 9, as shown on the Plan referred to in Exhibit A attached hereto.

II. Residence Lots: Permitted Uses and Approval Process.

A. Improvements and Alterations.

No buildings or fences or other structures of any kind or additions thereto or driveways, sidewalks, or parking areas or subsurface sewage disposal systems (hereinafter called collectively referred to as “Future Improvements”) shall be erected, placed, or allowed to stand upon any portion of any Residence Lot nor shall the grade of any portion of any Residence Lot be changed until the size, plans, specifications, and locations of any future improvements thereon and until the particular use of such future improvements shall have been approved in writing or this restriction waived with respect thereto or released in writing by the Approval Authority provided for in paragraph 2.

B. Approval Authority.

The term "Approval Authority" as used herein shall mean an approval committee of two persons as may from time to time be designated by Castle Reach, provided that each such designation of a successor to a member of the initial approval committee shall be by written instrument and shall not take effect until recorded with said Deeds. The initial approval committee shall be Kenneth Grandstaff and Anthony Mesiti. If any initial approval committee member or any of their successors shall be unwilling or unable to serve, or to continue to serve, successors shall be those persons designated by Castle Reach.

If, at any time after the date hereof, Castle Reach shall convey its remaining interest in the remaining unbuilt Residence Lots to a successor developer (the "Successor Developer"), Castle Reach shall have the right to assign any and all of its rights arising hereunder, to said Successor Developer, by a written instrument recorded herein the Rockingham Registry of Deeds, which writing shall provide the name and address of each person who has been designated as successor members of the Approval Authority.

C. Application for Approval of Improvements and Alterations.

Any owner of a Residence Lot proposing to make any improvement which, under Section II. A. hereof, requires the prior written approval of the Approval Authority, shall apply for approval by delivering a written application describing the nature of the proposed improvement, together with such of the following documents and information as are pertinent, in such number of copies as the Approval Authority may require:

- (1) A plot plan of the affected property showing the location of existing and proposed improvements and alterations;
- (2) Floor plans and landscaping plans (requiring a minimum of 4500 square feet of contiguous habitable space (exclusive of attics, cellars, or porches), a garage for three to five cars, and complete finish landscaping);
- (3) Drawings showing all elevations;
- (4) A description of exterior materials and colors, with color samples; and
- (5) The owner's proposed construction schedule.

D. Basis for Approval.

The Approval Authority, after consideration of the items set forth in the foregoing Paragraph C and such other matters as it deems necessary, shall grant the requested approval if the Approval Authority determines that:

(1) The proposed improvement or alteration conforms to the provisions of this Declaration and the restrictions herein set forth;

(2) The proposed improvement or alteration is reasonably compatible with the standards of Castle Reach and the purposes of this Declaration as to quality of workmanship and materials, as to harmony of external design with existing structures, and as to location with respect to vegetation, topography, finished grade, and views from other buildings and building sites; and

(3) The proposed improvement or alteration complies with all applicable laws, specifically including the Zoning Ordinances and building code requirements of the Town of Windham. In addition, Castle Reach shall require the following:

a. All improvements shall have a light post and mailbox at the entranceway of the Residence Lot meeting design criteria selected by Castle Reach.

b. All driveways shall be constructed of a hard surface including, but not limited, asphalt, concrete, or pavers. No driveway shall be gravel, loose soil, or other similar surface.

c. No detached garage shall be closer to the front lot line than the main residence structure.

d. No playgrounds, courts, or other recreational areas shall be constructed closer to the front lot line than the main residence structure.

e. All structures shall be at least 75 feet from the front yard lot line, 30 feet from each side yard lot line, and 30 feet from the rear lot line.

E. Decisions and Approval Authority.

All decisions by the Approval Authority hereunder shall be by a majority vote (or written consent) of the Approval Authority. A Certificate recorded with the Rockingham County Registry of Deeds consistent with Section II.B. above shall serve as conclusive evidence of the identity of the members of the Approval Authority.

F. Form of Approval.

All approvals given under the foregoing paragraph shall be in writing, provided, however, that any such application for approval which has not been acted upon within thirty (30) days from the date of submission thereof to the Approval Authority shall be deemed approved. In the event of such failure of the Approval Authority to act upon such application within said thirty (30) day period, the owner of the Residence Lot which submitted said application may record at the Rockingham County Registry of Deeds an affidavit, sworn to under the penalties of perjury, reciting same, and said affidavit, upon recording, shall be of the same force and effect as a certificate of approval issued by the Approval Authority. The deed of a particular lot by Castle Reach shall be conclusive evidence that with respect to all improvements existing as of the date of such deed the approvals required hereunder have been granted as to the Residence Lot conveyed.

G. Proceeding with Work.

The construction of approved future improvements on any Residence Lot once begun shall be carried forward to completion with diligence; and any improvement not substantially completed within nine (9) months after it is begun shall be removed; provided that said nine-month period shall be extended to the extent of any periods during which construction operations are prevented by governmental regulations, strikes, or casualties, it being understood that as used herein "substantial completion" shall mean that the exterior of the building has been fully completed and the building site has been graded, paved, and landscaped so as to give the outward appearance that the building and the building site have been completed. In no event shall any use be made of any Residence Lot, which is otherwise prohibited by the Ordinances of the Town of Windham, as the same may from time to time be amended, or by any applicable law, ordinance, or regulation of any governmental unit having jurisdiction thereof.

H. Failure to Complete Work.

In the event that the construction, reconstruction, refinishing, or alterations of any improvement is not completed within a reasonable time, or having been completed does not comply with the approval therefor given, the Approval Authority or his designee may direct and order the owner to remedy the non-compliance or remove the improvement. If the owner does not comply with the order within the period set forth in the order, the owner shall reimburse the Approval Authority, upon demand, for all reasonable expenses and legal fees incurred in connection with the enforcement thereof.

I. Construction Restrictions.

During the construction period, the owner and/or builder of any Residence Lot shall keep the construction site free and clear of any debris. Each construction site shall have a dumpster suitable for conditions of construction, which shall be emptied on a daily basis. All construction shall take place within the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday and 9:00 a.m. to 4:00 p.m. on Saturday.

Prior to commencing any construction at the site, a \$10,000.00 bond, letter of credit, or other security acceptable to Castle Reach, shall be delivered to and posted with Castle Reach, for purposes of indemnifying Castle Reach for any breach by the owner or builder of the terms and conditions hereof this Section I.

The owner and builder of the Residence Lot agree to indemnify, defend and hold harmless Castle Reach from any loss, claim or damages suffered by Castle Reach relating to any violation whatsoever of any permits, approvals, covenants or restrictions in any way relating to Castle Reach Subdivision including, but not limited to, violation of planning board approvals and/or conditions, conservation restrictions, damage to easements, or any other interference with the rights and privileges of Castle Reach, or any other owner within the Castle Reach Subdivision.

Prior to construction on any Residence Lot, the owner and builder shall be responsible for constructing a temporary entrance that is at least twenty (20) feet wide and thirty (30) feet in length, covered with course gravel of one to two inch size, intending to ensure that any mud, debris or other materials, are captured from trucks exiting or entering the Residence Lot for construction purposes.

J. Enforcement.

The Approval Authority may prosecute proceedings at law or in equity against any person violating or attempting to violate the provisions hereof either to restrain violation or to recover damages.

K. Non-Waiver.

The failure of the Approval Authority to enforce any restriction, covenant, or provision hereof, shall not be deemed to be a waiver of the right to do so thereafter as to the same breach or to one occurring prior or subsequent thereto.

L. Severability.

If any provision hereof or the application of any such provision to any person or circumstance shall be held invalid, the remainder of this declaration or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

M. Utilities.

The Residence Lots are as further described on Exhibit A attached hereto and as shown on that plan of land entitled "Jenny's Hill Road Extension" prepared by Edward N. Herbert Assoc., Inc. for Mesiti/Castle Reach, LLC dated January, 2003 last revised May 5, 2003 which Plan is recorded herein as Plan No. _____. At the time of the recording of the within Declaration, Castle Reach continues to attend to certain infrastructure and utilities related to Castle Reach Subdivision. In that regard, Castle Reach reserves the right, throughout the term of this instrument, to grant such easements as Castle Reach shall in its sole discretion deem to be necessary or desirable to service Castle Reach Subdivision, including but not limited to electric, gas, water, sewer, telephone, cable television, internet service providers, or other companies or municipal authorities (as the case may be) for the provision of related utilities, as applicable. Said reservation of rights shall be set forth in each deed to a Residence Lot, however, the absence of such language in a deed will not release said Residence Lot from the provisions hereof.

III. Continuing Restrictions. The following restrictions shall apply to all Residence Lots throughout the duration hereof:

1. Residential Use. No building or other structures of any kind shall be erected, placed or allowed to stand on a Residence Lot except a single family two story residential dwelling house permitted under applicable law, together with accessory buildings and structures normally appurtenant to such a dwelling situated in Windham. Each residential dwelling shall contain a minimum of 4500 square feet of contiguous habitual space (exclusive of attics, cellars, or porches), a garage for three to five vehicles, and complete finish landscaping. No garage shall be used for the storage of commercial vehicles or construction equipment. No business activities of any nature shall be continuously or regularly conducted upon any Residence Lot, and no advertising signs shall be displayed thereon,

except that an owner of a Residence Lot residing in a dwelling house thereon may maintain an office for his/her professional use subject to the provisions of the Windham Zoning Ordinance, and may employ not more than one person but may not display any professional nameplate or other business signage on the Residence Lot. Nothing herein shall be deemed to prevent the leasing of a Residence Lot from time to time by the owner thereof subject to the provisions of this Declaration. Nothing contained in this Declaration shall be deemed to prevent Castle Reach or its agents from (i) maintaining a model home, business office, trailer, temporary structure and/or construction field office on any of the Residence Lots; (ii) conducting business activities upon any Residence Lot with such number of employees as Castle Reach shall desire; (iii) maintaining or storing commercial vehicles or construction equipment; or (iv) displaying such advertising signs as Castle Reach.

2. Animals. No pets, animals or birds shall be kept or maintained on any Residence Lot, if they are of such type or in such number as to be noisy or offensive, and no pets, animals or birds shall be allowed to pass onto or enter land within Castle Reach Subdivision other than the Residence Lot of the owner thereof, unless such pet, animal or bird is suitably leashed, caged or otherwise physically controlled and/or restrained; provided, however, notwithstanding the foregoing, that no poultry house or yard, rabbit hutch, or other type of kennel, shall be erected or maintained on any Residence Lot and no pigs or other barnyard animals shall be stabled or maintained thereon. Excepted herefrom are kennels for domestic pets constructed in such a manner that they are not visible from the street.

3. Temporary Occupancy. No trailer, mobile home, camper, or temporary building or structure of any kind, shall be used for a residence, either temporarily or permanently.

4. Trailers and Tents. No trailer, mobile home, commercial vehicle, construction equipment, camper, permanent tent or similar structure, shall be kept, placed or maintained upon any Residence Lot or on any vehicular access areas in such a manner as to be visible from neighboring property; provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained during and used exclusively in connection with the construction of any improvement approved by the Approval Authority.

5. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon on Residence Lot which will or may render the same, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other Residence Lot, and no activity shall be conducted or maintained which is or may be offensive or detrimental to any other Residence Lot in the vicinity thereof, or to its occupants.

6. Repair of Buildings and Infrastructure. No buildings or structure upon any Residence Lot shall be permitted to fall into disrepair, and such building and structure, together with the driveway and adjacent sidewalk shall at all times be kept in good condition and repair and adequately painted or otherwise finished. The Town of Windham shall have no responsibility to maintain sidewalks.

7. Trash Containers and Collectors. Trash, rubbish and garbage shall be kept in covered containers which shall be properly screened and/or enclosed so as to be visible from neighboring properties or roadways, except for such necessary periods when such containers are made available for collection.

8. Communication Facilities. Outside television and/or radio antennas or aerials and satellite dishes and other similar outside communication facilities are prohibited. This provision shall not be applicable to television satellite dishes with a radius of thirty-six inches or less.

9. Clothes Drying Facilities. No outside clothes lines or other outside facilities for drying or airing clothes which are visible from neighboring property shall be erected or maintained on any Residence Lot.

10. No Above-Ground Swimming Pool. No above-ground swimming pool shall be erected or maintained on any Residence Lot. No above ground jacuzzi or hot tub shall erected or maintained which is visible from the street.

11. Restrictions on Further Subdivision. No Residence Lot shall be further subdivided, except by Castle Reach, or any Successor Developer designated by Castle Reach in writing, and recorded herein said Registry, and only in accordance with the Town of Windham subdivision regulations.

12. Signs. No signs shall be erected or maintained on any Residence Lot, except:

- (a) Such signs as may be required by law;
- (b) A two side residential identification sign having a total face area not larger than seventy-two (72) square inches per side;
- (c) During the time of construction of any building or other improvement, one job identification sign not larger in area than three (3) square feet per side; and
- (d) A “For Sale” or “For Rent” sign, of reasonable type, size and appearance.

13. Swing sets. No swing set may be installed or maintained on any Residence Lot unless it is a wood structure or it is constructed in such a manner that it is not visible from the street or it has been approved in writing by the Approval Authority, or its successor as provided herein.

14. Parking. There shall be no on street overnight parking.

IV. Amendments and Waivers.

The foregoing Declaration of Reservations and Restrictions may be amended by an instrument signed by Castle Reach, as long as Castle Reach owns any lot in Castle Reach Subdivision or any immediately adjoining real estate. Any amendment shall be recorded in the Rockingham County Registry of Deeds. Castle Reach may waive any provision hereof, with respect to all or any one Residence Lot, if in its sole discretion it determines that such waiver shall not have a material adverse effect on the subdivision.

V. Term.

All of the foregoing reservations and restrictions shall continue and remain in full force and effect at all times against the owner of any lot in Castle Reach Subdivision, regardless of how title may have been acquired, for a period of thirty (30) years from the date of recording hereof, after which time said Declaration of Reservations and Restrictions shall be automatically extended for successive periods of ten (10) years each.

VI. Enforcement.

So long as Castle Reach, or its designated Successor Developer, maintains an ownership interest in one or more Residence Lots, it shall maintain sole and exclusive right to enforce this Declaration of Reservations and Restrictions, and each of those Continuing Restrictions hereunder. Upon the sale by Castle Reach, or its designated Successor Developer, of the last of the Residence Lots within Castle Reach, Approval Authority shall be dissolved and relieved of any further responsibility hereunder. Regardless, each of the Continuing Restrictions set forth herein shall continue to remain in full force in effect for the benefit of the owner of each of the Residence Lots within Castle Reach at all times thereafter.

VII. Notices.

Any notices provided for in this Declaration of Reservations and Restrictions 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 Castle Reach or the Approval Authority. Such notice shall also be deemed delivered if properly addressed and sent by certified mail, return receipt requested and shall be

deemed received upon the earlier of signing of the receipt or three (3) business days after the first notice of attempt to deliver.

WITNESS the execution hereof under seal this _____ day of July, 2003

MESITI CASTLE REACH, LLC

By: _____
Anthony Mesiti, Manager

ACCEPTANCE

The undersigned hereby accept their appointment as members of the initial approval committee.

Kenneth Grandstaff

Anthony Mesiti

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

July __ , 2003

Then personally appeared the above named Anthony Mesiti, Manager, as aforesaid of Castle Reach, LLC, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said Castle Reach, LLC, a New Hampshire limited liability company, before me,

Notary Public
My Commission Expires: _____

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

July __ , 2003

Then personally appeared the above named Kenneth Grandstaff and Anthony Mesiti and acknowledged the foregoing instrument to be their free act and deed, before me,

Notary Public
My Commission Expires: _____