

**DECLARATION
OF RIGHTS, RESTRICTIONS, COVENANTS & EASEMENTS
FOR
TIDEWATER LANDING
A RESIDENTIAL COMMUNITY LOCATED AT
TIDEWATER WAY
TOWN OF WELLS, YORK COUNTY, MAINE**

This Declaration of Rights, Restrictions Covenants & Easements is made this 9th day of June 2014 by Tidewater Landing, LLC, a Limited Liability Company duly organized and existing under the laws of the State of Maine with a principal office and mailing address of 689 Carl Broggi Hwy, PO Box 100, Lebanon, Maine 04027, (hereinafter the Declarant).

WHEREAS, Declarant is owner and developer of real estate located at Tidewater Way, Town of Wells, York County, Maine as described in deed of Barbara A. Mosier, Paul Remick III, David M. Remick, Carol A. Seniuta, and Steven C. Button to Tidewater Landing LLC, dated November 15, 2012 and recorded at York County Registry of Deeds in Book 16462, Pages 64-70 (hereinafter the Subdivision);

WHEREAS, the Town of Wells Planning Board has approved the development of the Subdivision into residential building lots (hereinafter collectively referred to as the Lots and separately referred to as Lot), the road known as Tidewater Way, land preserved as Open Space, and easements within Tidewater Footpath (defined below), all as described herein or as shown on the plan entitled "Final Subdivision Plat of Tidewater Landing, Upper Landing Road, Wells, Maine 04090" prepared by Lower Village Survey dated September 9, 2013 and recorded in the York County Registry of Deeds in Plan Book 364, Page 2 (hereinafter collectively referred to as the Plan);

WHEREAS, the Declarant desires to assure purchasers of the Lots and their heirs, successors, and assigns owning such Lots (hereinafter Lot Owners), that the development, use, benefit and enjoyment of the Lots, road, easements and open space shall be in accordance with a harmonious plan, and to this end desires that the Subdivision be subjected to certain rights, restrictions, covenants, and easements as hereinafter set forth.

NOW THEREFORE, in consideration of the mutual promises set forth in this Declaration, the Declarant hereby covenants and agrees with the owners and/or purchasers of Lots 1 through 17 that the Subdivision shall be held and conveyed subject to the rights, restrictions, covenants, and easements set forth in this Declaration, which Declaration shall run with the Subdivision and each of the Lots and inure to the benefit of and be binding upon the Declarant, its successors and assigns, and the owners and/or purchasers of said Lots, their heirs, successors and assigns.

ARTICLE 1. EASEMENTS

1.1 Each Lot Owner in the Subdivision and Tidewater Landing Homeowners Association (*defined* below) is hereby granted a perpetual easement, in common with each other and the Declarant (limited to the Declarant Control Period defined in Article 4, below), as discussed herein. Said easements are shown and discussed on the Plan subject to the terms of this Declaration. They include Tidewater Way for purposes of vehicular and pedestrian passage and also for underground residential utilities (herein the ***Tidewater Way***), the thirty foot wide Water and Pedestrian Easement located at the boundary of Lot 3, and Lot 5 for purposes of pedestrian passage and underground residential utilities (herein ***Tidewater Footpath***), the areas identified as Open Space for purposes low impact (here meaning, non-disturbance of the natural condition of the land) pedestrian access (herein ***Open Space***), the drainage easement area located on Lot 3 for purposes of access and maintenance of stormwater management improvements (herein ***Drainage Easement Area***). All of the foregoing are herein collectively referred to as the ***Common Property***, and all of these easement areas are shown on the Plan. The use and maintenance of the Common Property is subject to the rights reserved herein by Declarant and the duly adopted rules and regulations of the Tidewater Landing Homeowners Association (***TLHA or Association***), the Maine non-profit corporation being established by the Declarant for care and management of the Common Property.

1.2 The pedestrian easements referenced above include passage by motorized and non-motorized wheelchairs and similar accessories used by mobility-impaired individuals.

1.3 All Lot Owners that are entitled under this Declaration to use Tidewater Way, Tidewater Footpath and the Open Space areas shall be and hereby are required to repair any damage caused to the Common Property by them, their agents, contractors, invitees, or guests, normal wear and tear, excepted in the case of Tidewater Way and Tidewater Footpath.

1.4 TLHA may adopt reasonable rules and regulations for the use and enjoyment of the Common Property, including without limit standards for utility installation and repair and restoration of Common Areas after installation of utilities by any Lot Owner. Such rules and regulations shall not be binding on the Declarant during the Declarant Control Period (defined in Article 4 below). Declarant and each Lot Owner covenant and agree that within the Common Property permitted pets shall be leashed, or under firm control, and no litter or personal property shall be placed or stored.

1.5 Lots 8 and 9 are subject to a 30 foot wide sewer easement as shown on the Plan and as described in the easement deed from Tidewater Landing LLC to the Wells Sanitary District dated May 20, 2014 and recorded at said Registry Book 16822, Pages 215-219.

ARTICLE 2. GENERAL RESTRICTIONS

2.1 Terms and Conditions of Plan Approval. The Subdivision is subject to all of the elements, features and notes set forth on the Plan, and the terms and conditions of the Town of Wells Planning Board approval dated September 9, 2013 and Maine Department of Environmental

Protection (*MDEP*) Findings of Fact and Order dated September 6, 2013, concerning stormwater management recorded at York County Registry of Deeds in Book 16730, Page 921 (**Exhibit A**) and MDEP Stormwater Forested and Meadow Buffer Declaration of Restrictions recorded at York County Registry of Deeds in Book 16730, Page 912 (**Exhibit B**) and U.S. Army Corps of Engineers Permit NAE-2013 (**Exhibit C**).

2.2 Division of Lots Prohibited. The Lots shown on the Plan shall not be subdivided further. Lot line adjustments between Lot Owners are permitted, but shall be subject to Town of Wells Planning Board approval at the expense of the applicants. The applicants shall notify TLHA of the intention to file such application with the Town of Wells Planning Board.

2.3 Residential Use. The Lots shall be used for single-family residential purposes only. Commercial, industrial, business, professional use or enterprise of any nature or description is prohibited on the Lots, except that home offices are allowed so long as the activities conducted within the home offices: (a) occur wholly within the dwelling located on the Lot; (b) involve not more than one employee who does not reside on the Lot; (c) are not advertised on the Lot or on roads leading to the Lot except as approved by TLHA; and (d) do not require regular excessive client/customer/patient contact and/or parking at the dwelling on the Lot as determined by TLHA. Leasing is permitted, subject to the limitations of law.

2.4 Pets. No livestock, animals or poultry, other than household pets shall be kept, maintained or allowed within the Subdivision. No boarding or breeding kennels may be kept or maintained anywhere within the Subdivision. No Lot owner shall maintain more than two dogs on any Lot. Beyond the boundaries of any Lot Owner's Lot, dogs shall be leashed or otherwise under firm control. It is acknowledged by each Lot Owner that repeated, prolonged, barking by a dog within the Subdivision shall constitute a nuisance for which the responsible Lot Owner shall be held liable for the complaining parties' damages and reasonable attorney's fees expended to enforce this restrictive covenant.

2.5 Parking. During the Declarant Control Period, motor vehicle parking within Tidewater Way is prohibited and Declarant may cause the removal of any vehicle that is in violation of this provision at the expense of the vehicle owner or the responsible Lot Owner. After the Declarant Control Period, parking shall be regulated and enforced by TLHA, which regulations shall at minimum provide as follows: (1) in no event shall vehicles be parked in such a manner as to inhibit or block access to Lots; (2) no part of the Common Property shall be used for repair, construction or reconstruction of any vehicle, boat or any other item or thing except in an emergency. The Board of Directors of TLHA (herein the **Board**) may cause the removal of any vehicle or property that is in violation of this provision at the expense of the vehicle or property owner or the responsible Lot Owner.

2.6 Utilities. All utility service lines within the Common Property shall be underground. Satellite dishes, similar communications equipment and propane tanks are prohibited unless view screened, preferably with vegetation, from Tidewater Way and the Lots. During the Declarant Control Period, Declarant shall, at Declarant's expense, construct water, electricity, and telecommunication connection points at least five feet into each Lot, in a location selected by the Lot Owner. The location selected by the Lot Owner is subject to utility regulations that may

require a different location on the Lot. Once the utility connections are installed on a lot in a location selected by the Lot Owner, Declarant shall have no obligation to relocate the utility connection points. All utility easements are or shall be recorded in the York County Registry of Deeds.

2.7. Nuisance. No Lot Owner shall do or permit to be done any act upon the Lots that is or may constitute a nuisance, the breach of which shall entitle the enforcing party to all available remedies at law and in equity, including specific enforcement, plus recovery of reasonable attorney's fees and costs incurred in enforcing this Declaration and/or related to the elimination of the nuisance.

2.8. Boats, Recreational Vehicles, and Commercial Vehicles. Boats, camper-trailers, recreational vehicles, and commercial vehicles (not including automobiles with commercial license plates) and similar vehicles or accessories, shall be (a) stored in the Lot Owner's garage or (b) view screened from Tidewater Way and other Lots with trees, shrubs, or, if approved by Declarant (during the Declarant Control Period and subject to the provisions of Section 4 hereof), other material. No Lot Owner shall store personal property of any kind, including without limit, vehicles and equipment, anywhere within the Subdivision other than on the Lot Owner's Lot.

2.9. Signs. No sign of any nature shall be visible from Tidewater Way and the Lots except one customary name and address sign of not more than 1 square foot in size or such larger size or different configuration as may be required by local governmental authorities. Temporary and customary real estate agency signs indicating that a Lot or dwelling is for sale are allowed. This restriction shall not apply to any sign of reasonable size erected by Declarant (during the Declarant Control Period) for purposes of Lot sales.

2.10. Sanitation. Open burning of refuse, leaves and brush within the Subdivision is prohibited. Open fires for cookouts and for so-called fire pits shall be permitted. Trash shall be kept in sanitary containers view screened from the Lots and Tidewater Way, except temporarily on the day of collection for purposes of neighborhood collection and removal from the Subdivision.

2.11. Recreation Amenities & Equipment. Swing sets, jungle gyms, wading pools, and similar recreational equipment shall be prohibited from front yards and shall be confined to side or rear yard areas. The area between Tidewater Way and the dwellings is deemed for the purposes of this provision as front yard.

2.12. Clotheslines. Clotheslines shall be confined to rear yards and view screened from the Lots and Tidewater Way.

2.13 Plant Diseases and Noxious Insects. No plants or seed or other things or conditions harboring or breeding infectious plant diseases or noxious insects shall be introduced or maintained upon any part of a Lot.

2.14 Temporary Structures. No trailer, tent, shack, shed, storage container or other similar structure, except as otherwise permitted herein, and no temporary building or structure of any kind shall be used for a residence, either temporary or permanent.

ARTICLE 3. BUILDING RESTRICTIONS

Each house or ancillary structure, and additions or modifications thereto, constructed on a Lot shall be constructed in accordance with the following:

3.1 All homes in Tidewater Landing should be based on and incorporate traditional coastal New England architectural style, such as shingle and cottage design.

3.2 Bright, vivid colors on the exterior of homes is prohibited. The Declarant must approve all colors.

3.3 Each house shall be constructed on a solid concrete foundation with a full, crawl or daylight basement or on a solid concrete slab with no basement; exterior porch areas shall be on frost post or walls and footings and not on monolithic concrete slab; each house shall be served by underground municipal water, municipal sewer, electricity and communications lines; all structures shall be located within the lot building envelopes shown on the Plan.

3.4 The total livable area above the foundation of each house shall be not less than two thousand (2,000) square feet, nor exceed five thousand (5,000) square feet. The term livable area as used here excludes garages, breezeways, exterior porches and decks without roofs.

3.5 The exterior of each house, including the garage and breezeway shall be finished with wood or fiber cement clapboard, or stone. The exterior decking of each house shall be PVC, composite or Mahogany. All deck framing shall be painted or wrapped with PVC. All overhead garage doors will be wood or overhead doors approved by the Declarant.

3.6 The portions of chimneys visible from the exterior shall be constructed of brick or stone only and shall be proportionate in scale to that of the house.

3.7 Exterior lights and lampposts are to be constructed in accordance with lighting specifications to be developed or approved by Declarant (subject to the provisions of Section 4 hereof), which will require that such lighting does not shine into the dwellings of other Lot Owners.

3.8 No construction shall occur on any Lot until the Declarant (subject to the provisions of Section 4 hereof) has reviewed and approved in writing the Lot Owner's architectural plans depicting all of the proposed principal and accessory structures and improvements (including fences, in-ground pools and hot tubs) to be located on the Lot, which structures shall conform with the criteria set forth in this Article. Declarant's review and decision with respect to such plans shall be completed within thirty days of submission of a complete set of plans and specifications. Approval of such plans shall not be unreasonably denied. The plans shall illustrate

the physical dimensions of all structures, improvements and landscaping, including yard setbacks and elevations. The plans shall also include exterior building material specifications such as color of paint or stain, windows, doors, trim, siding, and roofing materials.

3.9 All driveways and turnaround areas located on Lots must be 10 feet from the Lot lines and finished with asphalt, concrete, or other hard, dustless finished surface approved by the Declarant.

3.10 No fences or free standing walls exceeding three (3) feet in height shall be erected on the premises. Front yards may not be fenced with solid fences, such as stockade or chain link fences. Picket, split rail fences or low rock walls may be permitted. The adjoining property owner must approve in writing any fence on the property line.

3.11 No more than one mailbox shall be installed on a Lot and its design, to keep with the conformity of the community, will be identical in nature and location on the Lot shall be subject to the Declarant review and approval provisions of 3.8, above (subject to the provisions of Section 4 hereof).

3.12 Lot 3 and parcel B shall be subject to a stormwater easement for a Stormwater Raingarden as per Article 5.1(b) of this Declaration and Exhibit A and shall allow for access of said stormwater easement for maintenance and repairs.

3.13 Lots 5, 9, 10 and 11 shall be required to install DEP Drip line Filters as a required component of the Tidewater Landing stormwater management plan and detailed on the plans and in Exhibit A.

3.14 Each lot owner, or successor owner, must begin construction of the house on the lot within three (3) years from the date of the purchase of the lot from Declarant. Any construction undertaken on any Lot shall be continued with diligence toward the completion thereof, and all improvements on the Lot, including but not limited to the dwelling, grading, landscaping and stormwater drainage improvements, shall be completed within twelve (12) months of commencement of the construction, except that such period may be extended by reason of act of God, labor disputes or other matters beyond the Lot Owner's control.

3.15 All homes and other appurtenant structures shall be constructed by Declarant or his heirs or assigns, or a builder approved or designated by Declarant. If the lot owner fails to comply with Article 3 Section 14, Declarant, at its option, may advise the purchaser, his heirs or assigns, of the failure to comply. Notice shall be given in writing to the purchaser, his heirs or assigns, by certified mail, at the last provided address of the purchaser, his heirs or assigns. The notice shall state that Declarant intends to exercise its right to repurchase said lot as set forth in Article 4 hereof if a building permit is not acquired and the building commenced in accordance with this article within ninety (90) days from the date of mailing such notice.

3.16 Foundation plantings are required on any portion of the home facing the street. A minimum of seven shrubs and one tree per twenty five lineal feet of building must be installed. The minimum plant sizes will be: shrubs 18-24" in height or 2 gallon size and trees 2-2.5"

caliper. To provide harmonious and consistent landscaping throughout the Subdivision, Lot Owners shall submit to Declarant (subject to the provisions of Section 4 hereof) prior to commencing landscape improvements, a landscaping plan depicting placement of lawns, trees, bushes, walls, fences, recreational amenities (e.g. in-ground pool) and any large yard ornaments. Declarant shall have 30 days from receipt of said submission to review and approve or make revisions to said plan.

3.17 Any additions or exterior modification of structures or improvements on the Lots must be approved in advance in writing by the Declarant (subject to the provisions of Section 4 hereof) who shall review the application for compliance with the provisions of this Article and this Declaration.

3.18 No trees larger than five (5) inches in diameter measured at a height of four (4) feet from the ground shall be cut, trimmed or altered without prior written consent of the Declarant or the Association.

3.19 Within sixty days following the estimated date of completion of any work performed on a Lot for which Declarant approval was required, the Declarant, upon reasonable notice may proceed to inspect the work without being liable for trespass. Declarant shall inspect the work and determine whether it was performed in substantial compliance with the approval granted. If the Declarant finds that the work was not performed in substantial compliance with the approval granted or that the approval required was not obtained, the Declarant shall notify the Lot Owner in writing of the non-compliance and shall require the Lot Owner to remedy the non-compliance within a reasonable time not to exceed 90 days. If the Lot Owner does not comply with the Declarant's notice to remedy, the Declarant may either remove the non-complying improvement or remedy the non-compliance through legal action. The costs of remediation shall be assessed against the non-compliant Lot Owner and enforced in accordance with the provisions of Article 6.4 (b), (c), (d) and (e) below.

3.20 Within thirty days after written demand is delivered to Declarant by any Lot Owner, and upon payment to the Declarant of a reasonable fee (during Declarant Control Period \$50.00, thereafter as determined by TLHA in accordance with its Bylaws), Declarant shall record an estoppel certificate, executed by any two directors of TLHA and, until termination of the Declarant Control Period, Declarant, certifying that as of the date of the certificate, either: (a) the work completed complies with this Declaration or (b) the work completed does not comply. In the latter situation, the certificate shall also identify the particulars of the non-compliance. The certificate may also address the following matters upon request of the Lot Owner: (1) a statement setting forth the amount of the monthly, quarterly or annual assessment imposed against the Lot and Lot Owner by the Association, and any unpaid fees or assessments currently due and payable; (2) a statement of any other fees or assessments payable by Lot Owner to the Association; (3) a statement of any capital expenditures anticipated by the Association; (4) a statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the Association for any specified projects; (5) the most recent regularly prepared balance sheet and income and expense statement, if any, of the Association; (6) the current operating budget of the Association; (7) a statement of any unsatisfied judgments against

the Association and the status of any pending suits in which the Association is a defendant; (8) a statement describing Association insurance coverage; (9) a statement as to whether the Board has knowledge of any violations of this Declaration by the Lot Owner or any other Lot Owner; (10) a statement as to whether the Board has received notice of zoning, land use or building code violations with respect to any portion of the Subdivision. Any successor in interest of the Lot Owner shall be entitled to rely on the certificate with respect to the matters set forth therein. The certificate shall be conclusive as between the Association, Declarant, and the Lot Owners, and such persons deriving any interest through any of them.

3.21 Once construction is completed on any Lot, the owner is responsible for maintaining the property so that, when viewed from Tidewater Way and adjacent Lots or Common Property, it appears neat and well kept. Lawns shall be mowed regularly, debris removed and shrubs appropriately maintained, Lot Owners shall be responsible for the lawn and shrubbery maintenance of the strips of land located between their boundary lines and the edge of road pavement.

3.22 Nothing in this Article 3 shall be deemed to relieve any Lot Owner from obtaining all necessary government permits and otherwise complying with all applicable laws, regulations and ordinances.

ARTICLE 4. RIGHTS RESERVED BY DECLARANT

In addition to rights expressly reserved by Declarant in other Articles of this Declaration, Declarant reserves the following real estate development rights for a period five years from the date of this Declaration or, if earlier, the date upon which Declarant has duly assigned such rights and duties to the Association in accordance with this Declaration (herein referred to as ***Declarant Control Period***):

4.1 Declarant reserves the exclusive right to review and approve construction plans for dwellings and other improvements on the Lots as set forth in Article 3. Notwithstanding any provision herein to the contrary, upon expiration of the Declarant Control Period, the Board, pursuant to TLHA Bylaws, shall assume the administrative duties and responsibilities of Declarant set forth in this Declaration, but shall not assume any of the responsibilities of the Declarant for construction as specifically set forth in this Declaration.

4.2 The Declarant has the right to repurchase from a lot owner who has breached the conditions of Article 3, Paragraph 14 in the following manner: At any time after the expiration of three years, and after complying with the requirements set forth in Article 3, Section 15, the Declarant may exercise or assign its right to repurchase the subject lot by recording in the York County Registry of Deeds an affidavit stating that the Declarant has elected to exercise or assign its right to exercise its right to repurchase, and if the latter, by providing the name and address of the assignee. The lot owner shall then deliver a fully executed deed within thirty (30) days of said recording to the law office of Arthur H. Dumas, Esq., located at 51 Cottage Street, Sanford, Maine, or his successor. Declarant shall then tender to said law office a certified or bank treasurer's check in the amount of the original purchase price within fourteen (14) days of the lot owner executing and delivering a quitclaim deed with covenant, legally conveying the property

to Declarant or its named assignee, in the usual form, free and clear of any liens and encumbrances. Said law office shall then promptly deliver said check to the lot owner in hand or by first class mail. If the lot owner fails to comply with any of the conditions set forth herein, Declarant shall be entitled to reimbursement of reasonable attorneys' fees and costs arising out of enforcing such condition.

4.3 The Declarant, its successors and assigns, reserves title to the Common Property in fee simple absolute, subject to all the rights and privileges of Lot Owners set out herein and in deeds of conveyance. However, not later than expiration of the Declarant Control Period, Declarant shall convey its rights in the Common Property to TLHA.

4.4 All of the rights reserved by Declarant in this Article 4 and in other Articles of this Declaration may not be amended or modified without written consent of the Declarant during the Declarant Control Period.

4.5 During the Declarant Control Period, any rules and regulations adopted by the TLHA pertaining to the use and maintenance of the Common Property must be approved in writing by Declarant.

ARTICLE 5. MAINTENANCE OF COMMON PROPERTY

5.1 **Stormwater Management Easement Areas and Facilities.** Maintenance and repair of storm water management facilities, including the general drainage system, in accordance with **Exhibit D**, as more particularly described in the MDEP Order referenced in Section 2.1 above. Alteration of the land within these buffer areas is prohibited. The MDEP Order requires TLHA to maintain the stormwater management improvements within the Subdivision. The Drainage Easement Area is reserved for engineered stormwater management improvements that must be accessed and maintained regularly by TLHA. During the Declarant Control Period, Declarant shall have exclusive responsibility, including the expense, of promptly (but no later than one year from the date hereof) constructing all stormwater management improvements required by the Town of Wells or MDEP as a condition of Plan approval. Thereafter, the responsibility and expense of such maintenance shall be borne by TLHA. Declarant shall promptly (but no later than one year from the date hereof) adopt and implement a stormwater management maintenance plan based on a generally accepted model of best practices. Stormwater management facilities shall include, but not limited to:

- (a) Stormwater conveyance infrastructure, piping, culverts, catch basins, manholes, cleanouts, rip rap aprons and associated infrastructure;
- (b) Level lip spreader located on Parcel A and MDEP Stormwater Buffer as described in Exhibits A and B;
- (c) Bio Retention Area (Raingarden) located on Lot 3;

5.2 **Maintenance and Management of New England Cottontail Habitat.** Maintenance and management of Open Space Parcel A and the No-Cut Buffer Areas on lots 10, 11, 12, 13, 14, 15, 16 and 17 as New England Cottontail habitat as shown on the Plan in accordance with the Practices prescribed in **Exhibit E** ó A New England Cottontail Habitat Management Plan for

Tidewater Landing, Wells, Maine dated August 28, 2013, as prepared by Normandeau Associates' NEC Management Plan and approved by the Maine Department of Inland Fisheries and Wildlife (MDIFW) and MDEP. Said maintenance and management of Open Space Parcel A shall allow the continued use and maintenance of the existing grassed footpath to the tidal areas and shall not prohibit the installation of a dock or similar structure for the launching of non-motorized watercraft or other similar uses subject to any required permits from the Town of Wells, MDEP and the U.S. Army Corps of Engineers.

5.3 Footpath to Upper Landing Road. During the Declarant Control Period, Declarant shall promptly (but no later than one year from the date hereof) construct and maintain at its expense the footpath providing Lot Owners with access to Upper Landing Road, said footpath being located within Tidewater Footpath. Following the Declarant Control Period, TLHA shall be responsible for maintenance of said footpath. Declarant, and after termination of the Declarant Control Period, TLHA, shall have the right to adopt reasonable rules and regulations governing the use of the footpath, including without limit, time of access and pet policies. Such rules and regulations must be uniformly applicable to all the Lot Owners. The footpath constructed within Tidewater Footpath shall not be less than five feet wide, may be of gravel surface, and may or may not include artificial lighting.

5.4 Other Common Property, Declarant shall promptly (but not later than one year from the date hereof) construct Tidewater Way at its expense in accordance the Plan and at least to the minimum standards required by the Town of Wells, such work shall include installation of all underground utilities, stubbed to agreed-upon locations at the boundary of each Lot. However, to prevent damage to the top coat of asphalt during construction of dwellings within the Subdivision, Declarant will install the top coat not sooner than two years, or later than 5 years, from the date of this Declaration. During the Declarant Control Period, Declarant shall be responsible for the maintenance, repair, and condition of Tidewater Way, excluding snow plowing and street sweeping. After the Declarant Control Period, TLHA shall be responsible for maintenance of Tidewater Way. During and after the Declarant Control Period, snow plowing and street sweeping of Tidewater Way shall be the responsibility of TLHA. Tidewater Way is to remain a private way maintained by TLHA and shall not be accepted or maintained by the Town of Wells. No structures of any kind, whether temporary or permanent, may be constructed, placed or erected within or upon the Open Space areas. The Open Space shall remain forever wild, except that dead, diseased or invasive plant varieties (such as bittersweet) may be removed by the Declarant during the Declarant Control Period, and thereafter by TLHA. Preservation and management of the Open Space areas shall be the responsibility of the Declarant during the Declarant Control Period, and thereafter by TLHA, in perpetuity.

5.5 Miscellaneous. All of Declarant's work described in this Declaration shall be performed in a timely, workmanlike manner and in compliance with all laws, ordinances and regulations applicable thereto, using quality and grade of materials and installations consistent with a first-class residential development in southern Maine. Declarant hereby warrants and guaranties that all of such work shall be free from defects, latent or patent, free from defective materials and constructed in accordance with this Declaration and applicable law, according to sound engineering and construction standards. Declarant's obligations under this warranty and guaranty shall terminate five years from the date of this Declaration. In the event of a breach of this

guaranty, Declarant shall promptly at its sole expense undertake all work necessary to repair any defects or failures of said work to comply with this Declaration. During the Declarant Control Period, no provision of this Declaration concerning Declarant's work or the foregoing guaranty may be amended or modified without the unanimous vote of TLHA members.

ARTICLE 6. HOMEOWNERS' ASSOCIATION

6.1 Creation and Purpose: A Maine not-for-profit Corporation has been formed by Declarant, to be known as the Tidewater Landing Homeowners Association, to facilitate the maintenance of the Common Property and the assessment and collection of revenue to fund the maintenance of the Common Property from Lot Owners. In addition to the provisions set forth herein. TLHA shall be governed by its Articles of Incorporation, Bylaws, and any amendments thereto or any rules and regulations subsequently adopted by the TLHA. In the event of a conflict between the provisions of this Declaration and the Bylaws or rules and regulations, the provisions of this Declaration shall govern. Unless otherwise expressly provided in this Declaration, all of the rights and obligations of the Declarant with respect to the review and approval of construction plans (including dwellings, structures and landscaping) on the Lots and the enforcement of the provisions of this Declaration, shall be administered by the TLHA Board of Directors (the **Board**) or its officers, agents and employees following the termination of the Declarant Control Period.

6.2 Membership and Voting: Declarant, its successors and assigns, and every record Owner of Lots 1 through 17 of the Subdivision shall be members of TLHA and each Lot shall be entitled to one vote, except as provided herein. If only one of the multiple Owners of a Lot is present at a meeting of TLHA (either in person or electronically by telephone or video conference, which in all cases shall qualify for being present), he or she shall be presumed to be entitled to cast all of the votes allocated to that Lot. If more than one of the multiple Owners is present, the votes allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. A majority in interest consists of Owners of the Lot who collectively own more than fifty percent of the Lot. There is deemed to be a majority agreement when any one of the multiple Owners casts the votes allocated to that Lot without protest being made promptly to the person presiding over the meeting by any other Owners of that Lot. If a majority agreement is not reached, the votes allocated to that Lot shall not be cast.

6.3 Powers and Duties of the Association: TLHA shall have all of the powers that may be exercised in this State by a nonprofit mutual benefit corporation, including but not limited to the following specific powers and duties:

- a) To maintain the Common Property in accordance with Article 5;
- b) To improve, maintain and repair Tidewater Way including re-surfacing when necessary, snow plowing, snow removal, and sanding;
- c) To accept an assignment of Declarant's rights and obligations pertaining to the Common Property or as otherwise provided herein or as otherwise agreed to by Declarant and TLHA;

- d) To adopt and amend budgets for revenues, expenditures and reserves; to assess and collect association fees and assessments from Lot Owners; to impose charges for late payment of association fees and assessments
- e) To establish reasonable rules and regulations for the use and maintenance of the Common Property;
- f) To hire and terminate employees, agents and independent contractors; to make contracts and incur liabilities; to enter into a contract with a trash removal company for servicing the Lots if public trash removal is unavailable, a snow plowing contract, or any other service contracts as are reasonably necessary for the Association to uphold its Subdivision maintenance obligations;
- g) To obtain insurance including but not limited to liability of directors and officers, casualty, premises liability, motor vehicle and worker's compensation;
- h) To acquire, own and maintain equipment (including vehicles), tools and materials necessary to carry out the duties set forth above;
- i) To institute, defend or intervene in litigation or administrative proceeding;
- j) To impose reasonable charges for the preparation of and recording of amendments to this Declaration, estoppel certificates required by section 3.14, or statements of unpaid Lot Owner assessments;
- k) To provide for the indemnification of its directors and officers and maintain directors' and officers' liability insurance; and
- l) To exercise any powers conferred by this Declaration or the Bylaws.

6.4. Method of Assessing and Collecting Association Revenue:

- a) For the purpose of providing a general fund to enable the Association to exercise the powers, and make and maintain the improvements and render the services herein provided for, the Board shall determine for each year the total amount required for such fund for such year and shall levy an annual assessment uniformly against each of the Lots in the Subdivision.
- b) If a Lot Owner fails to pay any assessment on or before thirty (30) days following notice to such Owner of such assessment or the scheduled due date thereof, if later, then such assessment shall become delinquent and shall bear interest at the rate of eighteen percent (18%) per annum from the due date thereof, plus costs of collection, including without limitation attorney's fees. When delinquent, payment of principal, interest and costs may thereafter be enforced against the Owner personally, and as a lien on said real estate and the lien may be foreclosed in the same manner as a mortgage on real estate or

in any other manner provided by law for the enforcement of liens. The Association may accept a deed in lieu of foreclosure. The Association shall have the right to purchase the Lot and any improvements thereon at the foreclosure sale and to hold, lease, mortgage, convey, or otherwise deal with the real estate. A suit to recover a money judgment for unpaid common fees or assessments may be brought by the Association without foreclosing or waiving the lien that secures the amount owed.

c) It shall be the duty of the Association to bring suits to enforce such liens before the expiration thereof. The Association, through its Board, may file certificates of non-payment of assessments in the office of the Registry of Deeds whenever any such assessments are delinquent. For each certificate filed, the Association shall be entitled to collect from the Lot Owner a reasonable fee (initially \$50.00, thereafter adjusted by the Board for inflation using the CPI for Urban Wage Earners and Clerical Workers, U.S. City Average, All Items), which fee is hereby declared to be a lien upon the Lot so described in said certificate. Such fee shall be collectable in the same manner as the original assessment.

d) The liens for such assessments shall be subordinate to the lien of any valid mortgage now existing or that may hereafter encumber a Lot. In the event of the issuance of a deed pursuant to foreclosure of such mortgage or deed of trust or in lieu of such foreclosure, the grantee of such deed shall take title free and clear from any liens herein provided that accrue prior to the recording of such deed.

e) Such liens shall continue for a period of five years from the date of delinquency and no longer, unless within such time suit shall have been filed for the collection of the unpaid assessment, in which case the lien shall continue until the termination of the suit and until the sale of the property under execution of the judgment in such suit.

6.5 Expenditures Limited to Assessment for Current Year: The Association shall not expend more money within one year than the total amount of the assessment for that particular year, plus any surplus that it may have on hand from previous assessments; nor shall the Association enter into any contract for more than one year; and no such contracts shall exceed market rates.

6.6 Initial Annual Assessment. The initial annual assessment allocated to each Lot shall be \$1,000.00 as each lot is sold, and prorated monthly thereafter until modified by Declarant during Declarant Control Period, or by a majority vote of TLHA members thereafter. The Declarant shall be responsible for all additional expenses of to fund the maintenance of the Common Property, not to exceed \$1,000.00 for each lot owned by Declarant.

ARTICLE 7. GENERAL PROVISIONS

7.1 Except as otherwise set forth herein, this Declaration may be amended by Declarant during Declarant Control Period and by a two-thirds vote of TLHA members thereafter, which

vote and amendment shall be evidenced by a certificate executed by two directors of the Board and recorded in the office of the York County Registry of Deeds.

7.2. The provisions herein set forth shall run with the land and bind Declarant, its successors and assigns, and all parties claiming by, through or under it. Declarant, its successors or assigns, and each Lot Owner 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. If Declarant, the Association or a Lot Owner engages the services of an attorney to enforce the provisions set forth herein and are successful in establishing that a breach of these covenants by defendant(s) has occurred, said Declarant, Association or Lot Owners shall be entitled to reimbursement of reasonable attorneys' fees and paralegals' fees from the defendant(s). In no event shall the failure of Declarant, its successors or assigns, the Association or the Lot 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 subsequent violation. Declarant and the Association have the right, but not the duty, to enforce these covenants. A Lot Owner aggrieved by the breach of these covenants may, in the absence of timely enforcement action by the Declarant or the Association, initiate its own enforcement action.

7.3. If a court of competent jurisdiction shall hold invalid or unenforceable any part of any provision contained in the Declaration, such holding shall not impair, invalidate or otherwise affect the remainder of this Declaration, which shall remain in full force and effect.

7.4 Declarant hereby retains for itself, its successors and assigns, the right to vest the Association with all or any of the rights, privileges, easements, powers and duties herein retained or reserved by the Declarant or its successors or assigns, by written instrument or instruments in the nature of an assignment, which shall be effective when duly accepted by written confirmation of acceptance by TLHA and recorded in the office of the Registry of Deeds of York County, Maine and Declarant, its successors and assigns, shall thereupon be relieved and discharged from *every* duty so vested in the Association or in such other not-for-profit corporation provided the same is duly accepted by the Association, and provided Declarant may not be released from nor assign to the Association the Declarant's construction or building obligations in Article 5.

7.5 Each Lot Owner shall file the correct mailing address of such Owner with the Association and Declarant, and shall notify the Association and Declarant promptly in writing of any subsequent change of address. A written or printed notice, deposited in the United States Post Office, postage prepaid, and addressed to any Owner at the last address filed by such Owner with the Association or Declarant shall be sufficient and proper notice to such Owner wherever notices are required in this Declaration. Each Lot shall be entitled to one mailing address for the purpose of notification from the Association.

7.6 Each Lot Owner is entitled to the rights and privileges of membership in the Association, as provided in this Declaration and the Bylaws, and shall be responsible for the duties of membership, including the duty to pay Association assessments and the duty to remain membership thereof in good standing.

7.7 An Owner, however, may in his absence, rent his residence for not less than a 30-day term for residential use, subject to the restrictions herein. In such events, the Owner, his tenant and their families are subject to the restrictions herein.

7.8 An Owner shall be entitled to rent or lease his residence if:

- a) There is a written rental or lease agreement specifying that:
 - I. The tenant shall be subject to all provisions of this Declaration, the By-Laws and Rules and Regulations adopted by the Board; and
 - II. A failure to comply with any provision of such Declaration, By-Laws and Rules and Regulations shall constitute a default under the agreement permitting the commencement of eviction proceedings in accordance with Maine law;
- b) The owner gives each tenant a copy of the Declaration, By-Laws and Rules and Regulations; and
- c) The Owner provides the Board with a copy of the lease agreement, together with written authorization to the Board to order the eviction of the tenant for violation of the terms of said lease or the Declaration, By-Laws or Rules and Regulations.

7.9 This Declaration shall be governed by, construed and enforced in accordance with the laws of the State of Maine.

IN WITNESS WHEREOF, Tidewater Landing, LLC, has caused its Managing Partner, Lawrence M. Duell, duly authorized, to execute this instrument this _____ day of August 2014.

Tidewater Landing, LLC

By: _____

Witness

Lawrence M. Duell, Managing Partner

STATE OF MAINE

County of York, ss.

___ August 2014

Personally appeared the above named Lawrence M. Duell, Managing Partner of Tidewater Landing LLC, and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of said corporation.

Before me,

Notary Public / Attorney at Law

Commission Expires: