FIFTH AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS FOR MITCHELL HILL ESTATES SUBDIVISION

This Fifth Amended and Restated Declaration of Protective Covenants and Restrictions for Mitchell Hill Estates Subdivision ("Fifth Amended Declaration"), executed this 9th day of January, 2020, amends the Fourth Amended Declaration of Protective Covenants and Restrictions for Mitchell Hill Estates Subdivision Dated January 08, 2020, and recorded in Book 36325 Page 318 ("Fourth Amended Declaration"), amends the Third Amended Declaration of Protective Covenants and Restrictions for Mitchell Hill Estates Subdivision dated April 08, 2013 and recorded in Book 30538, Page 211 ("Third Amended Declaration"), amends the Declaration of Protective Covenants and Restrictions for Mitchell Hill Estates Subdivision dated November 29, 2007 and recorded in Book 25650, Page 171 ("Declaration"), and the Revocation and Amendment to the Declaration of Protective Covenants and Restrictions for Mitchell Hill Estates Subdivision dated November 3, 2008 recorded in Book 26431, Page 232 at said Registry ("Revocation and Amendment"), and the Second Amended and Restated Declaration, dated March 08, 2011 recorded in Book 28571, Page 163 at said Registry ("Second Amended Declaration").

DECLARATION

The Declarant, being the owner of the property, in order to provide for the proper development and use of the property, hereby declares that the property is, and forever shall be, held, transferred, sold and conveyed, subject to the covenants, restrictions, and easements set forth below, which shall run with the land. The declaration is for the benefit of, and may only be enforced by, the Declarant and members of the Mitchell Hill Homeowners' Association (the "Association") and their successors and assigns, or by the Declarant in accordance with the terms of the declaration, as follows:

1. RESIDENCE:

That each lot shall be used for one single family residence only and shall be developed with not more than one residential unit per lot: a residential unit shall include no buildings or structures other than the following; one detached dwelling house designed as a residence for one family, one garage for private use constructed as an integral part of the dwelling. No structure of a temporary character, and no trailer, tent, shack, barn, pen, kennel, run, stable, shed or other buildings shall be erected, used or maintained on any Lot at any time without the written consent of the Declarant.

The residence shall contain at least 1,300 square feet for one story, or 1,600 square feet for split level or multi-story, of above-ground-level living space, exclusive of any porches, garages or basement areas. No buildings or structures of any kind except the aforesaid residential structures shall be erected, used, maintained, or allowed to stand on the property. The design and quality of the

residential dwellings, including but not limited to materials, building shape, roof lines and site orientations shall be of a character assuring the conformity and harmony of external design and general quality of Mitchell Hill Subdivision. All utility lines shall be situated underground. All disturbed areas on any lot must be revegetated in accordance with good erosion prevention methods; growth of grass or other ground cover must be established within (1) year from the time of disturbance. Landscape plans shall include front and side lawns. All pool pumps, central heating and air condition equipment, and all other ground-level-mounted systems must be hidden from view from the road with shrubbery or other landscaping. In no event shall any above-ground swimming pool be permitted. No exterior clotheslines of any type shall be permitted upon any Lot. Any vegetable garden, hammock, statuary, play equipment (including, without limitation, basketball goals), or wading pools must be erected or located only between the rear line of the Residence dwelling and the rear lot line.

No for-profit nursery or child care, or commercial, industrial or business use or enterprise shall be carried out at or on any Lot, except that a home office for use by the Owner of the Lot only, may be permitted if otherwise in compliance with applicable zoning and licensing laws, but provided that such home office use is conducted without signs, outside storage or visits from customers or business invitees. Notwithstanding the above, the Declarant may use unsold lots for display and marketing purposes and may use unsold lots for construction purposes.

Lots may be leased for residential purposes. All leases shall be in writing. All leases shall require, without limitation, the tenant acknowledge in writing receipt of a copy of these Covenants. All leases shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, Declarant may seek legal remedies against the owner of the property.

Any solar energy collector panels or attendant hardware or other energy conservation equipment must be an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Declarant.

No exterior antennas of any kind shall be placed, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Declarant. Standard television antennas, direct broadcast satellite services antenna (DBS) one meter in diameter or less may be installed on any Lot subject to the following requirements:

a) Antenna placement on a roof shall not be visible from the street, provided such placement does not preclude reception of an acceptable quality signal.
b) Antennas installed in a yard must be adequately screened from view

2. <u>PETS AND ANIMALS:</u>

Nothing shall be done which may be or become an annoyance or nuisance; the keeping of poultry, swine, or livestock other than domesticated household pets in reasonable numbers normally housed in a residence shall not be permitted. No pets may be kept, bred or maintained for any commercial purpose.

All animals shall be restrained so as not to become noisome or offensive to the occupants of any lots; all dogs and other large pets shall not be permitted off the owner's lot except on a leash attended by a responsible person.

3. **MOTOR VEHICLES:**

Outside parking areas and drives are provided for the parking of private passenger motor vehicles as well as towable trailers whose intended and actual use is for seasonal recreational purposes only. The parking areas shall not be used for outside parking of unlicensed or inoperable vehicles except with the prior written approval of the Declarant or if housed within a fully enclosed garage.

4. **FENCES:**

No fences or free standing walls shall be erected on any lot except with the prior written approval of the Declarant.

5. **NATURAL TREE GROWTH:**

The natural tree growth on the Property shall be preserved, except as may be necessary for the construction and maintenance of the roads, structures and accessory improvements, utilities, subsurface disposal systems, paths, and as may be necessary to facilitate passive solar heating. The lot owner shall not clear more than a total of 15,000 square feet of land within any single lot.

6. **PARKING:**

Adequate off-street parking is provided with each lot; therefore no on-street parking is allowed on a consistent basis or for extended periods. The reason for this rule is to assure the safety and security of the community, and no person shall permit vehicles to be parked on the street in violation of this rule. The failure of the Declarant or its successors to enforce any of these rules shall in no event be considered a waiver of the right to do so in the future as to the same violation or breach or any violation or breach occurring prior or subsequent thereto.

7. **SIGNS:**

Signs, with the exception of signs less than two (2) square feet in overall area identifying the name of the family or individuals who reside in the home and/or the street number of the house, are not permitted. No sign may be neon or internally illuminated. Signs promoting the sale of lots in the Subdivision are

permitted provided: (1) that they are no larger than nine (9) square feet in area (single or double sided); (2) that such signs may appear only on the property that is being marketed for sale; and (3) only one such sign at any given time may appear on the property that is being marketed for sale. The Declarant reserves the right to display signs depicting all lots for sale at any location of Mitchell Road or Grand View Drive and right to display lot number signs for each lot.

8. NUISANCE:

It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. The assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall only be pursued or undertaken in a garage and not visible from the road or adjacent lots. No property within the Community shall be used, in whole or in part, for the storage of anything that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the Occupants of surrounding property.

9. REFUSE DISPOSAL:

Trash, garbage and other waste shall be kept in sanitary containers where they are not visible from any other Lot. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community except in accordance with city and county regulations.

CONSTRUCTION:

10. PRE-CONSTRUCTION REVIEW:

Designs for structures permitted within the Mitchell Hill development shall be subject to approval by Olander General Contracting, LLC. No structure shall be commenced, erected, placed, moved onto or permitted to remain on any lot nor shall any existing structure or lot be altered in any way which materially changes the exterior appearance of the structure or lot, unless plans and specifications have been submitted to and approved in writing by the Declarant. Prior to commencement of construction of any structure to be constructed on each lot, the lot owner shall submit to Declarant the following:

A. Complete site plans showing the location of the dwelling on the lot.

B. Complete floor plans for the dwelling showing the required minimum square feet of above-ground living space (exclusive of cellars, porches, decks and associated structures), and

C. Elevation plans showing all facades of all buildings on the lot.

D. Landscaping and drainage plans ensuring that that lot as developed will provide for adequate removal of runoff from the property without negative impact on the common areas or adjacent lots.

The Declarant shall approve such plans provided that they conform to the Declaration and the Declarant determines, in his sole discretion, that construction in accordance with such plans will not be detrimental to the Mitchell Hill subdivision. The Declarant will make reasonable efforts to assist and advise the lot owner in order that an acceptable plan may be prepared and submitted for approval.

11. DURING CONSTRUCTION:

Sediment Controls must be used during all exposed excavation work until adequate vegetation allows its removal. The Declarant, after reasonable request, at a reasonable time or times, enter upon any Lot for the purpose of ascertaining whether the proposed and approved installation, construction, or alteration of any structure or the use of any lot or structure is in compliance with the provisions of this declaration. During construction any and all waste will be placed in dumpsters.

12. COMPLETION OF CONSTRUCTION:

Within twelve (12) months from the start of any construction, and owner shall erect, build and have the exterior of the building closed in and completed in a manner consistent with the conditions set forth herein. A paved driveway must be completed within six (6) months of occupancy.

13. ROADS, EASEMENTS AND ASSESSMENTS:

For the purpose of maintaining roads, utility and other easements, traffic control, maintaining the storm water drainage systems, general planting along roadway and other common areas, and all common services of every kind and nature required or desired within or adjoining the subdivision for the general use and benefit of all lot owners, each and every lot owner, in accepting a deed or contract for any lot in such premises, agrees to and shall be a member of and be subject to the by-laws and rules of the Association. All Owners and occupants of Lots are given notice that use of their Lots is limited by the restrictions as they may be amended, expanded, and otherwise modified hereunder. Any lot within Mitchell Hill shall be subject to one or more easements for the purpose of drainage utilities or access necessary within the subdivision. These easements will be clearly shown on the recorded plan for Mitchell Hill and reserved in each deed. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and

enjoyment and marketability of his or her Lot can be affected and that the Design Standards may change from time to time.

The 30-foot-wide Access Easement that crosses Lot 26-20 as shown on the Plan shall be for the limited purpose of maintaining and improving the Easement Detention Pond 3 and surrounding areas, and shall not be used by anyone for any other purpose except by the owner(s) of Lot 26-20, who may use it for pedestrian and vehicular access and utility extensions to and from said Lot 26-20 or for any other purpose that does not hinder, restrict or interfere with access across the easement to the detention pond 3.

The lot owner shall pay to the Association, or its authorized representative, a yearly home owner association fee of $200 due January 31st of each year which will be payment for the current year. Any lot purchased from the Declarant after January 31st of a given calendar year shall be assessed a prorated association fee at closing. The fee may be adjusted based on the reasonable anticipated expenses and budgeting for prudent reserve funds as set by the Declarant or Board of Directors. Lot owners shall not be entitled to a refund. This fee will be used solely for maintenance costs, yearly home owner association incorporation fees and home owner association costs.

Any current resident of Mitchell Hill Subdivision that purchases an additional abutting vacant lot or lots will be subject to a nominal HOA fee of $150 per year for each abutting vacant lot. This vacant lot(s) will not be subject to additional HOA assessments as long as the current owner of the lot(s) is a resident of Mitchell Hill and the lot remains vacant. For this purpose, a vacant lot is a lot that does not have any structures, personal effects, belongings or possessions on it. The owner of the vacant lot may request, in writing, permission to put a temporary structure on the vacant lot, and the Declarant or Association may give permission to do so at their discretion, but this permission may be revoked if the temporary structure is deemed a nuisance, at which time the structure must be removed. If the lot owner does not maintain primary residency in Mitchell Hill, or violates the definition of a vacant lot as described herein, or if permission for a temporary structure is revoked, and the lot owner does not remedy the violation within 10 days of being notified in writing by the Declarant or Association, the HOA fee structure for the vacant lot(s) will default to the current covenants and restrictions.

Mitchell Road and Grand View Drive will be designed and built according to Planning Board requirements and will remain private roads. All costs of general maintenance including but not limited to, grading, graveling, paving, repair, mowing, snow plowing and sanding of common roads, drives, trails and common facilities shall be paid using the yearly home owner association fee. The reasonableness of any repair, maintenance or project shall be at the sole discretion of Declarant or Board of Directors. If the total maintenance cost is more than the total collected from the home owner association fee the prudent reserve will be

used to cover the expenses. If the cost is more than the prudent reserve balance, then a second fee shall be collected for maintenance costs and shall be assessed against the owner of each lot in the amount of one twenty-second (1/22nd) of the total amount of the excess costs. Assessments shall be due and payable within thirty (30) days from the billing. Each lot owner agrees, by acceptance of a deed for such lot, to pay all costs of collection, including reasonable attorneys' fees, incurred in any action taken pursuant to this agreement. The Declarant shall not be responsible for and shall not be assessable for assessments for individual unsold lots.

A. The Association shall notify the owners of the lots above described at the addresses maintained by the Association within thirty (30) days after said assessment has been fixed and levied, notifying such owners of the amount of the charge or assessment for such year, when the same will be due and payable, and the amount due on each lot or parcel of land owned by each such owner, and an interest rate of 18% per annum on past due assessments plus attorney's fees and other costs incurred in collection, provided that failure to send such notice shall not relieve the Owner of his obligation hereunder. It shall be the duty of each owner to list his address with the Association, failing which the Association may send such notices to such address as reasonably appears to be a permanent address of such owner. Failure of the Association to levy the assessment or charge for any one year or send such notice shall not constitute a waiver of said fees and shall not affect the right of said Association to do so for any subsequent year or for such prior years in arrears.

B. A written or printed notice thereof deposited into United States mails, with postage prepaid, and addressed to the respective owners as aforesaid shall be deemed to be sufficient and proper notice for this purpose or for any other purpose of this declaration, wherever notice may be required.

14. MAINTENANCE OF FACILITIES:

Drainage Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Notwithstanding the foregoing, changes necessary for the improvement in the drainage or flow of water from a lot or adjacent lot shall require prior approval of the Declarant. Any damage caused by modification to the original drainage and flow shall be repaired by the person causing the damage at such person's sole expense.

The Association, through its Board of Directors, shall have the irrevocable right to have access to each parcel from time to time during reasonable hours, as may be necessary for the maintenance, repair or replacement of any of the common areas and facilities therein or accessible there from, including pedestrian, utility and drainage easements, to prevent damage to the common areas and facilities, or to any other parcel(s). The Declarant and its designees shall also have, and are

hereby granted, the exclusive rights to maintain, repair, replace, add material to and alter the common roads, drives, trails and common facilities by means determined by the Declarant.

15. SUBDIVISION:

The lots as shown on the plan may not be further divided.

16. COMMON AREAS, OPEN SPACE AND ACCESS TO AMENITIES:

The Declarant has created a public easement which may be moved from time to time, to be available to the public for the purpose of passive recreational access through the Mitchell Hill open space forest and adjacent inter-connecting trail systems within the Town of Casco and adjoining towns. Access to Open Spaces shown on the Plan is allowed for members of the Association, their families, and invitees by easement through the open space for the purpose of trail access, respectful passive open space activity and legal hunting activities with the exception of all trapping activity utilizing animal traps, which is not to be allowed within the open space under any circumstances for the safety of the public, the lot owners and their household pets.

It is the intent of the Declarant to create open space opportunities for the Association. The use of alternate means of transportation (such as but not limited to ATV's, snowmobiles and other means of recreational transportation) shall be permitted to encourage and enable travel into and out from open space access points by any lot owner. The Association shall allow non-automotive motorized access to and from Mitchell Hill open space trail systems by lot owners in a safe and prudent manner subject to the rules and regulations concerning usage of motorized vehicles in the State of Maine. All motorized vehicles must be properly registered, insured and legally operated in such a safe manner such that they are not a nuisance to the Association. In any event motor vehicles shall be operated so as not to become noisome or offensive to the occupants of any lot.

HOME OWNER ASSOCIATION:

17. ASSOCIATION MEMBERSHIP AND ADMINISTRATION:

A. Each owner of a lot shall be deemed to be a full voting member of said Association and shall continue to be a voting member thereof as long as he or she is the owner of any said lot or lots subject hereto. A lot owner shall have one vote. Upon transfer, conveyance or sale by any owner of all of his or her interest in such lots, said owners membership in said Association shall thereupon cease and terminate and the new owner shall become an Association member.

B. The Association shall notify by mail all such owners at the address of such owners as are listed with the Association, the time and place of regular or special meetings of the Association. Such notices shall be mailed at least ten (10) days in advance of such meetings.

C. The Association shall have the right to make such reasonable rules and regulations and provide such means and employ such agents as will enable it to adequately and properly carry out the purpose and provisions of this Declaration, subject to the limitations hereinabove set forth.

18. RIGHTS OF DECLARANT

The Declarant reserves the right until the construction, marketing, and sale of all lots (Lots 1-22) is completed to:

A. So long as Declarant owns two or more of the lots within the Property, Declarant has the right to make non-substantive modifications to the Plan and the Subdivision in order to comply with applicable municipal, state, or federal rules, statutues, or requirements, or to correct planning or surveying errors and omissions. Declarant shall be responsible for the costs of such modifications. At any time after Declarant owns fewer than two lots, any such modifications shall require the consent of sixty-six percent (66%) of the lot owners. The change or changes shall be effective upon the recording of any amendment to this Declaration and/or the filing of a modified subdivision plan indicating the changes made.

B. Appoint and remove the officers of the Association and members of the Executive Board and veto any action of the Association or the Executive Board, in accordance with the provisions of the Bylaws in order to effectuate the purposes of this. The Declarant shall relinquish all special rights expressed or implied through which it may directly or indirectly control, direct or modify any action of the Association, its Board of Directors or the majority of lot owners, and control of the Association shall pass to the lot owners not later than the date on which (66%) percent of the lots (Lots 1-22) have been conveyed to purchasers. The requirements of this paragraph shall not affect the Declarant's rights, as a lot owner, to exercise the votes allocated to lots owned by the Declarant.

C. In order to amend any portion of the covenants and restrictions described herein, a minimum of two-thirds majority vote by association members must be satisfied. The Declarant shall have the right to veto all such modifications and amendments until (66%) percent of lots are sold.

19. ENFORCEMENT:

The provisions of Declaration have been adopted for the benefit of the owners of the Property. Therefore, the violation or attempted violations of any covenant or restriction in this Declaration is hereby declared a nuisance which may be remedied by any appropriate legal proceeding. If any owner shall attempt, violate or permit violation of any of the covenants, restrictions or reservations described above, the Declarant, the Association or any lot owner may commence proceedings at law or in equity to recover damages or other awards for such attempts, violations or permitting of the same, or to enjoin the furtherance or continuation of such attempts or violations, or both.

20. TERMINATION OF RESTRICTIONS:

At a meeting duly held not earlier than January 1, 2035, the then current lot owners of record may terminate the provisions set forth in this Declaration by a unanimous vote, which amendment or termination shall become effective upon the recording therefore. If no such amendment or termination is recorded by February 1, 2035, this Declaration shall automatically renew for another 25-year period, and in like manner for each 25 year period thereafter.

21. DECLARANT:

All references in the Declaration to the Declarant shall mean and include the Declarant's successors and assigns. Upon the sale of 66% of the lots depicted on the subdivision plan the Declarant shall convey the rights reserved to it herein to the Association.

22. SEVERABILITY:

If any provisions of this Declaration, or its application to any persons or circumstances, is invalid or unenforceable, then the remainder of this Declaration, or the application of such provisions to other persons or circumstances, shall not be affected thereby.

23. In all other respects the Declaration, the Second Amended Declaration, the Third Amended Declaration, the Fourth Amended Declaration , and the Revocation and Amendment, remain in full force and effect. In the event there is a conflict between this Fifth Amended Declaration conflicts with the Declaration, the Second Amended Declaration, the Third Amended Declaration, the Fourth Amended Declaration and the Revocation and Amendment, this document shall control.

IN WITNESS WHEREOF, Olander General Contracting, LLC has caused this instrument to be executed by Erik Olander, its Manager, on the date first above written.

OLANDER GENERAL CONTRACTING, LLC

Erik R. Olander, Manager

The Mitchell Hill Homeowners Association ("Association") joins in this instrument following a duly constituted meeting of the Association on January 4th, 2020 at which meeting the Members approved resolutions by unanimous decision to amend the Declaration and Revocation and Amendment in accordance with the provisions contained herein.

MITCHELL HILL HOMEOWNERS ASSOCIATION

Erik R. Olander
Its President
Duly Authorized Thereunto

STATE OF MAINE
CUMBERLAND, ss. January 9, 2020

Then personally appeared the above named Erik R. Olander, Manager of Olander General Contracting, LLC, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Olander General Contracting, LLC. And, the said Erik R. Olander, President of the Mitchell Hill Homeowners Association, acknowledged the foregoing instrument to be the free act and deed of the Mitchell Hill Homeowners Association.

Before me,

MATTHEW ERIC GONYEA
Notary Public, Maine
My Commission Expires February 26, 2025

Notary Public / Attorney at Law
Matt Gonyea
Print or type name
My commission expires: 2-26-2025

SEAL

Received
Recorded Register of Deeds
Jan 10,2020 08:49:23A
Cumberland County
Nancy A. Lane