

*[Note: Additional covenants and restrictions may be added by the Declarant provided they are consistent with and do not nullify or lessen enforceability of provisions of this Declaration format approved by the Durham Town Attorney. The applicant should consult with a private attorney on covenants to protect their development interests. Any changes to the wording of articles and sections included in this template apart from those to be added by the applicant to protect their development interests shall require review and approval by the Town Attorney at the applicant's expense.]*

**Declaration of Covenants, Restrictions and Easements**  
**SUBDIVISION**  
**Town of Durham, Androscoggin County, Maine**

This DECLARATION is made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, a Maine Corporation with a place of business in \_\_\_\_\_, County of \_\_\_\_\_ and State of Maine (hereinafter collectively referred to as the "Declarant").

WITNESSETH:

WHEREAS, the Declarant has established a certain \_\_\_\_\_ (\_\_\_\_) lot subdivision known as \_\_\_\_\_ (hereinafter referred to as the "Property"), approved by the Town of Durham Planning Board as depicted on a Plan prepared by \_\_\_\_\_ entitled "\_\_\_\_\_", which Plan is recorded in the Androscoggin County Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_\_\_\_ (hereinafter referred to as the "Plan"), and Declarant intends to subject the Property, as further indicated herein, to these Declarations of Restrictions for \_\_\_\_\_ that are to be recorded in the Androscoggin County Registry of Deeds; and

WHEREAS, the Declarant being about to sell and convey lots in said subdivision desires to assure to the purchasers and their heirs, successors and assigns owning such lots, the use, benefit and enjoyment of said lots in accordance with a harmonious plan, and to assure compliance with the Durham Planning Board's subdivision approval and to these ends desires that said lots in said subdivision shall be subjected to certain restrictions, reservations, servitudes, covenants, agreements and easements as hereinafter set forth; and

WHEREAS, Declarant intends to clarify the maintenance responsibilities with respect to certain common open space and project improvements as well as various easements to be located on the Property, as further indicated in this Declaration;

NOW THEREFORE, the Declarant hereby declares that the Property shall be held and shall be conveyed subject to the restrictions, reservations, servitudes, covenants, agreements and easements as set forth in the following provisions of this Declaration, which Declaration shall inure to the benefit and be binding upon the Declarant, their heirs, successors and assigns, and the purchasers of the Property, their heirs, successors and assigns, to wit:

*ARTICLE A.*  
***General Restrictions***

Each of the lots within the Property, numbered (\_\_\_ thru \_\_\_) as shown on the Plan, shall be subject to the following covenants and restrictions, which shall run with the land:

1.     **Further Subdivision of Lots.** No lot shall be further subdivided without prior written approval of the Durham Planning Board and the Declarant.
2.     **Subdivision Plan.** Each lot shall be subject to the restrictions, conditions and easements indicated on the Plan.
3.     **Compliance with Ordinances.** All construction activities, including the siting of buildings, shall be in accordance with all state and municipal laws, codes, ordinances and regulations.
4.     **Maintenance.** All lots and buildings thereon shall be maintained in a neat and attractive manner and kept in good repair at all times.
5.     **Nuisances.** No owner of a lot shall do or permit to be done any act upon the lot, which is, may be, or may become a nuisance as defined by state or municipal law, code, ordinance or regulation. The Declarant or its nominee and every person or corporation now owning, or hereafter owning properties, shall have the right, but not the obligation, to prevent or stop the violations by injunction or other lawful procedure and to recover any damages resulting from such violations.
6.     **Clearing of Vegetation.** There shall be no cutting of trees or clearing of vegetation outside of building envelopes and/or within buffers as shown on the subdivision plan except to remove dead or diseased trees as determined necessary by a licensed forester or arborist.
7.     **Wetlands.** No filling, alteration or disturbance of wetlands as shown on the subdivision plan shall be permitted except as approved by the Maine Department of Environmental Protection and the Durham Planning Board.
8.     **Surface Water.** No owner of a lot, his agents or employees shall alter the natural course of surface water on any lot in any way which would materially alter the natural flow of such water across any other lot unless such alteration is approved by the owners of all lots affected.

*ARTICLE B.*  
***Common Open Space***

*[Note: Article B. to be included if there is common open space in the subdivision]*

The Property shall be subject to the following covenants and restrictions related to the common open space, which shall run with the land:

1. **Common Open Space.** The parcel of land consisting of approximately \_\_\_\_\_ acres, and identified on the Plan as the “Common Open Space”, shall be deeded to the Homeowner’s Association to be established for \_\_\_\_\_ Subdivision. The Common Open Space shall be held and managed by the Association for the benefit and use of the owners of Lots 1-\_\_\_\_. Only one family unit per lot shall have the right to use the property known as The Common Open Space, fractional owners shall have no right to use the area known as “The Common Open Space.” The Common Open Space shall be utilized as a recreational area for pedestrian activities and passive recreation. Any pedestrian paths constructed in the Open Space shall be built in accordance with the guidelines for shoreland zoning footpaths. No structures shall be erected in the Open Space.
2. **Vehicles.** The use of motorized vehicles shall be prohibited within the Common Open Space, with the exception of the reasonable use of snowmobiles/snow machines during winter months.
3. **Costs.** The owner of each lot within the Property (Lots 1-\_\_\_\_) shall upon receiving their respective deed(s) be responsible for a 1/\_\_\_\_ share of all costs relating to the Common Open Space, including general maintenance, insurance, upkeep and taxes.
4. **Use.** The owners of Lots 1-\_\_\_\_ shall have the right to construct and maintain paths and trails for passive recreational use only within the Common Open Space, by vote of the lot owners representing a majority of the lots located within the Property. Any and all trails built shall comply with all state and local ordinances.

*ARTICLE C.*  
*Homeowners Association*

1. **Association.** Every owner of a lot within the Property (Lots 1-\_\_\_\_) shall be a member of the \_\_\_\_\_ Homeowners Association (“hereinafter referred to as the “Association”), which has or shall be created as a nonprofit and nonstock corporation, duly organized under the laws of the State of Maine. Membership shall be appurtenant to and may not be separated from lot ownership. The lot owners shall be entitled to one vote for each lot owned. The Association shall be the governing body for all of the above-mentioned lot owners with respect to the administration, management, maintenance, repair and replacement of all “Common Open Space” within the Property, and all areas owned by the Association within the Property (hereinafter collectively referred to as “Common Areas”).
2. **Bylaws.** Where not consistent with the provisions of Article “C” of this Declaration, the Bylaws of the Association shall govern issues such as meetings, election and authority of officers, authority and power of the Association and its members, and annual and special assessments.
3. **Assessments.** The Declarant, for each applicable lot (Lots 1-\_\_\_\_) owned within the Property, hereby covenants, and each owner of such lots, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) all annual assessments or charges, and (2) all special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.
  - a. **Even Proration of Expenses.** Owners of Lots 1-\_\_\_\_ within the Property shall pay annually to the Association, or its authorized representative, his or her proportionate share of the expense of maintaining the Common Areas along with the expense for liability insurance as provided in Article C, paragraph 4. Such proportionate share of expenses shall be evenly prorated for each lot.
  - b. **Annual Budget.** The annual budget shall be prepared by the Board of Directors and ratified by the lot owners in accordance with the Bylaws.
  - c. **Annual Assessments.** The annual assessments provided for herein shall commence to all applicable lots upon transfer of title. The Board of Directors shall fix the amount of the annual assessment against each applicable lot at least thirty (30) days in advance of each annual assessment period. Written notice shall be sent to each owner (Lots 1-\_\_\_\_), his heirs, or assigns subject thereto.
  - d. **Assessment Lien.** Assessments, both annual and special, and other proper charges authorized and billed by the Association shall be a charge on the lot and shall be a continuing lien upon the lot on which such assessment is made. If the assessment to the lot owner is not paid within thirty (30) days after the due date, then said assessment shall become delinquent and shall, together with interest at the rate of one percent (1%) per month, costs of collection and reasonable attorneys' fees, become a continuing lien on the lot owned by the delinquent lot owner, which lien

shall bind the lot, with the buildings and improvements thereon, as well as the delinquent lot owner, heirs, devisees, successors, personal representatives and assigns. Said lien may be enforced in the same manner as a lien for assessments against condominium units provided in the Maine statutes, as the same may be amended. Said lien for unpaid assessments shall be prior to all of the liens and encumbrances on the lot other than mortgages recorded before the date on which the assessment which is sought to be enforced becomes delinquent and liens for real estate taxes and other governmental/municipal assessments or similar charges against the lot. All such charges in addition to being a lien shall also constitute the personal liability of the owner of the lot so assessed at the time of the assessment.

4. **Insurance.** The Association shall obtain and maintain insurance under a policy of general public liability insurance, naming the owners of Lots 1-\_\_\_\_, and the Association as insured parties, which insurance shall insure against claims for personal injury and property damage occurring within or relating to the use of the Common Areas, and all Easements, in such amounts and insuring against such other perils as the Association may reasonably determine.

*ARTICLE D.*

***Homeowners Road & Improvements Association***

*[Note: Article D. to be included if there is a road in the subdivision providing access to lots and/or other common improvements required by the Planning Board, including but not limited to stormwater treatment and fire protection water supplies]*

1.     **Association.** The association shall appoint five (5) members of the Association to serve on the Homeowners Road & Improvements Association. The Association shall be the governing body for all deciding matters regarding the maintenance, repair, plowing, sanding and general upkeep of the road(s) known as “\_\_\_\_\_” and other common improvements required by the subdivision approval, including stormwater treatment systems and fire protection water supplies.
2.     **Bylaws.** Where not inconsistent with the provisions of Article “D” of this Declaration, the Bylaws of the Road & Improvements Association shall govern issues such as meetings, election and authority of officers, authority and power of the Association and its members, and annual and special assessments.
3.     **Assessments.** The Declarant, for each applicable lot (Lots 1-\_\_\_\_) owned within the Property, hereby covenants, and each owner of such lots, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Road & Improvements Association: (1) all annual assessments or charges, and (2) all special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.
  - a.     **Even Proration of Expenses.** Owners of Lots 1-\_\_\_\_ within the Property shall pay annually to the Road & Improvements Association, or its authorized representative, his or her proportionate share of the expense of maintaining “\_\_\_\_\_” Road(s) along with the expense for liability insurance as provided in Article D, paragraph 4. Such proportionate share of expenses shall be evenly prorated for each lot.
  - b.     **Annual Budget.** The annual budget of the Road Association shall be prepared by the Board of Directors and ratified by the lot owners in accordance with the Bylaws. At a minimum, the annual budget shall include adequate funds to cover the costs of annual plowing, sanding, and sweeping, periodic cleaning of driveway culverts, repairs necessary to keep the road in serviceable condition such as, but not limited to crack sealing, and for re-paving the road on a ten-year occurrence cycle. The budget shall also include funds adequate to maintain stormwater treatment systems in keeping with the approved maintenance plan and maintaining the fire protection water supply system fully operational per recommendations of the Fire Chief.
  - c.     **Annual Assessments.** The annual assessments provided for herein shall commence to all applicable lots upon transfer of title. The Board of Directors shall fix the amount of the annual assessment against each applicable lot at least thirty (30) days in advance of each annual

assessment period. Written notice shall be sent to each owner of Lots 1-\_\_\_\_ subject thereto.

- d. **Assessment Lien.** Assessments, both annual and special, and other proper charges authorized and billed by the Road Association shall be a charge on the lot and shall be a continuing lien upon the lot on which such assessment is made. If the assessment to the lot owner is not paid within thirty (30) days after the due date, then said assessment shall become delinquent and shall, together with interest at the rate of one percent (1%) per month, costs of collection and reasonable attorneys' fees, become a continuing lien on the lot owned by the delinquent lot owner, which lien shall bind the lot, with the buildings and improvements thereon, as well as the delinquent lot owner, heirs, devisees, successors, personal representatives and assigns. Said lien may be enforced in the same manner as a lien for assessments against condominium units provided in the Maine statutes, as the same may be amended. Said lien for unpaid assessments shall be prior to all of the liens and encumbrances on the lot other than mortgages recorded before the date on which the assessment which is sought to be enforced becomes delinquent and liens for real estate taxes and other governmental/municipal assessments or similar charges against the lot. All such charges in addition to being a lien shall also constitute the personal liability of the owner of the lot so assessed at the time of the assessment.
4. **Insurance.** The Homeowners Road & Improvements Association shall obtain and maintain insurance under a policy of general public liability insurance, naming the owners of Lots 1-\_\_\_\_, and the Road & Improvements Association as well as the Homeowners Association as insured parties, which insurance shall insure against claims for personal injury and property damage occurring within or relating to the use of the “\_\_\_\_\_”, and all Easements, in such amounts and insuring against such other perils as the Road & Improvements Association may reasonably determine.
5. **Acknowledgement.** The Homeowners Road & Improvements Association acknowledges that the Town of Durham is not responsible for the construction, maintenance, repair, or plowing of the private road.

*ARTICLE E.*  
***General Provisions***

1. **Governing Law.** This Declaration shall be governed by and interpreted in accordance with the laws of the State of Maine.
2. **Enforcement.** These covenants, easements and restrictions are posed as part of a general scheme for the protection and benefit of the Declarant and each subsequent owner of lots numbered 1-\_\_\_\_ within the Property. The provisions herein set forth shall run with the land and bind Declarant, their successors and assigns, and all parties claiming by, through, or under Declarant. Declarant, their successors or assigns, the Town of Durham, and each owner or owners of any of the aforementioned lots (Lots 1-\_\_\_\_) within the Property, 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. Each lot owner agrees, by acceptance of a deed for such lot, to pay all costs of collection, including reasonable attorney's fees, incurred in any action taken to enforce the provisions of this Declaration. In no event shall the failure of Declarant, or its successor or assign, and such owners to enforce any of the provisions herein set forth as to a particular violation be deemed to be a waiver of the right to do so as to any continuing or subsequent violation.
3. **Separate Provisions:** If any part or provision of this Declaration shall be held invalid or unenforceable by a Court of Law, such holding shall not impair, invalidate or otherwise affect the remainder of this Declaration, which shall remain in full force and effect.



*ARTICLE F.*  
*Compliance with Government Approvals and Plan*

By acceptance of a deed to a lot (Lots 1-\_\_\_\_) within the Property, each lot owner acknowledges and agrees that such lot is subject to the terms and conditions of (1) the Final Subdivision Approval issued by the Town of Durham on \_\_\_\_\_, 20\_\_ and (2) all terms, conditions and restrictions noted on the Plan, and by acceptance of such deed each lot owner agrees to comply with the terms and conditions thereof. The Declarant for the initial sale of each lot (Lots 1-\_\_\_\_), and the Association for each subsequent sale of a lot, shall provide each new lot owner with a copy of these approvals and the Plan upon the purchase of a lot within the Property.

IN WITNESS WHEREOF, [NAME OF CORPORATION] has caused this instrument to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

[NAME OF CORPORATION]

By: \_\_\_\_\_

\_\_\_\_\_  
Its duly authorized officer or agent

STATE OF MAINE  
ANDROSCOGGIN, SS.

\_\_\_\_\_, 2020

Personally appeared before me the above named \_\_\_\_\_ and acknowledged the foregoing instrument to be his/her free act and deed, in his said capacity.

\_\_\_\_\_  
Notary Public/Attorney at Law