

**SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR THE HAMPDEN BUSINESS AND COMMERCE PARK**

This Second Amended and Restated Declaration is made this 5th day of March, 2018 by the Town of Hampden, a municipality situated in Penobscot County, Maine:

BACKGROUND:

- A. A Declaration of Covenants, Conditions, and Restrictions for the Hampden Business and Commerce Park dated October 7, 2002 was recorded in the Penobscot County Registry of Deeds on December 17, 2002 in Book 8503, Page 78.
- B. By Certificate of Amendments dated January 23, 2008, recorded in the Penobscot County Registry of Deeds on January 28, 2008 in Book 11274, Page 328, the Town of Hampden amended Section 4.2 and Section 4.4 of the original Declaration.
- C. On November 17, 2014, the Hampden Town Council adopted additional amendments to the original Declaration pursuant to Article VI, Section 6.1 of the Declaration.
- D. This Amended and Restated Declaration was issued for the purpose of restating the original Declaration, as amended through November 14, 2014, and applied from November 14, 2014 until the date of effect of the Second Amended and Restated Declaration.
- E. This Second Amended and Restated Declaration is issued for the purpose of restating the Amended and Restated Declaration, as amended through September 17, 2015, and shall apply prospectively from March 5, 2018.

RECITALS:

1. The Town of Hampden is the owner of that certain real property in the Town of Hampden, County of Penobscot, State of Maine, shown on a Final Subdivision Plan entitled Hampden Business and Commerce Park and recorded in the Penobscot County Registry of Deeds in Map File Nos. 2001-70 and 2001-71, as amended by the Final Subdivision Plan - Amendment No. 1 recorded in said Registry in Map File Nos. 2002-89 and 2002-90, Final Subdivision Plan; Amendment 2 (addition of Business Court and Commerce Court) on June 20, 2007, recorded in said Registry in Map File No. 2007-112; Amendment 3 (Reconfiguration of Carey Circle) on September 10, 2014, recorded in said Registry in Map File Nos. 2014-60 and 2014-61; and Amendment 4 (Sheet 2 of 2 only; reconfiguration of lots 33 and 34, elimination of trail easement across lot 28) on March 21, 2018, recorded in said Registry Map File No. 2018-32. (Amended 11/17/14, 3/5/18)

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2. The Hampden Business and Commerce Park is being developed as a master planned Business and Commerce Park. It is the Town of Hampden's desire and intention to subject the real property in

said Business and Commerce Park to certain covenants, conditions, and restrictions which are deemed to be real covenants which run with the land, for the benefit of the property, the Town of Hampden, and the owners or occupants of lots in the Hampden Business and Commerce Park. It is intended that said covenants, conditions and restrictions shall bind and benefit not only said Town of Hampden, and the owners and/or the occupants, but also their respective successors, heirs, and assigns and that all lots in Hampden Business and Commerce Park shall be owned, held, used, sold, transferred, leased, and conveyed subject to the covenants, conditions, and restrictions set forth in this Declaration.

It is the intention of the Town of Hampden to further a plan of subdivision by means of the covenants, conditions, and restrictions set forth in this Declaration. Said covenants, conditions, and restrictions are intended to be common to all of the lots in the Hampden Business and Commerce Park, and any other land which the Town might wish to add in the future, and to enhance and protect the value, desirability, and attractiveness of all such lots to their mutual benefit except where otherwise noted. (Amended 11/17/14, 3/5/18)

3. It is also the intention of the Town of Hampden to enhance the value of the property, to increase the job base and job diversity in the community, and to increase the Town's tax base by undertaking construction and management of the Business and Commerce Park and through the use of this Declaration. Limitations on use, preference for certain uses over other uses, a limitation on non-taxable uses, construction and appearance standards, and many other standards in this Declaration are designed toward these ends.

ARTICLE I DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this article shall, as used in this Declaration, have the meanings herein set forth:

Declarant. The Town of Hampden, acting through its Town Council except as otherwise specified, and its successors and assigns.

Declaration. This Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Hampden Business and Commerce Park as it may from time to time be amended or supplemented.

Design Review Board. (Deleted 11/17/14)

Final Subdivision Plan - Subdivision Plan. The term Final Subdivision Plan or subdivision plan shall mean the Final Subdivision Plan approved by the Hampden Planning Board, on file at the Penobscot County Registry of Deeds in Map File Nos. 2001-70 and 2001-71, as amended by the: (1) Final Subdivision Plan - Amendment No. 1 recorded in said Registry in Map File Nos. 2002-89 and 2002-90, (2) Final Subdivision Plan, Amendment 2 (addition of Business Court and Commerce Court) on June 20, 2007, recorded in said Registry in Map File No. 2007-112, (3) Final Subdivision Plan Amendment 3 (reconfiguration of Carey

Circle) on September 10, 2014, recorded in said Registry in Map File Nos. 2014-60 and 2014-61, and (4) Final Subdivision Plan Amendment 4 (Sheet 2 of 2 only; reconfiguration of lots 33 and 34, elimination of trail easement across lot 28) on March 21, 2018, recorded in said Registry Map File No. 2018-~~32~~
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(Amended 11/17/14, 3/5/18).

Hampden Business and Commerce Park. The term "Hampden Business and Commerce Park" shall be synonymous with the term "subject property" and shall mean all of the real property now or hereafter made subject to this declaration, including but not limited to the property shown on the Final Subdivision Plan.

Improvement - Improvements. The term "Improvement" or "Improvements" shall include buildings, outbuildings, roads, driveways, parking areas, fences, screening walls and barriers, storage facilities, retaining walls, stairs, decks, water lines, sewers, electrical and gas distribution facilities, hedges, windbreaks; plantings, planted trees and shrubs, poles, signs, loading areas, and all other structures, installations, and landscaping of every type and kind, whether above or below the land surface.

Lot. The term "lot" shall mean any lot or other tract or parcel of land located within the subject property as shown on the Final Subdivision Plan. This definition does not preclude establishing improvements across interior lot lines of lots held in common ownership. (Amended 11/17/14)

Low Impact Outdoor Recreation. The term "low impact outdoor recreation" shall mean outdoor recreation, nature observation and study which is dispersed, traditional non-commercial outdoor activities that do not generally rely on buildings or spectator facilities, and may include hiking, bird watching, picnicking, cross-country skiing, snowmobiling, snow-shoeing, bicycling, horseback riding, primitive non-commercial camping, and outdoor education, including scientific and archeological research and observation.

Master Plan. The Hampden Business and Commerce Park master plan approved by the Town of Hampden Planning Board developed by WBRC Architects- Engineers dated April 27, 2001, a copy of which is on file at the Town Clerk's Office in Hampden, Maine. The plan shall include items identified on the Final Subdivision Plan as amended.

Occupant. A person or entity that is in possession of and is occupying or using any improvements located on a lot. The term includes, but is not limited to, an owner, lessee, optionee, or party in possession.

Owner. A person or entity that holds title to a lot as evidenced by records recorded in the Penobscot County Registry of Deeds.

Phase. This term shall represent certain lots within the Hampden Business and Commerce Park Subdivision and further identified on the Amendment 3 Final Subdivision Plan:

Subdivision Plan -Amendment No. 1 recorded in said Registry of Deeds in Map File Nos. 2002-89 and 2002-90;

Final Subdivision Plan, Amendment 2 (addition of Business Court and Commerce Court) on June 20, 2007, recorded in said Registry in Map File No.2007-112;

Final Subdivision Plan Amendment 3 (Reconfiguration of Carey Circle) on September 10, 2014, recorded in said Registry in Map File Nos. 2014-60 and 2014-61. (Amended 11/17/14); and

Final Subdivision Plan Amendment 4 (Sheet 2 of 2 only; reconfiguration of lots 33 and 34, elimination of trail easement across lot 28) on March 21, 2018, recorded in said Registry Map File No. 2018- 32 ;
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shall be sold, held, conveyed, encumbered, leased, rented, used, occupied, improved, maintained or transferred in whole or in part, subject to the limitations, restrictions, conditions, covenants, liens and provisions set forth in this Declaration, all of which are declared and agreed to be in furtherance of a general plan for the subdivision, improvement, and sale of said real property and are established for the purpose of enhancing and protecting the value, desirability, and attractiveness of the subject property and every part thereof. All of said limitations, restrictions, conditions, covenants, liens and provisions of this Declaration shall run with the land and shall be binding on all parties having or acquiring any right, title, or interest therein or any part thereof. (Amended 3/5/18).

2.2 ADDITION OF OTHER REALTY

Declarant may, but shall have no obligation to, add at any time or from time to time additional land to the scheme of this Declaration. The addition of additional land to the scheme of this Declaration shall be made and evidenced by filing in the Penobscot County Registry of Deeds a supplementary Declaration with respect to the additional land to be added. Declarant reserves the right to so amend or repeal this Declaration or any portion thereof pursuant to the procedures in Article VI, without the consent of any party who may have any right, title, or interest to the subject property. Upon addition of additional land to the scheme of this Declaration, said additional land shall be and become subject to this Declaration. (Amended 3/5/18).

ARTICLE III CONSTRUCTION OF IMPROVEMENTS

3.1 APPROVAL OF PLANS REQUIRED (Deleted 3/5/2018)

3.2 BASIS FOR APPROVAL (Deleted 3/5/2018)

3.3 ACTION (Deleted 3/5/2018)

3.4 APPEAL (Deleted 11/17/14)

3.5 PROCEEDING WITH WORK (Deleted 3/5/2018)

3.6 COMPLETION OF WORK

Any improvement commenced pursuant hereto shall be substantially completed within two (2) years from the date of regulatory approval , except that if such substantial completion is rendered infeasible, or unless work upon the proposed improvements would impose a great hardship upon the owner or occupant due to strike, fire, national emergency, natural disaster, or other supervening force beyond the control of the owner or occupant , Declarant may, upon written request made and received prior to the expiration of the two (2) year period, extend the period of time within which work must be completed. Failure to comply with this section shall constitute a breach of this Declaration and subject the party in breach to the enforcement procedures set forth in Article VII. Nothing in this paragraph shall be deemed to extend any construction start or completion date required by the Zoning Ordinance or other ordinance or regulation, or condition of permit.

All disturbed areas on any Lot must be revegetated in accordance with good erosion practice methods within three (3) months if disturbed during the growing season and within nine (9) months if disturbed during the non-growing season.

All revegetation must be completely established within one year from the time of disturbance.

If all elements of the approved plans and specifications are not substantially completed in accordance with the terms and conditions of this Declaration or such terms and conditions as may be included in a deed of conveyance, the owner may be assessed a late penalty of \$100 for each day beyond the completion deadline that the project is not substantially completed. Said late penalty shall be payable to Declarant, and the owner shall also be obligated to pay any of Declarant's reasonable costs incurred to collect the same, including reasonable attorney's fees and expenses. (Amended 3/5/18).

3.7 DECLARANT NOT LIABLE (Deleted 3/5/2018)

3.8 CONSTRUCTION WITHOUT APPROVAL

If any improvement shall be commenced, erected, placed, or maintained upon any lot, or any new use commenced upon any lot, other than in accordance with a plan approved by the Town of Hampden, such improvement shall be deemed to have been undertaken in violation of this Declaration, then upon written notice from Declarant, any such improvement shall be removed or altered so as to conform to the approval, and any such use shall cease or be altered so as to conform

to the approval within thirty (30) days after receipt of such notice. Thereafter, any party who remains in breach of the approval shall be subject to the enforcement procedures set forth in Article VII. (Amended 3/5/18).

3.9 STARTING TIME AND REPURCHASE OPTIONS

- a. Lots are conveyed with the intent that the owner will build thereon, and not for purposes of speculation. Conveyance of lots shall be specifically made upon the condition that commencement of construction shall begin within one year from the date of said conveyance and that substantial completion of construction, including paving of access ways, walkways and parking lots and the grading and landscaping of the surrounding grounds, shall be substantially completed within two (2) years from the date of regulatory approvals. In the event owner shall fail to commence construction within one (1) year from the date of conveyance, the Declarant may at its option and after written notice of 30 days, declare a violation of these covenants and upon tender of the original purchase price for the lot by Declarant to owner, the owner shall, notwithstanding any improvements to the lot, execute and deliver to the Declarant a deed conveying the subject lot to the Declarant. Owner shall have no right, remedy or recourse against the Declarant for the cost or value of any improvements, nor a cause or claim for unjust enrichment, quantum merit, or other similar relief. (Amended 3/5/18).
- b. In the event any owner of land lying within the Hampden Business and Commerce Park shall desire to sell all or part of the land which at the time is unimproved, then the Declarant shall have the prior right and option to repurchase the unimproved premises proposed to be sold at the same price per acre paid by the Owner for said land when originally acquired from the Declarant.
- c. Prior to any sale of such premises, the owner of such lot, or the owner's successors or assigns, shall notify the Declarant in writing of intention to sell, describing the premises to be sold and the Declarant shall have sixty (60) days from the date of receipt of such notice to exercise its option, and in the absence of written notification sent by the Declarant of its election to exercise said option, such owner shall be free to sell such premises to any person and at any price deemed desirable by such owner.
- d. In the event of any repurchase by the Declarant under paragraphs a, b, and c hereof, the purchaser upon tender of the repurchase price, shall execute and deliver to the Declarant a Quitclaim Deed with Covenant to said premises conveying thereby marketable title to the same free and clear of all encumbrances, except those encumbrances contained in the original deed from Declarant.

3.10 RIGHTS RESERVED TO DECLARANT (Deleted 3/5/2018)

3.11 WETLAND DISTURBANCES

No disturbances may occur within any delineated wetlands as shown on the "Site Grading and Erosion Control Plan" (Sheets CGJ01 and CGI02), prepared by WBRC Architects/ Engineers, dated

March 16, 2001, and recorded in the Penobscot County Registry of Deeds in Map Files 2002-275 and 2002-276, respectively, other than filling as specifically shown on said plan, unless said plan is amended with the requisite governmental approvals. Any such amendments to said plan must be recorded in said Registry. Costs of any such amendments, including permitting, shall be the responsibility of those seeking such amendment(s). (Amended 3/5/18).

3.12 BUFFER AREAS AND OPEN SPACE

No disturbances may occur within any delineated stormwater buffer treatment areas or open space areas designated on the final subdivision plan, except for the removal of dead or dying trees or shrubs, and in accordance with the requirements of the Site Location of Development Permit or Natural Resource Protection Act Permit, as amended, unless said plan is amended with the written approval of the Maine Department of Environmental Protection (MDEP). Any such amendments must be recorded in said Registry. Costs of any such amendments, including permitting, shall be the responsibility of those seeking such amendment(s). Exceptions to this restriction include the annual maintenance or mowing of non-wooded buffers, low impact outdoor recreation and recreational trail development within open space areas retained by the Declarant, and maintenance or repair of utilities within recorded easements. In the event that MDEP requires that a Declaration be recorded in the Registry of Deeds, the more strict provisions shall apply. (Amended 3/5/18).

**ARTICLE IV
DEVELOPMENT STANDARDS**

4.1 GENERAL REQUIREMENTS

All improvements shall comply in every respect with all applicable laws and ordinances of the United States, the State of Maine, and the Town of Hampden, including zoning restrictions, landscaping, and site development standards under applicable Town of Hampden ordinances.

4.2 IMPERVIOUS AREA SETBACK (Amended 10/15/07, 3/5/18)

- a. No paved areas, parking spaces, loading spaces and associated driveways and access aisles shall be placed outside the impervious area limit for each lot as depicted on the subdivision plan (as may be amended from time to time), or within 20' of the front property line or 10' of the side and rear property lines, except for entrance drives. This minimum setback requirement shall not apply to walkways, fences (subject to the requirements set forth in Section 4.7), landscaping, irrigation systems, low planers, signage, lighting, or underground utilities.

4.3 EXCEPTIONS TO SETBACK REQUIREMENTS (Deleted 3/5/2018)

4.4 STRUCTURES AND ARCHITECTURAL STANDARDS (Amended 3/5/18)

Acceptable exterior materials include:

- 1) Finished concrete.
- 2) Finished masonry or masonry units, such as stone, brick, structural facing tile and ceramic tile.
- 3) "Shallow" corrugated or flat metal panels.
- 4) Aluminum/glass curtain wall systems.
- 5) Wood siding, to include solid wood materials such as clapboards but not including pre-manufactured panels such as T1-11.
- 6) Architectural grade vinyl siding.
- 7) Aluminum doors and window systems.
- 8) Exterior insulation finish systems (EIFS).

4.5 SIGNS

Only signs identifying the building or the business of the occupant of a lot, business park identification signs, informational, and vehicular control signs, signs offering the lot for sale or lease, and temporary development signs are allowed. All signs must comply with the Hampden Zoning Ordinance. (Amended 3/5/18).

4.6 LANDSCAPING (Amended 3/5/18)

Within ninety (90) days following completion of construction each lot shall be landscaped in accordance with approved plans and specifications, except when the completion of the landscaping would impose a great hardship upon the owner due to weather or climatic conditions. Declarant may, upon written request made and received prior to the expiration of the ninety (90) day period, extend the period of time within which work must be completed.

- a. The area of each lot between any street and any minimum setback line shall be landscaped with a combination of trees, shrubs, and other ground cover providing a buffer and transition zone from streetscape to site. All other undeveloped portions of a lot shall be landscaped in a complementary and similar manner.
- b. The perimeters of parking areas shall be landscaped with year round plant material or earth berms or a combination of both to screen said areas from view and lessen the impact on neighboring sites.
- c. After completion, such landscaping as is herein required shall be maintained in a well-kept condition.

Landscaping shall be maintained thereafter by the property owner at a level consistent with the approved plan.

4.7 FENCES (Amended 3/5/18)

All fences are subject to the provisions of this section.

- a. A fence shall be erected so that its "good side" shall face an abutting property or roadway.
- b. Any fence located adjacent to a publicly owned or maintained sidewalk, bike path or pedestrian way shall not be located closer than two feet to such public facility.

4.8 PARKING AREAS, LOADING AREAS, AND DRIVEWAYS (Deleted 3/5/2018)

4.9 STORAGE AREAS (Deleted 3/5/2018)

4.10 LIGHTING (Deleted 3/5/2018)

4.11 SPECIAL PROVISIONS (Deleted 3/5/2018)

**ARTICLE V
USES AND OPERATIONS**

5.1 NO FURTHER SUBDIVISION OF LOTS (Deleted 3/5/2018)

5.2 PERMITTED USES (Deleted 3/5/2018)

5.3 PROHIBITED USES (Amended 3/5/18)

The following operations and uses shall not be permitted on any property subject to this Declaration:

- a. Junk yards; wrecking yards; automobile graveyards; or automobile recycling business;
- b. Recycling facilities (unless accessory to the primary activities regularly conducted on the premises);
- c. Mining, drilling for, or removing oil, gas, or other hydrocarbon substances;
- d. Refining of petroleum or of its products;
- e. (Deleted 11/17/14)
- f. Commercial excavation of building or construction materials, provided that this prohibition shall not be construed to prohibit any excavation necessary in the course of approved construction pursuant to Article III;
- g. Dumping, disposal, incineration, or reduction of garbage, sewage, offal, dead animals, or other refuse;
- h. No use shall be made of any lot or any portion thereof which would allow access to transportation or utility systems through such lot to any property not controlled by the Town of Hampden without approval of the Town of Hampden;
- i. Non-taxable uses are prohibited unless approved by the Hampden Town Council because they are generally inconsistent with the goals of Recital 4 above.

5.4 NUISANCES

No nuisances shall be permitted to exist or operate upon on any Lot so as to be offensive or detrimental to any adjacent Lot or property or to its occupants. A nuisance shall include, but not be limited to, any of the following conditions:

- a. Any use, excluding reasonable construction activity, of the Lot that emits dust, sweepings, dirt, or cinders into the atmosphere, or discharges liquid, solid wastes, or other matter into any stream, river, or other waterways that, in the opinion of the Declarant, may adversely affect the health, safety, comfort, or intended use of property by persons within the area. No waste nor any substance or materials of any kind shall be discharged into any public sewer serving the subject property or any part thereof in violation of any regulation of the Town of Hampden;
- b. The escape or discharge of any fumes, odors, gases, vapors, steam, acids, or other substances into the atmosphere, which discharge, in the opinion of Declarant, may be detrimental to the health, safety, or welfare of any person or may interfere with the comfort of persons within the area or may be harmful to property or vegetation;
- c. The radiation or discharge of intense glare or heat, or atomic, electromagnetic, microwave, ultrasonic, laser, or other radiation. Any operation producing intense glare or heat or such other radiation shall be performed only within an enclosed or screened area and then only in such manner that the glare, heat, or radiation emitted will not be discernible from any point exterior to the site or lot upon which the operation is conducted;
- d. Excessive noise. At no point outside of any lot shall the sound pressure level of any machine, device, or any combination of same, from any individual plant or operation, be offensive or detrimental to any adjacent lot or property or to its occupants as determined by the Code Enforcement Officer;
- e. Excessive emissions of smoke, steam, or particulate matter. Emission of dust, fly ash, fumes, vapors or gases which could damage human health, animals, vegetation, or property, or which could soil or stain persons or property, at any point beyond the lot line of the establishment creating that emission shall be prohibited. All such activities shall also comply with applicable Federal and State regulations;
- f. Ground vibration. Buildings and other structures shall be constructed and machinery and equipment installed and insulated on each lot so that the ground vibration inherently and recurrently generated is not perceptible without instruments at any point exterior to any lot.
- g. Trash and refuse outdoors if not contained in a proper receptacle in a refuse collection area. (Amended 11/17/14, 3/5/18).

5.5 CONDITION OF PROPERTY

The occupant of any lot shall at all times keep it and the buildings, improvements, and appurtenances thereon in a safe, clean, and wholesome condition and comply, at its own expense, in all respects with all applicable governmental, health, fire, and safety ordinances, regulations, requirements, and directives, and the occupant shall at regular and frequent intervals remove at its

own expense any rubbish of any character whatsoever that may accumulate upon such lot.
(Amended 3/5/18).

5.6 MAINTENANCE OF GROUNDS

Each occupant shall be responsible for the maintenance and repair of all parking areas, driveways, walkways, and landscaping on his/her lot. Such maintenance and repair shall include, without limitation, up to the public travel way including any easements, esplanades, tree protection zone, and joint or shared parking areas. Each occupant shall be responsible for:

- a. Maintenance of all parking areas, driveways, and walkways in a clean and safe condition, including the paving and repairing or resurfacing of such areas when necessary with the type of material originally installed thereon or such substitute therefor as shall, in all respects, be equal thereto in quality, appearance, and durability, the removal of debris and waste material and the washing and sweeping of paved areas, the painting and repainting of striping markers and directional signals as required;
- b. Cleaning, maintenance, and re-lamping of any external lighting fixtures; and
- c. Performance of all necessary maintenance of all landscaping, including the trimming, watering, and fertilization of all grass, groundcover, shrubs, or trees, the removal of dead or waste materials, the replacement of any dead or diseased grass, groundcover, shrubs, or trees.

5.7 REMEDIES FOR FAILURE TO MAINTAIN AND REPAIR

Each lot owner and occupant thereof shall promptly maintain and repair their premises per Article V but if owner or occupant shall fail to do so after fifteen (15) days written notice by Declarant, then the Declarant may pursue those remedies described in Article VII.

5.8 REFUSE COLLECTION AREAS

All outdoor refuse collection areas shall be screened to minimize visibility from neighboring property or streets and setback at least ten (10) feet from the Street right-of-way. No refuse collection area shall be permitted between a subdivision street and the front of a building.

5.9 REPAIR OF BUILDINGS

No building or structure upon any Lot shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

5.10 PUBLIC UTILITIES

Declarant reserves the exclusive right to approve installation of utility lines across the subject property. Declarant will consult with any Lot owner before such installation and shall attempt to

accommodate Lot owner concerns. The appropriate governmental authority must approve the construction and operation of public utilities in rights-of-way dedicated to the public.

5.11 UTILITY LINES AND ANTENNAS

No sewer, drainage, or utility lines or wires or other devices for the communication or transmission of electric current, power, or signals, including telephone, television, microwave, or radio signals, shall be constructed without approval by the Declarant. Notwithstanding the requirements of the Hampden Zoning Ordinance, no antenna or tower for the transmission or reception of telephone, television, microwave, or radio signals shall be placed on any Lot within the subject property without the consent of the Declarant, which shall not be unreasonably withheld. Nothing contained herein shall be deemed to forbid the erection or use of temporary power or telephone power or telephone facilities incidental to the construction or repair of buildings on the subject property.

5.12 MECHANICAL EQUIPMENT

All mechanical equipment, utility meters, storage tanks, air conditioning equipment, and similar items shall be screened with landscaping, fencing, or architectural features integrated into the structure itself, and shall not be visible from neighboring properties or street rights of way as defined in Article I. (Amended 3/5/18).

5.13 MINERAL EXPLORATION

No portion of the subject property shall be used in any manner to explore for or to remove any steam, heat, oil, or other hydrocarbons, gravel, earth, or any earth substances or other mineral of any kind, provided, however, that this shall not prevent the excavation of earth in connection with the grading or construction of improvements within the subject property.

5.14 OTHER OPERATIONS AND USES (Deleted 3/5/2018)

**ARTICLE VI
AMENDMENT AND REPEAL**

6.1 AMENDMENT OR REPEAL BY DECLARANT (Amended 3/5/18)

The Declarant, at its sole discretion, may amend or repeal the provisions of this Declaration or any portion thereof, provided, however, that:

- a. Prior to any such amendment or repeal, Declarant shall obtain the approval of any governmental agency to such amendment or repeal where such approval is necessary;
- b. A public hearing on the proposed amendment or repeal will be held by the Town Council;

- c. No such amendment or repeal shall be effective until the owners and occupants have been given thirty (30) days prior written notice of the proposed change, that any revisions from the advertised amendments made within the public hearing fall within the scope of the advertised amendments, and that upon approval by the Town Council a proper instrument in writing has been executed and recorded.

**ARTICLE VII
ENFORCEMENT**

7.1 ABATEMENT AND SUIT

The Declarant may enforce any breach or violation of the provisions of this Declaration in either the Superior Court of Penobscot County or the U.S. District Court, Bangor, Maine. In the event the Declarant seeks legal redress, the Declarant may pursue, at its option, both the owner and any related or non-related occupant for money damages, specific performance or any other form of legal or equitable relief. Notice of violation or breach of any covenant, condition or restriction or provision of this Declaration shall be provided by the Declarant in writing, and upon a failure to correct or abate said violation after 30 days, Declarant may pursue such legal or equitable action. In addition to the above remedies, if such violation shall continue for more than 30 days, the Declarant may enter upon the lot where said violation or breach exists and summarily correct, abate or remove, at the expense of owner and/or occupant, any improvements, structure, thing or condition deemed by the Declarant to be in violation of or contrary to the provisions of this Declaration. No such entry by the Declarant or its agents shall be deemed a trespass, nor shall the Declarant or its agents be liable for any actions taken hereunder to remedy or remove a violation. All costs incurred by Declarant shall be levied as an assessment against the owner of the lot(s) in question. If any such assessment is not paid within thirty (30) days of an invoice therefor issued by Declarant, such assessment shall then become delinquent and shall, together with interest thereon at the rate of twelve (12) percent per annum and the cost of collection thereof (including reasonable attorney's fees) become a continuing lien on the lot(s) against which such assessment is made and shall bind such lot(s) in the hands of the owner(s), and the owner's successors and assigns, and shall also be a continuing personal obligation of the owner(s) against whom the assessment is levied. The lien of the assessment for which provision is herein made shall be subordinate to the lien of any first mortgage to a financial institution.

7.2 RIGHT OF ENTRY

During reasonable hours and upon reasonable notice and subject to reasonable security requirements, Declarant, or its agents, shall have the right to enter upon and inspect any lot and the improvements thereon covered by this Declaration for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and neither Declarant nor

its agents shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

7.3 DEEMED TO CONSTITUTE A NUISANCE

The result of every act or omission whereby any covenant, condition, or restriction herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or in equity against an owner or occupant shall be applicable against every such result and may be exercised by Declarant.

7.4 ATTORNEY'S FEES

In the event the Declarant initiates any legal or equitable action to enforce these covenants, and it prevails in that action, the Declarant shall be entitled to its reasonable attorney's fees. In no event and under no circumstances shall Declarant be responsible for owner's or occupant's attorney's fees.

7.5 FAILURE TO ENFORCE IS NO WAIVER

The failure of Declarant to enforce any covenant, condition, restriction, or provision of this Declaration shall in no event be deemed to be a waiver of the right to do so thereafter or in other cases nor to the right to enforce any other restriction.

**ARTICLE VIII
ASSIGNMENT**

Any and all of the rights, powers, and reservations of Declarant herein contained may be assigned to any person, partnership, corporation, or association that will assume the duties of Declarant pertaining to the particular rights, powers, and reservations assigned, and upon any such person, partnership, corporation, or association evidencing its consent in writing to accept such assignment and assume such duties, the assignee shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. Any assignment made under this article shall be recorded in the Registry of Deeds.

**ARTICLE IX
CONSTRUCTIVE NOTICE AND ACCEPTANCE**

Every person or entity who now or hereafter owns or occupies any portion of the subject property is and shall be conclusively deemed to have consented and agreed to every covenant, condition, restriction

and provision contained in this Declaration, regardless of whether any reference thereto is made in any document by which that person acquired an interest in the subject property.

**ARTICLE X
WAIVER AND FAILURE TO ENFORCE**

The Declarant may after public hearing, waive one or more of the covenants, conditions, and restrictions contained in this Declaration. Neither Declarant, nor its successors or assigns, shall be liable to any owner or occupant of the subject property by reason of any mistake in judgment, negligence, nonfeasance, action, or inaction or for the enforcement or failure to enforce any provision of this Declaration. No owner or occupant of property in the Hampden Business and Commerce Park may bring any action or suit against Declarant to recover any such damages or to seek equitable relief because of same.

**ARTICLE XI
RUNS WITH LAND**

All covenants, conditions, restrictions, and provisions contained in this Declaration are made for the direct, mutual, and reciprocal benefit of each and every lot of the subject property; shall create mutual equitable servitudes upon each lot in favor of every other lot; shall create reciprocal rights and obligations between respective owners or occupants of all lots, their heirs, successors, and assigns; and shall, as to the owner or occupant of each lot, their heirs, successors, and assigns, operate as covenants running with the land, for the benefit of all other lots, except as herein provided otherwise.

**ARTICLE XII
RIGHTS OF MORTGAGEES**

No breach of any covenant, condition, restriction or provision herein contained, or any enforcement thereof, shall defeat or render invalid the lien of any mortgage now or hereafter granted on the subject property or a portion thereof, provided, however, that if any portion of said property is transferred under a foreclosure of any mortgage or by a deed in lieu of foreclosure, any successors and assigns shall hold any and all property so transferred subject to all of the covenants, conditions, restrictions and provisions contained in this Declaration.

**ARTICLE XIII
CAPTIONS**

The captions of articles and sections herein are used for convenience only and are not intended to be a part of this Declaration or in any way to define, limit, or describe the scope and intent of the particular article or section to which they refer.

**ARTICLE XIV
EFFECT OF INVALIDATION**

If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

**ARTICLE XV
NOTICES**

Any notices required to be sent to any owner or occupant under the provisions of this Declaration shall be deemed to have been properly sent when mailed by U.S. mail, postage prepaid, to the last known address of the person as it appears in the records of the Assessor of the Town of Hampden. Owner and occupant shall notify the Assessor of any change of address.

IN WITNESS WHEREOF, the Town of Hampden has caused this Second Amended and Restated Declaration to be duly executed on its behalf as of this 4th day of April, 2018.

Jessica Allen
Witness

Town of Hampden
By: Angus G. Jennings
Angus G. Jennings
Its Town Manager

STATE OF MAINE
PENOBSCOT, ss.

April 4, 2018

Personally appeared the above-named Angus Jennings in his stated capacity and acknowledged the foregoing instrument to be his free act and deed in such capacity and the free act and deed of said Town of Hampden.

Before me,

Paula A. Scott
Notary Public
Printed Name: Paula Scott



Susan F. Bulay, Register
Penobscot County, Maine

Paula A. Scott
Notary Public - Maine
My Commission expires Feb. 22, 2021

