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**Declaration of Covenants, Easements and Restrictions  
Affecting  
Elmaple Estates Subdivision**

**City of Westbrook, County of Cumberland  
and State of Maine**

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THIS DECLARATION dated this September \_\_\_\_\_, 2019 (herein called the "Declaration"), by STJ, Inc., a Maine corporation with a place of business in Buxton, York County, Maine (hereinafter called the "Declarant"), with a mailing address of 939 Parker Farm Road, Buxton, Maine 04093, witnesseth:

WHEREAS, Declarant STJ, Inc. by virtue of a quitclaim deed from Elmaple Associates dated \_\_\_\_\_, 2019 and recorded in the Cumberland County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_, is the owner of a certain real property (hereinafter the "Property") located in Westbrook, Cumberland County, Maine, and as described on Exhibit A attached hereto; and

WHEREAS, this Declaration shall apply to the above referenced real property, being the lots, common spaces, roads and ways in Elmaple Estates Subdivision as shown on the approved subdivision plan entitled "Subdivision Plan of Elmaple Estates Subdivision, 477 Saco Street, Westbrook, Maine 04092, for STJ, Inc., 939 Parker Farm Road, Buxton, Maine 04093," prepared by Sebago Technics, Inc., dated March 7, 2019 and revised through September 5, 2019, approved by the City of Westbrook Planning Board and recorded in the Cumberland County Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_\_\_\_ (hereinafter called the "Plan"); and

WHEREAS, this declaration is intended to ensure in part that the natural beauty and character of the Elmaple Estates Subdivision area is preserved for residential use for the benefit and enjoyment of those who may purchase lots there, and in part to provide for the maintenance of the roads, buffer areas, easements, stormwater drainage components, and other subdivision infrastructure; and

WHEREAS, it also serves the common and mutual benefit of any future lot owners to have a formal declaration that identifies each future owner's obligations, and the City of Westbrook wishes to understand how the roads, buffer areas, easements, and other subdivision infrastructures of Elmaple Estates Subdivision shall be maintained; and

WHEREAS, the Declarant, being about to sell and convey lots in said Elmaple Estates Subdivision, desires to assure to said purchasers and their heirs, successors, and assigns,

owning such lots, the use, benefit and enjoyment of said lots in accordance with a combined harmonious plan of this subdivision, and to this end desires that said lots in the Elmaple Estates Subdivision as shown on said Plan shall be subjected to certain restrictions, reservations, servitudes, covenants, agreements and easements as hereinafter set forth; and

NOW THEREFORE, in consideration of these premises, the Declarant hereby declares that Lots 1 through 34, as well as the road or way to be known as Elmaple Drive, all as shown on the approved subdivision plan entitled "Subdivision Plan of Elmaple Estates Subdivision, 477 Saco Street, Westbrook, Maine 04092, for STJ, Inc., 939 Parker Farm Road, Buxton, Maine 04093," prepared by Sebago Technics, Inc., dated March 7, 2019 and revised through September 5, 2019, approved by the City of Westbrook Planning Board and recorded in the Cumberland County Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_\_\_\_, is and are held subject to, and shall be conveyed subject to the restrictions, reservations, servitudes, covenants, agreements and easements as set forth in the various clauses of this Declaration, and which Declaration shall inure to the benefit of and be binding upon the Declarant, its successors, and assigns, and the purchasers of said lots, their heirs, successors and assigns, and be binding upon all the land described on said Plan.

#### **ARTICLE I** **Definitions**

"Association" shall mean and refer to the Elmaple Estates Homeowners Association, a non-stock nonprofit corporation, to be organized and established under the laws of the State of Maine.

"City" shall mean the City of Westbrook, Maine.

"Common Space" or "Open Space" shall mean the areas shown on the Plan as "Common Space to Homeowner's Association", and as may be described hereinafter.

"Declarant" shall mean and refer to STJ, Inc., its successors and assigns, provided that in order to transfer the Declarant's rights hereunder as a part of the transfer to such successor or assignee, (i) the Declarant must expressly transfer to such party Declarant's rights hereunder, and (ii) such assignee signs the instrument of transfer indicating its acceptance of the Declarant's rights.

"Declaration" shall mean and refer to this Declaration of Covenants, Easements and Restrictions Affecting Elmaple Estates Subdivision, in the City of Westbrook, County of Cumberland and State of Maine, and as recorded in the Cumberland County Registry of Deeds, as the same shall be properly amended from time to time.

"Governmental Requirements" shall mean the terms of the permits and approvals received from the City, the State of Maine and the United States, if any, for the development

of the Property and the requirements of accompanying applicable ordinances, laws, rules and regulations.

"Lot" or "Lots" shall mean and refer to any of the (thirty-four) 34 numbered lots shown on the Elmaple Estates Subdivision plan annotated thereon as Lot 1 through Lot 34, and any then existing "future lots" as described and defined herein. Lots 35 and 36 shall not be considered or interpreted as "Lots" or as "numbered lots" for purposes of this Declaration and the Association Bylaws, and shall not be subject to, or have the benefits of, this Declaration, or of the Association Bylaws. Excluding Lots 35 and 36, any residential building lots which are legally created from the future division of any of Lots 1 through 34, or from the Common Spaces (termed "future lots(s)"), shall also be construed as "Lots" hereunder, and subject to the terms of this Declaration in the same manner as Lots 1 through 34. When this Declaration, or the Bylaws of the Elmaple Estates Homeowners Association, use the phrases "all of the numbered Lots on the Plan," "numbered Lots", "Lots", or even "Lots numbered Lot 1 through Lot 34," it is intended that such phrases shall be interpreted to exclude Lots 35 and 36, but to include then existing "future lots," as appropriate.

"MDEP" shall mean the Maine Department of Environmental Protection.

"Member" shall mean and refer to the persons entitled to membership in the Elmaple Estates Homeowners Association as provided in this Declaration.

"Owner," "Lot Owner" or "Owner of a Lot" shall mean and refer to the owner (whether an individual person, joint tenants, co-tenants, a corporation, partnership or other legal entity) of record (as shown by the appropriate local municipal assessors maps and records and/or assessors maps and records for incorporated townships of the Maine Bureau of Taxation, but as ultimately determined by reference to the records of the Cumberland County Registry of Deeds and/or Cumberland Registry of Probate) of Lots numbered 1 through 34, and of any then existing "future lots," that is, any residential building lots which are legally created from the future division of any of Lots 1 through 34, or from the Common Spaces (collectively "the numbered lots"), all as shown on a certain plan entitled "Subdivision Plan of Elmaple Estates Subdivision, 477 Saco Street, Westbrook, Maine 04092, for STJ, Inc., 939 Parker Farm Road, Buxton, Maine 04093," prepared by Sebago Technics, Inc., dated March 7, 2019 and revised through September 5, 2019, approved by the City of Westbrook Planning Board and recorded in the Cumberland County Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_\_\_\_, in Westbrook in Cumberland County, Maine (but excluding the owners of Lots 35 and 36). In the event of jointly held or co-owned lots, the joint tenants or co-tenants shall collectively be defined as a single "Lot Owner." A "Lot Owner" shall not mean and refer to an owner of record whose only interest in such lot or parcel of land is as mortgagee under a real estate mortgage as security for the performance of an obligation, until and unless such owner shall have commenced proceedings under the laws of the State of Maine to foreclose such mortgage and shall have delivered a certificate to this effect to the Secretary of the Association.

"Property" shall mean and refer to that certain real property as shown on the Plan.

"Road" or "Roads" shall mean that street or way shown on the Plan as "Elmaple Drive."

"Stormwater Facilities" or "Stormwater Management Facilities" shall mean the stormwater drainage and retention improvements located on the Elmaple Estates Subdivision Lots, Commons Spaces and Roads, as further shown on the Elmaple Estate Subdivision plans, Sheets #1 through #17 prepared by Sebago Technics, Inc., dated March 7, 2019 and revised through September 5, 2019 and approved by the City's Planning Board, to be maintained by the Lot Owners through the Association.

"Subdivision" shall mean and refer to the Elmaple Estates Subdivision.

"Subdivision Plan," or "Plan" shall mean and refer to a certain plan entitled "Subdivision Plan of Elmaple Estates Subdivision, 477 Saco Street, Westbrook, Maine 04092, for STJ, Inc., 939 Parker Farm Road, Buxton, Maine 04093," prepared by Sebago Technics, Inc., dated March 7, 2019 and revised through September 5, 2019, approved by the City of Westbrook Planning Board and recorded in the Cumberland County Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_\_\_\_ .

## **ARTICLE II**

### **Protective Covenants and Restrictions**

The Lots numbered Lot 1 through Lot 34, and any then existing future lots, in the Elmaple Estate Subdivision shall be subject to the following express covenants and restrictions which shall run with the land, and which covenants and restrictions shall continue in force and effect perpetually, subject to change from time to time, as provided hereinafter, all as if set forth at length in any said conveyances of said Lot or Lots:

1. Use. No lot shall be used except for residential use. Only one (1) residential structure or building for a single family may be erected or maintained on a lot with less than twenty thousand (20,000) square feet of land area as shown on the Subdivision Plan. A maximum of one (1) residential structure or building collectively containing up to two attached single family dwelling units (commonly referred to as a "duplex") may be erected on a lot with at least twenty thousand (20,000) square feet of land area as shown on the Subdivision Plan. Attached or detached garages or barns are allowed but must meet zoning guidelines. No other buildings or structures of any nature or description shall be erected or maintained on said premises; provided however, that nothing in this paragraph shall be construed to prevent the construction of an outdoor fireplace, fences or storage sheds as herein provided for, directly related to the residential use of the premises by one (1) family, or two (2) families (for any permitted duplexes). No lot shall be used for any commercial purpose, but this restriction shall not prevent the owner of said premises from the practice of a profession, craft work, artistic endeavor or similar occupation, which may be conducted within a private residence. There shall be no commercial or business signs upon the premises. Rental of a residence for a period of less than thirty (30) days is not permitted.

2. Compliance with Ordinances. All construction activities, including the siting of buildings, shall be in accordance with all local and state laws, codes, ordinances and regulations.

3. Construction Standards.

A. Minimum Size. No permanent dwelling erected for private residential use shall be constructed or maintained upon said premises unless it shall consist of a first floor of at least 1,500 square feet, not including basements, porches (screened, glassed-in, or otherwise), stoops, garages, carports, or other outside living terraces, for single story or ranch style homes. For a two-story home, the main residential structure shall contain at least 1,750 square feet counting both floors, not including basements, porches (screened, glassed-in, or otherwise), stoops, garages, carports, or other outside living terraces. For a duplex structure, each duplex unit in the structure shall contain at least 1,200 square feet counting all floors, not including basements, porches (screened, glassed-in, or otherwise), stoops, garages, carports, or other outside living terraces.

B. Siding. All structures erected on any Lot shall have wood clapboards, wood shingles, shakes, masonry, architectural quality aluminum, vinyl and plastic siding, or other quality finish siding, with no T-111 or similar style plywood, tarpaper, tarred shingles or other type of tarred siding or corrugated metal or fiberglass siding permitted. Architectural quality solid plastic or composite trim is allowed.

C. Foundation. Each residential structure shall be supported by a solid perimeter masonry foundation.

D. Chimneys and Fireplaces. All exterior portions of chimneys and fireplaces shall be of brick or stone construction or a metal chimney encased with siding similar to the balance of the dwelling with a metal cap. No exposed cinder block or exposed metal chimneys are allowed, except for metal gas exhaust vents that directly penetrate a wall.

E. Roof Drip Line. All Dwellings and Structures shall be constructed with and shall maintain in good condition a roof drip line system without gutters in accordance with the best management practices established by the City and the Governmental Requirements so as to control water generated by roof runoff by detaining and filtering it at the roof drip line so as to reduce the potential for runoff onto the stormwater drainage system.

F. Driveways. All driveways will be surfaced with asphalt, pavers, brick, or other hard surfacing material.

4. Maintenance. Each Owner shall maintain his or her Lot and residence, and other structures, driveways, parking areas and other improvements comprising the Lot in good condition and repair, in an attractive condition and in accordance with this Declaration, and in a manner consistent with Governmental Requirements. No unsightliness shall be permitted

upon the Property. Without limiting the generality of the foregoing, any unsightly structures, facilities, vehicles, equipment, tools, objects or conditions shall be enclosed within an approved building or appropriately screened from view, except when in actual use for operation, maintenance or repairs.

5. Trash. Refuse, garbage, debris, junk or trash shall be placed and kept at all times in a covered container and such container shall be kept within an enclosed structure or appropriately screened from view where they are not visible from any roads or from any other Lot except when placed out for collection on the day such collection is to occur.

6. Vehicles. No unregistered or inoperable motor vehicles shall be kept on or stored on the Lot, unless stored inside a fully enclosed building. All-terrain vehicles and snowmobiles may be stored on a Lot but shall be shielded from view from outside the Lot boundaries. All-terrain vehicles and snowmobiles may not be operated on the road. Motor homes, recreational vehicles, camping trailers or similar vehicles, boats and boat trailers, shall be permitted to be stored or maintained on a lot, but the same must be stored completely within a garage or screened so as to minimize their visibility to neighbors.

7. Nuisances. Noxious, offensive, dangerous, illegal or unduly noisy activities of any nature shall not be carried on upon any Lot so as to disturb the peace and occupancy of neighbors. "Offensive" or "Noxious" activity or behavior shall include, but not be limited to following: a public nuisance or nuisance per se; a nuisance as defined by state or local law, ordinance or regulation; any behavior which is inconsistent with both the reasonable pleasurable use of the Lots and the Lot owners' reasonable expectations of living free of excessively noisy behavior disrespectful of others; flashing or excessively bright lights; racing vehicles; significantly loud electronic music distractions; criminal or illegal behavior; or other similar unreasonable behavior or activity curtailing or likely to curtail the reasonable pleasure and use of the properties by others who are not participating in such offensive or noxious activity.

8. Animals. The keeping of poultry, swine, horses, livestock, or animals used for commercial purposes shall not be permitted on a Lot. Only a reasonable number of dogs, cats and other ordinary household domestic pets shall be allowed on each Lot. All such pets shall be limited in number and regulated in their behavior so as to not unreasonably interfere with the ownership and enjoyment of other Lots. No boarding or breeding kennels may be kept or maintained. Dogs shall not be permitted off the owner's Lot except on a leash attended by a responsible person.

9. Construction. When the construction of the buildings on a lot is once begun, work thereon must proceed diligently and must be completed within a reasonable time. No building shall be occupied during construction. The prohibitions contained herein shall not be construed to prevent the use of trailers, vehicles or temporary structures during the period of actual construction in connection with said construction.

10. Restoration. Any residential dwelling or other structure on a Lot which is destroyed or damaged in whole or in part by fire, windstorm or other casualty must either be rebuilt or all debris removed and the affected portion of the Lot restored to its natural condition within a reasonable time, but in any event, not to exceed eight (8) months, excluding the winter months between November 1st and April 15th.

11. No Mobile Homes. No mobile home shall be placed on any lot at any time.

### **Restrictions on Common Spaces**

The Common Spaces as shown on the Plan, being four parcels of 31,157 s.f., 28,517 s.f., 3,855 s.f. and 10,173 s.f., respectively, to be conveyed to the Homeowners Association shall be subject to the following covenants and restrictions which shall run with the land, and which covenants and restrictions shall continue in force and effect perpetually, subject to change from time to time, as provided hereinafter:

1. The Common Spaces shown on the Elmaple Estates Subdivision plan, being four parcels of 31,157 s.f., 28,517 s.f., 3,855 s.f. and 10,173 s.f., respectively, subject to certain exceptions herein, and after completion of all initial construction, stormwater facilities installation and grading, shall be thereafter preserved, maintained and conserved in a natural state for shared low intensity recreational, conservation and open space use by the owners of Lots 1 through 34, and any then existing future lots, in Elmaple Estates Subdivision.

2. No residential, commercial or industrial construction, and no improvements, structures, or physical facilities, temporary, portable or otherwise, shall be permitted or placed upon the Common Space lots, excepting drainage facilities and structures and informal unpaved paths, and also subject to the following specific exceptions:

A. A roadway, paved or otherwise, and underground utilities, may be installed in the portion of the Common Space 31,157 s.f. parcel designated as "50' Access Easement to Smith Family Revocable Trust;"

B. A "wet pond," primarily for drainage and stormwater detention purposes, and a walking trail shall be installed on the Common Space 31,157 s.f. parcel;

C. A gang mailbox facility or facilities with mailbox access paving and parking area may be installed on the Common Space 10,173 s.f. parcel;

D. Elmaple Estates signage and related subdivision entry structures, such as decorative stone walls, flower or perennial beds, or the like, may be placed on the Common Space 10,173 s.f. parcel and/or the Common Space 3,855 s.f. parcel;

3. The Common Spaces shall not be used for future building lots, and may not be further subdivided, except as provided for herein.

4. After completion of all initial construction, stormwater facilities installation and grading, only low intensity recreational uses, such as walking, hiking, cross-country skiing, picnicking, mountain-biking, and similar low-impact uses shall be permitted on the two larger Common Space parcels located in the northwest and northeast corners of the Elmaples Estates Subdivision.

5. The use of motorized vehicles, including all-terrain vehicles, motorcycles, and other motorized recreational vehicles, shall be prohibited on all of the Common Spaces, excepting the above referenced mailbox parking area. During the winter months, provided there is adequate snow coverage, the non-destructive operation of snowmobiles may be permitted on the Common Spaces, provided such use does not become a nuisance to the Lot Owners or in violation of any municipal ordinances.

### **ARTICLE III** **No-Cut Buffer**

Lot #15 through #19 in the Elmaple Estates Subdivision include protected no-cut buffer areas designated as 15' No-Cut Buffer on the Elmaple Estates Subdivision plan (hereinafter, the "15' Wide No-Cut Buffer"), described as being a fifteen (15) foot wide strip running along the easterly boundary lines of said lots. Lot #15, Lot #16, Lot # 17, Lot #18 and Lot #19 in the Subdivision shall be conveyed subject to the following express covenants and restrictions which shall run with the land, all as if set forth at length in any conveyances of said five lots, and such restriction shall also appear by reference or otherwise in any deed conveying any of the said specific five lots:

1. The 15' wide No-Cut Buffer area located along the easterly boundary lines of Lot #15, Lot #16, Lot # 17, Lot #18 and Lot #19 as shown on the Elmaple Estates Subdivision plan shall remain undeveloped, substantially undisturbed, and left in its natural state. No trees may be cut on the No-Cut Buffer area except for the normal maintenance or removal of dead, diseased, windblown or damaged trees. The construction and maintenance of any approved stormwater facilities, including grading level spreaders, directing flow into and on the No-Cut Buffer area, shall not be considered to violate these restrictions.

### **ARTICLE IV** **Roads**

1. The Declarant shall retain title to the road or roads, specifically Elmaple Drive, and be responsible for the repair, maintenance and snowplowing of the roads until such time, in the opinion of the Declarant, the Association is able to maintain the same, provided, however, that until such time as such conveyance is made, Declarant shall have the exclusive right, but not the obligation, to convey all or any portion of the road or roads to the City of Westbrook as a public way. Upon a conveyance of the title to said roads to the Association, the Lot Owners, through the Association, shall be responsible for the repair, maintenance and snowplowing of the roads. In the event of, and upon conveyance of said road to the



Association, the Association shall have the same rights to convey the road or roads or any part thereof to the City of Westbrook upon majority vote of the Lot Owners. Neither this Declaration nor the recording of the Plan obligates the City to accept the roads. Unless the roads are so accepted by the City, the City shall not be responsible for the construction, maintenance (including snowplowing and snow removal) or repairs of the road or roads.

2. Declarant shall have the right to enter into contracts with subcontractors for the purpose of snow plowing, snow removal, and sanding of any roads, landscaping of any common areas and general maintenance of the grounds, until such time as the Declarant shall deliver a deed for any road or roads. Said contracts shall be binding upon the Association as if it had entered such agreements itself.

3. Declarant shall retain responsibility for the maintenance the stormwater drainage infrastructure until such time, in the opinion of the Declarant, the Association is financially and practically, able to maintain the same.

#### **ARTICLE V** **Common Easements**

The Declarant hereby establishes and creates the easements hereinbelow described, and as may be shown on the Plan, for the general and specific benefit of the numbered lots as provided herein (including any “future lots”). The numbered lots, as specified herein, including any “future lots”, are hereby made subject to and shall have the appurtenant benefit of, and shall be conveyed subject to and with the benefit of the easements as hereinafter described, which easement locations may also be shown on the Plan:

1. Elmaple Drive. All of the numbered Lots subject to this Declaration shall benefit from perpetual easement rights of vehicular and pedestrian access over and across, as well as perpetual utility easement rights, over, on, across and under, the location of Elmaple Drive as shown on the Plan, unless and until such time as Elmaple Drive is accepted by the City of Westbrook as a public way.

2. Ancillary Road Easement. All of the numbered Lots subject to this Declaration, as well as the Declarant (and when so granted to them, the City and public and private utilities) shall benefit from perpetual easement rights in a ten (10) foot wide strip of land located on the Lots and immediately adjoining Elmaple Drive as such road is shown on the Plan, for location, use, maintenance, repair, and replacement of underground electric and above ground transformers, water, sewer, fire hydrants, telephone, and cable TV service lines and appurtenances, street signs and lighting, alteration of the surface of the earth, drainage improvements, and for grading, snowplowing, and maintenance purposes and associated drainage and stormwater improvements, swales and appurtenances.

3. 15' Wide Pedestrian Easements. All of the numbered Lots subject to this Declaration shall benefit from perpetual easement rights of pedestrian access over and across

(a) the 15' wide pedestrian easement location which extends across Lot 1 on the Plan and runs between the Central Maine Power Company land and Elmable Drive, and (b) the 15' wide pedestrian easement location which extends along the southeasterly sideline of the 31,157 s.f. Open Space parcel and also runs between the Central Maine Power Company land and Elmable Drive, all as shown on the Plan, unless and until such time as such pedestrian easement rights maybe granted to and accepted by the City of Westbrook as public pedestrian access easements.

4. Drainage Easement Rights - Common Spaces. The two parcels designated as Common Space to Homeowners Association 31,157 s.f. and Common Space to Homeowners Association 28,517 s.f. shall be subject to, and all of the numbered Lots on the Plan shall benefit from, non-exclusive perpetual drainage rights across those parcels, including a “wet pond” for stormwater detention, said drainage easements being for the proper drainage of portions of Elmable Drive. The drainage easement rights described and created herein shall include rights of access to install, construct, maintain, service or repair any slope, grade, catch basin, manhole, underground line or pipe, stub, grade, drain, level spreaders, retention pond or catch basin, ditch, culvert and any inlet or outlet thereof, related to such drainage easement. In the event that it is necessary to construct, install, maintain, service or repair any such drainage component(s), then after the completion of such work, the party performing the work shall return the surface of the real property to substantially its state prior to said work being done, excepting grade, rip-rap installation, or other changes intended to improve drainage. The owner of Elmable Drive shall have benefit of flowage rights for stormwater through the above drainage easements and shall have the right, but not the responsibility, to conduct maintenance within these easements.

#### Other Easements

1. Access, Roadway and Utilities for Abutter Smith Family Revocable Trust. The Property shall be subject to the following easements for the benefit of and appurtenant to the abutting Smith Family Revocable Trust property (reference is deed recorded in the Cumberland County Registry of Deeds in Book 20231, Page 65) which abuts the Property to the northwest: (a) perpetual easement rights of vehicular and pedestrian access over and across, as well as perpetual utility easement rights, over, on, across and under, the location of Elmable Drive as shown on the Elmable Estates Subdivision plan, unless and until such time as Elmable Drive is accepted by the City of Westbrook as a public way, and (b) perpetual easement rights of vehicular and pedestrian access over and across, perpetual utility easement rights, and the right to install a road or way, over, on, across and under, a fifty (50) foot wide strip of land being the portion of the Common Space 31,157 s.f. parcel designated as “50' Access Easement to Smith Family Revocable Trust,” including the right to pave such latter road or way, and seek dedication and acceptance of such road or way as a public way, all at the sole expense of abutting Smith Family Revocable Trust. These easements shall be created and conveyed by the Declarant to the Smith Family Revocable Trust by separate recorded instrument.

#### **ARTICLE VI**

**Maintenance Obligations**

**Infrastructure Maintenance Obligations**

The Declarant initially, and the Lot Owners subsequently and for thereafter, by and through the mechanism of the Homeowners Association, shall be obligated to undertake and perform, and shall be responsible for all aspects of the operation, repair and maintenance of the road known as Elmaple Drive (unless and until accepted as a public way by the City of Westbrook and deeded to such municipality), the common sidewalks and common walkways, the gang mailbox facility, associated walkways and parking area, the Common Space areas and pedestrian paths, and any other common appurtenances, easements and elements in Elmaple Estates Subdivision as shown on the approved subdivision plan entitled "Subdivision Plan of Elmaple Estates Subdivision, 477 Saco Street, Westbrook, Maine 04092, for STJ, Inc., 939 Parker Farm Road, Buxton, Maine 04093," prepared by Sebago Technics, Inc., dated March 7, 2019 and revised through September 5, 2019, approved by the City of Westbrook Planning Board and recorded in the Cumberland County Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_\_\_\_.

With regard to Elmaple Drive (unless and until accepted as a public way by the City of Westbrook and deeded to such municipality), the common sidewalks and walkways, the gang mailbox facility and associated walkways and parking area, the above Declarant and Homeowners Association maintenance obligations shall also include any necessary snowplowing, snow-blowing and sanding after snow and ice events.

**Stormwater Management Obligations**

The Declarant initially, and the Lot Owners subsequently and for thereafter, by and through the mechanism of the Homeowners Association, shall be obligated to undertake and perform, and shall be responsible for all aspects of the operation, repair and maintenance of the all of the components and infrastructure of the Stormwater Facilities or Stormwater Management Facilities, including buffer areas, detention areas, storm drain inlets and outlets, culverts, swales, level spreaders, drainage easements, the wet pond, underdrain soil filtration system, and other components of the storm drainage facilities, as shown on the approved Elmaple Estate Subdivision plans, Sheets #1 through #17 prepared by Sebago Technics, Inc., dated March 7, 2019 and revised through September 5, 2019 and approved by the City's Planning Board.

The terms and conditions of the City of Westbrook's Stormwater Management Ordinance and the DEP's Stormwater Management and Natural Resources Protection Act approval / permit / order \_\_\_\_\_ dated \_\_\_\_\_, 2019 ("NRPA Permit") are incorporated herein by reference.

The Declarant shall be obligated to undertake and comply with the tasks, conditions and requirements of the NRPA Permit, and the "During Construction" provisions and tasks of

the Inspection, Maintenance, and Housekeeping Plan for Elmaple Estates Subdivision, which Plan is attached hereto and incorporated as Exhibit B.

The Lot Owners, by and through the mechanism of the Homeowners Association, shall be obligated to undertake and comply with the tasks, conditions and requirements of the NRPA Permit (including any required Re-Certification), and the "Post Construction" provisions and tasks of the Inspection, Maintenance, and Housekeeping Plan for Elmaple Estates Subdivision, which Plan is attached hereto and incorporated as Exhibit B.

With regard to its Stormwater Management Obligations, the Lot Owners, through the Association, as part of its corporate records, shall keep and maintain records evidencing compliance with the requirements of the City of Westbrook's Stormwater Management Ordinance and the approved Stormwater Management Plan for the subdivision, including records of annual inspections, conditions found, maintenance and corrective actions taken, and copies of required annual inspection reports submitted to the Enforcement Authority by a Qualified Post-Construction Stormwater Inspector.

#### **Miscellaneous Maintenance Obligation Provisions**

The Declarant initially, and the Lot Owners subsequently and for thereafter, by and through the mechanism of the Homeowners Association, shall be obligated to provide, and be responsible for the expense of, street side trash removal, unless and until such time as Elmaple Drive is accepted as a public way by the City of Westbrook and such road is deeded to such municipality.

Maintenance of underground utilities in the Elmaple Drive right of way as shown on the Subdivision Plan, including but not limited to sewer, water, and stormwater, are the responsibility of the Declarant initially, and the Lot Owners subsequently and for thereafter, by and through the mechanism of the Homeowners Association, unless and until such time as: (a) in the case of underground public or quasi-public utilities, Elmaple Drive is accepted as a public way by the City of Westbrook and such road is deeded to such municipality, (b) in the case of underground private or semi-private utilities, the private or semi-private utility service provider asserts ownership and responsibility for such respective underground utility.

#### **ARTICLE VII** **Declarant's Reserved Rights**

The Property and the conveyance of the Lots to owners shall be subject to the following reserved rights. Declarant STJ, Inc. reserves the following rights and temporary easements, until the construction, marketing and sale of all Lots is complete and Declarant has actually conveyed all Lots to owners other than Declarant:

1. The Declarant reserves the right to change the size, number and location of any Lots not sold or under contract, as well as the right to change the location of easements and other improvements. The change or changes shall be effective upon the recording by the Declarant of an amended subdivision plan duly approved by the City of Westbrook Planning Board indicating the changes made.

2. The Declarant reserves the right to connect with and make use of utility lines, wires, pipes and conduits located on the Property for construction and sales purposes, provided that the Declarant shall be responsible for the cost of service so used.

3. The Declarant reserves the right to use the road or roads shown on the Plan for ingress and egress and use the Property for the storage of construction materials and equipment used in the completion of the subdivision project.

4. The Declarant reserves the right to use any Lots owned or leased by the Declarant as models, management offices, sales offices for this and other projects or customer service from time to time within the Property; upon relocation, the furnishings thereof may be removed. The Declarant further reserves the right to maintain on the Property such sales advertising signs and lighting as may comply with applicable governmental regulations, which may be placed in any location on the Property and may be relocated or removed, all at the sole discretion of the Declarant. This easement shall continue until Declarant has conveyed all Lots to Owners other than Declarant.

5. The Property shall be, and hereby is, made subject to easements in favor of the Declarant, and the authority of Declarant to grant easements to appropriate utility and service companies, cable television companies and governmental agencies or authorities for such utility and service lines and equipment as may be necessary or desirable to serve any portion of the Property. The easements created by this section shall include, without limitation, rights of Declarant, or the providing utility or service company or governmental agency or authority to install, lay maintain, repair, relocate and replace gas lines, drainage ditches and pump stations, telephone wire and equipment, television equipment and facilities (cable or otherwise), electrical wires, conduits, and equipment and ducts and vents over, under, through, along and on the Property. Notwithstanding the foregoing provisions of this Article VI, any such easement through a Lot shall be located either in substantially at the same location as such facilities or similar facilities existed at the time of first conveyance of the Lot by the Declarant or so as not to materially interfere with the use or occupancy of the Lots by its occupants.

6. The Declarant reserves an easement on, over and under those portions of the Property not located within building envelopes for the purpose of maintaining and/or correcting drainage of surface water order to maintain reasonable standards of health, safety and appearance, and in accordance with any maintenance plans associated with any state or local permits.

7. The Declarant reserves the right to cut any trees, bushes, or shrubbery, to grade the soil, or to take any other action determined reasonably necessary to complete the development of the subdivision, and which action is not in violation of any subdivision restriction or condition.

8. So long as the Declarant shall retain title to the road or roads, specifically Elmaple Drive, shown on the Elmaple Estates Subdivision plan, Declarant reserves the exclusive right, but not the obligation, to dedicate and convey all or any portion of the road or roads to the City of Westbrook as a public way.

9. The Declarant reserves the right, but not the obligation, to dedicate and convey the two 15' wide pedestrian easements crossing Lot 1 and Lot 9 and the Common Space to the City of Westbrook as a public pedestrian easement for recreational purposes.

This Article VII shall not be amended without the consent of the Declarant so long as the Declarant owns any part of the property.

#### **ARTICLE VIII** **Association of Lot Owners**

1. Association. Every Lot Owner of the numbered Lots 1 through 34 on the approved Elmaple Estates Subdivision plan, and of any then existing "future lots", shall be a member of the Elmaple Estates Homeowners Association. Membership shall be appurtenant to and may not be separated from lot ownership of such lots in the Elmaple Estates Subdivision. All owners shall be entitled to one vote for each lot owned. If a lot is owned by more than one person, the owners are collectively as a Lot Owner entitled to one vote. There shall be thirty-four (34) votes, one for each of the numbered Lots 1 through 34, while allowing for a possible increase in a vote for each "future lot" which might be created. The owners of Lots 35 and 36 on the approved Elmaple Estates Subdivision plan shall not be members of the Elmaple Estates Homeowners Association.

2. By-Laws. Subsequent to the date of this Declaration and the recording thereof, the Elmaple Estates Homeowners Association, a nonprofit and nonstock mutual benefit corporation, shall be duly organized under the laws of the State of Maine, and shall adopt By-Laws. This Association shall be the governing body for all of the Lot Owners with respect to decisions and issues related to the administration and maintenance of the Association itself, insurances, enforcement of restrictions, the administration, maintenance, repair and replacement of the roads and ways, easements, facilities and appurtenances of the Elmaple Estates Subdivision, including (a) the buffers described in Article III herein, (b) the roads described in Article IV herein, and (c) the access, drainage and utility easements described in Article V herein, (d) the Common Spaces and any permitted structures or improvements thereon, including the gang mailboxes and walkways or paving serving such mailbox facility, and (e) all of the stormwater drainage and retention improvements and facilities of Elmaple Estates Subdivision. This Association shall also be the governing body for all

of the Lot Owners with respect to allocating, collecting and paying assessments and expenses related to such corporate administration, insurances, buffers, roads, common spaces, common easements, facilities and appurtenances of the Elmaple Estates Subdivision.

3. Authority to Assess / Assessments. The Declarant, for each lot owned within the Elmaple Estates Subdivision, hereby covenants, and each Owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Elmaple Estates Homeowners Association such regular assessments, special assessments and other charges as may be established by the Association. Such assessments shall be used for the purposes of providing funds to maintain and operate the corporation, to provide any necessary liability, property, and/or other insurances for roads and ways, common areas, and other common facilities, to provide any necessary directors and officers liability insurance, and to plow, manage and maintain the streets and ways, including Elmaple Drive (until acceptance by the City), and to manage and maintain detention areas, common easements, storm drain inlets and outlets, swales, level spreaders, and other components of any storm drainage facilities, as well as any other common appurtenances and elements in Elmaple Estates Subdivision as shown on the approved subdivision plan entitled "Subdivision Plan of Elmaple Estates Subdivision, 477 Saco Street, Westbrook, Maine 04092, for STJ, Inc., 939 Parker Farm Road, Buxton, Maine 04093," prepared by Sebago Technics, Inc., dated March 7, 2019 and revised through September 5, 2019, approved by the City of Westbrook Planning Board and recorded in the Cumberland County Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_\_\_\_. In addition, the assessments may be used for any other lawful purposes usual to a homeowners association, including, without limitation, the adoption of rules, regulations and restrictions regarding use of and improvements to the above mentioned streets and ways, storm drainage components, common easements, and any other common or shared facilities in Elmaple Estates Subdivision.

4. Assessment Lien / Personal Liability of Lot Owners. All sums assessed by the Elmaple Estates Homeowners Association as a regular assessment, special assessment, or other charge provided for hereunder, shall constitute the personal liability of the Lot Owner so assessed, and also, until fully paid, shall constitute a lien against such Lot Owner's lot with the same status as liens established on condominium units under the Maine Condominium Act, Title 33, Chapter 31 of the Maine Revised Statutes and shall be foreclosed in the same manner provided by law for the foreclosure of mortgages. Assessments that are unpaid for over fifteen (15) days after the due date shall bear interest at the rate of eighteen percent (18%) per annum from the due date until paid. In the sole discretion of the Board of Directors of the Association, a late charge of \$25.00 per assessment not paid when due may be assessed against the delinquent lot owner. The delinquent lot owner shall be obligated to pay (a) all expenses of the Association, including reasonable attorneys' fees, lien preparation and recording fees, court costs, and other actual costs, incurred in the efforts to collect and collection of the delinquent assessment by legal proceedings or otherwise, and (b) any amounts paid by the Association for taxes or on account of superior liens or otherwise to protect its lien, which expenses and amounts, together with accrued interest, shall be deemed to constitute part of the delinquent assessment and shall be lienable and collectible as such.

5. Liability of Purchaser of Lot for Unpaid Assessments. Upon the voluntary sale, conveyance or any other voluntary transfer of a numbered lot or any interest therein, the grantee thereof shall not be personally liable with the grantor thereof for all unpaid assessments for expenses of the Association which are a charge against the lot as of the date of consummation of the sale, conveyance or transfer, unless such grantee agrees to assume the obligation therefor.

6. Subordination of Assessments. Any regular or special assessments or any late charges and interest that may be levied by the Association shall be subordinate to any first mortgage lien recorded before or after such yearly or special assessment, late charge, or interest was due.

## **ARTICLE IX** **General Provisions**

1. Binding Effect; Amendment. The provisions set forth in this Declaration, including the Protective Covenants and Restrictions set forth in Article II, shall continue perpetually, subject to change from time to time, as provided below, and subject to the condition that any provisions required pursuant to the Governmental Requirements may not be amended or terminated without their consent. Until such time as Declarant no longer owns any of the numbered lots on the Elmaple Estates Subdivision plan, Declarant retains the right to amend the provisions set forth in this Declaration; thereafter, any said changes shall require the consent of at least sixty-six percent (66%) of the Lot Owners.

Any consent making changes permitted above shall be effective only if expressed in a written instrument or instruments executed by the Declarant or consenting owners of record and recorded in the Registry of Deeds. Upon and after the effective date of any such changes, they shall be binding upon the Lots subject to this Declaration and all persons then owning Lots in the Property and shall run with the land and bind all persons claiming, by, through or under any one or more of them.

2. Enforcement. The provisions herein set forth shall run with the land and bind Declarant, its successors, grantees and assigns, all parties claiming by, through, or under them. Declarant, or its successor or assign, and each owner or owners of the above land 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. In no event shall the failure of Declarant, or its successors or assigns, 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. Evidence of Compliance. Any consents making changes permitted above shall be effective only if expressed in a written instrument or instruments executed and



acknowledged by each of the consenting owners and recorded in the Cumberland County Registry of Deeds. Upon and after the effective date of such change or changes, it or they shall be binding upon the lots subject to this Declaration and all persons then owning said numbered lots in this subdivision and shall run with the land bind all persons claiming, through or under anyone or more of them.

4. 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.

Dated this September \_\_\_\_\_, 2019.

**STJ, Inc.**

\_\_\_\_\_

\_\_\_\_\_ By Thomas P. Shaw, President

State of Maine  
County of Cumberland, ss.

September \_\_\_\_\_, 2019

Then personally appeared the above named Thomas P. Shaw, duly authorized President of **STJ, Inc.** and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said corporation.

My commission expires:

\_\_\_\_\_

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

\_\_\_\_\_ Printed Name

## Exhibit A

### Elmaple Estates Legal Description

**A certain lot or parcel of land** situated on the northerly sideline of Saco Street in the City of **Westbrook**, County of Cumberland, State of Maine as depicted on a plan entitled "Subdivision Plan of Elmaple Estates Subdivision, 477 Saco Street, Westbrook, Maine 04092, for STJ, Inc., 939 Parker Farm Road, Buxton, Maine 04093," prepared by Sebago Technics, Inc., dated March 7, 2019 and revised through September 5, 2019, approved by the City of Westbrook Planning Board and recorded in the Cumberland County Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_\_\_\_, and being more particularly bounded and described as follows:

**Beginning** at an existing 5/8 inch rebar 12 inches above grade located on the northerly sideline of Saco Street and being the southerly corner of land now or formerly of John A. Tolan as described in a deed recorded at the Cumberland County Registry of Deeds in Book 34434, Page 143;

Thence South 39° - 18' - 29" West along Saco Street a distance of eighty-two and 72/100 (82.72) feet to a 5/8 inch rebar with plastic cap inscribed "STI PLS 2534" to be set at remaining land of Elmaple Associates as depicted on Elmaple Plan as Lot 36;

Thence North 50° - 41' - 31" West along Lot 36 a distance of two hundred twenty-six and 00/100 (226.00) feet to a 5/8 inch rebar with plastic cap inscribed "STI PLS 2534" to be set;

Thence South 39° - 18' - 29" West along Lot 36 a distance of two hundred six and 21/100 (206.21) feet to a capped iron rod to be set;

Thence South 50° - 41' - 31" East along Lot 36 a distance of two hundred twenty-six and 00/100 (226.00) feet to a 5/8 inch rebar with plastic cap inscribed "STI PLS 2534" to be set on the northerly sideline of Saco Street;

Thence South 39° - 18' - 29" West along the northerly sideline of Saco Street a distance of sixty-nine and 20/100 (69.20) feet to a 5/8 inch rebar with plastic cap inscribed "STI PLS 2534" to be set at land now or formerly of Central Maine Power Company as described in a deed recorded at the Cumberland County Registry of Deeds in Book 1672, Page 92 and Book 1644, Page 247;

Thence North 56° - 35' - 59" West along land now or formerly of Central Maine Power Company a distance of one thousand one hundred sixty-eight and 81/100 (1,168.81) feet to an existing 5/8 inch rebar, 2 inches above grade, bent at land now or formerly of Janet W. Smith, Trustee of the Smith Family Revocable Trust as described in a deed recorded at the Cumberland County Registry of Deeds in Book 20231, Page 65;

Thence North 50° - 12' - 33" East along land now or formerly of Janet W. Smith, Trustee of the Smith Family Revocable Trust, a distance of six hundred thirty-six and 89/100 (636.89) feet to

an existing 5/8 inch rebar flush with cap stamped "PLS 1303" at land now or formerly of Earlene S. Stein as described in a deed recorded at the Cumberland County Registry of Deeds in Book 26123, Page 17;

Thence South 39° - 45' - 09" East along land now or formerly of Earlene S. Stein a distance of three hundred forty-six and 50/100 (346.50) feet to an existing 2 inch iron pipe, 3 inches above grade, bent;

Thence North 54° - 43' - 26" East along land now or formerly of Earlene S. Stein, a distance of two hundred twelve and 91/100 (212.91) feet to an existing 5/8 inch rebar, 1-inch above grade with cap stamped "PLS 2282";

Thence South 39° - 41' - 51" East along land now or formerly of Earlene S. Stein a distance of two hundred ten and 71/100 (210.71) feet to a point at land now or formerly of Chhuk Chhay as described in a deed recorded in the Cumberland County Registry of Deeds at Book 32430, Page 52;

Thence South 40° - 53' - 08" East along land now or formerly of Chhuk Chhay a distance of one hundred forty-nine and 61/100 (149.61) feet to an existing 5/8 inch rebar, 8 inches above grade at land now or formerly of Clinton Parks as described in a deed recorded at the Cumberland County Registry of Deeds in Book 32653, Page 106;

Thence South 41° - 09' - 39" East along land now or formerly of Clinton Parks a distance of one hundred seventy-three and 41/100 (173.41) feet to a 5/8 inch rebar with plastic cap inscribed "STI PLS 2534" to be set and remaining land now or formerly of Elmaple Associates and depicted on Elmaple Plan as Lot 35;

Thence South 39° - 21' - 58" West along Lot 35 a distance of one hundred six and 95/100 (106.95) feet to an existing 5/8 inch rebar, 8 inches above grade with cap stamped "RW Eaton 2075" at land now or formerly of John A. Tolan;

Thence continuing South 39° - 21' - 58" West along land now or formerly of John A. Tolan a distance of eighty-five and 00/100 (85.00) feet to a 5/8 inch rebar with plastic cap inscribed "STI PLS 2534" to be set;

Thence South 50° - 38' - 02" East along land now or formerly of John A. Tolan a distance of one hundred twenty and 28/100 (120.28) feet to the point of beginning.

The herein described lot or parcel of land contains approximately 15.20 acres.