

TUTTLE LANE HOMEOWNERS' ASSOCIATION TRUST
DECLARATION OF PROTECTIVE COVENANTS

KNOW ALL MEN BY THESE PRESENTS that we, the Declarant, HPI, LLC, a New Hampshire Limited Liability Company, with a mailing address of 23 Stiles Road, Salem, New Hampshire 03079, owner of the property at 333, 339 and 347 Summer Street, Lynnfield, Essex County, Massachusetts (hereinafter referred to as either "Declarant" or "Trustee"), all of which land is shown on the plan referenced below, in full consideration of the promises and covenants hereinafter set forth, declares and agrees on behalf of itself, the Association and subsequent Owners as hereinafter defined, as follows:

I. Statement of Purposes

It is the intent of the Declarant/Trustee:

- A. To provide for the continued maintenance of the Subdivision Drainage System, including the surface water runoff detention and recharge basin located on Lot 5, and each of the individual stormwater management facility and drainage systems on each individual Lot, being Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9 as shown on the Definitive Subdivision Plan hereinafter referenced, to be recorded herewith (herein "Subdivision Plan") (hereinafter collectively referred to as "Drainage System") in order to adequately ensure proper drainage of the Property and protect adjacent resource areas for the benefit of the Owners and the Lynnfield Planning Board, as required by the Final Action of the Lynnfield Planning Board recorded herewith.
- B. To implement the Planning Board Conditions of Approval of the Subdivision Plan (the "Conditions of Approval").
- C. To enforce and insure compliance with the terms and conditions of a letter agreement dated March 29, 2019 between the Lynnfield Historical Commission and:

Janet M. Tobin, Trustee
DiGiovanni Family Trust
333 Summer Street
Lynnfield, MA 01940

Stephen C. Wallace and
Laura Singleton Wallace
339 Summer Street
Lynnfield, MA 01940

Jane W. Coonrod
349 Summer Street
Lynnfield, MA 01940

regarding properties at 333, 339 and 349 Summer Street (the "Historical Commission Agreement") attached hereto as Exhibit "A".

II. Certain Definitions

The following words when used in this Declaration shall have the following meanings:

- a. "Association" shall mean the Trustee from time to time of the Tuttle Lane Homeowners' Association Trust.
- b. "Common Expenses" shall mean all expenses incurred by the Association relating to all of the Drainage System located on Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9 as shown on the Subdivision Plan to be recorded herewith, to be proportionately shared by all of the aforementioned Lots, including, without limitation, all maintenance costs, repair costs, insurance premiums and deductibles, attorney's fees, accountant's fees, taxes, assessments, interest and the cost of labor, equipment and materials and the management and supervision thereof, together with provision for a reserve for capital improvements. In addition, Common Expenses shall cover all direct and indirect costs incurred in regularly complying with the "Operation and Maintenance Plan for Long Term Pollution Prevention Plan for Tuttle Lane, Lynnfield, Mass." dated _____, prepared by Williams and Sparages Engineers, as the same may be amended by the mutual consent of the Lynnfield Planning Board and the Trustee hereof, and a copy of which is on file in the office of the Lynnfield Planning Board.

Common Expenses shall also mean all expenses by the Association incidental to enforcing the terms and conditions of the Conditions of Approval and the Historical Commission Agreement.

- c. "Declaration" shall mean this Declaration of Protective Covenants.

- d. "Drainage System" shall mean the surface water runoff detention and recharge basin which is a portion of the subdivision drainage system providing drainage on the Property, located on Lot 5 on the Subdivision Plan and all connecting pipes and apparatus and also including the individual stormwater management facilities located on each of Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9 shown on the Subdivision Plan as finally approved, and all related appurtenances, all as shown on the Subdivision Plan.
- e. "Initial Contribution" shall mean the payment made by the Declarant, Trustee or first owners, as provided in Section III i. below.
- f. "Lot or Parcel" shall mean and refer to any and all of the lots shown on the Subdivision Plan, all of which are subject to the terms of this Homeowners' Association Trust.
- g. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated on the Property including the Declarant, and such Owner's successors, assigns and grantees, but shall not refer to a holder of a mortgage secured by any Lot unless such mortgagee has acquired title pursuant to foreclosure or a proceeding in lieu of foreclosure. Each Lot shall be entitled to one vote concerning all Association matters.
- h. "Subdivision Plan" or "Plan" shall mean that certain plan entitled "Definitive Subdivision Plan Tuttle Lane in Lynnfield Mass., Assessors Map 34, Lots 2015, 2017 and 2055", originally dated November 21, 2018, revised May 9, 2019, and further revised through July 2, 2019, to be recorded with the Essex South District Registry of Deeds herewith.
- i. "Planning Board" shall mean the duly elected members of the Town of Lynnfield, Massachusetts Planning Board.
- j. "Property" shall mean all of the land described on the Plan, which includes all the property located at 333, 339 347 and 349 Summer Street, Lynnfield, Massachusetts.
- k. "Registry of Deeds" shall mean the Essex South District Registry of Deeds.
- l. "Town" shall mean the Town of Lynnfield, Massachusetts.

III. Protective Covenants

- a. Applicability. This Declaration and these covenants shall be binding on the Declarant and its successors and assigns, including all Owners. The covenants imposed herein shall run in perpetuity with the Property, shall operate as restrictions upon the Property and shall be for the mutual benefit of the Property Owners and the Town. A duly executed original hereof shall be recorded with the Plan at the Registry of Deeds. Any amendment of this provision shall require written Planning Board approval, and shall not be effective until a certified copy thereof is recorded with the Registry of Deeds.
- b. The Association. Prior to conveyance of any Lots on the Plan, the Trustee does, by the execution hereof, create the Association, the holders of the beneficial interest in which shall be the Owners. Each Owner shall have a beneficial interest in the Association equal to a fraction, the numerator of which is the number of lots owned by such Owner and the denominator of which equals the number of Lots comprising the Property. Each Owner shall have one vote in the Association and, unless otherwise provided, the Association shall act on the majority vote of the Owners. If and when the initial Trustee hereunder resigns or fails to so serve or at such time as it no longer owns any Lot shown on the Subdivision Plan, the Owners of all the Lots shall, by majority vote, elect one or more Trustee who shall assume the responsibility of the Trustee hereunder. Thereafter the Owners shall annually elect said Trustee to so serve. A duly acknowledged appointment of Trustee, accepted by the Trustee so named and recorded in the Registry of Deeds, shall be conclusive proof of the identity of the persons entitled to act hereunder until a subsequent appointment and acceptance is so recorded. The Association shall promptly notify the Town, in writing, of all changes in the identity of the Trustee, and the Town shall be entitled at all times to deal with the Association through the Trustee identified herein or, if applicable, most recently so identified to the Town.
- c. Maintenance of the Drainage System. The Association shall be responsible for all necessary maintenance, repairs and replacement of the entire Drainage System, including, without limitation, cleaning, clearing, cutting and removing vegetation from the Drainage System at such frequency as is necessary to ensure its continued effective functioning, as determined from time to time by the Town, exclusive of such maintenance, repairs and replacement of any portion of the Drainage System which now is or hereafter may become the responsibility of the Town. In the event that the Association fails to perform such obligations, upon thirty (30) days prior written notice sent to the Trustee by Certified Mail, Return Receipt

Requested (except emergency situations deemed such by the Town, which shall require no notice), the Town shall have the right, but shall not be required, to perform such obligations. The Association shall reimburse the Town within thirty (30) days of the date of completion of such repairs for all costs which the Town incurs in performing such obligations. Prior to conveying out the Lots by recorded deeds, the Declarant shall be responsible for performing such obligations. Incorporated herein by reference is the "Long Term Operation & Maintenance Plan for Tuttle Lane, Lynnfield, Mass." dated July 2, 2019, prepared by Williams and Sparages Engineers, as the same may be amended, for all portions of the surface water runoff systems for which the Owner and future owners are responsible, a copy of which is on file in the office of the Planning Board. By acceptance of a deed for Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9 as more particularly shown on the Subdivision Plan, any and all subsequent Owners assume the responsibility to comply with said Operation and Maintenance Plan, including the necessary inspections and reports to the Town of Lynnfield Planning Board and as otherwise provided in said plan.

In addition, prior to the sale of any Lot shown on the Plan from the original Owner (who is also the Trustee hereof) to anyone, regardless of the consideration therefor, said purchaser is hereby notified that it shall be necessary for the purchaser to post a bond with the Town of Lynnfield in accordance with the requirements of the Lynnfield Planning Board's final decision relative to the Plan, to guarantee compliance with said Operation and Maintenance Plan, including the proper installation and continued maintenance of the individual stormwater management facility by the purchasers of said Lot(s). These requirements shall also be included in the deeds of conveyance. The bond shall be in the cash amount of \$1,500.00 per Lot, in addition to the initial assessment hereinafter set forth.

With respect to the requirement that the Association perform annual inspections of the surface water runoff systems shown on the Subdivision Plan and/or referred to herein, it shall be an express requirement of the Homeowners' Association Trust that a copy of each annual report also be filed with the Lynnfield Department of Public Works ("LDPW") within 10 days of receipt thereof by the Association, failing which, and upon an additional 14 days written notice of such failure to the Association by the LDPW, the LDPW shall have the right but not the obligation to perform any of the annual inspection(s) and obtain the report therefor, in which event, the Association shall reimburse the LDPW for all reasonable costs incurred in performing such inspection(s) and obtaining said report.

SUBSEQUENT OWNERS OF ANY LOT SHOWN ON THE SUBDIVISION PLAN ARE HEREBY ADVISED THAT THEY ARE DIRECTLY RESPONSIBLE FOR THE CONTINUED CLEANING AND MAINTENANCE OF THE INDIVIDUAL ROOF GUTTERS, DOWNSPOUTS, DRYWELLS AND APPURTENANCES LOCATED ON THEIR DWELLINGS AND LOTS AS THE SAME CONSTITUTE PART OF THE OVERALL SURFACE WATER RUNOFF SYSTEMS.

THE DECLARANT AND THE ASSOCIATION SHALL IN ADDITION THERETO BE JOINTLY AND SEVERALLY RESPONSIBLE FOR THE COMPLIANCE WITH THE CONDITIONS OF APPROVAL AND ENFORCEMENT OF THE PROVISIONS OF THE HISTORICAL COMMISSION AGREEMENT.

- d. Insurance. The Association shall obtain and maintain, to the extent attainable and permitted by applicable law: (i) a multi-peril type insurance policy including casualty and extended coverage covering all perils normally covered by the standard coverage endorsement insuring the Drainage System; (ii) worker's compensation insurance if the Association shall have any employee or employees; (iii) comprehensive general liability insurance covering the Drainage System and all portions of the Property used by the Association to perform its obligations pursuant to subsection c. above, in such amounts and with such coverages as the Association shall from time to time reasonably determine with a combined single limit for personal injury, death and property damage of not less than One Million (\$1,000,000.00) Dollars, but at least covering each Trustee of the Association, the managing agent or the manager, if any, and each Owner and with a cross liability endorsement to cover liabilities of the Association to an Owner and a severability of interest provision precluding the insurer's denial of an Owner's claim because of negligent acts by the Association or other Owners; (iv) defalcation, theft and misappropriation insurance covering the Association and all other persons handling or responsible for funds administered by the Association whether or not they receive compensation for their services; and (v) such other insurance as the Association may determine.
- e. Assessments and Lien for Non-Payment. The Declarant hereby covenants for each Lot owned by it, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so express in any such deed or other conveyance, shall be deemed a covenant to pay to the Association his/her/their/its pro rata share of all Common Expenses when due and payable. Each Owner's pro rata share of Common Expenses shall correspond to such Owner's interest in the Association. At least thirty (30)

days prior to the commencement of each fiscal year of the Association, the Association shall estimate the Common Expenses expected to be incurred during such fiscal year, together with reasonable provisions for contingencies and reserves and, after taking into account any undistributed common profits from prior years, shall determine the assessment for Common Expenses to be made for such fiscal year. The Association shall promptly furnish copies of each budget upon which such assessment is based to all Owners and render statements to the Owners for their respective shares of such assessment. Each Owner shall pay his/her/their/its pro rata share of the Common Expenses or any special assessment required by the Association for capital purposes, within thirty (30) days of receipt of a statement therefor. In the event that at any time and from time to time the Association shall determine during any fiscal year that the assessment so made is less than the Common Expenses actually incurred, or to be incurred including, but not limited to, provisions for proper reserve funds, the Association shall make a special assessment or assessments and render statements therefor in the manner aforesaid and such statements shall be payable and take effect as set forth in such statements. In addition, the Association shall, to the extent necessary, set aside common funds to create reserves for the purpose of capital improvements to the Drainage System. The annual and special assessments, with interest thereon, if not paid when due, at a rate equal to 1 ½% per month, together with all expenses, including reasonable attorney's fees, incurred by the Association in any proceeding brought to collect such assessments, shall constitute a continuing lien against the Lot against which such assessment is made. Each such assessment, together with such interest and costs, shall also be the personal obligation of the person(s) who was the record Owner of such Lot at the time when the assessment was made.

- f. Certificate of Lien. The Association shall, upon demand, at any time furnish to any Owner, a certificate in form recordable in the Registry of Deeds, setting forth the amount and due date of any outstanding assessment and whether the same has been paid. Such certificate may be signed by a Trustee or any officer designated by the Association, and the signature of such Trustee or officer shall be conclusive of his/her authority, and shall be conclusive evidence of payment of any assessment therein stated to be unpaid. Any cost associated therewith shall be paid to the Association by the Owner.
- g. Effect of Non-Payment of Assessment. If any assessment is not paid when due, determined as aforesaid, and in accordance with this Homeowners' Association Trust, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as are

herein provided, thereupon become a continuing lien on the Lot with respect to which the assessment was levied which shall bind such Lot of the then Owner and the Owner and his or her heirs, devisees, personal representatives, successors, assigns and grantees. Such assessment shall also be the personal obligation of the Owner and his or her heirs, devisees, personal representatives, successors, assigns and grantees. If the assessment is not paid within ninety (90) days after the date upon which the same may be payable, the Association may bring an action at law against the Owner liable therefor and there shall be added to the amount of such assessment the fees and costs incurred by the Association in connection with such action; and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorney's fees to be fixed by the court, together with the cost of the action. Once a judgment is obtained, the Association may, among other remedies available to it, also proceed to foreclose the lien on the Lot through the same procedure utilized to foreclose condominium common charge liens.

- h. Easements. The Association hereby reserves, and shall have the benefit of a perpetual easement to use, to the extent necessary, such portions of Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9 as aforesaid for purposes of access to and egress from the Drainage System, the individual drainage systems on the said Lots, as well as the retention system on Lot 5, and for inspections, maintenance, repair, alteration and replacement of any and all portions of said Drainage System. However, the Association shall be liable to the respective Owners of Lots, 1, 2, 3, 4, 5, 6, 7, 8 and 9, for any damage to said Lot(s) or any improvements thereto or thereon caused by such action, not properly repaired by the Association, which shall be promptly reimbursed to said Owner, once said Owner has provided a good faith estimate of the cost to repair said damage caused by the Association or its duly authorized agents or contractors, said estimate to be prepared by a disinterested professional qualified to make the same and agreed to by the Association. The perpetual easement hereby reserved and granted to the Association is also hereby granted to the Town for the purpose of exercising, and to the extent reasonably necessary to exercise, its rights under Section III.c. above, provided, however, that any liability incurred by the Town to the Owners of Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9 on account of damage to said Lot(s) or to any improvements thereof or thereon shall be the obligation of the Association, unless such liability arises from intentional wrongdoing or gross negligence by personnel of the Town.
- i. Initial Contribution. Upon execution of this Declaration, the Declarant shall establish an account to hold funds to be used by the Association and/or the Trustee to satisfy the duties and obligations imposed by this Agreement. At

the time said account is established, or upon the conveyance of each Lot shown on the Plan, whichever is later, the Declarant or new Owner shall deposit \$1,500.00 into the account for each Lot shown on the Plan, in addition to the bonding requirements with the Town of Lynnfield hereinbefore set forth for purposes of developing, installing, maintaining, repairing and replacing the individual stormwater management facilities on each of said Lots (the total of such payments to be referred to as the "Initial Contribution"). The Initial Contribution shall be used only for maintenance, capital improvements to the Drainage System and insurance costs, provided, however, that any interest accruing on the Initial Contribution following its deposit by the Declarant may be used to fund any Common Expenses. The Initial Contribution may be used in place of or in conjunction with any other monies available to the Association to fund maintenance, capital improvements to the Drainage System and insurance costs, and may be commingled with other monies held by and for the benefit of the Association, including, but not limited to, any assessments paid by Lot Owners, it being expressly understood that any such commingling shall not affect in any way the foregoing limitation on the use of the Initial Contribution.

IV. General

- a. Counterparts. This Declaration may be executed in any number of counterparts, each of which, when recorded in the Registry of Deeds, shall be an original instrument, and all counterparts shall constitute one and the same instrument.
- b. Enforcement. The provisions hereof may be enforced by the Trustee, by its successors and assigns in interest, by the Owners from time to time of any Lot shown on the Plan, and by the Town through a civil action in any court of competent jurisdiction. In the event the Town must initiate any civil action to enforce the provisions of the Declaration, the Town shall have the right to reimbursement of all costs and attorney's fees incurred in said action. The obligations owed by the Association to the Town, under §III.c. and otherwise hereunder, shall be the joint and several obligation of each and all of the Owners personally and of their respective heirs, devisees, personal representatives, successors, assigns and grantees. Any amendment of this provision shall require written approval and consent of the Lynnfield Planning Board, a certified copy of which must be recorded in the Registry of Deeds before becoming effective.

- c. Severability. Invalidation of any one or more provisions hereof by judgment or court order shall not affect the remaining provisions which shall remain in full force and effect.
- d. Amendments. Except as herein provided, the provisions hereof may be amended only by a two-thirds affirmative vote of all the Association Members, with approval of the Town (acting through its Planning Board), and will only become effective when recorded in the Registry of Deeds referencing this recorded instrument.
- e. Liability. Notwithstanding any provision of this instrument, the then Declarant, conveying any Lot to a grantee by recorded deed, shall thereupon be released from all liability hereunder to the same extent that the Lot conveyed represents a fraction of the total Lots of record, it being the intention of this instrument that upon the sale and recorded conveyances of all Lots in this subdivision, the then Declarant shall be free of all duties, obligations and liabilities hereunder.
- f. Notice. Any notice which may or shall be given hereunder to the Town shall be given (and shall not be deemed effective unless given) by certified mail, return receipt requested, to:

Lynnfield Planning Board
55 Summer Street
Lynnfield, MA 01940

with a copy to:

Town Administrator
55 Summer Street
Lynnfield, MA 01940

or to such other addresses as the Town may, from time to time by written notice to the Trustee, indicate.

Executed as a sealed instrument this ____ day of _____, 2019.

DECLARANT:

HPI, LLC

By _____
MICHAEL HANNON, Manager

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this ____ day of _____, 2019, before me, the undersigned notary public, personally appeared MICHAEL HANNON, Manager as aforesaid, proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Manager and authorized signatory of HPI, LLC.

Notary Public
My Commission Expires: _____