

FEB 27 '20 AM 10:16

**ERB & SOUTHCOTTE**  
780 MAIN STREET  
P.O. BOX 827  
FITCHBURG, MASSACHUSETTS 01420-0056

Elisha W. Erb  
David G. Southcotte, Sr.\*  
\* Also admitted in New Hampshire

Telephone (978) 343-4856  
Facsimile (978) 343-4858  
E Mail [erbandsouthcotte@verizon.net](mailto:erbandsouthcotte@verizon.net)

By Certified Mail No. 7018 0680 0001 5090 9329

25 February 2020

Gardner Planning Board  
City of Gardner – Manca Annex  
115 Pleasant Street, Room 201  
Gardner, Massachusetts 01440

Dear Planning Board Members:

Re: Wilder Brook Estates Subdivision

I am sending this letter to you on behalf of my client, Mr. Henry Cormier, in his capacity as the Trustee of Saint Paul's Trust, created by the Declaration of Trust dated 25 January 2000, recorded in the Worcester Registry of Deeds in Book 25932, Page 143. His appointment as the Trustee of Saint Paul's Trust is dated 13 December 2018 and recorded in said Registry of Deeds in Book 60355, Page 70.

I am also sending this letter to you on behalf of Mr. Cormier in his capacity as the Trustee of Wilder Brook Estates Road Trust created by the Declaration of Trust dated 17 September 2009, that is the subject of the Trustee's Certificate recorded in the Worcester Registry of Deeds in Book 44929, Page 326. His appointment as the Trustee of Wilder Brook Estates Road Trust is dated 13 December 2018 and recorded in said Registry of Deed in Book 60355, Page 69.

**BACKGROUND**

Saint Paul's Trust owns mortgage free Lots 38 through Lot 50 and Lot 69 through Lot 85 on the plan titled "Property Line Plan, Wilder Brook Estates", dated 10 September 1998, recorded in the Registry of Deeds in Plan Book 743, Page 122, (hereinafter referred to as the "Plan") they being respectively thirteen and seventeen of the parcels of land that Wilder Brook Development, LLC conveyed to Saint Paul's Trust by the deed dated 24 February 2017, recorded in the Registry of Deeds in Book 56781, Page 272.

Wilder Brook Estates Road Trust owns mortgage free:

- (a) the not laid out private way shown on the Plan that commences at the easterly sideline of Brookside Drive between Lot 37 and Lot 51 and extends easterly and southerly to where the roadway ends in a cul-de-sac. Said not laid out way is hereinafter referred to as "Wilder Lane"<sup>1</sup>; and
- (b) the part of not laid out Brookside Drive from where Brookside Drive intersects with Leo Drive and extends northerly and then easterly to the cul-de-sac at the end of Brookside Drive.

Wilder Brook Estates Road Trust owns Wilder Lane and the not laid out part of Brookside Drive by virtue of the deed from Andrea Cormier, as Trustee of Saint Paul's Trust, to herself, as Trustee of Wilder Brook Estates Road Trust, dated 17 September 2009, recorded in the Registry of Deeds in Book 44929, Page 328, subject to the rights of Saint Paul's Trust, as the owner of above mentioned Lot 38 through Lot 50 to use Wilder Lane as a private way and the right of Saint Paul's Trust, as the owner of above mentioned Lot 69 through Lot 85, to use the not laid out part of Brookside Drive as a private way.

A copy of the first page of the Plan is attached as Exhibit A.

A copy of the Form G, Notice of Subdivision Approval or Disapproval, dated 13 April 1999, recorded in the Registry of Deeds in Book 29589, Page 126, by which your Board approved the Plan is attached as Exhibit B.

A copy of the Notice of Subdivision Amendment dated 10 June 2008, recorded in the Registry of Deeds in Book 44929, Page 322 by which your Board modified and approved three amendments of the above reported Form G is attached as Exhibit C.

Paragraph 2 of the Subdivision Amendment required the establishment of a Homeowners Association acceptable to the Planning Board that would be "responsible for the management, maintenance, improvement and repair of the detention basins and associated drainage works located outside the public street layout."

The required Homeowners Association was created by the Declaration Establishing the Wilder Brook Estates Homeowners Association dated 17 September 2009, recorded in the Registry of Deeds in Book 44929, Page 331. A copy is attached as Exhibit D.

The Declaration states:

"Two hundred dollars (\$200.00) shall be paid to the Association as a 'Commencement Payment' prior to the issuance by the Gardner Building Inspector of a Building Permit for a particular Wilder Brook Estates Residential Lot. The Association

---

<sup>1</sup> The plan recorded in the Registry of Deeds in Plan Book 888, Page 38 identifies the dead end proposed street as "Wilder Lane".

shall issue a receipt each time it receives a \$200.00 Commencement Deposit that identifies the particular Wilder Brook Estates Residential Lot for which the Commencement Deposit was received that may be shown to the Gardner Building Inspector as proof that the Association has received a Commencement Deposit for the Residential Lot identified in the receipt”.

The Homeowners Association was never established as an operating entity. It does not currently exist as an operating entity. It has never received or collected any funds from anyone.

The Gardner Building Inspector has issued a total of thirty-eight building permits for homes in the Wilder Brook Subdivision. The Building Inspector did not require he be shown a receipt from the Association for \$200.00 prior to issuing each permit.

If the Homeowners Association had been established and the required \$200.00 had been paid to the Association on account of the thirty-eight issued building permits, the Association would have received a total of \$7,600.00, to be held by the Association until there was a need to maintain one or more of the storm water detention basins and be expended by the Association for the required maintenance when the need had arisen.

Mr. Cormier has authorized me to inform your Board that he assents to your Board continuing to hold \$7,600.00 of the security deposit it currently holds for the Wilder Brook Subdivision and to release the \$7,600.00 to the City of Gardner for the maintenance of the detention basins, or deliver the \$7,600.00 to the Homeowners Association when it is organized for the same purposes, thereby achieving by an alternate means the objective of “Two hundred dollars (\$200.00) shall be paid to the Association as a ‘Commencement Payment’ prior to the issuance by the Gardner Building Inspector of a Building Permit for a particular Wilder Brook Estates Residential Lot.”

#### PETITION

Mr. Cormier, in his capacity as the Trustee of Saint Paul’s Trust, and in his capacity as the Trustee of Wilder Brook Estates Road Trust, they being the owners of the land that is the subject of this petition, which land is not subject to any mortgages, hereby petitions the Gardner Planning Board to act under the authority granted to it by Massachusetts General Laws, Chapter 41, Section 81W to:

- (1) Amend its approval of the Wilder Brook Subdivision (Exhibit A) by withdrawing its approval of:
  - (a) Wilder Lane as an approved subdivision road,
  - (b) the adjoining Lots 38 through 50 as approved subdivision lots,
  - (c) Brookside Drive beyond Leo Drive as an approved subdivision road,
  - (d) the adjoining Lots 69 through 85 as approved subdivision lots, and
  - (e) Parcels E-2, E-3 and E-5 as storm water detention basin lots,

on the Wilder Brook Estates Subdivision Plan recorded in the Registry of Deeds in Plan Book 743, Page 122.

(2) Continue to hold \$7,600.00 from the security deposit Mr. Cormier posted with the City of Gardner to secure the completion of the roads and infrastructure in the Wilder Brook Estates Subdivision, the retained funds to be held by your Board and delivered to the Homeowners Association when it is organized or delivered to the City for use by the City when the need arises for the maintenance of the detention basins in the Wilder Brook Subdivision.

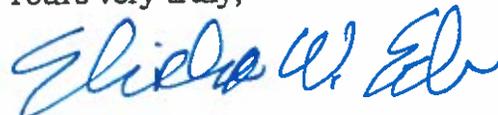
(3) Rescind its requirement in the Notice of Subdivision Amendment (Exhibit C) that

**The Sale Agreement and Deed of Conveyance of each lot shall contain and be subject to a Declaration of Trust, acceptable to the Planning Board, which requires the establishment of a home owner's organization that is responsible for the management, maintenance, improvement and repair of the detention basins and associated drainage works located outside the public street layout.**

and

(4) Authorize the return of the balance of the security deposit to Mr. Cormier.

Yours very truly,



Elisha W. Erb

e/1221/A/9/ewe

cc:

John M. Flick, Esq. – by e-mail

Mr. Henry Cormier – by e-mail

Ms. Jassy Bratko – by e-mail

Gardner City Clerk – by Certified Mail No. 7018 0680 0001 5090 9343

#### POSTSCRIPT

After I had drafted the above petition, I met with Ms. Jassy Bratko of the North County Land Trust ("NCLT") because, if the Petition was allowed Mr. Cormier planned to donate the land that is the subject of the Petition (the "subject land") and three additional undeveloped parcels of vacant land to NCLT. I discussed the petition with her. The outcome of the discussion and some following communications is the NCLT is aware that if it accepts title to

the subject land and the three additional undeveloped parcels land that are to be donated to it:

- (A) there is a pile of rocks that had been unlawfully deposited on the subject land that NCLT will have to deal with and
- (B) NCLT may become<sup>2</sup> a member of the Wilder Brook Homeowners Association, owning thirty-three (33) "association memberships" out of the total of seventy-one (71) association memberships, with the consequence that NCLT will be exposed to the contention that should the City ever enforce the Association's obligations to the City, NCLT would have to pay 46.5 percent of the cost of maintaining the Wilder Brook Estates Subdivision storm water detention basins.

My understanding is NCLT very much wants to become the owner of the subject land and the additional three parcels, is willing to take responsibility for clearing the pile of rocks, but is not willing to expose itself to the possible liability associated with having to pay 46.5 percent of whatever the Association may sometime in the future have to pay because the Association is:

"responsible for the management, maintenance, improvement and repair of the detention basins and associated drainage works located outside the public street layout."<sup>3</sup>

with the consequence that NCLT informed me that NCLT will not accept a gift of the land.

Though Mr. Cormier has authorized me to sign the Petition and submit it to the Planning Board, he has instructed me to not appear at any hearing the Planning Board holds to consider the Petition. Mr. Cormier does not care whether the Petition is allowed or denied because:

► if the Planning Board denies the Petition, the consequences most likely will be the City will eventually take the subject land and the three additional parcels for nonpayment of real estate taxes, thereby causing the City to become responsible for paying 46.5 percent of whatever the Association may some time in the future have to pay because of the Association's responsibilities quoted above. The City, because it will be the principal member of the Association, will have to lead the Association's effort to collect the remaining 53.5 percent from the other members of the Association, they being the owners of the homes in the Wilder Brook Estates Subdivision.

---

<sup>2</sup> I write "may become" instead of "shall become" because there is an argument that because the lots that NCLT would own will remain undeveloped, NCLT should have the right to withdraw those lots from the Association. There is a counter argument. I express no opinion as to the validity or strength of either argument.

<sup>3</sup> The quotation is from Exhibit C – the Gardner Planning Board's Notice of Subdivision Amendment dated 10 June 2008, recorded in the Registry of Deeds in Book 44929, Page 322.

► if the Planning Board allows the Petition by withdrawing its approval of:

- (a) Wilder Lane as an approved subdivision road,
- (b) the adjoining Lots 38 through 50 as approved subdivision lots,
- (c) Brookside Drive beyond Leo Drive as an approved subdivision road,
- (d) the adjoining Lots 69 through 85 as approved subdivision lots,
- (e) Parcels E-2, E-3 and E-5 as storm water detention basin lots, and

(g) rescinds its requirement that the Association be “responsible for the management, maintenance, improvement and repair of the detention basins and associated drainage works located outside the public street layout.”

the withdrawal of approval and the rescission of the requirement for a homeowners association responsible for the detention basins, the rescission will allow the Association to be dissolved because the Association’s reason for existing will have terminated. The dissolution of the Association will make it possible for NCLT to accept a gift of the land.<sup>4</sup>

► if the Planning Board allows the Petition in part, then NCLT will have to decide whether it will or will not accept a gift of the land. If NCLT decides it will not accept a gift of the land, the consequence will probably be the same as if the Planning Board had denied the Petition.

I have attached this postscript to the Petition because my instructions from Mr. Cormier are to do nothing further on his behalf regarding the Petition beyond signing it as his attorney and filing it with the Gardner Planning Board. I thought it best that I, as a matter of courtesy to the Gardner Planning Board and NCLT “clear the air” as to where matters stand with regard to Mr. Cormier and the Petition.

The Petition is now a matter between the City and NCLT.

---

<sup>4</sup> It is more tax advantageous for Mr. Cormier to simply do nothing (writing off the value of the land as a business loss) and not oppose the City eventually taking the land for non-payment of real estate taxes than it is for he to donate the land to NCLT. Notwithstanding the foregoing, Mr. Cormier has told me that if the NCLT is ever willing to accept a gift of the land, he will sign the deeds I prepared for the gifts sometime back, which signed deeds I will deliver to NCLT.



FORM G

RECEIVED

7/5/99

A true copy, Attest:  
City Clerk

**NOTICE OF SUBDIVISION APPROVAL OR DISAPPROVAL**

APR 28 AM '99  
CITY CLERK'S OFFICE  
GARDNER, MASS.

To: City Clerk

The Planning Board on April 13, 1999 by a vote of 4-0  
(date)

(Circle action taken)

DISAPPROVED

APPROVED

~~with bonds or surety~~ (cross out one)  
with conditions (listed on plan)

MODIFIED AND APPROVED

with bonds or surety (cross out one)  
with conditions (listed on plan)

The following subdivision plan:

Name or Description Wilder Brook Estates, JAB Realty Trust - 8/21/98  
Rev. #1-11/4/98; Rev #2 12/1/98; Rev #3 12/15/98; Rev #4 3/23/99;  
Submitted by JAB Realty Trust  
Address 29 Fairlawn Avenue, Gardner, MA 01440

on September 4, 1998 pending termination of the statutory twenty-  
(date)  
day appeal period.

Gardner

See Plan Book 743  
Plan 122

(signed) [Signature] Acting Chairman  
[Signature] Director  
[Signature]  
[Signature]

03 APR -7 AM 11:28

Planning Board Members

After twenty (20) days without notice of appeal, endorsed mylar and the original of the plot plan, if approved, will be transmitted to the applicant.

- cc: Applicant
- City Council
- Board of Health
- Conservation Commission
- Fire Department

- City Engineer
- Building Inspector
- Director of Public Works
- Police Department

MAIL

Coler and Colantoni, Inc.  
55 Bobala Road  
Holyoke, MA 01040

OK  
ATV

## Wilder Brook Estates - Conditions of Approval

The Gardner Planning Board approved a Definitive Subdivision Plan of WILDER BROOK ESTATES, Gardner, MA, prepared by Coler & Colantonio, dated 8/21/98, last revised 3/23/99, at their regular meeting on April 13, 1999. The following conditions apply:

1. Prior to release of the Usual Form of Agreement (Covenant) running with the land, the open space (approximately 89+- acres of upland open space plus wetland resource areas) shall be conveyed to a publicly supported tax-exempt organization, acceptable to the Planning Board, whose principal purpose is the conservation of open space.
2. Prior to release of the Usual Form of Agreement (Covenant) running with the land, the publicly supported tax-exempt organization that accepts ownership of the open space shall record, in the Worcester Registry of Deeds, a conservation restriction to insure that such open space shall be kept in an open or natural state and not be built upon for residential use or developed for access to any uses such as parking & roadways. Said conservation restriction shall be approved in writing by the Gardner Conservation Commission prior to recording.
3. The deed of conveyance for each lot shall contain a reference to the wetland resource area(s) or wetlands buffer zone(s) contained within the lot.
4. Any revision made to the Definitive Subdivision Plan to comply with MGL Chapter 131, Sections 40 and 40A shall constitute a new plan and shall be resubmitted to the Planning Board.
5. A "PRIVATE ROAD - Not Maintained by the City of Gardner" sign shall be installed at each entrance to the subdivision and at the beginning of each internal road, and shall remain until the City of Gardner accepts the road as a public way.
6. Final design details of the low pressure sewer system on Leo Drive shall be submitted to the Director of Public Works for his review, and construction of this system shall not begin until the design is approved in writing by said Director of Public Works.
7. Compaction tests shall be required prior to the authorizing of sewer construction over any fill areas.
8. Peak flow rates within the sewage collection system and at the wastewater treatment plant must be reduced by the removal of four gallons of inflow and infiltration (I&I) for each and every gallon of new flow introduced into the system. Prior to the installation of roadways, utilities and other improvements, the owner or developer shall pay the City of Gardner's Sewer Department \$330.00 per building lot for the sole purpose of I&I removal.
9. Pursuant to Section 52 of the City's Rules and Regulations Governing the Subdivision of Land an inspection fee of \$4.50 per linear foot of roadway shall be paid to the Director of Community Development and Planning.
10. Contractors shall confirm the existence of workable water gates the ends of Leo and Brookside Drives. If no water gates exist beyond the last service connection on these streets, a new gate shall be installed at the start of new work.
11. The construction of all ways and the installation of all municipal services shall be completed in accordance with the applicable Rules and Regulations of the Gardner Planning Board before April 13, 2002 unless an extension of time is granted by the Planning Board. Failure to so complete without an extension of time shall automatically rescind approval of the plan.
12. The developer shall be responsible for maintaining all ways and providing all municipal services including snow plowing and sanding of roadways, prior to acceptance of the road as a public way.
13. Deeds of conveyance for all lots subject to drain easements shall contain and be subject to conditions prohibiting any structure, including a driveway, from being built on the easements unless a waiver is granted by the Planning Board, and prohibiting any alterations to the drainage patterns or characteristics as indicated on the plans and calculations submitted for approval.
14. Street trees depicted on the Landscape Plan shall be planted within the setback area of the building lot rather than adjacent to the paved way.
15. Prior to release of the Usual Form of Agreement (Covenant) running with the land, a Phasing Plan shall be submitted and approved by the Planning Board. The objective of the Phasing Plan shall be to effectively manage the amount of disturbed, exposed area during the construction of the subdivision's infrastructure improvements.

ATTEST: WORC. Anthony J. Vigliotti, Register



**City of Gardner, Planning Board**  
**NOTICE OF SUBDIVISION AMENDMENT**

TO: City Clerk

The Planning Board on June 10, 2008, by a vote of 4 - 0

(circle action taken)

DISAPPROVED

APPROVED

MODIFIED AND APPROVED with conditions (see below)

amendments to the following definitive subdivision plan:

Wilder Brook Estates recorded at the Worcester Registry of Deeds, July 15, 1998, Plan Book 743, Plan 122, with NOTICE OF APPROVAL and Conditions of approval recorded in Book 29589, Page 126 and 127.

1. Construction of all ways and the installation of all municipal infrastructures shall be completed in accordance with the Gardner Planning Board's RULES AND REGULATIONS GOVERNING THE SUBDIVISION OF LAND, revised October 18, 2005, on or before June 30, 2013, unless an extension of time is granted by the Planning Board. Failure to so complete without an extension of time shall automatically rescind approval of the definitive plan.
2. The Sale Agreement and Deed of Conveyance of each lot shall contain and be subject to a Declaration of Trust, acceptable to the Planning Board, which requires the establishment of a home owner's organization that is responsible for the management, maintenance, improvement and repair of the detention basins and associated drainage works located outside the public street layout.
3. Iron pipe or re-bar at least two (2) feet in length shall be set at the four (4) corners of all lots. Where impractical due to wetland or unstable soil, corner markers shall be set along the lot sideline at a suitable setback. This setback shall be recorded on as-built records and according to customary practice dictated by the Commonwealth of Massachusetts Board of Land Surveyors.

*Allen J. Gross*

Allen J. Gross, Chairman

*Robert J. Bettes, Sr.*

Robert J. Bettes, Sr., Vice Chairman

*Laurie J. Blacchiere*

Laurie J. Blacchiere, Member

*Peter J. Sabettini*

Peter J. Sabettini, Member

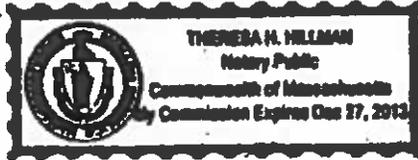
*(Handwritten initials)*

BROOKSIDE DRIVE, LED DRIVE AND WILDER LANE, GARDNER

Notary Public

State of Massachusetts, County of Worcester, SS

On this 10<sup>th</sup> day of June 2008, before me, the undersigned notary public, personally appeared Allen L. Gross, proved to me through satisfactory evidence of identity, which was personal knowledge of identity, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily and for its stated purpose.



*Theresa H. Hillman*

Theresa H. Hillman, Notary Public  
My commission expires: 12/27/13

City Clerk Certification

I, Kathleen M. Lesneski, City Clerk, City of Gardner, hereby certify the attached decision by the Planning Board was filed with my office on June 11, 2008 and that twenty (20) days have elapsed since the filing of said decision with my office and that no appeal concerning said decision has been filed or that any appeal that has been filed has been dismissed or denied.

*Kathleen M. Lesneski*  
Kathleen M. Lesneski, City Clerk

July 15, 2008  
Date

Registry of Deeds (original)  
Applicant  
City Clerk  
Building Inspector



2009 00117847

Bk: 44929 Pg: 331  
Page: 1 of 8 10/05/2009 02:54 PM

LOCATION OF PROPERTY: Wilder Brook Estates, Gardner  
BROOKSIDE DRIVE, LEO DRIVE AND WILDER LANE, GARDNER

E/1013/9/ewc

Revised 9/16/09

**DECLARATION ESTABLISHING THE  
WILDER BROOK ESTATES HOMEOWNERS ASSOCIATION**

**PREFATORY STATEMENT**

**ANDREA CORMIER**, in her capacity as the trustee of **SAINT PAUL'S TRUST**, created by the Declaration of Trust dated 25 January 2000, recorded in the Worcester (Southern District) Registry of Deeds in Book 44417, Page 92 (hereinafter referred to as "Saint Paul's Trust"), is the owner of the following seventy-three parcels of land located beside Brookside Drive, Leo Drive and Wilder Lane, Gardner, Massachusetts:

Lots 16, 18, 19, 23, 24, 25, 26, 28, 29, 30, 31, 32, 34, 35, 36, 38 through and including 51 and 54 through and including 97 on the plan titled "Property Line Plan, Wilder Brook Estates", dated 10 September 1998, copy recorded in said Registry of Deeds in Plan Book 743, Page 122.

by virtue of the deed from Wilder Brook Limited Liability Company to Saint Paul's Trust dated 15 June 2009, recorded in said Registry of Deeds in Book 44417, Page 92. See also the Affidavit Relative to Land Title dated 17 June 2009, recorded in said Registry of Deeds in Book 44447, Page 383. Said seventy-three parcels of land are hereinafter referred to as the "Wilder Brook Estates Residential Parcels".

**ANDREA CORMIER**, in her capacity as the trustee of **WILDER BROOK ESTATES ROAD TRUST**, created by the Declaration of Trust that is the subject of the Trustee's Certificate dated 17 September 2009, recorded in the said Registry of Deeds in Book 44929, Page 326 is the owner of:

- (1) the fee title to the roads shown on the plan titled "Property Line Plan, Wilder Brook Estates", dated 10 September 1998, copy recorded in said Registry of Deeds in Plan Book 743, Page 122; and
- (2) fee title in Lot H on the plan titled "Definitive Plan of Land in Gardner, Massachusetts for Century Way Development Corp." dated 26 February 1988, last revised 13 June 1988, recorded in said Registry of Deeds in Plan Book 605, Page 23.

by virtue of the deed from Saint Paul's Trust to Wilder Brook Estates Road Trust dated 17 September 2009, recorded in said Registry of Deeds in Book 44929, Page 328.

Appurtenant to said roads is the perpetual right and easement over and in the eight lots identified on said plan respectively as "Proposed Drainage Easement # 1", "Proposed Drainage Easement # 2", "Proposed Drainage Easement # 3", "Proposed Drainage Easement # 4", "Proposed Drainage Easement # 5", "Proposed Drainage Easement # 6", "Proposed Drainage Easement # 7" and "Proposed Drainage Easement # 8", hereinafter collectively referred to as the "Runoff Water Drainage Lots":

- ▶ to construct, maintain<sup>1</sup>, use, repair and replace one or more runoff water detention basins on the Runoff Water Drainage Lots with all affiliated access ways, structures and devices;
- ▶ to collect rain water and snow melt from the roads in the subdivision by means of catch basins, pipes and other facilities and discharge the collected water on the Runoff Water Drainage Lots; and
- ▶ to prohibit others from coming on (trespassing) or crossing (using as a driveway) the Runoff Water Drainage Lots or making any other use of the Runoff Water Drainage Lots. The right to prohibit the foregoing activities may be exercised by blocking access to the Runoff Water Drainage Lots by physical means - such as a string of boulders or a fence along the perimeter of a Runoff Water Drainage Lot - and by a legal proceeding against a trespasser.

The foregoing perpetual right and easement was created by the Grant of Easement from Gardner, LLC to the Saint Paul's Trust dated 15 June 2009, recorded in said Registry of Deeds in Book 44448, Page 59. The Grant of Easement provides: "Neither Gardner, LLC, nor any of its successor in title to the Runoff Water Drainage Lots, may alter or otherwise interfere with the detention basins and affiliated access ways, structures and devices." Said easement rights are hereinafter referred to as the "Detention Basin Easement Rights"

The City of Gardner, acting through its Planning Board, requires a Homeowners Association be established that will be responsible for the maintenance and repair of the storm water detention basins located on the Runoff Water Drainage Lots.

The Wilder Brook Homeowners Association is established by this document to create an association consisting of the owners of the seventy-three house lots in the Wilder Brook Estates subdivision that are currently owned by Saint Paul's Trust, such parcels being the parcels reported above.

---

<sup>1</sup> Maintenance includes, but is not limited to, the trimming or removal from time to time of natural plant growth and the removal from time to time of accumulated sedimentation.

**WILDER BROOK ESTATES HOMEOWNERS ASSOCIATION**

There is hereby created an unincorporated association named "Wilder Brook Estates Homeowners Association" for the benefit of the owners of the Wilder Brook Estates Residential Parcels and for the benefit of the City of Gardner, acting through its Department of Public Works or acting through its Planning Board. The Member's Obligation (defined below) imposed on each of the Wilder Brook Estates Residential Parcels by this Declaration is a continuing lien on each of the seventy-three Wilder Brook Estates Residential Parcels. A Wilder Brook Estates Residential Parcel may not resign or withdraw from the Wilder Brook Estate Homeowners Association. The members of the Wilder Brook Homeowners Association are the owners of the seventy-three Wilder Brook Estates Residential Parcels.

Each Wilder Brook Estates Residential Parcel shall have appurtenant to it one membership in the Association. Should more than one person own a Wilder Brook Estates Residential Parcel, the owners of such parcel together shall constitute one member of the Association, and together shall be entitled to one vote at a meeting of the members. Any one of the owners of such parcel shall represent all of the owners of such parcel. Should the same owner own more than one Wilder Brook Estates Residential Parcel, such owner shall be a member of the Association for each parcel (i.e. own two Wilder Brook Estates Residential Parcels, be two members of the Association and be entitled to two votes at a meeting of the members).

The purpose and objectives of the Association are limited to taking such action and raising such funds as may be required to:

1. to maintaining and keeping in good repair the storm water detention basins located on the Runoff Water Drainage Lots;
2. performing the maintenance and repair work required by the Gardner Department of Public Works for the storm water detention basins and for the Runoff Water Drainage Lots in general, such as fencing and mowing the lots and controlling plant growth within the lots;
3. preventing others from altering or otherwise interfering with the detention basins and their affiliated access ways, structures and devices; and
4. assessing and collecting from the owners of the Wilder Brook Estates Residential Parcels the funds required to accomplish the foregoing.

Andrea Cormier, as the Trustee of the Wilder Brook Estate's Road Trust, by signing this document, hereby authorizes the Wilder Brook Estates Homeowners Associations to perform the acts and work described in the foregoing paragraph as an agent of Wilder Brook Estates Road Trust, with full authority to exercise and enforce the Detention Basin Easement Rights on behalf of Wilder Brook Estates Road Trust.

The Association shall hold an annual meeting during March of each year. If no annual meeting is held in accordance with the foregoing provision, a special meeting may be held in lieu thereof and any action taken at the special meeting shall have the same effect as if taken at an annual meeting. Annual Meetings shall be called by the President. Special meetings may be called by the President, the Treasurer or the Clerk, or by seven members. Written notice stating the place, which must be in Gardner, Massachusetts, the date and hour thereof of each annual meeting or special meeting shall be given not less than seven (7) days in advance by the officer or the members calling the meeting. Twelve (12) members present at a meeting, either in person or by proxy, shall constitute a quorum for all meetings of members. A meeting may be adjourned from time to time by a majority vote, whether or not a quorum is present, and the meeting may be held as adjourned without further notice. The order of business at an annual or special meeting, or adjournments thereof, shall be as follows:

1. proof of due notice of meeting;
2. reading and disposal of minutes of preceding meeting;
3. determination of quorum;
4. reports of officers and committees;
5. election of officers, if applicable;
6. other business;
7. determining the hereinafter defined Homeowners' Obligation, if applicable; and
8. adjournment.

A copy of the minutes for the meeting shall be delivered to the Gardner Planning Board within thirty days of the meeting.

The officers of the Association shall consist of a President, a Treasurer, a Clerk, and such other officers as the members may determine. All officers shall be members of the Association (i.e. own a Wilder Brook Estates Residential Parcel). Except as provided in the following paragraph, all officers shall be elected at the annual meeting. A vacancy in any office between annual meetings may be filled at a special meeting. The same individual may hold two or more offices. Each officer shall hold office until the next annual meeting of the members, unless he/she earlier resigns, ceases to be a member (because no longer owns a Wilder Brook Estates Residential Parcel) or is removed from office, and thereafter until his/her successor is chosen and qualified. Any officer may resign by delivering his/her written resignation to the President or the Clerk. Such resignation shall be effective upon its receipt unless it contains a future date at which it is to be effective, in which event it shall be effective upon such future date. Any officer may be removed from office at any time with or without cause by vote at a special meeting called for the purpose of considering a proposal to remove such officer, which purpose shall be stated in the Notice of Meeting, provided not less than twenty members vote in favor of removal. Each officer shall have such duties and powers as are customarily incident to his/her office. Any officer authorized to sign checks or similar instruments on behalf of the Association may be required by the members to

give bond for the faithful performance of his/her duties to the Association in such amount and with such sureties as the members may determine.

Notwithstanding the foregoing, Saint Paul's Trust, or its successor and/or assigns, shall appoint the Association's President, Treasurer and Clerk until the occurrence of an "Operating Event". An Operating Event is either: (1) Saint Paul's Trust, or its successors and/or assigns, ceases to own at least one Wilder Brook Estates Residential Lots, or (2) Saint Paul's Trust, or its successors and/or assigns expressly releases its rights under this paragraph by a document recorded in said Registry of Deeds that is marginally referenced beside this Declaration.

The Treasurer shall prepare a report in January of each year of the funds received and the expenses paid by the Association during the preceding calendar year, the money owed to the Association by members as of the last day of the preceding year, the Association's funds on hand as of the last day of the preceding year, and the estimated expenses to be incurred by the Association during the current calendar year, and deliver a copy of the report to the members at least seven (7) days prior to the Association's annual meeting. If the Association has insufficient funds on hand to promptly pay its obligations, the Associations' Treasurer shall prepare a report of the funds received and the expenses paid by the Association since the most recent prior annual report (the "Special Financial Report"), shall call a Special Meeting of the Association for the purpose of determining whether the Association shall raise funds by adopting a special "Common Obligation", and shall deliver a copy of the Special Financial Report to the members at least seven (7) days prior to the Special Meeting. The Association shall, at the annual meeting, and may at a special meeting called for the purpose, determine the funds the Association needs to raise to pay its past and anticipated obligations and to provide the Association with a reasonable reserve to cover contingencies and planned and unplanned major repairs. The amount of funds that the Association determines the Association must raise is hereinafter called "the Common Obligation". Each member of the Association is obligated to pay 1/73rd. of the Common Obligation. For example, if the Common Obligation is \$10,000, each member's share shall be \$136.99, such amount being 1/73rd. of the \$10,000 Common Obligation. Such share of the Common Obligation is hereinafter called "the Member's Obligation". The Treasurer shall, promptly following the Association establishing the amount of the Common Obligation, invoice each member of the Association for the Member's Obligation. If a member owes the Association a Member's Additional Obligation (see hereinbelow for what constitutes a Member's Additional Obligation), the Treasurer shall invoice the member when the Member's Additional Obligation arises or any time thereafter for the Member's Additional Obligation. The Member's Obligation and the Member's Additional Obligation shall be due within twenty (20) days, if the invoice is hand delivered to the home located on the Wilder Brook Estates Residential Parcel - from the date of such delivery, and if the invoice is mailed - from the date of mailing. Should a member fail to pay to the Association the Member's Obligation and the Member's Additional Obligation within said twenty (20) days, the Member's Obligation and the Member's Additional Obligation shall constitute a lien on the member's Wilder Brook

Estates Residential Parcel to the same extent and with the same enforcement rights by the Association as an obligation owed by a condominium unit owner to a condominium association under Massachusetts General Laws Chapter 183A, Section 6, as amended from time to time and any future amendments or replacements of that statute. Should the Association enforce the lien, or take other legal action to collect the Member's Obligation and the Member's Additional Obligation, the member shall be responsible for all costs of collection incurred by the Association, including reasonable attorneys' fees. A lawsuit to recover a money judgment for an unpaid Member's Obligation and Member's Additional Obligation may be maintained without foreclosing or waiving the lien securing the same.

A Member's Additional Obligation shall consist of: (1) interest on the Member's Obligation at sixteen percent (16%) per annum from and after when the Member's Obligation became due and (2) all reasonable costs incurred by the Association in collecting a Member's Obligation and a Member's Additional Obligation, including, but not limited to, process server charges, court filing fees and charges and attorney's fees and (3), if applicable, the not paid two hundred dollar payment called for later in this document.

All notices and invoices required herein shall be given by delivery or mailing of the notice or invoice to the home located on each Wilder Brook Estates Residential Parcel, provided should the owner of a Wilder Brook Estates Residential Parcel have notified the Clerk within one year preceding the giving of the notice or invoice that any such notice or invoice should be mailed to the owner at a specified post office address, the notice or invoice shall be given to such an owner by mailing to such address. Should a home not be occupied by the homeowner and the Association have not been provided within the prior year with a post office address for the homeowner, the notice or invoice may be mailed to the most recent address the Association has for the homeowner or to the address of the homeowner as reported in the Gardner Assessor's records. A notice or invoice delivered or mailed as specified herein shall be deemed to have been received by the homeowner for purposes hereof regardless of whether in fact received by the homeowner. (A homeowner is obligated to at least annually inform the Association as to how the Association may contact the homeowner. The Association is not obligated to search for the current address of a homeowner.)

**OBLIGATION TO PROVIDE START-UP FUNDS  
TO THE ASSOCIATION WHEN A RESIDENTIAL LOT IS SOLD**

Two hundred dollars (\$200.00) shall be paid to the Association as a "Commencement Payment" prior to the issuance by the Gardner Building Inspector of a Building Permit for a particular Wilder Brook Estates Residential Lot. The Association shall issue a receipt each time it receives a \$200.00 Commencement Deposit that identifies the particular Wilder Brook Estates Residential Lot for which the Commencement Deposit was received that may be shown to the Gardner Building Inspector as proof that the Association has received a Commencement Deposit for the Residential Lot identified in the receipt. After a Commencement Deposit has been paid for a particular lot, the

lot shall thereafter be free to the burden of having to pay the Commencement Deposit. (i.e. No lot has to pay the Commencement Deposit a second time.) If a Commencement Deposit should have been paid for a particular lot, but was not paid, the unpaid Commencement Deposit shall become a Member's Additional Obligation for the particular lot that may be collected from owner of the particular lot as provided hereinabove for a Member's Additional Obligation.

#### LIMITED RIGHT TO AMEND

Should the owner of a Wilder Brook Estates Residential Parcel be unable to obtain mortgage financing on a Wilder Brook Estates Residential Parcel from a commercial lending institution because a provision of this Declaration Establishing the Wilder Brook Estates Homeowners' Association is inconsistent with the rules, regulations or requirements of a governmental organization, Saint Paul's Trust prior to an Operating Event, and Wilder Brook Estates Homeowners Association after an Operating Event, shall have the right and obligation to amend this Declaration Establishing the Wilder Brook Estates Homeowners' Association as may be required to bring it into compliance with the rule, regulation or requirement.

This Declaration Establishing Wilder Brook Homeowners Association was one of the matters considered by the Gardner Planning Board in connection with its issuance of an extension that prevented the termination of its conditional approval of the Wilder Brook Estates subdivision plan. A consequence of the foregoing is this Declaration Establishing the Wilder Brook Estates Homeowners Association as a restriction of the Wilder Brook Estates Residential Parcels is believed to be excepted from expiration pursuant to Massachusetts General Laws, Chapter 184, Section 27 by Massachusetts General Laws, Chapter 184, Section 26, with the result that it is not necessary to extend this Declaration Establishing the Wilder Brook Estates Homeowners Association pursuant to Chapter 184, Section 27 to prevent the restrictions it imposes on the Wilder Brook Estates Residential Parcels from expiring.

Notwithstanding the foregoing, intending as a precautionary matter to establish a means for extending this Declaration Establishing Wilder Brook Estates Homeowners Association as a restriction on the Wilder Brook Residential Parcels even though doing so may not be necessary, it is hereby stated the restrictions on the Wilder Brook Estates Residential Parcels contained in this Declaration Establishing the Wilder Brook Estates Homeowners Association are for the benefit of each (a) the City of Gardner, (b) the City of Gardner's Planning Board, (c) the City of Gardner's Department of Public Works, (d) the Wilder Brook Estates Homeowners' Association, and (e) owners of Wilder Brook Estates Residential Parcels. The City of Gardner, the City of Gardner's Planning Board, the City of Gardner's Department of Public Works, the Wilder Brook Estate's Homeowners Association, and the owners of Wilder Brook Estates Residential Parcels are each hereby authorized to extend (and re-extend again and again) this Declaration Establishing the Wilder Brook Estates Homeowners Association as a restriction on the Wilder Brook Estates Residential Parcels as provided in Massachusetts General Laws, Chapter 184, Section 27. Each owner of a Wilder Brook Estates Residential Parcel, including

successor owners, by acquiring such parcel, shall be deemed to have appointed the Wilder Brook Estates Homeowners Association, acting through any of its officers, as the owner's irrevocable attorney-in-fact, coupled with an interest, for the purpose of extending pursuant to Chapter 184, Section 27 this Declaration Establishing the Wilder Brook Estates Homeowners Association as a restriction on the Wilder Brook Estates Residential Parcels.

**As a precautionary matter, this Declaration should be extended pursuant to Massachusetts General Laws, Chapter 184, Section 27 prior to August 2039 and thereafter prior to the twentieth anniversary of the most recent extension.**

This Declaration Establishing Wilder Brook Estates Homeowners Association shall terminate as a condition or restriction on the land that is subject to this Declaration nine hundred and ninety-nine years from date, intending hereby to remove this Declaration from the operation of Massachusetts General Laws, Chapter 184, Section 23.

Signed as a sealed instrument this 17 day of September 2009.

SAINT PAUL'S TRUST

WILDER BROOK ESTATE'S ROAD TRUST

By: Andrea Cormier  
Andrea Cormier, Trustee

By: Andrea Cormier  
Andrea Cormier, Trustee

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss

On the 17 day of September 2009, before me, the undersigned notary public, personally appeared Andrea Cormier, proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the person whose name is signed on the preceding document and acknowledged to me that she signed it voluntarily for its stated purpose as the Trustee Wilder Brook Estates Road Trust and as the Trustee of Saint Paul's Trust.



Elisha W. Erb  
Elisha W. Erb, Notary Public  
My commission expires 13 May 2016