

COMMON DRIVEWAY EASEMENT AND MAINTENANCE DECLARATION

THIS DECLARATION, made and entered into this ___ day of _____, 2025, by **JENNIFER and PASCAL SMITH COUTI**, 36 Overlook Road, Ossining, New York 10562 (collectively referred to as the “**Declarants**”).

W I T N E S S E T H:

WHEREAS, the Declarants are the owner of all that certain lot, piece or parcel of land situate, lying and being in the Town of Ossining, County of Westchester, and State of New York, being designated as Lots 1, 2, and 3 as shown on that certain map entitled “Subdivision Plat, 94 Somerstown Road, Town of Ossining, New York, prepared for Pascal Smith Couti,” which was filed in the Office of the County Clerk of Westchester County on _____ as Filed Map No. _____ (the “**Subdivision Plat**”), a copy of which is annexed hereto as **Exhibit A** and made a part hereof, and which land is more accurately bounded and described in **Exhibit B** annexed hereto and made a part hereof, and is commonly known as the Smith Couti Subdivision, totaling approximately 6.4574 acres (the “**Property**”); and

WHEREAS, by Resolution No. _____, adopted _____, 2025, the Planning Board of the Town of Ossining granted final subdivision approval to Declarants for three (3) residential building lots (the “**Lots**”) on the Property, which Lots are designated on the Subdivision Plat (a copy of said Resolution is annexed hereto as **Exhibit C** and made a part hereof); and

WHEREAS, the Declarants intend to convey the Lots, each of which shall be subject to and be the beneficiary of a certain 30-foot Access Easement (the “**Driveway Easement**”) for purposes of access, ingress, and egress over the 18-foot Proposed Common Driveway (the “**Common Driveway**”) shown on the Subdivision Plat, which Driveway Easement is more accurately bounded and described in **Exhibit D** annexed hereto and made a part hereof (the “**Driveway Easement**”);

Area”), and shall be subject to certain conditions and agreements to provide for the common maintenance of same as herein set forth.

WHEREAS, Declarants wish to provide for the continued use and maintenance of the Driveway Easement Area by and among Lots 1, 2, and 3.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Declarants agree that Lot 1, Lot 2, and Lot 3 shall be held, sold, conveyed, transferred and occupied subject to the following easements and covenants:

1. The Subdivision Plat referred to above, shows a certain Driveway Easement Area which is intended to provide access, ingress, and egress from Somerstown Road over the Common Driveway to Lots 1, 2, and 3. The owner(s) of Lots 1 and 2 shall each have an easement which is more fully described and shown on the Subdivision Plat: (a) for access, ingress, and egress on, over, and under such Driveway Easement, in common with all owners; and (b) to temporarily enter onto those portions of the Lots which are within the Driveway Easement Area and abut the Common Driveway for necessary maintenance work to be done to the Common Driveway to be located therein, as described in Paragraph 2 herein.

2. The owners of the Lots shall each bear one-third of all the costs of construction, maintenance, snow removal, repairs, and reconstruction to the common portion of the driveway (*i.e.*, the portion of the Common Driveway that traverses Lots 1 and 3) to be located in the Driveway Easement (“**Work**”), and shall maintain same in good order and repair

3. Determinations of the Work required to be performed, including the persons to perform the same and the manner in which such work is to be performed, shall be made by mutual agreement of the three Lot owners serviced by the Common Driveway, each Lot owner to have a one

third interest in same. The Declarants for each Lot owned by them, hereby covenant, and each owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed therefor, shall be deemed to covenant and agree to pay the charges imposed by this paragraph, and such charges, together with interest thereon at the maximum legal rate and the cost of collection thereof, including reasonable attorneys' fees, shall be a continuing and binding lien against each Lot and be the responsibility of the owner, his heirs, devisees, personal representatives, successors and assigns. The obligation of the owner to pay such assessment, however, shall also remain as his personal obligation.

4. If the charges are not paid within thirty (30) days after receipt of a request for payment from the other Lot owner(s), charges shall bear interest from the date of such request to the date paid at the highest rate permitted by law, and any Lot owner or owners serviced by the driveway may bring an action at law against the Lot owner(s) obligated to pay the same or to foreclose the lien against the Lot(s), and there shall be added to the amount of such charges, the cost of preparing and filing of a lien, if any, and of bringing an action or proceeding to collect such charges, including interest, costs and reasonable attorneys' fees.

5. Upon the sale of any of the three Lots referenced herein, the selling Lot owner shall mail to the other Lot owner(s) by Registered or Certified Mail, Return Receipt Requested, notice that all charges imposed by Paragraphs 2, 3, and 4 above are paid and that all liens created by the above obligations have been satisfied as of the date of closing. The notice shall be mailed no later than twenty (20) days prior to the date of closing and if no objection is received ten (10) days prior to the date of closing, then such lack of objection shall be conclusive evidence that all charges and all liens imposed by Paragraphs 2, 3, and 4 above have been paid and satisfied.

6. Each grantee accepting a deed, lease, or other instrument conveying any interest in any of the three Lots, whether or not the same incorporates or refers to this Declaration, covenants for himself, his heirs, personal representatives, successors, and assigns to observe, perform, and be bound by this Declaration.

7. Should any covenant, easement, or restriction herein contained, of any article, section, subsection, sentence, clause, phrase, or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction, such judgment shall in no way affect the other provisions hereof which are hereby declared to be several and which shall remain in full force and effect.

8. This Declaration shall run with the land and be binding on all successors and assigns.

IN WITNESS WHEREOF, the Declarants have executed this instrument, intending that the same be recorded in the Office of the Clerk of the County of Westchester, Division of Land Records, on the day and date first above mentioned.

Jennifer Smith Couti

Pascal Smith Couti

STATE OF NEW YORK, COUNTY OF WESTCHESTER ss:

On the ____ day of _____, 2025, before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

STATE OF NEW YORK, COUNTY OF WESTCHESTER ss:

On the ____ day of _____, 2025, before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

RECORD AND RETURN MAIL TO:

JODY T. CROSS, ESQ.
Zarin & Steinmetz LLP
81 Main Street, Suite 415
White Plains, New York 10601
(914) 682-7800

EXHIBIT A

[Subdivision Plat]

EXHIBIT B

[Subdivision Metes & Bounds]

EXHIBIT C

[Resolution]

EXHIBIT D

[Common Driveway Easement Metes & Bounds]