

**DECLARATION OF COVENANTS AND RESTRICTIONS AND
STORMWATER CONTROL FACILITY
EASEMENT AND MAINTENANCE AGREEMENT**

**THIS DECLARATION OF COVENANTS AND RESTRICTIONS AND
STORMWATER CONTROL FACILITY EASEMENT AND MAINTENANCE
AGREEMENT**, 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**”).

WITNESSETH:

WHEREAS, the Declarants are the owners 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 Resolution is conditioned upon the recording of the following
easements, covenants and restrictions: (i) a permanent access and drainage easement for the

construction, use, and maintenance of the common stormwater improvements set forth in the Stormwater Pollution Prevention Plan for the Subdivision prepared by ALP Engineering & Landscape Architecture, PLLC (“ALP”), last revised _____, together with a set of drawings also prepared by ALP, last revised _____ (collectively, the “SWPPP”), as well as the Maintenance Plan for Stormwater Facilities (the “**Maintenance Plan**”), a copy of which Maintenance Plan is annexed hereto as **Exhibit D**, in favor of the owners of Lots 1, 2, and 3, and/or any subsequent homeowners association (collectively, the “**Lot Owners**”); and (ii) an access and maintenance easement for the use, maintenance, and inspection by the Town of Ossining to ensure the Maintenance Plan is being properly implemented; and

WHEREAS, the Subdivision Plat establishes a non-exclusive mutual easement for the benefit of the owners of the Lots (the “**Lot Owners**”), upon, over, under, and across Lot 1, Lot 2, and Lot 3, and the access, drainage and maintenance easement areas located thereon for the installation and operation of a Stormwater Drainage System (the “**Stormwater Management System**”) by Declarants to serve the Lots in accordance with the SWPPP; and

WHEREAS, the Stormwater Management System will consist of a series of catch basins, drain inlets, storm drainage pipes, rain gardens, a stormwater management basin, swales, and other various stormwater devices, which will be located on the Lots and the common driveway serving the subdivision (the “**Common Driveway**”), as shown on the Subdivision Plat; and

WHEREAS, the Declarants are desirous of establishing an easement to allow for access to and maintenance of the Stormwater Management System for the benefit of the Lot Owners or, if the Lot Owners establish a homeowners association in conformance with the Laws of New York (the “**Homeowners Association**”), for the benefit of the Homeowners Association, and regardless, for the Town of Ossining.

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. **Definitions.** Certain capitalized terms used in this Declaration and Agreement shall have the following meanings:

- (a) **“Declaration”** shall mean and refer to this instrument.
- (b) **“Drainage Easement Area”** shall mean and refer to that area identified and described on the metes and bounds description in **Exhibit E** annexed hereto and made a part hereof, and as shown on the Subdivision Plat.

2. **Project Documents.** The Declarants represent and ensure that the following design documents (the **“Project Documents”**) contain all necessary information to construct, operate, and maintain the Stormwater Management System for the lifetime of the facility:

(a) Plans approved by the Planning Board consisting of the following drawings, among others:

Drawing No.	Title	Prepared By	Dated
C-101	Layout / Subdivision Plan	ALP	
C-102	Grading and Utilities Plan	ALP	
C-103	Erosion and Sediment Control Plan	ALP	
C-104	Tree Preservation / Removals Plan	ALP	
C-105.1	Tree Preservation / Removals List	ALP	
C-105.2	Tree Preservation / Removals List	ALP	
C-106	Landscape/Tree Planting Plan	ALP	
C-107	Steep Slopes Plan	ALP	
C-111	Driveway Profile	ALP	
C-112	Construction Details	ALP	
C-113	Construction Details	ALP	

- (b) SWPPP prepared by ALP, and dated _____, 2025.

(c) Any amendments to the Project Documents that may hereafter be approved by the Planning Board.

3. Declaration of Easements. The Declarants hereby declare that Lots 1, 2, and 3 shall be held, sold, conveyed, transferred, and encumbered by the following easements:

- (a) Lots 1, 2, and 3 shall be conveyed subject to a perpetual access and drainage easement in favor of the owners of Lots 1, 2, and 3 (or their agents) to enter the Drainage Easement Area to perform work thereon necessary for the installation, maintenance, repair, operation, replacement, extension, and use of the Stormwater Management System (as defined herein) in accordance with the SWPPP, as well as the Maintenance Plan set forth therein and annexed hereto as **Exhibit D.**
- (b) Lots 1, 2, and 3 shall be conveyed subject to a perpetual access and drainage easement in favor of the Town of Ossining (or its agents) to enter the Drainage Easement Area for the use, maintenance, and inspection by the Town of Ossining of the Stormwater Management System in accordance with the SWPPP, as well as the Maintenance Plan set forth therein and annexed hereto as **Exhibit D.**

4. Maintenance and Repair: Drainage Easement. Lots 1, 2, and 3 shall each be conveyed subject to the following covenants:

- (a) The Lot Owners shall each be liable for an equal one-third share of the cost of maintaining the Stormwater Management System to be constructed for the purpose of capturing and managing the drainage and stormwater from the Lots as set forth in the SWPPP. The Stormwater Management System shall consist solely of the improvements and infrastructure set forth in the Project Documents. The maintenance and repair obligations set forth herein regarding the Stormwater Management System, as well as any maintenance and repair obligations required by the Town Engineer of the Town of Ossining, shall be in accordance with the SWPPP and the Maintenance Plan, and shall include all costs incurred for regular maintenance and repairs required to keep the Stormwater Management System in good clear and functional condition. In the event that the Lot Owners shall have failed to perform its/their maintenance obligation imposed in this Declaration, then the

Town of Ossining shall have the right, but not the obligation, to enforce this obligation by performing the required maintenance and/or repairs and charging the Lot Owners for the respective shares of said cost. In the event that the Town of Ossining performs the required maintenance and/or repairs in accordance hereof, then upon issuance of written notice by first class mail from the Town of Ossining of the charges incurred in connection therewith to the Lot Owners (as shown on the Tax Assessor's records) and the failure to pay same within 10 days following issuance of such notice, the Lot Owners agree that the Town may unilaterally file a Notice of Lien against Lots 1, 2, and 3, without any further notice or proceedings.

- (b) The Lot Owners shall collectively enter into an annual contract with a reputable contractor (to be selected by agreement of a majority of the Lot Owners), who is qualified and knowledgeable in the maintenance of stormwater management systems. Said contractor shall undertake any and all inspection and/or maintenance required in accordance with the SWPPP, the Maintenance Plan, and as appropriate, the instructions of the Town Engineer of the Town of Ossining in accordance with the SWPPP, and in further accordance with the most current NYSDEC Stormwater Management Design Manual (or equivalent replacement publication). A copy of the contract must state that the contractor shall provide a copy of both the contract and any reports required by the SWPPP, the Maintenance Plan, or set forth herein to the Town on an annual basis.
- (c) As set forth in the SWPPP and the annexed Maintenance Plan, the Lot Owners shall each be individually responsible for the maintenance and repair of any and all stormwater collection and conveyance facilities (including, but not limited to, infiltration facilities) located on their respective lots that are not part of the Stormwater Management System.
- (d) The maintenance of both the Stormwater Management System and all other stormwater improvements located on the individual lots shall comply with the SWPPP, as set forth in the Maintenance Plan annexed hereto.

5. Duration. The Easement and Covenants created herein shall run with the respective land in perpetuity, unless otherwise stated, and shall bind all Lot Owners and their respective successors, heirs, executors, administrators, personal representatives, and assigns.

6. Insurance. The agents, servants, and employees, or any persons acting for or under the Lot Owners, including, but not limited to, the selected contractor referred to in Paragraph 3(b) herein, shall obtain and maintain general liability insurance in the amount of One Million Dollars to protect against all claims for personal, property, and bodily injuries and damages related to or arising out of the construction, installation and maintenance of the Stormwater Management System.

7. Enforcement. The Lot Owners and/or the Town shall have the right to enforce this Declaration by any proceeding at law or in equity against any person or persons violating or attempting to violate this Declaration, to restrain said violation, to require specific performance and/or to recover damages, and to recover any reasonable legal fees incurred by the prevailing party in connection with such proceeding. Failure by the Lot Owners and/or the Town to enforce any provision herein contained shall not be deemed a waiver of the right to do so thereafter.

8. Amendment. This Declaration may not be modified or amended unless said document is in writing and signed by each of the Lot Owners, and duly recorded. Any such modification or amendment shall require the approval of the Town Board of the Town of Ossining.

9. Severability. Invalidation of any one of the provisions of this Declaration by judgment or court order shall not affect the validity of any other provision, which shall remain in full force and effect.

10. Singular and Plural Form. Whenever the sense of this Declaration may make it necessary or appropriate, any singular word or term used herein shall include the plural and any masculine word or term shall include the feminine and/or neuter genders and vice versa.

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

[Metes & Bounds]

EXHIBIT C

[Resolution]

EXHIBIT D

[Maintenance Plan]

EXHIBIT D
MAINTENANCE PLAN
For 94 Somerstown Road Subdivision

Prepared by ALP Engineering & Landscape Architecture, PLLC
July 31, 2025

Introduction

Stormwater management practices (SMP) are being proposed to control the rate of and to improve the quality of the runoff from the subdivision. SMP's are to be constructed and installed in accordance with the approved plans and thereafter be inspected, used, maintained, repaired and replaced in perpetuity in order to insure that they continue to function in the manner for which they are intended for the duration of the use of the project.

In addition, plantings are proposed as mitigation in the wetland, wetland buffer and upland areas of the property for the site and stormwater drainage improvements associated with the residential subdivision of the property. Mitigation includes the installation of native trees, shrubs and herbaceous species.

Drainage and wetland mitigation planting plans may be referenced on the following plans prepared by ALP Engineering and Landscape Architecture, PLLC:

<u>Drawing No.:</u>	<u>Drawing Title:</u>	<u>Date:</u>
C-102	Grading and Utilities Plan	08/03/2025
C-106	Landscape / Tree Planting Plan	08/03/2025

Protocol for the Commencement of Post-Construction Monitoring Period

Following the installation the stormwater management practices and the mitigation plantings, the Town shall receive a list of the plant materials that have been installed by the contractor. Upon completion of the Town's review of the installed plantings, the guarantee and monitoring periods will commence.

Assurances

The applicants, Jennifer and Pascal Smith Couti will be responsible for the maintenance of the plantings for a period of two years from the commencement of the Town's review of the installation. Maintenance will involve watering of plants. Following that, the individual homeowner will be responsible to ensure that all mitigation plantings have a minimum 85% survival and/or coverage rate, which must be met or exceeded at the end of the second growing season. If the 85% survival rate is not met at the end of the second growing season, the homeowner shall take measures to ensure the level of survival by the end of the next (third, fourth or fifth) growing season, including re-planting and regrading if necessary.

Invasive Plant Removals

Invasive species which are growing on trees to be removed will correspondingly be removed by the applicants. The applicants may also clear invasive species as a part of general lot clean up. Once the lots are sold, it is the homeowner that can choose to manage the invasive species on their property.

Rain Gardens Maintenance:

Inspection Frequency:

Level 1 Inspection:

During the first 6 months of operation, during the growing season which runs from April through October, it is recommended that the rain garden inspected at least twice, and after each storm event greater than 0.5” of rainfall depth. The rain garden should have no standing water 72 hours after the end of the rainfall event.

Maintenance Frequency:

At least 4 times during the growing season, the rain garden plants should be pruned, the area weeded, and mowed around; have any sediment removed with a shovel; and have any dead and damaged plants replaced, as needed.

In the spring and fall, have bare areas reseeded if applicable, and have shredded hardwood mulch replenished to a 3” depth.

Triggers for Level 2 Inspection:

- Water ponding on the surface for more than 72 hours after a storm event
- Sparse or out of control vegetation
- Erosion at the inlet or outlets
- Significant sediment accumulation

Triggers for Level 3 Inspection:

- Standing water caused by clogged media
- Vegetation management needed
- Severe erosion in the rain garden
- Significant sediment accumulation

Stormwater Management Basin (Extended Detention Basin) Maintenance:

Level 1 Inspection:

When to Inspect: At least 1 time per year in early spring. Additional inspection following major storm events of over 0.5" of precipitation depth.

Maintenance Frequency: At least 2 times per year, the emergency overflow should be cleared of any obstructions.

Remove buildup of trash or sediment during every inspection.

In seed mix area, when the vegetation height reaches 18-24", use a brush hog mower or string trimmer to trim the meadow to 8". Weeds should be hand pulled.

Triggers for Level 2 Inspection:

- Extensive bare soil and erosion in the drainage area
- Inlet pipes buried or covered with vegetation
- Excessive sediment buildup or overgrown vegetation

Triggers for Level 3 Inspection:

- Severe erosion of the basin
- Erosion at the inflow pipe or the outlet
- Major sediment buildup

Subsurface Chambers:

Inspect the chambers following construction. Following that initial inspection, inspect annually in the spring (April 15 through May 15). Inspect for: (i) depth of any sediment in the chamber, and (ii) presence of standing water in the chamber between 48 and 72 hours following the end of a runoff producing precipitation event.

Maintenance Tasks:

- Periodic cleaning of sediment deposition within the chambers.
- Periodic removal of any sediment from the catch basins that collect runoff that convey flow to the chambers.

Glossary:

Level 1: maintenance activities conducted by the property owner for the privately owned stormwater management practice (SMP).

Level 2: assistance from an individual with training in stormwater management practice inspection, operation and maintenance, may be necessary

Level 3: a Qualified Professional or specialized expert is needed to return the SMP to proper functioning condition

EXHIBIT E

[Drainage Easement Area Metes & Bounds]