

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration made on the date hereinafter set forth by ADAM HERSCH, with a post office address at 10 Sea Island Lane, Daufuskie Island, South Carolina, 29915, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property located on Erskine Drive in Lee, Berkshire County, Massachusetts, commonly known as ERSKINE DRIVE SUBDIVISION which is shown on a Plan entitled "Definitive Plan of Building Lots of Erskine Drive Subdivision surveyed for Erskine Park, LLC" prepared by SK Design Group, Inc. and recorded in the Berkshire Middle District Registry of Deeds (the "Registry") on July 18, 2006, in Plat H, No. 146 (hereinafter referred to as the "Plan"). Together the lots shown on the Plan are referred to as the "Property."

WHEREAS, it is the purpose of these Covenants, Conditions and Restrictions to provide an outline for the development and maintenance of the Property for single family residential use with the intention to preserve and protect the natural beauty and wooded character of the Property for the benefit of its Owners .

WHEREAS, the Declarant hereby establishes a set of covenants, conditions and restrictions which shall benefit and encumber the eight (8) lots (hereinafter referred to as the "Lots") which comprise the Property: Erskine Drive--the subdivision road servicing the Lots-- and the maintenance of the common elements including the stone walls and other appurtenances located on the Property; the drainage easements and structures (hereinafter referred to collectively as the "Improvements"); and the sewer line and sewer easement serving the Lots (hereinafter referred to as "Sanitary Sewer System"). Said Lots on said Plans are hereafter referred to individually as "Lot" or collectively as "Lots".

WHEREAS, the Declarant intends to hereby establish an association to be known as "The Erskine Drive Homeowners' Association" for the purpose of improving, repairing and maintaining the Improvements, and to implement and enforce all applicable restrictions as provided in this Declaration. Erskine Drive is to always remain a private road open to the public and shall not be offered to the Town of Lee as a public way.

NOW THEREFORE, Declarant hereby declares that all of the Property and the Lots shall be held, sold and conveyed subject to the following restrictions, covenants and conditions which shall run with, and shall be binding on all parties having any right, title or interest in the said Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each

owner thereof.

ARTICLE I

Definition

Section 1.1 "Association" shall mean and refer to Erskine Drive Homeowners' Association, an unincorporated Association comprised of the owners of the Lots at any given time.

Section 1.2 "Building Envelope" shall mean the area within the Lots within which Building Improvements must be confined as limited by the Town of Lee zoning setback requirements.

Section 1.3 "Building Improvements" shall refer to improvements carried out within the Building Envelope and shall include all buildings, garages, carports, sheds, stairs, decks, tennis courts, swimming pools, accessory uses and structures, but not the driveway leading thereto.

Section 1.4 "Declarant" shall mean and refer to Adam Hersch or his designee or assignee, which designation or assignment shall be in writing and shall be recorded with the Registry. Declarant shall also be considered an owner of any Lot which is a part of the Property and to which he holds title.

Section 1.5 "Lot" shall mean and refer to Lot 1 – 8 on the Plan.

Section 1.6 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, but excluding those having such interest merely as security for the performance of an obligation. Each Lot shall be represented by one Owner designated by the Owners of said Lot so that each Lot shall have one vote in the Association.

Section 1.7 "Drainage Easement" shall mean and refer to the two (2) such easements within the subdivision shown on the Plan and running from Erskine Drive along the westerly boundary of Lot Golden Hill Rd., and the easterly boundary of Lot One; and the other easement shown on the Plan as running between and along the westerly boundary of Lot Seven and the easterly and northerly boundaries of Lot Six. In the event of the dissolution of the Association, ownership of the Drainage Easements shall vest in the Owners as tenants in common. The Drainage Easements are one component of the "Storm Drainage System" which shall mean and refer to the Drainage Easements, catch basins, pipes, manholes, inlets and outlets designed to accommodate water runoff from Erskine Drive and the Building Improvements thereon.

Section 1.8 "Sanitary Sewer System" shall mean and refer to the forced main system of trunk lines, pipes, equipment and appurtenances necessary for the transportation of sewage shown on the "Sewer Extension Permit Application prepared for Erskine Park, LLC Golden Hill Road, Lee,

Massachusetts" dated January 2006 by SK Design Group, Inc., and continuing therefrom through the Property at a location to be determined by the Declarant (hereinafter the "Sewer Easement") and shall include all pipes running from said trunk line to the individual dwellings on each of the Lots (hereinafter the "Dwelling Service Pipes").

ARTICLE II
Restrictions

Section 2.1 The Restrictions in this Article II shall apply to all lots comprising the Property.

Section 2.2 No principal building shall be erected on a Lot except one single-family dwelling or one two-family dwelling as allowed in the Residential-Agricultural (RA-40) zoning district. Any accessory building and/or garage erected on said Lot or Lots must conform in appearance and material with the dwelling on that Lot and the appearance of any accessory structure shall not be detrimental to the general area. The buildings and/or Lots or any part thereof shall be used for private residential purposes only in accordance with those residential uses permitted under the Lee Zoning Bylaw. All Building Improvement shall occur within the Building Envelope.

Section 2.3 No shacks, tents (except for such temporary tents as are necessary for special events), mobile homes, recreation vehicles or recreation trailers, or unregistered automobiles or automobile trailers shall be built, constructed or maintained, or placed on the Lot or any part thereof. This Section shall not apply to boat trailers or any of the above trailers or vehicles if garaged. No temporary structure, mobile home, house trailer or shelter of any kind shall be built, erected or maintained on the premises, except as necessary for and used by a contractor in the course of construction, reconstruction or remodeling of a dwelling.

Section 2.4 Lots and buildings thereon shall be maintained in a neat, clean and first-class condition. No Building Improvement shall be permitted to fall into disrepair, and each such Building Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

Section 2.5 All private single-family dwellings must have complete sanitary plumbing with toilet facilities and all sewage or wastewater must be disposed of by connection to the Town of Lee municipal sewer system.

Section 2.6 No horses, miniature horses, cattle or any livestock whatsoever shall be kept, bred or raised upon the Lot or any building thereon erected or any part thereof. Common household pets shall not be proscribed by this paragraph.

Section 2.7 No Lot or portion thereof shall be further subdivided to increase the number of building lots to exceed eight. This shall not prohibit the adjustment of Lot lines provided the total number of building lots comprising the Property shall not exceed eight.

Section 2.8 All devices for separation or screening used as fences, screens, and retaining walls are to be built of masonry, wood, stone, earth, or natural vegetation. Non-vegetative fences or walls shall conform to the Lee Zoning Bylaw.

Section 2.9 All fuel oil tanks must be placed in the primary dwelling's basement, and all utility lines from the street to the dwelling must be installed underground. No underground storage tanks for fuels or chemicals of any type may be installed or placed or allowed on any part of the Property herein, except for propane.

Section 2.10 No radio or television antennas or outdoor clothes lines shall be built, erected, used, or maintained on the Lot. Satellite dishes or discs may be constructed provided that they are eighteen (18) inches or less in diameter and not visible from Erskine Drive.

Section 2.11 No refuse, rubbish, vehicle parts, junk, waste, stumps, brush or debris of any kind shall be placed or permitted to accumulate upon any Lot. No fill or other rocks shall be placed or permitted to accumulate upon any Lot which will or may render any such Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other part of the Property. No garbage, refuse or trash shall be placed or kept on any Lot, except in covered containers, and said containers shall be garaged or otherwise hidden from the view of those persons traveling on Erskine Way at all times, except on the day(s) of collection.

Section 2.12 All outside lighting shall be designed to provide a low level of lighting appropriate for the residential area, to avoid creating glare, "sky-glow", or nuisance. All outside lighting shall utilize low intensity light fixtures and bulbs. High intensity discharge (HID) lights shall not be used. Any post lights or lantern lights shall be mounted so the top is no higher than eight (8) feet above ground, and the top of the fixture shall be opaque to prevent "sky glow". Other outside lighting mounted higher than eight (8) feet shall be equipped with "full cutoff shields or housings so that no portion of the light source (bulb) is visible above a horizontal plane, and the resulting light shall not exceed 0.2 foot-candles measured at ground level at any side or rear property line. No outside light shall be mounted higher than twenty-five (25) feet.

Section 2.13 Any damages caused to Erskine Drive by any Owner or their agents, their contractors or their guests, resulting from construction or any activity other than routine residential use shall be assessed against the responsible Owner and promptly repaired by the Association at the

expense of said responsible Owner.

Section 2.14 Each Owner shall avoid interfering with the natural flow of surface water that occurs between its Lot and those of other Owners, either to increase or decrease said flow.

ARTICLE III

Enforcement

Section 3.1 The provisions of this Declaration have been adopted for the benefit of the Owners of Lots which comprise the Property. Therefore, the violation or attempted violation of any covenant or restriction in the Declaration is hereby declared a nuisance which may be remedied by an appropriate legal proceeding. If any Owner shall attempt to violate or permit any violation of any of the covenants, restrictions or reservations described above, the Declarant or the Association may commence proceedings at law or in equity to recover damages or other awards for such attempts, violations or permitting of the same, or to enjoin the furtherance or continuation of such attempts or violations or both.

Section 3.2 All restrictions in this Declaration shall run with the land and shall be binding on all parties claiming under them for a period of up to fifty (50) years from the date of the recording of this Declaration of Covenants, Conditions and Restrictions in the Berkshire Middle District Registry of Deeds. Said restrictions shall be for an initial term of thirty (30) years and shall be subject to recordation of a Notice of Extension of said restrictions in accordance with Massachusetts General Laws, Chapter 184, Section 27, for an additional twenty (20) year term. Validation of any one of these covenants by judgment or decree shall in no way affect any of the other provisions hereof which shall remain in full force and effect.

ARTICLE IV

Covenant for Maintenance Assessments

Section 4.1 The Declarant, for each Lot owned, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments (together with interest, costs and reasonable attorney's fees, if delinquent), shall be a charge on each Lot, and shall be a continuing lien upon the Lot against which each such assessment is made in accordance with Section 4.2 below.

Section 4.2 Each Owner agrees that by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, Erskine Drive, the subdivision road serving the Lots, is to always remain as a private road open to the public and shall not be offered to the Town of Lee as a public way.

Section 4.3 The assessments levied by the Association shall be used exclusively to improve, repair and maintain the Improvements and to implement and enforce all applicable restrictions as provided in this Declaration. This Assessment shall be assessed only to the Owners. The maintenance of Erskine Drive shall be pursuant to the Road Maintenance provisions per Section 4.3.1; the Storm Drainage System Maintenance per Section 4.3.2; and the Sanitary Sewer System Maintenance per Section 4.3.3, all as set forth below. The annual assessment to each Lot shall be one-eighth of the cost to improve, repair and maintain the Improvements and one-thirteenth the cost to repair and maintain the Sanitary Sewer System along with the cost to implement and enforce all applicable approvals and restrictions as provided in this Declaration above.

Section 4.3.1 "Road Maintenance" is defined as snow removal, sanding and de-icing, as necessary to provide safe and adequate access, including emergency vehicles, and street sweeping annually in the spring with disposal of sweepings offsite at an approved location. Snow banks shall be pushed back to maintain the full width of the traveled way. Access to fire hydrants shall be maintained at all times. The surface of the road, the curbs and the shoulder shall be maintained in good and safe condition, plus repair of the surface of any trenches across or along the road that might be necessary for repair or replacement of utilities, regardless of whether the utility work is performed by the Town of Lee, utility company or privately. The Owners and Association acknowledge that upon acceptance of the water lines by the Town of Lee, the responsibility of the Town of Lee for the repair or replacement of water lines located under Erskine Drive shall be only to backfill the trenches necessary for repair or replacement of the water lines, and the repair of the bituminous concrete surface of Erskine Drive shall be the sole responsibility of the Owners and the Association.

Section 4.3.2 The "Storm Drainage System Maintenance" is defined as maintenance of all components of the drainage system necessary to properly control storm water runoff, prevent erosion and sedimentation and maintain water quality of water bodies receiving runoff, and the operation, maintenance, repair and replacement of the components as necessary. This includes but is not limited to: routine maintenance of catch basins located in Erskine Drive and in the Drainage Easement by inspecting quarterly and cleaning inlets, removing silt and sediments from sumps annually in the spring, at a minimum; keeping grates and inlets open and free from obstructions; preventing accumulation of sediments in the drainage manholes, drainage pipes and at outlets of those pipes; disposal of sediments and debris off site at an approved location in accordance with applicable state and federal laws and regulations; and all work necessary to properly maintain and operate the Storm Drainage System.

Section 4.3.3 "Sanitary Sewer System Maintenance" is defined as maintenance of the Sanitary Sewer System, with the exception of the Dwelling Service Pipes from the trunk line to the dwelling. Maintenance of the Sanitary Sewer System shall be the sole responsibility of the Association and maintenance of the Dwelling Service Pipes shall be the sole responsibility of the Owners of each Lot serving their individual dwellings. The responsibility for the Sanitary Sewer system shall extend to the point of connection with the Town sewer line located on Golden Hill Road, a public way, and through the Sewer Easement to the cul-de-sac on Erskine Drive, so-called. It is understood and agreed that the Sewer Easement shall extend through the Property and connect to land previously owned by the Declarant and now owned by the owners / members of the Pinnacle Way Homeowners' Association, which land is as described in the deed to the Declarant from Francis Newton and Mary Newton dated February 23, 2006 and recorded on March 1, 2006 in the Berkshire Middle District Registry of Deeds in Book 3464, Page 155 and which land has been subdivided into eight (8) lots on a private way known as "Erskine Drive" (hereinafter referred to as "Adjacent Property"), all of which are to be connected to the Town sewer system through the Sewer Easement, but the maintenance and obligations for that portion of the Sanitary Sewer System running from the cul-de-sac on Erskine Drive, so-called, and continuing through the Property to the Adjacent Property shall be the responsibility of the Homeowners' Association and the owner of the Adjacent Property, the Pinnacle Way Homeowners' Association and/or its successors or assigns. In addition, until such time as Declarant conveys the common elements to the Association, Declarant and its successors and assigns, shall be responsible for eight-thirteenths of the cost of maintenance and repair of that portion of the Sanitary Sewer System (except for the dwelling service pipes) which runs from the Town sewer line located on Golden Hill Road through the Sewer Easement to the cul-de-sac on Erskine Drive. The Association shall have the right to enforce this obligation against the Declarant, its successors and assigns. All maintenance and repairs required on that portion of the Sanitary Sewer System located as set forth above and in the Sewer Easement or on the private way (Erskine Drive), including pavement repairs, shall be coordinated by the Association with the Town of Lee Department of Public Works, and shall be the sole responsibility and cost of the Association. All maintenance and repairs required on that portion of the Sanitary Sewer system located in the public way (Golden Hill Road) connecting Erskine Drive to the main on Laurel Street/Route 20, including pavement repairs, shall be the sole responsibility and cost of the Town of Lee. All maintenance and repair shall be in accordance with the Department of Public Works Construction Standards in effect at the time of the maintenance and repair. Upon written request from the Town of Lee, the Association shall deliver to the town within thirty (30) days copies of all plans, documents, records, and relative documents associated with the Sanitary Sewer System. In the event of the dissolution of the Association, ownership of the Sanitary Sewer System and the maintenance obligations therefor shall vest in the Owners of the Lots as tenants in common. There shall be no building or construction of any kind on or within the Sewer Easement that would obstruct the Sewer Easement, except as may be necessary for driveways and underground utilities.

Section 4.4 The Fiscal Year shall be a calendar year. Written notice of the annual assessment

shall be sent to every Owner of a Lot by the Directors within fourteen (14) days of the establishment of the assessment. The due date for payment shall be May 1 for the period of January 1 through December 31 unless an alternate date is established by the Association. The Association shall, upon demand and for a reasonable charge, furnish a certificate in recordable form signed by one Director of the Association (other than the Owner of the subject Lot) setting forth whether the assessments on a specified Lot have been paid; a certificate so issued shall constitute conclusive evidence of payment unless otherwise noted thereon.

Section 4.5 The Directors shall establish two funds. The purpose of the funds is for repairs and/or maintenance of the Improvements; and the repair and/or maintenance of the Sanitary Sewer System. The funds shall be designated as "Fund One" and "Fund Two". Fund One shall be for all Improvements with the exception of the Sanitary Sewer System. Fund Two shall be for the Sanitary Sewer System. Fund One shall be funded by the annual assessments to the Owners and any special assessment levied by the Association. Fund Two shall be funded by an initial assessment of Two Hundred Fifty (\$250.00) DOLLARS per Lot, and an annual assessment to be determined by the Association.

Section 4.6 Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date to the date paid at the maximum interest rate as allowed by Massachusetts law. The Association may bring an action at law against the Owner personally obligated to pay same, or foreclose the lien against the Lot in accordance with Massachusetts General Law, Chapter 254, Sections 5 and SA. No Owner may waive or otherwise avoid liability for the assessments provided for herein by non-use or abandonment of its Lot (a "Legal Action"). In the event a Legal Action is brought by the Association, it shall be entitled to recover from the defaulting Lot owner the costs of such action including but not limited to its attorney's fees associated with such action.

Section 4.7 The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage to a bank or other lending institution. Sale or transfer of any Lot shall not affect such lien; however, the sale or transfer of a Lot pursuant to mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish the lien relating to those payments which became due prior to such sale foreclosure. No sale or transfer by a foreclosing Mortgagee shall relieve the Owner of such Lot from liability for any assessments incurred prior to or after the foreclosure.

ARTICLE V Membership

Section 5.1 The Association shall be organized to improve, maintain and repair the Improvements as well as to implement and enforce all applicable restrictions. The Association shall have authority to accept the title to Erskine Drive.

Section 5.2 The members of the Association shall be limited to Owners as defined in Section 1.9 above.

Section 5.3 Meetings of the Owners may be called for such time and such place as the Directors may from time to time determine. There shall be called and held each year, commencing in the next calendar year after the recording of this Declaration, on or before July 15th, and an "Annual Meeting" for the purpose of electing Directors, setting the annual assessment and transactions of such other business as the Directors or Owners shall determine. Special meetings may be called by a majority of the Directors or by the written request of two Owners. A written notice stating the place, day, hour and purpose of each meeting of the Association shall be mailed to each Owner at his or her address appearing on the records of the Association at least ten (10) days before the date of such meeting. A quorum at any meeting of the Association shall consist of three (3) of the Owners, and such Owners may act by a majority vote of those present.

ARTICLE VI

Board of Directors

Section 6.1 Without limiting the generality of the foregoing purposes and an extension of said purposes, the Board of Directors of the Association is empowered to carry out the purposes of the Association which is to provide for the improvement, repair, and maintenance of the Improvements, and to implement and enforce all applicable approvals and restrictions as provided in Article II above.

Section 6.2 There shall be eight Directors of the Association hereunder with each Owner automatically becoming a Director upon the purchase of a Lot; however, no more than one (1) Owner from each Lot shall be a member of the Board of Directors. Any five of the Directors shall constitute a quorum. A Director shall not be liable for any error of judgment or for any loss arising out of any act or omission in the execution of his or her duty so long as he or she acts in good faith, but shall be responsible only for his or her unlawful breach of trust. No Director shall be required to furnish a bond. A Director shall be entitled to reimbursement by the Association with respect to obligations and expenses properly incurred by him or her in the performance of his or her functions, but shall not be entitled to any compensation for his or her service as a Director. The Directors of the Association may take action hereunder with or without a meeting. Such Director's meeting may be held by conference telephone call. The Directors shall maintain all books and records pertaining to the Association which shall be open to inspection by any Owner at all reasonable times and shall prepare and send to each of the Owners annually, reports, accounting and financial statements of the management and affairs of the Association, including a report and financial statement for each fiscal year of the Association to be distributed at least ten (10) days prior to the date of any Annual Meeting of the Owners.

except its right to the use, for the benefit of the Adjacent Property, of the Sewer Easement and other utility connections, including, but not limited to, water, electricity, cable and natural gas.

Section 7.2 This Declaration may be amended by a writing executed by at least six (6) of the Owners and filed with the Registry. The Association and the Declaration of Covenants, Conditions and Restrictions may be terminated by a writing executed by all of the Owners, provided that any such notice of termination shall be properly acknowledged and registered in the Registry, subject to the condition that the termination of the Declaration of Covenants, Conditions and Restrictions does not vitiate any conditions of any permits covering the Property issued by the Town of Lee, or the obligations of the Owners to maintain Erskine Drive; the Storm Drainage System and the Sanitary Sewer System as provided for in this Declaration.

IN WITNESS WHEREOF, the Declarant hereto has executed this Declaration of Covenants, Conditions and Restrictions as of this 11 day of January, 2021.




Adam Hersch

STATE OF SOUTH CAROLINA

_____, ss.

On this 11th day of January, 2021, before me, the undersigned notary public, personally appeared ADAM HERSCH, proved to me through satisfactory evidence of identification, which was personally known to me to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.



Michelle McDermott Barrett, Notary Public
My Commission Expires: July 22, 2029

