

EASEMENT AGREEMENT AND RIGHTS OF FIRST REFUSAL

This **EASEMENT AGREEMENT AND RIGHTS OF FIRST REFUSAL** (the “Agreement”) is made this ___ day of _____, 2021, by and between **MARY BRESLAUER AND REBECCA HAAG**, of P.O. Box 181, Chilmark, MA 02535 (hereafter referred to as “B&H”), and the **UNITARIAN UNIVERSALIST SOCIETY OF MARTHA’S VINEYARD**, a religious organization, with a principal place of business in Tisbury, MA, and a mailing address of P.O. Box 1236, Vineyard Haven, MA 02568, (hereafter referred to as “UUSMV”).

WHEREAS, B&H are the owners of the land with the improvements thereon more particularly shown as “Lot 1 15,932 s.f.” (“Lot 1”) on a plan entitled “Plan of Land in Tisbury, Mass. Prepared for South Mountain Company, Scale 1”=20’ November 14, 2016 Schofield, Barbini & Hoehn,” (the “Plan”), which Plan is recorded with the Dukes County Registry of Deeds (the “Registry”) in Plan Book 18, Page 54. For title information see deed dated August 21, 2020 and recorded with the Registry in Book 1539, Page 898; and

WHEREAS, UUSMV is the owner of the land with the improvements thereon more particularly shown as “Lot 2 7,500 s.f.” (“Lot 2”) on the Plan. For title information see deed dated January 26, 2017 and recorded with the Registry in Book 1428, Page 870; and

WHEREAS, B&H’s predecessor in title, South Mountain Company, Inc. (“SMC”), and UUSMV entered into an Easement and Covenant Agreement, dated January 26, 2017 and recorded with the Registry in Book 1428, Page 873, as amended by First Amendment to Easement and Covenant Agreement dated August 21, 2020, recorded with the Registry in Book 1539, Page 893 (the “Amended Easement and Covenant Agreement”) containing provisions for a shared driveway, reciprocal rights of first refusal, and land use covenants and restrictions for Lot 1 and Lot 2 on the Plan; and

WHEREAS, at the time SMC and UUSMV entered into the Easement and Covenant Agreement, SMC contemplated developing several additional units of housing on Lot 1; and

WHEREAS, instead, SMC sold Lot 1 to B&H, and B&H has now renovated the dwelling and restored Lot 1 as a single-family property; and

WHEREAS, in light of B&H’s restoration of Lot 1 as a single-family property, the parties wish to terminate the Amended Easement and Covenant Agreement and enter into a new Agreement granting a shared driveway easement to each Lot and reciprocal rights of first refusal.

NOW THEREFORE, for good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, B&H and UUSMV hereby agree as follows:

1. **Termination and Supersession.** The Easement and Covenant Agreement, dated January 26, 2017 and recorded with the Registry in Book 1428, Page 873, and the Amended Easement and Covenant Agreement dated August 21, 2020, recorded with the Registry in Book 1539, Page 893 are superseded and replaced in its entirety by this Agreement. Accordingly, upon the recording of this Agreement,

the Easement and Covenant Agreement and the Amended Easement and Covenant Agreement shall terminate and be of no further force and effect.

2. **Shared Driveway Easement:** B&H hereby grants to UUSMV the non-exclusive perpetual right and easement, appurtenant to Lot 2, in, over and across that portion of Lot 1 shown as “8’ Driveway Easement” on the sketch plan entitled “Easement Plan Tisbury, Mass. Scale: 1’=30’ August 7, 2020 Schofield, Barbini & Hoehn, Inc., Land Surveying Civil Engineering, 12 Surveyor’s Lane, Box 339 Vineyard Haven, Mass.,” attached hereto as Exhibit A and incorporated herein by reference (the “Shared Driveway”), for ingress and egress to and from Lot 2 and for all purposes for which streets and ways are used in the Town of Tisbury, including, without limitation, the installation, maintenance, repair, and replacement of utilities. Neither UUSMV or B&H shall be permitted to park any vehicles, store any vehicles or place anything in, on or over the Shared Driveway, except for materials required to maintain it and except for underground utility lines. UUSMV may not build, erect, install, or maintain any fences, gates, signs, walls, or other improvements in, on, or over the Shared Driveway.

UUSMV hereby grants to B&H the non-exclusive perpetual right and easement, appurtenant to Lot 1, in, over and across that approximate portion of Lot 2 and the parcel of land owned by UUSMV and shown on the Plan as 238 Main Street, which parcel is more particularly described in a deed dated December 6, 1963 and recorded with the Registry in Book 251, Page 40, on which the Shared Driveway is located, for ingress and egress to and from Lot 1 and for all purposes for which streets and ways are used in the Town of Tisbury, including, without limitation, the installation, maintenance, repair, and replacement of utilities. Neither B&H or UUSMV shall be permitted to park any vehicles, store any vehicles or place anything in, on or over the Shared Driveway, except for materials required to maintain it and except for underground utility lines. B&H may not build, erect, install, or maintain any fences, gates, signs, walls, or other improvements in, on, or over the Shared Driveway.

B&H shall have the right and obligation to repair and maintain (including, without limitation, snow plowing) the Shared Driveway, and shall maintain it in a good and workmanlike manner. B&H shall notify UUSMV reasonably before performing any repairs, maintenance, or replacements other than ordinary and routine maintenance.

Notwithstanding anything to the contrary contained herein, if as a result of entry onto the Shared Driveway by either UUSMV or B&H, as the case may be, or their agents, employees, licensees, contractors, representatives, visitors, and invitees, the Shared Driveway is damaged, then UUSMV or B&H, as the case may be, shall promptly restore it to as near to its original condition as possible, at the sole cost and expense of the responsible party/host.

3. **Right of First Refusal.** UUSMV and B&H shall each have a forty-five (45) day Right of First Refusal to purchase the property of the other (being Lot 1 and Lot 2), which right shall run in perpetuity, pursuant to the following terms:

Neither UUSMV nor B&H shall in any manner sell Lot 1 or Lot 2 or any part thereof, except pursuant to an Offer to Purchase and in accordance with all of the terms and conditions contained in this Paragraph. Any conveyance made in violation of the terms of this Paragraph shall be void.

Fifteen (15) days before listing property for sale, the party wishing to sell its property shall give the other party notice of its intention to sell the property.

If either UUSMV or B&H (as "Offeror") receives a bona fide, binding written offer from a person or entity not affiliated with such party to purchase such party's lot, or any part thereof (an "Offer to Purchase"), such party (the "Selling Party") shall give written notice thereof (the "Offer Notice") to the other party (the "Other Party") in the manner below, including a copy of the Offer to Purchase and all exhibits or other documents referred to or incorporated therein. The Other Party shall have forty-five (45) days from the date the Offer Notice is given within which to give written notice to the Selling Party (in the manner provided in paragraph 6, below) of the Other Party's agreement to purchase the lot on the same terms and conditions as set forth in the Offer to Purchase. (the "Acceptance Notice").

If the Other Party so gives an Acceptance Notice to the Selling Party, the Selling Party shall sell the lot to the Other Party, and the Other Party shall buy the lot from the Selling Party, on such terms and conditions. If the Other Party does not give an Acceptance Notice to the Selling Party within said forty-five (45) day period (or if the Other Party by written notice to Selling Party earlier waives its right to purchase), the Selling Party shall be free to convey the lot, but only on the terms and conditions set forth in the Offer to Purchase (and not otherwise).

If the Selling Party does not so convey the lot, the lot shall remain subject to the terms of this agreement and may not thereafter be conveyed without first being offered to the Other Party in the manner provided above.

The right of the Other Party to purchase the lot in accordance with the above shall not apply to the foreclosure of any mortgage or other security interest held by any institutional lender on or in the lot or to any conveyance in lieu of the foreclosure thereof; provided, however, that any mortgage shall be subject hereto, as shall title in the hands of a successor in title to the lot taking on foreclosure sale or otherwise in lieu of foreclosure.

This agreement shall not prevent the transfer of title to the Premises by gift, or by will or intestate succession, but title in those who take thereby shall remain subject to this agreement. This agreement shall not apply to any transfer of title by

operation of law not covered above, but the title of those taking thereby shall remain subject to this agreement.

4. **Indemnification.** UUSMV and B&H each hereby agrees to indemnify and save the other harmless from and against all loss, demands, causes of action, costs and expenses, claims, liability, or damages, including reasonable attorneys' fees and disbursements, caused by, related to or in any way arising out of the exercise by UUSMV or B&H, or their respective agents, employees, licensees, contractors, and representatives of the easement rights granted herein, or as a result of or in connection with any failure by UUSMV or B&H to comply in any material respect with the provisions of this instrument.
5. **Successors Bound.** The rights granted in this Agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto and their heirs, devisees, executors, administrators, successors, and assigns as owners of their respective above-described properties. The terms "B&H" and "UUSMV" as used herein shall include each such party's heirs, devisees, executors, administrators, successors, and assigns, as owner of Lot 1 and Lot 2, as the case may be.
6. **Notice.** Any notices given hereunder shall be in writing and shall be delivered in hand, mailed postage prepaid, by registered or certified mail, return receipt requested, or shall be sent by Federal Express or another nationally recognized overnight delivery service, addressed to the party for whom the notice is intended at the address of such party maintained by the Board of Assessors for the Town of Tisbury. Any such notices shall be deemed given when so delivered by hand, or if so mailed, when deposited with the U.S. Postal Service, or, if so delivered by such overnight delivery service, when deposited with said overnight delivery service.
7. **Miscellaneous.** This Agreement sets forth the entire Agreement between the parties hereto concerning the subject matter hereof, and it may not be amended, except by written instrument executed by all parties. The Agreement shall be governed by and enforced under the laws of the Commonwealth of Massachusetts, and it may be executed in multiple counterparts, each of which deemed an original and all of which, together, shall constitute one and the same Agreement. No waiver by any party of any breach by any other party of, or failure of any party to comply with, any condition or provision of this Agreement shall be deemed a waiver of any other breach or failure. The invalidity of any provision of this Agreement shall in no way affect the validity of any other provision.

[Remainder of page intentionally left blank. Signature page follows.]

EXECUTED as a sealed instrument on the date and year first above written.

Mary Breslauer

Rebecca Haag

**Unitarian Universalist Society
Of Martha's Vineyard:**

By:

Rita A. Brown, President

Janice E. Casey, Treasurer

Michael J. Savoy, Trustee

COMMONWEALTH OF MASSACHUSETTS

County of Dukes County

On this _____ day of _____, 2021, before me, the undersigned notary public, personally appeared Mary Breslauer, proved to me through satisfactory evidence of identification, being _____, 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 as her free act and deed.

Notary Public
My commission expires:

AFFIX :
NOTARIAL :
SEAL :

COMMONWEALTH OF MASSACHUSETTS

County of Dukes County

On this _____ day of _____, 2021, before me, the undersigned notary public, personally appeared Rebecca Haag, proved to me through satisfactory evidence of identification, being _____, 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 as her free act and deed.

Notary Public
My commission expires:

AFFIX :
NOTARIAL :
SEAL :

COMMONWEALTH OF MASSACHUSETTS

County of Dukes County

On this _____ day of _____, 2021, before me, the undersigned notary public, personally appeared Rita A. Brown, President as aforesaid, Janice E. Casey, Treasurer as aforesaid, and Michael J. Savoy, Trustee as aforesaid proved to me through satisfactory evidence of identification, being _____, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as their free act and deed, as President and Treasurer of Unitarian Universalist Society of Martha’s Vineyard.

Notary Public
My commission expires:

AFFIX :
NOTARIAL :
SEAL :