

DECLARATION AS TO EASEMENT, MAINTENANCE, COMMON UTILITY OF SHARED RIGHT OF WAY,
And COVENANTS AND RESTRICTIONS

TOWN OF OLIVE, ULSTER COUNTY, NEW YORK

This Declaration of Easement Maintenance, Common Utility of Shared Right of Way, and Covenants and Restrictions ("Declaration") is made _____ day of _____, 2023, by Ashokan Realty LLC, having an address at 201 West Realty LLC, New York, NY 10024 ("Declarant").

WHEREAS, Declarant is the owner in fee of premises formerly known as Section, Block and Lot "SBL" 54.1-1-16.310 , Town of Olive, County of Ulster, State of New York (the "Premises"), which property was acquired by deed dated August 23, 2022 and recorded in the Ulster County Clerk's Office as Instrument No. 2022-14847.

WHEREAS, the Premises are the subject of an approved subdivision as set forth and depicted on a map entitled "Sketch Plan for Concept Subdivision", prepared by Medenbach & Eggers Civil Engineering & Land Surveying, P.C. August 1, 2023 ("Subdivision Map");

The Map shows four parcels, identified as Lot 1, Lot 2, Lot 3 and Lot 4 all of which have the right to use a common right of way (the "ROW") for access, ingress and egress, as depicted on the Subdivision Map traversing Lot 1, Lot 2, Lot 3 and Lot 4; and

WHEREAS, Declarant, Declarant's successors and/or assigns and the owners of the Lots (hereinafter sometimes collectively referred to as the Lot Owners or the Owner(s) of the Lot(s)), will utilize the ROW for purposes of ingress to and egress from their respective premises; and

WHEREAS, written provision should be made for the maintenance of the ROW to promote the safety, security, benefit and general welfare of all those lot owners using the ROW;

WHEREAS, for the benefit of the Declarant, their successors and/or assigns and the future owners of premises who may utilize the ROW, the Declarant desires to provide for the proper care and maintenance, upkeep, snow removal and climatic maintenance of the ROW and a means by which certain costs related to the ROW shall be paid; and

WHEREAS, for the benefit of the Declarant, their successors and/or assigns and the future owners of premises, the Declarant desires to ensure that each Lot has adequate access to electric and telecommunication utility services.

NOW, THEREFORE, the following Declaration as to Maintenance of shared ROW (hereinafter alternately called the "Declaration" or "Agreement") is hereby made and shall run with the land and shall be binding upon the Declarant, Declarant's successors and/or assigns and all owners of Lots hereafter served by said ROW. The undersigned Declarant and Declarant's successors and/or assigns, by acceptance of a deed to any portion of the Lots affected by this Declaration, shall be bound by and considered as having accepted and agreed to these covenants and restrictions whether or not this Declaration is referred to in the Deed(s).

1. EASEMENTS AND DRAINAGE.

All owners of Lots served by the ROW or any portion thereof and all emergency, utility, and service vehicles shall have an easement and right of way in common over and across the ROW for ingress and egress by motor vehicle or otherwise to their Lot(s). The land adjoining the ROW shall also be subject to the right to drain or discharge water, ice or snow off the road or through culverts now or hereafter installed by Declarant, Declarant's successors and/or assigns or future owners of Premises who make use of the ROW under the Agreement. Driveways shall be constructed with landing areas, crowns and culverts so that water, ice and snow are not discharged onto the ROW. The land adjoining the ROW shall also be subject to Declarant's right to grant public utility easements and to the private right of each Lot Owner to install and maintain electric, cable and telecommunication lines over, under or within twelve (12') feet of the bounds of said ROW to service the Lots. However, no overhead utilities shall be permitted.

2. RESPONSIBILITY FOR EXPENSES.

The Owner(s) of the Lot(s) of lands shown on the above-referenced Map shall be responsible for all upkeep, maintenance and repair of the ROW and also snow removal, sanding and/or salting thereon and thereof, said items being sometimes referred to hereunder as expenses.

As of the date of this Agreement, the expenses shall be divided among the Owner(s) of Lot No. 1, Lot No. 2, Lot No. 3 and Lot No. 4 according to the following formula:

Lot No. 1 - 2x%

Lot No. 2 - 2x%

Lot No. 3 - 2x%

Lot No. 4 - 2x%

Each Owner subject to this Agreement shall also be individually responsible for the full cost of repair of any damage done to the ROW by heavy trucks, construction equipment or improper use of the ROW by that Owner, Owner's family, guests, invitees, employees, contractors or agents without regard to whether or not their Lot may be improved.

No additional work beyond that contemplated herein shall be performed or undertaken for which reimbursement is sought by Owner(s) unless and until the consent of all of the Owner(s) of the Lots then subject to this Agreement is obtained, regardless of the number of Lots owned by any one Owner. The term "Owner shall be defined as meaning the record title holder(s) of one or more improved Lots shown on the Subdivision Map.

3. MUTUAL WAIVER OF LIABILITY.

It is anticipated that the fee or ownership interest in the ROW will be conveyed to the Lot Owners subject to this Agreement and to the easements in common received and reserved herein.

To the extent legally permissible, each Owner for his, her or itself and to the extent applicable, their families, guests, agents, employees and invitees agree that the Declarant and the Town, and its respective officers, agents and employees shall not be held liable for any claim for property damage or personal injury arising out of the design or condition of the ROW or any act or omission relating thereto including but not limited to its construction, maintenance, up-keep, repair, snow removal, sanding or salting.

4. EXPENSES OF COLLECTION AND MORTGAGE SUBORDINATION.

In the event that any Lot Owner refuses to contribute such owner's proportionate share of the expenses within sixty (60) days of notice of payment of an expense being due, then all such unpaid sums due from such Lot Owner and the costs of securing the same may be secured by Mechanics' Lien and shall be due together with reasonable attorney's fees, costs and disbursements of collecting the same. Any such lien may be filed by Declarant, future Owner(s) of Lots and/or premises making use of the ROW or otherwise obligated under this Agreement or their successor who may also maintain any necessary legal proceedings in any Court of competent jurisdiction. Any litigation relating to this Declaration shall be required to be determined in the Courts of New York State with venue exclusively in Ulster County. Any and all sums which may become due hereunder shall be subject and subordinate to the lien of any first mortgage now or hereafter held by a lending institution on any of the Lots except to the extent of any filed, valid Mechanic's Lien or judgment which precedes the recording of a mortgage.

5. UTILITY EASEMENT.

- a) Declarant hereby establishes and grants to each Owner a perpetual nonexclusive Utility Easement on, under, over and through the Utility Section of the Easement Area, for the purpose of installing, maintaining and/or repairing gas, electric, water, sewer, phone, Internet, and cable utility lines, pipes, services and all necessary appurtenances thereto (the "Utility Easement," and collectively with the Access Easement, the "Easements"), subject to the covenants and conditions contained herein.
- b) The Utility Easement shall be for the benefit of the Owners, but same is not intended, nor shall it be construed as creating any rights in or for the benefit of the general public, nor shall it affect any real property outside of the Parcels, unless agreed to by all Owners.

6. TERMINATION OF DECLARATION.

This declaration shall automatically terminate as to any Lot Owner where the proposed ROW has been accepted as a Town road adjoining said Lot to point on said ROW where such Lot Owner(s) driveway or access is located with the exception of the continued maintenance of utility lines and easements. Upon acceptance of the entire proposed ROW as shown on the Subdivision Map, Declarant and all other Lot Owner(s) with frontage on said ROW shall be relieved of any liability thereafter arising under this Declaration as to such ROW.

7. EMERGENCY ACCESS AND TOWN LIABILITY.

The Lot Owner(s) agree to maintain the ROW in such conditions as to permit fire, emergency and safety vehicles to gain access to developed parcels.

8. ENFORCEMENT.

The aforesaid common easements, rights of way, restrictions and servitudes shall accrue to the benefit of and may be enforced jointly or severally by the Declarant, its successor or assigns on the Lot Owners property services by the said ROW, as well as the Owners of any additional Lots resulting from subdivision.

9. ASSOCIATION OF OWNERS.

The Owners of the Lots shall meet at least annually to agree upon a budget and billings including reserves for particular items relating to the ROW and general administrative, legal, accounting or insurance costs for which all Lot Owners shall be liable and to conduct such other business as may be required or appropriate. The Association shall meet more frequently upon notice given by any three Lot Owners. The Lot Owners may through their incorporated or unincorporated association, adopt their own further rules,

regulations and by-laws in their reasonable discretion and may also enforce those rules and regulations and any protective covenants applicable to the Subdivision but none of said rules or regulations shall interfere with the intended development and use of the subdivision of the individual residential Lots.

10. NO WAIVER.

No delay or omission on the part of the Owners of other Lots serviced by the ROW in exercising any rights, powers or remedies herein provided to be exercised in the event of any breach of the covenants, conditions, easements, reservations, restrictions or servitudes herein contained shall be construed as a waiver thereof of acquiescence therein; and no right of action shall accrue, nor shall any action be brought or maintained by any person whatsoever, against the Declarant, Declarant's successors and/or assigns or future owners of Lots covered hereunder or on account of the Declarant's failure to bring any action in connection with the breach of these covenants, reservations, conditions, easements, restrictions or servitudes.

11. AMENDMENTS.

At any time the Owners of all the Lots serviced by the ROW or any future Owners may rescind, modify or amend any of the foregoing covenants, conditions, easements, reservations, restrictions and servitudes by an agreement in writing specifying the changes and modifications and executed by all owners of lots affected by this Agreement in writing and acknowledged and duly recorded in the Office of the Ulster County Clerk.

12. BINDING EFFECT.

This Declaration shall run with the land and be binding upon and inure to the benefit of the heirs, representatives, successors and assigns of Declarant and the subsequent Owner(s) of the Lots made subject to this Agreement. In the event that any one or more of the foregoing covenants, conditions, easements, reservations, restrictions or servitudes shall be declared, for any reason, by a court of competent jurisdiction, to be null and void, such judgment or decree shall not in any manner whatsoever, affect, modify, change, abrogate or nullify any of the covenants, conditions, reservations, restrictions and servitudes not so declared to be void; all the remaining covenants, conditions, reservations, restrictions and servitudes not so expressly held to be void shall continue unimpaired and in full force and effect. The Owner(s) of Lot(s) affected by this Agreement may assign this Agreement together with their rights and responsibilities hereunder by an instrument recorded in the Office of the Ulster County Clerk.

13. CAPTIONS.

The paragraph captions are inserted for convenience and do not limit or affect the contents of this Declaration or the paragraphs.

IN WITNESS WHEREOF, The Declarant herein hereby executes this Agreement and Declaration this ____ day of _____, 2023.

Ashokan Realty LLC

BY: Niv Amodai, Sole Member

STATE OF NEW YORK)
) ss:
COUNTY OF)

On _____, 2023, before me, the undersigned, a notary public in and for said State, personally appeared **Niv Amodai**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

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