

**ARTICLE 4**  
**EASEMENTS AND PROPERTY RIGHTS**

- 4.01 Easements of Use and Enjoyment. Declarant hereby grants a perpetual, non-exclusive easement, over and upon the Maintenance Area for the benefit of the Property, and every Owner shall have a right and easement, of use and enjoyment and a right of access to and of pedestrian ingress and egress on, over, across, in, upon and to the Maintenance Area, and such right easement shall be appurtenant to and shall pass with title to every Lot, subject to the rights of Declarant and Developer reserved in this Declaration, and the rights of others granted in this Declaration and the following rights of the Association exercised in the manner provided in the By-laws:
- a. To adopt rules and regulations governing the use, operation and maintenance of the Maintenance Area.
  - b. To dedicate or transfer all or any part of the Maintenance Area, or any utility system thereon, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members provided that so long as the Developer has the power to appoint any director of the Association and/or so long as the Developer still owns a lot, then such instrument must also be signed by Developer.
  - c. To pay for, out of the assessment funds, all taxes and assessments and other liens and encumbrances that are assessed or charged against the Maintenance Area.
- 4.02 Easements of Access. The Association, Declarant, and Developer, and each of them, is hereby granted and reserved perpetual non-exclusive easements to, through, over and across the Property for the purposes of exercising the rights, performing the functions, and discharging the responsibilities, permitted or required to be performed or discharged by any of them pursuant to any provision of this Declaration.
- 4.03 Municipal Service Easements. Declarant hereby grants a perpetual non-exclusive easement to the Village of Manhattan over the Property to enforce all applicable laws, ordinances and regulations and for the purpose of providing police and fire protection and such other municipal services as the Association may request and the Village of Manhattan may agree to furnish. Furthermore, the Village of Manhattan and any other governmental authority having jurisdiction over the Property are hereby granted an easement to enter upon, on and over the Property for the purpose of inspecting the Property to determine whether the Maintenance Area improvements, facilities and systems have been and are being properly maintained in conformity with the applicable ordinances and regulations. If it is determined that inadequate maintenance exists, the governmental authority shall give the Association written notice of such determination, including a description of the actions that must be taken to perform the necessary maintenance. If the

Association fails to perform the necessary maintenance within a reasonable time after receiving notice of the determination, the governmental authority shall have the right, but not the obligation to perform such maintenance or other operations it deems necessary. If the governmental authority is required to perform such service, it shall be entitled to reimbursement by the Association (including expenses, reasonable attorneys' fees and court costs). In the event the Association fails to pay such bill within the time required, the governmental authority may place and enforce a lien, pro-rata, against each Lot, which lien and right of recovery shall include expenses, reasonable attorneys' fees, and court costs. Failure of the governmental authority to exercise or enforce its rights in any particular circumstances shall not be deemed a waiver of its rights. Notwithstanding any other provision of this Declaration, the rights granted to the governmental authority under this section shall not be modified in any manner without the written approval of the governmental authority.

- 4.04 Implied Easements. Declarant hereby acknowledges that, due to the length and complexity of this Declaration, certain omissions may have occurred in connection with the grants of various easements including, but not limited to, those for access, ingress and egress, use and enjoyment, utilities, light and air, support and maintenance. Declarant therefore hereby grants any easement omitted herein which easement is reasonably implied from and by the provisions and scheme of this Declaration and is reasonably necessary for the purpose of furthering the beneficial purposes and intentions of Declarant as expressed in this Declaration.
- 4.05 Transfer of Maintenance Area to Association. Declarant will convey to the Association and the Association shall accept the Maintenance Area herein described and any additions thereto, together with such facilities and improvements as the Developer may elect to install thereon and subject to such easements as the Developer may cause to be placed thereon, and at such time or times as the Developer shall determine, provided that all Maintenance Areas shall be conveyed to the Association by the date upon which Developer shall cease to have the right to appoint one or more Members of the Board. At the time of any such conveyance to the Association, the Association shall assume and agree to perform the obligations of Declarant, Developer and the Association under this Declaration with respect to the property so conveyed.
- 4.06 Agreement for Grant of Easements. In the event, at any time after the recording of this Declaration, Declarant or Developer shall deem it necessary to do so, Declarant may (i) reserve or grant easements for the benefit of the Property in, over, under, to and across the Property for the installation, construction and maintenance of any and all public and private utility conduits, wires, ducts, pipes, cables and other lines, and all associated equipment for the provision of utilities services for the Property, including without limitation, those for the transmission and distribution of water, electricity, gas telephone, sewage, drainage, cable or satellite television, and (ii) dedicate any portion of the Maintenance Area to any

- public or quasi-public utility or to any governmental authority for the installation, construction and maintenance of any such utilities and for ingress and egress thereto. For so long as Declarant owns a Lot subject to the terms hereof, Developer shall have the right to connect to all utilities serving the Property.
- 4.07 Rights of Occupants. All persons who reside on a Lot shall have the same rights to use and enjoy the Maintenance Area and all improvements situated thereon as the Owner of that Lot.
- 4.08 Easements to Run with the Land. All easements and rights described herein are easements and rights appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding upon the Declarant, its successors or assigns, and any Owner, purchaser, mortgagee or other person having an interest in the Property, or any part or portion thereof. Reference in the respective deeds of conveyance or in any mortgage or trust deed or title commitment or other evidence of obligation to the easements and rights described in this Article or in any other part of this Declaration shall be sufficient, but not necessary, to reserve such easements and rights to the respective grantees, mortgagees, or trustees as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.
- 4.09 No Dedication to Public Use. Nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Property to or for any public use or purpose whatsoever.
- 4.10 Certain Rights Reserved to Developer. The right is reserved by Declarant for Developer, or its agents, to place and maintain on the Property all models, sales offices, advertising signs and banners and lighting in connection therewith, and other promotional facilities at such locations and in such forms as shall be determined by Developer. There is also reserved to Developer, its agents and prospective purchasers and tenants, the right of ingress, egress and transient parking in and through the Property. Declarant also reserves the right for Developer to maintain on the Property without charge (i) a general office for the purpose of exercising the development and management rights and (ii) appropriate permanent and transient parking facilities for the employees of Developer and of Developer's agents and for prospective purchasers of lots in the Property. Developer's aforesaid reserved rights shall exist at any time Developer is engaged in the sale or leasing of Lots on the Property, and no charge shall be made with respect thereto. In connection therewith, Declarant hereby reserves for the benefit of Developer a non-exclusive easement to, through, over and across the Property for the purpose of exercising the rights reserved to Developer pursuant to this Declaration. Such rights of Developer shall continue until the sale or rental of all Lots located on the Property unless Developer, by written notice to the Association, elects to terminate such rights prior to such date. All rights and easements created by this Declaration are subject and subordinate to the development rights of Developer, whether or not inconvenience to any Owner

shall result therefrom; provided, however, that Developer shall not exercise any of such rights in a manner so as to prevent the exercise of the rights of use and enjoyment of the Maintenance Area.