

SEWER EASEMENT (NEW DEVELOPMENT)

DECLARATION OF COVENANTS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS

Declaration made as of this ____ day of _____, 198_, by _____, as President of _____, with an address at _____, New York, hereinafter referred to as "Developer."

W I T N E S S E T H :

WHEREAS, Developer is the owner of the real property described in Article II of this Declaration and shown on the filed subdivision map which Declarant desires to develop as a residential community with a private "gang-line" combined sewer (storm and sanitary); hereinafter called the "drainage system" for the benefit of said Community; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said Community and for the maintenance and repair of the drainage system and, to this end, desires to subject the real property described in Article II to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in said Community to create an agency to which should be delegated and assigned the powers of maintaining and administering the drainage system and administering

and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has incorporated _____ Homeowners Association, Inc. under the not-for-profit corporation laws of the State of New York for the purpose of exercising the aforesaid functions;

NOW, THEREFORE, the Developer, for itself, its successors and assigns, declares that the real property described in Article II is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE 1. DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration shall, unless the context otherwise prohibits, have the meanings set forth below:

(a) "Association" shall mean and refer to _____ Home Owners Association, Inc., a New York Not-For-Profit corporation.

(b) "The Properties" shall mean and refer to all such existing properties as are subject to this Declaration.

(c) "Home" shall mean and refer to all units of residential housing situated upon The Properties.

(d) "Owner" shall mean and refer to the record owner of fee simple title to any Home, including the Developer with respect to any

unsold Home. Every Home Owner shall be treated for all purposes as a single owner for each Home held, irrespective of whether such ownership is joint, in common or tenancy by the entirety. Where such ownership is joint, in common or tenancy by the entirety, a majority vote of such owners shall be necessary to cast any vote to which such owners are entitled.

(e) "Member" shall mean and refer to each holder of a membership interest in the Association, as such interest is set forth in Article III.

(f) "Development" shall mean the _____ consisting of _____ houses, with a total of _____ homes each of _____ bedrooms.

(g) "Developer" shall mean and refer to _____, an individual and his successors and assigns, if such successors and assigns should acquire an undeveloped or a developed but unsold portion of the Properties from the Developer for the purpose of development.

(h) "Drainage System" shall mean and refer to the private "gang-line" internal combined sewer located in the Properties to be maintained by the Association, and intended to be devoted to the common use of the owners of the Properties.

(i) "Lot" shall mean and refer to any plot of land intended and subdivided for residential uses shown on the subdivision map of the Properties but shall not include the Drainage System as herein defined.

ARTICLE II. PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Properties. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is all that certain plot, piece or parcel of land situate, lying and being in _____ County, City and State of New York. (See Description of Property as annexed hereto in Schedules A and B).

Section 2. Easement Areas. (See Description of Easements as annexed hereto as Exhibits C, D, & E).

ARTICLE III. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

The Association shall have one class of membership interest. The owner of each dwelling unit on The Properties subject to this Declaration shall be a member.

Each Member is entitled to one vote. When more than one person or entity holds such interest in any Home, the one vote attributable to such Home shall be exercised as such persons mutually determine but with the exception of cumulative voting employed in the election of Directors, not more than one vote may be cast with respect to any such Home. For purposes of this section the word "home" shall have the same meaning as "lot" and therefore if there is no home constructed on a particular lot in the Development, the owner of such lot will still be considered a Member entitled to cast the one vote as set forth above. No member shall split or divide its votes on any motion, resolution or ballot other than in the cumulative voting procedure employed in the election of Directors.

ARTICLE IV. PROPERTY RIGHTS IN THE PROPERTIES

Section 1. Members' Easement of Enjoyment. Subject to the provisions of Section 2, every Member shall have a right and easement of use in and to the Drainage System and such easement shall be appurtenant to and shall pass with the title to every Home.

Section 2. Extent of Members' Easements. The rights and easements of use created hereby shall be subject to the following:

(a) The right of the Association to dedicate or transfer all or any part of the Drainage System 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 no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members and their mortgagees entitled to cast eighty percent (80%) of the eligible votes has been recorded agreeing to such dedication, transfer, purpose or condition and unless written notice of the action is sent to every member at least ninety (90) days in advance of any action taken.

(b) The right of the Developer and of the Association to grant and reserve easements and rights-of-way, in, through, under, over and across the Properties, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, electric, gas, drainage, cable television and other utilities, and the right of the Developer to grant and reserve easements and rights-of-way, in, through, under, over, upon and across the Properties for the completion of the Developer's work under Section 1 of Article V.

ARTICLE V. DEVELOPMENT OF _____ HOMES

Section 1. _____ Homes. Developer intends to build _____-family _____ houses, with a total of _____-family homes each of _____ bedrooms.

Section 2. Reservation of Easement. Developer reserves the easements, licenses, rights and privileges of a right-of way in,

through, over, under and across the Properties, for the purpose of completing its work under Section 1 above and towards this end, reserves the right to grant and reserve easements and rights-of-way in, through, under, and across the Properties, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, cable television, electric, gas and other utilities and for any other materials or services necessary for the completion of the work. Developer also reserves the right to connect with and make use of the utility lines, wires, pipes, conduits, cable television, sewers and drainage lines which may from time to time be in or along the streets and roads of other areas of the Properties. Finally, Developer reserves the right to continue to use the Properties in its efforts to market homes constructed on the Properties. This paragraph may not be amended without the consent of Developer.

ARTICLE VI. COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation.
The Developer, for each Home owned by it within the Properties, hereby covenants and each Owner of any Home by acceptance of a deed therefore, whether or not it shall be expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association such assessments as are fixed by the Association's Board of Directors and assessed to the Members as hereinafter provided. All sums assessed to the Association but unpaid, together with such interest thereon as is hereinafter provided, shall be a

charge on the land and shall be a continuing lien upon the property owned by such Member against which each such assessment is made. Each such assessment, together with interest thereon and cost of collection thereof, as hereinafter provided shall be a personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of the Assessment. The assessments levied by the Association shall be used exclusively for the purpose of maintenance of the Drainage System, and related to the maintenance of the Drainage System including without limiting the foregoing, payment of taxes (if any), insurance thereon and maintenance, replacement and additions thereto, and the cost of labor, equipment, materials, services, management and supervision thereof.

Section 3. Assessments. (a) A reserve fund will be created in the minimum amount of _____ for the maintenance and repairs of the internal drainage system. This initial assessment in the amount of _____ shall be collected from each Purchaser at the time of closing of title to each individual home. This reserve fund shall be held in an escrow account in the name of the Homeowners Association. There shall be an annual assessment on each homeowner by The Association in the amount of _____ to maintain the integrity of the fund and furthermore if this reserve fund falls below the minimum adequate amount as aforementioned then additional reserves shall be provided by a way of an additional assessment of each Home Owner to increase the amount of the reserve fund. The amount at any given time of this reserve fund shall be determined by

additional assessments made by the Association's Board of Directors at appropriate times in order to determine and maintain the minimal level of the fund.

(b) The Association's Board of Directors shall, from time to time, but at least annually, fix and determine the budget representing the sum or sums necessary and adequate for the continued operation of the Association and shall send a copy of the budget and any supplement to the budget to each Member prior to assessing the Members thereon. The Board shall determine the total amount required, including the operational items such as insurance, repairs, reserves, maintenance and other operating expenses, as well as charges to cover any deficits from prior years. The total annual requirements and any supplemental requirements shall be allocated between, assessed to and paid by the Members as follows:

Each Member shall pay a portion of said requirements the numerator of which shall be one (1) and the denominator of which shall be equal to the number of Lots on the Properties subject to this Declaration. The Developer's obligation for such assessments on unsold Homes (whether built or unbuilt) subject to this Declaration will be limited to the difference between the actual operating costs of the Association, including any reserves on the Drainage System and the assessments levied on owners who have closed title on their homes in each separate phase. In no event, however, will the Developer be required to make a deficiency contribution in an amount greater than it would otherwise be liable for if it were paying assessments on unsold Homes. The sum due the association from each individual Home Owner shall constitute an assessment of the Board of Directors and unpaid assessment shall constitute liens on the individual Homes, subject to foreclosure as hereinafter provided.

Section 4. Due Dates; Duties of the Board of Directors.

All Assessments shall be payable annually in advance as ordered by

the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Home and shall prepare a roster of the Homes and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Member. Upon the written request of a Member or his mortgagee, the Board shall promptly furnish such Member or his mortgagee with a written statement of the unpaid charges due from such Member.

Section 5. Effect of Non-Payment of Assessment, The Personal Obligation of the Member; The Lien, Remedies of the Association. If an assessment is not paid on the date when due, as fixed by the Board of Directors, then such assessments shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Member's Home which shall bind such property in a hands of the Member, his heirs, devisees, personal representatives and assigns. Such lien shall be prior to all other lien except:

(a) tax or assessment liens on the Home by the taxing subdivision of any governmental authority, including but not limited to State, County and School District taxing agencies; and (b) all sums unpaid on any first mortgage or record encumbering the Home. The personal obligation of the Member who was the Owner of the Home when the assessment fell due to pay such assessment, however, shall remain his person obligation for the statutory period and shall not pass to his successor in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the maximum permissible rate in the State of New York and the association may bring an action at law against the Member or former Member personally obligated to pay the same and may foreclose the lien against the property. There shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorney's fees to be fixed by the court together with the cost of the action.

ARTICLE VII. INSURANCE

The Board of Directors shall maintain public liability insurance, to the extent obtainable, covering the Association, each Association Member, lessee and occupant against liability for any negligent act of commission or omission attributable to them which occurs on or in the Drainage System. All insurance premiums for such coverage shall be paid for by the Association.

ARTICLE VIII. USE OF PROPERTY

The use of a Home by a Member or other occupant shall be subject to the rules, regulations and provisions of this Declaration, the By-Laws and Rules and Regulations of the Board of Directors and the following covenants and restrictions.

(a) Any Member who mortgages or sells his Home shall notify the Board of Directors providing the name and address of his mortgagee or new owner.

(b) The Board of Directors shall, at the request of the mortgagee of the Homes, report any delinquent assessments due from the Owner of such Home.

(c) The maintenance assessments shall be paid when due. Upon the written request of a Member or His mortgagee, the Board of Directors or its designee shall furnish a written statement of the unpaid charges due from such Member which shall be conclusive evidence of the payment of amounts assessed prior to the date of the statement.

ARTICLE IX. GENERAL PROVISIONS

Section 1. Beneficiaries of Easements, Rights and Privileges.

The easements, licenses, rights and privileges established, created and granted by this Declaration shall be for the benefit of and restricted solely to the Association and the Owners of Home constructed on The Properties; and any owner may also grant the benefit of such easement, license, right or privilege to his tenants and guests and their immediate families for the duration of their tenancies or visits, subject in the case of the Drainage System to the Rules and Regulations of the Board of Directors, but the same is not intended nor shall it be construed as creating any rights in or for the benefit of the general public.

Section 2. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable to the Association, any Member, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, until _____, unless otherwise expressly limited herein, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by sixty-six and two-third percent (66-2/3%) of the Home Owners and signed by the New York City Department of Buildings has been recorded, agreeing to change said covenants and restrictions in whole in part. Notwithstanding the foregoing, the easements, licenses, rights and privileges established and created with respect to the Properties by Section 2 of Article V shall be perpetual, run with the land and shall survive any destruction, reconstruction and relocation of the physical structures unless said provision is abrogated by the unanimous written consent of all the Home Owners and the New York City Department of Buildings. Unless specifically prohibited herein, this Declaration may be amended by an instrument signed by members holding not less than sixty-six and two-thirds percent (66-2/3%) of the votes of the membership and signed by the New York City Department of Buildings.

Section 3. Disposition of Assets Upon Dissolution of Association. Upon dissolution of the Association, its real and personal assets, including the drainage system, shall be dedicated to

an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. In the event such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. No such disposition of the Association properties shall be effective to divest or diminish any right or title to any Member vested in him under the licenses, covenants and easements of this Declaration, or under any subsequently recorded covenants and easements of this Declaration, or under any subsequently recorded covenants and easements of this Declaration, or under any subsequently recorded covenants, deed or other documents applicable to the Properties, except as may be otherwise provided in this Declaration or said covenants, deeds or other documents, as the case may be, nor shall any other party under any such deeds, covenants or other documents be deprived of any rights thereunder on account of such disposition.

Section 4. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 5. Administration. The administration of the Association shall be in accordance with the provisions of the

Association By-Laws which are made part of this Declaration and attached hereto as Exhibit "B".

Section 6. Severability. Invalidation of any of the covenants, limitations or provisions of this Declaration by judgment or court order shall in no way affect any of the remaining provisions hereof and the same shall continue in full force and effect.

_____, Inc.

By: _____