

DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS

WHEREAS, The Marc Development Co., Inc., a corporation organized and existing under the laws of the State of New York with offices for the transaction of business at Sycamore Road, Town of Vestal, New York 13850 (the "Developer") is the owner of a certain tract of land situate in the Town of Union, County of Broome and State of New York, which land is laid down on a certain subdivision plat entitled "Western Village" Subdivision 5 (the "Property" or "Premises"), which subdivision plat was prepared by Carl J. Winterberger, Surveyor, and filed in the Broome County Clerk's Office on the 3<sup>rd</sup> day of June, 1986 in Plat Cabinet 3; Map 2496; Sleeve 208; and

WHEREAS, the said premises are best adapted for residential purposes and are part of a development known as Glen Park West; and

WHEREAS, said subdivision plat shows twelve (12) parcels (hereinafter collectively referred to as the "Parcels").

NOW, THEREFORE, in order to promote the development and use of said Premises to be known as "Glen Park West", the following restrictions, covenants and easements with respect to the use and occupation thereof are hereby imposed and shall run with the land. The Developer hereby covenants and agrees with all who shall become purchasers thereof that it

shall be bound by the same restrictions and will not violate the same, and that in making sales or conveyances of said Premises, all deeds or conveyances shall be construed as containing, either expressly or by implication, the restrictions, covenants and easements hereinafter set forth.

The following are the restrictions, covenants and easements hereby imposed on the Property:

1. Homeowners' Association

The Developer has formed a New York not-for-profit corporation known as Glen Park West Homeowners' Association, Inc. (the "Association"). The purpose of the Association is to enforce the covenants, conditions and restrictions set forth in this Declaration and to have such other specific rights, obligations, duties and functions as are set forth in this Declaration, the Certificate of Incorporation, and the Bylaws of the Association as the same may be amended from time to time.

2. Membership in the Association

The Association shall have as members only Owners and the Developer. "Owner" shall mean and refer to each holder or holders of record title to the fee interest in each parcel, whether or not such holder actually resides on such Parcel. All Owners shall, upon becoming such, be deemed automatically to have become members of the Association and there

shall be no other qualifications for membership. Membership shall be appurtenant to, and shall not be separate from, the ownership of a Parcel.

The Owners of each Parcel shall, collectively, be considered as one member of the Association with the right to cast, collectively, one vote on all matters requiring a vote of the membership of the Association.

3. Assessments

Imposition, Personal Obligation, Lien

Each Owner by becoming an Owner by acceptance of a deed or otherwise, whether or not such deed or any other instrument pursuant to which title was obtained so provides, shall be deemed to covenant and agree to pay the Association:

(a) Membership fees in the annual amount of **One Hundred and Seventy dollars (\$170.00)** or as established by the Association in accordance with the Bylaws of the Association.

(b) Annual assessments for capital improvements and repairs ("Special Assessments"); together hereinafter being referred to as "Assessments".

The Assessments shall be fixed, established and collected from time to time as provided for in the Bylaws of the Association (the "Bylaws"). Each Assessment (or installment payment thereof), together with such late

charges, interest thereon and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the Parcel against which the Assessment is made and shall also be the personal obligation of the Owner of such Parcel at the time the Assessment falls due.

4. Non-Payment of Assessment

If an Assessment, or installment thereof, is not paid on the due date, then such assessment payment shall be deemed delinquent. Any delinquent assessment payment, together with such interest thereon, accelerated installments, if any and cost of collection thereof as herein provided, shall thereupon become a continuing lien on the property and shall also be the personal obligation of the Owner of such Parcel.

If the Assessment or any installment thereof is not paid in full within thirty (30) days after the due date, (i) the Association may impose a late charge or charges in such amounts as the Board of Directors deems reasonable, not to exceed ten percent (10%) of the amount of such overdue Assessment or installment thereof, and, if not paid within thirty (30) days after the due date (ii) the Assessment shall bear interest from the due date at such rate as may be fixed by the Board of Directors from time to time, such rate not to exceed the maximum rate of interest then permitted by law, (iii) the Board of Directors may accelerate the remaining installments, if any, of

such Assessment upon notice thereof to the Owner, and (iv) the Association may bring legal against the Owner personally obligated to pay the same or foreclose the lien against the property, and the cost of such proceedings, including reasonable attorneys' fees, shall be added to the amount of such Assessments, accelerated installments, if any, late charges and interest.

Once an Assessment is deemed delinquent, any payments received from the Owner shall be applied in the following order: (i) costs of collection, including attorneys' fees, (ii) late charges, (iii) interest, and (iv) the delinquent Assessment or installments thereof in inverse order of their due dates.

Dissatisfaction with the quantity or quality of services furnished by the Association shall, under no circumstances, entitle any Owner to withhold or fail to pay any Assessments due.

5. Subordination of Assessment Lien to Mortgage

The lien of the Assessments provided for herein shall be subordinate to the lien of any mortgage of record now or hereafter placed upon any Parcel subject to such Assessments.

6. Use of Property

All Parcels in the Property shall be used only for single-family residential purposes. No Parcel shall be resubdivided.

7. Architectural Standards Committee

(a) Approval for Construction of Additions to and Alterations of Existing Structures and Landscapes

No completed building or structure on any Parcel may be added to or altered in any way which materially affects the exterior appearance thereof unless plans and specifications have been approved by the Architectural Committee. For the purposes of this paragraph, an alteration shall include, but not limited to, the following:

- (1) Change of color of exterior paint or stain or roofing;
- (2) Any addition or removal of a portion of the structure;
- (3) Changes to windows, doors, screens, and fireplace chimneys;
- (4) Changes to the initial planting of landscaping, trees, bushes and the like.

(b) Designation of Committee

The Architectural Committee as presently established consists of the Board of Directors of the Association (the "Board"). The Board has the

right to enlarge the Committee and/or appoint a successor or successors at any time.

(c) Procedure for Review

Whenever the consent is required of the Architectural Committee hereunder, the party seeking such consent shall submit a written proposal to the Committee detailing the nature of the action to be reviewed in such form and detail as the Committee requires.

All decisions of the Committee shall be issued within thirty days of the submission. In the event no action is taken by the Committee within such period, the submitted proposal shall be deemed approved.

8. Maintenance of Property

Each Owner shall keep and maintain his/her Parcels and improvements in good condition and repair including, but not limited to: the seeding, watering, and mowing of all lawns; the pruning and trimming of all trees, hedges, shrubbery and other plantings so that the same are not detrimental to adjoining Parcels, obstructive of a view of street traffic or unattractive in appearance; and the repairing and painting (or other external care) of all improvements. Each Owner shall maintain all lawns, shrubbery and trees located in the street right of way adjacent to such Owner's Parcel.

Each Owner shall maintain and repair driveway areas, if any, and sidewalk, if any, which are located on the Owner's Parcel.

9. Advertising and Signs

No sign or other advertising device of any nature shall be placed on display to the public view on any Parcel or other portion of the Premises shown as open space on any filed or recorded map, without written permission of the Architectural Committee, except for signs or other advertising devices erected by or with the permission of the Developer in connection with the original construction, lease or sale of buildings, or Parcels within the Property.

10. Animals, Birds and Insects

Except for dogs, cats and other common household pets kept as pets, and except as the Architectural Committee may otherwise approve in writing, no animals, birds, reptiles or insects shall be kept or maintained on any Parcel.

11. Trailer, Boat, Non-Operable Motor Vehicle and Snowmobile Storage

No boats, boat trailers, house trailers, mobile homes, trailers, campers, junked, non-operable or non-registered motor vehicles, recreational vehicles, all terrain vehicles, motorcycles or similar items shall be permitted



to be stored outside any Parcel, except as may be approved, in writing, by the Architectural Committee.

12. Fences, Walls and Other Appurtenances

Except as may be permitted by the Architectural Committee in conjunction with construction, or the sale or lease of any Parcel, no fence, wall, pole, mailbox, newspaper delivery receptacle or similar improvement shall be erected, begun or permitted to remain on any Parcel within the Premises.

13. Sewage Disposal Systems

No individual sewage disposal system shall be permitted on any Parcel within the Premises.

14. Above Surface Utilities

Except during construction of improvements on a Parcel, and except for high-tension lines and switch gear boxes required in conjunction with the underground installation of utility lines and padmounted transformers, no facilities, including poles and wires, for the transmission of electricity, television dish transmitters or receptor, telephone messages, television or radio reception or transmission, shall be placed or maintained above the surface of the ground with the prior approval of the Architectural Committee.

The location of all switch gear boxes and padmounted transformers required to be placed above ground surface not previously approved by the Developer in conjunction with the plans and specifications for the development with the Premises must be approved, in writing, by the Architectural Committee prior to their installation.

15. Party Walls

Each wall that is built, as a part of the original construction of any building located on the Property which is placed on the dividing line between two or more Parcels shall be construed a party wall. The cost of reasonable and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. If a party wall is damaged or destroyed by fire or other casualty, any Owner who has used the wall may restore it and if the other Owners thereafter make use of the wall they shall contribute to the cost of restoration in proportion to such use, which right of contribution shall, however, be without prejudice to the right of the Owner to demand a larger contribution from the others under any rule of law regarding liability for negligent or will acts of omissions. Notwithstanding any other provision of this paragraph, an Owner, who by his/her negligent or willful act causes the party wall to be damaged or to be exposed to the elements shall bear the whole cost of repair or furnishing the

necessary protection against such elements. In the event any dispute arises concerning a party wall, each Owner shall choose one arbitrator, and the two arbitrators shall choose an additional arbitrator, and the decision of the three arbitrators with respect to the dispute shall be by a majority and shall be binding upon the Owners and enforceable in any court having jurisdiction over the Owners.

16. Pipes, Oil and Mining Operations

Except during construction of improvements on a Parcel, no water pipe, gas pipe, sewer pipe or drainage pipe shall be installed or maintained on any portion of the Property above the surface of the ground, except hoses and movable pipes used for irrigation purposes. No portion of the property shall be used for the purpose of boring, drilling, refining, mining, quarrying, exploring for or removing natural gas, oil or other hydrocarbons, minerals, gravel or earth.

17. Protective Screening

Where protective screening areas, screen planting, fences, or walls exist, the same shall be maintained by the Owner of the Parcel upon which screening areas, screen planting, fence, or walls are located for the protection of the adjacent Parcels. No building or structure, except such planting, fence or wall, shall be placed or permitted to remain in such area.

No vehicular access shall be permitted over such area except for the purpose of installing, maintaining and screening utilities and drainage facilities, if any.

18. Residence Not A Dwelling House

No temporary building, trailer, basement, tent, shack, barn, outbuilding, shed, garage, or building in the course of construction or other structure not a dwelling house shall be used, temporarily or permanently, as a residence on any portion of the Premises.

19. Sight Obstructions to Vehicular Traffic

No fence, wall, tree, hedge, or shrub planting shall be maintained in such a manner as to obstruct sight lines for vehicular traffic.

20. Television and Radio Antennas

No television and/or radio antenna or television dish shall be erected outside on any Parcel within the premises unless and until the Committee has first granted permission for the same, in writing,.

21. Preservation of, Maintenance and Use of Utility and Easement Areas

Easements for the installation, maintenance and repair of utilities, access and drainage are reserved as shown on subdivision plat. Within said drainage and access easement area, no structure, planting or other materials

shall be placed or permitted to remain, nor shall any activity be undertaken which may:

- (b) damage or interfere with the slope ratios as established by the Developer;
- (c) create erosion or sliding problems;
- (d) change the direction of flow or drainage channels;
- (e) obstruct or retard the flow of water through drainage channels;
- (f) interfere with access over such access easement area.

Within the utility easement areas, no structure, fencing, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation, operation and maintenance and repair of utilities.

Within both the drainage and access easement areas and the utility easement areas, the Owners of each Parcel shall maintain all improvements located thereon, except in those cases where the Town of Union or a utility company is responsible for such improvements.

In addition the foregoing each Owner of a Parcel shall have the right of ingress and egress to, from and over such access easement areas (as hereinafter defined) as are:

(a) Shown on the subdivision map exhibiting said individual Owners' Parcel; or

(b) Needed to gain access to the rear of an individual Owners' Parcel.

In addition to the foregoing, the Owner of each Parcel shall have the right of ingress and egress to, from and over the access easements set forth above which are necessary and convenient to gain access to the real portion of said Owner's Parcel.

22. Water Supply Systems

Except as may be utilized by the Developer in conjunction with the construction, sale or lease on or of any Parcel, no individual water supply system shall be permitted on any Parcel.

23. Operation of Snow Mobiles and Motor Bikes

No snowmobile, unlicensed motor bike or similar recreational motor vehicle shall be operated on any portion of the premises.

24. General Prohibition Against Noxious or Offensive Uses

Except during the construction of improvements on a Parcel or by the Developer, no activity which may be considered noxious or offensive by reason of odor, sound, appearance or sight, shall be permitted upon any Parcel nor shall anything be done thereon, which may be or become a

nuisance or annoyance to other parcels, the Premises, or to the residents, Owners or occupants thereof.

25. Commercial or Professional Activity on Property

No professional or commercial activity or home industry shall be conducted in or on any part of a Parcel or in any improvement situate thereon.

26. Machinery

No machinery shall be placed or operated upon any Parcel except machinery as is used in the maintenance of a private residence or as may be located indoors and used in the pursuit of any home hobby. This provision shall not apply to the Developer during its construction or repair of dwellings or drainage facilities on the Premises.

27. Repair Work

No repair work, including, but not limited to, dismantling of any motor vehicles, boats or machines, of any kind, shall be permitted outdoors on any Parcel.

28. Sidewalks and Driveways

No motor vehicle of any kind, including, but not limited to automobiles, trucks, snowmobiles or motor bikes of any kind shall be parked or operated on any sidewalk. Further, no garbage, trash or other refuse of

any kind shall be dumped, disposed of or placed upon any sidewalk or driveway except as may be maintained in a covered trash container.

29. Garage Doors

Garage doors shall be kept closed unless entry or exit is being made from said garage.

30. Declaration Runs with the Land

Each person or entity acquiring an interest in a Parcel or other portion of the Property or otherwise occupying any portion of the property (whether or not the deed, lease or any other instrument incorporates or refers to this Declaration) covenants and agrees for him, her or itself, and for him, her, or its heirs, successors and assigns to observe, perform and be bound by the provisions of this Declaration and assumes personal responsibility for the payment of all charges that may become liens against his, her or its property and become due while he, she or it is the Owner thereof, and also covenants to incorporate this Declaration by reference in any deed, lease or other instrument further transferring an interest in such Parcel or other portion of the Property.

31. Enforceability of Covenants

If any party bound by this instrument shall violate or attempt to violate any of the covenants or restrictions herein contained, it shall be



lawful for any person or persons owning any other Parcel or the Association (being hereby deemed the agent for all Owners) to prosecute any proceeding at law or in equity to specifically enforce the covenants contained herein, or to recover damages resultant from said violation. In any successful prosecution of said action, the party bringing the action shall be entitled to recover the costs and disbursements of the action, together with reasonable attorneys' fees.

32. Amending or Rescinding

The Developer, during the time the Developer owns any Parcels, may make amendments to this Declaration to correct omissions or errors, which amendments shall not adversely modify substantial rights of any Owner without such Owner's written consent. All other amendments or any rescission of the Declaration, unless otherwise specifically provided herein, shall be made by obtaining the consent, in writing, of not less than two-thirds (2/3rds) of all Owners which are subject to this Declaration, not including the Developer. In addition, notwithstanding the above, until four (4) years from the date of recording of this Declaration, or so long as the Developer owns or has under construction on the Property any improvements, the written consent of the Developer will be required for any

amendment which adversely affects a substantial interest or right of the Developer.

In voting for such amendment or rescission, each Owner shall have one (1) vote for each Parcel owned.

The Owners shall receive written notice of every proposed amendment or rescission at least thirty (30) days prior to the date on which the vote is to be taken on said proposed amendment or rescission.

In addition to the approval of the Owners and Developer as provided herein, no amendment or rescission which substantially affects the interest of any lending institution shall be effective if the lending institutions which together are mortgages on one-third ( $1/3^{\text{rd}}$ ) or more of the Parcels advise the Association in writing, prior to the date on which the vote is to be taken on the proposed amendment, that they are opposed to such amendment, which opposition must not be unreasonable. Written notice of any proposed amendment or rescission which substantially affects the interest of any lending institution first mortgage shall be sent to all such lending institution first mortgages whose names appear on the records of the Association at least thirty (30) days prior to the date set for voting on the proposed amendment or rescission.

33. Additions to Property Subject to Declaration

The Developer shall have the right to subject additional property which is part of any subdivision of "Western Village" whether now or hereafter subdivided (also known as Glen Park West) to this declaration.

34. Duration

The within covenants shall run with the land and be binding upon and be enforceable by all present and future owners, lessees and grantees of the land without limitation as to time.

35. Severability

The determination by any court of competent jurisdiction that any provision of the within covenants and restrictions is unenforceable, invalid, void, unconstitutional or in conflict with Federal, State or Local law, shall not in any way affect the enforceability or validity of any other provision, covenant or restriction contained herein.

IN WITNESS WHEREOF, this instrument is dated and executed the 11th day of October, 2005.

