

B-13
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RECORDED

2004 MAY -4 PM 3:5

MONROE COUNTY CLERK

BARGAIN AND SALE DEED

THIS DEED is made this 3rd day of May, 2004, by and between the **CITY OF ROCHESTER**, a municipal corporation with offices at 30 Church Street, Rochester, New York 14614 (hereinafter the "Grantor") and **J. DIMARCO BUILDERS, INC.** with offices at 1950 Brighton-Henrietta Townline Road, Rochester, New York 14623 (hereinafter the "Grantee")

WITNESSETH, that for and in consideration of the sum of **FIVE THOUSAND and 00/100 DOLLARS (\$5,000.00)**, and other good and valuable consideration, the Grantor does, by this Bargain and Sale Deed, convey and grant unto the Grantee to have and to hold fee simple title, in and to

ALL THAT TRACT OR PARCEL OF LAND (hereinafter, "Property") situate in the City of Rochester, County of Monroe, and State of New York, being Lot #13 all as shown on Drawing No 18095-SU1 entitled "**Atlantic-Woodstock Subdivision**", dated February 4, 2003, prepared by the Sear Brown Group, Inc of Rochester, New York, filed August 6, 2003 in the Monroe County Clerk's Office in Liber 317 of Maps, at page 13

Said Lot #13 fronts 117 77 feet on Newcroft Park and is of the dimensions and configuration as shown on said filed map

Being part of the same premises obtained by the City of Rochester ^{by deed} dated December 31, 1986 in Liber 8024 of Deeds, at page 128
^{included}

Subject to all easements, covenants and restrictions of record

EXCEPTING AND RESERVING from this conveyance, however, **ALL RIGHT, TITLE AND INTEREST** of the Grantor in and to any public street or road abutting said Property

AND, the Grantor does hereby release, grant, and convey the property hereby conveyed, and covenants that it will execute such further assurances thereof as may be requisite

A. PROVIDED, however, that this Deed is made and executed upon and is subject to certain express covenants, said covenants being a part of the consideration for the Property hereby conveyed and are to be taken and construed as running with

TAX ACCOUNT NO. 107 81-2-17.3
PROPERTY ADDRESS: 85 Newcroft Park, Rochester, New York 14609
TAX BILLING ADDRESS: 1950 Brighton-Henrietta Townline Road, Rochester, NY 14623

the land, and the Grantee hereby binds itself and its successors, assigns, grantees, and lessees forever to these covenants as follows

1. ENVIRONMENTAL

The real property conveyed herein by this deed has been investigated and/or remediated in accordance with the terms and conditions of the "Environmental Restoration Program" established under the 1996 Clean Water/Clean Air Bond Act, as set forth in title 5 of article 56 of the New York State Environmental Conservation Law ("ECL") and its accompanying regulations, and is subject to the terms and conditions set forth in such laws and regulations. This real property is further subject to the terms and conditions of the following State Assistance Contracts (SAC) entered into by the City of Rochester ("Municipality") and the New York State Department of Environmental Conservation ("NYSDEC")

an Investigation, State Assistance Contract ("SAC") No. C300944, filed in the Monroe County Clerk's Office in Book of Deeds No. 9463 at Page No. 1, and any amendments thereto (if applicable), and

a remediation, SAC No. C300944, filed in the Monroe County Clerk's Office in Book of Deeds No. 9891 at Page No. 437, and any amendment thereto (if applicable)

Additionally, the real property is subject to the terms and conditions of Records of Decision (ROD) relating to the investigation of real property, as prepared by NYSDEC dated July 1998 and March 2000, and on file in the central office of the NYSDEC.

The Grantor agrees to the following conditions with respect to the use of the real property described herein

(a) the property shall be used for the following purpose **RESIDENTIAL**, groundwater underlying this property shall not be used as a source of potable or process water,

(b) the Municipality and successors in title shall implement the following engineering controls over the property **NO ENGINEERING CONTROLS REQUIRED**, and

(c) no person shall use for drinking purposes, or in the preparation of food intended for human consumption, any water except the potable water supply authorized for public use by the City of Rochester

The Grantor hereby declares that the real property described herein and being conveyed by this instrument shall be held, sold and conveyed subject to each and every term, covenant, condition and restriction set forth in the afore-mentioned law, regulations, contracts, and ROD. All such terms, covenants, conditions, and restrictions shall constitute covenants that shall run with the land and shall be binding on all parties including heirs, successors, and assigns having any right, title or interest in this real

property, or any part thereof, and may not be released or modified without the prior written approval of the NYSDEC. The Grantor further declares that any use or occupancy of the real property conveyed herein by this deed is limited to the uses identified up above. Any "change in use" which includes, but is not limited to, construction on or conveyance of the real property, is defined in ECL 56-511 (3)(1), and is subject to the requirements set forth in section 56-5011 of the ECL, which requirements minimally include the prior notice and approval of NYSDEC, or its successor. The Grantor additionally promises that every deed, subsequent to this deed, shall contain this restrictive covenant and all subsequent owners shall be deemed to covenant by acceptance of a deed to be bound by these restrictive covenants. The Grantor also declares that the State of New York, NYSDEC, as well as its successors or assigns, shall be entitled to enforce the terms of this restrictive covenant.

2. FENCES

Only the following types of fencing shall be allowed on the Property: wood privacy fencing, picket fencing, space board, steel fencing, board on board, ornamental aluminum, and maintenance-free vinyl fencing. No chain link fence or chain link with plastic/vinyl slots shall be allowed. However, the plastic-coated chain link fence at the rear boundary line of the Property at the time of the City's transfer of title to the Purchaser, may remain.

The foregoing covenant "2" shall be enforceable by the owner(s) of lots in the Atlantic-Woodstock Subdivision and by the City of Rochester, even if the City of Rochester is not the owner of land in the Subdivision.

B **PROVIDED**, however, that this Deed is also made and executed upon and is subject to a certain express condition subsequent, said condition subsequent being a part of the consideration for the property hereby conveyed and upon the satisfaction of which the continued existence of the estate hereby granted shall depend, and the Grantee hereby binds itself and its successors, assigns, and grantees to these conditions as follows.

1. The Grantee shall construct on the Property, a single-family residential dwelling containing approximately 1800 square feet of space (the "Approved Model"). Grantee shall commence construction within twenty (20) days after transfer of title to the Grantee, and thereafter diligently proceed with construction, and shall complete the construction of the Approved Model on or before August 25, 2004. The Approved Model shall be constructed in accordance with plans and specifications approved in writing by the Grantor prior to commencement of construction (the "Approved Plans"), with any changes to the Approved Plans also subject to the prior written approval of the Grantor. The Grantee shall obtain all governmental permits and approvals required for such construction. The Grantee shall participate, with the Approved Model, in "CityScape 2004 at Newcroft Park" sponsored by the Rochester Home Builders' Association.

Receipt of a City of Rochester certificate of occupancy allowing occupancy of the entire Approved Model shall be satisfactory evidence of Purchaser's compliance with Section B 1. above

2. In the event that subsequent to the Grantor's conveyance of the Property, the Grantee shall default in or violate the condition subsequent contained in subsection B 1 above, and any such default or violation shall not be cured, ended or remedied within ten (10) days after written demand by the Grantor (or, if the default or violation cannot reasonably be cured, ended or remedied within 10 days, the Grantee has not diligently commenced and thereafter continues to cure, end or remedy the default or violation within 10 days after written demand by the City to do so), then in that event, the Grantor shall have the right to reacquire the entire Property, and may, at its option, commence a proceeding or suit in a court of appropriate jurisdiction to regain title to the Property and revest title in the Grantor

However, such condition(s) subsequent and any revesting of title as a result thereof in the Grantor shall always be subject to and limited by, and shall not defeat, render invalid or limit in any way the lien of any mortgage, security interest or assignment granted by the Grantee on the Property to finance the construction of the Approved Model, provided that the Grantor consented in writing The Grantee shall not place or suffer any other lien upon the Property

The Grantor shall pay the Grantee, in the event of such reacquisition, an amount equal to the original price paid by the Grantee for the land, less (1) the reasonable cost and expense incurred by the Grantor for the reacquisition, (2) the amount of any unpaid County of Monroe, City of Rochester and City of Rochester School District and valorem property taxes, special assessments, service charges and embellishment charges, (3) the amount of any unpaid Rochester Pure Waters District assessments and charges, (4) the amount of any liens, including judgment(s) which is/are a lien, on the Property, and (5) the amount of any reimbursement for bedrock removal paid by the Grantor to the Grantee

3. Promptly after the Grantee's satisfaction of the condition subsequent contained in Section B 1, the Grantor will provide the Grantee with an appropriate instrument certifying such satisfaction The certification by the Grantor shall be (and it shall be so provided in the Deed and in the certification itself) a conclusive determination of satisfaction and termination of the applicable condition subsequent contained in this Section and the deed The certificate shall be in such form as will enable it to be recorded in the Miscellaneous Records of the Monroe County Clerk's Office

C. The Grantor, in compliance with Section 13 of the Lien Law, covenants that it will receive the consideration for this conveyance and will hold the right to receive such consideration as a Trust Fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the same for any other purpose

D. The Grantor certifies that all conditions precedent to the valid execution and delivery of this Bargain and Sale Deed on its part have been complied with, and that all things necessary to constitute the Deed valid and binding on the terms and conditions and for the purposes set forth herein have been done and performed, and that the execution and delivery of this Deed on its part have been and are in all respects authorized in accordance with law. The Grantee similarly certifies with references to its execution and delivery of this Deed.

E. The Grantor covenants that it has not done or suffered anything whereby the Property has been encumbered in any way.

TOGETHER with the appurtenances and all the estate and rights of the Grantor in and to said premises, except as reserved and excepted herein.

TO HAVE AND TO HOLD the premises herein granted unto the Grantee, its successors and assigns.

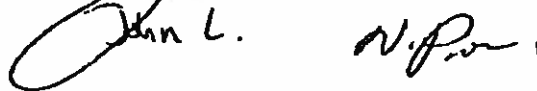
IN WITNESS WHEREOF, the Grantor has caused this Deed to be duly executed in its behalf, and the Grantee has duly executed the same, on or as of the day and year first above written.

 **CITY OF ROCHESTER**

By 
Jeffrey Eichner, Acting Corporation Counsel

J. DIMARCO BUILDERS, INC.

By. 
Joel DiMarco, President



STATE OF NEW YORK)
COUNTY OF MONROE) ss
CITY OF ROCHESTER)

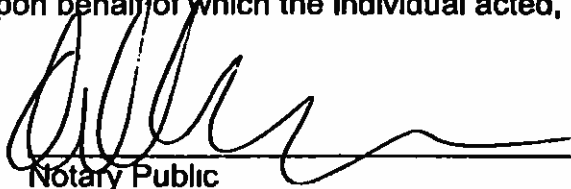
On the 3rd day of May, in the year 2004 before me, the undersigned, a Notary Public in and for said State, personally appeared **JEFFREY EICHNER**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument


Notary Public

GAIL D. PYLIOW
Notary Public State of New York
Qualified in Monroe County
Commission Expires April 30, 2007

STATE OF NEW YORK)
COUNTY OF MONROE) ss
CITY OF ROCHESTER)

On the 3rd day of May, in the year 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared **JOEL** John L. **DIMARCO**, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument


Notary Public

DAVID DIMARCO
Notary Public, State of New York
Qualified in Monroe County
Commission Expires March 16, 20 06

MONROE COUNTY CLERK'S OFFICE

Return To:

BOX 93

Index DEEDS

Book 09952 Page 0318

No. Pages 0007

Instrument DEED

Date : 5/04/2004

Time : 3:57:00

Control # 200405040964

ROCHESTER CITY OF

J DIMARCO BUILDERS INC

TT# TT 0000 019387

Employee ID DA40

MORTGAGE TAX

FILE FEE-S	\$	66.00
FILE FEE-C	\$	11.00
REC FEE	\$	21.00
TRANS TAX	\$	20.00
MISC FEE-C	\$	5.00
	\$.00
	\$.00
	\$.00
	\$.00

MORTGAGE AMOUNT	\$.00
BASIC MORTGAGE TAX	\$.00
SPEC ADDIT MTG TAX	\$.00
ADDITIONAL MTG TAX	\$.00
Total	\$.00

Total: \$ 123.00

STATE OF NEW YORK
MONROE COUNTY CLERK'S OFFICE

TRANSFER AMT

WARNING - THIS SHEET CONSTITUTES THE CLERKS
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

TRANSFER AMT \$ 5,000.00

TRANSFER TAX \$ 20.00

Cheryl Dinolfo
Monroe County Clerk



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