

SAMPLE TRUST DEED

TRUST DEED

THIS TRUST INDENTURE, Made this \_\_\_\_\_day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_, a corporation organized and existing under and by virtue of the laws of the State of \_\_\_\_\_, (hereinafter called "GRANTOR" or "PARTY OF THE FIRST PART"), and \_\_\_(see text, page 6 and 7 for selection of entity)\_\_\_\_, TRUSTEE, a corporation duly chartered, organized and existing under and by virtue of the laws of the State of \_\_\_\_\_, (hereinafter called "TRUSTEE" or "PARTY OF THE SECOND PART").

WITNESSETH:

THAT WHEREAS, \_\_\_\_\_ is now the owner of property known as \_\_\_\_\_, located in or near the City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, which property is being improved and developed by the construction of dwellings thereon; and

WHEREAS, Grantor is the owner of certain property, (hereinafter more particularly described) upon which there is located a sewage system including sanitary sewers and appurtenances together with a sewage treatment plant (hereinafter referred to as "sewage system"), for the purpose of supplying adequate service to all properties connected to or to be connected to the sewage system; and

WHEREAS, The Department of Housing and Urban Development (HUD) will not accept for insurance, and the Veterans Administration will not guarantee or insure, mortgage loans covering the separate properties and improvements built or to be built thereon, without receiving assurances as to the continuous and satisfactory operation of the said sewage system; and

WHEREAS, such improvement and development of the properties and the future financing and sale of the properties is contingent upon the insurance of said mortgage loans by HUD or the guaranty or insurance of said mortgage loans by the Veterans Administration; and

WHEREAS, it is the intention and purpose of the Grantor that such system shall be used and operated to provide adequate disposal of sewage for each of the properties connected thereto, regardless of the ownership of the individual properties, and properly to maintain the sewage system so that it will not adversely affect said properties, and to

assure the continuance of the operation and maintenance of such system for the benefit of the present and future owners of the properties connected thereto, the mortgagees holding mortgages covering such property, and HUD and the Veterans Administration.

NOW, THEREFORE, for and in consideration of the undertakings of the Grantor to provide and assure the maintenance and operation of the sewage system as aforesaid and the further sum of One Dollar (\$1.00) Lawful money of the United States cash in hand to Grantor by Trustee, the receipt whereof is hereby acknowledged, the Grantor does hereby grant and convey to the party of the second part, as Trustee, the following property, to wit:

(A) All of its right, title and interest in and to the following described real property:

(Complete description of property upon which sewage system is located is to be inserted in this space)

(B) The sewage collection system including all appurtenances such as manholes, pumping stations, etc. and the sewage treatment plant including effluent line to point of final disposal, heretofore constructed or to be constructed, including all easements incident to the ownership and operation of said sewage system.

Further, the Grantor hereby warrants that there is no existing encumbrances, liens, or other indebtedness to the title of the sewage system conveyed hereunder other than the following:

And warrants that the above said encumbrances, liens or indebtedness (if any) have been subordinated to this conveyance and are subject to this trust deed.

This conveyance is upon the trusts and for the purposes following, to wit:

1. This grant is for the benefit of the present and future owners of all and each of the properties now or hereafter connected to the said sewage system, as well as the holders of the mortgages covering

each of the properties and Trustee shall hold the title to the property granted by this indenture until either (a) the sewage system is taken over by either a Governmental authority or a public utility (regulated and controlled as to rates and services by a duly constituted public regulatory body or commission) for maintenance and operation, or (b) other adequate sewage service is provided either by a Governmental authority or public utility (regulated and controlled as to rates and services by a duly constituted public regulatory body or commission)

through means other than the operation of sewage system and facilities now transferred to the Trustee herein. Upon the happening of either of such events at a time when the Grantor is still operating and managing the sewage system in accordance with the terms and provisions hereof, the Trustee shall immediately reconvey the property to the Grantor, its successors or assigns, and this indenture shall be of no further effect.

2. The Grantor agrees to provide at all times, for each of the properties connected to the said sewage system, service adequate for the safe and sanitary collection, treatment, and disposal of all domestic sewage from said dwellings, in accordance with the 1972 Federal Water Pollution Control Act Amendments of the U.S. Environmental Protection Agency (EPA). The Grantor further shall operate and maintain the sewage system, including the sewage treatment plant, in a manner so as not to pollute the ground, air, or water in, under or around said properties with improperly or inadequately treated sewage, or with noxious or offensive gases or odors. The Grantor further agrees to operate the system in accordance with regulations and recommendations of the State Board of Health and any and all other public authorities having jurisdiction in such matters, and to produce an effluent of a quality satisfactory to the State Board of Health and any and all other public authorities having jurisdiction over such matters. Records of any and all tests conducted in connection with said system shall be kept as permanent records by the Grantor and said records shall be open to inspection by the State Board of Health of the State of \_\_\_\_\_, and the owners of the properties connected to the said sewage system. The said Board of Health and/or its agents shall at all times have access to the plant of the Grantor to conduct any and all tests as said Board shall consider necessary to determine compliance with the said regulations and recommendations. In the event said Board shall determine that the operation of the system does not meet the said regulations or recommendations the Grantor shall with reasonable dispatch at its sole costs make any adjustment, repair, installation, or improvement that shall be necessary or recommended by said Board to bring the operation of the system up to the said regulations and recommendations.

3. The Grantor shall maintain said sewage system at all times in good order and repair so that satisfactory service as aforesaid may be supplied to each of said properties as provided in paragraph 2 above.

APPENDIX 3

4. Until the happening of one of the events set forth under paragraph numbered 1 above: Should Grantor fail to operate and manage the sewage system, in the manner and under the conditions specified in paragraphs numbered 2 and 3 above and should Grantor fail, after notice in writing from the Trustee, to correct such failure with reasonable dispatch, then Trustee shall take immediate possession of the sewage system for the purpose of operating and maintaining the same, and shall hold, use, operate, manage, and control the same either itself or by or

through any of the agencies or parties for whose benefit this trust is created and it shall take possession thereof for the purpose of operating the same, and in that event, the Trustee or the entity operating the sewage system in its behalf or in the behalf of any of the beneficiaries of this trust, shall be subrogated to all rights of the Grantor to levy and collect a charge against each customer at rates not in excess of those specified in paragraph numbered 6 herein.

5. In the event the Trustee takes possession of the sewage system pursuant to the provisions of paragraph numbered 4 or paragraph numbered 6 the Grantor shall have no further right, title or interest in or to the sewage system or other property granted by this indenture and shall not be entitled to any portion of the proceeds resulting from any sale of such system or property; but the Trustee shall have the right to transfer such system to a governmental authority upon such terms or conditions as may be approved by the Trustee and the owner or owners of a majority of the properties connected to the sewage system.

6. The Grantor reserves the right to levy and collect a charge for sewage services provided to the occupants of each of the properties connected to the sewage system in the amount of \$\_\_\_\_\_ per\_\_\_\_\_.

A \_\_\_\_\_ discount will be allowed if paid within \_\_\_\_\_ days after same is due. Service shall be charged on a prorata basis from the date the service is established at the request of the customer to the date of its discontinuance.

(a) It is agreed between the parties hereto that for the first year of operation of the sewage system the above rates shall be deemed reasonable.

(b) The Grantor shall maintain accurate books relative to the sewage system. Such books shall be available for inspection by a person or persons designated in writing by the Trustee or designated in writing by not less than one-third of the beneficiaries of this Trust; provided,

9/76

Page 4

HUD-Wash., D. C.

---

4075.12 REV

APPENDIX 3

that the continuing right of inspection hereby created shall be exercised only at the place where such books are customarily maintained in \_\_\_\_\_; that such right of inspection shall be exercised during usual business hours, after reasonable notice and in such a manner as not to hamper unduly or interfere with the conduct of the Grantor's business.

(c) Changes in rates may be proposed by the Grantor and by the said beneficiaries. If within 90 days after notice to the Trustee and to the beneficiaries of a rate change proposed by the Grantor not more than one-third of the beneficiaries of this Trust shall have signified

in writing their opposition to such proposed rate change, the Grantor may forthwith establish such new rates which shall be deemed reasonable pending the accumulation of experience to show such new rates to be unreasonable. If more than one-third of the beneficiaries signify in writing their opposition to a rate change proposed by the Grantor, or if more than one-third of the beneficiaries propose in writing a rate change which the Grantor opposes, and the parties cannot reach an agreement by negotiation within 30 days, then the matter shall be referred to a board of arbiters who shall be designated as follows: The Grantor shall designate an arbiter, the beneficiaries shall designate an arbiter and the two arbiters thus selected shall choose a third arbiter. The decision, of the board of arbiters as to the reasonableness of rates shall be final upon the parties hereto. All costs of arbitration shall be paid by the losing party or parties. The duly elected officers of a citizens' or property owners' association comprised of the beneficiaries, or the members of a committee duly appointed by such officers, shall prima facie represent more than one-third of the beneficiaries.

(d) Should the Grantor charge rates for sewage service in excess of reasonable rates, as herein above defined, then the Trustee shall notify the Grantor of such over-charge by registered mail. Should the Grantor thereafter fail or refuse to establish and maintain fair and reasonable rates, as herein above defined, within the period of ninety (90) days, the Trustee shall take immediate possession of the sewage system for the purpose of furnishing sewage service at fair and reasonable rates and the Trustee shall hold, use, operate, manage and control the sewage system, as set forth under paragraph numbered 4 above.

7. Notwithstanding any other provision of this trust deed, any creditor of record of the Grantor shall have a reasonable period of time to correct any default hereunder prior to the taking over of the property by the trustee.

Page 5

9/76

HUD-Wash., D. C.

---

4075.12 REV

APPENDIX 3

8. If it should become necessary at any future time for the Trustee or any entity acting in its behalf' or any beneficiary under this trust indenture, to take over, operate and manage the sewage system under the provisions of this trust, then and in that event, the operator of such system shall be entitled to a Trustee's fee payable from the income of the sewage system at a rate not in excess of \_\_\_\_\_% of the gross charges collected by such Trustee, provided that such Trustee's fee may be increased with the approval of the owner or owners of seventy-five (75) per cent of the properties connected to the sewage system.

IN TESTIMONY WHEREOF \_\_\_\_\_, the Grantor, has caused these presents to be executed in its behalf by \_\_\_\_\_, its President, and its corporate seal to be hereunto affixed and attested

by \_\_\_\_\_, its \_\_\_\_\_ and the \_\_\_\_\_,  
the Trustee herein named, has caused these presents to be executed by  
\_\_\_\_\_, its President, and its corporate seal to be  
affixed and attested by \_\_\_\_\_, the-day and year  
first hereinabove written. In entering into the agreement contained  
herein and executing this Trust Indenture, \_\_\_\_\_  
\_\_\_\_\_ acts for itself as Trustee and as representative  
of and by authority of all persons, firms, corporations or entities  
which are or may be beneficiaries under the trust thereby created.

\_\_\_\_\_ Grantor

By \_\_\_\_\_

ATTEST:

\_\_\_\_\_ Trustee

By \_\_\_\_\_

9/76

Page 6

HUD-Wash., D. C.