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| **SUPREME COURT** |  |
| **STATE OF NEW YORK** | **COUNTY OF WESTCHESTER** |
| Benjamin Rosenstad & Jane Lubowitz,  Kevin J Kelly & Janet A Brody, John S. Galantic & Alexandra Galantic, Robert L. Alexander & Elizabeth C. Alexander, Trustees, as Trustees of the Robert L. Alexander Revocable Trust and Elizabeth C. Alexander Revocable Trusts, and The Mundinger Paul -Trust,  Plaintiffs, | Index No. \_\_\_\_\_\_\_\_\_\_\_  **VERIFIED COMPLAINT**  **SEEKING**  **DECLARATORY JUDGMENT & PERMANENT INJUNCTION** |
| v. |  |
| Wainwright House, Inc.,  Defendant. | Plaintiffs designate Westchester County as the place of trial.  The basis of venue is the  residence of Plaintiffs |

Plaintiffs, by way of Complaint for Declaratory Judgment and Injunctive relief against Defendants, Wainwright House, Inc. ("WHI" or "Defendant"), allege and say as follows:

**INTRODUCTION**

1. This is an action for declaratory and injunctive relief to settle important questions concerning the use of WHI's property at 260 Stuyvesant Avenue, Rye NY (the "Wainwright Parcel"), and the rights and obligations of the Plaintiffs and Defendant with respect to a certain deed restriction in the chain of title of both parties which prohibits the sale of intoxicating liquors on the Wainwright Parcel ("Deed Restriction").  See **Exhibit A-1**, Deed to Wainwright Parcel (which includes the Deed Restriction), and **Exhibit A-2** (the deed in which the language of the Deed Restriction first occurs and which is expressly incorporated into the Deed to the Wainwright Parcel).
2. The Plaintiffs each own property adjacent to, and/or within the neighborhood of, the Wainwright Parcel, and each benefits from the Deed Restriction (collectively, those Plaintiffs being referred to as the “Neighborhood Owners” and those parcels being referred to as the “Neighboring Benefitted Parcels”).
3. Defendant is prohibited by the Deed Restriction from suffering or permitting any intoxicating liquors to be sold on the Wainwright Parcel, or to use any building upon said premises or to let or lease the same to be used for the purpose of selling intoxicating liquors, and other non-residential actions (“Actionable Events”).
4. Upon information and belief, Defendant has sold, intends to continue to sell, and/or to suffer such sale and consumption of, intoxicating liquors on the Wainwright Parcel, in violation of the Deed Restriction.
5. Without prejudice to Plaintiffs’ allegations herein or any future action that no Actionable Event is permitted or can be permitted under the Code of the City of Rye, Defendant has made application to City agencies and departments to authorize events at which Actionable Events are intended and/or would be allowed or desired.
6. Without prejudice to Plaintiffs’ allegations herein or any future action that no Actionable Event is permitted or can be permitted under the Code of the City of Rye, upon information and belief, the Defendant has held or allowed, and/or intends to hold or allow, Actionable Events on the Wainwright Parcel which are not only Actionable Events, but are not permitted under its local entitlements (“Unlawful Events”), since such events are permitted only by special permit, and Defendant’s special permit to hold such events has expired without any new or renewed approval being filed in the City Clerk’s office, further evidencing its intent and desire to proceed in holding or allowing Actionable Events.
7. Notwithstanding that certain Plaintiffs, as set forth below, may have unique claims based on being continuous to, or in direct line of title with, the Wainwright Parcel, all of the Plaintiffs comprise a unified and intentional community of interest such as was intended to benefit from the Deed Restriction, and join in opposing, any and all Actionable Events and Unlawful Events. All of the Plaintiffs are united in their objections to the Defendant holding or allowing Actionable or Unlawful Events on the Wainwright Parcel.
8. The Plaintiffs thus commence this action in order to obtain a judgment declaring that intoxicating beverages may not be sold upon the Wainwright Parcel, nor may its owners do, or fail to do, any act which would result in intoxicating liquors being sold on the Wainwright Parcel such as leasing, subleasing, licensing, cooperating, empowering, hosting, promoting, allowing or facilitating, or making application to any local, state or federal entity or official for entitlements to, sell or allow for sale of intoxicating liquors sold intoxicating liquors on the Wainwright Parcel, (all such acts being referred to as "Actionable Events"), or transferring ownership or letting or licensing to third parties, all or any part of the Wainwright Parcel (any such act being referred to as "Letting," and any person or entity to whom all or any portion of the Wainwright Parcel is transferred, leased or licensed being referred to as an "Interested Occupant"), without expressly continuing and enforcing the Deed Restriction as to any Interested Occupant.

**THE PARTIES & JURISDICTIONAL STATEMENTS**

1. Upon information and belief, the Defendant is a domestic not-for-profit corporation of the State of New York, with a principal place of business at 260 Stuyvesant Avenue, Rye, in the County of Westchester, State of NY, possessing fee title to the Wainwright Property.

1. Defendant WHI is the owner in fee of 260 Stuyvesant Ave, Rye, New York (the Wainwright Parcel). See **Exhibit B**, Deed to Wainwright Parcel.
2. Plaintiffs Benjamin Rosenstad & Jane Lubowitz are natural persons residing at 220 Stuyvesant Avenue, Rye NY Exhibit C-1.
3. Kevin J Kelly & Janet A Brody are natural persons residing at 210 Stuyvesant Avenue, Rye NY Exhibit C-2.
4. John S & Alexandra Galantic are natural persons residing at 230 Stuyvesant Avenue, Rye NY Exhibit C-3.
5. Robert L. Alexander & Elizabeth C. Alexander, Trustees, as Trustees of the Robert L. Alexander Revocable Trust and Elizabeth C. Alexander Revocable Trusts (the “Alexanders”), are duly designated trustees of said trusts, formed for the purpose of owning, and/or authorized to own, property known as 290 and 300 Stuyvesant Avenue, within the City of Rye, County of Westchester. **Exhibit C-4** and **Exhibit C-5**, respectively.
6. Mary is the duly authorized trustee of the Mundinger Paul-Trust, established for the purpose of owning, and/or authorized to own, the ownership of property known as 200 Stuyvesant Avenue, within the City of Rye, County of Westchester. **Exhibit C-6.**

**FACTUAL BACKGROUND**

1. The Deed Restriction was recorded against and with respect to the Wainwright Parcel by the Common Owner at the time of transfer of the Wainwright Parcel into Wainwright House, Inc. ("WHI"), in 1983 (the "Deed Restriction Transfer"). See Exhibit A-1.
2. The Deed Restriction states that the owner of the restricted parcel shall not “…suffer or permit any intoxicating liquors to be sold thereon or to use any building upon said premises or to let or lease the same to be used for the purpose of selling intoxicating liquors.”
3. The Deed Restriction runs with the land.
4. To the extent any Actionable Event is held on the Wainwright Parcel it is expressly forbidden by the Deed Restriction.
5. The Restriction was intentional and express in its terms, it is neither arcane nor a residual provision in an obscure instrument.
6. Given that Wainwright owned both the land being retained *and* the encumbered land being transferred, there can be no doubt that it was a restriction meant to restrict its own behavior for the benefit of neighboring owners. Otherwise, it could simply have refrained from the behaviors as a matter of choice without making the obligation a matter of record in the chain of title.
7. The Deed Restriction acts to preserve the pastoral character of the neighborhood upon which future residents of the neighborhood could rely, and with which any owner of the Wainwright Parcel would have to comply.
8. Transfer was also clearly intended to ensure that the land retained by WHI in 1983 was to remain residential (as opposed to commercial) in character. In addition to prohibiting the service of alcohol, the language of the Deed Restriction also prohibits other specific types of commercial uses.
9. By virtue of the intention of the parties to the Deed Restriction to protect the quality and nature of the neighborhood through the imposition of the restriction, and all other theories of law by which the parcel may be found to benefit from the Deed Restriction, all of the Plaintiffs’ parcels are benefitted parcels, and are thus all Plaintiffs, including the Alexander Plaintiffs, are referred to herein collectively as the Neighboring Benefitted Parcels.
10. Upon information and belief, WHI has on numerous occasions held or allowed to be held on the Wainwright Parcel Actionable Events.
11. Upon information and belief, WHI has sought and received municipal permits to hold future Actionable Events on the Wainwright Parcel without any restriction against the sale of intoxicating liquors on the Wainwright Parcel.
12. In connection with seeking and obtaining such approvals, and in other contexts, WHI has admitted that it has and/or intends to enter into agreements with third parties to allow for receptions and gatherings on the Wainwright Parcel and has failed or refused to acknowledge the Deed Restriction's continuing prohibition of Actionable Events.
13. Upon information and belief, WHI sponsored, hosted, or Let upon the Wainwright Parcel for an Actionable Event on or about October 23, 2021during which alcohol was served and may have contributed to a motor vehicle accident on Stuyvesant Street.

**AS AND FOR A FIRST CAUSE OF ACTION FOR DECLARATORY JUDGMENT AS TO THE NEIGHBORING PLAINTIFFS WITH RESPECT TO THE BENEFITTED NEIGHBORING PARCELS**

1. The foregoing paragraphs are all incorporated herein as if set forth fully herein.
2. All Plaintiffs are "Neighboring Plaintiffs" in that the parcels owned by them are within a contemplated and intentional plan of development for the lands of, and contiguous to, WHI, which included a clear intent to have all said lands continue in enjoyment of their fee ownership in reliance upon the sober and pastoral nature of the use of the Wainwright Parcel, an intent also reflected in the street's residential zoning designation.
3. The Plaintiff Owners of the Benefitted Neighboring Parcels are entitled to enforce the covenant of the Deed Restriction which prohibits the sale of intoxicating liquors on the Wainwright Parcel.
4. By reason of the foregoing, an actual and justiciable controversy exists between Plaintiffs and Defendant.  Plaintiffs therefore seek a declaratory judgment as to the parties' rights and obligations with respect to the Deed Restriction.

**AS AND FOR A SECOND CAUSE OF ACTION FOR A PERMANENT INJUNCTION AS TO THE BENEFITTED NEIGHBORING PARCEL PLAINTIFFS**

1. The foregoing paragraphs are all incorporated herein as if set forth fully herein.
2. The foregoing allegations of the instant complaint set forth facts which have resulted in, and will result in further, violation of the Deed Restriction at issue herein.
3. Each and every Actionable Event which is held will be a violation of the Deed Restriction.
4. Given that the Defendant has sought and obtained land use entitlements to hold numerous events without any restriction as to the sale, service or consumption of alcohol on the Wainwright Property, and given that Defendant has acknowledged publicly in the process of obtaining those entitlements that the contemplated events include parties and receptions (ranging from small gatherings to gatherings of hundreds) of the sort where alcohol is typically served, as well as their failure or refusal to acknowledge that the Deed Restriction is in full force and effect, it is clear that violation of the Deed Restriction is either presently occurring or threatened and imminent.
5. The Plaintiffs have no adequate remedy at law, in that money damages cannot serve as a remedy to the Benefitted Neighboring Plaintiffs. The Deed Restriction  is in the vein of protection of a quality of life,  seeking to ensure the preservation of a certain neighborhood character, upon which the Plaintiffs relied, and were entitled to rely.
6. Serious and irreparable injury will result if the injunction is not granted, in that any and every Actionable Event is a *total and entire* violation of the Deed Restriction. There is no "partial" or even "nominal" way to limit the permitted and planned Actionable Event's violation of the Deed Restriction absent a declaration of the applicability of the Deed Restriction and total prohibition of its violation.
7. For the same reasons, the equities are balanced in the Plaintiff's favor, in that the Defendant may continue in the use of its property in every lawful way, while the Plaintiffs are entirely devoid of protections each time an Actionable Event occurs.
8. Further, and for the same reasons, the Plaintiffs will suffer irreparable harm absent the injunction in that every Actionable Event constitutes a continuing and total harm from which no post-Event action or proceeding can provide any redress or remedy.
9. The injunctive relief is necessary to give protection for the future to prevent repeated violations, threatened or probable, of the Plaintiffs' property rights.

**AS AND FOR A THIRD CAUSE OF ACTION FOR DECLARATORY JUDGMENT AS TO CONTIGUOUS PLAINTIFFS**

1. The foregoing paragraphs are all incorporated herein as if set forth fully herein.
2. As contiguous owners immediately impacted by the breach of the Deed Restriction, the Alexanders and Galantics, and any other Plaintiff who is proven to own property contiguous to property owned by WHI, are entitled to enforce the covenant of the Deed Restriction which prohibits Actionable Events by virtue of its express terms in favor of such protections.
3. As owners who took fee title to a portion of their property which was once in common ownership with the WHI, the Alexanders, and any other Plaintiff who is proven to own property once in common ownership with property owned by WHI, are entitled to enforce the covenant of the Deed Restriction which prohibits Actionable Events by virtue of its express terms in favor of such protections.
4. By reason of the foregoing, an actual and justiciable controversy exists between Plaintiffs and Defendant.  Plaintiffs therefore seek a declaratory judgment as to the parties' rights and obligations with respect to the Deed Restriction.
5. By virtue of their ownership of the Dominant Alexander Parcel, the Alexanders are entitled to the express protections of the Deed Restriction.
6. As noted above, the Alexanders also acquired two Parcels in 2011 which, are contiguous to and/or in the neighborhood of the Wainwright Parcel. By virtue of the intention of the parties to the Deed Restriction to protect the quality and nature of the neighborhood through the imposition of the restriction, and all other theories of law by which the parcel may be found to benefit from the Deed Restriction, 290 and 300 Stuyvesant Street became benefitted parcels and are thus referred to herein as the “Benefitted Alexander Parcels.”

**AS AND FOR A FOURTH CAUSE OF ACTION FOR A PERMANENT INJUNCTION AS TO CONTIGUOUS PLAINTIFFS**

1. The foregoing paragraphs are all incorporated herein as if set forth fully herein.
2. On the facts of the Third cause of action, the foregoing allegations of the instant complaint set forth facts which have resulted in, and will result in further, violation of the Deed Restriction at issue herein.
3. Each and every Actionable Event which is held will be a violation of the Deed Restriction.
4. Given that the Defendant has sought and obtained land use entitlements to hold numerous events without any restriction as to the sale, service or consumption of alcohol on the Wainwright Property, and given that Defendant has acknowledged publicly in the process of obtaining those entitlements that the contemplated events include parties and receptions (ranging from small gatherings to gatherings of hundreds) of the sort where alcohol is typically served, as well as their failure or refusal to acknowledge that the Deed Restriction is in full force and effect, it is clear that violation of the Deed Restriction is either presently occurring or threatened and imminent.
5. The Plaintiffs have no adequate remedy at law, in that money damages cannot serve as a remedy to the Alexander Plaintiffs. The Deed Restriction  is in the vein of protection of a quality of life,  seeking to ensure the preservation of a certain neighborhood character, upon which the Plaintiffs relied, and were entitled to rely.
6. Serious and irreparable injury will result if the injunction is not granted, in that any and every Actionable Event is a total and entire violation of the Deed Restriction. There is no "partial" or even "nominal" way to limit the permitted and planned Actionable Event's violation of the Deed Restriction absent a declaration of the applicability of the Deed Restriction and total prohibition of its violation.
7. For the same reasons, the equities are balanced in the Plaintiff's favor, in that the Defendant may continue in the use of its property in every lawful way, while the Plaintiffs are entirely devoid of protections each time an Actionable Event occurs.
8. Further, and for the same reasons, the Plaintiffs will suffer irreparable harm absent the injunction in that every Actionable Event constitutes a continuing and total harm from which no post-Event action or proceeding can provide any redress or remedy.
9. The injunctive relief is necessary to give protection for the future to prevent repeated violations, threatened or probable, of the Plaintiffs' property rights.
10. The foregoing paragraphs are all incorporated herein as if set forth fully herein.

**AS AND FOR A FIFTH CAUSE OF ACTION FOR DECLARATORY JUDGMENT AS TO SUCCESSOR PLAINTIFFS**

1. The foregoing paragraphs are all incorporated herein as if set forth fully herein.
2. The Alexanders acquired all or part of their property in a direct chain of title with the Wainwright Parcel.
3. By virtue of same, the Alexanders, and any other Plaintiff who is proven to be in the chain of title with the Wainwright Parcel (“Successor Plaintiffs”) are entitled to the express protections of the Deed Restriction on that ground.
4. As noted above, the Alexanders also acquired two Parcels in 2011 which, are contiguous to and/or in the neighborhood of the Wainwright Parcel. By virtue of the intention of the parties to the Deed Restriction to protect the quality and nature of the neighborhood through the imposition of the restriction, and all other theories of law by which the parcel may be found to benefit from the Deed Restriction, 290 and 300 Stuyvesant Street became benefitted parcels and are thus referred to herein as the “Benefitted Alexander Parcels.”

**AS AND FOR A SIXTH CAUSE OF ACTION FOR A PERMANENT INJUNCTION AS TO SUCCESSOR PLAINTIFFS**

1. The foregoing paragraphs are all incorporated herein as if set forth fully herein.
2. On the facts of the Fifth cause of action, the foregoing allegations of the instant complaint set forth facts which have resulted in, and will result in further, violation of the Deed Restriction at issue herein.
3. Each and every Actionable Event which is held will be a violation of the Deed Restriction.
4. Given that the Defendant has sought and obtained land use entitlements to hold numerous events without any restriction as to the sale, service or consumption of alcohol on the Wainwright Property, and given that Defendant has acknowledged publicly in the process of obtaining those entitlements that the contemplated events include parties and receptions (ranging from small gatherings to gatherings of hundreds) of the sort where alcohol is typically served, as well as their failure or refusal to acknowledge that the Deed Restriction is in full force and effect, it is clear that violation of the Deed Restriction is either presently occurring or threatened and imminent.
5. The Plaintiffs have no adequate remedy at law, in that money damages cannot serve as a remedy to the Alexander Plaintiffs. The Deed Restriction  is in the vein of protection of a quality of life,  seeking to ensure the preservation of a certain neighborhood character, upon which the Plaintiffs relied, and were entitled to rely.

1. Serious and irreparable injury will result if the injunction is not granted, in that any and every Actionable Event is a *total and entire* violation of the Deed Restriction. There is no "partial" or even "nominal" way to limit the permitted and planned Actionable Event's violation of the Deed Restriction absent a declaration of the applicability of the Deed Restriction and total prohibition of its violation.
2. For the same reasons, the equities are balanced in the Plaintiff's favor, in that the Defendant may continue in the use of its property in every lawful way, while the Plaintiffs are entirely devoid of protections each time an Actionable Event occurs.
3. Further, and for the same reasons, the Plaintiffs will suffer irreparable harm absent the injunction in that every Actionable Event constitutes a continuing and total harm from which no post-Event action or proceeding can provide any redress or remedy.
4. The injunctive relief is necessary to give protection for the future to prevent repeated violations, threatened or probable, of the Plaintiffs' property rights.

**WHEREFORE**, Plaintiffs request that this Court:

1) On the **FIRST CAUSE OF ACTION**, as to the Benefitted Neighboring Parcels Plaintiffs:

1. Declare that the Deed Restriction remains in full force and effect;
2. Declare that the Deed Restriction prohibits the sale or service of intoxicating liquors on the Wainwright Parcel;
3. Declare that the Deed Restriction prohibits Defendant from Letting, Allowing, or Transferring all or any portion of the Wainwright Parcel without expressly prohibiting, and taking all steps necessary and proper to ensure, that no intoxicating liquors are sold on the Wainwright Parcel by any third party;
4. Declare that WHI may not seek, obtain or be granted any permit, land use entitlement or authorization of any kind ("Permit") which would allow for any of the foregoing declared rights and obligations of the parties to be contravened;
5. Declare that any Permit previously obtained or which might, notwithstanding these Declarations, be issued or obtained hereafter, shall not in any way nullify or render the Deed Restriction unenforceable;

2) On the **SECOND CAUSE OF ACTION**, as to the Benefitted Neighboring Parcel Plaintiffs: Issue a judgment and order permanently enjoining the Defendant from doing or omitting to do any act which would violate the Declaration of this Court as to the First Cause of Action or qualify as an Actionable Event; and

3) On the **THIRD CAUSE OF ACTION**, as to the Contiguous Plaintiffs:

1. Declare that the Deed Restriction remains in full force and effect;
2. Declare that the Deed Restriction prohibits the sale of intoxicating liquors on the Wainwright Parcel;
3. Declare that the Deed Restriction prohibits Defendant from Letting, Allowing, or Transferring all or any portion of the Wainwright Parcel without expressly prohibiting, and taking all steps necessary and proper to ensure, that no intoxicating liquors are sold on the Wainwright Parcel by any third party;
4. Declare that WHI may not seek, obtain or be granted any permit, land use entitlement or authorization of any kind ("Permit") which would allow for any of the foregoing declared rights and obligations of the parties to be contravened;
5. Declare that any Permit previously obtained or which might, notwithstanding these Declarations, be issued or obtained hereafter, shall not in any way nullify or render the Deed Restriction unenforceable.

4)     On the **FOURTH CAUSE OF ACTION**, as to the Contiguous Plaintiffs: Issue a judgment and order permanently enjoining the Defendant from doing or omitting to do any act which would violate the Declaration of this Court as to the First Cause of Action or qualify as an Actionable Event;

5) On the **FIFTH CAUSE OF ACTION**, as to the Successor Plaintiffs:

1. Declare that the Deed Restriction remains in full force and effect;
2. Declare that the Deed Restriction prohibits the sale of intoxicating liquors on the Wainwright Parcel;
3. Declare that the Deed Restriction prohibits Defendant from Letting, Allowing, or Transferring all or any portion of the Wainwright Parcel without expressly prohibiting, and taking all steps necessary and proper to ensure, that no intoxicating liquors are sold on the Wainwright Parcel by any third party;
4. Declare that WHI may not seek, obtain or be granted any permit, land use entitlement or authorization of any kind ("Permit") which would allow for any of the foregoing declared rights and obligations of the parties to be contravened;
5. Declare that any Permit previously obtained or which might, notwithstanding these Declarations, be issued or obtained hereafter, shall not in any way nullify or render the Deed Restriction unenforceable.

6)     On the **SIXTH CAUSE OF ACTION**, as to the Successor Plaintiffs: Issue a judgment and order permanently enjoining the Defendant from doing or omitting to do any act which would violate the Declaration of this Court as to the First Cause of Action or qualify as an Actionable Event;

5) Such other and further relief as to the Court seems just and proper.

Dated:  Rhinebeck, New York

January \_\_\_, 2022    Yours, etc.

VENEZIANO & ASSOCIATES

Attorneys for Petitioners

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Joseph P. Eriole, Esq., of Counsel

108 Montgomery Street

Rhinebeck, NY 12572

P: (845) 417.4267

F: (845) 443-4010

To:     Wainwright House, Inc.

           260 Stuyvesant Avenue

Rye NY 10580

**VERIFICATION**

STATE OF NEW YORK  )

) ss.:

COUNTY OF DUTCHESS  )

JOSEPH P. ERIOLE, being duly sworn, deposes and says:

1. I am of counsel to the firm of VENEZIANO & ASSOCIATES, attorneys for Plaintiffs.
2. I am an attorney, duly licensed to practice law in the State of New York, and a duly licensed notary public.
3. I am fully and personally familiar with all the facts and circumstances and the pleadings and the proceedings heretofore had herein. I have read all of the allegations of the Verified Complaint and I believe said allegations to be true and correct, and as to these allegations and any allegations asserted upon information and belief, I believe the same to be true and correct based upon the books and records in Petitioner's possession, custody and control.
4. I have also consulted with the Plaintiffs, who know the contents herein.
5. The reason this Verification is made by me is that I have personal knowledge of all of the material allegations contained in the Verified Petition, and my offices are located outside the County in which the Petitioners reside.

Affirmed:

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Joseph P. Eriole, Esq.