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RESTRICTIONS, EASEMENTS, CHARGES AND LIENS

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DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS, EASEMENTS, CHARGES AND LIENS

THIS DECLARATION made this _____ day of _____ 1984, by FOREST CREEK EQUITY CORP., a corporation organized and existing under the laws of the State of New York, having its principal offices at 80 West Main Street, Rochester, New York 14614, hereinafter referred to as "Sponsor".

WITNESSETH

WHEREAS, the "Sponsor" is the owner of certain real property in the Town of Chili, Monroe County, New York, more particularly described in "Schedule A" annexed hereto and made a part hereof.

WHEREAS the "Sponsor" desires to develop as a residential community with residential lots and dwelling units to be individually owned and with certain open spaces and common facilities available for the benefit of said community, and

WHEREAS, the "Sponsor" desires to provide for maintenance of said common areas and for the preservation of the values and amenities in said common areas by the creation of an association which shall be empowered to maintain and administer the community property and facilities and which shall administer and enforce the covenants and restrictions and which shall collect and disburse the assessments and charges all as set forth herein, and

WHEREAS, the "Sponsor" has incorporated the Pumpkin Hill Homeowners Association, Inc. pursuant to the Not-for-profit Corporation Laws of the State of New York for purposes of exercising the functions as set forth herein,

NOW THEREFORE, the "Sponsor" declares that the real property described in "Schedule A" shall be held, sold and conveyed subject to the following ease-

ments, restrictions, covenants and conditions for purposes of protecting the value and desirability of said real property and which shall run with the real property and be binding on all parties having any right, title or interest in the property, their heirs, successors and assignments and shall inure to the benefit of each owner.

ARTICLE ONE - DEFINITIONS

Section 1.01 Definitions

The following words, phrases or terms when used in this Declaration or in any Supplemental Declaration shall have the following meanings:

1. Association shall mean and refer to the Pumpkin Hill Homeowners Association, Inc.
2. Common Areas shall mean and refer to all property owned by the Association now or hereafter for the common use and enjoyment of the homeowners.
3. Declaration shall mean and refer to this document of protective covenants, conditions, restrictions, easements, charges and liens as of from time to time may be supplemented, extended or amended.
4. Eligible Holder of Lot Mortgages shall mean and refer to the holder, insurer or guarantor of any lien of mortgage given by a lot owner covering his lot which is 1) a purchase money mortgage or 2) any mortgage taken or acquired by the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

5. Lot shall mean and refer to any plot of land shown upon any recorded subdivision map or resubdivision map of the properties with the exception of the common area, and which plot is identifiable as a separate parcel according to the Town of Chili tax records.
6. Member shall mean and refer to each holder of a membership interest in the Pumpkin Hill Homeowners Association, Inc.
7. Owner shall and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property.
8. Property shall mean and refer to all the properties as are subject to this Declaration and such additions as may hereafter be brought within the jurisdiction of the Association.
9. Sponsor shall mean and refer to Forest Creek Equity Corp.
10. Townhome shall mean a single family dwelling on the property that it is attached to at least one other townhome by means of a party wall or otherwise.

ARTICLE TWO - PROPERTIES SUBJECT TO THIS DECLARATION

Section 2.01 Initial Property

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Town of Chili, County of Monroe, and State of New York and is more particularly described in "Schedule A" attached hereto and incorporated by reference herein, all of which property shall be referred to as initial property.

SCHEDULE A

ALL THAT TRACT AND OR PARCEL OF LAND SITUATED IN PART OF TOWN LOT 110, OF THE JOHN SMITH ALOTMENT, IN THE TOWN OF CHILI, COUNTY OF MONROE, STATE OF NEW YORK AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE CENTERLINE OF PAUL ROAD (PROPOSED 70 FEET WIDE), LOCATED 707.77 FEET WESTERLY FROM THE INTERSECTION OF CENTERLINES OF PAUL ROAD AND CHILI AVENUE; THENCE, NORTH $00^{\circ} 46' 55''$ WEST, 35 FEET TO A POINT ON THE NORTHERLY STREET LINE OF PAUL ROAD AND BEING THE POINT OF BEGINNING; THENCE,

- 1 SOUTH $89^{\circ} 13' 05''$ WEST, ALONG THE SAID LINE A DISTANCE OF 264.0 FEET; THENCE,
- 2 NORTH $00^{\circ} 46' 55''$ WEST, A DISTANCE OF 114.16 FEET; THENCE,
- 3 SOUTH $89^{\circ} 13' 05''$ WEST, A DISTANCE OF 113.63 FEET; THENCE,
- 4 NORTH $00^{\circ} 46' 55''$ WEST, A DISTANCE OF 335.84 FEET; THENCE,
- 5 NORTH $00^{\circ} 46' 55''$ WEST, ALONG A PHASE LINE, A DISTANCE OF 20.00 FEET TO AN ANGLE POINT; THENCE,

- 6 NORTH $89^{\circ} 13' 05''$ EAST, ALONG A PHASE LINE, A DISTANCE OF 60.00 FEET TO AN ANGLE POINT; THENCE,
7. SOUTH $00^{\circ} 46' 55''$ EAST, ALONG A PHASE LINE, A DISTANCE OF 8.69 FEET TO AN ANGLE POINT; THENCE,
- 8 NORTH $58^{\circ} 59' 28''$ EAST, ALONG A PHASE LINE, A DISTANCE OF 48.58 FEET TO AN ANGLE POINT; THENCE,
- 9 NORTHEASTERLY, ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 407.00 FEET AND A CENTRAL ANGLE OF $18^{\circ} 35' 37''$, A DISTANCE OF 132.08 FEET TO AN ANGLE POINT; THENCE,
10. SOUTH $88^{\circ} 39' 13''$ EAST, ALONG A PHASE LINE, A DISTANCE OF 104.35 FEET TO AN ANGLE POINT; THENCE,
11. NORTH $62^{\circ} 29' 11''$ EAST, ALONG A PHASE LINE, A DISTANCE OF 83.40 FEET TO AN ANGLE POINT; THENCE,
12. NORTH $86^{\circ} 07' 00''$ EAST, ALONG A PHASE LINE, A DISTANCE OF 128.82 FEET TO AN ANGLE POINT; THENCE,
13. NORTH $72^{\circ} 37' 00''$ EAST ALONG A PHASE LINE, A DISTANCE OF 168.12 FEET TO AN ANGLE POINT; THENCE,
14. NORTH $00^{\circ} 46' 55''$ WEST, ALONG A PHASE LINE, A DISTANCE OF 187.00 FEET TO AN ANGLE POINT; THENCE,
15. NORTH $48^{\circ} 03' 42''$ WEST, ALONG A PHASE LINE, A DISTANCE OF 80.00 FEET TO AN ANGLE POINT; THENCE,
16. NORTH $31^{\circ} 48' 50''$ EAST, ALONG A PHASE LINE, A DISTANCE OF 29.50 FEET TO AN ANGLE POINT; THENCE,

17. NORTH 89° 13' 05" EAST, ALONG A PHASE LINE, A DISTANCE OF 257.88 FEET TO AN ANGLE POINT; THENCE,
18. SOUTH 00° 46' 55" EAST, ALONG A PHASE LINE, A DISTANCE OF 88.00 FEET TO AN ANGLE POINT; THENCE,
19. SOUTH 89° 13' 05" WEST, ALONG A PHASE LINE, A DISTANCE OF 35.00 FEET TO AN ANGLE POINT; THENCE,
20. SOUTH 00° 46' 55" EAST, ALONG A PHASE LINE, A DISTANCE OF 230.00 FEET TO A POINT ON THE PROPERTY LINE BETWEEN FOREST CREEK EQUITY CORP., REPUTED OWNER ON THE NORTH AND NOW OR FORMERLY WESLEY F. MOFFETT JR ET. AL. ON THE SOUTH; THENCE,
21. SOUTH 89° 13' 05" WEST, ALONG SAID PROPERTY LINE, A DISTANCE OF 284.00 FEET; THENCE,
22. SOUTH 00° 49' 15" CONTINUING ALONG SAID PROPERTY LINE, A DISTANCE OF 84 FEET; TO A POINT ON THE PROPERTY LINE BETWEEN FOREST EQUITY CORP., REPUTED OWNER ON THE NORTH AND NOW OR FORMERLY SELDEN A. AND JUDITH C. MARSHALL ON THE SOUTH; THEN
23. SOUTH 89° 13' 05" WEST, ALONG SAID PROPERTY LINE, A DISTANCE OF 72.80 FEET TO A POINT; THENCE,
24. SOUTH 00° 46' 55" EAST, CONTINUING ALONG SAID PROPERTY LINE, A DISTANCE OF 114.16 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF PAUL ROAD, BEING THE POINT AND PLACE OF BEGINNING, PARCEL CONTAINING 7.31 ACRES OF LAND MORE OR LESS.

ALL AS SHOWN ON A MAP ENTITLED, "PUMPKIN HILL TOWNHOMES, FINAL SITE PLAN, PHASE I," DRAWING NO. 8301J-12A, AS PREPARED BY PASSERO ASSOCIATES.

Section 2.02 Additional Property

The "Sponsor", its successors and assigns shall have the right to bring additional property within the scheme of this Declaration. The additions of property authorized under this article shall be made by filing and recording a Supplemental Declaration with respect to additional property and which shall extend the scheme of protective covenants, conditions, restrictions, easements, charges and liens contained in this Declaration to said additional properties and shall thereby subject such additions to assessment for the just share of Association expenses. This Supplemental Declaration may contain complementary additions and modifications of this Declaration as may be necessary to reflect the different character, if any of the added properties.

ARTICLE THREE - PROPERTY RIGHTS

Section 3.01 Owners Rights

Every owner shall have a right and easement of enjoyment in and to common areas which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

1. The right of the Association pursuant to its bylaws to adopt rules and regulations governing the use of the common areas and facilities, and governing the personal conduct of Association members and their guests and to establish penalties for infraction of said rules and regulations.
2. The right of the Association to charge reasonable admission and/or fees for use of any recreational facilities situated upon the common areas.
3. The right of the Association to suspend an owners voting rights and to suspend the owners right to use recreational facilities during any

period in which an assessment against his lot remains unpaid and for any infraction of the Association's published rules and regulations.

Section 3.02 Sponsor's Rights

NOTWITHSTANDING any other provisions herein contained: The "Sponsor": reserves the right to operate a Sale Center at 101 A 105 A Sleepy Hollow and to maintain five (5) model units. Prospective purchasers and others shall be allowed to visit the Sale Center and model units until the marketing and sale of all townhomes are complete, including additional phases of development. The "Sponsor" shall also have the right to use portions of the common elements for sales promotions including private roads, parking spaces, and to erect and maintain on the common area advertising direction and signs for Sponsors sales and marketing.

ARTICLE FOUR - EASEMENTS

Section 4.01 Easements for Utilities

"Sponsor" reserves the right to grant easements, both temporary and permanent, to all public authorities and public and private utility companies over any part of the common areas described herein.

Section 4.02 Easements for Encroachments

If any portion of the common areas encroach upon the lot, or if any lot encroaches upon any other lot or upon any portion of the common areas, as a result of the construction of any building or as a result of settling or shifting of any building, or as a result of alterations or refurbishing of the com-

mon areas, or one or more lots made by or with the consent of the Board of Director's, a valid easement for the encroachment and for the maintenance of the same so long as the building or buildings stand shall exist. In the event any building, townhome, any adjoining townhome or any adjoining common areas, shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceeding, and then rebuilt, encroachments of parts of the common areas upon any townhome, unit bought, or any lot or townhome upon any other lot or townhome, or upon any portion of the common areas, due to such rebuilding, shall be permitted, and valid easements for such encroachments and maintenance thereof shall exist so long as the building or buildings shall stand.

Section 4.03 Additional Easements

There is hereby created a blanket easement upon, across, over and under all of the properties for ingress, egress, installation, replacement, repair and maintenance of all utilities, including but not limited to water, sewers, gas, telephone, electricity and the master television antenna system. This easement shall permit the erection and maintenance of necessary poles and other equipment on property and shall permit the placement and maintenance of electrical or telephone wires and conduits, sewer and water lines, on above or below any residential land owned by any owner. An easement is hereby granted to the Pumpkin Hill Homeowners Association, Inc., its officers, agents, employees and employees of any Management Company having a contract with the Association over all of the common areas and to enter any residence to perform the duties or maintenance and repair of the residences or common areas, to maintain any utilities for which an easement has been granted and to prevent damage to any

other residence. In addition, the Association shall have the right to grant permits, licenses and easements over common areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the project.

Section 4.04 Easement in Favor of the "Sponsor"

The "Sponsor" and any persons it may select shall have the right of ingress and egress over, upon and across the common areas, or any additional land which may be hereafter added to the property and the right to store materials thereon and make such other use thereof as may be reasonably necessary incident to construction development and sales of the town homes, operation of the association and maintenance of the common areas and to perform any operations as in the sole opinion of the "Sponsor" may be reasonably required, convenient or incidental to the construction and sale of residences.

ARTICLE FIVE - PARTY WALLS

Section 5.01 Party Walls

Each wall built as part of the original construction of a townhome and placed on the dividing line between the lots shall constitute a party wall.

Section 5.02 Repair and Maintenance of Party Walls

The costs of reasonable repair and maintenance of a party wall shall be shared by the owners of said wall, each townhome owner being responsible for the ordinary maintenance and repair of their respective sides of said party wall. As it shall become necessary to make substantial repairs or rebuild a party wall,

the costs of such repairing or rebuilding shall be born equally by the two townhome owners.

Section 5.03 Exposure of Wall

Notwithstanding any other provision of this article, any owner who by his negligent or willful act causes the party wall to be exposed to the elements, shall bear the entire cost of furnishing necessary protection against such elements and the necessary repair caused by such elements. The Association shall have an easement to enter upon any townhome in order to effect the necessary repairs or maintenance of said party wall, and charge the cost of such repair to the responsible party or parties. If any party wall is repaired or rebuilt it shall stand upon the same place and be of the same or similar materials as the original wall. All labor performed shall be performed in a good and workmanlike manner.

Section 5.04 Party Wall Rights Run With the Land

The rights of support, quiet enjoyment, entry to repair or restore and contribution for the costs of same as described in this article shall run with the land and be binding upon all heirs, successors and assigns of each townhome owner.

Section 5.05 Arbitration

In the event of any dispute arises concerning a party wall each owner shall choose from a list of arbitrators provided by the Board of Directors of the Association one arbitrator and such arbitrator shall choose one additional arbitrator and the decision shall be by a majority of all the arbitrators.

ARTICLE SIX - ASSOCIATION MEMBERSHIP VOTING RIGHTS AND DIRECTORS

Section 6.01 Formation

Pursuant to the Not-For-Profit Corporation Laws of the State of New York, the "Sponsor" has formed the Association to own, operate and maintain the Association property and to enforce the protective covenants, conditions or restrictions set forth in this Declaration and in the certificate of incorporation and by-laws of the Association, and as they may be amended from time to time.

Section 6.02 Membership

Every owner of a lot subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 6.03 Voting

The Association shall have one (1) class of voting membership and each member including the "Sponsor" shall be entitled to no more than, nor less than, one (1) vote.

Section 6.04 Election of Directors

The nomination and election of directors and the filing of vacancies on the Board of Directors shall be governed by the by-laws of the Association.

Section 6.05 Powers and Duties of the Board of Directors

The powers and duties of the Board of Directors shall be as set forth in the by-laws of the Association.

Section 6.06 Indemnification of Officers and Directors

Every director and officer of the Association shall be and is hereby indemnified by the Association against any expenses or liabilities, including counsel fees reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which such officer or director may be a party or in which such officer or director may become involved by reason of being or having been a director or officer of the Association, whether or not such person is a director or officer at the time when such expenses are incurred except in the case where the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of duties.

ARTICLE SEVEN - ASSESSMENTS

Section 7.01 Creation of a Lien and Personal Obligation of Assessment

Each lot owner, by accepting a deed therefore, whether or not such deed or any other instrument pursuant to which title is obtained so expressly provides, shall be deemed to covenant and agree to pay to the Association:

1. Annual assessments or charges for maintenance and operation of Association property (common areas), including payment of property tax assessments for all real property taxes on the common areas and for all casualty and liability insurance covering Association property obtained pursuant to Article 13 of this declaration. This assessment shall also

include a reserve fund for periodic maintenance, repair and replacement of improvements to the common areas.

2. Special assessments.
3. Working Capital assessments.

The assessments shall be fixed, established and collected from time to time as hereinafter provided. Each assessment together with such interests thereon and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the lot against which the assessment is made and shall also be the personal obligation of each owner of such lot at the time the assessment falls due.

The sponsor will be obligated for association charges including supplemental charges on all unsold townhomes or lots.

Section 7.02 Purpose of Maintenance Assessment

The maintenance assessment shall be used to fund maintenance, preservation, operation and improvement of Association Property and for the promotion of recreation, safety and welfare of the members of the Association. The assessment funds shall be used for the payment of taxes on Association property, utility services to property which is commonly metered or billed, refuse collection, snow removal, vehicles and equipment used in maintenance, management, legal and accounting fees, all casualty, liability and other insurance covering association property, maintenance, repair and replacement of all facilities commonly serving the Association members both on and off the lots including landscaped

areas, roads, patios, fences and townhome exteriors as more fully set forth in Article 10. This assessment shall also include a reserve fund for periodic maintenance, repair and replacement of improvements to the common area which the Association is obligated to maintain.

Section 7.03 Commencement and Notice of Assessment

Assessments shall commence on the day in which the first lot is transferred from the "Sponsor" to an owner or on such other date as may be determined by the "Sponsor". The first assessment shall be adjusted according to the number of months remaining in the fiscal year as established by the Board of Directors. Thereafter, assessments shall be fixed on a full year basis. The Board of Directors shall fix the amount of the assessment against each lot at least thirty (30) days in advance of the annual assessment period. The assessment shall be due and payable on a monthly basis unless the Board of Directors establishes other periods for payment.

Section 7.04 Basis for Maintenance Assessment

The annual maintenance assessment shall be calculated in the following manner

There shall be four (4) classes of maintenance assessments varying according to townhome styles:

Large 2 Story (2B)	1325 square foot = \$78.00/month
Medium 2 Story (2A)	1268 square foot = \$77.00/month
Large Ranch (1B)	1212 square foot = \$78.00/month
Small 2 Story (2C)	1169 square foot = \$76.00/month
Small Ranch (1A)	1021 square foot = \$75.00/month

In addition, all townhomes with greater than two (2) occupants shall be charged an additional TWO DOLLARS (\$2.00) per month for increased usage of water.

The following items shall be considered common expenses and shall be included in the maintenance assessment for all townhomes: Payroll and payroll taxes, maintenance and operation, including grounds maintenance-supplies, refuse collection, snow removal, reserves (including road resurfacing, drive resurfacing, seal roads and drives, road gutters and walks, roofs, staining and miscellaneous) vehicle and equipment, utilities, insurance, real estate taxes, management, legal and accounting and miscellaneous.

Section 7.05 Change in Basis of Assessments

The Association may change the basis of determining the maintenance assessment provided for above by obtaining the consent of not less than two thirds (2/3) of the total votes of members voting in person or by proxy in a meeting called for this purpose. Written notice of the meeting for this purpose shall be given at least thirty (30) days in advance to all voting members. No change in the basis of maintenance assessments which adversely affects the interest of the sponsor with respect to unsold lots shall be valid except with the specific consent of the sponsor in writing for a period of five (5) years from the date of the first townhome conveyance or within 120 days after the sponsor has sold seventy-five percent (75%) or more of the lots then subject to the declaration, whichever period shall occur first. A written certification of any such change shall be executed by the Board of Directors and recorded in the Monroe County Clerk's Office.

Section 7.06 Working Capital Fund

The Sponsor shall advance to the Association TWO HUNDRED AND FIFTY DOLLARS (\$250.00) per lot for each lot in a given phase prior to conveyance of the first lot in such phase. The purchase agreement set forth as Exhibit ____ requires the initial purchaser of each lot to reimburse the sponsor for the TWO HUNDRED AND FIFTY DOLLARS (\$250.00) per lot for purposes of working capital of the Association. Reimbursement shall be made at the time of closing title to the lot. The advance shall be used for such purposes as the Board of Directors, in its sole discretion, may determine including to meet unforeseen expenditures or to acquire additional equipment or services. Working capital fund shall be replenished from funds collected in the assessment from lot owners. While the Sponsor is in control of the Board of Directors, the working capital fund shall not be used to reduce projected Association charges. Neither the Department of Law nor any other Government agency has passed upon the adequacy of the working fund established by the Sponsor.

Section 7.07 Master Water Meter Fee

The Sponsor shall install a master water meter for the Pumpkin Hill Townhomes and charge a fee of ONE HUNDRED AND TWENTY-FIVE DOLLARS (\$125.00) to each owner for the cost of such installation. The choice of the master water meter was made for the benefit of the townhome owners as it will substantially reduce the cost of water from the Monroe County Water Authority. Current estimates indicate the ordinary water rate from Monroe County Water is ONE DOLLAR AND TWENTY-NINE CENTS (\$1.29) per thousand gallons of water. A bulk rate is also available at SIXTY CENTS (\$0.60) per thousand gallons of water if more than 50,000 gallons of water are used per month. It is anticipated that ten (10) townhomes

will average in excess of 50,000 gallons per month in the course of ordinary usage.

Section 7.08 Special Assessments

In addition to the annual maintenance assessment, the Association may levy a special assessment for any purpose deemed necessary by the Board of Directors. For any special assessment in excess of twenty percent (20%) of the then current amount of annual maintenance assessment, consent of two-thirds (2/3) of the total votes of the owners shall be required. A meeting of Association members shall be called at least thirty (30) days in advance for the purpose of voting on special assessments.

Section 7.09 Nonpayment of Assessment

If an assessment or installment is not paid on the due date, then such assessment payment shall be deemed delinquent. Any delinquent assessment payment, together with interest thereon and costs of collection, shall there upon become a continuing lien on the property and shall bind such property in the hands of the then owner and such owner's heirs, devisees, personal representatives, successors and assigns.

If the assessment is not paid within ten (10) days after the due date the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable, not to exceed ten percent (10%) of the amount of such overdue assessment or installment thereof, provided such late charges are equitably and uniformly applied.

Any assessment not paid within thirty (30) days after the due date 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.

The Association may bring an action at law against the owner who is personally obligated to pay the assessment or foreclose the lien against the property including interest, costs and reasonable attorneys fees of any such action. Each lot owner, by his acceptance of the deed to a lot, hereby expressly grants Pumpkin Hill Homeowners Association, Inc. the right and power to bring all actions against such owner personally for the collection of each charge as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens including foreclosure by an action brought in the name of the Association in a like manner as a mortgage lien on real property and such owner hereby expressly grants the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all lot owners. The Association, acting on behalf of the lot owners shall have the power to bid for an interest foreclosed upon a foreclosure sale and to acquire and hold, lease, mortgage and convey the same. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his lot. Dissatisfaction with the quantity or quality of maintenance services furnished by the Association shall under no circumstances entitle any lot owner to withhold or fail to pay the assessments due to the Association for the lot or lots owned by such owner.

Section 7.10 Right to Maintain Surplus

The Association shall not be obligated in any calendar year to spend all sums collected in such year by way of maintenance assessments or otherwise and may carry forward as surplus any balances remaining. The Association is not obligated to apply any such surpluses towards the reduction of the amount of the maintenance assessment in the succeeding year but may carry forward from year to year such surpluses as the Board of Directors in its absolute discretion may determine to be desirable for the greater financial security and achievement of the purposes of the Association.

Section 7.11 Subordination of the Lien to Mortgages

Lien of the assessments provided for herein, and fees, late charges, fines or interest levied by the Association shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not effect the assessment lien, however the sale or transfer of any lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments hereafter becoming due or from the lien thereof.

Section 7.12 Subordination of Mortgage

The mortgage for any land or construction loan for any part of the Pumpkin Hill Townhomes shall be made subordinate to the Declaration or shall include a covenant insuring that the Association and/or the townhome or lot owner's undisturbed use of the premises for the purposes described herein in the event of foreclosure. Subordination to mortgage, to the extent permitted by law, the

lien of the Association for maintenance assessments or other charges, fees, late charges or fines levied by the Association on or after the date of recording of the first mortgage on any lot shall be subordinate to said first mortgage lien.

ARTICLE EIGHT - MAINTENANCE

Section 8.01 Maintenance by the Association

The Association shall be responsible for all maintenance and or repair and or replacement to the improvements on the Association property; all roadways, parking areas and walkways on the Association property, all snow removal from roadways, parking areas and walkways on Association property, all landscape areas on Association property, all hydrants of the Association property and waterlines connected therewith and all pipes, drainage facilities, wires, conduit and public utility lines owned by the Association and for which the utility company or other entities are not responsible. Such costs shall be funded from the maintenance assessments.

Section 8.02 Maintenance of Townhomes with Respect to the Townhomes

The Association shall repair, replace any exterior siding, gutters, downspouts, roofs including garages, and paint the exterior trim, windows and doors and maintain patios, but the Association shall not repair or replace broken window panes or doors. The Association shall paint and repair or replace all fences or railings installed by the "Sponsor" and shall maintain, replace and repair all walkways. Costs of all maintenance performed by the Association shall be funded from the maintenance assessments.

Section 8.03 Quality and Frequency of Maintenance and Repairs

All maintenance, repair and replacements whether or not performed by the Association shall be of a quality and appearance consistent with the enhancement and preservation of the appearance and values of the property. The Association may establish reasonable schedules and regulations for maintenance repair or replacement which schedules and regulations shall take into account the useful life of any painting and exterior materials in the enhancement and preservation of the appearance and value of the property.

Section 8.04 Access for Repairs

The Association, its employees, contractors and agents shall upon reasonable notice to owners have the right to enter upon any portion of the owners property and into and upon any townhome at a reasonable hour to carry on its functions, as provided for in this Article except that in an emergency the Association shall have the right without notice to enter upon any portion of the property or enter into any townhome to make necessary repairs and to prevent damage to any unit or any portion of the property. Repair of any damage caused from gaining access shall be the expense of the Association.

ARTICLE NINE - EXTERIOR MAINTENANCE

Section 9.01 Exterior maintenance

In addition to maintaining the common areas the Association shall provide exterior maintenance upon each lot which is subject to assessment hereunder. Maintenance shall include painting, repairing, replacing and caring for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks,

patios, fences and other exterior improvements. Such exterior maintenance shall not include glass surfaces or doors, screens or screen doors, exterior door and window fixtures. Any maintenance or repair necessitated by the willful or negligent acts of an owner, his family, guests, or invitees shall be added to and become a part of the assessment to which said owner's lot is subject.

ARTICLE TEN - ARCHITECTURAL CONTROL

Section 10.01 Architectural Control

An architectural committee consisting of three or more representatives shall be appointed by the Board of Directors of the Pumpkin Hill Homeowners Association, Inc. to establish and enforce the architectural standards for Pumpkin Hill. These standards shall include prohibitions against the erection of any buildings, fences, walls, or structures upon the properties or the exterior addition, change or alteration of any building or lot unless such alteration has been first submitted and approved in writing by the architectural committee. The committee shall be obligated to respond within thirty (30) days of receipt of any plan and if the committee fails to approve or disapprove such design and location within sixty (60) days after receipt of same, this article will have been deemed to be fully complied with and committee approval will not be required. This prohibition is established to maintain the harmony of the external design, perspective and location of structures in Pumpkin Hill Townhomes.

Section 10.02 Liability of Architectural Committee

No action taken by the architectural committee or any member, employee or agent

thereon shall entitle any person to rely thereon with respect to conformity with laws, regulations, codes or ordinances or with respect to physical or other conditions of any lot or other portion of the property. Neither the Association nor the architectural committee or any agent thereon shall be liable to anyone submitting plans to them for approval or to any owner, member, or other person, in connection with the submission of plans or the approval or disapproval thereof including without limitation mistakes in judgement, negligence or nonfeasance. Every person submitting plans to the architectural committee agrees by submission of such plans that no action or suit will be brought against the Association or the architectural committee or any members, subcommittee, employee, or agent thereof in connection with such submission.

ARTICLE ELEVEN - USE RESTRICTION

Section 11.01 Use Restriction

No commercial or business activity shall be permitted upon the properties and all owners shall be bound by the by-laws and rules and regulations a copy of which is annexed hereto and made a part hereof. No owner shall be entitled to rent his townhome without the prior written approval of the Board of Directors.

ARTICLE TWELVE - INSURANCE AND CASUALTY DAMAGE

Section 12.01 Insurance

The Board of Directors of the Association shall obtain and maintain in force and effect a policy of insurance in an amount determined by the Board of Directors to be appropriate or relevant to cover fire and casualty insurance on

Association property, liability insurance on Association property, directors and officers liability insurance, insurance to cover the full replacement cost of any repair or reconstruction work on all Townhomes, and any additional umbrella coverage as may be deemed necessary or desirable.

Section 12.02 Deductible

The deductible, if any, on any insurance policy purchased by the Association shall be a common expense provided that the Board of Directors of the Association may assess any deductible amount necessitated by the gross negligence or wanton malicious act of any owner against such owner. The Association may pay the deductible portion for which the owner is responsible, and the amounts so paid together with interest and cost of collection, including attorney's fees shall be a charge and continuing lien upon the lot involved and shall constitute the personal obligation of such owner and shall be collectible in the same manner as assessments pursuant to this declaration.

Section 12.03 Restoration or Reconstruction After Fire or Other Casualty

In the event of damage to or destruction of any townhome, insured through insurance obtained by the Board of Directors as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the damaged property and the Board of Directors or the insurance trustee shall disburse the proceeds of all insurance policies to the contractors engaged in such repair or restoration in appropriate progress payments. If the owners of seventy-five percent (75%) or more of all townhomes do not duly and promptly resolve to proceed with the repair and restoration, the net proceeds of the insurance policy, if any, shall be divided among the townhomes in pro-

portion to the damage to the insured property in relation to the total damage to all the insured property, provided that no payment shall be made to a townhome owner until there is first been paid out of such townhome owner's share all liens on such owners townhome. In the event that insurance proceeds are insufficient to pay all the costs of restoring or repairing the property to the same condition as formerly existed, the Board of Directors shall levy a special assessments to make up the deficiencies against all owners of the damaged townhomes in such proportions as the Board of Directors deems fair and equitable taking into account the damage sustained to each townhome and any negligence which in the opinion of the Board contributed to the damage or loss. In the event that insurance proceeds exceed the cost of repair and reconstruction, such expenses shall be paid over to their respective mortgagees and townhome owners in such proportion as the Board of Directors deems fair and equitable taking into account the damage sustained to each townhome and provided that no part of the distribution that results from an assessment paid by a townhome owner shall be made to all townhome owners and the mortgagees as their interest may appear.

Section 12.04 Condemnation

In the event of a loss or of condemnation rewards for losses to, or a taking of, common property a distribution cannot be made by the Association in any way which conflicts with the rights of any first mortgagee of any lot pursuant to the mortgage on said lot.

The Association shall represent, or appoint any Agent to represent, townhome and/or lot owners in any condemnation proceeding or in negotiations, settle-

ments and agreements with the condemning authority for the acquisition of the common areas, or parts thereof.

Proceeds or awards of settlement shall be payable to the Association or trustee of the Association for the use and benefit of Association members and their mortgagees as their interests may appear.

ARTICLE THIRTEEN - GENERAL COVENANTS AND RESTRICTIONS

Section 13.01 Enforcement

The Association or any owner shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 13.02 Severability

Invalidation of any of these covenants or restrictions by judgment or court order shall in no way effect the other provisions which shall remain in full force and effect.

Section 13.03 Declaration Runs With the Land

Each person or entity acquiring an interest in a lot or other portions of the property of Pumpkin Hill Townhomes, whether by deed, lease or any other instrument, covenants and agrees for himself, his heirs, successors and assigns to

observe, perform and be bound by the provisions of the declaration including personal responsibility for the payment of all charges which may become liens against his property and which become due while he is the owner thereof and also covenants to incorporate this declaration by reference of any deed, lease or other instrument for the transferring and interest in such lot or other portion of the property.

Section 13.04 Amendment

Unless otherwise specifically provided, this declaration may be amended or rescinded upon the consent, in writing, of the owners of not less than two-thirds (2/3) of all the lots which are subject to this declaration. In addition, the approval of eligible holders holding mortgages on lots which have at least fifty-one percent (51%) of the votes of lots subject to eligible holder mortgages, shall be required to add or amend any material provisions of the Declaration of the project, which establish, provide for, govern or regulate any of the following:

- a. Voting;
- b. Assessments, assessment liens or subordination of such liens;
- c. Reserves for maintenance, repair and replacement of the common areas;
- d. Insurance or Fidelity Bonds;
- e. Rights to use of the common areas;
- f. Responsibility for maintenance and repair of the several portions of the project;
- g. Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project, other than Phases I through IV of Pumpkin Hill Townhomes;

- h. Boundaries of any lot;
- i. The interests in the general common areas;
- j. Convertibility of lots into common areas or of common areas into lots;
- k. Leasing of lots;
- l. Imposition of any right of first refusal or similar restriction on the right of a lot owner to sell, transfer, or otherwise convey his or her lot;
- m. Any provisions which are for the express benefit of eligible mortgage holders.

Until five (5) years from the date of the first townhome conveyance or within 120 days after the sponsor has sold seventy-five percent (75%) or more of the lots subject to this declaration, whichever period occurs first, the written consent of the sponsor will be required for any amendment which adversely affects the interest of the sponsor. The owner of every lot shall receive written notice of every proposed amendment or rescission to this declaration at least thirty (30) days prior to the date set for voting on said amendment or rescission. Any amendment to the declaration must be recorded in the Monroe County Clerk's Office and shall not become effective until the date of recording. The provisions of this declaration shall unless amended or rescinded continue with full force and effect against both the property and the owners for a period of not less than twenty (20) years from the date this declaration is recorded and shall then be automatically and without further notice extended for successive periods of ten (10) years.

Section 13.05 Inspection and Right of Entry

Any agent of the Association or architectural committee may at any reasonable

time or times upon not less than twenty-four (24) hours notice to the owner, enter upon a lot or other portion of the property and inspect improvements thereon for the purpose of ascertaining whether maintenance construction or alteration of structure or other improvements comply with the Declaration or other rules and regulations issued pursuant thereto. Neither the Association or such agents shall be deemed to have committed a trespass or other wrongful act by reason of such enter inspection.

Section 13.06 Captions

The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration nor the intent of any provision hereof. Any notice required to be sent to the "Sponsor", owner, or mortgagee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid to the last known address to the person who appears as the "Sponsor", owner, or mortgagee on the records of the Association at the time of such mailing period.

Section 13.07 The Right Reserved to Impose Additional Protective Covenants

The "Sponsor" reserves the right to record additional protective covenants and restrictions prior to the conveyance of any lands encumbered by this Declaration.

Section 13.08 Provisions Relating to Mortgagees

Any eligible holder of any lot mortgage at its request is entitled to timely written notification of the following:

- A Any condemnation loss or any casualty loss which affects a material portion of the project or any lot on which there is a first mortgage held, insured, or guaranteed by such eligible mortgage holder.
- B Any delinquency in the payment of assessments or charges owed by an owner of a lot subject to a first mortgage held, insured or guaranteed by such eligible holder, which remains uncured for a period of sixty (60) days.
- C Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- D Any proposed action which would require the consent of a specified percentage of eligible mortgage holders as follows:
- 1 Any restoration or repair of project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original plans and specifications, unless other action is approved by eligible holders holding mortgages on lots which have at least fifty-one percent (51%) of the votes of lots subject to eligible holder mortgages.
 - 2 Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the project property must require the approval of eligible holders

holding mortgages on lots which have at least fifty-one percent (51%) of the votes of lots subject to eligible holder mortgages.

3 Unless the formula for reallocation of interests in the common areas after a partial condemnation or partial destruction of the Pumpkin Hill Townhomes is fixed in advance by the constituent documents or by applicable law, no reallocation of interests in the common areas resulting from a partial condemnation or partial destruction of such a project may be effected without the prior approval of eligible holders holding mortgages on all remaining lots whether existing in whole or in part, and which have at least fifty-one (51%) percent of the votes of such remaining lots subject to eligible holder mortgages.

4 When professional management has been previously required by any eligible mortgage holder, whether such entity became an eligible mortgage holder at that time or later, any decision to establish self-management by the Association shall require the prior consent of owners of lots to which at least two-thirds (2/3) of the votes in the Association are allocated and the approval of eligible holders holding mortgages on lots which have at least fifty-one percent (51%) of the votes of lots subject to eligible holder mortgages.

Section 13.09 First Mortgagees

First Mortgagees of lots in Pumpkin Hill Townhomes may pay taxes or other

charges which are in default and which may or have become a charge against any of the common areas and pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of policy for such property. Any first mortgagees may making such payment shall be owed immediate reimbursement therefor from the Association.

IN WITNESS WHEREOF, The undersigned be the "Sponsor" herein has hereunto set his hands and seal this 23rd day of 1984.

FOREST CREEK EQUITY CORP.

Sponsor

~

By

ACKNOWLEDGEMENT

STATE OF NEW YORK)
COUNTY OF MONROE) SS

On this 23rd day of October, 1984, before me personally came
to me known and who, by me being duly
sworn did depose and say:

That he/she resides at 7 Da Vinci Drive, County of
Monroe and State of New York, that he/she is the President of Creek ^P
an authorized Corporation, the Corporation described in and which executed the fore-
going Instrument; that such seal affixed to said Instrument is such corporate seal;
that it was affixed to said Instrument by order of the Managing Partner of such Cor-
poration in writing, and that he/she signed his/her name thereto by like order.

POLLY J. FEIGENBAUM
Notary Public, State of New York
Monroe County
My Commission Expires March 30, 1986
REG# 4803519

OFFERING PLAN

THIS OFFERING RELATES SOLELY TO MEMBERSHIP IN THE PUMPKIN HILL HOMEOWNERS ASSOCIATION, INC. AND THE DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS APPLICABLE TO ALL LOTS SOLD AT PUMPKIN HILL TOWNHOMES, 840-844 PAUL ROAD, TOWN OF CHILI, COUNTY OF MONROE, STATE OF NEW YORK. PUMPKIN HILL TOWNHOMES IS BOUNDED ON THE EAST BY COLDWATER ROAD, ON THE WEST BY SPRING LAKE APARTMENTS, ON THE NORTH BY SPRING VALLEY SUBDIVISION, AND ON THE SOUTH BY PAUL ROAD. THIS OFFERING IS THE FIRST PHASE OF AN ANTICIPATED FOUR PHASE DEVELOPMENT. A MAXIMUM 140 ADDITIONAL TOWNHOMES MAY BE OFFERED IN SUBSEQUENT PHASES: \$218,000 (PHASE II) 40 LOTS, \$59,500 (PHASE III) 51 LOTS AND \$68,500 (PHASE IV) 49 LOTS.

APPROXIMATE AMOUNT
OF OFFERING:

SEVENTY THOUSAND DOLLARS for Phase I. (Cost of common areas and facilities, included in the price of thirty-two (32) lots in Phase I.)

NAME AND ADDRESS
OF SPONSOR:

FOREST CREEK EQUITY CORP.
80 West Main Street, Suite 101
Rochester, New York 14614
Phone: (716) 454-7145

NAME AND ADDRESS
OF SELLING AGENT

JOHN T. NOTHNAGLE, INC.
1485 Monroe Avenue
Rochester, New York 14618
Phone: (716) 442-1800

THE DATE OF THE FIRST OFFERING OF THIS PLAN IS OCTOBER 25, 1984. THIS PLAN MAY NOT BE USED AFTER OCTOBER 24, 1985 UNLESS EXTENDED BY AMENDMENT.

THIS PLAN HAS BEEN AMENDED. SEE INSIDE FRONT COVER.

SEE PAGE 2 FOR SPECIAL RISKS TO PURCHASER.

THIS OFFERING PLAN IS THE SPONSOR'S ENTIRE OFFER TO SELL MEMBERSHIP INTERESTS IN THE PUMPKIN HILL HOMEOWNER'S ASSOCIATION, INC. NEW YORK LAW REQUIRES THE SPONSOR TO DISCLOSE ALL MATERIAL INFORMATION IN THE PLAN AND TO FILE THIS PLAN WITH THE NEW YORK STATE DEPARTMENT OF LAW PRIOR TO SELLING OR OFFERING TO SELL ANY MEMBERSHIP INTERESTS. FILING WITH THE DEPARTMENT OF LAW DOES NOT MEAN THAT THE DEPARTMENT OR ANY OTHER GOVERNMENT AGENCY HAS APPROVED THIS OFFERING.

