

FIRST AMENDMENT TO AND RESTATEMENT OF
SCRIBNER HOLLOW TOWN HOUSES
DECLARATION OF
COVENANTS, RESTRICTIONS AND AGREEMENTS

OCT 30 9 51 AM '95
GREENE CO. CLERK'S OFFICE
CATSKILL, N.Y.

THIS DECLARATION, having originally been made February 7, 1972 and recorded on same date at Liber 457, Page 925 in the office of the Clerk of Greene County in the State of New York by Whistle Tree Development Corp., a New York corporation, maintaining offices at Hunter, New York 12442, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant was the owner of certain property in Hunter, New York, which is more particularly described in Schedule A annexed hereto, and

WHEREAS, the titles to all Lots within the property described above have been sold and conveyed by Declarant to Lot Owners as defined herein, and

WHEREAS, Declarant declared that all of the properties described above were to be held, sold and conveyed subject to certain easements, restrictions, covenants and agreements, which are for the purpose of protecting the value and desirability of, and which run with, the real property and are binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and inure to the benefit of each owner thereof, and

WHEREAS, the Lot Owners do hereby amend as of this 17th day of September 1995 the Declaration of Covenants, Restrictions and Agreements as permitted by Article X, Section 3 of said Declaration.

NOW, THEREFORE, the properties described above are hereinafter to be held, sold and conveyed subject to the easements, restrictions, covenants and agreements declared by the Declarant, but as amended by the Lot Owners as hereinafter set forth and restated.

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to Scribner Hollow Homeowner's Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean 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 Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association, all of which is sometimes collectively hereinafter referred to as the "Subdivision".

Section 4. "Association Properties" shall mean and refer to the section or sections of the Properties, a development area, upon which Declarant commenced development and sale of residential dwellings, and which have been subjected to the jurisdiction of the Association, together with the section or sections of the Common Area that have been conveyed to the Association by Declarant.

Section 5. "Common Area" shall mean all real property within the Properties not otherwise designated as a Lot and which is reserved for the common use and enjoyment of the Owners.

Section 6. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, or otherwise legally designated as a residential building site, with the exception of the Common Area and any property dedicated to and accepted by any public authority.

Section 7. "Declarant" shall mean and refer to Whistle Tree Development Corp.

ARTICLE II PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) The right of the Association to suspend the voting rights of an Owner and the right to use of the recreational facilities by an Owner or his tenants or guests for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- (c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the members agreeing to such dedication or transfer has been recorded.
- (d) The management of the Common Area by the Association.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right to enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to Common Area. The Declarant has covenanted for itself, its heirs and assigns, that it will convey fee simple title to the Common Area to the Association, free and clear of all mortgages and liens. The deed to the Common Area is to contain a covenant running with the land providing that the Common Area shall be used only as parks, playgrounds and recreation areas, and for no other purpose.

Section 4. The Common Area is completed and is to be conveyed by Declarant, its successors or assigns, to the Association.

Section 5. The Association shall be authorized to acquire and to hold any Lot or unit thereon and to lease, mortgage and convey same as may be agreed to by the members. Any such acquisition may be effected by the Board of Directors acting on behalf of the unit owners if such acquisition shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants or record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No owner shall have more than one membership. Membership shall be appurtenant to and may

not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. The right of any person to acquire or maintain an ownership interest in any Lot may be limited or restricted by his membership in the Association as set forth in this Declaration or in the By-Laws.

Section 2. The Association shall have one class of voting membership:

Class A. Class A members shall be all Owners and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Section 3. The Association is authorized to set forth in this Declaration or in the Association By-Laws, provisions which govern the alienation, conveyance, sale, leasing, purchase, ownership and/or occupancy of any Lot within the Properties provided, however, that no such provision shall restrict the alienation, conveyance, sale, leasing, purchase, ownership or occupancy of any Lot because of race, creed, color or national origin.

Section 4. No member of the Association shall hold an interest in more than two Lots in the Properties. Should any member hold an ownership interest in more than two Lots at the time of enactment of this provision, said member's interest in those Lots shall not be affected by this provision, but he may not thereafter acquire an ownership interest in any other Lot in violation of this provision.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

(a) Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

(b) The Association shall collect assessments to spend as it sees fit in the care and maintenance of the buildings and property within its jurisdiction. A separate assessment may be made for the care and maintenance of Common Areas subject to the Management Agreement in Schedule A-1, the Management Agreement renewal in Schedule A-2 or any further renewal thereof. Any funds so collected shall be payable to the Manager under the Agreement or as otherwise directed by the Association.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the

Properties and for the improvement and maintenance of the Common Area and of the homes situated upon the Properties.

Section 3. Maximum Annual Assessments. The annual assessment shall be fixed by the Board of Directors and may be decreased or increased each year to responsibly meet the fiscal requirements of the Association. The amount of annual assessment may be decreased or increased from that fixed by the Board of Directors by a vote of two-thirds (2/3) of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, preconstruction, repair, or replacement of a capital improvement upon the Common Area or property within the jurisdiction of the Association, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. The presence of members or proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice and quorum requirements.

Section 6. Uniform Rate of Assessment. Annual assessments and special assessments must be fixed at a rate and on a basis that is uniformly applied to all lots. Such assessments may be collected on a monthly basis.

Section 7. Due Dates of Annual Assessments: The Board of Directors shall fix the amount of the annual assessment against each Lot. At least thirty (30) days in advance of the date that the Board of Directors sets to begin a change in the amount of an assessment, written notice of such change shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the maximum legal rate(s) of interest, as the same may vary during the continuance of such delinquency. The Association may bring an action at law against the Owner personally obligated to pay the same and may foreclose the lien against the property. 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.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien.

Section 10. The following property subject to this Declaration shall be exempt from the assessments created herein.

- (a) All properties dedicated to and accepted by a local public authority; and
- (b) The Common Areas.

ARTICLE V ARCHITECTURAL CONTROL

No building, fence wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. The Board, or its designated committee, shall approve or disapprove such design and location within ninety (90) days after said plans and specifications have been submitted to it, or may reserve the question for vote by the general membership which shall be by two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

ARTICLE VI EXTERIOR MAINTENANCE

In the event an owner of any lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval of two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon.

The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

ARTICLE VII
BUILDING AND USE RESTRICTIONS

Section 1. The subdivision is hereby restricted to residential structures and ancillary and accessory uses and buildings in connection therewith, including but not limited to community buildings and recreational facilities. All buildings or structures erected in the subdivision shall be of new construction and no buildings or structures shall be removed from other locations to the subdivision and no subsequent buildings or structures other than residential units shall be built on any unit where the Declarant has theretofore constructed a residential unit. No building or structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any unit at any time as a residence either temporarily or permanently.

Section 2. No animals, livestock, or poultry of any kind shall be raised bred, or kept, on any Lot or in any unit except that an Owner may possess dogs, cats or other household pets for other than commercial purposes so long as such pets are not permitted to enter upon any Common Area without being restrained by a leash. This right of Owners to possess household pets may not be passed to tenants or lessees and all Leases for any unit shall contain a specific provision prohibiting pets on the Properties.

Section 3. No for rent or for sale signs, advertising signs, billboards, objects of unsightly appearance or nuisances shall be erected, placed or permitted to remain on any unit, nor shall any unit be used in any way for any purpose which may endanger the health or unreasonably disturb

the residents of the subdivision. No commercial activities of any kind whatever shall be conducted in any building or on any portion of the subdivision except activities intended primarily to serve residents of the subdivision.

Section 4. All equipment, garbage cans, woodpiles, etc., shall be kept screened by adequate planting or fencing as to conceal them from view of neighboring units and streets. All rubbish, trash and garbage shall be regularly removed from the subdivision and shall not be allowed to accumulate thereon. No exposed radio or television aerial or antenna nor any wash drying lines shall be maintained on any lot or upon the exterior of any residential dwelling or appurtenant structure.

Section 5. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted.

Section 6. The Association shall designate a limit for the occupancy of each unit. No Owner shall permit the overnight occupancy to exceed the designated limit which shall be set forth in the By-Laws of the Association.

Section 7. Due to the limited available parking space, the Association may direct all parking and designate all assigned parking spaces on the Properties. Any parking on the Properties other than as designated or in excess of the limits set by the Association may be deemed a trespass and the violating car may be removed at the owners expense and the owner may be subjected to a fine for said trespass. Any additional parking for guests must be as designated by the Association.

Section 8. All leasing of any Unit, whether same be on a long or short term basis, may be arranged by the owner or his agent, but must be pursuant to a written Lease which utilizes a

Lease Form that has been approved by the Association. A copy of every Lease for every rental or leasing of any Unit must be filed with the Association prior to the commencement of the term of the Lease. Failure to comply with the requirements of this section subject the Owner to automatic damages of one hundred dollars (\$100.00) per day the failure or violation exists which damages are payable to the Association.

ARTICLE VIII
PARTY WALLS AND OVERHANGING EAVE AND
FOUNDATION WING WALL EASEMENTS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not consistent with the provisions of this Article, the general rules or law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Overhanging Eave and Foundation Wing Wall Easements. Each Owner of a Lot which is part of the properties shall be benefited by and subject to overhanging eave and foundation wing wall easements to that extent that eaves and foundation wing walls which are on part of the original residence structure (or structure rebuilt in accordance with approved plans), built or to be built, extend into adjacent lots for a distance not to exceed 18" from a lot line.

Section 7. Each Owner of a lot which is part of the Properties shall be benefited by and be subject to reciprocal easements for the construction and maintenance of fences along common lot lines for a distance not to exceed 12" on both sides of such lot lines to the extent that fences are a part of the original construction of the residence structure upon the subject lot. Excepting for the construction, maintenance and replacement of fences within said fence easements additional fences may be built only with the approval required by the provisions of Article V above.

Section 8. Arbitration. In the event of any dispute arising concerning a party wall, or under any of the provisions of this Article VIII, it shall be settled by arbitration, as follows: Each party shall choose one arbitrator, and such arbitrator shall choose a third arbitrator, and the

decision by a majority of all the arbitrators, after a hearing of the evidence, shall be binding upon the parties to the dispute.

ARTICLE IX
UTILITIES AND DRAINAGE EASEMENTS

Section 1. Creation and Reservation of Easements. Declarant, its successors or assigns, the Village of Hunter, the Association and all public utility companies and community cable antennae companies that service or may in the future service the Properties or any portion or portions thereof, are hereby granted the right to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires, surface channels, drains, swales, underground pipes and catch basins and other equipment into and through the Lots and the Common Areas with utilities service and drainage. All disturbed areas shall be restored by the person or entity exercising any right to an easement hereunder.

Section 2. Each grantee of a lot agrees for himself, assigns or successors in interest that he will permit free access by owners of adjacent or adjoining lots to drainage ways located on his lot which affect said adjacent or adjoining lots, when such access is essential for the maintenance of the drainage facilities for the protection and use of property other than the lot on which the drainageway is located.

Section 3. Each grantee of a lot agrees for himself and his assigns that he will not in any way interfere with the established drainage pattern over his lot from adjoining or other lots, or that he will make adequate provisions for proper drainage in the event it is necessary to change the established drainage over his lot. For the purpose hereof, "established" drainage is defined as

the drainage which occurred at the time the overall grading of the property, including the landscaping of each lot, was completed by the Declarant.

ARTICLE X
GENERAL PROVISIONS

Section 1. 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 by 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.

Declarant has recognized the Town and Village of Hunter as an interested party to this Declaration and, as such, that it may enforce the Covenants, Restrictions and Agreements herein contained by letting contracts to do any work in the Common Area and collecting the charges and costs therefor from Declarant.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration did run with and bind the land for a term of twenty years from February 7, 1972, the date this Declaration was recorded, after which time they have been and shall be automatically extended for successive periods of ten years. The Declaration, subject to the limitations elsewhere in the Declaration provided, may be amended by an instrument signed by not less than two-thirds (2/3) of the Lot Owners. Any amendment must be recorded.

Section 4. By-Laws. The operation of the Properties and of the Association shall be governed by the By-Laws of the Scribner Hollow Homeowner's Association, Inc., a copy of which is annexed hereto as Schedule B.

Section 5. Annexation.

(a) Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of the members.

IN WITNESS WHEREOF, the undersigned Lot Owners, constituting not less than seventy-five percent of the Lot Owners, have hereunto set their hands and seals as of the dates set forth below.

1092/2198J

FIRST AMENDMENT TO AND RESTATEMENT OF
SCRIBNER HOLLOW TOWNHOUSES
DECLARATION OF COVENANTS, RESTRICTIONS AND AGREEMENTS

IN WITNESS WHEREOF, the undersigned, being the Lot Owner of the Lot designated as Unit A-4 or being the authorized representative of the Owners of said Lot in the event more than one person holds ownership interest in said Lot, and said Lot being subject to the Declaration referred to herein, does hereby consent to the amendment of said Declaration as hereinbefore set forth in this First Amendment and Restatement of Scribner Hollow Townhouses Declaration of Covenants, Restrictions and Agreements and to the amendment to the By-Laws of Scribner Hollow Homeowner's Association, Inc. in the form annexed to this First Amendment to the Declaration and does hereby execute this document to acknowledge same.

H. Heller

STATE OF NEW ^{Jersey} ~~YORK~~)
COUNTY OF Morris) SS.:

On this 8th day of September, 1995, before me personally came Hank Heller to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he executed the same.

M. Maglietta
Notary Public
MARGARET MAGLIETTA
Notary Public of New Jersey
My Commission Expires May 3, 1999