

SCRIBNER HOLLOW TOWN HOUSES

DECLARATION OF
COVENANTS, RESTRICTIONS AND AGREEMENTS

THIS DECLARATION, made on the date hereinafter set forth by Whistle Tree Development Corp., a New York corporation, maintaining offices at Hunter, New York 12442, hereinafter referred to as "Declarant".

W I T N E S S E T H:

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

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

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to Scribner Hollow Town Houses 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 has 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 owned by the Association 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., its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 8. "Future Development Areas" The Sections of the Properties to be divided into Lots and improved with residential dwellings and appurtenant improvements.

Section 9. "Development Area" Each area that is under development by Declarant with the construction of residential units shall, from the date of the issuance of the first building permit for the construction of a residence within said area, be and be deemed to be a Development Area and subject to the jurisdiction of the Association.

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 and right to use of the recreational facilities by an owner 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 each class of members agreeing to such dedication or transfer has been recorded.

(d) A 20 year management contract or any renewal thereof between Whistle Tree Development Corp., and Scribner Hollow Corp. wherein Scribner Hollow Corp. is to have exclusive management of the Common Area. See schedule A-1.

(e) The right of way by Scribner Hollow Corp. or its assigns over roads in the Common Area for use as access or egress to its adjoining lands.

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 hereby covenants 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, except that Declarant expressly reserves the right of way aforesaid to Scribner Hollow Corp. and the right to convey easements to public authorities and/or to utilities, public or private. The deed to the Common Area will 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. All future use of the Common Area not laid out in the original development shall be in the sole control of Scribner Hollow Corp. during the term of its management contract.

Section 4. The Common Area will be completed and conveyed by Declarant, its successors or assigns, to the Association in a sequence of conveyances as new development areas are started.

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.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant 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.

Class B. The Class B. member(s) shall be the Scribner Hollow Corp. or its agent and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) On December 31, 1972.

Section 3. There shall be no membership existing or created with reference to any area therein until such area shall be and become a Development Area. At the time each area becomes a Development Area, there shall concurrently and automatically be created the number of memberships that corresponds to the number of Lots within the particular area then becoming a Development Area. All of said memberships, so created, shall ultimately be Class A memberships. Each Class B memberships shall become a Class A membership forthwith upon the conveyance of the particular Lot to which the membership relates by Declarant to a purchaser, thus making the purchaser a member and terminating the membership of Declarant as to the particular Lot.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

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

(a) The Declarant, for each Lot owned within the Properties, hereby covenants, and 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) Association will commence collecting Residents Association assessments from the time each home is conveyed to a purchaser. All funds paid by Home Owners shall be payable to Scribner Hollow Corp. during the term of its management agreement to spend as it sees fit in the care and maintenance of the Common Areas

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. After each purchase the Lot owner so purchasing a Lot in a Development Area will become subject to the assessments as provided either in subparagraph (a) or (b) of this Article IV Section 1 above, and until January 1 immediately following, the maximum annual assessment shall be \$460.00 per Lot:

(a) From and after January 1 of the year immediately following, the maximum annual assessment may be increased each year not more than three percent (3%) of the maximum assessment for the previous year, without a vote of the members, or alternatively, said assessment may be increased to conform with the rise, if any, of the Consumer Price Index, prepared by the Department of Labor, Washington, D.C., for the preceding month of July, without a vote of the members.

(b) When the Lot Owners become liable for the annual assessments as provided above, the maximum annual assessment may be increased by a greater amount than is provided for in Article IV, Section 3, Paragraph (2) above, by a vote of two-thirds (2/3) of each Class of members who are voting in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum as set forth in paragraph (a) above and in compliance with the management agreement with Scriber Hollow Corp.

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, reconstruction, repair, or replacement of a capital improvement upon the Common Area, 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 each class of 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. At the first such meeting called, the presence of members or of proxies entitled to cast sixty per cent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following in the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates.

(a) The annual assessments provided for herein as to each Development Area shall commence as to each Lot in said development area on the first day of the month following its conveyance to the individual purchaser. Such assessments shall commence under either subparagraph (a) or (b) of Article IV Section 1 above, whichever is applicable. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment 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.

(b) For each Area becoming a Development Area subsequent to the initial Development Area, and upon each respective subsequent Area becoming a Development and upon the conveyance of the first Lot of the Lots in each said respective area, all of the lots in said respective Area shall forthwith become subject to assessments as provided in either (a) or (b) of Article IV Section 1 above. This procedure will commence with the second Area becoming a Development Area and will continue with respect to each Area subsequently becoming a Development Area.

(c) Any provision to the contrary notwithstanding, all lots in all Development Area ultimately will become liable for pro-rata assessments for the maintenance and upkeep of all Common Areas belonging to the Association.

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, or 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. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

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. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Provided however, that until the date that all of the Lots contained within all of the Properties in the initial area, shall have been built upon and sold to individual owners, or until December 31, 1972, whichever date shall first occur, Declarant, its successors or assigns, shall be privileged to exercise all powers, duties and authorities with reference to all unsold lots, whether improved with residential dwellings or not, all undeveloped property within the respective areas and all Common Areas not conveyed to the Association that otherwise would have been exercised by the Board of Directors of the Association or the Architectural Committee, as provided in this Article V. Declarant shall exercise such powers, duties and authorities through an architectural committee composed of three (3) members. The original three (3) members shall be:

1. Guy Chirico
2. Edward Moran
3. Justin Collins

Said members shall serve at the pleasure of the Declarant and may be removed from office at any time by Declarant and during said period Declarant shall have authority to fill any vacancies created or existing on said committee.

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; provided, however, that during construction and sale of residential units upon any portion of the Property, Declarant may maintain construction offices, buildings, storage yards, sheds and other structures used in connection with such construction and sale.

Section 2. No animals, livestock, or poultry of any kind shall be raised bred, or kept, on any unit except for dogs, cats or other household pets for other than commercial purposes.

Section 3. (a) 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. (b) As part of the overall program of development of the properties into a residential community and to encourage the marketing thereof, the Declarant shall have the right to use of the Common Area and facilities thereon, including any community buildings, without charge during the sales and construction period to aid in its marketing activities.

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. Limits on Occupancy of any town house are restricted as follows:

Duplex Units - 14 persons

Triplex Units - 20 persons

Violations of said occupancy subject the owner to automatic damages of \$100 per each day the violation exists which damages are payable to the Association.

Section 7. Parking Space is limited and adjoining parking spaces are assigned as follows:

Duplex - 2 parking spaces

Triplex - 4 parking spaces

Any additional parking for guests will be in a public parking area to be built and designated accordingly. Any parking in excess of the aforesaid limits in parking areas adjoining the town houses is

hereby deemed a trespass and the violating car may be removed at the owners expense any may subject the owner to a fine for said trespass. The Association or Scribner Hollow Corp. while acting under the management contract may direct parking and designate assigned parking spaces.

Section 8. Leasing of the units on a summer or winter seasonal basis may be arranged by the owner or his agent, subject to approval of Scribner Hollow Corp. Leases for less than a 10 week seasonal basis or any subleasing must be accomplished only through Scribner Hollow Corp. its agents or assigns. All lessors and lessees must notify Scribner Hollow Corp. of the names and addresses of all occupants so that a record can be kept and so that management can exercise its responsibilities.

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 of 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 line 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.

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 undersigned 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 recognizes 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.

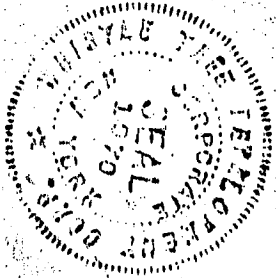
Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded after which time they shall be automatically extended for successive periods of ten years. This Declaration, subject to the limitations elsewhere in this Declaration provided, may be amended during the first twenty (20) year period by an instrument signed by not less than ninety per cent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five per cent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation.

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

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this seventy day of FEBRUARY, 1972.



WHISTLE TREE DEVELOPMENT CORP.

By [Signature]
President

STATE OF NEW YORK, COUNTY OF GREENE ss:

On the 7th day of February, 1972, before me personally came Guy Chirico to me known, who being by me duly sworn, did depose and say that he resides at: Hunter, New York; that he is the President of Whistle Tree Development Corp., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporation seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

[Signature]
Notary Public