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AT  
MONROE COUNTY CLERK

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

THIS DECLARATION made this 27th day of AUGUST, 1987 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, and

Box 19

WHEREAS, the Sponsor desires to develop as a residential subdivision with residential lots and dwelling units to be individually owned, with common walkways and green spaces (hereinafter "common areas") available for the benefit of said subdivision, 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 common areas 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 Wellington 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 easements, 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

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binding on all parties having any right, title or interest in the property, their heirs, successors and assigns 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 Wellington Homeowners Association, Inc.

2. **Common Areas** shall mean and refer to the walkways and open green spaces in said subdivision for the common use and enjoyment of the homeowners, as shown on the filed Subdivision Map for Wellington Subdivision.

3. **Declaration** shall mean and refer to this document of protective covenants, conditions, restrictions, easements, charges and liens as 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, 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 Wellington Homeowners Association, Inc.

7. 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 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.

## 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.

### 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 Owner 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 suspend an owners voting rights 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 shall have the right to use portions of the common elements for sales promotions including common areas 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 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 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 - ASSOCIATION MEMBERSHIP, VOTING RIGHTS AND DIRECTORS

### **Section 5.01 Formation**

Pursuant to the Not-For-Profit Corporation Laws of the State of New York, the Sponsor has formed the Association to operate and maintain the common areas 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 5.02 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 5.03 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 5.04 Election of Directors**

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

### **Section 5.05 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 5.06 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 SIX - ASSESSMENTS

##### **Section 6.01 Creation of a Lien and Personal Obligation of Assessment**

Each lot owner, by accepting a deed therefor, 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 common areas. This assessment shall also include a reserve fund for periodic maintenance, repair and replacement of improvements to the common areas.

2. Special 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 lots.

##### **Section 6.02 Purpose of Maintenance Assessment**

The maintenance assessment shall be used to fund maintenance, preservation, operation and improvement of common areas and for the promotion of the safety and welfare of the members of the Association. The assessment funds shall be used for management, legal and accounting fees, maintenance, repair and replacement of the common areas. 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 6.03 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 yearly basis unless the Board of Directors establishes other periods for payment.

#### **Section 6.04 Basis for Maintenance Assessment**

The annual maintenance assessment shall be assessed equally among all lot owners. The following items shall be considered common expenses and shall be included in the maintenance assessment for all lots: maintenance and operation, reserves (including walkway resurfacing and sealing), management, legal and accounting and miscellaneous.

#### **Section 6.05 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) year from the date of the first home conveyance or within 120 days after the Sponsor has sold 75% 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 6.06 Reserve Fund**

A reserve fund shall be established from funds collected in the monthly assessment from lot owners. While the Sponsor is in control of the Board of Directors, the reserve 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 reserve fund established by the Sponsor.

#### **Section 6.07 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 the Association members shall be called at least thirty (30) days in advance for the purpose of voting on special assessments.

#### **Section 6.08 Non-payment 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 Wellington 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 6.09 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 6.10 Subordination of the Lien to Mortgages**

The 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 thereafter becoming due or from the lien thereof.

#### **Section 6.11 Subordination of Mortgage**

The mortgage for any land or construction loan for any part of the Wellington Subdivision shall be made subordinate to the Declaration or shall include a covenant

insuring that the Association and/or the 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 SEVEN - MAINTENANCE

##### **Section 7.01 Maintenance by the Association**

The Association shall be responsible for all maintenance and or repair and or replacement to the improvements on the common areas. Such costs shall be funded from the maintenance assessments.

##### **Section 7.02 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 the common walkways.

##### **Section 7.03 Easement and Access for Repairs**

The Association, its employees, contractors and agents is hereby given an easement over, upon and across that portion of the owners property as described in Schedule B attached hereto and made a part hereof, which describes the common areas, in order to carry on its functions, as provided for in this Article.

#### ARTICLE EIGHT - USE RESTRICTION

##### **Section 8.01 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.

## ARTICLE NINE - INSURANCE AND CASUALTY DAMAGE

### Section 9.01 Insurance

The individual lot owners shall be responsible for obtaining and maintaining in force and effect a policy of insurance in an amount which they determine to be appropriate or relevant to cover fire and casualty insurance on their property, including liability insurance. The Association shall obtain and maintain liability insurance to cover the common areas as described herein.

### Section 9.02 Condemnation

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

The Association shall represent, or appoint any Agent to represent lot owners in any condemnation proceeding regarding common areas or in negotiations, settlements 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 TEN - OTHER RESTRICTIONS

### Section 10.01

All homesites in said subdivision shall be known as residential homesites only and shall not be used for any other purpose other than the erection and maintenance of a private detached dwelling for a single family not to exceed 2-1/2 stories in height, and a private garage for not more than three (3) cars. The private garage must be attached to or built into the residence. The term attached shall be construed to mean any kind of attachment, whether by common wall, so-called breezeway, a roofed porch, etc.

An In-Law Apartment only shall be permitted in said subdivision only upon application to and approval by the Town of Chili.

**Section 10.02**

No residence shall be built nearer any side lot line than five (5) feet.

**Section 10.03**

No homesite shall be resubdivided into smaller homesites, but the homesites may be resubdivided into larger ones.

**Section 10.04**

No commercial trade, professional, manufacturing or mercantile business shall be conducted on the premises herein, nor anything be done thereon which may be or become a nuisance to the neighborhood. No public buildings shall be permitted on any homesite.

**Section 10.05**

No trailer, motor home, boat, tent, shack, barn or other structure shall be used for the purpose of a second residence on any homesite. No homesite or portion thereof shall be used for the purpose of outside storage of unused vehicles, junk or other abandoned equipment. No basement or substantially uncompleted structure shall be used as a residence.

**Section 10.06**

No structure shall be moved onto any homesite unless it complies with the existing restrictions on the tract and has received the approval of the subdividers or the subdividers' agent authorized in writing to make such approval.

**Section 10.07**

No sign, billboard or advertising structure of any kind may be erected or maintained on any of the homesites provided, however, an advertising sign, no more than eight (8) square feet in size, may be used for the sole purpose of advertising the property for sale.

#### Section 10.08

No licensed or unlicensed recreational vehicles, motor homes, boats, storage trailers or trucks with storage cabs or unlicensed standard vehicles will be left in the driveway of any yard. All such vehicles will be stored in the garage. No vehicles used for commercial purposes shall be parked within the limits of the subdivision.

#### Section 10.09

No wire link or wood fence shall be placed upon any homesite within twenty-five feet (25') of the property line except immediately surrounding any inground pool as may be required by the rules of the Monroe County Department of Health and the Town of Chili. Wood fences will be permitted to be placed on the rear yard of any reverse frontage homesites along Paul Road or Marshall Road to within sixty feet (60') of the highway right-of-way line. Fences are restricted to four feet (4') in height. No fences shall be placed on, over or around the landscaped berms on any reverse frontage lot along Paul Road or Marshall Road. No fences shall be placed on any homesite front yard area.

All fences are to be kept in good repair at all times, and any other fences erected on any homesite shall be in compliance with the zoning requirements of the Town of Chili.

#### Section 10.10

No above-ground pools shall be permitted on any corner or reverse frontage lots unless sufficiently screened from view with a minimum of four feet (4') high landscaping. Any inground pool will be permitted with a fence which shall be in compliance with the zoning requirements of the Town of Chili and Rules of the Monroe County Department of Health.

#### Section 10.11

Dwelling shall be erected or placed in accordance with the subdivision map filed in the Monroe County Clerk's Office and in accordance with the requirements of the Town of Chili.

#### Section 10.12

Trash receptacles, garbage containers and/or miscellaneous trash will remain in the garage until a reasonable time prior to collection at which time they may be set at the curb in front of each residence.

#### Section 10.13

No exterior laundry lines shall be erected or attached to the front or sides of any structure within the subdivision. Exterior laundry lines shall be restricted to the rear and within twenty feet (20') of the rear of the dwelling so as not to be directly visible from the street.

#### Section 10.14

The Declarant reserves the right to grant easements for installation and maintenance of public utility improvements, including cable T.V., storm and sanitary drainage facilities, on any homesite in said subdivision to the responsible utility, authority, corporation or municipality and also reserves the right to dedicate all highways and required easements in said subdivision to the Town of Chili.

The Declarant further reserves the right to install storm water drainage facilities along the rear or side lot lines of any homesite, ten feet (10') in width, following transfer of any lot, to remedy surface water drainage conditions.

#### Section 10.15

These covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them.

#### Section 10.16

If the parties hereto, or any of them or their heirs or assigns, shall violate or attempt to violate any of the covenants or restrictions herein, it shall be lawful for any other person or persons owning any other homesites in said development or subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions and either to prevent him or them from so doing or to recover damages and attorneys fees for such violations.

#### Section 10.17

The invalidation of one of these restrictive covenants by judgment or court order or by common consent shall in no way affect any of the other provisions and they shall remain in full force and effect.

#### Section 10.18

The entire homesite, including any landscaped berms shall be maintained by the property owner in accordance with the Town of Chili Code. Any plantings within the common areas must be approved by a majority vote of the members of the Homeowners Association and are limited to only those trees and shrubs listed in Schedule "B", annexed hereto and made a part hereof.

### ARTICLE ELEVEN - GENERAL COVENANTS AND RESTRICTIONS

#### Section 11.01 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 11.02 Severability

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

#### Section 11.03 Declaration Runs With the Land

Each person or entity acquiring an interest in a lot or other portions of the property of Wellington Subdivision, 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 in any deed, lease or other instrument for the transferring and interest in such lot or other portion of the property.

#### Section 11.04 Amendment

Unless otherwise specifically provided, this declaration may be amended or recinded 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 area;
- d. Insurance or Fidelity Bonds;
- e. Rights to use of the common area;
- f. Responsibility for maintenance and repair of the common area;
- g. Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the subdivision;
- h. Boundaries of any lot;
- i. The interests in the common area;
- j. Convertibility of lots into common areas or of common area into lots;
- k. 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;
- l. Any provisions which are for the express benefit of eligible mortgage holders.

Until five (5) years from the date of the first home conveyance or within 120 days after the Sponsor has sold 75% 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 recission to this declaration at least thirty (30) days prior to the date set for voting on said amendment or



recision. 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 recinded 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 11.05 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 11.06 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 11.07 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 common area 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 proposed action which would require the consent of a specified percentage of eligible mortgage holders as follows:

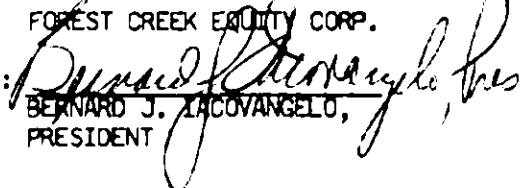
1. Any restoration or repair of the common area after a partial condemnation shall be performed substantially in accordance with the Declaration and the original plans and specifications, unless other action is approved by eligible holders holding mortgages on lots which have at least fifty-one percent (51%) of the votes of lots subject to eligible holder mortgages.

2. Any election to terminate the legal status of the Association after a substantial taking in condemnation of the common area 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 area after a partial condemnation is fixed in advance by the constituent documents or by applicable law, no reallocation of interests in the common area resulting from a partial condemnation 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 percent (51%) 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.

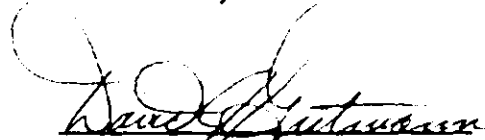
IN WITNESS WHEREOF, the undersigned being the Sponsor herein has hereunto set his hand and seal this 27<sup>th</sup> day of AUGUST, 1987.

FOREST CREEK EQUITY CORP.  
BY:   
BERNARD J. ZICOVANGELO,  
PRESIDENT

STATE OF NEW YORK)  
COUNTY OF MONROE ) SS.:

On this 27th day of August, 1987, before me personally came BERNARD J. IACOVANGELO, to me known and who, by me being duly sworn did depose and say:

That he resides in the Town of Chili, County of Monroe and State of New York, that he is the President of FOREST CREEK EQUITY CORP., an authorized Corporation, the Corporation described in and which executed the foregoing Instrument; that such seal affixed to said Instrument is such corporate seal; that it was affixed to said Instrument by order of the Board of Directors of such Corporation in writing, and that he signed his name thereto by like order.



Notary Public

**DAVID J. GARRISON**

**NOTARY PUBLIC, State of N.Y., Chautauq Co.**

**My Commission Expires 8/21/89**

SCHEDULE "A"

ALL THAT TRACT OR PARCEL OF LAND, being part of Town Lots 24 and 25 of the 3,000 Acre Tract, Township 2, Range 1, in the Town of Chili, County of Monroe, State of New York, said parcel being more particularly bounded and described as follows:

Beginning at a point of intersection of the centerlines of Paul Road and Marshall Road, said point also being the southeast corner of Town Lot 25; thence

( 1 ) S 85°-57'-25" W, along the centerline of Paul Road, said line also being the southerly line of Town Lot 25, a distance of 1,432.05 feet (1,432.60 feet per old deed) to a point, said point also being the southeast corner of lands now or formerly owned by Dennis R. and Doris Watson, Liber 4072 of Deeds, page 235; thence

( 2 ) N 03°-47'-35" W, along the easterly property line of lands now or formerly owned by said Watson, making an interior angle of 89°-45'-00", a distance of 233.00 feet to the northeast corner of said Watson property; thence

( 3 ) S 85°-57'-25" W, along the northerly property line of said Watson and property of William W. and Bernice F. Wilcox and James P. and Susan M. Blonsky, Liber 6355 of Deeds, page 55, making an interior angle of 270°-15'-00", a distance of 378.17 feet to a point in the easterly line of Sandy Mount Manor Subdivision, said point being 233.00 feet north from the center line of Paul Road; thence

( 4 ) N 03°-47'-35" W, along said easterly line of Sandy Mount Manor Subdivision, making an interior angle of 99°-45'-00", a distance of 1,278.02 feet to a point, said point being 1,478.02 feet northerly from the northerly right-of-way line of Paul Road; thence

( 5 ) S 85°-51'-55" W, making an interior angle of 270°-20'-30", parallel to the center line of Paul Road, a distance of 1,198.29 feet to a point in the easterly boundary line of Section 2 of Bright Oaks Subdivision, said point being 1,478.02 feet northerly from the northerly right-of-way line of Paul Road, measured along the easterly extension; thence

( 6) N 03°-50'-13" W, along the easterly boundary lines of Section 1 and 2 of Bright Oaks Subdivision, making an interior angle of 89°-42'-08", a distance of 1,016.23 feet (1,016.49 feet per old deed) to a point; thence

( 7) N 86°-06'-55" E, along the southerly boundary line of Section 1 and 4 Bright Oaks Subdivision, the southerly boundary line of Gerwick's Subdivision and southerly boundary line of Section 1 Pine Valley Subdivision, making an interior angle of 90°-02'-52", a distance of 1,485.11 feet (1,484.68 feet per old deed) to an angle point; thence

( 8) Continuing easterly N 85°-28'-34" E, along the southerly boundary line of Sections 1 and 2 Pine Valley Subdivision and southerly boundary line of Adele Frederes property, Liber 2846 of Deeds, page 100, making an interior angle of 180°-38'-21" (180°-37'-20" per old deed), a distance of 998.04 feet (998.14 feet per old deed) to a point; thence

( 9) S 04°-34'-00" E, making an interior angle of 90°-02'-34" (90°-04'-10" per old deed), a distance of 674.54 feet (674.28 feet per old deed) to an angle point at the northwest corner of property now or formerly owned by Alice Longbine, Liber 953 of Deeds, page 52; thence

(10) Continuing southerly S 04°-00'-18" E, along the westerly boundary line of said Longbine property, making an interior angle of 179°-26'-18", a distance of 496.00 feet to the southwest corner of said Longbine property; thence

(11) N 85°-56'-23" E, along the southerly boundary line of said Longbine property making an interior angle of 270°-03'-19", a distance of 276.00 feet to a point; thence

(12) S 04°-36'-37" E, parallel to the centerline of Marshall Road, making an interior angle of 90°-33', a distance of 190.00 feet to a point; thence

(13) N 85°-56'-23" E, making an interior angle of 269°-27'-00", a distance of 224.75 feet to a point in the centerline of Marshall Road; thence

(14) S 04°-36'-37" E, along the centerline of Marshall Road, making an interior angle of 90°-33'-00", a distance of 593.16 feet to an angle point in said centerline of Marshall Road; thence

(15) Continuing southerly S 04°-07'-22" E, along the centerline of said Marshall Road, making an interior angle of 179°-30'-45" (179°-32'-23" per old deed), a distance of 576.10 feet (576.43 feet per old deed) to the point of beginning, containing 115.7268 acres of land, as calculated to the centerlines of Marshall Road and Paul Road.

This conveyance is subject to and together with all covenants, easements and restrictions of record affecting the above-described premises as recorded in the Monroe County Clerk's Office.

Being the same premises conveyed to the grantors herein by Warranty Deed recorded on February 28, 1986, in the Monroe County Clerk's Office in Liber 6864 of Deeds, page 257.

SCHEDULE "B"  
WELLINGTON SUBDIVISION  
FOREST CREEK EQUITY CORP.

TREE & SHRUB PLANTING SCHEDULE FOR PATH & COMMON AREAS

Major Trees

Red Maple - Acer Rubrum  
Crimson King Maple - Acer Platanoides (Crimson King)  
Norway Maple - Acer Platanoides (All Varieties)  
Green Ash - Fraxinus Pennsylvanica Lanceolata  
Red Oak - Quercus Rubra (Borealis)  
Sweetgum - Liquidambar Styraciflua  
London Plane - Platanus Acerfolia (Bloodgood Strain)

Minor Trees

European Littleleaf Linden - Tilia Cordata (All Varieties)  
Amur Maple - Acer Ginnala  
Downy Serviceberry - Amelanchier Canadensis  
Spring Snow Crabapple - Malus 'Spring Snow'  
Kwanzan Cherry - Prunus Serrulata Kwanzan  
Bradford Flowering Pear - Pyrus Calleryana Bradford  
Autumn Blaze Flowering Pear - Pyrus Calleryana 'Autumn Blaze'  
Japanese Tree Lilac - Syringa Amurensis Japonica  
Nannyberry - Viburnum Lentago

Evergreens

Colorado Spruce - Picea Pungens  
Austrian Pine - Pinus Nigra  
White Spruce - Picea Glauca  
Norway Spruce - Picea Abies  
Douglas Fir - Pseudotsuga Taxifolia

Shrubs

Dense Spreading Yew - Taxus Densiflora  
Arrowwood Viburnum - Viburnum Dentatum  
Leatherleaf Viburnum - Viburnum Alleghany  
Cranberry Viburnum - Viburnum Opulus  
Double-File Viburnum - Viburnum Tomentosum  
Redtwig Dogwood - Cornus Alba Siberica  
Dwarf Burning Bush - Euonymus Alatus Compacta

Major trees to be planted no closer than ten feet (10') of paths

Minor trees to be planted no closer than eight feet (8') of paths

Evergreens to be planted no closer than fifteen feet (15') of paths

STATE OF NEW YORK  
MONROE COUNTY, SS.

RECORDED ON	09/08/87
TIME	11:14:00
BOOK	7186
PAGE	99
REEL	FR
OF	

NEED  
AND EXAMINED  
PATRICIA L. MCCARTHY  
MONROE COUNTY CLERK