

BY-LAWS OF PUMPKIN HILL HOMEOWNERS ASSOCIATION, INC.

ARTICLE ONE

PLAN OF TOWNHOUSE OWNERSHIP

Section 1-01. Townhome Lot Ownership.

The property of the PUMPKIN HILL HOMEOWNERS ASSOCIATION, INC., Town of Chili, Monroe County, State of New York (hereinafter called the "PROPERTY") has been submitted to the provisions of a Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens (hereinafter referred to as the "Declarations") recorded in the Office of the County Clerk, Monroe County, simultaneously herewith, and shall hereinafter be known as "PUMPKIN HILL HOMEOWNERS ASSOCIATION, INC." hereinafter referred to as the "Association".

Section 1-02. Applicability of By-Laws.

The provisions of these By-Laws are applicable to the property of the Association and to the use and occupancy thereof. The term "PROPERTY" as used herein shall include the land, the buildings and all other improvements thereon owned in fee simple absolute, and all easements, rights, and appurtenances belonging thereto, and all other property, personal or mixed intended for use in connection therewith, all of which are intended to be submitted to the provisions of the said Declaration.

Section 1-03. Applicability to Persons.

All present and future owners, lessees, and mortgages, their employees, and any other person who may use the facilities of the property in any manner shall be subject to these By-Laws, the Declaration, and rules and regulations pertaining to the use and operation of the Association Property.

Acquisition, rental or occupancy of any lot on the property shall be sufficient to signify acceptance and ratification of the provisions of the aforementioned instruments, and in agreement to comply therewith.

Section 1-04 Membership in the Association.

The members of the Association shall be the record owners of a fee or undivided fee interest in any of the lots within the Property, provided that any person or entity holding such interest merely as security for the performance of any obligation shall not be a member. The Association shall have one (1) class of members.

Forest Creek Equity Corp. (hereinafter called "Sponsor"), may assign its membership in the Association to any person, corporation, association, trust or other entity, and such assignee, and any future assignee of such membership may make successive like assignments. Memberships in the Association shall not otherwise be transferable or assignable.

Section 1-05. Office.

The Office of the Association and of the Board of Directors shall be located at PUMPKIN HILL HOMEOWNERS ASSOCIATION, INC., 840 Paul Road, Chili, New York.

## ARTICLE TWO

### BOARD OF DIRECTORS

#### Section 2-01. Number and Qualifications.

The affairs of the Association shall be governed by a Board of Directors, until five (5) years have elapsed from the date of conveyance of the first townhome lot or until 120 days after 75% of the townhome lots have been sold by Sponsor and paid for (whichever shall first occur) and thereafter until their successors shall have been elected by the members, the Board of Directors shall consist of such of the officers and directors of Sponsor shall from time to time designate. Thereafter, the Board of Directors shall be composed of five (5) persons, all of whom shall be owners, co-owners, spouses of owners, or mortgagees of lots, or, in the case of corporate owners or mortgagees of lots, officers, directors, shareholders, or employees of such corporations, or in the case of fiduciary owners, shall be the fiduciary or officers or employees of such fiduciaries.

#### Section 2-02. Powers and Duties.

The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things, except as by law, or by the Certification of Incorporation, or by the Declaration, or by these By-Laws, may not be delegated to the Board of Directors by the members. Such powers and duties of the Board of Directors shall include, but shall not be limited to, the following:

- A. Care, upkeep, maintenance and operation of the common elements;
- B. The determination of amounts required to defray common expenses of the Association (such as amounts required for operation and maintenance of the common elements);
- C. Collection of common charges from members;
- D. Maintenance of detailed and accurate records, in chronological order, of receipts and disbursements arising from the operation of the property, which records shall be made available for examination by members at convenient hours on weekdays;
- E. Authorization and prosecution of suits to foreclose liens for non-payment of common charges, or to recover money judgments for unpaid common charges, on behalf of all members;
- F. Authorization and prosecution of actions or proceedings on behalf of the owners of two (2) or more lots as their respective interests may appear with respect to any cause of action relating to the common elements or to more than one (1) lot;
- G. Employment and dismissal of personnel necessary or appropriate for the maintenance and operation of the property, the common areas and facilities and the restricted common areas and facilities;
- H. Adoption and amendment of rules and regulations not in consistent with these By-Laws, covering the details of operation and use of the property;
- I. Establishment of bank accounts in the name of the Association, and authorization of signatories therefore;
- J. Purchasing, leasing, or otherwise acquiring in the name of the Board of Directors, or its designee, corporate or otherwise, on behalf of all members, lots offered for sale, lease or surrender by their owners to the Board of Directors;
- K. Purchasing lots at foreclosure or other judicial sale in the name of the Board of Directors, or its designee, corporate or otherwise, on behalf of all members;
- L. Selling, leasing, mortgaging, voting the votes appurtenant to (other than for the election of members of the Board of Directors), or otherwise dealing with lots

- acquired by, and subleasing lots leased by the Board of Directors or its designee, corporate or otherwise on behalf of all members;
- M. Organizing corporations to act as designees of the board of Directors in acquiring title to or leasing lots on behalf of all of the members;
  - N. Procuring of insurance for the Association Property, including the lots thereof, as set forth in Article Five, Section 5-13 and 5-14, hereof;
  - O. Contracting for and/or making of repairs, additions, and improvements to the property, and for repairs to and restoration of the property in accordance with the provisions of these By-Laws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings;
  - P. Levying fines against members for violations of the rules and regulations established by it to govern the conduct of the members, provided, however, that no fine may be levied in an amount in excess of TWENTY-FIVE DOLLARS (\$25.00) for any one (1) violation. But for each day a violation continues after notice, it shall be considered a separate violation. Such fines may be collected as if they were common charges owed by the member(s) against whom the fines are levied. Where a member is fined for an infraction of the rules and regulations and fails to pay the fine within ten (10) days after notification thereof, the Board may levy an additional fine or fines to enforce payment of the initial fine. Where a member persists in violation of the rules and regulations, the Board may require him a post a bond to secure future compliance with the rules and regulations;
  - Q. Controlling the use of all common elements of the property, including restricted common elements;
  - R. Borrowing money on behalf of the Association when required in connection with the operation, care, upkeep and maintenance of the common elements, provided, however, that (1) the consent two-thirds (2/3) in number of all voting Association members, obtained at a meeting duly called and held for such purpose in accordance with the provisions of these By-Laws, shall be required for the borrowing of any sum in excess of THREE THOUSANDS DOLLARS (\$3,000.00) and (2) no lien to secure repayment of any sums borrowed may be created on any lot without the consent of the lot owner;
  - S. Employment of a Managing Agent and/or Manager at such reasonable compensation and to perform such duties as the Board of Directors may authorize; provided however, that the Board of Directors shall not delegate to any such Managing Agent and /or Manager any of the powers set forth in subsections F., H., I., K., L., and M., of this Section;
  - T. Exercising all other necessary and proper actions for the sound management of the Association and fulfillment of the terms and provisions of the Association Certificate of Incorporation, Declaration and By-Laws.

#### Section 2-03. Election and Terms of Office.

At the first annual meeting of members, the terms of office of the Board of Directors shall be fixed as follows:

- A. The terms of office of two (2) members shall be set at times (3) years;
- B. The terms of office of two (2) members shall be set at two (2) years; and
- C. The terms of office of one (1) member shall be set at one (1) year.

At the expiration of the initial term of office of each Board Member, his successor shall be elected to serve a term of three (3) years. Board Members shall hold office until their successors have been elected and hold their first meeting.

Section 2-04. Vacancies.

Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the members, shall be filled by vote of the majority of the remaining Board Members, even though they may constitute less than a quorum; each person so elected shall hold office until his successor is elected at the next annual meeting of Association members.

Section 2-05. Removal of Board Members.

At any regular or special meeting duly called, any one or more members of the Board of Directors may be removed with or without cause by a majority of voting Association members, and a successor may then and there be elected to fill the vacancy so created. Any Board Members so elected shall serve for the unexpired term of his predecessor in office. Any Director whose removal has been proposed by the Association member shall be given an opportunity to be heard at the meeting at which a vote is to be taken on the issue of his removal.

Section 2-06. Organizational Meetings.

The first (1st) meeting of the Board of Directors shall be held within fifteen (15) days of the first (1st) bi-annual meeting of Association members at which Board Members are elected and at such place as may be fixed by the Board of Directors. No notice shall be necessary to the newly elected Board of Directors in order legally to constitute such a meeting, providing a majority of the Board shall be present.

Section 2-07. Regular Meetings.

Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the members of the Board of Directors, but at least twelve (12) of such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each Board Member personally, or by mail, telephone, or telegraph at least three (3) business days prior to the date set for such meeting.

Section 2-08. Special Meetings.

Special meetings of the Board of Directors may be called by the President, and shall be called by the President or Secretary on the written request of at least two (2) Board Members on two (2) business days' notice to each Board Member, given personally or by mail, telephone, or telegraph. Any such notice shall state the time, place, and purpose of the meeting.

Section 2-09. Waiver of Notice.

Any Board Member may at any time waive notice of any meeting of the Board of Directors in writing, and any such written waiver shall be deemed equivalent to the giving of the notice required herein. Attendance by any Board Member of any meeting of the Board shall constitute a waiver by him or notice of the time and place thereof. If all Board Members are present at any meeting of the Board, no notice shall be required, and any business may be transacted at any such meeting.

Section 2-10. Quorum of Board of Directors.

At all meetings of the Board of Directors, a majority of the members thereof shall constitute a quorum for the transaction of business, and the votes of a majority of the members of the Board of Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If at any meeting of the Board of

Directors there is less than a quorum present, a majority of those present may adjourn the meeting. At any such subsequent meeting at which a quorum is present, any business that might have been transacted at the meeting as originally called may be transacted without further notice.

Section 2-11. Fidelity Bonds.

The Board of Directors shall in their discretion, obtain adequate fidelity bonds for all officers and employees of the Association handling or responsible for Association funds. The premiums of such bonds shall constitute a common expense.

Section 2-12. Compensation.

No member of the Board of Directors shall receive compensation from the Association for acting as such, provided, however, that nothing herein contained shall be construed to preclude any Board Member from serving the Association or the Board of Directors in any other capacity and receiving compensation therefore.

Section 2-13. Liability of Board Directors.

The members of the Board of Directors shall not be liable to the Association for any mistake or judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith. The Association shall indemnify and hold harmless each of the members of the Board of Directors against all contractual liabilities to others arising out of contracts made by the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Certificate of Incorporation, the Declaration or of these By-Laws. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association. Every agreement made by the Board of Directors, or the Managing Agent, or the Manager, on behalf of the Association shall provide that the members of the Board of Directors, or the Managing Agent, or the Manager, as the case may be, are acting only as agents for the Association and shall have no personal liability thereunder.

## ARTICLE THREE

### LOT OWNERS

#### Section 3-01. Bi-Annual Meetings.

Within 120 days after 75% of the Townhome lots have been sold by Sponsor and paid for or within five (5) years from the date of conveyance of the first Townhome lot, whichever shall first occur, sponsor shall notify all lot owners thereof, and the first bi-annual meeting of members shall be called by the President to be held within thirty (30) days thereafter. At such meeting officers and directors of the Sponsor holding office, as members of the Board of Directors shall resign, and all lot owners including Sponsor, shall elect a new Board of Directors. Thereafter, bi-annual meetings of members shall be held, at the property, on the first Monday in February and August of each succeeding year, or at such other reasonable place or time (not more than sixty [60] days before or after such date) as may be designated by written notice by the Board of Directors delivered to the members not less than fifteen (15) days prior to the date fixed for said meeting. At such meetings there shall be elected by ballot of the members, a Board of Directors in accordance with the requirements of Section 2-03 of these By-Laws. The members may also transact such other business of the Association as may properly come before the meeting.

#### Section 3-02. Special Meetings.

The President may, and shall if directed by resolution of the Board of Directors or by Petition signed and presented to the Secretary by members representing twenty-five percent (25%) of the voting Association membership, call a special meeting of the Association. The notice of any special meeting shall state the time and place of the meeting, and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

#### Section 3-03. Place of Meetings.

Meetings of the Association shall be held at the principal office of the Association, or at such other suitable place convenient to the members as may be designated by the Board of Directors.

#### Section 3-04. Notice of Meetings.

It shall be the duty of the Secretary to mail a notice of each bi-annual or special meeting, stating the purpose, the time and place thereof, to each Association member, at least ten (10), but not more than thirty (30) days prior to such meeting. Any notice so mailed shall be considered served.

#### Section 3-05. Quorum; Majority Voting.

At all meetings of the Association, members holding in the aggregate in excess of fifty percent (50%) in voting interests shall constitute a quorum for transaction of business. If a quorum is present at a meeting, the acts of a majority of voting members present shall bind all members for all purposes other than those for which a higher percentage is required by law, by the Declaration or by these By-Laws. If, at any meeting of members, less than a quorum is present, a majority of voting members present may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called. At any such subsequent meeting at which a quorum is present, any business, which might have been transacted at the meeting as originally called, may be transacted without further notice. As used in these By-Laws, the term "majority of members" shall

mean those members holding in excess of fifty percent (50%) in the aggregate in voting interests.

Section 3-06. Order of Business.

The order of business at all meetings of Association members shall be as follows:

- A. Roll call;
- B. Proof of notice of meeting or waiver of notice;
- C. Reading of minutes of the preceding meeting;
- D. Reports of officers;
- E. Report of Board of Directors;
- F. Reports of committees;
- G. Election of voting inspectors (when appropriate);
- H. Election of members of Board of Directors (when required);
- I. Unfinished business;
- J. New business.

Section 3-07. Title to Lots.

Title to lots may be taken in the name of an individual or in the names of two (2) or more persons, as tenants in common or as joint tenants or as tenants by the entirety, or in the name of a corporation or a partnership, or in the name of a fiduciary.

Section 3-08. Voting.

The Association shall have one class of voting membership. Members shall be entitled to no more than, nor less than one vote. The appointment of any proxy shall be made in a writing filed with the Secretary, and shall be revocable at any time by notice in writing to the Secretary.

## ARTICLE FOUR

### OFFICERS

#### Section 4-01. Designation.

The principal officers of the Association shall be President, Vice-President, Secretary, and Treasurer, all of whom shall be elected by and from the Board of Directors. The Board of Directors may also appoint an Assistant Vice-President, and Assistant Treasurer, an Assistant Secretary and such other officers as in its judgment may be necessary.

#### Section 4-02. Election of Officers.

The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board, and shall hold office at the pleasure of the Board of Directors.

#### Section 4-03. Removal of Officers.

Upon the affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor may be elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

#### Section 4-04. President.

The President shall be the chief executive officer of the Association, shall supervise the functions of the other officers, shall preside at all meetings of the Association members and shall preside at all meetings of the Board of Directors. He shall keep the Board of Directors fully informed, and shall freely consult with them concerning the activities of the Association. He shall have the power to sign alone, unless the Board of Directors shall specifically require an additional signature, in the name of the Association all contracts, agreements, deeds, leases, checks, and other instruments of the Association authorized either generally or specifically by the Board of Directors. He shall perform all duties incident to the office of President, subject however, to the control of the Board of Directors.

#### Section 4-05. Vice-President.

The Vice-President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice-President is able to act, the Board of Directors shall appoint some other member of the Board of Directors to act in the place of the President, on an interim basis. The Vice-President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors or by the President.

#### Section 4-06. Secretary.

The Secretary shall keep the minutes of all meetings of the Board of Directors and of the Association members; he shall have charge of such books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of Secretary, subject however, to the control of the Board of Directors and such other duties as shall from time to time be assigned to him by the Board of Directors.

#### Section 4-07. Treasurer.

The Treasurer shall have the custody of all funds and securities of the Association, which



may come into his hands. He shall keep or cause to be kept complete and accurate accounts of receipts and disbursements of the Association, and shall deposit all monies and other valuable effects of the Association in the name and to the credit of the Association in such banks or depositories as the Board of Directors may designate. Whenever required by the Board of Directors, he shall render a statement of his accounts. He shall at all reasonable times exhibit his books and accounts to any officer or member for the Board of Directors of the Association, and shall perform all duties incident to the office of Treasurer, subject however, to the control of the Board of Directors, and such other duties as shall from time to time be assigned to him by the Board of Directors. The Treasurer shall, if required by the Board of Directors, give security for the faithful performance of his duties as the Board of Directors may require.

Section 4-08. Agreements, Contracts, Deeds, Checks and Other Instruments.

All agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by any one (1) officer of the Association or by such other person or persons as may be designated by the Board of Directors.

Section 4-09. Compensation of Officers.

The salaries, if any, of all officers shall be set by the Board of Directors, in their discretion, and the fact that any officer is a member of the Board of Directors shall not preclude him from receiving his salary, if any, or from voting on any resolution providing for the same.

## ARTICLE FIVE

### OPERATION OF PROPERTY

#### Section 5-01. Determining Common Charges.

Except as otherwise provided herein, all costs and expenses in connection with the repair, maintenance, replacement, restoration and operation of any alteration, addition or improvement to, common elements ("common expenses") shall be determined by the Board of Directors and shall be borne by the Association members. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Association which budget shall include projection of common expenses, common revenues (from sources other than assessments of lot owners), the amount of common charges required to meet the excess of the former over the latter, and an allocation and assessment of such common charges against lot owners as provided in the Declaration. As used in these By-Laws, the term "common expenses" or "common charges" shall mean expenses or charges for which lot owners are proportionately liable, and shall include, but shall not be limited to the following:

- A. All expenses of administration, maintenance, repair and replacement of the common elements;
- B. Insurance premiums on all policies of insurance obtained by the Board of Directors, Managing Agent or Manager, as the case may be, pursuant to Sections 5-13 and 5-14 of the Article;
- C. Working capital reserve;
- D. General operating reserve;
- E. Capital Improvement fund;
- F. All other amounts that the members may agree upon or that the Board of Directors may deem necessary or appropriate for the operation, administration, and maintenance of the Association property;
- G. All other amounts designated common expenses by the Declaration, by these By-Laws, or by law.

The Board of Directors shall furnish all lot owners and mortgages with copies of the budget by which the allocations and assessments of common charges are based.

#### Section 5-02. Collection of Assessments

The Board of Directors shall assess common charges against the lot owners from time to time, and at least annually, and shall advise each lot owner in writing of the amount of common charges payable by him. If any common charges remain unpaid for more than ten (10) days from the date due, the Board of Directors shall take prompt action to collect the same and impose a late charge 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 equitable and uniformly applied.

#### Section 5-03. Obligation to Pay Common Charges.

All lot owners are obligated to pay common charges assessed by the Board of Directors at such times as the Board may determine. No lot owner may exempt himself from liability for any assessment for common charges by waiver of the use or enjoyment of any of the common elements or by abandonment of his lot. In all voluntary conveyance of lots, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover against the

grantor any amounts paid by the grantee. However, any such grantee shall be entitled to a statement from the Board of Directors, or the Managing Agent or the Manager, setting forth the amount of unpaid assessments. In such event, the grantee shall not be liable for any amount in excess of the amount set forth in such statement. A mortgagee or other purchaser of a lot as a foreclosure sale, shall not be liable for non-payment of any common charges assessed prior to the date of the foreclosure sale and such lot shall not be subject to a lien for non-payment of such charges.

Section 5-04. Default in Payment of Common Charges.

In the event of default by any lot owner in paying the common charges assessed against his lot by the Board of Directors, such lot owner shall be obligated to pay the maximum legal interest rate permissible by law (or such lower interest rate as may be fixed by the Board of Directors), on such common charges from the due date thereof, together with all expenses, including reasonable attorneys' fees incurred by the Board of Directors in any proceeding brought to collect such common charges, or to foreclosure a lien for non-payment thereof.

Section 5-05. Foreclosure of Liens for Unpaid Common Charges.

The Board of Directors have the right and duty to attempt to recover unpaid common charges, together with interest thereon, and expenses of the proceeding, including reasonable attorney's fees, (1) in an action to recover a money judgment brought against any lot owner in default on his obligation to pay the common charges, or (2) by foreclosure of the lien, on any lot in respect to which such default has occurred. The suit to recover a money judgment for unpaid common charges shall be maintainable without foreclosing or waiving the lien, securing the same, and foreclosure shall be maintainable notwithstanding the pendency of a suit to recover money judgment. In any such foreclosure, the lot owner shall be required to pay reasonable rental for the lot for any period prior to sale, and the Board of Directors, as Plaintiff in such a foreclosure, shall be entitled to the appointment of a receiver to collect the same.

Section 5-06. Common Surplus.

The Association shall not be obligated to 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 balance remaining. The Association shall not be 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 effectuation of the purposes of the Association.

Section 5-07. Maintenance and Repair

All maintenance and repairs and the responsibility therefore shall be in accordance with the provisions of Articles Nine and Ten of the Declaration, which provisions shall become a part of these By-Laws as if fully set forth herein.

Section 5-08. Uses of Lots.

In order to provide for a more congenial occupancy of the Association property and for the protection of the values of the lots, the use of the Association property shall be restricted to and shall be in accordance with the following provisions:

- A. Lots shall be used for residential purposes only.
- B. Common elements may be used only for the furnishing of the services, the facilities and the other uses for which they are reasonably suited.

- C. No nuisance shall be allowed on the Association property, nor shall any use or practice be allowed which is a source of annoyance to owners or occupants of the townhomes or which interferes with the peaceful possession or proper use of the Association property by its owners or occupants.
- D. No immoral, improper, offensive or unlawful use shall be made of the Association property or any portion thereof. All valid laws, zoning ordinances and regulations of governmental bodies having jurisdiction thereof, relating to any portion of the Association property, shall be complied with at the full expense of the respective lot owners or the Board of Directors, whoever shall have the obligation to maintain or repair such part of the property.
- E. Lot owners shall not allow anything be done or kept in their lot which would increase the rate of fire insurance thereon or on the Association as a whole.
- F. No townhome may be rented without the prior written consent of the Board of Directors.

Section 5-09. Modifications by Lot Owners.

No lot owner shall make any structural addition or alteration in or to his townhome without the prior written consent of the Architectural Committee pursuant to Article Ten of the Declaration. On request by any lot owner for approval of a proposed addition or alteration, the Architectural Committee shall answer the same within sixty (60) days after receipt thereof, and failure to do so within the stipulated time shall constitute consent. Any application to any governmental authority for a permit to make any addition or alteration in or to any townhome shall be executed by the Architectural Committee only. The Association, the Board of Directors and the Architectural Committee shall not, however, be liable to any contractor, sub-contractor, or material man, or to any person claiming injury to person or property as a result of such addition or alteration. The provisions of this section shall not apply to lots owned by sponsor until such lots shall have been initially sold by sponsor and paid for.

Except as provided herein, no lot owner shall construct any additions to the exterior of his townhome, make structural changes to any of the common elements, or excavate or otherwise alter common elements, whether such common elements be located in, under, or adjacent to the building.

Section 5-10. Right of Entry.

Each lot owner shall grant a right of access to his townhome to the manager and/or the managing agent and/or any other person authorized by the Board of Directors, the manager or the managing agent, for the purpose of making inspections or for the purpose of correcting any condition originating in his townhome and threatening another townhome or a common element, or for the purpose of performing installation, alterations or repairs to the mechanical or electrical services or other common elements in his townhome or elsewhere in the building, or to correct any condition which violated the provision of any mortgage covering another lot, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the lot owner. In case of an emergency, such right of entry shall be immediate, whether the lot owner is present at the time or not.

#### Section 5-11 Modification by Board of Directors

Any additions or alterations in or to the common elements costing THREE THOUSAND DOLLARS (\$3,000.00) or less may be made by the Board of Directors without the approval of members or lot mortgagees, and the cost thereof shall be treated as common expenses. Whenever, in the judgment of the Board of Directors, the common elements require additions or alterations costing in excess of THREE THOUSAND DOLLARS (\$3,000.00) the making of such additions or alterations shall require approval by a majority of voting members, and by those mortgages holding first mortgages on fifty-one percent (51%) of the lots. After such approval has been obtained, the Board of Directors shall proceed with the additions or alterations, and the cost thereof shall be treated as common expenses.

#### Section 5-12. Repair or Reconstruction.

Except as regarding eligible holders mortgages as provided in Section 13.08 of the Declaration, if seventy-five (75%) or more of the property is destroyed or substantially damaged and seventy-five percent (75%) or more of the voting lot owners do not duly and promptly resolve to proceed with repair or restoration, then the property, or so much thereof shall remain, shall be subject to an action for partition at the suit of any lot owner or lienor as if owned in common. In such event, the net proceeds of sale, together with the net proceeds of insurance policies, shall be considered as one fund and shall be divided among all lot owners proportionately; provided however, that no payment shall be made to a lot owner until there has been paid out of his share of such funds all liens on his lot.

In all other cases, in the event of damage to or destruction of the property, the Board of Directors shall arrange for the prompt repair and restoration of the property, including individual lots therein, but not including furniture, furnishings, decorations, fixtures, equipment, or other personal property installed in the townhomes by lot owners. The Board of Directors shall disburse the proceeds of all insurance policies, in appropriate progress payments, to the contractors engaged in repair and restoration work. Costs of repair and restoration in excess of insurance proceeds shall be treated as common expenses.

#### Section 5-13. Fire and Extended Coverage Insurance.

The Board of Directors, managing agent, or manager, as the case may be, shall obtain and continue in effect, insurance against loss by fire and other casualties normally covered under broad form fire and extended coverage insurance as written in New York, covering all Association property, and all lots, but not including furniture, fixtures, decorations, equipment, or other personal property placed therein by lot owners, in at least an amount satisfactory to mortgages holding first mortgages on the individual lots and in accordance with Article Twelve of the Declaration. The premiums for such insurance shall be a common expense to be paid by monthly assessments levied by the Board of Directors.

#### Section 5-14. Liability Insurance.

The Board of Directors, managing agent, or manager, as the case may be, shall obtain and continue in effect, insurance against liability for personal injury and death and for damage to property arising from accidents occurring within the Property in amounts satisfactory to mortgagees holding first mortgages on the individual lots. Such amounts shall be determined by the governing board and the premiums for such insurance shall be a common expense.

Section 5-15. Right of Owners to Insure Lots.

Any insurance obtained or maintained by the Board of Directors, managing agent, or manager, as the case may be, shall be without prejudice to the right of lot owners to obtain and maintain such lot insurance as they see fit.

Section 5-16. Use of Common Elements and Facilities.

A lot owner shall not place or cause to be placed in the common facilities or areas, other than an area to which such lot owner has sole access, and other than the areas designed as storage areas, any furniture, packages, merchandise or object of any kind.

Section 5-17. Rules of Conduct.

Rules and regulations concerning the use of the common elements and of individual lots may be promulgated and amended from time to time by the Board of Directors with the approval of a majority of lot owners. Copies of all such rules and regulations shall be furnished by the Board of Directors to each lot owner prior to their effective date. Initial rules and regulations, shall be effective until amended by the Board of Directors with the approval of a majority of voting lot owners, are annexed hereto and made a part hereof as "Schedule A".

Section 5-18. Abatement of Violations.

Violation of any provision of the Declaration, of these By-Laws, or any rule or regulation adopted pursuant hereto, shall give the Board of Directors, acting on behalf of all lot owners, the right, in addition to any other rights set forth herein:

- a. To enter any lot in or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting lot owners, any thing or condition constituting such violation or breach, and the Board of Directors shall not be deemed guilty of trespass in so doing; or,
- b. to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such violation or breach.

## ARTICLE SIX

### MORTGAGES

#### Section 6-01. Notice to Board of Directors.

The lot owner who mortgages his lot shall, within fifteen (15) days after such mortgage has been executed, notify the Board of Directors of the name and address of his mortgagee. The Board of Directors shall maintain such information in a book entitled "Mortgagees of Lots".

#### Section 6-02. Payment of Assessments.

No lot owner shall be permitted to convey, mortgage, pledge, sell, or lease his lot unless and until he has paid in full to the Board of Directors all unpaid charges theretofore assessed his lot, and until he has satisfied all unpaid liens against his lot other than mortgage liens.

#### Section 6-03. Notice of Unpaid Common Charges.

The Board of Directors, whenever so requested in writing by a mortgagee of a lot, shall promptly report any unpaid common charges or any default by the owner of the mortgaged lot.

#### Section 6-04. Notice of Default

Upon giving notice to a lot owner of a default, whether in payment of common charges or otherwise, the Board of Directors shall send a copy of such notice to each holder of a mortgage secured by such lot whose name and address appears in the book entitled "Mortgagees of Lots".

#### Section 6-05. Notice of Action.

Upon written request to the Association any eligible mortgage holder shall be entitled to timely written notice of:

- a. Any condemnation loss or any casualty loss which affects a material portion of the project or any lot on which there is a first mortgage held by such eligible mortgage holder;
- b. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- c. Any proposed action which would require the consent of a specified percentage of eligible mortgage holders as specified in Article Eleven of these By-Laws.

#### Section 6-06. Inspection of Books.

Lot owners and lot mortgages shall be permitted to inspect the books of accounts of the Association at reasonable times during business hours, but not more often than once per month.

## ARTICLE SEVEN

### SALE AND LEASES OF LOTS

#### Section 7-01. Compliance with Article.

No lot owner may sell or lease his lot or any interest therein except by complying with the provision of this Article.

#### Section 7-02. Financing Acquisition of Lots by Board of Directors.

Acquisition of lots by the Board of Directors may be financed from special assessments pursuant to the Declaration, working capital, and common charges in the hands of the Board of Directors. The Board of Directors is also authorized to borrow money to finance the acquisition of such lots; provided however, that no lien or encumbrance on any property, other than the lot to be acquired, may be suffered to secure such financing.

#### Section 7-03. Leasing of Lots.

No lot owner may lease his lot or any part thereof, except with the written consent of the Board of Directors and in accordance with the following provisions:

- a. No lot owner shall lease his townhome for a periods of less than thirty (30) days.
- b. Any lease must be consistent with the Declaration, By-Laws and rules and regulations of the Association, as the same may be amended from time to time and must provide that the lessee must comply therewith. Said lease must further provide that if the lessee fails to comply with the aforementioned provisions, the Board of Directors shall have the power to terminate such lease and/or bring a summary proceeding to evict the leasee in the name of the landlord.
- c. Said lease must further provide that it may not be modified, amended, extended or assigned, without prior written consent of the Board of Directors and that the lessee shall not sublet the demised premises or any part thereof without prior written consent of the Board of Directors.
- d. Said lease must further provide that if the landlord fails to pay common charges or special assessments assessed against the lot owner, the Board of Directors can evict the lessee on not less than thirty (30) days prior written notice of foreclosure of the lien of such lot.
- e. Except as otherwise provided herein, such lease shall be an approved form of Association lease, whose such modifications shall be approved in writing by the Board of Directors.
- f. A copy of said lease shall be delivered to the Board of Directors, to be kept in the permanent records of the Association.
- g. Lease made in violation of these provisions shall be voidable by the direction of the Board of Directors. If the Board of Directors so elects, the landlord shall be deemed to have authorized the Board of Directors to institute legal proceedings to evict the lessee in the name of the owner, as landlord, and the landlord shall reimburse the Board of Directors for all costs incurred in connection therewith, including, but not limited to, reasonable attorney's fees.

#### Section 7-04. Payment of Assessment.

No lot owner shall be permitted to convey, mortgage, pledge, hypothecate, sell on lease his lot unless and until he shall have paid in full to the Board of Directors all unpaid common charges theretofore assessed by the Board of Directors against his lot and until he shall satisfied all unpaid liens against such lot, other than permitted mortgages.



## ARTICLE EIGHT

### CONDEMNATION

#### Section 8-01. Condemnation of Association Property.

Except as regarding eligible holders of mortgages as provided in Section 13.08 of the Declaration, in the event of a taking in condemnation or eminent domain of part or all the association property, the award made for such taking shall be payable to the Board of Directors. If seventy-five percent (75%) or more in number of voting lot owners duly and promptly approve the repair and restoration of the common elements, the Board of Directors shall contract for such repair and restoration, and shall disburse the proceeds of the award in appropriate progress payments to contractors engaged in such repair and restoration. If the proceeds of the award are insufficient to defray the entire expense of repair and restoration, the excess of such expense over such proceeds shall be treated as a common expense. In the event that seventy-five percent (75%) or more of the voting lot owners do not duly and promptly approve the repair and restoration of the Association property, the net proceeds shall be divided by the Board of Directors among all lot owners proportionately, paying out of the share of each lot owner the amount of any unpaid liens on his lot, in the order of priority of such liens.

## ARTICLE NINE

### RECORDS

#### Section 9-01. Records; Certification by Certified Public Accountants.

The manager, managing agent, and/or Board of Directors shall keep detailed records of all actions of such manager, managing agent and Board of Directors, as well as minutes of the meetings of the Board of Directors, minutes of the meetings of member, and financial records and books of accounts for the Association, including a chronological record of all receipts and disbursements. A separate account shall also be kept for each lot containing, among other things, the amount of each assessment against such lot, the date when due, amounts paid thereon, and the balance remaining due. The Board of Directors shall also prepare a quarterly written report summarizing receipts and disbursements of the Association, copies of which shall be made available to all lot owners. Additionally, an annual report of receipts and disbursements of the Association, certified by an independent certified public accountant, shall be rendered by the Board of Directors to all lot owners and mortgages requesting the same, promptly after the end of each fiscal year.

#### Section 9-02. Fiscal Year.

The fiscal year of the Association shall commence on January 1<sup>st</sup> of each year and end December 31<sup>st</sup>.

## ARTICLE TEN

### MISCELLANEOUS

#### Section 10-01. Notices.

All notices required or permitted to be sent to the Board of Directors shall be personally delivered or sent by registered or certified mail in care of the manager or managing agent, or if there is no manager or managing agent, to the office of the Board of Directors at 840 Paul Road, Chili, New York, or to such other address as the Board of Directors may designate. All notices required or permitted to be sent to any lot owner, shall be sent by registered or certified mail to the Association or to such other address as such owner may have designated in writing to the Board of Directors. All notices to lot mortgages shall be sent by registered or certified mail to their respective addresses, as maintained in the book entitled "Mortgagees of Lots". All notices shall be deemed to have been given when mailed, except notices of change of address, which shall be deemed to have been given when received.

#### Section 10-02. Invalidity.

If any provision or provisions of these By-Laws is or are declared invalid, such invalidity shall in no way impair or effect in any manner the validity, enforceability, or affect the remaining provisions of these By-Laws.

#### Section 10-03. 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 these By-Laws, or the intent of any provision thereof.

#### Section 10.04. Waiver.

No restriction, condition, obligation, or provision contained in these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations and failures to enforce that may occur.

#### Section 10-05. Gender; Singular/Plural.

The use of the masculine gender in these By-Laws shall be deemed to include the feminine gender and the use of the singular shall deem to include the plural whenever the context so requires.

#### Section 10-06. Reference to the Sponsor.

Whenever a reference is made to the sponsor, such reference shall be deemed to include by corporation, subsidiary or other entity wholly controlled by the sponsor and designated by it to act in its place and stead concerning any matter pertaining to ownership, leasing or mortgaging of lots, operation of the Association property, or both.

## ARTICLE ELEVEN

### AMENDMENTS TO BY-LAWS

#### Section 11-01. Amendments.

These By-Laws may be modified or amended by the vote of two-thirds (2/3) of all voting members at a meeting of members duly called for such purposes.

However, 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 By-Laws which establish, provide for, govern or regulate any of the following:

- a. Voting;
- b. Assessments, assessment liens or subordination of such liens;
- c. Reserves for maintenance, repair and replacement of the common areas (or lots if applicable);
- d. Insurance or Fidelity Bonds;
- e. Rights to use of the common areas;
- f. Responsibility for maintenance and repair of the several portions of the project;
- g. Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project, other than Phases I through IV of Pumpkin Hill Townhomes;
- h. Boundaries of any lot;
- i. The interests in the general common areas;
- j. Convertibility of lots into common areas or of common areas into lots;
- k. Leasing of Lots;
- l. Imposition of any rights of first refusal or similar restriction on the right of a lot owner to sell, transfer, or otherwise convey his or her lot;
- m. Any provision which are for the express benefit of eligible mortgage holders.

#### Section 11-02. Amendments Affecting Sponsor.

Notwithstanding any provision contained herein to the contrary, no amendment to these By-Laws shall be effective in any way against the Sponsor, until five (5) years shall have elapsed from the date of conveyance of the first townhome lot or until 120 days after seventy-five percent (75%) of the townhome lots have been sold by Sponsor and paid for, whichever shall first occur.

ARTICLE TWELVE

CONFLICTS

Section 12-01. Conflicts.

In the case of any conflict between the Certificate of Incorporation and these By-Laws, the Certificate of Incorporation shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

ARTICLE THIRTEEN

DEFINITIONS

Section 13-01. Definitions.

The words, phrases or terms used in these By-Laws shall have the same meanings as those words, phrases or terms set forth and defined in Article One of the Declaration.