

K. HOVNANIAN'S FOUR SEASONS AT SMITHVILLE
DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS ("Declaration"), made this _____ day of _____ 199__ by K. HOVNANIAN AT SMITHVILLE, INC., a corporation of the State of New Jersey, with offices located at 110 Fieldcrest Avenue, Edison, New Jersey 08818 ("Developer").

W I T N E S S E T H:

WHEREAS, Developer is the owner or contract purchaser of certain real property in the Township of Galloway, County of Atlantic and State of New Jersey ("Property") which is located within and is part of the Towne of Historic Smithville PUD (the "PUD") being developed in Galloway Township, Atlantic County, New Jersey; and

WHEREAS, the Developer proposes to develop on portions of the Property, in Sections or Villages ("Sections" or "Villages"), an active adult community to be known as "K. Hovnanian's Four Seasons at Smithville" (the "Community"), intended to ultimately contain: (i) a Club House, (ii) a swimming pool, (iii) tennis courts, (iv) other recreational facilities; and (v) other improvements for the benefit of the Community and its residents; and

WHEREAS, the Property is described in Exhibit A and is visually depicted on the Community Plan attached hereto as Exhibit B; and

WHEREAS, the Developer has reserved the right to add Sections to the lien of this Declaration on a Section by Section plan of completion of the Community so as to encumber the Property or those portions of the Property acquired by Developer to be developed as part of the Community; and

WHEREAS, Developer explicitly states that no part of the Property is to be encumbered by the lien of this Declaration unless specifically included in an exhibit to this Declaration, or amendment hereto; and

WHEREAS, this Declaration is intended to supercede and replace any other master deed or declaration of covenants that may have been recorded in the Atlantic County Clerk's Office that previously encumbered, or purported to encumber, the Encumbered Property; and

WHEREAS, upon receipt of approvals and acquisition of title to portions of the Property, Developer intends to construct and complete the Common Property, as defined hereinafter, which Common Property may include the Club House, swimming pool, tennis courts, and other recreational facilities, and certain roadways, parking areas, sidewalks, curbing and open areas, drainage improvements and appurtenances, all as depicted on the Community Plan; and

WHEREAS, the Developer desires to file this Declaration in the Atlantic County Clerk's Office ("Clerk's Office") so as to impose upon specific portions of the Property (the "Encumbered Property") a uniform scheme of covenants, conditions, restrictions, easements, assessments, obligations, charges and liens, for the purpose of ensuring the protection value of the Homes to be constructed in the Community and for the further purpose of providing for the ownership, operation, maintenance, repair and replacement of the improvements to be constructed by Developer on the Common Property; and

WHEREAS, the Developer also intends to file a Master Deed in the Clerk's Office so as to impose upon each Section in which Homes are to be owned as condominiums, a scheme providing for the ownership, operation, maintenance, repair and replacement of the common elements exclusive of Homes to be constructed within each said Section; and

WHEREAS, Developer has deemed it advisable to create a homeowners association to which shall be delegated and assigned: the power and authority (i) to own, maintain and operate the Common Property; (ii) to administer and enforce the covenants and restrictions governing the Community; (iii) to collect and disburse all assessments and charges deemed necessary for such maintenance, administration and enforcement; and (iv) to perform such other services as may be deemed desirable to benefit its residents all as hereinafter provided; and

WHEREAS, Developer has incorporated under the laws of the State of New Jersey, a non-profit corporation known or to be known as SMITHVILLE/FOUR SEASONS HOMEOWNERS ASSOCIATION, INC. ("Community Association") as the agency to perform various functions as set forth in this Declaration and the Bylaws of the Association (a copy of the filed Certificate of Incorporation for the Community Association is attached hereto as Exhibit F); and

WHEREAS, the Developer, upon receipt of all approvals and acquisition of title to appropriate portions of the Property, intends to construct the Club House and certain other improvements and recreational facilities to be located on the Common Property and, when completed by Developer, in accordance with the requirements dictated by the Township of Galloway, to convey title to such Common Property to the Community Association;

NOW, THEREFORE, Developer declares that the Encumbered Property, as defined hereinafter, is and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, obligations and liens hereinafter set forth in this Declaration.

ARTICLE 1. DEFINITIONS

"Beneficial Member": every Owner of a Home in the Community other than Developer.

"Club House": the club house (which may consist of separate structures) to be constructed on the Property, the location of which is shown on Exhibit B.

"Common Expenses": all those expenses (including reserves) incurred or assessed by the Community Association, or its respective directors, officers, agents or employees, in the lawful performance of their respective duties or powers. Common Expenses shall not include expenses incurred by Developer in the maintenance of lands not yet made part of the Community.

"Common Property": all the real property, improvements and facilities of the Community owned and operated by the Association, including, but not by way of limitation, the Club House, stormwater handling facilities, and the Roadways.

"Community": K. Hovnanian's Four Seasons at Smithville residential adult community intended to be developed on the Property as shown on the Community Plan.

"Community Association": the Smithville/Four Seasons Homeowners Association, Inc., a New Jersey not-for-profit corporation, formed to enforce the restrictions, covenants and conditions regarding the construction, use and occupancy of Homes in the Community and to maintain, repair, own and replace the Common Property as provided in this Declaration and the Bylaws.

"Community Association Bylaws": the Bylaws of the Community Association with all future amendments or supplements thereto; see Exhibit D.

"Community Association Certificate of Incorporation": shall mean and refer to the Certificate of Incorporation of the Community Association.

"Community Association Dues" (also "Dues" or "Assessments"): all assessments assessed by the Community Association against the Owners.

"Community Association Founding Documents": the Community Association Certificate of Incorporation, the Community Association Bylaws, and this Declaration, all as initially drawn by the Developer and filed and recorded as the case may be, and all as may be duly amended from time to time.

"Community Board": the Board of Directors of the Community Association and any reference herein or in the Community Association Certificate of Incorporation, Community Association Bylaws or Rules and Regulations to any power, duty, right of approval or any other right of the Community Association shall be deemed to refer to the Community Board and not the membership of the Community Association, unless the context expressly indicates to the contrary.

"Condominium": The Smithville/Four Seasons Condominium, created by the Master Deed.

"Condominium Association": The Smithville/Four Seasons Condominium Association, Inc., a New Jersey non-profit corporation to be incorporated and organized by the Builder to administer,

manage and operate the common officers of the owners of Condominium Homes of the Condominium and to maintain, repair and replace the general and limited common elements of the Condominium as provided in the Condominium Founding Documents.

"Condominium Association Board": the Board of Directors of the Condominium Association.

"Condominium Association Bylaws": The Bylaws of the Condominium Association.

"Condominium Association Certificate of Incorporation": the Articles of Incorporation of the Condominium Association.

"Condominium Founding Documents": the Master Deed filed by any Builder and the Condominium Association Articles of Incorporation, Condominium Association Bylaws, all as initially drawn by said Builder and filed and recorded as the case may be, and all as may be duly amended from time to time.

"Condominium Homes": a separate individual residential dwelling unit within the Condominium.

"County": the County of Atlantic in the State of New Jersey.

"Declaration": this Declaration of Covenants and Restrictions, including the covenants, conditions, and restrictions and all other provisions herein set forth herein and as may be amended from time to time. (May also be referred to as "Master Declaration", where appropriate)

"Developer": K. Hovnanian at Smithville, Inc., a New Jersey corporation, its successors and assigns; provided, however, that no successor or assignee of the Developer shall have any rights or obligations of the Developer hereunder unless such rights and obligations are specifically set forth by Developer.

"Encumbered Property": those Sections or portions of the Property which have been specifically subjected to the provisions of this Declaration, as described in Exhibit C.

"Federal Mortgage Agencies": those federal agencies who have or may come to have an interest in the Community, including, but not limited to, the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation, or successors to their interests.

"First Mortgagee": an Institutional Lender who holds the mortgage on a Lot and Home and who has notified the Association of its holdings.

"Governing Documents": the Community Association Founding Documents and the Rules and Regulations, as such may be amended from time to time.

"Home": any individual residential dwelling unit, whether single family detached, attached units or multi-family flat in the Community, whether the Home is a Condominium Home or is located on a

fee simple lot; in the case of a Home located on a fee simple lot, the defined term Home includes the lot and the dwelling.

"Institutional Lender": any commercial or savings bank, mortgage banker, savings and loan association, trust company, insurance company, governmental agency, or other financial institution or pension fund, any other lender regularly engaged in financing the purchase, construction or improvement of real estate, or any assignee of loans made by such a lender, or any individual who loans money for home purchase or any combination of the foregoing entities.

"Lease": any agreement for the leasing or rental of any Home in the Community, including any sublease.

"Lot": any plot of land shown upon any recorded subdivision map of a Section intended for development as a Home. The Lot may contain detached or attached Homes.

"Master Deed": the Master Deed for the Condominium, together with all future amendments and supplements thereto which are or will be recorded in the Atlantic County Clerk's Office.

"Member" or "Members": individuals permanently residing in the Community whether as tenants in Homes or as Owners. If a tenant enjoys rights as a Member, the Owner of said Home may not exercise said rights, except for voting rights.

"Operating Agreement": The agreement, dated December 11, 1996 between the Smithville Community Association and Declarant, attached hereto as Exhibit E.

"Owner" (also "Lot Owner" or "Home Owner"): to those persons or entities in whom record title to any Lot or Home is vested as shown in the records of the Clerk's Office. It shall include the Developer unless the context expressly indicates otherwise, but, notwithstanding any applicable theory of mortgage law, it shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title to any such Lot or Home pursuant to foreclosure proceedings or any proceeding in lieu of foreclosure. The term "Owner" shall not refer to any lessee or tenant of an Owner.

"Party Wall": the entire wall, all or a portion of which is used for support of an attached Home (if any) situate or intended to be situate between adjoining Lots or Homes.

"Permitted Mortgage": any first mortgage lien encumbering a Home held by a bank, mortgage banker, trust company, insurance company, savings and loan association, trust company, insurance company, pension fund, governmental agency, or other Institutional Lender or which is a purchase money mortgage held by the Developer or by the seller of a Home.

"Property": all those lands located in the Township of Galloway, Atlantic County more particularly described in Exhibit A attached to This Declaration.

"Rules and Regulations": the rules and regulations duly adopted by the Community Association with all future amendments and supplements thereto.

"Sections": the portions of the Property into which the Community shall be divided for the purposes of development, which may be exclusive of the Common Property, but inclusive of designated Lots, streets and roads; sewer, water, electric, gas and cable television transmission facilities; sidewalks, walkways and curbing; drainage facilities, landscaping, street signs, directional signs and monumentation.

"Township": the Township of Galloway in Atlantic County, New Jersey.

ARTICLE 2. PROPERTY SUBJECT TO THIS DECLARATION

Section 2.1 Property Subject to This Declaration.

The Encumbered Property, including every Home, Lot and all Common Property contained therein, is now or hereafter expressly subjected to this Declaration and is, and shall be, held, transferred, sold, conveyed, leased and occupied, subject to this Declaration and all amendments or supplements hereto.

Section 2.2 Additions to the Encumbered Property.

Developer, at Developer's discretion, may subject additional land to this Declaration provided that such is done within fifteen (15) years from the date this Declaration is recorded. Notwithstanding the foregoing, however, under no circumstances shall Developer be required to make any such additional land subject to the Declaration. All additional land which is made subject to the Declaration shall thereupon and thereafter be included with the term "Encumbered Property" as used in this Declaration. Developer neither commits to nor warrants or represents that any additional land shall be made subject to the Declaration. Developer shall not need the consent or approval by either the Community Association of its Members, to make subject to the Declaration any additional lands. If Developer adds additional lands to the Declaration, Developer reserves the right to alter the lot configuration or type of housing offered by Developer or any Builder such that the type of housing product shall rest solely with the discretion of Developer. Developer further reserves the right, in adding additional lands, to vary the restrictions applicable to said lands, such that said additional lands may not be subject to the age restriction set forth herein. The determination of the restrictions to be applicable to the additional lands shall be within the sole discretion of the Developer, to be memorialized in the filed amendments to this Declaration, including said additional lands. It is Developer's intention to construct the Community, subject to market conditions, acquisition of title to appropriate portions of the Property, and receipt of all approvals as quickly as possible.

Section 2.3 Procedure for Making Additional Land Subject to the Declaration.

Developer may make a Section subject to the Declaration by filing with the Clerk's Office an amendatory Declaration which need only be executed by the Developer, and shall not require the joinder or consent of the Community Association or its members. Such amendatory Declarations may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary.

Section 2.4 Voting Rights.

2.4.1. Developer shall have no voting rights as to the land added to the Encumbered Property or any portion thereof until such land or portion thereof is actually added to the Encumbered Property in accordance with this Declaration.

2.4.2. The voting and participation rights of Members in the affairs of the Community Association shall be subject to the Community Association Founding Documents, which are incorporated herein by reference as if same were fully set forth herein.

Section 2.5 Assessment Obligation of the Developer.

Developer shall have no assessment obligation as to the land or any portion thereof added to the Encumbered Property until such land or portion thereof is actually added to the Encumbered Property in accordance with the provisions of this Declaration and a Home constructed thereon has been issued a certificate of occupancy by the Township.

ARTICLE 3. PROPERTY RIGHTS IN THE COMMON PROPERTY

Section 3.1 Lot Owner's Right of Enjoyment.

Subject to the provisions of the Governing Documents, every Home Owner shall have a right and easement of enjoyment in and to the Common Property and such easement shall be appurtenant to and shall pass with the title to every Home.

Section 3.2 Title to Common Property.

Developer may retain the legal title to the whole or portions of the Common Property until such time as it has substantially completed initial improvements thereon (if any) and until such time as, in the sole judgment of the Developer, the Community Association is able to maintain same. Developer shall convey its entire interest in all completed portions of the common Property to the Community Association for One (\$1.00) Dollar in consideration and free and clear of all liens and encumbrances (except for easements and standard title policy exceptions).

Notwithstanding the foregoing, Developer reserves the right to convey any portions of the Common Property at an earlier date and the Community Association shall be obligated to accept such conveyance(s) and shall properly maintain the Common Property in accordance with this Declaration and the By-Laws. Developer further reserves the right to enter upon the Common Property at any time

to complete or repair any portion of the Common Property or other improvements or other work that Developer, in its sole discretion, seems necessary or desirable.

The beneficial use of various portions of the Club House and Common Property will be made available to the Community Association and its Members within thirty (30) days after completion of each such portion, and the cost for maintenance, operation and administration of same, including insurance premiums and the proportionate allocation of real estate for taxes ("Maintenance Costs") shall thereupon become a Common Expense of the Community Association, notwithstanding that legal title remains in Developer.

ARTICLE 4. EASEMENTS

Section 4.1 Member's and Community Association's Easements.

The Encumbered Property and rights and easements of enjoyment created hereby shall be subject to the following easements:

4.1.1 Every Owner shall have a perpetual and non-exclusive easement in, over and through the Common Property, subject to the right of the Community Association as provided in the Community Association By-Laws to promulgate Rules and Regulations for the use and the enjoyment of The Common Property and voting rights of any Owner for any period during which any assessment, interest or penalty charge (herein sometimes collectively referred to as "Community Association Dues") remains unpaid, or for any period during which any infraction of its published Rules and Regulations continues, it being understood that any suspension for either nonpayment off any Community Association dues or a breach of the rules and Regulations of the Community Association shall not constitute a waiver or discharge of the Member's obligation to pay the Community Association Dues. When any Home is not occupied by the Owner, such easement shall be solely for the benefit of the permanent occupants thereof and their guests, and not the Owner or his invitee; and

4.1.2 The right of the Community Association to prescribe Rules and Regulations and to charge admission and other fees for the use of the Common Property; and

4.1.3 The right of the Community Association to dedicate or transfer all or any part of the Common Property to any municipal, County, State, Federal or other public agency, authority, or utility, for such purposes and subject to such conditions as may be agreed upon by the Members, provided that no such dedication, transfer, or determination as to the purposes of or as to the conditions of such dedication or transfer shall become effective unless such dedication, transfer and determination as to purpose and conditions thereof shall be authorized by the vote in person or by proxy of two-thirds (2/3) of the aggregate votes held by all Members of the Community Association in good standing, and

unless written notice of the proposed resolution authorizing such action is sent to every member at least sixty (60) days in advance of the scheduled meeting, at which such action is to be taken and in the case of dedication or transfer to the Township or County, acceptance of such dedication by ordinance or resolution duly adopted by the governing body of the township or County. A true copy of such resolution together with a certificate showing the result of the vote taken thereon shall be made and acknowledged by the President or Vice President and Secretary or Assistant Secretary of the Community Association, and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Property, prior to the recording thereof in the Clerk's Office. Such certificate shall be conclusive evidence of authorization by the membership.

Section 4.2 Developer's Easements.

Developer, its successors and assigns shall have the following easements: A blanket and non-exclusive easement in, upon, over, under, across and through the Encumbered Property (including, without limitation, the Homes and Lots) for the purpose of installation, maintenance, repair and replacement of (i) all sewer, water, power and telephone, pipes, lines, mains, gas conduits, waters, poles, transformers, master television antennas or cable television facilities and any and all other utility or cable communications systems serving the Encumbered Property and Community; or (ii) any other improvements thereto, including the right of ingress and egress, which easements shall be for the benefit of (a) Developer for so long as Developer, its successors and assigns shall be engaged in the construction, development and sale of Homes in the Community; and (b) the Community Association on a perpetual basis in connection with the proper discharge of its responsibilities with respect to the Homes or Common Property. Should any governmental agency or utility or cable communications company furnishing one of the foregoing services hereafter request a specific easement by a separate recordable instrument in connection with the furnishing of any such service, the Board of Directors of the Community Association shall have the right to grant such easement, without payment of any consideration and without a prior vote of the members, provided that it does not adversely materially impair the rights of any Owner.

Section 4.3 Governmental Easements.

There shall be a blanket, perpetual and non-exclusive easement of unobstructed ingress and egress in, upon, over, across and through the Encumbered Property for the Township, the County, appropriate governmental entities and the Community Association, the respective officers, agents and employees of the Township, County, appropriate governmental entities and Association and for all policemen, firemen and ambulance personnel in the proper performance of their respective duties; and

Section 4.4 Home Owner's Easements.

Every Home Owner shall have the following easements:

4.4.1 A perpetual and non-exclusive easement for the existence and continuance of any encroachment by his Home upon any adjoining Home now existing or which may come into existence hereafter as a result of construction, repair, shifting, settlement, movement of any portion of a Home, or as a result of condemnation or eminent domain proceedings, so that any such encroachment may remain undisturbed so long as the Home stands.

4.4.2 A perpetual and non-exclusive easement for ingress and egress to his Home or parking space in, upon, under, over, across and through (i) the roadways, driveways and walkways; or (ii) the Common Property all as may be reasonably required for such ingress and egress.

4.4.3 A perpetual and non-exclusive easement to use and maintain all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located on any portion of the Encumbered Property which serve the Home of an Owner or Owners.

Section 4.5 Institutional Lender's Easements.

Any Institutional Lender who is the owner of a mortgage which encumbers any Home (and its officers, agents, and employees), shall have a blanket, perpetual and non-exclusive easement to enter the Encumbered Property or any part thereof to inspect the condition and repair of such Home. This right shall be exercised only during reasonable daylight hours, and then, whenever practicable, only after advance notice to and with the permission of the Community Association; and

Section 4.6 Utility and Cable Communications Easement.

Any utility company, cable communications company or entity furnishing utility service to the Property, including but not limited to meter or cable television, electronic security, its agents and employees, shall have a blanket, perpetual and non-exclusive easement to enter the Property, or any part thereof, in order to read meters, service or repair utility lines and equipment and do everything and anything else necessary in order to properly maintain and furnish utility or cable communication service to the property and Homes; and

Section 4.7 Drainage Easement.

Developer and Home Owners, their successors and assigns, shall have a blanket, perpetual and non-exclusive easement in common in, upon, over, under, across and through the Property for surface water runoff and drainage caused by natural forces and elements, grading, and/or the improvements located upon the Property. No individual Home Owner shall directly or indirectly interfere with or alter the drainage and runoff patterns and systems within the Property, including any such facilities and patterns on any Individual Lot; and

ARTICLE 5. RESTRICTIONS

In order to preserve the character of the Community as an adult residential community and for the protection of the value of the Homes, Developer declares that the Encumbered Property shall be subject to the following restrictions and covenants, all of which shall be perpetual in nature and run with the land:

Section 5.1 Age Restrictions.

5.1.1 For any individual to use and occupy a Home, one of the following standards must be met:

- a. 55 years of age or older;
- b. a husband or wife, regardless of age, residing with his or her spouse, provided the spouse of such person is 55 years of age or older; and
- c. child or children residing with a permissible occupant provided the child or children is or are 18 years of age or older.

5.1.2 No Home may be occupied by more than three(3) permanent residents if the Home contains two (2) bedrooms and no more than four (4) permanent residents if the Home contains three (3) bedrooms.

5.1.3 Notwithstanding the foregoing, visitor occupants of any age shall be permitted to visit for up to four (4) weeks during any year, provided that at no time shall more than six (6) individuals reside temporarily in any two (2) bedroom Home; no more than seven (7) individuals may temporarily resident in a three (3) bedroom Home.

Section 5.2 Use.

No Home or Lot, except those owned by Developer, or the Community Association, or the Condominium Association, and/or used by Developer for sales, administration, construction, maintenance or similar purposes, shall be used for any purpose other than as a private residence. Further, the Common Property shall not be utilized for any residential or commercial purpose not expressly permitted by this Declaration.

Section 5.3 Obstruction.

There shall be no obstruction of access to any Common Property.

Section 5.4 Building.

No Home Owner or occupant shall build, plant, or maintain any matter or thing (including, without limitation, any addition, alteration or improvement to any Home) upon, in, over or under the Encumbered Property without the prior written consent of the Architectural Control Committee, except that a Home Owner may plant flowers, trees, shrubbery and gardens within the area immediately adjacent to his Home. This restriction shall not be applicable to construction by Developer.

Section 5.5 Exterior Appearance.

Owners shall not have any right to change the appearance of any portion of the exterior of any Home (including, without limitation, any change to the exterior color scheme) without the prior written approval of the Architectural Control Committee.

Section 5.6 Maintenance.

Each Owner shall promptly furnish, perform and be responsible for, at his own expense, the repair, maintenance, and replacement of his own Home, provided, however, that the Community Association, its agents and employees may effect, at its sole discretion, emergency or other necessary repairs which the Owner has failed to perform and charge the cost of same to the Owner(s) involved.

Section 5.7 Insurance.

Nothing shall be done or kept in any Home which will increase the rates of insurance beyond the rates applicable for Homes, without the prior written consent of the Community Board. No Owner

shall permit anything to be done or kept in his Home or in or upon the Common Property which will result in the cancellation of insurance on any of the Common Property or the contents thereof, or which will be in violation of any law.

Section 5.8 Display.

No clothes, sheets, blankets, laundry of any kind or any other articles shall be hung out or exposed on any part of the Encumbered Property nor shall anything be hung, painted or displayed on the outside of the windows or placed on the outside walls or outside surfaced of doors of any of the Homes and no signs, awnings, canopies, shutters, earth stations, satellite dishes, or antennas (except for those heretofore or hereinafter installed by Developer) shall be affixed or placed upon the exterior walls or roofs of any part thereof, nor relocated or extended, without the prior written consent of the Architectural Control Committee. Television or radio antennas are not permitted under any circumstances; provided, however, that until cable television is available to the Property, a Home Owner may install a rooftop television antenna to be removed forthwith once cable television is available to that Home. Home Owners shall allow a cable communications company to pre-wire a Home and Lot. The display or use of items visible in the interior of any Home from the exterior thereof shall be subject to the Rules and Regulations. Notwithstanding the foregoing, Developer shall have the right to display signs for promotional, sales, exhibit, and administrative purposes upon any portion of the Common Property or within any Home owned by it until the last Home within the Property is sold and conveyed. Owners shall not cause or permit any signs to be displayed on the Property advertising the sale or lease of their Homes, unless authorized by the Board. Signs for any other purpose are prohibited except as may otherwise be provided by the Rules and Regulations. The Developer or the Community Association Board shall have the right to immediately cause the removal of any sign violating this provision and obtain, in addition to any penalties which might otherwise be imposed by the Community Association, all costs incurred by such removal.

Section 5.9 Animals.

No dogs, cats, birds, reptiles, rabbits, horses, livestock, fowl or poultry, or animals of any kind shall be raised, bred or kept in any Home or upon the Common Property, except as provided herein. No more than two dogs or cats in the aggregate shall be permitted in any Home. In no event shall outdoor shelters, pens or runs be permitted. All Owners and their guests, invitees, agents and others who allow or permit their pets and/or animals in their charge to defecate upon the grounds of the Property shall immediately thereafter remove from the grounds of the Property any and all excrement left by the pet or animal and dispose of it as soon as possible in a sanitary fashion. All Owners, guests, invitees, agents and other shall accompany the pet or animal in their charge at all times, shall keep the

pet on a leash when it is not on the Owners Lot, and shall carry with them at such time devices necessary to remove the pet excrement, which removal shall be done immediately.

Section 5.10 Nuisance.

No noxious, hazardous, or offensive activities shall be carried on, in or upon the Property or in any Home nor shall anything be done therein either willfully or negligently which may be or become an annoyance or nuisance to the other residents or which interferes with the peaceful possession and proper use of the Property by the other Owners. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Property shall be observed.

Section 5.11 Structural Changes.

Nothing shall be done to any Home which will impair the structural integrity of any Home or which will structurally change a Home. No Owner (other than Developer) may make any exterior structural additions, alterations or improvements in or to his Home without the prior written approval of the Architectural Control Committee or impair any easement without the prior written consent of the Architectural Control Committee subject to the right of appeal to the Community Association Board and as provided in the By-Laws. Nothing herein shall be construed to prohibit reasonable adaptation of any Home for handicap use or accessibility.

Section 5.12 Commercial Vehicles.

No commercial vehicles may park overnight and no boats, trailers, campers, mobile homes, or trucks may be parked on any part of the Property except (i) in areas specifically designated for such purpose by the Community Association; and (ii) for those vehicles temporarily on the Property for purposes of servicing the Property itself or one of the Homes. This restriction shall not apply to Developer, its employees, agents, contractors or servants.

Section 5.13 Waste.

No portion of the Property shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. Any contractor, repairman or other person retained by a Home Owner to perform work on any Home or Common Property shall cleanup all rubbish at the conclusion of each work day. Trash, garbage, or other waste shall be kept in sanitary containers as approved by the Community Association Board on the Owner's Lot for weekly or more frequent collection.

Section 5.14 Digging.

There shall be no digging or earth removal or regarding operations of any nature whatsoever on any Encumbered Property without first obtaining permission from the Covenants Committee. This section is intended as a protection against inadvertent disruption of underground services and creation of a nuisance to adjoining Owners.

Section 5.15 Draperies.

Draperies, blinds, curtains or other window coverings must be installed and maintained by each Home Owner on all windows of his/her Home.

Section 5.16 Utilities.

Each Home Owner shall pay for his/her own telephone, cable television services and utilities, which are separately metered or billed to each user by the respective utility or cable communications company. All electrical, gas, telephone and television service and other utility facilities shall be underground and no poles or above ground wires shall be permitted.

Section 5.17 Traffic.

Each Home Owner, their guests, invitees and licensees are subject to the requirements of a uniform traffic plan established for the Property. All usage of the parking areas and other Common Property is subject to compliance with the traffic plan so developed. In this connection, the Community Association may establish and enforce speed limits, parking regulations, stop intersection requirements or any other generally acceptable technique of traffic regulation which shall be adhered to as a condition to the usage of the Common Property. The Community Association further, without

approval of the members, may delegate responsibility and authority for the enforcement of New Jersey Statutes Title 39 to the police department of the Township or any other legally constituted authority over the Common Property, or portions thereof. Such delegations, however, shall not constitute dedication of these portions of the Common Property to public use.

Section 5.18 Rental.

No Home shall be rented by the Owner(s) thereof (except by Developer or an Institutional Lender in possession of such Home following a default in a first mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure) or otherwise be utilized for transient or hotel purposes, which shall be defined as "(i) rental for any period less than 180 days; or (ii) any rental if the occupants of the Home are provided customary hotel services, such as room service for food and beverages, maid service, furnishing laundry and linen, and bellboy service", provided, however, that any Owner including Developer or any Builder may rent a Home for a period of less than 180 days to a contract purchaser, but in no event for transient or motel purposes. No Owner may lease less than an entire Home. Copies of all leases must be furnished to the Community Association prior to the commencement of the term thereof. Other than the foregoing obligations, the Owners shall have the right to lease Homes provided that the Lease is in writing and is made subject to all provisions of the Governing Documents, including the right of amendment reserved to Developer and Builder therein and provided further that any failure of the lessee to fully comply with the terms and conditions of the Governing Documents shall constitute a default under the Lease. No leasing shall, however, relieve an Owner from his obligations hereunder and he shall remain primarily responsible therefor. In the event a tenant of a Home fails to comply with the provisions of the Governing Documents then, in addition to all other remedies which it may have, the Community Association shall notify the Owner of such violation(s) and demand that the same be remedied through the Owner's efforts within thirty (30) days after such notice. If such violation(s) is not remedied within said thirty (30) day period, then the Owner shall immediately thereafter, at his own cost and expense, instituted and diligently prosecute an eviction action against his tenant on account of such violation(s). Such action shall not be compromised or settled without the prior written consent of the Community Association. In the event the Owner fails to fulfill the obligation, then the Board shall have the right, but not the duty, to institute and prosecute such action as attorney-in-fact for the Owner and at the Owner's sole cost and expense, including all legal fees incurred. Said costs and expenses shall be due and payable upon demand by the Community Association and shall be deemed to constitute a lien on the particular Home involved, and collection thereof may be enforced by the Community Board in the same manner as the Community Board is entitled to enforce collection of Community Association Dues.

Section 5.19 Club House.

Developer, for itself, its successors and assigns, shall have the right to use, without charge, an area of the Club House for its sales and marketing purposes with respect to Homes located or to be located within the Community, provided that such use shall not unreasonably interfere with the use of

the Club House by its members for the purposes for which it is reasonably intended. Such right shall continue until six (6) months after all such Homes have been conveyed by Developer or until expiration of twenty (20) years from the date of filing this Declaration, whichever event first occurs.

Section 5.20 Lawn.

All Lots must have grassed front lawns and grassed side and rear yards. No gravel or similar type ground covers are permitted. No weeds, vegetation, rubbish, debris, garbage, waste materials shall be placed or permitted to accumulate on any Lot which would be unsanitary, unsightly or offensive.

Section 5.21 Lot Upkeep.

Each Home Owner shall keep the Lot neat and clean, regularly removing any trash and debris.

Section 5.22 Use of Water Retention and Detention Areas.

Swimming, bathing, boating and other use of the water retention and detention areas in the Community shall be prohibited except when in accordance with Rules and Regulations prescribed by the Community Association.

Section 5.23 Sale of Home.

Each Owner shall give the Secretary of the Community Association timely notice of the Home Owner's intent to list the Home for sale. Upon closing of title, such selling Home Owner shall immediately notify the Secretary of the Community Association of the name and address of the new Home Owner.

Section 5.24 Violations.

The Community Board shall have the power to make such rules and regulations as may be necessary to carry out the intent of these restrictions and shall have the right to bring lawsuits to enforce the Rules and Regulations promulgated by it. The Community Board shall further have the right to levy fines for violation of such Rules and Regulations, provided that the fine for a single violation may not, under any circumstances, exceed \$100.00 for a first violation or \$250.00 for any violation subsequent to a first conviction. For each day a violation continues after notice it shall be considered a separate violation. Any fine so levied is to be considered as an assessment to be levied against the particular Owner involved, and collection may be enforced by the Community Board in the same manner as the Community Board is entitled to enforce collection of other assessments. Fines may be levied against an Owner's tenant, and the Owner shall be jointly and severally liable with his tenant for the payment of same. In the event the Community Board institutes legal action for collection of any fines, then the defendant(s) shall be responsible for payment of reasonable attorneys' fees of The Community Association plus interest and costs of suit.

Section 5.25 Wells. No individual or entity shall have the right to drill a well on the Property for any purpose other than those wells constructed by Developer in conjunction with the development of the Property.

Section 5.26 Structures or Plantings. No Owner or occupant shall build or maintain any matter or thing upon, in, over or under the Common Property or upon any Lot on which a Home is located without the prior written consent of the Community Board unless permitted by the Rules and Regulations. This includes additions to any Home as well as the construction of detached accessory buildings such as garages and storage sheds.

Section 5.27 Temporary Structures. No structure of a temporary character, including, without limiting the generality thereof, trailer, tent, shack, garage, barn, or other outbuilding, shall be used on any Lot at any time as a residence.

Section 5.28 Burning. No Homeowner or occupant shall burn anything on, over, under or above the Property, with the exception of bar-b-que grills.

Section 5.29 Noxious or Offensive Activities. No noxious or offensive activities shall be carried on, in or upon the Encumbered Property nor shall anything be done therein either willfully or negligently which may be or become an annoyance or nuisance of the other residents of the Community.

Section 5.30 Immoral, Improper, Offensive or Unlawful Activity. No immoral, improper, offensive or unlawful activity shall be permitted within any Home or anywhere on the Property. All laws, zoning ordinances and regulations of all governmental bodies having jurisdiction there over shall be observed. Said laws, etc. shall supersede any Community Association regulations or this Declaration to the extent they are more restrictive.

Section 5.31 Payment of Taxes and Assessments. All property taxes, special assessments and other charges imposed by any taxing authority on the Common Property shall be paid by Owners either in accordance with this Declaration or as otherwise provided by law.

Section 5.32 Garages. No garage, with the exception of Homes with two car garages and two car wide driveways, shall be converted or renovated for any residential living purpose. All garages shall be kept usable as a garage for passenger motor vehicles or other permitted vehicles.

Section 5.33 Sump Pumps. All sump pumps within the Property shall discharge into the storm water collection system or onto a yard area. Sump pumps shall not be connected to the sanitary sewer system.

Section 5.34 Waterfowl. Feeding of any migratory or domestic waterfowl, including, but not limited to, ducks, geese and swans, on any Common Property or any Lot, is strictly prohibited.

Section 5.35 Enforcement. The Community Board shall have the power to make such Rules and Regulations as may be necessary to carry out the intent of these restrictive covenants and shall have the right to bring lawsuits to enforce the Rules and Regulations promulgated by it.

Section 5.36 Deviations. The Community Board may allow reasonable deviations from the covenants and restrictions stated in this Article 5 in order to overcome practical difficulties and prevent unnecessary hardships in the applications of the provisions herein contained provided that any such deviation: (a) does not violate the intent and purposes hereof; (b) is not materially detrimental or injurious, to other property or improvements in the area; and (c) does not violate any municipal law, ordinance or regulation. In no event shall any deviation be deemed a waiver or abandonment of the overall scheme contemplated by this Declaration.

Section 5.37 Conflicts. In the event of any conflict between the restrictions and covenants herein above set forth and the restrictions and covenants set forth in the Condominium Association Governing Documents, the more restrictive provisions shall govern. Notwithstanding the foregoing, no amendment of the restrictions and covenants contained in the Condominium Association Governing Documents which may effect the overall scheme of restrictions set forth in this Declaration shall be deemed effective without prior written approval of the Community Board.

ARTICLE 6. ASSESSMENTS

Section 6.1 Creation of the Lien.

Every Home Owner, by acceptance of a deed or other conveyance for a Lot and Home, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay Community Association Dues, by way of annual or special assessments or charges as hereinafter more particularly described. All Community Association Dues, together with such interest thereon, late charges, and cost of collection thereof (including reasonable attorneys' fees) shall be a continuing lien upon the Lot and Home against which each such assessment is made and shall also be the personal obligation of the Owner of such Lot and Home at the time when the assessment fell due. Further the Township shall have a continuing lien against each such Lot and Home for its pro rata share of all real estate taxes due and payable to the Township by the Community Association for real estate taxes assessed against the Common property. Such lien shall be apportioned equally among all Homes and shall be enforceable by the Township in the manner provided by law with respect to the real estate taxes assessed directly against each such Lot and Home.

In the event that the Community Association shall at any time fail to discharge its obligations to maintain any portion of the Common Property, or other portions of the Property it is obligated to maintain, as required by this Declaration, or to enforce the provisions hereof, the Township shall have the right to so maintain the Common Property, or other portions of the Property it is obligated to maintain, or to enforce such provisions in the same place and stead of the Community Association. The assumption of such maintenance responsibility shall be in accordance with the procedures set forth

in N.J.S.A. 40:55D-43(b). The cost of same shall be assessed, enforced and collected in accordance with provisions of N.J.S.A. 40:55D-43(c).

No Home Owner may waive or otherwise avoid liability for the aforesaid Community Association Dues by non-use of the Common Property, or otherwise.

Section 6.2 Amount of Annual Assessments.

It shall be an affirmative obligation of the Community Association and the Community Board to fix assessments in a sufficient amount. Common Expenses will include all budgeted expenses of the Community Association and will be allocated by the Community Board in accordance with Article 6 of the Community Association Bylaws.

Thereafter, each Home Owner shall be obligated to pay an assessment equal to that fraction of the total Common Expenses, the numerator of which is one and the denominator of which is that number of Homes located within the Property for which a Certificate of Occupancy has been issued by the Township, as of the date the assessment is established. Anything to the contrary herein notwithstanding, no assessment shall be made by the Community Association with respect to any Home owned by Developer for which a Certificate of Occupancy has not been issued by the Township. However, Developer shall reimburse the Association for the actual costs incurred by the Community Association for any services which Developer specifically requests in writing that the Community Association perform on its behalf with regard to any other property which the Developer owns in the Community including, without limitation, to the provision of security and Lot maintenance. In addition, the distribution of any proceeds from any insured casualty loss, eminent domain proceeding affecting the Common Property of the Community Association or any distribution of common surplus of the Community Association shall be prorated in accordance with the formula set forth above with respect to the determination of Community Association Dues. Until such time as the Community Association and Community Board shall make an assessment for Community Association Dues, Developer shall pay all Common Expenses.

Except as stated above, the amount of monies for Community Association Dues deemed necessary by the Community Board to discharge the responsibility of the Community Board and the manner of expenditure thereof, including, but not limited to, the allocation thereof, shall be a matter for the sole discretion of the Community Board.

Section 6.3 Date of Commencement of Annual Assessments and Due Dates.

The annual assessments provided for herein shall commence on the date fixed by the Community Board to be the date of commencement and shall be due and payable on such dates and in such installments as may from time to time be prescribed by the Community Board.

Section 6.4 Special Assessments.

In addition to the annual Community Association Dues authorized by Section 6.2 of this Article, the Community Board may levy, in any assessment year, a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Property, including the necessary furniture, fixtures, equipment and other personal property related thereto, or for other lawful purposes, provided that any such special assessment shall be apportioned in the same manner as a regular assessment and shall receive the assent of two-thirds (2/3) of all of the votes eligible to be cast by all of the members at a Community Association meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and which notice shall set forth the purpose of the meeting. The due date(s) of any special assessment, or any installment(s) thereof, shall be fixed in the resolution authorizing such special assessment. While Developer maintains a majority of the Community Board, it shall make no additions, alterations, improvements or purchases which would necessitate a special assessment or a substantial increase in the monthly assessment unless required by a government agency, title insurance company, mortgage lender or in the event of an emergency.

Section 6.5 New Capital Improvement Assessment. In addition to the other Assessments herein authorized, the Community Board may levy, in any Assessment year, a New Capital Improvement Assessment for the purpose of acquiring or constructing a new capital improvement, provided that the acquisition or construction of any new capital improvement, the cost of which exceeds the sum of \$10,000.00 increased by the percentage of increase in the Consumer Price Index since 1997, shall have been authorized by the assent of two-thirds (2/3) of all the eligible votes at a Community Association meeting duly called for this purpose. Written notice of such a meeting, stating the purpose of the meeting, shall be sent to all Owners entitled to vote or to be represented no less than thirty (30) days in advance. The due date(s) of any New Capital Improvement Assessment, or any installment(s) thereof, shall be fixed in the resolution authorizing the New Capital Improvement Assessment.

Section 6.6 Subordination of the Lien to Mortgage.

The lien of the assessments provided for herein shall be subordinate to any lien for past due and unpaid taxes and the lien of any first mortgage or mortgages held by an Institutional Lender now or hereafter placed upon any Home; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of any such Home pursuant to judgment of foreclosure or a deed in lieu of foreclosure. Such sale or transfer shall not relieve any

such Home from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

If an Institutional Lender or other purchaser of a Home obtains title to such Home as a result of foreclosure of such first mortgage (or by a deed of conveyance in lieu thereof), such acquirer of title, his successors and assigns, shall not be liable for the assessments by the Community Association pertaining to such Home or chargeable to the former Owner thereof which became due prior to acquisition of title as a result of the foreclosure. Such unpaid sums shall be deemed to be Common Expenses collectible from all of the remaining Home Owners, including such acquirer, his successors and assigns.

Liens for unpaid assessments may be foreclosed by suit brought in the name of the Community Association in the same manner as a foreclosure of a mortgage on real property. Subject to the foregoing exceptions, suit to recover a money judgment for unpaid assessments may be maintained against the record Owner of the Home as of the effective date of the assessment or against all subsequent record Owners thereof, without waiving the lien securing same, all of which record Owners shall be jointly and severally liable with respect to same.

Section 6.7 List of Assessments, Notice of Assessment and Certificate as to Payment.

The Board shall cause to be prepared, at least thirty (30) days in advance of the due date of each annual or special assessment, a list of the Lots and Homes and the assessments applicable thereto, in alphabetical order, according to the names of the Owners thereof, which list shall be kept in the office of the Community Association and shall be open to inspection, upon request, by any Owner. Written notice of the assessments shall be sent to every Owner subject thereto.

The Community Association shall, upon the request of any Owner liable for an assessment, or of the mortgagee of any Home, furnish to such Owner or mortgagee, a certificate in writing, signed by an officer of The Community Association, setting forth whether or not such assessment has been paid. Such certificate shall constitute conclusive evidence of the payment of any assessments therein stated to have been paid.

If an annual assessment is not made as required, an assessment shall be presumed to have been made in the amount equal to one hundred ten (110%) percent of the last prior year's assessment except while the Developer maintains control of the Community Board, and any installments on such assessment shall be due upon each installment payment date until changed by an amended assessment. In the event the annual assessment proves to be insufficient, the budget and annual assessment may be amended at any time by the Community Board, provided, that nothing herein shall serve to or prohibit

or prevent the Community Board from imposing a lump sum assessment in the case of any immediate need or emergency without the consent of the Members.

Section 6.8 Acceleration of Assessment Installments and Other Remedies of the Community Association.

If an Owner shall be in default in the payment of an installment upon an assessment, the Community Board may accelerate the remaining installments of the assessment upon notice to the Owner, and the then unpaid balance of the assessment shall become due upon the date stated in the notice, but not less than five (5) days after delivery of the notice to the Owner, or not less than ten (10) days after the mailing of such notice to him by regular mail, whichever shall first occur. If such default shall continue for a period of thirty (30) days, then the Community Board may, at the Community Board's sole discretion (i) accelerate the remaining installments of the assessment and (ii) file a lien for such accelerated assessment and (iii) notify any mortgagee of the Home affected of such default if such mortgagee has requested such notice from the Community Association in writing. If said default continues for a period of ninety(90) days, then the Community Board may, in the Community Board's discretion, foreclose the foregoing lien pursuant to law and/or to commence a suit against the appropriate Owner(s) to collect said assessment.

Section 6.9 Interest and Counsel Fees.

The Community Board, at its option, shall have the right in connection with the collection of this, or any other charge, to impose a late fee, or an interest charge at the legal maximum rate if such payment is made after a certain date stated in such notice. In the event that the Community Board shall effectuate collection of said charges by resort to counsel, the Community Board may add to the aforesaid charge or charges a sum or sums of twenty (20%) percent of the gross amount due as counsel fees, in addition to such costs allowable by law.

Section 6.10 Contribution to Capital.

Each Home Owner shall at the time he acquires title to his Lot and Home be obligated to pay to the Community Association a one time contribution to the working capital and operating expense of the Community Association in the amount of \$200.00, which contribution shall not be refundable or transferable and may be utilized for any lawful purpose which the Community Board may deem appropriate.

Section 6.11 Conveyance.

Upon any voluntary conveyance of a Home, the grantor and grantee of such Home shall be jointly and severally liable for all unpaid assessments pertaining to such Home duly made by the Community Association or accrued up to the date of such conveyance without prejudice to the right of

the grantee to recover from the grantor any amounts paid by the grantee. The grantor shall be exclusively liable for those accruing while he is the Home Owner.

ARTICLE 7. COMMUNITY ASSOCIATION DUTIES AND SERVICES

Section 7.1 Duties of the Community Association.

The annual assessments levied by the Community Association shall be used exclusively for promoting the health, safety, pleasure and welfare of the Home Owners and for the costs and expenses incident to the operation of the Community Association, including, without limitation, the following:

7.1.1 maintenance and repair of all facilities on the Common Property, including parking area, Clubhouse, Roadways (which are not to be dedicated and/or maintained by the Township), paths, right-of-ways, drainage ways, storm pipes, catch basins, ponds and streams, and retaining walls (even if located on a privately owned Lot or within the Condominium; in that case, neither the Owner nor the Condominium Association shall do anything to destroy or compromise the structural integrity of such a wall);

7.1.2 payment of the cost of street lighting for the Common Property;

7.1.3 payment of all taxes and insurance premiums required to be paid by the Community Association;

7.1.4 operation and administration of the Club House, recreational facilities and any other costs and expenses incidental to the operation and administration of the Community Association and its facilities and services;

7.1.5 providing for snow removal over two (2) inches of snow from any roadways (which are not to be dedicated and/or maintained by the Township), driveways, parking lots and walkways, as contained on the Common Property;

7.1.6 retain a management firm or manager to maintain the Common Property and carry out the duties of the Community Association, provided, however, that any management agreement for the Property will be terminable by the Community Association with or without cause upon thirty(30) days prior written notice thereof, and the term of any such agreement shall not exceed one (1) year;

7.1.7 snow removal for driveways and walkways (by the same standard set forth in 7.1.5 above) and lawn care for the Homes in the Community that are not subject to the Condominium Association Founding Documents.

7.1.8 cutting of grass on all privately owned Lots (no owner may install fences, pools or other structures on his/her Lot which will increase the expense to cut lawns).

7.1.9 providing such other items as may from time to time be deemed appropriately by the Community Board.

7.1.10 providing snow removal of over 2 inches or more of snow from driveways and walkways on all Lots and from any sidewalks within the right-of-way of any publicly-dedicated right-of-way.

Section 7.2 Services to be Provide by Community Association as Delegated by the Condominium Association.

7.2.1 Pursuant to Subparagraph 16.03 of the Master Deed, the duty to deliver specific services to the Condominium Association and its members have been irrevocably delegated to, and accepted by, the Community Association. The cost of these services shall be included in the Common Expenses and paid by all Members as part of the Community Association Dues. The Community Association is granted an irrevocable easement over, under and through the lands encumbered by the Master Deed to perform the following services and duties:

- a. streets and parking areas (maintenance; repair; cleaning; snow removal over two inches);
- b. sidewalks (snow removal over two inches; maintenance; repair);
- c. walkways leading from front door to driveway and parking areas (snow removal over two inches);
- d. lawn cutting on Condominium common elements; and
- e. street lights and parking lot lights (maintenance, repair, electricity).

Section 7.3 Service Which May Be Performed at the Option of the Community Association - Procedure.

Developer shall have the right to make such improvements and provide such facilities on the Common Property as it considers to be advantageous to the Common Property and to the Owners of Homes. The Community Association shall be obligated to accept such improvements and facilities and to properly maintain the same at its expense. The Community Association, at its expense, also shall maintain and carry on the services instituted, from time to time, by Developer for the benefit of the Common Property and the Owners. In addition to the required maintenance of the Common Property and of the improvements and facilities thereon and the aforesaid services required to be performed, the Community Association may furnish (but shall not be required to furnish) such services as the Board from time to time, by resolution, may propose, unless the projected cost of such additional services exceeds, in the aggregate, the amount equal to one-sixth (1/6) of the current annual Community Association Dues per Home, in which event such proposed additional services must first be authorized by a vote in person or by absentee ballot of two thirds (2/3) of all the votes eligible to be cast at a meeting of Members duly called for this purpose.

ARTICLE 8. GENERAL PROVISIONS

Section 8.1 Duration.

This Declaration shall run with and bind all of the Encumbered Property perpetually and shall inure to the benefit of and be enforceable by The Community Association and the Owners, their respective successors, assigns, heirs, executors, administrators and personal representatives, except that the restrictions contained in Article 5 hereof shall have a duration of twenty (20) years, at the end of which period said restrictions shall be automatically extended for successive periods of ten (10) years each, unless at least two thirds (2/3) of the Owners at the time of the expiration of the initial period, or of any extension period, shall sign an instrument or instruments, in which they shall agree to change said restrictions in whole or in part.

Section 8.2 Notice.

Unless otherwise provided in this Declaration, any notice required to be sent to any Owner under the provisions of the Governing Documents shall be deemed to have been properly sent, and notice thereby given, when mailed, by regular post, with postage prepaid, addressed to the member or Owner at the last known post office address of the person who appears as a member or Owner on the records of the Community Association at the time of such mailing. Notice to one of two Owners shall constitute notice to all Owners thereof. It shall be the obligation of every Owner to immediately notify the Secretary of the Association in writing of any change of address. Valid notice may also be given to Owners (i) personal delivery to any occupant of any Home over nineteen (19) years of age or older; or (ii) by affixing said notice to or sliding same under the front door of any Home.

Section 8.3 Enforcement.

Enforcement of this Declaration shall be by any appropriate proceeding in law or equity in any court or administrative tribunal having jurisdiction, against any person or persons, firm or corporation violating or attempting to violate or circumvent any provision herein contained, either to restrain or enjoin such violation or threatened violation or to recover damages, and against any Home and Lot to enforce any lien created by this Declaration, and failure by the Community Association or any Owner to enforce any covenant or restriction herein contained for any period of time, shall in no event be deemed a waiver or estoppel of the right to thereafter enforce the same. If the Community Association, at any time, fails to discharge its obligations to maintain any portion of the Property as required by this Declaration or to enforce the provisions hereof, any Owner shall have the right to enforce such obligations by any proceeding at law or equity. A failure to so enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Also, in such event, the Township shall have the right to so maintain the Property or to enforce such

provisions in the name, place and stead of the Community Association. The assumption of such maintenance responsibility shall be in accordance with the procedures set forth in N.J.S.A. 40:55D-43(b). The cost of same shall be assessed, enforced and collected in accordance with the provisions of N.J.S.A. 40:55D-43(c). Notwithstanding any limitations as to the applicability of N.J.S.A. 40:55D-43(b) and (c) aforesaid to the maintenance of "open space", the provisions of this subparagraph shall apply to all maintenance obligations of the Community Association as set forth in this Declaration or otherwise. Should either the Community Association or any of its Members at any time fail to enforce the provisions hereof, the Township upon thirty (30) days notice to the Community Association, shall have the right to institute appropriate legal proceedings in the name of the Community Association to effect such enforcement.

Section 8.4 Severability.

Should any covenant or restriction herein contained, or any Article, section, subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable, and which shall remain in full force and effect.

Section 8.5 Amendments.

This Declaration may be amended at any time after the date hereof by a vote of at least two-thirds (2/3) of the fully authorized membership of the Community Association at any meeting of the members established by the Community Board for such purpose and previous to which written notice to every Owner of the exact language of the amendment shall have been sent at least thirty (30) days in advance; and further provided, that no amendment may be so effected which would permit (i) any Owner to be exempted from the payment of any assessment or Community Association Dues; (ii) the obligation or proportionate responsibility for the payment of assessments with respect to Homes or Common Property to be changed; or (iii) the modification of any easements or restrictions in Articles 4 or 5 hereof except as therein set forth; (iv) revocation of any of the powers of attorney reserved herein or in the By-Laws; and further provided, that in no event may the Common Property be conveyed to any third person, firm or corporation nor may the rights of the Township, be modified in any manner, without the express consent, by ordinance, or otherwise of the governing body of the Township.

Notwithstanding the foregoing, Developer hereby expressly reserves the right to amend and supplement this Declaration from time to time, to (i) incorporate any or all future portions of the Community pursuant to Article 2; (ii) modify or delete the restriction set forth in Section 5.1 with respect to any such future portions as part of the Property, without obtaining the consent of any

Owners, any members, or the Community Board of the Community Association, or any other parties with the exception of any governmental authority from whom approval is required; provided, however, that in no event shall any of the substantive provisions be changed so as to adversely and materially affect the priority or validity of any Permitted First Mortgage or the value of any Home. In addition, Developer may, in Developer's sole discretion, amend this Declaration prior to the conveyance of a Home to a Home Owner other than Developer or any Builder. Developer shall not be permitted to cast any votes held by him, for unsold lots, Homes or interests for the purpose of amending the Declaration, By-Laws or any other document in order to change the permitted use of a Lot or Home or to reduce the Common Property or facilities. No amendment shall be effective until recorded in the County Clerk's Office. This paragraph is by way of supplement to and not in derogation of the powers of amendment reserved to Developer pursuant to Article 2 hereof. In the alternative, an amendment may be made by an agreement, signed and acknowledged by all of the Owners including Developer, in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the Clerk's Office.

Section 8.6 By-Laws and Administration; Changes in Documents; Power of Attorney.

The administration of Common Property shall be by the Community Association in accordance with the provisions of the Governing Documents, and of any other agreements, documents, amendments or supplements to the foregoing which may be duly adopted or subsequently be required by any Institutional Lender, any governmental agency having regulatory jurisdiction over the Property or by any title insurance company selected by Developer to insure title to any Lot(s) or Home(s). Developer hereby reserves for itself, its successors and assigns, for a period of twenty(20) years from the date the first Home is conveyed to an individual Purchasers, the right to execute on behalf of all contract purchasers, Owners, mortgagees, other lien holders or parties claiming a legal or equitable interest in the Property, any such agreement, documents, amendments or supplements to the above described documents which may be so required by any such Institutional Lender, governmental agency or title insurance company; provided, however, that no such agreement, documents, amendment or supplement which adversely affects the value or increases the financial obligations of the Owners or reserves any additional or special privileges shall be made without the prior written consent of the affected Owner(s) and all owners of any mortgage(s) encumbering same; or if such agreement, documents, amendment or supplement adversely affects the priority or validity of any mortgage which encumbers any Home, without the prior written consent of such mortgages.

The powers of attorney aforesaid are expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the same shall run with the title to any and all Homes and be

binding upon the heirs, personal representatives, successors and assigns of any of the foregoing parties. Further, said powers of attorney shall not be affected by the death or disability of any principal and are intended to deliver all right, title and interest of the principal in and to said powers. In furtherance of these provisions, at the time of acceptance of a deed to any Home or at the time of acceptance of any other instrument conveying any legal or equitable interest in the Property, each and every contract purchaser, Home Owner or occupant or holder of any mortgage or other liens, agrees to execute an instrument which will expressly grant, ratify and confirm the foregoing power of attorney.

Section 8.7 Waiver.

No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 8.8 Rule Against Perpetuities.

If any provisions of this Declaration or the By-Laws shall be interpreted to constitute a violation of the rule against perpetuities, then such provision shall be deemed to remain in effect until the death of the last survivor of the now living descendants of Richard Hughes, former Governor of the State of New Jersey, plus twenty-one (21) years thereafter.

Section 8.9 Ratification, Confirmation and Approval of Agreements.

The fact that some or all of the officers, Directors, Members or employees of the Community Association and the Developer may be identical, and the fact that the Developer or its nominees, have heretofore or may hereafter enter into agreements with the Community Association or with third parties, will not invalidate any such agreements and the Community Association, and its members, from time to time, will be obligated to abide by and comply with the terms and conditions thereof. The purchase of a Home and the acceptance of the Deed therefor by any party, shall constitute the ratification, confirmation and approval by such purchaser, his heirs, legal representatives, successors and assigns, of the propriety and legality of said agreements or said agreement, or any other agreements authorized and permitted by the New Jersey Planned Real Estate Community Full Disclosure Act, this Declaration, the Community Association Certificate of Incorporation or the Community Association By-Laws.

Section 8.10 Protective Provisions for the Benefit of Institutional Lenders.

8.10.1 Protective Provisions for the Benefit of Eligible Mortgage Holders.

8.10.2 General. Anything to the contrary in the Governing Documents, the provisions of this subparagraph 8.10 shall apply with respect to each Eligible Mortgage Holder.

8.10.3 Notice. Any Eligible Mortgage Holder shall be entitled to timely written notice of:

(a) any condemnation or casualty loss that affects either a material portion of the Common Property or the Home securing the Eligible Mortgage Holder's mortgage; and no Owner or other party shall have priority over such Eligible Mortgage Holder with respect to the distribution to such Home(s) of the proceeds of any condemnation award or settlement in the event of condemnation or with respect to the distribution to such Home(s) of any insurance proceeds in the event of casualty loss; and

(b) any sixty (60) day delinquency in the payment of Common Expense assessment installments or other assessments or charges owed to the Community Association by an Owner of any Home upon which the Eligible Mortgage Holder holds a mortgage; and

(c) a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Community Association; and

(d) any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders.

8.10.4 Amendments Requiring Approval of 51% of Eligible Mortgage Holders. The prior written approval of at least fifty-one (51%) percent of the Eligible Mortgage Holders is required for any material amendment to the Governing Documents including, but not limited to, any amendment which would change any provision relating to:

- (a) voting rights;
- (b) reserves for maintenance, repair and replacement of Common Property;
- (c) responsibility for maintenance and repairs;
- (d) reallocation of interests in the Common Property or rights to their use;
- (e) boundaries of any Home;
- (f) convertibility of Homes into Common Property or vice-versa;
- (g) insurance or fidelity bonds;
- (h) leasing of Homes;
- (i) imposition of any restrictions upon an Owner's right to sell or transfer his or her Home;
- (j) assessment liens or the priority of assessment liens;
- (k) restoration or repair of the Common Property (after damage, destruction or condemnation) in a manner other than that specified in this Declaration;
- (l) any provisions that expressly benefit Eligible Mortgage Holders.

8.10.5 Amendments Requiring Approval of 67% of Eligible Mortgage Holders. The prior written approval of at least sixty-seven (67%)percent of the Eligible Mortgage Holders is required before the effectuation of any decision by the Owners to terminate the legal status of the Community for reasons other than substantial destruction or condemnation of the Property.

8.10.6 Common Expense Lien Subordinate. Any lien the Community Association may have on any Home for the payment of Common Expense assessments attributable to each Home is subordinate to the lien or equivalent security interest of any first mortgage on the Home recorded prior to the date any such Common Expense assessment became due.

8.10.7 Inspection of Records. Any Eligible Mortgage Holder shall upon request, (a) be permitted to inspect the books and records of the Community Association during normal business hours; and (b) receive an annual audited financial statement of the Community Association within ninety (90) days following the end of any fiscal year of the Community Association. The Association shall maintain current copies of the Governing Documents and Rules and Regulations, and any respective amendments thereto.

8.10.8 Notice of Meetings. Any Eligible Mortgage Holder shall receive written notice of all meetings of the Community Association and be permitted to designate a representative to attend all such meetings.

8.10.9 Liability for Common Expense Assessments. Any Permitted Mortgage Holder holding a first mortgage lien on a Home that obtains title to a Home as a result of foreclosure of the first mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser in a foreclosure sale, or their respective successors and assigns, is not liable for the share of Common Expenses or other assessments by the Community Association pertaining to such Home or chargeable to the former Owner which became due prior to acquisition of title. Such unpaid share of Common Expenses, outstanding water bills and other assessments shall be deemed to be Common Expenses collectible from all of the remaining Owners including such acquirer, his successors and assigns.

8.10.10 Management Agreements. Any management agreement for the Community will be terminable by the Community Association with or without cause upon ninety (90) days' prior written notice thereof, and the term of any such agreement shall not exceed one (1) year.

8.10.11 Common Expense Default. Despite the absence of any express provision to such effect in the mortgage instrument, in the event that there is any default in the payment of any installment of a Common Expense assessment with respect to any Home, either regular or special, the Permitted Mortgage Holder of such Home shall be entitled to declare such mortgage in default in the same manner that is permitted by such mortgage with respect to any default in the payment of real estate taxes.

8.10.12 Implied Approval. Approval of any action requiring consent hereunder will be implied when an Eligible Mortgage Holder fails to submit a response to any written proposal within

thirty (30) days after it receives proper notice of the proposal provided that notice was delivered by certified or registered mail, with a return receipt requested.

Section 8.11 Damage to Common Property. If, due to the negligent actor misuse by an Owner, or a member of his family or household pet, guest, occupant, visitor, or tenant (whether authorized or unauthorized by the Owner), damage shall be cause to the Common Property or maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, the Owner so responsible shall pay for such damage and be liable for any damages, liability, costs and expense, including attorney's fees, caused by or arising out of such circumstances. Such maintenance, repairs and replacements to the Common Property shall be subject to the Bylaws and the Rules and Regulations. In the event of the failure of any Owner to perform any such maintenance or to make any such repairs or replacement as shall be required, the Community Association shall have the right but not the obligation to do so on the Owners behalf, to assess the costs of same against such Owner as a Miscellaneous Expense under Article 7 of this Declaration. If the Owner fails within ten (10) days after any such damage, then the Community Association shall have the right but not the obligation to make repairs.

Section 8.12 Operating Agreement. Where applicable and appropriate, the provisions of the Operating Agreement shall set forth the relationship between the Community Association and the Smithville Community Association. In particular, this applies to the services to be provided by the Smithville Community Association, payment therefore, architectural control and committee representation.

Section 8.13 Miniparks, Drainage Ponds & Swales. The Common Property includes, in various locations, drainage ponds and swales and other facilities known as miniparks. In some cases, these ponds will be stocked by the Developer with fish. Residents of the Community may fish in these areas subject to rules and regulations developed by the Association. The Association is also required to abide by a maintenance schedule for the ponds that will be provided by Developer. Upon obtaining ownership of any Common Property that includes ponds and miniparks, the Association pursuant to the approvals granted by the Township of Galloway, shall defend, indemnify and hold harmless the Township of Galloway, its agents, employees, elected officials and professionals from any and all liability resulting from the construction, existence and maintenance thereof,

ARTICLE 9. SPECIAL DEVELOPER'S RIGHTS

Section 9.1 Transfer of Rights.

No special rights created or reserved to the Developer under this Declaration ("Special Developer Rights") may be transferred except by an instrument evidencing the transfer recorded in the Clerk's Office. The instrument shall not be effective unless executed by the transferee. Developer may convey part or all of the Lots and Homes or the Property in the Community. Developer shall retain all Special Developer Rights subject to Developer's right to grant a revocable license to any Builder("Builder's License"). Builders shall not be deemed transferees of these Special Developer Rights except as Developer may so grant by Builder's License. No Builder's License shall be deemed to have been granted by Developer unless (i) contained in or incorporated as part of Developer's deed conveying Lots to such Builder or (ii) set forth in a separate agreement executed by Developer and the Builder and recorded in the Clerk's Office. No obligation otherwise imposed upon Developer by this Declaration shall be deemed to have been assigned to a Builder unless specifically set forth in the Builder's License.

Section 9.2 Liability of Transferor.

Upon transfer of any such Special Developer Right by a Builder's License, the liability of the transferor is as follows:

9.2.1 A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him.

9.2.2 A transferor who retains no such Special Developer Rights under a Builder's License has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of any such Special Developer Right by a successor Developer who is not an affiliate of the transferor.

Section 9.3 Foreclosure.

9.3.1 Unless otherwise provided in a mortgage instrument, in case of foreclosure of a mortgage, or sale under bankruptcy laws or receivership proceedings of any Home owned by Developer in the Property, a person or entity acquiring title to all the Homes being foreclosed or sold, but only upon his request, succeeds to all such Special Developer Rights, or only to any such Special Developer Rights to maintain models, sales offices and signs. The judgment or instrument conveying title shall provide for transfer of only the Special Developer Rights requested.

9.3.1 Upon foreclosure, sale by a trustee under a deed of trust, or sale under bankruptcy laws or receivership proceedings of all Homes in the Property owned by Developer:

9.3.2.1 Developer ceases to have any such Special Developer Rights; and

9.3.2.2 The period of Developer control terminates unless the judgment or instrument conveying title provides for transfer of all such Special Developer Rights to a successor Developer.

Section 9.4 Liability of Transferee.

The liabilities and obligations of persons who succeed to Special Developer Rights are as follows:

9.4.1 A successor to all Special Developer Rights under a Builder's License who is an affiliate of the Developer is subject to all obligations and liabilities imposed on any Developer by law or by the Declaration.

9.4.2 A successor to all such Special Developer Rights under a Builder's License, other than a successor described in subsections 9.4.3 and 9.4.4 hereof who is not an affiliate of Developer, is subject to all obligations and liabilities imposed upon Developer by law or the Declaration, but he is not subject to liability for misrepresentations or warranty obligations on improvements made by any

previous Developer or predecessor in title or for a breach of fiduciary obligation by any previous Developer.

9.4.3 A successor to the sole Special Developer Right to maintain models, sales offices and signs, if he is not an affiliate of Developer, may not exercise any other Special Developer Rights but is not subject to any liability or obligation as a Developer.

9.4.4 A successor to all Special Developer Rights who is not an affiliate of Developer and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to Homes under subsection 9.4.3 aforesaid, may declare his intention in a recorded instrument to hold those rights solely for transfer to another party. Thereafter, until transferring all such Special Developer Rights to any person acquiring title to any Lot or Home owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than right to control the Board for the duration of any period of Developer control, and any attempted exercise of those rights is void. So long as a successor Developer may not exercise Special Developer rights under this subsection he is not subject to any liability or obligation as a Developer other than liability for the successor's acts and omissions under the Declaration.

9.4.5 Nothing in this Article subjects any successor to Special Developer Rights to any claims against or other obligations of transfer or other than claims and obligations arising under the Declaration.

9.5 Activities. Developer may conduct real estate resale activities, promotion of Developer's other projects, sale of interior furnishings and other activities related to Developer's business in the Community.

ARTICLE 10. PREVIOUS DECLARATIONS & MASTER DEEDS

This Declaration and amendments hereto shall supercede and replace any and all Declarations of Covenants and Restrictions and Master Deeds or similar instruments that may have been recorded encumbering the Encumbered Property that may have been recorded in the Atlantic County Clerk's Office by a predecessor in title to the Encumbered Property.

IN WITNESS WHEREOF, the Developer has caused these presents to be duly executed by its proper officers the day and year first above written.

Developer:

ATTEST:

K. HOVNANIAN AT SMITHVILLE, INC.

Lewis S. Kurland, Asst. Secy.

BY: _____
Robert H. Karen, President

STATE OF NEW JERSEY
COUNTY OF MIDDLESEX

)
)ss.:
)

BE IT REMEMBERED, that on this _____ day of _____, 1994, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared Robert H. Karen, who I am satisfied is the President of K. HOVNANIAN AT SMITHVILLE, INC., the Developer which executed the foregoing instrument, and is the person who signed said instrument as such officer for and on behalf of the Developer and he acknowledged that said instrument was made by said corporation and sealed with its corporate seal as the voluntary act and deed of said corporation by virtue of authority from its Board of Directors, and as for the voluntary act of the corporation.