

BY:   
FRANCIS J. McGOVERN, JR., ESQUIRE

**AMENDMENT TO THE DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR FOUR SEASONS AT SMITHVILLE HOMEOWNERS ASSOCIATION, INC.**

WHEREAS, the Declaration of Covenants and Restrictions for Four Seasons at Smithville Homeowners Association, Inc. ("Smithville Four Seasons") was recorded in the Atlantic County Clerk's Office on August 8, 1997 in Deed Book 6169, Page 11, et seq. (the "Smithville Four Seasons Declaration"); and

WHEREAS, the Master Deed for Wayland Village Condominium Association, Inc. ("Wayland Village") was recorded in the Atlantic County Clerk's Office on April 16, 1999 in Deed Book 6466, Page 056, et seq. (the "Wayland Master Deed"); and

WHEREAS, the Master Deed for Devonshire Village Condominium Association, Inc. ("Devonshire Village") was recorded in the Atlantic County Clerk's Office on August 11, 2000 in Deed Book 6756, Page 145, et seq. (the "Devonshire Master Deed"); and

WHEREAS, Wayland Village and Devonshire Village (collectively the "Condominium Associations") are within Smithville Four Seasons and subject to the Smithville Four Seasons Declaration; and

WHEREAS, the Condominium Associations and Smithville Four Seasons were both developed by K. Hovnanian at Smithville, Inc. ("Hovnanian"); and

WHEREAS, Disagreements arose between and among the Condominium Associations, Smithville Four Seasons and Hovnanian as to which entity(ies) are responsible for snow clearing, road maintenance, Landscaping and certain other responsibilities within the various



Instr # 3146102 MICHAEL J. GARVIN  
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Associations; and

**WHEREAS, Smithville Four Seasons Declaration Section 7.2.1 Services to be Provided by Community Association as Delegated by the Condominium Association** provides "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 and 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); and

**WHEREAS, Wayland Master Deed Section 8.08 "Delegation to Community Association"** provides "The Association perpetually delegates to the Community Association the responsibility to perform specified tasks within the Property and to include, within Community Association dues, the costs for such services. These services are: A. Removal of snow, when such snow exceeds 2 inches from: 1. sidewalks and walkways leading from a Unit's front door to driveways and garages; and 2. driveways in front of garages. The Community Association is responsible for snow and ice clearing from each Unit's exterior front entry walkways and driveways providing access to garages that are part of a Unit...B.

Lawn cutting and maintenance and general landscaping on Common Elements at the same frequency as is provided to the other portions of the Community. The Community Association has accepted these task according to Subsection 7.2.1 of the Master Declaration, as amended by the First Amendment to the Master Declaration”; and

**WHEREAS**, Devonshire Master Deed Section 18.00 “Master Declaration/Community Association” provides “...Nothing herein shall prevent the Condominium Association from contracting with the Community Association for certain services including but not limited to snow removal, management, dues collection, landscaping. However, the Community Association shall provide lawn cutting and general landscaping services to the Condominium, the cost of which is included in the charges assessed to all members of the Community Association.”; and

**WHEREAS**, Hovnanian intended to impose upon Smithville Four Seasons the obligation with respect to “driveways in front of garages (snow removal over two inches)” and “lawn cutting and maintenance and general landscaping on Condominium Associations’ Common elements at the same frequency as is provided to the other portions of the Community” (collectively the “Driveway and Landscaping Obligations”) but this was not provided for in the original Smithville Four Seasons Declaration; and

**WHEREAS**, Hovnanian did not intend to impose upon Smithville Four Seasons the obligation to address “streets and parking areas (maintenance, repair, cleaning, snow removal over two inches)” or “street lights and parking lot lights (maintenance, repair, electricity)” (the “Street Maintenance and Lighting Obligations”) but this was provided for in the original Smithville Four Seasons Declaration; and

**WHEREAS**, Hovnanian filed a First Amendment to the Smithville Four Seasons Declaration withdrawing the Street Maintenance and Lighting Obligations from the Smithville Four Seasons Association and imposing the Driveway and Landscaping Obligations upon the Smithville Four Seasons Association (the "First Amendment"); and

**WHEREAS**, the First Amendment was filed on April 20, 1998 in Atlantic County Deed Book 6283, Page 003 however, the First Amendment was inadvertently never distributed to home purchasers; and

**WHEREAS**, the First Amendment was apparently recorded after homes in the Pembroke section of Smithville Four Seasons had already been sold; and

**WHEREAS**, Smithville Four Seasons and the Condominium Associations' Boards as well as the Smithville Four Seasons Finance Committee have agreed that Smithville Four Seasons should bear the responsibility for the Driveway and Landscaping Obligations and the Street Maintenance and Lighting Obligations within the Condominium Associations; and

**WHEREAS**, Smithville Four Seasons Declaration, Section 8.6 provides that "Developer hereby reserves for itself, its successors and assigns, for a period of twenty years from the date the first home was conveyed to an individual purchaser, 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 over the owners or reserves any additional or special privileges shall be

made without the prior written consent of the affected owners and all owners of any mortgage 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”; and

**WHEREAS**, Wayland Village Master Deed Section 14 provides that Hovnanian reserves for itself and its affiliates, for a period of ten years from the date the first unit is conveyed to an individual purchaser or until the closing of title of not less than 53 units, whichever event occurs first; the right to execute on behalf of all contract purchasers, unit owners, institutional lenders, permitted mortgagees, eligible insurers or guarantors, other lien holders or parties claiming a legal or equitable interest in the condominium or units, any such agreements, documents, amendments or supplements to the Master Deed and Bylaws which may be required to effectuate the changes enumerated below. However, no agreement, document, amendment or supplement can affect a material physical modification to or adversely affect the value of a unit or the priority or validity of any mortgage on any unit without the prior written consent of its mortgagees and unit owners; and

**WHEREAS**, Wayland Village Master Deed Section 14.05 provides that Hovnanian may use the rights set forth and granted in Section 14 to effectuate the following changes, enumerated by way of description and not in limitation: “to correct, supplement or provide technical changes to the Master Deed, Bylaws or other documents that create or implement the creation of the condominium or association.”; and

**WHEREAS**, Devonshire Village Master Deed Section 14 provides that Hovnanian reserves for itself and its affiliates, for a period of ten years from the date the first unit is

conveyed to an individual purchaser or until the closing of title of not less than 52 units, whichever event occurs first; the right to execute on behalf of all contract purchasers, unit owners, institutional lenders, permitted mortgagees, eligible insurers or guarantors, other lien holders or parties claiming a legal or equitable interest in the condominium or units, any such agreements, documents, amendments or supplements to the Master Deed and Bylaws which may be required to effectuate the changes enumerated below. However, no agreement, document, amendment or supplement can affect a material physical modification to or adversely affect the value of a unit or the priority or validity of any mortgage on any unit without the prior written consent of its mortgagees and unit owners; and

**WHEREAS**, Devonshire Village Master Deed Section 14.05 provides that Hovnanian may use the rights set forth and granted in Section 14 to effectuate the following changes, enumerated by way of description and not in limitation: "to correct, supplement or provide technical changes to the Master Deed, Bylaws or other documents that create or implement the creation of the condominium or association.";

**NOW, THEREFORE,**

The Smithville Four Seasons Declaration is amended as follows:

- 1) The First Amendment which was filed on April 20, 1998 in Atlantic County Deed Book 6283, Page 003 is hereby withdrawn and rendered of no effect.
- 2) The intention of this amendment is to clarify the Smithville Four Seasons' and the Condominium Associations' obligations and duties in light of the varied governing document language, the conflicts with respect to whether or not home owners received the First Amendment, concerns with respect to contractor hiring, management and economies, home

purchasers' expectations in view of the language of the original documents and historic practices by the Associations such that Smithville Four Seasons shall bear the following responsibilities with respect to the Condominium Associations (collectively the "Delegated Responsibilities"):

- 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, garages and parking areas and driveways in front of garages (snow removal over two inches);
- d. lawn cutting and maintenance and general landscaping on Condominium Common elements at the same frequency as is provided to the other portions of the Community;
- e. street lights and parking lot lights (maintenance, repair, electricity);

#### **Transition Issues**

Hovnanian acknowledges and agrees that the warranties and representations with respect to the items and areas within the scope of the Delegated Responsibilities including, but not limited to, those constructed within Wayland Village, Devonshire Village or anywhere else within Smithville Four Seasons will not begin to run until the Board of Trustees for Smithville Four Seasons is controlled by a majority of homeowner-elected members other than Developer-appointed representatives. No sub-association including, but not limited to, Devonshire Village Condominium Association, Inc. Wayland Village Condominium Association, Inc. or any other sub-association shall be obligated to address transition of the items and areas within the scope of the Delegated Responsibilities; transition of the items and areas within the scope of the Delegated Responsibilities shall be addressed with Smithville Four Seasons.

C. To the extent any provisions of the Wayland and/or Devonshire Village Master Deeds and/or the Smithville Four Seasons Declaration have been amended by specific provisions contained within this Amendment, and to the extent that any other provisions have not been amended but would or should have been appropriately amended to be consistent with the changes contained herein, those provisions not specifically amended are hereby deemed to have been amended by this Amendment.

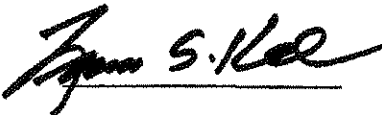
D. Except to the extent specifically amended by provisions of this Amendment, all other terms and conditions of the Devonshire Village and Wayland Village Master Deeds and/or the Smithville Four Seasons Declaration shall remain in full force and effect.

E. Notwithstanding the full execution of this Amendment, this Amendment shall not take affect until the recording of same in the Atlantic County Clerk's Office.

IN WITNESS WHEREOF, the undersigned have executed this Amendment to the Declaration of Four Seasons at Smithville Homeowners Association, Inc., the day and year listed above.

WITNESS:

K. Hovnanian at Smithville, Inc.



By:   
**Barry McCarroll**, President

**ACKNOWLEDGMENT**

STATE OF NEW JERSEY )  
COUNTY OF MIDDLESEX )

On the 21 day of November, 2003, Barry McCarroll personally appeared before me and this person acknowledged under oath, to my satisfaction, that:

(a) this person signed and delivered the foregoing document as the President of K. Hovnanian at Smithville, Inc., a Non-Profit Corporation (the "Corporation"), named in this document; and



(b) this document was signed and delivered by the Corporation as it voluntary act and deed by virtue of authority from its Members.

Sworn and subscribed to before me this 21 day of November, 2003.

Jacalyn A. Colson  
Notary Public - State of New Jersey

JACALYN A. COLSON  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Exp. July 10, 2004

WITNESS:

Four Seasons at Smithville Homeowners Association, Inc., A Non-Profit Corporation

Christopher Blumford

By: Michael Perro  
Michael Perro, President

ACKNOWLEDGMENT

STATE OF NEW JERSEY )  
COUNTY OF ATLANTIC )

On the 4<sup>th</sup> day of December, 2003, Michael Perro personally appeared before me and this person acknowledged under oath, to my satisfaction, that:

(a) this person signed and delivered the foregoing document as the President of Four Seasons at Smithville Homeowners Association, Inc., a Non-Profit Corporation (the "Corporation"), named in this document; and

(b) this document was signed and delivered by the Corporation as it voluntary act and deed by virtue of authority from its Members.

Sworn and subscribed to before me this 4 day of December, 2003.

Nancy Blumenthal  
Notary Public - State of New Jersey  
WITNESS  
MY COMMISSION EXPIRES MAY 15, 2005

Wayland Village Condominium Association, Inc., A Non-Profit Corporation

Christopher Blumford

By: Frank Messina  
\_\_\_\_\_, President

ACKNOWLEDGMENT

STATE OF NEW JERSEY )  
COUNTY OF ATLANTIC )

On the 4<sup>th</sup> day of December, 2003, Frank Messina personally appeared before me and this person acknowledged under oath, to my satisfaction, that:

(a) this person signed and delivered the foregoing document as the President of Wayland Village Condominium Association, Inc., a Non-Profit Corporation (the "Corporation"), named in this document; and

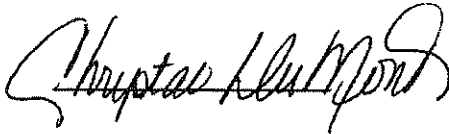
(b) this document was signed and delivered by the Corporation as it voluntary act and deed by virtue of authority from its Members.

Sworn and subscribed to before me this 7<sup>th</sup> day of December, 2003.

  
Notary Public - State of New Jersey  
NANCY BLUMENTHAL

NOTARY PUBLIC OF NEW JERSEY  
WITNESS:  
MY COMMISSION EXPIRES MAY 15, 2005

Devonshire Village Condominium  
Association, Inc., A Non-Profit Corporation



By: , President

**ACKNOWLEDGMENT**


STATE OF NEW JERSEY )  
COUNTY OF ATLANTIC )

On the 4<sup>th</sup> day of December, 2003, Joe Martinsky personally appeared before me and this person acknowledged under oath, to my satisfaction, that:

(a) this person signed and delivered the foregoing document as the President of Devonshire Village Condominium Association, Inc., a Non-Profit Corporation (the "Corporation"), named in this document; and

(b) this document was signed and delivered by the Corporation as it voluntary act and deed by virtue of authority from its Members.

Sworn and subscribed to before me this 7<sup>th</sup> day of December, 2003.

  
Notary Public - State of New Jersey  
NANCY BLUMENTHAL

NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES MAY 15, 2005

**RECORD AND RETURN TO:  
STARK & STARK, P.C.  
ATTN: FRANCIS J. McGOVERN, JR., ESQUIRE  
P.O. BOX 5315  
PRINCETON, NJ 08543-5315**

List Of Marks

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AMENDMENT RECORDED 11/20/2006 #2006115766