

**COLONY AT SMITHVILLE
PROPERTY OWNERS ASSOCIATION, INC.**

- * Declaration of Covenants, Conditions and Restrictions
 - * Supplemental Declaration of Covenants and Restrictions
 - * Amendments to Article V, Section 3 of the Declaration of Covenants
Conditions and Restrictions (12/3/84)
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-

Reprinted, December 1988

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS

The Declaration, made on the date hereinafter set forth, by HANADA DEVELOPMENT CORPORATION, a New Jersey corporation, having an address at 22 Franklin Blvd., Pleasantville, Atlantic County, New Jersey, hereinafter referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in the Township of Galloway, County of Atlantic and State of New Jersey, which is more particularly described on the final plat designated as "Colony At Smithville", which final plat is or shall be recorded in the Office of the Clerk of Atlantic County; and

WHEREAS, Declarant has or is about to receive final approval for the Colony at Smithville for the development of a planned unit development on the aforesaid tract of land; and

WHEREAS, Declarant desires to transfer the real property described in Exhibit "A" to the Colony at Smithville Property Owners Association, Inc., as "Common Open Space" for the common use and enjoyment of all Members of the Colony at Smithville Property Owners Association, Inc.; and

WHEREAS, Declarant desires to preserve in its natural state that portion of the property of Colony at Smithville which is more particularly described as "Deed Restricted Common Open Space" on the final plat of Colony at Smithville;

NOW, THEREFORE, the Declarant hereby declares that all the property shown on the above referred to final plat of Colony At Smithville shall be held, sold and conveyed, leased, aliened or transferred subject to the following easements, restrictions, covenants and conditions, all of which shall run with the land.

ARTICLE I
DEFINITIONS

SECTION 1. "Association" shall mean and refer to Colony At Smithville Property Owners Association, Inc., its successors and assigns.

SECTION 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot situate upon the property, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 3. "Association's Property" shall mean and refer to that certain real property conveyed to the Association, and such areas within the jurisdiction of the Association as set forth herein, and in the By-Laws of the Association or in the New Jersey Municipal Land Use Act and Galloway Township Comprehensive Land Management Code.

SECTION 4. "Common Open Space" shall mean and refer to all real property owned by the Association for the common use and enjoyment of the Owners. The Common Open Space to be owned by the Association is set forth on Exhibit "A" by a metes and bounds description, and on the final plat designated as Colony At Smithville.

SECTION 5. "Lot" shall mean and refer to any individual lot shown upon the above referred to final plat of Colony At Smithville, excepting therefrom the lot designated for the Common Open Space.

SECTION 6. "Deed Restricted Open Space" shall mean and refer to all that property within an Owner's Lot which has been deed restricted to be maintained in a natural and unimproved state as indicated on the final plat of Colony At Smithville, which plat has been or will be recorded with the Clerk of Atlantic County.

SECTION 7. "Living Unit" shall mean and refer to all or any portion of the building situated upon the lot designated and intended for use as a residence.

SECTION 8. "Annual Assessment" shall mean and refer to those fees or charges levied by the Association or the Township of Galloway upon the Owner of each Lot for the purpose of adequately meeting expenses for the improvement and maintenance of the Common Open Space and areas within the jurisdiction of the Association, and for the promotion and maintenance of the health, safety and welfare of the residents in the Properties.

SECTION 9. "Special Assessments" shall mean and refer to those fees or charges levied by the Association upon the Owner of each Lot for the purpose of capital improvements.

SECTION 10. "Declarant" shall mean and refer to Hanada Development Corporation, its successors and assigns.

SECTION 11. "Member" shall mean and refer to all those Owners who are members of the Association as hereinafter provided.

SECTION 12. "Common Easement" shall mean easements inuring to the benefit of all Owners and invitees and licensees which shall also be used by utility companies for the purpose of installation, maintenance and repair of all utility lines affecting the premises and including but not limited to easements set forth on the final plat of Colony At Smithville, as well as all utility easements and access easements herein referred to.

SECTION 13. "Property" shall mean and refer to all property shown on the final plat known as Colony At Smithville, recorded and filed in the office of the Clerk of Atlantic County, State of New Jersey.

SECTION 14. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions.

SECTION 15. "Tennis Court" shall mean and refer to the tennis courts constructed by Declarant on the Common Open Space.

SECTION 16. "Wood Chip Nature Trail" shall mean and refer to the 20 foot Common Open Space Easement and Nature Trail constructed by the Developer.

ARTICLE II

PROPERTY RIGHTS

SECTION 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Open Space described herein, which shall be appurtenant to and shall pass with the title to every lot, which rights shall be subject to the following provisions:

(a) The right of the Declarant, its successors or assigns, to convey, dedicate, grant or transfer those portions of the Common Open Space and Common Easements pursuant to the requirements of the approvals granted with regard to the Property;

(b) The right of the Association to suspend the voting rights and right to use of the Common Open Space by an Owner for any period during which there is any unpaid assessment against his Lot and for a period not to exceed thirty (30) days for infraction by the Board of Trustees of the Association;

(c) The right of the Declarant and/or Association to dedicate, grant, reserve or transfer all or any part of the Common Open Space to any public agency, authority or utility for such purposes, including but not limited to installing, maintaining, repairing, replacing and inspecting all lines and appurtenances for water, sewer, drainage, fuel oil, and other utilities, with the right of the Grantees to have access over and across such portions of the Common Open Space consistent with the full exercise of such grants;

(d) The right of the Declarant and/or Association to grant any part of the premises described herein as a Common Easement.

SECTION 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right to enjoyment to the Common Open Space to members of his family, his tenants, or contract purchasers who reside on the Property.

SECTION 3. Title to the Common Open Space. Declarant may retain legal title to the Common Open Space until such time as it has completed improvements thereon and until such time as, in the opinion of the Declarant, the Association is able to maintain the same, but, notwithstanding any provisions herein, Declarant hereby covenants for itself, its successors and assigns, that it shall convey the Common Open Space to the Association free and clear of all liens and encumbrances except utility easements, grants of record, and covenants, conditions and restrictions herein set forth at such time as Declarant has sold, leased, rented or conveyed more than seventy-five (75%) percent of the Lots. The Deed of Conveyance to the Association shall reserve unto the Declarant the right to complete the improvements upon the premises, including but not limited to the right of any entry thereof, the right to grant any and all easements for utilities and drainage benefiting the premises conveyed or the remaining Lots being developed.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

SECTION 1. Every Owner of a Lot which is subject to assessment shall be a Member of the Association, and such membership shall be appurtenant to and shall not be separate from ownership of any Lot which is subject to assessment. Such Owners of Lots within said sections approved hereafter shall become subject to the declarations and conditions herein immediately upon the conveyance of said Lots to them.

SECTION 2. The Association shall have one class of voting membership consisting of all Owners of Lots, and each shall be entitled to one vote for each Lot. When more than one person holds an interest in any Lot, the vote for such Lot shall be exercised by the person holding such interest as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot.

Notwithstanding any provision herein set forth or any provision of the By-Laws, the percentage of the members of the Board of Trustees elected by the owners shall be governed as follows:

(a) Sixty (60) days after conveyance of twenty-five (25%) percent of the Lots, not less than twenty-five (25%) percent of the members of the Board of Trustees shall be elected by the Owners;

(b) Sixty (60) days after conveyance of fifty (50%) percent of the Lots, not less than forty (40%) percent of the members of the Board of Trustees shall be elected by the Owners;

(c) Sixty (60) days after conveyance of seventy-five (75%) percent of the Lots, the Declarant's control of the Board of Trustees shall terminate, at which time the Owners shall elect the entire Board of Trustees;

(d) Notwithstanding (a), (b) and (c) above, the Declarant may retain one member of the Board of Trustees so long as there are any Lots remaining unsold in the regular course of business;

(e) Declarant may surrender control of the Board of Trustees of the Association prior to the time as specified, provided the Owners agree by a majority vote to assume control;

(f) The Association, when controlled by the Owners, shall not take any action that would be detrimental to the sale of Living Units by the developers, and shall continue the same level of maintenance, operation and services as immediately prior to their assumption of controls, until the last Living Unit is sold.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 1. Creation of the Lien of Personal Obligations of Assessments. The Declarant, for each Lot owned, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(1) Annual Assessment or charges, and

(2) Special Assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The Annual and Special Assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Property against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Property at the time when the assessment fell due. The obligation for delinquent assessments shall pass to his successors in title, said assessments being a charge against a Lot in favor of the Association. The Association shall provide for the issuance and issue to every Owner or mortgagee, upon his request, a statement of such amount due. A person other than a Lot Owner may rely upon such statement, and his liability shall be limited to the amounts set forth therein. Liability for the payment of said amount to the Association shall not

Section 1 (continued) attach to the purchase of the Lot following a mortgage foreclosure sale, provided the Association has been joined as a party to the foreclosure unit. Such unpaid share shall be deemed to be expenses collectible from the remaining Owners, including the acquirer.

SECTION 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purposes set forth in the Municipal Lands Use Act and the Galloway Township Comprehensive Land Management code and for the purpose of promoting the recreation, health, safety, and welfare of the residents in the Properties, and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Open Space, including but not limited to the following:

- (a) the payment of taxes;
- (b) the payment of insurance;
- (c) the maintenance, repair and improvement of the Common Open Space, including but not limited to landscaping, drainage facilities, walkways, natural areas, planted areas, landscaped areas and recreational facilities;
- (d) compliance with ordinances, regulations, government rules and regulations affecting such premises;
- (e) the supervisory and management cost for the activities;
- (f) removal of trash and garbage;
- (g) making structural repairs to the tennis courts and wood chip nature trail in the Common Open Space.

SECTION 3. Annual Assessments. The amount of the assessment shall be fixed by the Board of Trustees of the Association on an annual basis in a sum sufficient to meet the expenses necessary for the improvement and maintenance of the Common Open Space, the payment of real estate taxes assessed against the Common Open Space lot, the creation of a reserve fund for the performance of the duties and obligations of the Association and for the promotion and maintenance of the health, safety and welfare of the residents in the Properties and each Lot shall be treated equally and equitably with regard to an assessment. The power of the Board of Trustees to increase the annual assessment is limited to an annual increase of 10% of the total annual assessments of the prior year. The Board of Trustees may, however, increase the annual assessment above the 10% limitation with the vote or written consent of 51% of the members.

SECTION 4. Date of Commencement Assessments: Due Dates. The Annual and Special Assessments provided for herein shall be pro-rated for payment by Owners on a monthly basis or on such other basis as determined by the Association. The Annual Assessments shall commence as to all Lots on the first day of January of each year, and the first assessment shall be adjusted according to the number of months remaining in the calendar year. Written notice of the Annual Assessments shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Trustees.

SECTION 5. Special Assessments. In addition to the Annual Assessments authorized above, the Board of Trustees of the Association may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Open Space, including fixtures and personal property related thereto, provided that before the Board of Trustees levies any such assessment it shall have the vote or written consent of fifty-one (51%) percent of the Members. Any such assessment shall be payable over such term as determined by the Board of Trustees.

SECTION 6. Computation of Assessment. Both Annual and Special Assessments shall be computed by dividing the total number of Lots into the total assessment calculated pursuant to Sections 3 and 5 above, as the case may be; the quotient thereby arrived at shall be the assessment each Owner shall pay pursuant to the terms of this Declaration. All assessments must be fixed at a uniform rate for all Lots.

SECTION 7. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest at the maximum legal rate permitted under the laws of the State of New Jersey. The Association may bring an action at law or equity against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise avoid liability for the assessments provided for herein by the non-use of the Common Open Space for abandonment of his Lot.

SECTION 8. Subordination of the Lien to Mortgages. The lien of such assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot or unit pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or unit from liability for any assessment thereafter becoming due or from the lien thereof.

ARTICLE V **PROTECTIVE COVENANTS**

SECTION 1. Common Open Space. Declarant hereby declares that the Common Open Space, more particularly described on Exhibit "A" herein attached and also illustrated on the final plat of the Colony At Smithville which has or will be recorded with the Clerk of Atlantic County, State of New Jersey, will be transferred to the Association, subject to the following restrictions.

(a) that Lot known as the Common Open Space lot shall be maintained by the Association in its natural and unimproved state, excepting therefrom the tennis courts and natural pathways to be maintained by the Association.

(b) any construction or improvement on the Common Open Space will be restricted to the maintenance and repair of the aforementioned tennis courts and pathway.

SECTION 2. Deed Restricted Open Space. Deed Restricted Open Space is subject to the following restrictions:

(a) that portion of each Lot designated as Deed Restricted Open Space shall be maintained by Owner of that Lot in its natural and unimproved state, and no dwelling unit, other structure or property, real or personal, of any kind shall be built, erected or maintained on such area of the Lot; and

(b) every member of the Association shall have a right-of-way limited to pedestrian travel of ingress and egress to the Woodchip Nature Trail and the Tennis Courts over that portion of each Lot designated as "Deed Restricted Open Space".

(c) The Association or any Member of the Association shall have the right to enforce the above restrictions.

SECTION 3. Protective Covenants. The use of each Lot in the Colony At Smithville is subject to the following restrictions:

(a) no tank for storage of gas or liquids may be maintained on any Lot unless hidden from external view of any other Lot;

(b) no animals, livestock or poultry of any kind shall be raised, bred or kept in any dwelling or on any Lot, except that dogs, cats or other domesticated household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose, and further provided that not more than two (2) pets in the aggregate shall be kept on the Lot;

(c) no noxious, unsightly or offensive activity, including vehicle repairs, shall be conducted on the Property of a Lot Owner, or Common Open Space or on the streets, nor shall anything be permitted to be done thereon which may be or may become an annoyance or nuisance;

(d) no sign of any kind shall be displayed to the public view on any Lot or improvement thereon, except for a one-family name sign of not more than 144 square inches, or one temporary sign of not more than two (2) square feet, advertising the Property for sale or rent. No such sign shall be illuminated;

(e) no building structure shall be erected, nor alteration or addition to or repainting of the exterior thereof be made unless it shall conform substantially in architecture and material to the dwelling as originally constructed by the Declarant. Any change in exterior paint color or exterior surface from that originally selected by the Declarant shall be subject to the approval of the Board of Trustees;

(f) no dog run, dog kennel, dog house, storage shed, tool shed or outdoor structure may be maintained, constructed or erected on any Lot without the consent of the Association;

(g) no garbage, refuse, rubbish or cuttings shall be deposited on any Lot, street, sidewalk or parking area, unless placed in a closed metal receptacle container or placed in other designated collection areas provided by the Lot Owner. Containers provided by the Lot Owners shall not be placed on any street, sidewalk, parking area or Common Open Space except in a location on the Lot which is unobstructive to view from any other portion of the land in the Colony At Smithville;

(h) no commercial or other non-passenger vehicle of any type and no unlicensed motor vehicles of any type shall be permitted to remain overnight on the Property of a Lot Owner, other than as may be used by the Declarant in conjunction with building operations;

(i) no boats, campers or trailers of any type shall be permitted on the Property of any Lot Owner;

(j) no outside radio or television antenna shall be erected on the Property of a dwelling unit unless and until permission for the same has first been granted by the Board of Trustees, nor shall air-conditioning window units be allowed.

(k) no drying or airing of any clothing or bedding shall be permitted outdoors within the area of the Property of a Lot Owner, and clothes-hanging devices such as lines, reels, poles, frames, etc. shall not be erected.

(l) each member shall have a right of way limited to pedestrian travel over that portion of the "wood chip nature trail" which exists on any lot as depicted by the final plat of the Colony of Smithville.

ARTICLE VI
COMMON SERVICE ENTRANCE LINES

SECTION 1. In order to provide the Lot Owner from within with underground utility lines, it is required from time to time that two (2) Lots be served with a common service entrance line. Owners of Property with such lines agree to cooperate fully with the utility companies concerned therewith for all maintenance, repair and other measures as may be necessary to provide adequate and proper service to the Owners served thereby, and there are hereby created easements for the purpose set forth herein.

ARTICLE VII
GENERAL PROVISIONS

SECTION 1. Enforcement. The Association, any Owner, and the Township of Galloway shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

SECTION 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land. The Declaration may be amended by vote of not less than eighty (80%) percent of the Lot Owners, which vote shall be calculated pursuant to the formula set forth herein, except there shall be no amendment of any provision herein, the terms of which expressly prevent an amendment.

SECTION 4. Other Additions. Upon approval in writing of the Association pursuant to a vote of its Members as provided in its Articles of Incorporation, the Owner of any Property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association may file on record a Supplementary Declaration of Covenants and Restrictions as described in Section 6 hereof.

SECTION 5. Nothing herein contained shall be contrary to any federal, state, municipal rule or regulation and the terms and conditions of the approval granted affecting the premises.

SECTION 6. Declarant reserves the right, prior to any conveyance of title to an individual Lot herein described, to determine, in Declarant's sole discretion, the type of improvement to be constructed upon such Lot, provided, however, that any such improvements shall comply with the requirements and approvals of governmental authorities having jurisdiction over such Lot, and Declarant further reserves the right, prior to the conveyance of any such Lot, to apply for and obtain additional governmental approvals affecting such Lot, included but not limited to modifications of, supplements to, and amendments of prior approvals.

Section 6 (continued) The additions authorized under this subsection shall be made by filing of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property.

Such Supplementary Declaration may contain such complementary additions and modifications of the within covenants and restrictions as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration with regard to the existing Property.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has hereunto set its hand and seal this day of , 1980.

HANADA DEVELOPMENT CORPORATION
A New Jersey Corporation

By: _____ [L.S.]
Albert M. Adamonis, President

ATTEST:

Roger B. Hansen, Secretary

STATE OF NEW JERSEY }

: SS

AFFIDAVIT

COUNTY OF ATLANTIC }

BE IT REMEMBERED, that on this day of , 1980, before me, the Subscriber, personally appeared ROGER B. HANSEN, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction, that he is the Secretary of Hanada Development Corporation, the corporation named in the within Declaration; that Albert M. Adamonis is the President of said Corporation; that the execution, as well as the making of this Declaration, has been duly authorized by a proper resolution of the Board of Directors of the said Corporation; and that the seal annexed to said Corporation and the seal affixed to said Declaration is the proper corporate seal and was thereto affixed and said Declaration signed and delivered by the said President as and for the voluntary act and deed of said Corporation, in the presence of deponent, who thereupon subscribed his name as attesting witness.

—
ROGER B. HANSEN, Secretary

Sworn and Subscribed to
before me the date aforesaid.

PREPARED BY: Arthur J. Momjian, Esquire

**SUPPLEMENTAL DECLARATION
OF
COVENANTS AND RESTRICTIONS**

**A SUPPLEMENTAL DECLARATION
OF COVENANTS AND RESTRICTIONS**

THIS DECLARATION, made this 5th day of August, 1980, by HANADA DEVELOPMENT CORPORATION, a New Jersey Corporation hereinafter call HANADA.

W I T N E S S E T H :

WHEREAS, Hanada is the owner of the real property depicted in Exhibit A of the supplemental declaration attached hereto and made a part hereof; and

WHEREAS, developer is desirous of clarifying the existence of an access easement to service the swales at the Colony At Smithville which easements enure to the benefit of the Colony At Smithville Property Owners Association; and

WHEREAS, developer is desirous of clarifying certain terms in the Declaration of Covenants and Restrictions;

NOW THEREFORE, developer hereby declares that all of the property described above shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens set forth.

ARTICLE I
CREATION OF ACCESS EASEMENT
TO SERVICE SWALES.

SECTION 1. PROPERTY. The real property which is, and shall be held, transferred, conveyed and occupied subject to this supplemental declaration is the Colony At Smithville Planned Unit Development located in Galloway Township, County of Atlantic, State of New Jersey and is more particularly depicted in Exhibit A.

SECTION 2. SWALE EASEMENT. Hanada hereby grants and conveys to the Colony At Smithville Property Owners Association, Inc., easements of ingress and egress for purposes of servicing and maintaining the swales which exist on Lots 1.01, 1.17, 1.19 and 1.20 as depicted on the final plat of the Colony At Smithville which is attached hereto as Exhibit A. The physical location and dimensions of the easements are depicted on the preliminary subdivision plans of "Colony At Smithville" on file with the Galloway Township Planning Board.

SECTION 3. DEFINITION OF TENNIS COURTS: Tennis Court shall mean the one tennis court which will be constructed by Hanada and maintained by the Colony At Smithville Property Owners Association, Inc.

IN WITNESS WHEREOF, the undersigned, being the declarant herein, has hereunto set its hand and seal the date first above written.

ATTEST:

HANADA DEVELOPMENT CORPORATION
A New Jersey Corporation

Roger B. Hansen, Secretary

BY: _____
Albert M. Adamonis, President

AFFIDAVIT

Baron Roger B. Hansen, Secretary

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[affix seal]
[date commission expires]
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AMENDMENTS TO ARTICLE V, Section 3
OF THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

AMENDMENTS TO ARTICLE V, SECTION 3 [PROTECTIVE COVENANTS] OF THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE COLONY AT SMITHVILLE PROPERTY OWNERS ASSOCIATION, INC. AS PREVIOUSLY RECORDED IN DEED BOOK 3477, PAGE 94 AND IN DEED BOOK 3501, PAGE 31.

THESE AMENDMENTS, made this Third day of December, 1984 by the Colony At Smithville Property Owners Association, Inc.

NOW, THEREFORE, Be It Resolved by the Colony At Smithville Property Owners Association, Inc. that Article V, Section 3 (Protective Covenants) of the Declaration of Covenants, Conditions and Restrictions of the Colony At Smithville Property Owners Association, Inc. are hereby amended to read in its entirety as follows:

SECTION 3. Protective Covenants. The use of each Lot in the Colony At Smithville is subject to the following restrictions:

[a] no tank for storage of gas or liquids may be maintained on any Lot unless hidden from external view of any Lot;

[b] no animals, livestock or poultry of any kind shall be raised, bred or kept in any dwelling or on any Lot, except that dogs, cats or other domesticated household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose, and further provided that not more than two (2) pets in the aggregate shall be kept on the Lot;

[c] no noxious, unsightly or offensive activity, including vehicle repairs, shall be conducted on the Property of a Lot Owner, or Common Open Space or on the streets, nor shall anything be permitted to be done thereon which may be or may become an annoyance or nuisance;

[d] no sign of any kind shall be displayed to the public view on any Lot or improvement thereon, except a one-family name sign of not more than 144 square inches, or one temporary sign of not more than two (2) square feet, advertising the Property for sale or rent. No such sign shall be illuminated.

[e] no building structure shall be erected, nor alteration or addition to or repainting of the exterior thereof be made unless it shall conform substantially in architecture and material to the dwelling as originally constructed by the Declarant. Any change in exterior paint color or exterior surface from that originally selected by the Declarant shall be subject to the approval of the Board of Trustees;

[f] no dog run, dog kennel, dog house, storage shed, tool shed or outdoor structure may be maintained, constructed or erected on any Lot without the consent of the Association. The consent of the Association shall only be granted to the present owner. Any subsequent owner must reapply within ninety (90) days of taking title to receive the continued consent of the Association;

[g] no garbage, refuse, rubbish or cuttings shall be deposited on any Lot, street, sidewalk or parking area, unless placed in a closed container. Containers provided by the Lot Owners shall not be placed on any street, sidewalk, parking area or Common Open Space except in a location on the Lot which is unobstrusive to view from any other portion of the land in the Colony At Smithville;

[h] no commercial or other nonpassenger vehicle of any type and no unlicensed motor vehicles of any type shall be permitted to remain overnight on the Property of a Lot Owner, other than as may be used by the Declarant in conjunction with building operations. Recreational vans and vehicles may remain overnight on the Property of a Lot Owner only with the advance approval of the Board and only for no longer than five nights;

(i) no boats, campers or trailers of any type shall be permitted on the Property of any Lot Owner, except that the above shall be permitted in the closed garage of any Lot Owner;

(j) all antennae except conventional radio or television antennae which are fixed to the roof or chimney of a dwelling are prohibited. Dish antennae are prohibited. Radio or television towers or masts not affixed to the roof or chimney of the dwelling are prohibited. Air conditioning window units are not allowed;

(k) no drying or airing of any clothing or bedding shall be permitted outdoors within the area of the Property of a Lot Owner, and clothes-hanging devices such as lines, reels, poles, frames, etc. shall not be erected;

(l) each member shall have a right of way limited to pedestrian travel over that portion of the "wood chip nature trail" which exists on any Lot as depicted by the final plat of the Colony At Smithville;

(m) from January 1, 1984 on, the erection of above ground swimming pools on the property of any Lot Owner is prohibited;

(n) the construction of a fence on the Property of a Lot Owner except where required by municipal ordinance is prohibited;

(o) the erection of newspaper boxes shall not be permitted on the Property of a Lot Owner;

(p) anyone residing on the Property of a Lot Owner shall only park their passenger vehicles in the garage or driveway of the Lot Owner and shall not park on any street in front of any Lot;

(q) Any outdoor structures consented to by the Association shall be annually reviewed in April or May of each year by the Board or their designees to ensure that the structures are being maintained in accordance with the original approval;

(r) in the event that a Lot Owner willfully violates any of these Protective Covenants, the Board may, after written notice to the Lot Owner, assess fines for each violation. Every day a violation exists may be considered by the Board to be a separate offense. Any Lot Owner assessed a fine may appeal the assessment to the Board within 30 days and request a hearing before the Board. The decision of the Board, after a hearing, shall be final. The Association shall have all of the remedies for nonpayment of fines that are provided for nonpayments of assessments in Article IV.

I, WANDA WAYSON, Secretary of the Colony At Smithville Property Owners Association, Inc., certify that the foregoing is a true copy of a Resolution as it appears in the records of the Corporation and as was duly and legally adopted by the membership of the Corporation at meetings called for that purpose and held on January 8, 1984 and May 6, 1984, pursuant to and in accordance with the Certificate of Incorporation and By-Laws thereof and pursuant to the Declaration of Covenants, Conditions and Restrictions; that it has not been modified, amended or rescinded, and is in full force and effect as of the day hereof.

—
WANDA WAYSON

DATED: December 3, 1984

Prepared by:

Salvatore Perillo
An Attorney at Law of N.J.

AFFIDAVIT

Notary Public

**BY-LAWS
OF THE
COLONY AT SMITHVILLE
PROPERTY OWNERS ASSOCIATION, INC.**

**BY-LAWS
OF
COLONY AT SMITHVILLE PROPERTY OWNERS ASSOCIATION, INC.**

**ARTICLE I
NAME AND LOCATION**

The name and location of the corporation is COLONY AT SMITHVILLE PROPERTY OWNERS ASSOCIATION, INC., hereinafter referred to as the "Association". The principal office of the corporation shall be located at but meetings of the members and directors may be held at the principal office or at such other places as may be designated by the Board of Trustees.

**ARTICLE II
DEFINITIONS**

SECTION 1. "Association" shall mean and refer to COLONY AT SMITHVILLE PROPERTY OWNERS ASSOCIATION, INC., its successors and assigns.

SECTION 2. "Property" shall mean and refer to all property shown on Exhibit "A", "The Colony at Smithville".

SECTION 3. "Association's Property" shall mean and refer to that certain real property conveyed to the Association, and such areas within the jurisdiction of the Association as set forth herein, and in the By-Laws of the Association or in the Municipal Land Use Act and Galloway Township Comprehensive Land Management Code.

SECTION 4. "Common Open Space" shall mean and refer to all real property owned by the Association for the common use and enjoyment of the Owners as more particularly defined in the Declaration of Covenants, Conditions and Restrictions.

SECTION 5. "Lot" shall mean and refer to any individual lot or plot of land shown upon Exhibit "A", COLONY AT SMITHVILLE prepared by E.P. Ryan & Associates as approved by the Planning Board of the Township of Galloway and excepting therefrom the Common Area. "Lot" when used for the purposes of assessment herein with respect to an Owner shall mean and refer to each residential Lot held pursuant to deed as shown on said map. Each such Lot Owner shall be liable for and pay the assessments to the Association pursuant to the provisions of the Declaration of Covenants, Conditions and Restrictions.

SECTION 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 7. "Residential Dwelling" shall mean and refer to any dwelling constructed on a Lot which is conveyed or to which title is held.

SECTION 8. "Annual Assessments" shall mean and refer to those fees or charges levied by the Association upon the Owner of each Lot for the purpose of adequately meeting expenses for the improvement and maintenance of the Common Areas and areas within the jurisdiction of the Association and for the promotion and maintenance of the recreation, health, safety and welfare of the residents in the properties.

SECTION 9. "Special Assessments" shall mean and refer to those fees or charges levied by the Association upon the Owner of each Lot for the purpose of capital improvements.

SECTION 10. "Declarant" shall mean and refer to Hanada Development Corp., its successors and assigns.

SECTION 11. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties which Declaration is recorded in the Office of the Clerk of Atlantic County.

SECTION 12. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

SECTION 13. "Common Easement" shall mean easements inuring to the benefit of all owners and invitees and licensees which shall also be used by utility companies for purposes of installation, maintenance and repair of all utility lines affecting the premises described in Schedule "A" annexed hereto which easement included those set forth on the subdivision map of the premises herein described filed in the office of the County Clerk in the County of Atlantic, as well as all utility easements herein referred to.

ARTICLE III **TIME OF MEETINGS**

SECTION 1. Annual Meetings. The first annual meeting of the members shall be held within two years from the date of incorporation of the Association or not later than thirty (30) days after fifty-one percent (51%) of the lots have been sold, whichever occurs first. Subsequent regular annual meetings of the members shall be held on the same day of the same month of each year thereafter. If the date for the annual meeting of the members is a legal holiday, the meeting will be held on the first day following which is not a legal holiday.

SECTION 2. Special Meetings. Special meetings of the members may be called at any time by the president or by the Board of Trustees, or upon written request of the members who are entitled to vote one-fourth (¼) of all of the votes of both classes of the membership.

SECTION 3. Notice of meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least five (5) days before such meeting to each member entitled to vote, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association, for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

SECTION 4. Quorum. The presence at the meeting of members entitled to cast at least twenty-five percent [25%] of the total votes of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

ARTICLE IV

BOARD OF TRUSTEES: SELECTION: TERM OF OFFICE

SECTION 1. Number. The affairs of this Association shall be managed by the Board of five (5) Trustees. All trustees shall be members of the Association.

SECTION 2. Removal. Any Trustee may be removed from the Board with or without cause, by a majority of the members of the Association, except any Trustees appointed by Declarant as set forth in Declaration of Covenants, Conditions and Restrictions. In the event of death, resignation or removal of a Trustee, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

SECTION 3. Compensation. No Trustee shall receive compensation for any service he may render the Association. However, any trustee may be reimbursed for his actual expenses incurred in the performance of his duties.

SECTION 4. Action Taken Without Meeting. The Trustess shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Trustees. Any action so approved shall have the same effect as though taken at a meeting of the Trustees.

ARTICLE V

NOMINATION AND ELECTION OF TRUSTEES

SECTION 1. Nomination. Nomination for election to the Board of Trustees shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nomination Committee shall consist of a Chairman, who shall be a member of the Board of Trustees and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Trustees prior to each meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Trustees as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations shall be restricted to members of the Association.

SECTION 2. Term of Office. At the first annual meeting at which owners are permitted to elect the entire Board of Trustees, the Owners shall elect three Trustees for a term of one year and two Trustees for a term of two years, and at each annual meeting thereafter the Owners shall elect either two or three Trustees, depending on the year, for a term of two years. In the interim period, each Trustee elected by Owners shall serve one-year terms.

SECTION 3. Election. Election to the Board of Trustees shall be by secret written ballot. At such election the members may cast, in respect to each vacancy as many votes as they are entitled to exercise under the provisions of the Declaration. The person receiving the largest number of votes shall be elected.

ARTICLE VI

MEETING OF THE TRUSTEES

SECTION 1. Regular Meetings. Regular meetings of the Board of Trustees shall be held quarterly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

SECTION 2. Special Meetings. Special meetings of the Board of Trustees shall be held when called by the President of the Association, or by any two Trustees, after not less than three (3) days' notice to each Trustee.

SECTION 3. Quorum. A majority of the number of Trustees shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Trustees present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII

POWERS AND DUTIES OF THE BOARD OF TRUSTEES

SECTION 1. Powers. The Board of Trustees shall have power to:

[a] adopt and publish rules and regulations governing the use and maintenance of the common area, common easements and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

[b] suspend the voting rights and right to use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed thirty (30) days for infraction of published rules and regulation;

[c] exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;

[d] declare the office of a member of the Board of Trustees to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Trustees;

[e] employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties and further to contract with any person, firm or corporation upon such terms as it deems proper for the maintenance of the Common Area and common easements;

[f] to take all reasonable action necessary to maintain, operate, preserve, improve and manage the Common Areas and common easements;

SECTION 2. Duties. It shall be the duty of the Board of Trustees to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth [¼] of the members who are entitled to vote;

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration to:

(1) fix the amount of the annual assessment against each lot at least thirty [30] days in advance of each annual assessment period;

(2) foreclose the lien against the Owner personally obligated to pay the same.

(d) issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Open Space to be maintained in accordance with these By-Laws, the requirements of the Municipal Land Use Act of the State of New Jersey, the requirements of the Municipal Land Use Act and Ordinance of the Township of Galloway and the provisions of the Declaration of Covenants, Conditions and Restrictions.

ARTICLE VIII
OFFICERS AND THEIR DUTIES

SECTION 1. Enumeration of Officers. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Trustees, a secretary and a treasurer, and such other officers as the Board may from time to time by resolution create.

SECTION 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Trustees following each annual meeting of the members.

SECTION 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one [1] year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

SECTION 4 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

SECTION 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

SECTION 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

SECTION 8. Duties. The duties of the officers are as follows:

PRESIDENT

[a] The President shall preside at all meetings of the Board of Trustees; shall see that orders and resolutions of the Board are carried out; shall sign all written instruments and shall co-sign all checks and promissory notes.

VICE-PRESIDENT

[b] The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

SECRETARY

[c] The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

TREASURER

[d] The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association including all assessments and shall disburse such funds as directed by resolution of the Board of Trustees; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of same to each of the members.

ARTICLE IX

BOOKS AND RECORDS

The books and records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE X

ASSESSMENTS

As more fully provided in the Declaration, each member is obliged to pay to the Association Annual and Special Assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid within thirty (30) days after due date, the assessment shall bear interest from the date of delinquency at the maximum permitted rate of interest in the State of New Jersey per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or common easements or abandonment of his lot.

In addition to the aforesaid assessments and in the event the Association fails to maintain the Common Open Space in accordance with the Municipal Land Use Law and the Galloway Township Comprehensive Land Management Code, the Township of Galloway may serve written notice upon the Association, setting forth the manner in which the Association has failed to maintain the common open spaces and, pursuant to the ordinances of the municipality, the provisions of which are incorporated herein, said municipality may enter upon and maintain the Common Open Space, the cost of such maintenance being assessed against the Association, Lot or Owner set forth in the Declaration of Covenants, Conditions and Restrictions, and same shall be a tax lien upon the properties.

ARTICLE XI

CORPORATE SEAL

The Association shall have a seal in circular form having within its circumferences the words: COLONY AT SMITHVILLE PROPERTY OWNERS ASSOCIATION, INC.

ARTICLE XII

AMENOMENTS

SECTION 1. These By-Laws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person.

SECTION 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

ARTICLE XIII

DISSDLUTION

The Association shall not be dissolved, nor shall it dispose of any Common Area space, by sale or otherwise (except to an organization conceived and established to own and maintain the Common open space), without first offering to dedicate the same to the Township of Galloway and the municipality shall fail to accept said dedication for a period of sixty (60) days from the date of the offering.

ARTICLE XIV
MISCELLANEOUS

The fiscal year of the Association shall begin on the 1st day of January and end on the 31st day of December every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, we being all of the Trustees of Colony At Smithville Property Owners Association, Inc., have hereunto set our hands and seals this day of , 19 .

Trustee

Trustee

Trustee

Trustee

Trustee