

BY-LAWS

OF

WHITESVILLE MEADOWS WEST HOMEOWNERS ASSOCIATION, INC.

ADOPTED:

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BY-LAWS
OF
WHITESVILLE MEADOWS WEST HOMEOWNERS ASSOCIATION

ARTICLE I

NATURE OF BY-LAWS

1.1. Nature of By-Laws. These By-Laws are intended to govern the administration of Whitesville Meadows West Homeowners Association (the "Association"), a non-profit corporation organized under Title 15A of the Statutes of New Jersey, and the management, administration, utilization and maintenance of the Common Property subject to the Declaration of Covenants and Restrictions for Whitesville Meadows West Homeowners Association, Inc.

1.2. Definitions. Unless the context clearly indicates otherwise, all definitions set forth in the aforesaid Declaration or in N.J.S.A. 46:8B-3 are incorporated herein by reference.

1.3. Fiscal Year. The fiscal year of the Association shall be determined by the Board of Trustees.

1.4. Principal Office. The principal office of the corporation is located at 202 Main Street, Toms River, New Jersey 08753, or such other location as may be determined by the Board of Trustees.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS

2.1. Membership. Every person, firm, association, corporation or other legal entity who is a record Owner or Co-Owner of the fee simple title to any Lot shall be a member of the Association. Any person, firm, association, corporation or legal entity who holds such title or interest to a Lot merely as a security for the performance of an obligation (including but not limited to mortgagees or trustees under deeds of trust) shall not be a Member of the Association.

2.2. Associate Members. Every person who is entitled to possession and occupancy of a Lot as a tenant or lessee of a Member shall be an Associate Member

of the Association but shall not be entitled to any vote with respect to Association matters.

2.3. Change in Membership. Transfer of membership of Owners shall be accomplished by recording in the Ocean County Clerk's Office a Deed or other instrument establishing a record title to a Lot, and by delivery to the Secretary of the Association a certified copy of such instrument and such sums of money as are required for the payment of any membership fee and/or contribution to capital. The membership of the prior Lot owner shall be thereby terminated.

2.4. Rights of Membership. Every person who is entitled to membership in the Association, pursuant to the provisions of the Certificate of Incorporation and these By-Laws, shall be privileged to use and enjoy the Common Property, subject, however, to the right of the Association to:

(a) Promulgate Rules and Regulations governing such use and enjoyment;

(b) Suspend the use and enjoyment of the Common Property as provided in Section 2.5 of these By-Laws; and

(c) Transfer, grant or obtain easements, licenses or other property rights with respect to the Common Property as provided in Section 6.1(j) of these By-Laws.

2.5. Suspension of Rights. Membership, voting rights and use by a Member of the Common Property may be suspended by the Board for any period during which any assessment against the Lot to which his membership is appurtenant remains unpaid; but upon payment of such assessments, together with any late fees, any interest accrued thereon, and any costs, attorneys' fees, penalties and other expenses, if any, properly chargeable to his Lot, whether by check or cash, his rights and privileges shall be immediately and automatically restored; provided that Section 2.8 of these By-Laws shall govern the restoration of voting rights. Further, if Rules and Regulations governing the use of the Common Property and the conduct of persons thereon have been adopted and published, as authorized

in the By-Laws, the rights and privileges of any person in violation thereof may be suspended at the discretion of the Board for a period not to exceed thirty (30) days for any single violation, but if the violation is of a continuing nature, such rights and privileges may be suspended indefinitely until such time as the violation is abated. No such action shall be taken by the Board until the Member is afforded an opportunity for a hearing consistent with the principles of due process of law.

2.6. Member in Good Standing. A Member shall be deemed to be in good standing and entitled to vote in person or by proxy or in any ballot by mail if, and only if, he shall have fully paid all installments due for assessments made or levied against him and his Lot by the Board as hereinafter provided, together with all interest, costs, attorney's fees, penalties and other expenses, if any, properly chargeable to him and to his Lot, at least three (3) business days prior to the date fixed for such meeting.

2.7. Voting Rights. Each Member shall be entitled to one (1) vote of equal weight for each Lot to which he holds title. When more than one person holds title, the vote(s) for each Lot shall be exercised as the Co-Owners among themselves determine. When one or more Co-Owners sign a proxy or purports to vote for his or her Co-Owners, such vote(s) shall be counted unless one or more of the other Co-Owners is present and objects to such vote(s); or, if not present, submits a proxy or objects in a writing delivered to the Secretary of the Association before the vote(s) is counted. If Co-Owners disagree as to the vote(s), the vote shall be divided equally among the Co-Owners.

ARTICLE III

MEETINGS OF MEMBERS

3.1. Place of Meetings. All meetings of the Members of the Association shall be held at such place convenient to the Members as may be designated by the Board.

3.2. Annual Meetings. All annual meetings of the Members of the Association shall be held on such day during May of each year as may be established by the Board, except that no more than thirteen (13) months shall lapse between annual meetings. At each annual meeting the members may vote on questions as set forth in Section 3.7 hereof and transact other business of the Association.

3.3. Special Meetings. Special meetings of Members may be called by the President whenever the President deems such a meeting advisable, or shall be called by the Secretary upon the order of the Board or upon the written request of Members representing not less than twenty-five (25%) percent of all votes entitled to be cast at such meeting. Such request shall state the purpose(s) of such meeting and the matter(s) proposed to be acted upon. Unless Members representing at least fifty (50%) percent of all votes entitled to be cast request such a meeting, no special meeting may be called to consider any matter which is substantially the same as a matter voted upon at any meeting of the Members held during the preceding twelve (12) months, which determination shall be made in the sole and absolute discretion of the Board.

3.4. Notice of Meeting. Except as otherwise provided by law, notice of each meeting of Members, whether annual or special, shall be given not less than ten (10) days, nor more than ninety (90) days before the day on which the meeting is to be held, to each Member at his last known address, by delivering a written or printed notice thereof to said Member, or by mailing such notice, postage prepaid. Every such notice shall state the time, place and purpose(s) of the meeting. Notice of any meeting of Members shall not be required to have been sent to any Members who shall attend such meeting in person or by proxy. Notice of any adjourned meeting of the Members shall not be required to be given unless the time and place to which the meeting is adjourned is not announced at the meeting adjourned. Except where otherwise expressly required by law, no publication of any notice of a meeting of Members shall be required.

3.5. Quorum and Adjourned Meetings. At any meeting of the Members, Members in good standing comprising ten (10%) percent of the total authorized votes and present in person or by proxy, shall constitute a quorum for the transaction of business except where otherwise provided by law. In the absence of a quorum, the persons present in person or by proxy and entitled to vote, may, by majority vote, adjourn the meeting from time to time until a quorum shall be present in person or by proxy. At any such adjourned meeting at which a quorum may be present any business may be transacted which might have been transacted at the meeting originally called.

3.6. Organization. At each meeting of the Association, the President, or, in his absence, the Vice President, or in the absence of both of them, a person chosen by the remaining Trustees shall act as a chairperson, and the Secretary, or in his absence, a person whom the chairperson shall appoint, shall act as Secretary of the Meeting.

3.7. Voting on Questions. Only Members in good standing at least three (3) business days prior to any meeting shall be entitled to vote on questions. A majority of votes present in person or by proxy at any duly constituted meeting of the membership, shall be sufficient on those questions submitted to a vote of the membership. The vote on any question need not be taken by ballot, unless (i) chairperson of the meeting determines a ballot to be advisable, or (ii) a majority of the votes present at the meeting determine that the vote on the question submitted shall be taken by ballot.

3.8. Voting in Elections of Trustees. Only Members in good standing at least three (3) business days prior to any meeting at which an election is to occur shall be entitled to vote in elections of Trustees. Each Member shall be entitled to one (1) vote for each Lot to which he holds title with respect to all elections. The election of Trustees shall be conducted by written ballot. If with respect to any election more than twice the number of candidates to be elected are nominated, then there shall be two ballots cast. At the end of the

tabulation of the first ballot, the field of nominees shall be reduced so that there are twice as many candidates as there are positions to be filled, with the persons receiving the fewest votes being eliminated from the ensuing ballot. A second vote shall be held, and on the second vote, the persons receiving the plurality of votes will be deemed to be elected in order to fill the vacant positions. If there are not more than twice the number of nominees for the number of positions to be filled, then there shall be one vote, with the persons receiving the highest numbers of votes being elected in order to fill the vacancies on the Board. If ever applicable, candidates polling the highest numbers of votes will be considered elected for the longest period of years.

3.9. Ballot By Mail. The Board may submit any question or election to a vote of the membership through a ballot by mail, whether or not membership meeting is held for same purpose. No ballot by mail shall be valid or tabulated unless the signature of the Member(s) submitting the ballot has been verified on the ballot in accordance with procedures established by the Board. The Board shall appoint Inspectors to tabulate the ballots, whose report shall be included in the minute book. In order to conduct a ballot by mail for a question submitted to a vote of the membership, the Board shall serve a notice upon all Members which shall (i) state with specificity in terms of motion(s) the question(s) upon which the vote is to be taken; (ii) state the date by which ballots must be received in order to be counted; (iii) provide an official ballot for the purposes of the vote; and (iv) state the date upon which the action contemplated by any motion(s) shall be effective, which date shall be not less than ten (10) days after the date ballots must be received. No actions contemplated by a question submitted to a ballot by mail shall be taken unless a majority in interest of all Members in good standing submit ballots approving such action. In order to conduct a ballot by mail for an election of Trustees, the Board shall serve a notice upon all Members which shall (i) provide an official ballot for the purposes of the election; and (ii) state the date by

which the ballot must be received in order to be counted. No ballot shall be counted if the Member casting same is not in good standing at least three (3) business days prior to the date set for the ballot to be received.

3.10. Proxies. Proxy ballots shall be permitted with respect to all amendments to the Declaration, the Certificate of Incorporation, these By-Laws, or any other matter to properly be voted upon by the Members. All proxies shall be in writing, signed by the individual member, or by his or their duly authorized representative(s), and delivered to the Secretary of the Association, or his designee, at least 24 hours prior to the commencement of the meeting at which ballots are to be cast and may not be opened until after all other ballots are counted. Proxies may be revoked at any time prior to the opening of the polls by the person issuing the proxy. No proxy shall be voted on after eleven (11) months from the date of its execution unless the proxy provides for a longer period, which in no event can exceed three (3) years from the date of its execution. All proxies shall be substantially in the form prescribed by the Board, and if not in such form, shall be deemed invalid, which determination shall be made in the sole and absolute discretion of the Board or the Inspectors of the election with respect to any election.

3.11. Inspectors of Election. If at any meeting of the Members a vote by ballot shall be taken, the chairperson of such meeting shall appoint two persons to act as Inspector with respect to the ballots. Each Inspector so appointed shall first subscribe an oath to execute faithfully the duties of an Inspector with strict impartiality and according to the best of his ability. Such Inspector shall decide upon the qualifications of voters and shall report the number of votes represented at the meeting and entitled to vote on such question, shall conduct and accept the votes, and when the voting is completed, shall ascertain and report the number of votes respectively for and against the questions. Reports of Inspectors shall be in writing and subscribed and delivered by them to the Secretary of the meeting promptly after the ballots are

tabulated. The Inspectors need not be Members of the Association, and any officer or Trustee of the Association may not be an Inspector on any question, in which he may be directly interested.

3.12. Order of Business. The order of business at the annual meeting of the Members or at any special meetings insofar as practicable shall be:

- (a) Calling of the roll and certifying the proxies.
- (b) Proof of notice of meeting and waiver of notice.
- (c) Reading and disposal of any unapproved minutes.
- (d) Appointment of Inspectors, if appropriate.
- (e) Election of Trustees, if appropriate.
- (f) Vote on Questions, if appropriate.
- (g) Receiving reports of officers.
- (h) Receiving reports of committees.
- (i) Old business.
- (j) New business.
- (k) Membership Remarks and Questions.
- (l) Adjournment.

ARTICLE IV

BOARD OF TRUSTEES

4.1. Qualifications and Members. There shall be a five (5) member Board of Trustees which shall be selected among the owners of Lots. Trustees must meet the following criteria to qualify for nomination, appointment, election or service as a Trustee:

- (a) Member in Good Standing: Membership in good standing shall be a qualification of any non-Developer nominee or appointee to a Trusteeship and for continued service on the Board.
- (b) Representation: Partnerships, corporations, fiduciaries or co-owners holding lot memberships in good standing may designate one individual per Lot owned to be eligible for

nomination, appointment, or election as Trustees in accordance with the following qualifications:

- i) Partnership designees shall be members, employees or agents of the partnership;
- ii) Corporate designees shall be officers, stockholders, employees or agents of the corporation;
- iii) Fiduciary designees shall be fiduciaries, officers, or employees of the fiduciary; and
- iv) Co-owners holding a membership in good standing may designate any one of them but only one of them to be eligible for nomination, appointment, or election as a Trustee; however, in the case of any disagreement, the express consent of a majority in interest of such Co-owners shall be required.

(c) Disqualification of Trustees: Any Trustee whose membership in the Association is not in good standing for thirty (3) consecutive calendar days shall automatically be disqualified as a Trustee upon expiration of said thirty (30) day period and a replacement shall be appointed by the Board within thirty (30) calendar days thereafter to serve the remainder of the vacant term as contemplated by Section 4.4 hereof. Despite the aforesaid, any Trustee who conveys title to his Lot and no longer holds title to any other Lot is automatically disqualified as a Trustee effective on the date of said conveyance.

4.2. Term of Office. Each Trustee shall ultimately serve for a term of three (3) years. The terms shall be staggered so that either one or two Trustees shall be elected each year.

In order to implement this provision, the existing Board of Trustees shall schedule an election for all five (5) Trustees to be held within one hundred and twenty (120) days after these By-Laws become effective. At such election, the Board shall be reconstituted and the five (5) persons receiving the most votes shall be deemed elected. The two (2) Trustees receiving the most votes shall serve for a term of three (3) years, the two (2) Trustees receiving the second highest number of votes shall serve for a term of two (2) years and the remaining Trustee shall serve for a one (1) year term. Thereafter at each annual election each Trustee shall be elected for a three (3) year term.

4.3. Removal of Members of the Board. At any duly held and constituted regular or special meeting of the Owners at which a quorum is present, any one or more Trustees may be removed with or without cause by vote of the Owners present, provided that the notice of the meeting expressly includes the proposed removal action. A successor may then and there be elected by a majority of the remaining Trustees to fill the vacancy thus created. Each person so elected shall be a Trustee for the remainder of the term of the Trustee whose term he is filling and until his successor is duly elected and qualified. Any Trustee whose removal has been proposed shall be given an opportunity to be heard at the meeting.

Despite the foregoing, a Trustee cannot be removed except by a majority vote of the Owners present, but the failure of any Trustee to (i) be a Member in Good Standing for a period of sixty (60) days or more or (ii) be present at three (3) consecutive Board meetings shall be grounds for removal, by majority vote of the Trustees without any vote of the Members.

4.4. Vacancies. Vacancies on the Board caused by any reason other than the removal of a Trustee by a vote of the Members shall be filled promptly by a vote of a majority of the remaining Trustees of the entire Board. Each person so elected shall be a Trustee for the remainder of the term of the Trustee whose

term he is filling and until his successor shall have been duly elected and qualified.

ARTICLE V

TRANSACTION OF BUSINESS BY THE BOARD OF TRUSTEES

5.1. Meeting of the Board; Notices; Waiver of Notice. The annual meeting of the Board shall be held within ten (10) days after the annual meeting of the Members and at such time and place as shall be fixed by a majority of the Board and no notice shall be necessary. Thereafter, regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Board, but at least two meetings shall be held each year. Notice of regular meetings of the Board shall be given to each Trustee by telephone, mail, or telegram at least three (3) days prior to the day of the meeting. Special meetings of the Board may be called by the President on three (3) days notice to each Trustee given by telephone, mail or telegram, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board shall be called by the President or the Secretary in like manner and on like notice on the written request of at least three (3) Trustees. Any Trustee may, at any time, waive notice of any meeting of the Board in writing and such waiver shall be deemed equivalent to the giving of notice. Actual attendance by Trustees at any meeting of the Board shall constitute a waiver of notice by each such Trustee of the time and place thereof. If all the Trustees are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

5.2. Quorum and Adjourned Meetings. At all meetings of the Board, a majority of the Trustees shall constitute a quorum for the transaction of business and the votes of a majority of the Trustees present and voting at a meeting at which a quorum is present shall constitute a valid decision. If at any meeting of the Board there shall be less than a quorum present, the majority of those present shall adjourn the meeting to a new date. At any such adjourned

meeting at which a quorum is present, any business which may have been transacted at the original meeting may be transacted without further notice.

5.3. Joinder in Meetings by Approval of Minutes. The transaction of any business at any meeting of the Board, however called and noticed, or wherever held, shall be as valid as if transacted at a meeting duly held after regular call and notice, if (i) a quorum is present; and (ii) either before or after the meeting, each Trustee signs a written waiver of notice, or a consent to the holding of the meeting, or an approval of the minutes thereof or of any resolution adopted at such meeting. All such waivers, consents or approvals, shall be in writing and filed with the Secretary and made a part of the minutes of the meeting even though filed subsequent thereto.

5.4. Non-Waiver. All the rights, duties and privileges of the Board shall be deemed to be continuing and shall not be exhausted by any single act or series of acts. To the same extent, the failure to use or employ any remedy or right hereunder or hereafter granted shall not preclude its exercise in the future nor shall any custom bind the Board.

5.5. Consent in Lieu of Meeting and Vote. Despite anything to the contrary in these By-Laws, the Certificate of Incorporation or the Declaration, the entire Board shall have the power to take action on any matter on which it is authorized to act, without the necessity of a formal meeting and vote if the entire Board, or all the Trustees empowered to act, whichever the case may be, shall consent in writing to such action.

5.6. Meetings Open to Owners; Notice.

(a) All Board Meetings shall be open to attendance by all Owners, subject to the following exceptions set forth in N.J.S.A. 46:8B-13a and N.J.A.C. 5:20-1.1, as now or hereafter amended:

(b) The provisions of (a) above notwithstanding, the Board may exclude or restrict attendance at those meetings, or portions of meetings, at which any of the following matters are to be discussed.

1. Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy;

2. Any pending or anticipated litigation or contract negotiations;

3. Any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer; or

4. Any matter involving the employment, promotion, discipline or dismissal of a specific officer or employee of the association.

Adequate written notice of the time and place of all such open meetings shall be given by the Board to all Unit Owners at least forty-eight (48) hours in advance of such meeting in the manner required by N.J.A.C. 5:20-1.2(b). Moreover, the Board shall also within seven (7) days following the Annual Meeting of the Association post and maintain position throughout the year, mail to at least two newspapers having general circulation in the Community and file with the administrator of the business office of the Association a schedule of the regular Board Meetings to be held in the succeeding year and make appropriate revisions thereto, all as required by N.J.A.C. 5:20-1.2(c).

ARTICLE VI

POWERS AND DUTIES OF BOARD OF TRUSTEES

6.1. General Powers and Privileges. Subject to the Declaration, Certificate of Incorporation and these By-Laws, the Association may do all it is legally entitled to do under the laws applicable to its form of organization. The Association shall discharge its powers in a manner that protects and furthers the health, safety and general welfare of the residents of the Community. The Association shall provide a fair and efficient procedure for the resolution of disputes between individual Owners and the Association, and between different Owners, that shall be readily available as an alternative to litigation.

The property, affairs and business of the Association shall be managed by the Board, which shall have all those powers granted to it by the Declaration, the Certificate of Incorporation, these By-Laws, and by law. The Board shall have the powers to maintain and administer the Common Property, to enforce the Covenants and Restrictions governing the Common Property and to collect and disburse all assessments and charges necessary for such maintenance, administration and enforcement.

6.2. Duties and Responsibilities. It shall be the affirmative and perpetual obligation and duty of the Board to perform the following:

(a) To cause the Common Property to be maintained to accepted standards as the Board may deem appropriate. All repairs and replacements shall be substantially similar to the original application and installation and shall be of first-class quality; and

(b) To investigate, hire, pay, supervise and discharge the personnel necessary to be employed, and provide the equipment and materials necessary, in order to properly maintain and operate the Common Property and exercise its other powers and duties as contemplated by the Declaration, the Certificate of Incorporation and these By-Laws. Compensation for the services of such employees (as evidenced by certified payroll) shall be considered an operating expense of the Association; and

(c) To cause to be kept a complete record of all its acts and corporate affairs and to present a summary report thereof to the Members at the annual meeting or at any special meeting when requested in writing at least twenty-one (21) days in advance by members representing at least fifty (50) percent of the total outstanding votes of the Association or to make available, during regular business hours, the complete Association records to any Member, when requested in writing at least twenty-one (21) days in advance; and

(d) To allocate common surplus or make repairs, additions, improvements to, or restoration of the Common Property in accordance with the

provisions of these By-Laws and the Declaration after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings; and

(e) To take such action as may be necessary to comply promptly with any and all orders or requirements affecting the Common Property which are placed thereon by any federal, state, county or municipal authority having jurisdiction thereover, or order of the Board of Fire Underwriters or other similar bodies; and

(f) To manage the fiscal affairs of the Association as herein provided in Article VII; and

(g) To place and keep in force all insurance coverages required to be maintained by the Association, including, but not limited to:

(i) Physical Damage Insurance. To the extent applicable and available in the normal commercial marketplace, broad form insurance against loss by fire and against loss by lightning, windstorm and other risks normally included within all risk extended coverage, including vandalism and malicious mischief, insuring all Common Property, together with all service machinery appurtenant thereto, and covering the interest of the Association, the Board, and all Members and any Mortgagees who have requested the Association in writing to be named as loss payee, as their respective interests may appear, in an amount equal to the full replacement value of the Common Property (exclusive of foundations and footings), without deduction for depreciation. Each policy shall contain a standard mortgagee clause in favor of each applicable Mortgagee, which shall provide that the loss, if any, thereunder, shall be payable to each applicable Mortgagee as its interest may appear. Prior to obtaining any renewal of a policy of fire insurance, the Board shall obtain an appraisal or other written evaluation of an insurance broker licensed to conduct business in New Jersey or other qualified expert as to the full replacement value of the Common Property and the improvements located thereon, without deduction for

depreciation, for the purposes of determining the amount of fire insurance to be effected pursuant to this subparagraph. The amount of any deductible and the responsibility for payment of same shall be determined by the Board, in its sole discretion.

(ii) Public Liability Insurance. To the extent obtainable in the normal commercial marketplace, public liability insurance for personal injury and death from accidents occurring within the Common Property (and any other areas which the Board may deem advisable), and the defense of any actions brought by injury or death of a person or damage to property, occurring within such areas, and not arising by reason of any act or negligence of any individual Member. Said insurance shall be in such limits as the Board may, from time to time, determine, covering each Member of the Board, the managing agent, the manager, and each one insured against another. Such public liability insurance shall be in a single limit of not less than \$1,000,000.00 per occurrence for claims of personal injury or for property damage arising out of any one occurrence. The Board shall review such limits at least once a year.

(iii) Trustees and Officers Liability Insurance. Liability insurance indemnifying the Trustees, Officers and Committee Members of the Association against the liability for errors and omissions occurring in connection with the performance of their duties, with any deductible amount to be in the sole discretion of the Board.

(iv) Workers Compensation Insurance. Workers Compensation and New Jersey disability benefits insurance as required by law.

(v) Vehicular Liability Insurance. To the extent applicable and obtainable in the normal commercial marketplace, vehicular liability insurance to cover all motor vehicles owned or operated by the Association.

(vi) Employee Dishonesty Insurance and Fidelity Bonds. Employee Dishonesty Insurance and Fidelity Bonds covering the theft or

misappropriation of association funds by any officer, director, employee or agent of the Association.

(vii) Other Insurance. Such other insurance as the Board may determine.

All physical damage policies shall: (i) provide that adjustment of loss shall be made by the Board with the approval of the Insurance Trustee, if any, and that the net proceeds thereof, if \$25,000.00 or less shall be payable to the Board, and if more than \$25,000.00 shall be payable to the Insurance Trustee if any; (ii) require that the proceeds of physical damage insurance apply to the restoration of such Common Property and service machinery as is required by the Declaration and these By-Laws; (iii) to the extent obtainable contain agreed amount and inflation guard endorsements; (iv) provide that the insurance will not be prejudiced by any act or omission of individual members that are not under the control of the Association; (v) provide that the policy will be primary, even if insurance covering the same loss is held by any Member(s); (vi) to the extent obtainable contain waivers of subrogation and waivers of any defense based on co-insurance or of invalidity arising from any acts of the insured; and (vii) provide that such policies may not be cancelled without at least thirty (30) days prior written notice to all of the named insureds, including all Members and Mortgagees.

Any insurance maintained by the Board may provide for such deductible amount as the Board may determine. Despite any other provisions of this subparagraph, the Association shall not be required to provide any type or amount of insurance not commonly available in the normal commercial marketplace.

Members shall not be prohibited from carrying insurance for their own benefit provided that all such policies shall contain waivers of subrogation; and, further provided that the liability of the carriers issuing insurance obtained by the Board shall not be affected or diminished by reason of any such additional insurance carried by any Member.

ARTICLE VII

FISCAL MANAGEMENT

7.1. Annual Common Expense Assessments. It shall be an affirmative and perpetual obligation of the Board, in its sole discretion, to fix annual Common Expense assessments in an amount at least sufficient to discharge its duties as contemplated by the Declaration or these By-Laws. Said assessment shall reflect the anticipated operating expenditures and repair and replacement reserve accumulation requirements for the next ensuing fiscal year. Every Owner, by acceptance of a deed or other conveyance for a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association all assessments and all fines and other charges contemplated herein.

7.2. Liability for Assessments. No Owner may waive or otherwise avoid liability for payment of Common Expense assessments by non-use of the Common Property. Each assessment and all fines and other charges shall be a continuing lien upon the Lot against which it was made and shall also be the joint and several personal obligation of the owner of such Lot at the time when the assessment, fine or other charge fell due, and of each subsequent record owner of such Lot, together with such interest thereon as may be permitted by law and cost of collection thereof (including reasonable attorney's fees). Liens for unpaid assessments, fines or other charges may be foreclosed by suit brought in the name of the Association in the same manner as a foreclosure of a mortgage on real property. Suit to recover a money judgment for unpaid assessments, fines or other charges may also be maintained without waiving the lien securing same.

7.3. Determination of Common Expenses. The amount of money for Common Expenses deemed necessary by the 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 Board.

7.4. Annual Common Expense Assessment Not Made. If an annual Common Expense assessment is not made as required, an assessment shall be presumed to have been made in the amount of the last prior year's assessment, and any installments of such annual Common Expense assessments shall be due upon each installment payment date until the new annual Common Expense assessment is made.

7.5. Notice of Annual Common Expense Assessments. The Board shall cause to be prepared annually, at least thirty (30) days in advance of the due date of the first annual Common Expense assessment installment for each fiscal year, a list of the Lots and the annual Common Expense assessment applicable to each, according to the names of the Owners. This list shall be kept in the Office of the Association and shall be open to inspection, upon request, by any Owner. Written notice of the annual Common Expense assessments shall be sent by mail or delivered to every Owner.

7.6. Due Dates of Annual Common Expense Assessment. Annual Common Expense assessments shall be made for a yearly period to be determined by the Board, and shall be payable in advance in monthly installments or in such other installments as may be established by the Board. Upon the conveyance of title to a Lot, the portion of the then current annual Common Expense assessment payable by the new Owner shall be an amount which bears the same relationship to the annual Common Expense assessment as the remaining number of months in the then current annual Common Expense assessment period bears to twelve. Such annual Common Expense assessment or portion thereof for which a new Owner is liable shall be immediately due upon such owner's acquisition of title.

7.7. Special Assessments. In addition to the other Common Expense assessments herein authorized, the Board may levy, in any assessment year, a special Common Expense assessment, for the purpose of defraying in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the described capital facility upon the Common Property, including the necessary furniture, fixtures, equipment, and other personal property related

thereto, or for any other lawful purpose, provided that any such special assessment shall receive the assent of two thirds (2/3) of the votes eligible to be cast by the Members, at a meeting duly called for this purpose. Written notice of such a meeting, stating the purpose of the meeting, shall be sent to all Owners no less than thirty (30) days in advance.

7.8. Disbursements. The Board shall take and hold the funds as collected and shall disburse the same for the purposes and in the manner set forth herein and as required by the Declaration, Certificate of Incorporation and applicable law. the purpose of the meeting, shall be sent to all Owners no less than thirty (30) days in advance.

7.9. Depositories. The depository of the Association shall be such a bank or banks as shall be designated from time to time by the Board and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such parties as are authorized by the Board, provided, however, that all checks over \$5,000 shall require at least two (2) signatures. If a managing agent is authorized to sign checks on behalf of the Association for payment of the obligations of the Association, a proper fidelity bond must be furnished to the Association.

7.10. Accounts. The receipts and expenditures of the Association shall be Common Expense assessments and Common Expenses respectively, and shall be credited and charged to accounts under the following classifications as the Board shall deem appropriate, all of which expenditures shall be Common Expenses:

(a) Current expenses, which shall include all expenditures within the year for which the budget is made, including reasonable allowances for contingencies and working funds. At the end of each year the unexpended amount remaining in this account applicable to a particular budget shall be applied to reduce the assessments for current expenses for the succeeding year, or may be distributed to the current Members in the same manner as assessed, as the Board, in its sole discretion, shall determine.

(b) Operations, which shall include all funds from the use of the Common Property or from any other sources. Only the additional direct expense required by any revenue producing operation will be charged to this account, and any surplus from any operation or otherwise shall be used to reduce the assessments for current expenses for the succeeding year, or at the discretion of the Board, distributed to the current Members in the same manner as assessed. Losses from the operations or otherwise shall be met by special assessments against Members, which assessments may be made in advance in order to provide a working fund.

The Board may, in its sole discretion, maintain the remaining funds in one or more consolidated accounts. As to each consolidated account, the division into the various accounts set forth above need be made only on the records of the Association.

7.11. Acceleration of Assessment Installment Upon Default. If a Member shall be in default in the payment of an installment upon any type of assessment, the Board may notify the delinquent Member that the remaining installments of the assessment shall be accelerated if the delinquent installment has not been paid by a date stated in the Notice, which date shall not be less than five (5) days after delivery of the notice to the Member, or not less than ten (10) days after the mailing of such notice to him by registered or certified mail, whichever shall first occur. If such default shall continue for a period of thirty (30) days then the Board shall be obligated to: (i) accelerate the remaining installments of the assessment; (ii) file a lien for such accelerated assessments, and (iii) notify any mortgagee of the Lot affected by such default if such mortgagee has requested such notice from the Association in writing. If said default continues for a period of one hundred and eighty (180) days, then the Board shall have the right to foreclose the foregoing lien pursuant to law and/or commence a suit against the appropriate Lot Owner(s) to collect said assessment.

7.12. Interest and Counsel Fees. The Board, at its option, shall have the right in connection with the collection of any Common Expense assessment, or other charge, to impose an interest charge at the maximum rate permitted by law if such payment of is made after a date certain stated in such notice. In the event the Board shall effectuate collection of such charges by resort to counsel, the Board may add to the charge or charges the sum of twenty (20%) percent of the gross amount due as counsel fees, in addition to such other costs as may be allowable by law.

7.13. Assessment of Expenses in Actions By or Against Association. In the case of any action or proceeding brought or defended by the Association pursuant to the provisions of these By-Laws, the reasonable costs and expenses of preparation and litigation, including attorney's fees, shall be a Common Expense allocated to all Members.

(a) Any judgments recovered by the Association in any action or proceeding brought hereunder, including costs, penalties or damages, shall be deemed a special fund to be applied to:

(i) The payment of unpaid litigation expenses;

(ii) refunding to the Members the cost and expenses of litigation advanced by them;

(iii) Common Expenses, if the recovery thereof was the purpose of the litigation;

(iv) repair or reconstruction of the Common Property if recovery of damages to same was the motivation for the litigation; and

(v) any amount not applied to (i), (ii), (iii), and (iv) above shall be at the discretion of the Board treated either as:

a) a common surplus which shall be allocated and distributed in the same proportion as Common Expenses are assessed to the Members, or

b) a set-off against the annual Common Expense assessments generally. Despite the foregoing, if a Member(s), the Board or any other person or legal entity affected by any such distribution shall assert that the damages sustained or the diminution in value suffered by a Member(s) was disproportionate to his or their interest in the Common Property, in that event the matter shall be submitted to binding arbitration to be decided in accordance with the procedures set forth in Article XIV hereof.

c) All Common Expenses received and to be received by the Board, for the purpose of paying any judgment obtained against the Association and the right to receive such funds, shall constitute trust funds and the same shall be expended first for such purpose before expending any part of the same for any other purpose.

7.14. Annual Audit. The Board shall submit the books, records of the Association to an annual audit by an independent certified public accountant who shall audit the same and render a report thereon in writing to the Board and in summary form to all Members and such Mortgagee(s) or other persons, firms or corporations as may be entitled to same. The audit shall cover the operating budget.

7.15. Examination of Books. Each Member shall be permitted to examine the books of account of the Board by appointment at a reasonable time on business days; provided, however, that the Treasurer has been given at least twenty-one (21) days prior written notice of the Member's desire to make such an examination.

ARTICLE VIII

OFFICERS

8.1. Designation. The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer. All officers shall be members of the Board including any appointed Assistant Treasurers and Assistant Secretaries that may be necessary in the judgment of the Board. Any

two (2) offices, except that of President and Vice President, may be held by one person.

8.2. Election of Officers. The officers of the Association shall be elected annually by the Board at the first Board meeting following each annual meeting and such officers shall hold office at the pleasure of the Board.

8.3. Removal of Officers. Upon an affirmative vote of a majority of the full number of Trustees, any officer may be removed, either with or without cause, after opportunity for a hearing, and his successor elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.

8.4. Duties and Responsibilities of Officers.

(a) President. The President shall be the chief executive officer of the Association; shall preside at all meetings of the Association and of the Board; and shall have all of the general powers and duties which are usually vested in the office of President of a non-profit corporation.

(b) Vice President. The Vice President shall take the place of the President and perform the President's duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other Trustee to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed by the Board.

(c) Secretary. The Secretary shall cause the minutes of all meetings of the Board and of the Members of the Association to be kept; shall have charge of such books and papers as the Board may direct; and shall, in general, perform all the duties incident to the office of the Secretary.

(d) Treasurer. The Treasurer shall have the ultimate responsibility for the Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. The Treasurer shall be ultimately responsible for

the deposit of all monies and other valuable effects in the name, and to the credit of the Association in such depositories as may from time to time be authorized by the Board.

8.5. Other Duties and Powers. The Officers shall have such other duties, powers and responsibilities as shall, from time to time, be authorized by the Board.

8.6. Eligibility of Trustees. Nothing contained herein shall prohibit a Trustee from being an Officer.

ARTICLE IX

COMPENSATION, INDEMNIFICATION AND EXCULPABILITY OF OFFICERS, TRUSTEES AND COMMITTEE MEMBERS

9.1. Compensation. No compensation shall be paid to the President or the Vice President or any Trustee or committee member for acting as such officer or Trustee or committee member. The Secretary and/or Treasurer may be compensated for their services if the Board determines that such compensation is appropriate. Nothing herein stated shall prevent any officer, Trustee or committee member from being reimbursed for out-of-pocket expenses or compensated for services rendered in any other capacity to or for the Association, provided, however, that any such expenses incurred or services rendered shall have been authorized in advance by the Board.

9.2. Indemnification. Each Trustee, officer and committee member of the Association, shall be indemnified by the Association against the actual amount of net loss, including counsel fees, reasonably incurred by or imposed upon him in connection with any action, suit or proceeding to which he may be a party by reason of his being or having been a Trustee, officer, or committee member of the Association, except as to matters for which he shall be ultimately found in such action to be liable for gross negligence or willful misconduct. In the event of a settlement of any such case, indemnification shall be provided only in connection with such matters covered by the settlement as to which the

Association is advised by counsel that the person to be indemnified had not been guilty of gross negligence or willful misconduct.

9.3. Exculpability. Unless acting in bad faith neither the Board as a body nor any Trustee, officer, or committee member shall be personally liable to any Member in any respect for any action or lack of action arising out of the execution of his office. Each Member shall be bound by the good faith actions of the Board, officers and committee members of the Association, in the execution of the duties of said Trustees, officers and committee members.

ARTICLE X

ENFORCEMENT

10.1. Enforcement. Enforcement of these By-Laws 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 the land of any Member to enforce any lien created by the Declaration, and failure by the Association or any Owner or Member 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. Should either the Association or any of its members at any time fail to enforce the provisions hereof, the Township of Dover or County of Ocean, upon thirty (30) days notice to the Association, shall have the right to institute appropriate legal proceedings in the name of the Association to effect such enforcement.

10.2. Waiver. No restriction, condition, obligation or covenant contained in the Declaration, these By-Laws or the Rules and Regulations shall be deemed to have been abrogated or waived by reason of the failure to enforce the same irrespective of the number of violations or breaches thereof which may occur.

10.3. Cause of Action. Members shall have a cause of action, to the extent permitted by the laws of New Jersey, against the Association for its failure to act in accordance with the Declaration, Certificate of Incorporation, these By-Laws, and Rules and Regulations or any formal decisions of the Association.

10.4. Invalidity. The invalidity of any part of these By-Laws shall not impair or affect in any manner the enforceability or affect in any other manner the remaining provisions of these By-Laws.

10.5. Compliance By Members. Each Member shall comply with and shall assume ownership or occupancy subject to the laws, rules and regulations of governmental authorities having jurisdiction over the Community. Failure to comply with any of the foregoing shall be grounds for commencement of action for the recovery of damages, or for injunctive relief, or both, by the Developer, the Association, or any Member, in any court or administrative tribunal having jurisdiction, against any person or persons, firm or corporation violating or attempting to violate or circumvent any of the aforesaid, and against any Member, to enforce any provision of the Declaration, these By-Laws or the Rules and Regulations. Failure by the Association or any Member to enforce any such provision for any period of time shall in no event be deemed a waiver or estoppel of the right to thereafter enforce the same.

ARTICLE XI

CONFLICT

11.1. General. Despite anything herein to the contrary, if any provision of these By-Laws is in conflict with or contradiction of the Declaration, the Certificate of Incorporation, or with the requirements of any law, then the Declaration, the Certificate of Incorporation or the requirements of the law shall be deemed to control. In the case of any conflict of the Rules and Regulations with these By-Laws, then these By-Laws shall be deemed to control.

ARTICLE XII

AMENDMENTS

These By-Laws, or any of them, may be amended or repealed, or new By-Laws may be adopted, at any meeting of the Association duly held for such purpose, and previous to which written notice to Members of the exact language of the amendment or of the repeal shall have been sent, a quorum being present, by an affirmative vote of 51% in number and in interest of the votes entitled to be cast in person or by proxy, except that the obligation or the proportionate responsibility for the payment of Common Expenses with respect to the Common Property may not be changed by reason of any such amendment, repeal or new By-Law.

ARTICLE XIII

NOTICE

Any notice required to be sent to any Member under the provisions of the Declaration, Certificate of Incorporation or these By-Laws shall be deemed to have been properly sent and notice thereby given, when mailed, by regular post with postage prepaid, addressed to the Member at the last known post office address of the person who appears as a member on the records of the Association at the time of such mailing. Notice to one of two or more Co-owners of a Lot shall constitute notice to all Co-owners. It shall be the obligation of every Member to immediately notify the Secretary of the Association in writing of any change of address. Valid notice may also be given to members by (i) personal delivery to any occupant of said Lot over 14 years of age or (ii) by affixing said notice to or sliding same under the front door of any Lot.

ARTICLE XIV

ARBITRATION AND MEDIATION

Any arbitration provided for in these By-Laws shall be conducted before one (1) arbitrator in Ocean County, New Jersey by the American Arbitration Association, in accordance with its Rules then obtaining and the decision

rendered in such arbitration shall be binding upon the parties and may be entered in any court having jurisdiction. The Board may also require any disputes between or among its Members and/or the Association regarding the Association or its governing documents to be submitted to non-binding mediation in accordance with the then Rules of the American Arbitration Association, which mediation shall be in Ocean County. All expenses of arbitration or mediation hereunder including the fees and expenses of counsel and experts shall be borne equally by the parties involved.

ARTICLE XV

CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words "Whitesville Meadows West Homeowners Association".

ARTICLE XVI

ROBERTS RULES OF ORDER

Except to the extent that they conflict with the provisions of the Declaration, these By-Laws, the Association's Certificate of Incorporation or any applicable laws, Roberts Rules of Order shall govern the conduct of all meetings of the members and the Board of the Association.