

DECLARATION OF COVENANTS AND RESTRICTIONS

This Declaration, made the 15th day of March, 1994, by V & S Precast Corp., having its principal office at 150 Airport Road, Lakewood, New Jersey, hereinafter called "Developer."

W I T N E S S E T H:

WHEREAS, Developer is the Owner of the property hereinafter described located in the Township of Dover, County of Ocean and State of New Jersey and is shown on the Tax Maps of the Township of Dover as Block 320, Lot 1 and Block 298, Lots 8.01, 8.02 and 116 and desires to create thereon a development consisting of one hundred and twenty-five (125) single family dwellings and Lots and certain Common Property, as hereinafter defined; and

WHEREAS, Developer desires to provide for the permanent maintenance of the two detention basins and pedestrian pathways located on said Common Property, and to this end, desires to subject all of the Property hereinafter described to the Covenants, Restrictions, easements, charges and items, hereinafter set forth, each and all at which is and are hereby declared to be for the benefit of said Common Property and each and every owner of any and all portions thereof; and

WHEREAS, Developer has deemed it advisable to create, an entity to which shall be delegated and assigned the power and authority to maintain and administer the Common Property, to administer the Common Property, to administer and 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, all as hereinafter provided; and

WHEREAS, Developer has caused or will cause to be incorporated under the laws of the State of New Jersey, a not-for-profit corporation known and designated as Whitesville Meadows West Homeowners Association, Inc. as the entity to perform the functions aforesaid, and which are hereinafter more fully described.

NOW, THEREFORE, Developer declares that the Common Property hereinafter described, is and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, and obligations.

ARTICLE I

Definitions

The following words and terms, when used in this Declaration or any Supplemental Declaration (unless the context clearly shall indicate otherwise), the Certificate of Incorporation or the By-Laws of the Association, shall have the following meanings:

(a) "Certificate of Incorporation" shall mean and refer to the Certificate of Incorporation of the Whitesville Meadows West Homeowners Association, Inc.

(b) "Association" shall mean and refer to the Whitesville Meadows West Homeowners Association, Inc., a New Jersey not-for-profit corporation, its successors and assigns.

(c) "Board" or "Board of Trustees" shall mean and refer to the Board of Trustees of the Association.

(d) "By-Laws" shall mean and refer to the By-Laws of the Association.

(e) "Common Expenses" shall mean and refer to these expenses which are incurred by the Association in fulfilling its lawful responsibilities.

(f) "Common Property" shall mean the property described as Common Open Space on each of the Final Subdivision Plats for the Property, together with all facilities thereon, or any real or personal property owned by the Association.

(g) "Date of Commencement" shall mean and refer to the date upon which the Developer, its successors or assigns shall convey to the Association all of the Common Property.

(h) "Final Subdivision Plat" shall mean and refer to each such plat prepared and filed according to law for each of the Sections 8 through 12 of Whitesville Meadows.

(i) "Declaration" shall mean and refer to this Declaration of Covenants and Restrictions.

(j) "Lot" shall mean and refer to any individual residential building lot shown on the Final Subdivision Plat of the Property.

(k) "Member" shall mean and refer to all those Lot Owners who are members of the Association.

(l) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot.

(m) "Property" shall mean and refer to the real property included within the Final Subdivision Plats for Section 8 through 12 and described in Exhibit A attached to this Declaration.

(n) "Developer" shall mean and refer to V & S Precast Corp., its successors and assigns.

ARTICLE II

Property Subject to this Declaration

Section 1. Member's Easement of Enjoyment. Subject to the provisions of this Declaration, the Certificate of Incorporation, By-Laws and the rules and regulations of the Association, every Member shall have a right and easement of enjoyment in and to the Common Property and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Title to Common Property. Developer may retain the legal title to the Common Property until such time as, in the judgment of the Developer, the Association is able to maintain same. Notwithstanding any provisions herein to the contrary, the Developer hereby covenants for itself, its successors and assigns, that it shall convey to the Association all of the Common Property not later than two (2) years from the date of the recording of this Declaration and that until the conveyance to the Association of such Common Property, the Developer will maintain all such Common Property to which it retains title.

Section 3. Extent of Members' Easements. The rights of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, as provided in the By-Laws, to promulgate rules and regulations for the use and the enjoyment of the Common Property or to suspend the enjoyment and voting rights of any Member for any period during which any assessment remains unpaid, or for any period during which any infractions of its published rules and regulations continues, it being understood that any suspension for either non-payment of any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligations to pay the assessment; and

(b) The right of the Association to charge fees for the use of the Common Property;

(c) The right of the Association to dedicate or transfer all or any part of the Common Property to any municipal, county, state, federal or other public agency, authority, or utility, for such purposes and subject to such conditions as may be agreed upon by the Members, provided that no such dedication, transfer, or determination as to the purposes of or as to the conditions of such dedication or transfer shall become effective unless such

dedication, transfer and determination as to purpose and conditions thereof shall be authorized by the vote in person or by proxy of two-thirds (2/3) of all of the votes eligible to be cast by all of the members of the Association, and unless written notice of the proposed resolution authorizing such action is sent to every Member at least ninety (90) days in advance of the scheduled meeting, at which such action is taken. A true copy of such resolution together with a certificate of a result of the vote taken thereof shall be made and acknowledged by the President or Vice President and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument of dedication of transfer affecting the Common Property, prior to the recording thereof in the office of the Ocean County Clerk. Such certificate shall be conclusive evidence of authorization by the membership.

(d) The following easements are hereby established:

(i) A blanket perpetual and non-exclusive easement in, upon, over, across and through the Common Property for the purpose of the installation, maintenance, repair and replacement of all sewer, drainage, water, power and telephone pipes, lines, mains, conduits, waters, poles, transformers, master television antennas or cable television facilities and any and all other equipment or machinery necessary or incidental to the proper functioning of any utility system serving the Property, which easement shall be for the benefit of the Developer, or any governmental agency or utility company which requires same for the purpose of furnishing one or more of the foregoing services.

(ii) A blanket and non-exclusive easement in, upon, through and over the Common Property for the purpose of construction, installation, maintenance and repair of any improvements on the Lots or Common Property, and for ingress and egress thereto, which easement shall be to the

benefit of the Developer, its successors and assigns who shall be engaged in the construction, development and sale of residential dwelling units on the Property.

(iii) A blanket, perpetual and non-exclusive easement of unobstructed ingress and egress in, upon, over, across and through the Common Property to the Township of Dover, County of Ocean, the Association, their respective officers, agents and employees and all policemen, firemen, and ambulance personnel in the proper performance of their respective duties.

ARTICLE IV -

Assessments

Section 1. Creation of the Lien. 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 such sums, by way of annual or special assessments or charges as hereinafter more particularly described. Each such assessment, together with such interest thereon and cost of collection thereof (including reasonable attorney fees) shall be a continuing lien upon the Lot against which each such assessment is made and shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due. In the event that the Association should at any time fail to discharge its obligations to maintain any portion of the Property as required by this Declaration or to enforce provisions hereof, the Township of Dover or County of Ocean shall have the right to so maintain the Property or to enforce such provisions in the name, place and stead of the Association. The assumption of such maintenance responsibility shall be in accordance with the procedures set forth in R.S. 40:55D-43(b). The cost of same shall be assessed, enforced and collected in accordance with the provisions of R.S. 40:55D-43(c).

No Owner may waive or otherwise avoid liability for the aforesaid assessments by non-use of the Common Property.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for promoting the health, safety, pleasure and welfare of the owners of Lots and costs and expenses incident to the operation of the Association, including, without limitation, the maintenance and repair of two detention basins and pedestrian pathways located on the Common Property, the maintenance of services furnished by the Association, the repair and replacement of services furnished by the Association, the repair and replacement of facilities on the Common Property, payment of all taxes and insurance premiums, and all costs and expenses incidental to the operation and administration of the Association and its facilities and services.

Section 3. Amount of Assessments. It shall be an affirmative obligation of the Association and its Board of Trustees to fix assessments in an amount sufficient to maintain and operate the Common Property and to pay all taxes thereon. Such assessments shall be borne equally among all Lots and in the event the Association does not pay the real estate taxes due on the Common Property, the municipality shall have the right to collect all of the said unpaid taxes directly from each Lot Owner.

The initial annual assessment payable to the Association at closing by the purchaser of any Lot from the Developer shall be One Hundred Dollars (\$100.00). Thereafter, Members shall pay to the Association Forty-Eight Dollars (\$48.00) annually. If, after the Date of Commencement, the Developer still retains title to unsold lots, the Developer shall not be obligated to pay to the Association the annual assessment herein described. The amount of such assessments may be amended and modified in the sound discretion of the Board of Trustees.

Section 4. Date of Commencement of Annual Assessments and Due Dates.

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

Section 5. Special Assessments. In addition to the annual assessments authorized in Section 3 of this title, the Association may levy, in any assessment year, a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital facility upon the Common Property, including the necessary furniture, fixtures, equipment, and other personal property related thereto, or other lawful purpose, provided that any such special assessment shall receive the assent of two-thirds (2/3) of all of the votes eligible to be cast by all of the Members, at a meeting duly held for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and which notice shall set forth the purpose of the meeting.

Section 6. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to any lien for past due and unpaid taxes and the lien of any first mortgage or mortgages now or hereafter placed upon any Lot, provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of any such Lot pursuant to a decree of foreclosure, or any proceeding in lieu of foreclosure. Such sale or transfer shall not relieve any such lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

If a holder of a mortgage or record or other purchaser of a Lot obtains title to such Lot as a result of foreclosure of such first mortgage (or

by a deed of conveyance in lieu thereof), such acquirer of title, his successors and assigns shall not be liable for the assessments by the Association pertaining to such Lot or chargeable to the former Owner thereof which became due prior to acquisition of title as a result of the foreclosure. Such unpaid assessments shall be deemed to be Common Expenses collectible from all of the remaining Lot Owners including such acquirer, his successors and assigns.

Liens for unpaid assessments may be foreclosed by and brought in the name of the Association in the same manner as a foreclosure of a mortgage on real property. A suit to recover money judgment for unpaid assessments may be maintained without waiving the lien securing same.

Section 7. List of Assessments - Notice of Assessment Certificate as to Payment. The Board shall cause to be prepared, at least thirty (30) days in advance of the due date of each a assessment, a list of the properties and the assessments applicable thereto. The list shall be kept by the Treasurer of the Association and shall be open to inspection, upon request, by any Lot Owner. Written notice of the assessments shall be sent to every Lot Owner subject thereto.

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

If an annual assessment is not made as required, an assessment shall be presumed to have been made in the amount of the most recent full year's assessment, and any installment in such assessments shall be due upon each installment payment date until changed by an amended assessment. In the event

the annual assessment proves to be insufficient, the budget and assessments may be amended at any time by the Board, provided, that nothing herein shall serve to prohibit or prevent the Board from imposing a lump sum assessment in the case of any immediate need or emergency.

Section 8. Acceleration of Assessment Installments and Other Remedies of the Association. If a Member shall be in default in the payment of an installment of an assessment, the Board may accelerate the remaining installments of the assessment upon notice to the Member, and the then unpaid balance of the assessment shall become due upon the date stated in the notice, but not less than five (5) days after delivery of the notice to the 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 of such default if such mortgagee has requested such notice from the Association in writing. If said default continues for a period of one hundred eighty (180) days, then the Board shall have the right to foreclose the foregoing lien pursuant to law and/or to commence a suit against the appropriate Lot Owner(s) to collect said assessment.

Section 9. Interest and Counsel Fees. The Board, at its option, shall have the right in connection with the collection of this, or any other charge, to impose an interest charge at the maximum rate permitted by law if such payment is made after a date certain stated in such notice. In the event that the Board shall effectuate collection of such charges by resort to counsel, the Board may add to the aforesaid charge or charges a sum or sums of twenty (20%) percent of the gross amount due as counsel fees, in addition to such costs allowable by law.

Section 10. Expenditure of Funds. The amount of monies 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.

ARTICLE V

Miscellaneous Services Authorized

Section 1. Services which may be Performed at the Option of the Developer. The Developer shall have the right to provide such facilities on the Common Property as it considers to be advantageous to the Common Property and to the Lot Owners, and the Association shall be obligated to accept such facilities and to properly maintain the same at its expense.

ARTICLE VI

General Provisions

Section 1. Duration. This Declaration shall run with and bind all of the Property, and shall inure to the benefit of and be enforceable by the Association, and the Owners of any portion of this Property, their respective successors, assigns, heirs, executors, administrators, and personal representatives, from the date this Declaration is recorded in the Office of the Ocean County Clerk, in perpetuity.

Section 2. Notice. Any notice required to be sent to any Member or Lot Owner under the provisions of the Declaration of the Certificate of Incorporation or by the By-Laws of the Association shall be deemed to have been properly sent, and notice thereby given, by regular mail, postage prepaid, addressed to the Member or Lot Owner 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

or Owner to immediately notify the Secretary of the Association in writing of any change of address.

Section 3. Enforcement. Enforcement of this Declaration shall be by any appropriate proceeding in law or equity in any court or administrative tribunal having jurisdiction, against any person or persons, firm or corporation violating or attempting to violate or circumvent any provision herein contained, either to restrain or enjoin such violation or threatened violation or to recover damages, and against the land of any Member to enforce any lien created by this Declaration, and failure by the Association of 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.

Section 4. Severability. Should any covenant or restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall not affect the other provisions hereof which are hereby declared to be severable, and which shall remain in full force and effect.

Section 5. Amendment. This Declaration may be amended at any time after the date hereof by a vote of at least two-thirds (2/3) of all Lot Owners at any meeting of the Association duly constituted for such purpose and previous to which written notice to every Lot Owner of the exact language of the Amendment.

shall have been sent at least thirty (30) days in advance, provided, however, no amendment may be effected which would permit (i) the Association or any Lot Owner to be exempted from the payment of any Common Expenses or (ii) any action otherwise prohibited by Article XI of the By-Laws; and provided further, that in no event may the Common Property be conveyed to any third person, firm or corporation, without the express consent, by ordinance, of the governing body of the Township of Dover or County of Ocean (or such municipal corporation as may then have zoning and subdivision control jurisdiction over the Common Property).

Section 6. Certificate of Incorporation and By-Laws of the Association. All the provisions of the Certificate of Incorporation and By-Laws of the Association, together with all future amendments thereto, are hereby incorporated by reference.

Section 7. Developer's Power of Attorney. Developer hereby reserves for itself, its successors and assigns, for a period of seven (7) years from the date the first Lot is conveyed to an individual purchaser, or until Developer conveys title to the last Lot, whichever occurs first, the right to execute on behalf of all contract purchasers, Owners, mortgagees, other lienholders or parties claiming a legal or equitable interest in the Association, any such agreements, documents, amendments or supplements to the above described documents which may be so required by any Institutional Lender, governmental or quasi-governmental agency or title insurance company.

(a) Appointment. By acceptance of a deed to any Lot or by the acceptance of any other legal or equitable interest in the Association, each and every such contract purchaser, Owner, mortgagee, or other lienholder or party having a legal or equitable interest in the Association does automatically and irrevocably name, constitute, appoint and confirm Developer, its successors and

assigns, as attorney-in-fact for the purpose of executing such agreements, documents, amendments, supplements or other instrument(s) necessary to effect the foregoing subject to the limitations set forth above in the preceding paragraph and Section 7(b).

(b) Limitations. No such agreement, document, amendment or supplement which adversely affects the value of any Lot or materially increases the financial obligations of the Owner or reserves any additional or special privileges to the Developer or the Association shall be made without the prior written consent of the affected Owner(s). No such agreement, document, amendment or supplement shall adversely affect the priority or validity of any mortgage which encumbers any Lot, without the prior written consent of the owners of all such mortgages. No such agreement, document, amendment or supplement shall revoke or diminish the delegation of any power or duty of the Board.

(c) Duration. The powers of attorney aforesaid are expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the same shall run with the title to any and all Lots and be binding upon the heirs, personal representatives, successors and assigns of any of the foregoing parties. Further, said powers of attorney shall not be affected by the death or disability of any principal and are intended to deliver all right, title and interest of the principal in and to said powers. Said powers of attorney shall be vested in the Developer, its successors and assigns until same effectuate the initial conveyance of all Units or the expiration of the foregoing seven (7) year period, whichever shall first occur. Thereafter, said powers of attorney shall automatically vest in the Association on a perpetual basis and may be exercised by the Board.

IN WITNESS WHEREOF, the Developer has caused this instrument be executed the day and year first above written, by its President and attested by its Secretary, and the corporate seal affixed pursuant to a resolution duly and unanimously adopted by the Board of Directors.

ATTEST: V & S PRECAST CORP.

_____, Secretary By: _____, President

STATE OF NEW JERSEY)
)SS.:
COUNTY OF OCEAN)

BE IT REMEMBERED, that on _____, 199____, before me, the subscriber, the undersigned authority, personally appeared who, being by me duly sworn to his oath, deposes and makes proof to my satisfaction that he is the Secretary of the Corporation named in this Declaration of Covenants and Restrictions; that _____ is the President of said Corporation; that the execution, as well as the making of this Declaration of Covenants and Restrictions, has been duly authorized by a proper resolution of the Board of Directors of the said Corporation; that deponent well knows the corporate seal of said Corporation; and that the seal affixed to said Instrument is the proper corporate seal and was thereto affixed and said Declaration of Covenants and Restrictions, signed and delivered by said President as and for the voluntary act and deed of said Corporation, in presence of deponent, who thereupon subscribed his name thereto as attesting witness.

_____, Secretary

Sworn to and subscribed
to before me on this
day of _____, 199____.
