

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR HIGHVIEW**

**ARTICLE I**

**Definitions**

The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meaning:

- A. "Association" shall mean and refer to the Highview Homeowners Association, Inc., or such other nonprofit corporation as the Declarant shall form.
- B. "Common Areas" shall mean and refer to those areas of land designated on the Record Subdivision Plan of HIGHVIEW and are designated on the plot which is recorded in Plot Book and incorporated herein by reference as (1) The roads shown upon the Recorded Plot and therein designated as: Bullrush Court, Cove View, and Burrwood, and (2) the areas marked as follows:
  - (i) Common Area, being a walkway located between lots 15 and 16.
  - (ii) Wetlands contiguous to the development and owned by the development.
  - (iii) Recreation Center area, being located at the entrance to Highview east of Burrwood, north of Bullrush Court, and south of County Route 22.
  - (iv) All areas outside of the numbered lots in HIGHVIEW and not included in (i), (ii) and (iii) above.

All said Common Areas shall be subject to the restrictions, created hereunder, and shall be subject to all easements or rights of way previously granted by the Declarant or its predecessors in title.

- C. "Lot" shall mean and refer to any unimproved or improved lot of land intended and subdivided for a detached single family residence, shown upon the Record Subdivision Plan as a numbered parcel but shall not include the "common Areas" as hereinabove defined.
- D. "Member" shall mean and refer to all those Owners who are members of Highview Homeowners Association, Inc., as provided in Article III of this Declaration.
- E. "Mortgage" shall mean and refer to any mortgage, deed of trust, or similar instrument granted as security for the performance of any obligation.
- F. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, holding fee simple title to any Lot but shall not mean or refer to any mortgages or subsequent holder of a mortgage, unless and until such mortgages or holder has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- G. "Record Subdivision Plan" shall mean and refer to a plot of the subdivided property of record in the Office of the Recorder of Deeds, in and for Sussex County. Such plot describes and depicts HIGHVIEW as subdivided into lots, Common Areas, and roads.

H. "HIGHVIEW" shall mean and refer to the lands shown on the Record Subdivision Plan.

## ARTICLE II

### **MEMBERSHIP AND VOTING**

Section 1. Every person who or entity which is the record Owner of a fee or undivided fee interest in any lot that is the subject of this Declaration shall be deemed to have membership in the Association. Membership shall be appurtenant to and may not be separated from such ownership. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the owner's membership. No owner, whether one or more persons shall have more than one vote ownership per lot owned. The right and privileges of membership, including the right to vote, may be exercised by a member or the member's spouse, but in no event shall more than one vote be cast for each lot.

Section 2. Members shall be all Owners of a lot in the recorded subdivision of HIGHVIEW who shall be entitled to one (1) vote for each Lot. When more than one person holds an interest in any Lot, all such persons shall be Members. Each lot owner shall, upon conveyance of a lot to him, have created with his lot ownership a mandatory membership in the Association. The vote of such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot. Upon the recordation of a deed for each lot that owner shall become, for so long as he is an owner, a member of the Association and each such owner, upon transfer of his lot to a subsequent owner, shall then cease to be a member and the acquiring owner shall then become the replacement member. Voting in the Association shall require for affirmative action an affirmative vote of a majority of the votes combined (i.e. a majority of the total lots)

### **PURPOSE AND DUTIES**

Section 1. The Association shall have as its purpose, and as its duty, promoting the recreation, health, safety and welfare of the residents and owners of HIGHVIEW, including but not limited to the improvement and maintenance of the Common Areas (including common open space area, easements, roads, etc.); the enforcement of the covenants, conditions, and restrictions of HIGHVIEW; and control of construction through restrictions of HIGHVIEW; and control of construction through the Architectural Review Committee (as hereinafter provided).

Section 2. The association shall:

- (a) Operate, reinstall, maintain and replace, for the use and benefit of all Members of the Association, all Common Areas and facilities and improvements developed thereon, including the sign and entranceway improvements, road improvements and any recreational improvements
- (b) Maintain and install all facilities on, mow the grass on, and replace all dead or destroyed original landscaping on, all Common Areas.
- (c) When permitted as provided hereinafter, appoint an Architectural Review Committee.
- (d) Enforce the covenants, conditions and restrictions herein.

ARTICLE III  
**MEETINGS OF MEMBERS**

Section 1. **Annual Meetings.** Each regular annual meeting shall be held on the first Saturday of October of each year at the hour of eleven (11) o'clock, a.m. at a convenient location for the residents of Highview as designated by the Board of Directors. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour of the next Saturday or 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 Directors, or upon written request of one-fourth (1/4) of the voting members.

Section 3. **Notice of Meeting.** 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 fifteen (15) days before such meeting to each member entitled to vote thereat, 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 vote, or of proxies entitled to vote, require an affirmative vote of a majority of the votes once that vote equals or exceeds the vote of 33% of the membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation 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.

Section 5. **Proxies.** At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of this Lot.

ARTICLE IV  
**BOARD OF DIRECTORS**  
**TERM OF OFFICE**

Section 1. **Affairs of this Association.** The affairs of this Association shall be managed by a Board of three (3) directors who are required to be members of the Association.

Section 2. **Term of Office.** At the first annual meeting the members shall elect one director for a term of one year, one director for a term of two years, and one director for a term of three years; and at each annual meeting thereafter the members shall elect three (3) directors for a term of three years.

Section 3. **Removal.** Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without A Meeting. The directors 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 directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

#### ARTICLE V NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nominations may be made from the floor at the organizational meeting. Thereafter, a Nominating Committee shall make all nominations for election to the Board of Directors. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors, prior to each annual 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 Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members or nonmembers (only if the nonmembers are hired to manage the Highview Home Owners Association and or its facilities).

Section 2. Elections. Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

#### ARTICLE VI MEETING OF THE DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held every fourth month 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 Directors shall be held when called by the President of the Association, or by any two directors, after not less than three (3) days notice to each Director.

Section 3. Quorum of Directors. A majority of the number of directors shall constitute a quorum for the transaction of every act or decision done or made by a majority of the directors 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 DIRECTORS

**Section 1. Powers.** The Board of Directors shall have power to: Adopt and publish rules and regulations governing the use of any Common Area and facilities, and the personal conduct of the members and their guests thereon, then to establish penalties for the infraction thereof; 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; Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors.

**Section 2. Duties.** It shall be the duty of the Board of Directors to: 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 (1/4) of the membership; Supervise all officers, agents and employees of this association, and to see that their duties are Properly performed; As authorized by the Declaration to:

- a) Fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period; Send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; Foreclose the lien against any property for which assessments are not paid within thirty (30) days after the due date or to bring an action at law against the Owner personally obligated to pay the same.
- b) Issue, or to cause an appropriate officer to issue, upon demand by any voting member, 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; Procure and maintain adequate liability and hazard insurance on property owned by the Association; Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; Cause any Common Area to be maintained.

## ARTICLE VIII OFFICERS AND THEIR DUTIES

**Section 1. Enumeration of Offices.** The officers of this Association shall be a president and vice president, who shall at all times be members of the Board of Directors, 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 Directors 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, 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 his Article.

Section 8. Duties. The Duties of the officers are as follows:

#### President

The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instrument and shall co-sign all checks and promissory notes.

#### Vice-President

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

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 of the Association and affix it on all papers requiring said 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

The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; 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 a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

### ARTICLE IX

#### COMMITTEES

The Association shall appoint a Nominating Committee as provided in these By-Laws, in addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

## Assessments

**Section 1. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the property, and particularly for the improvement and maintenance of the Common Areas located in the Property, and for services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas, including, but not limited to, the payment of taxes and insurance thereon, and repair, replacement and additions thereto, for the cost of labor, equipment, materials, management and supervision thereof, and for operating reserve funds and reserve funds for repair and replacement of the Common Areas and facilities thereon. Assessments may be levied to accomplish the purpose and duties of the Association as stated in Article II.

**Section 2. Creation of Lien and Personal Obligation of Assessments.** The Declarant, for each lot within HIGHVIEW, herby covenants, and each Owner of any lot, by acceptance of a deed or other transfer document therefore, whether or not it shall be expressly established in such Deed or other transfer document, hereby covenants and agrees to pay the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements, operations, repair, replacement and reserve funds, such assessments to be fixed, established and collected as hereinafter provided. The annual, special and user assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land, and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, for the collection thereof, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. A personal obligation for delinquent assessment shall not pass to the owner's successor in title (other than as a lien on the land), unless expressly assumed by them.

**Section 3. Computation of Assessment.** It shall be the duty of the Board of Directors, at least 60 days before the beginning of the fiscal year and 30 days prior to the meeting at which the budget shall be presented to the membership, to prepare a budget covering the estimated costs of operating the Association during the coming year. The Board shall cause a copy of the budget and the amount of the annual assessments to be levied against each lot for the following year to be delivered to each owner at least 15 days prior to the meeting. The budget and the annual assessments shall become effective unless disapproved at the meeting by a vote of at least a majority of the membership votes. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board of Directors fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Item (i) All assessments shall be allocated equally among all residential lots excepting exempt lands as hereinafter provided.

Item (ii) The base annual assessments shall be Two Hundred Fifty Dollars (\$250.00). The annual assessment shall not exceed the base annual assessment except as provided in Article II Clause C Section 3 Item (vi).

Item (iii) The annual budget may include a reserve for Capital Improvements and Operating Reserves.

Item (iv) In addition to the Annual Assessment authorized by Item (ii) hereof, 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, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including the necessary fixture and personal property related thereon, and for operating the Common Areas, for which a reserve fund does not exist or is not adequate, provided that any such assessment shall have the assent of a majority of the eligible voting members.

Item (v) The Board of Directors may, without the consent of the voting members, increase the annual assessment in an amount not to exceed twenty percent (20%) of the annual assessment for the preceding fiscal year.

Item (vi) The Board of directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement costs. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by annual assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and assessment, as provided in Section 2 of this Article. A copy of the capital budget shall be distributed to each member in the same manner as the operating budget.

Item (vii) The Board of directors shall set the fiscal year of the Association.

Item (viii) The association is specifically authorized and encouraged to seek public and private funds to help defray, in whole or in part, the expenses for which assessments would be necessary. To the extent received, such funds shall be used to reduce the assessments otherwise required by the budget in other entities for the payment of some portion of the common expenses. Such contract or contracts shall be for the benefit of and enforceable by the Association and its members.

**Section 4. Effect of Nonpayment of Assessment; the Personal Obligation of the Owner; the Lien; Remedies of the Association.** If any Assessment is not paid on the date when due as hereinabove provided, then such Assessment shall be deemed delinquent and together with such interest and cost of collection thereof, including reasonable attorneys' fees, as hereinafter provided, continue as a lien on the Lot and any structure built thereon which shall bind such lot in the hands of the then Owner. In addition to such lien rights, the personal obligation of the then Owner to pay such Assessment, however, shall remain his personal obligation and shall not pass to his successors in title (other than as a lien on the land) unless expressly assumed by them. If the Assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of the legal interest rate authorized by 6 Del. C. Section 2301, as amended, and the Association may bring a legal action against the Owner personally obligated to pay the same or may enforce or foreclose the lien against the lot, and in the event of a judgment is obtained, such judgment shall include interest on the Assessment above provided and reasonable attorneys' fees to be fixed by the court, together with the



cost of the action. No Owner of a lot may waive or otherwise escape liability or the Assessment provided for herein by non-use of the Common Areas or abandonment of his or its lot.

Section 5. Assessment Lien. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage on the Lot. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relive such lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 6. Exceptions for Assessments. The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein:

- (a) All properties dedicated to and accepted by a governmental body, agency or authority and devoted to public use;
- (b) All Common Areas;

#### Architectural Review Committee

Section 1. There shall be a committee of the Association known as the Architectural Review Committee (hereinafter referred to as "ARC") consisting of one (1) to five (5) members.

Section 2. The ARC shall have jurisdiction over all construction on any portion of any lot, to approve or disapprove such construction based upon the Restrictions, Conditions and Covenants of Article IV. The ARC shall also have the authority to prepare additional standards and procedures to further implement the requirements of Article IV vis'-a-vis' construction of any nature which shall have the full force of said Restrictions, Conditions and Covenants; expressly provided, however, such additional standards and procedures may be disapproved or rescinded by a majority of the membership votes.

Section 3. The Board of Directors of the Association shall appoint the Members of the ARC.

Section 4. The ARC may charge a fee of up to One Hundred Dollars (\$100.00) for each review, requested for main dwelling house plans and specification.

Section 5. Lot owners shall be obligated to pay for the cost of repairs to the roads and other common areas caused by their use of the same or the use of the same by their agents and contractors, subcontractors and material suppliers associated with the construction and completion of any improvement on their lots.

#### Article X

#### COMMON AREAS

##### Property Rights in the Common Areas

Section 1. Owner's Easement of Enjoyment. Subject to the provisions of Section 3 of ARTICLE III, every Owner shall have a right and easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every lot.

**Section 2. Title to Common Areas.** The Association retains legal title in the Common Areas:

**Section 3. Extent of Member's easements.** The rights and easement of enjoyment created hereby shall be subject to the following:

- (a) The right of the Association as provided in its Certificate of Incorporation and By-Laws, to suspend the enjoyment rights of any Member in any easement or in any Common Areas, any period during which any assessment against such member remains unpaid, and for any period not to exceed sixty (60) days for any infraction of the Association's published rules and regulations.
- (b) The right of the Association to transfer all or any part of its interest in the Common Area (subject to easements created hereunder, or previously created of record) to any public agency, authority or utility.
- (c) The right of the Association to grant and reserve easements and rights-of-way through, under, over and across the Common Areas, for the installation, maintenance and inspection of lines and appurtenances for water, sewer, drainage, gas, electricity, telephone, cable television and other utilities.
- (d) The right of the Association to adopt rules and regulations governing the use by the Owners of the Common Areas.

**Section 4. Delegation of Use.** Any Owner may delegate his rights of enjoyment to the Common Areas and facilities to the members of his family, tenants, or contract purchasers (and members of the family of any tenant or contract purchaser) who reside on the property or to such other persons as may be permitted by the Association.

#### **Streets and Ways**

**Section 1. Right to Use.** The Highview HOA hereby grants to the owners, their heirs, successors, successors-in-title, assigns, and all other persons now or hereafter entitled to occupy any lots in this subdivision, or to travel therein, the right, its successors and assigns, of free and uninterrupted use of the streets or ways delineated and designated on the plat of passage to and from the various parts of the lands herein conveyed and to and from points outside this subdivision; provided, however, that the use of said streets or ways herein granted shall be restricted to the right of passage only, and no lunch or refreshment wagon, or any similar vehicle, or other stands of any kind for the display or sale of food, drinks, goods, wares, and merchandise of any description, nor any nuisance or obstruction, shall be maintained or permitted on any of said streets or ways.

**Section 2. Future Streets or Ways.** No public or private street, road, lane, alley, or other thoroughfare, except the streets or ways laid out upon said plat or any revision thereof, for the use of lot owners, shall be opened or used over, across, or upon any of the lots of said plot, without the prior written consent of the Association; nor shall any such way or thoroughfare be extended or continued into or out of said lots, from or to adjoining premises without similar consent; nor shall any easement, public or private

license or permission be granted by the owners for the purpose of ingress, egress, or passage over, upon or across any of said lots, without the prior written consent of the Association.

**Section 3. Right to convey or Dedicate Streets or Ways.** The Association reserves the right to convey, in the future, to any public road authority, including the State of Delaware or any of its political subdivisions, all or any part of its right, title, and interest in and to all or any of said streets or ways, and also reserves the right to dedicate to public use all or any part of said streets or ways at any future time, by filing and recording in the Office of the Recorder of Deeds, in and for Sussex County, Delaware, an appropriate declaration of dedication, should the Declarant deem it advisable to do so; and upon any such future conveyance or dedication, the Association shall be relieved of any and all duties, obligations, and liabilities with reference to said streets or ways.

**Section 4. Improvement and Maintenance of Streets and Ways.** The cost of any repairs, maintenance, and improvements to the Association's streets or ways shall be borne by the lot owners until such time as the streets and ways shall be conveyed to and taken over by a public road authority, or shall be dedicated to public use,

## ARTICLE XI

### **RESTRICTIONS, CONDITIONS AND COVENANTS**

**Section 1. Approval of Plans and Specifications Required.** No building, boat house, garage, structure, fence, wall, bulkhead, pier or other improvements, shall be commenced, erected, maintained or used, nor shall any addition to, or change in, or alterations therein, or in the use thereof, be made upon any of the numbered lots which are shown on the recorded subdivision plot of HIGHVIEW, no matter for what purpose or use, until complete and comprehensive plans and specification, showing the nature, kind, shape, height, materials, floor plans, exterior architectural scheme, location and frontage on the Lot, approximate cost of such building, structure or other erection, and the grading and landscaping of the Lot to be built upon or improved, shall be submitted to and approved in writing by the Association, through its duly designated Architectural Review Committee (hereinafter ARC), its successors and assigns, and until a copy of all such plans and specifications, finally approved as aforesaid, shall be lodged permanently with the Association, its successors or assigns, providing that nothing herein shall require the aforesaid approval as to interior decorations, alterations or changes. The Association, its successors and assigns, shall have the right to refuse approval of any such plans or specifications, or grading or landscaping plans or changes, which are not suitable or desirable in its or its successors opinion, for aesthetic or other reasons. In passing upon such plans and specification, or grading and landscaping plans, the Association, its successors or assigns, shall have the right to take into consideration the suitability of the proposed building or improvements or erections and/or the materials of which the building or other improvements or erections are to be built and the site upon which it is proposed to be erected and used, the harmony thereof with the surroundings and the effect of such improvements, additions, alterations or changed use, as planned, on the outlook from the adjacent or neighboring property, and any and all factors which in its opinion would affect the desirability or suitability of such proposed improvements, erections or alterations or change. In order to insure the

development and maintenance of the properties as a residential development of high standard, the owner of each Lot, as shown on the record Subdivision Plan of HIGVIEW, by accepting title thereto or by occupying the same, hereby covenants and agrees that no building, structure or improvement shall be erected, altered, placed or permitted to remain upon any such Lot, or other land area, unless and until plans and specifications therefore have first met the requirements of this Article.

At a minimum, the standards to be required by the Architectural Review Committee shall be as follows:

- (a) All pilings, if salt treated, shall be stained and if creosote piling, shall be boxed as approved by the Architectural Review Committee.
- (b) All roofs shall be minimum 5/12 pitch; the Architectural Review Committee may require the roof line to contain breaks to prevent boxiness.
- (c) All homes shall have complete foundation plantings approved by the ARC.
- (d) All exterior finishes shall be natural finishes, or painted, wood or masonry (except cinder block), drivet, or vinyl or aluminum siding. Log exteriors, that is, unfinished, unmilled wood exteriors, shall be strictly prohibited.

Section 2. No trade, business, commerce, industry, profession, or occupation shall be conducted on any lot.

Section 3. Residential Purposes. All of the lands described herein shall be used for private residential purposes only, and no building of any kind whatsoever shall be erected, maintained or used upon any lot except one private dwelling house designed for occupancy by a single family, for use by the owner, tenant, or occupant of such dwelling house and their guests, friends, servants and employees.

Section 4. Occupancy. No building shall be used as a residence until fully completed according to the plans and specifications approved therefore, and no one shall reside on any lot casually, temporarily, or permanently, except in a dwelling house completed according to the plans and specifications approved by the ARC. No more than one family may reside in, or regularly occupy each residential house. This restriction applies not only to owners but also to tenants of the property for any term. No building may be occupied until a certificate of occupancy is issued by the government authority that issues same.

Section 5. Houses, garages, Outbuildings, Carports. No structure shall be erected, altered, placed or permitted to remain upon any such numbered Lot other than one (1) detached single family dwelling, with attached carport, attached or detached garage and one detached outbuilding. Every dwelling house must have at least one (1) attached garage unless waived by the ARC. Metal outbuildings are prohibited.

Section 6. Restrictions as to Types of Construction, Prohibitions, Mobile and manufactured Homes. No trailer, mobile homes, double wide or similar type manufacture structure, which moves to a building site on wheels attached to its own under carriage, tent, shack, garage, barn or other type outbuildings shall at any time be used as a residence, temporarily or permanently, and no trailer, mobile home, double wide manufactured home, tent, shack, garage, or barn shall be utilized as a main or single family dwelling unit on any lot as shown on the Record Subdivision Plan. This prohibition applies to what are commonly referred to as manufactured homes and does not prohibit the placement of modular homes

on lots in HIGHVIEW so long as the plans and specifications for those modular homes are approved by the ARC and meet the requirements of those restrictive covenants.

**Section 7. Setbacks.** No structure shall be erected on any lot unless:

It meets the building restriction or setback lines as the same are designated on the Record Subdivision Plan of HIGHVIEW or by the requirements of the Zoning Ordinance for Sussex County, Delaware, whichever is greater or more restrictive.

**Section 8. Minimum Size.** No main dwelling shall be erected or used on any lot, the square footage of which shall be less than one thousand four hundred square feet (1,400 sq. ft.), exclusive of all porches, breezeways, basements, and terraces, stoops and the like. In the event of a multi-level or multi-story dwelling, the first floor of such dwelling shall contain a minimum square footage of one thousand square feet (1,000 sq. ft.), exclusive of all porches, breezeways, basements, and terraces, stoops and the like.

**Section 9. Maximum Heights.** No structure erected on any lot may exceed a height of thirty-five (35) feet from ground level.

**Section 10. Construction and Demolition.** Once construction or demolition of any building has been commenced on any numbered lot, such construction or demolition shall proceed without delay until the same is completed except where such completion is impossible or results in great hardship to the owner or building due to strikes, fires, national emergencies or national calamities. Cessation of work upon the construction or demolition of any building once started and before completion thereof for a continuous period of sixty (60) days shall be prima facie evidence of an attempt to abandon the same in its partially completed or demolished state and shall be deemed to be a public nuisance. In the event construction plans have been approved pursuant to Section 1, construction must commence pursuant to said approved plans within one (1) year of the date of approval. Failure to commence construction within one (1) year of the date of approval of plans will void the approval. Once building of a structure has commenced, the exterior roof and walls must be fully enclosed within six (6) months of the start of construction and a Certificate of Occupancy or compliance must be issued within one (1) year of the commencement of construction.

**Section 11. Fences.** No boundary fence or wall shall be constructed to a height of more than four (4) feet. No wall or fence of any height shall be constructed upon any lot until the height, design, and approximate location thereof has been approved in writing by the Association or its successor or assigns. Provided, however, the fences enclosing pools may be constructed to a height of up to eight (8) feet if approved by the Association through its designated Architectural Review Committee. No boundary hedge or shrubbery shall be permitted to a height of more than ten (10) feet, except that the landscaping along the rear of lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 may exceed the foregoing height restriction.

**Section 12. Lot Elevation.** Lot elevation shall not be changed more than twenty-four (24) inches, and no such change shall adversely affect adjacent lots and property.

**Section 15. Garbage Receptacles and Lamp Post.** Each Lot shown on the Record Subdivision Plan shall provide receptacles for garbage in a screened area not generally visible from any interior road, as shown upon the Record Subdivision Plan of HIGHVIEW, or provide underground garbage receptacles or similar facilities in accordance with reasonable standards established by the ARC or its successors or assigns. No garbage receptacles shall be permitted in any setback areas. Each lot shown on the record Subdivision Plan shall be required to install a lamp post with functional light fixture which may be placed on the front of the structure or placed within the front yard setback area on all improved lots.

**Section 16. Clothes-lines.** No clothes-line, clothes-pole or similar equipment shall be placed or erected on any lot unless said line or pole is screened by shrubbery so as not to be visible from any adjacent property on the ground level.

**Section 17. Lot Subdivision.** No lot shall be subdivided. Whenever two or more adjoining lots are acquired in single ownership and the same are devoted to use as a single building site, the interior side-yard and/or the interior rear-yard set-back line or lines thereof, as the case may be, shall be applicable thereto only as to the common rear line or side boundary line or lines between such lots or land area and the adjoining lots or land area held in other ownership. If two or more lots are subject to such use as a single building site, subsequent sale of an individual lot must meet, without exception, all setback requirements referred herein.

The above to the contrary notwithstanding, a lot may be split to become part of the adjacent lots, thereby resulting in the loss of the split lot and increased size of the adjacent lots.

**Section 18. Trees.** No tree with the diameter greater than ten (10) inches may be cut without approval by the ARC.

**Section 19. Swimming Pools.** No above-ground swimming pools are permitted in HIGHVIEW. No swimming pools are permitted in the front of any main dwelling.

**Section 20. Storage Receptacles.** No fuel tanks or similar storage receptacles may be exposed to view; however, the same may be installed within the main dwelling, or within any accessory building or properly screened from view provided the method of screening is approved by the ARC.

**Section 21. Signs and Advertising Regulated.** No signs, notices or advertising matter of any nature or description shall be erected, used or permitted upon any of the Lots shown on the recorded plot, except for signs displaying property "for sale" or "for lease", or advertising contractors performing work on any lot. All "for sale" signs must be removed upon a final settlement. No contractor's signs will be permitted unless Sussex County building permits for the proposed construction have been issued. All contractors' signs must be removed after a Certificate of Occupancy is granted by Sussex County for any structure erected.

**Section 22. Parked Vehicles.** No truck, trailer, unlicensed vehicle, mobile home, campers or other similar unit shall be placed on any lot or parked on any street temporarily or permanently, except a non-commercial truck rated less than 6,000 lbs. gross weight or private vehicles which may be parked



permanently in the driveway or temporarily on any street. No vehicle of any kind may be parked on the street during the hours of 1 a.m. to 6 a.m. Travel trailers, recreational vehicles, campers, camper trailers, boat trailers, and the like may be placed on the lot only within the rear setback area on the lot. Trailer mounted boats may be temporarily parked on the resident's driveway from May through October to accommodate weekend use, however, the trailer mounted boat is not permitted to be stored on that driveway for more than 30 sequential days. Travel trailers, recreational vehicles, camper trailers, boat trailers, and the like may not be parked on the street.

Section 23. Animals. No animals except household pets shall be permitted on any lot and no wild animals, fowl, pigeons, rabbits, horses, ponies, bees or other farm animals shall be permitted on any lot. No dogs or cats may be bred and sold for commercial purpose in this development. No dog house or dog run shall be constructed without the prior written approval of the ARC. Domestic pets shall be limited to no more than six (6) mature pets per lot.

Section 24. Landscaping. No landscaping, shrubs, or trees to be placed on or removed from any lot in conjunction with the erection of any main dwelling shall be planned, until complete and comprehensive landscaping plans shall be submitted to and approved in writing by the Association through its duly designated Architectural Review Committee. The land area not occupied by structures, hard-surfacing, vehicular driveways or pedestrian paths shall be kept planted with grass, trees or shrubs or other ground covering or landscaping in conformance with the standards set by the Architectural Review Committee of the Association. Such standards will take into consideration the need for providing effective site development to:

- (a) Enhance the site and building;
- (b) Screen undesirable areas of views;
- (c) Establish acceptable relationships between buildings, parking and adjacent properties; and
- (d) Control drainage and erosion.

Section 25. Weeds and Undergrowth. No noxious weeds, undergrowth or accumulated trash of any kind shall be permitted to grow or be maintained upon a lot by the owner or occupier thereof. The Association reserves the right to notify the owner or occupier to cut and/or remove any such offending growth or trash. Within ten (10) days of the giving of notice in writing by the Association to the owner or occupier of any lot to remove trash or control undergrowth or weeds and, if the owner or occupier shall fail or neglect to comply with any notice, in such an event the Association or its successors shall be empowered to enter upon such lot, together with any such assistance and equipment as may be required, and thereupon to cut and/or remove the same, all without being deemed a trespasser, and all at the expense of the owner of said lot. Any expenses incurred by the Association or its successors in conjunction with this Section shall be billed to the owner, and the owner agrees to remit same within thirty (30) days of such billing. Failure to remit within thirty (30) days of such bill, on the receipt thereof by the owner, shall entitle the Association to bring suit, for such charges; and in any such suit the Association shall be entitled to treble the amount of such expenses it has incurred, plus the costs of said suit, and the reasonable attorney's fees to collect same, for nonremittance of the expenses of the Association incurred to remove trash or noxious growth is reasonable and will constituted liquidated



damages for the cost and expense of the Association in enforcing this restriction through litigation. This Section and any part hereof shall not be construed as an obligation on the part of the Association to provide garbage or trash removal services, nor shall it be construed as an obligation upon the Association to remove the underbrush or rubbish or to cut grass or brush from any of the lots in the development, after same have been out conveyed by Declarant. However, the Association reserves the right and privilege to enter upon any said lot for the purposes as set forth herein to maintain the appearance of any lots so as not to cause detriment to the community at large. Notwithstanding the foregoing, no cutting or removal of underbrush shall be required, if a wooded lot has not been cleared for development purposes.

Section 26. Parking Spaces and Paving. Each numbered lot shall have provided space for parking two (2) automobiles off the streets of the subdivision prior to occupying any dwelling constructed on any lot. All driveways shall be paved with tar and chip, cement, macadam, stone or other approved material within six months of the completion of the main dwelling.

Section 27. Sewage Disposal and Water Supply Systems. No individual sewer disposal system or water supply system shall be approved, installed, or permitted on any lot. All lots are required to hook up to the public water and sewer system with the cost of such hook up, including any permit fees, impact fees and the cost of purchase and installation of water meter. Each lot may install an irrigation well limited to landscape watering only.

Section 28. Nuisances. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly, or unkempt conditions of buildings or grounds upon a Lot which will tend to substantially decrease the beauty of the development as a whole, or the beauty of the specific area. No noxious or offensive activity shall be permitted upon any lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to the Property. There shall not be maintained upon any Lot any plant, animal device or thing of any sort, the normal activities of which is in any way noxious, dangerous, unsightly, unpleasant or of such a nature as may diminish or destroy the enjoyment of the property.

## ARTICLE XII

### GENERAL PROVISIONS

Section 1. Utility Easements. The Association, hereby reserves the right to grant easements over, under, in, on and through the Common Areas and all roads plotted and shown on the recording plots for the installation, construction, and reconstruction, relocation, removal, maintenance, repair, operation, inspection of water service, sewer, drainage, electric, gas, television, telephone, and cable telephone and television facilities and wires, lines, conduits, and other necessary and proper attachments in connection therewith, for the benefit of the adjoining land owners, any federal, state or local authority, commission or agency having jurisdiction there over or any corporation, either public, quasi-public, or private, supplying or serving such facilities.

**Section 2. Duration and Amendment.** The Restrictions of this Declaration run with and bind the Property and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, as the case may be in perpetuity; subject, however, to the provision that the Association or its successors, by and with the vote or written consent of two-thirds (2/3) of the Owners of the Lots, shall have the power to waive, abandon, terminate, modify, alter, change, amend, eliminate or add to these Restriction and this Declaration at any time hereafter. Any such waiver, abandonment, termination, modification, alterations, change, amendment, elimination or addition shall take effect when a copy thereof executed and acknowledged by the Association in accord with the usual form of execution and acknowledgement of deeds, together with written consents of the requisite number of Owners, has been filed for record in the Office of the Recorder of deeds, in and for Sussex County, and the same shall thereafter remain in effect in perpetuity unless otherwise provided.

**Section 3. Variances.** In addition to the amendment power set forth in Article VII, Section 1, the Board of Directors shall have the power, at its sole discretion, and for the purpose of aesthetics and providing a systematic development of the community, to waive, modify, or vary the restrictions establishing minimum setback requirements, front, side and rear lines, and the minimum square footage required for any main structure built upon any lot.

**Section 4. Remedies.** The Declarant, the Association, or any Owner, shall have the right to enforce this Declaration and the Restrictions contained herein by any proceeding at law or in equity, against any person or persons violating or attempting to violate nay provision of this Declaration or any restrictions contained herein, to restrain violation, to require specific performance and/or to recover damages; and to proceed against any lot to enforce any line created by these Restrictions. The expense of enforcement by the Association shall be chargeable to the Owner of the Lot, including the cost of reasonable attorneys' fees, in the event any legal action is taken by the Association, and such fees, approved by a court of competent jurisdiction, shall constitute a lien on the lot, collectible in the same manner as assessments hereunder.

**Section 5. Nonwaiver.** Failure of the Declarant or any Owner, or their respective legal representatives, heirs, successors and assigns, to enforce any restrictions contained in this Declaration shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such violation or breach occurring prior to subsequent thereto.

**Section 6. Construction and Interpretation.** The Association, to the extent provided herein, may adopt and promulgate reasonable rules and regulations regarding the administration, and interpretation of and the enforcement of the provisions of this Declaration. In so adopting and promulgating such rules and regulations and in making any finding, determination, ruling, or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association shall take in to consideration the best interests of the owners to the end that Property shall be preserved and maintained as a viable community.

**Section 7. Severability.** All the covenants, conditions, restrictions, and reservations contained in this Declaration are hereby declared to be severable and a finding by any court of competent jurisdiction that any of them or any clause or phrase thereof is void, unlawful or unenforceable shall not affect the validity or enforceability of any other covenants, conditions, restrictions, reservations, clause or phrase thereof.

**Section 8. Nonliability.** Nothing contained in this Declaration shall be construed in any manner as to impose upon the Association any liability whatsoever for property damage, and/or personal injury occurring to any person or persons, whomsoever, or by reason of any use of any Common Areas, or roads, or adjacent waters, depicted on the recorded plot. Any and all persons using any such roads, common areas, easements, boat slips and water ways, or any of them, shall do so at their own risk and without any liability whatsoever on the part of the Association as the cause may be.

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

IN WITNESS WHEREOF, I Christopher M Holmon, Esquire, being the Incorporator of the Highview Homeowners Association, Inc. have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2003

\_\_\_\_\_(SEAL)

Christopher M. Holmon, Incorporator

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