

Tillamook County, Oregon

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2023-003947

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\$60.00 \$11.00 \$61.00 \$10.00 - Total = \$142.00



I hereby certify that the within instrument was received for record and recorded in the County of Tillamook, State of Oreaon.

Tassi O'Neil, Tillamook County Clerk

AFTER RECORDING RETURN TO:

Vial Fotheringham LLP
17355 SW Boones Ferry Road, Suite A
Lake Oswego, OR 97035

GRANTOR: Holly Heights Home Owners Association

GRANTEE: Public

**CORRECTED AMENDED
DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR HOLLY HEIGHTS SUBDIVISION**

This Amended Declaration of Protective Covenants, Conditions and Restrictions for Holly Heights Subdivision is made this 31st day of August, 2023 by the Holly Heights Home Owners Association ("Association").

RECITALS

- A. Holly Heights ("Community") is a planned community, located in Tillamook County, Oregon. The Community is governed by the following documents recorded in the Records of Tillamook County, Oregon:
 - 1. *Declaration of Protective Covenants, Conditions and Restrictions for Holly Heights Subdivision*, recorded September 30, 1997, as Document No. 97362928 Book 390, Page 296 ("Declaration"), as amended by the Amended Declaration of Protective Covenants, Conditions and Restrictions for Holly Heights Subdivision, recorded on July 11, 2023 as Document No. 2023-02992 ("Amended Declaration").
 - 2. *Bylaws of the Holly Heights Home Owners Association*, recorded September 30, 1997, as Document No. 97362929 Book 390, Page 297 ("Bylaws"), as amended by the Amended Bylaws of the Holly Heights Home Owners Association, recorded July 11, 2023 as Document No. 2023-02993.
- B. The purpose of this amendment is to correct an error in the previously recorded Amended Declaration of Protective Covenants, Conditions and Restrictions for Holly Heights Subdivision.

- C. Pursuant to ORS 94.590, the Association hereby amends the Declaration in its entirety. The Amended Declaration replaced and superseded by this Corrected Amended Declaration of Protective Covenants, Conditions and Restrictions for Holly Heights Subdivision, that read as set forth below.
- D. This Declaration of Protective Covenant is applicable to Holly Heights Subdivision, lots 1-21 inclusive, Tracts A and B located in the North half of the Northwest quarter, Section 5, Township 2 South, Range 10 West, Willamette Meridian, Tillamook County, Oregon, and Holly Heights Avenue, a private road easement, recorded in book 390, page 104 of Tillamook County;

WHEREAS, the purpose of the protective covenants, conditions and restrictions ("CC&R'S") and Home Owners Association Provisions are to maintain and protect the value and desirability of said real property. The terms of these CC&R'S and Home Owners Association Provisions shall inure and be binding to the benefit on all parties having any right, title or interest in the above described property or any portion thereof, their heirs, successors and assigns. The CC&R'S and Home Owner Provisions shall run with and attach to the subject property and bind all the real property within this subdivision.

WHEREAS, the original CC&R's were recorded on September 30, 1997 at Tillamook County, and amended on July 26, 2004.

NOW, THEREFORE, the Association and lot owners amend and restate the Declaration of Protective Covenants applicable to the Holly Heights Subdivision as follows:

HOME OWNERS ASSOCIATION PROVISIONS

1. **Home Owners Association.** The Holly Heights Home Owners Association is and shall remain at all times registered as a domestic nonprofit corporation in the State of Oregon, and shall be responsible for compliance with the covenants and restrictions contained herein. The Association has the power to hold property for the benefit of its members. All lot owners within the Holly Heights Subdivision shall be a member of the Association in accordance with the Home Owners Association Bylaws. A copy of the Bylaws is attached. The Bylaws may be amended in accordance with the Bylaw amendment procedure.
2. **Animals and Pets.** No animals, livestock or poultry of any kind shall be kept or raised on any property, except not more than two (2) tamed and domesticated household pets (excludes exotic pets), provided that such household pet is not kept bred or maintained for any commercial purposes. Exotic animals can only be kept if approved by the Board of Directors. Domestic household pets shall be kept in such a manner so as not to create any objectionable noise and odors. Pets shall not be allowed to roam free and shall be kept within the confines of the dwellings or fenced areas, except when on a leash. Pets are only allowed off leash in Tract A (the common

area) and only in the following circumstances: the pet is in sight of, under the voice control of, and actively engaged with its owner; no other people or animals are present in the area.

3. **Appearance and maintenance.** Owners shall maintain the exterior of their structures, including landscaping and fences, in neat, clean and sanitary condition, in good repair and order (painted as required). No manufactured homes shall be allowed. Repairs shall be done in a professional manner consistent with the original construction. All structures' exterior trim and paint shall remain as originally designed and built except changes approved by the Home Owners Association pursuant to paragraph 15. Such approved exterior modifications shall maintain an overall unity of appearance. The Association's Board of Directors shall have the authority to adopt rules regarding minimum maintenance standards for lots and homes.
4. **Residential use only.** No commercial activities of any kind shall be conducted on the property or within any dwelling. This provision, however, shall not be construed to prevent or prohibit any owner or occupant from maintaining a personal professional library; keeping personal business or professional records, or accounts; handling personal business or professional telephone calls; or conferring with business or professional associates, clients or customers.
5. **Short-term rental.** Short-term rental is strongly discouraged because of the negative impact on quality of life for all members of the association. Owners shall be financially responsible for any violations committed by their renters, guests, and invitees.
 - a. Short-term rental restrictions. Short-term rental of private homes within the Subdivision shall be restricted as follows:
 - i. Four (4) night minimum rental period;
 - ii. No more than two (2) vehicles associated with the rental shall be allowed to be parked in front of the rented home driveway. No Street parking is allowed.
 - iii. No recreational vehicles allowed.
 - iv. No pets associated with the rental are allowed except for the use of a service animal by disabled persons.
 - v. No noxious or offensive activity shall be allowed.
 - b. Advertising of short-term rentals. Public advertisements for short-term rentals must clearly state the following:
 - i. Four (4) night minimum rental period - same renters, not transferable.
 - ii. No more than two (2) vehicles associated with the rental shall be allowed to be parked in front of the rented home driveway. No street parking is allowed.

- iii. No recreational vehicles allowed.
 - iv. No pets associated with the rental are allowed except for the use of a service animal by disabled persons.
6. **Signs.** No occupant of a dwelling shall post any sign, advertisement or poster of any kind in or upon the property except one identification sign as permitted by the Tillamook County Zoning Ordinance for a home occupation.
7. **Offensive or unlawful activities.** No car parts, appliances, immobilized vehicle shall be placed or stored upon property for more than 72 hours. No part of the property may be used or maintained as a dumping ground for rubbish, trash, garbage or any other waste. No garbage, trash or other waste may be kept or maintained on any part of the property except in a sanitary container located within a bin or within a trash enclosure hidden from public view. All such waste and garbage must be promptly and regularly removed in accordance with Tillamook County Health Provisions.
8. **Balconies, patios, exterior areas.** No clothes line, clothes rack or other apparatus with clothes, rugs or similar items exposed for the purpose of drying or airing shall be located on the property. Balconies, patios or yard areas are not to be used for storage or otherwise permitted to-become unsightly.
9. **Carports.** There shall be no storage of items in any drive or carport area which are visible in whole or in part from outside the carport, except the storage of operable vehicles. The storage prohibited by this restriction shall include, but is not limited to, garbage cans, boxes, newspapers, appliance' and other household items.
10. **Lot 19.** Except for lot 19, no lot may be subdivided into divisions of any nature. On lot 19, all future land divisions and placement of structures shall be done in such a manner as not to preclude the creation of urban density lots. To create these future urban density lots requires that the lots be served by public sanitary sewer, public water and road improvements (either public or private) including storm drainage. If sanitary sewer, water main and road storm drainage services are not extended to a parcel as a condition of County Land Division approval, the ultimate build-out will require subsequent owners to connect to said services. Such future build-out of lot 19 to urban densities will require future owners to equitably share the cost for any sanitary sewer, water and road improvements including storm drainage that may be necessary to serve an urban density development. All future land divisions are subject to compliance with Tillamook County's Land Division regulations. Lot 19 is subject to a 20-foot wide pedestrian easement.
11. **Common and Open Space/Pedestrian Easement.** As depicted on the approved subdivision map, Tracts A and B and the pedestrian easement were created for the use and benefit of the future subdivision owners as a conservation and recreation area. Tract A contains common space and Tract B contains open space. The deed to Tracts A and B (Common Space and Open Space) are in the name of Holly Heights

Homeowners Association. The Home Owners Association shall be responsible for the maintenance of Tracts A and B and the pedestrian easement, keeping them free of blackberry bushes, poison oak and other obnoxious weeds as defined by Oregon's Revised Statutes and for maintenance of storm drainage from individual lots to the detention pond and maintenance of the detention pond to meet Tillamook County regulations. The open space area (Tract B) is to remain for perpetuity in a natural state, providing riparian creek setback, storm water disposal and conservation areas. Recreational use of Tract B is limited solely to walking, bird watching, picnicking, etc. including pathways. Construction of any additional improvements, including maintenance structures, are limited to Tract A (common space). Such recreational structures are limited to the following types of Uses: benches, gazebos, picnic shelters, tennis courts, basketball courts. Any maintenance structures are limited to small accessory buildings for storage of tools, mowers, weed cutters. No storage of recreational vehicles, including but not limited to campers and boats, shall be stored on any portion of Tracts A and B. All improvements, including structures, shall conform to and comply in all material respects with all applicable laws, ordinances and approvals of all government agencies with respect to environmental protection, zoning and building regulations. Furthermore, Tracts A and B cannot be sold or partitioned from the subdivision lots including partitioning (redivision) into additional lots/parcels.

12. **Private Road.** As depicted on the approved subdivision map, the 50 foot wide easement was created for the use and benefit of the subdivision owners for vehicular access and public utility easement between State Highway 131 and Tax 20. Maintenance shall be performed by the Association, with all lot owners except for the owner(s) of Lot 20, which does not have access to the private road, contributing to the cost of the maintenance work in equal shares. Said maintenance is subject to terms contained in the Private Road Agreement, recorded at 390, Page 104, Tillamook County. The Home Owners Association will maintain said easement as necessary to meet Tillamook County's road maintenance standards and ordinances. The Home Owners Association shall maintain the drainage facilities within the easement to conform to county specifications as are necessary to provide proper drainage. In the event the Home Owners Association is dissolved or for any other reason, maintenance of the easement ceases, Tillamook County may perform or have performed any maintenance work it reasonably deems necessary. For such maintenance, Tillamook County may impose a lien upon the lots for the reasonable value of said work. Any such liens may be enforced and foreclosed in a manner provided for in Oregon Revised Statutes (ORS 223.505 to 223.650).

13. **Covenants with Tillamook County**

- a. The Home Owners Association will maintain Tracts A and B; storm drainage from individual lots; the detention pond; the pedestrian easement located on Lot 19 in a manner necessary to meet Tillamook County's standards, ordinances. Each owner, except for the owner of 20, shall be assessed sufficient monies to share the maintenance of Tracts A and B; the pedestrian easement located on Lot 19; and

the detention pond and storm drainage from individual lots so that it conforms to such standards. This maintenance requirement shall continue as an obligation upon the property and the owners thereof notwithstanding the dissolution of the Home Owners Association. In the event the Association is dissolved or for any other reason maintenance of the common area ceases, Tillamook County may perform or have performed any maintenance work it reasonably deems necessary. For such maintenance, Tillamook County may impose a lien upon the lots for the reasonable value of said work. Any such liens may be enforced and foreclosed in a manner provided for in Oregon Statutes (ORS 223.505 to 223.650).

- b. The covenants and restrictions set forth in this document shall extend to and be binding upon the heirs, administrators, executors, transferees, successors and assigns, including tenants of the parties thereto,
 - c. The foregoing covenants and restrictions in Section 12 (Private Road) shall not be amended, changed, revoked or terminated in all or in part without the written consent of the Owner of the road.
 - d. The foregoing covenants and restrictions in Section 13 (Covenants with Tillamook County) shall not be amended, changed, revoked or terminated in all or in part without the written consent of Tillamook County's Planning Director, which shall not be unreasonably withheld.
14. **Right to Use Adjacent Resource Land.** The land to the north and east is designated as resource land and, therefore, subject to conditions resulting from forest and/or farming operations. Such operations may include management and harvesting of timber and crops, disposal of slash, reforestation, preparation of ground and the planting of crops, application of chemicals, road construction and maintenance, and other accepted and customary forest and farm management activities conducted in accordance with federal and state law. Said forest and farm activities ordinarily and necessarily may produce noise, dust, smoke and other conditions which may conflict with residential purposes. The covenant waives all common law rights to object to normal, nonnegligent forest and farm management activities legally conducted on adjacent resource land which may conflict with residential uses and hereby grants easement to the adjacent property owners for the resultant impacts caused by the adjacent forest-farm management activities.
15. **New Construction and Remodels.** No improvement shall be commenced, erected, placed or altered on any Lot until the construction plans and specification showing the nature, shape, heights, materials, colors, and proposed location of the improvement have been submitted to and approved in writing by the Board. Remodel projects that affect the exterior in any way of an existing home in the Holly Heights Subdivision must also be submitted in writing and approved in writing by the Board of Directors before work is begun. Remodels will be governed by the same requirements as for new construction. It is the intent and purpose of this Declaration to assure quality of workmanship and materials and the harmony of exterior design

with the existing improvements and landscaping. The Board is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations. Nor shall the Board's review analyze structural, geophysical, engineering or other similar factors. Such compliance and analysis are the responsibilities of the Owners. The procedure and specific requirements for review and approval of construction may be set forth in design guidelines adopted from time to time by the Board. The Board must deny any application or any part thereof not later than 60 days following its submission. Any application not denied within 60 days is deemed approved. The Board is directed to enforce the following minimum requirements before granting approval to new construction:

- a. Work must be performed by a licensed and bonded contractor;
- b. All work, including landscaping, must be completed within eighteen (18) months of groundbreaking on said property;
- c. Design must be of a similar style and quality to existing homes already in place in the Holly Heights Subdivision.
- d. Exterior paint colors must be approved by a majority of the board of directors and must be a color similar to colors already in place in the Holly Heights Subdivision.
- e. Exterior trim and siding must be approved by a majority of the board of directors and must include stone and or brick frontage similar to the town homes already in place in the Holly Heights Subdivision.
- f. Driveways and walkways must be stamped concrete similar in style and quality to existing homes already in place in the Holly Height Subdivision.
- g. Single family dwellings must be a minimum of two thousand (2000) square feet of finished living space excluding unfinished areas, garages, patios and decks.
- h. Town Homes must be of a size comparable to the town homes already in place in the Holly Heights Subdivision. (approximately three thousand six hundred (3600) square feet of finished living space excluding unfinished areas, garages, patios and decks.
- i. Maximum heights restrictions are governed by Tillamook County restrictions.
- j. No fences are permitted, (excluding the west side of lot 1) without approval from the HOA. If an owner has been given permission to install a fence, if that fence is ever removed, the owners will need to get approval to install a new fence.

- k. Houses may not be sited in such a way to exceed the 100-foot setback requirement as outlined in the Bylaws and must be sited so as not to restrict the views of existing homes in the Holly Heights Subdivision.
16. **Association Rights.** The association has the authority to levy assessments to pay common expenses (road maintenance, townhouse painting, townhouse roofs, general common area maintenance/other shared associations costs). The assessments will be adopted at the annual Board meeting and/or special meeting if needed to change mid-year. The Board has the right to impose interest and late fees on past due accounts. These fees and interest charges will be set and adopted at the annual meeting of the Board of Directors. The Board has the right to levy and enforce reasonable fines for the violation of the CC&Rs, Bylaws, or Rules and Regulation. The Board has the right to remove buildings or alterations that are made without its required consent or are otherwise in violation of the CCRs and to charge the owner for all costs to return the property to its original state, and the right to charge an owner requesting approval of a structure or alteration for the costs of experts, photocopying and other out-of-pocket costs related to the Board's review of the alteration request, the right to place a lien against an owner's lots for assessments, and the right to obtain an attorney in the event of litigation for enforcement of the CCRs or Bylaws. The Board is required to adopt an annual budget at the annual meeting of the Board of Directors to be held during the second quarter of each calendar year. The Board is authorized to adopt rules governing parking on Holly Heights Ave.
17. **Late Fees and Interest.** Accounts will be deemed late 6 months after billing and will be charged a late fee as per the Fee Schedule. This late fee will be assessed each billing period that the account is not brought current. Interest will also begin simultaneously at 5% simple interest per annum on outstanding fees, fines and late charges and will continue until the account is current. The Board has the power to pursue litigation and other collection actions against delinquent owners on any accounts that are six months or greater past due. The fee schedule will be presented and adopted at the annual meeting of the Board of Directors. The procedures set forth below shall be the process for handling complaints and enforcement of violations of the CC&Rs, Bylaws, Rules and Regulations.
18. **Complaint.** An owner ("Complaining Owner") may file a written complaint (this can be via email) with any member of the HOA Board or management company regarding a violation of the CC&Rs, Bylaws, or Rules and Regulations by another owner, tenant, or guest ("Alleged Offending Owner"). The owner of any lot or home shall be responsible for the violations of any renter, tenant, guest, or family member who violates any portion of the CC&Rs, Bylaws, or Rules and Regulations. The Board of Directors may also initiate a complaint. The complaint must be in writing and include:
 - a. The name, if known, and address of the Alleged Offending Owner;

- b. A description of the offending behavior or activity, including the date(s) and approximate time(s); and
 - c. Whether or not the Complaining Owner attempted contact with the Alleged Offending Owner regarding the alleged violation.
19. **Investigation.** Upon written complaint, the Board or person authorized by the Board, has the discretion to investigate the complaint to confirm the nature and existence of the allegations and decide if it is valid.
20. **Violation and Notice.** If the Board of Directors finds there is a violation of the CC&Rs, Bylaws, or Rules and Regulations, the Board or its representatives must provide notice to the Alleged Offending Owner as follows:
- a. First Notice. The Board will first provide a “First Notice” to the Alleged Offending Owner. The First Notice shall be sent by mail and/or email to the address on record with the Association and a copy to the HOA Management. The First Notice must state the following:
 - i. Violation
 - ii. Specific period of time to correct or abate the violation if applicable
 - iii. Statement that the Alleged Offending Owner has the opportunity to request a hearing, and the manner by which to request a hearing;
 - iv. A statement advising the Alleged Offending Owner that if no hearing is requested within ten (10) days of receipt of the notice, and if the alleged violation is not remedied or ceased by the specified compliance deadline, fines will be assessed, beginning on the day following the specified compliance deadline, or pursuant to the Schedule of Fines listed below under number (5) Schedule of Fines and Fees, whichever comes first.
 - a. Second Notice. If a fine is going to be assessed, then the Board will provide a Second Notice (also send to HOA management) via mail and/or email that will provide the following:
 - i. Statement that the violation has not been remedied or ceased
 - ii. Any other information as directed by the Board;
 - iii. Statement of fines/fees to be assessed and the date fees begin accruing.
 - b. Repeat Violations. Owners who repeat any violations within a 12-month period are not entitled to a second notice or hearing, regardless of whether or not the owner participated in a hearing as a result of the first violation. For such repeat violations, the Board may automatically begin fines as outlined in the Schedule of Fines below.

- c. Informal Action. Nothing precludes the President, a designated Board member, or the HOA management company from first attempting to resolve the matter either by an informal meeting, telephone call, email or a warning letter to the Alleged Offending Owner.
21. **Hearing**. If requested by the Alleged Offending Owner, the Board of Directors may call a meeting to hear testimony or evidence regarding the violation.
 - a. Appearances at the Hearing. If the alleged Offending Owner fails to appear within fifteen minutes (15) of the time set for the hearing, the Board may, at its sole discretion:
 - i. Conduct the hearing without the presence of the Alleged Offending Owner;
 - ii. Reset the hearing to another date and time; or
 - iii. Dismiss the complaint. The Board will notify the Alleged Offending Owner if the Complaint has been dismissed.
 - b. Conduct of Hearing. The Board shall proceed to hear testimony from the Complaining Owner and then the Alleged Offending Owner. Both the Complaining Owner and the Alleged Offending Owner may present evidence and witnesses at the hearing. The Board may limit testimony and evidence as it determines is reasonable and necessary.
 - c. Board Determination. Following the testimony and any evidence presented by the parties, the Board has the discretion to re-evaluate its prior determination of violation above. The Board also has the discretion to reevaluate the fine, any required or appropriate resolution for the violation, and any other matter which may result in the resolution of the violation.
 - i. The discussions must be in open session.
 - ii. The Board shall either give its decision at the conclusion of the hearing or take the matter under advisement and give the decision at a later date not to exceed 10 days after the hearing date.
22. **Schedule of Fines and Fees**. The Board may impose fines pursuant to the following fee schedule if the violation is not remedied or ceased within the time specified in the notice.
 - a. Fines. A per day fine (unless otherwise noted below) will be assessed and accrue for all violations of CC&Rs, Bylaws, Rules and Regulations, per the most recent adopted fee schedule, except those listed under (b). Violations include, but not limited to the following:
 - i. Parking of recreational vehicles;
 - ii. Parking on the street;

- iii. Excessive noise and/or disturbances;
- iv. Trash outside of trash receptacle, trash receptacles left at curbside after trash pick-up, trash receptacles blocking the driveway, trash receptacle left in public view.
- v. Use of another homeowner's trash receptacle will be considered a violation unless written approval by homeowner;
- vi. Yards, gardens, and vacant lots must be maintained. If the Alleged Offending Owner does not comply within the terms of the First Notice, the Board reserves the right to arrange for the landscaping company to bring the property into compliance. The owner will be charged the cost of the landscaping company in addition to the per day fee for non-compliance.
- vii. If vehicles spill oil and damage/stain driveways, the HOA will inform the homeowner of the need to have the driveway cleaned. If the Alleged Offending Owner does not comply with the terms of the Notice, the board reserves the right to arrange for the cleanup and charge the cost to the owner in addition to the per day fee for non-compliance.
- viii. Pets not on leashes and running free (except as stated under 2 above)

b. Short-term rental Fees, Fines and Compliance.

- i. Short-term rentals that violate any of the restrictions listed in 5a. will be fined per occurrence as listed in the Fee Schedule.
- ii. Owners will have 15 business days from the first of January to provide documentation of rental compliance with state/county regulations and the CC&Rs. Failure to provide such documentation will result in a fine per the Fee Schedule. This is to include a copy of the Certificate of Inspection from Tillamook County.
- iii. Owners will have 15 business days from the first of January to provide documentation that public advertisement of the rental complies with the CC&R requirements. Failure to provide such documentation will result in a fine per the Fee Schedule.

THEREFORE, Holly Heights Home Owners Association hereby adopts these amended CC&R's and certifies that they will be recorded in Tillamook County.

DATED: August 31, 2023.

HOLLY HEIGHTS HOME OWNERS ASSOCIATION
An Oregon Nonprofit Corporation

By: Shannon Farrier
Shannon Farrier, President

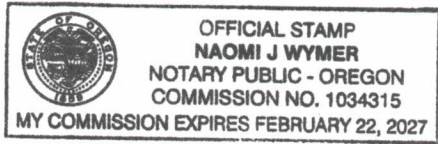
By: Rhonda Walker
Rhonda Walker, Secretary

CERTIFICATION

The undersigned President and Secretary of the Holly Heights Home Owners Association, an Oregon nonprofit corporation, hereby certify that this foregoing Corrected Amended Declaration was adopted in accordance with the Declaration, Bylaws and pursuant to ORS 94.

STATE OF OREGON)
) ss.
County of Tillamook)

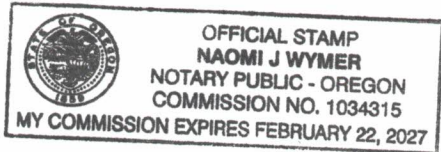
The foregoing instrument was acknowledged before me this 31 day of August, 2023, by Shannon Farrier, **President of Holly Heights Home Owners Association**, an Oregon nonprofit corporation, on its behalf.



Naomi J Wymer
Notary Public for Oregon

STATE OF OREGON)
) ss.
County of Tillamook)

The foregoing instrument was acknowledged before me this 31 day of August, 2023, by Rhonda Walker, **Secretary of Holly Heights Home Owners Association**, an Oregon nonprofit corporation, on its behalf.



Naomi J Wymer
Notary Public for Oregon