

Original text and/or previously voted changes - regular typeface  
Association changes - italics  
Legal changes - boldface

# Declaration of Covenants and Restrictions

## ARTICLE I - DEFINITIONS

The following words when used in this Declaration shall have meaning as follows:

1. **“Association”** shall mean the Holiday Heights Homeowners Association, Inc., a New Jersey non-profit corporation *operating as a not-for-profit corporation*.
2. **“Board”** shall mean and refer to the Association Board of Directors.
3. **“Bylaws”** shall mean the Association Bylaws and all amendments thereto.
4. **“Common Properties”** shall mean and refer to the real property or real property interests owned by the Association including those areas of land devoted to the common use and enjoyment of the Owners, Residents and Guests designated as “Green Areas” on any filed subdivision map of The Properties together with any and all facilities thereon.
5. **“Declaration”** shall mean and refer to the Association Declaration of Covenants and Restrictions, and all amendments thereto.
6. **“Developer”** shall mean and refer to Hovson’s Inc., a corporation of the State of New Jersey, its successors or assigns.
7. **“Director”** shall mean and refer to an Owner in Good Standing that is a member of the Association Board of Directors.
8. **“Good Standing”** shall mean an Owner who is current on the payment of common expenses, late fees, legal fees, or other charges lawfully assessed, and which Owner has not failed to satisfy a judgement for common expenses, late fees on unpaid assessments, legal fees, or other charges lawfully assessed.

**An Owner is in ‘Good Standing’ if the Owner is in full compliance with a settlement agreement with respect to the payments of assessments, legal fees or other charges lawfully assessed, or the Owner has a pending, unresolved dispute concerning charges assessed in which a dispute has been initiated through a valid alternative to litigation pursuant to subsection c. of section 2 of P.L. 1993, c.30 (C.45:22A-44) (ADR) provided no other disputes which have been resolved otherwise render the Owner’s status to be not in ‘Good Standing’.**

**An Owner is not in ‘Good Standing’ if the Owner owes the Association money and the Owner is not in full compliance with a settlement agreement with the Association for**

**the payment of monies or otherwise delinquent in the performance of an act agreed to be done by the Owner.**

*An Owner or Resident is in 'Good Standing' if they are not in violation of the Association Code of Conduct, Declaration, Bylaws or Rules, or they have been offered the opportunity to participate in Alternate Dispute Resolution by either the Association or another Owner and they have not declined to participate in Alternate Dispute Resolution.*

9. **"Guest"** shall mean any person who is not an Owner and is not a Resident, but who occupies or is present in a Living Unit or on a Lot, including all visitors.
10. **"Living Unit"** shall mean and refer to all or any portion of a building situated upon The Properties designated and intended for use and occupancy as a residence.
11. **"Lot"** shall mean and refer to any plot of land shown on the filed subdivision map of The Properties, which was owned by the Developer, with the exception of Common Properties as herein defined.
12. **"Membership Privileges"** shall mean certain rights afforded to each Owner and/or Resident who is in full compliance with the Declaration, Bylaws and Rules. For a Resident and Owner in Good Standing with the Declaration, Bylaws and Rules, these rights include the right to serve as an officer for any club sanctioned by the Board, to participate in any activity sponsored by any club sanctioned by the Board, to serve as a leader or officer of any group sanctioned by the Board, to participate in any activity sponsored by any groups sanctioned by the Board, to receive the Association publication or any other publication or communication from the Association, to use, enjoy and/or otherwise occupy the Common Properties, or, to attend or participate in any Board meetings.

For an Owner in Good Standing, Membership Privileges additionally includes the right to vote in Association matters, to nominate themselves or another Owner in Good Standing to run for the Board, to be elected or appointed to serve on the Board, and to vote to amend the Association Declaration and Bylaws.

If the Owner of a Lot and/or Living Unit is not in Good Standing or is not entitled to enjoy Membership Privileges, such Owner and all Residents of such Owner's Lot and/or Living Unit shall not be allowed to enjoy Membership Privileges.

Even though an Owner or Resident is not entitled to enjoy Membership Privileges, such Owner or Resident must otherwise comply with and abide by all obligations and duties as set forth in the Declaration, Bylaws and Rules.

13. **"Owner"** shall mean persons not less than fifty-five (55) years of age provided, however, that in the event the Lot or Living Unit is owned by a spouse or domestic partner, only one must meet the age requirement. Additionally, such persons shall have a current fee simple interest in a deed for a Lot and/or Living Unit recorded with the Ocean County Clerk's Office authorized to hold title pursuant to and in accordance with the Declaration, Bylaws and Rules, but not withstanding any applicable theory or mortgage or lien, Owner shall not refer to a mortgage or lien holder of any Lot and/or Living Unit. Additionally, any Trust and Life Estate as authorized in Article II, Section 1. B. in the Bylaws shall be deemed an Owner.

14. *“Resident” shall mean and refer to any person or persons who occupy any Lot and/or Living Unit who are not an Owner or Guest but who permanently reside in the Living Unit.*
15. **“Rules”** shall mean Rules and Regulations adopted by the Board.
16. **“The Properties”** shall mean and refer to all the lands described in Article II of the Declaration.

## **ARTICLE II – ADDITIONS TOTHE PROPERTIES**

### **Section 1. Description of Property(as per Addendum)**

The Holiday Heights is a Planned Residential Retirement Community (PRRC) of approximately 563.95 acres of land in the northwest portion of Berkeley Township in the County of Ocean and the State of New Jersey, as referred to in the “Description of Property” contained in the Certificate of Incorporation of Holiday Heights Homeowners Association, Inc. filed with the New Jersey Secretary of State on May 22, 1966 attached hereto as Exhibit A, and, any other real property acquired or developed by the Association.

### **Section 2. Additions to Existing Property**

1. The Board shall have the right to bring within the scheme of this Declaration, additional property provided that such additions are in accordance with a general plan of development and compliant with all local, state and federal laws.
2. The Owner of any Lot and/or Living Unit that may be added to The Properties shall have the same rights and privileges in the Association, the same right of enjoyment of all the Common Properties, as well as the same duties, responsibilities and obligations as every Owner.

## **ARTICLE III - OBLIGATIONS TO ASSOCIATION AND VOTING RIGHTS**

### **Section 1. Obligations to Association**

Every Owner and Resident and Guest shall be subject to comply with and be bound by all of the obligations imposed by the Declaration, Bylaws and Rules.

### **Section 2. Conveyance of Interest in Association**

If a transfer of recorded title is made pursuant to and in accordance with the Declaration, Bylaws and Rules, each Owner’s interest in the Association shall be deemed to be conveyed automatically by the delivery of a recorded deed.

### **Section 3. Voting Rights**

When expressly authorized by the Declaration, Bylaws and Rules, every Lot is entitled to one (1) full vote in affairs of the Association. If more than one person owns a Lot, such person shall have that portion of one vote proportionate to his or her ownership in the Lot.

## **ARTICLE IV - COVENANT FOR ASSESSMENTS**

### **Section 1. Creation of the Lien and Personal Obligation of Assessments**

1. The Owner of any Lot and/or Living Unit in The Properties, together with any additions thereto, hereby covenant and agrees to pay tothe Association in accordance with these Declarations, an annual assessment and any special assessment in an amount to be fixed by the Board, payable on a date or

dates as determined by the Board which shall include any and all charges for late fees, and all attorneys' fees and costs incurred by the Association to collect such assessments.

2. The annual and special assessments, together with late fees, and all attorneys' fees and costs incurred by the Association to collect such assessments, may become a lien on the Lot against which each assessment is made. Each such assessment together with late fees, and all attorneys' fees and costs incurred by the Association to collect such assessments, shall be an obligation of the Lot Owner at the time such assessments become due and payable.

## **Section 2. Annual Assessment**

1. The assessments levied by the Association shall be used generally for the purpose of promoting the recreation, health, safety and welfare of the Owners, including but not limited to the payment of taxes and insurance thereon, repairs, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.
2. The annual assessment shall be payable in advance to the Association with a frequency and on a day to be fixed by the Board.
3. In the event it is determined by the Board that the existing annual assessment rate is insufficient, the Board shall set a new rate. Advance written notice of the new rate shall be given to all Owners.

## **Section 3. Special Assessment**

Unless there are emergency circumstances, the levying of a special assessment by the Board shall be contingent upon a majority of the votes cast in person by Owners in Good Standing at a Special Election.

## **Section 4. Effect of Non-Payment of Assessments**

1. In the event one or more of the quarterly payments of the annual assessment are not paid within thirty (30) days of the due date, or a duly authorized special assessment is not paid within thirty (30) days of the due date, then the assessment shall become delinquent and shall, together with such late fees thereon as may be determined by the Board and costs of collection thereon, including but not limited to all attorneys' fees and costs incurred by the Association to collect such assessments, may become a continuing lien upon the Lot and/or Living Unit and shall be binding upon the Lot and/or Living Unit and shall be a personal obligation of the Owner, his successors, heirs or assigns. In the sole discretion of the Board, the Association may bring an action at law against the Owner personally for their failure to pay or may foreclose against the Lot and/or Living Unit in the same manner as one would foreclose a real estate mortgage.
2. Subject to N.J.S.A. 45:22A-44.1 the lien of the assessment provided herein shall be subordinated to the lien of any first mortgage and taxes placed upon the Lot prior to the assessment.

## **Section 5. Exempt Property**

The following real property subject to the Declaration shall be exempt from the assessments and liens created herein:

1. All properties to the extent of any easement or other interest therein dedicated and accepted by any public authority or devoted to public use.
2. All Common Properties as herein before defined.

3. All easements, rights of way, licenses or any other or any other right given to any other entity for use of utilities, services or drainage.

## **ARTICLE V - RIGHTS IN COMMON PROPERTIES AND FACILITIES**

### **Section 1. Easement of Enjoyment**

Only Owners and their Residents subject to the Bylaws and Rules of the Association shall have the right to enjoy Membership Privileges including an easement of enjoyment in and to the Common Properties and facilities. With the exception of Residents, such easements shall pass with record recorded title to every Lot Owner authorized to and in compliance with the Declaration, Bylaws and Rules.

### **Section 2. Rights of the Association by the Board**

The rights and easements of enjoyment created hereby shall be subject to the following:

1. The right of the Association through its Board, to borrow money for any purpose set forth herein and in the Bylaws, contingent upon a majority of the votes cast in person by Owners in Good Standing at a Special Election meeting;
2. The right of the Board to take such steps as are reasonably necessary to protect the Common Properties against foreclosure;
3. The right of the Board as provided in the Bylaws and Rules of the Association to suspend the Membership Privileges or rights of any Owner and/or Resident to enjoy the Common Properties and facilities for any period during which any monies due the Association remains unpaid or for the infraction of or which otherwise arise from the Declaration, Bylaws or Rules;
4. The right of the Board to admit to the use and enjoyment of Common Properties and facilities to Owners and such persons who lawfully occupy but do not own a Lot or Living Unit, and
5. The right of the Board to charge reasonable admission and other fees for the use of the Common Properties and facilities.

## **ARTICLE VI - TRANSFER AND SUBSEQUENT TRANSFER**

### **Section 1. Acceptance of Deed**

All Owners of any Lots and Living Units, and their respective Residents and Guests upon the Owner's acceptance of a recorded deed, shall be bound by the Declaration, Bylaws, and Rules.

### **Section 2. Age Restrictions**

No Owner shall be less than fifty-five (55) years of age provided, however, that in the event the Lot or Living Unit is owned by two individuals that are spouses or domestic partners under New Jersey law, only one must meet the age requirement. *However, if the Living Unit is occupied by a Resident or Guest who is under the age of fifty-five (55), the fifty-five (55) year old or older Owner must jointly occupy the Living Unit with said Resident or Guest for at least 9 months per calendar year.*

In the event that an Owner of a Lot or Living Unit dies, testate or intestate, leaving as heirs one or more persons who do not qualify as to age, these restrictions shall in no way be deemed to restrict the ownership of said Lot or Living Unit by the heirs provided, however, that said heir or heirs, their successors or assigns, shall not occupy said Lot or Living Unit until they meet the age requirement together with such

other requirements that may be contained herein. Surviving Owners or heirs who are not fifty-five (55) years of age or older must vacate the Living Unit within a period of time not to exceed one (1) year from the date of the death of the age-qualified decedent. This shall extend to any person with life tenancy who must vacate the Lot and Living Unit until age qualified.

### **Section 3. Persons Under Eighteen (18) Years of Age**

No sale, transfer, gift, assignment, lease or grant shall be made of any Lot or Living Unit covered by this Declaration to any purchaser, lessee, transferee or grantee who intends to have as a Resident or Guest in the Lot or Living Unit a person under the age of eighteen (18) for any stay exceeding ninety (90) *days per calendar year*.

### **Section 4. Sale of Lot, Disclosure to Board**

No transfer including but not limited to any sale, gift, lease, assignment or grant of any Lot or Living Unit shall be made by any Owner or any subsequent prospective purchaser or lessee until the existing Owner who desires to transfer makes full disclosure to the Board in writing of the name and address of the prospective purchaser or lessee, together with the evidence that said prospective purchaser or lessee meets all the qualifications that are set forth herein and in the Bylaws.

## **ARTICLE VII - EXTERIOR MAINTENANCE**

### **Section 1. Maintenance**

1. Each Owner is responsible for the exterior maintenance of their Lot and/or Living Unit including, but not limited to: painting, repairs, replacement and care of roofs, gutters, downspouts, *steps and porches, windows and doors*, building surfaces, grounds, lawns, trees, shrubs and the maintenance, repair and replacement of sidewalks and walkways. *At the sole discretion of the Code Committee and the Board, nothing visible on a Living Unit or its surrounding Lot should be viewed as unsightly, or regarded as an excessive use of figurines or decorations, with an exception for seasonal holiday displays.* Nothing contained herein shall be deemed to relieve the Owner of the interior maintenance of his Living Unit.
2. Each Owner shall maintain slope areas on their Lot in such manner as to prevent soil erosion and to maintain slopes, banks, swales and drainage ways located on their Lots for the preservation of designated drainage patterns over their Lot, surrounding Lots and Common Properties. Each Owner shall not in any way interfere with established drainage patterns within The Properties.
3. Where it is determined by the Board that an Owner has failed to perform exterior maintenance, or in other ways has not complied with the provisions of this section, the Board shall issue such Owner written notice to correct the condition within a specific time.

### **Section 2. Assessment of Cost**

*The Board may impose fines for and seek full reimbursement of all charges to correct, including attorneys' fees and costs or other expenditures incurred by the Association to address or correct any violation of the Declaration, Bylaws and Rules, including per diem fines if the violation is of a continuing nature, which shall be in addition to any unpaid annual assessment to which the Lot/Living Unit is subject and, as part of such annual assessment, it may become a lien on the Lot and the obligation of the Owner and shall become due and payable together with the annual assessment. Additionally, the Association may file suit to recover all fines and costs imposed pursuant to maintenance violations, and, otherwise additionally recover all attorneys' fees and costs incurred by the Association which arise from or relate to any violation of the Declaration, Bylaws and Rules including but not limited to the collection of any judgement.*

### **Section 3. Assessment of Liability**

Any person who acquires purported or recorded title to any Lot/Living Unit shall be jointly and severally liable with the prior Owner *for any and all fines, costs imposed pursuant to Section 1. of this Article VII, or monies or otherwise due the Association pursuant to the Declaration, Bylaws or Rules* which were outstanding at the time of passing of purported or recorded title and, by virtue of the acceptance of the aforesaid purported or recorded title, recognizes and accepts such monies due the Association may become a lien against the recorded title to the Lot. Enforcement of the aforesaid lien shall be as provided Article IV of this Declaration.

## **ARTICLE VIII - PROPERTY AND USE RESTRICTIONS**

### **Section 1. Lot and Living Unit Restrictions**

No building, fence, wall or other structure shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition, change or alteration be made to any Living Unit until the plans and specifications showing all details of same are submitted to and approved in writing by the Board and before a Holiday Heights Project Permit, or a Berkeley Township permit, where required, can be issued. Nothing contained herein shall be deemed to authorize the Owner to deviate from the original architectural design of the Living Unit unless authorized by the Rules.

### **Section 2. Property and Use Restrictions**

The Board is authorized to promulgate Property Rules and Regulations regarding the use, maintenance, upkeep and conduct of those persons relative to The Properties.

### **Section 3. Handicapped Use**

No provision, term or restriction set forth in this Declaration shall be construed, interpreted or implemented so as to prohibit the reasonable adaptation of any Lot or Living Unit to the extent permitted by law for use by handicapped individuals.

## **ARTICLE IX - EASEMENTS**

### **Section 1. Easements**

The Properties shall have a perpetual easement under, over and across each Lot and Living Unit for the purpose of installation, maintenance and repair of all utility, drainage and other service facilities. The Owner of each and every Lot covenants and agrees, by their acceptance of their purported or recorded deed, not to plant any shrubs, trees, or make any other improvements to the easement shown on any filed subdivision map and designated "General Easement Reserved to Hovson's, Inc. and/or its Successors and Assigns" or which otherwise creates a threat to the health, safety and welfare of Owners, Residents or Guests of the The Properties.

### **Section 2. Developer's Title to Common Properties**

The Developer's deed of conveyance of Common Properties to the Association shall except therefrom and reserve to the Developer, its heirs and assigns all oil, gas, and other minerals underlying the land thereby conveyed together with the rights of the Developer, its heirs and assigns to enter in, upon and under such land to mine, excavate and remove such oil, gas and other minerals.

### **Section 3. Berkeley Township Easement in Common Properties**

The Common Properties, excluding clubhouses and other buildings, shall be subject to a valid easement which is hereby granted to the Township of Berkeley, its successor and assigns, but not to the public in general to enter upon all roadways, streams, lakes, parking areas, driveways, sidewalks and walkways for the purpose of maintaining the health, benefit and welfare of the citizens of the Township of Berkeley including but not limited to all Owners, Residents and Guests of the Association.

## **ARTICLE X- PRECEPTS OF THE DECLARATION**

### **Section 1. Term of Declaration**

1. Notwithstanding Article XII of this Declaration, this Declaration, shall run in perpetuity, and shall not be terminated until a vote of not less than a two-thirds (2/3) vote of the full Board, and a vote via mail-in ballot by Owners in Good Standing representing two-thirds (2/3) of the Association Lots.
2. The acceptance of a purported or recorded deed or by occupancy of any Lot or Living Unit within The Properties shall be conclusively deemed to mean that the Owner, and their respective Residents and Guests approve, adopt and are subject to the Declaration together with all amendments thereto; the Bylaws and the Rules, and the Owner along with any Resident or Guest of such Lot and Living Unit will comply therewith. Such approval of the Declaration, Bylaws and Rules shall further be deemed to mean that said Declaration, Bylaws and Rules shall run with the land.

### **Section 2. Validity**

In the event it is determined by a Court of Law that a specified provision or provisions of this Declaration or any part thereof is unconstitutional, unenforceable, or in any way unlawful, said provision or provisions shall be severable from the original portion of this Declaration. The intent, therefore, is that the original portion of this Declaration shall remain in full force and effect and that any judicial decree shall only affect that limited and specific portion held unenforceable.

### **Section 3. Enforcement**

Enforcement of this Declaration shall be, if necessary, through any way deemed appropriate by the Association, including but not limited to a proceeding at law or equity against any person or persons by a suit for enforcement of the Declaration and/or Bylaws and/or Rules and or damages or other relief. It is further provided that the enforcement of this Declaration may be by the Township of Berkeley, any Lot Owner, or the Association through its Board.

## **ARTICLE XI- AMENDMENTS**

An Amendment to the Declaration of Covenants and Restrictions requires a majority vote of the full Board and a fifty-one percent (51%) majority of full votes cast by Lot Owners in Good Standing. All voting will be by mail-in ballot. To be effective, Amendments shall be recorded with the Ocean County Clerk. A copy of the recorded Amendments with Book and Page number shall be made available to all Owners.

## **ARTICLE XII - TAX SALES**

The Owner of a Lot or Living Unit by acceptance of a purported or recorded deed, accepts such title subject to the rights of the Association to redeem any tax sales certificate, or take an assignment of the same, and to acquire by reason of such redemption any and all rights accruing thereby in the conformity with N.J.S.A. 54:5-54, any conveyance or alienation by the grantee, his heirs, successors, administrator or assigns to the contrary notwithstanding.



## **ARTICLE XIII-VOTE TO ACCEPT A PROPERTY MANAGER**

*As per the Association Certificate of Incorporation, it was the expectation of the Developer that within sixty (60) days after conveyance of seventy-five percent (75%) of the Lots to Owners, the Developer's control of the Board shall terminate at which time the Owners shall elect the entire Board. Furthermore, upon turnover, the affairs of the Association shall be managed by a Board who must be Owners.*

*The Association has historically been self-managed, that is, the Board and the Board's retention of employees have exclusively managed the affairs of the Association. To the extent the Owners want to no longer be self-managed and retain a third-party property manager, independent of the Association to manage the Association, the following process shall be followed to retain a third-party property manager, independent of the Association, to manage the Association:*

- 1. A motion shall first be made by a Director or Owner in Good Standing to present for a vote to all Owners a proposed change in the status of the Association from self-managed to being managed by a third-party property manager, independent of the Association;*
- 2. If a vote of two-thirds (2/3) of the full Board approves, or a petition of Owners in Good Standing representing not less than 250 Lots requests to present for vote to all Owners a proposed change in the status from self-managed to third-party management, a date to take such vote shall be scheduled within One-Hundred-Twenty (120) days and notification must be posted in the Association's Monthly Publication and on the Association website as soon as practicable, and sent by USPS mail to the Owner of each Lot/Living Unit within thirty (30) days of the Board approving to present the issue for vote;*
- 3. After thirty (30) days from the date of the mailing, three (3) separate meetings shall be held with the Owners at the Association clubhouse to present the proposal, provide discussion, anticipated additional cost per household, and the relevant information, including but not limited to specific budgeting impacts;*
- 4. The three (3) meetings will be held fifteen (15) days apart, taking place once on a weekday afternoon, once on a weekday evening, and once on a Saturday afternoon;*
- 5. Fifteen (15) days after the last meeting, the ballot proposing to change the Association management status will be mailed by USPS. Fifteen (15) days after the ballot is issued, two (2) special meetings shall be held once on a weekday/evening, and once on a Saturday, to address any questions or concerns over the amendment;*
- 6. The ballots will be due back forty-five (45) days from the date of the mailing and all ballots cast shall be done in a manner to maintain full anonymity;*
- 7. After the return date, the ballots will be publically counted before all Owners who wish to be present;*
- 8. A two-thirds (2/3) vote of full votes cast by Lot Owners in Good Standing shall be necessary to change the management status of the Association from self-management to third-party management, the vote tally must be immediately announced to all Owners after the votes are counted, and the final tally shall be posted on the Association website, on the clubhouse bulletin board and via RoboCall, and.*
- 9. If the management status of the Association is changed to third-party management and either two-thirds (2/3) of the full Board approves, or, a petition of Owners in Good Standing representing not less than 250 Lots requests to present for vote to change the status of the Association from third-party management to self-management, the same protocol for Paragraphs 2 – 8 of this Article shall be followed.*

## **ARTICLE XIV - THE ASSOCIATION'S SUCCESSOR**

In the event the Association shall cease to function through lack of participation of the Owners, or is dissolved, the Township of Berkeley shall have the right by special assessments to assess all Owners a sum of money annually, which would be sufficient to pay the taxes on The Properties for their proper upkeep, maintenance and preservation.

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