



After recording, return to:

Sharon R. Smith
Bryant Lovlien & Jarvis, PC
PO Box 880
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**DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
FOR
Ponderous Pines Subdivision**

This Declaration of Covenants, Conditions, and Restrictions is made this 9 day of April , 2007, by the The Hollman Company, an Oregon Corporation hereinafter referred to as "Declarant".

1
WHEREAS, Declarant is the owner of the real property described in *Article 2*. Declarant intends by this Declaration to impose upon the Properties mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within Ponderous Pines Subdivision, the planned unit development made subject to this Declaration and amendments thereto by the recording of this Declaration. This real property has no common property and therefore is not subject to the Oregon Planned Community Act, ORS 94.550 to 94.783. All private roads and alleys are covered by recorded road maintenance agreements;

WHEREAS, Declarant desires to provide a flexible and reasonable procedure for the overall development of the Properties as are now subjected to this Declaration;

NOW, THEREFORE, Declarant hereby declares that all the Properties described in *Article 2* be subjected to this Declaration shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE 1.

Definitions

As used in this Declaration, the terms set forth below shall have the following meanings:

1.1 "Architectural Review Committee" shall mean the committee appointed to review Architectural Design in Article 4 below.

- 1.2 **"Declarant"** shall mean The Hollman Company, an Oregon corporation.
- 1.3 **"Improvement"** shall mean every structure or improvement of any kind, including, but not limited to, a dwelling, landscaping, fences, wall, driveways, fixtures, shelters, or other product of construction efforts on or with respect to the Subdivision.
- 1.4 **"Lot"** shall mean a portion of the Properties other than the roads or alleys intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the plats of survey filed with this Declaration or amendments thereto. Where the context indicates or requires, the term Lot includes any structure on the Lot.
- 1.5 **"Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of any Lot which is part of the Properties, but excluding any party holding the fee simple title merely as security for the performance of an obligation. Owner shall include the Declarant.
- 1.6 **"Person"** means a natural person, a corporation, a partnership, trustee, or other legal entity.
- 1.7 **"Plat"** shall mean the duly recorded Plat of Ponderous Pines Subdivision recorded at document number 2007-20409 in Deschutes County, Oregon.
- 1.8 **"Property or Properties"** shall mean and refer to the real property described in Article 2 of this Declaration and such additional real property as may be added in accordance with this Declaration.
- 1.9 **"Subdivision"** shall mean the Ponderous Pines Subdivision.

ARTICLE 2.

Property Subject to This Declaration

2.1 **Initial Development.** Declarant hereby declares that all of the real property described below is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration:

All real property within that certain plat entitled "Ponderous Pines Subdivision" filed in the Plat records of Deschutes County, Oregon, on April 9, 2007 as record number 2007-20409. Located in the northeast 1/4 of section 20, township 17 South, Range 12 East of The Willamette Meridian, City of Bend Deschutes County, Oregon.

2.2 **Amendment.** This Article shall not be amended without the written consent of Declarant, so long as the Declarant owns any property in the Subdivision.

ARTICLE 3.

Land

3.1 Land Classifications within Development. All land within the Development is included in one or another of the following classifications:

3.1.1 Lots, which shall consist of Lots 1-21 on the plat of the Development.

3.1.2 Private roads and alleys, which shall be covered by Road Maintenance Agreements recorded on April 9, 2007 at Document Number 2007-20412, Deschutes County, OR and April 9, 2007 at Document Number 2007-20413, Deschutes County, OR.

ARTICLE 4.

Architectural Design and Review

4.1 Architectural Review Committee. Declarant shall serve as the Architectural Review Committee (the "ARC") for the duration of time required for all Lots to be developed with a residential dwelling or for a period of ten years, whichever occurs first.

4.1.1 The purpose of the ARC is to enforce the architectural and design standards of the community and to approve or disapprove plans for Improvements proposed for the Lots.

4.1.2 The ARC shall have the authority to delegate its duties or to retain the services of a professional engineer, architect, designer, inspector or other person to assist in the performance of its duties. The ARC may render its decision only in written setting forth the action taken by the ARC.

4.1.3 The ARC shall have discretion to withhold consent if it believes the improvement does not meet the Design Guidelines. Any condition or provision of the Design Guidelines may be waived by the ARC in its exclusive discretion. Any waiver shall be in general conformity with the development concept and the development standards for the Subdivision. Any such waiver shall not be deemed a general waiver. The granting of a waiver as to one Owner shall not automatically entitle any other Owner to the waiver of the same or similar conditions or provisions. No waiver shall be valid unless it is in writing, signed by an authorized representative of the ARC and delivered by certified mail to the party claiming the benefit of such waiver.

4.2 Design Guidelines. The Declarant may adopt, and from time to time, amend, modify, or revise the Design Guidelines. Adoption, amendments, modifications, or revisions of the Design Guidelines may occur without the consent of anyone prior to the conveyance of the first Lot to an Owner other than the Declarant. No such amendments, modifications, or revisions shall affect any prior ARC approval. The Design Guidelines may show the nature, kind, shape, color, size, materials, and quality of workmanship and design and harmony of external design

with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation.

4.3 Approval Required. No Improvement, as defined in Article 1, shall be erected, placed, altered, maintained, or permitted to remain on any Lot subject to this Declaration, except Lots owned by Declarant, until final plans and specifications have been submitted to and approved in writing by the ARC. The procedure and specific requirements for review and approval of residential construction may be set forth in Design Guidelines adopted from time to time by the ARC. The ARC may charge a reasonable fee to cover the cost of processing the application. No work may be performed relating to any Improvement unless and until all aspects of all plans have been approved in writing by the ARC.

4.4 Inspection. All work related to any building, structure or Improvement or any landscaping, vegetation, ground cover or other improvements within the Property shall be performed in strict conformity with the plans and drawings approved by the ARC. The ARC shall have the right to inspect any such work to determine its conformity with the approved plan and drawings and reserves the right to order a stop to all work if, in good faith, it believes that any such work is nonconforming. In the event that it is determined by the ARC that certain work is nonconforming, a stop work notice may be issued, without necessity of a court order, which shall required the Owner to correct all non-conforming work specified in the notice before the remainder of the proposed work may be completed. Continued work without correction of any such non-conforming items shall be deemed a breach of the Declaration. Neither the Declarant nor the ARC shall be deemed responsible for any damages, loss, delay, cost or legal expense occasioned through a stop work notice given in good faith, even if it is ultimately determined that such work was in conformity with the approved plans and drawings.

4.5 Enforcement. The ARC may approve or deny plans based on compliance with the Design Guidelines. Owners of nonconforming structures or structures built without prior approval of the ARC may be required to pay fines or to remove the offending structure as set out in the Design Guidelines.

4.6 Liability. The scope of the ARC's review is not intended to include any review or analysis of structural, geophysical, engineering, building or zoning code compliance or other similar considerations. Neither the Declarant, ARC nor any member thereof shall be liable to any Owner, tenant, occupant, invitee, builder, or developer for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act of the Declarant or the ARC or a member thereof, provided only that the Declarant or ARC has, or the member has, in accordance with the actual knowledge possessed by the Declarant or ARC or by such member, acted in good faith.

ARTICLE 5.

Dispute Resolution.

5.1 Mediation. Except as otherwise provided in this section, before initiating litigation or an administrative proceeding in which the Declarant and an Owner have an adversarial relationship, the

party that intends to initiate litigation or an administrative proceeding shall offer to use any dispute resolution program available within Deschutes County, Oregon, that is in substantial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must be hand-delivered or mailed by certified mail, return receipt requested, to the address of the other party.

5.1.1 If the party receiving the offer does not accept the offer within ten (10) days after receipt of the offer, such acceptance to be made by written notice, hand-delivered or mailed by certified mail, return receipt requested, to the address of the other party, the initiating party may commence the litigation or administrative proceeding. The notice of acceptance of the offer to participate in the program must contain the name, address and telephone number of the body administering the dispute resolution program.

5.1.2 If a qualified dispute resolution program exists within Deschutes County, Oregon and an offer to use the program is not made as required under this Article 5, then litigation or an administrative proceeding may be stayed for thirty (30) days upon a motion of the non-initiating party. If the litigation or administrative action is stayed under this paragraph, both parties shall participate in the dispute resolution process.

5.1.3 Unless a stay has been granted as described above, if the dispute resolution process is not completed within thirty (30) days after receipt of the initial offer, the initiating party may commence litigation or an administrative proceeding without regard to whether the dispute resolution is completed.

5.1.4 Once made, the decision of the court or administrative body arising from litigation or an administrative proceeding may not be set aside on the grounds that an offer to use a dispute resolution program was not made.

5.2 Costs and Attorney's Fees. The fees of the mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorney's fees and costs in connection with any mediation.

5.3 Survival. The mediation agreement set forth in this Section shall survive the transfer by any party of its interest or involvement in the Property and any Lot or Living Unit therein and the termination of this Declaration.

ARTICLE 6.

General Provision

6.1 Duration. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Declarant for the duration of time required for all Lots to be developed with a residential dwelling or for a period of ten years, whichever occurs first.

6.2 Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination

which shall be in conflict therewith; (b) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Units subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on Lots subject to this Declaration or (e) to correct clerical errors. Amendments to this Declaration shall become effective upon recordation in the records of Deschutes County, Oregon, unless a later effective date is specified therein.

6.3 Gender And Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

6.4 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

6.5 Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

6.6 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now-living descendants of Elizabeth, Queen of England.

6.7 Attorneys Fees. In the event any party shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder or to foreclose a lien, the party not prevailing shall pay to the prevailing party all costs and expenses incurred by it in connection with such suit or action, such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof or other proceedings, including any bankruptcy or arbitration proceeding.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 9 day of APRIL, 2007.

THE HOLLMAN COMPANY

By: 
GERALD VEENKER, President

STATE OF OREGON, County of Deschutes, ss:

On April 9, 2007, the undersigned, a Notary Public in and for said County and State, personally appeared Gerald Veenker known to me to be the President of the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

Amber Lee Kirk
Notary Public for Oregon
My Comm. Expires: 10/31/07

