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DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

APTON COMMONS

This Declaration made this 1st day of July, 1983 by THE HOLLMAN COMPANY, an Oregon corporation, hereinafter called Declarant;

WITNESSETH:

Whereas Declarant is the owner of all the real property in the Recorded Plat of APTON COMMONS subdivision (the "Property") filed in the Plat Records, City of Durham, Washington County, Oregon, and desires to create thereon a planned community with permanent roadways and utility installations (Exhibit "A").

Declarant desires to provide for the preservation and enchantment of the property values, amenities and opportunities in said community and for the maintenance of the Property to the covenants, restrictions, and easements, hereinafter set forth, each and all of which is and are for the benefit of the Property and each owner of any lot thereof.

NOW, THEREFORE, the Declarant declares that the "Property", APTON COMMONS Subdivision (Exhibit "A") shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions and easements (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE I

DEFINITIONS

Section 1. "Owner" shall mean and refer to the record owner, whether one or more persons or entities of a fee simple title to any Lot which is a part of the Properties, including contract buyers, but excluding those, including contract sellers, having such interest merely as security for the performance of an obligation.

Section 2. The "Property" shall mean and refer to all real property including Lots, together with such other real

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property as may from time to time be annexed thereto under the applicable laws and ordinances of the County of Washington, the State of Oregon, and the United States.

Section 3. "Lot" shall mean any numbered plot of land shown upon any recorded subdivision plat of the Properties which is not designated as a street or public area.

Section 4. "Street" means any highway or other throughfare as shown on a recorded plat of the Properties.

Section 5. "Declaration" shall mean the covenants, conditions and restrictions and all other provisions herein set forth in this entire document.

Section 6. "Declarant" shall mean and refer to The Hollman Company, an Oregon corporation, its successors or assigns, or any successor or assign to all remainder of their interest in the development of the Property.

Section 7. "Living Unit" shall mean and refer to any portion of a building situated upon the Properties designed and intended for use and occupancy as a residence.

Section 8. "Occupant" shall mean and refer to the occupant of a living unit who shall be either the owner, lessee, or any other person authorized by the owner to occupy the premises.

#### ARTICLE II

##### PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Property. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Washington County, Oregon, land is more particularly described in Exhibit "A" and in the Plat of APTON COMMONS filed in the Plat Records, Washington County, Oregon.

#### ARTICLE III

##### LAND DEVELOPMENT SCHEME

Section 1. General. The Declarant intends to develop the Property with twenty-three (23) single family attached Lots and five (5) single family detached Lots. The Lots will be developed with five (5) single family, seven (7) duplex, three (3) tri-plex buildings.

**Section 2. Declarant's Special Rights.** Until living units on all lots have constructed, fully completed and sold with respect to each lot on the Property, the Declarant shall have the following special rights:

(a) **Sales Office and Model.** The Declarant shall have the right to maintain a sales office and model on one or more of the lots which the Declarant owns. The Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week.

(b) **"For Sale" Signs.** The Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations on the Property.

**Section 3. Leases.** Each owner shall have the right to lease his lot and the improvements thereon. Any said lease shall be in writing and shall provide that its terms shall be subject in all respects to the provisions of this Declaration and that any failure by the lessee to comply with the provisions of said Declaration shall constitute a default under said lease. For purposes of this Section, the term "lease", without limitation, a month-to-month rental agreement.

#### **ARTICLE IV**

#### **PARTY WALLS**

**Section 1. General Rules of Law to Apply.** Each wall which is built as a part of the original construction of multi-family homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**Section 2. Sharing of Repair and Maintenance.** The cost or reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. The word "use" as referred to in this Article means ownership of a dwelling unit or other structure which incorporates any part of such wall.

**Section 3. Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owners who have used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall

contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. The Owner repairing or reconstructing a party wall shall have the right of access over the adjacent Owner's Lot to the extent reasonably necessary to effect the repair or reconstruction.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole costs of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the dispute shall be arbitrated by the arbitrators so designated, in accordance with the rules of the American Arbitrators Association. The decision shall be by a majority of all of the arbitrators and shall be binding on all parties thereto, their heirs and assigns. The prevailing party shall be entitled to such arbitration fees from losing party, including fees in any appellate proceeding.

Section 7. Encroachments If any portion of a party wall or other part of a building or structure now or hereafter constructed upon said property encroaches upon any part of the lot or lots used or designated for use by another lot owner, an easement for the encroachment and for the maintenance of same is granted and reserved and shall exist, and be binding upon the Declarants and upon all present and future owners of any part of said property for the benefit of the present and future owners of such encroaching building or structure for the purpose of occupying and maintaining the same; in the event a structure consisting of more than one dwelling unit becomes partially or totally destroyed or in need of repair or replacement, mutual and reciprocal easements are granted and reserved in and upon each dwelling unit and lot for the repair. No such easement shall exist, however, in respect to an encroachment caused by construction of any improvement on any lot after completion of construction of the original improvement thereon by the Declarant.

**ARTICLE V**

**USE RESTRICTION AND ARCHITECTURAL CONTROLS**

**Section 1. City of Durham Restrictions.** All uses, occupancy, construction and other activities conducted on any Lot shall conform with and be subject to applicable zoning, use restrictions, construction and building codes of the City of Durham, and further to the restrictions of all other applicable public authorities and to the extent the following restrictions may be in conflict therewith, the same shall be deemed modified thereby.

**Section 2. Affirmative Duty of Maintenance.** Each Owner shall be responsible for maintaining, painting or staining and generally keeping in good order and repair, the exterior of any improvement on any of the Properties owned by such Owner and such Owner shall be responsible for trimming and maintaining the lawns, shrubbery, plantings, trees and other landscaping thereon in a neat and proper condition consistent with good horticultural practices, it being the intention of this provision that the Properties and improvements thereon shall be maintained by the Owners thereof to provide for the preservation and enhancement of the property values of said community.

**Section 3. Uniformity of Color and Decor.** Any paint or stain applied by an Owner to the exterior walls of any improvement sharing a party wall as defined in Article IV hereof shall be of the same color and decor as the color and decor applied to such improvement when it was originally constructed in order to maintain uniformity of color and decor among all improvements sharing the party wall. The color, decor and type of any roofing material, placed by an Owner on any improvement sharing a party wall(s) as defined in Article IV hereof shall be of the same color, decor and type of roofing material used on such improvement when it was originally constructed in order to maintain uniformity of color, decor and type of roofing material among all improvements sharing the party wall(s).

**Section 4. Land Use and Architectural Control.**

(a) No Lot shall be used except for residential purposes.

(b) No building, fence, wall or other structure shall be commenced, erected, or

maintained upon the property, nor shall any exterior addition to or change or alteration therein, to be made until the plans and specifications showing the nature, kind, shape, height, materials, colors, and locations of the same shall have been submitted to and approved in writing as to the harmony of external design and location to surrounding structures and topography by the Architectural Committee.

**Section 5. Use Restrictions.** The following restrictions shall be applicable to the use of any of the Properties subject to this Declaration and each Owner is responsible hereunder with respect to any portion of the Properties owned by such Owner:

(a) No animals or fowls shall be raised, kept or permitted upon the Properties or any part thereof, excepting only domestic dogs and cats and excepting caged pet birds kept within the dwelling house, provided said dogs, cats and pet birds are not permitted to run at large and are not kept, bred or raised for commercial purposes or in unreasonable numbers.

(b) No noxious or offensive activity shall be carried on upon the Properties or any part thereof, nor shall anything be done or maintained thereon which may be or become an annoyance or nuisance to the neighborhood or detract from its value as a high-class residential district, including permitting the landscaping on any Lot to become overgrown or permitting any structure on any Lot to become unsightly.

(c) No inoperable vehicle, automobile, trailer, camper, boat and trailer or camper and pickup shall be stored in the open on the street or any Lot for a period to exceed forty-eight (48) hours. All permanent storage for the items outlined above shall be provided by permanent garage, carport or suitably screened area, approved by the Architectural Control Committee.

(d) No trash, garbage, ashes, or other refuse, junk vehicles, underbrush or other unsightly growths or objects, shall be thrown, dumped or allowed to accumulate on any portion of the Properties.

(e) No exterior clotheslines are allowed that

can be seen from any streets or adjacent Lot.

(f) No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporary or permanent.

(g) No fence or screening structure shall be erected on any Lot without the prior written approval of the Architectural Control Committee. In no event shall side yard fences project beyond the front of any dwelling or accessory building or garage as previously defined. In no event shall any fence exceed six (6) feet in height from the finished Lot grade. Rear and side lot fences referred to hereinabove may only be erected with written approval of the Architectural Control Committee.

(h) No front yard will be allowed to remain without landscaping for a period to exceed six (6) months from the date of occupancy.

(i) No sign shall be displayed to public view on any Lot except as follows:

(1) One professional sign, not larger than one square foot.

(2) One sign not larger than five square feet advertising the property for sale or rental.

(3) Builder's sign during construction and initial sale period.

(j) Each owner shall provide draperies or other appropriate window coverings at all windows which shall be lined with white material, sufficiently opaque so as to conceal the color of the interior portion of such window coverings.

(k) All outside television and radio aerials and antennas are absolutely prohibited. No outdoor overhead wire or service drop for the distribution of electric energy or for telecommunication purposes nor any pole, tower or other structure supporting said outdoor overhead wires shall be erected, placed or maintained within the subdivision.

**Section 6. Architectural Control Committee.** There is hereby created an Architectural Control Committee to be composed of three (3) representatives selected by The Hollman Company, said Committee to provide for planned neighborhood. A majority of the Committee may designate a representative to act for it, and it will be the responsibility of this Committee to approve all plans for dwellings to be constructed on the Properties covered herein. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to this covenant.

No building, wall or other structure, shall be erected, placed, or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure has been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony or external design with existing structures, and as to location with respect to topography and finished grade elevation. No fences or walls shall be erected, placed or altered on any Lot nearer to any street than the minimum building set-back line.

The Committee's approval or disapproval as required in these covenants shall be in writing. In the event the Committee or its designated representatives fail to approve or disapprove within thirty (30) days after complete and adequate plans and specifications have been received by the Committee, approval will be assumed given and the Owner shall be deemed to be in compliance with the related covenants. Further, the Committee shall be dissolved and have no further authority or responsibility beyond a date five (5) years from the date of recording of these restrictions or beyond a date that all of the Lots in the development of APTON COMMONS are sold and built upon, whichever first occurs.

**Section 7. Arbitration.** In the event of any dispute arising under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the dispute shall be arbitrated by the arbitrators so designated in accordance with the rules of the American Arbitration Association. The decision shall be by a majority of all of the arbitrators and shall be binding on all parties thereto, their heirs, and assigns. The prevailing party shall be entitled to such arbitration fees from the losing party, including such fees in any appeltated proceedings.



**ARTICLE VI**

**OBLIGATION TO REBUILD**

**Section 1. Damage and Destruction Affecting Residences. Duty To Rebuild.** If all or any part portion of any residence is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of said residence to rebuild, repair, reconstruct said residence, in manner which will restore it substantially to its appearance and condition immediately prior to the casualty.

**Section 2. Time Limitation.** The Owner or Owners of any damaged residence shall be obliged to proceed with all due diligence hereunder and shall commence reconstruction within six (6) months after the damage occurs and complete reconstruction within nine (9) months after the damage occurs, unless prevented by causes beyond their reasonable control.

**ARTICLE VII**

**EASEMENTS**

**Section 1. Utility Easement.** Perpetual easements for installation, maintenance, operation, relocation and removal of utilities and drainage are hereby reserved by the Declarant over the front and rear five (5) feet of each Lot and on the side five (5) feet of each Lot (the front of each lot being the side facing the street). Any such easement shall be terminated upon construction of a party wall on the property line of two adjacent Lots to the extent of the entire area of the structure of which the party wall forms a part.

**Section 2. Access Easement.** Perpetual easements for access are hereby reserved for the Owners and occupants of Lot 7 over the rear five (5) feet of Lots 6 and 8 and the side five (5) feet of Lots 6 and 8.

Further, perpetual easements for access are hereby reserved for the Owner and occupants of Lot 23 over the rear five (5) feet of Lots 22 and 24 and the side five (5) feet of Lots 22 and 24.

Further, perpetual easements for access are hereby reserved for the Owner and occupants of Lot 16 over the rear

five (5) feet of Lots 15 and 17 and the side five (5) feet of Lots 15 and 17.

Section 1. Encroachment Easement. See Section 7 of Article IV.

#### ARTICLE VIII

##### GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable to the Owner of an Lot or Living Unit subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty (20) years from the date this Declaration is recorded. After such term such covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument fully executed by the then Owners of not less than sixty-four (64) percent of the Lots and Living Units has been recorded agreeing to change said covenants and restrictions in whole or in part. Any provision of the covenants and restrictions of this Declaration may be amended except Article IV, Party Walls (see below) by an instrument fully executed by the Owners of not less than sixty-four (64) percent of the Lots and Living Units. The standards and specifications that are established for the Party Wall (Article IV) are irrevocable and shall in no case be amended to reduce the specified fire protection. Any amendment must be properly recorded.

Section 2. Lessees and Other Invited. Lessees, invitees, contractors, family members and other persons entering the Properties under rights derived from an Owner shall comply with all of the provisions of these Declaration of Restrictions restricting or regulating the Owner's use and enjoyment of the Properties and shall be liable to an Owner under Section 3 hereof as though an Owner. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by such Owner.

Section 3. Enforcement. Any Owner shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, and reservations imposed by the provisions of this Declaration and a similar right shall exist with respect to recovery of damages for any such violation. Failure of any Owner to enforce any covenant or

restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Attorney's Fees. In the event suit or action is commenced to enforce or interpret any provision hereof, or for damages on account of a breach thereof, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorney's fees at trial or on appeal of such suit or action, in addition to all other sums provided by Law.

Section 5. Severability Invalidation of any one of these covenants of restrictions by judgment or court decree shall in no way affect any other provisions which shall remain in full force and effect.

Section 6. Amendment. The covenants, or any provision thereof may, at any time with written consent of Declarant, or at any time more than five (5) years after the date on which this Declaration is recorded without the consent of Declarant, be amended or repealed as provided by the vote or written consent of Owners owning not less than sixty-four (64) percent of the Lots and Living Units.

IN WITNESS WHEREOF the undersigned being the Declarant herein has hereunto set its hand and seal as of the date and year first hereinabove set forth.

THE HOLLMAN COMPANY

By Edward H. Murphy  
Date 7/1/83

STATE OF OREGON )  
County of Washington)

Personally appeared Edward H. Murphy  
who being duly sworn did say that he is the President  
of THE HOLLMAN COMPANY, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and he acknowledged said instrument to be its voluntary act and deed.

Alvin Sandler  
NOTARY PUBLIC FOR OREGON

My Commission Expires: 12/31/83

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FIRST SUPPLEMENTAL ADDITION  
TO THE DECLARATION OF COVENANTS and RESTRICTIONS  
FOR AFTON COMMONS SURDIVISION

STEWART TITLE W-0067 Aced

Whereas The Hollman Company, an Oregon corporation is the dedicators of Afton Commons, a plat of land in Washington County, Oregon recorded on August 19, 1983 in Plat Book 55, pages 35 and 36, and have placed of record certain Declaration of Covenants and Restrictions for Afton Commons, recorded on August 18, 1983 as Fee Number 83030452. The Hollman Company wishes to add the following condition:

The owners of Lot 17 and Lot 18 of Afton Commons are to maintain their respective yards and landscaping to include the entry monument signs for Afton Commons in a professional manner. Each owner is to remove any tall weeds, tall grass, brush, etc. from said yards. The City of Durham desires that these yards be maintained in a manner that will enhance the Afton Neighborhood and the City of Durham.

All other Declarations of Covenants and Restrictions for Afton Commons are to remain in full force and effect as though set forth in full herein.

DATED: June 8, 1984

THE HOLLMAN COMPANY

*Edward H. Murphy*  
President

STATE OF OREGON )  
County of Washington )

Personally appeared the above named Edward H. Murphy who, being duly sworn, did say that he is the President of The Hollman Company, a corporation and that said instrument was signed in behalf of said corporation by authority of its board of directors; and acknowledged said instrument to be its voluntary act and deed.

Before me:

*Cliff Swindler*  
Notary Public for Oregon  
My commission expires: 11-22-87



After recording return to: The Hollman Company  
155 "B" Avenue, #300  
Lake Oswego, Or. 97034

STATE OF OREGON  
County of Washington

I, Donald W. Wilson, Director of Assessment and Taxation, do hereby certify that the within instrument was received and recorded in the public records of this county.



1984 JUN 27 AM 10:43

RECORDED BY STEWART TITLE AS AN ACCOMMODATION ONLY. NO LIABILITY IS ACCEPTED FOR THE CONDITION OF TITLE OR FOR THE VALIDITY, SUFFICIENCY, OR EFFECT OF THIS DOCUMENT.

