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DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS AND CONDITIONS

for

NOTTINGHAM SQUARE  
DESCHUTES COUNTY, OREGON

This Declaration made on the date hereinafter set forth by the undersigned, hereinafter referred to as "Declarant":

WHEREAS, Declarant is the owner of certain real property in the county of Deschutes, state of Oregon, hereinafter referred to as "Property", more particularly described as follows:

The Southwest Quarter of the Northeast Quarter of the Northeast Quarter (SW1/4NE1/4NE1/4) and the Southeast Quarter of the Northeast Quarter (SE1/4NE1/4) of Section Nine (9), Township Eighteen (18) South, Range Twelve (12) East of the Willamette Meridian, Deschutes County, Oregon;

EXCEPTING that portion conveyed to Central Oregon Railroad Company by deed recorded November 1, 1909 in Volume 6, page 304, Deed records.

WHEREAS, Declarant desires to subject said property to certain protective covenants, conditions, restrictions, reservations, easements, liens, and charges for the benefit of said property and its present and subsequent owners as hereinafter specified, and will convey said property subject thereto,

NOW, THEREFORE, Declarant hereby declares that all of the said property is and shall be held and conveyed upon and subject to the easements, conditions, covenants, restrictions, and reservations hereinafter set forth; all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of said property. These easements, covenants, restrictions, conditions, and reservations shall constitute covenants to run with the land and shall be binding upon all persons having any right, title, or interest in the described property or in any part thereof, their heirs, successors, and assigns, and shall inure to each present and future owner thereof.

ARTICLE I

DEFINITIONS

Whenever used in this Declaration, the following terms shall have the following meanings:

(1) "Association" shall mean HOMEOWNERS OF NOTTINGHAM SQUARE ASSOCIATION, a nonprofit corporation organized under the laws of the state of Oregon, its successors and assigns.

(2) "Property" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may be hereafter brought within the jurisdiction of the Association by recorded declarations in the manner hereinafter set forth.

(3) "Common Area" shall mean all of the land and appurtenances thereto now or hereafter owned by the Association including roadways, and intended to be devoted for the common use and enjoyment of the members of the Association. The common area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

All of the above-described real property excepting that portion represented by the numbered lots on the subdivision plat recorded in Volume 13 page 29, plat records, Deschutes County, Oregon.

(4) "Lot" shall mean any numbered plot of land shown upon any recorded subdivision plat of said property.

(5) "Member" shall mean every person or entity who holds membership in the Association.

(6) "Owner" shall mean the recorded owner, whether one or more persons or entities, of fee simple title to any lot situated upon said property, or a contract purchaser if his record owner retains such title merely to secure an obligation. Owner does not include those having the interest merely as security for the performance of an obligation.

(7) "Roadway" means any street, highway, or other thoroughfare as shown on the recorded plat of said property.

(8) "Declarant" shall mean and refer to Ward Corporation of Bend, an Oregon corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

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## ARTICLE II

### SUBJECTING ADDITIONAL PROPERTY TO THIS DECLARATION

Section 1. At any time before January 31, 1980, Declarant, its successors and assigns, shall have the right to bring within the scheme of this Declaration additional properties in future states of development if such additions are in accord with the general plan of development of Nottingham Square.

#### Section 2. Method of Making Additions:

Additions authorized under this Article shall be made by filing of record a supplemental declaration of covenants and restrictions with respect to the additional property. Such supplemental declaration may contain such additions and modification of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property. In no event, however, shall such supplemental declaration revoke, modify, or add to the covenants established by this Declaration with respect to the property described herein.

#### Section 3. Additions Not in Accordance With the General Plan of Development:

Additions which are not in accord with the general plan of development may be made by the Declarant or any other owner of property, who with Declarant's consent desires to add such property to the scheme of this Declaration and to subject it to the jurisdiction of the Association, upon approval of the Association pursuant to a vote of its members.

## ARTICLE III

### MEMBERSHIP AND VOTING

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment. If a lot owner sells the lot by contract of sale, upon written notification to the Association, the lot owner's membership shall terminate and the contract purchaser's membership shall commence.

Section 2. The Association shall have two classes of voting membership:

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Class A: Class A members shall be all owners with the exception of Declarant and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one lot.

Class B: The Class B member shall be the Declarant and its successors and assigns as above defined, and shall be entitled to two (2) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) On January 1, 1979.

#### ARTICLE IV

##### PROPERTY RIGHTS

##### Section 1. Members' Easements of Enjoyment:

Every member of the Association shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every lot; subject, however, to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

(b) The right of the Association to suspend any member's voting rights and/or right to use of any of the recreational facilities owned by the Association, for any period during which any assessment against said member's property remains unpaid, and for a period not to exceed sixty (60) days for each infraction of its published rules and regulations.

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such considerations as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by 2/3 of each class of members agreeing to such dedication or transfer has been recorded in the appropriate records of Deschutes County, Oregon.

(d) The right of the directors of the Association to promulgate reasonable rules and regulations governing such rights of use, from time to time, in the interest of securing maximum safe usage of such Common Area by the members of the Association without unduly infringing upon the privacy or enjoyment of the owner or occupant of any part of said property.

Section 2. Delegation of Use:

Any member may delegate, in accordance with the rules and regulations adopted from time to time by the Directors, his right of enjoyment to the Common Area and facilities to the members of his family, his guests, or his tenants, provided they reside on the property.

Section 3. Title to the Common Area:

The Declarant hereby covenants that it will convey to the Association title to the Common Area prior to the first lot sale, subject to any necessary reservation of an easement or easements for utilities including, but not limited to, water, electricity, gas, sewage, telephone, and television.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENT

Section 1. Creation of the Lien and Personal Obligation of Assessments:

The Declarant, for each lot owned within the properties, hereby covenants, and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the persons who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Annual Assessments:

The annual assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and

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welfare of the residents in the properties and for the improvement and perpetual maintenance of the Common Areas, of each lot and of the homes situated upon the properties.

Without limiting the generality of the foregoing it is understood that the annual assessments will be of two types:

(a) "Common Area Assessments": This type of assessment includes, but is not limited to, road maintenance, sign installation, and maintenance, snow removal, common area watering and grass cutting, insurance, or real property taxes attributable to the common areas.

(b) "Lot Assessment": This type of assessment includes, but is not limited to, individual lot utilities such as domestic and irrigation water, sewer, TV cable, and garbage.

The Association shall have the right to contract for, pay, and assess against each lot owner any "common area assessment" or "lot assessment".

#### Section 3. Maximum Annual Assessment:

Until January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment shall be \$200 per lot.

(a) From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased each year not more than 10 percent above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased above 10 percent by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

#### Section 4. Special Assessments for Capital Improvements:

In addition to the annual assessments authorized above, The Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such



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assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4:

Written notice of any meeting called for the purpose of taking any action authorized under Section 3, when the amount exceeds the maximum set forth above, or Section 4 shall be sent to all members not less than fifteen (15) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) percent of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment:

After all homes have been sold to individual home owners, all assessments must be fixed at a uniform rate for all lots unless an assessment relates exclusively to one or more lots in which event such individual lots will be charged. All assessments may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments:

Due Dates: The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association:

Any assessments which are not paid when due shall be delinquent if the assessment is not paid within thirty (30) days after the due date; the assessment shall bear interest from the date of delinquency at the rate of ten (10%) percent per annum. The

Secretary of the said Association shall file in the office of the Directors of Records, County Clerk, or appropriate recorder of conveyances of Deschutes County, state of Oregon, within thirty (30) days after delinquency, a statement of the amount of any such charges or assessments, together with interest as aforesaid which have become delinquent with respect to any lot on said property, and upon payment in full thereof, shall execute and file a proper release of the lien securing the same. The aggregate amount of such assessments, together with interest, costs, expenses, and a reasonable attorney's fee for the filing and enforcement thereof, shall constitute a lien on the Lot, with respect to which it is fixed from the date the notice of delinquency thereof is filed in the office of said Director of Records, County Clerk, or other appropriate recording office, until the same has been paid or released as herein provided. Such lien may be enforced by said Association in the manner provided by law with respect to liens upon real property. The owner of said property at the time said assessment is levied shall be personally liable for the expenses, costs, and disbursements, including reasonable attorney's fees of the Declarant or of the Association, as the case may be, of processing and, if necessary, enforcing such liens, all of which expense, costs, and disbursements and attorney's fees shall be secured by said lien, including fees on appeal, and such Owner at the time such assessment is levied, shall also be liable for any deficiency remaining unpaid after any foreclosure sale. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his dwelling unit, Lot, or building site.

#### Section 9. Subordination of the Lien to Mortgages:

The lien of the assessments provided for herein shall be inferior, junior, and subordinate to the lien of any first mortgage or any first trust deed now or hereafter placed upon said property or any part thereof. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage or trust deed, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to amounts thereof which become due prior to such sale or transfer; and such lien shall attach to the net proceeds of sale, if any, remaining after such mortgages and other prior liens and charges have been satisfied. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

### ARTICLE VI

#### RESTRICTIONS ON USE OF PROPERTY

Section 1. Each lot shall be used for residential purposes only.



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Section 2. No noxious, or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood.

Section 3. No living tree may be cut down without the written consent of the architectural committee of the Association.

Section 4. No animals other than domestic household pets shall be kept on any part of said property.

Section 5. All garbage, trash, cuttings, refuse, garbage and refuse containers, and other service facilities shall be screened from view from neighboring units and Common Areas.

Section 6. Each lot and its improvements shall be maintained in a clean and attractive condition in good repair and in such fashion as not to create a fire hazard, and in compliance with the regulations of the Architectural Committee.

Section 7. No motorized vehicles other than automobiles or pickup trucks may be operated on the property without prior approval of the Board of Directors of the Association.

Section 8. No mobile homes, travel trailers, boats, boat trailers, or pickup campers may be left on any lot when they are not in use.

## ARTICLE VII

### ARCHITECTURAL CONTROL

After initial construction of the residence and sale to the homeowner, no building, fence, wall, or other structure shall be commenced, erected, or maintained upon the properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, color, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures, topography, and plans for landscaping by the Board of Directors of the Association, or by an Architectural Committee composed of three (3) or more representatives appointed by the Board. In the event said Board or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with, it being the intention that the Board or said Committee shall have full control not only of structures but landscaping and maintenance of individual lots.

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## ARTICLE VIII

### GENERAL PROVISIONS

#### Section 1. Enforcement:

The Association, or any Owner, or the owner of any recorded mortgage upon any part of said Property, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, or by 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. If any owner constructs or permits to be constructed on his property any improvement or allows the condition of his property to violate any provision of this Declaration, the Association may no sooner than sixty (60) days after delivery to such owner of written notice of the violation enter upon the offending property and remove the cause of such violation, or alter, repair, or change the item which is in violation of such Declaration in such manner as to make it conform thereto with the reasonable cost of such action to be a charge against the Owner's land.

#### Section 2. Severability:

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

#### Section 3. Amendment:

The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, on the Owner of any Lot 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 which time they will be automatically extended for successive periods of ten (10) years. Any of the covenants and restrictions of this Declaration except the easements herein granted, may be amended during the first four (4) year period if at least ninety (90%) percent of the votes entitled to be cast vote in favor of such amendment. Thereafter an amendment will be effective if at least seventy-five (75%) percent of the votes entitled to be cast vote in favor of such amendment. Any amendment will be recorded.

#### Section 4. Benefit of Provisions; Waiver:

The provisions contained in this Declaration shall bind and inure to the benefit of and be enforceable by Declarant, the

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Association, and the Owner or Owners of any portion of said property, and their heirs and assigns, and each of their legal representatives, and failure by Declarant or by the Association or by any of the property Owners or their legal representatives, heirs, successors, or assigns to enforce any of such conditions, restrictions, or charges herein contained shall in no event be deemed a waiver of the right to do so.

IN WITNESS WHEREOF the undersigned, Owner, has hereunto set its hand this 15<sup>th</sup> day of November, 1973.

WARD CORPORATION OF BEND

By

[Signature]  
President

SUBSCRIBED AND SWORN to before me this 15<sup>th</sup> day of November, 1973.



[Signature]  
Notary Public for Oregon

My Commission Expires: 10/26/74

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STATE OF OREGON

County of Deschutes

I hereby certify that the within instrument of writing was received for Record the 16 day of Nov AD 1973 at 4:43 o'clock P. M. and recorded in Book 200 on Page 994 Records of [Signature]

ROSEMARY PATTERSON  
County Clerk

By [Signature] Deputy