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# PRIVATE STREET & GATE MAINTENANCE AGREEMENT FOR RADCLIFFE COURT

Tract A  
Barrington Heights 9  
Clackamas County, Oregon

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**PRIVATE STREET & GATE  
MAINTENANCE AGREEMENT  
FOR RADCLIFFE COURT**

**Tract A  
Barrington Heights 9  
Clackamas County, Oregon**

This Private Street & Gate Maintenance Agreement for Radcliffe Court ("Agreement") is entered into this 23<sup>rd</sup> day of February, 2007, by and between Barrington Heights Association of Homeowners, an Oregon nonprofit corporation (the "Association"), and Owners of Lots for which Radcliffe Court provides primary access (the "Radcliffe Court Owners").

**RECITALS**

A. Barrington Heights is a planned community, located in the City of West Linn, Clackamas County, Oregon, comprised of the owners of lots located in the subdivisions described in attached **Exhibit A**.

B. Association is the association of owners of lots in Barrington Heights, established to govern, maintain, and administer the affairs of Barrington Heights and is incorporated as a nonprofit corporation under ORS Chapter 65.

C. The Association is governed by Bylaws of Barrington Heights Association of Homeowners, recorded October 19, 1989, as Document No. 89-46792, Records of Clackamas County, Oregon, and the Oregon Planned Community Act, ORS 94.550 to 94.783, to the extent provided under ORS 94.572.

D. Barrington Heights 9 (the "Plat") is a subdivision, located in the City of West Linn, Clackamas County, Oregon, recorded November 4, 1996, in Book 197, Page 14, Plat Records of Clackamas County, Oregon. By document recorded November 4, 1996, as Document No. 96-081733, the Plat was subjected to the covenants, conditions and restrictions, recorded July 12, 1993, as Document No. 93-48615, Records of Clackamas County, Oregon.

E. By First Amendment to the Declaration of Covenants, Conditions and Restrictions and General Description of Plan of Development for Barrington Heights IX, recorded June 4, 2002, as Document No. 2002-052655, Records of Clackamas County, Oregon, the Plat was subjected to the jurisdiction of the Association as provided under the amendment.

F. Tract A of the Plat is a private street (cul de sac) designated on the Plat as "Radcliffe Court" to be owned and maintained by the Association.

G. For traffic control and to promote the general safety and welfare of the owners, and to preserve the property value of the lots, the declarant of the Plat, at its sole expense, caused the gate to be installed at the entrance to Radcliffe Court. Since installation of the gate, Radcliffe Court

Owners have maintained the gate, including the gate motors, access keypad, telephone system, and related equipment, and the improvements to Radcliffe Court.

H. The Board of Directors, on behalf of the Association, and the Radcliffe Court Owners have determined that it is in the best interest of all members of the Association, the Association, and the Radcliffe Court Owners to enter into a written agreement setting forth the rights and responsibilities of the Association and the Radcliffe Court Owners regarding the maintenance, repair, and replacement of Radcliffe Court, the gate, and related matters.

I. Under Bylaws and other governing documents of Barrington Heights, the maintenance of common property is a common expense of all owners in Barrington Heights.

J. Under ORS 94.704(6), any common expense or any part of a common expense benefitting fewer than all of the lots may be assessed exclusively against the lots benefitted. Because Radcliffe Court is a cul de sac, only the Radcliffe Court Owners utilize the street for access to their lots.

**NOW THEREFORE**, in consideration of the mutual benefits to be received and obligations incurred by the Association, the owners in Barrington Heights and Radcliffe Court Owners, the parties agree as follows:

1. **DEFINITIONS.** As used in this Agreement the following terms, whether or not capitalized, have the following meanings:

1.1 **“Act”** means the Oregon Planned Community Act, ORS 94.559 to 94.783.

1.2 **“Agreement”** means this Private Street & Gate Maintenance Agreement for Radcliffe Court as it may be amended from time to time.

1.3 **Assessment**” means any charge imposed or levied by the Association on or against an owner or lot within Barrington Heights, pursuant to the provisions of the Bylaws, other governing document, or the Act.

1.4 **“Association”** means Barrington Heights Association of Homeowners, an Oregon nonprofit corporation.

1.5 **“Barrington Heights”** means the planned community and property described in attached **Exhibit A**.

1.6 **“Board of Directors” or “Board”** means the board of directors of the Association elected as provided in the Bylaws.

1.7 **“Bylaws”** means the Bylaws of Barrington Heights Association of Homeowners, recorded October 19, 1989, as Document No. 89-46792, Records of Clackamas County, Oregon, as they may be amended from time to time.

1.8 **“Common Expense”** means communal expenses described in Article V, Section 1 of the Bylaws and other expenses of all lots in Barrington Heights, pursuant to the Bylaws and any other governing documents of Barrington Heights.

1.9 **“Declaration”** means Declaration of Covenants, Conditions and Restrictions and General Description of Plan of Development for Barrington Heights VIII, recorded July 12, 1993, as Document No. 93-48615, Records of Clackamas County, Oregon, and all amendments thereto.

1.10 **“Gate”** means the vehicle gate located at the entrance to Radcliffe Court, including the gate motors and related mechanical apparatus, the key pad, or other security devices restricting access and telephone or other communication systems located in the brick pillars.

1.11 **“Plat”** means Barrington Heights 9, recorded November 4, 1996, in Book 197, Page 14, Plat Records of Clackamas County, Oregon.

1.12 **“Radcliffe Court” or “Street”** means that portion of Tract A improved with asphalt or other material, including the curbs, which provides access to the lots owned by the Radcliffe Court Owners.

1.13 **“Radcliffe Court Common Expenses” or “RC Common Expenses”** means the expenses described under Section 4.1, below.

1.14 **“Radcliffe Court Owners”** means the owners of Lots 28 through 39, Barrington Heights 9, recorded November 4, 1996, in Book 197, Page 14, Plat Records of Clackamas County, Oregon.

1.15 **“Tract A”** means Tract A of the Plat.

1.15 **Additional Definitions.**

(a) **Incorporation by Reference.** Except as otherwise provided in this Agreement, unless the context clearly requires otherwise:

(1) The terms defined in the Declaration or Bylaws have the same meaning in this Agreement.

(2) Each term used in this Agreement that is defined in ORS 94.550 has the meanings set forth in ORS 94.550, unless the term is defined otherwise in the Declaration or the Bylaws.

(b) **Other Definitions.** Terms which are not defined in this section but are defined elsewhere in this Agreement, whether or not capitalized, have the respective meanings given them in the provisions of this Agreement.

2. **ASSOCIATION OBLIGATIONS.** The Association has the following duties, responsibilities, and obligations:

2.1 **Maintenance Responsibilities.** The Association is responsible for the maintenance, repairs, and replacements of:

- (a) Radcliffe Court (the Street).
- (b) The Gate.
- (c) The brick pillars and related components.
- (d) Maintenance of landscaped portions of Tract A located northeasterly of the Gate.

2.2 **Financial Obligations of All Barrington Heights Owners.** The following are common expenses of the Association under Article V of the Bylaws:

- (a) Cost of the power supplied to the Gate and the lights located in the brick pillars during December and January of each year.
- (b) Insurance required under Section 2.5, below.
- (c) Cost of maintenance and replacement of landscaped portions of Tract A located northeasterly of the Gate.
- (d) Cost of the reserve study required under Section 6.2, below.
- (e) Cost of maintenance, repair, and replacement of the brick pillars and related components.

2.3 **RC Common Expense Duties.** The Board of Directors shall determine, levy, and collect Radcliffe Court Common Expenses in accordance with this section.

(a) **Determination of RC Common Expenses.** In conjunction with the preparation of the annual budget of the Association, the Board of Directors shall estimate the RC Common Expenses expected to be incurred for the following year and prepare a supplement to the Association annual budget for the annual RC Common Expenses (the "Annual RC Budget"). The Annual RC Budget is not subject to the approval requirements of Article V, Section 1(b) of the Bylaws, but is subject to Subsection (d) of this section.

(b) **Allocation and Assessment of RC Common Expenses.** Subject to Subsection (d) of this Section, the Board of Directors shall allocate the Annual RC Common Expenses among the Radcliffe Court Owners equally, in accordance with Section 4.2, below. The Board shall include the allocated amount, designated separately with each budget item listed, in the

regular periodic assessment levied against all owners in Barrington Heights, in accordance with Article V of the Bylaws.

(c) Collection of RC Common Expenses. The Board of Directors shall collect RC Common Expenses together with common expenses of the Association, in accordance with the Bylaws the Act and other applicable governing documents.

(d) Annual RC Common Expense Limitation.

(1) Limitation on Increase in Annual RC Budget. If the amount of the Annual RC Budget exceeds the amount of the Annual RC Budget for the preceding year (including any amendments) by more than four percent (4%), the Annual RC Budget may be subject to amendment by the Radcliffe Court Owners as provided in this subsection.

(2) Request for Special Meeting to Consider Amending Annual RC Budget. If, within fifteen (15) days of delivery of the notice described in Paragraph (3) of this subsection, the president or other person specified in the notice receives a written request signed by at least twenty-five percent (25%) of the Radcliffe Court Owners that a special meeting be called for the purpose of amending the Annual RC Budget, the president shall call a special meeting of the Radcliffe Court Owners, in accordance with the procedures of Article I, Sections 7 and 9 of the Bylaws.

(3) Notice of Right to Request Special Meeting. If the Annual RC Budget or an amended Annual RC Budget exceeds the limitation specified under Paragraph (1) of this subsection, the Board shall give Radcliffe Court Owners notice, in accordance with this subsection. The notice must accompany the copy of the Annual RC Budget provided, in accordance with Section 2.4(c), below. The notice must include, without limitation, the following:

(A) A statement that the Annual RC Budget or amended budget exceeds the limitation specified in Paragraph (1) of this subsection.

(B) The Radcliffe Owners have the right to request a special meeting for the purpose of considering amending the Annual RC Budget.

(C) The date by which request for the special meeting must be received.

(D) The name and address of the person where the requests for a special meeting must be delivered.

(4) Required Vote. Unless at the meeting held under Subsection (d)(2) of this section, at least seventy-five percent (75%) of the Radcliffe Court Owners vote to amend the Annual RC Budget, the Annual RC Budget remains in effect.

(5) Suspension of Excessive Increase. If a special meeting is requested under Paragraph (2) of this subsection, until the special meeting is held, the amount of the allocation of Annual RC Common Expenses included in the periodic assessment under Subsection (b) of this section is the sum of the amount of the allocation for the preceding year (including any amendments) plus four percent (4%) of such amount.

(e) Costs Exceeding Reserve Account. If the actual costs incurred for RC Common Expenses for which reserves are established under Section 6.1, below, exceed the funds in the reserve account, the Association shall pay the excess costs and assess the costs to the Radcliffe Court Owners. If the excess cost is more than FIVE THOUSAND DOLLARS (\$5000), the Association shall pay the excess costs and assess the costs to the Radcliffe Court Owners over five (5) years, in accordance with this section.

(f) Surplus Funds. If the sums estimated and budgeted for the RC Common Expenses, and being collected or already collected, at any time exceed necessary funds, the Board of Directors shall amend the supplemental budget to correspond with the reduction in necessary funds and reduce the RC Common Expenses being assessed to the Radcliffe Court Owners under Subsection (b) of this section.

#### 2.4 Records and Accounts.

(a) Accounts. The Board of Directors shall cause Radcliffe Court Common Expenses collected to be deposited in such Association checking, savings, or other account or accounts with an institution or institutions as designated by the Board in accordance with ORS 94.670 and the Bylaws.

(b) Financial Records. The Board of Directors shall keep accounting records reflecting the RC Common Expenses assessed in accordance with Article III, Section 6 of the Bylaws and the Act. The records of the Association shall be available to owners in Barrington Heights for inspection or audit in accordance with the Bylaws and the Act.

(c) Copy of RC Common Budget. The Board of Directors shall cause a copy of the supplemental budget for the annual RC Common Expenses to be included with the summary of annual Association budget required to be provided to owners under ORS 94.645.

#### 2.5 Insurance. The Board of Directors shall obtain and maintain:

##### (a) Property Damage Insurance.

(1) The Association shall obtain and maintain property insurance covering loss or damage from occurrences including, but not limited to, fire, vandalism, and malicious mischief with extended coverage endorsement and such other coverage that the Association may seem desirable, such as flood and earthquake coverage.

(2) The amount of coverage shall be for not less than the full insurable replacement value of the Gate, the Street, and all other real or personal property required to be maintained under this Agreement.

(b) Liability Insurance.

(1) The Association shall obtain and maintain comprehensive general liability insurance coverage insuring the Association, the Board of Directors, owners of lots in Barrington Heights, and managing agent, if any, against liability to the public or to the owners of lots in Barrington Heights and their invitees or tenants incident to the ownership or use of the property.

(2) Limits of liability under the insurance may not be less than One Million Dollars (\$1,000,000) on a combined single limit basis.

2.6 Reserve Study. In accordance with Section 6.2, below, the Board of Directors shall annually conduct a reserve study, or review and update an existing study, to determine the reserve account requirements.

3. **RADCLIFFE COURT OWNERS OBLIGATIONS.**

3.1 **AC Common Expenses.**

(a) Obligation to Pay. As of January 1, 2007, Radcliffe Court Owners are obligated to pay RC Common Expenses determined, assessed, and collected as provided in Sections 2.3 and 4 of this Agreement.

(b) Assessments Property of Association. All sums received on account of RC Common Expenses, including assessments paid into the reserve account required under Section 6, below, belong to and are the property of the Association for the purposes designated under this Agreement. Except as provided under Sections 7.1 and 7.2, below, the sums are not refundable to owners. As provided under ORS 94.595, owners may treat their outstanding share of the reserve account as separate items in any agreement for the sale of their units.

3.2 **Nature of Obligation for Assessments.**

(a) Personal Obligation. Assessments for RC Common Expense, together with interest, late payment charges, and collection costs as provided under Section 2.3(c) above are the personal obligation of the owner of the lot and subsequent owners as provided under ORS 94.712.

(b) Joint and Several Obligation. In addition to constituting a lien on the Lot as provided under Article V of the Bylaws and the Act, each assessment for RC Common Expenses is the joint and several obligation of the owner or owners of the lot against which the assessment is levied.



(c) Offsets Prohibited.

(1) An owner may not claim an offset against assessments for RC Common Expenses or failure of the Association to perform its obligations. An owner may not offset amounts owing or claimed to be owed by the Association to the owner.

(2) An owner by the owner's action may not claim exemption from liability for contribution towards RC Common Expenses under Section 4, below, by waiver of owner's use or enjoyment of any common property or by abandonment by the owner of the owner's lot.

4. DETERMINATION AND ALLOCATION OF RC COMMON EXPENSES.

4.1 Determination of Radcliffe Court Common Expenses. Subject to Sections 4.4, 4.5, and 4.6, below, the following constitute RC Common Expenses:

(a) A reserve for major maintenance and repair and replacement of Radcliffe Court, the Gate, and other items established under Section 6.1, below.

(b) Cost of maintenance and repair of Radcliffe Court and the Gate not included in the reserve account established under Section 6.1, below.

(c) Cost of the power supplied to the Gate and the lights located in the brick pillars for the period of February through November of each year.

(d) Any other costs of operation of the Gate, including, without limitation, maintenance costs for which reserves are not established under Section 6, below.

(e) Uncollectible Radcliffe Court Common Expenses.

4.2 Allocation of Radcliffe Court Expenses. The Radcliffe Court Expenses specified under Section 4.1, above, shall be allocated equally among the Radcliffe Court Owners.

4.3 Re-computation of RC Common Expenses. If the sums estimated and budgeted for the RC Common Expenses, and being collected or already collected, at any time exceeds necessary funds, in accordance with Section 2.3(d), above, the Board of Directors shall revise the supplemental budget to correspond with the reduction in necessary funds and reduce the RC Common Expenses being assessed to the Radcliffe Court Owners under Section 2.3(b), above.

4.4 Damage Due to Owner. In accordance with ORS 94.708(4), if, due to the act or neglect of an owner in Barrington Heights, a member of the owner's family or household pet, or a guest or other authorized occupant or visitor of the owner, damage is caused to the Street or the Gate, or maintenance, repairs, or replacements are required which would otherwise be a Radcliffe Court Common Expense under Section 4.1, above, then the owner shall pay for the damage and such maintenance, repairs, and replacements as may be determined by the Association. The cost is an assessment against the owner and owner's unit and may be collected under Article V of the Bylaws.

4.6 **Damage or Destruction by Casualty.**

(a) Damage or Destruction of Gate by Casualty.

(1) In the event of damage or destruction of the Gate by casualty, the damage or destruction shall be repaired or reconstructed unless:

(A) Insurance proceeds are insufficient to cover the costs of repair or reconstruction; and

(B) Within twenty-one (21) days of the damage or destruction, at least seventy-five percent (75%) of the Radcliffe Court Owners agree in writing not to cause the Gate to be repaired or reconstructed.

(2) Unless the Radcliffe Court Owners agree not to repair or reconstruct the Gate, the Association is responsible for repairing or reconstructing the Gate. The incurred costs shall be assessed as provided under Section 2, above.

(b) Damage or Destruction of Radcliffe Court. In the event of damage or destruction of Radcliffe Court by casualty, the Association shall cause the damage or destruction to be repaired or reconstructed. The costs incurred are RC Common Expenses to be assessed as provided under Section 2, above.

5. **OPERATING ACCOUNT.**

(a) Establishment of Account. The Board of Directors shall establish and maintain a general operating account by allocation and payment of the portion of the periodic assessment levied under Section 2.3(b), above, not allocated to the reserve fund established under Section 6.1, below.

(b) Use of Funds. The account may only be used for payment of RC Common Expenses for which reserves are not established under Section 6.1, below.

6. **RESERVE ACCOUNT.**

6.1 **Establishment of the Reserve Account.** The Board of Directors shall establish and maintain a reserve account (the "Radcliffe Court Reserve Account") for major maintenance, repair, and replacement of the following items:

(a) Radcliffe Court.

(b) The Gate.

(c) Any other items the Board, with the written consent of at least a majority of the Radcliffe Court Owners, determines necessary to ensure the continued operation of the Gate.

**6.2 Determination of Reserve Account; Reserve Study.**

(a) The Radcliffe Court Reserve Account requirements shall be determined as a part of the annual reserve study or update conducted by the Board of Directors to determine the reserve account requirements of the other reserve accounts maintained by the Association.

(b) Within thirty (30) days after conducting the reserve study or updating an existing reserve study described under Subsection (a) of this section, the Board of Directors shall provide to every Radcliffe Court Owner a copy of the reserve study or update.

**6.3 Use of Reserve Fund.**

(a) The Radcliffe Court Reserve Account may be used only for the purposes for which the reserves have been established and must be kept separate from other funds, including other reserve funds of the Association.

(b) The Board of Directors may borrow funds from the Radcliffe Court Reserve Account to meet high seasonal demands on the non-reserve items in the RC Annual Budget or the annual budget of the Association or to meet unexpected increases in expenses of the operating account maintained under Section 5.1, above, or the operating account of the Association if the Board has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds.

(c) Not later than the adoption of the affected budget for the following year, the Board of Directors shall adopt by resolution a written payment plan providing for repayment by the affected owners within a reasonable time of any unpaid funds borrowed under Subsection (b) of this section.

(d) The Board of Directors may use funds of the Radcliffe Court Reserve Account allocated to one reserve item to meet unexpected expenses of another reserve item of the account. The re-allocation of funds must be reflected in the next reserve study or reserve study update conducted under Section 6.2, above.

(e) The Radcliffe Court Reserve Account may be invested by the Board of Directors subject to normal prudent investment standards.

7. **CONDITIONS AND RESTRICTIONS.**

7.1 **Removal of Gate.**

(a) **Required Approval.** The gate may only be removed with the written approval of at least seventy-five percent (75%) of the Radcliffe Court Owners.

(b) **Gate Reserve Funds.** If the Radcliffe Court Owners approve removing the gate, any funds identified in the Radcliffe Court Reserve Account for the gate and related purposes shall be re-allocated for other items in the Radcliffe Court Reserve Account.

(c) **Radcliffe Court Maintenance Responsibility.** Subject to Section 7.2, below, if the owners approve removing the gate, the maintenance, repair, and replacement of Radcliffe Court remains an obligation of the Radcliffe Court Owners under Section 3.1, above.

7.2 **Change in Responsibility for Cost of Radcliffe Court Maintenance.**

(a) **Association Responsibility.** If the Association pays for the maintenance, repair, and replacement of any other private street within Barrington Heights, the cost of maintenance, repair, and replacement of Radcliffe Court ceases to be an RC Common Expense under Section 4.1, above. The cost of maintenance, repair, and replacement of Radcliffe Court automatically becomes a common expense of the Association under Section 2.2, above. However, funds in the Radcliffe Court Reserve Account remain reserve funds to be used for the purpose for which the reserves were established.

(b) **City of West Linn Responsibility.** If the City of West Linn assumes maintenance, repair, and replacement responsibility for Radcliffe Court, the funds identified for such purposes in the Radcliffe Court Reserve Account shall be refunded to the Radcliffe Court Owners in the allocation specified under Section 4.2, above.

7.3 **Termination of Financial Obligations of Radcliffe Court Owners.** If the financial obligations of the Radcliffe Court Owners under this agreement are no longer required and this Agreement is terminated under Section 10, below, all funds in the Radcliffe Court Reserve Account shall be deposited in the general operating account of the Association. The account of each Radcliffe Court Lot shall be credited with an allocated amount calculated in accordance with Section 4.2, above.

7.4 **Access to Radcliffe Court.** The Association and any management agent, and the Radcliffe Court Owners shall establish procedures to provide Gate access in the case of emergencies and for the purpose of performing maintenance, repairs, and replacements required under this Agreement, the Bylaws, the Declaration, or other applicable governing documents.

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8. **DEFAULT.**

8.1 **Radcliffe Court Owners.** If a Radcliffe Court Owners fails to pay any assessment under Section 3.1, above, the owner is obligated to pay interest on the amount owed, a late charge for all expenses incurred by the Association in collecting the unpaid assessment, including, without limitation, attorney fees, as provided under Article V of the Bylaws and the Act.

8.2 **Association.**

(a) **Performance of Obligations.** Upon compliance with Subsection (c) of this section:

(1) If the Association fails to perform Association's obligations under this Agreement, the Radcliffe Court Owners may give the Association written notice of RC Owners' intent to cause the obligations to be performed and the costs incurred billed to the Association as an RC Common Expense. The notice shall state the date by which the obligations must be commenced and describe the obligations to be performed.

(2) If the obligations described in the notice are not performed by the date specified in the notice or any agreed extension, the Radcliffe Court Owners may cause the described obligations to be performed and the costs incurred billed to the Association as an RC Common Expense.

(b) **Additional Remedies.** Upon compliance with Subsection (3) of this section, in addition to the remedies under Subsection (a) of this section, if the Association fails to perform Association's obligations under this Agreement, the Radcliffe Court Owners shall have any other remedy available to them by law or in equity.

(c) **Required Consent for Action by Radcliffe Court Owners.** Any action taken under Subsections (a) and (b) of this section requires the prior written consent of at least a majority of the Radcliffe Court Owners.

8.3 **Remedies Not Exclusive.** No remedy granted under this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every remedy granted under this Agreement is cumulative and is in addition to every other remedy granted under this Agreement, now or hereafter existing at law or in equity.

9. **BINDING EFFECT.** This Agreement is binding upon the parties and their successor and assigns, including without limitation, the successor and assigns of the Radcliffe Court Owners and all other owners of lots within Barrington Heights.

10. **AMENDMENT AND TERMINATION.** This Agreement may only be amended or terminated by an instrument in writing approved, signed, and recorded as provided in this section.

10.1 **Required Approvals.** The approval of the Board of Directors and the written approval of at least seventy-five percent (75%) of the Radcliffe Court Owners is required to amend or to terminate this Agreement.

10.2 **Written Instrument.** An amendment to this Agreement or a termination of this Agreement must be by an instrument in writing, signed and acknowledged by the president and secretary on behalf of the Association. The written approval of at least seventy-five percent (75%) of the Radcliffe Owners must be attached to the instrument. The written approvals of the Radcliffe Court Owners need not be acknowledged.

10.3 **Certification; Recording.** An amendment to this Agreement or a termination of this Agreement must include a certification by the president and secretary of the Association that the amendment or termination was approved in accordance with this Agreement. The amendment or termination is not effective until recorded in the office of the recording officer of Clackamas County, Oregon.

11. **ATTORNEY FEES.** If suit or action is instituted by any party in connection with any controversy arising out of this Agreement, the prevailing party is entitled to recover, in addition to all costs, damage, and awards, its reasonable costs and attorney fees, both at and in preparation for trial and any appeal or review including such amounts as determined by the court or reviewing authority.

12. **GENERAL PROVISIONS.**

12.1. **Notices.** Any notice required or permitted to be given under this Agreement is sufficient if deposited in the United States mails, postage prepaid, property addressed to the parties at the addresses set forth below or at such other addresses as they may designate from time to time in writing.

(a) **Association.** Notices to the Association shall be sent to the Association at the address indicated for the Association in the annual report filed with the Secretary of State pursuant to ORS Chapter 65.

(b) **Radcliffe Court Owners.** Notices to Radcliffe Court Owners shall be sent to the mailing address of each owner indicated in the records of the Association.

12.2 **Waiver, Precedent, and Estoppel.** No restriction, condition, obligation, or provision contained in this Agreement may be deemed to have been abrogated or waived by the Association or Radcliffe Court Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur. Any failure to enforce the same may not be deemed to constitute precedent or estoppel impairing the right of the Association or a Radcliffe Court Owner as to any similar matter.

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12.3 **Severability; Number; Captions; Construction.**

(a) **Severability.** The invalidity of any part of this Agreement does not impair or affect in any manner the validity, enforceability, or effect of the balance of this Agreement.

(b) **Number and Construction.** As used in this Agreement, the singular includes the plural and the plural the singular and “may not” and “shall not” are equivalent expressions of an absolute prohibition. The masculine and neuter each include the masculine, feminine, and neuter, as the context requires.

(c) **Captions.** All captions used in this Agreement are intended solely for convenience of reference and in no way limit any of the provisions of this Agreement.

12.4 **Conflicts.** This Agreement is intended to comply with the Act, the Oregon Nonprofit Corporation Act, the Declaration, and the Bylaws. In case of any irreconcilable conflict, the Acts, subject to ORS 65.959 and 94.770(4), and the Declaration and Bylaws control over this Agreement.

IN WITNESS THEREOF, the parties have signed this Agreement effective on the date and year stated above.

**BARRINGTON HEIGHTS  
ASSOCIATION OF HOMEOWNERS,  
an Oregon nonprofit corporation**

By: [Signature]  
President

By: [Signature]  
Secretary

STATE OF OREGON )  
County of Washington ) ss.

The foregoing instrument was acknowledged before me this 23rd day of February, 2007, by Doug Kohlert, President of Barrington Heights Association of Homeowners, an Oregon nonprofit corporation, on its behalf.



[Signature]  
Notary Public for Oregon  
My Commission Expires: July 5, 2010

STATE OF OREGON )  
County of Washington ) ss.

The foregoing instrument was acknowledged before me this 23rd day of February, 2007, by William Hupfer, Secretary of Barrington Heights Association of Homeowners, an Oregon nonprofit corporation, on its behalf.



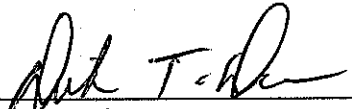
[Signature]  
Notary Public for Oregon  
My Commission Expires: July 5, 2010

**RADCLIFFE COURT OWNERS**  
*See Pages 16-27 Below*




DATED: 2/3, 2007.

**BARRINGTON HEIGHTS  
ASSOCIATION OF HOMEOWNERS,  
an Oregon nonprofit corporation**

By:   
Dirk Davis  
Owner of Lot 28  
Barrington Heights Association of Homeowners  
Barrington Heights 9, Tract A  
Clackamas County, Oregon

**BARRINGTON HEIGHTS  
ASSOCIATION OF HOMEOWNERS,  
an Oregon nonprofit corporation**

By:   
Tamera Davis  
Owner of Lot 28  
Barrington Heights Association of Homeowners  
Barrington Heights 9, Tract A  
Clackamas County, Oregon

DATED: 28, 2007.

**BARRINGTON HEIGHTS  
ASSOCIATION OF HOMEOWNERS,  
an Oregon nonprofit corporation**

By: Pachoutan Rouhbakhsh

Pachoutan Rouhbakhsh  
Owner of Lot 29  
Barrington Heights Association of Homeowners  
Barrington Heights 9, Tract A  
Clackamas County, Oregon

**BARRINGTON HEIGHTS  
ASSOCIATION OF HOMEOWNERS,  
an Oregon nonprofit corporation**

By: Azar Rouhbakhsh

Azar Rouhbakhsh  
Owner of Lot 29  
Barrington Heights Association of Homeowners  
Barrington Heights 9, Tract A  
Clackamas County, Oregon

DATED: 2-4-07, 2007.

**BARRINGTON HEIGHTS  
ASSOCIATION OF HOMEOWNERS,  
an Oregon nonprofit corporation**

By: Randy Eggen  
Randy Eggen  
Owner of Lbt 30  
Barrington Heights Association of Homeowners  
Barrington Heights 9, Tract A  
Clackamas County, Oregon

**BARRINGTON HEIGHTS  
ASSOCIATION OF HOMEOWNERS,  
an Oregon nonprofit corporation**

By: Julie A Eggen  
Julie Eggen  
Owner of Lot 30  
Barrington Heights Association of Homeowners  
Barrington Heights 9, Tract A  
Clackamas County, Oregon

DATED: February 7, 2007.

**BARRINGTON HEIGHTS  
ASSOCIATION OF HOMEOWNERS,  
an Oregon nonprofit corporation**

By: \_\_\_\_\_

Robert Straton  
Owner of Lot 31  
Barrington Heights Association of Homeowners  
Barrington Heights 9, Tract A  
Clackamas County, Oregon

**BARRINGTON HEIGHTS  
ASSOCIATION OF HOMEOWNERS,  
an Oregon nonprofit corporation**

By: \_\_\_\_\_

*Anne C. Straton*  
Name:  
Owner of Lot 31  
Barrington Heights Association of Homeowners  
Barrington Heights 9, Tract A  
Clackamas County, Oregon

DATED: 2/7/2007, 2007.

**BARRINGTON HEIGHTS  
ASSOCIATION OF HOMEOWNERS,  
an Oregon nonprofit corporation**

By: M. O'Sullivan  
Martin O'Sullivan  
Owner of Lot 32  
Barrington Heights Association of Homeowners  
Barrington Heights 9, Tract A  
Clackamas County, Oregon

**BARRINGTON HEIGHTS  
ASSOCIATION OF HOMEOWNERS,  
an Oregon nonprofit corporation**

By: A. J. O'Sullivan  
Ann O'Sullivan  
Owner of Lot 32  
Barrington Heights Association of Homeowners  
Barrington Heights 9, Tract A  
Clackamas County, Oregon

DATED: 2-4-, 2007.

**BARRINGTON HEIGHTS  
ASSOCIATION OF HOMEOWNERS,  
an Oregon nonprofit corporation**

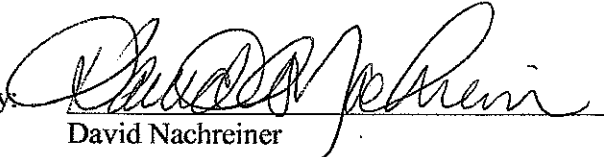
By: Susanne S. Greengard  
Name Susanne Greengard  
Owner of Lot 33  
Barrington Heights Association of Homeowners  
Barrington Heights 9, Tract A  
Clackamas County, Oregon

**BARRINGTON HEIGHTS  
ASSOCIATION OF HOMEOWNERS,  
an Oregon nonprofit corporation**


By: \_\_\_\_\_  
Name Samuel Greengard  
Owner of Lot 33  
Barrington Heights Association of Homeowners  
Barrington Heights 9, Tract A  
Clackamas County, Oregon

DATED: February 5<sup>th</sup>, 2007.

**BARRINGTON HEIGHTS  
ASSOCIATION OF HOMEOWNERS,  
an Oregon nonprofit corporation**

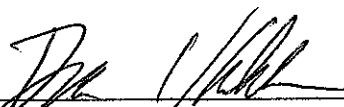
By:   
David Nachreiner  
Owner of Lot 34  
Barrington Heights Association of Homeowners  
Barrington Heights 9, Tract A  
Clackamas County, Oregon

**BARRINGTON HEIGHTS  
ASSOCIATION OF HOMEOWNERS,  
an Oregon nonprofit corporation**

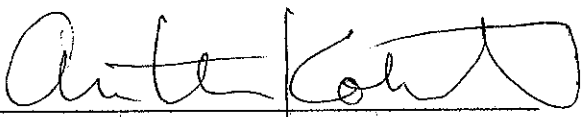
By:   
Rozanne Nachreiner  
Owner of Lot 34  
Barrington Heights Association of Homeowners  
Barrington Heights 9, Tract A  
Clackamas County, Oregon

DATED: 2/6, 2007.

**BARRINGTON HEIGHTS  
ASSOCIATION OF HOMEOWNERS,  
an Oregon nonprofit corporation**

By:   
\_\_\_\_\_  
Douglas Kohlert  
Owner of Lot 35  
Barrington Heights Association of Homeowners  
Barrington Heights 9, Tract A  
Clackamas County, Oregon


**BARRINGTON HEIGHTS  
ASSOCIATION OF HOMEOWNERS,  
an Oregon nonprofit corporation**

By:   
\_\_\_\_\_  
Annette Kohlert  
Owner of Lot 35  
Barrington Heights Association of Homeowners  
Barrington Heights 9, Tract A  
Clackamas County, Oregon

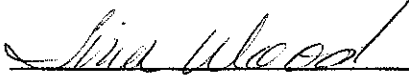


DATED: 1-7-07, 2007.

**BARRINGTON HEIGHTS  
ASSOCIATION OF HOMEOWNERS,  
an Oregon nonprofit corporation**

By:   
Monte Woods  
Owner of Lot 36  
Barrington Heights Association of Homeowners  
Barrington Heights 9, Tract A  
Clackamas County, Oregon

**BARRINGTON HEIGHTS  
ASSOCIATION OF HOMEOWNERS,  
an Oregon nonprofit corporation**

By:   
Name:  
Owner of Lot 36  
Barrington Heights Association of Homeowners  
Barrington Heights 9, Tract A  
Clackamas County, Oregon

DATED: 2/5, 2007.

**BARRINGTON HEIGHTS  
ASSOCIATION OF HOMEOWNERS,  
an Oregon nonprofit corporation**

By: Brad C. Arms  
Brad C. Arms  
Owner of Lot 37  
Barrington Heights Association of Homeowners  
Barrington Heights 9, Tract A  
Clackamas County, Oregon

**BARRINGTON HEIGHTS  
ASSOCIATION OF HOMEOWNERS,  
an Oregon nonprofit corporation**

By: Huong T. Arms  
Huong T. Arms  
Owner of Lot 37  
Barrington Heights Association of Homeowners  
Barrington Heights 9, Tract A  
Clackamas County, Oregon

DATED: Feb 2<sup>nd</sup>, 2007.

**BARRINGTON HEIGHTS  
ASSOCIATION OF HOMEOWNERS,  
an Oregon nonprofit corporation**

By: William M. Olsen  
William M. Olsen  
Owner of Lot 38  
Barrington Heights Association of Homeowners  
Barrington Heights 9, Tract A  
Clackamas County, Oregon

**BARRINGTON HEIGHTS  
ASSOCIATION OF HOMEOWNERS,  
an Oregon nonprofit corporation**

By: Johanna S. Olsen  
Johanna S. Olsen  
Owner of Lot 38  
Barrington Heights Association of Homeowners  
Barrington Heights 9, Tract A  
Clackamas County, Oregon

DATED: \_\_\_\_\_, 2007.

**BARRINGTON HEIGHTS  
ASSOCIATION OF HOMEOWNERS,  
an Oregon nonprofit corporation**

By: \_\_\_\_\_

Phillippe Kingsley  
Owner of Lot 39  
Barrington Heights Association of Homeowners  
Barrington Heights 9, Tract A  
Clackamas County, Oregon

**BARRINGTON HEIGHTS  
ASSOCIATION OF HOMEOWNERS,  
an Oregon nonprofit corporation**

By: \_\_\_\_\_

Name:  
Owner of Lot 39  
Barrington Heights Association of Homeowners  
Barrington Heights 9, Tract A  
Clackamas County, Oregon

## EXHIBIT A

The following described subdivisions are within Barrington Heights Planned Community as provided in the documents set forth below:

**PHASE I BARRINGTON HEIGHTS** recorded August 2, 1985 as Plat No. 2694, Plat Records, Clackamas County, Oregon, by:

First Amendment to the Declaration of Covenants, Conditions and Restrictions and General Description of Plan of Development for Barrington Heights I, recorded June 4, 2002 as Document 2002-052648, Records of Clackamas County, Oregon.

**PHASE II BARRINGTON HEIGHTS** recorded January 23, 1987 as Plat No. 2751, Plat Records Clackamas County, Oregon, by:

First Amendment to the Declaration of Covenants, Conditions and Restrictions and General Description of Plan of Development for Barrington Heights II, recorded June 4, 2002 as Document 2002-052649, Records of Clackamas County, Oregon.

**PHASE III BARRINGTON HEIGHTS** recorded March 11, 1988 as Plat No. 2789, Plat Records of Clackamas County, Oregon, by:

First Amendment to the Declaration of Covenants, Conditions and Restrictions and General Description of Plan of Development for Barrington Heights III, recorded June 4, 2002 as Document 2002-052650, Records of Clackamas County, Oregon.

**BARRINGTON HEIGHTS PHASE IV** recorded December 19, 1989 as Plat No. 2858, Plat Records of Clackamas County, Oregon, by:

First Amendment to the Declaration of Covenants, Conditions and Restrictions and General Description of Plan of Development for Barrington Heights IV, recorded June 4, 2002 as Document 2002-052651, Records of Clackamas County, Oregon.

**BARRINGTON HEIGHTS 5** recorded July 19, 1990 as Plat No. 2890, Plat Records of Clackamas County, Oregon, by:

First Amendment to the Declaration of Covenants, Conditions and Restrictions and General Description of Plan of Development for Barrington Heights V, recorded June 4, 2002 as Document 2002-052652, Records of Clackamas County, Oregon.

**EXHIBIT A**

**BARRINGTON HEIGHTS 6** recorded March 26, 1992 as Plat No. 2982, Plat Records of Clackamas County, Oregon, by:

First Amendment to the Declaration of Covenants, Conditions and Restrictions and General Description of Plan of Development for Barrington Heights VI, recorded June 4, 2002 as Document 2002-052653, Records of Clackamas County, Oregon.

**BARRINGTON HEIGHTS 8** recorded July 8, 1993 as Plat No. 3055, Plat Records of Clackamas County, Oregon, by:

First Amendment to the Declaration of Covenants, Conditions and Restrictions and General Description of Plan of Development for Barrington Heights VIII, recorded June 4, 2002 as Document 2002-052654, Records of Clackamas County, Oregon.

**BARRINGTON HEIGHTS 9** recorded October 24, 1996 as Plat No. 3282, Plat Records of Clackamas County, Oregon, by:

First Amendment to the Declaration of Covenants, Conditions and Restrictions and General Description of Plan of Development for Barrington Heights IX, recorded June 4, 2002 as Document 2002-052655, Records of Clackamas County, Oregon.

**BARRINGTON HEIGHTS NORTH** recorded December 17, 1999 as Plat No. 3563, Plat Records of Clackamas County, Oregon, by:

First Amendment to the Declaration of Covenants, Conditions and Restrictions and General Description of Plan of Development for Barrington Heights North, recorded July 30, 2003 as Document 2003-098765, Records of Clackamas County, Oregon.