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**DECLARATION OF
PRIVATE ROADWAY AND JOINT MAINTENANCE AGREEMENT
FOR BARRINGTON HEIGHTS, PHASE V SUBDIVISION**

This Declaration of Private Roadway and Joint Maintenance Agreement is made on the date hereinafter set forth by BARRINGTON DEVELOPMENT INC., an Oregon Corporation, hereinafter referred to as "Declarant".

WHEREAS, Declarant is the owner of five (5) lots located in the real property development known as Barrington Heights Phase V Subdivision, located in the City of West Linn, County of Clackamas, State of Oregon and more particularly described as Lots 27, 28, 29, 30 and 31 of Block 6, Barrington Heights Phase 5 Subdivision.

NOW, THEREFORE, Declarant hereby declares that, for the purpose of protecting the value and desirability of the property, and with the specific intent of creating a permanent and mutual right of way for use as a private roadway, all of the property described above shall be held, sold and conveyed subject to the following declarations:

(1) Declarant hereby grants, conveys, declares and dedicates for permanent use as a private roadway benefiting and appurtenant to the property, a strip of land located in the County of Clackamas, State of Oregon, more particularly described in Exhibit "A" attached hereto and incorporated herein.

(2) This private roadway and right of way may be used for vehicular and pedestrian ingress and egress purposes by Declarant, their successors, assigns, lessees, mortgagees, invitees, guests, customers, agents and employees. No party or persons shall have the right to park, load or unload any vehicle in the roadway, other than under emergency conditions. Use of the roadway shall be on a regular, continuous, non-exclusive, non-priority basis. No party or person's rights hereunder shall lapse in the event of that party's failure to use the roadway on a continuous basis.

(3) After completion of initial construction of the private roadway described herein the cost of periodic maintenance and future necessary repairs to such roadway shall be borne exclusively by the purchasers of Lots 27, 28, 29, 30 and 31 of Block 6, Barrington Heights Phase V Subdivision, their successors and assigns. All costs shall be apportioned equally between each lot owner. Declarant shall remain responsible for maintenance and repairs to the roadway only in proportion to any remaining ownership of the lots described and Declarant shall have no further responsibility for such maintenance and repairs on and after the date of sale of the last lot sold.

A. Maintenance and repairs shall be performed by the Lot owners on a prompt, diligent and regular basis in accordance with the generally accepted street and road maintenance

standards then existing under the laws of the City of West Linn, Oregon, including but not limited to the prompt filling of damaged areas. Required maintenance shall include the removal of snow, ice and debris as soon as practicable after their occurrence.

- F. Subject to sub-paragraph 3C. below, if an owner fails to perform any necessary maintenance and repairs as required, the other owners, upon 15 days prior written notice to the non-performing owner, may cause such work to be done with the right of reimbursement for all sums necessarily and properly expended to remedy such failure. If the non-performing owner fails to pay such reimbursement on demand, the owners causing such work to be done shall have the immediate right to record a lien against the non-performing owner's property benefited by this Declaration. It is agreed that such lien shall be treated as a construction lien pursuant to ORS Chapter 87, subject to foreclosure and priority as set forth in the construction lien statutes.
- C. If the roadway becomes impassable or ingress or egress is unreasonably impeded or curtailed because of an owner's failure to maintain the roadway as required herein, the other owners may demand by written notice that remedial work be performed immediately. If such work is not so performed, the other owners shall have the rights of cure, reimbursement and lien as set forth in sub-paragraph 3B above.

(4) Each owner shall pay when due all real property taxes, assessments or other charges against the land to which each owner holds fee title and which is benefited by the private roadway. There shall be no right of contribution from the other owners for such items. Real property taxes, assessments or other charges against the private roadway shall be apportioned equally to, and paid by, each owner holding fee title to the land benefited by the private roadway.

(5) Each owner shall maintain public liability insurance with minimum combined limits of not less than \$250,000 dollars in force at all times relating to all activities, conditions, operations and usages on or about the private roadway as used by each of the owners. Each owner hereby indemnifies and holds harmless the other owners for any liability arising out of the usage of the private roadway by the indemnifying owner.

(6) In the event that the private roadway or any part thereof is taken by power of eminent domain, or is conveyed under threat of condemnation, and such taking will render the private roadway unusable for normal, regular, two-way vehicular ingress and egress, this Declaration shall terminate. If such taking does not render the private roadway so unusable, the obligations of any owner whose portion of the roadway is taken shall be abated to the extent of such taking, but this Declaration shall otherwise continue in full force and effect. Proceeds from any such condemnation shall belong exclusively to the fee title owner of the property so taken.

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- A. If the owners are requested by an appropriate governmental jurisdiction to dedicate the private roadway for public use, or if one or more of the owners request such a dedication, each owner shall promptly execute and deliver to such jurisdiction appropriate deeds conveying their respective portions of the roadway for such purposes.

(7) In the event any owner shall fail to perform its obligations under this Declaration, the other owners shall be entitled to require such performance by suit for specific performance or, where appropriate, through injunctive relief. Such remedies shall be in addition to any other remedies afforded under Oregon law and those rights of cure and reimbursement specifically granted under this Declaration. In the event of any litigation arising under this Declaration, the prevailing party shall recover from the losing party the prevailing parties reasonable attorney fees at trial or on appeal as adjudged by the trial or appellate court.

(8) The rights, benefits and obligations granted hereunder shall run with the land and to all property burdened, and benefited by the private roadway and this Declaration, including any division or partition of such property. The rights, covenants, and obligations contained in this Declaration shall bind, burden and benefit Declarant, their successors and assigns, lessees, mortgagees and beneficiaries.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set his hand this 22nd day of May, 1992.



BARRINGTON DEVELOPMENT, INC.
Declarant

BY: [Signature]
Bruce A. Ament, President

STATE OF OREGON)
) ss.
County of Clackamas)

On this 22nd day of May, 1992, personally appeared the BRUCE A. AMENT, who being duly sworn did say he was the President of Barrington Development, Inc., an Oregon Corporation, on behalf of the Corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

3 Jeannette A. Gale
Notary Public for Oregon
My Commission Expires: 10/24/93

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AFTER RECORDING RETURN TO: Barrington Development, Inc.
15431 SE 82nd Dr., "J", Clackamas, OR 97015

EXHIBIT "A"

Legal Description for Private Access & utility easement
Lots 27 thru 31, Block 6, Barrington Heights 5

A strip of land lying in the duly platted subdivision "Barrington Heights 5", in the North 1/2 of Section 36, Township 2 South, Range 1 East, Willamette Meridian in the City of West Linn, Clackamas County, Oregon and further described as follows:

Beginning at the most northwesterly corner of Lot 29, Block 6 of said "Barrington Heights 5" and also being on the right-of-way line of Wellington Drive; thence following said right-of-way line of Wellington Drive along an arc radius of 550 feet (concave northerly, and whose chord bears N 83°59'00" W a distance of 15.08 feet) a length of 15.08 feet; thence leaving said right-of-way line of Wellington Drive, S 0°03'49" E, parallel with and 15 feet distant from a side of said Lot 29, 133.87 feet; thence S 11°10'03" E, parallel with and 20 feet distant from a side of said Lot 29, 87.77 feet to the south line of said "Barrington Heights 5"; thence N 89°53'19" E, along the south line of said "Barrington Heights 5", 9.28 feet to an angle point in said south boundary; thence N 50°26'33" E, along a boundary of said Lot 29, 12.38 feet to an angle point in said boundary; thence N 89°53'19" E, 25.47 feet to a point on a northerly boundary of said Lot 29; thence leaving said Lot 29 boundary, N 11°10'03" W, parallel with and 15 feet distant from a side of said Lot 29, 110.13 feet; thence N 0°03'49" W, parallel with and 15 feet distant from a side of said Lot 29, 100.67 feet to a point on the southerly right-of-way line of said Wellington Drive; thence following said right-of-way line of Wellington Drive along an arc radius of 550 feet (concave northerly, and whose chord bears N 86°04'26" W a distance of 25.06 feet) a length of 25.06 feet to the point of beginning.

AFTER RECORDING RETURN TO:

Barrington Development, Inc.
15431 SE 82nd Drive, Suite J
Clackamas, OR 97015

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CLACKAMAS COUNTY CLERK
I hereby certify that the instrument of
this date is a true and correct copy
of the original as recorded in the records of
this County.

IN 24 AM 11:07



[Signature]
LOWE KAUFFMAN
County Clerk
38557