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\$68.00

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08/08/2012 12:26:12 PM

AFTER RECORDING RETURN TO:

~~City Recorder~~ **Kelly Burgoyne**  
P.O. Box 3040  
Oregon City, Oregon 97045-0304

D-LIC Cnt=1 Stn=9 DIANNAW  
\$25.00 \$16.00 \$17.00 \$10.00

Map No.: 3-2E  
900 Tax Lot: 1800

### LICENSE TO ALLOW LANDSCAPE MAINTENANCE

THIS LANDSCAPE MAINTENANCE LICENSE (this "License") is made this 20 day of June, 2012, by the CITY OF OREGON CITY, ("Owner"), and CARRINGTON HOMEOWNERS ASSOCIATION ("Licensee").

### RECITALS

A. The Owner holds an easement (the "Easement") over a portion of property in the \* subdivision, a portion of which has been closed to public use through a license granted to the owner of adjoining property. The location of the Easement is as generally shown on the map attached to this License as Exhibit A.

B. A portion of the Easement is not subject to closure, but has not been adequately maintained by the owner of the servient estate pursuant to the Easement.

C. Licensee desires to maintain the landscape in and around the Easement.

E. The parties now desire to enter into this License to permit the Licensee to maintain the landscaping in the Easement, while preserving the rights that are held under the Easement and to recognize that Licensee's actions shall, in no way, derogate, diminish, or alter the rights of the Owner in and to the Easement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

### AGREEMENT

1. **Term of License.** This License for landscaping and maintenance shall continue for a term of five years, or until July 13, 2017 unless a future City Manager decision decides to revoke the license or extend its term.

2. **Permission to Enter onto Easement and Conditions.** Licensee is hereby granted permission to enter onto the Easement and perform landscaping maintenance and street

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\*CARRINGTON PLACE  
(CLACKAMAS COUNTY PLAT NO. 3880)

landscaping in and around the public pedestrian pathway located between Sophia Court and Glen Oak Road. The work consists of landscape maintenance and street landscaping in and around the public pedestrian pathway located between Sophia Court and Glen Oak Road. All activity must be in compliance with all applicable Federal, State and local regulations. Negligence by the Licensee that results in damage to turf, curbs, sidewalks, pavement, structures, mail boxes, appurtenances, etc. shall be repaired or replaced by Licensee to the satisfaction of the City at no cost to the City. Licensee must provide any and all tools and equipment necessary to perform the landscape maintenance contemplated by this License. The City is not responsible or liable for injury to persons or damage to property caused by the operation of the Licensee's equipment and damage or break-down of those tools or equipment provided by Licensee.

**3. No Compensation.** Licensee is not entitled to any compensation under this License. The landscaping that Licensee wishes to provide is above and beyond what the Owner believes is necessary to properly maintain this Easement and, therefore, does not desire to enter into a contract to provide additional landscaping. However, the Owner is willing to allow Licensee to enter onto the Easement and perform additional landscaping that Licensee believes enhance the neighborhood.

**4. Revocation.** This License may be revoked at any time for any reason by either party upon thirty (30) days' written notice to the other party stating that the terminating party requires such termination.

**5. Miscellaneous Provisions.**

**a. Entire Agreement.** This document contains the entire, final, and complete terms of the License and understanding of the parties with respect to the subject matter hereof, and supersedes and replaces any and all written or oral agreements and understandings heretofore made or existing by and between the parties or their representatives with respect thereto.

**b. Waiver.** No waiver of any provision of this License shall be deemed, or shall constitute, a waiver of any other provision of the License, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

**c. Indemnity and Insurance.** Licensee acknowledges responsibility for liability arising out of Licensee's negligent performance of the activity permitted by this License and shall hold City, its officers, agents, contractors, and employees harmless from, and indemnify them for, any and all liability, settlements, loss, costs, and expenses, including attorney fees, in connection with any action, suit, or claim caused or alleged to be caused by the negligent acts or activities performed by the Licensee, or the agents, contractors or employees of Licensee.

**d. Comprehensive, General, and Automobile Insurance.** Licensee shall maintain comprehensive general and automobile liability insurance for protection of Licensee

and City and for their directors, officers, agents, and employees, insuring against liability for damages because of personal injury, bodily injury, death, and broad-form property damage, including loss of use, and occurring as a result of, or in any way related to, Licensee's actions pursuant to this License, each in an amount not less than \$1,000,000 combined, single-limit, per-occurrence/annual aggregate. Such insurance shall name City as an additional insured, with the stipulation that this insurance, as to the interest of City, shall not be invalidated by any act or neglect or breach of this Agreement by Licensee.

**e. Notices.** Any notice or other communication required or permitted under this License shall be in writing and shall be deemed given on the date of transmission when sent by facsimile transmission, e-mail transmission or when mailed by first class mail from within the United States and shall be sent to the parties at the following addresses, or at such other address as either party may hereafter designate by written notice to the other:

OWNER	LICENSEE
City Manager, City of Oregon City 625 Center Street PO BOX 3040 Oregon City, OR 97045	Carrington Place Homeowners Association 19876 Sophia Court Oregon City, OR 97045
	AND
	Carefree Property Management 8925 SW Beaverton-Hillsdale Highway Portland, OR 97225

**f. Amendment.** This License may not be amended, modified, or changed, nor shall any provision hereof be deemed waived, except only by an instrument in writing signed by the party against whom enforcement of any such waiver, amendment, modification or change is sought.

**g. Severability.** If any portion of this License or its application is construed to be invalid, illegal, or unenforceable, then the other portions of the License or its application thereof shall not be affected thereby and shall be given full force and effect without regard to the invalid or unenforceable portions. Although Owner and Licensee acknowledge that the restrictions contained herein are reasonable, if any term or condition of this License is determined to be unenforceable because of its scope, duration, geographical area or similar factor, the court making such determination shall have the power to reduce or limit such scope, duration, area or other factor, and such covenant shall then be enforceable in its reduced or limited form.

**h. Attorney Fees.** In the event a party fails to perform any of its obligations under this License, such nonperforming party shall reimburse the other party for all costs and expenses, including without limitation, reasonable attorney fees, incurred in the enforcement of

such obligations. In addition, in the event of any legal action to enforce or interpret this License, or otherwise related to this License, or in the event a petition in bankruptcy is filed by or on behalf of a party, the prevailing party, in addition to all other amounts that the other party may be required to pay, shall be entitled to recover such additional sum for the prevailing party's reasonable attorney fees and costs, as the applicable court determines to be reasonable in the action, including any proceeding at trial, on appeal, or on petition for review, and in any bankruptcy proceeding.

i. **Governing Law.** This License, and its formation, operation and performances, shall be governed, construed and enforced in accordance with the laws of the State of Oregon, without regard to its conflict of law principles.

j. **No Third-Party Beneficiaries.** Nothing in this License, express or implied, is intended to confer on any person, other than the parties to this License or their permitted assignees, any right or remedy of any nature whatsoever.

k. **Captions.** The caption headings of the sections and subsections of this License are for convenience of reference only and are not intended to be, and should not be construed as, a part of this License.


l. **Counterparts.** This License may be executed in any number of counterparts, each of which shall be deemed to be an original instrument and all of which together shall constitute a single agreement.

EXECUTED as of the date hereinabove set forth.

OWNER:

LICENSEE:

  
\_\_\_\_\_  
David W. Frasher, City Manager

  
\_\_\_\_\_  
Jeffrey (Clark) Lowery, HOA President

6-21-12

# EXHIBIT "A"

