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08/04/2006 10:51am \$41.00
PIERCE COUNTY, WASHINGTON

AFTER RECORDING RETURN TO:

William J. Lindberg, Jr.
INSLEE, BEST, DOEZIE & RYDER, P.S.
777 108th Avenue N.E., Suite 1900
P.O. Box C-90016
Bellevue, Washington 98009-9016

INGRESS, EGRESS AND UTILITY EASEMENT AGREEMENT

Grantor: OAKVIEW HEIGHTS HOMEOWNERS ASSOCIATION, a Washington nonprofit corporation

Grantee: GARY H. ERB and NORMA R. ERB, husband and wife

Abbreviated Legal Description:

Grantor's Property:

Grantee's Property:

(Complete Legal Descriptions shown on Exhibits A & B attached hereto)

Assessor's Tax Parcel Nos.:

Grantor's Property: _____

Grantee's Property: _____

EXCISE TAX EXEMPT DATE 8-4-06
Pierce County

By [Signature] Auth. Sig

For reference only, not for re-sale.

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THIS INGRESS, EGRESS AND UTILITY EASEMENT AGREEMENT (the "**Easement Agreement**") is executed and entered into by and between **OAKVIEW HEIGHTS HOMEOWNERS ASSOCIATION**, a Washington nonprofit corporation (the "**Association**"), and **GARY H. ERB** and **NORMA R. ERB**, husband and wife (collectively referred to as "**Erb**").

RECITALS:

A. The Association is a homeowners association formed pursuant to the provisions of that certain Declaration of Covenants, Conditions, Restrictions, Easements and Reservations of the Plat of Oakview Heights (the "**Declaration**"), which Declaration was recorded in Pierce County under Pierce County Auditor's File No. 9405120168. The Plat of Oakview Heights is a single family residential development which was recorded in 1994 under Pierce County Auditor's File No. 9405120167 (the "**Plat of Oakview Heights**"). The legal description of the Plat of Oakview Heights is attached hereto as **Exhibit "A"**.

B. The Declaration granted the Association the right to govern the Common Areas (as defined therein) within the Plat of Oakview Heights, which Common Areas include the Easement Area (i.e. a portion of the existing private roadway within the Plat of Oakview Heights), which is the subject of this Easement Agreement.

C. Erb is the owner of certain other real property located adjacent to the Plat of Oakview Heights consisting of approximately 38.36 acres and commonly known as Lot 3 of Gary Erb Short Plat ("**Lot 3**"). The legal description of Lot 3 is attached hereto as **Exhibit "B"**.

D. Erb desires to obtain an easement over a portion of the Common Areas governed by the Association and included in the Plat of Oakview Heights for the benefit of Lot 3 in connection with Lot 3's proposed future development as a single family residential plat.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Grant of Easement for Ingress, Egress and Utilities.** For and in consideration of Erb's reimbursement of attorneys fees and costs incurred by the Association in connection with the negotiation and preparation of this Easement in the amount of Four Thousand Six Hundred Dollars (\$4,600.00), the receipt of which is hereby acknowledged, the Association hereby gives, grants and conveys a non-exclusive perpetual easement (the "**Easement**") to Erb over, under and across that portion of the Common Areas of the Plat of Oakview Heights (the "**Easement Area**"), which is legally described on **Exhibit "C"**. The Easement is for the purposes of: (i) constructing, improving and maintaining a roadway and related cuts, slopes and fills, including curbs, curb cuts, gutters, and sidewalks, if required by Pierce County, and utilities (including, but not necessarily limited to, electricity, water, sewer, drainage, natural gas, telephone, CATV and street lighting); and (ii) providing public access via ingress and egress to and from Lot 3 for pedestrians and

vehicular traffic. The location of the Easement Area is as shown on the map attached hereto as **Exhibit "D"**. The Easement given and granted pursuant to this Easement Agreement is appurtenant to and for the benefit of the Lot 3 and shall be deemed to be a benefit running with the land. The parties hereto understand, acknowledge and agree that Lot 3 will be developed as a single family plat and, as such, the Easement is for the benefit of all the future owners of any lots created in connection with the recording of the final plat relating to the development of Lot 3 and their respective guests, invitees and licensees.

2. **Cost of Improvements and Work Standards.** All work performed in connection with the improvement of the Easement Area shall be the sole responsibility and at the sole cost and expense of the then owners of Lot 3. All such work shall be completed in a careful and workmanlike manner according to the plans and specifications submitted to and approved by Pierce County, the City of Roy, or other governmental authority having jurisdiction therefore. Erb, or Erb's successors in interest, shall keep the Plat of Oakview Heights, including the Easement Area, free and clear of any and all liens, liabilities and encumbrances relating to such work.

3. **Indemnity.** Erb, and Erb's successors in interest, agree to indemnify, defend and save the Association and the owners of lots in the Plat of Oakview Heights harmless from and against any and all liability, loss, damage, expense, actions and claims (including, but not limited to, reasonable attorneys' fees) arising out of or relating to the work and any improvements which may be made by Erb or Erb's successors and their agents, employees and contractors and the exercise of the rights granted in this Easement; provided, however, that this paragraph does not purport to indemnify the Association or the owners of any of the lots in the Plat of Oakview Heights against liability for damages arising out of bodily injury to persons or damage to property to the extent caused by or resulting from the negligence of the Association or the owners of any of the lots in the Plat of Oakview Heights.

4. **Maintenance and Repair.** Following the completion of the improvements within the Easement Area by Erb or Erb's successors in interest, the subsequent costs of maintenance, upkeep and repair of any and all improvements to the Easement Area (including, but not limited to, the roadway and utility improvements presently located within the Easement Area) shall be shared among the owners of Lot 3 and the owners of the Oakview Heights Plat pro rata based upon the number of lots in each such development. In this regard, the nature and extent of and the timing for any such maintenance, upkeep and repair shall be as determined solely by the Association.

5. **Ingress/Egress Easement for the Benefit of the Owners of Lots in the Plat of Oakview Heights.** As additional consideration for the Association's grant of this Easement, Erb and Erb's successors in interest agree that in connection with the development of Lot 3 (and to be included and shown on the final plat for such development) the owners of lots in the Plat of Oakview Heights will be given, granted and conveyed an easement for the purposes of ingress and egress to and from the Plat of Oakview Heights over and across the roadways included in the

development of Lot 3. Such easement is intended to provide an alternative means of access to and from the Plat of Oakview Heights for the benefit of the owners of lots in the Plat of Oakview Heights and their respective guests, invitees and licensees. Said future ingress and egress easement shall be deemed to be a benefit running with the land. Further, notwithstanding the use of said alternative means of access by the owners of the lots in the Plat of Oakview Heights and their respective guests, invitees and licensees, all costs of maintenance, upkeep and repairs to the roadways to be developed in Lot 3 shall be the responsibility of the owners of Lot 3.

6. **Miscellaneous.**

6.1 **Binding Effect.** The Easement rights and obligations described herein shall be deemed covenants running with the Plat of Oakview Heights and Lot 3. The provisions of this Easement Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto, their respective heirs, successors and assigns, and all future owners of all or any portion of Lot 3, including any lots created in conjunction with the future development and subdivision of the Lot 3.

6.2 **Complete Agreement.** This Easement Agreement represents the complete agreement of the parties regarding the matters described herein. There are no other verbal or written agreements regarding the Easement rights and obligations set forth herein, except as contained in this Easement Agreement.

6.3 **Dispute Costs.** In the event of any conflict, controversy, claim or dispute arising out of or relating to this Easement Agreement, whether or not such conflict, controversy, claim or dispute has its basis in law or in equity, the prevailing party shall be entitled to receive from the non-prevailing party(ies), in addition to any other relief, all reasonable costs and expenses of every sort whatsoever, including, but not limited to, arbitrators' fees, mediators' fees, mediation fees, deposition costs, expert witness fees, accounting expenses relating thereto, and to the payment of reasonable attorneys' fees incurred or expended whether or not court arbitration proceedings are initiated, and including all such costs or expenses incurred or expended in arbitration, in trial, on appeal, or in any bankruptcy or receivership proceeding, as well as those incurred prior to suit and those incurred in the prosecution or defense of any action or proceeding.

6.4 **Effective Date.** The Easement shall be deemed effective concurrently with the recording of the proposed Erb Short Plat which will create Lot 3.

6.5 **Real Estate Excise Tax.** The real estate excise tax, if any, payable in connection with this Easement shall be the responsibility of and paid for by Erb.

6.6 **Incorporation by Reference.** The Recitals to this Easement Agreement together with the exhibits attached hereto are incorporated herein by this reference as if set forth

in full.

IN WITNESS WHEREOF, the undersigned have executed this Easement Agreement on the dates indicated below.

ASSOCIATION:

ERB:

OAKVIEW HEIGHTS HOMEOWNERS
ASSOCIATION, a Washington non-profit
Corporation

By

Ray Bourne

Ray Bourne, President

Dated: 8-4, 2006

Gary H. Erb

Gary H. Erb

Dated: 8-4, 2006

Norma R Erb

Norma R. Erb

Dated: Aug. 4, 2006

For reference only, not for re-sale.

STATE OF WASHINGTON)
) ss
COUNTY OF PIERCE)

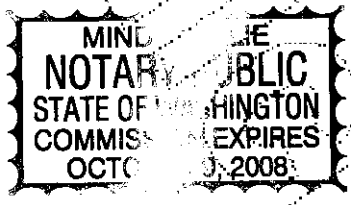
I certify that I know or have satisfactory evidence that Ray Bourne is the person who appeared before me, and said person acknowledged that he signed this instrument, and acknowledged it as the President of OAKVIEW HEIGHTS HOMEOWNERS ASSOCIATION to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED: 8/4/06

Mindy A. Elie

NAME: Mindy A. Elie
(Print Name)

Notary Public in and for the State of Washington
Commission Expires: 10/9/08



STATE OF WASHINGTON)
) ss
COUNTY OF PIERCE)

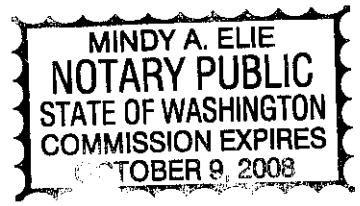
I certify that I know or have satisfactory evidence that GARY H. ERB and NORMA R. ERB are the persons who appeared before me, and said persons acknowledged that they signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: 8/4/06

Mindy A. Elie

NAME: Mindy A. Elie
(Print Name)

Notary Public in and for the State of Washington
Commission Expires: 10/9/08



For reference only, not for re-sale.

EXHIBIT "A"
LEGAL DESCRIPTION
OF
THE PLAT OF OAKVIEW HEIGHTS

The Plat of Oakview Heights as recorded under Pierce County Auditor's File Number 9209240295,
located in Pierce County, Washington

For reference only, not for re-sale.

EXHIBIT "B"

**LEGAL DESCRIPTION
OF
LOT 3**

COMMENCING AT THE NORTHEASTERLY CORNER OF THE PLAT OF OAKVIEW HEIGHTS, RECORDED ON MAY 12TH, 1994 UNDER AUDITORS RECORDING NUMBER 9405120167; THENCE SOUTH 18°40'01" WEST ALONG THE EASTERLY LINE OF SAID PLAT 1344.04 FEET TO THE POINT OF BEGINNING; THENCE NORTH 66°23'00" WEST, PARALLEL WITH THE SOUTHERLY LINE OF SAID PLAT 2636.33 FEET TO THE EASTERLY RIGHT OF WAY LINE OF THE CHEHALIS WESTERN RAILROAD; THENCE NORTH 06°15'52" EAST ALONG THE EAST RIGHT OF WAY LINE OF SAID RAILROAD, A DISTANCE OF 907.51 FEET TO AN ANGLE POINT OF SAID PLAT TO THE SOUTH RIGHT OF WAY OF 292ND STREET SOUTH AND ALSO BEING THE BEGINNING OF LEFT CURVE FROM WHICH THE RADIUS POINT BEARS NORTH 06°15'52" EAST, EASTERLY AND NORTHEASTERLY A DISTANCE OF 212.64 FEET ALONG THE CURVE CONCAVE TO THE NORTH, HAVING A RADIUS OF 285.00 FEET AND A CENTRAL ANGLE OF 42°44'55" TO A POINT OF REVERSE CURVATURE; THENCE NORTHEASTERLY, EASTERLY AND SOUTHEASTERLY A DISTANCE OF 246.50 FEET ALONG THE ARC OF SAID CURVE CONCAVE TO THE SOUTH HAVING A RADIUS OF 235.00 FEET AND A CENTRAL ANGLE OF 60°06'03"; THENCE SOUTH 66°23'00" EAST TANGENT TO SAID CURVE, A DISTANCE OF 953.29 FEET TO AN ANGLE POINT OF SAID PLAT; THENCE SOUTH 18°40'01" WEST ALONG THE BOUNDARY OF SAID PLAT A DISTANCE OF 947.24 FEET TO AN ANGLE POINT OF SAID PLAT; THENCE SOUTH 66°23'00" EAST ALONG THE BOUNDARY LINE OF SAID PLAT, A DISTANCE OF 1108.00 FEET; THENCE NORTH 18°40'01" EAST, A DISTANCE OF 115.00 FEET; THENCE SOUTH 71°19'59" EAST, A DISTANCE OF 115.00 FEET; THENCE SOUTH 18°40'01" WEST, 319.04 FEET TO THE POINT OF BEGINNING, PIERCE COUNTY, WASHINGTON.

For reference only, not for re-sale.

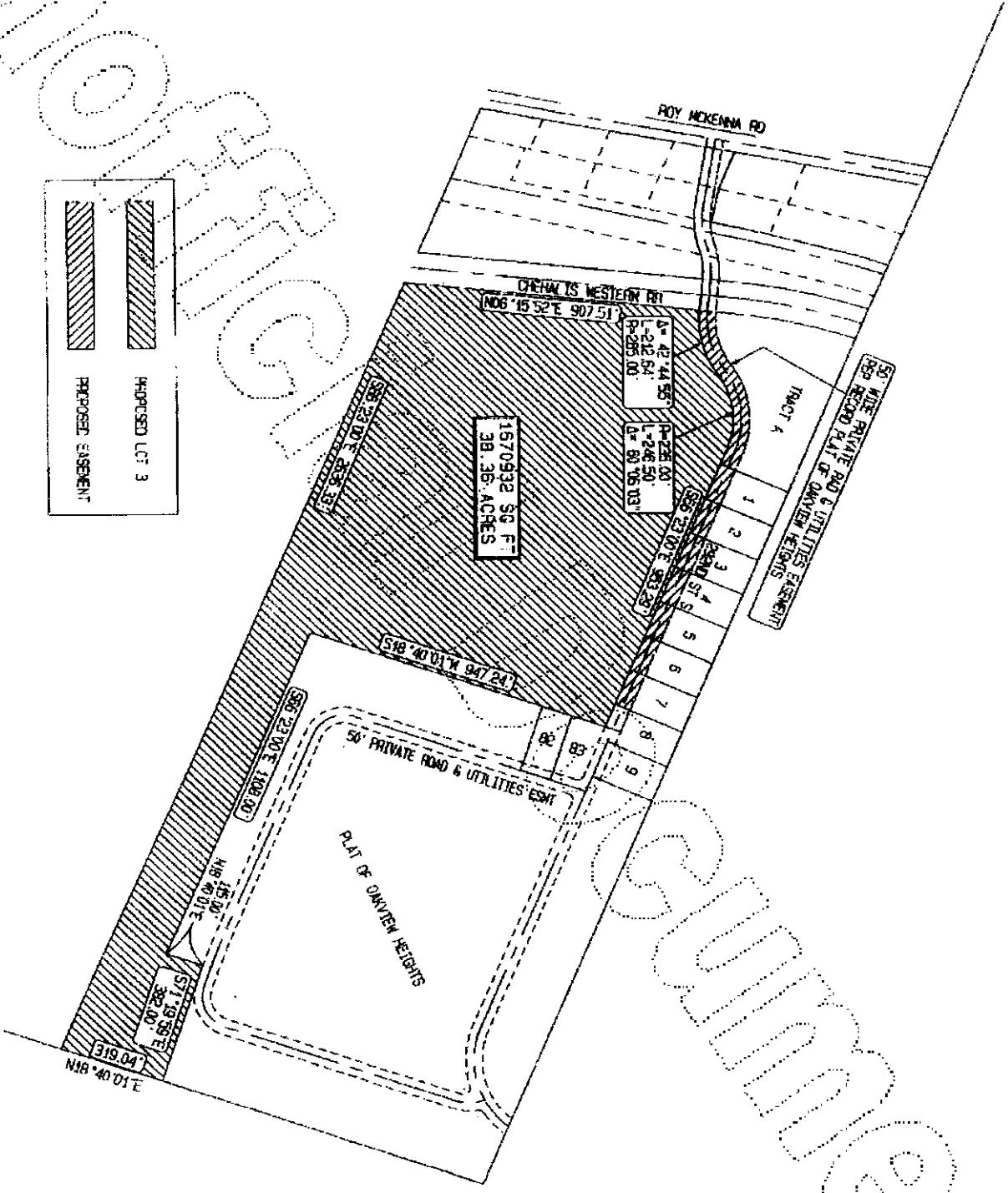
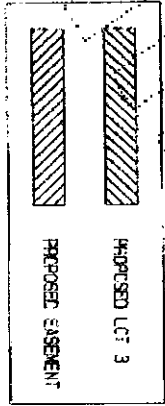
EXHIBIT "C"
LEGAL DESCRIPTION
OF
EASEMENT AREA

A PORTION OF THE 50 FOOT PRIVATE ROAD AND UTILITIES EASEMENT AS DELINEATED ON THE PLAT OF OAKVIEW HEIGHTS, RECORDED ON MAY 12, 1994 UNDER AUDITORS RECORDING NUMBER 9405120167, RECORDS OF PIERCE COUNTY, WASHINGTON. SPECIFICALLY DESCRIBED AS FOLLOWS:

THE SOUTH 50 FEET OF TRACT A, AND THE SOUTHERLY 50 FEET OF LOTS 1 THROUGH 7.

For reference only, not for re-sale.

EXHIBIT "D"
MAP SHOWING EASEMENT AREA AND LOT 3 LOCATION



For reference only, not for re-sale.