

AFTER RECORDING RETURN TO:

Paula Swisher, City Clerk  
City of Brier  
2901 228th St. SW  
Brier, WA 98036

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Document Title: Right of Way Use Agreement for Fence

Grantor:

Grantee: City of Brier, Washington

Abbreviated Legal Description: \_\_\_\_\_

Assessor's Tax Parcel ID#: \_\_\_\_\_

Reference Numbers of Documents Released or Assigned: N/A

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### **RIGHT OF WAY USE AGREEMENT FOR FENCE**

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between \_\_\_\_\_, individually/husband and wife ("Owner"), and the CITY OF BRIER, WASHINGTON, a Washington municipal corporation ("City").

#### **RECITALS**

A. Owner is/are the owner(s) of certain real property located at \_\_\_\_\_, Brier, Snohomish County, Washington and legally described in **Exhibit A** attached to and incorporated in this Agreement ("Property"). The Property abuts a City right of way depicted on **Exhibit B**.

B. Owner desires to construct and maintain a fence within the City right of way. The City has determined that the fence will not materially affect the City's rights to and use of the right of way.

C. The City is willing to authorize the fence within the City right of way, in accordance with the terms and conditions of this Agreement.

## AGREEMENT

In consideration of the mutual covenants, promises and conditions in this Agreement, the parties agree as follows:

**1. Location of Right of Way.** Owner acknowledges and admits the existence of the City right of way for street purposes as shown on **Exhibit B**.

**2. Authorization for Fence Location.** Owner may construct and maintain the type and size of fence depicted and shown on **Exhibit C**, in the location shown on **Exhibit D** ("Fence"). The Fence may not be enlarged or altered materially without subsequent permission of the City and amendment of this Agreement. Owner acknowledges and admits that construction and maintenance of the Fence is an encroachment in the City right of way. The City's knowledge of the encroachment and execution of this Agreement shall not constitute waiver, abandonment or estoppel of its rights in the right of way.

**3. Removal of Fence.** If the City Director of Public Works, or the successor position, determines that removal of the Fence, or any part thereof, is necessary to construct or install street improvements, or to use the right of way for public purposes, Owner, at Owner's cost and expense, shall remove the Fence, or the part thereof, within 60 days of a written request by the Director of Public Works, or the successor position.

**4. Indemnification.** Owner agrees to indemnify and hold the City harmless from and against any loss, liabilities, claims, demands or causes of action (including any costs and attorneys' fees incidental to the defense thereof by the City), for deaths or injuries to persons or loss of or damage to property sustained by Owner, its representatives, agents or consultants, guests or invitees, or any other person or entity, arising out of or in connection with the maintenance and/or use of the Fence, except for loss, liabilities, claims, demands or causes of action caused solely by the negligence or willful misconduct of the City, its officers, employees, representatives, agents or consultants. In the event of any such loss, liability, claim, demand or cause of action caused by the joint negligence of Owner, its representatives, agents or consultants, guest or invitees, and the City, Owner's indemnification of the City shall be enforceable to the extent of Owner's negligence. If any action or proceeding is brought against the City by reason of such claim, Owner upon notice from the City, shall defend the same at Owner's expense through legal counsel reasonably satisfactory to the City. Owner shall give the City prompt notice in the event of casualty or accidents involving the fence. Owner's indemnity of the City shall survive termination of this Agreement.

**5. Notices.** All notices shall be in writing and deemed to have been given and received: (i) when personally delivered to the party at the address below; (ii) when sent by facsimile transmission with confirmed receipt, or (iii) 48 hours after being mailed by certified

mail with return receipt requested. Notices and invoices shall be sent to the following addresses:

If to the City: Attn: Public Works Director  
2901 228th St. SW  
Brier, WA 98036

If to Owner: \_\_\_\_\_  
or Current Owner  
\_\_\_\_\_  
\_\_\_\_\_

Each Party shall have the right, by written notice given to the other pursuant to the provisions of this paragraph, to change from time to time the respective addresses at which notice shall be given.

**6. Notice to Buyer of Property.** Upon execution of an agreement to sell the Property, Owner shall give a copy of this Agreement to the prospective buyer.

**7. Binding Covenants--Recording.** All provisions of this Agreement, including the benefits and burdens, run with the land and are binding upon and inure to the benefit of the heirs, assigns, licensees, invitees, successors, tenants, employees and personal representatives of the City and Owner. The City shall record this Agreement with the Snohomish County Auditor. Owner shall pay the cost of recording.

**8. Entire Agreement.** This document and its Exhibits contain the entire agreement between the parties with respect to the subject matter of this Agreement.

**9. Attorneys' Fees.** If any party employs an attorney to enforce or defend any claim or cause of action arising out of or relating to this Agreement, the prevailing party in any such claim, cause of action or arbitration shall be entitled to recover from the other all such prevailing party's reasonable attorneys' fees, together with all costs and expenses incurred in connection therewith.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date referenced above.

**THE CITY:**

**OWNER:**

By \_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_  
[owner name]

\_\_\_\_\_  
[owner name]

STATE OF WASHINGTON        )  
  ) ss:  
COUNTY OF SNOHOMISH     )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the \_\_\_\_\_ of the City of Brier to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

NAME: \_\_\_\_\_  
(Print Name)

Notary Public in and for the State of Washington.  
Commission Expires: \_\_\_\_\_

STATE OF WASHINGTON        )  
  ) ss:  
COUNTY OF SNOHOMISH     )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

NAME: \_\_\_\_\_  
(Print Name)

Notary Public in and for the State of Washington.  
Commission Expires: \_\_\_\_\_

STATE OF WASHINGTON        )  
  ) ss:  
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DATED: \_\_\_\_\_

NAME: \_\_\_\_\_

(Print Name)

Notary Public in and for the State of Washington.  
Commission Expires: