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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH**

MT. INDEX RIVERSITES COMMUNITY CLUB, INC., a Washington Corporation,

Plaintiff,

vs.

ELEANOR ANDERSON, a single person,
GARY D GRABER, a single person, and All
Others Similarly Situated,

Defendants.

NO. 07 2 07884 1

AMENDED COMPLAINT RE:

**DECLARATORY JUDGMENT ON
EQUITABLE CONTRIBUTION
(CLASS ACTION)**

COMES NOW Plaintiff, MT. INDEX RIVERSITES COMMUNITY CLUB, INC., and for its causes of action herein, alleges as follows:

I. JURISDICTION AND VENUE

1. The court has jurisdiction over this matter pursuant to RCW 2.08.010, as the matter involves title to real property and the action is brought in equity. Venue is properly in Snohomish County as this action is against owners of real property located within Snohomish County.

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1 2. Plaintiff, MT. INDEX RIVERSITES COMMUNITY CLUB, INC.,
2 [hereinafter "Plaintiff Corporation"] is a nonprofit corporation organized and
3 existing in accordance with the laws of the State of Washington with all fees paid
4 as required by law.

6 3. Defendant, ELEANOR ANDERSON (hereinafter referred to as
7 "Defendant Anderson"), is believed to be a single person residing in Snohomish
8 County, Washington.

10 4. Defendant, GARY D GRABER, (hereinafter referred to as "Defendant
11 Graber") is believed to be a single person residing in Snohomish County,
12 Washington.

14 5. Plaintiff Corporation is the owner of real property consisting of all the
15 private roads in the Mt. Index Riversites Community, situated in Snohomish
16 County, Washington, described as:

17 All private roads as shown on recorded plat, records of Snohomish
18 County Auditor, State of Washington, on Assessor's Plat of Mount
19 Index Riversites Division Number 2, Block A, Block B, Block C, Block
20 D, Block E, Block G and Block H. EXCEPT those portions of roadway
located in Block B, Block C, and Block G of Assessor's Plat of Mount
Index Riversites Division Number 2, recorded to the Great Northern
Railway Company. EXCEPT those Easements over private property.

21 6. Within the Mt. Index Riversites Community and a few small
22 neighboring communities, there are approximately 1,100 individual lots or tax
23 parcels (collectively hereinafter referred to as "the community"), owned by
24 approximately 500 different individuals or entities. All of the lots and property
25 owners are served by the roads owned by the Plaintiff Corporation which must be
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1 used to access the public highway. Aside from the platted Mt. Index Riversites
2 Community, there are other property owners outside of the community who also
3 must use the Plaintiff Corporation's roads to access the public highway.
4

5 7. Defendant Anderson is the owner of real property located within the
6 Mt. Index Riversites Community, situated in Snohomish County, Washington, with
7 the legal description of Mt Index Riversites Assessors Plat Blk 000 D-00 - Lot 27,
8 commonly described as lot MIR 027 (lot 27).
9

10 8. Defendant Graber is the owner of real property located within the Mt.
11 Index Riversites Community, situated in Snohomish County, Washington, recorded
12 as Mt Index Riversites 2 Blk E Assr Plat Blk 005 D-00 - Lot 35 Blk E, commonly
13 described as lot E35.
14

15 II. BACKGROUND FACTS

16 9. The Mt. Index Riversites community was originally platted in the late
17 1950's and early 1960's. Based on a lack of foresight on the part of the original
18 developers, there are no covenants, or other documents that affect title, binding all
19 property owners within the community to any home owner's association, or
20 requiring payments for the use of Plaintiff Corporation's roads. The Plaintiff
21 Corporation was deeded all of the roads in the 1960's and has been responsible for
22 repair and maintenance of those roads since. Defendant Anderson, Defendant
23 Graber, and all other property owners within the community must use the roads
24 owned and maintained by the Plaintiff Corporation to access their real property.
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1 10. Defendant Anderson, Defendant Graber, and all others similarly
2 situated within the community, assert, as an incident of Defendants' title to real
3 property within the community, a right of access over and across the property of the
4 Plaintiff Corporation for ingress and egress to their individual property.
5

6 11. Each and every property owner within the community enjoys an
7 implied easement across the roads of the Plaintiff Corporation.
8

9 12. In 2003, Plaintiff Corporation brought lawsuits against property
10 owners in an attempt to enforce a flat rate annual assessment. The decision of Judge
11 Wynne in 2004 indicated that while there was a requirement of equitable
12 contribution, under Washington law equitable contribution had to be based on an
13 individual property owner's implied easement. Subsequent to that decision,
14 Plaintiff Corporation adopted a formula for annually assessing and invoicing all 500
15 property owners within the community based on their individual implied easement
16 across the roads of the Plaintiff Corporation. Each property owner is invoiced an
17 amount each year based on the estimated reasonable and necessary costs of the
18 repair and maintenance of the Plaintiff Corporation's roads of the particular
19 property owner's implied easement. This is accomplished through measurement
20 of each individual's implied easement along the main road, consideration of the
21 necessity side roads, and the costs of maintaining each of the different sections of
22 road.
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26 13. All property owners within the community are equitably obligated to
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1 contribute to the reasonable and necessary costs of repair and maintenance of the
2 Plaintiff Corporation's roads according to the above described formula.

3
4 14. Beginning in May 2005, Plaintiff Corporation has sent out annual
5 assessments based on the implied easement of each and every property owner
6 within the community. In addition, in response to severe flooding and road damage
7 in November, 2006, Plaintiff Corporation sent out a special assessment.

8
9 15. Plaintiff Corporation has invoiced Defendants Anderson and Graber
10 for their equitable share of the reasonable and necessary costs of repair and
11 maintenance of Plaintiff Corporation's roads. Defendants Anderson and Graber
12 have wholly failed and refused to pay the invoices or any portion of their equitable
13 share. Of the approximate five-hundred (500) property owners within the
14 community, roughly forty percent, or two-hundred (200), community members
15 have refused to pay the amounts invoiced annually since 2005.

16
17 16. Defendant Anderson, Defendant Graber, and all others similarly
18 situated, assert, as an incident of Defendants' title to real property within the
19 community, a right of access over and across the property of the Plaintiff
20 Corporation for ingress and egress to their property.

22 **III. CLASS ACTION ALLEGATIONS**

23 **A. DEFINITION OF CLASS MEMBERS**

24
25 17. Plaintiff brings this matter as a class action pursuant to Civil Rule 23
26 against Eleanor Anderson, Gary Graber, and all others similarly situated, as a

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1 representative of the following class:

2 All persons who are now, or in the future may become, owners of property
3 with access over and across the roads owned by the Plaintiff Corporation
4 who are obligated by the doctrine of equitable contribution to pay their
5 appropriate allocation of the reasonable and necessary costs to repair and
6 maintain the roads of the Plaintiff Corporation.

7 Excluded from this class should be all property owners with previously
8 existing contracts, agreements, or covenants with the Plaintiff Corporation, a small
9 minority of the community.

10 18. Within the class of persons described above are a subclass of persons,
11 such as Defendant Anderson and Defendant Graber, who have wholly failed to
12 contribute towards the reasonable and necessary costs to repair and maintain the
13 Plaintiff Corporation's roads. Defendants Anderson and Graber are adequate
14 representatives of the subclass, as well as the entire class of property owners within
15 the community.

17 **B. CAUSE OF ACTION AGAINST CLASS MEMBERS**

18 19. The requirements of CR 23, and the applicable Washington State case
19 law have been met. The class, and the subclass, are so numerous that joinder of all
20 members is impracticable, there are questions of law and fact common to the class,
21 the defenses of the representative party are typical of the defenses of the class, and
22 the representative party will fairly and adequately protect the interests of the class.
23

24 20. A class action lawsuit is appropriate as there are questions of law and
25 fact common to the entire class and the subclass which include: whether the current
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1 formula based on length of individual implied easements is the appropriate formula
2 for apportioning the reasonable and necessary costs of road repair and maintenance;
3 whether the Plaintiff Corporation is entitled to court orders to granting the power
4 to lien property; whether including any other considerations in the formula is
5 reasonable, necessary, fair, or equitable; and whether Plaintiff Corporation is
6 entitled to incidental damages against the subclass of persons who have failed to
7 pay assessments since 2005.
8
9

10 21. A class action in this matter is necessary to avoid continuing and
11 ongoing litigation against property owners within the community who fail to pay.
12 Based on Washington law and previous court rulings, only the Snohomish County
13 Superior Court has the power to hear these matters involving equitable contribution
14 based on an interest in real property. Plaintiff may not prosecute cases in the
15 Snohmish County small claims courts.
16

17 22. A class action is an appropriate method for the fair and efficient
18 adjudication of the controversy given: common questions of law and/or fact
19 predominate over any individual questions that may arise; class treatment is
20 required for optimal resolution of the issues and minimizing legal costs and
21 expenses of both the Plaintiff Corporation and individual Defendants; no unusual
22 difficulties are likely to be encountered in the management of this class action in that
23 all questions or law or fact to be litigated are common to the class and subclass; and
24 all claims of incidental damages against the subclass are too small to pursue on an
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1 individual basis.

2 23. Class certification is appropriate under CR 23(b)(1) as prosecution of
3 separate actions would create a risk of adjudications with respect to individual
4 members of the class, which may be dispositive of the interests of other members
5 not parties to the adjudication or substantially impair or impede their ability to
6 protect their interests, or may result in inconsistent or differing adjudications.
7

8 **C. DECLARATORY JUDGMENT**
9

10 24. A present controversy exists whether Plaintiff Corporation is entitled
11 to collect annual assessments based on equitable contribution, and whether the
12 current formula is fair and equitable or whether it should account for additional
13 factors in determining the apportionment of repair and maintenance costs.
14

15 25. The Plaintiff Corporation is entitled to declaratory judgment against
16 the entire class of current and future property owners within the community as to
17 the lawfulness, validity, and enforceability of the current formula based on the
18 length of each and every implied easement.
19

20 26. Plaintiff Corporation is entitled, in equity, to court orders that will
21 bind all current and future owners to contribute towards the reasonable and
22 necessary costs of repair and maintenance of Plaintiff Corporation's roads, and the
23 power to enforce said mandatory contribution by lien.
24

25 **D. INCIDENTAL DAMAGES**

26 27. The Plaintiff Corporation is entitled to an award of incidental damages,
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1 in an amount to be proven at trial, against Defendant Anderson, Defendant Graber,
2 and all others within the subclass who have failed and refused to pay the invoiced
3 amounts, plus interest at 12% from the invoice dates until paid in full.
4

5 **E. ATTORNEYS FEES AND COSTS**

6 28. The Plaintiff Corporation is entitled to an award of costs and
7 reasonable attorney's fees against the entire class of property owners within the
8 community as a reasonable and necessary expense of repairing and maintaining the
9 Plaintiff Corporation's roads. Obtaining declaratory judgment against all current
10 and future property owners within the community is reasonable and necessary to
11 ensure the future collection of annual assessments.
12

13
14 WHEREFORE, Plaintiff MT. INDEX RIVERSITES COMMUNITY CLUB, INC.
15 prays as follows:
16

17 29. For entry of declaratory judgment on Plaintiff Corporation's formula for
18 equitable contribution.

19 30. For entry of orders allowing Plaintiff Corporation to record liens
20 against the real property within the community where owners refuse or fail to pay
21 the invoiced amounts, or other such equitable relief.
22

23 31. For judgment against Defendant Anderson, Defendant Graber, and the
24 subclass of property owners who have refused or failed to pay for their equitable
25 share of reasonable and necessary road maintenance and repairs to Plaintiff
26

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1 Corporation's private roads;

2 32. For Plaintiff Corporation's costs and reasonable attorneys fees; and

3 33. For such other and further relief as the Court deems just and equitable
4
5 under the circumstances.

6
7 DATED this _____ day of June, 2008.

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10 ADAMS, DUNCAN & HOWARD, INC., P.S.

11
12
13 By: _____
14 BRICE E. HOWARD WSBA#34326
15 Attorney for Plaintiff Corporation

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