

RETURN TO:

ROBERT A. CARMICHAEL
CARMICHAEL CLARK, PS
P. O. BOX 5226
BELLINGHAM, WASHINGTON 98227



201712120047

Skagit County Auditor

\$82.00

12/12/2017 Page

1 of

9 1:57PM

DOCUMENT TITLE:

EASEMENT AGREEMENT

REFERENCE NUMBER OF RELATED DOCUMENT:

GRANTORS:

James L Berna and Jeanie B Berna, husband and wife

GRANTEE:

COLONY MOUNTAIN COMMUNITY CLUB, a Washington Non-Profit Corporation

ABBREVIATED LEGAL DESCRIPTION:

PTN NE Q Sec 22 Twp 36 N Rge 3 E

Full legal description at page 2.

ASSESSOR'S TAX PARCEL NUMBER(S):

P48026

EASEMENT AGREEMENT

This EASEMENT AGREEMENT ("Agreement") is entered into on the 12th day of December, 2017, by and between COLONY MOUNTAIN COMMUNITY CLUB, a Washington Non-Profit Corporation ("CMCC" or "CMCC Homeowners' Association" or "Grantee"), and James L Berna and Jeanie B Berna, husband and wife, ("Owner" or "Grantor") for the purposes set forth herein. CMCC and Owner shall be referred to herein individually as "Party" and collectively as "Parties".

RECITALS:

WHEREAS, Grantor is the owner in fee of the following described real property:

A tract of land in the Northeast Quarter of Section 22, Township 36 North, Range 3 East of the Willamette Meridian, described as follows:

Beginning at the Northeast Quarter of said Section 22;

Thence North 88°20'54" West along the Northerly line of said Section 22, a distance of 205.00 feet;

Thence South 49°28'39" West, 692.92 feet to an intersection with a curve having a radius of 985 feet, the center of which curve bears North 70°22'00" East;

Thence Southeasterly along said curve to the left through a central angle of 8°58'00", an arc distance of 154.15 feet;

Thence North 68°32'21" East, 179.89 feet;

Thence South 16°35'47" East, 6.5 feet;

Thence North 73°27'18" East, 46.50 feet;

Thence North 16°35'47" West, 10.5 feet;

Thence North 68°32'21" East, 497.51 feet to the Easterly line of said Section 22;

Thence North 00°55'15" West, along said Easterly Line 320.00 feet to the point of beginning.

(Being known as Revised Tract 51 of Colony Mountain, an unrecorded plat).

Situate in Skagit County, Washington.

Which is, Assessor Tax Parcel No. P48026; and

WHEREAS, Grantor wishes to grant Grantee an easement over, under and across a portion of the Property for ingress, egress, road, and utility purposes to access the Property and the parcels north of the Property, which portion is described and depicted on Exhibit A; and

WHEREAS, the Grantor and Grantee agree that this easement supersedes the previous 50-foot easement recorded May 1, 1974 under Skagit County Auditor's File Number 800130, which is hereby vacated, and

WHEREAS, the foregoing recitals are a material part of this Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. EASEMENT

1.1 Perpetual Easement Grant. Grantor, for valuable consideration receipt of which is hereby acknowledged, does by these presents grant and convey unto CMCC:

A perpetual, non-exclusive easement ("Easement") fifty feet (50') in width for the placement, installation, construction, operation, maintenance, improvement, replacement, and repair of water utility infrastructure, and for a road which shall be open for motorized and non-motorized vehicular, bicycle, equestrian, and pedestrian use by the CMCC and all CMCC members, invitees, and guests, all of which shall be through, under, over, and across the following portion of the Property depicted and described on Exhibit A.

1.2 Purpose. The Easement shall provide CMCC, its agents and contractors with the perpetual right to enter upon the Easement without incurring any legal obligation or liability therefore, for all purposes relating to water utility infrastructure or the road. Grantor shall not take any action to interfere with or impair the use and enjoyment of the road by the CMCC and CMCC members, invitees, and guests.

1.3 Restoration of Easement Area. The Grantee covenants that all construction and other work done by the Grantee on the Easement shall be performed with only reasonably necessary damage to the Easement area. Except for the surface area of the road, the Grantee shall reasonably grade and mulch or plant grass seed on surfaces disturbed by construction and shall restore landscaping to as near the condition existing prior to the commencement of the work as is reasonably feasible; provided that, Grantor shall not be obliged to replace damaged landscaping with trees or vegetation exceeding four (4) feet in height.

1.4 Warranty of Title. The Grantor warrants that the Grantor has good title to that portion of the Property for which the Easement is conveyed. The Easement is conveyed based on the Grantor's warranty of good right, title, and interest Grantor now has in that portion of the Property described and depicted in Exhibit A as the Easement.

1.5 Removal of Obstructions. The Grantor shall retain the right to use that portion of the Grantor's Property within the Easement, so long as said use does not interfere with Grantee's use of the Easement and so long as no permanent building or structures are erected on the Easement. Grantor shall make no use of the road surface portion of Easement except for that use and enjoyment available to all CMCC members as described in Section 1.1. Further, Grantor shall not dig, tunnel, or conduct other forms of construction activity on the Easement or on Grantor's Property which would disturb, damage, unearth, or endanger the lateral support to the road or water utility infrastructure. CMCC shall have the right to remove any building, structure, concrete, paving, decking or other improvement of any kind which is erected or placed on the Easement, at the sole expense of Grantor. CMCC shall have the further right to remove trees, bushes, undergrowth, and other obstructions interfering with the location, construction and maintenance of the Easement, without liability to Grantor.

1.6 Road Maintenance. Grantor shall initially construct a road running the entire length of the Easement, except where a road meeting its needs and the needs of CMCC is already present. CMCC shall maintain and repair the constructed road within the Easement, however, it shall not be responsible for maintaining, repairing, or otherwise constructing any portion of the road within the Easement where CMCC access is restricted by locked gate or otherwise.

II. GENERAL PROVISIONS

2.1 Run with the Land. This Agreement entered into by the Parties, and the Easement granted herein, shall be deemed to touch and concern the land, and shall, therefore, run with the land in perpetuity. The rights and obligations of the Parties shall inure to the benefit of and be binding upon their heirs, successors and assigns.

2.2 Indemnity.

2.2.1 Grantee Obligation. Grantee expressly agrees to appear, defend, indemnify and hold harmless the Grantor and those persons who were, are now, or shall be contractors, subcontractors, employees or agents thereof, from and against any and all claims, losses, liabilities, judgments and expenses (including reasonable attorneys' fees) and arising wholly or partially out of any negligent act, action, omission or default on the part of Grantee, its contractors, subcontractors, employees and agents which pertain to the use of the Easement; except that, Grantee's indemnification and hold harmless obligation shall be proportionally reduced by any negligent act, omission, or default on the part of the Grantor, or Grantor's contractors, subcontractors, employees or agents.

2.2.2 Grantor Obligation. Grantor expressly agrees to appear, defend, indemnify and hold harmless the Grantee and those persons who were, are now, or shall be contractors, subcontractors, employees or agents thereof, from and against any and all claims, losses, liabilities, judgments and expenses (including reasonable attorneys' fees) and arising wholly or partially out of any negligent act, action, omission or default on the part of Grantor, its contractors, subcontractors, employees and agents which pertain to the use of the Easement; except that, Grantor's indemnification and hold harmless obligation shall be proportionally reduced by any negligent act, omission, or default on the part of the Grantee, or Grantee's contractors, subcontractors, employees or agents.

2.3 Expenses and Attorneys' Fees. The prevailing Party in any action brought to enforce any terms and conditions of this Agreement shall be entitled to the recovery of their reasonable attorney's fees, costs and expenses.

2.4 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any lawsuit filed shall lie exclusively in Skagit County Superior Court.

2.5 Nonwaiver of Breach. Failure of either Party at any time to require performance of any provision of this Agreement shall not limit such Party's right to enforce such provision, nor shall any waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

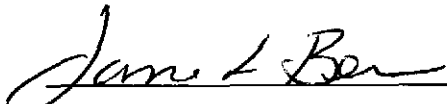
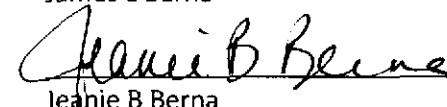
2.6 Complete Agreement – Modification Must be in Writing. This Agreement constitutes the entire agreement between the Parties as to the matters contained herein. No oral or written statements made by either Party prior to or following entry of this Agreement shall be considered a part of this Agreement unless expressly incorporated herein in writing. This Agreement may be modified in writing only, upon mutual agreement of the Parties.

2.7 Counterparts. This Agreement may consist of two or more separately ratified counterparts, each of which shall constitute a duplicate original of this Agreement.

2.8 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

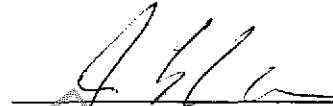
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

GRANTOR:


James L Berna

Jeanie B Berna


GRANTEE:

COLONY MOUNTAIN COMMUNITY CLUB


By: Jeremy Means *Easement*
Its: President SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

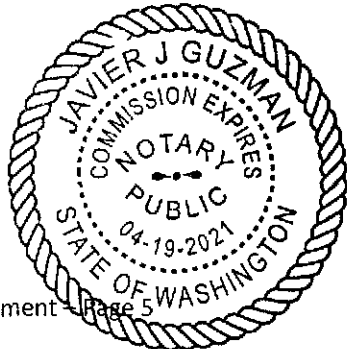
STATE OF WASHINGTON)
) §
COUNTY OF SKAGIT)


DEC 12 2017

Amount Paid \$
Skagit Co. Treasurer
By  Deputy

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

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal this 11 day of December, 2017.




NOTARY PUBLIC in and for the State of Washington.
My commission expires: 04-19-2021

STATE OF WASHINGTON)
) §
COUNTY OF SKAGIT)

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

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal this 4 day of December, 2017.

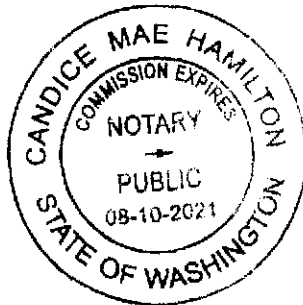


[Signature]
NOTARY PUBLIC in and for the State of Washington.
My commission expires: 04-19-2021

STATE OF WASHINGTON)
) §
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that Jeremy Means signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of the Colony Mountain Community Club to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal this 12th day of December, 2017.



[Signature]
NOTARY PUBLIC in and for the state of Washington.
My commission expires: 08/10/2021

EXHIBIT A
Legal Description and Depiction of Easement

UNOFFICIAL DOCUMENT

EXHIBIT A
LEGAL DESCRIPTION—INGRESS, EGRESS, AND UTILITY EASEMENT
AFFECTING TAX PARCEL ID NO. P-48026

A FIFTY-FOOT (50') WIDE EASEMENT, OVER AND ACROSS A PARCEL OF LAND WITHIN THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 36 NORTH, RANGE 3 EAST, W.M., SAID PARCEL BEING LOT 51, OF THE UNRECORDED PLAT OF COLONY MOUNTAIN, ACCORDING TO THE REVISED AND ADJUSTED BOUNDARY OF LOTS 51 AND 52, PER THE BOUNDARY LINE ADJUSTMENT RECORD OF SURVEY FILED UNDER SKAGIT COUNTY AUDITOR'S FILE NO. 201212170100, SAID EASEMENT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE IRON DISK MONUMENT MARKING THE NORTHEAST SECTION CORNER OF THE AFOREMENTIONED SECTION 22, SAID MONUMENT ALSO BEING THE NORTHEAST CORNER OF THE AFOREMENTIONED REVISED LOT 51;

THENCE NORTH 87° 14' 42" WEST, ALONG THE NORTH LINE OF SAID SECTION 22 AND NORTH LINE OF REVISED LOT 51, 205.00 FEET, TO A POINT AT THE NORTH-MOST CORNER COMMON TO SAID LOT 51, AND LOT 50 OF THE UNRECORDED COLONY MOUNTAIN SUBDIVISION;

THENCE SOUTH 50° 34' 47" WEST, ALONG THE BOUNDARY LINE COMMON TO SAID LOTS 51 AND 50, 158.35 FEET, TO THE **TRUE POINT OF BEGINNING** OF THIS DESCRIBED EASEMENT;

THENCE SOUTH 30° 19' 02" EAST, 217.28 FEET;

THENCE SOUTH 00° 43' 05" WEST, 122.61 FEET, TO A POINT ON THE BOUNDARY LINE COMMON TO THE AFOREMENTIONED REVISED LOT 51 AND 52, SAID POINT BEARS SOUTH 69° 38' 29" WEST, 232.45 FEET DISTANT, FROM THE EAST-MOST CORNER COMMON TO SAID LOTS;

THENCE SOUTH 69° 38' 29" WEST, ALONG SAID COMMON BOUNDARY LINE, 53.58 FEET;

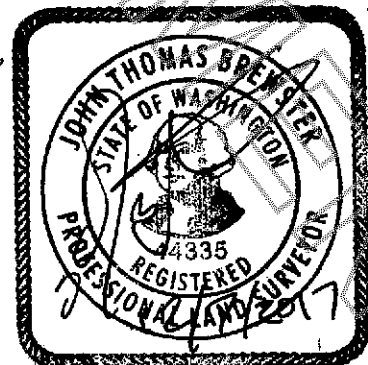
THENCE NORTH 00° 43' 05" EAST, 128.00 FEET;

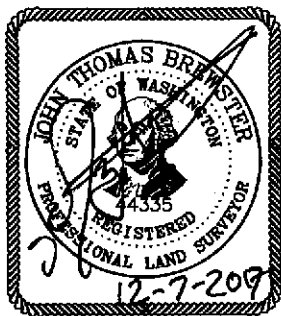
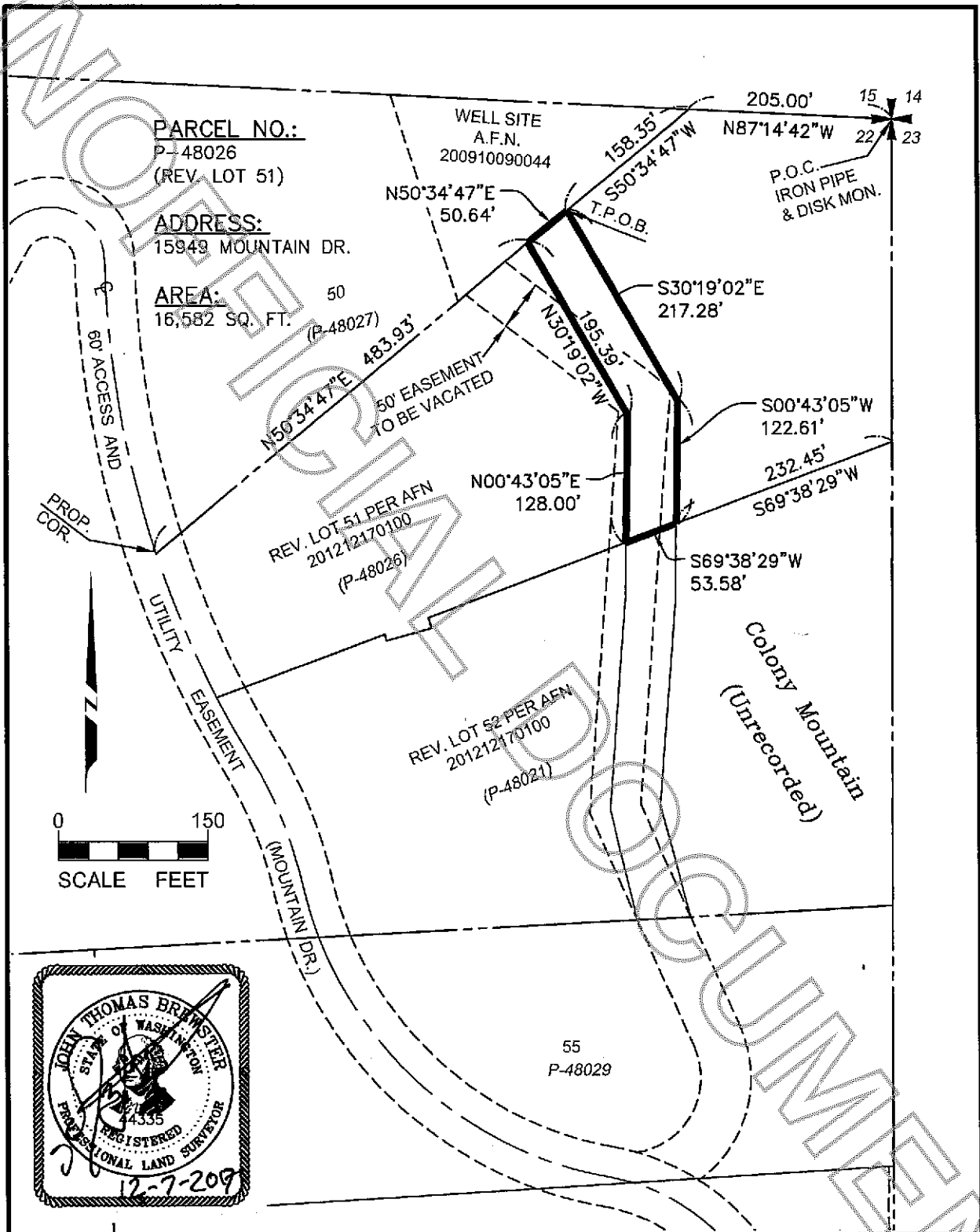
THENCE NORTH 30° 19' 02" WEST, 195.39 FEET, TO A POINT ON THE AFOREMENTIONED BOUNDARY LINE COMMON TO LOTS 51 AND 50, SAID POINT BEARS NORTH 50° 34' 47" EAST, 483.93 FEET DISTANT, FROM THE WEST-MOST CORNER COMMON TO SAID LOTS;

THENCE NORTH 50° 34' 47" EAST, ALONG SAID COMMON BOUNDARY, 50.64 FEET, TO THE **TRUE POINT OF BEGINNING AND TERMINUS** OF THIS DESCRIBED EASEMENT.

CONTAINS 16,582 SQUARE FEET, MORE OR LESS.

SITUATE IN SKAGIT COUNTY, WASHINGTON.





Wilson

SURVEY/ENGINEERING

WILSON ENGINEERING, LLC
 805 DUPONT STREET
 BELLINGHAM, WA 98225
 (360) 733-6100 • FAX (360) 647-9081
 www.wilsonengineering.com

Lot 51 Easement Exhibit

BOW

WASHINGTON

Within the NE 1/4, Sec. 22
 Twp. 36 N., Rge. 3 E., W.M.

DATE
 12/07/17

JOB NO.
 17089