

**After Recording Please Return To:**

ROBERT A. CARMICHAEL  
Carmichael Clark, PS  
1700 D Street  
Bellingham, WA 98225



**201906180037**

06/18/2019 11:54 AM Pages: 1 of 9 Fees: \$107.00  
Skagit County Auditor

**Document Title:**

AGREEMENT TO INCORPORATE REAL PROPERTY INTO THE  
COLONY MOUNTAIN COMMUNITY CLUB HOMEOWNERS' ASSOCIATION

**Reference # of Related Documents:**

**Grantor(s):**

JOHN B. WADE, a single person, and  
GAYLE K. SMITH, a single person

**Grantee:**

COLONY MOUNTAIN COMMUNITY CLUB, a Washington Non-Profit Corporation

**Abbreviated Legal Description:**

Ptns NW ¼ and SW ¼ Sec 23 T36 N., R3E., W.M., Skagit County, Washington, being the Westerly Parcel  
of Boundary Line Adjustment Survey recorded under AF#200202010042

Full legal description at Exhibit A attached hereto.

**Assessor's Tax Parcel No(s):**

P48090  
P48091  
P118920  
P119283

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**AGREEMENT TO INCORPORATE REAL PROPERTY INTO THE  
COLONY MOUNTAIN COMMUNITY CLUB HOMEOWNERS' ASSOCIATION**

THIS **AGREEMENT TO INCORPORATE REAL PROPERTY INTO THE COLONY MOUNTAIN COMMUNITY CLUB HOMEOWNERS' ASSOCIATION** ("AGREEMENT") is entered into on the 3<sup>RD</sup> day of JUNE, 20 19, by and between COLONY MOUNTAIN COMMUNITY CLUB, a Washington Non-Profit Corporation ("CMCC" or "CMCC Homeowners' Association" or "Grantee"), and JOHN B. WADE, a single person, and GAYLE K. SMITH, a single person, ("Owner" or "Grantor") for the purposes set forth herein. CMCC and Owner shall be referred to herein individually as "Party" and collectively as "Parties".

**ARTICLE 1. RECITALS**

**1.1** Owner is owner in fee of the property described at Exhibit A, fully incorporated herein by this reference, commonly known as:

Property Address(s): 3479 Wood Lane, Bow, WA 98232

Tax Parcels Number(s): P48090; P48091; P118920; P119283

Hereafter, the "Property".

**1.2** CMCC Homeowners' Association is organized pursuant to the laws of Washington State.

**1.3** Owner has applied to join the CMCC Homeowners' Association and to have the Property included within the boundaries CMCC Homeowners' Association; and the CMCC Board of Directors has approved said application.

**1.4** CMCC owns and operates a Group A municipal water system located within Skagit County, State of Washington (the "CMCC Water System" or "Water System"). CMCC has the authority and sufficient water available to provide potable water to the Property.

**1.5** This Agreement shall be subject to the terms and conditions of the CMCC Covenants, Restrictions and Agreements ("Covenants") recorded at Skagit County Auditor File No. 200104300175, as amended, recorded at Skagit County Auditor File No. 201901280086, and as amended in the future.

**1.6** The foregoing recitals are a material part of this Agreement.

**NOW THEREFORE, PURSUANT** to the terms and conditions of this Agreement and the obligations set forth herein, Parties do agree as follows:

**ARTICLE 2. AGREEMENT**

**2.1 Purchase of CMCC Membership Share.** In exchange for payment of a one-time fee of \$17,500.00 (Seventeen Thousand Five Hundred and 00/100 Dollars) per residential lot, Owner shall become a member of CMCC with one (1) share of Class A Stock ("Stock") in the CMCC Homeowners' Association per residential lot. Said fee will be changed from time to time by the CMCC Board of Directors. The Stock shall be appurtenant to the title of the Property and shall be transferable only as a

part of the transfer of the Property title. The Stock shall entitle the Owner to one (1) vote in matters relating to the CMCC Homeowners' Association, pursuant to the Governing Documents (as defined in section 2.2 below). The Stock shall also entitle the Owner to the use of corporate facilities and services, including the private roads and water system, subject to the Governing Documents (as defined in Section 2.2 below). Note that there shall be only one (1) access point and one (1) water service per residential lot.

- a. The following CMCC stock share number(s) is/are assigned to the Property:

**Stock Number:** 86

**Parcel ID Number(s):** P48090; P48091; P118920; P119283

**Abbrev. Legal Description:**

Ptns NW ¼ and SW ¼ Sec 23 T36 N., R3E., W.M., Skagit County, Washington, being the Westerly Parcel of Boundary Line Adjustment Survey recorded under AF#200202010042.

**2.2 Owner Subject to Governing Documents.** The Property and the Owner shall be subject to the terms and conditions of the CMCC governing documents, including but not limited to: The Covenants; By-laws; Articles of Incorporation; Consolidated Policies and Procedures adopted September 13, 2011 and as thereafter amended (collectively "Governing Documents"); and all financial and monetary obligations. Owner shall have the right to use and enjoyment of the CMCC facilities and services.

**2.3 Future Subdivision.** The CMCC Governing Documents address requirements associated with future subdivision of the Property. Requests for membership shares for additional lots must be presented to the Board and may need to be approved by the general Membership. Additional Membership shares are subject to available capacity in the water system. CMCC may require the Owner to enter into a Developer Extension Agreement to subdivide the Property, and CMCC will require the Owner to record a revised Agreement to Incorporate for all affected properties at the completion of the subdivision.

**2.4 Grant of Water Utility Easements.** The Owner hereby grants CMCC a non-exclusive perpetual water utility easement to install, operate, and maintain the CMCC Water System, including the right to enter upon said easement, for the purpose of constructing, repairing, reconstructing, improving and maintaining water pipes and appurtenances ("Water Utility Easement"). The Water Utility Easement shall be located along the lot lines of the Property described as follows: ten feet (10') in width in addition to road easements or rights-of-way on the lot line along that portion of the Property abutting any roads for the entire length that the Property's lot line abuts said road, and five feet (5') in width commencing on the lot line along the entire length of all other lot lines of the Property. All other terms of the Water Utility Easement granted herein shall be as set forth for easements in the Governing Documents and title for the Property, which terms are incorporated herein by this reference.

**2.4.1 Removal of Obstructions.** The Owner shall retain the right to use that portion of the Property within the Water Utility Easement, so long as said use does not interfere with CMCC's access to the Water Utility Easement. Owner shall not construct any building or structure over the CMCC Water Utility Easement. Further, Owner shall not dig, tunnel, or conduct other forms of construction activity on the Water Utility Easement or on the Property which would disturb or damage CMCC Water System, unearth or undermine the CMCC Water System, or endanger the lateral support to the CMCC Water System. 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 Water Utility Easement, at the sole expense of Grantor.

**2.4.2 General Obligations.** All construction and other work done by the Grantee on the Water Utility Easement shall be performed with only reasonably necessary damage to the surface of the Property. The Grantee shall reasonably grade and mulch or plant grass seed on such disturbed surface. Grantee shall also 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.

**2.5 Reserved.**

**2.6 Indemnification.**

**2.6.1 Grantor Obligation.** Owner shall indemnify and hold harmless Grantee, including its board of directors, officers, employees, contractors, consultants, and agents, from any and all claims, actions, or suits seeking damages or reimbursement of any kind arising as a result of any negligent act or omission of the Grantee related to any activity on the Property.

**2.6.2 Grantee Obligation.** Grantee shall indemnify and hold harmless Owner from any and all claims, actions, or suits seeking damages or reimbursement of any kind arising as a result of any negligent act or omission of the Grantor related to any activity on the Property.

**2.7 Excise Tax and Recording Cost.** The Grantee shall pay any real estate excise tax due and all costs related to recording this Agreement with the Skagit County Auditor.

**2.8 Dues, Fees and Assessments.** All lots and tracts covered by this Agreement shall be subject to all fees, dues and assessments, on the same terms and conditions as all other lots and tracts in the Colony Mountain Community Club. Terms and conditions are set forth in the Governing Documents and in any resolution approved or other action taken by the CCMC Board of Directors.

**2.9 Lien holders.** All lienholders and mortgagees with an interest in the lots or tracts hereby subordinate their interests to the obligations in this Agreement.

**2.10 Covenants.** The Covenants may be amended and the amended Covenants recorded at the convenience of CMCC to include the Property within the legal description of property to which such Covenants apply.

### ARTICLE 3. GENERAL PROVISIONS

**3.1 Run with the Land – Binding on Successors.** The provisions in this Agreement shall run with the land and shall inure to the benefit of and be binding upon the successors, assigns, heirs and personal representatives of the Parties hereto

**3.2 Non-waiver of Breach.** A waiver by either Party of any terms or conditions of this Agreement shall not be deemed or construed to be a waiver of any other term or condition, nor shall the waiver of any breach be deemed or construed to constitute a waiver of any subsequent breach, whether of the same or any other term or condition of this Agreement.

**3.3 Invalidity of Term.** If any term or provision of this Agreement or the application thereof to any person, entity or circumstance shall to any extent be adjudicated invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**3.4 Notices.** Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by electronic transmission in the form of email or facsimile, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

**To the CMCC:**

Colony Mountain Community Club  
P.O. Box 91  
Bow, WA 98232  
Email: info@colonymtcc.org

**To Owner:**

John Wade / Gayle Smith  
3479 Wood Lane  
Bow, WA 98232  
Email: johnnybwade@gmail.com

or to such other address designated in writing by the addressee.

**3.5 Authority.** Each Party represents and warrants that it has the power and legal authority to enter into this Agreement. The Parties executing this Agreement represent and warrant that they have the power and authority to do so.

**3.6 Effective Date.** This Agreement shall become effective upon the date of mutual execution of this Agreement.

**3.7 Remedies for Breach or Default.** Any and all remedies in law and equity shall be available to the Parties in the event of a breach or default of this Agreement, including the remedy of specific performance.

**3.8 Attorney's Fees and Costs.** In the event that either Party commences any legal action or proceeding relating to the provisions or enforcement of this Agreement, the prevailing Party shall be entitled to receive, and the non-prevailing Party shall pay, its reasonable attorneys' fees and costs, including those incurred in any appeal.

**3.9 Governing Law and Venue.** The laws of the State of Washington shall govern any disputes arising under this Agreement. Any disputes shall be adjudicated in the Superior Court for Skagit County, Washington, unless otherwise agreed.

**3.10 Complete Agreement.** This Agreement constitutes the entire agreement between the Parties. There are no other oral understandings or agreements. This Agreement may be modified or amended in writing only, on the mutual agreement of the Parties.

**3.11 Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which together will constitute a single agreement.

IN WITNESS WHEREOF, the Parties hereunto enter this Agreement the day and year first above written.

COLONY MOUNTAIN COMMUNITY CLUB

Mark Jacobsen

By: MARK JACOBSEN  
Its: President

OWNER

John Wade

JOHN WADE

Gayle Smith

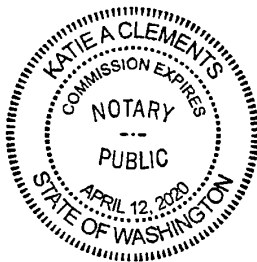
GAYLE SMITH

State of Washington )  
                                  ) §  
County of Skagit )

I certify that I know or have satisfactory evidence that MARK JACOBSEN is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the PRESIDENT of COLONY MOUNTAIN COMMUNITY CLUB to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 4<sup>th</sup> day of June, 2019.

Katie A. Clements  
Notary Public in and for the state of Washington.  
My appointment expires: 4/12/20.



State of Washington )

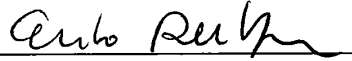
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County of Skagit )

Whatcom

I certify that I know or have satisfactory evidence that JOHN WADE 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 this 3 day of June, 2019.



Notary Public in and for the state of Washington.

My appointment expires: 12-3-22



State of Washington )

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County of Skagit )

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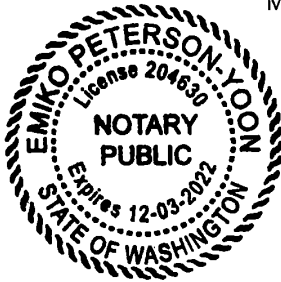
I certify that I know or have satisfactory evidence that GAYLE SMITH is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated this 3 day of June, 2019.



Notary Public in and for the state of Washington.

My appointment expires: 12-3-22



**EXHIBIT A**

**LEGAL DESCRIPTION**

**SKAGIT COUNTY TAX PARCELS:  
P48090; P48091; P118920; P119283**

The Westerly Parcel of Boundary Line Adjustment Survey recorded under AF#200202010042, being located in the Northwest  $\frac{1}{4}$  and the Southwest  $\frac{1}{4}$  of Section 23, Township 36 N., Range 3E., W.M., Skagit County, Washington, and depicted in Exhibit B.



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