

REVIEWED BY
SKAGIT COUNTY TREASURER
DEPUTY Lena Thompson
DATE 09/17/2021

FILED FOR AND RECORDED AT REQUEST OF AND RETURN ORIGINAL TO:

NICOLE L. TERPSTRA, ATTORNEY AT LAW, PLLC
709 Grover Street
Lynden, WA 98264

**ACCOMMODATION
RECORDING ONLY
202032 - LT**

DOCUMENT TITLE: Utility Easement

GRANTOR(S):

1. Misbehaven 35, LLC

GRANTEE(S):

1. Avalon Heights Homeowners Association

LEGAL DESCRIPTION: Full legal descriptions found on Page 1.

Abbreviated:

1. Lot 11, Avalon Heights Plat AF #200708220070

ASSESSOR'S PARCEL NUMBER(S):

1. P126691/4939-000-011-0000 (Misbehaven)

UTILITY EASEMENT AGREEMENT

This UTILITY EASEMENT AGREEMENT ("Agreement") is made this 14th day of September, 2021, by and between MISBEHAVEN 35, LLC, a Washington limited liability company ("Misbehaven") & AVALON HEIGHTS HOMEOWNERS ASSOCIATION, a Washington non profit corporation ("Avalon Heights").

RECITALS

1. Misbehaven is the owner of the real property described as follows:

Lot 11, Plat of Avalon Heights, recorded under Auditor's File No. 200708220070, records of Skagit County, Washington.

Situate in Skagit County, Washington.

Referred to herein as the "Burdened Property".

2. Misbehaven does hereby desire to establish an easement for utility purposes, for the benefit of Avalon Heights as more particularly described herein.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and conditions herein contained and no monetary consideration, the parties hereby declare as follows:

1. Recitals Incorporated.

The recitals set forth on pages 1 and 2 hereof are hereby fully incorporated by this reference as if fully restated herein.

2. Grant of Easement.

Misbehaven does hereby grant, bargain, sell, convey, transfer and deliver over, under, across and through those portions of the Misbehaven Property legally described on Exhibit B, and approximately depicted on Exhibit C, which Exhibits are attached hereto and incorporated herein by this reference (hereinafter referred to as the "Easement Area") a ten (10) foot non-exclusive easement, for the purposes of the installation, maintenance, repair and replacement of utilities associated with a POGO internet pole (the "Easement") managed by Avalon Heights.

3. Duration.

The Easement herein granted shall be perpetual in duration. Notwithstanding the foregoing, if the POGO internet pole is ever decommissioned or removed with the intent of not being replaced, this Easement shall automatically terminate without need of further action by any or either party.

4. Use of Easement Area.

Provided the scope of the Easement granted in paragraph 2, above, is not increased, Avalon Heights or its agents shall have the right to construct, operate, maintain, repair, replace, improve, remove, and use the Easement Area, together with all necessary or convenient appurtenances thereto, for the purposes set forth herein and shall be provided reasonable access for such purposes, but for no other purposes without the consent of the owner of the Burdened Property, which consent may be withheld in that owner's sole discretion.

The owner of the Burdened Property reserves the right to use the Easement Area for any purposes not inconsistent with the rights herein granted; provided, however, that the owners of the Burdened Property shall not construct or maintain any buildings or permanent structures in the Easement Area that would interfere with the Easement granted herein.

5. Indemnity.

The owner of the Benefited Property, their successors and assigns, shall indemnify and hold harmless the owner of the Burdened Property, and the Burdened Property owners' successors and assigns from and against all losses, claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees and expenses, whether or not a lawsuit is instituted), arising out of or resulting from any actual or alleged injury to or death of any person, or from any actual or alleged loss of or damage to property, caused by any occurrence in or on the Easement Area or in connection with the use of the Easement Area by the owners of the Benefited Property, their employees, agents, licensees, contractors, invitees, unless such loss, damage, liability or expense is negligently caused by the owner of the Burdened Property, his/her/its employees, agents, licensees, contractors or invitees.

6. Allocation of Construction and Maintenance Costs.

Avalon Heights agrees to pay for all costs related to the maintenance, repair, replacement, and improvement of the Easement Area.

The owner of the Burdened Property shall remain liable for the payment of real property taxes and insurance that may be assessed on the Easement Area as a result of the Burdened Property owners' fee simple ownership of the Easement Area.

7. Attorneys' Fees.

If it shall be necessary for any party to this Agreement to employ an attorney to enforce its rights pursuant to this Agreement because of the default of the other party, the defaulting party shall reimburse the non-defaulting party for reasonable attorneys' fees and expenses.

8. Successors and Assigns.

The rights and obligations of this Agreement shall run with the land and shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

9. Purchase Price/Recording.

The Easement granted herein shall be for no consideration other than the promises and agreements set forth herein. This Agreement shall be recorded in the records of Skagit County.

10. Severability.

Should any separable part of this Agreement be found void or unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect.

11. Controlling Law

This Agreement has been made under the laws of the State of Washington, and such laws will control its interpretation.

WHEREAS, this document has been signed as of the day and year first above written.

MISBEHAVEN:**MISBEHAVEN 35, LLC**

[Signature]
BY: JERRY HAMMER, MEMBER

[Signature]
BY: LURLINE HAMMER, MEMBER

AVALON HEIGHTS:**AVALON HEIGHTS HOMEOWNERS ASSOCIATION**

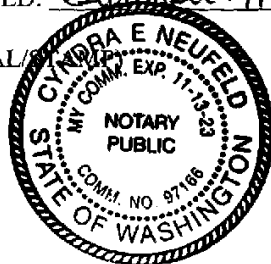
[Signature]
BY: Eben Twaddle
ITS: President

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that Jerry & Lurline Hammer are the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the Members of MISBEHAVEN, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: September 14, _____, 2021.

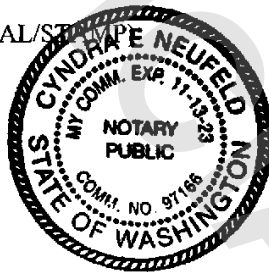
(SEAL)



Cynthia Neufeld
NOTARY PUBLIC
My appointment expires: NOV. 13, 2023

I certify that I know or have satisfactory evidence that Eben Twaddle 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 AVALON HEIGHTS HOMEOWNERS ASSOCIATION to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

(SEAL/ST)



Cynthia E. Newfeld
NOTARY PUBLIC
My appointment expires: Nov 13, 2023

EXHIBIT "B"

DESCRIPTION OF EASEMENT "B"

A UTILITY EASEMENT OVER, UNDER AND ACROSS THE EAST 10.00 FEET OF LOT 11, AVALON HEIGHTS, AS PER THE MAP THEREOF RECORDED UNDER SKAGIT COUNTY AUDITOR'S FILE No. 200708220070, BEING A PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 35 NORTH, RANGE 4 EAST OF W.M.

AS DEPICTED ON EXHIBIT "C" ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE. SITUATE IN SKAGIT COUNTY, WASHINGTON.

SUBJECT TO AND TOGETHER WITH ALL EASEMENTS, COVENANTS, RESTRICTIONS AND/OR AGREEMENTS OF RECORD OR OTHERWISE.

DEPICTING EASEMENTS

N 88°12'06"W 261.66'

Course	Bearing	Distance
L1	N 73°49'04" W	10.32'
L2	N 73°49'04" W	12.17'

Course	Bearing	Distance
RP1	S 45°31'37" W	45.00'
RP2	S 64°42'27" W	45.00'

