

RETURN TO:

ROBERT A. CARMICHAEL
CARMICHAEL CLARK, P.S.
P.O. BOX 5226
BELLINGHAM, WA 98227
PHONE: 360-647-1500

DOCUMENT TITLE:

EASEMENT AGREEMENT

REFERENCE NUMBER OF RELATED DOCUMENT:

N/A

GRANTORS:

MICHAEL AND SALLY ENGELS, a married couple
CHATEAUX AT GARDEN GREEN CONDOMINIUM ASSOCIATION
SPORTS CLUB CABANAS CONDOMINIUM OWNERS ASSOCIATION

GRANTEE:

CITY OF LYNDEN, a Washington municipal corporation

ABBREVIATED LEGAL DESCRIPTION:

PTN HOMESTEAD MABERRY PLAT DIV. 8, AF# 940104197
Chateaux at Garden Green Condominium, AF#2121202992
Sports Club Condominium AF# 960119016

Full legal descriptions at pages 2-3 hereto.

ASSESSOR'S TAX PARCEL NUMBER(S):

400317 309359 0000
400317 316340 0000
400317 310326 0000

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 20__, by and between MICHAEL AND SALLY ENGELS ("ENGELS"), a married couple, CHATEAUX AT GARDEN GREEN CONDOMINIUM ASSOCIATION ("CHATEAUX"), and SPORTS CLUB CABANAS CONDOMINIUM OWNERS ASSOCIATION ("SPORTS CLUB") (hereinafter collectively "GRANTORS") and the CITY OF LYNDEN, a Washington municipal corporation (hereinafter "GRANTEE" or "CITY"). Grantors and Grantee may be referred to herein individually as "Party" or collectively as "Parties."

RECITALS

WHEREAS, Grantee is a Washington municipal corporation that is capable of supplying water for fire protection purposes to Whatcom County residents dwelling in close proximity to the City's limits; and

WHEREAS, Engels are the sole owners of real property within Whatcom County legally described as follows, fully incorporated herein by reference:

Those portions of Lots 10 and 11 of Maberry Plat, Division No. 8, according to the Plat thereof, recorded in Volume 18 of Plats, Pages 37 and 38, records of Whatcom County, Washington, described as follows:

Beginning at the Southwest corner of said Lot 10; then North 2°17'33" West along the West line of said Lots 10 and 11, a distance of 184.60 feet; thence North 89°35'04" East, 147.52 feet; thence South 0°24'57" East, 184.50 feet to the South line of said Lot 10; thence South 89°35'04" West along the South line of said Lot 10, a distance of 141.48 feet to the true point of beginning. Situate in Whatcom County, Washington.

(hereinafter "Engels Property"); and

WHEREAS, Chateaux is the sole owner of real property within Whatcom County legally described as follows, fully incorporated herein by reference:

The Common Areas of the Chateaux at Garden Green Condominium, according to the Declaration thereof, recorded under Auditor's File No. 2121202992 and any Amendments thereto, records of Whatcom County, Washington. Situate in Whatcom County, Washington.

(hereinafter "Chateaux Property"); and

WHEREAS, Sports Club is the sole owner of real property within Whatcom County legally described as follows, fully incorporated herein by reference:

The Common Areas of the Sports Club Condominium according to the Amended Declaration thereof recorded under Auditor's File No. 960119016, records of Whatcom County, Washington. Situate in Whatcom County, Washington.

(hereinafter "Sports Club Property"); and

WHEREAS, the Engels Property, the Chateaux Property and the Sports Club Property are collectively referred to herein as the "Grantors' Property";

WHEREAS, Grantors wish to secure a source of water for fire protection purposes for Grantors' Property by installing a fire hydrant, connected to and supplied by City's water main, on Grantors' Property; and

WHEREAS, Grantee has requested from Grantors the grant of an easement securing to Grantee necessary rights in said fire hydrant and the water line providing fire flow connected to City's water main (hereinafter "Fire Protection Facilities"); and

WHEREAS, these recitals are a material part of this Agreement,

NOW, THEREFORE, in consideration of the promises and conditions herein, the Parties hereby covenant and agree as follows:

1. Grant of Easement. Grantors, in consideration of the terms and conditions specified herein, grant and convey to Grantee a perpetual, non-exclusive easement (hereinafter "Easement") for ingress, egress and access over, across, along, in, upon and under a portion of Grantor's Property (hereinafter "Easement Area") as described in Exhibit A and depicted in Exhibit B, both attached hereto and fully incorporated herein by reference.

2. Purpose. This Easement shall be for the purposes of providing Grantee with a perpetual and unlimited right to access and use the Easement for all City fire protection purposes.

3. City's Rights Under Easement. Grantee shall have the right at any time to enter the Easement Area for the purposes of installing, inspecting, operating, maintaining, repairing, improving, removing, and replacing the Fire Protection Facilities, including the right of ingress to and egress from Grantors' Property for the foregoing purposes. No advance notice to Grantors shall be required.

4. Restoration of Easement Area.

A. If Grantee disturbs the Easement Area or other portions of Grantors' Property during the course of utilizing the Easement, Grantee shall restore the surface of the Easement Area or Grantors' Property as nearly as reasonably feasible to the condition in which it existed at the commencement of said utilization at its sole expense and within a reasonable time. In the event grass is disturbed, Grantee's obligation to restore the Easement shall be limited to re-seeding disturbed grass. In the event vegetation such as shrubs or trees are disturbed, Grantee's restoration obligation shall be deemed satisfied if it replaces the disturbed shrubs or trees with smaller or younger plants. Grantee is not required to replace disturbed grass, shrubs, trees or other vegetation with the same species or variety as what was disturbed, but will make reasonable efforts to do so.

B. Notwithstanding the foregoing, Grantee reserves the right to remove without replacing any structures, objects, trees or other vegetation which, in Grantee's sole judgment and discretion, may interfere with its rights under this Agreement and may do so without advance notice to Grantors.

5. Grantors' Obligations.

A. Grantors erect all structures and allows the growth of all vegetation on or in such a way as to interfere with the Easement at Grantors' own risk.

B. Grantors may not construct, install, or maintain permanent structures or structures that cannot be easily removed within the Easement Area after the execution of this Agreement. Grantors also may not construct, install, or maintain any structure outside the Easement Area but interfering with Grantee's rights under this Agreement.

C. Grantors may not dig, tunnel, perform any construction activity, or allow any condition to occur that might disturb or damage the Fire Protection Facilities within the Easement Area.

D. Grantors may not allow the growth of vegetation within the Easement Area, except for small plants such as grass or other groundcovers that do not prevent the Grantee or its assigns from exercising its rights under this Agreement and do not have the potential to damage the Fire Protection Facilities within the Easement Area.

E. Grantors shall remove any encroachments on the Easement Area or interfering with Grantee's use of the Easement at their own expense. Any structure or other objects within the Easement Area or interfering with the Grantee's use of the Easement may be removed without notice to Grantors.

6. Rights Reserved by Grantors. All right, title and interest which may be used and enjoyed without interfering with the easement rights conveyed by this Agreement are reserved to Grantors.

7. Indemnification. To the extent permissible by law, Grantee shall indemnify, defend and hold Grantors, its agents, employees, officers, guests, invitees, partners, licensees, contractors or subcontractors harmless from and against any and all claims, demands, loss, damage, expense and liability of every kind and description and for any damage to or loss or destruction of property suffered by Grantors, its agents, employees, officers, guests, invitees, partners, licensees, contractors or subcontractors arising as a result of Grantee's negligent acts or omissions in the utilization of this 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 Grantors and its agents, employees, officers, guests, invitees, partners, licensees, contractors or subcontractors.

8. Divestiture. Any divestiture of Grantee's rights under this Agreement shall occur in the following manner:

A. Grantee shall notify Grantors in writing of its intent to divest itself of its rights under this Agreement at least ninety (90) days prior to holding a public hearing on the divesting of the Grantee's rights herein.

B. Grantee may in its sole discretion hold a public hearing with regard to the divesting of Grantee's rights herein.

C. The divesting of the Grantee's rights herein may only occur upon the approval of the City Council.

D. The divesting of the Grantee's rights herein shall be without cost, fee or obligation to Grantors under any circumstance.

9. Scope of Easement/Obligations Run with the Land. This Easement shall be perpetual in duration, shall be deemed to touch and concern the land, shall constitute covenants running with the land, and shall be binding on the undersigned and all successors, assignees, devisees, or transferees of the Parties and shall in all respects attach to the individual properties legally described in this Agreement.

10. Compensation. This Easement is a condition of connecting to City's water main for fire protection purposes and no compensation shall be paid to Grantors.

11. Costs. Grantors shall pay any recording fees related to this Agreement. Each Party shall be solely responsible for their own attorney's fees related to the preparation of this

Agreement.

12. Commencement of Easement. This Agreement and Easement shall commence upon the recording of this Agreement with the Whatcom County Auditor.

13. Notice. Any notice, declaration, demand or communication to be given by a party to this Agreement to the other shall be in writing and transmitted to the other party by personal service or certified U.S. mail, return receipt requested, postage fully prepaid, addressed as follows:

To Grantors:

Michael and Sally Engels
PO Box 349
Lynden, WA 98264

To Grantee:

City of Lynden
Attn: Steve Banham
300 4th Street
Lynden, WA 98264

Chateaux at Garden Green
Condominium Association
519 Front Street, Ste. A
Lynden, WA 98264

Sports Club Cabanas Condominium
Owners Association
541 W. Bakerview Road
Bellingham, WA 98226

14. Compliance with Laws and Rules. Grantee shall at all times exercise its rights herein in accordance with the requirements (as from time-to-time amended) of all applicable statutes, laws, orders, rules, and regulations of any public authority having jurisdiction, including its own.

15. 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. Waiver of any breach of any provision of this Agreement does not constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

16. Amendment or Termination. This Agreement may be amended or terminated only by mutual written agreement of the Parties. Modification of this Agreement or any of its terms and conditions shall be binding upon the Parties only if in writing and fully executed by the Parties.

17. Applicable Law/Construction/Venue. This Agreement shall be governed and

interpreted in accordance with the laws of the State of Washington. The venue of any action brought to interpret or enforce any provision of this Agreement shall be laid in the Whatcom County Superior Court, Whatcom County, Washington.

18. 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.

19. Counterparts. This Agreement may consist of two or more separately ratified counterparts, each of which shall constitute a duplicate original of this Agreement and all which together will constitute a single Agreement.

20. Attorney's Fees, Costs & Expenses. The prevailing Party in any action brought to enforce any terms and conditions of this Agreement shall be entitled to the recovery of its reasonable attorney's fees, costs and expenses.

21. Not a Public Dedication. Nothing contained in this Agreement grants a dedication of any portion of real property to the general public or for any public use, except as may be specifically provided herein. No other right, privilege, or immunity of any Party shall inure to the benefit of any third party, nor shall any third party be a beneficiary of any of the provisions of this Agreement, except as may be specifically provided herein.

22. Entire Agreement. This Agreement constitutes the entire agreement between the Parties as to the matters contained herein. There are no other representations, warranties, covenants, agreements, collateral agreements, or other conditions affecting this Agreement other than those set forth herein. No oral or written statements made by either Party prior to or following execution of this Agreement shall be considered a part of this Agreement unless expressly incorporated herein in writing.

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IN WITNESS WHEREOF, the Parties hereunto enter this Agreement on the date first above written.

GRANTORS:

GRANTEE:

CITY OF LYNDEN



MICHAEL ENGELS

By: Scott Korthius
Its: Mayor



CHATEAUX AT GARDEN GREEN
CONDOMINIUM ASSOCIATION



By: MICK O'BYRNE

Its: MEMBER

SPORTS CLUB CABANAS
CONDOMINIUM ASSOCIATION



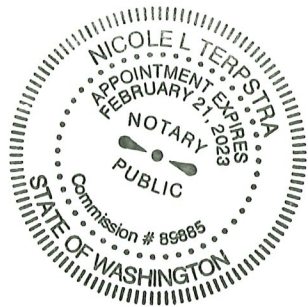
By: SCOTT HILLIUS

Its: PRESIDENT

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that MICHAEL ENGELS 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 to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 13th day of October, 2020.

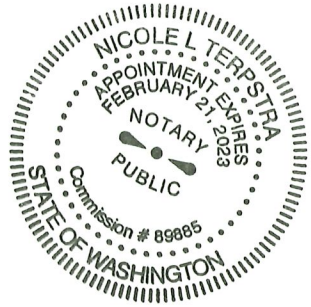


Nicole L. Terpstra
Name (typed or printed): Nicole Terpstra
NOTARY PUBLIC in and for the State of Washington
Residing at Lynden WA
My appointment expires: 2-21-23

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

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

DATED this 13th day of October, 2020.



Nicole L. Terpstra
Name (typed or printed): Nicole L. Terpstra
NOTARY PUBLIC in and for the State of Washington
Residing at Lynden WA
My appointment expires: 2-21-23

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that MICK O'BRYAN 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 member/President of CHATEAUX AT GARDEN GREEN CONDOMINIUM ASSOCIATION, a Washington corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 13th day of October, 2020.

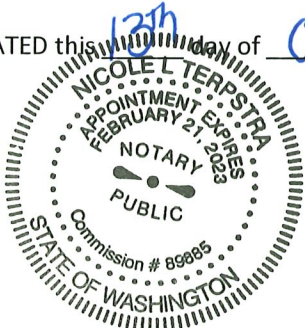


Nicole L. Terpstra
Name (typed or printed): Nicole L. Terpstra
NOTARY PUBLIC in and for the State of Washington
Residing at Lynden
My appointment expires: 2-21-23

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that SCOTT HILLIES 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 SPORTS CLUB CABANAS CONOMINIUM OWNERS ASSOCIATION, a Washington corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 13th day of October, 2020.



Nicole L. Terpstra
Name (typed or printed): Nicole L. Terpstra
NOTARY PUBLIC in and for the State of Washington
Residing at Lynden WA
My appointment expires: 2-21-23

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that SCOTT KORTHUIS 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 MAYOR of the CITY OF LYNDEN, a Municipal Corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this _____ day of _____, 2020.

Name (typed or printed): _____
NOTARY PUBLIC in and for the State of Washington
Residing at _____
My appointment expires: _____

Exhibit A
WATER LINE EASEMENT DESCRIPTION

TO THE CITY OF LYNDEN

**OVER TAX PARCEL #'s 400317 309359 0000,
400317 316340 0000, 400317 310326 0000**

That portion of the Homestead Maberry Plat Div # 8 recorded at Auditor's File Number 940104197, records of Whatcom County, WA being within the Northeast Quarter of Section 17, Township 40 North, Range 3 East, W.M. and the centerline of a 20.00 foot wide strip of land described as follows:

Beginning at the nail and washer marked "CPS PLS 53687" marking the northeast corner of Tax Parcel # 400317 319326 0000 as shown on the Record of Survey recorded at AFN 2020-0503334, said records; thence said centerline of the 20.00 foot wide strip extends North $86^{\circ}37'08''$ West 144.53 feet to a $5/8^{\text{th}}$ inch rebar with plastic cap marked "CPS PLS 53687" which is a witness corner to the northwest corner of said parcel; thence continuing North $86^{\circ}37'08''$ West 3.00 feet to the northwest corner, all as shown on said survey, with sidelines of said 20.00 foot wide strip extending to the easterly margin of Depot Road; AND ALSO

EXCEPT any portion of that access and utility easement shown on said Record of Survey recorded at AFN 2020-0503334 and described at AFN 1950919030, all in said records.

Prepared on 7/7/2020.



Exhibit B

