

RETURN TO:
CARMICHAEL CLARK, P.S.
PO BOX 5226
BELLINGHAM, WA 98227
(360) 647-1500

DOCUMENT TITLE:
ACCESS and UTILITY EASEMENT AGREEMENT

REFERENCE NUMBER OF RELATED DOCUMENT:

GRANTOR:
CITY OF LYNDEN, a Washington municipal corporation

GRANTEE:
Mountain Summit Ventures, L.L.C.

ABBREVIATED LEGAL DESCRIPTION:
PTN NE SE, SEC.18, TWP 40 N. R 3E WM

Full legal descriptions at page 1 and 2 hereto

ASSESSOR'S TAX PARCEL NUMBER(S):
400318 529257 0000 and 400318 477250 0000

UTILITY AND ACCESS EASEMENT AGREEMENT

THIS **UTILITY AND ACCESS EASEMENT AGREEMENT ("Agreement")** is made as of this ____ day of _____, 2025 ("Effective Date"), by City of Lynden, to specify terms and conditions of an easement agreement.

RECITALS

- A. **City of Lynden** is the fee owner of certain real property located in Whatcom County, Washington, legally described as:

A tract of land in the Northeast quarter of the Southeast quarter of Section 18, Township 40 North, Range 3 East of W.M., described as follows:

Commencing at the Northeast corner of the Northeast quarter of the Southeast quarter of said Section, Township and Range; thence South 180 feet; thence West 242 feet; thence North 180 feet; thence East to the point of beginning;

Except right-of-way for Benson Road lying along the East line thereof.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

and incorporated herein by this reference commonly known as **8691 Benson Road** (hereinafter referred to as the "Burdened Property").

- B. **Mountain Summit Ventures, L.L.C.** is the fee owner of certain real property located in Whatcom County, Washington, legally described as:

The North half of the North half of the Northeast Quarter of the Southeast Quarter of Section 18, Township 40 North, Range 3 East of W.M., EXCEPT the North 180 feet of the East 242 feet thereof.

Except right of way for Benson Road lying along the East line thereof.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

and incorporated herein by this reference commonly known as **8683 Benson Road** (hereinafter referred to as the "Benefited Property").

- C. **City of Lynden** desires to grant a non-exclusive easement for ingress and egress purposes over a portion of the Burdened Property for the benefit of the Benefited Property.

AGREEMENT

NOW, THEREFORE, inconsideration of the mutual promises and conditions herein contained, **City of Lynden** hereby covenants and agrees as follows:

1. Grant of Easement

City of Lynden does hereby grant, bargain, sell, convey, transfer and deliver for the benefit of the Benefited Property, a non-exclusive variable width easement for the purposes of underground utility installation, ingress and egress, and fire or emergency response apparatus (the "Easement") over that certain property legally described on Exhibit A and approximately depicted on Exhibit B, both of which are attached hereto and incorporate herein by this reference (the "Easement Area").

2. Duration and Expiration

The Easement herein granted shall be perpetual in duration except that failure of the Benefited Property to construct the access and install the private utilities of water and sewer within 3 years of the date of execution of this agreement shall cause the easement to expire.

3. Use of Easement Area

The owner of the Benefited Property shall have the right to use the Easement Area for underground private utilities, ingress and egress purposes, and the turnaround of fire or emergency response apparatus. The Easement Area shall not be used for parking or storage of vehicles or recreational vehicles by either the Burdened or Benefited properties.

The owner of the Burdened Property reserves the right to use the Easement Area of any purpose not inconsistent with the rights herein granted; provided, however, that the owners of the Burdened Property shall not construct or maintain any buildings, structure, or other objects in the Easement Area, without the prior written approval of the owner of the Benefited Property.

The owner of the Burdened Property reserves the right to install traffic-calming devices such as speed bumps without prior written approval of the owner of the Benefited Property. Gates or other means of restricting public access may be installed upon mutual agreement of the Burdened and Benefited properties.

4. Construction and Maintenance Costs

Initial construction associated with the Easement Area including permitting, demolition, and the installation of private utilities within the Easement Area shall be paid by the Benefited Property at no cost to the Burdened Property. Provisions shall be made by the Benefited Property to provide water and sewer utility stubs to the Burdened Property at a capacity capable of supporting residential densities consistent with the underlying zoning category (approximately 8 multi-family units).

The design of the access is subject to the minimum standards associated with the City of Lynden private access lanes and the design standards for multi-family development. The lane must include a raised or flush concrete edges as well as a concrete sidewalk a minimum of 5 feet in width that provides pedestrian access to Benson Road.

Subsequent maintenance and repair costs shall be paid by the users of the Easement Area in proportion to their use. Prior to undertaking any maintenance, or repair within the Easement Area the parties shall mutually agree on the costs thereof and the allocation of said costs between the parties. In the event said approval is not obtained prior to construction, maintenance or repair occurring, the non-approving parties will not be required to contribute to the costs thereof. In the event of a bona fide emergency, this requirement for prior agreement shall be deemed waived. Notwithstanding the above, in the event one party's sole actions cause damage to the Easement Area, said party shall be solely responsible for all costs and expenses associated with the maintenance and repair thereof. Following any construction, maintenance and/or repair within the Easement Area, the parties shall restore the Easement Area to its previously existing conditions as is reasonably practicable.

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 owner's successors and assigns (including each other's contractors, subcontractors, employees, agents or invitees) 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 an occurrence in or on the Easement Area or in connection with the use of the Easement Area by the owner 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. 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.

7. 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.

8. 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 Whatcom County.

9. 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.

10. 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.

11. 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.

12. Nonwaiver of Breach

Failure of either Party to require performance of any provision of this Agreement shall not limit the 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.

13. Applicable Law/Construction/Venue

This Agreement shall be governed and interpreted in accordance with the laws of the State of Washington. In the event this Agreement is in conflict with the provisions of any law or statutes governing the subject matter hereof, such law or statute only to the extent of such conflict shall be controlling. 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.

14. Modification or Termination Must be in Writing

Modification or Termination Must be in Writing. No oral or written statements made 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 not be modified or terminated except by written agreement of the Parties.

IN WITNESS WHEREOF, **City of Lynden** has set its hand this _____ day of _____, 2025.

GRANTOR:
City of Lynden

By: Scott Korthuis
Its: Mayor

STATE OF WASHINGTON }
 } ss.
COUNTY OF WHATCOM }

On this ____ day of _____, 2025, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Scott Korthuis, mayor of the City of Lynden, a municipal corporation, who acknowledged the said instrument to be their free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first written above.

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

EXHIBIT "A"

DESCRIPTION OF EASEMENT AREA

BEGINNING AT THE SOUTHEAST CORNER OF THE NORTH 180 FEET OF THE EAST 242 FEET OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M.; THENCE THE FOLLOWING NINE (9) COURSES:

Course	Bearing	Distance
E1	S 88°42'25" W	212.23'
E2	N 01°22'04" E	30.03'
E3	N 88°42'25" E	79.62'
E4	RADIUS=87.50' LENGTH=15.27' CENTRAL ANGLE=10°00'00"	
E5	N 78°42'25" E	32.33'
E6	RADIUS=112.50' LENGTH=19.63' CENTRAL ANGLE=110°00'00"	
E7	N 88°42'25" E	50.19'
E8	RADIUS=35.00' LENGTH=17.10' CENTRAL ANGLE=127°59'37"	
E9	S 01°21'04" W	42.79'

TO THE POINT OF BEGINNING.

AS DEPICTED ON EXHIBIT "B" ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

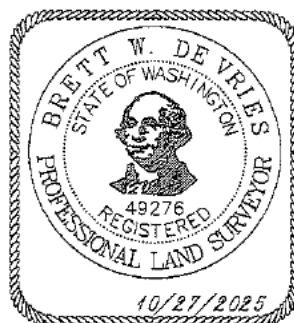


EXHIBIT "B"

DEPICTING EASEMENT AREA

PORTION OF THE NE 1/4 SE 1/4, SECTION 18,
TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M.
WHATCOM COUNTY, WASHINGTON

S 88°42'25"W 1344.83'

1102.56'

Course	Bearing	Distance
RB1	N 29°17'11" W	35.00'

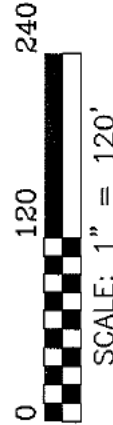
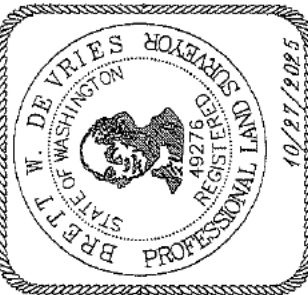
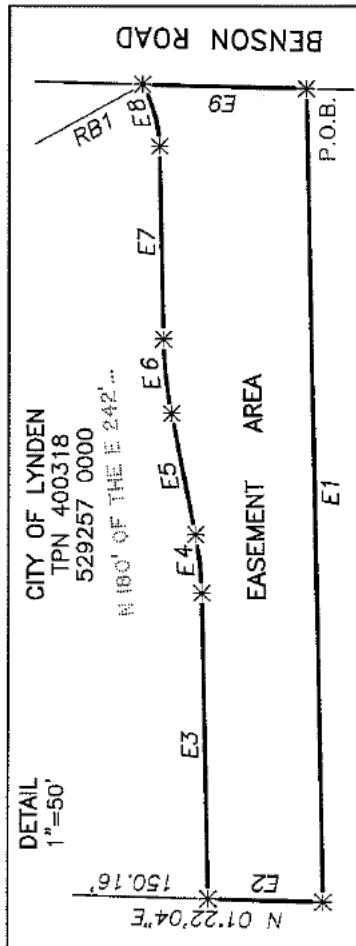
Course	Bearing	Distance
E1	S 88°42'25" W	212.23'
E2	N 01°22'04" E	30.03'
E3	N 88°42'25" E	79.62'
E4	RADIUS=87.50' CENTRAL ANGLE=10°00'00"	LENGTH=15.27'
E5	N 78°42'25" E	32.33'
E6	RADIUS=112.50' CENTRAL ANGLE=110°00'00"	LENGTH=19.63'
E7	N 88°42'25" E	50.19'
E8	RADIUS=35.00' CENTRAL ANGLE=127°59'37"	LENGTH=17.10'
E9	S 01°21'04" W	42.79'

MOUNTAIN SUMMIT
VENTURES LLC
TPN 400318
477250 0000
N 1/2 NE 1/4 SE 1/4...

N 1/2 NE 1/4 SE 1/4...

1314.90'

N 89°11'49"E 1344.92'



BASIS OF BEARINGS =
RECORD OF SURVEY FILED
UNDER AF No. 2080603928

NE CORNER
NE 1/4,
SE 1/4...

17

212.21'

150.16'

N 01°22'04"E 180.19'

30.05'

137.40'

N 180° OF THE E 242...

E2

E3

E4

E5

E6

E7

E8

E9

152.88'

N 01°22'04"E 333.33'

30.02'

152.88'

152.88'

152.88'

152.88'

152.88'

152.88'

152.88'

152.88'

152.88'

152.88'

BENSON ROAD

CITY OF LYNDEN
TPN 400318
529257 0000
N 180° OF THE E 242...

EASEMENT AREA
(SEE DETAIL)

