

**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:**

ROBERT AND ERIN LEE, a married couple  
J & E BLACK, a married couple

**GRANTEE:**

CITY OF LYNDEN, a Washington municipal corporation

**ABBREVIATED LEGAL DESCRIPTION:**

PTN Lot B, M Lewis Lot Line Adjustment, AF# 2061100638  
PTN Lot 2, D & K Timmer Short Plat, AF# 2019-0502207

Full legal descriptions at pages hereto

**ASSESSOR'S TAX PARCEL NUMBER(S):**

400321 124492 0000  
400321 122460 0000

## EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between ROBERT AND ERIN LEE ("LEE"), a married couple, and J & E BLACK, a married couple ("BLACK") (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, Lee are the sole owners of real property within Whatcom County legally described as follows, fully incorporated herein by reference:

Lot B, as delineated on M Lewis Lot Line Adjustment, according to the plat thereof, recorded under Auditor's File No. 2061100638, records of Whatcom County, Washington.

Situate in Whatcom County, Washington.

(hereinafter "Lee Property"); and

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

Lot 2, as delineated on D & K Timmer Short Plat, according to the plat thereof, recorded under Whatcom County Auditor's File No. 2019-0502207, records of Whatcom County, Washington.

Situate in Whatcom County, Washington.

(hereinafter "Black Property"); and

WHEREAS, the Lee Property and the Black 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 1 and depicted in Exhibit 2, 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 of 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 the D&K Timmer Short Plat and 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:**

Robert and Erin Lee  
936 E Front Street  
Lynden, WA 98264

**To Grantee:**

City of Lynden  
Attn: Steve Banham  
300 4<sup>th</sup> Street  
Lynden, WA 98264

J & E Black  
PO Box 762  
Lynden, WA 98264

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.

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

**GRANTORS:**

**GRANTEE:**

CITY OF LYNDEN

  
\_\_\_\_\_  
ROBERT LEE

\_\_\_\_\_  
By: Scott Korthius  
Its: Mayor

  
\_\_\_\_\_  
ERIN LEE

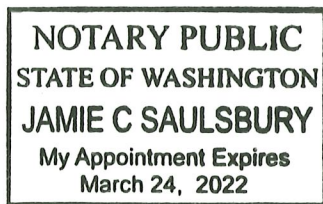
  
\_\_\_\_\_  
J BLACK

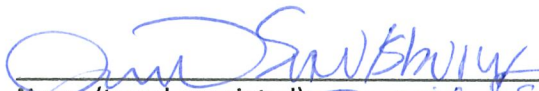
  
\_\_\_\_\_  
E BLACK

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF WHATCOM )

I certify that I know or have satisfactory evidence that ROBERT LEE 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 16 day of October, 2020.

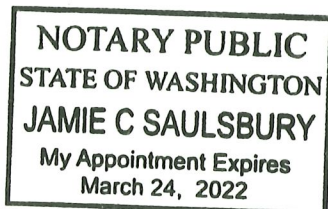


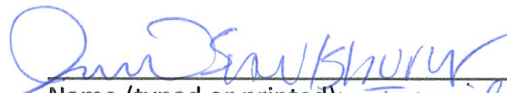
  
Name (typed or printed): Jamie C Saulsbury  
NOTARY PUBLIC in and for the State of Washington  
Residing at Bellingham WA  
My appointment expires: MARCH 24, 2022

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF WHATCOM )

I certify that I know or have satisfactory evidence that ERIN LEE 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 16 day of October, 2020.

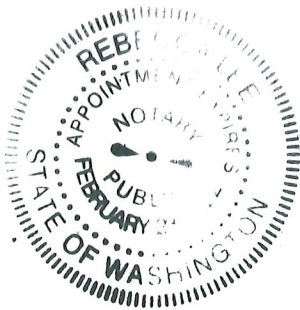


  
Name (typed or printed): Jamie C Saulsbury  
NOTARY PUBLIC in and for the State of Washington  
Residing at Bellingham WA  
My appointment expires: MARCH 24, 2022

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF WHATCOM )

I certify that I know or have satisfactory evidence that J BLACK 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 19<sup>th</sup> day of OCTOBER, 2020.

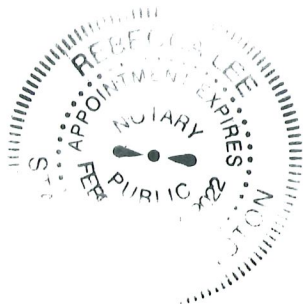


Rebecca Lee  
Name (typed or printed): Rebecca Lee  
NOTARY PUBLIC in and for the State of Washington  
Residing at Lynden WA  
My appointment expires: 2/23/2022

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF WHATCOM )

I certify that I know or have satisfactory evidence that E BLACK 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 19<sup>th</sup> day of October, 2020.



Rebecca Lee  
Name (typed or printed): Rebecca Lee  
NOTARY PUBLIC in and for the State of Washington  
Residing at Lynden WA  
My appointment expires: 2/23/2022



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 1**

**WATERLINE AND HYDRANT EASEMENT**

**TO THE CITY OF LYNDEN**

**OVER A PORTION OF**

**TAX PARCEL NUMBERS 4003211244920000 AND 4003211224600000**

THAT PORTION OF THE NW 1/4 OF THE NW 1/4 OF SECTION 21, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., WITHIN THE CITY OF LYNDEN, WHATCOM COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

INGRESS, EGRESS, AND MAINTENANCE FOR ALL UTILITY PURPOSES TO A WATERLINE AND HYDRANT ASSEMBLY REQUIRED UNDER AF 2019-0502207. WATERLINE AND HYDRANT ASSEMBLY WILL BE LOCATED WITHIN AN EXISTING ACCESS AND UTILITY EASEMENT TO THE CITY OF LYNDEN PREVIOUSLY RECORDED UNDER AF 2061100638, 2018-0801214, & 2019- 0501727; AND ALSO WITHIN AN EXISTING SEWER EASEMENT TO THE CITY OF LYNDEN, PREVIOUSLY RECORDED UNDER AF 2061100638 & 782639. SEE ATTACHED EXHIBIT 2.

# EXHIBIT " 2 "

## DEPICTING WATERLINE EASEMENT

PTN: NW 1/4 OF THE NW 1/4 OF SECTION 21,  
TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M.

