

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

GRANTOR:

QUALITY PLUMBING & CONSTRUCTION, INC., a Washington corporation

GRANTEE:

CITY OF LYNDEN, a Washington municipal corporation

ABBREVIATED LEGAL DESCRIPTION:

PTN HOMESTEAD MABERRY PLAT DIV. 8, AF# 940104197

Full legal descriptions at pages hereto

ASSESSOR'S TAX PARCEL NUMBER(S):

400317 324323 0000

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 20__, by and between QUALITY PLUMBING & CONSTRUCTION, INC., a Washington corporation (hereinafter "Grantor") and the CITY OF LYNDEN, a Washington municipal corporation (hereinafter "Grantee" or "City"). Grantor 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 municipal purposes; and

WHEREAS, Grantor is the sole owner of real property legally described as follows, fully incorporated herein by reference:

Parcel 3, as delineated on Maberry Division No. 8 Lot Line Adjustment, according to the plat thereof, recorded June 4, 2008, under Whatcom County Auditor's File No. 2080600559. Situate in Whatcom County, Washington (Tax Parcel No. 400317 324323 0000).

(hereinafter "Grantor's Property" or "Burdened Property"); and

WHEREAS, Grantee wishes to secure an easement across the Grantor's Property for maintenance of an existing two (2) inch water service line that services properties to the north ("Waterline") and is connected to and supplied by City's water main, ; and

WHEREAS, Grantor is willing to grant of an easement securing to Grantee necessary rights in said Waterline connected to City's water main; and

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

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

1. Grant of Easement. Grantor hereby grants and conveys 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 provide Grantee with a perpetual and unlimited right to access, use, replace, and maintain the Waterline in the Easement for all City municipal

water service purposes, as further described in Section 3.

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 Waterline therein, including the right of ingress to and egress from Grantor's Property for the foregoing purposes. No advance notice to Grantor shall be required.

4. Restoration of Easement Area.

A. If Grantee disturbs the Easement Area or other portions of Grantor's Property during the course of utilizing the Easement, Grantee shall restore the surface of the Easement Area or Grantor's 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 Grantor.

5. Grantor's Obligations.

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

B. Grantor 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. Grantor also may not construct, install, or maintain any structure outside the Easement Area but interfering with Grantee's rights under this Agreement.

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

D. Grantor 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 Waterline within the Easement Area.

E. Grantor 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 Grantor.

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

7. Indemnification. To the extent permissible by law, Grantee shall indemnify, defend and hold Grantor, 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 Grantor, 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 Grantor 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 Grantor 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 Grantor 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. No monetary compensation shall be paid to Grantor.

11. Costs. Grantor 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 Grantor:

Quality Plumbing & Construction
PO Box 349
Lynden, WA 98264

To Grantee:

City of Lynden
Attn: Steve Banham
300 4th Street
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.

GRANTOR:
QUALITY PLUMBING & CONSTRUCTION, INC.



By: Michael J. Engels
Its: President

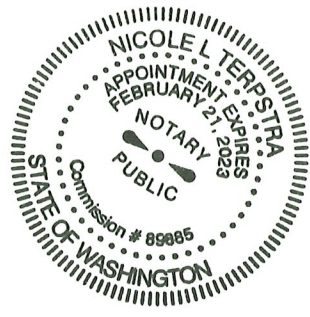
GRANTEE:
CITY OF LYNDEN

By: Scott Korthius
Its: Mayor

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that MICHAEL J. 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 as the PRESIDENT of QUALITY PLUMBING & CONSTRUCTION, INC., 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 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 # 400317 324323 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 described as follows:

Commencing at the intersection of the southerly boundary of Lot 10, said Maberry Plat Div # 8 and the easterly margin of Depot Road as shown in the Record of Survey recorded at AFN 2020-050334, said records; thence on said southerly boundary South 86°37'08" East (South 89°35'03" East per record) 141.48 feet to the southwest corner of Parcel 3 as described in the description in the Maberry Plat Division # 8 Lot Line Adjustment recorded at AFN 2080600559, said records; thence continuing South 86°37'08" East (South 89°35'03" East per record) 159.54 feet to the southeast corner of said Parcel 3; thence on the described easterly boundary of said Maberry Plat, Parcel 3, North 3°22'52" East (North 0°24'57" West per deed) 50.00 feet to the northerly margin of West Maberry Drive and the **True Point of Beginning** of said Water Line Easement; thence leaving said northerly margin of West Maberry Drive and continuing on said easterly boundary of Parcel 3 North 3°22'52" East 67.13 feet to the northeast corner of said Parcel 3; thence on the northerly described boundary of said Parcel 3 North 86°37'08" West (North 89°35'03" West per record) 18.93 feet; thence leaving said northerly boundary South 3°55'38" West 56.29 feet; thence South 71°55'38" West 18.00 feet; thence South 3°55'38" West 4.29 feet to said northerly margin of West Maberry Drive; thence on said northerly margin South 86°39'52" East 36.26 feet to said True Point of Beginning.

Prepared on 7/7/2020.

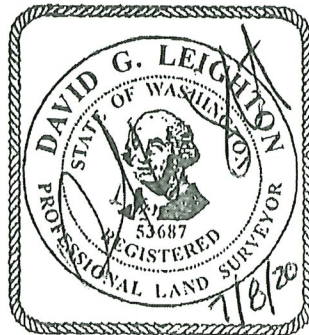


Exhibit B

SURVEYOR'S NOTES:

1. NO UNDERGROUND UTILITY LOCATES WERE PERFORMED FOR THIS SURVEY. WATER EASEMENT AREA IS BASED OFF THE CITY OF LYNDEN SEWER / WATER CONNECTION SHEET SKETCH MAP FOR HOMESTEAD NW, DATED 10/29/95.

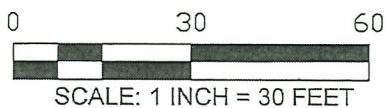
TAX PARCEL No.
4003173353290000

WATER LINE EASEMENT
TO THE CITY OF LYNDEN

PARCEL 3
TAX PARCEL No.
4003173243230000

HELD DEED LINE PER LEGAL
DESCRIPTION IN MABERRY
PLAT DIV. # 8 LLA

LOT LINE SHOWN AS PER
ERRONEOUSLY MONUMENTED
MABERRY PLAT DIVISION #8
LOT LINE ADJUSTMENT.
NOT HELD FOR THIS SURVEY.



BASIS OF BEARINGS =
A.F. No. 2020-0503334



WEST MABERRY DRIVE (PRIVATE)

S 86°37'08" E
141.48'

BASIS OF BEARINGS
S 86°37'08" E 159.54'
(N 89°35'03" W RECORD)

N 86°37'08" W
18.93'

S 71°55'38" W
18.00'
S 03°55'38" W
4.29'

S 03°55'38" W
56.29'

(N 00°24'57" W RECORD)
N 03°22'52" E 67.13'

36.26'

S 86°39'52" E

50.00'

N 03°22'52" E

DRAWN BY: RL
CHECKED BY: DE
DATE: 07/08/20
REV:

EXHIBIT ___ MAP
WITHIN THE SW 1/4, NE1/4, SECTION 17,
TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M.
WHATCOM COUNTY, WASHINGTON



**COMPASS POINT
SURVEY, LLC**
523 FRONT STREET, LYNDEN, WA 98264
PH. 360-354-8320 FAX. 360-354-8321