

AFTER RECORDING RETURN TO:

ROBERT A. CARMICHAEL
CARMICHAEL CLARK, PS
P. O. BOX 5226
BELLINGHAM, WASHINGTON 98227

DOCUMENT TITLE:

TEMPORARY CONSTRUCTION EASEMENT AND RIGHT OF WAY AGREEMENT

REFERENCE NUMBER OF RELATED DOCUMENT:

GRANTOR:

V.G. Lumber, a Washington limited liability company

GRANTEE:

City of Lynden, a Washington municipal corporation

ABBREVIATED LEGAL DESCRIPTION:

Lot B, Old Lynden Middle School L.L.A./Lot Consolidation

ASSESSOR'S TAX PARCEL NUMBER(S):

400320 199500 0000

Temporary Construction Easement and Right of Way Easement Agreement

This Temporary Construction Easement and Right of Way Agreement ("Agreement") is made and entered into this ____ day of _____, 2023, by and between V.G. Lumber, LLC, a Washington limited liability company ("Grantor" or "V.G. Lumber") and the City of Lynden, a Washington municipal corporation ("Grantee" or "City"). Grantor and Grantee may be referred to herein individually as "Party" and collectively as "Parties."

RECITALS

WHEREAS, V.G. Lumber, LLC is the owner of the real property legally described in **Exhibit A** hereto and fully incorporated herein by reference ("Grantor's Property"); and

WHEREAS, the City of Lynden ("City") is engaged in the expansion of the Jim Kaemingk Sr. Trail to improve and extend the trail; and

WHEREAS, a temporary construction easement over a portion of the Grantor's Property will facilitate the City's work on a portion of the Jim Kaemingk Sr. Trail on an adjacent parcel owned by the City; and

WHEREAS, a perpetual right of way easement over a second portion of the Grantor's Property is needed to construct and maintain a pedestrian pathway and associated improvements as a part of the Jim Kaemingk Sr. Trail expansion; and

WHEREAS, the above recitals are a materials part of this Agreement,

NOW THEREFORE, the Parties hereby agree as follows:

AGREEMENT

V.G. Lumber hereby grants and conveys to the City of Lynden the following:

- (1) A temporary construction easement over the portion of Grantor's Property described in **Exhibit B** and depicted in **Exhibit C**, for a period of eighteen (18) months commencing from the date first written above ("Temporary Construction Easement"), and
- (2) A perpetual right of way easement over the portion of Grantor's Property described in **Exhibit D** and depicted in **Exhibit E** ("Right of Way Easement").

This Agreement shall be governed by the following terms and conditions:

1. **Purpose.** This grant shall provide the City with:
 - (1) A Temporary Construction Easement for access, construction, inspection, maintenance, repair, alteration, ingress, and egress over the portion of Grantor's Property described in **Exhibit B** and depicted in **Exhibit C**, for the purposes of constructing and extending part of the Jim Kaemingk Sr. Trail and completing related mitigation (the "Project"); and
 - (2) A Right of Way Easement for access, construction, inspection, maintenance, repair, and alteration over the portion of Grantor's Property described in **Exhibit D** and depicted in **Exhibit E**, for the purpose of installation and operation of a public pathway, open to the general public for pedestrian, cycling, and other recreational uses, as authorized by the City

and in accordance with City rules and regulations, and associated improvements as a part of the Jim Kaemingk Sr. Trail expansion (the "Trail").

Grantee hereby agrees that it shall not use the Grantor's Property in any manner that is a violation of local, state, or federal law. The Grantee or its designees shall be solely responsible for all aspects of the Project and the Trail.

2. **Payment.** The Temporary Construction easement described in Section 1(1) above and the Right of Way Easement described in Section 1(2) above are granted in exchange for a payment of \$30,000 from the City to V.G. Lumber.

TEMPORARY CONSTRUCTION EASEMENT PROVISIONS

The following terms apply to the Temporary Construction Easement only:

3. **Term of Temporary Construction Easement.** The Temporary Construction Easement shall commence on the date first written above and shall terminate eighteen (18) months thereafter.

4. **Temporary Chain Link Fence.** The City shall install a temporary chain link fence between the Temporary Construction Easement and V.G. Lumber's lumber yard to the east, with the design and location to be approved by V.G. Lumber. The temporary chain link fence will remain in place until the Project is complete, a permanent fence is installed by the City, or the Temporary Construction Easement expires. If the chain link fence does not, in Grantor's view, adequately prevent trespass from the Temporary Construction Easement onto V.G. Lumber's lumber yard, the City will be responsible for installing additional means to prevent trespass. The City shall be responsible for removal of the temporary chain link fence when the Project is complete.

5. **Security.** Once the temporary chain link fence is installed, the City's contractor(s) will ensure that any gates providing access to Grantor's Property are locked each night.

6. **Costs of Improvements to the Easement Area.** The City shall be solely responsible for all costs of improvement, maintenance, and repair within the Temporary Construction Easement while it remains in effect.

7. **Restoration.** Upon completion of the Project, the City shall repair damage caused within the Temporary Construction Easement as a result of performing the Project work and will leave the Grantor's Property in a clean and tidy condition as nearly as reasonably feasible to the condition in which it existed on the commencement of construction of the Temporary Construction Easement.

8. **Insurance.** Grantee shall procure and maintain in force, without cost or expense to Grantor, throughout the term of or as long as Grantee remains in possession of the Temporary Construction Easement, a broad form comprehensive general liability policy of insurance covering bodily injury and property damage, with respect to the use and occupancy of the easement area with liability limits of not less than five million dollars (\$5,000,000.00) per occurrence and ten million dollars (\$10,000,000.00) aggregate. Grantor shall be named as an additional insured on all such policies, which policies shall in addition provide that they may not be canceled or modified for any reason without fifteen (15) days prior written notice to Grantor. Grantee shall provide Grantor with a certificate or certificates of such insurance within ten (10) days of the execution of this Temporary Construction Easement, and prior to beginning any work in the Temporary Construction Easement.

RIGHT OF WAY EASEMENT PROVISIONS

The following terms apply to the Right of Way Easement only:

9. **Open to the General Public.** Use of the Right of Way Easement shall be open to the general public for pedestrian, cycling, and other recreational uses, as authorized by the City and in accordance with City rules and regulations.

10. **Costs of Improvements to the Right of Way Easement.** The City shall be responsible for the design, construction, maintenance, and repair of the pedestrian pathway and associated improvements to be installed in the Right of Way Easement, which shall be at no cost or expense to the Grantor.

11. **Improvements.** The improvements associated with the Right of Way Easement may include, but are not limited to, railing(s), bench(es), trashcan(s), landscaping, lighting, retaining wall(s), and any necessary utilities, and a fence to delineate the borders of the trail and to prevent trespass from the trail onto V.G. Lumber's lumber yard.

12. **Permits.** The Grantee shall be required to obtain all necessary approvals and permits from such governmental agencies with jurisdiction for the construction and installation of the public pathway and any associated improvements within the Right of Way Easement.

13. **Divestiture.** Any divestiture of Grantee's rights in the Right of Way Easement shall occur only in the following manner:

(a) The Grantee shall notify the 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 in the Right of Way Easement.

(b) The Grantee may in its sole discretion hold a public hearing with regard to the divesting of Grantee's rights in the Right of Way Easement.

(c) The divesting of the Grantee's rights in the Right of Way Easement may only occur upon the approval of the City Council.

(d) The divesting of the Grantee's rights in the Right of Way Easement shall be without cost, fee, or obligation to the Grantor under any circumstance.

14. **Run with the Land.** The Right of Way Easement and all conveyances, rights, and obligations related to the Right of Way Easement shall be deemed to touch and concern the land, shall run with the land, and shall be binding on all parties having or acquiring any right, title, or interest in the land described herein or any part thereof.

GENERAL PROVISIONS

The following general provisions apply to both the Temporary Construction Easement and the Right of Way Easement:

15. **Hold Harmless.** Grantor and Grantee shall indemnify and hold each other harmless from any and all damages and litigation expenses resulting from any claims or causes of action for injury to persons or property arising from any acts or omissions of either party, their employees, or authorized agents, to the extent and in the same proportion as employees or authorized agents are determined to be at fault.

16. **Assignment.** Grantee shall not assign, convey or transfer the Temporary Construction Easement, Right of Way Easement, or any interest herein, without prior written consent of Grantor.

17. **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:
V.G. Lumber, L.L.C.
8461 Depot Road
Lynden, WA 98264

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

18. **Complete Agreement/Modification.** This Agreement and all terms and conditions herein represent a complete agreement between the Parties. There are no other representations, warranties, covenants, agreements, collateral agreements, or other conditions affecting this agreement other than those set forth herein. Modification of the Agreement, or of any of the terms and conditions herein, shall be binding upon the Parties only if they are in writing and fully executed by the Parties.

19. **Applicable Law/Construction/Venue.** This Agreement shall be governed and interpreted in accordance with the laws of the State of Washington. In the event any portion of this Agreement conflicts with the provisions of any law or statute governing the subject matter hereof, such law or statute shall be controlling only to the extent of such conflict. The venue of any action brought to interpret or enforce any provision of the Agreement shall be laid in Whatcom County, Washington.

20. **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.

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

signatures on following page

GRANTOR:

V.G. LUMBER, L.L.C.

8461 Depot Road

Lynden, WA 98264

GRANTEE:

CITY OF LYNDEN

300 4th Street

Lynden, WA 98264

By:

Harry Vanden Griend

Its:

owner

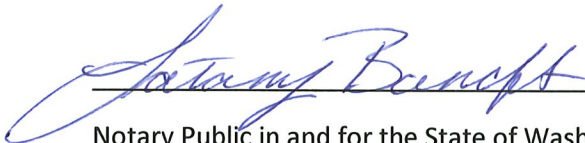
FOR MAYOR'S
SIGNATURE

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)



On this 24th day of march, 2023, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Gary VanderGriend, the Owner of V.G. LUMBER, L.L.C., a Washington limited liability company, who acknowledged said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned and stated on oath that they were authorized to execute this instrument on behalf of said company.

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



Notary Public in and for the State of Washington

Residing at:

My commission expires: 10/25/2026

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this ___ day of _____, 2023, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, the _____ of the CITY OF LYNDEN, a Washington municipal corporation, who acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and stated on oath that he/she was authorized to execute this instrument on behalf of said corporation.

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

Notary Public in and for the State of Washington

Residing at:

My commission expires: _____