

**RETURN TO:**

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**DOCUMENT TITLE:**

AMENDED AIRSPACE ENCROACHMENT EASEMENT AGREEMENT

**REFERENCE NUMBER OF RELATED DOCUMENT:**

AIRSPACE ENCROACHMENT EASEMENT: AF No. 2020-0302083  
RESTRICTIVE COVENANT: AF No. 2019-0900678

**GRANTOR:**

CITY OF LYNDEN, a Washington municipal corporation

**GRANTEE:**

PORCH SWING PROPERTIES, LLC, a Washington limited liability company

**ABBREVIATED LEGAL DESCRIPTION:**

LOTS 1 & 2 & PTN LOT 3, BLOCK 9, SUPPLEMENTAL AND CORRECTED PLAT OF  
LYNDEN

Full legal descriptions at pages 6-9 hereto

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

400320 202260 0000  
400320 206263 0000

## AMENDED AIRSPACE ENCROACHMENT EASEMENT AGREEMENT

THIS **AMENDED AIRSPACE ENCROACHMENT EASEMENT AGREEMENT** (“**Amended Agreement**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF LYNDEN, a Washington municipal corporation (hereinafter “Grantor” or “City”) and PORCH SWING PROPERTIES, LLC, a Washington limited liability company (hereinafter “Grantee”). Grantor and Grantee may be referred to herein individually as “Party” or collectively as “Parties.”

### RECITALS

**WHEREAS**, Grantor is the sole owner of real property within the City of Lynden legally described in **Exhibit A** hereto and fully incorporated herein by reference (hereinafter “Parking Lot” or “Burdened Property”); and

**WHEREAS**, Grantee is the sole owner of real property within the City of Lynden legally described in **Exhibit B** hereto and fully incorporated herein by reference (hereinafter “Mural Building”); and

**WHEREAS**, the Parties previously executed an Airspace Encroachment Easement Agreement (“Encroachment Agreement”), recorded under AF No. 2020-0302083, to facilitate Grantee’s development of the Mural Building; and

**WHEREAS**, the Parties intend that Encroachment Agreement and all of its terms shall be incorporated into this Amended Agreement, without the need to restate them; and

**WHEREAS**, Grantee’s plan for developing the Mural Building requires that a second means of emergency access to and from the building be established; and

**WHEREAS**, the layout and constraints of the immediate vicinity are such that obtaining access to Grantor’s Parking Lot, which is adjacent to the Mural Building, represents Grantee’s best option for establishing the required emergency access; and

**WHEREAS**, Grantee, for the purposes of securing the required emergency access, has requested from Grantor an easement permitting construction of an emergency exit landing extending into a portion of the Parking Lot (hereinafter “Encroachments”) as well as associated pedestrian emergency ingress/egress from the Mural Building; and

**WHEREAS**, Grantee also desires to from time to time use the requested easement for pedestrian ingress/egress between the Parking Lot and Mural Building at such times as the Parking Lot is functioning as an event space; and

**WHEREAS**, Grantor desires to grant and Grantee desires to receive the requested emergency access easement; and

**WHEREAS**, Grantor and Grantee intend that this Amended Agreement shall effectively amend the Encroachment Agreement in order to grant the requested easement; and

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

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

1. **Grant of Easement.** Grantor, for mutually accepted good and valuable consideration, hereby grants and conveys to Grantee a non-exclusive easement (hereinafter “Emergency Access Easement”) for the placement of Encroachments upon, and pedestrian ingress and egress over, a portion of the Parking Lot (hereinafter “Easement Area”) as legally described in **Exhibit C** and depicted in **Exhibit D**, both attached hereto and fully incorporated herein by reference. The Encroachments shall be limited to a landing, and associated required improvements for providing emergency pedestrian ingress and egress for the Mural Building.

2. **Purpose and Scope.**

2.1 **Primary Purpose & Scope.** The primary purpose of this Emergency Access Easement shall be for the purposes of allowing Grantee to place the Encroachments within the Easement Area and allowing the emergency pedestrian ingress and egress to and from the Easement Area. The Encroachments shall not be permitted to extend outside the Easement Area. However, Grantee may use the areas of the Parking Lot around the Easement Area to construct, operate, maintain, repair or replace the Encroachments, so long as such use is reasonable and does not interfere with Grantor’s use of the Parking Lot.

2.2 **Secondary Purpose & Scope.** The secondary purpose of this Emergency Access Easement shall be for the purposes of allowing pedestrian ingress and egress to and from the Easement Area at such times as the Parking Lot is functioning as an event space pursuant to a special event permit issued by City. Use of the Emergency Access Easement for this purpose shall be limited to events authorized by a City-approved event permit.

3. **Consideration.** As consideration for this Emergency Access Easement, Grantee shall compensate Grantor by installing, maintaining, and paying any annual fee required, at Grantee’s sole expense, a public electric vehicle charging facility within the Parking Lot.

4. **Costs.** Grantee shall pay any recording fees related to this Amended Agreement. Each Party shall be solely responsible for its own attorney’s fees related to the preparation of this Amended Agreement.

5. **Commencement of Easement.** This Amended Agreement and Emergency Access Easement shall commence upon the recording of this Amended Agreement with the Whatcom County Auditor.

6. **Binding on Successors & Run with the Land.** This Amended Agreement and all rights, restrictions, covenants, easements and obligations described in this Amended Agreement are perpetual and shall run with the land and are appurtenant to the Burdened Property and shall be binding on the heirs, successors and assigns of the Parties and on all persons or entities having or acquiring any right, title or interest in the Burdened

Property or any part thereof.

**7. 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.

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

**9. Severability.** In case any one or more of the provisions contained in this Amended Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision herein, and this Amended Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**10. Number/Gender/Headings.** As used herein, the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All paragraph headings and/or captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Amended Agreement.

**11. Existing Easement and Encroachment Agreement Terms.** Except as set forth herein, the remainder of the existing Encroachment Agreement shall remain in full force and effect and its terms, unless modified or contradicted herein, are hereby fully incorporated herein by reference and shall govern this Amended Agreement.

**12. Entire Agreement.** This Amended 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 Amended Agreement other than those set forth herein or expressly incorporated herein by reference. No oral or written statements made by either Party prior to or following execution of this Amended Agreement shall be considered a part of this Amended Agreement unless expressly incorporated herein in writing or by reference.

**IN WITNESS WHEREOF,** the Parties have executed this Amended Agreement on the date first above written.

**GRANTOR:**

**GRANTEE:**

CITY OF LYNDEN

PORCH SWING PROPERTIES, LLC

\_\_\_\_\_  
By: Scott Korthuis  
Its: Mayor

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF WHATCOM )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of **PORCH SWING PROPERTIES, LLC**, 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 he/she was 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: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF WHATCOM )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 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: \_\_\_\_\_

**EXHIBIT A**  
**Legal Description of Parking Lot (Burdened Property)**

Parcel No. 400320 202260 0000

All of Lots 1 and 2, except, the Easterly 2 feet of Lot 2 thereof, Block 9, "Supplemental and Corrected Plat of Lynden," as per the plat thereof, recorded in Book 3 of Plats, Page 48, in the Auditor's Office of Whatcom County, Washington.

Situate in Whatcom County, Washington.

**EXHIBIT B**  
**Legal Description of Mural Building**

Parcel No. 400320 206263 0000

The Northeasterly two feet of Lot 2 and the Southwesterly thirty feet of Lot 3, Block 9, "Supplemental and Corrected Plat of Lynden," according to the plat thereof, recorded in Volume 3 of Plats, Page 48, records of Whatcom County, Washington.

Situate in Whatcom County, Washington.

**EXHIBIT C**  
**DESCRIPTION OF EASEMENT AREA**

AN EASEMENT OVER, UNDER AND ACROSS A PORTION OF LOT 2, BLOCK 9, SUPPLEMENTAL AND CORRECTED PLAT OF LYNDEN, AS PER THE PLAT THEREOF, RECORDED IN BOOK 3 OF PLATS, PAGE 48, IN THE AUDITOR'S OFFICE OF WHATCOM COUNTY WASHINGTON, SAID EASEMENT DESCRIBED AS FOLLOWS:

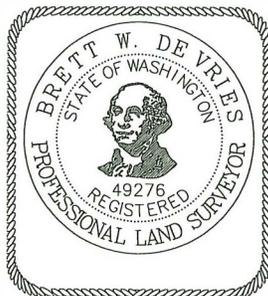
**COMMENCING** AT THE SOUTHEAST CORNER OF SAID LOT 2; THENCE SOUTH 66°33'21" WEST ALONG THE SOUTH LINE OF SAID LOT 2 A DISTANCE OF 2.00 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE THE FOLLOWING FIVE (5) COURSES:

1. CONTINUING SOUTH 66°33'21" WEST A DISTANCE OF 5.40 FEET;
2. NORTH 23°26'50" WEST A DISTANCE OF 40.00 FEET;
3. NORTH 21°33'10" EAST A DISTANCE OF 3.42 FEET;
4. NORTH 66°33'21" EAST A DISTANCE OF 2.98 FEET;
5. SOUTH 23°26'50" EAST A DISTANCE OF 42.42 FEET TO THE **TRUE POINT OF BEGINNING**.

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

SITUATE IN WHATCOM COUNTY, WASHINGTON.

SUBJECT TO AND/OR TOGETHER WITH ALL EASEMENTS, COVENANTS, RESTRICTIONS AND/OR AGREEMENTS OF RECORD, OR OTHERWISE.



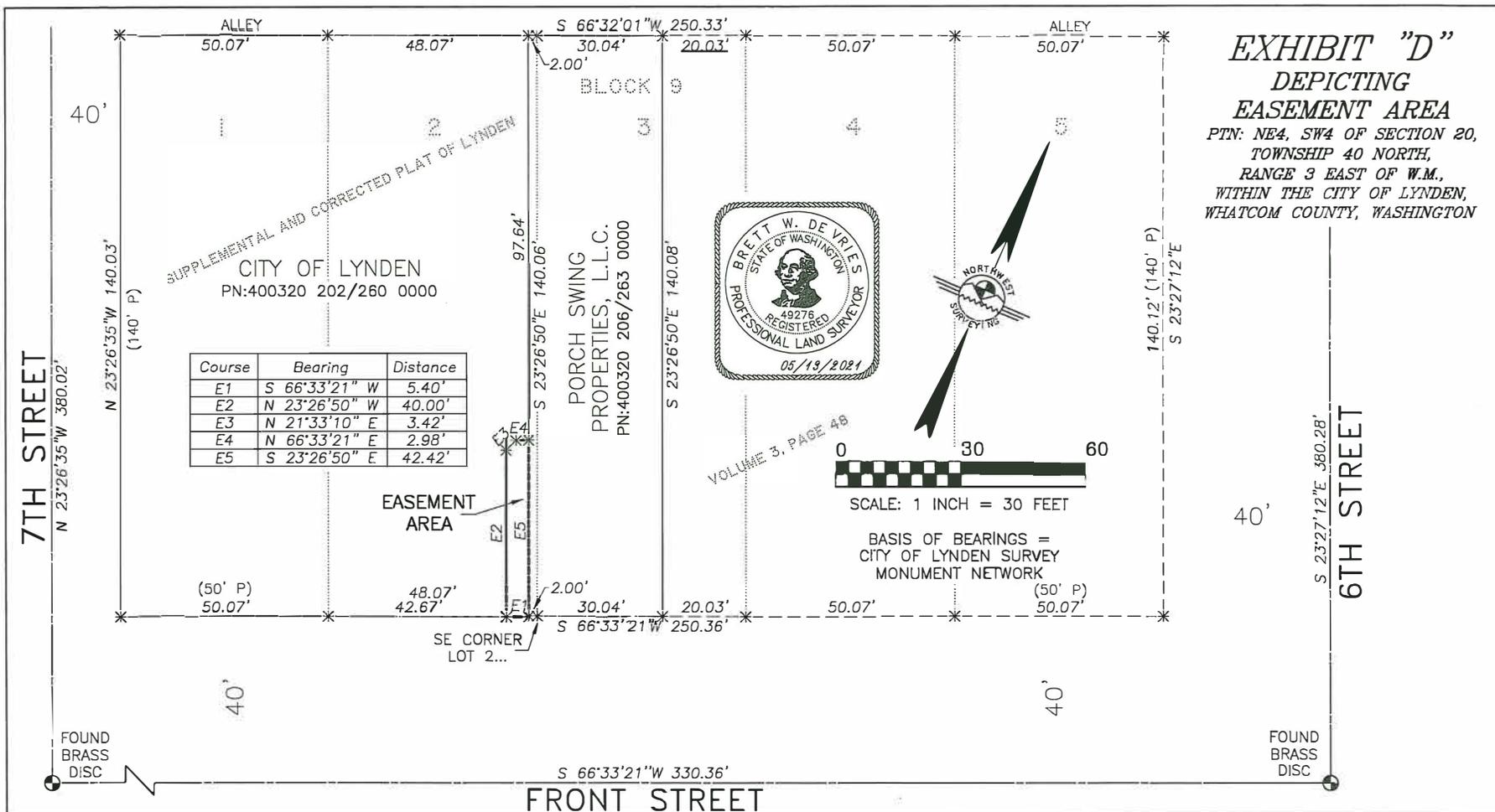


EXHIBIT D  
DEPICTING EASEMENT AREA