

After recording return document to:

City of Lynden
Planning Department
300 4TH Street
Lynden WA 98264

DOCUMENT TITLE:

PARKING EASEMENT AGREEMENT

RELATED OR REFERENCED DOCUMENTS:

OORDT VELLEMA SUBDIVISION AF NO. 1972-1127595
1610 GROVER SHORT PLAT AF NO. 2023-_____

GRANTORS:

CITY OF LYNDEN, a municipal corporation

GRANTEES:

Lynden Professional Group, LLC

ABBREVIATED LEGAL DESCRIPTION

Lot 1, 1610 Grover Short Plat, AF # 2023-_____
Full legal description on page 2.

ASSESSOR'S TAX PARCEL NUMBER(S):

400319 _____ 0000

PARKING EASEMENT AGREEMENT

THIS PARKING EASEMENT AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2023, by and between the City of Lynden, a municipal corporation organized under the laws of the state of Washington (“City” or “Lynden”) and Lynden Professional Group, a limited liability company, organized under the laws of the state of Washington (“LPG”).

RECITALS

WHEREAS, the Vision Policies within the City Comprehensive Plan promote cooperation between business owners, citizens and city officials to encourage economic vitality in the City; and

WHEREAS, LPG owns in fee the real property in the City of Lynden described as follows:

Lot 1 of the 1610 Grover Short Plat, according to the plat thereof, recorded under Auditor’s File number 2023-_____, records of Whatcom County, Washington.

Situate in Whatcom County, Washington.

(the “Subject Property”). The Subject Property is located at the corner of Liberty and 17th Streets; and

WHEREAS, immediately prior to this Agreement, LPG recorded the 1610 GROVER SHORT PLAT, Whatcom County Auditor’s File No. 2023-_____; and

WHEREAS, during the short plat review process, it was found that the 80-foot-wide right-of-way used for Liberty Street has, in the past, been represented as a 60-foot-wide right-of-way, including on an adjacent plat map known as the Oordt Vellema Subdivision recorded under Whatcom County Auditor’s File Number 1972-1127595. However, that portion of the Liberty Street right-of-way was never legally vacated by ordinance of the City of Lynden, as required now and in 1972 by Chapter 35.79 RCW; and

WHEREAS, because a vacate was not completed, a ten-foot strip of frontage along the Subject Property remains part of the Liberty Street right-of-way; and

WHEREAS, it was also discovered that the handicap parking spot for the Subject Property protrudes into the 17th Street right-of-way; and

WHEREAS, since approximately 1979, both the ten-foot-wide strip and what is now the handicap parking spot have been used as part of the parking lot for the Subject Property; and

WHEREAS, the City has no immediate need for either portion of the rights-of-way; and

WHEREAS, LPG does not desire to pursue a vacate action at this time has instead requested to enter into an easement agreement with the City that would allow the portion of parking lot encroaching into the right-of-way to remain as it currently exists; and

WHEREAS, the City has agreed to enter into an easement agreement until such time the Subject Property is redeveloped or until the easement area is properly vacated; and

WHEREAS, the area currently used for parking within the right-of-way is legally described in Exhibit A attached hereto and illustrated in Exhibit B (“Easement Area”); and

WHEREAS, the foregoing recitals are a material part of this Agreement;

AGREEMENT

NOW THEREFORE the Parties agree as follows:

I. Easement

- A. Grant of Easement. The City hereby grants LPG a non-exclusive easement for parking over the Easement Area as legally described in Exhibit A and illustrated in Exhibit B. The Easement Area is in two sections: Easement Area 1 being a 10-foot strip of the Liberty Street right-of-way plus a corner protruding into the 17th Street right-of-way, approximately 1,105 square feet, and Easement Area 2 being the handicap parking space in the 17th Street right-of-way, approximately 82 square feet. The Easement shall be terminable or revocable only as set forth herein and shall be assignable by LPG only as set forth herein.
- B. Consideration. Upon execution and prior to recording of this Agreement, LPG shall pay to the City six thousand eight hundred sixty dollars and eighty-six cents (\$6,860.86) as consideration for this Easement.
- C. Scale of the Easement Area. The Easement Area shall not exceed that which is described in Exhibit A and depicted in Exhibit B (approximately 1,187 square feet) unless both parties agree to modify this agreement.

II. Additional Terms

- A. Scope.
 - i. Scope of Parking. The Easement Area shall be used for parking for the commercial uses on the Subject Property and/or for other parking purposes authorized by LPG.
 - ii. Nonexclusive Use. Subject to the terms herein, this Agreement grants LPG nonexclusive use of the Parking Easement Area. The City reserves the right to use the

Easement Area for the installation or maintenance of public and franchise utilities. When practical, the City shall provide LPG notice of disturbance to the Easement Area at least five business days in advance. LPG. This Agreement does not guarantee parking will be available to LPG if it is disrupted for utility purposes. This provision does not permit the City to allow the Easement Area to be used for general public parking purposes.

- iii. Right to Establish Regulations and Remove Vehicles: LPG may establish and post regulations related to use of the Easement Area for parking. LPG may remove vehicles from the Easement Area if they are deemed to be abandoned, are trespassing, or do not comply with posted parking restrictions.

- B. Term. The term of this Agreement initiates upon its recording. This Agreement shall automatically terminate upon the first of any of the following: (i) approval of a vacation of all or a portion of the right-of-way that includes the Easement Area; or (ii) if the building on the Subject Property is demolished or destroyed to the extent that repairs or replacement equate to more than 80% of the building's assessed value on the date the damage or demolition occurred; or (iii) if the primary use of the building ceases to be commercial. In such an event, either the City or LPG may record a termination of this Agreement at its option; the other party shall execute the termination upon request.

- C. Consideration for Vacation of Right of Way. In the event that the right of way impacted by this Agreement is vacated, any amount that LPG may owe as a result of that vacation to acquire title to the vacated right of way shall be reduced by the consideration paid for this Agreement. If the entire right of way is vacated, the amount LPG owes will be reduced by six thousand eight hundred sixty dollars and eighty-six cents (\$6,860.86). If only a portion of the right of way is vacated, for each square foot of vacated right of way in the Easement Area, LPG's costs shall be reduced by five dollars and seventy-eight cents (\$5.78) per square foot.

- D. No Guarantee of Sufficient Parking. By entering this Agreement, the City does not represent or warrant that the parking permitted herein is sufficient for LPG's purposes under any federal, state, or city law, ordinance, rule, or regulation. Nothing in this Agreement should be construed as an approval of any kind.

- E. Indemnification. Except in cases of the City's sole negligence, LPG shall fully indemnify and hold the City harmless from any claims, losses, liabilities, damages, and expenses (including reasonable experts' and attorneys' fees) arising out of: (a) any damage to any person or property occurring in, on, or about the Easement Area or LPG's or other party's use of the Easement Area or LPG's breach of any term of this Agreement, (b) any presence of, or past, present, or future release of, any hazardous substances (including any and all substances

defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future federal, state and local law, statute, ordinance, rule, regulation or common law relating to protection of human health or the environment, and including any substance that may have a negative impact on human health or the environment) in, on, above, or under the Property; (c) failure to comply with any present or future federal, state and local law, statute, ordinance, rule, regulation or common law relating to protection of human health or the environment; and (d) any past, present or future non-compliance with the Americans with Disabilities Act, the Washington Law Against Discrimination, Chapter 46.19 RCW, or any present or future federal, state and local law, statute, ordinance, rule, regulation or common law relating to discrimination or disability.

- F. Insurance. LPG shall maintain, at its own expense, for the benefit of itself and the City, insurance against liability for property damage or loss and against liability for personal injury or death, arising from acts or omissions of LPG, its owners, agents, subcontractors, employees, tenants, residents, invitees of tenants or residents or persons doing business with the Subject Property or other commercial or non-profit tenant located at the Subject Property. Prior to the commencement of this Agreement, LPG shall deliver to the City certificates or binders evidencing the existence of the insurance required herein. Such policy or policies shall name the City as an additional insured and shall contain a provision whereby the City must receive at least thirty (30) days' prior written notice of any cancellation or reduction in LPG insurance coverage. In addition, should LPG be notified or have reason to expect a termination or cancellation action by its insurance company, LPG will provide the City with at least thirty (30) days advance written notice. Any reduction or cancellation in the coverage or limits shown here, or any failure to provide proof of the required insurance or to timely provide the notice required herein shall constitute a material breach of this Agreement and be cause for immediate termination of this Agreement and the License and Easement granted herein, and immediate revocation of all Permits issued.

LPG shall possess the following insurance with coverage amounts not less than as specified below:

<u>Type</u>	<u>Amount</u>
Worker's Compensation	Statutory
Professional Liability	\$ One Million (errors and omissions) (On a claims-made, annual aggregate basis)

General and Excess Liability

\$ One Million per occurrence/

\$ Two Million aggregate

- G. Notice. All notices or demands to be given by any Party to any other Party pursuant to this Agreement shall be deposited in the United States mail, postage prepaid, by first-class mail and addressed to the Party at issue. Notices and demands sent by mail shall be deemed to have been given and delivered when properly mailed and the postmark affixed by the United States Post Office shall be conclusive evidence of the date of mailing. Said notices or demands shall be addressed to:

City of Lynden

Planning Department

Attn: Planning Director

300 4th Street

Lynden, WA 98264

Lynden Professional Group, LLC

Attn:

1610 Grover St, Ste B15

Lynden, WA 98264

- H. Non-Waiver 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, 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.
- I. Governing Law and Venue. Any dispute arising out of this Agreement shall be governed by the laws of the State of Washington. Venue shall be in Whatcom County Superior Court.
- J. All Remedies at Law and Equity Available. In the event of a breach of this Agreement, all remedies in law and equity shall be available to the Parties, including the remedy of specific performance.
- K. Attorney's Fees and Costs. In the event of any cause of action or litigation arising out of an alleged breach of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorney's fees and costs from the other Party.
- L. Complete Agreement; Modification in Writing. This Agreement constitutes the entire agreement as to the matters contained herein. No oral or written statements shall be considered a part of this License unless expressly incorporated herein in writing. This Agreement may not be modified or amended except by the written agreement of the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date specified above.

CITY OF LYNDEN:

Lynden Professional Group, LLC:

By: Scott Korthuis

Its: Mayor

By: _____

Its: _____

STATE OF WASHINGTON)
) §
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 to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2023.

NOTARY PUBLIC in and for the State of
Washington. My Commission expires _____.

STATE OF WASHINGTON)
) §
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the _____ of Lynden Professional Group, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2023.

NOTARY PUBLIC in and for the State of
Washington. My Commission expires _____.

EXHIBIT A-1
DESCRIBING PARKING EASEMENT #1

AN EASEMENT OVER, UNDER AND ACROSS A PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER, SECTION 19, TOWNSHIP 40 NORTH, RANCE 3 EAST OF W.M., SAID EASEMENT LYING WITHIN THE RIGHT-OF-WAY OF LIBERTY STREET AND 17TH STREET, AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 10, PLAT OF SHANK & ROBINSON'S ADDITION TO THE TOWN OF LYNDEN, FILED IN VOLUME 2 OF PLATS, PAGE 12, RECORDS OF WHATCOM COUNTY, WASHINGTON; THENCE THE FOLLOWING TEN (10) COURSES:

<i>Course</i>	<i>Bearing</i>	<i>Distance</i>
L1	S 88°50'15" E	119.50'
L2	N 00°52'55" E	8.01'
L3	N 89°10'46" W	82.50'
L4	S 85°15'11" W	27.69'
L5	S 66°30'51" W	13.75'
L6	S 50°04'17" W	14.17'
L7	S 10°54'07" W	6.06'
L8	S 40°09'57" W	4.29'
L9	N 77°28'12" E	18.00'
L10	N 01°06'35" E	15.42'

TO THE POINT OF BEGINNING.

AS DEPICTED ON EXHIBIT **B** 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 A-2
DESCRIBING PARKING EASEMENT #2

AN EASEMENT OVER, UNDER AND ACROSS A PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER, SECTION 19, TOWNSHIP 40 NORTH, RANCE 3 EAST OF W.M., SAID EASEMENT LYING WITHIN THE RIGHT-OF-WAY OF 17TH STREET, AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 10, PLAT OF SHANK & ROBINSON'S ADDITION TO THE TOWN OF LYNDEN, FILED IN VOLUME 2 OF PLATS, PAGE 12, RECORDS OF WHATCOM COUNTY, WASHINGTON; THENCE S 01°06'35" WEST ALONG THE EAST LINE OF SAID 17TH STREET A DISTANCE OF 41.57 FEET TO THE POINT OF BEGINNING; THENCE THE FOLLOWING FOUR (4) COURSES:

<i>Course</i>	<i>Bearing</i>	<i>Distance</i>
<i>E1</i>	<i>N 88°53'25" W</i>	<i>4.43'</i>
<i>E2</i>	<i>S 04°31'18" W</i>	<i>16.26'</i>
<i>E3</i>	<i>S 79°38'16" E</i>	<i>5.47'</i>
<i>E4</i>	<i>N 01°06'35" E</i>	<i>17.11'</i>

TO THE POINT OF BEGINNING.

AS DEPICTED ON EXHIBIT **B** 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

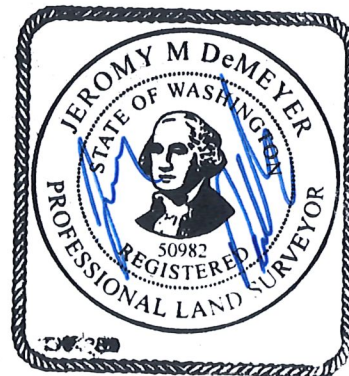


EXHIBIT "B"

DEPICTING PARKING EASEMENTS

PORTION OF THE NE 1/4 SE 1/4, SECTION 19,
TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M.,
WHATCOM COUNTY, WASHINGTON

Course	Bearing	Distance
L1	S 88°50'15" E	119.50'
L2	N 00°52'55" E	8.01'
L3	N 89°10'46" W	82.50'
L4	S 85°15'11" W	27.69'
L5	S 66°30'51" W	13.75'
L6	S 50°04'17" W	14.17'
L7	S 10°54'07" W	6.06'
L8	S 40°09'57" W	4.29'
L9	N 77°28'12" E	18.00'
L10	N 01°06'35" E	15.42'

Course	Bearing	Distance
E1	N 88°53'25" W	4.43'
E2	S 04°31'18" W	16.26'
E3	S 79°38'16" E	5.47'
E4	N 01°06'35" E	17.11'

Curve	Radius	Length	Delta
C1	327.56'	145.23'	25°24'13"
C2	251.08'	111.53'	25°27'00"



SCALE: 1 INCH = 40 FEET
BASIS OF BEARINGS =
CITY OF LYNDEN

SURVEY MONUMENT NETWORK
HELD LIBERTY STREET
BETWEEN 16 STREET & 14TH STREET
(LIBERTY STREET = S 88°50'15"E)

