

Record & Return to:  
City of Lynden  
300 4<sup>th</sup> Street  
Lynden, WA 98264

**AGREEMENT AND NO-BUILD COVENANT**

Grantors:	BENJAMIN STUIT and LINDY STUIT
Grantee:	CITY OF LYNDEN
Legal Description (Abbreviated):	PTN NW¼ NE¼ §25 TWP 40 N R 2 E.W.M. (Full Legal on Exhibit A, Page ____)
Assessor’s Tax Parcel ID#:	4002253884230000 / 125969
Reference Number of Related Document(s):	Development Agreement

GRANTORS BENJAMIN and LINDY STUIT, a married couple (the Stuits), hereby grant and enter into this AGREEMENT AND NO-BUILD COVENANT (the Agreement) in favor of the CITY OF LYNDEN, a Washington Municipal Corporation (the City) (collectively, the Parties), as set forth herein. This Agreement is effective upon approval by the Parties (herein Effective Date).

RECITALS

- A. The Stuits owns land within the City of Lynden at 8036 Flynn Road that is identified and legally described above and on the attached Exhibit A (the Property).
- B. In 2019, the City approved the Stuits’ short plat application SP #18-03 (the Short Plat) to subdivide the Property into three lots. The Technical Review Committee indicated the Stuits had the ability to install an on-site septic system in lieu of connecting to City sewer. The remaining conditions requiring, among other things, improvement of Flynn Road up to City Development Standards, the extension of water, future extension of sewer to the furthest extent of all properties within the Short Plat, and post-construction maintenance bonding, were not feasible for the Stuits scope of development which included only one new single-family home despite the capacity of the Property for additional density.
- C. Subsequently, the Stuits formally requested that the City vacate the Findings of Fact and Determination on the Short Plat, which the City did via letter from Planning Director Heidi Gudde on November 5, 2019, so that the Parties could work together on alternative infrastructure installation and bonding requirements.
- D. Since that time, the Parties have had ongoing discussions related to alternative infrastructure installation and other requirements for the development of the Property.
- E. Additionally, the City’s Public Works Department was advancing the design and development of sewer infrastructure to this area of the City. This advancement warranted coordination with the Stuits development plan to avoid the installation of a new onsite septic system, which would be abandoned with City sanitary sewer service.

F. On December 2, 2020, the Stuits submitted a revised short plat design, attached as Exhibit B, which depicts 3 lots: Lots A and B, and Reserve Tract C (collectively, the Lots).

E. The Stuits also submitted a Development Agreement setting forth the Parties' respective rights and obligations pertaining to the provision of City utility services and the required road improvements to serve the Property, described herein, and pursuant to the authority provided in RCW 36.70B.170 et. seq. The Development Agreement is being executed simultaneously with this Agreement and No-Build Covenant.

F. This Agreement is intended to set forth the Stuits' rights and obligations specifically related to the development of Reserve Tract C.

THEREFORE, for and in consideration of the City's issuance of preliminary approval of SP #18-03 and the Parties' joint execution of the Development Agreement, the Stuits hereby convey, covenant, grant and reserve as follows:

1. Establishment of No-Build Covenant. Reserve Tract C shall not be further divided or built upon until such time as all road and utility improvements as specified in the Development Agreement are installed and accepted by the City.
2. Development/Improvement Obligations. Specific rights and obligations of the Stuits and their successors-in-interest related to the development of Reserve Tract C and the installation of improvements are set forth in the Development Agreement.
3. Term/Termination. This Agreement shall be binding upon the Parties until such time as all rights and obligations set forth in the Development Agreement are satisfied, including completion of installation and City acceptance of all road, water, and sewer improvements as they relate to Reserve Tract C, at which time, at the Stuits request the City shall execute and record a termination notice extinguishing this Agreement.
4. No Hindrance on Conveyance. Nothing in this Agreement should be construed as preventing Reserve Tract C from being conveyed/transferred/sold separately from Lots A and B, subject hereto, or to burden the conveyance/transference/sale of Lots A and B.
5. Amendment. This Agreement shall not be amended except by a written instrument signed by the Stuits and approved by the City.
6. Construction. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments thereto, and the same shall be given a reasonable interpretation in accordance with the plain meaning of its terms and the intent of the Parties.
7. Applicable Law. This agreement shall be construed, interpreted and enforced pursuant to the laws of the State of Washington, and the Parties agree that the Superior Court of Whatcom County shall be the appropriate venue of any suit or proceeding brought with respect to this agreement or the Property.
8. Not a Public Dedication. Nothing in this Agreement shall be considered a gift or dedication of any real property to the general public, or for any public use or purpose whatsoever.
9. Obligations Run With the Land. The rights and obligations contained in this Agreement shall run with the land and be binding upon and inure to the benefit of all assignees, devisees, or transferees of the Stuits.
10. Entire Agreement; Severability. This Agreement represents the entire agreement with respect to the subject matter hereof. Should any provision of this Agreement be found to be void or otherwise unenforceable, all other provisions shall remain enforceable and binding.

11. Governing Law. This Agreement shall be construed under the laws of the state of Washington.

12. Attorney's Fees. In any litigation arising out of this Agreement, including appeals, the prevailing party shall be entitled to recover from the other party all costs and attorney's fees.

We, the undersigned owners of the above-described Property do hereby agree to the above terms.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_

For BENJAMIN AND LINDY STUIT  
Property Owners

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
and \_\_\_\_\_ are the person(s) who appeared before me, and said  
persons acknowledged it to be their free and voluntary act for the uses and purposes  
mentioned in this instrument.

Dated \_\_\_\_\_

Notary Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Residing at: \_\_\_\_\_

My appointment expires: \_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

**Approved by City of Lynden:**

\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
\_\_\_\_\_ is the person who appeared before me, and said person acknowledged it to  
be his free and voluntary act for the uses and purposes mentioned in this instrument.

Dated \_\_\_\_\_

Notary Signature: \_\_\_\_\_

Printed Name:\_\_\_\_\_

Residing at:\_\_\_\_\_

My appointment expires:\_\_\_/\_\_\_/\_\_\_

DRAFT