

After recording return document to:

City of Lynden  
Planning Department  
300 4<sup>TH</sup> Street  
Lynden WA 98264

**DOCUMENT TITLE:**

AMENDED AGREEMENT FOR SHARED PARKING

**REFERENCE NUMBER OF RELATED DOCUMENT:**

Superseded Agreement: 2019-0900677

**GRANTORS:**

CITY OF LYNDEN, a municipal corporation

**GRANTEES:**

Porch Swing Properties LLC, Washington limited liability company

**ABBREVIATED LEGAL DESCRIPTION FOR 610 FRONT STREET ("Mural Building Property"):**

Lot 3 and ptn Lot 2, Block 9, Supplemental and Corrected Plat of Lynden  
Full legal description on Page \_\_\_\_\_ hereto.

**LEGAL DESCRIPTION FOR CITY PARKING PROPERTIES:**

Lot 1 and ptn Lot 2, Block 9; Ptns Lots 3-4, Block 10; and Lot 1 and ptn Lot 2, Block 12, all of Supplemental and  
Corrected Plat of Lynden  
Full legal description on Page \_\_\_\_\_ hereto.

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

400320 202260 0000  
400320 322333 0000  
400320 240304 0000

400320 206263 0000

## AMENDED AGREEMENT FOR SHARED PARKING

THIS AMENDED AGREEMENT FOR SHARED PARKING (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Lynden, a municipal corporation organized under the laws of the state of Washington (“City” or “Lynden”) and Porch Swing Properties LLC (“Porch Swing Properties”), a limited liability company, organized under the laws of the state of Washington (individually, Party; together, “Parties”) formerly known as TWIGA NW LLC & RAH Properties LLC (“TWIGA NW & RAH”).

### RECITALS

**WHEREAS**, this Agreement amends, replaces and supersedes the previous agreement for shared parking which was recorded under auditor file number 2019-0900677 (“Superseded Agreement”); and

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

**WHEREAS**, the City Downtown Development Plan calls for economic enhancement of the Historic Business District of Lynden by encouraging diversity and mixed uses, improving economics for business owners, encouraging joint public/private partnerships, making the Historic Business District attractive to visitors, and increasing the community’s tax base; and

**WHEREAS**, Porch Swing Properties are in the process of adding seven (7) residential units in the downtown Historic Business District at 610 Front St, Lynden, WA (the “Mural Building Property”); and

**WHEREAS**, the Mural Building Property is benefited by this Agreement and is identified and legally described on Exhibit A, attached hereto; and

**WHEREAS**, the Mural Building Property, per Lynden Municipal Code 19.51.160(C), is required to provide one on-site parking stall per residential unit; and

**WHEREAS**, the Mural Building Property is dominated by the existing structure, has limited ability to provide on-site parking, and will only be developed with two (2) parking stalls on-site; and

**WHEREAS**, the Mural Building Property will need an additional five (5) parking stalls to meet the requirements of LMC 19.51.160(C); and

**WHEREAS**, the City and Porch Swing Properties desire to have available seven (7) additional parking stalls beyond the seven (7) stalls required by LMC 19.51.160(C); and

**WHEREAS**, the City owns certain property currently used for parking in the vicinity of the Mural Building Property, for which it has excess capacity; and

**WHEREAS**, City-owned properties currently used for parking in the vicinity of the Mural Building Property and burdened by this Agreement, are legally described in Exhibit B attached hereto and illustrated in Exhibit C (“City Parking Properties”); and

**WHEREAS**, parking for retail and professional services during peak business hours and parking for the residences in off-peak hours can be complementary uses rather than competing uses; and

**WHEREAS**, current use patterns have demonstrated a capacity for additional parking use in off-peak hours; and

**WHEREAS**, the residential units within the Historic Business District will generate additional customers within walking distance of downtown business; and

**WHEREAS**, the redevelopment of the Mural Building Property will create an attractive new entrance to the Historic Business District; and

**WHEREAS**, the redevelopment of the Mural Building Property in the Historic Business District will enable the preservation in perpetuity of a valued installation of public art, the mural located on the west façade of the structure on the Mural Building Property; and

**WHEREAS**, to accommodate the development of the Mural Building Property and financing thereof, the Parties wish to provide (i) an easement for the five (5) parking stalls required by LMC 19.51.160(C), and (ii) a license for seven (7) additional parking stalls; and

**WHEREAS**, the City intends to issue to residents of the Mural Building Property parking permits (“Permits”) to manage and enforce the rights and privileges created by the easement and the license the City grants Porch Swing Properties herein; and

**WHEREAS**, the City intends to issue up to seven (7) Permits pursuant to the license (“License-Based Permits”), up to five (5) Permits issued pursuant to the easement (“Easement-

Based Permits”), and the Parties shall keep track of which Permits are License-Based Permits and which Permits are Easement-Based Permits for purposes of managing rights and responsibilities under this Agreement; and

**WHEREAS**, each Permit shall allow its holder to park one (1) vehicle in one (1) parking space, consistent with the terms herein; 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 Porch Swing Properties a non-exclusive easement for ingress and egress over City Parking Properties, and nonexclusive possession for purposes of parking, of five (5) automobile parking stalls on City Parking Properties (“Easement”). The Easement shall be terminable or revocable only as set forth herein and shall be assignable by Porch Swing Properties only as set forth herein.
- B. Consideration. Prior to recording the Superseded Agreement, Porch Swing Properties paid to the City Seven Thousand Dollars (\$7,000.00) as consideration for this Easement. As consideration for expansion of the Easement from three (3) to five (5) parking stalls under this Agreement, upon its execution and prior to its recording, Porch Swing Properties shall pay to the City an additional Four Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$4,666.66).
- C. Number of Permits. Up to a maximum of five (5) Easement-Based Permits shall be issued pursuant to this Easement.
- D. Termination of Easement-Based Permits. The five (5) Easement-Based Permits issued pursuant to the Easement shall remain in place, consistent with the terms herein, for so long as the Easement remains in effect.

### **II. License**

- A. Grant of License. The City hereby grants Porch Swing Properties a license for ingress and egress over City Parking Properties, and nonexclusive possession for purposes of

parking, of seven (7) automobile parking stalls on City Parking Properties (“License”). The License shall be terminable or revocable only as set forth herein and shall be assignable by Porch Swing Properties only as set forth herein.

- B. Consideration. The consideration for this License shall be the annual Permit fee described in Section III(C)(ii), which must be timely paid to maintain the Permits in good standing.
- C. Number of Permits. Up to a maximum of seven (7) License-Based Permits shall be issued pursuant to this License.
- D. Termination of License and License-Based Permits. The City may, at its sole option, refuse to re-issue or renew some or all of the seven (7) License-Based Permits, without cause, when said Permits become due for annual renewal. If the City intends to exercise this termination option, it shall inform Porch Swing Properties in writing at least one hundred eighty (180) days in advance. If the City refuses to re-issue or renew all seven (7) License-Based, the License granted under subsection A herein shall be terminated.

### **III. Additional Terms**

- A. Scope. This Agreement allows residents of the Mural Building Property in possession of a valid and unexpired Permit the right to park on City Parking Properties, to accommodate up to seven (7) residential units as described herein:
  - i. Scope of Parking. The Permits will allow residents of the Mural Building Property to park vehicles overnight and as needed on the City Parking Properties for typical residential use. The use of the City Parking Properties by residents is subordinate to the City’s use of the City Parking Properties and may be temporarily suspended on an as-needed basis, such as to accommodate the City’s special event permits which utilize City parking lots, and development, maintenance, repair, or snow clearing of the City Parking Properties. Neither this Agreement nor the Permits are intended grant or assign any particular parking spot(s) on City Parking Properties or provide a right to park on a particular lot designated as one of the City Parking Properties. This Agreement and the Permits do not expand the privileges of the residents of Mural Building Property at any other parking location, including street parking.

- ii. Nonexclusive Use. Subject to the terms herein, this Agreement grants Porch Swing Properties nonexclusive use of the City Parking Properties. The City reserves the right to use the City Parking Properties as it sees fit and reserves the right to grant other licenses, easements, and parking permits for the City Parking Properties without notice to Porch Swing Properties. This Agreement does not guarantee such parking will be available to Permit holders at the designated City Parking Properties at any given time, nor does it provide Porch Swing Properties or their residents with the right to remove or cause the removal of vehicles parked at the City Parking Properties.
  - iii. Lot on 7th and Front Street to be Primary Parking Lot. The City Parking Property on tax parcel number 400320 202260 0000, located on the northeast corner of the intersection of 7<sup>th</sup> and Front Streets, shall be the primary parking for residents of the Mural Building Property with valid Permits. Other City Parking Properties shall be used only when this primary parking lot is in use or otherwise has limited availability. Parking availability may be limited when these parking lots accommodate the City's special event permits, development, maintenance, repair, or snow clearing of City Properties.
  - iv. Applicability of Lynden Municipal Code and Additional Prohibitions. This Agreement and the Permits do not exempt Permit holders from conforming to the Lynden Municipal Code and any other City rules or restrictions on parking on City Parking Properties as they exist now or in the future, except as otherwise specifically stated in this Agreement. Permit holders are prohibited from conducting any type of vehicle cleaning, maintenance, or repair while parked in City Parking Properties.
- B. Addition or Removal of City Parking Properties from this Agreement. The City may permanently remove any one City Parking Property from this Agreement by so notifying Porch Swing Properties in writing. No prior notice of such removal is required. The City may permanently remove a second City Parking Property from this Agreement with one hundred eighty (180) days' prior written notice to Porch Swing Properties. The Parties anticipate that they may amend this Agreement to add additional city-owned parking lots to the City Parking Properties or to swap a city-owned parking lot not included in this Agreement for one of the City Parking Properties.

C. Parking Permits – Issuance, Use, and Termination.

- i. Permits Issued Annually. Upon receipt of the annual fees due, the City shall annually issue the Permits to Porch Swing Properties to distribute to owners and / or renters of units within the Mural Building Property. Prior to issuance of the Permits, Porch Swing Properties shall provide to the City the name of each resident to be issued a License-Based Permit and each resident to be issued an Easement-Based Permit. The City shall mark the Easement-Based Permits by adding a capital “E” in a prominent place on the face of the Permit; Permits without such a mark will be the License-Based Permits.
- ii. Fee for Permits. An annual fee for a Historic Business District residential parking permit, established by City ordinance and subject to annual review and adjustment, will be due at the time of issuance. The initial annual fee will be two hundred and forty dollars (\$240.00) per License-Based Permit and there shall be no annual fee for Easement-Based Permits.
- iii. Permit Use. Valid Permits must be displayed in the vehicles parking overnight in the City Parking Properties. Permits shall only be used by the resident to which it was issued and shall not be used by third parties. Permits found to be used by third parties who are not residents of the Mural Building Property shall be subject to City action under subsections (C)(iii) and (C)(iv) herein. Vehicles displaying expired Permits or vehicles parking overnight in parking areas not included in this Agreement will be subject to parking enforcement.
- iv. Suspension and Revocation of License-Based Permits and Termination of License for Cause. In the event that the City believes Porch Swing Properties or a License-Based Permit holder has improperly used any Permits issued under grant of the License, the City agrees to contact Porch Swing Properties. Should such Permit-related issues not be resolved to the City’s satisfaction, the City may in its sole discretion temporarily suspend or permanently revoke the License-Based Permit(s) without issuing a refund of the Permit fee. In the event of such a Permit revocation, the City may in its discretion terminate the License upon which said Permit was granted, effective upon providing written notice thereof to Porch Swing Properties. Upon termination of the License authorizing

issuance of License-Based Permits, the City may record an extinguishment of the License with the County Auditor.

- v. Improper Use of Easement-Based Permits. In the event that the City believes Porch Swing Properties or an Easement-Based Permit holder has improperly used any Permits issued under grant of the Easement, the City agrees to contact Porch Swing Properties. Should such Permit-related issues not be resolved to the City's satisfaction, the City may in its sole discretion temporarily suspend the Easement-Based Permit until the improper use is resolved, or issue a new Easement-Based Permit for distribution to a different resident of the Mural Building Property.
  - vi. Termination of License-Based Permits Without Cause. The City may in its sole discretion decline to renew or re-issue up to all seven (7) of the Permits issued pursuant to the grant of License, as set forth in Section II.D herein.
  - vii. Termination of Easement and Easement-Based Permits. Subject to conformance with the terms of this Agreement, the Easement and the five (5) Easement-Based Permits issued pursuant hereto shall remain in effect for so long as the Mural Building Property is intended or used for residential purposes. However, notwithstanding an intent to use the Mural Building Property for residential purposes, the Easement shall automatically terminate if the Mural Building Property is not used for residential purposes for twenty-four (24) consecutive months. In this event, the City may record an extinguishment of the Easement and this Agreement with the County Auditor.
- D. Specific to Residential Use at the Mural Building Property. This Agreement is specific to the Mural Building Property for use in association with operation of the residential units located in the Mural Building Property. This Agreement and the License and Easement granted herein run with the land and shall be recorded with the County Auditor's office. This Agreement and the License and Easement granted herein shall also be assignable or transferable to any subsequent owner or operator of the Mural Building Property, provided such assignee or transferee executes such documents reasonably requested by the City confirming such assignee's or transferee's consent to be bound by the obligations of Porch Swing Properties under this Agreement.



- E. Term. The term of this Agreement initiates upon issuance of the initial certificate of occupancy for residential use at the Mural Building Property. This Agreement shall automatically terminate upon termination of the Easement.
  
- F. Indemnification. Porch Swing Properties shall fully indemnify and hold the City harmless from any claims, losses, liabilities, damages, and expenses (including reasonable attorney’s fees) arising out of ingress, egress, use or occupation of one or more of the City Parking Properties by an owner, employee, resident, invitee of a resident, agent, contractor, or subcontractor of the owner or operator of Porch Swing Properties or by any person doing business with the Mural Building Property or other commercial or non-profit tenant located at the Porch Swing Properties Property.
  
- G. Insurance. Porch Swing Properties 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 Porch Swing Properties, its owners, agents, subcontractors, employees, tenants, residents, invitees of tenants or residents or persons doing business with the Mural Building Property or other commercial or non-profit tenant located at the Mural Building Property. Prior to the commencement of this Agreement, Porch Swing Properties 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 Porch Swing Properties’ insurance coverage. In addition, should Porch Swing Properties be notified or have reason to expect a termination or cancellation action by its insurance company, Porch Swing Properties 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.

Porch Swing Properties shall possess the following insurance with coverage amounts not less than as specified below:

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

H. 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  
300 4<sup>th</sup> Street  
Lynden, WA 98264

Porch Swing Properties LLC  
1118 Front Street  
Lynden, WA 98264

- I. 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.
- J. 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.
- K. 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.

- L. 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.
- M. Previous Agreement Superseded. The Superseded Agreement is replaced in its entirety by this Agreement. The Superseded Agreement shall have no further force or effect.
- N. 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:

PORCH SWING PROPERTIES 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: \_\_\_\_\_, 2020.

\_\_\_\_\_  
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 PORCH SWING PROPERTIES LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_, 2020.

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

**EXHIBIT A**  
**PORCH SWING PROPERTIES PROPERTY**

610 Front St.: Parcel Number 400320 2062630000

The Northeasterly two feet of Lot 2 and the Southwesterly thirty feet of Lot 3, in 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.

**EXHIBIT B**  
**CITY PARKING PROPERTIES**

618 Front Street (7<sup>th</sup> Street Parking Lot): Parcel Number 400320 202260

Lots 1 and 2 of Block 9, except the easterly 2 feet of said Lot 2 of the Supplemental and corrected Plat of Lynden, as per the map thereof recorded in Book 3 of Plats, Page 48, in the Auditor's office of Whatcom County, Washington. Being within Section 20, Township 40 North, Range 3 East of W.M. Together with rights in party wall agreement recorded in Volume 240 of Deeds, Page 79.

324 Front Street (4<sup>th</sup> Street Parking Lot): Parcel Number 400320 322333

All of Lot 1 together with the west half of Lot 2 in Block 12 of the Supplemental and corrected Plat of Lynden, as per the map thereof recorded in Book 3 of Plats, Page 48, in the Auditor's office of Whatcom County, Washington. Being within Section 20, Township 40 North, Range 3 East of W.M.

Parking Lot between 5<sup>th</sup> and 6<sup>th</sup> Streets: Parcel Number 400320 240304

The east 25 feet of Lot 3 together with the west 25 feet of Lot 4 in Block 10 of the Supplemental and corrected Plat of Lynden, as per the map thereof recorded in Book 3 of Plats, Page 48, in the Auditor's office of Whatcom County, Washington. Being within Section 20, Township 40 North, Range 3 East of W.M.

**EXHIBIT C**

**DIAGRAM OF CITY OWNED PARKING PROPERTIES DESCRIBED IN EXHIBIT B**

