

After recording return document to:

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

DOCUMENT TITLE:

Airspace Encroachment Easement Agreement

REFERENCE NUMBER OF RELATED DOCUMENTS:

Restrictive Covenant: 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 description on page(s) _____

ASSESSOR'S TAX PARCEL NUMBER(S):

400320 202260 0000
400320 206263 0000

AIRSPACE ENCROACHMENT EASEMENT AGREEMENT

THIS AIRSPACE ENCROACHMENT EASEMENT AGREEMENT ("Agreement") is made on this ____ day of _____, 2020, by and between THE GRANTOR, the CITY OF LYNDEN, a Washington municipal corporation ("Grantor" or "City"), and the Grantee, PORCH SWING PROPERTIES, LLC, a Washington limited liability company (collectively, "Grantee") formerly known as TWIGA NW LLC & RAH Properties LLC ("TWIGA NW & RAH").

WHEREAS, the City owns the real property legally described at Exhibit A hereto ("City Property"); and

WHEREAS, Grantee owns the real property legally described at Exhibit B hereto ("Grantee's Property"); and

WHEREAS, on the Grantee's Property, there is an historic one-story building ("Building") that is built on the common property line between the City Property and the Grantee Property; and

WHEREAS, Grantee is in the process of remodeling the Building to add a second and third story, and in order to preserve, maintain and enhance the historical aesthetic of the building, Grantee wishes to build certain encroachments off of the west wall into the airspace above the City Property; and

WHEREAS, said encroachments shall be limited to railings, gutters, down spouts, awning facia, window sills, cornices, and other similar ornamentation, safety measures, or stormwater control, and one air vent ("Encroachments"); and

WHEREAS, the Encroachments will not interfere with the use of the City Property due to the "No Build Zone" created in the restrictive covenant recorded at Whatcom County Auditor's File No. 2019-0900678; and

WHEREAS, the City desires to grant, and Grantee desires to receive, an easement for the purpose of allowing the Encroachments from the west wall into the airspace above the City Property; and

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

NOW THEREFORE, for mutually accepted good and valuable consideration, the City hereby grants and conveys to the Grantee, a non-exclusive easement for the placement of the Encroachments in the Easement Area (defined below), pursuant to the following terms and conditions.

1. Purpose and Scope; Easement Area. The purpose of this Agreement is to allow the Grantee to place the Encroachments on the west wall of the Building, so that the Encroachments occupy the airspace above the City Property within the Easement Area. The Easement Area shall be a three-dimensional rectangular prism. The Easement Area shall be in the eastern-most one (1) foot of the City Property; and in height, shall begin five (5) feet above the ground and extend upwards to the limit of the City's airspace. Encroachments shall not be permitted to extend

outside the Easement Area. However, the Grantee may use the area of the City Property 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 the City's use of the City Property.

2. Payment. As consideration for this Agreement, Grantee shall compensate Grantor in the amount of three hundred dollars (\$300.00) upon Grantee's execution.
3. Commencement of Term and Duration of Agreement. This Agreement shall commence upon execution by both Parties. It shall terminate in the event the Wall Easement described in the covenants recorded at Whatcom County Auditor's File No. 2019-0900678 is terminated.
4. Subordination to City's Construction and Use Needs. The City anticipates reconstructing the City Property. The City reserves the right to temporarily exclude Grantee from the Easement Area and temporarily remove Encroachments in the event it or its contractor(s) requires access to that portion of the City Property in order to redevelop it.
5. Construction, Operation, Maintenance, Repair and Replacement. The Encroachments shall be kept in good repair, at least as well as current building and engineering codes require. The Grantee shall bear all expenses for operation, maintenance, repair, and replacement of the Encroachments.
6. Early Termination. If Grantee's use of the City Property exceeds the purpose and scope of this Agreement, or if any Encroachment, in the City's sole discretion, poses a potential risk to public safety and the Grantee does not correct said risk to the City's satisfaction within thirty (30) days of written notice thereof, then this Agreement shall be terminated and Grantee shall have fifteen (15) days to remove all Encroachments from the Easement Area.
7. Emergency Repair or Removal or Encroachments. If any of the Encroachments, in the City's sole discretion, pose an immediate threat to public safety, the City may cause the Encroachment to be repaired or removed in the manner it best sees fit. The Grantee shall reimburse the City for all costs incurred. The City shall not be responsible for damages to the Building or the Grantee's Property caused during or because of its correction of an emergency situation.
8. Repair Damage. The Grantee shall repair any damage caused to Grantor's Property arising from or related to its use of the Easement Area or the City Property. Grantee shall leave the City Property in a clean and tidy condition, free of refuse of any kind, after installing and maintaining the Encroachments.
9. Run with the Land. This Agreement and all rights and obligations described herein shall be deemed to touch and concern the land, shall run with the land during its entire term, and shall be binding on all parties having or acquiring any right, title, or interest in the land described herein or any part thereof.

10. Insurance. Grantee shall procure and maintain in force, without cost or expense to the City, on or before the commencement date of this Agreement and throughout the term, a broad form comprehensive general liability policy of insurance covering bodily injury and property damage, with respect to the use and occupancy of the Grantor's Property with liability limits of not less than \$1,000,000.00 per occurrence. The City shall be named as 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 the City. Grantee shall provide the City with a certificate or certificates of such insurance within ten (10) days of the execution of this Agreement.
11. Hold Harmless. Grantee shall indemnify and hold the City harmless from any and all such damages and litigation expenses resulting from any claims or causes of action for injury to persons or property arising from Grantee's own respective acts or omissions and the acts or omissions of their employees, contractors, residents, or authorized agents, to the extent and in the same proportion as employees, contractors, residents, or authorized agents are determined to be at fault.
12. Assignment. Grantee shall not assign, convey or transfer this Agreement or any interest herein, without prior written consent of the City.
13. 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:

Grantor:
City of Lynden
Attn: Steve Banham
300 Fourth Street
Lynden, WA 98264

Grantee:
Porch Swing Properties, LLC
1118 E. Front Street
Lynden, WA 98264

14. Complete Agreement/Modification. This Agreement and the terms and conditions herein represents a complete agreement between the Parties. There are no other representations, warranties, covenants, agreements, collateral agreements, or other conditions affecting this Dumpster Easement other than those set forth herein. Modification of this Agreement or any of its terms and conditions shall be binding upon the parties only if they are in writing and fully executed by the Parties.
15. Applicable Law/Construction/Venue. This Agreement shall be governed and interpreted in accordance with the laws of the State of Washington. In the event this Agreement is in conflict with the provisions of any law or statutes governing the subject matter hereof, such law or

statute only to the extent of such conflict shall be controlling. The venue of any action brought to interpret or enforce any provision of this Agreement shall be laid in Whatcom County, Washington.

16. Attorney' s Fees and Costs. In the event of any litigation arising under the terms of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing Party its reasonable costs and attorney's fees.
17. Nonwaiver 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 for the same or similar breach then or in the future, 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.
18. Counterparts. This Agreement may consist of two or more separately ratified counterparts, each of which shall constitute a duplicate original of this Agreement and all which together will constitute a single Agreement.
19. 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.

IN WITNESS WHEREOF, this Agreement is executed on the date first above written.

GRANTOR:

CITY OF LYNDEN

GRANTEES:

PORCH SWING PROPERTIES, LLC

By Scott Korthuis
Its Mayor

By: _____
Its: _____

STATE OF WASHINGTON)
) ss
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 this _____ day of _____, 20____.

{Notary Signature}
NOTARY PUBLIC in and for the State of Washington
Residing at _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss
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 the PORCH SWING PROPERTIES, LLC, A WASHINGTON LIMITED LIABILITY COMPANY, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this _____ day of _____, 20____.

{Notary Signature}
NOTARY PUBLIC in and for the State of Washington
Residing at _____
My appointment expires: _____

EXHIBIT A

Legal Description of City Property

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 Grantee's Property

400320 206263 0000

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.

Situate in Whatcom County, Washington.