

After recording return document to:

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

DOCUMENT TITLE:

Dumpster Easement Agreement

REFERENCE NUMBER OF RELATED DOCUMENT:

N/A

GRANTOR:

City of Lynden, a Washington municipal corporation

GRANTEE:

TWIGA NW, L.L.C., a Washington limited liability company RAH
Properties, LLC, a Washington limited liability company

ABBREVIATED LEGAL DESCRIPTION:

Lot 1 & Ptn. Lot 2, Block 9, Supplemental and Corrected Plat of Lynden

ASSESSOR'S TAX PARCEL NUMBER(S):

400320 202260 0000

DUMPSTER EASEMENT AGREEMENT

THIS DUMPSTER EASEMENT AGREEMENT (“Agreement”) is made by and between THE GRANTOR, the CITY OF LYNDEN, a Washington municipal corporation ("Grantor" or " City"), and the Grantee, TWIGA NW, L.L.C., a Washington limited liability company, and RAH PROPERTIES, LLC, a Washington limited liability company ("Grantee").

WHEREAS, the City owns the real property legally described at Exhibit A hereto (“Grantor’s Property); and

WHEREAS, Grantee owns property adjacent to the Grantor’s Property, which Grantee is in the process of redeveloping (“the Project”); and

WHEREAS, the City desires to grant, and Grantee desires to receive, an easement for the purpose of placing and using a dumpster on the Grantor’s Property on the day of garbage pick-up only (“Dumpster Easement”); and;

WHEREAS, due to the configuration and conditions of the Grantor’s Property and the Grantee’s property, the only location a dumpster / garbage or recycling bins can be placed is on the portion of Grantor’s Property shown at Exhibit B hereto (“Dumpster Easement Area”); 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 placement of a dumpster / garbage or recycling bins within the Dumpster Easement Area, and access thereto, one day per week, pursuant to the following terms and conditions.

1. Purpose and Scope. This grant shall provide the Grantee with an easement for the placement of one dumpster or equivalent number of garbage or recycling bins upon Grantor's Property within the Dumpster Easement Area for one day per week, which shall be the day garbage is picked up, and for ingress and egress across the Grantor’s Property for access to said dumpster or bins on that one day per week. This Dumpster Easement does not authorize placement of the dumpster or bins at any location on Grantor’s Property other than the location shown in Exhibit B.
2. Payment. There will be no monetary payment for this Dumpster Easement.
3. Commencement of Term and Duration of Agreement. The Dumpster Easement term shall commence on the date written below and shall expire when the Dumpster Easement Areas is no longer needed by Grantee for its purpose and scope described in Section 1.
4. Subordination to City’s Construction and Use Needs. The City anticipates reconstructing the Grantor’s Property. The City reserves the right to exclude Grantee from the Dumpster Easement Area in the event it or its contractor(s) requires access to that portion of the Grantor’s Property in order to redevelop it. The City further reserves the right to relocate the Dumpster Easement Area upon providing thirty (30) days prior written notice to Grantee.
5. Early Termination. If Grantee's use of the Grantor's Property exceeds the purpose and scope of

this grant, Grantor may terminate the Dumpster Easement by providing Grantee with thirty (30) days prior written notice.

6. Construction, Operation, Maintenance, Repair and Replacement. The Grantee shall bear all expenses for operation, maintenance, repair, and replacement of the dumpster / garbage or recycling bins used in the Dumpster Easement Area.
7. Repair Damage. The Grantee shall repair any damage caused to Grantor's Property arising from or related to its use of the Dumpster Easement Area. Grantee shall leave the Grantor's Property in a clean and tidy condition, free of refuse of any kind, following its once weekly use of the Dumpster Easement Area.
8. Run with the Land. This Dumpster Easement 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. Insurance.
9. Insurance. Grantee shall procure and maintain in force, without cost or expense to Grantor, on or before the commencement date of this Dumpster Easement 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. Grantor 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 Grantor. Grantee shall provide Grantor with a certificate or certificates of such insurance within ten (10) days of the execution of this Dumpster Easement.
10. Hold Harmless. Grantee shall indemnify and hold the City other 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.
11. Assignment. Grantee shall not assign, convey or transfer this Dumpster Easement or any interest herein, without prior written consent of Grantor.
12. Notice. Any notice, declaration, demand or communication to be given by a Party to this Dumpster Easement 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 4th Street
Lynden, WA 98264

Grantee:
TWIGA NW, L.L.C.
RAH Properties, LLC
1118 E. Front Street
Lynden, WA 98264

13. Complete Agreement/Modification. This Dumpster Easement grant 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 Dumpster Easement 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.
14. Applicable Law/Construction/Venue. This Dumpster Easement shall be governed and interpreted in accordance with the laws of the State of Washington. In the event this Dumpster Easement 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 Dumpster Easement shall be laid in Whatcom County, Washington.
15. 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.
16. 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.
17. 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.
18. 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.

Dated this _____ day of _____ 2019.

GRANTOR:

City of Lynden

By: _____
Its: _____ GRANTEE:

TWIGA NW, L.L.C.

By: _____
Its: _____

RAH Properties, LLC

By: _____
Its: _____

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 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 RAH 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: _____

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 TWIGA NW, 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

Description of Grantor's 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.

Subject to an Agreement for Joint Use of Party Wall as set forth in an instrument recorded under Auditor's File No. 505068.

Situate in Whatcom County, Washington.

EXHIBIT B
(Depiction – Not to Scale)

