

FILED FOR AND RECORDED AT REQUEST OF AND RETURN ORIGINAL TO:

STARKENBURG - KROONTJE
Attorney At Law,
P.S.
PO Box 231
Lynden, WA 98264
(360) 354-7822

ASSIGNED/RELEASED DOCUMENTS:

Whatcom County AF No. 505068

GRANTORS:

1. City of Lynden
1. TWIGA NW, L.L.C.
2. RAH Properties, LLC

GRANTEES:

3. City of Lynden
4. TWIGA NW, L.L.C.
5. RAH Properties, LLC

LEGAL DESCRIPTION: Full legal descriptions found on pages 1-2.

Abbreviated:

1. Lots 1 & 2, and Ptn. of Lot 3, Block 9, Supplemental and Corrected Plat of Lynden

ASSESSOR'S PARCEL NUMBER(S):

1. 400320 202260 0000
2. 400320 206263 0000

RECIPROCAL RESTRICTIVE COVENANTS

THESE RECIPROCAL RESTRICTIVE COVENANTS ("Reciprocal Restrictive Covenants") are entered into this ____ day of _____, 2019, by the CITY OF LYNDEN, a Washington municipal corporation ("City"), and TWIGA NW, L.L.C., a Washington limited liability company, and RAH PROPERTIES, LLC, a Washington limited liability company ("TWIGA NW"), as follows:

RECITALS

WHEREAS, City is the owner of the real property legally described as follows (the "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.

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.

WHEREAS, TWIGA NW is the owner of the real property legally described as follows (the "TWIGA NW 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.

WHEREAS, the TWIGA NW Property contains a one-story structure that is built on the common property line between the City Property and the TWIGA NW Property for which a party wall agreement exists as filed with the Whatcom County Auditor under file 505068 ("Party Wall Agreement"),

WHEREAS, TWIGA NW is remodeling the TWIGA NW Property to incorporate a second story with residential space;

WHEREAS, in order to incorporate windows into the second floor of the structure an open set back is required which could not be accommodated by a solid wall located on the common property line;

WHEREAS, the Party Wall Agreement anticipates additional agreement between the parties in the event that either party desires to add to the height of the wall;

WHEREAS, the structure on the TWIGA NW Property contains a mural on the wall that is located on the common property line ("the Mural");

WHEREAS, The Mural provides public art that is important to the downtown Lynden area and is seen by residents and visitors as they enter the downtown core, and maintaining it is important to the City;

WHEREAS, TWIGA NW agrees to maintain the Mural, or a similar one that is accepted and approved by the City of Lynden, in perpetuity, in exchange for a restrictive covenant on the City Property to create a no build zone for the benefit of the TWIGA NW Property;

WHEREAS, because of the no build zone, the Party Wall Agreement is no longer necessary and should be terminated or extinguished;

NOW, THEREFORE, in consideration of the mutual promises and conditions herein contained, the parties hereby covenant and agree as follows:

1. Recitals Incorporated. The recitals set forth above are fully incorporated herein by this reference.
2. Nature and Extent. The purpose of these Reciprocal Restrictive Covenants is to create a no build zone on the east ten (10) feet of the City Property (the "No Build Zone") for the benefit of the TWIGA NW Property and to require TWIGA NW to maintain the Mural, or a similar one that is accepted and approved by the City of Lynden, in perpetuity.
3. Restriction of City Property. Within the No Build Zone City shall not erect or construct any building of any type or nature, whether permanent or temporary. The No Build Zone may however be landscaped with grass and groundcover plants and may be paved and otherwise improved as a parking lot with the necessary and related improvements. This section does not prevent the City from erecting small structures such as parking meters or boxes or from erecting non-building structures such as tents or scaffolding on a temporary basis.
4. Restriction of TWIGA NW Property. In exchange for the City maintaining the No Build Zone, TWIGA NW will retain and cause to be maintained the Mural. Maintenance as used in this section includes both regular maintenance due to expected deterioration and repair in the case of accident or vandalism. In the event that the Mural requires replacement or altering beyond normal maintenance, TWIGA NW will propose a replacement public art form, which form shall require the approval of the City of Lynden.
5. Extinguishment of Party Wall Agreement. These Reciprocal Restrictive Covenants make the Party Wall Agreement unnecessary. The Party Wall Agreement is hereby extinguished.
6. Establishment of Wall Easement. The City hereby grants TWIGA NW and its successors and assigns a perpetual, nonexclusive easement to maintain and improve the wall described in the Party Wall Agreement at its present location, but not to increase the extent to which the wall encroaches into the City Property ("Wall Easement"). This Wall Easement shall remain in effect so long as the Mural is retained, maintained, or replaced at its present location in accordance with paragraph 4. In the event the Mural is not so retained, maintained, or replaced at its present location, the City shall provide written notice thereof to TWIGA NW. In the event TWIGA NW fails to cure the breach hereof to the City's satisfaction within thirty (30) days of receipt of said notice, or in the event the wall is for any reason destroyed in its entirety, this Wall Easement shall be automatically extinguished.
7. Run with the Land. These Reciprocal Restrictive Covenants 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 unless mutually terminated in writing by the owners of the TWIGA NW Property and the City Property.
8. Breach. Subject to paragraphs 4 and 6, in the event of a perceived breach by the other party, a party's rights are limited to seeking an injunction or specific performance, consistent with sections 10, 11, and 12 below. Neither party may resort to "self-help" tactics to rectify a perceived breach by the other party. This section does not prevent either party from attempting to work with the

other party cooperatively to resolve concerns before court involvement becomes necessary.

9. Hold Harmless. City and TWIGA NW shall indemnify and hold each 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 their own respective acts or omissions and the acts or omissions of their employees, or authorized agents, to the extent and in the same proportion as employees or authorized agents are determined to be at fault.

10. Notice. Any notice, declaration, demand or communication to be given by a Party to these Reciprocal Restrictive Covenants 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:

City:

City of Lynden

TWIGA NW, L.L.C.

RAH Properties, LLC

1118 E. Front Street

Lynden, WA 98264

11. Complete Agreement/Modification. These Reciprocal Restrictive Covenants 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 these Reciprocal Restrictive Covenants other than those set forth herein. Modification of these Reciprocal Restrictive Covenants 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.

12. Applicable Law/Construction/Venue. These Reciprocal Restrictive Covenants shall be governed and interpreted in accordance with the laws of the State of Washington. In the event these Reciprocal Restrictive Covenants 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 these Reciprocal Restrictive Covenants shall be laid in Whatcom County, Washington.

13. Attorney's Fees and Costs. In the event of any litigation arising under the terms of these Reciprocal Restrictive Covenants, the prevailing party shall be entitled to recover from the non- prevailing party its reasonable costs and attorney's fees.

14. Nonwaiver of Breach. Failure of either party at any time to require performance of any provision of these Reciprocal Restrictive Covenants 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 these Reciprocal Restrictive Covenants constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

15. Counterparts. These Reciprocal Restrictive Covenants may consist of two or more separately ratified counterparts, each of which shall constitute a duplicate original of these

Reciprocal Restrictive Covenants and all which together will constitute a single agreement.

16. Severability. In case any one or more of the provisions contained in these Reciprocal Restrictive Covenants 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 these Reciprocal Restrictive Covenants shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

IN WITNESS WHEREOF, the parties have executed these Reciprocal Restrictive Covenants as of the date and year set forth above.

CITY:

City of Lynden

By: _____

Its: _____

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: _____

