

**RETURN TO:**

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PO Box 231  
Lynden, WA 98264

**DOCUMENT TITLE:**

Temporary Construction 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

## TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THE GRANTOR, the CITY OF LYNDEN, a Washington municipal corporation ("Grantor" or "City"), in consideration of the terms and conditions specified herein, grants and conveys to the Grantee, TWIGA NW, L.L.C., a Washington limited liability company, and RAH PROPERTIES, LLC, a Washington limited liability company ("Grantee"), a temporary easement for construction purposes as described herein ("Temporary Easement") over, under and across the real property described at Exhibit A and depicted as Exhibit B hereto (hereinafter referred to as "Grantor's Property").

This Temporary Easement has been granted under and shall be governed by the following terms and conditions.

1. Grant of Temporary Easement. For the mutual promises herein, Grantor hereby grants and conveys to the Grantee a non-exclusive temporary construction easement over Grantor's Property under the terms and conditions set forth herein.

2. Purpose. This grant shall provide the Grantee with a temporary construction easement for construction, inspection, alteration, ingress and egress over, under, and across Grantor's property ("Temporary Easement") for the construction of the Grantee's adjacent building (the "Project"). Grantee hereby agrees that it shall not use the Grantor's Property in any manner that exceeds the scope of this Temporary Easement or is a violation of local, state, or federal law. The Grantee shall be solely responsible for all aspects of the Project.

3. Payment. There will be no monetary payment for the Temporary Easement.

4. Commencement of Term and Duration of Agreement. The Temporary Easement term shall commence on the date written below and shall expire one (1) year from the date of commencement.

5. Early Termination. If Grantee's use of the Grantor's Property exceeds the scope of this Easement, Grantor may terminate this Temporary Easement by providing Grantee with thirty (30) days written notice.

6. Construction, Operation, Maintenance, Repair and Replacement. The Grantee shall bear all expenses for construction, installation, operation, maintenance, repair, and replacement of the Project.

7. Restoration. Excepting improvements made to the party wall between Grantor's and Grantee's Properties during the course of the Project, the Grantee shall, upon completion of the Project, repair any damage caused when performing the Project work and leave the Grantor's Property in a clean and tidy condition equal to that which existed on the date of execution of this Agreement.

8. Run with the Land. This Temporary 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.

9. Insurance. Grantee shall procure and maintain in force, without cost or expense to Grantor, on or before the commencement date of this Temporary 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 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 Temporary Easement.

10. Hold Harmless. Grantor and Grantee 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.

11. Assignment. Grantee shall not assign, convey or transfer this Temporary 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 Temporary 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 Fourth 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 Grant of Temporary Easement 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 Temporary Easement other than those set forth herein. Modification of this Temporary 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 Temporary Easement shall be governed and interpreted in accordance with the laws of the State of Washington. In the event this Temporary 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 Temporary 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

The \_\_\_\_\_ of the following described 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**