

RETURN TO:

ROBERT A. CARMICHAEL
CARMICHAEL CLARK, PS
P. O. BOX 5226
BELLINGHAM, WASHINGTON 98227
PHONE: 360-647-1500

DOCUMENT TITLE:

Temporary Construction Easement Agreement

REFERENCE NUMBER OF RELATED DOCUMENT:

n/a

GRANTORS:

Top Family Living Trust

GRANTEE:

City of Lynden, a Washington municipal corporation

ABBREVIATED LEGAL DESCRIPTION:

THAT PTN OF NE NW DAF-BEG AT NW COR OF NE NW-TH E 180 FT-TH S 797 FT M/L TO N LI OF
HAWLEY'S ADD TO LYNDEN-TPOB-TH W 180 FT-TH N 164 FT-TH E 180 FT-TH S 164 FT TO TPOB-LESS RDS-
EXC THAT PTN OF LOT 1 LYNDEN CITY TRAIL SHORT PLAT/LLA AS REC AF 2070403245

ASSESSOR'S TAX PARCEL NUMBER(S):

PTN 4003201454930000

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

This Temporary Construction Easement Agreement ("Agreement") is made and entered into this ____ day of _____ 2023, by and between the Top Family Living Trust ("Grantor") and the City of Lynden, a Washington municipal corporation ("Grantee" or "City"). Grantor and Grantee may be referred to herein individually as "Party" and collectively as "Parties."

RECITALS

WHEREAS, The Top Family Living Trust is the owner of the real property legally described in **Exhibit A** hereto and fully incorporated herein by reference ("Grantor's Property"); and

WHEREAS, the City of Lynden ("City") is engaged in the expansion of the Jim Kaemingk Sr. Trail to improve and extend the trail; and

WHEREAS, a temporary construction easement over a portion of the Grantor's Property will facilitate the City's work on a portion of the Jim Kaemingk Sr. Trail on an adjacent parcel owned by the City; and

WHEREAS, the above recitals are a materials part of this Agreement,

NOW THEREFORE, the Parties hereby agree as follows:

AGREEMENT

The Top Family Living Trust, in consideration of the terms and conditions specified herein, hereby grants and conveys to the City of Lynden an exclusive temporary construction easement over the portion of Grantor's Property described in **Exhibit B** hereto and depicted in **Exhibit C** hereto, both of which are incorporated herein by reference ("Temporary Construction Easement").

This Agreement shall be governed by the following terms and conditions:

1. **Purpose.** This grant shall provide the Grantee with an exclusive temporary construction easement for construction, inspection, alteration, ingress and egress for the purposes of constructing a new portion of the Jim Kaemingk Sr. Trail (the "Project"), located adjacent to the north boundary of Grantors' Property.

2. **Payment.** The Temporary Construction Easement described above are granted in exchange for a payment of \$18,500 from the City to Grantor. Payment must be made on or before May 5, 2023, or this Agreement is null and void. In the event that the three-month extensions discussed in Section 4 are executed, the City will pay an additional \$11,000 to Grantor for each three-month extension.

3. **Commencement of Term of Agreement.** The Temporary Easement term shall commence on May 5, 2023.

4. **Termination/Extension.** This Temporary Construction Easement shall terminate on May 5, 2024; provided that, Grantee may extend the term for up to two (2) additional three (3) month

increments by providing forty-five (45) days written notice to the Grantor prior to expiration of the term or extended term.

5. **Restoration.** The Grantee shall, upon completion of the Project, repair any damage caused when performing the Project work and leave the Grantors' Property in a clean and tidy condition equal to that which existed on the date of execution of this Agreement. Bank stabilization work will occur within the Temporary Construction Easement.

6. **Insurance.** Grantee shall procure and maintain in force, without cost or expense to Grantors, on or before the Commencement Date of this Temporary Easement and throughout the Term or as long as Grantee remains in possession of Grantor's Property, 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 \$2,000,000.00 per occurrence. Grantors 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 Grantors. Grantee shall provide Grantors with a certificate or certificates of such insurance within ten (10) days of the execution of this Agreement. If Grantee is self-insured through the Office of State Risk Management, a certified statement setting out (1) program approval of the state risk manager, and (2) coverage(s) (including additional named insured) enumerated herein shall be appended to this Agreement.

7. **Hold Harmless.** Grantors and Grantee shall indemnify and hold each other harmless from any and all damages and litigation expenses resulting from any claims or causes of action for injury to persons or property arising from any acts or omissions of either party, their employees, or authorized agents, to the extent and in the same proportion as employees or authorized agents are determined to be at fault.

8. **Assignment.** Grantee shall not assign, convey, or transfer this Temporary Construction Easement or any interest herein, without prior written consent of Grantors.

9. **Notice.** Any notice, declaration, demand, or communication to be given by a Party to this Agreement to the other Party 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:

To Grantors:

Top Family Living Trust
1904 Bender Park BLVD #A
Lynden, WA 98264-8524

To Grantee:

City of Lynden
Attn: Steve Banham
300 4th Street
Lynden, WA 98264

10. **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 Agreement 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.

11. 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.

GRANTOR:
Top Family Living Trust

GRANTEE:
CITY OF LYNDEN




By: Michael J. Top
Its: Trustee

By: Scott Korthuis
Its: Mayor

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this 07 day of April, 2023, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Michael Top, the Trustee of the Top Family Living Trust, who acknowledged said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned and stated on oath that they were authorized to execute this instrument on behalf of said entity.

WITNESS my hand and official seal hereto affixed the day and year first written above.


Lesla Starkenburg
Notary Public in and for the State of Washington
Residing at: Lynden WA
My commission expires: 1/25/25

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this ____ day of _____, 2023, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, the _____ of the CITY OF LYNDEN, a Washington municipal corporation, who acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and stated on oath that he/she was authorized to execute this instrument on behalf of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first written above.

Notary Public in and for the State of Washington
Residing at:
My commission expires: _____

EXHIBIT A

Legal Description of Grantor's Property

Assessor's Tax Parcel Number: 400320 145493 0000

THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 20,
TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M. DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST
QUARTER, THENCE EAST 180 FEET, THENCE SOUTH 797 FEET M/L TO THE NORTH LINE OF HAWLEY'S
ADDITION TO LYNDEN, TO THE POINT OF BEGINNING, THENCE WEST 180 FEET, THENCE NORTH 164
FEET, THENCE EAST 180 FEET, THENCE SOUTH 164 FEET TO THE POINT OF BEGINNING, LESS ROADS,
EXCEPT THAT PORTION OF LOT 1 LYNDEN CITY TRAIL SHORT PLAT, LOT LINE ADJUSTMENT AS RECORDED
UNDER AUDITOR'S FILE NUMBER 2070403245.

INCLUDING THAT PORTION OF AN ADJACENT AREA OF DEED GAP CONVEYED BY THE CITY OF LYNDEN,
RECORDED UNDER WHATCOM COUNTY ASSESSOR'S FILE NUMBER 2111202452.

EXHIBIT "B"

TEMPORARY CONSTRUCTION EASEMENT

TOP FAMILY LIVING TRUST to THE CITY OF LYNDEN

A variable width easement over and across a portion of the Northeast quarter of the Northwest quarter of Section 20, Township 40 North, Range 3 East of W.M., said easement described as follows:

All that portion of said quarter quarter lying: Southerly of Lot 1 of the Lynden City Trail Short Plat / Lot Line Adjustment, as per the map thereof, recorded under Whatcom County Auditor's File No. 2070403245, Southwesterly of Fishtrap Creek, East of the West line of said quarter quarter, East of the Northerly extension of East line of Lot 5, Block 31, Hawleys Addition to Lynden, as per the map thereof recorded in Book 1 of Plats, Page 87, record of Whatcom County, Washington and Northeasterly and Northwesterly of the following described line:

Commencing at the Southwest corner of said Lot 1; thence South 02° 52' 35" West on a southerly extension of said Lot 1 a distance of 50.11 feet to the **true point of beginning** of this line description: thence South 51° 08' 05" East a distance of 222.44 feet; thence North 72° 16' 16" East a distance of 105.42 feet; thence North 02° 45' 12" East a distance of 15.47 feet more or less to Fishtrap Creek and the **terminus** of this line description.

As shown on Exhibit "C" attached hereto and incorporated herein by reference.

Situate in Whatcom County, Washington.

Subject to all easements, covenants, restriction and/or agreements of record, or otherwise.



EXHIBIT "C"
DEPICTING TEMPORARY
CONSTRUCTION EASEMENT
 PORTION OF THE NE 1/4 NW, SECTION 20,
 TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M.,
 WITHIN THE CITY OF LYNDEN,
 WHATCOM COUNTY, WASHINGTON

