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City of Mount Vernon
P.O. Box 809
Mount Vernon, WA 98273



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Skagit County Auditor
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Document Title: Possession & Use Agreement
Grantor: Paul S. Wells and Darcy G. Wells
Grantee: City of Mount Vernon, a Municipal Corporation
of the State of Washington
Abbreviated Legal: Tract 2 of Mount Vernon Short Plat MV-1-96
Legal Description: Ptn of W 1/2 of the SW 1/4 Sec. 20, Township 34 N, R 4 EWM
Assessor's Tax Parcel No: 340420-3-174-0200
Property I.D. Number: P-109055

P91513E

LAND TITLE COMPANY OF SKAGIT COUNTY

In the Matter of Skagit Transportation Center

Possession Agreement

THIS AGREEMENT, is made and entered this 23rd day of March, 2001, among Paul S. Wells and Darcy G. Wells, husband and wife and the marital community composed thereof (hereinafter, "Owner"), and the City of Mount Vernon, a Washington municipal corporation (hereinafter, "City")

WHEREAS Owner is the owner of the fee estate in the land (hereafter the "Land") and the building and improvements erected thereon, inclusive of private utility systems and connections (hereafter, the "Improvements"), consisting of approximately 29,648 square feet, more or less, commonly referred to as 106 E. Gates Street, Mount Vernon, Skagit County, Washington, and more particularly described herein. Hereinafter, the Land and Improvements shall be referred to collectively as the "Real Property," and

WHEREAS the City desires to acquire Owner's Real Property for public use. City has indicated to Owner that the City's intent is to rely upon its power of eminent domain to acquire the Real Property as necessary, and

WHEREAS the City has offered to compensate the Owner in the amount of \$500,000 for the Real Property, and

WHEREAS, the Owner requires additional time to evaluate said offer and/or to resolve any questions concerning just compensation;

WHEREAS, it is understood and agreed by the parties that the consideration paid pursuant to this Agreement is for both possession of the premises on the terms

and conditions set forth herein, and that the failure of the Owner to deliver possession of the premises as provided by this Agreement shall result in a diminution of the purchase price as hereinafter set forth,

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

1. **Subject of Purchase and Sale.** The Subject of this Agreement is that property described in the attached Exhibit "A," together with, and without limitation, all right, title, interest, and reversions, if any, of Owner in and to (a) any land lying in the bed of any street, road, or avenue, opened or proposed, in front of or adjoining the Real Property, (b) all strips and gores, if any, abutting or adjoining the Real Property, (c) all rights, privileges, easements, licenses, appurtenances and hereditaments relating to the Real Property, (d) all minerals, oil, gas and other hydrocarbon substances under the Real Property, and (e) all development rights, air rights, water rights, water and water stock relating to the Real Property.
2. **Public Use and Necessity.** The parties hereby acknowledge and agree that the Real Property is necessary for a public use of the City of Mount Vernon. In the event the City commences legal proceedings pursuant to Chapter 8.12 RCW, Owner consents to the entry, without objection, of an Order Adjudicating Public Use and authorized pursuant to the provisions of 8.12.030 RCW. The owner further agrees that, from and after the date of this Agreement, this instrument shall be treated as having the same legal effect as an Order for Immediate Possession and Use. The Owner shall cooperate with the entry of such Order.
3. **Consideration.** It is the intent of the City to acquire the Real Property through the power of eminent domain, and all payments made to Owner hereunder shall be pursuant to the City's exercise of its power of eminent domain. Such payment made pursuant to this agreement shall offset the purchase price and/or settlement amount.

A. No later than March 19, 2001, the City will issue a warrant in payment to the Owner in the amount of FIVE-HUNDRED THOUSAND AND 00/100 DOLLARS [\$500,000], subject only to deductions of the value of interests of others. The City acknowledges that this warrant will be issued in consideration of Owner's execution of this agreement and the Owner's promises made hereunder, and that the full amount of such payment shall in all circumstances be nonrefundable to the City irrespective of whether the City proceeds with condemnation, whether the above-described project is constructed, or the final adjudication of just compensation for the taking of the real property.

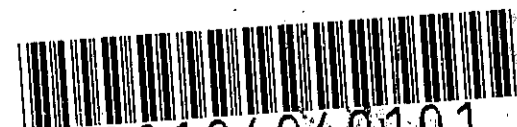


B. Funds distributed pursuant to this Agreement shall be first applied to the satisfaction of those encumbrances identified in the attached Exhibit "B." Owner shall provide appropriate assurances to the City that such encumbrances have been, or will be, satisfied, which assurances may be met by the distribution of funds through escrow.

C. The consideration paid hereunder shall not be construed as a written statement showing amount of total just compensation pursuant to RCW 8.25.010

D. **Foreign Investment in Real Property Tax Act.** The parties agree to comply in all respects with Section 1445 of the Internal Revenue Code and the regulations issued there under. ~~If Owner is not a "foreign person" as defined under the applicable regulations, Owner shall deliver to City a non-foreign certificate as prescribed by the regulations. If Owner is a foreign person or fails or refuses to deliver the non-foreign certificate, a tax equal to 10 percent of the Purchase Price will be withheld and paid to the Internal Revenue Service in the manner prescribed by law, unless withholding is excused on the manner prescribed by applicable law. In the event of any withholding, Owner's obligations to deliver title and close this transaction will not be excused or otherwise affected.~~ *[Handwritten initials: B, R, SGT]*

4. **Subsequent Determination of Value.** Execution of this agreement by the undersigned parties shall not prejudice such parties' right to subsequent adjudication of just compensation pursuant to state law, and neither shall this agreement, nor the basis therefore, be construed as an admission of fair market value or just compensation by any of the parties named herein.
5. **Date of Valuation.** The date of valuation for the determination of just compensation shall be the date that this agreement is executed by the City.
6. **Abandonment or alteration of City Plans.** Nothing herein shall preclude the City from hereafter changing its plans to increase or decrease the nature or extent of the acquisition. If the acquisition is enlarged to other areas controlled by the Owner, a supplemental Possession and Use Agreement will be required.
7. **Possession and use.** Until this agreement is accepted and approved by the City of Mount Vernon, the City shall have no right of entry, use or possession of real estate described on Exhibit "A". Following the date of such approval, the City will indemnify, defend, and hold Owner harmless from and against all costs, claims, expenses and damages, including attorneys' fees (with or without litigation), arising in any way in connection with use possession or entry onto said real property by the City, its contractors, subcontractors, agents, employees and assigns. Owners shall have the right to continued possession of the property as follows:



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- (a) Owners agree to file a SEPA application no later than March 1, 2001, and substantially complete its application for building permit on or about ~~March 22~~, 2001, for the property being purchased in South Mount Vernon ("new building") (tax parcel Nos. 340429-3-017-0008P28726; 340429-3-0007P28740; and 340429-3-020-0003P28730.)
- (b) Owners agree to vacate the premises within two weeks after an occupancy permit has been issued for the new building or seven months after the appropriate reviewing agency issues its building permit for the new building, whichever is earlier.
- (c) Notwithstanding the above, the City shall have access to the site after the execution of this Agreement for the purpose of surveying, conducting site analysis incidental to the preparation of construction plans and drawings, and similar design-related activities.

8. **Care of Property Until Closing.**

A. Operation of the Property. Subsequent to the execution of this Agreement, Owner shall manage and operate the Property or cause the Property to be managed and operated, in a manner consistent with the manner in which it is being managed and operated on the date hereof, and shall not knowingly violate any applicable laws or regulations of any federal, state, or local government agency. Owner shall operate and maintain the Property in the ordinary course, making all necessary repairs and replacements, which are reasonably required for normal maintenance and upkeep.

B. Notification of Casualty or Loss. Owner shall immediately notify the City of any material occurrence with respect to the Property, including, without limitation, the filing by or against Owner of a litigation action, and the occurrence of any material casualty or other damage to the Property.

C. Encumbrances. Owner shall not sell, assign, or convey any right, title, or interest whatever in or to the Real Property or create or permit to exist any lien, encumbrance, or charge thereon (excepting any lien, encumbrance, or charge identified in the preliminary commitment for title insurance, attached hereto as Exhibit "B") without promptly discharging the same.

D. Insurance. Owner shall at its expense keep all insurance policies in full force and effect

E. New Leases. Owner shall not enter into any Lease relating to the Real Property without City's prior written consent, which consent may be withheld in City's sole and absolute discretion.



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F. Utilities. Owners agree to pay as rent during the period of their possession, all utility costs relating to its operations in the building, any applicable real property taxes.

9. Indemnification. The Owner shall indemnify, defend, and hold harmless the City, its officials, officers, agents, employees, and volunteers from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, and expenses and costs arising out of the subject matter of this Agreement; provided that this provision shall not apply to the extent that damage or injury results from the fault of the City or its officers, agents, or employees. The term "fault" as used herein shall have the same meaning as set forth in RCW 4.22.015, as that statute may hereinafter be amended.

10. Risk of Loss and Condemnation

A. Eminent Domain. If at any time after the effective date of this Agreement, Owner receives any notice of any condemnation proceedings, or other proceedings in the nature of eminent domain, from any entity other than the City, Owner will promptly send a copy of such notice to the City. If all or any part of the Real Property is taken by condemnation or eminent domain, the City may, upon written notice to Owner, elect to terminate this Agreement, and in such event all monies theretofore paid shall be returned to the City upon completion of the condemnation proceedings.

B. Casualty Loss. Following the occurrence of any event prior to the date on which the city takes unencumbered control of the property, which event causes damage to or destruction of the Real Property or any portion of the Real Property, Owner shall promptly notify the City of such occurrence. The rights to all insurance proceeds collectively by reason of such loss and not collected by Owner prior to the City taking unencumbered control of the Real Property will be assigned to the City, and the Purchase Price will be paid without reduction by reason of such loss. The Owner and the City will in such circumstances cooperate in settlement of such claims and any proceeds collected prior to transfer of unencumbered possession will, consistent with the circumstances, be applied to offset against any portion of the Purchase Price paid pursuant to this agreement, and at closing.

11. Notices. All notices, demands, requests or other communications required or permitted to be given under this Agreement must be in writing and shall be deemed to have been properly given if addressed to the party to receive same at its address set forth below, by certified mail, return receipt requested, by hand delivery, by reputable overnight courier service, or by facsimile with receipt confirmed provided that a true copy thereof is also delivered by hand or reputable overnight courier serve. A copy of any



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notice, demand, request or other communication given to the City shall be given (in the same manner) to the City's counsel. A copy of any notice, demand, request or other communication given to Owner shall be given (in the same manner) to Owner's counsel. Any party may, by notice given in accordance with this Section, designate a different address for notices, demands, requests or other communications. Notices, demands, requests and other communications shall be deemed given as follows: (i) when duly tendered for receipt, if given by hand or by reputable overnight courier service, (ii) when received, if given by facsimile, or (iii) two (2) business days after same is deposited in the mail, if given by certified mail.

Owner:

Paul S. and Darcy G. Wells

With copy to Owner's counsel

Charles Gordon

Gordon Murray Tilden

1325 Fourth Avenue, Suite 1800

Seattle, Washington 98101-2510

Phone (206) 467-6477 FAX (206) 467-6292

City

Dan Eisses

With copy to City's Counsel:

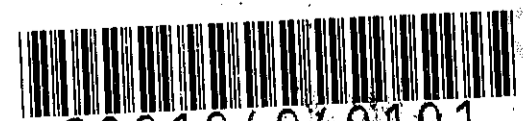
Scott G. Thomas

320 Broadway Street

Mount Vernon, WA 98273

Phone (360) 336-6203 FAX (360) 336-6267

12. **Section 1031 Like-Kind Exchange.** If either Owner intends for this transaction to be a part of a Section 1031 like-kind exchange, then the City agrees to cooperate in the completion of the like-kind exchange so long as the City incurs no additional liability in doing so, and so long as any expenses (including attorney's fees and costs) incurred by the City that are related only to the exchange are paid or reimbursed by Owner.
13. **Governing Law; Construction; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington without regard to its conflict of laws rules. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. If any words or phrases in this Agreement shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this Agreement shall be construed as if the words or phrases so stricken out or otherwise eliminated were never



included in this Agreement and no implication or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated. All terms or words used in this Agreement, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require. Venue shall be proper in the Superior Court of Skagit County.

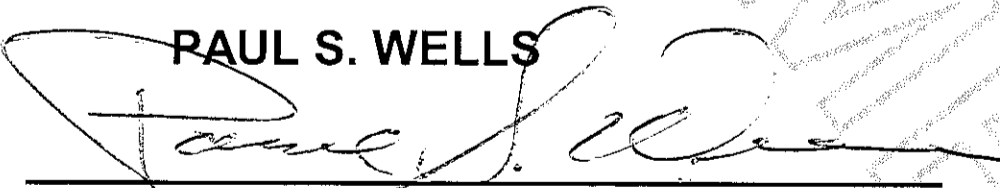
14. **Merger.** All understandings and agreements heretofore between the parties hereto are merged in this Agreement, which alone fully and completely expresses their agreement. In entering into this Agreement, neither party has relied upon any statement or representation not embodied in this Agreement.
15. **Amendment.** This Agreement may not be changed orally or in any manner other than by a written agreement executed by Seller and Buyer.
16. **No Waivers.** No waiver by either party of any failure or refusal to comply with its obligations shall be deemed a waiver of any other or subsequent failure or refusal to so comply.
17. **Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law.
18. **Miscellaneous.** The captions or paragraph titles contained in this Agreement are for convenience and reference only and shall not be deemed a part of the text of this Agreement. The Recitals set forth at the beginning of this Agreement are hereby incorporated by this reference into the substantive provisions of this Agreement.

Dated: March 23, 2001

Accepted and Approved:

OWNERS:

PAUL S. WELLS



DARCY G. WELLS



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CORPORATE ACKNOWLEDGEMENT

STATE OF WASHINGTON)
)ss.
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that John W. Buckley signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Public Works Director of the **CITY OF MOUNT VERNON** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 3/24/01



Signature: Charlene J. Nelson
Notary Public in and for the State of Washington
Residing at Mount Vernon
My appointment expires: 8-17-04

APPROVED AS TO FORM:

[Signature]
Scott G. Thomas, City Attorney

[Signature]
Skye K. Richendrfer, Mayor

Attest:

[Signature]
Mark S. Knowles, Finance Director



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Exhibit "A"
Legal Description
Wells Parcel

Tract 2 of City of Mount Vernon Short Plat No. MV-1-96, approved May 16, 1996 and recorded May 16, 1996, under Auditor's File No. 9605160033, in Volume 12 of Short Plats, pages 98 and 99, records of Skagit County Washington; being a portion of the West 1/2 of the Southwest 1/4 of Section 20, Township 34 North, Range 4 East, W.M.

Situate in Skagit County, Washington.

Tax Parcel No: 340420-3-174-0200

Property ID No: P109055



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EXHIBIT "B"
Wells Possession Agreement

Order Number: P-91513

F. Deed *Sten*

3. DEED OF TRUST AND THE TERMS AND CONDITIONS THEREOF:

Grantor: Paul S. Wells and Darcy G. Wells, husband and wife
Trustee: Skagit County Title Company, dba First American Title Company, a Washington corporation
Beneficiary: Bernice Ekrem, a married woman
Amount: \$357,500.00
Dated: May 31, 1996
Recorded: June 4, 1996
Auditor's No.: 9606040132

4. DEED OF TRUST AND THE TERMS AND CONDITIONS THEREOF:

Grantor: Paul S. Wells and Darcy G. Wells, husband and wife
Trustee: First American Title Company of Skagit, a Washington corporation
Beneficiary: InterWest Bank
Amount: \$75,000.00
Dated: August 10, 1999
Recorded: August 16, 1999
Auditor's No.: 199908160149

The following has been added as Paragraph 5 on Schedule B:

5. DEED OF TRUST AND THE TERMS AND CONDITIONS THEREOF:

Grantor: Paul S. Wells and Darcy G. Wells, husband and wife
Trustee: Island Title Company, a Washington corporation
Beneficiary: Whidbey Island Bank
Amount: \$100,000.00
Dated: December 26, 2000
Recorded: December 27, 2000
Auditor's No.: 200012270076

