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Skagit County Auditor

8/30/2007 Page

1 of

8

1:44PM

After recording, return to:

FURLONG ♦ BUTLER  
ATTORNEYS

825 CLEVELAND AVENUE  
MOUNT VERNON, WASHINGTON 98273

Document Title: Agreement in Lieu of Condemnation

Reference number of documents assigned or released: N/A

Grantor: Pickett/Tesarik, LLC, a Washington limited liability company

Grantee: Skagit County Public Hospital District No. 1, a Washington municipal corporation

Legal Description: The south ½ of Lot 10, "DALE AND SHEA'S ADDITION TO THE CITY OF MOUNT VERNON," as per plat recorded in Volume 3 of Plats, page 68, records of Skagit County, Washington.

Assessor's Parcel/Tax I.D. Number: 3717-000-010-0006/P52659

## AGREEMENT IN LIEU OF CONDEMNATION

**THIS AGREEMENT IN LIEU OF CONDEMNATION** ("Agreement") is made this 27<sup>th</sup> day of August 2007, by and between Skagit County Public Hospital District No. 1, a Washington municipal corporation ("Condemnor") and Pickett/Tesarik, LLC, a Washington limited liability company ("Condemnee"). Condemnee recognizes that Condemnor has adopted a resolution finding that the Condemnee's property is necessary to the Condemnor's public uses and authorizing the acquisition of the property subject hereto by condemnation for public use

1. **Property:** The property subject to this Agreement is the real property owned by Condemnee located in the City of Mount Vernon, Skagit County, and legally described below (the "Property").

The south ½ of Lot 10, "DALE AND SHEA'S ADDITION TO THE CITY OF MOUNT VERNON," as per plat recorded in Volume 3 of Plats, page 68, records of Skagit County, Washington.

Situate in the City of Mount Vernon, Skagit County, state of Washington.

Parcel I.D. #3717-000-010-0006/P52659

Commonly known as: 111-1113 E. Kincaid Street, Mount Vernon, Skagit County, Washington.

2. **Earnest Money:** Condemnor shall deposit with Closing Agent one thousand dollars (\$1,000.00) as earnest money within seven (7) days of mutual acceptance hereof. Said earnest money shall apply to the purchase price at closing.

3. **Fair Compensation:** The parties have agreed that the amount of Fair Compensation for the Property based on its value and the terms and conditions herein shall be one hundred fifty thousand four hundred dollars (\$150,400.00) paid in cash at closing, with credit for earnest money.

4. **Title:**

a. Title to the Property shall be marketable at closing. Rights, reservations, covenants, conditions, and restrictions, easements, and encroachments, presently of record, and not materially affecting the value of the Property or unduly interfering with Condemnor's intended use of the Property shall not cause the title to be considered unmarketable. Condemnor shall conclusively be deemed to have accepted the condition of title unless Condemnee receive notice of Condemnor's objections within fourteen (14) days after the preliminary commitment for title insurance and any supplement thereto is received by or made available to Condemnor. Encumbrances not assumed in writing by Condemnor shall be paid by Condemnee on or before closing.



200708300087  
Skagit County Auditor

5. **Title Insurance:** Upon mutual acceptance hereof, Condemnee authorizes Closing Agent, at Condemnor's expense, to apply for a standard form owner's policy of title insurance, inflation protection endorsements, if applicable, and available at no additional cost, to be issued by Land Title Company. The title policy shall contain no exceptions other than those contained in said standard form and those not inconsistent with this Agreement. If title is not so insurable and cannot be made so insurable before or at closing, Condemnor may elect either to waive such encumbrances or defects, or to terminate this Agreement and receive a refund of the earnest money.

6. **Conveyance:** Title shall be conveyed by statutory warranty deed free of encumbrances and defects except those accepted by Condemnor in writing.

7. **Closing:** Closing Agent shall be Bradford E. Furlong of Furlong Butler, Attorneys, 825 Cleveland Avenue, Mount Vernon, Washington 98273 ("Closing Agent"). This sale shall be closed within thirty (30) days after all contingencies are waived or satisfied or by December 31, 2007, whichever is earlier. "Closing" means the date on which all documents are recorded and the sale proceeds are available for disbursement to Condemnee. Condemnor and Condemnee shall deposit with Closing Agent all documents and monies required to complete this sale in accordance with this Agreement.

8. **Closing Costs & Proration:** Condemnor shall pay title insurance, escrow fee, and real estate excise tax. Property taxes shall be prorated at closing.

9. **Possession:** Condemnor shall be entitled to possession on closing.

10. **Notices:** Unless otherwise specified in this Agreement, any and all notices required or permitted to be given under this Agreement must be given in writing. All notices must be signed by an authorized representative of the party giving the notice. Notices shall be deemed to be given when actually received by or at the address of the intended recipient or three (3) business days after deposited in the U.S. Mail, postage prepaid, to such addresses, whichever is sooner.

Notices shall be given to:

**Pickett/Tesarik, LLC:**  
c/o Bradford L. Pickett  
714 W. Division Street  
Mount Vernon, WA 98273

**Skagit County PHD No. 1:**  
Gregg A. Davidson, Superintendent  
P.O. Box 1376  
Mount Vernon, WA 98273

Each party shall be deemed to have received notices when delivered to the foregoing address unless addressee has notified addressor of an address change prior to transmittal. The person authorized by Condemnor to give notices hereunder is: Gregg A. Davidson, Superintendent, Skagit County Public Hospital District No. 1, or his successor.

AGREEMENT IN LIEU OF CONDEMNATION  
CONDEMNEE: PICKETT/TESARIK, LLC  
CONDEMNOR: PHD # 1



200708300087  
Skagit County Auditor

8/30/2007 Page 3 of 8 1:44PM

11. **Hazardous Substances:** Condemnee shall disclose to Condemnor within fifteen (15) days of mutual acceptance:

a. whether, to Condemnee's knowledge, the Property, or any portion thereof, has been affected by the presence of, or there is present on any portion of the Property, oil, hazardous waste, toxic substances or other pollutants or material (hereinafter "Hazardous Substances") present that could be a detriment to the Property or in violation of any local, state or federal law or regulation; and/or

b. whether, to Condemnee's knowledge, there are potentially hazardous environmental conditions upon any portion of the Property; and/or


c. whether, to Condemnee's knowledge, there exists on the Property any oil storage tanks, either above or below ground; and/or

d. whether, to Condemnee's knowledge, Condemnee or any other user or occupant of any part of the Property known to Condemnee has ever been cited for violating any federal, state or local Hazardous Substances or environmental law or regulation with respect to operations or activities on or about the Property. Condemnee shall also deliver any and all reports, test results, and/or other documents relating to the presence or absence of Hazardous Substances on or about the Property to Condemnor within said fifteen (15) day period. If Condemnor shall receive information that the Property has been affected with any environmental contaminants or Hazardous Substances at any time prior to closing, Condemnor, at its discretion, may; (i) delay closing up to ninety (90) days to investigate environmental conditions; or (ii) terminate its obligation to purchase the Property and receive a refund of its earnest money.

12. **Hold Harmless:** In the event it is determined, after this transaction closes, that due to any act or omission of Condemnee or the predecessor owners of the Property, there is a presence of Hazardous Substances or other pollutants or material that could be a detriment to the Property or which renders the Property in violation of any local, state or federal law or regulation, and of which Condemnee had knowledge prior to closing, then in that event, Condemnee agrees to pay, be responsible for and hold Condemnor harmless from any remedial action to either remove or repair the cause of said Hazardous Substance, waste or other pollutants or material that is a detriment to the Property or that renders the Property in violation of any local, state or federal law or regulation, or constitutes and health hazard to any life form and from any and all fines, penalties or assessments imposed upon Condemnor therefor. This paragraph 12 shall survive closing and shall bind and inure to the benefit of the parties' successors and assigns.

13. **Computation of Time:** Unless otherwise expressly specified herein, any period of time specified in this Agreement shall expire at 5:00 p.m. of the last calendar day of the specified period of time, unless the last day is Saturday, Sunday, or legal holiday, as prescribed in RCW 1.16.050, in which event the specified period of time shall expire at 5:00 p.m. of the next business day. Any specified period of five (5) days or less shall include business days only.

AGREEMENT IN LIEU OF CONDEMNATION  
CONDEMNEE: PICKETT/TESARIK, LLC  
CONDEMNOR: PHD # 1

  
200708300087  
Skagit County Auditor

8/30/2007 Page 4 of 8 1:44PM

14. **Termination:** In the event of termination of this Agreement, any costs authorized under this Agreement shall be paid by the party responsible therefor.

15. **General Provisions:** Time is of the essence. There are no verbal agreements which modify this Agreement. This Agreement constitutes the full understanding between Condemnee and Condemnor.

16. **Litigation Costs:** If any legal action or any other proceeding, including an arbitration or action for declaratory relief, is brought for the enforcement of this Agreement or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs incurred in that action or proceeding, including appeals, in addition to any other relief to which the prevailing party may be entitled.

"Prevailing party" shall include without limitation:

- a. a party dismissing an action in exchange for sums allegedly due;
- b. a party receiving performance from the other party of an alleged breach of covenant or a desired remedy where the performance is substantially equal to the relief sought in an action; or
- c. the prevailing party as determined by a court of law.

Venue for any suit shall be solely in Skagit County; this Agreement shall be interpreted pursuant to Washington law.

17. **Successors and Assigns:** This Agreement shall, in whole or in part, inure to the benefit of and be binding on the parties and their respective successors, heirs, assigns, mortgagee and/or beneficiaries. All references to "Condemnees" and "Condemnor" include respective successors, heirs, assigns, mortgagees and/or beneficiaries of each.

18. **Contingencies:** This sale is specifically contingent upon:

a. **Environmental Inspection.** Completion, at Condemnor's option and expense, of environmental inspections and investigations of the Property. Condemnee shall cooperate to provide access at a reasonable time to Condemnor or its agent upon prior notice for purposes of an inspection. Condemnor shall provide to Condemnee notice of waiver of this inspection within thirty (30) days of: (a) mutual acceptance; or (2) after completion of the removal of the structure, as provided below, whichever is later, or this Agreement shall terminate (silence shall mean termination) and the earnest money shall be returned to Condemnor.

AGREEMENT IN LIEU OF CONDEMNATION  
CONDEMNEE: PICKETT/TESARIK, LLC  
CONDEMNOR: PHD # 1



200708300087  
Skagit County Auditor

8/30/2007 Page

5 of

8 1:44PM

b. **Removal of Structure.** Condemnee shall, within sixty (60) days of mutual acceptance, remove from the Property and properly dispose of the entire remains of the duplex structure located on the Property, including all debris, foundations, any underground storage tanks and, if any, contaminated soils, and shall regrade the Property to a pre-construction, rough grade condition, free of debris. Upon completion of such removal and disposal, Condemnee shall call for an inspection by Condemnor and provide to Condemnor proof of the method for disposal of all material removed pursuant to this paragraph. The adequacy of such removal and disposal shall be subject to the approval of Condemnor, which approval shall not unreasonably be withheld. Condemnor shall be under no obligation to close the sale contemplated hereby until the removal and disposal has been satisfactorily completed. Additionally, Condemnor may, at any time, after sixty (60) days of mutual acceptance, terminate this Agreement and receive its earnest money in return if Condemnor has not reasonably accepted the adequacy removal and disposal.

19. **Recordation:** This Agreement, or a memorandum thereof, may be recorded at Condemnor's expense.


20. **Captions:** Captions and headings in this Agreement, including the title of this Agreement, are for convenience only and are not to be considered in construing this Agreement.

21. **Modification and Amendment:** This Agreement may not be modified or amended except in writing signed by Condemnee and Condemnor.

**THE PARTIES**, by their signatures below accept the foregoing terms and shall be bound thereby.

[END OF AGREEMENT. SIGNATURES & NOTARIES FOLLOW.]

AGREEMENT IN LIEU OF CONDEMNATION  
CONDEMNEE: PICKETT/TESARIK, LLC  
CONDEMNOR: PHD # 1

  
200708300087  
Skagit County Auditor  
8/30/2007 Page 6 of 8 1:44PM

**CONDEMNOR:**

SKAGIT COUNTY PUBLIC HOSPITAL DISTRICT NO. 1

By:

*Gregg A. Davidson* / 8/24/07  
GREGG A. DAVIDSON, Superintendent Date

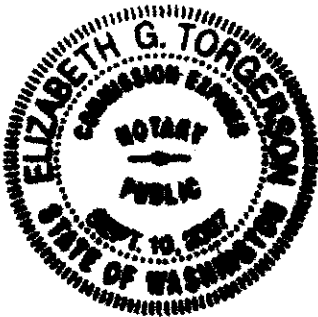
STATE OF WASHINGTON )

ss.

COUNTY OF SKAGIT )

On this 24<sup>th</sup> day of August 2007 before me, the undersigned, a Notary Public in and for the state of Washington, duly commissioned and sworn, personally appeared Gregg A. Davidson, to me known to be the superintendent of Skagit County Public Hospital District No.1, a Washington municipal corporation, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they/he is authorized to execute the said instrument,

Witness my hand and official seal hereto affixed the say and year first above written.



*Elizabeth G. Torgerson*  
Notary Public  
Elizabeth G. Torgerson  
Printed Name

In and for the state of Washington  
Residing at Sedro-Woolley  
My commission expires 9-10-07

AGREEMENT IN LIEU OF CONDEMNATION  
CONDEMNEE: PICKETT/TESARIK, LLC  
CONDEMNOR: PHD # 1



200708300087  
Skagit County Auditor

**CONDEMNEE:**

PICKETT/TESARIK, LLC

Bradford L. Pickett  
BRADFORD L. PICKETT, Member

08-27-07  
Date

Chris Tesarik  
~~CHRIS TESARIK, Member~~

8-27-07

Date

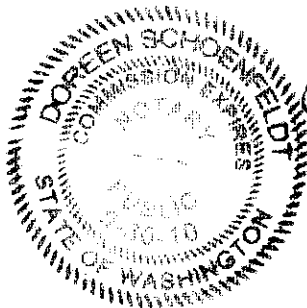
STATE OF WASHINGTON )

SS.

COUNTY OF SKAGIT )

On this 27<sup>th</sup> day of August 2007 before me, the undersigned, a Notary Public in and for the state of Washington, duly commissioned and sworn, personally appeared Bradford L. Pickett and Chris Tesarik, to me known to be members of Pickett/Tesarik, LLC, a Washington limited liability company, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the say and year first above written.



Doreen Schoenfeldt  
Notary Public

Doreen Schoenfeldt  
Printed Name

In and for the state of Washington

Residing at Sedro Woolley

My commission expires 09/30/2010

AGREEMENT IN LIEU OF CONDEMNATION  
CONDEMNEE: PICKETT/TESARIK, LLC  
CONDEMNOR: PHD # 1



200708300087

Skagit County Auditor