



200801310191

Skagit County Auditor

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After recording, return to :
City of Burlington
Public Works Department
833 South Spring Street
Burlington, WA 98233

POSSESSION AND USE AGREEMENT

Reference No.: N/A
Grantors: Co-Trustees of the Einer Knutzen Testamentary Trust
Grantee: City of Burlington
Legal Description: Ptn NE ¼, 31-35-4 E W.M.
Assessor's Tax Parcel No.: P102587
Additional legal description on Schedule "A"

In the matter of: North Burlington Boulevard Improvements Project

Parcel No.: 11

This agreement is made and entered into by and between the City of Burlington, a Municipal Corporation in the State of Washington, hereinafter referred to as the ("City") and the undersigned Grantors, hereinafter referred to as the ("Owner").

RECITALS

The Property described in the attached Schedule "A" of this Agreement (the "Property") is required by the City for the construction of the City of Burlington's North Burlington Boulevard Improvements Project ("the Project");

Delay in construction of the Project is contrary to the public interest;

The City has made a firm and continuing offer to pay the Owner the amount of **One Hundred Ninety Six Thousand Nine Hundred and no/100 dollars (\$196,900.00)** to purchase the Property and/or to compensate the Owner for any reasonable damage to the Property resulting from the Project;

The Owner wishes additional time to evaluate the City's offer and resolve any questions it may have concerning just compensation.

AGREEMENT

1. The parties agree that the Property is necessary for the construction of the Project, and that the Project, which consists of the construction of streets, drainage facilities, and other public utilities is a public purpose in accordance with the terms of Title 8 RCW.
2. The City will issue a Warrant in payment to the Owner of the amount of the firm offer stated above, subject only to deduction of the value of interests of others therein.
3. The Owner grants the City possession and use of the described Property for project purposes, and will surrender possession of the Property to the City not later than [date].
4. The parties agree that the object and use for which the City is acquiring the property rights held by Owner in this case is a public object and a public use, and that the acquisition of the Property is necessary to that public use; *i.e.*, acquisition of interests in real property for the City's North Burlington Boulevard Improvements Project in Burlington, Washington. If the parties cannot agree as to the amount of just compensation due the Owner and the City institutes condemnation proceedings, the Owner will not object and further stipulate to the City's entry of an Order Adjudicating Public Use and Necessity, as provided by RCW 8.12.090 and agree that this instrument shall be treated as having the same legal effect as an Order for Immediate Possession provided by RCW 8.04.090, et seq., which by this reference, are incorporated herein as if fully set forth.
5. The Parties agree that if condemnation proceedings are instituted by the City, this Agreement shall be deemed to satisfy the requirements of a Stipulated Order of Immediate Use and Possession entered pursuant to RCW 8.25.070(3) the provisions of which are incorporated herein by reference. This Agreement shall continue in effect until said proceedings have terminated and the Property is finally acquired by the City.
6. Nothing in this Agreement shall be deemed to waive any right either party may have to a subsequent adjudication of compensation pursuant to state law. Neither this Agreement nor the basis for the payment made pursuant to this Agreement shall be construed as evidence of or an admission of fair market value or just compensation by either party to the Agreement.
7. The date of valuation for the determination of just compensation shall be the date that this agreement is accepted and approved by the Burlington City Council or agent of the City delegated authority by the City Council to enter into the agreement.
8. If condemnation proceedings are instituted, any payment of costs and attorney's fees shall be governed by the provisions of RCW 8.25.070 and 8.25.075.



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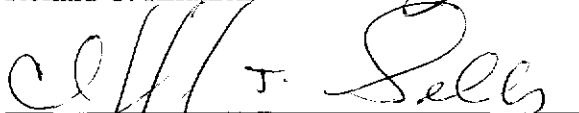
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9. If the City's possession and use of the Property requires that the Owner move from the Property, the Owner waives the requirement of a written notice to move as provided by RCW 8.26.180 and agree to surrender possession of the Property by the date the Agreement is signed by both the City and the Owner.
10. This Agreement is the complete expression of the terms hereto, any other representation whether oral or in writing not incorporated in this Agreement are excluded. The terms and obligations of this Agreement shall be effective when the Agreement is signed by both the City and the Owner. Time is of the essence of the performance of the provisions of this Agreement. Waiver of any default shall not be deemed to be a waiver of any other subsequent default.

DATED this 18th day of Dec, 2007.

CO-TRUSTEES OF THE EINER-KNUTZEN TESTAMENTARY TRUST


Ronald C. Knutzen


Clifford J. Sells


Charles K. Barbo



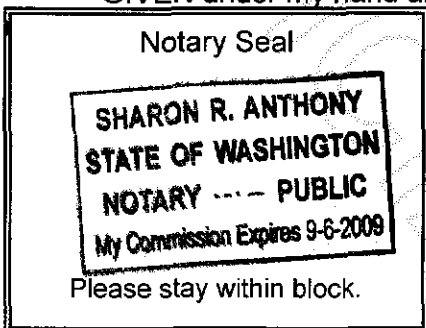
STATE OF WASHINGTON)

County of Skagit)

ss.

On this 18th day of December, 2007, before me personally appeared **Ronald C. Knutzen**, to me known to be the Trustee described in and who executed the foregoing instrument, and acknowledged that in that capacity as Trustee signed the same as the Trust's free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.



Sharon R. Anthony
Notary (print name) Sharon R. Anthony
Notary Public in and for the State of Washington,
residing at Mount Vernon
My Appointment expires 9-6-2009

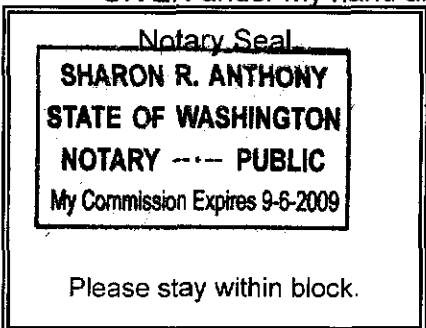
STATE OF WASHINGTON)

County of Skagit)

ss.

On this 18th day of December, 2007, before me personally appeared **Clifford J. Sells**, to me known to be the Trustee described in and who executed the foregoing instrument, and acknowledged that in that capacity as Trustee signed the same as the Trust's free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.



Sharon R. Anthony
Notary (print name) Sharon R. Anthony
Notary Public in and for the State of Washington,
residing at Mount Vernon
My Appointment expires 9-6-2009



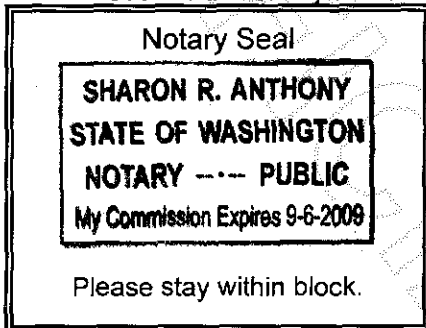
STATE OF WASHINGTON)

County of Skagit)

ss.

On this 19th day of December, 2007, before me personally appeared **Charles K. Barbo**, to me known to be the Trustee described in and who executed the foregoing instrument, and acknowledged that in that capacity as Trustee signed the same as the Trust's free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.



Sharon R. Anthony
Notary (print name) Sharon R. Anthony
Notary Public in and for the State of Washington,
residing at Mount Vernon
My Appointment expires 9-6-2009

ACCEPTED AND APPROVED this 25th day of January, ~~2007~~ 2008.

CITY OF BURLINGTON

Chal. A Martin, P.E.
Chal. A Martin, P.E.
Public Works Director

Attest:

Rebecca A. Zil

Approved as to form:

[Signature]
City Attorney

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SCHEDULE "A"

Legal Description of Parcel P102587 before Right of Way Acquisition

(Shown on Land Title Company Second Limited Liability Report Order No. 120944-LL dated Aug. 7, 2007)

Tract E as delineated on Record of Boundary Line Adjustment Survey Map approved by the City of Burlington and recorded January 4, 2007 under Auditor's File No. 200701040097, records of Skagit County, Washington; being a portion of the Northeast $\frac{1}{4}$ of Section 31, Township 35 North, Range 4 East, W.M.

Situate in the County of Skagit, State of Washington.

Legal Description of Right of Way Acquisition on Parcel P102587

Beginning at the Southeast corner of said Tract E;

Thence North $02^{\circ}22'13''$ East, along the Westerly Right of Way of North Burlington Blvd.,
a distance of 360.08 feet to a point on the North line of said Tract E;

Thence North $89^{\circ}09'19''$ West, along the North line of said Tract E, a distance of 22.48 feet to a point called out as Station 23+80.63, 52.47 feet Left as shown on City of Burlington Right of Way Plan of North Burlington Blvd., Sheet 5 of 7, approved in 2007, on file with the City of Burlington Public Works Department;

Thence South $02^{\circ}39'56''$ West, leaving the North line of said Tract E, a distance of 274.10 feet to a point called out as Station 21+06.53, 53.88 feet Left as shown on the aforementioned Right of Way Plan;

Thence South $30^{\circ}14'03''$ West, a distance of 65.11 feet to a point called out as Station 20+48.97, 84.31 feet Left as shown on the aforementioned Right of Way Plan;

Thence South $62^{\circ}04'50''$ West, a distance of 59.43 feet to a point called out as Station 20+18.99, 135.63 feet Left as shown on the aforementioned Right of Way Plan;

Thence South $01^{\circ}06'00''$ West, a distance of 0.66 feet to a point on the South line of said Tract E;

Thence South $89^{\circ}09'23''$ East, along the South line of said Tract E, a distance of 105.66 feet to the Point of Beginning.

