



200803310182

Skagit County Auditor

3/31/2008 Page 1 of 16 3:31PM

After recording return document to:

State of Washington  
Department of Transportation  
Real Estate Services Office  
P O Box 47338  
Olympia, WA 98504-7338

*Document Title: Possession and Use Agreement*

*Reference Number of Related Document: N/A*

*Grantor(s): Diane M. Martin; Val D. Martin Testamentary Trust; The John W. and Jeanne E. Martin Family Limited Partnership; Martin Commercial Fueling, Inc.*

*Grantee: State of Washington, Department of Transportation*

*Legal Description: Ptn SW 1/4 of the NE 1/4 of Section 6, T34N, R4E, W.M.*

*Additional Legal Description is on Page(s) 12, 13, 14 and 15 of Document*

*Assessor's Tax Parcel Number(s): 340406-1-002-0204 (P23794); 340406-0-156-0010 (P23789); and 340406-0-039-0005 (P23649)*

**GUARDIAN NORTHWEST TITLE CO.**

**POSSESSION AND USE AGREEMENT**

76202

State Route 5, SR 20 Interchange

**ACCOMMODATION RECORDING ONLY**

This AGREEMENT is made and entered into by and between the **State of Washington, Department of Transportation**, hereinafter referred to as the "State", and DIANE M. MARTIN, Trustee of the VAL D. MARTIN TESTAMENTARY TRUST established in Skagit County Probate Case No. 02-4-0-00143-2; DIANE M. MARTIN, a married woman, as her separate estate, and THE JOHN W. AND JEANNE E. MARTIN FAMILY LIMITED PARTNERSHIP, a Washington Limited Partnership, hereinafter referred to as the "Owners", and MARTIN COMMERCIAL FUELING, INC., a Washington corporation, hereinafter referred to as the "Lessee":

**WITNESSETH**

WHEREAS, the State affirms that the Owners' real estate described herein is required by the State for immediate construction of a transportation project.

## POSSESSION AND USE AGREEMENT

AND WHEREAS, the State affirms that any delay in its construction program is contrary to the public interest;

AND WHEREAS, the State has made a firm and continuing offer to pay the amount of NINE HUNDRED THIRTY SIX THOUSAND, TWO HUNDRED AND NO/00 (\$936,200.00) DOLLARS for the purchase of the following described real property situated in Skagit County, in the State of Washington:

For legal description and additional conditions,  
see Exhibit A attached hereto and made a part hereof.

AND WHEREAS, the Owners require additional time to evaluate said offer and/or to resolve any questions concerning just compensation;

NOW THEREFORE, for and in consideration of the payment of said offer, the Owners hereby grant to the State a right to possess and use the above described real estate and the parties further agree that:

1. The real estate is necessary for a public use of the State of Washington.
2. The State will issue a warrant in payment to the Owners of the amount of the offer stated above, subject only to deduction of the value of interests of others therein.
3. Execution of this agreement by the undersigned parties shall not prejudice such parties rights 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.
4. If it becomes necessary for the State to institute condemnation proceedings, the Owners have no objection to the State entering an Order Adjudicating Public Use, as provided by RCW 8.04.070, and agree that this instrument shall be treated as having the same legal effect as an Order for Immediate



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Possession provided by RCW 8.04.090, et seq., which, by this reference, are incorporated herein as if fully set forth.

5. The date of valuation for the determination of just compensation shall be the date that this agreement is accepted and approved by the Department's Director of Real Estate Services.
6. The Owners hereby waive the requirement of a written notice to move, as provided by RCW 8.26.180, and will surrender possession of the above described real estate to the State not later than date of receipt of payment.

Also, the Owners request the Assessor and Treasurer of said County to set over to the remainder of the hereinafter described PARCEL "A", the lien of all unpaid taxes, if any, affecting the real estate herein conveyed, as provided for by RCW 84.60.070.

It is understood and agreed that delivery of this agreement is hereby tendered and that the terms and obligations hereof shall not become binding upon the State of Washington unless and until accepted and approved hereon in writing for the State of Washington, Department of Transportation, by the Director of Real Estate Services.

Dated 2-21, 2008

VAL D. MARTIN TESTAMENTARY TRUST

By: Diane M. Martin  
DIANE M. MARTIN, Trustee

Diane M. Martin  
DIANE M. MARTIN, Individually



**POSSESSION AND USE AGREEMENT**

THE JOHN W. AND JEANNE E. MARTIN  
FAMILY LIMITED PARTNERSHIP,  
a Washington limited partnership

By: *John W. Martin*

JOHN W. MARTIN, General Partner

LESSEES:

MARTIN COMMERCIAL FUELING, INC.,  
a Washington corporation

By: *John A. Martin*

JOHN A. MARTIN, President

By: *Arnold M. Donovan*

ARNOLD M. DONOVAN, Vice President

By: *John W. Martin*

JOHN W. MARTIN, Chair, Board of Directors

By: *Nancy D. Kehl Martin*

NANCY D. KEHL MARTIN, Director

By: *Jacqueline J. Donovan*

JACQUELINE J. DONOVAN, Director

Accepted and Approved

STATE OF WASHINGTON,  
Department of Transportation

By: *ML Palacios*

*for* Gerald L. Gallinger  
Director, Real Estate Services

Date: 3/28/08

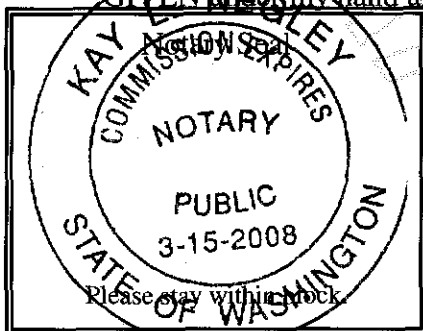


# POSSESSION AND USE AGREEMENT

STATE OF WASHINGTON )  
: ss.  
County of Skagit )

On this 21st day of February, 2008, before me personally appeared DIANE M. MARTIN, 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.



Kay L. Negley  
Notary (print name) KAY L. NEGLEY  
Notary Public in and for the State of Washington,  
residing at Mount Vernon  
My Appointment expires 3/15/2008



**POSSESSION AND USE AGREEMENT**

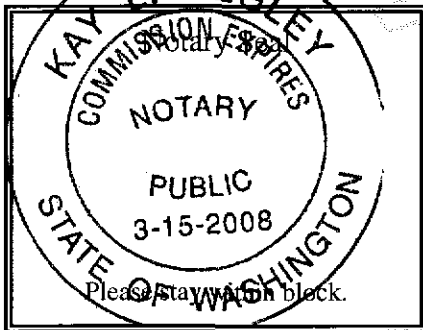
STATE OF WASHINGTON )

: ss.

County of Skagit )

On this 21st day of February, 2008, before me personally appeared DIANE M. MARTIN, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that she signed the same as her 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.



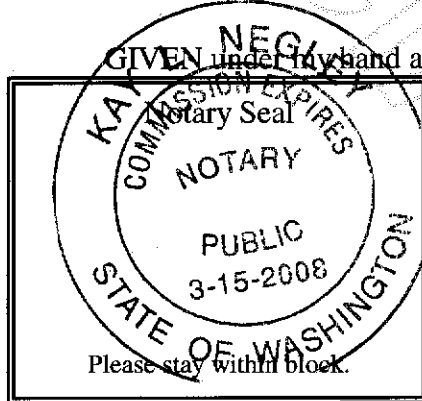
Kay L. Negley  
Notary (print name) KAY L. NEGLEY  
Notary Public in and for the State of Washington,  
residing at Mount Vernon  
My Appointment expires 3/15/2008



# POSSESSION AND USE AGREEMENT

STATE OF WASHINGTON )  
 : ss.  
County of Skagit )

On this 21<sup>st</sup> day of February, 2008, before me personally appeared JOHN A. MARTIN, to me known to be the President of the corporation that executed the foregoing instrument, and acknowledged 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 he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.



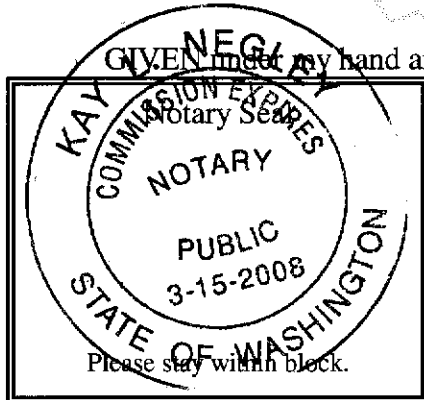
Kay L. Wegley  
Notary (print name) KAY L. WEGLEY  
Notary Public in and for the State of Washington,  
residing at Mount Vernon  
My Appointment expires 3/15/2008



**POSSESSION AND USE AGREEMENT**

STATE OF WASHINGTON )  
 : ss.  
County of SKAGIT )

On this 21 day of February, 2008, before me personally appeared ARNOLD M. DONOVAN, to me known to be the Vice President of the corporation that executed the foregoing instrument, and acknowledged 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 he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.



Kay L. Negley  
Notary (print name) KAY L. NEGLEY  
Notary Public in and for the State of Washington,  
residing at Mount Vernon  
My Appointment expires 3/15/2008



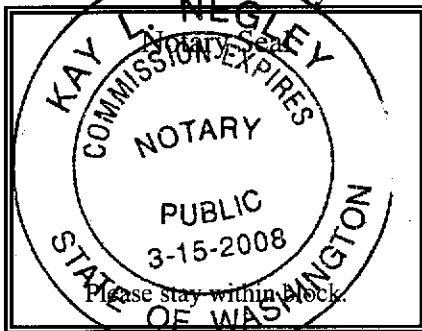


**POSSESSION AND USE AGREEMENT**

STATE OF WASHINGTON )  
: ss.  
County of SKAGIT )

On this 21 day of February, 2008, before me personally appeared JOHN W. MARTIN, to me known to be the Chair, Board of Directors of the corporation that executed the foregoing instrument, and acknowledged 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 he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

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



Kay L. Negley  
Notary (print name) KAY L NEGLEY  
Notary Public in and for the State of Washington,  
residing at MOUNT VERNON  
My Appointment expires 3/15/2008



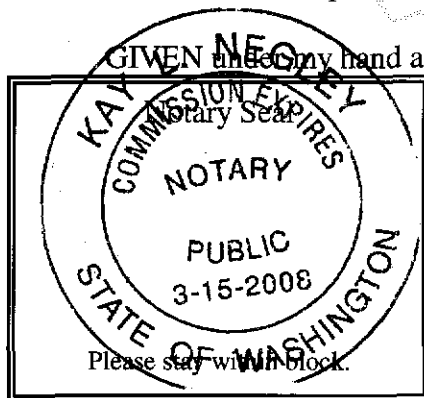
# POSSESSION AND USE AGREEMENT

STATE OF WASHINGTON )

: ss.

County of SKAGIT )

On this 21<sup>st</sup> day of February, 2008, before me personally appeared NANCY D. KEHL MARTIN, to me known to be a Director of the corporation that executed the foregoing instrument, and acknowledged 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 she was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.



Kay L. Negley  
Notary (print name) KAY L. NEGLEY  
Notary Public in and for the State of Washington,  
residing at MOUNT VERNON  
My Appointment expires 3/15/2008



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Skagit County Auditor

**POSSESSION AND USE AGREEMENT**

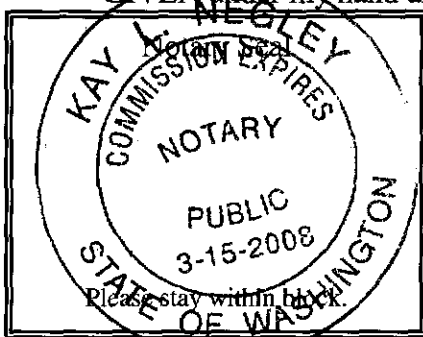
STATE OF WASHINGTON )

: ss.

County of SKAGIT )

On this 21<sup>st</sup> day of February, 2008 before me personally appeared JACQUELINE J. DONOVAN, to me known to be a Director of the corporation that executed the foregoing instrument, and acknowledged 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 she was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

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



Notary (print name) Kay L. Negely

KAY L. NEGELY

Notary Public in and for the State of Washington,  
residing at MOUNT VERNON

My Appointment expires 3/15/2008



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Skagit County Auditor

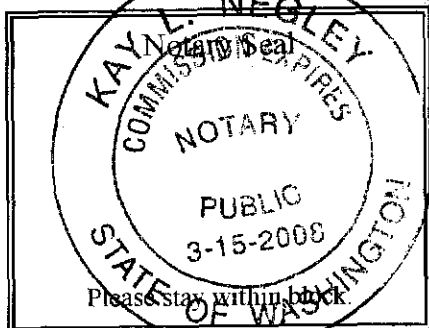
STATE OF WASHINGTON )

: ss.

County of Skagit )

On this 21<sup>st</sup> day of February, 2008, before me personally appeared JOHN W. MARTIN known to me to be the General Partner of THE JOHN W. AND JEANNE E MARTIN FAMILY LIMITED PARTNERSHIP, the limited partnership that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said limited partnership, for the uses and purposes therein mentioned, and each on oath stated that they were authorized to execute said instrument.

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



Kay L. Negley  
Notary (print name) KAY L. NEGLEY  
Notary Public in and for the State of Washington,  
residing at MOUNT VERNON  
My Appointment expires 3/15/2008

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Skagit County Auditor

## POSSESSION AND USE AGREEMENT

### EXHIBIT A

#### **Rights to be acquired in fee:**

All that portion of the hereinafter described PARCEL "A" lying northeasterly of a line beginning at a point opposite Highway Engineer's Station (herein after referred to as HES) N 21+34.73 on the N-line survey of SR 5, SR 20 Interchange and 57 feet southerly therefrom; thence southeasterly to a point opposite HES 314+90.64 on the SR 5 line survey of said Highway and 361.81 feet westerly therefrom; thence southeasterly to a point opposite HES 314+56.50 on said SR 5 line survey and 260 feet westerly therefrom; thence southeasterly to a point opposite HES 314+11± on said SR 5 line survey and 160.98 feet westerly therefrom, said point being on the easterly line of said PARCEL "A" and the end of this line description.

AND all that portion of the hereinafter described PARCEL "A" lying southwesterly of a line beginning at HES NT 22+58.64 on the NT line survey of said Highway; thence northeasterly to a point opposite said HES NT 22+58.64 and 32.55 feet northeasterly therefrom; thence southeasterly to a point opposite HES NT 23+00.08 on said line survey and 30.05 feet northeasterly therefrom; thence southeasterly to a point opposite HES NT 23+50.15 on said line survey and 29.89 feet northeasterly therefrom; thence southeasterly to a point opposite HES NT 24+00.04 on said line survey and 28.80 feet northeasterly therefrom; thence southeasterly to a point opposite HES NT 24+17.71 on said line survey and 26.48 feet northeasterly therefrom; thence southwesterly to said HES NT 24+17.71 and the end of this line description.

Also, the Owners herein convey and grant to the State of Washington all rights of ingress and egress (including all existing, future or potential easements of access, light, view and air) to, from and between SR 5, SR 20 Interchange and the remainder of said PARCEL "A";

EXCEPT that the Owners herein reserve for themselves, their heirs, successors or assigns, the right of reasonable access to the NT line connection of said Highway southerly of HES 314+90.64 on the SR 5 line survey;

AND EXCEPT that the Owners herein reserve for themselves, their heirs, successors or assigns, the right of reasonable access to Andis Rd.



## POSSESSION AND USE AGREEMENT

### EXHIBIT A (continued)

#### **Rights to be acquired in temporary easement**

Purpose: Providing a work area for adjacent highway construction-related activities.  
Termination date: October 31, 2013

All that portion of the hereinafter described PARCEL "A" lying within a tract of land beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) 314+90.64 on the SR 5 line survey of SR 5, SR 20 Interchange and 361.81 feet westerly therefrom; thence on the arc of a curve to the left having a radius of 760 feet for a distance of 13.4 feet to a point opposite HES NT 20+24.89 on the NT line survey of said Highway and 87.26 feet easterly therefrom; thence southerly to a point opposite HES NT 20+65.15 on said NT line survey and 84.62 feet easterly therefrom; thence southeasterly to a point opposite HES NT 20+81.79 on said NT line survey and 134.32 feet easterly therefrom; thence northeasterly to a point opposite HES NT 20+32.47 on said NT line survey and 150.83 feet easterly therefrom; thence northwesterly to the point of beginning.

AND all that portion of the hereinafter described PARCEL "A" lying within a tract of land beginning at a point opposite HES 312+04.08 on the SR 5 line survey of said Highway and 237.01 feet westerly therefrom; thence northeasterly to a point opposite HES 312+29.33 on said line survey and 202.22 feet westerly therefrom; thence northerly to a point opposite HES 312+62.29 on said line survey and 196.40 feet westerly therefrom; thence easterly to a point opposite HES 312+67.27 on said line survey and 146.49 feet westerly therefrom; thence southerly to a point opposite HES 311+97.55 on said line survey and 139.46 feet westerly therefrom; thence westerly to the point of beginning.



## POSSESSION AND USE AGREEMENT

### EXHIBIT A (continued)

#### PARCEL "A"

All that portion of the northeast quarter of the southwest quarter of the northeast quarter of Section 6, Township 34 North, Range 4 East, W.M., Skagit County, Washington lying northerly of the Andis Road and lying within the boundaries of the following described tract:

Beginning at a point on the south line of said Andis Road opposite Highway Engineer's Station (hereinafter referred to as HES) 311+64 on the survey line of State Highway Route No. 5, Skagit River to Junction SR 20 and 136.08 feet westerly therefrom; thence northwesterly to a point opposite HES 314+30 on said survey line and 162.90 feet westerly therefrom; thence northwesterly to point opposite HES 315+78.54 on said survey line and 259.09 feet westerly therefrom; thence northwesterly to a point 60 foot distant southerly when measured at right angles and/or radially from the WE-S Ramp line survey of said SR 5 at Station 1+01-61 P.C.; thence westerly to an intersection with the easterly boundary of a strip of land having a width of 80 feet, being 40 feet wide on each side when measured at right angles and/or radially from the A line survey of SR 5, Skagit River to Junction SR 20; thence southerly along the easterly line of said 80 foot wide strip (being also identified in Skagit County Superior Court Cause No. 33-037 as condemned therein) to the southerly line of the Andis Road; thence east along the south line of the Andis Road to the point of beginning;

EXCEPT therefrom that portion thereof lying with the boundaries of the four following described tracts:

No. 1: Beginning at a point on the south line of said Andis Road opposite HES 311+64 on the survey line of State Route No. 5, Skagit River to Junction SR 20 and 136.08 feet westerly therefrom; thence west along the south line of the said Andis Road, a distance of 115.00 feet; thence northerly at right angles to said south line, a distance of 100.00 feet; thence east parallel with said south line to the east line of the hereinabove described main tract; thence southerly along the east line of said main tract to the point of beginning.



## POSSESSION AND USE AGREEMENT

### EXHIBIT A (continued)

No. 2: All that portion of the hereinabove main tract lying easterly of a line described as follows:

Beginning at a point on the south line of said Andis Road opposite HES 311+64 on the survey line of State Highway Route No. 5, Skagit River to Junction SR 20 and 136.08 feet westerly therefrom; thence westerly along said south line a distance of 115.00 feet to the True Point of Beginning of this right-of-way line description; thence northerly, at right angles to said south line 100.00 feet; thence east parallel with said south line to a line extending northwesterly from said point of beginning to a point opposite HES 314+30 on said survey line and 162.90 feet westerly therefrom; thence northerly to said point opposite HES 314+30; thence northwesterly to a point opposite HES 315+78.54 on said survey line and 259.09 feet westerly therefrom and the terminal point of the right-of-way line description.

No. 3: All that northerly portion of the hereinabove described main tract lying within those premises conveyed to the State of Washington by deeds recorded as Auditor's File No. 8107270034 and 8107270035.

No. 4: All that southerly portion of the hereinabove described main tract lying within the unvacated portion of the right-of-way for Andis Road.

TOGETHER WITH all that portion of the former cul-de-sac for Andis Road, State Turnback as described and set forth in "Order Vacating County Road" recorded under Auditor's File No. 9102080020, records of Skagit County, Washington which upon vacation reverted to said premises by operation of law.

The lands herein described contain an area of 21,538 square feet, more or less, to be acquired in fee and an area of 7,310 square feet, more or less, to be acquired in temporary easement, the specific details concerning all of which are to be found in that certain map of definite location now of record and on file in the office of the Secretary of Transportation at Olympia, and bearing date of approval November 20, 2006, revised November 29, 2007.

Owners' Initials *SWM* *SKM*

