

POSSESSION AND USE AGREEMENT



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Skagit County Auditor

After recording return document to:

5/19/2008 Page 1 of 16 3:15PM

City of Mount Vernon
Attn.: Mikael Love, Public Works Department
1024 Cleveland Avenue
Mount Vernon, WA 98273-0809

Document Title: Possession and Use Agreement
Reference Number of Related Document: N/A
Grantor: MOUNT VERNON PLAZA ASSOCIATES, LLC, et al
Grantee: CITY OF MOUNT VERNON
Legal Description: Ptn. of NW 1/4 of SW 1/4, 17-34-4E W.M.
Additional Legal Description is on Exhibit "A" of this Document.
Assessor's Tax Parcel Numbers: P25984, P25678

POSSESSION AND USE AGREEMENT

City of Mount Vernon, College Way and Riverside Drive Improvement Project

This AGREEMENT is made and entered into by and between **THE CITY OF MOUNT VERNON, a Municipal Corporation of the State of Washington**, hereinafter referred to as the "City", and **EDUARD P. ROCKEY, as his separate property**, as to an undivided 1/10 interest, as to Parcels "A" and "B"; **BABETTE LENA PHILLIPS, as Trustee of the BABETTE PHILLIPS LIVING TRUST**, as to an undivided 1/10th interest, as to Parcels "A" and "B"; **ISOBELL BURTENSHAW, as her separate property**, as to an undivided 1/5 interest, as to Parcels "A" and "B"; a undivided 1/25th interest each to **NORAH LEE SMITH, a married person as her separate property**, **PENNY VANBUREN, f/k/a PENNY LEE MERRELL, a married person as her separate property**, **WENDEE HAMILTON, f/k/a/ WENDEE CYR, a married person as her separate property**, **TRACIE CYR, a single person**, and **PHILLIP E. CYR, a single man** , as to Parcels "A" and "B"; **MOUNT VERNON PLAZA ASSOCIATES, LLC, a Washington Limited Liability Company**, as to an undivided 2/5th interests, as to Parcels "A" and "B", hereinafter referred to as the "Owners":

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WITNESSETH

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

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

AND WHEREAS, the City has made a firm and continuing offer to pay the amount of **TWO HUNDRED FIFTY NINE THOUSAND THREE HUNDRED (\$259,300.00) 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 Owner requires 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 Owner hereby grants to the City 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 City of Mount Vernon.
2. The City will issue a warrant in payment to the Owner 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 party shall not prejudice such party's 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.



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4. If it becomes necessary for the City to institute condemnation proceedings, the Owner has no objection to the City entering an Order Adjudicating Public Use, as provided by RCW 8.08.040, and agrees 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 date of valuation for the determination of just compensation shall be the date that this agreement is accepted and approved by the City of Mount Vernon.
6. The Owner hereby waives 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 City not later than date of receipt of payment.

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 City of Mount Vernon unless and until accepted and approved hereon in writing for the City of Mount Vernon.

Dated March 26th, 2008



POSSESSION AND USE AGREEMENT

GRANTOR:

EDUARD P. ROCKEY

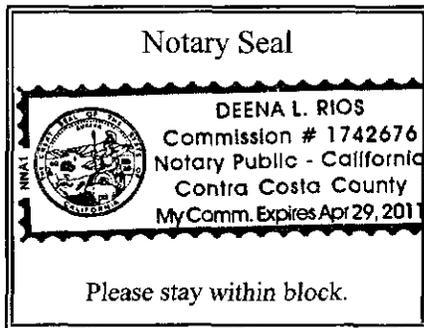
Edward P. Rockey

STATE OF _____)

County of Contra Costa : ss.

On this 26 day of March, 2008, before me personally appeared EDUARD P. ROCKEY, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he signed the same as his 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.



Deena L. Rios
Notary (print name) Deena L. Rios
Notary Public in and for the State of CA
residing at 4474 Treat Blvd Concord, CA 94521
My Appointment expires 04/29/2011



POSSESSION AND USE AGREEMENT

GRANTOR:

BABETTE LENA PHILLIPS, TRUSTEE OF THE BABETTE PHILLIPS LIVING TRUST

Babette L. Phillips

STATE OF California)
County of Monterey) : ss.

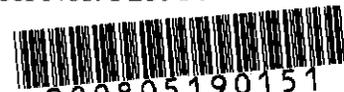
On this 25 day of March, 2008 before me personally appeared BABETTE LENA PHILLIPS, to me known to be a Trustee described in and who executed the foregoing instrument, and acknowledged that in her capacity as Trustee, signed the same as the Trust's free and voluntary act and deed, for the uses and purposes therein mentioned.

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

Notary Seal

Please stay within block.

Ronald Michael Alvarez JR
Notary (print name) Ronald Michael Alvarez JR
Notary Public in and for the State of
residing at Salinas Ca
My Appointment expires June 23, 2009



POSSESSION AND USE AGREEMENT

GRANTOR:

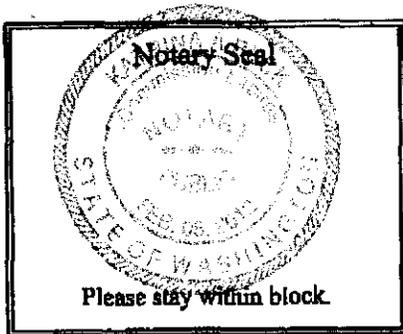
ISOBELL BURTENSHAW

Isobel Burtenshaw

STATE OF WASHINGTON)
County of KING, WA.) ss.

On this 28 day of March, 2008 before me personally appeared ISOBELL BURTENSHAW, 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.



Katriona A Beck
Notary (print name) Katriona A Beck
Notary Public in and for the State of Washington,
residing at King County
My Appointment expires Feb 9, 2012



POSSESSION AND USE AGREEMENT

GRANTOR:

NORAH LEE SMITH

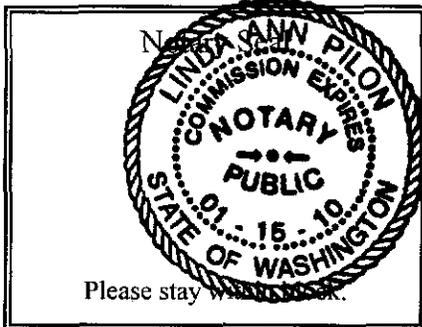
Norah Lee Smith

STATE OF WASHINGTON)

County of Whatcom) : ss.

On this 27th day of March, 2008, before me personally appeared NORA LEE SMITH, 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.



Linda Ann Pilon
Notary (print name) Linda Ann Pilon
Notary Public in and for the State of Washington,
residing at Bellingham
My Appointment expires 1/15/10



POSSESSION AND USE AGREEMENT

GRANTOR:

PENNY VAN BUREN

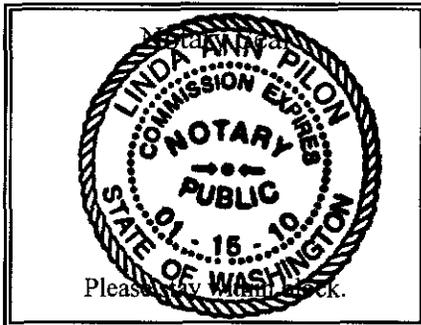
Penny Van Buren

STATE OF WASHINGTON)

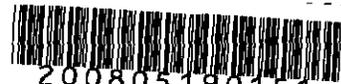
County of Whatcom) : ss.

On this 27 day of March, 2008, before me personally appeared PENNY VANBUREN, 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.



Linda Ann Pilon
Notary (print name) Linda Ann Pilon
Notary Public in and for the State of Washington,
residing at Bellingham
My Appointment expires 11/15/10



POSSESSION AND USE AGREEMENT

GRANTOR:

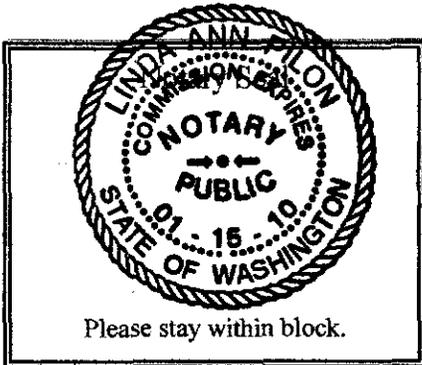
WENDEE HAMILTON

Wendee Hamilton

STATE OF WASHINGTON)
: ss.
County of Whatcom)

On this 27 day of March, 2008, before me personally appeared WENDEE HAMILTON 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.



Linda Ann Pilon
Notary (print name) Linda Ann Pilon
Notary Public in and for the State of Washington,
residing at Bellingham
My Appointment expires 1/15/10



POSSESSION AND USE AGREEMENT

GRANTOR:

TRACIE CYR

Tracie Cyr

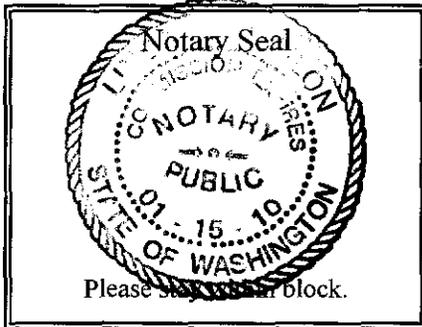
STATE OF WASHINGTON)

County of Whatcom)

: ss.

On this 27th day of March, 2008, before me personally appeared TRACIE CYR, 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.



Linda Ann Pilon

Notary (print name) Linda Ann Pilon
Notary Public in and for the State of Washington,
residing at Bellingham
My Appointment expires 1/15/10



POSSESSION AND USE AGREEMENT

GRANTOR:

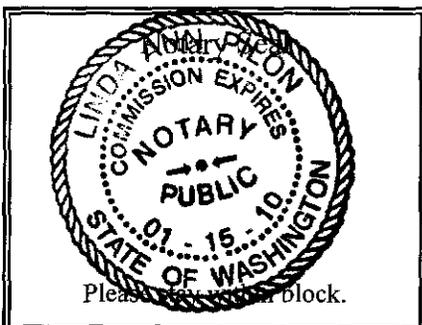
PHILLIP E. CYR

Phillip E. Cyr

STATE OF WASHINGTON)
)
) : ss.
County of Whatcom)

On this 26 day of MARCH, 2008, before me personally appeared PHILLIP E. CYR and, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he signed the same as his 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.



Linda Ann Pilon
Notary (print name) Linda Ann Pilon
Notary Public in and for the State of Washington,
residing at Bellingham
My Appointment expires 1/15/10



POSSESSION AND USE AGREEMENT

GRANTOR:

MOUNT VERNON PLAZA ASSOCIATES, LLC

By: 
Eli Genauer

Its: Managing Member

STATE OF WASHINGTON)
County of KING) ss.

On this 26th day of MARCH, 2008, before me personally appeared ELI GENAUER, to me known to be Managing Member of Mount Vernon Plaza Associates, LLC, a limited liability company, that executed the foregoing instrument, and acknowledged 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 he authorized to execute said instrument.

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



MARK H. ANDERSON
Notary (print name) Mark H. Anderson
Notary Public in and for the State of Washington,
residing at DES MOINE
My Appointment expires 10-19-11



POSSESSION AND USE AGREEMENT

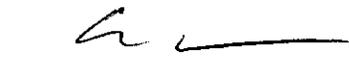
GRANTEE:

CITY OF MOUNT VERNON

Approved as to Form:

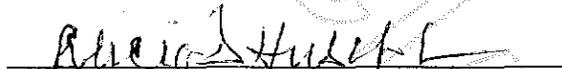


Bud Norris, Mayor



Kevin Rogerson, City Attorney

Attest:



Alicia Huschka, Finance Director



POSSESSION AND USE AGREEMENT

Right-of-Way Acquisition

That portion of the following described Parcels "A" and "B", lying Northerly and Westerly of the following described line:

Commencing at the Northwest corner of the Southwest 1/4 (West 1/4 corner) of Section 17, Township 34 North, Range 4 East, W.M.;
thence South 0°24'00" West along the West line of said Southwest 1/4 for a distance of 669.94 feet, more or less, to the Southwest corner of the North 1/2 of the Northwest 1/4 of the Southwest 1/4 of said Section 17;
thence South 89°42'08" East along said South line for a distance of 37.00 feet to the TRUE POINT OF BEGINNING of said line description;
thence North 00°24'00" East for a distance of 27.82 feet;
thence North 2°30'00" East for a distance of 192.33 feet;
thence South 89°42'08" East for a distance of 2.00 feet;
thence North 2°30'00" East for a distance of 115.09 feet;
thence North 89°42'08" West for a distance of 2.27 feet;
thence North 00°24'00" East for a distance of 73.05 feet;
thence North 14°26'10" East for a distance of 45.87 feet;
thence North 00°24'00" East for a distance of 136.54 feet;
thence North 49°28'26" East for a distance of 37.83 feet;
thence South 89°37'00" East for a distance of 48.09 feet;
thence North 87°35'56" East for a distance of 329.36 feet, more or less, to the South line of the North 40.00 feet of said Southwest 1/4 of said Section 17, Township 34 North, Range 4 East, W.M., being the existing Southerly right-of-way margin of SR 538, College Way and also being the terminus of said line description.



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EXHIBIT "A"

Parcels "A" (P25984)

(Shown as Parcel A on Land Title Company Limited Liability Report Order No. 123867)

That portion of the North 1/2 of the Northwest 1/4 of the Southwest 1/4 of Section 17, Township 34 North, Range 4 East, W.M., lying West of the Pacific Northwest Traction Company right of way,

EXCEPT the South 450 feet thereof,

AND EXCEPT those portions thereof lying within the boundaries of the County road and State Highway rights-of-way,

AND EXCEPT that portion thereof lying East of a line running South from a point on the South line of the A. W. Furber Road that is 262.33 feet West of the West line of the Old Pacific Northwest Traction Company right-of-way,

AND EXCEPT the North 10 feet conveyed to the City of Mount Vernon by Deeds recorded under Auditor's File Nos. 816623 through 816628, inclusive.



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EXHIBIT "A"

Parcel "B" (P25678)

(Shown as Parcel B on Land Title Company Limited Liability Report Order No. 123867)

That portion of the North 1/2 of the Northwest 1/4 of the Southwest 1/4 of Section 17, Township 34 North, Range 4 East, W.M., described as follows:

BEGINNING at a point on the East side of the State Highway, 450 feet North of the South line of said subdivision;
thence South along the East line of said highway, 115 feet;
thence East parallel to the South line of said subdivision, 211 feet;
thence North to a point 211 feet East of the POINT OF BEGINNING and 450 feet North of the South line of said subdivision;
thence West to the POINT OF BEGINNING.

ALL OF THE ABOVE BEING SUBJECT TO and TOGETHER WITH easements, reservations, restrictions, covenants, liens, leases, court causes and other instruments of record.

All situate in the City of Mount Vernon, County of Skagit, State of Washington.

Area of new right-of-way = 11,709 sq. ft.

