

**ELECTRONICALLY RECORDED**

201712080309

10

12/08/2017 11:19 AM

83.00

SNOHOMISH COUNTY, WASHINGTON

**RETURN ADDRESS**

City of Mountlake Terrace

P.O. Box 72

Mountlake Terrace, WA 98043

Please print neatly or type information

**Document Title(s)**

Possession and Use Agreement

**Stewart Title**

01148-58578

**Reference Number(s) of related documents:**

Additional reference #s on page \_\_\_\_\_

**Grantor(s)** (Last, First and Middle Initial)

Diane Parker

Additional grantors #s on page \_\_\_\_\_

**Grantee(s)** (Last, First and Middle Initial)

City of Mountlake Terrace

Additional grantees #s on page \_\_\_\_\_

**Legal Description** (abbreviated form: i.e. lot, block, plat or section, township, range quarter/quarter)

PTN Lot 20, Blk 2, Mountlake Terrace Div. #5, Snohomish County

Washington

Additional legal is on page \_\_\_\_\_

**Assessor's Property Tax Parcel/Account Number:**

00520900202000

Additional parcel #s on page \_\_\_\_\_

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy of completeness of the indexing information provided herein.

201712080309

**DEC 08 2017**

KIRKE SIEVERS, Snohomish County Treasurer

By KIRKE SIEVERS

**After recording return document to:**

City of Mountlake Terrace  
Attn: City Clerk  
P.O. Box 72  
Mountlake Terrace, WA 98043

Document Title: Possession and Use Agreement  
Grantor(s): Diane Parker and Eric Broadley  
Grantee: City of Mountlake Terrace  
Abbreviated Legal: Ptn of Lot 20, Block 2, Mountlake Terrace Division No. 5,  
Snohomish County, WA  
Tax Parcel No.: 00520900202000  
Main Street Revitalization Project  
Project Parcel #88

STEWART \_\_\_\_\_

STEWART 01148-58578  
(10)

**POSSESSION AND USE AGREEMENT**

THIS POSSESSION AND USE AGREEMENT ("Agreement") is dated effective as of the date last signed below. The parties ("Parties") to this Agreement are **City of Mountlake Terrace**, a Washington municipal corporation ("City"), and **Diane Parker** ("Owner").

- A. The Owner owns certain real property located at 5902 236th Street SW, Mountlake Terrace, WA ("Property"); and
- B. The City seeks to acquire certain portions of the Property or property rights for immediate construction of the Main Street Revitalization Project ("Project"). Specifically, the City seeks to acquire a partial taking of that portion of the Property legally described and depicted on **Exhibits A and A-1** hereto ("Fee Take Area"). The City will also be acquiring a portion of the Property for a utility easement as legally described and depicted, and in substantially the form of **Exhibits B and B-1** hereto ("Utility Easement Areas"). The City also seeks to acquire a portion of the Property for a temporary construction easement as depicted, and in substantially the form of **Exhibit C** hereto ("TCE Area"). **Exhibits A and A-1; B and B-1 and C** are attached hereto and incorporated herein by this reference and the Fee Take Area, Utility Easement Areas and the TCE Area are hereinafter referred to collectively as the "Right-of-Way Property".
- C. Any delay in the City's construction program is contrary to the public interest; and

## POSSESSION AND USE AGREEMENT

- D. The City has made a firm offer on June 21, 2016 (in the amount of \$8,700.00) and a revised offer on February 24, 2017 and is continuing its offer to pay the amount of Nine Thousand Eight Hundred and No/100 Dollars (\$9,800.00) for the purchase of the Right-of-Way Property; and
- E. The Owner wishes to grant the immediate possession and use of the Right-of-Way Property to the City for the purpose of commencing construction; and
- F. The Parties require additional time in order to evaluate the offer and/or to resolve any questions concerning just compensation, conclude negotiations, and to close the sale of the Right-of-Way Property to the City.

### **NOW, THEREFORE, the Parties agree as follows:**

1. City Payment. Upon the execution by the City and Owner of this Agreement, the City will issue a warrant to Stewart Title for the benefit of the Owner in the amount of \$9,800.00, subject only to deduction of the value of interests of others therein. This amount shall be applied to the sale of the Right-of-Way Property from the Owner at closing or, if the parties cannot reach agreement, condemnation will be filed, and the payment amount will be applied toward the value of the Right-of-Way Property determined by/in that action.
2. Condemnation. The Parties stipulate and acknowledge that the Right-of-Way Property is necessary for public use of the City. If it becomes necessary for the City to institute condemnation proceedings, the Owner waives any objection and stipulates to the entry of an Order Adjudicating Public Use and Necessity as provided in RCW 8.12.090, and stipulates and acknowledges that this Agreement shall be treated as having the same legal effect and accorded the same provisions as an Order for Immediate Possession and Use provided by RCW 8.25.070 which by this reference are incorporated herein as fully set forth. It is expressly understood by both Parties that by signing this Agreement, the Owner is deemed to have met the requirements of RCW 8.25.070(3) concerning responding to a written request for possession and use and that the date of City's acceptance of this Possession and Use Agreement is the agreed date of valuation.
3. Possession. Upon recording of this Agreement in the records of the Snohomish County Auditor, the Owner hereby grants possession and use of the Right-of-Way Property to the City, its employees, agents, contractors, and representatives for the purpose of commencing construction and performing all tasks necessary for completion of the above referenced project. 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 real estate to the City immediately upon recording of the Possession and Use Agreement, unless extended in writing under a separate rental agreement.

## POSSESSION AND USE AGREEMENT

4. Indemnification. The Owner and the City hereby agree to indemnify, hold harmless, and defend each other from any and all claims, liability, damages, costs, expenses, and judgments arising from the negligence or intentional misconduct of their respective officers, employees, agents, or contractors on the Right-of-Way Property or the Property, occurring prior to closing or final decree transferring title to the Right-of-Way Property.
5. Real Estate Taxes Set Over. Pursuant to RCW 84.60.070, Owner elects to have any and all taxes, assessment, interest, and penalties due and owing on the property set over to those portions of Parcel No. 00520900202000 that are not subject to this Agreement.
6. The City will continue to negotiate with the Owner for the required Right-of-Way Property as well as in regard to the Owner's ingress and egress to the property. The Owner may provide additional appraisal information, supplied by a state certified appraiser, or other applicable cost information to the City for negotiating purposes. If the City and Owner agree on a price for the Owner's real estate, the Owner will execute a Statutory Warranty Deed or other conveyance documents to the City for the herein-described property and property rights.
7. If the City and Owner cannot agree on a price for the Owner's real property within four (4) months of the date of this agreement, or if title cannot be cleared in escrow, the City may institute condemnation proceedings; provided that the City reserves the right to institute condemnation proceedings at any time upon impasse or request by the Owner.
8. General Provisions:

8.1 Entire Agreement. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement. This Agreement shall be recorded against the property.

8.2 Recording. Upon acceptance by the City, the City is authorized to record this Possession and Use Agreement in the records of the Snohomish County Auditor.

8.3 Advice of Counsel. The Owner has been advised of Owner's right to secure review of this Agreement by Owner's own legal counsel and has not relied upon the City for any advice concerning this Agreement.

8.4 Amendments. No provision of this Agreement may be amended or modified except by written agreement signed by the Parties.

8.5 Severability. Any provision of this Agreement which is declared invalid or illegal shall in no way affect or invalidate any other provision and such other sections or provisions shall remain in full force and effect.

## POSSESSION AND USE AGREEMENT

8.6 Authority. Each Party represents and warrants that the individuals executing this Agreement are duly authorized to execute this Agreement.

8.7 Attorney Fees and Jurisdiction. In the event any of the Parties default on the performance of any terms of this Agreement or any Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, said Party shall pay all its own attorneys' fees, costs, and expenses. The venue for any dispute related to this Agreement shall be Snohomish County, Washington.

8.8 Waiver of Breach. Failure of a Party to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default.

8.9 Performance. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.

8.10 Successors in Interest. This Agreement is intended to protect the value of the Property, as well as the public health, safety, and welfare of the City of Mountlake Terrace, and the benefits and burdens inuring to the Property, and to the City, from this Agreement shall run with the land and shall be binding upon Owner and its heirs, successors, and assigns, and upon the City of Mountlake Terrace.

The date of this Agreement will be the date executed by the City of Mountlake Terrace and the parties further agree that the terms and obligations herein shall not become binding upon the City unless and until accepted and approved hereon in writing for the City by its authorized agent.

OWNER:

  
\_\_\_\_\_  
Diane Parker

Date: 4.10.17

  
\_\_\_\_\_  
Eric Broadley

Date: \_\_\_\_\_

Accepted and approved by the  
City of Mountlake Terrace

By:   
\_\_\_\_\_  
Printed Name: Scott Hugill  
Title: City Manager  
Date: 4/14/17

POSSESSION AND USE AGREEMENT

STATE OF WASHINGTON )

County of Snohomish : ss

On this 10th day of April 20 17, before me personally appeared Diane Parker [REDACTED] to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged that they signed and sealed the same as their 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.



Laura Floyd

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

My commission expires 11-12-2017

STATE OF WASHINGTON )

County of Snohomish : ss

On this 14th day of April before me personally appeared Scott Hugill to me known to be the City Manager of the City of Mountlake Terrace, Washington, that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said City, for the uses and purposes therein mentioned, and oath stated that he was authorized to execute said instrument as City Manager of said City.

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



Mick Horton

Name: mick Horton

Notary Public in and for the State of Washington, residing at MOUNTLAKE TERRACE

My commission expires 6-13-2020

**EXHIBIT A**  
**PARCEL NO. 00520900202000**  
**RIGHT OF WAY ACQUISITION**

THAT PORTION OF THE HEREINAFTER DESCRIBED PARCEL "A" DESCRIBED AS FOLLOWS:

THE NORTH 3.50 FEET;

EXCEPT THE SOUTH 1.00 FOOT OF THE EAST 27.00 FEET THEREOF.

CONTAINING 183 SQUARE FEET, MORE OR LESS.

PARCEL "A":

(PER STEWART TITLE COMPANY ORDER NO. 27832, DATED DECEMBER 24, 2013)

LOT 20, BLOCK 2, MOUNT-LAKE TERRACE DIVISION NO. 5, ACCORDING TO THE PLAT THEREOF  
RECORDED IN VOLUME 13 OF PLATS, PAGES 38 AND 39, RECORDS OF SNOHOMISH COUNTY,  
WASHINGTON.



SW 1/4, SEC. 33, T. 27 N., R. 4 E., W.M.

236TH ST SW

N 88°01'59" W

EXISTING RIGHT OF WAY C

N 88°02'58" W

30'  
ROW

60.00'

3.50'

1.00'

27.00'

RIGHT OF WAY  
AREA = 183 S.F.±

PROPERTY LINE

PROPERTY LINE

TAX LOT NUMBER  
00520900201900

TAX LOT NUMBER  
00520900202000

TAX LOT NUMBER  
00520900101600



N.T.S.

DATE: DECEMBER 9, 2015

FILE: 88.DWG

**KPG**

753 9th Ave N  
Seattle, WA 98109  
(206) 286-1640  
www.kpg.com

2502 Jefferson Ave  
Tacoma, WA 98402  
(253) 627-0720

EXHIBIT A-1  
PARCEL 00520900202000  
RIGHT OF WAY ACQUISITION



**EXHIBIT B**  
**PARCEL NO. 00520900202000**  
**UTILITY EASEMENT**

THAT PORTION OF THE HEREINAFTER DESCRIBED PARCEL "A" DESCRIBED AS FOLLOWS:

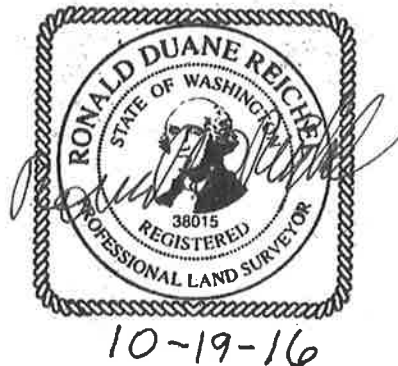
THE SOUTH 5.00 FEET OF THE NORTH 7.50 FEET OF THE EAST 5.00 FEET.

TOTAL EASEMENT AREA CONTAINING 25 SQUARE FEET, MORE OR LESS.

PARCEL "A":

(PER STEWART TITLE COMPANY ORDER NO. 27832, DATED DECEMBER 24, 2013)

LOT 20, BLOCK 2, MOUNT-LAKE TERRACE DIVISION NO. 5, ACCORDING TO THE PLAT THEREOF  
RECORDED IN VOLUME 13 OF PLATS, PAGES 38 AND 39, RECORDS OF SNOHOMISH COUNTY,  
WASHINGTON.



SW 1/4, SEC. 33, T. 27 N., R. 4 E., W.M.

236TH ST SW

N 88°01'59" W

EXISTING RIGHT OF WAY C

N 88°02'58" W

30'  
ROW

ROW ACQUISITION

UTILITY EASEMENT  
AREA = 25 S.F.±

5.00'

5.00'  
7.50'

PROPERTY LINE

PROPERTY LINE

TAX LOT NUMBER  
00520900201900

TAX LOT NUMBER  
00520900202000

TAX LOT NUMBER  
00520900101600



DATE: OCTOBER 18, 2016

FILE: 88.DWG

**KPG**

753 9th Ave N  
Seattle, WA 98109  
(206) 286-1840  
www.kpg.com

2502 Jefferson Ave  
Tacoma, WA 98402  
(253) 627-0720

EXHIBIT **B-1**  
PARCEL 00520900202000  
UTILITY EASEMENT