

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): Antonio Arroyo Martinez and Leticia Martinez
Grantee: City of Mountlake Terrace
Abbreviated Legal: Ptn of Lot 10, Block 3, Mountlake Terrace Division No. 2,
Snohomish County, WA
Tax Parcel No.: 00520600301000
Main Street Revitalization Project
Project Parcel #104

01148-
STEWART LOLE158 (9)

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 Antonio Arroyo Martinez and Leticia Martinez, husband and wife, ("Owner").

- A. The Owner owns certain real property located at 23608 56th Avenue West, 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 **Exhibit A and A-1** hereto ("Fee Take Area"). 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 B** hereto ("TCE Area"). **Exhibits A, A-1 and B** are attached hereto and incorporated herein by this reference and the Fee Take Area and the TCE Area are hereinafter referred to collectively as the "Right-of-Way Property"; and
- C. Any delay in the City's construction program is contrary to the public interest; and

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): Antonio Arroyo Martinez and Leticia Martinez
Grantee: City of Mountlake Terrace
Abbreviated Legal: Ptn of Lot 10, Block 3, Mountlake Terrace Division No. 2,
Snohomish County, WA
Tax Parcel No.: 00520600301000
Main Street Revitalization Project
Project Parcel #104

01148-
LELE158
STEWART ⑨

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 Antonio Arroyo Martinez and Leticia Martinez, husband and wife, ("Owner").

- A. The Owner owns certain real property located at 23608 56th Avenue West, 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 **Exhibit A and A-1** hereto ("Fee Take Area"). 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 B** hereto ("TCE Area"). **Exhibits A, A-1 and B** are attached hereto and incorporated herein by this reference and the Fee Take Area and the TCE Area are hereinafter referred to collectively as the "Right-of-Way Property"; and
- 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 February 23, 2017 and is continuing its offer to pay the amount of Fourteen Thousand, Six Hundred and No/100 Dollars (\$14,600.00) 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 \$14,600.00, 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. 00520600301000 that are not subject to this Agreement.
6. The City will continue to negotiate with the Owner for the required Right-of-Way 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.

POSSESSION AND USE AGREEMENT

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.

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:



Antonio Arroyo Martinez

Date: 04.08.17



Leticia Martinez

Date: 4-8-17

POSSESSION AND USE AGREEMENT

Accepted and approved by the
City of Mountlake Terrace

By: [Signature]
Printed Name: Scott Hugill
Title: City Manager
Date: 4/14/17

STATE OF WASHINGTON)
County of Snohomish : ss

On this 8th day of April 2017, before me personally appeared Antonio Arroyo Martinez and Leticia Martinez, 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

POSSESSION AND USE AGREEMENT

STATE OF WASHINGTON)
: ss
County of Snohomish)

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.





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. 00520600301000
RIGHT OF WAY ACQUISITION

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

BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL "A", SAID CORNER ALSO BEING ON THE WEST MARGIN OF 56TH AVENUE WEST;

THENCE SOUTH 00° 50' 04" WEST ALONG SAID MARGIN, 29.01 FEET;

THENCE NORTH 88° 00' 31" WEST, 1.50 FEET;

THENCE NORTH 52° 36' 30" WEST, 18.67 FEET TO A LINE THAT IS 46.50 FEET WEST OF AND PARALLEL WITH THE CENTERLINE OF SAID 56TH AVENUE WEST;

THENCE NORTH 00° 50' 04" EAST ALONG SAID PARALLEL LINE, 18.19 FEET TO THE NORTH LINE OF SAID PARCEL "A";

THENCE SOUTH 88° 00' 31" EAST ALONG SAID NORTH LINE, 16.50 FEET TO THE POINT OF BEGINNING

CONTAINING 397 SQUARE FEET, MORE OR LESS.

PARCEL "A":

(PER STEWART TITLE COMPANY ORDER NO. 42805, DATED MAY 6, 2015)

LOT(S) 10, BLOCK 3, MOUNT-LAKE TERRACE DIVISION NO. 2, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 13 OF PLATS, PAGE(S) 23, RECORDS OF SNOHOMISH COUNTY, WASHINGTON.



2-16-16

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

TAX LOT NUMBER
00520600301100

30'
ROW

PROPERTY LINE

RIGHT OF WAY
AREA = 397 S.F.±

104
TAX LOT NUMBER
00520600301000

EXISTING RIGHT OF WAY

EXISTING RIGHT OF WAY

56TH AVE W

N.T.S.

DATE: FEBRUARY 12, 2016

FILE: 104.DWG

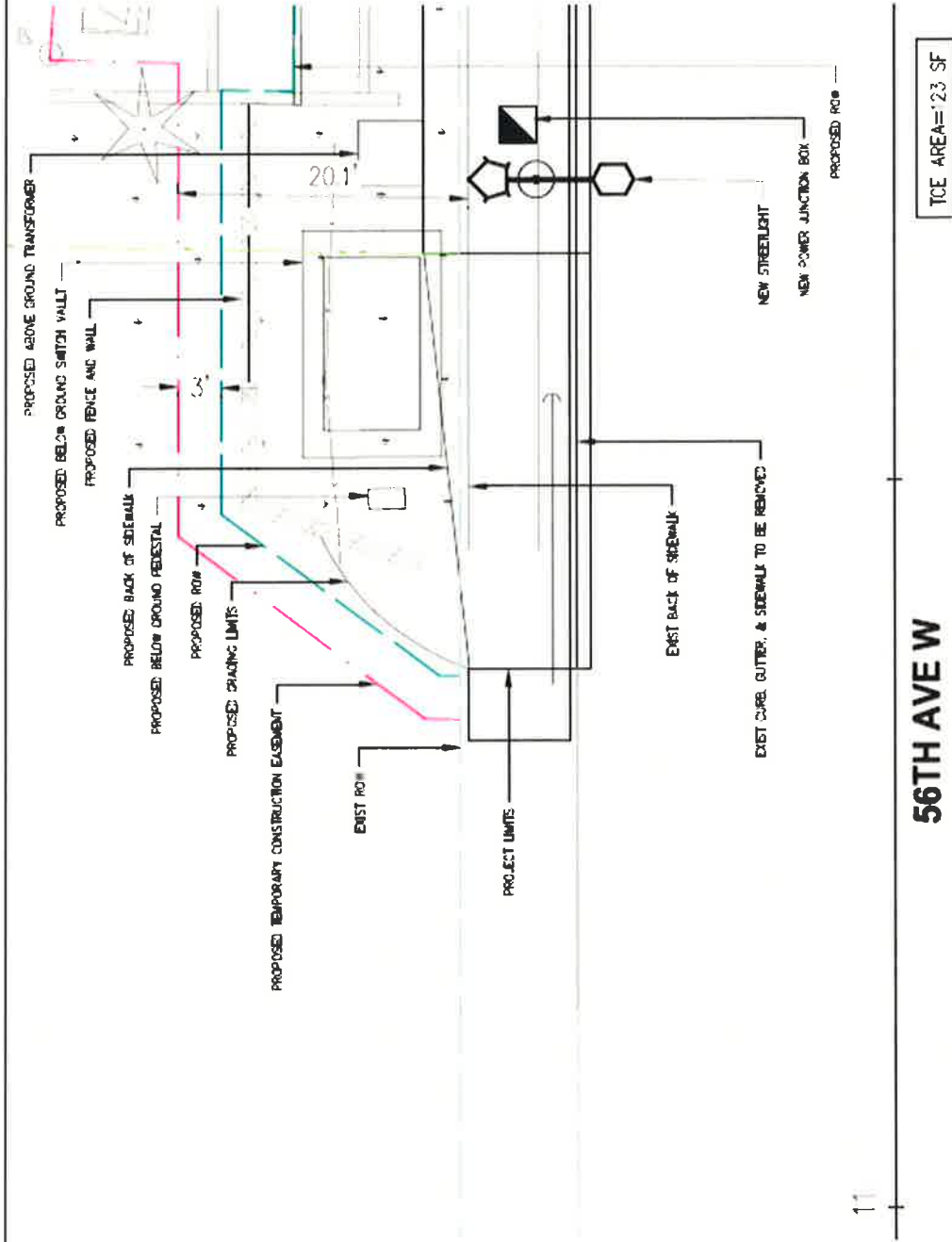
KPG

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 00520600301000
RIGHT OF WAY ACQUISITION

EXHIBIT B



KPG
 7330 14th
 2000 1st Ave
 Seattle, WA 98101
 206-261-1000
 kpg.com



SCALE: 1"=10'

23608 56TH AVE W
 PARCEL # 0052060001000
 MAIN STREET REVITALIZATION

**MOUNTLAKE
 TERRACE**
 -02/03/16- 09/15/16