

**WHEN RECORDED RETURN TO:**

Michael S. Courtlage  
Alston, Courtlage & Bassetti LLP  
1000 Second Avenue  
Suite 3900  
Seattle, Washington 98104-1045



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Skagit County Auditor

11/5/2008 Page 1 of 13 12:47PM

**Document Title:** Easement Agreement  
**Grantor:** The City of Mount Vernon, Washington  
**Grantee:** NWCC Investments VIII, LLC

**Legal Description:**  
**Abbreviated Legal Description:** Portion of Tracts 9 and 10, Plat of Mount Vernon Acreage, Skagit County, Washington  
**Full Legal Descriptions:** See Exhibits 1 and 2 attached  
**Assessor's Tax Parcel Nos.:** 3746-000-010-0407; 3746-000-009-0202

SKAGIT COUNTY WASHINGTON  
REAL ESTATE EXCISE TAX

NOV 05 2008

**EASEMENT AGREEMENT**

Amount Paid \$  
Skagit Co. Treasurer  
By [Signature] Deputy

THIS AGREEMENT entered into as of this 31 day of October, 2008, by and between **THE CITY OF MOUNT VERNON, WASHINGTON**, a Washington municipal corporation (the "City") and **NWCC INVESTMENTS VIII, LLC**, a Washington limited liability company ("NWCC").

**RECITALS**

- A. The City owns the real property located in Skagit County, Washington, which is described more particularly in Exhibit 1 hereto (the "City Parcel").
- B. NWCC is the owner of real property located in Skagit County, Washington, which is described more particularly in Exhibit 2 hereto (the "NWCC Parcel"). (Each of the City Parcel and the NWCC Parcel are sometimes referred to herein as a "Parcel").
- D. The City has agreed to grant NWCC certain easements affecting portions of the City Parcel and wish to reflect those easements and certain other obligations in writing.

NOW, THEREFORE, the parties covenant and agree as follows:

1. Temporary NWCC Easements. City hereby grants to NWCC and its successors and assigns in title or interest to all or any portion of the NWCC Parcel a temporary exclusive easement for the installation of a sign (the "Sign") at the location indicated as "Easement B" on attached Exhibit A and legally described on attached Exhibit B and for the installation of an underground electrical line (the "Line") from the NWCC Parcel to the Sign and a temporary non-exclusive easement from the NWCC Parcel across the City Parcel to the Sign and Line for the installation, repair, improvement, replacement and use of the Sign and from the NWCC Parcel across the City Parcel for the installation, repair, replacement and use of the Line. The easement areas covered by these easements are referred to collectively as the NWCC Easement Areas. These easements are for the benefit and use of the NWCC Parcel and the use of NWCC (as long as it holds an interest in any portion of the NWCC Parcel) and its successors, assigns, and the tenants, employees, agents, contractors, subtenants, licensees, concessionaires, customers and business invitees and shall be deemed covenants running with the land, subject to the terms of this Agreement.

2. Maintenance and Repair. The City shall cause the City Parcel to be maintained in good order, repair and condition, at its own expense, except that the owner of the NWCC Parcel shall maintain the Sign and the Line in good order, repair and condition at its expense.

3. Indemnity; Insurance. The City and NWCC shall each indemnify and defend the other, and hold the other harmless from and against, all claims, demands, liabilities, costs and expenses (including reasonable attorneys' fees) suffered by or claimed against the others as the result of or caused by a claim asserted by any third party for damage or injury suffered on NWCC Parcel Easement Area; provided that any such claim or demand is not due to the negligence or misconduct attributable to the other. When a claim or demand results from negligence or misconduct attributable to the owners of more than one Parcel, each party will be responsible for the claim or demand in proportion to its allocable share of such joint negligence or misconduct. NWCC shall carry commercial general liability insurance on its Parcel with combined minimum limits of not less than Two Million Dollars (\$2,000,000) per occurrence for property damage and bodily injury. The City shall maintain liability insurance through the Washington Cities Insurance Authority.

4. Limitation. Nothing contained in this Agreement shall limit the rights of the City or the owner of the City Parcel to construct, reconstruct, alter, remove or relocate buildings, improvements, landscaping or other features on the non-NWCC Easement Area of its Parcel so long as the NWCC owner is not materially and negatively impacted thereby.

5. Eminent Domain. Nothing herein shall be construed to give a party any interest in any award or payment made to another party in connection with any exercise of eminent domain or transfer in lieu thereof affecting the other party's Parcel or to give the public or any government any rights in the Entire Property or any Parcel. In the event of any



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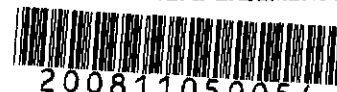
Skagit County Auditor

exercise of eminent domain or transfer in lieu thereof of any part of the NWCC Easement Areas the award attributable to the land and improvements of such portion of the Easement Areas, other than the Sign, shall be payable only to the owner in fee thereof and no claim thereon shall be made by the owners of any other portion of the Easement Areas.

6. Amendment. This Agreement may be modified or amended only by written consent of the City and NWCC.

7. Attorneys' Fees. If any lawsuit or arbitration arises in connection with this Agreement, including without limitation, an action to rescind this Agreement, the substantially prevailing party therein shall be entitled to recover from the losing party the substantially prevailing party's costs and expenses, including reasonable attorneys' fees, incurred in connection therewith, in preparation therefor and on appeal therefrom, including those in any bankruptcy proceeding, which amounts shall be included in any judgment entered therein.

8. Default. If either party shall default in the full, faithful and punctual performance of any obligation required hereunder, and if at the end of thirty (30) days after written notice from any owner of a Parcel or the party to whom its authority has been delegated, stating with particularity the nature and extent of such default, the defaulting owner has failed to cure such default, and if a diligent effort is not then being made to cure such default, then any other owner of a Parcel or the party to whom its authority has been delegated shall, in addition to all other remedies it may have at law or in equity, have the right to perform such obligation of this Agreement on behalf of such defaulting owner and recover the cost thereof, together with interest at the rate of twelve percent (12%) per annum. Any such claim for reimbursement, together with interest as aforesaid, shall be a secured right and a lien shall attach and take effect upon recordation of a lien claim by the claimant with the Skagit County Recorder's Office. The claim of lien shall include the following: (1) the name of the claimant; (2) a statement concerning the basis of the claim of the lien; (3) the last known name and address of the owner or reputed owner of the Parcel against which the lien is claimed; (4) a description of the Parcel against which the lien is claimed; (5) a description of the work performed or payment made which has given rise to the claim of lien hereunder and a statement itemizing the amount thereof; and (6) a statement that the lien is claimed pursuant to the provision of this Agreement. The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon or mailed to the party against whom the lien is claimed, either by personal service or by mailing (first class, certified, return receipt requested) at the address for mailing of tax statements with respect to the property against which the lien is claimed. A party which files a lien shall be obligated to release the lien if the owner of that Parcel posts a bond in an amount sufficient to release the lien as a matter of record. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and it may be enforced in any manner allowed by law for the foreclosure of liens. Notwithstanding the foregoing, such liens shall be subordinate to any mortgage or deed of trust given in good faith and for value now or hereafter encumbering the property subjected to the lien which is



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recorded prior to the date of such lien, and any purchaser at any foreclosure or trustee's sale (as well as any grantee by deed in lieu of foreclosure or trustee's sale) under any first mortgage or deed of trust shall take free and clear from any such then existing lien, but otherwise be subject to the provisions of this Agreement. The failure of the owner or owners of a Parcel to insist in any one or more cases upon the strict performance of any of the promises, covenants, conditions, restrictions or agreements herein, shall not be construed as a waiver or relinquishment for the future breach of the provisions hereof.

9. Rights and Obligations of Lender. Except as otherwise provided in paragraph 8, the provisions of this Agreement are, and shall at all times be, prior and therefore superior to the lien or charge of any mortgage or deed of trust hereafter made in good faith and for value affecting the City and NWCC Parcels or any part thereof, or any improvements now or hereafter placed thereon, but are subordinate to the security interests of record on the date hereof. A breach of any of the easements, covenants, or restrictions hereof shall not defeat or render invalid the lien or charge of any mortgage or deed of trust.

10. Release From Liability. Any person acquiring fee title to the City or NWCC Parcels or any portion thereof shall be bound by this Agreement only as to the Parcel or portion of the Parcel acquired by such persons. Such person shall be bound by this Agreement only during the period such person is the fee owner of such Parcel or portion of the Parcel, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the easements, covenants and restrictions of this Agreement shall continue to be benefits and servitudes upon the Parcels and running with the land. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors, and assigns.

11. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Parcels to the general public or for the general public or for any public purposes whatsoever, it being the intention of the parties hereto that this Agreement shall be strictly limited to and for the purposes herein expressed. The right of the public or any person to make any use whatsoever of the Easement Areas of the Parcels herein affected, or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is by permission, and subject to the control of the owner. Notwithstanding any other provisions herein to the contrary, the owners of the Parcels may periodically restrict ingress and egress in order to prevent a prescriptive easement from arising by reason of continued public use. Any restriction on ingress and egress shall be limited to the period reasonably necessary to prevent the creation of a prescriptive easement and, to the extent reasonably practical, shall occur at such time as to have a minimum effect on the parties hereto.

12. Notices. All notices provided for herein may be delivered in person, sent by regular overnight courier service, FedEx or mailed in the United States mail postage prepaid and, if mailed, shall be considered delivered three (3) days after deposit in such mail. The



addresses to be used in connection with such correspondence and notices are the following, or such other address as a party shall from time to time direct:

City: 1024 Cleveland Avenue  
Mount Vernon, WA 98273  
Attn: Public Works Department and  
City Attorney  
Facsimile No.: (360) 336-6299

NWCC: 1420 Fifth Avenue, Suite 2200  
Seattle, WA 98101  
Attn: Mark McDonald  
Facsimile No.: (206) 623-4305

13. Miscellaneous.

(a) Headings. The headings in this Agreement are for convenience only and do not in any way limit or affect the terms and provisions hereof.

(b) Unenforceability. If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the remainder of such provision or any other provisions hereof.

(c) Gender. Wherever appropriate in this Agreement, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of certain genders shall be deemed to include either or both of the other genders.

(d) Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington.

(e) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but which when taken together shall constitute one and the same instrument.

14. Termination and Relocation of NWCC Easements. If, by May 1, 2009 or upon ninety (90) days written notice from the City, whichever is sooner, NWCC or an affiliate has not entered into a purchase and sale agreement with the City to acquire a fee interest in the City Parcel, then NWCC will relocate the Sign to the location indicated as "Easement A" and legally described on attached Exhibit C, at which time NWCC shall have, as a full and complete replacement of the easements granted NWCC under terms of Section 1 above, an exclusive easement for the installation, repair, replacement and use of the Sign and for the installation, repair, replacement and use of a new underground electrical line from the NWCC Parcel to the relocated Sign and for access across the City Parcel to enable the installation, repair, replacement and use of the sign and electrical line. The easement areas covered by these relocated easements will thereafter constitute the NWCC Easement Areas for purposes of this



Agreement. These easements are for the benefit and use of the NWCC Parcel and the use of NWCC (as long as it holds an interest in any portion of the NWCC Parcel) and its successors, assigns, and the tenants, employees, agents, contractors, subtenants, licensees, concessionaires, customers and business invitees and shall be deemed covenants running with the land, subject to the terms of this Agreement.

15. Entire Agreement. This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, express or implied, and all negotiations or discussions of the parties, whether oral or written, and there are no warranties, representations or agreements among the parties in connection with the subject matter hereof except as set forth herein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CITY

THE CITY OF MOUNT VERNON,  
WASHINGTON

By [Signature]  
Its Mayor

[Signature] APPROVED AS TO FORM

NWCC

NWCC INVESTMENTS VIII, LLC

MOUNT VERNON CITY ATTORNEY

By [Signature]  
Its Manager

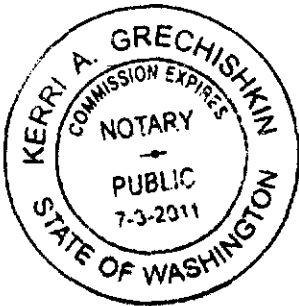


STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAGIT )

On this 3<sup>rd</sup> day of November, 2008, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared Bud Norris, known to me to be the Mayor of **THE CITY OF MOUNT VERNON, WASHINGTON**, the entity that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.



Kerri A. Grechishkin  
Signature

Kerri A. Grechishkin  
Print Name  
NOTARY PUBLIC in and for the State of  
Washington, residing at Mount Vernon  
My commission expires 7/3/2011.



STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 17<sup>th</sup> day of October, 2008, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared Mark McDonald, known to me to be the manager of **NWCC INVESTMENTS VIII, LLC**, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

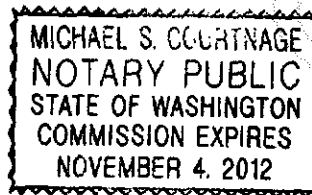
WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

Signature

Michael S. Courtlage

Print Name

NOTARY PUBLIC in and for the State of  
Washington, residing at Seattle.  
My commission expires 11/4/12.





**EXHIBIT 1**

**DESCRIPTION:**

The West 120 feet of Tract 10, "PLAT OF MOUNT VERNON ACREAGE, SKAGIT COUNTY, WASH.," as per plat recorded in Volume 3 of Plats, page 102, records of Skagit County, Washington, EXCEPT the South 10 feet thereof conveyed to the City of Mount Vernon by Auditor's File No. 816622.

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

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EXHIBIT 2

The land referred to herein is situated in the County of Skagit, State of Washington, and is described as follows:

The West 168 feet of Tract 9 of "PLAT OF MOUNT VERNON ACREAGE, SKAGIT COUNTY, WASHINGTON", as per plat recorded in Volume 3 of Plats, page 102, records of Skagit County, and the North 29.5 feet of the East 100 feet of the West 268 feet of said Tract 9 "PLAT OF MOUNT VERNON ACREAGE".

TOGETHER WITH, a non-exclusive easement for ingress and egress over and across the South 29.5 feet of the West 268 feet of Tract 8 of said "PLAT OF MOUNT VERNON ACREAGE".

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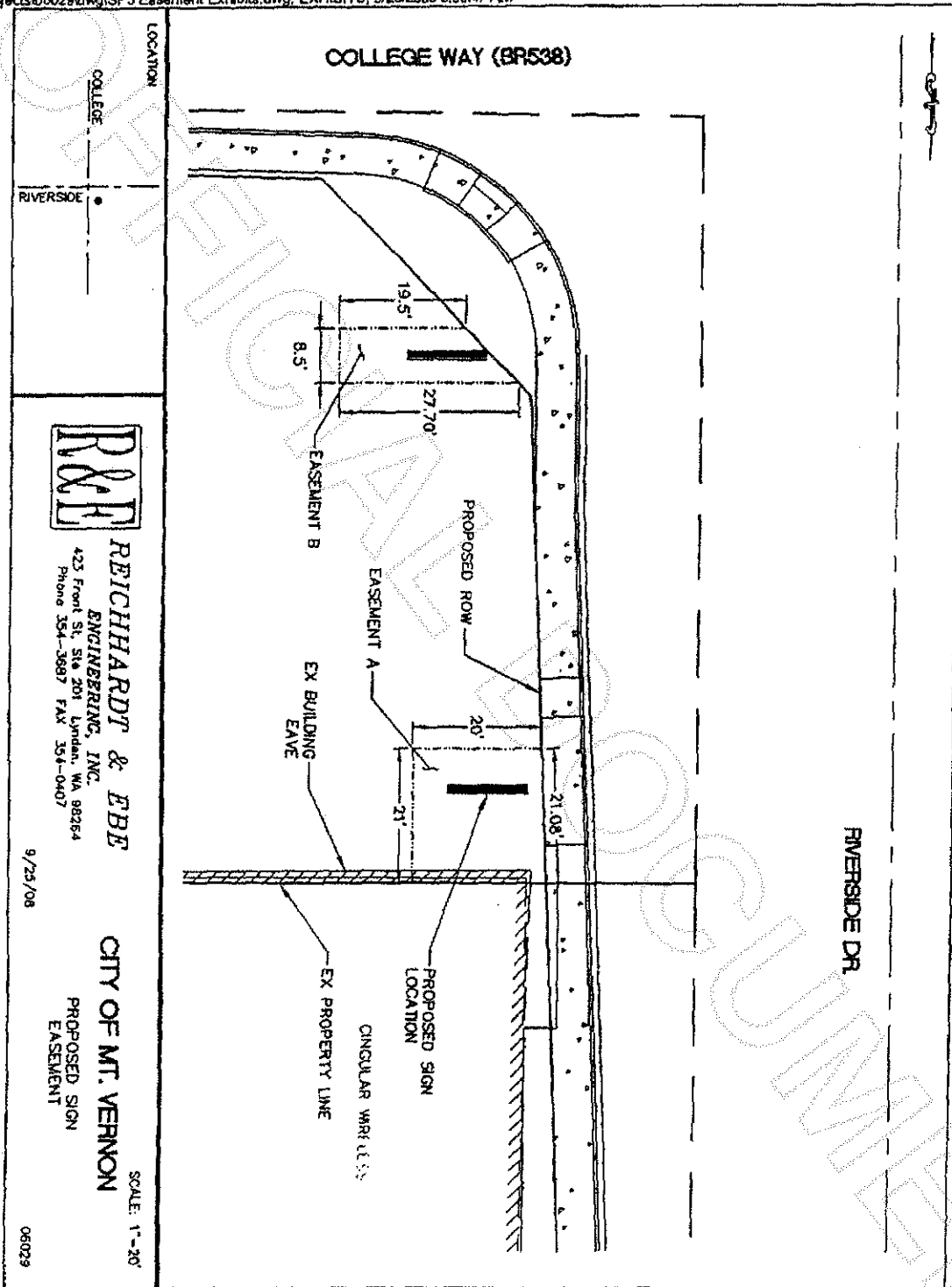


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**EXHIBIT A**

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**REICHHARDT & EBE**  
 ENGINEERING, INC.  
 425 Front St. Ste 201  
 Lynden, WA 98264  
 Phone 354-3997 FAX 354-0407

9/25/08

**CITY OF MT. VERNON**  
 PROPOSED SIGN  
 EASEMENT

SCALE: 1"=20'

06029



**EXHIBIT B**

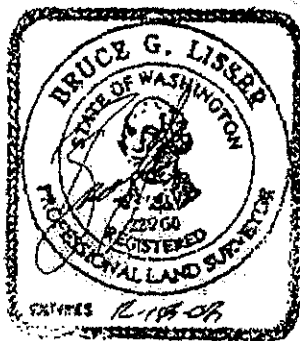
**Proposed Signage Easement B  
(P-53850)**

An easement for signage installation and the maintenance thereof over, under, and across a portion of Tract 10, "Plat of Mount Vernon Acreage, Skagit County, Wash.," as per plat recorded in Volume 3 of Plats, Page 102, records of Skagit County, Washington and being more particularly described as follows:

Beginning at the Northwest corner of said Tract 10, "Plat of Mount Vernon Acreage, Skagit County, Wash.";  
thence North 89° 19' 45" East along the north line of said Tract 10 for a distance of 22.69 feet, more or less, to the proposed easterly right of way margin of Riverside Drive  
thence South 2° 57' 41" East along said proposed easterly right of way margin for a distance of 75.83 feet to an angle point on said margin;  
thence South 44° 36' 10" East along said margin for a distance of 2.80 feet to the TRUE POINT OF BEGINNING;  
thence North 89° 21' 14" East along said north line for a distance of 27.70 feet;  
thence South 0° 38' 46" East for a distance of 8.50 feet;  
thence South 89° 21' 14" West for a distance of 19.50 feet, more or less, to said proposed easterly right of way margin of Riverside Drive at a point bearing South 44° 36' 10" East from the TRUE POINT OF BEGINNING;  
thence North 44° 36' 10" West along said proposed easterly right of way margin for a distance of 11.81 feet, more or less, to the TRUE POINT OF BEGINNING

SUBJECT TO and TOGETHER WITH easements, reservations, restrictions, covenants, liens, leases, court causes and other instruments of record.

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



9-25-08

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**EXHIBIT C**

**Proposed Signage Easement A  
(P-53850)**

An easement for signage installation and the maintenance thereof over, under, and across a portion of Tract 10, "Plat of Mount Vernon Acreage, Skagit County, Wash.," as per plat recorded in Volume 3 of Plats, Page 102, records of Skagit County, Washington and being more particularly described as follows:

Beginning at the Northwest corner of said Tract 10, "Plat of Mount Vernon Acreage, Skagit County, Wash."; thence North 89° 19' 45" East along the north line of said Tract 10 for a distance of 22.69 feet, more or less, to the proposed easterly right of way margin of Riverside Drive and being the TRUE POINT OF BEGINNING; thence continue North 89° 19' 45" East along said north line for a distance of 20.78 feet; thence South 0° 51' 22" East for a distance of 21.00 feet; thence South 89° 08' 38" West for a distance of 20.00 feet, more or less, to said proposed easterly right of way margin of Riverside Drive at a point bearing South 2° 57' 41" East from the TRUE POINT OF BEGINNING; thence North 2° 57' 41" West along said proposed easterly right of way margin for a distance of 21.08 feet, more or less, to the TRUE POINT OF BEGINNING

SUBJECT TO and TOGETHER WITH easements, reservations, restrictions, covenants, liens, leases, court causes and other instruments of record.

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



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MCOURT\MCDONALD\EMERALD CITY PIZZA MT VERNON

TEMP EASEMENT AGR3



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