

After recording, return to:

Mark Rowley
Garvey Schubert Barer
1191 Second Avenue, Suite 1800
Seattle, Washington 98101



201002230006
Skagit County Auditor

2/23/2010 Page 1 of 13 9:25AM

EASEMENT AGREEMENT

GRANTOR: NWCC Investments VIII, LLC, NWCC Investments IX, LLC

GRANTEE: Highland Two, LLC

ABBREV. LEGAL: Ptn. Tr. 10, Plat of Mount Vernon Acreage. A full legal description is attached hereto as Exhibit B.

ASSESSOR'S TAX ACCOUNT NO. 3746-000-010

(P53850)

REFERENCED DOC. 200811050054

This Agreement is made by and among NWCC Investments VIII, LLC, a Washington limited liability company ("NWCC VIII") and NWCC Investments IX, LLC, a Washington limited liability company ("NWCC IX") and Highland Two, LLC, a Delaware limited liability company ("Highland Two").

RECITALS

A. Concurrently herewith, NWCC VIII is conveying to Highland Two the real property described in Exhibit A hereto (the "Dominant Estate").

B. Pursuant to a certain Easement Agreement, dated as of October 31, 2008 and recorded November 5, 2008 under Skagit County Auditor's No. 200811050054 (the "City Easement Agreement"), the City of Mount Vernon (the "City") granted to NWCC VIII a temporary exclusive easement for the installation of a sign at the location indicated as Easement B on Exhibit C attached hereto and as legally described in Exhibit D attached hereto, together with an easement for an underground electric line and the temporary easements for the installation, repair, improvement, replace and use of the sign and electrical line, all of which easements (collectively, the "Corner Easement") are described in paragraph 1 of the City Easement Agreement. The Corner Easement is located on the real property now owned by the

City as legally described in Exhibit B attached hereto (the "Corner Parcel"). (Each of the Dominant Estate and the Corner Parcel are sometimes referred to herein as a "Parcel").

C. NWCC VIII has erected a pylon sign (the "Sign") within the Corner Easement which provides signage to one or more tenants of the Dominant Estate. The City and NWCC VIII agreed that in the event NWCC VIII or an affiliate of NWCC VIII did not acquire the Corner Parcel from the City, the Corner Easement would expire and NWCC VIII would relocate the Sign to permanent easements ("Adjacent Easement") located on the Corner Parcel which are adjacent to the Dominant Estate and are depicted as Easement A on Exhibit C attached hereto and is legally described in Exhibit E attached hereto.

D. NWCC IX, an affiliate of NWCC VIII, has entered to a Purchase and Sale Agreement, dated April 23, 2009 (the "City Purchase Agreement") for the purchase of the Corner Parcel.

E. As a condition to the purchase of the Dominant Estate by Highland Two, NWCC VIII and NWCC IX (collectively herein, "NWCC") desire to confirm and restate the easements granted in the City Easement Agreement to and for the benefit of Highland Two.

AGREEMENT

It is therefore agreed as follows:

1. Corner Easement. NWCC hereby confirms, represents and warrants to Highland Two that upon the date of acquisition of the Corner Parcel by NWCC or its affiliates, successors and assigns, NWCC shall and does hereby pursuant to the terms of this Agreement grant to Highland Two and its successors and assigns in title or interest to all or any portion of the Dominant Estate a permanent exclusive easement for the installation of a sign (the "Sign") at the location indicated as "Easement B" on attached Exhibit C and legally described on attached Exhibit D and for the installation of an underground electrical line (the "Line") from the Dominant Estate to the Sign and a temporary non-exclusive easement from the Dominant Estate across the Corner Parcel to the Sign and Line for the installation, repair, improvement, replacement and use of the Sign and from the Dominant Estate across the Corner Parcel for the installation, repair, replacement and use of the Line. The easement areas covered by these easements are referred to collectively as the "Easement Areas". These easements are for the benefit and use of the Dominant Estate and the use of Highland Two (as long as it holds an interest in any portion of the Dominant Estate) 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. Easement Obligations. As of the date of the acquisition of the Corner Parcel by NWCC or any affiliate, the following obligations shall be in full force and effect:

(a) Maintenance and Repair. NWCC shall cause the Corner Parcel to be maintained in good order, repair and condition, at its own expense, except that the owner of the



Dominant Estate shall maintain the Sign and the Line in good order, repair and condition at its expense.

(b) Indemnity; Insurance. NWCC and Highland Two 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 the Easement Areas; 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 and Highland Two shall each 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.

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

(d) 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 any Parcel. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the 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.

(e) Rights and Obligations of Lender. Except as otherwise provided in paragraph 5 below, 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 Corner Parcel 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.

(f) Release From Liability. Any person acquiring fee title to the Corner Parcel or Dominant Estate 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.



(g) 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 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.

3. Amendment. This Agreement may be modified or amended only by written consent of the owners of the Corner Parcel and the Dominant Estate.

4. 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.

5. 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 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.

6. Adjacent Easement. NWCC represents and warrants to Highland Two that in the event NWCC or any affiliate thereof does not acquire the Corner Parcel pursuant to the terms of the City Purchase Agreement, as the same may be hereafter amended or extended, the Adjacent Easement, as described in Recital C above, shall be a permanent easement encumbering the Corner Parcel to and for the benefit of the Dominant Estate. Within thirty (30) days after the date of any expiration or termination of the City Purchase Agreement without the purchase by NWCC of the Corner Parcel, NWCC represents and warrants that NWCC shall relocate the Sign and any electrical line serving the same from the Corner Easement to the Adjacent Easement and shall obtain the written ratification by the City to grant of the Adjacent Easement and the relocation of the Sign and electrical line to the Adjacent Easement. NWCC shall provide Highland Two with an itemization of the costs incurred for such relocation, together with such reasonable back-up information as may be requested by Highland Two and Highland Two, within 10 days of the receipt of the itemization and requested information, shall reimburse NWCC for 50% of such relocation costs.

7. 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:

Highland Two:

P.O. Box 97
Mercer Island, WA 98040
Attn: John F. Miller, Jr.

NWCC:

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



8. 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.

NWCC:

NWCC Investments VIII LLC, a
Washington limited liability company

By 

Mark McDonald, Manager

Date: 12-30-09

NWCC Investments IX LLC, a
Washington limited liability company

By 

Mark McDonald, Manager

Date: 12-30-09

replacement
SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

FEB 23 2010

Amount Paid \$*0*
Skagit Co. Treasurer
By *mlm* Deputy



HIGHLAND TWO:

Highland Two, LLC, a Delaware limited liability company

By Highland Enterprises, a Washington limited liability company

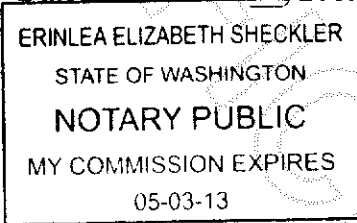
By *John F. Miller, Jr.*
John F. Miller, Jr., Manager




STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Mark McDonald is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Manager of NWCC Investments VIII, LLC and NWCC Investments IX, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: December 29, 2009

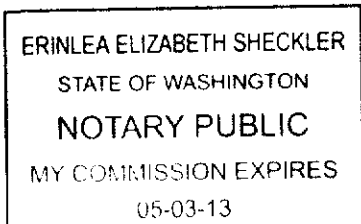




Notary Public for the State of Washington
My commission expires: 5/3/2013

STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

I certify that I know or have satisfactory evidence that John F. Miller, Jr. is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Manager of Highland Enterprises, LLC as the sole member of Highland Two, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: December 30, 2009




Notary Public for the State of Washington
My commission expires: May 3, 2013



**EXHIBIT A
(LEGAL DESCRIPTION OF DOMINANT ESTATE)**

The West 168 feet of Tract 9, PLAT OF MOUNT VERNON ACREAGE, SKAGIT COUNTY, WASHINGTON, according to the plat thereof, recorded in Volume 3 of Plats, page 102, records of Skagit County, Washington, 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 North 30 feet of the West 168 feet and across the East 30 feet of the West 168 feet of Tract 8, Plat of Mount Vernon Acreage, Skagit County, Washington, according to the plat thereof, recorded in Volume 3 of Plats, page 102, records of Skagit County, Washington as described in instrument recorded April 1, 1977, under Auditor's File No. 853753, records of Skagit County, Washington.

Together with a non-exclusive easement for vehicular and pedestrian ingress, egress, parking and access over and upon the drive aisle portions of Tracts Band C, City of Mount Vernon Short Plat No. MV-26-76, approved September 10, 1976, recorded September 23, 1976 in Volume I of Short Plats, page 175, under Auditor's File No. 843161, records of Skagit County, Washington and being a portion of Tracts 9 and 10, Plat of Mount Vernon Acreage, Skagit County, Washington, according to the plat thereof, recorded in Volume 3 of Plats, page 102, records of Skagit County, Washington as disclosed by instrument recorded September 22, 2004, under Auditor's File No. 200409220116, records of Skagit County Washington.

All situated in Skagit County, Washington



**EXHIBIT B
LEGAL DESCRIPTION OF CORNER PARCEL**

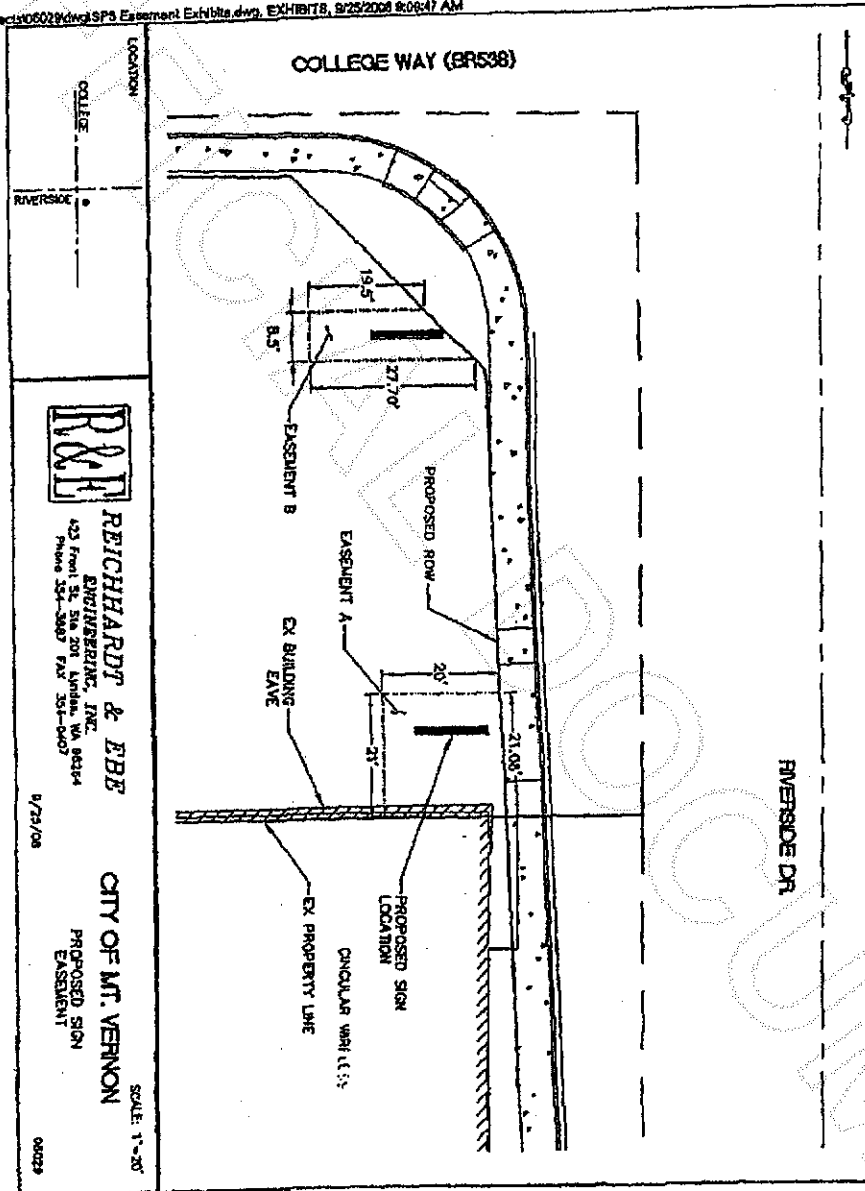
The West 120 feet of Tract 10, Plat of Mount Vernon Acreage, Skagit County, Washington, as per plat recorded in Volume 3 of Plats, page 102, records of Skagit County, Washington, except the South 10 feet thereof conveyed to the City of Mount Vernon by Auditor's File No. 816622

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



EXHIBIT C

P:\Project\06029\Kug\SP3 Easement Exhibits.dwg, EXHIBIT8, 9/25/2008 9:08:47 AM



REICHHARDT & EBE
 ENGINEERING, INC.
 423 Fern St.
 Mount Vernon, WA 98214
 Phone 360-590-7421 Fax 360-590-7407

9/23/08

CITY OF MT. VERNON
 PROPOSED SIGN
 EASIMENT

SCALE: 1"=20'

00229

Handwritten initials



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 Skagit County Auditor

EXHIBIT D

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.



EA\Office\Legal\06-062 Easement P-53850 .doc



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Skagit County Auditor

EXHIBIT E

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 $89^{\circ} 19' 45''$ 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 $89^{\circ} 19' 45''$ East along said north line for a distance of 20.78 feet; thence South $0^{\circ} 51' 22''$ East for a distance of 21.00 feet; thence South $89^{\circ} 08' 38''$ 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 $2^{\circ} 57' 41''$ East from the TRUE POINT OF BEGINNING; thence North $2^{\circ} 57' 41''$ 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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Skagit County Auditor