

08/23/2005

## POSSESSION AND USE AGREEMENT

This Possession and Use Agreement ("Agreement") is entered into by and among the City of Rochester Hills (hereinafter the "City") and Mr. Norman E. Heinrich ("Owner"). The circumstances underlying this Agreement are as follows:

A. The Owner owns certain real property located in the City of Rochester Hills more fully described on Exhibit A.

B. The City, in cooperation with the Road Commission for Oakland County ("RCOC"), is undertaking a road widening project in Rochester Hills, Michigan, and the City therefore desires to acquire certain property from the Owner more fully described in Exhibit B (the "Property").

C. The City desires to obtain immediate possession of the Property prior to filing any condemnation action to acquire that Property by eminent domain.

### THEREFORE, IT IS AGREED AS FOLLOWS:

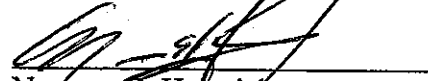
1. **Grant** -- Owner grants to the City an irrevocable right to possession and use of the Property for road widening purposes, which right the City may assign to RCOC. The right to possession is permanent and shall be deemed granted as of September 1, 2005. On or before September 8, 2005, the City shall deliver a check to the Owner's counsel, payable to Norman E. Heinrich, in the amount of \$22,000.00. This figure represents the City's good faith written offer of estimated just compensation ("EJC") for its proposed acquisition of the Property, inclusive of a proposed fee taking, permanent easement, and temporary grading permit.
2. **Effective Date** -- This agreement shall become effective when signed by the Owner.
3. **Payment** -- The amount stated in paragraph one represents 100% of the City's EJC for the Property. It is agreed that this amount shall be deducted from any final settlement amount or verdict in any condemnation action to acquire the Property. It is also agreed that, by accepting payment of the EJC, the Owner's rights to seek additional just compensation, interest, and reimbursements for costs, experts' fees, and attorneys' fees for the City's acquisition of the Property, and all other payments of any kind, are entirely preserved and are unaffected by this Agreement. In the event the final settlement amount or verdict in the condemnation action is less than the EJC, the Owner shall immediately refund the difference to the City.
4. **Negotiate** -- The City shall continue to negotiate in good faith with the Owner to acquire his interest in the Property by direct purchase. If a settlement is not reached within 60 days from the effective date of this agreement, the City shall exercise the power of eminent domain by filing an action to acquire title to the Property. The Owner stipulates and agrees to the necessity of the particular highway construction and improvement project for which the Property is needed and to the necessity for the taking of said Property. The Owner waives hearing on necessity, jurisdiction and public use for the taking. The Owner further acknowledges that the City has made the jurisdictionally required good faith offer and effort to purchase said Property and consents to the City's execution and recording of a declaration

of taking for the Property, hearing thereon being expressly waived. In the event that the City files such a condemnation action, the Owner shall be permitted to obtain an appraisal(s). The parties agree that, if the Owner believes that the City's good faith written offer as described herein did not include or fully include one or more items of compensable property or damage for which the Owner intends to claim a right to just compensation, the date by which the Owner shall file a written claim with the City shall be the date on which the Owner produces his appraisal(s), and the claim shall be deemed filed in the form of the appraisal itself.

5. **Title** -- It is agreed by the Owner that, in the event of condemnation, the date of valuation is September 1, 2005. This Agreement does not convey title. Title will pass upon proper conveyance by the Owner or filing of the condemnation action. The parties agree that the Property is owned free and clear by the Owner and unencumbered by any encumbrances or other claims of ownership or right other than any mortgages and security interests of record.
6. **Tenants** -- In the event the Property is occupied by a tenant, the City's possession, granted in this instrument, is subject to the rights of the tenant.
7. **Interest** -- In the event of condemnation, the Owner shall be entitled to interest at the rate required by MCL 213.51, *et seq.* on the final judgment or verdict, less the EJC, from September 1, 2005 through and including the date of payment of the final judgment or verdict.
8. **Access and Restoration** -- The City shall maintain access to the property described in Exhibit A, at all times during construction of the project for which it is acquiring the Property. The City shall promptly and reasonably restore the Property to the condition that it was in prior to construction including, but not limited to, replacing any and all trees, landscaping, asphalt, concrete, improvements, and all other property disturbed by the City.
9. **Taxes** -- All real property taxes and special assessments shall be prorated as of September 1, 2005 on a due date in advance basis. The Owner shall be responsible for payment of all delinquent taxes and/or delinquent special assessments. Real estate taxes and special assessments that are payable by the Owner pursuant to this paragraph will be deducted from the amount in paragraph 1 before delivery to the Owner. For purposes of this paragraph only, one-half of the total taxes shall be prorated. It is agreed that this partial proration of taxes is irrelevant to the amount of just compensation payable for any taking involving the Property, and the proration shall be inadmissible in any condemnation action involving the Property.

10. **Personal** -- Personal property taxes are the personal responsibility of the Owner. Personal property taxes will be deducted from the amount in paragraph one, if requested by the local government, before delivery to the Owner. They are not subject to proration.

Date: Septmber 8, 2005

  
Norman E. Heinrich  
"Owner"

Date: 10-18, 2005

CITY OF ROCHESTER HILLS  
By: Pat Lomewille  
Its: Meyer  
"City"

## **EXHIBIT A**

Situated In the City of Rochester Hills, Oakland County, Michigan, LOT 1, Township 3 North, Range 11 East, Section 30 "WHEATON AND WORRALL'S AVON HILLS ESTATES NO 1", also that part of 1/2 of vacated alley.

## EXHIBIT B

### DESCRIPTION OF RIGHT OF WAY ACQUISITION

Situated in the City of Rochester Hills, Oakland County, Michigan; COMMENCING at a 5/8" iron rod in monument box at the southwest corner of Section 30, Township 3 North, Range 11 East as recorded in Liber 22386, Page 323, Oakland County records; thence along the true west line of said section, North 02°44'00" West 50.00 feet; thence parallel with the south line of said section, North 86°57'58" East 52.72 feet to the southwest corner of Lot 1 of "Wheaton & Worrall's Avon Hills Estates No. 1" as recorded in Liber 40 of Plats, Page 31, Oakland County records, being the POINT OF BEGINNING of this description; thence along the west line of said Lot 1, North 03°03'16" West 119.87 feet (recorded as North 00°46' East 120.00 feet) to the northwest corner of said Lot 1, thence along the north line of said Lot 1, North 86°57'58" East 7.62 feet; thence South 02°50'39" East 119.87 feet to the south line of said Lot 1; thence along the south line of said Lot 1, South 86°57'58" West (recorded as North 89°09' West) 7.18 feet to the Point of Beginning; being a part of Lot 1 of "Wheaton & Worrall's Avon Hills Estates No. 1", Oakland County records, and containing 0.020 acres (887 square feet).

### DESCRIPTION OF 10' x 10' EASEMENT FOR TRAFFIC SIGNAL EQUIPMENT

Situated in the City of Rochester Hills, Oakland County Michigan; COMMENCING at a 5/8" iron rod in monument box at southwest corner of Section 30, Township 3 North, Range 11 East as recorded in Liber 22386, Page 323, Oakland County records; thence along the true west line of said section, North 2°44'00" West 50.00 feet; thence parallel without the south line of said section, North 86°57'58" East 52.72 feet to the southwest corner of Lot 1 of "Wheaton & Worrell's Avon Hills Estates No. 1" as recorded in Liber 40 of Plats, Page 31, Oakland County records; thence along the south line of said Lot 1, North 86°57'58" East (recorded as South 89°09' East) 7.18 feet to the POINT OF BEGINNING of this description; thence North 02°50'39" West 10.00 feet; thence parallel with the south line of said Lot 1, North 86°57'58" East 10 feet; thence South 02°50'39" East 10.00 feet to the south line of said Lot 1; thence along the south line of said Lot 1, South 80°57'58" West (recorded as North 89°09' West) 10.00 feet to the Point of Beginning; being a part of Lot 1 of "Wheaton & Worrell's Avon Estates No 1 Oakland County records, and containing 100 square feet.

### DESCRIPTION OF GRADING EASEMENT

Situated in the City of Rochester Hills, Oakland County Michigan; a 25 feet wide temporary grading easement described as follows; COMMENCING at a 5/8" iron rod in monument box at the southwest corner of Section 30, Township 3 North, Range 11 East as recorded in Liber 22386, Page 323, Oakland County records; thence along the true west line of said section, North 02°44'00" West 50.00 feet, thence parallel with the south line of said section, North 86°57'58" East 59.90 feet to a point on the south line of lot 1 of "Wheaton & Worralls Avon Hills Estates No. 1 as recorded in Liber 40 of Plats, Page 31, Oakland County records; thence North 02°50'39" West 65.00 feet to the POINT OF BEGINNING of this description; thence continuing North 02°50'39" West 54.87 feet to the north line of said Lot 1; thence continuing North 02°50'39" West 10 feet to the centerline of a 20 feet wide alley vacated per Deed Liber 18541, Page 301, Oakland County records; thence along the centerline of said alley, North 86°57'58" East 25.00 feet; thence South 02°50'39" East 10.00 feet to the north line of said Lot 1; thence continuing South 02°50'39" East 23.87 feet; thence South 35°57'57" West 39.89 feet to the Point of Beginning being a part of Lot 1 and a part of the southerly half of the vacated alley abutting the north line of Lot 1 of "Wheaton & Worrall's Avon Hills Estates No. 1", Oakland County records, and containing 0.028 acres (1,234 square feet).