

15027

Attachment B

DRAFT

2004-370

## REAL ESTATE PURCHASE AND SALE AGREEMENT

July 1, 2004

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of \_\_\_\_\_, 2004, by and between KING COUNTY, a municipal corporation and political subdivision of the State of Washington (the "Seller") and CITY OF KENMORE, a municipal corporation of the State of Washington (the "Buyer").

### RECITALS

A. Seller owns that certain real property located in the City of Kenmore, County of King, State of Washington, which consists of approximately 4.72 acres, commonly identified as the Northshore Park-and-Ride lot, the legal description of which is attached hereto as EXHIBIT A (the "Property").

B. Seller is desirous of selling the Property and Buyer is desirous of purchasing the Property.

### AGREEMENT

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

### ARTICLE 1. PURCHASE AND TRANSFER OF ASSETS

1.1. **PROPERTY TO BE SOLD.** Subject to and upon the terms and conditions set forth in this Agreement, Seller shall sell, convey, assign, transfer and deliver to Buyer on the Closing Date (as hereinafter defined in Section 10.1 of this Agreement) and Buyer shall buy, assume and accept from Seller on the Closing Date the following assets and properties:

(a) all of Seller's right, title and interest in the Property as described in **EXHIBIT A**;

(b) all of Seller's right, title and interest in improvements and structures located on the Property, if any;

(c) all of Seller's right, title and interest in and to tangible personal property, if any, owned by the Seller and attached, appurtenant to or used in connection with the Property ("Personal Property"), except for passenger shelters, which shall be retained on the Property, as described in Section 5.6 of this Agreement; and

(d) all of Seller's tenements, hereditaments, easements and rights appurtenant to the Property including but not limited to, all of the Seller's right, title, and interest in and to streets, alleys or other public ways adjacent to the Property, easements for public utilities, all sewers and service drainage easements, all rights of connection to the sewers, and all rights of ingress and egress, and all leases, licenses, government approvals and permits affecting the Property.

Hereinafter, the items listed in Section 1.1 are collectively referred to as the "Purchased Assets."

## ARTICLE 2. PURCHASE PRICE

**2.1. PURCHASE PRICE AND PAYMENT.** In consideration of the sale, transfer, conveyance, assignment and delivery of the Purchased Assets, Buyer shall, in full payment therefore, pay to Seller on the Closing Date a total purchase price of **TWO MILLION FIVE HUNDRED TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$2,525,000.00)** (the "Purchase Price").

**2.2. ALLOCATION OF PURCHASE PRICE.** Seller and Buyer agree that the entire Purchase Price is allocable to real property and that the value of the Seller's Personal Property, if any, is *de minimus*.

## ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF THE PARTIES

**3.1. WARRANTIES AND REPRESENTATIONS OF SELLER.** Seller represents and warrants as follows:

**3.1.1. Definition of Seller.** The Seller is a municipal corporation and subdivision of the State of Washington duly organized, validly existing and in good standing under the laws of the State of Washington. Seller has all requisite corporate power and authority

to carry on its business as it is now being conducted in the place where such businesses are now conducted.

**3.1.2. Execution, Delivery and Performance of Agreement, Authority.** The execution, delivery and performance of this Agreement by Seller (i) is within the powers of Seller as a municipal corporation, (ii) has been or will be on or before the Closing Date, duly authorized by all necessary action of the Seller's legislative authority, and (iii) does not and will not violate any provision of any law, rule, regulation, order, writ, judgment, decree or award to which the Seller is a party to or which is presently in effect and applicable to Seller. This Agreement constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with the terms thereof.

**3.1.3. Litigation.** There is no pending, or to the best of Seller's knowledge, threatened lawsuit or material claim against or relating to Seller with respect to the Property, which shall impede or materially affect Seller's ability to perform the terms of this Agreement. There is no pending or, to the best of Seller's knowledge, contemplated condemnation or similar proceeding with respect to the Property or any part thereof.

**3.1.4. Assessments.** There is no pending, or to the best of Seller's knowledge, contemplated local improvement district or other special assessment or charge with respect to the Property, except as may be disclosed in the Title Commitment described in Section 4.1 of this Agreement.

**3.1.5. Full Disclosure.** No representation or warranty by Seller in this Agreement or in any instrument, certificate or statement furnished to Buyer pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or fail to state a material fact which is necessary to make the statements set forth therein not false or misleading.

**3.1.6. No Broker.** No broker, finder, agent or similar intermediary has acted for or on behalf of Seller in connection with this Agreement or the transactions contemplated hereby, and no broker, finder, agent or similar intermediary is entitled to any broker's, finder's or similar fee or commission in connection with this Agreement based on an agreement, arrangement or understanding with Buyer or any action taken by Buyer.

**3.1.7. Contracts.** There are no contracts or other obligations outstanding for the sale, exchange, transfer, lease, rental or use of the Property or any portion thereof.

**3.1.8. Future Agreements.** From and after the date hereof, unless this Agreement is terminated in accordance with its terms, Seller shall not without the prior written consent of Buyer:

(i) enter into any agreement, contract, commitment, lease or other transaction that affects the Property in any way; or

(ii) sell, dispose of or encumber any portion of the Property.

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**3.1.9 Maintenance of the Property.** Seller shall continue to maintain the Property in compliance with all applicable laws and pay all costs of the Property with respect to the period prior to the Closing Date.

**3.1.10 Condition of the Property.** Seller has not intentionally withheld any material information concerning environmental matters with respect to the Property. To the best of Seller's knowledge (i) there has been no generation, treatment, storage, transfer, disposal or release of Hazardous Substances on the Property at any time during Seller's ownership or use thereof; (ii) there are no underground storage tanks on the Property nor have underground storage tanks been removed from the Property; and (iii) Seller is not aware of any facts which would lead it to believe that there are any Hazardous Substances on the Property. For purposes of this Agreement, the term Hazardous Substances shall mean: "hazardous substance" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"); "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 ("RCRA") as amended; hazardous wastes, hazardous materials, hazardous substances, toxic waste, toxic materials, or toxic substances as defined in state or federal statutes or regulations; asbestos-containing materials, polychlorinated biphenyls; radioactive materials, chemicals known to cause cancer or reproductive toxicity; petroleum products, distillates or fractions; any substance the presence of which is prohibited by statute or regulation; and any substance for which any statute or regulation requires a permit or special handling in its use, collection, storage, treatment or disposal.

**3.1.11. Assistance with Due Diligence.** Seller shall fully and promptly cooperate with Buyer's due diligence activities, provided that such cooperation is at no additional expense or liability to Seller. Seller shall promptly deliver to Buyer all documents and materials concerning the Property which Buyer may request during the Due Diligence Period (as defined in Section 5.1 of this Agreement) that are in Seller's possession or control.

**3.1.12. Risk of Loss.** Until the Closing Date, the risk of loss relating to the Property shall rest with the Seller. Risk of Loss shall be deemed to include any property damage occurring as a result of an "Act of God," including, but not limited to, earthquakes, tremors, wind, rain or other natural occurrence

**3.1.13. Foreign Person.** Seller is not a foreign person and is a "United States Person" as such term is defined in Section 7701 (a) (30) of the Internal Revenue Code of 1986, as amended (the "Code") and shall deliver to Buyer prior to the Closing Date, an affidavit, as set forth in EXHIBIT B (Certificate of Non-Foreign Status), evidencing such fact, and such other documents as may be required under the Code

**3.2. REPRESENTATIONS AND WARRANTIES OF BUYER.** Buyer represents and warrants as follows:

**3.2.1. Organization.** Buyer is a municipal corporation of the State of Washington duly organized, validly existing and in good standing under the laws of the State of

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Washington. **Buyer** has all requisite corporate power and authority to carry on its business as it is now being conducted in the place where such businesses are now conducted.

**3.2.2. Execution, Delivery and Performance of Agreement, Authority.** The execution, delivery and performance of this Agreement by **Buyer** (i) is within the powers of **Buyer** as a municipal corporation, (ii) has been or will be on or before the Closing Date, duly authorized by all necessary action of the **Buyer's** legislative authority, and (iii) does not and will not violate any provision of any law, rule, regulation, order, writ, judgment, decree or award to which the **Buyer** is a party to or which is presently in effect and applicable to **Buyer**. This Agreement constitutes the legal, valid and binding obligation of **Buyer** enforceable against **Buyer** in accordance with the terms hereof.

**3.2.3. Litigation.** There is no pending or, to the best of **Buyer's** knowledge, threatened lawsuit or material claim against or relating to **Buyer** that shall impede or materially affect **Buyer's** ability to perform the terms of this Agreement.

**3.2.4. Full Disclosure.** No representation or warranty by **Buyer** in this Agreement or in any instrument, document, certificate or statement furnished to **Seller** pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or fail to state a material fact which is necessary to make the statements set forth therein not false or misleading.

**3.2.5. Condition of Property.** **Buyer** acknowledges that, within the Due Diligence Period, it will have conducted a physical inspection and made all investigations **Buyer** deems necessary in connection with its purchase of the Purchased Assets, and that, as of the date hereof, **Seller** has provided **Buyer** with copies of all reports in **Seller's** possession that have been requested by **Buyer**. Upon waiver or satisfaction by **Buyer** of its contingencies pursuant to Article 5, **Buyer** will be deemed to have approved the physical condition of the Property and agrees to accept and purchase the same "AS IS, WHERE IS", including, without limitation, the existence or non-existence of any pollutants, contaminants, hazardous waste, dangerous waste, toxic waste, underground storage tanks or contaminated soil, or the actual or threatened release, deposit seepage, migration or escape of such substances at, from or into the Property and the compliance or noncompliance of the Property with applicable federal, state, county and local laws and regulations including, without limitation, environmental laws and regulations. **Buyer** acknowledges and agrees that, except to the extent of **Seller's** representations and warranties in Section 3.1 of this Agreement, and to the extent of any fraud or deliberate misrepresentation by **Seller**, **Seller** shall have no liability for, and that **Buyer** shall have no recourse against the **Seller** for, any defect or deficiency of any kind whatsoever in the Property, without regard to whether such defect or deficiency was discovered or discoverable by the **Buyer** or **Seller**.

**3.2.6. No Broker.** No broker, finder, agent or similar intermediary has acted for or on behalf of **Buyer** in connection with this Agreement or the transactions contemplated hereby, and no broker, finder, agent, or similar intermediary is entitled to any broker's, finder's or similar fee or commission in connection with this Agreement

based on an agreement, arrangement, or understanding with the Buyer or any action taken by the Buyer.

#### ARTICLE 4. TITLE MATTERS

4.1. **TITLE.** Seller shall deliver to Buyer good and marketable title, free and clear of all liens, defects and encumbrances except for the Permitted Exceptions (as defined in Section 4.1.3 of this Agreement).

4.1.1. **Title Commitment.** Buyer shall obtain a current ALTA form of commitment for an owner's policy of title insurance (the "Title Commitment") issued by Pacific Northwest Title Company, Inc. (the "Title Company"), describing the Property, listing Buyer as the prospective named insured and showing as the policy amount the total purchase price for the Property.

4.1.2. **Survey.** Prior to the expiration of the Due Diligence Period (as defined in Section 5.1 of this Agreement), Buyer shall have the option, at its expense, to have prepared and furnished to the Title Company, Buyer and Seller a survey (the "Survey") of the Property prepared by a licensed public surveyor.

4.1.3. **Review of Title Commitment and Survey.** Buyer shall have until fourteen (14) days after receipt of the last dated Title Commitment and Survey, if any has been obtained, (the "Review Period") in which to notify Seller of any objections Buyer has to any matters shown or referred to in the Title Commitment or Survey. Any exceptions or other items that are set forth in the Title Commitment or the Survey and to which Buyer does not object within the Review Period shall be deemed to be permitted exceptions ("Permitted Exceptions"). With regard to items to which Buyer does object within the Review Period, Seller shall notify Buyer within ten (10) days after Seller receives Buyer's notice of objections of any exceptions to the title or items on the Survey which Seller is not willing or able to remove or otherwise resolve, and Buyer may, at Buyer's option, either waive the objections not cured or Buyer may terminate this Agreement by written notice to Seller. Notwithstanding the foregoing, all monetary liens or encumbrances shall be paid by Seller at Closing.

4.2. **CONVEYANCE.** Seller shall convey to Buyer the title to the Property by Statutory Warranty Deed in the form attached hereto as EXHIBIT C, subject only to the Permitted Exceptions. Rights reserved in federal patents or state deeds, building or use restrictions general to the district, and building or zoning regulations or provisions shall be deemed Permitted Exceptions.

#### ARTICLE 5.

## CONTINGENCIES

**5.1. DUE DILIGENCE AND FEASIBILITY.** Buyer shall satisfy itself by investigation and inspection, at its cost and expense in its sole and absolute discretion, that condition of the Property for Buyer's contemplated use meets with its approval. If Buyer approves of the condition of the Property, Buyer agrees to notify Seller, in writing, thereby removing the contingency. Buyer shall make such determination within twenty-one (21) days following the date of mutual execution of this Agreement ("Due Diligence Period"). In the event this contingency is not satisfied or waived within the Due Diligence Period, Buyer may terminate this Agreement upon written notice to Seller on or before the expiration of the Due Diligence Period, and neither party shall have any further rights or obligations to the other hereunder

**5.1.1. INSPECTIONS.** During the Due Diligence Period, Buyer, its designated representatives or agents shall have the right at Buyer's expense to (i) obtain a Phase I or Phase II Environmental Assessment on the Property and perform any and all tests, inspections and studies deemed necessary therewith; and (ii) examine all due diligence materials that Buyer may request from Seller.

**5.1.2 RIGHT OF ENTRY.** Buyer and Buyer's designated representatives or agents shall have the right and Seller hereby grants to Buyer and Buyer's designated representatives the right to enter the Property and conduct the tests, investigations and studies set forth in this Article 5 upon three (3) days advance written notice; provided that such right of entry will be limited to those times and dates that will not disrupt Seller's operations and activities on the Property. Invasive tests of the Property, such as drilling or excavation shall be subject to Seller's prior written approval.

**5.2. LICENSES.** Within the Due Diligence Period, Buyer shall grant Seller authorization to conduct the activities on the Property listed below subject to the conditions contained herein. If Buyer and Seller fail to enter into the necessary agreements within the Due Diligence Period, this Agreement shall become null and void unless the parties agree in writing to an extension of the contingency period.

**5.2.1. Bus Loop, Layover and Comfort Station Requirements.** In order for Seller to continue to provide transit service to the Northshore area, it is necessary for Seller to maintain a bus loop and layover area for buses at or next to the Property. At bus layover areas, it is necessary for bus operators to have access to comfort stations (restrooms), located nearby.

**5.2.1.1. Buyer agrees to allow Seller to continue to use the existing bus stop, bus loop, layover area and comfort station on the Property from the Closing Date until Buyer gives Seller written Notice to Vacate. Seller shall cease operation of the area within 180 days of**

receiving the Notice to Vacate. The existing bus loop, layover area and comfort station are identified in **EXHIBIT D** (Northshore P&R Layover), which is attached hereto and made a part hereof.

**5.2.1.2.** Seller agrees to pay Buyer \$50 per month, paid quarterly, to cover the costs of utilities associated with Seller's use of the existing comfort station until Seller ceases transit operations on the Property. Payment will be pro rated for months in which Seller's use is less than a full month. Buyer acknowledges and agrees that Seller needs continued use of the bus loop for access to the bus stop, bus layover and comfort station.

**5.2.1.3.** Seller agrees to maintain the existing bus loop, layover area and comfort station until Seller ceases transit operations on the Property. Buyer acknowledges and agrees that the layover area and comfort station will be maintained for the exclusive use of Seller's transit operators. Buyer acknowledges and agrees that Seller and transit customers may need to enter the bus loop area for boarding and deboarding buses on the Property.

**5.2.1.4.** Buyer and Seller agree to immediately begin working to identify future bus layover areas on or near the Property with necessary bus access and to continue to work in a collaborative partnership. The intent of the parties is for the Seller to secure a mutually agreeable bus layover location to replace the exiting layover area once the Seller ceases transit operations on the Property.

**5.2.2. PARK-AND-RIDE.** Until the Kenmore Park-and-Ride Expansion project is complete, the Seller desires to use the Property for park-and-ride purposes subject to the following conditions.

**5.2.2.1.** Buyer agrees to allow Seller and King County Metro Transit customers to continue to use the Property for park-and-ride purposes until November 30, 2004, or the Seller's Kenmore Park-and-Ride Expansion project is completed and occupancy permitted, whichever is later. At such time as the project is completed and occupancy permitted, King County Metro Transit customers will be directed to the expanded Kenmore Park-and-Ride lot and use of the Property for park-and-ride purposes will terminate. After said use, Seller may remove the bus shelter and related passenger facilities from the site.

**5.2.2.2.** Seller agrees to pay Buyer for interim parking at 100 spaces at \$4



per month per space for each month beyond the Closing date of this agreement until the new lot is permitted. Payment will be pro-rated for months in which Seller's use is less than a full month.

**ARTICLE 6.  
COVENANTS OF SELLER PENDING CLOSING**

**6.1 CONDUCT, NOTICE OF CHANGE.** Seller covenants that between the date hereof and the Closing Date, Seller shall take all such actions as may be necessary to assure that the representations and warranties set forth in Article 3 hereof will be true and complete as of the Closing Date (except such representations, warranties and matters which relate solely to an earlier date), and all covenants of Seller set forth in this Agreement which are required to be performed by it at or prior to the Closing Date shall have been performed at or prior to the Closing Date as provided for in this Agreement. Seller shall give Buyer prompt written notice of any material change in any of the information contained in the representations and warranties made in Article 3 or elsewhere in this Agreement which occurs prior to the Closing Date.

**ARTICLE 7.  
COVENANTS OF BUYER PENDING CLOSING**

**7.1 CONDUCT, NOTICE OF CHANGE.** Buyer covenants that between the date hereof and the Closing Date, Buyer shall take all such actions as may be necessary to assure that the representations and warranties set forth in Article 3 hereof will be true and complete as of the Closing Date (except such representations, warranties and matters which relate solely to an earlier date), and that all covenants of Buyer set forth in this Agreement which are required to be performed by it at or prior to the Closing Date shall have been performed at or prior to the Closing Date as provided for in this Agreement. Buyer shall give Seller prompt written notice of any material change in any of the information contained in the representations and warranties made in Article 3 or elsewhere in this Agreement which occurs prior to the Closing Date.

**ARTICLE 8.  
CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS**

All obligations of Buyer hereunder are subject to the fulfillment of each of the following conditions at or prior to the Closing Date, and Seller shall exert its best efforts to cause each such condition to be fulfilled:

**8.1. DELIVERY OF DOCUMENTS.** Seller shall have delivered to Buyer at or prior to Closing all documents required by the terms of this Agreement to be delivered to Buyer.

**8.2. REPRESENTATIONS, WARRANTIES AND COVENANTS.** All representations, warranties and covenants of Seller contained herein or in any document delivered pursuant hereto shall be true and correct in all material respects when made and as of the Closing Date.

8.3. **OBLIGATIONS.** All obligations required by the terms of this Agreement to be performed by Seller at or before the Closing Date shall have been properly performed in all material respects.

8.4. **TITLE.** Any and all matters shown or referred to in the Title Commitment to which Buyer has objected within the time specified in Section 4.1, shall have been cured by Seller, unless such objections have been waived by Buyer.

8.5. **APPROVAL OF COUNSEL.** Seller's counsel shall have approved this document as to form as evidenced by such counsel's signature on this Agreement.

8.6. **CONDEMNATION.** No portion of the Purchased Assets shall have been taken or damaged by any public or quasi-public body, and Seller shall not have transferred any portion of the Purchased Assets to any such body in lieu of condemnation.

## ARTICLE 9. CONDITIONS PRECEDENT TO SELLER'S OBLIGATIONS

All obligations of Seller to close on the Closing Date are subject to the fulfillment of each of the following conditions at or prior to the Closing Date, and Buyer shall exert its best efforts to cause each such condition to be so fulfilled:

9.1. **REPRESENTATIONS, WARRANTIES AND COVENANTS.** All representations, warranties and covenants of Buyer contained herein or in any document delivered pursuant hereto shall be true and correct in all material respects when made and as of the Closing Date.

9.2. **OBLIGATIONS.** All obligations required by the terms of this Agreement to be performed by Buyer at or before the Closing Date shall have been properly performed in all material respects.

9.3. **APPROVAL OF COUNSEL.** Buyer's counsel shall have approved this document as to form as evidenced by such counsel's signature on this Agreement.

9.4. **DELIVERY OF DOCUMENTS.** Buyer shall have delivered to Seller at or prior to Closing Date all documents required by the terms of this Agreement to be delivered to Seller.

9.5. **TITLE.** Buyer shall have caused the Title Company to be irrevocably committed to issue an owner's policy of title insurance for the full amount of the Purchase Price, effective as of the Closing Date, containing no exceptions other than the Permitted Exceptions.

## ARTICLE 10. CLOSING

**10.1. CLOSING/CLOSING DATE.** The Closing shall take place on or before October 1, 2004 unless extended pursuant to a written agreement executed by **Buyer** and **Seller**. Upon execution of this Agreement, the parties agree to set up an escrow account with Pacific Northwest Title Company of Washington, Inc. (the "Escrow Agent"). The Escrow Agent shall serve as Closing Agent for the transaction contemplated herein and the Closing shall occur in the offices of Escrow Agent in Seattle, Washington. The title, right of possession and interest to the Purchased Assets shall pass to **Buyer** upon the Closing Date and thereafter the risk of loss thereof shall be the responsibility of **Buyer**.

**10.2. EARNEST MONEY.** **Buyer** shall submit **TEN THOUSAND DOLLARS AND NO CENTS (\$10,000)** in Earnest Money to **Seller** at the time this Agreement is executed, which shall be placed in an interest bearing escrow account by the Escrow Agent with interest to accrue to the benefit of the **Buyer**. The earnest money will be credited against the Purchase Price.

**10.3. PRORATIONS.** All prorations, unless otherwise specifically provided for herein, shall be made as of the Closing Date.

**10.3.1. Closing Costs.** **Seller** shall pay the cost of one-half (½) of the escrow fee charged by the Escrow Agent, any real estate excise or other transfer tax due, and its own attorneys' fees. **Buyer** shall pay one-half (½) of the escrow fee charged by the Escrow Agent, the cost of the preliminary and binding title commitments from the Title Company, the recording fees for the deed and its own attorneys' fees. Except as otherwise provided in Section 10.2 of this Agreement, all other expenses hereunder shall be paid by the party incurring such expenses.

**10.3.2. Taxes.** **Seller** is exempt by law from the payment of real property ad valorem taxes, LIDs and assessments ("Taxes") on the Property.

**10.4. MONETARY LIENS.** Except as otherwise expressly provided to the contrary in this Agreement, **Seller** shall pay or cause to be satisfied at or before the Closing Date all monetary liens on or with respect to all or any portion of the Property. If **Seller** fails to satisfy said liens, the Purchase Price shall be reduced by the amounts due to satisfy and discharge the liens.

**10.5. SELLER'S DELIVERY OF DOCUMENTS AT CLOSING.** At the Closing, **Seller** will deliver to **Buyer** the following properly executed documents:

(a) **Seller's** Certificate of Non-Foreign Status substantially in the form of **EXHIBIT B**, attached hereto;

(b) A Statutory Warranty Deed conveying the Property in the form of **EXHIBIT C** attached hereto;

(c) A Bill of Sale and Assignment duly executed by the **Seller** in the form of **EXHIBIT E**, attached hereto for the Personal Property, if any

**10.6. BUYER'S DELIVERY OF DOCUMENTS AND PURCHASE PRICE AT CLOSING.** At the Closing, **Buyer** will deliver to **Seller** the following properly executed documents:

- (a) Cash or immediately available funds in the amount of the Purchase Price.

## ARTICLE 11. TERMINATION

**11.1. TERMINATION BY EITHER PARTY.** Either party may terminate this Agreement if a condition to its obligation to consummate the transactions contemplated by this Agreement as set forth in Articles 8 and 9 has not been satisfied by the Closing Date. In that event, if neither party is in default under this Agreement, the parties shall have no further obligations or liabilities to one another and all documents delivered into escrow shall be returned to the appropriate party.

## ARTICLE 12. MISCELLANEOUS PROVISIONS

**12.1. NATURE AND SURVIVAL OF REPRESENTATIONS AND WARRANTIES.** Each statement, representation, warranty, indemnity, covenant, and agreement made by Seller and Buyer in this Agreement or in any document, certificate or other instrument delivered by or on behalf of Seller or Buyer pursuant to this Agreement or in connection herewith shall be deemed the representation, warranty, indemnity, covenant and agreement of Seller and Buyer and shall survive the Closing Date unless a different time period is expressly provided for in this Agreement and all such statements are made only to and for the benefit of the parties hereto, and shall not create any rights in other persons.

**12.2. DEFAULT AND ATTORNEYS' FEES.** In the event of default by either party to this Agreement, the non-defaulting party shall have the right to bring an action for specific performance, damages and any other remedies available to such party at law or in equity. In the event of any litigation hereunder, the Superior Court of King County, Washington shall have the exclusive jurisdiction and venue.

**12.3. TIME IS OF THE ESSENCE.** Time is of the essence in the performance of this Agreement.

**12.4. NOTICES.** Any and all notices or other communications required or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given upon receipt when personally delivered or sent by overnight courier or two (2) days after deposit in the United States mail if by first class, certified or registered mail, return receipt requested. All notices shall be addressed to the parties at the addresses set forth below or at such other addresses as any parties may specify by notice to all other parties and given as provided herein:

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**If to Buyer:** City of Kenmore  
Attn:  
  
Kenmore, WA

*With a copy to:*

**If to Seller:** King County Metro Transit Division  
Attn: Nancy Gordon  
201 South Jackson Street  
KSC-TR-0431  
Seattle, WA 98104-3856

*With a copy to:* King County Prosecuting Attorney  
Attn: Robert L Stier  
900 King County Administration Building  
500 Fourth Avenue  
Seattle, WA 98104

**12.5 ENTIRE AGREEMENT AND AMENDMENT.** This writing (including the exhibits attached hereto) constitutes the entire agreement of the parties with respect to the subject matter hereof and may not be modified or amended except by a written agreement specifically referring to this Agreement and signed by all parties hereto.

**12.6 SEVERABILITY.** In the event any portion of this Agreement shall be found to be invalid by any court of competent jurisdiction, such holding shall not impact or affect the remaining provisions of this Agreement unless that court of competent jurisdiction rules that the principal purpose and intent of this contract should and/or must be defeated, invalidated or voided.

**12.7 WAIVER.** No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any prior or subsequent breach or default.

**12.8 BINDING EFFECT.** Subject to Section 12.12 in this Agreement shall be binding upon and inure to the benefit of each party hereto, its successors and assigns.

**12.9 LEGAL RELATIONSHIP.** The parties to this Agreement execute and implement this Agreement solely as **Seller and Buyer**. No partnership, joint venture or joint undertaking shall be construed from this Agreement.

12.10 CAPTIONS. The captions of any articles, paragraphs or sections contained herein are for purposes of convenience only and are not intended to define or limit the contents of said articles, paragraphs or sections.

12.11 COOPERATION. Prior to and after the Closing Date the parties shall cooperate, shall take such further action and shall execute and deliver further documents as may be reasonably requested by the other party in order to carry out the provisions and purposes of this Agreement.

12.12 GOVERNING LAW. This Agreement and all amendments thereof shall be governed by and construed in accordance with the laws of the State of Washington applicable to contracts made and to be performed therein, without giving effect to its conflicts of law provisions.

12.13 NON-MERGER. The terms and provisions of this Agreement will not merge in, but will survive, the Closing of the transaction contemplated under this Agreement.

12.14 ASSIGNMENT. Buyer shall not assign this Agreement or any rights hereunder without Seller's prior written consent, which shall not be unreasonably withheld.

12.15 NEGOTIATION AND CONSTRUCTION. This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party. All parties acknowledge and represent, as an express term of this Agreement, that they have had the opportunity to obtain and utilize legal review of the terms and conditions outlined in this Agreement, although each party must determine if they wish to obtain and pay for such legal review. Each party shall be and is separately responsible for payment of any legal services rendered on their behalf regarding legal review of the terms found in this Agreement.

12.16 EXHIBITS. The following Exhibits described herein and attached hereto are fully incorporated into this Agreement by this reference:

- |                  |  |
|------------------|--|
| <b>EXHIBIT A</b> | Legal Description of Property                |
| <b>EXHIBIT B</b> | Certificate of Non-Foreign Status            |
| <b>EXHIBIT C</b> | Statutory Warranty Deed                      |
| <b>EXHIBIT D</b> | Northshore Bus Loop and Layover Requirements |
| <b>EXHIBIT E</b> | Bill of Sale and Assignment                  |

15027

EXECUTED as of the date and year first above written:

**SELLER:**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

By \_\_\_\_\_  
Deputy Prosecuting Attorney

**BUYER:**

Name: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVED AS TO FORM:

By \_\_\_\_\_

Buyer's Legal Counsel

15027

[Acknowledgements Follow]

STATE OF WASHINGTON

COUNTY OF KING

} ss.

On this day personally appeared before me \_\_\_\_\_, to me known to be the \_\_\_\_\_ of KING COUNTY, the municipal corporation and political subdivision of the State of Washington that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such municipal corporation and political subdivision, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

Printed Name \_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington,  
residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_



15027

STATE OF WASHINGTON

COUNTY OF KING

} ss.

On this day personally appeared before me \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, known to me to be the Buyer that executed the foregoing instrument, and acknowledged such instrument to be [his/her] free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that [he/she] was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

Printed Name \_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington,  
residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

[End of Acknowledgements]

**EXHIBIT A**

**Property Legal Description**

That portion of the east 720 feet of Government Lot 1, Section 11, Township 26 North, Range 4 East, W.M., in King County, Washington, lying north of the Plat of Northlake Terrace Addition, according to the plat thereof recorded in Volume 33 of Plats, page 20, in King County, Washington and lying south of the following described line:

Beginning at a point that is 300.00 feet south of the northeast corner of said Government Lot 1 as measured along the east line thereof; thence north 87°44'38" west parallel with the north line of said Government Lot 1, a distance of 190.34 feet to a point designated Point "A" (for reference purposes); thence continue north 87°44'38" west along said line, a distance of 529.67 feet to the east line of said east 720 feet of Government Lot 1 and the terminus of said line; EXCEPT the east 30 feet thereof conveyed to King County for road by deed recorded under Recording Number 2963377;

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TOGETHER WITH an easement for ingress and egress over the following described tract of land:

Beginning at a point that is 300.00 feet south the northeast corner of Government Lot 1, Section 11, Township 26 North, Range 4 East, W.M., in King County, Washington, as measured along the east line thereof;  
thence north  $87^{\circ}44'38''$  west parallel with the north line of said Government Lot 1, a distance of 190.34 feet to a point designated Point "A" and the TRUE POINT OF BEGINNING of this tract;  
thence north  $87^{\circ}44'38''$  west parallel with the north line of said Government Lot 1, a distance of 446.01 feet to a point on a curve, from which the radial point of said curve bears north  $84^{\circ}37'32''$  west, a distance of 488 feet;  
thence along said curve to the left, with a central angle of  $07^{\circ}36'03''$ , an arc distance of 64.74 feet;  
thence north  $02^{\circ}13'36''$  west, a distance of 93.92 feet;  
thence on a 512-foot radius tangent curve to the right with a central angle of  $04^{\circ}45'55''$ , an arc distance of 42.58 feet;  
thence north  $02^{\circ}32'19''$  east, a distance of 89.14 feet, to the south right-of-way line of N.E. 185<sup>th</sup> Street as recorded under Recording Number 4791700, said point is 10.00 feet south of, when measured at right angles from, said north line of Government Lot 1;

(Legal Description continued)

Legal Description, continued:

thence south  $02^{\circ}32'19''$  west, a distance of 89.26 feet;  
thence on a 488-foot radius tangent curve to the left, with a central angle of  $04^{\circ}45'55''$ , an arc distance of 40.59 feet;  
thence south  $02^{\circ}13'36''$  east, a distance of 93.92 feet;  
thence on a 512-foot radius tangent curve to the right, with a central angle of  $03^{\circ}22'02''$ , an arc distance of 30.09 feet to a point of reverse curvature; thence  
on a 25-foot radius curve to the left, with a central angle of  $88^{\circ}53'04''$ , an arc distance of 38.78 feet; thence  
south  $87^{\circ}44'38''$  east parallel with said north line, a distance of 287.18 feet;  
thence on a 502.90-foot radius tangent curve to the right, with a central angle of  $12^{\circ}32'32''$ , an arc distance of 110.09 feet to Point "A" and the TRUE POINT OF BEGINNING of this description.

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EXHIBIT B

**Certificate of Non-Foreign Status.**

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a United States real property interest by **KING COUNTY** ("Transferor"), the undersigned hereby certifies the following on behalf of Transferor:

- 1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations); and
- 2. Transferor's United States employer identification number is 91-6001327; and
- 3. Transferor's office address is King County Facilities Management Division, Asset Development and Management Section, Room 500 King County Administration Building, 500 Fourth Avenue, Seattle, WA 98104

Transferor understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

**TRANSFEROR:**

**KING COUNTY**

By \_\_\_\_\_

Title \_\_\_\_\_

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EXHIBIT C

Filed For Record At Request Of

**AFTER RECORDING RETURN TO:**

King County  
Asset Management Section  
ADM-ES-0500  
Room 500 King County Admin. Bldg.  
500 Fourth Avenue  
Seattle, WA 98104

**STATUTORY WARRANTY DEED**

**Grantor -- KING COUNTY, WASHINGTON**

**Grantee --**

**Legal ----**

**Tax Acct. --**

The Grantor, KING COUNTY, a political subdivision of the State of Washington, for and in consideration of \_\_\_\_\_, the receipt of which is hereby acknowledged, pursuant to King County Ordinance No. \_\_\_\_\_, does hereby convey and warrant unto \_\_\_\_\_ the following described real property, situate in King County, Washington:

(Legal Description)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

KING COUNTY, WASHINGTON

BY \_\_\_\_\_

TITLE \_\_\_\_\_

**EXHIBIT C**  
Parcel map

**15027**

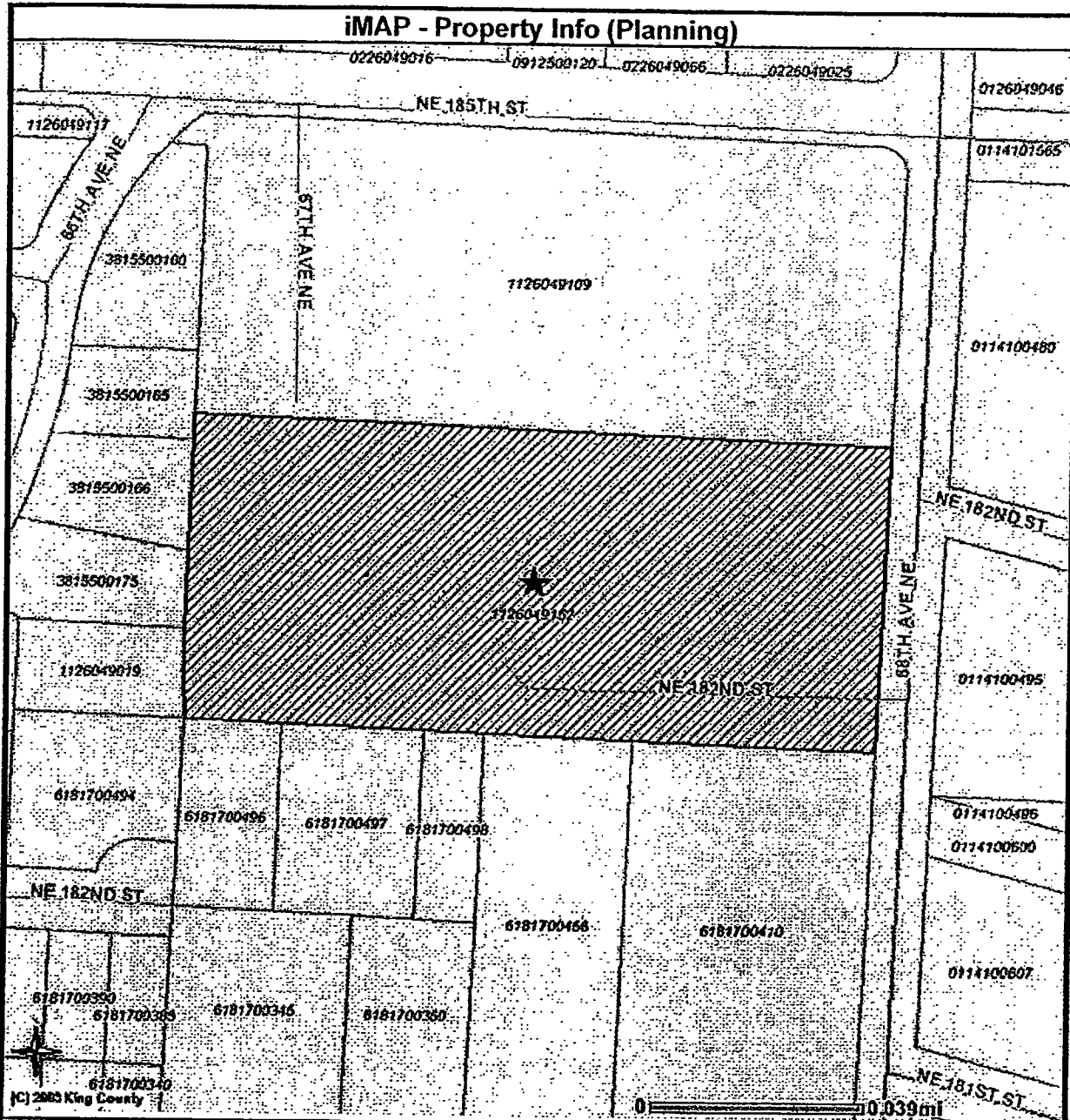


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**EXHIBIT C**  
Parcel map

**15027**

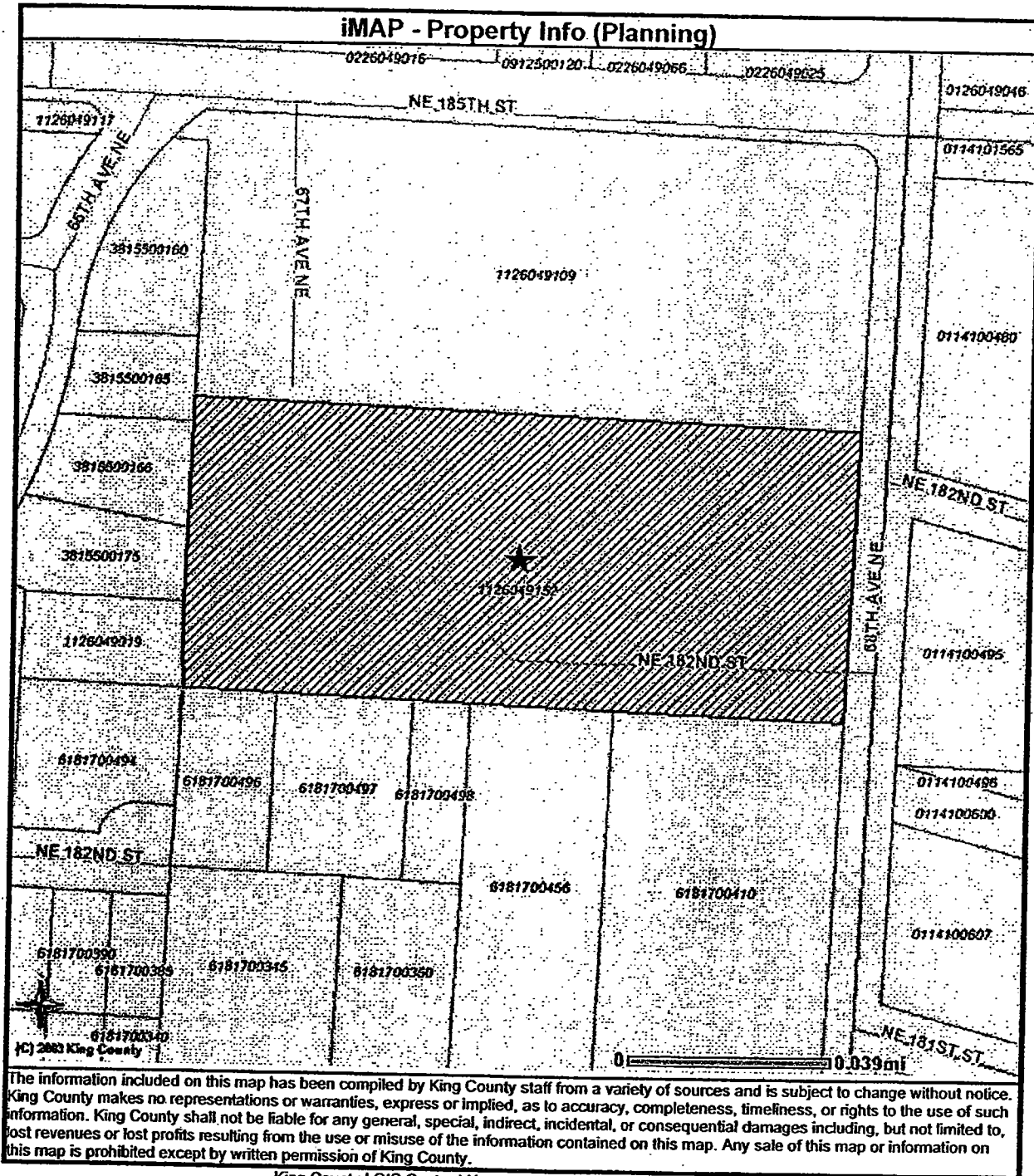


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**EXHIBIT C**  
Parcel map

# 15027

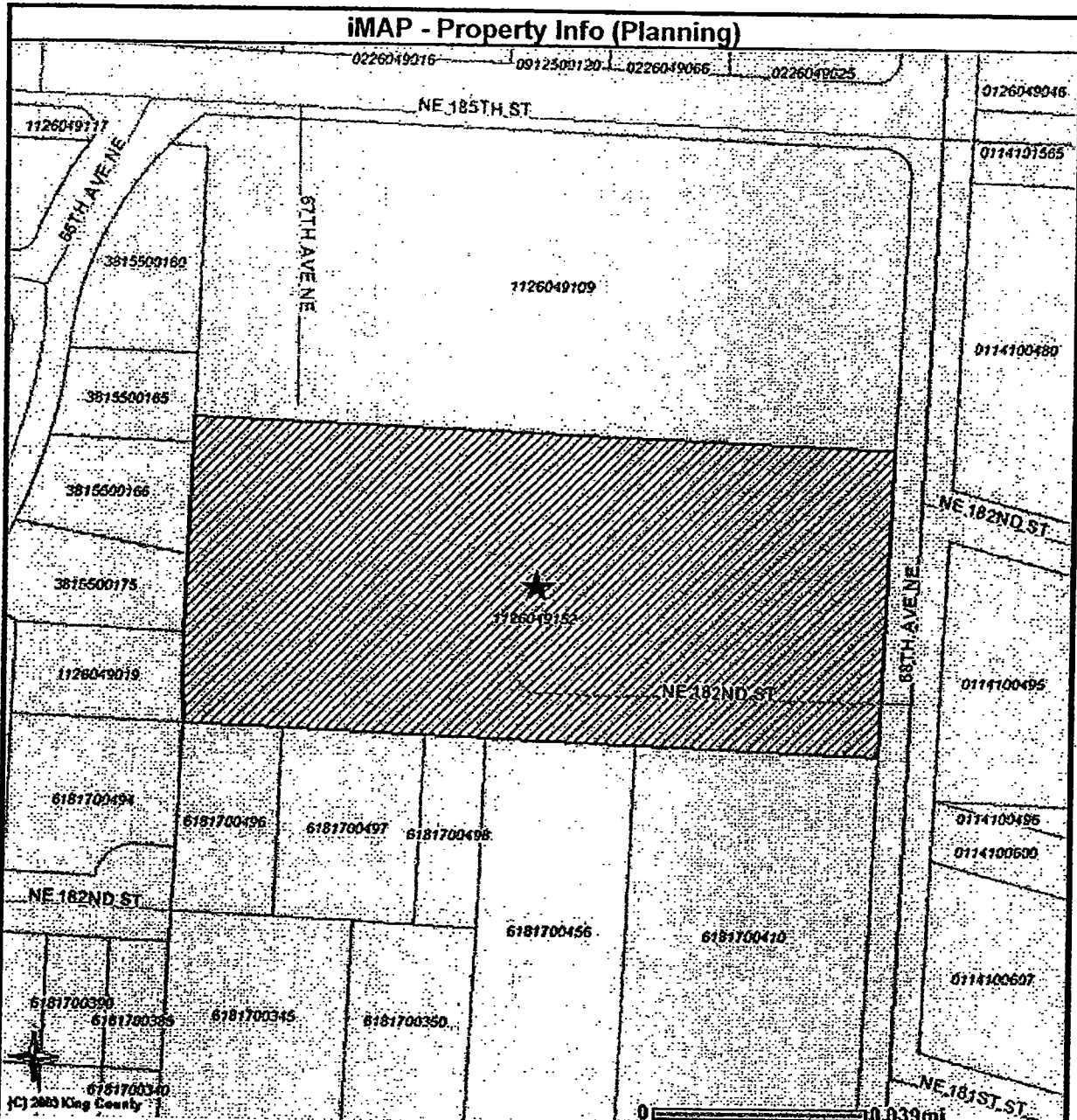


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**EXHIBIT C**  
Parcel map

**15027**

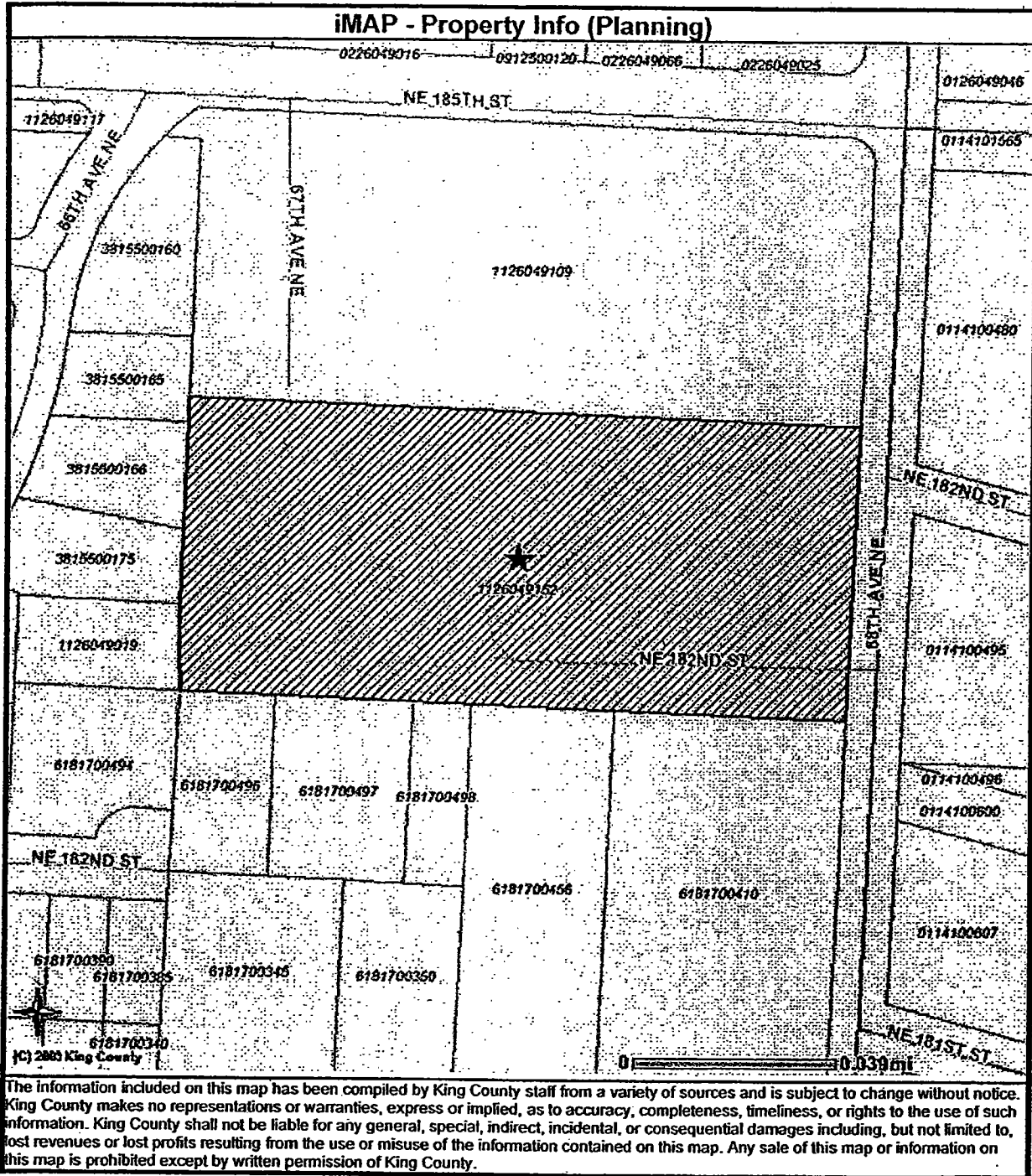


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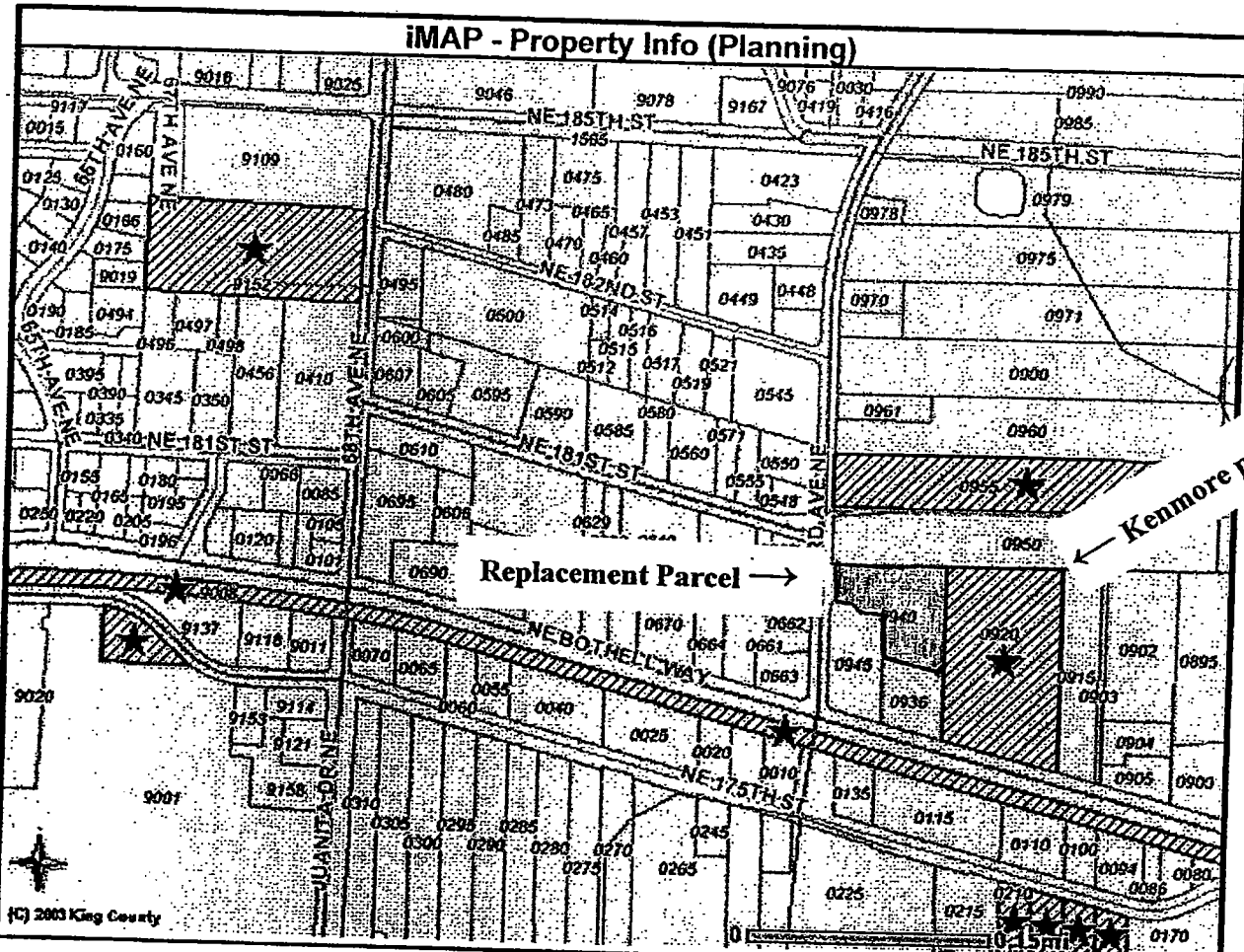
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iMAP - Property Info (Planning)



(C) 2003 King County

Legend		
	County Boundary	
	Streets	
	Highway	
	Arterials	
	Local	
	Forest Production District Boundary	
	Agricultural Production District Boundary	
	Urban Growth Area Line	
	Lakes and Large Rivers	
	Streams	
	Muckleshoot Tribe	
	King County owned properties	
	Parcels	
	Zoning Labels	
	A-10 - Agricultural, one DU per 10 acres	
	A-35 - Agricultural, one DU per 35 acres	
	F - Forest	
	M - Mineral	
	RA-2.5 - Rural Area, one DU per 2.5 acres	
	RA-5 - Rural Area, one DU per 5 acres	
	RA-10 - Rural Area, one DU per 10 acres	
	UR - Urban Reserve, one DU per 5 acres	
	R-1 - Residential, one DU per acre	
	R-4 - Residential, 4 DU per acre	
	R-6 - Residential, 6 DU per acre	
	R-8 - Residential, 8 DU per acre	
	R-12 - Residential, 12 DU per acre	
	R-18 - Residential, 18 DU per acre	
	R-24 - Residential, 24 DU per acre	
	R-48 - Residential, 48 DU per acre	
	NB - Neighborhood Business	
	CB - Community Business	
	RB - Regional Business	
	O - Office	
	I - Industrial	
	Other	
	Incorporated Area	

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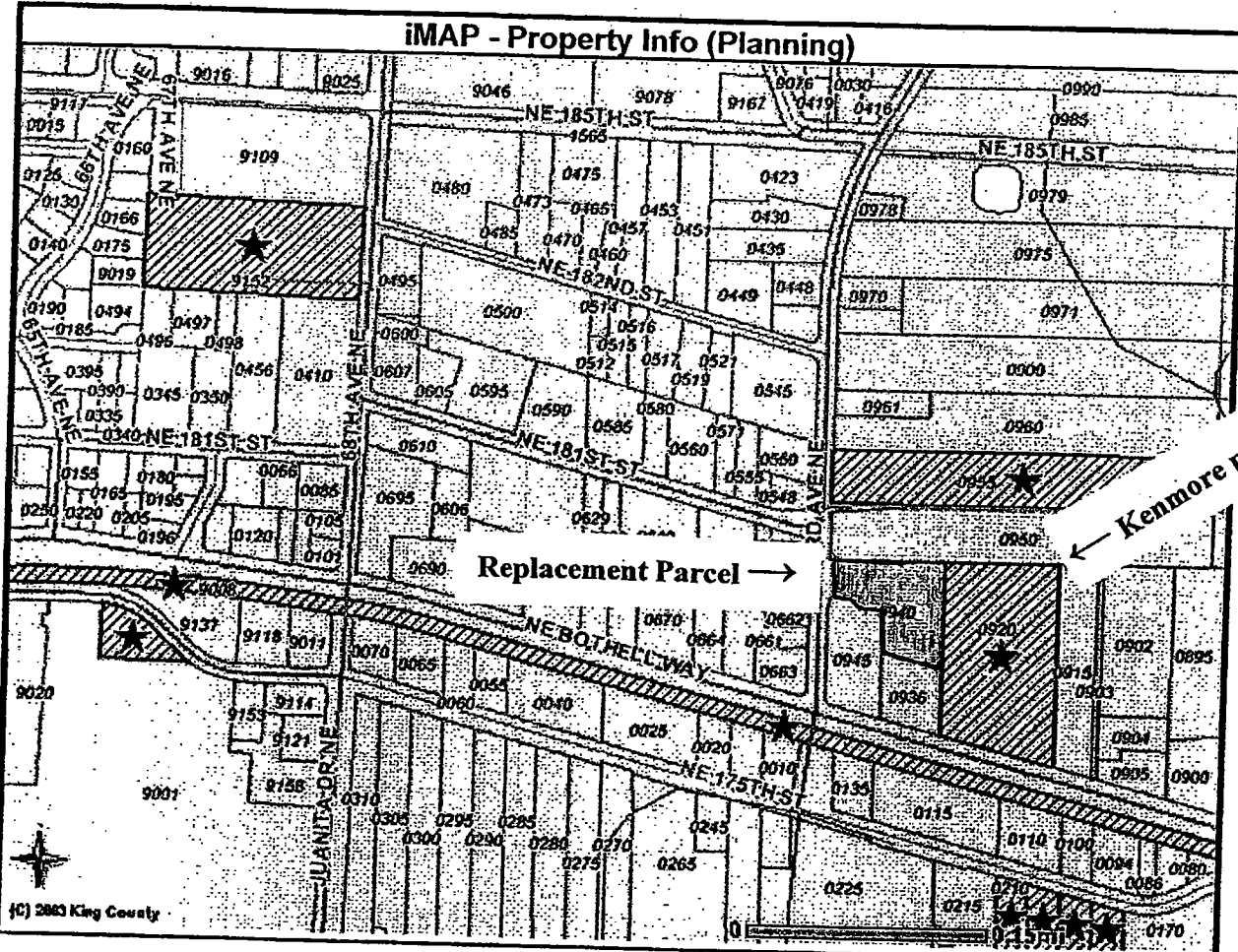


King County Home

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iMAP - Property Info (Planning)



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County Boundary

Streets

Highway

Arterials

Local

Forest Production District Boundary

Agricultural Production District Boundary

Urban Growth Area Line

Lakes and Large Rivers

Streams

Muckleshoot Tribe

King County owned properties

Parcels

Zoning Labels

Legend

Zoning

- A-10 - Agricultural, one DU per 10 acres
- A-35 - Agricultural, one DU per 35 acres
- F - Forest
- M - Mineral
- RA-2.5 - Rural Area, one DU per 5 acres
- RA-5 - Rural Area, one DU per 5 acres
- RA-10 - Rural Area, one DU per 10 acres
- UR - Urban Reserve, one DU per 5 acres
- R-1 - Residential, one DU per acre
- R-4 - Residential, 4 DU per acre
- R-6 - Residential, 6 DU per acre
- R-8 - Residential, 8 DU per acre
- R-12 - Residential, 12 DU per acre
- R-18 - Residential, 18 DU per acre
- R-24 - Residential, 24 DU per acre
- R-48 - Residential, 48 DU per acre

- NB - Neighborhood Business
- CB - Community Business
- RB - Regional Business
- O - Office
- I - Industrial
- Other
- Incorporated Area

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EXHIBIT E

**BILL OF SALE AND ASSIGNMENT**

---

THIS BILL OF SALE is made as of this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by KING COUNTY ("Seller"), in favor of \_\_\_\_\_, a political subdivision of the State of Washington ("Buyer"), with reference to the following facts.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Seller does hereby absolutely and unconditionally give, grant, bargain, sell, transfer, set over, assign, convey, release, confirm and deliver to Buyer all of Seller's right, title and interest in and to any and all equipment, furniture, furnishings, fixtures and other tangible personal property owned by Seller that is attached, appurtenant to or used in connection with the real property legally described on the attached EXHIBIT A.

Seller represents and warrants that it is the sole owner of, and has good title to, such personal property, and has full right and authority to transfer and deliver the same, and will defend the sale hereby against each and every person claiming otherwise.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale as of the date first above written.

**SELLER:**

By: \_\_\_\_\_

Its: \_\_\_\_\_