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2005-364

**Attachment D
Purchase and Sale Agreement-Fitzgerald**

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of August, 2005, by and between Ronald D. Fitzgerald and Lynda K. Fitzgerald, husband and wife (the "Seller") and KING COUNTY, a political subdivision of the State of Washington (the "Buyer").

RECITALS

A. Seller owns certain real property located in Redmond, County of King, and State of Washington, which consists of 0.93 acres, more or less, commonly identified as Assessors Tax Parcel No. 2526059010, 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. Seller and Buyer desire to avoid the risks, delays and expenses of any and all claims and issues between them related to the conveyance of real property by the Seller to the Buyer for the Northeast 124th Street, SR 522-Redmond-Avondale right of way project on May 9, 1974.

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) and Buyer shall buy, assume and accept from Seller on the Closing Date the following assets and properties:

(a) all the 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");

(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; and

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 Seventy Thousand and no/100 (\$ 70,000.00) (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 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. 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.

3.1.2. 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 below.

3.1.3. 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

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statement of a material fact or fails to state a material fact which is necessary to make the statements set forth therein not false or misleading.

3.1.4. 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.

3.1.5. 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, except as noted in Article 5.1, 10.1, and 12.14.

3.1.6. 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;

3.1.7. 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 Closing.

3.1.8. 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) 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 and shall deliver to Purchaser prior to the Closing an affidavit, as set forth in **Exhibit D**, 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 and political subdivision duly organized, validly existing and in good standing under the laws of the State of 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 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.

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. **Broker.** Each party represent to the other that no broker or finder has been involved in this transaction. In the event this agreement is assigned per Article 12.14, the assignee, Burnstead Construction, as buyer, will pay any real estate commission relating to this purchase and sale.

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 the Permitted Exceptions.

4.1.1. **Title Commitment.** Buyer shall obtain a current ALTA form of commitment for an owner's extended policy of title insurance (the "Title Commitment") issued by Chicago Title Insurance 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. At such time as the Title Company causes the Title Commitment to be furnished to Buyer, the Title Company shall further cause to be furnished to Buyer legible copies of all instruments referred to in the Title Commitment as restrictions or exceptions to title to the Property.

4.1.2. **Survey.** Prior to the expiration of the Due Diligence Period (as defined in Section 5.2), Buyer shall the option, at its expense, to have prepared and furnished to the Title Company and Buyer a survey (the "Survey") of the Property prepared by a licensed public surveyor. The Survey shall be certified to Buyer and the Title Company, shall be satisfactory to the Title Company so as to permit it to issue an owner's extended coverage title policy, identify the Property by legal description and shall set forth the number of square feet contained within the Property, show all natural monuments, existing fences, drainage ditches and/or courses, flood plain limits, any building or other site improvements and/or objects, any rights-of-way for streets, existing driveways, alleys or highways, easements and other restriction lines existing and/or proposed which shall affect any portion of the Property, and such other items as required by Buyer.

4.1.3. **Review of Title Commitment and Survey.** Buyer shall have until thirty

(30) days after receipt of the last of the Title Commitment and the Survey (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 and of any title insurance endorsements required by Buyer. 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 title or items on the survey which Seller is not able to remove or otherwise resolve and any endorsements that Seller is not able to provide following Buyer's request within the Review Period, and Buyer may, at Buyer's option, either waive the objections not cured or Buyer may terminate this Agreement by notice to Seller. Notwithstanding the foregoing, all monetary liens or encumbrances shall be paid by Seller at Closing.

4.2. **OWNER'S TITLE INSURANCE POLICY.** At the closing, Buyer shall cause an owner's policy of title insurance to be issued by the Title Company in the full amount of the purchase price, effective as of the closing date, insuring Buyer that the fee simple title to the Property is vested in Buyer, subject only to the usual printed exceptions contained in such title insurance policy, to the matters approved by Buyer as provided herein, and to any other matters approved in writing by Buyer. The obligation of Buyer to provide the title policy called for herein shall be satisfied if, at the closing, the Title Company has given a binding commitment, in a form reasonably satisfactory to Buyer, to issue the policies in the form required by this section. Buyer shall pay any sum owing to the Title Company for the preparation of the preliminary and binding commitments generated by the Title Company.

4.3. **CONVEYANCE.** Seller shall convey to Buyer the title to the Property by statutory warranty deed, 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 PERIOD.** The obligations of Buyer under this Agreement are subject to the satisfaction or waiver of the contingencies set forth in this Article 5 on or before September 10, 2005. ("Due Diligence Period"). Should County Council Approval not be obtained by September 10, 2005 as noted in paragraph 9.5 of this agreement, the Due Diligence Period will be extended for an additional 30 days. In the event any one or more of the contingencies herein set forth is not removed or waived by Buyer within the Due Diligence Period, Buyer may terminate this Agreement upon written notice to Seller and neither party shall have any further rights or obligations to the other hereunder. Buyer shall be the sole judge as to whether the contingencies shall have been satisfied.

5.2. **INSPECTIONS AND FEASIBILITY.** The condition of the Property for Buyer's contemplated use and the feasibility of such use shall meet the approval of Buyer, in Buyer's sole discretion. During the Due Diligence Period, Buyer, its designated representatives or agents shall

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discretion. During the Due Diligence Period, Buyer, its designated representatives or agents shall have the right at Buyer's expense to (i) perform any and all tests, inspections, studies, surveys or appraisals of the Property deemed necessary on any subject by Buyer (subject to the limitations set forth below); (ii) obtain a Phase I or Phase II Environmental Assessment on the Property; (iii) examine all due diligence materials that Buyer may request from Seller; (iv) determine to its satisfaction whether approvals, permits and variances for the Project can be obtained under applicable land use and zoning codes for Buyer's proposed development of the Project on the Property; (v) and determine whether Buyer's proposed development of the Project is economically feasible.

5.2.1. 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 1 day(s) 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.

ARTICLE 6. COVENANTS OF SELLER PENDING CLOSING

6.1 CONDUCT, NOTICE OF CHANGE. Seller covenants that between the date hereof and the Closing, 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 shall have been performed at or prior to the Closing 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, 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 shall have been performed at or prior to the Closing as provided 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, 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 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. The Title Company is irrevocably committed to issue an owner's extended coverage policy of title insurance containing no exceptions other than the Permitted Exceptions.

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, 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

9.2. **OBLIGATIONS.** All obligations required by the terms of this Agreement to be performed by Buyer at or before the Closing 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 all documents required by the terms of this Agreement to be delivered to Seller.

9.5. **County Council Approval.** The sale of the Property is subject to approval by the King County Council of an ordinance approving transfer of this Property and other property to Burnstead Construction. If such approval is not granted prior to October 10, 2005, Seller or Buyer may terminate this Agreement upon written notice to the other. Upon such termination, neither party shall have any further rights or obligations to the other hereunder.

ARTICLE 10. CLOSING

10.1. **CLOSING/CLOSING DATE.** The Closing shall take place on _____, 2005 or such earlier date as may be mutually agreed upon by the parties, 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 Chicago Title Insurance Company (the "Escrow Agent"). The Escrow Agent shall serve as closing agent for the transaction contemplated herein and closing shall occur in the offices of Escrow Agent in Bellevue, 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. Closing of this agreement shall take place concurrently with closing of the Purchase and Sale Agreement dated May 12, 2005, and executed June 10, 2005, between King County, Seller, and Burnstead Construction, Buyer.

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

10.2.1. **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 this Section 10.2, and Section 9.4 above, all other expenses hereunder shall be paid by the party incurring such expenses.

10.3. **MONETARY LIENS.** Except as otherwise expressly provided to the contrary in this Agreement, Seller shall pay or cause to be satisfied at or before Closing all monetary liens on or

10.3. **MONETARY LIENS.** Except as otherwise expressly provided to the contrary in this Agreement, Seller shall pay or cause to be satisfied at or before Closing 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.

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

- (a) A Statutory Warranty Deed conveying the Property.
- (b) Seller's Certificate of Non-Foreign status.

10.5. **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 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:

12.5. **1031 Exchange.** If either Buyer or Seller intends for this transaction to be part of a Section 1031 like-kind exchange, then the other party agrees to cooperate in the completion of the like-kind exchange so long as the cooperating party incurs no additional liability doing so, and so long as any expenses (including attorneys fees and costs) incurred by the cooperating party that are related only to the exchange are paid or reimbursed to the cooperating party at or prior to closing.

If to Buyer: **King County Real Estate Services**

 500 4th Avenue, Room 500

 Seattle, WA 98104

 Attention: Bob Thompson ph. (206) 296-7494

With a copy to: *Harold McNelly*

If to Seller: **Ronald D. Fitzgerald and Lynda K. Fitzgerald**

 6205 S. Dearborn Road

 Spokane, WA 00223-1723 ph. (509) 443-0302

With a copy to:

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, then such holding shall not impact or affect

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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 below, 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 Closing 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 may assign any and all of its rights under this Agreement to Burnstead Construction, or to entities controlled by Fred Burnstead, Steve Burnstead or Rick Burnstead without Seller's prior written consent. Seller shall not assign this Agreement to any other entity not listed in this paragraph without Buyer's prior written consent.

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.

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

EXHIBIT A	Legal Description
EXHIBIT B	Statutory Warranty Deed
EXHIBIT C	Certificate of Non-Foreign Status

EXECUTED as of the date and year first above written:

SELLER:

Name: _____

Name: _____

BUYER:

Name: _____

Its: _____

Approved as to Form:

By: _____

Deputy Prosecuting Attorney

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STATE OF WASHINGTON

COUNTY OF KING

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 _____, 2005.

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

STATE OF WASHINGTON

COUNTY OF KING

} ss.

On this day personally appeared before me _____ and _____, known to me to be the individuals that executed the foregoing instrument, and acknowledged such instrument to be their 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 _____, 2005.

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

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EXHIBIT A.

Legal Description

The north 100 feet of the east half of the northwest quarter of the northwest quarter of the southwest quarter of Section 25, Township 26 North, Range 5 East, Willamette Meridian, in King County, Washington, and the east 15 feet of said subdivision lying north of Johnson-Dave Road No. 2 (Northeast 122nd Street), except the north 100 feet thereof.