

**ATTACHMENT A:**

**PURCHASE AND SALE AGREEMENT**

Original

## REAL ESTATE PURCHASE AND SALE AGREEMENT

**THIS REAL ESTATE PURCHASE AND SALE AGREEMENT** (“Agreement”) is made and entered by and between **KING COUNTY**, a political subdivision of the State of Washington (the “Seller”) and **the CITY OF AUBURN**, a municipal corporation (the “Buyer”). Seller and Buyer are also referred to herein individually as a “Party” or collectively as “Parties.” This Agreement shall be effective as of the date it has been executed by both Parties (“Effective Date”).

### RECITALS

**A.** Seller is the owner of that certain real property located at 100 Auburn Avenue NE, Auburn, Washington 98002, King County, State of Washington, the legal description of which is attached hereto as **EXHIBIT A** (the “Real Property”).

**B.** Seller desires to sell the Real Property and Buyer desires to purchase the Real Property. The Parties are entering into this Agreement pursuant to the authority granted in the Intergovernmental Disposition of Property Act, RCW ch. 39.33.

### 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.** Seller shall sell and convey to Buyer on the Closing Date (as hereinafter defined) and Buyer shall buy and accept from Seller on the Closing Date the following assets and properties:

**1.1.1.** all the Seller’s right, title and interest in the Real Property as legally described in **EXHIBIT A**;

**1.1.2.** all of Seller’s right, title and interest in improvements and structures located on the Real Property, if any;

**1.1.3.** 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 Real Property (“Personal Property”);

**1.1.4.** all of Seller’s easements and other rights that are appurtenant to the Real Property including but not limited to, Seller’s right, title, and interest in and to streets, alleys or other public ways adjacent to the Real Property, sewers and service drainage easements, rights of connection to the sewers, rights of ingress and egress, and leases, licenses, government approvals and permits affecting the Real Property.

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

## ARTICLE 2. PURCHASE PRICE

**2.1. PURCHASE PRICE AND PAYMENT.** In consideration of the conveyance of the Property, Buyer shall, in full payment therefor, pay to Seller on the Closing Date a total purchase price of Three Hundred Fifty Thousand and 00/100 Dollars (**\$350,000.00**) (the "Purchase Price").

**2.2. ALLOCATION OF PURCHASE PRICE.** Seller and Buyer agree that the entire Purchase Price is allocable to the Real Property and that the value of the Personal Property, if any, is *de minimis*.

**2.3. DEPOSIT.** Within two (2) business days after the Effective Date, Buyer shall deliver to Title Insurance Company (the "Escrow Agent"), in its capacity as the Parties' closing agent, immediately available cash funds in the amount of Thirty Five Thousand and 00/100 (**\$35,000.00**) (the "Deposit"). The Deposit shall be invested by the Escrow Agent in a money market account, a federally insured investment or such other investment as may be approved by Seller and Buyer in writing. Accrued interest will be added to and become part of the Deposit. Upon deposit with Escrow Agent, the Deposit shall be non-refundable except as otherwise provided in this Agreement. The Deposit shall be applied as a credit against the Purchase Price at the Closing.

## ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF THE PARTIES AND CONDITION OF PROPERTY

**3.1. WARRANTIES AND REPRESENTATIONS OF SELLER.** As of the date hereof and as of the Closing Date, Seller represents and warrants as follows:

**3.1.1. ORGANIZATION.** The Seller is a political subdivision of the State of Washington duly organized, validly existing and in good standing under the laws of the State of Washington.

**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 political subdivision of the State of Washington, and (ii) subject to the contingency in section 5.2 of this Agreement, has been or will be on or before the Closing Date,

duly authorized by all necessary action of the Seller's legislative authority. This Agreement constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with the terms herein.

**3.1.3. 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 except for (name of agent) of Kidder Mathews, who is entitled to a commission in connection with this Agreement based on a commission agreement dated December 13, 2011 ("Commission Agreement"). Compensation to Kidder Mathews shall be paid by Seller in accordance with the Commission Agreement at Closing.

**3.1.4. FUTURE AGREEMENTS.** From and after the Effective Date unless this Agreement is terminated in accordance with its terms, Seller shall not without the prior written consent of Buyer:

- (a) enter into any agreement, contract, commitment, lease or other transaction that affects the Property in any way; or
- (b) sell, dispose of or encumber any portion of the Property.

**3.1.5. 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 ("Code"), as amended and shall deliver to Buyer 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.** As of the date hereof and as of the Closing Date, Buyer represents and warrants as follows:

**3.2.1. ORGANIZATION.** Buyer is a municipal corporation 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, and (ii) has been or will be on or before the Closing Date, duly authorized by all necessary action of the Buyer's governing authority. This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with the terms hereof.

**3.2.3. 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.

### **3.3. CONDITION OF PROPERTY.**

**3.3.1. SELLER DISCLOSURE STATEMENT.** To the maximum extent permitted by RCW ch. 64.06, Buyer expressly waives its right to receive from Seller a seller disclosure statement ("Seller Disclosure Statement") and to rescind this Agreement, both as provided for in RCW ch. 64.06. Seller and Buyer acknowledge and agree that Buyer cannot waive its right to receive the section of the Seller Disclosure Statement entitled "Environmental" if the answer to any of the questions in that section would be "yes." Nothing in any Seller Disclosure Statement delivered by Seller creates a representation or warranty by the Seller, nor does it create any rights or obligations in the Parties except as set forth in RCW ch. 64.06. Buyer is advised to use its due diligence to inspect the Property as allowed for by this Agreement, and that Seller may not have knowledge of defects that careful inspection might reveal. Buyer specifically acknowledges and agrees that any Seller Disclosure Statement delivered by Seller is not part of this Agreement, and Seller has no duties to Buyer other than those set forth in this Agreement.

**3.3.2. SELLER DISCLAIMER OF CONDITION OF THE PROPERTY.** Except to the extent of Seller's representations and warranties in Section 3.1. of this Agreement, Seller has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, contracts or guarantees of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning, or with respect to the value, nature, quality, or condition of the Property (collectively "Condition of the Property"), including, without limitation:

- (a) The water, soil and geology;
- (b) The income to be derived from the Property;
- (c) The suitability of the Property for any and all activities and uses that Buyer or anyone else may conduct thereon;
- (d) The compliance or noncompliance of or by the Property or its operation with any laws, rules, ordinances, regulations or decrees of any applicable governmental authority or body or the zoning or land use designation for the Property;
- (e) The habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property;
- (f) The manner or quality of the construction or materials, if any, incorporated into the Property and the existence, nonexistence or condition of utilities serving the Property;

(g) The actual, threatened or alleged existence, release, use, storage, generation, manufacture, transport, deposit, leak, seepage, spill, migration, escape, disposal or other handling of any Hazardous Substances in, on, under or emanating from or into the Property, and the compliance or noncompliance of or by the Property or its operation with applicable federal, state, county and local laws and regulations, including, without limitation, Environmental Laws and regulations and seismic/building codes, laws and regulations. For purposes of this Agreement, the term "Environmental Law" shall mean: any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health, safety, or the environment, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9602 et. seq. ("CERCLA"); the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq. ("RCRA"); the Washington State Model Toxics Control Act, RCW ch. 70.105D ("MTCA"); the Washington Hazardous Waste Management Act, RCW ch. 70.105; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Washington Water Pollution Control Act, RCW ch. 90.48, and any laws concerning above ground or underground storage tanks. For the purposes of this Agreement, the term "Hazardous Substance" shall mean: any waste, pollutant, contaminant, or other material that now or in the future becomes regulated or defined under any Environmental Law; or

(h) Any other matter with respect to the Property.

### 3.3.3. BUYER ACCEPTANCE OF CONDITION OF PROPERTY.

(a) Buyer acknowledges and accepts Seller's disclaimer of the Condition of the Property in Section 3.3.2 of this Agreement.

(b) Buyer acknowledges and agrees that, within the Due Diligence Period as defined in Section 5.1 of this Agreement, Buyer will have conducted a physical inspection and made all investigations that Buyer deems necessary in connection with its purchase of the Property. Buyer further acknowledges and agrees that, having been given the opportunity to inspect the Property, Buyer is relying solely on its own investigation of the Property and is not relying on any information provided or to be provided by Seller. Buyer further acknowledges and agrees that any information provided or to be provided with respect to the Property was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information and no employee or agent of Seller is authorized otherwise. Buyer further acknowledges and agrees that Seller is not liable or bound in any manner by any verbal or written statements, representations, or information pertaining to the Property, or the operation thereof, furnished by any agent, employee, or contractor of Seller, any real estate broker, or any other person.

(c) Upon waiver or satisfaction by Buyer of its contingencies pursuant to Article 5, Buyer acknowledges and agrees that it will thereby approve and accept the

Condition of the Property and accordingly agree to purchase the Property and accept the Condition of the Property "AS IS, WHERE IS" with all faults and patent or latent defects, including, without limitation, the actual, threatened or alleged existence, release, use, storage, generation, manufacture, transport, deposit, leak, seepage, spill, migration, escape, disposal or other handling of any Hazardous Substances in, on, under or emanating from or into the Property, and the compliance or noncompliance of or by the Property or its operation with applicable federal, state, county and local laws and regulations including, without limitation, Environmental Laws and regulations and seismic/building codes, 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, Buyer shall have no recourse against the Seller for, and waives, releases and discharges forever the Seller from, any and all past, present or future claims or demands, and any and all past, present or future damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown (collectively, "Losses"), which the Buyer might have asserted or alleged against the Seller arising from or in any way related to the Condition of the Property, including, without limitation, the actual, threatened or alleged existence, release, use, storage, generation, manufacture, transport, deposit, leak, seepage, spill, migration, escape, disposal or other handling of any Hazardous Substances in, on, under or emanating from or into the Property. Losses shall include without limitation (a) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law, that is required by judicial order or decree or by order of or agreement with any governmental authority, or that is conducted voluntarily, (b) losses for injury or death of any person, and (c) losses arising under any Environmental Law, whether or not enacted after transfer of the Property.

**3.3.4. INDEMNIFICATION.** From and after the Closing Date, Buyer shall indemnify, defend and hold Seller, its officers, agents and employees harmless from and against any and all Losses, liability, claim, agency order or requirement, damage and expense relating to or arising out of, directly or indirectly, the Property, including without limitation those relating to the actual or threatened release, disposal, deposit, seepage, migration or escape of Hazardous Substances at, from, into or underneath 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.

**3.4. 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.

## **ARTICLE 4. TITLE MATTERS**

**4.1. CONVEYANCE.** Seller shall convey to Buyer the title to the Property by bargain

and sale deed in substantially the form attached hereto as **EXHIBIT B**, subject only to the Permitted Exceptions (as defined below), the lien of current real property taxes, fees and/or charges not yet due and payable, rights reserved in federal patents or state deeds, building or use restrictions general to the governing jurisdiction, and the matters excluded from coverage by the printed exceptions and exclusions contained in the form of title insurance policy required by Section 4.4 of this Agreement.

**4.2. TITLE COMMITMENT.** Buyer shall within fifteen (15) days after the Effective Date obtain a preliminary commitment for an owner's standard coverage policy of title insurance (the "Title Commitment") issued by First American Title Insurance Company (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.

**4.3. REVIEW OF TITLE COMMITMENT.** Buyer shall have until thirty (30) days after the Effective Date (the "Review Period") in which to notify Seller in writing of any objections Buyer has to any matters shown or referred to in the Title Commitment ("Buyer's Objections"). Any exceptions or other items that are set forth in the Title Commitment 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 Objections of any exceptions to title which Seller will not remove or otherwise resolve ("Seller's Response"), and Buyer may, at Buyer's option, either proceed to Closing and thereby waive the Buyer's Objections not cured, in which case such exceptions to title shall be Permitted Exceptions, or Buyer may terminate this Agreement by notice to Seller within ten (10) days after receipt of Seller's Response. If the Title Company issues a supplement to the Title Commitment that identifies new exceptions, the procedure set forth in this Section 4.3 shall apply to such supplement, except that Buyer will have seven (7) days to make Buyer's Objections to any new exception, Seller shall have five (5) days to provide Seller's Response, and the Closing Date will be extended for the period necessary to allow the procedures set forth herein to be completed with regard to a timely objection.

**4.4. 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 Permitted Exceptions, the lien of current real property taxes, fees and/or charges not yet due and payable, rights reserved in federal patents or state deeds, building or use restrictions general to the governing jurisdiction, and the matters excluded from coverage by the printed exceptions and exclusions contained in the form of title insurance policy required by the Title Company. 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. If requested in writing by Seller, Buyer shall provide a copy of such binding commitment to Seller to verify satisfaction of this obligation as a condition to Seller being obligated to close. Buyer shall pay any sum owing to the Title Company for the preparation of the preliminary and binding commitments generated by the Title Company.

## **ARTICLE 5. CONTINGENCIES**

**5.1. DUE DILIGENCE INSPECTION AND FEASIBILITY.** Buyer shall satisfy itself by investigation and inspection, at its cost and expense in its sole and absolute discretion, that the condition of the Property for Buyer's contemplated use meets with its approval ("Due Diligence Contingency"). If Buyer is not satisfied with the condition of the Property, Buyer may terminate this Agreement by delivering written notice of termination to Seller within thirty (30) days of the Effective Date ("Due Diligence Period"). In such event this Agreement shall terminate, the Deposit shall be returned to Buyer and the Parties shall have no further obligations hereunder. If Buyer fails to give such notice to terminate within the Due Diligence Period or affirmatively gives notice that this Due Diligence Contingency is satisfied or waived within the Due Diligence Period, Buyer shall be obligated hereunder without further contingency and the Deposit shall be nonrefundable to Buyer except in the event of a default hereunder by Seller. Seller and Buyer may agree in writing to extend the Due Diligence Period.

**5.1.1. INSPECTIONS.** During the Due Diligence Period, Buyer, its designated representatives or agents shall have the right at its own expense to (a) perform any and all tests, inspections, studies, surveys or appraisals of the Property deemed necessary, on any subject, by the Buyer (subject to the limitations set forth below and Section 5.1.2 Right of Entry); (b) obtain a Phase I or Phase II Environmental Assessment on the Property and perform any and all tests, inspections and studies deemed necessary therewith; (c) examine all due diligence materials related to the Property that Buyer may reasonably request from Seller that are in Seller's possession and about which Seller has knowledge, and that are not protected as attorney work product, by the attorney-client privilege or by other similar confidentiality protections; (d) determine to its satisfaction whether approvals, permits and variances can be obtained under applicable land use and zoning codes for Buyer's proposed development of the property; and (e) determine whether Buyer's proposed development of the property is economically feasible.

**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 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 use of, or 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. If invasive tests are performed by Buyer, Seller may elect to obtain split samples of any sampling that is obtained and reimburse the Buyer for the costs

thereof. The Buyer will not be permitted to undertake activities that damage the Property. In connection with any such inspections and tests, Buyer agrees to hold harmless, indemnify and defend Seller, its officers, agents and employees, from and against all claims, losses, or liability for injuries, sickness or death of persons, including employees of Buyer ("Claims") caused by or arising out of any act, error or omission of Buyer, its officers, agents, contractors, subcontractors or employees in entering the Property for the above purposes, except to the extent the Claims are caused by or arise out of any act, error or omission of Seller, its officers, agents and employees.

**5.1.3 RIGHT OF ENTRY INSURANCE.** Prior to the entry of Buyer or its contractors for invasive testing of the Property such as drilling or excavation, the entering party(ies) shall submit evidence of (1) Commercial General Liability coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (2) Automobile liability insurance in the amount of \$1,000,000; (3) Contractor's Pollution insurance in the amount of \$1,000,000 per claim and in the aggregate; and (4) Stop Gap/Employers Liability coverage in the amount of \$1,000,000. King County, its officers, officials, agents and employees shall be named as additional insureds.

**5.2. METROPOLITAN KING COUNTY COUNCIL APPROVAL CONTINGENCY.** Seller's performance under this Agreement is contingent on approval by ordinance of the conveyance of the Property by the Metropolitan King County Council ("Council Approval Contingency"). The Council Approval Contingency will be satisfied if an ordinance passed by the Metropolitan King County Council approving the conveyance of the Property becomes effective within one hundred twenty (120) days of the Effective Date ("Council Approval Period"). If the Council Approval Contingency is not satisfied within the Council Approval Period, the Seller may extend the Council Approval Period for up to an additional sixty (60) days. If the Council Approval Contingency is not satisfied within the Council Approval Period, this Agreement shall terminate, the Deposit shall be returned to Buyer and the Parties shall have no further obligations hereunder. If the Council Approval Contingency is satisfied within the Council Approval Period, Seller shall be obligated hereunder without further contingency except in the event of a default hereunder by Buyer.

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

**6.1. CONDUCT, NOTICE OF CHANGE.** Seller covenants that between the Effective Date 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 (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.

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

**7.1. CONDUCT, NOTICE OF CHANGE.** Buyer covenants that between the Effective Date 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 (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.

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

All obligations of Buyer to close on the Closing Date 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 the Closing all documents required by the terms of this Agreement to be delivered to Buyer.

**8.2. 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.

**8.3. TITLE.** Seller shall have cured any exceptions to title to which Buyer objected within the Review Period in Section 4.3 and to which Seller agreed to remove or resolve under Section 4.3, unless Seller's obligation to remove or resolve has been waived by Buyer.

**8.4. CONDEMNATION.** No portion of the Property shall have been taken or damaged by any public or quasi-public body, and Seller shall not have transferred any portion of the Property 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. 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.

**9.2. 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. TITLE.** The Title Company shall 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 and the other exceptions allowed for under Section 4.4 of this Agreement.

## **ARTICLE 10. CLOSING**

**10.1. CLOSING/CLOSING DATE.** The Closing shall take place within fifteen (15) days following the removal of all the contingencies in Article 5 of this Agreement or such other date as may be mutually agreed upon by the Parties ("Closing Date"). On or before the Effective Date, the Parties shall set up an escrow account with the Escrow Agent. The Escrow Agent shall serve as closing agent for the transaction contemplated herein and Closing shall occur in the offices of the Escrow Agent in Seattle, Washington.

**10.2. PRORATIONS.** Real property taxes and assessments shall be prorated as of the Closing Date. 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 premium for the title insurance and any costs of the preliminary and binding title commitments, the recording fees for the deed and its own attorneys' fees. Except as otherwise provided in this Section 10.2, all other expenses hereunder shall be paid by the Party incurring such expenses.

**10.3. SELLER'S DELIVERY OF DOCUMENTS AT CLOSING.** At the Closing, Seller will deliver to Buyer via escrow with the Escrow Agent the following properly executed documents:

**10.3.1.** A bargain and sale deed conveying the Property substantially in the form of **EXHIBIT B** attached hereto;

**10.3.2.** A bill of sale and assignment duly executed by the Seller in substantially the form of **EXHIBIT C**, attached hereto for the Personal Property, if any;

**10.3.3.** A seller's certificate of non-foreign status substantially in the form of **EXHIBIT D**, attached hereto.

**10.4. BUYER'S DELIVERY OF PURCHASE PRICE AT CLOSING.** At the Closing, Buyer will deliver to Seller via escrow with the Escrow Agent cash or immediately available funds in the amount of the Purchase Price, less the Deposit made under Section 2.3. of this Agreement.

## **ARTICLE 11. MISCELLANEOUS PROVISIONS**

**11.1. NON-MERGER.** Each statement, representation, warranty, indemnity, covenant, agreement and provision in this Agreement shall not merge in, but shall survive the Closing of the transaction contemplated by this Agreement unless a different time period is expressly provided for in this Agreement.

### **11.2. DEFAULT AND ATTORNEYS' FEES.**

**11.2.1. DEFAULT BY BUYER.** In the event Closing does not occur due to default by Buyer, Seller's sole and exclusive remedy shall be to terminate this Agreement and retain the Deposit as liquidated damages. Buyer expressly agrees that the retention of the Deposit by Seller represents a reasonable estimation of the damages in the event of Buyer's default, that actual damages may be difficult to ascertain and that this provision does not constitute a penalty. Buyer and Seller acknowledge and agree that these damages have been specifically negotiated and are to compensate Seller for taking the Property off the market and for its costs and expenses associated with this Agreement.

**11.2.2. DEFAULT BY SELLER.** In the event Closing does not occur due to default of Seller, Buyer's sole and exclusive remedy shall be to terminate this Agreement and receive a refund of the Deposit.

**11.2.3. ATTORNEY'S FEES.** In any action to enforce this Agreement, each Party shall bear its own attorney's fees and costs.

### **11.3. TIME.**

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

**11.3.2. COMPUTATION OF TIME.** Any reference to "day" in this Agreement shall refer to a calendar day, which is every day of the year. Any reference to business day in this Agreement shall mean any calendar day that is not a "Legal Holiday." A Legal Holiday under this Agreement is a Saturday, Sunday or legal holiday as defined in RCW 1.16.050. Any period of time in this Agreement shall mean Pacific Time and shall begin the calendar day or business day, as the case may be, after the event starting the period and shall expire at 5:00 p.m. of the last calendar day or business day, as the case may be, of the specified period of time, unless with regard to calendar days the last day is a Legal Holiday, in which case the specified period of time shall expire on the next day that is not a Legal Holiday.

**11.4. 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 a Party may specify by notice to the other Party and given as provided herein:

**If to Buyer:** Office of the Mayor  
City of Auburn  
25 West Main Street  
Auburn, WA 98001  
Attn: Nancy Backus, Mayor

**If to Seller:** King County  
King County Facilities Management Division  
Real Estate Services Section  
500 Fourth Avenue, Room 830  
Seattle, WA 98104  
Attn: Manager, Real Estate Services Section

With a copy to: King County Prosecuting Attorney's Office  
Civil Division  
King County Courthouse  
516 3<sup>rd</sup> Avenue, Suite W400  
Seattle, WA 98104  
Attention: John Briggs, Senior Deputy Prosecuting Attorney

With a copy to: City Attorney  
25 West Main Street  
Auburn, WA 98001-4916  
Attention: Dan Heid

**11.5. 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.

**11.6. 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 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.

**11.7. 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.

**11.8. BINDING EFFECT.** Subject to Section 11.14 below, this Agreement shall be binding upon and inure to the benefit of each Party, its successors and assigns.

**11.9. 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.

**11.10. 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.

**11.11. 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.

**11.12. GOVERNING LAW AND VENUE.** This Agreement and all amendments hereto 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 rules or choice of law provisions. In the event that either Party shall bring a lawsuit related to or arising out of this Agreement, the Superior Court of King County, Washington shall have exclusive jurisdiction and venue.

**11.13. NO THIRD PARTY BENEFICIARIES.** This Agreement is made only to and for the benefit of the Parties, and shall not create any rights in any other person or entity.

**11.14. ASSIGNMENT.** Buyer shall not assign this Agreement or any rights hereunder without Seller's prior written consent.

**11.15. NEGOTIATION AND CONSTRUCTION.** This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the Parties, and shall not be construed as if it has been prepared by one of the Parties, but rather as if both Parties had jointly prepared it. 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. The 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. Each Party shall be and is separately responsible for payment of any legal services rendered on their behalf regarding legal review of this Agreement.

**11.16. SELLER'S KNOWLEDGE.** Any and all representations or warranties or other provisions in this Agreement that are conditioned on terms such as "to Seller's knowledge" or "about which Seller has knowledge" are made to and limited by the present, actual knowledge of Jim Loveless, who is an employee of King County, and is the Sales Supervisor of the Real Estate Services Section of the Facilities Management Division of the Department of Executive Services. Jim Loveless has made no inquiries or investigations with respect to Seller's representations or warranties or other provisions prior to the making thereof and has no duty to undertake the same.

**11.17. INDEMNIFICATION TITLE 51 WAIVER.** The indemnification provisions in Sections 3.3.4 and 5.1.2 of this Agreement are specifically and expressly intended to constitute a waiver of the Buyer's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the Seller only, and only to the extent necessary to provide the Seller with a full and complete indemnity of claims made by the Buyer's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

**11.18. COUNTERPARTS.** To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each Party, or that the signature of all persons required to bind any Party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each Party hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter may be attached to another counterpart identical thereto except having attached to it additional signature pages.

**11.19. EXHIBITS.** The following exhibits described herein and attached hereto are fully incorporated into this Agreement by this reference:

<b>EXHIBIT A</b>	Legal Description
<b>EXHIBIT B</b>	Bargain and Sale Deed
<b>EXHIBIT C</b>	Bill of Sale and Assignment
<b>EXHIBIT D</b>	Certificate of Non-Foreign Status

[SIGNATURES ON THE NEXT PAGE]



EXECUTED on the dates set forth below.

**SELLER: KING COUNTY**

By: 

Name: Anthony Wright

Title: Director, Facilities Management Division

Date: 2-5-16

**BUYER: CITY OF AUBURN**

By: Nancy Backus

Name: Nancy Backus

Title: Mayor, City of Auburn

Date: 1-26-16

APPROVED AS TO FORM:

By:   
John Briggs, Senior Deputy Prosecuting Attorney

APPROVED AS TO FORM:

By:   
Dan Heid, City Attorney

**EXHIBIT A.**

**LEGAL DESCRIPTION**

LOTS 5, 6, 7, 8, 9 AND 10, BLOCK 2, BALLARD'S COMMERCIAL ADDITION TO AUBURN, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 29 OF PLATS, PAGE 49, IN KING COUNTY, WASHINGTON; TOGETHER WITH ALL OF THE AREA, 16 FEET IN WIDTH, PLATTED AS AN ALLEY, EXTENDING IN A NORTHERLY AND SOUTHERLY DIRECTION THROUGH SAID BLOCK 2, BOUNDED ON THE EAST BY SAID LOT 6 AND ON THE WEST BY SAID LOTS 7, 8, 9 AND 10, WHICH ALLEY WAS VACATED PURSUANT CITY OF AUBURN ORDINANCE NO. 775, RECORDED UNDER RECORDING NO. 2932781, AND ATTACHED TO SAID LOTS BY OPERATION OF LAW.

Tax Parcel Number: 048300-0090-07

Situs Address: 100 Auburn Ave, Auburn, WA 98002

**EXHIBIT B.**

**BARGAIN AND SALE DEED**

**AFTER RECORDING RETURN TO:**  
KING COUNTY  
REAL ESTATE SERVICES SECTION  
500 FOURTH AVENUE, ROOM 830  
ATTN: KATE DONLEY

**BARGAIN AND SALE DEED**

**Grantor -- King County, Washington**

**Grantee -- City of Auburn, Washington**

**Legal - - - - Lots 5-10, Blk. 2, Ballard's Commercial Addition to Auburn, Vol. 29, pg. 49, King County**

**Tax Acct. - 048300-0090-07**

The Grantor, KING COUNTY, a political subdivision of the State of Washington, for and in consideration of mutual benefits, pursuant to King County Ordinance No. \_\_\_\_\_, does hereby bargain, sell and convey unto the Grantee, the City of Auburn, a municipal corporation, the following the real property situate in King County, Washington and described in EXHIBIT A, attached hereto and incorporated herein by this reference, subject to the permitted exceptions set forth in EXHIBIT A.

**GRANTOR  
KING COUNTY**

**GRANTEE  
CITY OF AUBURN**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: Director, Facilities  
Management Division

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Approved as to Form:

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

**NOTARY BLOCKS APPEAR ON NEXT PAGE**

**NOTARY BLOCK FOR KING COUNTY**

STATE OF WASHINGTON)

) SS

COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared ANTHONY WRIGHT, to me known to be the Director of the Facilities Management Division of the King County Department of Executive Services, and who executed the foregoing instrument and acknowledged to me that HE was authorized to execute said instrument on behalf of KING COUNTY for the uses and purposes therein mentioned.

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

Notary Public in and for the State of Washington, residing

at \_\_\_\_\_

City and State

My appointment expires \_\_\_\_\_

**NOTARY BLOCK FOR CITY OF AUBURN**

STATE OF WASHINGTON)

) SS

COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_, who executed the foregoing instrument and acknowledged to me that SHE or HE was authorized to execute said instrument on behalf of the \_\_\_\_\_ for the uses and purposes therein mentioned.

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

Notary Public in and for the State of Washington, residing

at \_\_\_\_\_

City and State

My appointment expires \_\_\_\_\_

**EXHIBIT A**  
**TO BARGAIN AND SALE DEED**

**LEGAL DESCRIPTION**

LOTS 5, 6, 7, 8, 9 AND 10, BLOCK 2, BALLARD'S COMMERCIAL ADDITION TO AUBURN, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 29 OF PLATS, PAGE 49, IN KING COUNTY, WASHINGTON; TOGETHER WITH ALL OF THE AREA, 16 FEET IN WIDTH, PLATTED AS AN ALLEY, EXTENDING IN A NORTHERLY AND SOUTHERLY DIRECTION THROUGH SAID BLOCK 2, BOUNDED ON THE EAST BY SAID LOT 6 AND ON THE WEST BY SAID LOTS 7, 8, 9 AND 10, WHICH ALLEY WAS VACATED PURSUANT CITY OF AUBURN ORDINANCE NO. 775, RECORDED UNDER RECORDING NO. 2932781, AND ATTACHED TO SAID LOTS BY OPERATION OF LAW.

Tax Parcel Number: 048300-0090-07  
Situs Address: 100 Auburn Ave, Auburn, WA 98002

**EXCEPTIONS TO TITLE**

SUBJECT TO: [permitted exceptions will be determined in accordance with the process identified in Article 4 of the Agreement and inserted in the final deed].

**EXHIBIT C.****BILL OF SALE AND ASSIGNMENT**

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THIS BILL OF SALE is made as of this \_\_\_\_ day of \_\_\_\_\_, 2016, by KING COUNTY, a political subdivision of the State of Washington (“**Seller**”), in favor of the City of Auburn, a municipal corporation (“**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.

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

SELLER:

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

Name: Anthony Wright

Title: Director, Facilities Management Division

**EXHIBIT D.****Seller's Certification of Non-Foreign Status under  
Foreign Investment in Real Property Tax Act (26 U.S.C. 1445)**

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including Section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. 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);
2. Transferor is not a disregarded entity as defined in Section 1.1445-2(b)(2)(iii);
3. Transferor's U.S. employer identification number is 91-6001327;
4. Transferor's office address is King County Facilities Management Division, Real Estate Services Section, Room 800 King County Administration Building, 500 Fourth Avenue, Seattle, WA 98104.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by 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 \_\_\_\_\_, 2016.

King County, Transferor:

By: \_\_\_\_\_  
Name: Anthony Wright  
Title: Director, Facilities Management Division