



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**February 3, 2009**

**Ordinance 16359**

**Proposed No.** 2008-0516.2

**Sponsors** Gossett

1 AN ORDINANCE authorizing the King County executive  
2 to execute a purchase and sale agreement and all necessary  
3 conveyance documents to complete the sale of the county-  
4 owned property known as the Summit Pit regional roads  
5 maintenance facility, located in council district 9, to  
6 Summit Place 156 LLC.

7  
8 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

9 SECTION 1. Findings.

10 A. King County owns a 156.5 acre undeveloped parcel of land commonly know  
11 as the Summit Pit regional roads maintenance facility ("Summit"), located in  
12 unincorporated King County, surrounded by the city of Maple Valley, approximately  
13 thirty-one miles southeast of downtown Seattle.

14 B. Summit was purchased by King County in 1953 and has been used since that  
15 time as a major headquarters for roads maintenance operations servicing southeastern  
16 King County. Use of the site has expanded over the years to its current use as a regional  
17 roads maintenance operations center, gravel mine, and road waste processing/recycling

18 facility. Summit has capacity to support the unincorporated areas of southeast King  
19 County, as well as the road services the county provides on a contract basis to cities  
20 including Covington, Maple Valley and others. Although Summit functions well in  
21 terms of operational capability and service delivery, over time it has become surrounded  
22 by urban residential developments which are increasingly incompatible with the  
23 maintenance operations that frequently run potentially twenty-four hours per day.

24 C. Additionally, most of the existing roads maintenance facilities and operations  
25 at the Summit site were designed and built to standards of the 1950s and are inadequate  
26 to meet the needs for a South King County regional road maintenance facility for the next  
27 thirty to fifty years. Although the existing facility could be improved, it is not realistic to  
28 expect a thirty-year return on significant investments at Summit given the encroachment  
29 of residential development.

30 D. In February 2006, an unsolicited verbal offer came to the executive office  
31 from the Yarrow Bay Group ("YBG"). The offer was that King County would acquire  
32 approximately two hundred eighty acres of conservation land, known as Icy Creek  
33 Properties, and YBG would relocate, at no cost to the county, the Summit operations to a  
34 site acceptable to King County. In exchange YBG would receive fee simple title to  
35 Summit.

36 E. After YBG was unable to locate a site acceptable to King County to which  
37 Summit operations could be relocated, in May 2007, the road services division ("Roads")  
38 identified a potential replacement site for the South King County regional roads  
39 maintenance facility. The replacement site would encompass approximately two hundred  
40 acres of the underutilized six-hundred-fifty-acre King County-owned Ravensdale

41 shooting range site. As a result, structure of the proposal was changed requiring YBG to  
42 pay cash for Summit instead of a property exchange.

43 F. On June 25, 2007, the King County council unanimously approved Ordinance  
44 15856 authorizing the King County executive to enter into direct negotiations with YBG  
45 for the sale of Summit. The basis for this authorization was the unique opportunity  
46 presented by YBG's ability to provide the opportunity for King County to acquire  
47 valuable resource lands in the Icy Creek basin as a component of the Summit sale  
48 transaction.

49 G. On July 10, 2007, Roads requested that Summit be declared surplus  
50 conditioned on the occurrence of a number of factors, most importantly that the  
51 Ravensdale property be transferred to Roads and that Roads is able to transfer all  
52 activities from Summit to Ravensdale.

53 H. Pursuant to K.C.C. 4.56.070, the facilities management division declared  
54 Summit conditionally surplus to the county's foreseeable needs. The facilities  
55 management division completed the standard surplus process including determining the  
56 site was suitable for affordable housing. A variety of housing types could be made  
57 available and affordable to a full spectrum of income levels, which would support goals  
58 consistent with the Countywide Planning Policies and joint recommendations committee.

59 I. After an extended period of negotiations, YBG and King County were unable  
60 to agree on a price for Summit. Additionally, there were indications in the real estate  
61 market that other buyers might be interested in purchasing Summit. King County  
62 decided to solicit proposals for the sale of Summit through a competitive request for  
63 proposals ("RFP") process. The RFP was issued on February 28, 2008.

64 J. King County received only one proposal for the sale of Summit, an offer from  
65 YBG with a \$35,000,000 purchase price. The proposal was responsive to the criteria  
66 enumerated in King County's RFP; however the purchase price was insufficient for the  
67 county's needs. On May 19, 2008, King County's facilities management division  
68 responded to YBG's proposal indicating that the county was willing to continue  
69 negotiations for the sale of Summit if the purchase price was significantly increased.

70 K. YBG responded in a letter dated May 22, 2008, indicating they would like to  
71 continue negotiating a mutually beneficial purchase and sale agreement.

72 L. Further negotiations between the facilities management division and YBG has  
73 resulted in a proposed purchase and sale agreement ("the agreement") with Summit Place  
74 156 LLC, which is the Washington limited liability company formed by YBG to purchase  
75 and develop Summit, that incorporates the RFP's minimum requirements and provides  
76 protections to the county in the form of contingencies to ensure that, before the closing  
77 of the sale, Roads's use of Summit is not compromised and that the sale of Summit will  
78 not occur unless Roads obtains the permits necessary for it to transfer all of its activities  
79 from Summit to the Ravensdale site or, at the county's option, other suitable locations.

80 M. The agreement also contains protections in the form of covenants running  
81 with the land to ensure that, following closing of the sale, development of the site  
82 continues to comply with the agreement.

83 N. The Agreement establishes a purchase price for Summit of \$51,000,000.00  
84 payable as follows:

85 1. If Roads determines it is feasible, from an operational perspective, to  
86 consolidate its activities on Summit without affecting the efficiency and quality of its

87 services in order to accommodate the conveyance of only portions of Summit to YBG  
88 while the Ravensdale relocation site is being constructed (Consolidation) and can obtain  
89 the necessary permits to do so, a series of closings will occur on portions of Summit,  
90 commencing after the road services division obtains the necessary permits for the  
91 Ravensdale site. Beginning in 2011, YBG will pay \$16,000,000.00 at an initial closing,  
92 \$15,000,000.00 one year later and the remaining balance in four equal installments;

93 2. If Roads cannot obtain the necessary permits to consolidate its operations at  
94 Summit, but can obtain the permits necessary for its move to Ravensdale, the payment  
95 schedule will be the same, but will commence after the road services division has moved  
96 to Ravensdale, and each installment after the initial payment will carry an additional five  
97 percent annual charge calculated from the date of the initial payment;

98 3. If Roads decides it is not feasible to consolidate its operations and coexist on  
99 Summit with YBG, but can obtain the permits necessary to move to Ravensdale, then  
100 YBG will have the choice of either paying for Summit pursuant to the schedule in  
101 subsection 2 or establishing a new purchase price by binding independent appraisal and  
102 paying the new purchase price in full when Roads moves its operations to Ravensdale;  
103 and

104 4. If Roads cannot obtain the permits necessary to move to Ravensdale, then  
105 YBG has the choice of either letting the agreement terminate or letting the agreement  
106 remain in place. If it chooses to leave the agreement in place and if within three years  
107 King County decides it wants to move Roads's operations to another location and sell  
108 Summit, a new purchase price will be established by binding independent appraisal,  
109 payable in cash at the closing following Roads moving its operations from Summit. If

110 the county makes no decision about Summit within three years, the agreement will  
111 terminate.

112 O. The Agreement requires YBG to provide affordable housing in any  
113 development of Summit. Not less than thirty percent of the total housing units to be  
114 developed on the site shall be made available for ownership or rental, or both ownership  
115 and rental, for families meeting the income criteria established in the RFP. Density  
116 achieved pursuant to the transfer of development rights purchased from the transfer of  
117 development rights bank is excluded from the affordable housing requirement.

118 P. The agreement requires YBG to purchase at least two hundred development  
119 rights from the King County transfer of development rights bank.

120 Q. The agreement requires YBG to convey or grant to King County or arrange to  
121 have a third party convey or grant to King County fee title or a conservation easement  
122 over resource conservation land that meets criteria specified in the RFP.

123 R. The agreement requires YBG to incorporate low impact development  
124 concepts, green building construction methods, energy efficient design, water  
125 conservation and material reuse into any development of Summit.

126 S. Proceeds from the sale of Summit will fund construction of all improvements  
127 necessary to relocate Roads's existing facility at Summit and allow implementation of  
128 plans for near- and long-term roads maintenance facilities.

129 T. King County has an extensive and long-time interest in implementing a  
130 comprehensive approach to affordable housing for people at a range of income levels. It  
131 is the responsibility of the county to ensure housing opportunities are available for a full  
132 spectrum of affordable housing, from market rate to very low income housing.

133 According to the Countywide Planning Policies, jurisdictions are required to develop  
134 housing resources to assist the large number of low and moderate-income households  
135 who currently do not have affordable, appropriate housing. King County has goals to  
136 provide decent, affordable housing to King County's communities, as well as provide a  
137 suitable living environment and economic opportunities for very low-, low- and  
138 moderate-income persons and communities.

139 U. The sale of Summit and relocation to Ravensdale would make Summit  
140 available for uses that are more consistent with surrounding land uses while continuing to  
141 provide efficient road maintenance services to the unincorporated areas of southeast king  
142 county, and to contract cities, from a modern regional maintenance facility located at a  
143 site more compatible with the operations and functions.

144 V. Roads completed an environmental checklist pursuant to the state  
145 Environmental Policy Act regarding the potential environmental impacts of the sale of  
146 Summit. As a result of the findings in the checklist, the county's designated state  
147 Environmental Policy Act responsible official for this transaction issued a determination  
148 of nonsignificance on December 6, 2007. Roads received and responded to comments  
149 regarding the determination of nonsignificance. No changes were made to the  
150 determination of nonsignificance or the checklist as a result of those comments.

151 W. The sale of Summit is authorized under K.C.C. 4.56.110.A.7, because it is  
152 being sold through a request for proposals for on-site development of  
153 affordable/workforce housing that provides a public benefit.

154 SECTION 2. The King County executive is hereby authorized to convey the  
155 Summit Pit regional roads maintenance facility property to Summit Place 156 LLC,

**Ordinance 16359**

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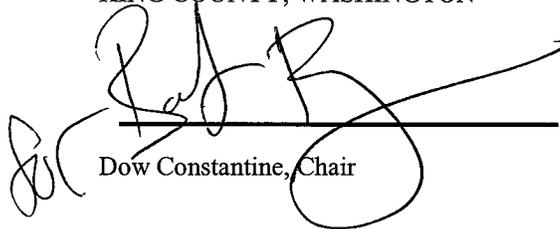
156 consistent with a purchase and sale agreement substantially in the form of Attachment A  
157 to this ordinance, and to implement the purchase and sale agreement and execute any  
158 documents necessary to carry out such conveyance.

159

Ordinance 16359 was introduced on 9/29/2008 and passed as amended by the Metropolitan King County Council on 2/2/2009, by the following vote:

Yes: 9 - Mr. Constantine, Mr. Ferguson, Ms. Hague, Ms. Lambert, Mr. von Reichbauer, Mr. Gossett, Mr. Phillips, Ms. Patterson and Mr. Dunn  
No: 0  
Excused: 0

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

  
Dow Constantine, Chair

ATTEST:

  
Anne Noris, Clerk of the Council

APPROVED this 10 day of February, 2009.

  
Ron Sims, County Executive

**Attachments** A. Real Estate Purchase and Sale Agreement, dated 01-28-09, as amended by Council 02-02-09

RECEIVED  
2009 FEB 11 PM 12:23  
KING COUNTY COUNCIL

## REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of \_\_\_\_\_, 200\_ ("Effective Date"), by and between **KING COUNTY**, a municipal corporation and political subdivision of the State of Washington (the "Seller") and **Summit Place 156 LLC**, a Washington Limited Liability Company (the "Buyer").

### RECITALS

**A.** Seller owns that certain real property located in an unincorporated area of the County of King, State of Washington, which consists of approximately 156 acres of land, commonly identified as the Summit Pit, located at 22801 SE 272<sup>nd</sup> Street, the legal description of which is attached hereto as **EXHIBIT A** (the "Summit Pit Property" or "Property"). Seller desires to sell the Summit Pit Property.

**B.** On February 28, 2008, the King County Executive issued a Request for Proposals to purchase the Summit Pit Property (the "RFP"). YarrowBay Group was the only party to respond to the RFP. Buyer is an LLC formed by members of the YarrowBay Group for the purpose of entering into this transaction.

**C.** As a result of a sale of Summit Pit Property to Buyer, Seller will be required to relocate activities of its Road Services Division's operations currently located at the Summit Pit Property. The Seller has identified a potential replacement site and is in the process of planning for relocation to that site ("Ravensdale" or "Ravensdale site").

### 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 and Buyer shall buy, assume and accept from Seller the following assets and properties, which shall hereinafter be collectively referred to as the "Purchased Assets,":

(a) all the Seller's right, title and interest in the Property to be sold, conveyed, assigned, transferred and delivered to the Buyer;

(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 that remain on the portion of the Property conveyed as of the applicable closing (as described in Section 10.1 herein) ("Personal Property"); 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 applicable portion of the Property.

## ARTICLE 2. PURCHASE PRICE

**2.1. PURCHASE PRICE.** In consideration of the sale, transfer, conveyance, assignment and delivery of the Purchased Assets, Buyer shall, in full payment therefore, pay to Seller, in accordance with the terms herein, a total purchase price of Fifty One Million and 00/100 Dollars (\$51,000,000) (the "Purchase Price"); provided that if closing occurs pursuant to Sections 10.1.2.1 or 10.1.2.2, the Purchase Price shall be the value of the Property determined by an appraiser agreed upon Buyer and Seller, such appraisal shall reflect either the zoning of the Property at the time of the appraisal or the zoning to which the Buyer is vested at the time of the appraisal, whichever would result in the higher appraised value. If the parties cannot agree on a single appraiser within three (3) months of either, as applicable, Buyer receiving the Relocation Notice (as defined in Section 10.1.2.1 herein) if Closing pursuant to 10.1.2.1 or Buyer electing to close pursuant to Section 10.1.2.2 herein, Seller and Buyer shall each select an appraiser and the two appraisers shall agree on a third appraiser and the three appraisers shall agree on and issue a single appraised value. The valuation date for the appraised value shall be the anticipated date of Closing.

**2.2. PAYMENT OF PURCHASE PRICE.** Except as otherwise provided in Sections 5.2.5.1, 5.2.5.2 or 5.2.5.3 herein, as shown in Schedule A contained in Exhibit B, Buyer shall pay the Purchase Price to the Seller as follows: Buyer shall pay Sixteen Million and 00/100 Dollars (\$16,000,000.00) on the Closing Date (as defined in Section 10.1.1(a) herein) paid in cash or immediately available federal funds; provided Buyer shall receive a credit for the amount of Earnest Money released to Seller prior to the Closing Date pursuant to Section 2.4 herein. On or before the first Installment Closing Date (as defined in Section 10.1.1 herein and shown in Exhibit B, Schedule A), Buyer shall pay Fifteen Million and 00/100 Dollars (\$15,000,000.00) in cash or immediately available federal funds. If closing is to occur pursuant to Section 10.1.1(b), the amount to be paid on

the Closing Date and on the first Installment Closing Date shall be the amounts set forth in Schedule B of Exhibit B. The remainder of the Purchase Price shall be paid in four (4) additional installments in the amounts shown in Schedule A or Schedule B of Exhibit B, as applicable, to be paid in cash or immediately available federal funds, on or before the applicable Installment Closing Date. A payment made after the Closing Date shall be referred to as "Installment Payment" or, collectively, as "Installment Payments". Buyer shall have the option of exercising two (2) waivers of an Installment Payment (the "Closing Waiver"). Each Closing Waiver shall extend the Installment Payment due date by a period of one (1) year. The waivers shall not be exercised either at Initial Closing (as defined in Section 10.1.1 herein), at the first Installment Closing or in consecutive years. If Buyer elects to exercise a Closing Waiver, notice must be given to Seller one hundred and twenty (120) days prior to the Installment Payment due date, (the "Waiver Notice").

In the event Buyer elects to exercise a waiver, in addition to the amount of the next Installment Payment, the Buyer shall pay to Seller at the next Installment Closing Date an amount equal to five percent (5%) of the aggregate amount of the remaining Installment Payments, including the Installment Payment then due, (hereinafter referred to as the "Waiver Fee"). The Waiver Fee shall not be applicable to the Purchase Price and shall be nonrefundable.

If Closing occurs pursuant to Section 10.1.2 herein, the Buyer shall pay the Purchase Price to the Seller on the Closing Date ( as defined in Section 10.1.2 herein) in cash or immediately available federal funds; provided Buyer shall receive a credit for the amount of Earnest Money released to Seller prior to the Closing Date pursuant to Section 2.4 herein.

**2.3. 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 minimis*.

**2.4. EARNEST MONEY.** Within five (5) business days following the Effective Date, Buyer shall deposit with Escrow Agent (as defined in Section 10.1 herein) a promissory note, in the form of attached Exhibit C, in the amount of One Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$1,750,000.00) (the "Earnest Money") which note shall be converted to cash and released to Seller only upon Buyer's waiver of its contingency set forth in Section 5.1. The Earnest Money shall be applicable to the Purchase Price at, as applicable, Closing or Initial Closing. Following satisfaction or waiver of Buyer's contingency set forth in Section 5.1 herein during the Due Diligence Period (as defined in Section 5.1 herein), the Earnest Money shall be nonrefundable, except in case of Buyer's termination pursuant to Section 5.2.5.2 herein or Seller's default.

### **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 a political 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 activities as they are now being conducted in the place where such activities 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 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 Purchased Assets, 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 Purchased Assets 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 (as defined in Section 4.2.1 herein).

**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 fails 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 Seller or any action taken by Seller.

**3.1.7. Contracts.** With the exception of the portion of the Property that is used for the operation of a golf course, there are no contracts or other obligations outstanding for the sale, exchange, transfer, lease, rental or use of the Property or any portion thereof. Seller shall terminate the right to use the Property for the operation of a golf course prior to or on the Closing Date and shall deliver the Property, or the relevant

portion thereof, free of any tenants, licensees or other parties in possession at, as applicable, Closing, Initial Closing or Installment Closing .

**3.1.8. 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:

- (i) enter into any agreement, contract, commitment, lease or other transaction that affects the Purchased Assets in any way; or
- (ii) sell, dispose of or encumber any portion of the Purchased Assets;

**3.1.9. Compliance with Law.** Seller has not received any written notices that the Property or its activities conducted thereon violate any applicable laws, regulations, codes and ordinances.

**3.1.10. Reclamation and Maintenance of the Property.** Seller currently operates a gravel mine on the Property pursuant to:

- a) a surface mining reclamation permit ("Surface Mining Permit") issued by the Washington State Department of Natural Resources, permit number 70-010347
- b) a grading permit issued by the King County Department of Development and Environmental Services ("Grading Permit"), for project number C9103700.
- c) a National Pollution Discharge Elimination System general permit for Sand & Gravel operations ("NPDES Permit") issued by the Washington State Department of Ecology, permit number WAG-50-3036.

These permits shall be collectively referenced in this Agreement as the "Mining Permits".

Seller is obligated to perform reclamation of the Property consistent with the Mining Permits and applicable law, including, but not limited to Ch. 78.44 RCW and Ch. 16.82 King County Code ("Reclamation").

Until Closing, Initial Closing or Installment Closing, as applicable, Seller shall continue to operate and maintain the Property yet to be conveyed to Buyer in compliance with all applicable laws and permits and shall be solely responsible for and pay all associated costs thereof.

**3.1.11. Environmental Hazards.** Seller has not intentionally withheld any material information concerning environmental matters with respect to the Purchased Assets and Seller is not aware of any facts which would lead it to believe that there are any Hazardous Substances on the Property. To the best of Seller's knowledge, except as disclosed in the Development Documents (as defined in Section 5.4 herein), (i)

the Property is not in violation of any law, ordinance, rule or regulation relating to the environmental conditions thereon; (ii) Seller has not used, generated, manufactured, produced, stored, released, discharged or disposed of on, under or about the Property (or off-site of the Property that might affect the Property) or transported from the Property, any Hazardous Substance (as defined below); (iii) no Hazardous Substance has been used, generated, manufactured, produced, stored, released, discharged or disposed of on, under or about the Property (or off-site of the Property that might affect the Property) in violation of applicable law, ordinances, rules or regulations; and (iv) no underground storage tanks have been removed from the Property, and no underground storage tanks are located on the Property. As used in this Section 3.1.11, the "Seller's knowledge" and its awareness of facts refers to and is limited to the current actual knowledge of:

Rob Fritz, Supervising Ecologist  
King County Road Services Division, Roads Maintenance Section  
Phone: 206-205-7107  
FAX: 206-296-8198  
Email: [rob.fritz@kingcounty.gov](mailto:rob.fritz@kingcounty.gov)

Mailing address:  
King County Roads Maintenance Section  
155 Monroe Avenue NE, Bldg. A  
Renton, WA 98056

or knowledge he should have without special inquiry or investigation. The term "Hazardous Substance" means any hazardous or toxic substance, material or waste, pollutants or contaminants, as defined, listed or regulated now or in the future by any federal, state or local law, ordinance, code, regulation, rule, order or decree regulating, relating to or imposing liability or standards of conduct concerning, any environmental conditions, health or industrial hygiene (collectively, "Environmental Laws"), including without limitation, (i) chlorinated solvents, (ii) petroleum products or by-products, (iii) asbestos, (iv) polychlorinated biphenyls, and (v) anything that would be a hazardous waste, material or substance, toxic substance or pollutant, as defined under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et. seq.; Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et. seq., the Clean Water Act, 42 U.S.C. § 1251 et. seq., the Washington Environmental Policy Act, RCW Ch. 43.21C, the Washington Water Pollution Control Act, RCW 90.48.010 et seq., the Washington Hazardous Waste Management Act, RCW Ch. 70.105, the Washington Model Toxics Control Act, RCW Ch. 70.105D, and the regulations promulgated thereunder.

**3.1.12. Assistance with Due Diligence and Project Approvals.**

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 Purchased Assets which Buyer may request during the Due Diligence Period (as defined in Section 5.1 herein) that are in Seller's possession or control. Seller in its capacity as owner of the Purchased Assets agrees to join with Buyer in any actions reasonably necessary or convenient to effect approvals for the subdivision and development of the Property by Buyer or its successors or assigns. Such cooperation shall specifically include Seller's execution of the Letter of Authority attached as Exhibit D, and may include making reasonable efforts to facilitate Buyer's acquisition of temporary or permanent easements for utilities and ingress/egress for construction. Seller further agree to execute, in its capacity as owner of the Purchased Assets, any and all documents within ten (10) business days after being provided those documents; provided the documents are reasonably necessary or appropriate for the Buyer's contemplated development of any portion of the Property and further provided King County Council approval is not a prerequisite to Seller executing the document.

**3.1.13. Risk of Loss.** Until the closing of all or a portion of the Purchased Assets, the risk of loss relating to the Purchased Assets yet to be conveyed 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.

**3.1.14. 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 Buyer prior to or at the Closing, Initial Closing or Installment Closing, as applicable, an affidavit, as set forth in Exhibit E, 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 Washington Limited Liability Company 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 is within the powers of Buyer as a limited liability company. This Agreement, and all documents executed by Buyer which are to be delivered prior to or at, as applicable, the Closing, Initial Closing or Installment Closing are and at the time of applicable closing will be duly authorized, executed and delivered by 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 fails to state a material fact which is necessary to make the statements set forth therein not false or misleading.

**3.2.5. Condition of Purchased Assets.** Buyer acknowledges that, except as set forth in this Agreement, neither Seller, nor any principal, agent, attorney, employee, broker or other representative of Seller has made any representations or warranties of any kind whatsoever regarding the Property, either express or implied, and that Buyer is not relying on any warranty, representation or covenant, express or implied, with respect to the Property, except as set forth in this Agreement or in the documents required to be delivered by Seller at, as applicable, Closing, Initial Closing or Installment Closing ("Closing Documents"). 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, consistent with Section 5.4, Seller shall provide Buyer with copies of all reports in Seller's possession that have been requested by Buyer. Upon waiver or satisfaction by Buyer of its contingency pursuant to Article 5, and Seller's fulfillment of the covenants set forth in Article 6, Buyer will be deemed to have approved the fitness of the Property for Buyer's intended purpose, and, subject to the Representation, Warranties and Covenants made herein by Seller, 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 any breach of the Representations, Warranties and Covenants made herein by Seller, and 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; provided further that nothing in this Agreement shall be deemed to waive any statutory claim for contribution that Buyer might have against Seller under federal or state environmental statutes that arises from Hazardous Substances deposited or released on the Property during Seller's period of ownership.

**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. PROPERTY TO BE TRANSFERRED.** Buyer shall, at its sole cost, apply and obtain final plat approval to subdivide the Property into parcels so that, upon payment at Initial Closing and upon each subsequent Installment Closing as provided for in Section 10.1.1 herein, the Seller may transfer to Buyer one or more parcels and associated easements, the aggregate value of which approximate, as closely as possible, the value of the portion of the Property to be transferred upon such payment as identified in Exhibit B, (the "Takedown Schedules"), provided that if the Closing is to occur pursuant to Section 10.1.2 herein, the subdivision need not be complete prior to Closing. At Initial Closing and each Installment Closing, Seller also shall convey temporary and permanent easements necessary for access to and from the parcel or parcels conveyed and for utilities required by the final plat, such easements to be agreed upon by Seller and Buyer and based on the approved preliminary plat and the applicable Takedown Schedule. Prior to submitting the subdivision application and prior to the expiration of the Seller's First Contingency Period (defined in Section 5.2.4 herein), Buyer and Seller shall agree on the parcel or parcels resulting from the subdivision that will be transferred at Initial Closing and each Installment Closing, along with the agreed-upon easements. The application for the subdivision of the Property and any amendments to the subdivision application shall be reviewed and approved by Seller (in its capacity as owner of the Property) prior to submission, such approval not to be unreasonably withheld, conditioned or delayed. After the subdivision application has been submitted, the Takedown Schedules shall be amended to include the legal description for each parcel and identify in the Takedown Schedules at which closing each parcel will be transferred. Seller, in its capacity as owner of the Property, shall cooperate fully with Buyer in the subdivision process.

**4.2. TITLE.** At Closing, Initial Closing or Installment Closing, as applicable, Seller shall deliver to Buyer good and marketable title, free and clear of all liens, defects and encumbrances except the Permitted Exceptions (as defined in Section 4.2.3 herein).

**4.2.1. Title Commitment.** The Buyer shall, within twenty (20) business days after the Effective Date, obtain at Buyer's cost a title binder ("Title Commitment") consisting of a commitment for a 2006 ALTA owner's extended title insurance policy covering the Property issued by the Chicago Title Insurance Company (the "Title Company") describing the Property, showing all matters pertaining to the Property and listing the Buyer as the prospective named insured true, correct and legible copies of all of the Title Documents referred to in the Title Commitment as conditions or exceptions to title to the Property. The Buyer also shall, at least sixty (60) days prior to each Installment Closing Date, obtain at Buyer's cost a supplement to the Title Commitment.

**4.2.2. Survey.** Prior to the expiration of the Due Diligence Period, Buyer shall have the option, at its sole expense, to have prepared and furnished to the Title Company and Buyer a survey (the "Survey") of the Property prepared by a surveyor licensed by the state of Washington. 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.

**4.2.3. Review of Title Commitment and Survey.** Buyer shall have until thirty (30) days after receipt 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 Buyer may, at Buyer's option, either waive the objections not cured or Buyer may terminate this Agreement by notice to Seller. Any title exception or item on the survey which Seller is to remove or resolve shall be removed or resolved and, all monetary liens or encumbrances shall be paid by Seller at, as applicable, Closing, Initial Closing and Installment Closings.

Within five (5) business days after Buyer's receipt of a supplement to the Title Commitment from Title Company together with a copy of intervening liens or matters, Buyer shall notify Seller in writing of any objections thereto (the "Amendment Objections"). Seller and Buyer shall have the same rights and duties with respect to an objection by Buyer to a Commitment supplement as they do with respect to an objection by Buyer to a matter contained in the Title Commitment. Matters for which no objection is made or for which an objection has been waived shall become Permitted Exceptions.

**4.2.4. DEVELOPMENT-RELATED ENCUMBRANCES.** Encumbrances and exceptions to title arising out of Buyer's development efforts (including, but not limited to, subdivision of the Property, easements, plat notes and other covenants) shall constitute Permitted Exceptions and shall not be subject to the title review process described in Section 4.2 even if they appear in a supplemental Title Commitment.

**4.3. CONVEYANCE.** Seller shall convey to Buyer the title to the Property or, if applicable, each portion of the Property by statutory warranty deed in the form attached hereto as Exhibit F, subject only to the Permitted Exceptions. Rights reserved in federal patents or state deeds, building or use restrictions general to the area, and building or zoning regulations or provisions shall be deemed Permitted Exceptions.

## ARTICLE 5. CONTINGENCIES

### 5.1. BUYER'S CONTINGENCIES.

**5.1.1. Due Diligence Period.** The obligations of Buyer under this Agreement are subject to the satisfaction of the contingency set forth in this Section 5.1. In the event the contingency herein set forth is not satisfied within the period set forth below for such contingency ("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. Buyer shall be the sole judge as to whether the contingency has been satisfied. In the event that Buyer does not provide written notice of Buyer's satisfaction or waiver of the contingency set forth in Section 5.1 prior to the expiration of the Due Diligence Period, the contingency shall be deemed satisfied or waived.

**5.1.2. Inspections and Feasibility.** The condition of the Purchased Assets for Buyer's contemplated use and the feasibility of such use shall meet the approval of Buyer, in Buyer's sole discretion. The Due Diligence Period for this contingency shall begin on the Effective Date and shall expire at 5:00 p.m. on the day which is One (1) Year after the Effective Date. During the Due Diligence Period, Buyer, its designated representatives or agents shall have the right at Buyer's expense to (i) perform, subject to reasonable conditions imposed per Section 5.3, any and all tests, inspections, studies, surveys or appraisals of the Purchased Assets deemed necessary on any subject by Buyer, including obtaining a Phase I or Phase II Environmental Assessment on the Property; (ii) examine all Development Documents (as defined in Section 5.4 herein) and due diligence materials that Buyer may request from Seller; (iii) determine to its satisfaction whether approvals, permits and variances for the development of the Property can be obtained under applicable land use and zoning codes for Buyer's proposed development of the Property; (iv) and determine whether Buyer's proposed development of the Property is economically feasible. Buyer shall exercise commercially reasonable efforts to waive Buyer's contingency.

**5.1.3. Extension of Due Diligence Period.** Buyer shall have the option of obtaining one (1) extension of the Due Diligence Period for an additional six (6) months only in the event that Buyer is unable, despite reasonably diligent efforts, to enter into a development agreement with the City of Maple Valley pursuant to RCW 36.70B.170 et seq.; provided, however, that an annexation agreement shall not satisfy this provision. The extension may be obtained by delivering written notice and Fifty Thousand Dollars (\$50,000.00) to Seller no later than thirty (30) days prior to expiration of the Due Diligence Period. The \$50,000.00 shall be deposited with the Escrow Agent and become additional Earnest Money.

**5.2. SELLER'S CONTINGENCIES.** The obligations of Seller under this

Agreement are subject to the satisfaction and/or waiver of the contingencies set forth in Sections 5.2.1, 5.2.2 and 5.2.3. Seller shall exercise commercially reasonable efforts to obtain the approvals necessary to waive Seller's contingencies.

**5.2.1. Consolidation Feasibility.** Within five (5) business days after the Effective Date, Buyer shall provide Seller with descriptions of the parcel or parcels and associated easements that Buyer anticipates will be transferred at each closing and the development plans and schedule for each parcel ("Buyer's Takedown Proposal"). Seller shall determine if its Road Services Division can continue to carry on its existing functions currently conducted on the Property and also accommodate transfer of the Property pursuant to the Buyer's Takedown Proposal (herein collectively referred to as "Consolidation"). Buyer shall reimburse Seller upon the Initial Closing Date for the costs necessary to implement an approved Consolidation plan, except for the cost of applying for associated permits, which, pursuant to Section 5.2.3, shall be Seller's obligation. Seller shall develop a Consolidation plan, including estimated implementation costs, making reasonable efforts to accommodate the Buyer's Takedown Proposal. Seller shall provide Buyer with said proposed Consolidation plan and cost estimate no than later than sixty (60) days after the Effective Date. The Buyer must review the Consolidation plan and cost estimate within five (5) days and give Seller written notice of Buyer's approval or disapproval thereof; provided Buyer's approval shall not be unreasonably withheld or conditioned. If the Buyer reasonably disapproves of the Seller's Consolidation plan, the parties shall continue to work in good faith to arrive at a mutually agreeable Consolidation plan and cost estimate. The details regarding closings that are to be agreed upon pursuant to Section 4.1 of this Agreement shall be consistent with an agreed-upon Consolidation plan developed under this section 5.2.1. If Seller and Buyer are unable to agree upon a Consolidation plan prior to the expiration of Seller's First Contingency Period, this contingency shall be deemed to have failed.

**5.2.2. Ravensdale Approvals and Permits.** Seller, at its sole cost, shall obtain the approvals and permits necessary for King County Road Services Division to conduct on the Ravensdale site the functions currently performed on the Property by the Seller and to construct and operate the necessary improvements on the Ravensdale site for those functions ("Replacement Facility"), including the issuance of all land use approvals/permits, site plan approvals, environmental approvals, and any other governmental approvals necessary for Seller to develop and construct the Replacement Facility. The permits and approvals referred to in this Section 5.2.2 shall be referred to herein collectively as "Project Approvals". For the purposes of this Section, the Project Approvals shall not be deemed to have been "obtained" until each of the same has become final and any periods for challenge to the same (or other conditions for final effectiveness) shall have expired, regardless of whether an appeal or challenge has been filed. Any conditions, requirements for on-site and off-site improvements or services, in-lieu fees or payments, dedication or reservation requirements, water rights acquisition costs, local improvement district costs, connection charges, assessments, mitigation fees, impact fees, permit fees and any other similar fees and charges imposed on the construction or operation of the Replacement Facility by any governmental entity or utility service provider must be acceptable to Seller and shall be subject to Seller's approval in its sole

and absolute discretion.

**5.2.3. Summit Permits and Operation Agreement.** If the contingency set forth in Section 5.2.1 herein is waived or satisfied by Seller, Seller shall obtain the approvals necessary for King County Road Services Division to consolidate and relocate consistent with the agreed-upon Consolidation plan developed pursuant to Section 5.2.1, to other areas on the Property, the functions currently performed on the Property by King County Road Services Division ("Current Operations") and the approvals necessary for Seller to comply with its obligations regarding Reclamation pursuant to Section 6.2 herein. The cost of applying and processing applications for those approvals, for both staff time and payments to regulatory agencies, shall be borne by the Seller. Seller shall exercise commercially reasonable efforts to obtain the approvals necessary to waive Seller's contingency set forth in this Section 5.2.3. Seller and Buyer also shall enter into an agreement that sets forth the means for coordinating each others' operations on the Property.

**5.2.4. Contingency Periods and Extension.** The period for Seller to waive and/or express satisfaction with the contingency described in Section 5.2.1 herein shall end three (3) months after the Effective Date ("Seller's First Contingency Period"). The period for Seller to waive or express satisfaction with the contingency described in Sections 5.2.2 and 5.2.3 herein shall end March 1, 2011 ("Seller's Second Contingency Period"). Seller shall have the option of obtaining an extension of Seller's Second Contingency Period for six (6) months by giving written notice of the request to Buyer at least ninety (90) days before the end of Seller's Second Contingency Period.

**5.2.5. Contingency not Satisfied or Waived.**

5.2.5.1. In the event the contingency set forth in Section 5.2.1 herein is not satisfied or waived within Seller's First Contingency Period, upon written notice to Buyer from Seller of that event and subject to satisfaction or waiver of Seller's contingency in Section 5.2.2, Buyer shall have the option of electing for closing to occur either, (i) as provided for in Section 10.1.1(b) herein or (ii) as provided for in Section 10.1.2.2 herein. In the event that Seller does not provide written notice of Seller's satisfaction or waiver of the contingency set forth in Section 5.2.1 herein prior to the expiration of the applicable contingency period, the contingency shall be deemed satisfied or waived. In the event Buyer fails to provide Seller with written notice of which option Buyer has elected for closing within ten (10) business days of receiving notice from Seller that the contingency is not satisfied or waived, the Buyer will be deemed to have elected to close as provided in Section 10.1.1(b).

5.2.5.2. In the event the contingency set forth in Section 5.2.3 is not satisfied or waived within Seller's Second Contingency Period, upon written notice to Buyer from Seller of that event and subject to satisfaction and waiver of Seller's contingency in Section 5.2.2, the Initial Closing shall occur as provided for in Section 10.1.1(b) herein. In the event that Seller does not provide written notice of Seller's satisfaction or waiver of the contingency set forth in Section 5.2.3 herein prior to the

expiration of the applicable contingency period, the contingency shall be deemed satisfied or waived.

5.2.5.3. In the event the contingency set forth in Section 5.2.2 herein is not satisfied or waived within the Seller's Second Contingency Period, Buyer shall have the option, in Buyer's sole discretion, of (i) remaining under contract with Closing to occur as provided for in Section 10.1.2.1, or (ii) terminating this Agreement in which case Seller shall refund to Buyer the Earnest Money. Buyer must provide Seller written notice of Buyer's decision within thirty (30) days of expiration of Seller's Second Contingency Period. In the event that Seller does not provide written notice of Seller's satisfaction or waiver of the contingency set forth in Section 5.2.2 prior to the expiration of the Seller's Second Contingency Period, the contingency shall be deemed satisfied or waived. In the event that Buyer does not provide written notice of Buyer's decision within thirty (30) days after expiration of Seller's Second Contingency Period, Buyer's decision shall be deemed to terminate this Agreement.

**5.3. 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 five (5) business 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.

**5.4. DEVELOPMENT DOCUMENTS.** Within ten (10) business days after the Effective Date, Seller shall deliver to Buyer full and complete copies of all of the following documents in the possession or control of the King County Department of Executive Services, Facilities Management Division, Real Estate Services Section and the King County Department of Transportation, Road Services Division: (i) existing surveys and topographical maps of the Property; (ii) government permits, licenses, approvals; (iii) easements, leases, licenses, covenants, conditions, restrictions, concomitant agreements, utility agreements, or other agreements, regardless of purpose or use, associated with the Property not contained in the Commitment and any development approvals; and (iv) studies or other reports and information in the possession of or available to Seller which pertain in any way whatsoever to the Purchased Assets, including without limitation, the adverse condition thereof and/or any present or potential development and/or use of the Property, and including but limited to all documents, contracts, plans, specifications and drawings related to the construction and development of the Property, geotechnical reports, environmental studies, and traffic studies. All items described in this Section 5.4, together with subsequent additions to or revisions of such documents, are collectively referred to as the ("Development Documents").

Provided Buyer has waived its contingency in accordance with Section 5.1, within five (5) business days of receiving Buyer's written request, Seller shall provide a copy of the appraisal prepared on behalf of the County in anticipation of the RFP.

## ARTICLE 6. COVENANTS OF SELLER

**6.1. CONDUCT, NOTICE OF CHANGE.** Seller covenants that between the date hereof and, as applicable, the Closing or the last Installment 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 applicable 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 applicable closing shall have been performed at or prior to that 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 applicable closing.

**6.2. RECLAMATION.** Seller covenants that Seller will complete all Reclamation of the Property for the mining activity performed by Seller prior to, as applicable, the Closing Date or the Installment Closing Date, consistent with Ch. 78.44 RCW as determined by the Department of Natural Resources and with Ch. 16.82 KCC as determined by the King County Department of Development and Environmental Services, within three (3) months of completion of the Relocation Deadline defined in Section 6.3 herein.

**6.3. RELOCATION.** Seller covenants that, if closing is to occur pursuant to Sections 10.1.1(b) or 10.1.2.2 herein, within two (2) years of satisfaction or waiver of the Project Approval contingency described in Section 5.2.2 or, alternatively, if Closing is to occur pursuant to 10.1.2.1, within two (2) years of Buyer receiving a Relocation Notice (as defined in Section 10.1.2.1 herein) from Seller, (the "Relocation Deadline"), Seller shall have fully transferred all operations, and removed all equipment, from the Property. Seller will incur a penalty of Ten Thousand Dollars (\$10,000) per month for Seller's failure to relocate by the Relocation Deadline.

**6.4. TRANSFER OF PERMITS.** Prior to, as applicable, the Closing Date or the Installment Closing Date, Seller shall file all documents necessary for the transfer as may be allowed by law, to Buyer, of the Mining Permits. If all or some of the Mining Permits are transferred to Buyer, Buyer shall indemnify, defend and hold Seller from any and all loss, liability, claims or expenses (including, without limitation, attorneys' fees) arising out of or in connection with activities conducted after transfer and pursuant to the Mining Permits.

## ARTICLE 7. COVENANTS OF BUYER

**7.1. CONDUCT, NOTICE OF CHANGE.** Buyer covenants that between the date hereof and, as applicable, the Closing or the last Installment 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 applicable 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 applicable closing shall have been performed at or prior to that 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 applicable closings.

**7.2 TRANSFER OF DEVELOPMENT RIGHTS. TRANSFER OF DEVELOPMENT RIGHTS.** Buyer covenants to: purchase 200 King County-certified development rights (“TDRs”) either from the King County Transfer of Development Rights Bank (the “Bank”); or from rural sending sites within five miles of the Maple Valley city limits (the “Sending Sites”); or from some combination of the Bank and the Sending Sites, in the buyer's sole and absolute discretion in determining whether to purchase TDRs from the Bank or from the Sending Sites. The timing of the purchase of the development rights shall be concurrent with need; provided in no event shall this covenant be fully performed later than two (2) years from closing on all portions of the Property. This covenant shall survive all closings.

### **7.3. AFFORDABLE HOUSING.**

**7.3.1.** Buyer covenants that development of the Property shall include an affordable housing component. This covenant will be memorialized by a deed restriction, in the form of attached Exhibit G, (the “Deed Restriction”) to be attached to the Deed, that, in addition to other requirements described in this Section 7.3, shall require affordability of Thirty Percent (30%) of the total units constructed on the Property; provided this affordable housing covenant shall not apply to any density achieved pursuant to the transfer of development rights eligible for use in developing this Property. The Seller and its successors in interest shall have standing to enforce these covenants against Buyer. The covenants in the Deed Restriction shall be enforced with the remedies set forth in Section 13.2 of this Agreement. Seller and Buyer further agree that these covenants may also be enforced by the Seller as a matter of contract through this Agreement, and that these covenants shall be binding obligations on Buyer when this Agreement becomes effective and shall survive all closings.

**7.3.2. Prevailing Wages.** Buyer further covenants that, with respect, at least, to the construction of affordable housing, Buyer will contract only with

companies who agree to pay their employees prevailing wages. This prevailing wage covenant shall apply only to work performed on the Property and shall survive all closings.

**7.4. DEVELOPMENT SCHEDULE.** Buyer covenants that it shall commence site development of the Property or the portion of the Property conveyed to Buyer at a particular closing no later than twenty four (24) months after, as applicable, the Closing Date or Installment Closing Date. Seller acknowledges that the development will be completed in multiple phases over a period of years. The foregoing deadlines are subject to extension upon prior written approval by Seller; such approval not to be unreasonably withheld, conditioned, or delayed. Seller must receive any request for an extension from Buyer at least twenty (20) business days prior to the applicable deadlines. This covenant shall survive all closings.

**7.5. CONSERVATION OF HIGH PRIORITY RESOURCE LANDS.** Buyer covenants that, at or prior to, as applicable, the date of Closing or the date the first Installment Closing is scheduled to take place in accordance with Exhibit B, Buyer will convey or grant to Seller fee title to or a conservation easements over land or arrange for such conveyance or grant to the Seller. Such land shall be a minimum of 75-acres and be reviewed and approved by Seller prior to the conveyance or grant, with such approval not to be unreasonable withheld or delayed. In evaluating the land, Seller shall consider, but not be limited to, whether the land: 1) implements a Salmon Conservation Plan; 2) protects large, contiguous acreages at risk of substantial development; 3) connects to other protected lands or forms links with other valuable lands; 4) is agricultural land within designated Agricultural Production Districts; and/or 5) is forest lands within Forest Production Districts or Forest Focus Areas. Buyer shall provide Seller with notice describing the land that will be conveyed or on which the conservation easement will be placed no later than one (1) year from the Effective Date.

**7.6. GREEN BUILDING INITIATIVE.** Buyer covenants that it shall incorporate low-impact development concepts, green building construction methods (including using commercially reasonable efforts to obtain certification for four (4) or five (5) star Built Green certification from the Master Builders Association of King and Snohomish Counties), energy efficient design, water conservation and material reuse into the development of the Property. Buyer shall include this requirement in all contracts with third parties for the development or purchase of the Property or any portion thereof and also include a provision granting Seller the right to enforce the requirement.

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

All obligations of Buyer to close on the date for any closing are subject to the fulfillment of each of the following conditions at or prior to, as applicable; the date for Closing, Initial Closing or Installment 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 applicable 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 date of the applicable closing.

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

**8.4. TITLE AND TITLE INSURANCE.** Any and all matters shown or referred to in the Title Commitment to which Buyer has objected within the time specified in Section 4.2, shall have been cured by Seller, unless such objections have been waived by Buyer, and the Title Company shall be irrevocably committed to issue an Owner's Extended Coverage Title Insurance Policy (ALTA Form 2006) containing no exceptions other than the Permitted Exceptions and in the amount of the value of the portion of the Property transferred as set forth in the applicable Takedown Schedule of Exhibit B, if closing is to occur pursuant to Section 10.1.1 herein, or the Purchase Price, if closing occurs pursuant to Section 10.1.2 herein; provided that failure of Title Company to be irrevocably committed to issue the requisite insurance policy due to the inability of the Title Company and Buyer to agree on endorsements to the policy shall not constitute a failure of this condition precedent.

**8.5. CONDEMNATION.** No portion of the Purchased Assets to be conveyed to the Buyer at the applicable closing 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 date for any closing are subject to the fulfillment of each of the following conditions at or prior to, as applicable, the Closing, Initial Closing or Installment 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 pursuant hereto shall be true and correct in all material respects when made and as of the date for the applicable closing.

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

**9.3. FINAL PLAT.** Before the Initial Closing described in Section 10.1.1 herein, preliminary short plat approval for the subdivision of the Property must have been obtained and the final short plat of the Property must be ready for recording on the date of the Initial Closing. The preliminarily approved short plat shall be consistent with the plat application and amendments thereto approved by Seller and consistent with the Takedown Schedules as amended pursuant to Section 4.1 herein. Provided, this provision shall have no force or effect if Closing shall occur pursuant to Section 10.1.2.

**9.4. PURCHASE PRICE.** Before the Closing described in Section 10.1.2 herein, the Purchase Price must be established as provided for in Section 2.1 herein.

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

## **ARTICLE 10. CLOSING**

### **10.1. CLOSING.**

Upon the Effective Date of this Agreement, the parties agree to set up an escrow account with Mary Ann Hingst with the Chicago Title Insurance Company of Washington (the "Escrow Agent"). The Escrow Agent shall serve as a closing agent for the transaction contemplated herein and closings shall occur in the offices of Escrow Agent in Seattle, Washington.

**10.1.1. Phased Closing.** If the Seller's contingency set forth in Section 5.2.2 is satisfied or waived, unless, as provided for in Section 5.2.5.1, Buyer has chosen to proceed under Section 10.1.2, a closing shall occur when a deed to Buyer for one or more parcels comprising the Property is recorded and the amount due for that parcel or those parcels pursuant to Exhibit B is delivered to the Escrow Agent for delivery to Seller. The date on which the initial closing ("Initial Closing") occurs is referred to herein as the "Closing Date." The Initial Closing shall take place on a day mutually agreed upon by the Buyer and Seller that is no later than either:

a) If the Seller's contingency set forth in Sections 5.2.1 is satisfied or waived, Thirty (30) days after Seller has received its Ravensdale Project Approvals and Summit Project Approvals and waived the contingencies set forth in Sections 5.2.2 and 5.2.3, provided that Seller shall be required to provide Buyer sixty (60) days written notice of Seller's intended Closing Date (the "Closing Notice") and if the expiration of the Closing Notice occurs more than thirty (30) days after the contingencies set

forth in Sections 5.2.2 and 5.2.3 have both been waived, the Initial Closing shall not take place prior the intended Closing Date. Each closing after the Initial Closing ("Installment Closing") shall occur on the annual anniversary of the Closing Date ("Installment Closing Date") pursuant to Exhibit B Schedule A, except in the event Buyer exercises one or both of the Closing Waivers referred to in Section 2.2;

b) If the Seller's contingency set forth in Section 5.2.1 is not waived or satisfied and Buyer has elected this option pursuant to Section 5.2.5.1, or if Seller's contingency set forth in Section 5.2.3 is not waived or satisfied, thirty (30) days after Seller has fully transferred all operations and removed all equipment from the Property ("Vacate Date"); provided that Seller shall be required to provide Buyer ninety (90) days written notice of Seller's anticipated Vacate Date (the "Vacation Notice") and further provided that if the expiration of the Vacation Notice occurs more than thirty (30) days after the Vacate Date, the Initial Closing shall not take place prior to the expiration of the Vacation Notice. Each closing after the Initial Closing ("Installment Closing") shall occur on the annual anniversary of the Closing Date ("Installment Closing Date") pursuant to Exhibit B Schedule B, except in the event Buyer exercises one or both of the Closing Waivers referred to in Section 2.2.

#### **10.1.2. Single Closing.**

10.1.2.1. In the event Seller gives Buyer proper notice that the contingency set forth in Section 5.2.2 is not satisfied or waived and Buyer has elected to close under this section pursuant to Section 5.2.5.3, the closing of the transaction contemplated by this Agreement shall occur when a deed to Buyer for the entire Property is recorded and the Purchase Price as determined in the manner set forth in Section 2.1 herein is delivered to the Escrow Agent for delivery to Seller ("Closing"). The date on which the Closing occurs is referred to herein as the "Closing Date." The Closing shall take place on a day mutually agreed upon by the Buyer and Seller that is no later than within sixty (60) days after Seller has fully transferred all operations and removed all equipment from the Property ("Vacate Date"), provided that Seller shall be required to provide Buyer ninety (90) days written notice of Seller's anticipated Vacate Date (the "Vacation Notice") and the Closing shall not take place prior to the expiration of the Vacation Notice. Seller shall give Buyer at least one (1) year notice if it decides to remove its operations and equipment from the Property and to proceed to Closing ("Relocation Notice"). If the Seller does not provide Buyer with a Relocation Notice within three (3) years from the date Seller gives Buyer notice that the contingency set forth in Section 5.2.2 is not satisfied or waived, this Agreement shall terminate immediately, Seller shall return to Buyer the Earnest Money and the parties shall have no further obligations or liabilities to one another.

10.1.2.2. If the Seller's contingency set forth in Section 5.2.2 is satisfied or waived, and Buyer has elected to close under this section pursuant to Section 5.2.5.1, the closing of the transaction contemplated by this Agreement shall occur when a

deed to Buyer for the entire Property is recorded and the Purchase Price as determined in the manner set forth in Section 2.1 herein is delivered to the Escrow Agent for delivery to Seller ("Closing"). The date on which the Closing occurs is referred to herein as the "Closing Date." The Closing shall take place on a day mutually agreed upon by the Buyer and Seller that is no later than within sixty (60) days after Seller has fully transferred all operations and removed all equipment from the Property ("Vacate Date"), provided that Seller shall be required to provide Buyer ninety (90) days written notice of Seller's anticipated Vacate Date (the "Vacation Notice") and the Closing shall not take place prior to the expiration of the Vacation Notice. The appraisal process described in Section 2.1 shall begin no earlier than the date Seller's contingency set forth in Section 5.2.2 has been satisfied or waived and no later than sixty (60) days after that date.

**10.2. PRORATIONS.** All prorations for the portion of the Purchased Assets that will be conveyed at a particular closing, unless otherwise specifically provided for herein, shall be made as of the date for the applicable closing.

**10.3. CLOSING COSTS.** Seller shall pay the cost of one-half (½) of the escrow fee or fees charged by the Escrow Agent, the premium for an ALTA standard owners policy of title insurance, any real estate excise or other transfer tax due, and its own attorneys' fees. Buyer shall pay the cost of the extended coverage portion of the Title Insurance policy and endorsements if required by Buyer, one-half (½) of the escrow fee or fees charged by the Escrow Agent, the cost of the preliminary and binding Title Commitment from the Title Company all supplemental title commitments issued due to all Installment Closings, the recording fees for all deeds and its own attorneys' fees. Except as otherwise provided in this Section 10.3, and Section 4.1 above, all other expenses incurred at a closing hereunder shall be paid by the party incurring such expenses.

**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 each applicable closing all monetary liens on or with respect to all or any portion of the applicable portion of the Property. If Seller fails to satisfy said liens, the payment due shall be reduced by the amounts due to satisfy and discharge the liens.

**10.5. SELLER'S DELIVERY OF DOCUMENTS AT CLOSINGS.** At the Closing or at Initial Closing and each Installment Closing, as applicable, Seller shall deliver to Buyer the following properly executed documents:

(a) A Statutory Warranty Deed conveying the Property or a portion thereof, as applicable, in the form of Exhibit F attached hereto to which the Affordable Housing Deed Restriction in the form of Exhibit G attached hereto shall be attached;

(b) A Bill of Sale and Assignment duly executed by the Seller in the form of Exhibit H, attached hereto for the Personal Property, if any;

(c) Seller's Certificate of Non-Foreign status substantially in the form of Exhibit E, attached hereto;

**10.6. BUYER'S DELIVERY OF DOCUMENTS AND PURCHASE PRICE AT CLOSINGS.** At the Closing or Initial Closing and each Installment Closing, as applicable, unless otherwise noted in this Section 10.6, Buyer shall deliver to Seller the following properly executed documents and payments:

(a) the Purchase Price or payment due pursuant to Exhibit B (after credit for the Earnest Money, if any, and any other credits pursuant hereto) as described in Article 2 above.

(b) at Initial Closing and each Installment Closing, the applicable final plat of the Property to be recorded at the closing.

(c) If closing occurs pursuant to Section 10.1.1(a) herein, at Initial Closing, the amount Buyer agreed to reimburse Seller pursuant to Section 5.2.1 herein

(d) At Closing or the date of the first Installment Closing only, a deed or conservation easement, in a form acceptable to the Seller, for conservation land as proof of that Buyer has performed its Buyer's covenant contained in Section 7.5 herein.

## **ARTICLE 11. EARLY ACCESS**

**11.1. EARLY ACCESS.** If closing is to occur pursuant to Section 10.1.1(b) herein, Buyer shall be granted early access to the site for the purpose of performing site work, including but not limited to clearing, grading and storage of material. Buyer's right to access the Property shall be subject to Buyer receiving a Special Use Permit, as may be issued by the King County Department of Executive Services, Facilities Management Division, Real Estate Services Section. Seller agrees that its King County Road Services Division shall cooperate with Buyer to obtain the Special Use Permit.

## **ARTICLE 12. TERMINATION**

**12.1. 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 Article 8, "Conditions Precedent to Buyer's Obligations", and Article 9, "Conditions Precedent to Seller's Obligations" has not been satisfied by the date of the applicable closing. In that event, if the failure to satisfy a condition was for a reason other than the default of a party and neither party is otherwise 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 13. MISCELLANEOUS PROVISIONS

### 13.1. 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 and the Installment Closing Dates 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.

### 13.2. DEFAULT AND ATTORNEYS' FEES.

**13.2.1. Seller's Remedies.** In the event of any default by Buyer without legal excuse, Seller shall be entitled to (a) terminate this Agreement and retain the Earnest Money as liquidated damages; and/or (b) bring an action for actual damages, provided that Seller shall not be able to recover consequential damages or lost profits and further provided the total damages recovered from Buyer shall not exceed Five Million Dollars (\$5,000,000).

**13.2.2. Buyer's Remedies.** In the event of any default by Seller without legal excuse, Buyer shall be entitled to: (a) terminate this Agreement, in which event the Earnest Money shall be returned to Buyer; (b) maintain an action for specific performance or other injunctive relief; and/or (c) bring an action for actual damages, provided that Buyer shall not be able to recover consequential damages or lost profits.

**13.2.3. Opportunity to Cure.** Except for the failure to close without legal excuse, which shall constitute an immediate default under this Agreement, with respect to the breach of any other covenant, representative or warranty under this Agreement, a party shall not be entitled to declare a default and pursue its rights and remedies for breach and default under this Agreement until and unless notice of the breach has been given to the breaching party and the breaching party fails to cure such breach within 14 days after receiving such notice or make reasonable efforts to begin to cure such breach within 14 days after receiving such notice if the breach does not lend itself to curing within 14 days.

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

**13.4. 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:

**If to Buyer:**

Summit Place 156 LLC  
Attn: Brian Ross  
825 5<sup>th</sup> Avenue, Suite 202  
Kirkland, WA 98033

*With a copy to:*

Thomas Read  
Alston Courtnage & Bassetti LLP  
1000 Second Avenue, Suite 3900  
Seattle, WA 98104

**If to Seller:**

King County Real Estate Services  
Attn: Harold McNelly  
500 Fourth Avenue  
Seattle, WA 98104-3856

*With a copy to:*

King County Road Services Division  
Attn: Linda Dougherty  
201 South Jackson Street  
Seattle, WA 98104

*With a copy to:*

King County Prosecuting Attorney  
Attn: Scott Johnson  
900 King County Administration Building  
500 Fourth Avenue  
Seattle, WA 98104  
Fax No.: (206) 296-0420

**13.5. 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.

**13.6. 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.

**13.7. 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.

**13.8. BINDING EFFECT.** Subject to Section 13.14 below, this Agreement shall be binding upon and inure to the benefit of each party hereto, its successors and assigns.

**13.9. 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.

**13.10. 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.

**13.11. COOPERATION.** Prior to and after a 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.

**13.12. 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.

**13.13. NON-MERGER.** The terms and provisions of this Agreement will not merge in, but will survive, any closing of the transaction contemplated under this Agreement.

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

**13.15. 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.

**13.16. EFFECTIVE DATE.** This Agreement is contingent on approval by the Metropolitan King County Council ("Council") and shall be effective as of the date on which an ordinance adopted by the Council authorizing the terms and conditions set forth herein becomes effective and the Agreement is fully executed by the parties, which date shall be inserted into the first paragraph of this Agreement. The Executive may withdraw the offer to sell the Purchased Assets to Buyer under the terms and conditions of this Agreement if Council rejects or fails to act on a proposed ordinance approving this Agreement.

**13.17. MEMORANDUM OF AGREEMENT.** Upon the request of either party, the parties shall execute and record a Memorandum of this Agreement in the form attached hereto as Exhibit I. The Memorandum of Agreement shall provide that upon expiration or earlier termination of this Agreement, it shall automatically be released without further action from either party. Notwithstanding the foregoing, upon expiration or termination of this Agreement and the request of either party, the other party shall promptly execute and deliver an instrument terminating of the Memorandum of Agreement.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

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

EXHIBIT A	Legal Description of the Summit Pit Property
EXHIBIT B	Takedown Schedules
EXHIBIT C	Earnest Money Promissory Note
EXHIBIT D	Letter of Authority
EXHIBIT E	Certificate of Non-Foreign Status
EXHIBIT F	Statutory Warranty Deed
EXHIBIT G	Affordable Housing Deed Restriction
EXHIBIT H	Construction Schedule Deed Restriction
EXHIBIT I	Bill of Sale and Assignment
EXHIBIT J	Memorandum of Agreement

**Executed** as of the date and year first above written:

**SELLER:**

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

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

APPROVED AS TO FORM:

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

**BUYER:**

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

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

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 \_\_\_\_\_, 2009.

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 \_\_\_\_\_, 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 \_\_\_\_\_, 2009.

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

**EXHIBIT A.**

**Legal Description of Summit Pit Property**

The northwest quarter of Section 34, Township 22 North, Range 6 East, W.M., in King County, Washington; EXCEPTING there from that portion conveyed by instrument recorded under Recording Number 8905110590, in King County, Washington; AND EXCEPT that portion conveyed to the city of Maple Valley by deed under Recorder's No. 20040824000981. And SUBJECT TO: Easement for Slope and Sidewalk conveyed to the city of Maple Valley under Recorder's No. 20040824000980 and Easement for Slope conveyed to the city of Maple Valley under Recorder's No. 20040824000982.

**EXHIBIT B.**

**Takedown Schedules**

Takedown Schedule A

	Date due	Amount to be paid on Initial and Installment Closing Dates	Value of Property Transferred on Initial and Installment Closing Dates (80% of payment)	Percent of total value of Property Transferred
Initial Closing	X	\$16,000,000	\$12,800,000	25.1%
1 <sup>st</sup> install	X + 1 year	\$15,000,000	\$12,000,000	23.5%
2 <sup>nd</sup> install	X + 2 years	\$5,000,000	\$4,000,000	7.9%
3 <sup>rd</sup> install	X + 3 years	\$5,000,000	\$4,000,000	7.9%
4 <sup>th</sup> install	X + 4 years	\$5,000,000	\$4,000,000	7.9%
5 <sup>th</sup> install	X + 5 years	\$5,000,000	\$14,200,000	27.7%
Totals		\$51,000,000	\$51,000,000	100%

Takedown Schedule B

	Date due	Amount to be paid on Initial and Installment Closing Dates	Value of Property Transferred on Initial and Installment Closing Dates (80% of payment)	Percent of total value of Property Transferred
Initial Closing	X	\$16,000,000	\$12,800,000	23.2%
1 <sup>st</sup> install	X + 1 year	\$15,750,000	\$12,600,000	22.8%
2 <sup>nd</sup> install	X + 2 years	\$5,500,000	\$4,400,000	8.0%
3 <sup>rd</sup> install	X + 3 years	\$5,750,000	\$4,600,000	8.3%
4 <sup>th</sup> install	X + 4 years	\$6,000,000	\$4,800,000	8.7%
5 <sup>th</sup> install	X + 5 years	\$6,250,000	\$16,050,000	29.0%
Totals		\$55,250,000	\$55,250,000	100%

**EXHIBIT C.**

**Earnest Money Promissory Note**

FOR VALUE RECEIVED, Summit Place 156 LLC ("Maker"), promises to pay to the order of King County (collectively, "Payee"), the principal sum of One Million, Seven Hundred Fifty Thousand and No/100 Dollars (\$1,750,000), interest-free. This Note shall be payable in lawful money of the United States, at such place as the Payee may designate.

This Note is made pursuant to that certain Purchase and Sale Agreement dated \_\_\_\_\_, 200\_, between the Maker and Payee (the "Agreement"), the terms and conditions of which are incorporated herein by this reference. This Note shall be due and payable only as, when and if due under the terms of the Agreement.

Maker shall have the right to prepay at any time in advance of maturity, without premium or penalty, all or any part of the principal amount of this Note.

If this Note is placed in the hands of any attorney for collection after any default, Maker promises to pay all costs of collection and a reasonable sum as attorneys' fees, whether suit is brought or not.

This Note is to be construed in all respects and enforced according to the laws of the State of Washington.

**MAKER:**

Summit Place 156 LLC,  
a Washington limited liability company

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

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

Date: \_\_\_\_\_

**EXHIBIT D.**

**Letter of Authority**

To Whom it May Concern:

King County, a municipal corporation and political subdivision of the State of Washington ("Seller") entered into a Real Estate Purchase and Sale Agreement ("Agreement") with Summit Place 156 LLC ("Buyer") effective \_\_\_\_\_, 200\_, for property owned by the Seller located in unincorporated King County, Washington, and legally described on attached Exhibit A (the "Property").

Seller authorizes Buyer to apply for permits and approvals related to the subdivision and development of the Property prior to the earlier of the consummation of the sale or termination of the Agreement. Such applications shall be solely on behalf of the Buyer.

The purpose of this letter is to confirm to you Seller's agreement that, subject to the conditions contained in this letter, Buyer may proceed to act in Seller's place to submit applications or permits associated with the Property, at no cost to Seller.

**SELLER:**

\_\_\_\_\_

**EXHIBIT E.**

**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 \_\_\_\_\_, 2009.

**TRANSFEROR:**

**KING COUNTY**

By \_\_\_\_\_

Title \_\_\_\_\_

**EXHIBIT F.**

**Statutory Warranty Deed**

**AFTER RECORDING RETURN TO:**

K. C. Real Estate Services  
500 King County Admin. Bldg.  
500 Fourth Avenue  
Seattle, WA 98104

**STATUTORY WARRANTY DEED**

**GRANTOR - KING COUNTY**

**GRANTEE -**

**LEGAL --**

**TAX NO. -**

The Grantor, KING COUNTY, a political subdivision of the State of Washington, for and in consideration of \_\_\_\_\_, pursuant to King County Ordinance No. \_\_\_\_\_, does hereby convey and warrant unto the Grantee, \_\_\_\_\_, a municipal corporation of the State of Washington, and Grantee hereby accepts, the following described real estate, situate in King County, Washington:

SEE LEGAL DESCRIPTION IN EXHIBIT "A" ATTACHED HERETO  
AND BY THIS REFERENCE INCORPORATED HEREIN.

AND

SUBJECT TO MATTERS AS SET FORTH IN EXHIBIT "B" ATTACHED  
HERETO AND BY THIS REFERENCE INCORPORATED HEREIN.

AND



## **EXHIBIT G.**

(To be attached to Deed as Exhibit C)

### **AFFORDABLE HOUSING DEED RESTRICTION**

Pursuant to the terms of a Purchase and Sale Agreement ( the "Agreement") entered into between Grantor and Grantee with the Effective Date of \_\_\_\_\_, Grantor transfers to Grantee by this deed all or a portion of certain real property described in Exhibit A to the Agreement (the Property). Exhibit A to the Agreement is reproduced and attached to this Deed Restriction as Attachment A. In the Agreement, Grantee made covenants regarding development of affordable housing that are contained in this deed restriction.

The following covenants shall run with the land for the sole benefit of the Grantor. The Grantor and its successors in interest shall have standing to enforce these covenants against Grantee and its successors and assigns and all subsequent owners of any portion of the Property. The covenants and conditions contained herein shall bind, respectively, Grantee and its successors and assigns and all subsequent owners of any portion of the Property subject to expiration, termination, and modification thereof as specifically provided below. Each and every contract, deed or other instrument hereafter executed conveying any portion of or interest in the Property, including any interest under the Washington Condominium Act, Ch. 64.32 RCW, shall contain an express provision making such conveyance subject to any covenants and conditions of this Deed Restriction, if still in effect, provided however, that any such contract, deed or other instrument shall conclusively be held to have been executed, delivered and accepted subject to such covenants and conditions, regardless of whether or not such covenants and conditions are set forth or incorporated by reference in such contract, deed or other instrument. In particular that if any condominium is created in any of the Property, this Deed Restriction, unless previously satisfied, shall be attached and incorporated as conditions to the declaration, master lease, or other document creating the condominiums, and to any condominium association by-laws.

Upon satisfaction of the covenants herein Grantor shall execute and record a document to memorialize such satisfaction in a form proposed by Grantee and approved by Grantor, which approval shall not be unreasonably conditioned, delayed or withheld. The covenants regarding affordable housing shall be satisfied once the construction of the development of the Property is complete and adequate covenants, the form of which Grantor will provide to Grantee, have been placed on the title of the number of affordable units necessary to meet the goals set forth below to ensure they will remain affordable. In the alternative, if the Property is developed pursuant to the Urban Planned Development (UPD) provisions of the King County Code and such development standards include affordable housing conditions consistent with the affordable housing covenants contained in this deed restriction, the covenants may be satisfied upon satisfaction of the UPD affordable housing conditions. Grantor shall have sole discretion to determine whether or

not satisfaction of the UPD affordable housing conditions satisfies the affordable housing covenants contained in this Agreement.

The Grantee covenants that Thirty Percent (30%) of the total units constructed on the Property shall be affordable housing units ("Units"), provided this affordable housing deed restriction shall not apply to any density achieved pursuant to the transfer of development rights eligible for use in developing this Property. For purposes of this covenant, Affordable housing shall require:

a.) Ten Percent (10%) of the Units shall be made available for either (i) ownership by households earning below 80% of the King County median household income, or (ii) rent by households earning between 50 and 60% of the King County median household income. Grantee will not be required to construct and market Units in this category if, after making reasonable efforts to do so, Grantee is unable to arrange for development of these Units by publicly funded or private non-profit programs and if Grantee sets aside sufficient land to meet this requirement for a period of up to five years from the closing of the Property or the portion of the Property on which such Units are to be constructed. If Grantee is unable to arrange for the development of these Units by the end of the five year period, the affordable housing requirement under this category shall terminate upon Grantor's approval and the number of Units in the category described in subsection b.) below shall be increased according to the number of Units that would have been included in the category described in this subsection a.). Grantor shall determine in its sole discretion whether or not the Grantee has made the necessary reasonable effort to arrange for development of these Units, such discretion not to be unreasonably exercised or delayed.

b.) Ten Percent (10%) of the Units shall be made available for either (i) ownership by households earning between 80% and 100% of the King County median income or (ii) rent to households earning between 60% and 80% of the King County median income.

c.) Ten Percent (10%) of the Units shall be made available for either (i) ownership by households earning between 100% and 120% of the King County median income or (ii) rent to households earning between 80% and 100% of the King County median income.

Within the above categories, Grantee can provide a mix of ownership and rental Units. Ownership Units shall carry a 15-year affordable housing deed restriction and rental Units shall carry a 30-year affordable housing deed restriction. The King County median income shall be determined according to HUD Income Guidelines for King County in effect at the time the Units are rented or sold. For ownership Units, the Units must be priced so that the monthly housing payment, including homeowner's insurance, taxes, homeowner dues and mortgage payment (including principal and interest based on standard interest rate and down payment assumptions) or ground lease payment, that does not exceed thirty percent of the household income as established by HUD annual income guidelines for the applicable percentages(s) of area median income served by the housing, adjusted for family size and/or number of bedrooms. For rental Units, the monthly

housing payment, including utilities other than telephone, shall not exceed thirty percent of the household's monthly income, as established by HUD annual income guidelines for the applicable percentage(s) of area median income served by the housing, adjusted for family size and/or number of bedrooms.

The Grantee further covenants that, with respect, at least, to the construction of affordable housing, Grantee will contract only with companies who agree to pay their employees prevailing wages. This prevailing wage covenant shall apply only to work performed on the Property and shall survive all closings.

**EXHIBIT H.**

(To be attached to Deed as Exhibit D)

**CONSTRUCTION SCHEDULE**

Pursuant to the terms of a Purchase and Sale Agreement ( the "Agreement") entered into between Grantor and Grantee with the Effective Date of \_\_\_\_\_, Grantor transfers to Grantee by this deed all or a portion of certain real property described in Exhibit A to the Agreement (the Property). Exhibit A to the Agreement is reproduced and attached to this Deed Restriction as Attachment A. In the Agreement, Grantee made covenants regarding development of affordable housing that are contained in this deed restriction.

The following covenants shall run with the land for the sole benefit of the Grantor. The Grantor and its successors in interest shall have standing to enforce these covenants against Grantee and its successors and assigns and all subsequent owners of any portion of the Property. The covenants and conditions contained herein shall bind, respectively, Grantee and its successors and assigns and all subsequent owners of any portion of the Property subject to expiration, termination, and modification thereof as specifically provided below. Each and every contract, deed or other instrument hereafter executed conveying any portion of or interest in the Property, including any interest under the Washington Condominium Act, Ch. 64.32 RCW, shall contain an express provision making such conveyance subject to any covenants and conditions of this Deed Restriction, if still in effect, provided however, that any such contract, deed or other instrument shall conclusively be held to have been executed, delivered and accepted subject to such covenants and conditions, regardless of whether or not such covenants and conditions are set forth or incorporated by reference in such contract, deed or other instrument. In particular that if any condominium is created in any of the Property, this Deed Restriction, unless previously satisfied, shall be attached and incorporated as conditions to the declaration, master lease, or other document creating the condominiums, and to any condominium association by-laws.

Upon satisfaction of the covenants herein Grantor shall execute and record a document to memorialize such satisfaction in a form proposed by Grantee and approved by Grantor, which approval shall not be unreasonably conditioned, delayed or withheld.

The Grantee covenants that it shall commence site development of the Property, or portion of the Property, conveyed by Grantor to Grantee no later than twenty four (24) months after the Property or portion of Property, as applicable, is conveyed by Grantor to Grantee. Grantor acknowledges that development of the Property may be completed in multiple phases over a period of years. The foregoing deadlines are subject to extension upon prior written approval by Grantor; such approval not to be unreasonably withheld, conditioned, or delayed. Grantor must receive any request for an extension from Grantee at least twenty (20) business days prior to the applicable deadlines

**EXHIBIT I.**

**Bill of Sale and Assignment.**

**BILL OF SALE AND ASSIGNMENT**

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THIS BILL OF SALE is made as of this \_\_\_\_ day of \_\_\_\_\_, 200 \_\_, by KING COUNTY (“**Seller**”) a political subdivision of the State of Washington, in favor of Summit Place 156 LLC, (“**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: \_\_\_\_\_

**EXHIBIT J.**

**Memorandum of Agreement**

**RETURN TO:**

Jami Kuzaro-Balint, Esq.  
Yarrow Bay Group  
825 5<sup>th</sup> Avenue, Suite 202  
Kirkland, WA 98033

<b>DOCUMENT TITLE</b>	Memorandum of Purchase and Sale Agreement
<b>REFERENCE NUMBER(S) OF RELATED DOCUMENTS</b>	N/A
<b>GRANTOR(S)</b>	King County, a municipal corporation and political subdivision of the State of Washington
<b>GRANTEE</b>	Summit Place 156, LLC, a Washington limited liability company
<b>ABBREVIATED LEGAL DESCRIPTION</b>  <b>FULL LEGAL DESCRIPTION APPEARS ON PAGE 4</b>	
<b>ASSESSOR'S PARCEL NO(S).</b>	342206-9006

**MEMORANDUM OF PURCHASE AND SALE AGREEMENT**

This Memorandum of Purchase and Sale Agreement is dated as of \_\_\_\_\_, 2008, and is by and between King County, a municipal corporation (collectively, "Seller"), and Summit Place 156, LLC, a Washington limited liability company ("Buyer").

Seller and Buyer have entered into a Purchase and Sale Agreement dated \_\_\_\_\_, 2009, for the purchase and sale of the real property described on attached Exhibit A. The Buyer has the right to close its purchase under the Purchase and Sale Agreement until the Purchase and Sale Agreement terminates as provided therein. This Memorandum is prepared for the purpose of recordation only, and does not modify the Purchase and Sale Agreement in any way.



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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_.

My commission expires \_\_\_\_\_.