

KITSAP TRANSIT BOARD OF COMMISSIONERS
MEETING MINUTES
SEPTEMBER 20, 2011

Board of Commissioners Present:

Coppola, Lary, Mayor, City of Port Orchard, **Vice-Chair**
Erickson, Becky, Mayor, City of Poulsbo
Garrido, Charlotte, Kitsap County Commissioner
Gelder, Robert, Kitsap County Commissioner
Lent, Patty, Mayor, City of Bremerton
Maupin, Will, Bremerton City Councilmember, **Chair**
Putansuu, Rob, *At-Large Board member & Port Orchard City Councilmember*
Fuller, Mark for John Witte of Teamsters Local 589, *non-voting member*

Board of Commissioners Absent:

Brackett, Kim, Proxy for Mayor, City of Bainbridge Island
Brown, Josh, Kitsap County Commissioner

Staff Present:

Cartwright, Jeff, Human Resources Director
Clark-Getzin, Wendy, Capital Development Director
Clauson, John, Service Development Director
Dimmen, Jeff, Acting Vehicle & Facilities Maintenance Director
Edwards, Phyllis, *ACCESS Driver of the Month for July*
Freer, Jack, Routed Operations Manager
Grund, Fred, Routed Driver of the Month for July
Gustafson, Ellen, Operations Director
Knox-Browning, Cathie, Clerk of the Board
Lenee, Tammy, *ACCESS Driver of the Month for June*
Lynn, Hans, Routed Driver of the Month for June
Shinners, Paul, Finance Director
Templeton, Ron, General Counsel
Thomson, Gayle, Deputy Clerk

Visitors Present:

Downs, Sue, Interpreter for Mr. Roach
Friedrich, Ed, Kitsap Sun
Gray, Carol
Sanders, Greg, ATU No. 1384
Roach, Robert, KT Citizens' Advisory Committee
Russell, Stuart

1. CALL TO ORDER: Chairperson Maupin called the regular meeting of the Kitsap Transit Board of Commissioners to order at 9:33 a.m.

2. EXECUTIVE SESSION

Chairperson Maupin said the board would recess into Executive Session at 9:33 a.m. for 15 minutes to discuss property and contract negotiations. The board exited the closed session at 9:48 a.m., took a short break and resumed the open portion of the meeting at 9:50 a.m.

Mr. Templeton left the meeting at this point: 9:50 a.m.

3. CHAIRPERSON'S COMMENTS / DISCUSSION:

- a. Recognizing the 2011 Drivers of the Month for June & July in Routed and *ACCESS*

Mr. Freer began by introducing the *ACCESS* Driver of the Month (DOM) for June, Tammy Lenee, who he said began working for Kitsap Transit (KT) in 1998, has been DOM six times and Driver of the Year in 2003. He said she is known for her sunny disposition and her attitude to be all she can be every day. Mr. Freer said that Ms. Lenee's advice to other drivers is to treat every day as a good day and know that some days are just better than others.

Applause followed these remarks.

Ms. Lenee said she hoped the meeting attendees would have a good day, enjoy the rest of their summer and have a happy autumn.

Chairperson Maupin offered his congratulations.

Applause followed these remarks.

Mr. Freer then introduced the July DOM in *ACCESS*; Fred Grund. He said Mr. Grund enjoys kite-flying, biking and X-box video games, and that Mr. Grund's goal is to pay off his house and retire. Mr. Freer also said Mr. Grund's advice to other drivers is to not back down, especially if it is an issue of safety.

Applause followed these remarks.

Mr. Grund noted he was about as keen on public speaking as Ms. Lenee was, and he bid the board a good day. He then said he was going back to work.

Laughter and applause followed these remarks.

Mr. Freer noted that KT's *ACCESS* drivers' real skills come out one-on-one with their passengers.

He then introduced the June DOM in Routed; Hans Lynn, who he noted began with KT as an

ACCESS driver four years ago. Mr. Lynn, who has been married for 35 years, had the day off and was not in attendance, Mr. Freer said, and he asked for a round of applause for Mr. Lynn in absentia.

The assemblage complied.

Mr. Freer last introduced the Routed DOM for July; Phyllis Edwards, who he said began working for the agency in January of 2007. This is Ms. Edward's first DOM and her professional goal is to become a nurse, he said. Mr. Freer said Ms. Edwards spends her free time reading and playing with her son. He also said that Ms. Edward's advice to other drivers is to listen to customers, other drivers and your supervisors.

Applause followed these remarks.

Ms. Edwards thanked the board for the honor and said "God bless."

Applause followed these remarks.

Chairperson Maupin thanked all the Drivers of the Month.

b. Board Sub-Committee reports:

- Patty Lent, of the Planning SC, which met on Aug. 9

As both the chair and vice-chair of this SC were not at the meeting, Commissioner Lent provided a report. She said the highlights of the Planning SC meeting included an overview of the TDP, its capital priorities starting with Eastside and then Port Orchard and KT's desire to work with all the cities in the county in advancements in current park-and-ride lot locations.

Commissioner Lent said KT believes its first electric vehicles (EVs) will like operate on Bainbridge Island and that the agency will study more closely the use of alternative technologies. She noted that the current thinking is that while EV and hybrid vehicles generally cost less, they often don't last as long as the 12-15 years provided by diesel buses.

Commissioner Lent noted KT has the funds for the minimum North Base and no plans to make changes at the park-and-ride lots at Mullenix and McWilliams. Also noted was the start of the Kariotis area survey of riders and non-riders, she said.

Commissioner Lent said the SC also discussed the installation of Automatic Passenger Counters, why KT uses low-floor buses in some services and high-floor coaches in others and why the agency opts for certain manufacturers; ease of maintenance and price. She also noted that the 28 new Worker/Driver (W/D) buses, which KT bought used and which have expanded the capacity of the W/D program, cost less than three brand-new transit buses. Commissioner Lent said it was also noted KT can pay for diesel upgrades with EPA funds and that the PSRC has been helpful in the funding for that.

She said the SC also discussed the Poulsbo park-and-ride and the Greaves Way appraisal.

- Becky Erickson, Chair of the Finance & Personnel SC, which met on Aug. 12 and Sept. 9

Commissioner Erickson said most of work of this SC over the past two months involved review of the financial piece of the TDP, which also appeared in the materials for today's meeting. She said the SC also discussed the ORCA agreement slated for board consideration later in the agenda and the recruitment process for the agency's next executive director, which she noted was proceeding along the projected timeline.

- Rob Putaansuu, Chair of Passenger-Only Ferry SC, which met on Aug. 10 and Aug. 19

Commissioner Putaansuu noted that as board members heard in the Work-Study earlier that morning, this SC travelled to Bellingham and Anacortes on Aug. 19 to see the construction progress on the Rich Passage 1 (RP1) and on the foil. And, as noted earlier, the prototype vessel is expected to be back in the water by the end of this month, he said.

Commissioner Putaansuu also reported that this SC met Aug. 10 with officials of the King County Ferry District, which operates passenger ferries between downtown Seattle and two other locations; Alki in West Seattle and Vashon Island. He said that meeting included discussion of short-term and long-term service goals and that once the RP1 is in the water, there is the possibility of a shared facility. Commissioner Putaansuu also noted the this SC's intent to be involved in the redevelopment of the downtown Seattle waterfront, specifically regarding a passenger-ferry dock.

Chairperson Maupin asked if there were questions or comments on these reports? There were none.

4. PUBLIC HEARING: A public hearing was advertised on the agency's 2010-2016 Transit Development Plan (*See Resolution 11-45 below*)

Chairperson Maupin asked staff to begin with a presentation.

Mr. Clauson first noted that the agenda later includes consideration of the 2010-2016 Transit Development Plan (TDP), a state-required annual report that reviews the transit agency' past year, current year and next five years. He said the report describes the current composition of the agency in terms of staffing, physical facilities, equipment and other assets, it outlines the agency's service system and expenses and KT's income from fares, sales taxes and other sources. Mr. Clauson said the TDP also projects capital spending into the future, as far as 2016, including the expected sources of funding through that year.

Mr. Clauson noted that the TDP was discussed in some detail in the Work-Study earlier this morning and said the agency would be glad to hear any public comment.

Chairperson Maupin opened the public hearing at 10:01 a.m. and called for public comment on the plan and goal. Seeing none, he closed the public hearing at 10:01 a.m.

5. CITIZENS' ADVISORY COMMITTEE ISSUES

Mr. Clauson said the CAC reviewed the agendas for today's meetings but that it did not forward any items to the board.

He said the committee is sending letters to other transit CACs around the state to gauge interest in re-starting an annual gathering that had been cancelled the last few years due to budget constraints. Mr. Clauson explained that CACs from around the state had, for a number of years, organized a one-day meeting and that the goal here is to include such a gathering in the budgets of CACs around the state, if there is sufficient interest.

Commissioner Lent asked if that involved just the ORCA transit agencies or all transits in Washington.

Mr. Clauson said the meeting was open to CACs across the state.

Commissioner Lent said she would like to see such a meeting get re-started.

6. PUBLIC COMMENT: Chairperson Maupin called for public comment. There was none.

7. CONSENT/ACTION ITEMS:

- a. Approval of MINUTES of July 19, 2011 Board Meeting*
- b. Approval of KITSAP TRANSIT VOUCHERS for July & August, 2011*
- c. RESOLUTION 11-42 authorizing Kitsap Transit staff to renew property and liability insurance policies for the Kitsap Transit-owned passenger only ferry vessels and facilities*
- d. RESOLUTION 11-43 authorizing the cancellation of outstanding warrants in accordance with RCW 39.56.040*
- e. RESOLUTION 11-44 authorizing Kitsap Transit staff to seek bids for sewer hook-up at the North Base in Poulsbo*

Commissioner Lent moved to approve the consent agenda and Commissioner Coppola seconded the motion.

Chairperson Maupin called for discussion of the items on the consent agenda. There was none.

He called for those in favor of the motion. All voted yes. Chairperson Maupin called for those opposed to the motion. There were none. Chairperson Maupin called for abstentions. There were none.

Chairperson Maupin noted the executive session indicated on the agenda at this point had already occurred.

8. DISCUSSION / ACTION ITEM:

- a. *RESOLUTION 11-45 authorizing Kitsap Transit staff to adopt the 2010-2016 Transit Development Plan*

Chairperson Maupin noted that the board has discussed this previously, not only earlier today, but in sub-committee meetings over the summer.

Commissioner Gelder moved to approve Resolution 11-45 and Commissioner Erickson seconded the motion. Chairperson Maupin called for those in favor of the motion. All voted yes. Chairperson Maupin called for those opposed to the motion. There were none. Chairperson Maupin called for abstentions. There were none.

- b. *RESOLUTION 11-46 approving Kitsap Transit's sponsorship of the Port of Kingston into the regional smartcard ORCA system and authorizing Kitsap Transit to enter into an Affiliate Agreement between the ORCA Joint Board and the Port of Kingston for inclusion of the port's SoundRunner passenger ferry service in the ORCA program*

Mr. Clauson said this agreement, on behalf of the Port of Kingston and its SoundRunner passenger-ferry service, has been under development for some time. He said SoundRunner expressed interest in becoming a participant in the ORCA fare collection system and he said he will be happy to note this Kitsap County entity will be the first new participant, if this agreement is approved by the seven transit systems that comprise ORCA.

Mr. Clauson said the development of the regional program has delayed any participation, beyond the initial seven systems, as that group wanted to avoid contractor scope creep; charging more for additions. He said the ORCA system has now been up and running for a year and thus is ready to accept additional partners. Mr. Clauson said there have been two approaches to adding partners; a full buy-in option and affiliate membership. He said the former is quite expensive but gives new partners a full vote on the Joint Board, the governing body for ORCA. Mr. Clauson said what KT is proposing today is that the Port of Kingston's SoundRunner service join the ORCA system as an affiliate member. That requires that one of original seven agencies sponsor such an affiliate membership and that is what KT has done to date. Mr. Clauson said the Affiliate Agreement board members have today between KT and the Port of Kingston identifies all costs associated with ORCA membership and also outlines parties' responsibilities. He said the port has agreed to all affiliate membership expenses, up to and including between \$65,000 and \$80,000 worth of modifications to the underlying software to allow ORCA to accept SoundRunner service and collect their fares.

Mr. Clauson said KT's financial responsibility includes accepting SoundRunner fares and re-distributing those monies back to the port. He said the projected cost to accomplish that includes the port purchasing some equipment which KT will maintain and own, and the port paying for KT staff time to support the operations. Mr. Clauson said the port and the ORCA Joint Board have both approved this agreement and this affiliate opportunity. He said that if the Transit Board approves this today, this system will be in operation by October.

Commissioner Putaansuu moved to approve Resolution 11-46 and Commissioner Gelder seconded the motion.

Chairperson Maupin called for discussion.

Commissioner Erickson said she believes this is a really important step for the SoundRunner and KT working in cooperation. She said she supports this first step in the important efforts to stabilize revenue flow for the SoundRunner. Commissioner Erickson said she also wanted to thank Mr. Clauson and others involved in this agreement, which she said she heartily supports.

Commissioner Gelder said he also wanted to thank Mr. Clauson and KT staff in moving this forward. He said that having worked with officials from the port and SoundRunner over the past several months, he is aware of their struggles in having to pay for this work, as the estimates kept changing. Commissioner Gelder said those officials stepped up as they believed this is part of the long-term viability of the service between Kingston and Seattle and he said he also applauds KT for its help in opening this door and insuring this tool is available to the port as it develops its long-term, sustainable business plan.

Commissioner Garrido said this is also a way that shows the ORCA program is region-wide and how KT is joining a more systematic look at transit participation and transit across the region.

Commissioner Lent said it is her understanding that the software that supports the ORCA card not only keeps track of the number of passengers and the type of trips people are taking, but also can supply participants with a wealth of knowledge for transit planning and funding.

Chairperson Maupin called for those in favor of the motion. All voted yes. Chairperson Maupin called for those opposed to the motion. There were none. Chairperson Maupin called for abstentions. There were none.

At this point, a new resolution was introduced *[attached at the end of these minutes]*.

- c. *RESOLUTION 11-47 authorizing Kitsap Transit staff to purchase an approximately five-acre parcel of land from Viking Way Industrial Park, LLC for a price not to exceed eight-hundred and forty-nine thousand, five hundred dollars, together with related transaction costs, for the development of a park-and-ride lot and transfer center*

Commissioner Gelder moved to approve Resolution 11-47 and Commissioner Erickson seconded the motion.

Commissioner Putaansuu said that while he has no financial interest in this matter, he does have a business relationship with the seller through his job with Columbia Bank, and he said that because of that he would recuse himself from this discussion and the vote.

Commissioner Coppola said he would also recuse himself from this matter as he has a financial business relationship with the agent representing the seller.

Chairperson Maupin asked for a staff report.

Mr. Clauson said Ms. Clark-Getzin has that information.

Ms. Clark-Getzin said the agency has been conducting an 18-month feasibility site impact review for the federal government and responding to requirements in the National Environmental Protection Act, which involved a very lengthy checklist. She said the KT has also conducted a number of other state and tribal approval processes to determine whether this site is feasible for a park-and-ride lot. Ms. Clark-Getzin said the agency recently received confirmation from the Federal Transit Administration that KT had reached the point where it could appraise the property, and she said that was done in August and September. She said appraiser Gary Lyman of Richard & Associates expeditiously provided a very lengthy summary report, which then, following the federal uniform acquisition act, was reviewed by another appraiser, a former WSDOT real estate appraiser now living in Bremerton. Ms. Clark-Getzin said the appraisal report and appraisal review were consistent and that KT is now ready to approve this purchase and sale agreement as the next step of the agency's acquisition.

Commissioner Gelder said this has been a long time coming and that, the resources and the assets KT has to manage transit needs in north end, especially in the Poulsbo area, are somewhat scattered. He said what is really exciting about this park-and-ride facility is that it will pull all those together to make north end transit a more efficient, long-term operation. Commissioner Gelder said this is the right direction to move

Commissioner Erickson said she absolutely agreed, and she noted the prime location of this site next to both State Routes 3 and 305. She said this will basically function for Poulsbo but also for good portions of north end. Commissioner Erickson said the site is also right next to the North Base yard, making for a real hub of transit that can work effectively and efficiently for the citizens. She said it is absolutely imperative this move forward and she thanked the staff.

Chairperson Maupin called for those in favor of the motion. Five voted yes. Chairperson Maupin called for those opposed to the motion. There were none. Chairperson Maupin called for abstentions. There were two: Commissioners Coppola and Putaansuu.

8. PROGRESS REPORTS:

- a. Draft Financial Reports for June & July, 2011
- b. Monthly Cash Flow and Cash Position charts through July
- c. Ridership Reports for June & July, 2011
- d. Fuel Costs Report through the end of August, 2011

Mr. Clauson said these stand as read, and he noted that while the ridership reports continue to show a slight decline, the Automatic Passenger Counters are now being installed. He said riders already can go on-line to see some buses on routes with automatic vehicle locating technology, moving around. Mr. Clauson said the agency has also developed ways to identify trips on each bus to associate counts with specific routes. Soon the ridership reports will be coming directly from that system, he said.

Mr. Clauson also noted that while fuel costs continue to rise, some other lower-than-anticipated expenses have helped to offset that. He said fuel costs continue to be closely monitored.

Commissioner Lent asked whether the over-allotment of fuel funding, during the years when KT's actual costs for fuel are less than what is budgeted, goes into a reserve?

Mr. Clauson said any monies left in KT's fuel budget revert to the agency's general fund and are reprogrammed. He said KT maintains a bare-bones reserve. Between the slightly better-than-anticipated sales tax receipts and some reduced expense, the agency is holding its own, Mr. Clauson said.

9. STAFF INFORMATION / DISCUSSION ITEMS:

- a. Report on Kariotis Flex Route project
- b. August report from state lobbyists
- c. Regional POF

Mr. Clauson asked for questions. There were none.

Chairperson Maupin called for other information from the staff. There was none.

10. FOR THE GOOD OF THE ORDER: Transit Board members' issues/comments

Commissioner Garrido said she wanted to report about the Connecting Washington Task Force. She said the group will meet five times to make recommendations for transportation funding to the 2012 Legislature. She said the task force has met twice and will meet again in October. The first meeting featured presentations from cities, counties, ports and WSDOT about the state of transportation, and each presenter included both their budget woes as well as ideas about how the state might address shortfalls in revenue. Commissioner Garrido said the second meeting continued with presentations from the tribes and transit and then a lengthy discussion about the principles upon which the task force would base any recommendations. She said that discussion is ongoing. Commissioner Garrido said there were several outspoken interest groups that talked about jobs and economic development and she said that discussion will also continue next month.

Mr. Clauson said he wanted to thank the board members who attended the Worker/Driver (W/D) kick-off event the day before at the shipyard. He said it was a success. He said what was unexpected was how impressed the W/D operators were with the show of support from board

members and U.S. and Rep. Norm Dicks (D-Belfair).

Chairperson Maupin said it was a great event. He said that the W/D operators and riders must be in heaven now, after operating for so many years with hand-me-down equipment that was bottom-of-the barrel in terms of the KT fleet, and now having the best equipment in the fleet. Chairperson Maupin said he was really impressed that KT was able to purchase the buses he saw yesterday for less than \$50,000 each.

Commissioner Lent said the exterior graphic art which includes the crane, the icon of the shipyard, really highlights the partnership between KT and the Navy.

11. ADJOURN: Chairperson Maupin adjourned the meeting at 10:21 a.m.

ADOPTED by the Board of Commissioners of Kitsap Transit at a regular meeting thereof, held on the 18th of October, 2011.

Will Maupin, Chairperson

ATTEST:

Cathie Knox-Browning
Clerk of the Board

KITSAP TRANSIT

RESOLUTION SUMMARY

TITLE: Resolution authorizing Kitsap Transit to purchase an approximately five-acre parcel of land from Viking Way Industrial Park, LLC for a price not to exceed eight-hundred and forty-nine thousand, five hundred dollars, together with related transaction costs, for the development of a park-and-ride lot and transfer center.

RESOLUTION NO. 11-47

AGENDA OF: 09/20/11

EXHIBITS: Exhibits A and B are attached.

SUBMITTED BY: Wendy Clark-Getzin, PE
Capital Director

DATE: 09/19/11

DEPARTMENT OF ORIGIN: Capital

DEPARTMENT(S) IMPACTED: All

BUDGETED AT: \$877,771

CAPITAL X **OPERATING**

EXPENDITURE REQUIRED: Up to \$849,500, plus closing and other costs from federal Surface Transportation Program Flex funds with match from toll credits.

REVIEWED BY Ron Templeton, General Counsel	RECOMMENDED Date: 09/19/11	COMMENTS
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SUMMARY STATEMENT:

This resolution provides Kitsap Transit staff with the authority to purchase property for the development of a park-and-ride lot and transfer center adjacent to its North Base operating base.

RECOMMENDED ACTION: Motion to Adopt Resolution

RESOLUTION AUTHORIZING KITSAP TRANSIT TO PURCHASE AN APPROXIMATELY FIVE-ACRE PARCEL OF LAND FROM VIKING WAY INDUSTRIAL PARK, LLC FOR A PRICE NOT TO EXCEED EIGHT-HUNDRED AND FORTY-NINE THOUSAND, FIVE HUNDRED DOLLARS, TOGETHER WITH RELATED TRANSACTION COSTS, FOR THE DEVELOPMENT OF A PARK-AND-RIDE LOT AND TRANSFER CENTER

RESOLUTION 11-47

WHEREAS, Kitsap Transit needs to acquire land to develop a park-and-ride lot and transfer facility in or near Poulsbo, Washington in close proximity to State Route 3 and State Route 305, and;

WHEREAS, pursuant to Resolution 03-59, Kitsap Transit previously acquired a four and two-tenths (4.2) acre parcel (the "Waite Property") to develop a north end bus fueling, wash down and parking facility (the "North Base Facility") on Viking Way in Poulsbo, and;

WHEREAS, pursuant to Resolution 06-11, Kitsap Transit purchased a second parcel adjacent to and south of the North Base Facility (the "Lasser Property") to expand the North Base Facility, and;

WHEREAS, Viking Way Industrial Property, LLC owns a four and ninety-seven hundredths (4.97)-acre parcel (the "Subject Property") on Viking Way that abuts the Lasser Property, as illustrated in the drawing attached and incorporated by reference herein as Exhibit A, and;

WHEREAS, the subject property is readily accessible to both State Route 3 and State Route 305 and abuts a large mixed use development that the City of Poulsbo has approved on properties south and southeast of the subject property, and;

WHEREAS, the subject property is not only suitable for the development of a transfer center and park-n-ride lot, it will better enhance and facilitate the next phase of the North Base Facility by providing better options for the potential road vacation and replacement of Northwest Vetter Road, thereby optimizing the amount of available usable land for both projects, and;

WHEREAS, the seller is willing to sell the subject property pursuant to the terms of a Purchase and Sale Agreement, attached and incorporated by reference herein as Exhibit B, so long as closing occurs on or before October 14, 2011, and;

WHEREAS, Kitsap Transit's staff believes the acquisition of the subject property will advance the public interest (i) by enhancing the proposed North Base Facility expansion and improvements; (ii) by enabling Kitsap Transit to develop an ideally located transfer center facility and park-and-ride lot; and (iii) by avoiding the expense and uncertainty of a condemnation.

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners of Kitsap Transit that Kitsap Transit is authorized to acquire the property described in the Purchase and Sale Agreement attached as Exhibit B on the terms in substantial conformance with those set forth therein, and it is further

RESOLVED, that Kitsap Transit's Executive Director and/or his delegee is authorized to sign the said Purchase and Sale Agreement and all other instruments necessary or desirable to complete the purchase of said property on terms in substantial conformance with the terms set forth in the said Purchase and Sale Agreement.

ADOPTED by the Board of Commissioners of Kitsap Transit at a regular meeting thereof, held on the September 20, 2011.

Will Maupin, Chairperson

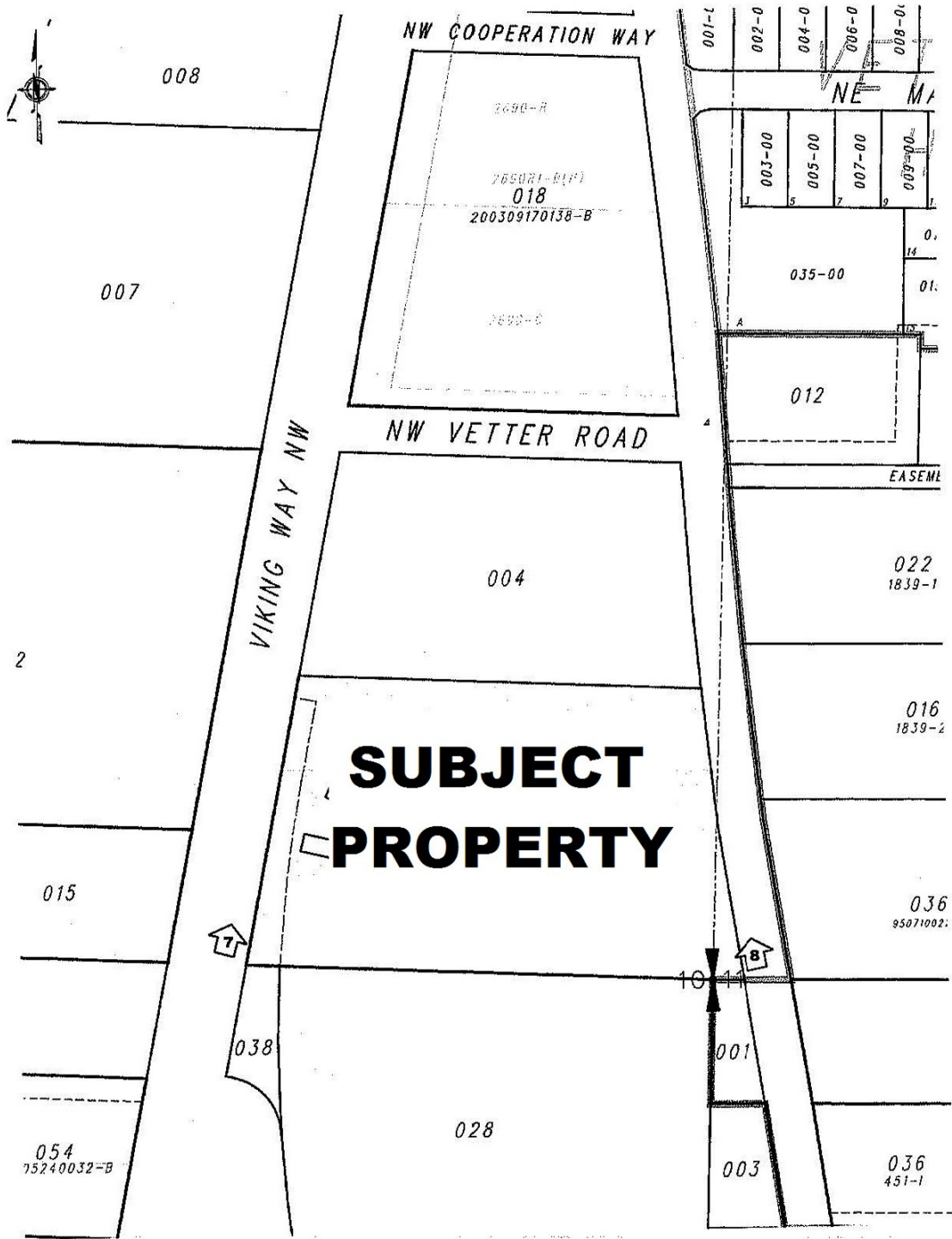
ATTEST:

Cathie Knox-Browning
Clerk of the Board

EXHIBIT A

Photograph Map

NOTE: Not a survey. Building location shown are approximations only.



Resolution 11-47, Exhibit A



**COMMERCIAL & INVESTMENT REAL ESTATE
PURCHASE & SALE AGREEMENT**

This has been prepared for submission to your attorney for review and approval prior to signing. No representation is made by licensee as to its sufficiency or tax consequences

Reference Date: 2011

Kitsap Transit &/or Assigns

("Buyer") agrees to buy and

Viking Way Industrial Park, LLC

("Seller") agrees to sell, on the following terms, the commercial real estate and all improvements thereon (collectively, the "Property") commonly known as Kitsap County Assessors's Tax ID # 102601-1-019-2000 in the City of Poulsbo, Kitsap County, Washington, legally described on attached Exhibit A. The Reference Date above is intended to be used to reference this Agreement, and is not the date of "Mutual Acceptance." Mutual Acceptance is defined in Section 23 below.

1. **PURCHASE PRICE.** The total purchase price is \$1,000,000.00 Dollars (\$ 1,000,000.00) payable as follows (check only one):

- All cash at closing with no financing contingency.
- All cash at closing contingent on new financing in accordance with the Financing Addendum (attach CBA Form PS_FIN).
- \$ _____ OR _____ % of the purchase price in cash at closing with the balance of the purchase price paid as follows (check one or both, as applicable): Buyer's assumption of the outstanding principal balance as of the Closing Date of a first lien note and deed of trust (or mortgage), or real estate contract, in accordance with the Financing Addendum (attach CBA Form PS_FIN); Buyer's delivery at closing of a promissory note for the balance of the purchase price, secured by a deed of trust encumbering the Property, in accordance with the Financing Addendum (attach CBA Form PS_FIN).
- Other: _____

2. **EARNEST MONEY.** The earnest money in the amount of \$ _____ shall be in the form of Cash Personal check Promissory note (attached CBA Form EMN) Other: None

The earnest money shall be held by Selling Firm Closing Agent. Selling Broker may, however, transfer the earnest money to Closing Agent.

Buyer shall deliver the earnest money no later than:
 _____ days after Mutual Acceptance.
 On the last day of the Feasibility Period defined in Section 5 below.
 Other: _____

If the earnest money is to be held by Selling Firm and is over \$10,000, it shall be deposited to: Selling Firm's pooled trust account (with interest paid to the State Treasurer) A separate interest bearing trust account in Selling Firm's name. The interest, if any, shall be credited at closing to Buyer. If this sale fails to close, whoever is entitled to the earnest money is entitled to interest.

Selling Firm shall deposit any check to be held by Selling Firm within 3 days after receipt or Mutual Acceptance, whichever occurs later. Buyer agrees to pay financing and purchase costs incurred by Buyer. Unless otherwise provided in this Agreement, the earnest money shall be applicable to the purchase price.

3. **EXHIBITS AND ADDENDA.** The following Exhibits and Addenda are made a part of this Agreement:
 Exhibit A - Legal Description
 Earnest Money Promissory Note, CBA Form EMN

INITIALS: BUYER _____ DATE _____ SELLER _____ DATE _____
BUYER _____ DATE _____ SELLER _____ DATE _____



**COMMERCIAL & INVESTMENT REAL ESTATE
PURCHASE & SALE AGREEMENT
(CONTINUED)**

- Promissory Note, LPB Form No. 28A/
- Short Form Deed of Trust, LPB Form No. 20
- Deed of Trust Rider, CBA Form DTR
- Utility Charges Addendum, CBA Form UA
- FIRPTA Certification, CBA Form 22E
- Assignment and Assumption, CBA Form PS-AS
- Addendum/Amendment, CBA Form PSA
- Back-Up Addendum, CBA Form BUA
- Vacant Land Addendum, CBA Form VLA
- Financing Addendum, CBA Form PS_FIN
- Tenant Estoppel Certificate, CBA Form PS_TEC
- Defeasance Addendum, CBA Form PS_D
- Other _____

4. **SELLER'S UNDERLYING FINANCING.** Unless Buyer is assuming Seller's underlying financing, Seller shall be responsible for confirming the existing underlying financing is not subject to any "lock out" or similar covenant which would prevent the lender's lien from being released at closing. In addition, Seller shall provide Buyer notice prior to the end of the Feasibility Period if Seller is required to substitute securities for the Property as collateral for the underlying financing (known as "defeasance"). If Seller provides this notice of defeasance to Buyer, then the parties shall close the transaction in accordance with the process described in CBA Form PS_D or any different process identified in Seller's defeasance notice to Buyer.

5. **FEASIBILITY CONTINGENCY.** Buyer's obligations under this Agreement are conditioned upon Buyer's satisfaction in Buyer's sole discretion, concerning all aspects of the Property, including its physical condition; the presence of or absence of any hazardous substances; the contracts and leases affecting the property; the potential financial performance of the Property; the availability of government permits and approvals; and the feasibility of the Property for Buyer's intended purpose. This Agreement shall terminate and Buyer shall receive a refund of the earnest money unless Buyer gives written notice to Seller within _____ days (30 days if not filled in) (the "Feasibility Period") of Mutual Acceptance stating that this condition is satisfied. If such notice is timely given, the feasibility contingency stated in this Section 5 shall be deemed to be satisfied.

a. **Books, Records, Leases, Agreements.** Seller shall make available for inspection by Buyer and its agents within _____ days (2 days if not filled in) after Mutual Acceptance all documents in Seller's possession or control relating to the ownership, operation, renovation or development of the Property, excluding appraisals or other statements of value, and including: statements for real estate taxes, assessments, and utilities for the last three years and year to date; property management agreements and any other agreements with professionals or consultants; leases or other agreements relating to occupancy of all or a portion of the Property and a suite-by-suite schedule of tenants, rents, prepaid rents, deposits and fees; plans, specifications, permits, applications, drawings, surveys, and studies; maintenance records, accounting records and audit reports for the last three years and year to date; and "Vendor Contracts" which shall include maintenance or service contracts, and installments purchase contracts or leases of personal property or fixtures used in connection with the Property. Buyer shall determine within the Feasibility Period: (i) whether Seller will agree to terminate any objectionable Vendor Contracts; and (ii) whether Seller will agree to pay any damages or penalties resulting from the termination of objectionable Vendor Contracts. Buyer's waiver of the Feasibility Contingency shall be deemed Buyer's acceptance of all Vendor Contracts which Seller has not agreed in writing to terminate. Buyer shall be solely responsible for obtaining any required consents to such assumption

INITIALS: BUYER _____ DATE _____ SELLER _____ DATE _____
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and the payment of any assumption fees. Seller shall cooperate with Buyer's efforts to receive any such consents but shall not be required to incur any out-of-pocket expenses or liability in doing so. Seller shall transfer the Vendor Contracts as provided in Section 17.

b. **Access.** Seller shall permit Buyer and its agents, at Buyer's sole expense and risk to enter the Property at reasonable times subject to the rights of and after legal notice to tenants, to conduct inspections concerning the Property and improvements, including without limitation, the structural condition of improvements, hazardous materials, pest infestation, soils conditions, sensitive areas, wetlands, or other matters affecting the feasibility of the Property for Buyer's intended use. Buyer shall schedule any entry onto the Property with Seller in advance and shall comply with Seller's reasonable requirements including those relating to security, confidentiality, and disruption of Seller's tenants. Buyer shall not perform any invasive testing including environmental inspections beyond a phase I assessment or contact the tenants or property management personnel without obtaining the Seller's prior written consent, which shall not be unreasonably withheld. Buyer shall restore the Property and improvements to the same condition they were in prior to inspection. Buyer shall be solely responsible for all costs of its inspections and feasibility analysis and has no authority to bind the Property for purposes of statutory liens. Buyer agrees to indemnify and defend Seller from all liens, costs, claims, and expenses, including attorneys' and experts' fees, arising from or relating to entry onto or inspection of the Property by Buyer and its agents. This agreement to indemnify and defend Seller shall survive closing. Buyer may continue to enter the Property in accordance with the foregoing terms and conditions after removal or satisfaction of the feasibility contingency only for the purpose of leasing or to satisfy conditions of financing.

c. Buyer waives the right to receive a seller disclosure statement ("Form 17-Commercial") if required by RCW 64.06. However, if Seller would otherwise be required to provide Buyer with a Form 17-Commercial, and if the answer to any of the questions in the section of the Form 17-Commercial entitled "Environmental" would be "yes," then Buyer does not waive the receipt of the "Environmental" section of the Form 17-Commercial which shall be provided by Seller.

6. TITLE INSURANCE.

a. **Title Report.** Seller authorizes Buyer, its Lender, Listing Broker, Selling Broker or Closing Agent, at Seller's expense, to apply for and deliver to Buyer a standard extended (standard, if not completed) coverage owner's policy of title insurance. If an extended coverage owner's policy is specified, Buyer shall pay the increased costs associated with that policy including the excess premium over that charged for a standard coverage policy, and the cost of any survey required by the title insurer. The title report shall be issued by Pacific NW Title & Escrow (a title company of Seller's choice, if not completed). If Seller previously received a preliminary commitment from a title insurer that Buyer declines to use, Buyer shall pay any cancellation fee owing to the original title insurer. Otherwise, the party applying for title insurance shall pay any title cancellation fee, in the event such a fee is assessed.

b. **Permitted Exceptions.** Buyer shall notify Seller of any objectionable matters in the title report or any supplemental report within the earlier of: (1) twenty (20) days after Mutual Acceptance of this Agreement; or (2) the expiration of the Feasibility Period. This Agreement shall terminate and Buyer shall receive a refund of the earnest money, less any costs advanced or committed for Buyer, unless within five (5) days of Buyer's notice of such objections (1) Seller agrees, in writing, to remove all objectionable provisions or (2) Buyer notifies Seller that Buyer waives any objections which Seller does not agree to remove. If any new title matters are disclosed in a supplemental title report, then the preceding termination, objection and waiver provisions shall apply to the new title matters except that Buyer's notice of objections must be delivered within five (5) days of delivery of the supplemental report and Seller's response or Buyer's waiver must be delivered within two (2) days of Buyer's notice of objections. The closing date shall be extended to the extent necessary to

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- 9. POST-CLOSING ADJUSTMENTS, COLLECTIONS, AND PAYMENTS.** After Closing, Buyer and Seller shall reconcile the actual amount of revenues or liabilities upon receipt or payment thereof to the extent those items were prorated or credited at Closing based upon estimates. Any bills or invoices received by Buyer after Closing which relate to services rendered or goods delivered to the Seller or the Property prior to Closing shall be paid by Seller upon presentation of such bill or invoice. At Buyer's option, Buyer may pay such bill or invoice and be reimbursed the amount paid plus interest at the rate of 12% per annum beginning fifteen (15) days from the date of Buyer's written demand to Seller for reimbursement until such reimbursement is made. Notwithstanding the foregoing, if tenants pay certain expenses based on estimates subject to a post-closing reconciliation to the actual amount of those expenses, then Buyer shall be entitled to any surplus and shall be liable for any credit resulting from the reconciliation. Rents collected from each tenant after Closing shall be applied first to rentals due most recently from such tenant for the period after closing, and the balance shall be applied for the benefit of Seller for delinquent rentals owed for a period prior to closing. The amounts applied for the benefit of Seller shall be turned over by Buyer to Seller promptly after receipt. Seller shall be entitled to pursue any lawful methods of collection of delinquent rents but shall have no right to evict tenants after Closing.
- 10. OPERATIONS PRIOR TO CLOSING.** Prior to Closing, Seller shall continue to operate the Property in the ordinary course of its business and maintain the Property in the same or better condition than as existing on the date of Mutual Acceptance but shall not be required to repair material damage from casualty except as otherwise provided in this Agreement. After the Feasibility Period, Seller shall not enter into or modify existing rental agreements or leases (except that Seller may enter into, modify, extend, renew or terminate residential rental agreements or residential leases in the ordinary course of its business), service contracts, or other agreements affecting the Property which have terms extending beyond Closing without first obtaining Buyer's consent, which shall not be unreasonably withheld.
- 11. POSSESSION.** Buyer shall be entitled to possession on closing _____ (on closing, if not completed). Buyer shall accept possession subject to all tenancies disclosed to Buyer during the Feasibility Period.
- 12. SELLER'S REPRESENTATIONS.** Except as disclosed to or known by Buyer prior to the satisfaction or waiver of the feasibility contingency stated in Section 5 above, including in the books, records and documents made available to Buyer, or in the title report or any supplemental report or documents referenced therein, Seller represents to Buyer that, to the best of Seller's actual knowledge, each of the following is true as of the date hereof: (a) Seller is authorized to enter into the Agreement, to sell the Property, and to perform its obligations under the Agreement; (b) The books, records, leases, agreements and other items delivered to Buyer pursuant to this Agreement comprise all material documents in Seller's possession or control regarding the operation and condition of the Property; (c) Seller has not received any written notices that the Property or the business conducted thereon violate any applicable laws, regulations, codes and ordinances; (d) Seller has all certificates of occupancy, permits, and other governmental consents necessary to own and operate the Property for its current use; (e) There is no pending or threatened litigation which would adversely affect the Property or Buyer's ownership thereof after Closing; (f) There is no pending or threatened condemnation or similar proceedings affecting the Property, and the Property is not within the boundaries of any planned or authorized local improvement district; (g) Seller has paid (except to the extent prorated at Closing) all local, state and federal taxes (other than real and personal property taxes and assessments described in Section 8 above) attributable to the period prior to closing which, if not paid, could constitute a lien on Property (including any personal property), or for which Buyer may be held liable after Closing; (h) Seller is not aware of any concealed material defects in the Property except as disclosed to Buyer in writing during the Feasibility Period; (i) There are no Hazardous Substances (as defined below) currently located in, on, or under the Property in a manner or quantity that presently violates any Environmental Law (as defined below); there are no underground storage tanks located on the Property; and there is no pending or threatened investigation or

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remedial action by any governmental agency regarding the release of Hazardous Substances or the violation of Environmental Law at the Property. As used herein, the term "Hazardous Substances" shall mean any substance or material now or hereafter defined or regulated as a hazardous substance, hazardous waste, toxic substance, pollutant, or contaminant under any federal, state, or local law, regulation, or ordinance governing any substance that could cause actual or suspected harm to human health or the environment ("Environmental Law"). The term "Hazardous Substances" specifically includes, but is not limited to, petroleum, petroleum by-products, and asbestos.

If prior to Closing Seller or Buyer discovers any information which would cause any of the representations above to be false if the same were deemed made as of the date of such discovery, then the party discovering the same shall promptly notify the other party in writing. If the newly-discovered information will result in costs or liability to Buyer in excess of the lesser of \$100,000 or five percent (5%) of the purchase price stated in this Agreement, or will materially adversely affect Buyer's intended use of the Property, then Buyer shall have the right to terminate the Agreement and receive a refund of its earnest money. Buyer shall give notice of termination within five (5) days of discovering or receiving written notice of the new information. Nothing in this paragraph shall prevent Buyer from pursuing its remedies against Seller if Seller had actual knowledge of the newly-discovered information such that a representation provided for above was false.

13. **AS-IS.** Except for those representations and warranties specifically included in this Agreement: (i) Seller makes no representations or warranties regarding the Property; (ii) Seller hereby disclaims, and Buyer hereby waives, any and all representations or warranties of any kind, express or implied, concerning the Property or any portion thereof, as to its condition, value, compliance with laws, status of permits or approvals, existence or absence of hazardous material on site, occupancy rate or any other matter of similar or dissimilar nature relating in any way to the Property, including the warranties of fitness for a particular purpose, tenantability, habitability and use; (iii) Buyer otherwise takes the Property "AS IS;" and (iv) Buyer represents and warrants to Seller that Buyer has sufficient experience and expertise such that it is reasonable for Buyer to rely on its own pre-closing inspections and investigations.

14. **PERSONAL PROPERTY.**

a. This sale includes all right, title and interest of Seller to the following tangible personal property: None That portion of the personal property located on and used in connection with the Property, which Seller will itemize in an Exhibit to be attached to this Agreement within ten (10) days of Mutual Acceptance (None, if not completed). The value assigned to the personal property shall be \$ _____ (if not completed, the County-assessed value if available, and if not available, the fair market value determined by an appraiser selected by the Listing Broker and Selling Broker). Seller warrants title to, but not the condition of, the personal property and shall convey it by bill of sale.

b. In addition to the leases and Vendor Contracts assumed by Buyer pursuant to Section 5(a) above, this sale includes all right, title and interest of Seller to the following intangible property now or hereafter existing with respect to the Property including without limitation: all rights-of-way, rights of ingress or egress or other interests in, on, or to, any land, highway, street, road, or avenue, open or proposed, in, on, or across, in front of, abutting or adjoining the Property; all rights to utilities serving the Property; all drawings, plans, specifications and other architectural or engineering work product; all governmental permits, certificates, licenses, authorizations and approvals; all rights, claims, causes of action, and warranties under contracts with contractors, engineers, architects, consultants or other parties associated with the Property; all utility, security and other deposits and reserve accounts made as security for the fulfillment of any of Seller's obligations; any name of or telephone numbers for the Property and related trademarks, service marks or trade dress; and guaranties, warranties or other assurances of performance received.

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15. CONDEMNATION AND CASUALTY. Seller bears all risk of loss until Closing, and thereafter Buyer shall bear the risk of loss. Buyer may terminate this Agreement and obtain a refund of the earnest money if improvements on the Property are destroyed or materially damaged by casualty before Closing, or if condemnation proceedings are commenced against all or a portion of the Property before Closing. Damage will be considered material if the cost of repair exceeds the lesser of \$100,000 or five percent (5%) of the purchase price stated in this Agreement. Alternatively, Buyer may elect to proceed with closing, in which case, at Closing, Seller shall assign to Buyer all claims and right to proceeds under any property insurance policy and shall credit to Buyer at Closing the amount of any deductible provided for in the policy.

16. FIRPTA - TAX WITHHOLDING AT CLOSING. Closing Agent is instructed to prepare a certification (CBA or NWMLS Form 22E, or equivalent) that Seller is not a "foreign person" within the meaning of the Foreign Investment in Real Property Tax Act, and Seller shall sign it on or before Closing. If Seller is a foreign person, and this transaction is not otherwise exempt from FIRPTA, Closing Agent is instructed to withhold and pay the required amount to the Internal Revenue Service.

17. CONVEYANCE. Title shall be conveyed by a Statutory Warranty Deed subject only to the Permitted Exceptions. If this Agreement is for conveyance of Seller's vendee's interest in a Real Estate Contract, the Statutory Warranty Deed shall include a contract vendee's assignment sufficient to convey after acquired title. At Closing, Seller and Buyer shall execute and deliver to Closing Agent CBA Form No. PS-AS Assignment and Assumption Agreement transferring all leases and Vendor Contracts assumed by Buyer pursuant to Section 5(a) and all intangible property transferred pursuant to Section 14(b).

18. NOTICES AND COMPUTATION OF TIME. Unless otherwise specified, any notice required or permitted in, or related to, this Agreement (including revocations of offers and counteroffers) must be in writing. Notices to Seller must be signed by at least one Buyer and must be delivered to Seller and Listing Broker with a courtesy copy to any other party identified as a recipient of notices in Section 28. A notice to Seller shall be deemed delivered only when received by Seller, Listing Broker, or the licensed office of Listing Broker. Notices to Buyer must be signed by at least one Seller and must be delivered to Buyer, with a copy to Selling Broker and with a courtesy copy to any other party identified as a recipient of notices in Section 28. A notice to Buyer shall be deemed delivered only when received by Buyer, Selling Broker, or the licensed office of Selling Broker. Selling Broker and Listing Broker have no responsibility to advise of receipt of a notice beyond either phoning the represented party or causing a copy of the notice to be delivered to the party's address provided in this Agreement. Buyer and Seller shall keep Selling Broker and Listing Broker advised of their whereabouts in order to receive prompt notification of receipt of a notice. If any party is not represented by a licensee, then notices must be delivered to and shall be effective when received by that party at the address, fax number, or email indicated in Section 28.

Unless otherwise specified in this Agreement, any period of time in this Agreement shall mean Pacific Time and shall begin the day after the event starting the period and shall expire at 5:00 p.m. of the last calendar day of the specified period of time, unless the last day is a Saturday, Sunday or legal holiday as defined in RCW 1.16.050, in which case the specified period of time shall expire on the next day that is not a Saturday, Sunday or legal holiday. Any specified period of five (5) days or less shall not include Saturdays, Sundays or legal holidays. Notwithstanding the foregoing, references to specific dates or times or number of hours shall mean those dates, times or number of hours; provided, however, that if the Closing Date falls on a Saturday, Sunday, or legal holiday as defined in RCW 1.16.050, or a date when the county recording office is closed, then the Closing Date shall be the next regular business day.

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19. AGENCY DISCLOSURE. At the signing of this Agreement,

Selling Broker _____ **NONE**
Represented _____
and the Listing Broker _____ **JCM Property Management, LLC**
represented _____ **Seller**

Selling Firm, Selling Firm's Designated Broker, Selling Broker's Branch Manager (if any) and Selling Broker's Managing Broker (if any) represent the same party that Selling Broker represents. Listing Firm, Listing Firm's Designated Broker, Listing Broker's Branch Manager (if any), and Listing Broker's Managing Broker (if any) represent the same party that the Listing Broker represents. If Selling Broker and Listing Broker are different persons affiliated with the same Firm, then both Buyer and Seller confirm their consent to the Brokers' Designated Broker, Branch Manager (if any), and Managing Broker (if any) representing both parties as a dual agent. If Selling Broker and Listing Broker are the same person representing both parties, then both Buyer and Seller confirm their consent to that person and his/her Designated Broker, Branch Manager (if any), and Managing Broker (if any) representing both parties as dual agents. All parties acknowledge receipt of the pamphlet entitled "The Law of Real Estate Agency."

20. ASSIGNMENT. Buyer may may not (may not, if not completed) assign this Agreement, or Buyer's rights hereunder, without Seller's prior written consent, unless provided otherwise herein. If the "may not" option is selected and the words "and/or assigns" or similar words are used to identify the Buyer, then this Agreement may be assigned with notice to Seller but without Seller's consent only to an entity which is controlled by or under common control with the Buyer identified in this Agreement. Any other assignment requires Seller's consent. The party identified as the initial Buyer shall remain responsible for those obligations of Buyer stated in this Agreement notwithstanding any assignment and, if this Agreement provides for Seller to finance a portion of the purchase price, then the party identified as the initial Buyer shall guarantee payment of the Seller financing.

21. DEFAULT AND ATTORNEY'S FEE.

(a) Buyer's default. In the event Buyer fails, without legal excuse, to complete the purchase of the Property, then (*check one*):

- Seller may terminate this Agreement and keep the earnest money as liquidated damages as the sole and exclusive remedy available to Seller for such failure; or
- Seller may, at its option, (a) terminate this Agreement and keep as liquidated damages the earnest money as the sole and exclusive remedy available to Seller for such failure, (b) bring suit against Buyer for Seller's actual damages, (c) bring suit to specifically enforce this Agreement and recover any incidental damages, or (d) pursue any other rights or remedies available at law or equity.

(b) Seller's default. In the event Seller fails, without legal excuse, to complete the sale of the Property, then (*check one*):

- As Buyer's sole remedy, Buyer may either (a) terminate this Agreement and recover all earnest money or fees paid by Buyer whether or not the same are identified as refundable or applicable to the purchase price; or (b) bring suit to specifically enforce this Agreement and recover incidental damages, provided, however, Buyer must file suit within sixty (60) days from the scheduled date of closing or from the date Seller has informed Buyer in writing that Seller will not proceed with closing, whichever is earlier; or
- Buyer may, at its option, (a) bring suit against Seller for Buyer's actual damages, (b) bring suit to specifically enforce this Agreement and recover any incidental damages, or (c) pursue any other rights or remedies available at law or equity.

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Neither Buyer nor Seller may recover consequential damages such as lost profits. If Buyer or Seller institutes suit against the other concerning this Agreement, the prevailing party is entitled to reasonable attorneys' fees and expenses. In the event of trial, the amount of the attorney's fee shall be fixed by the court. The venue of any suit shall be the county in which the Property is located, and this Agreement shall be governed by the laws of the state where the Property is located.

22. MISCELLANEOUS PROVISIONS.

a. **Complete Agreement.** This Agreement and any addenda and exhibits thereto state the entire understanding of Buyer and Seller regarding the sale of the Property. There are no verbal or other written agreements which modify or affect the Agreement.

b. **Counterpart Signatures.** This Agreement may be signed in counterpart, each signed counterpart shall be deemed an original, and all counterparts together shall constitute one and the same agreement.

c. **Electronic Delivery.** Electronic delivery of documents (e.g., transmission by facsimile or email) including signed offers or counteroffers and notices shall be legally sufficient to bind the party the same as delivery of an original. At the request of either party, or the Closing Agent, the parties will replace electronically delivered offers or counteroffers with original documents.

d. **Section 1031 Like-Kind Exchange.** If either Buyer or Seller intends for this transaction to be a part of a Section 1031 like-kind exchange, then the other party agrees to cooperate in the completion of the like-kind exchange so long as the cooperating party incurs no additional liability in doing so, and so long as any expenses (including attorneys fees and costs) incurred by the cooperating party that are related only to the exchange are paid or reimbursed to the cooperating party at or prior to Closing. Notwithstanding Section 20 above, any party completing a Section 1031 like-kind exchange may assign this Agreement to its qualified intermediary or any entity set up for the purposes of completing a reverse exchange.

23. **ACCEPTANCE; COUNTEROFFERS.** Seller has until midnight of _____ (if not filled in, the third business day) following the day Buyer delivers the offer to accept this offer, unless sooner withdrawn. If this offer is not timely accepted, it shall lapse and the earnest money shall be refunded to Buyer. If either party makes a future counteroffer, the other party shall have until 5:00p.m. on the _____ business day (if not filled in, the second business day) following receipt to accept the counteroffer, unless sooner withdrawn. If the counteroffer is not timely accepted or countered, this Agreement shall lapse and the earnest money shall be refunded to the Buyer. No acceptance, offer or counteroffer from the Buyer is effective until a signed copy is received by the Seller, the Listing Broker or the licensed office of the Listing Broker. No acceptance, offer or counteroffer from the Seller is effective until a signed copy is received by the Buyer, the Selling Broker or the licensed office of the Selling Broker. "Mutual Acceptance" shall occur when the last counteroffer is signed by the offeree, and the fully-signed counteroffer has been received by the offeror, his or her broker, or the licensed office of the broker. If any party is not represented by a broker, then notices must be delivered to and shall be effective when received by that party.

24. **INFORMATION TRANSFER.** In the event this Agreement is terminated, Buyer agrees to deliver to Seller within ten (10) days of Seller's written request copies of all materials received from Seller and any non-privileged plans, studies, reports, inspections, appraisals, surveys, drawings, permits, applications or other development work product relating to the Property in Buyer's possession or control as of the date this Agreement is terminated.

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25. **CONFIDENTIALITY.** Until and unless closing has been consummated, Buyer and Seller shall follow reasonable measures to prevent unnecessary disclosure of information obtained in connection with the negotiation and performance of this Agreement. Neither party shall use or knowingly permit the use of any such information in any manner detrimental to the other party.

26. **SELLER'S ACCEPTANCE AND BROKERAGE AGREEMENT.** Seller agrees to sell the Property on the terms and conditions herein, and further agrees to pay a commission in a total amount computed in accordance with the listing or commission agreement. If there is no written listing or commission agreement, Seller agrees to pay a commission of 4 % of the sales price or \$. The commission shall be apportioned between Listing Firm and Selling Firm as specified in the listing or any co-brokerage agreement. If there is no listing or written co-brokerage agreement, then Listing Firm shall pay to Selling Firm a commission of % of the sales price or \$. Seller assigns to Listing Firm and Selling Firm a portion of the sales proceeds equal to the commission. If the earnest money is retained as liquidated damages, any costs advanced or committed by Listing Firm or Selling Firm for Buyer or Seller shall be reimbursed or paid therefrom, and the balance shall be paid one-half to Seller and one-half to Listing Firm and Selling Firm according to the listing agreement and any co-brokerage agreement. In any action by Listing Firm or Selling Firm to enforce this Section, the prevailing party is entitled to reasonable attorneys' fees and expenses. Neither Listing Firm nor Selling Firm are receiving compensation from more than one party to this transaction unless disclosed on an attached addendum, in which case Buyer and Seller consent to such compensation. The Property described in attached Exhibit A is commercial real estate. Notwithstanding Section 25 above, the pages containing this Section, the parties' signatures and an attachment describing the Property may be recorded.

27. **LISTING BROKER AND SELLING BROKER DISCLOSURE.** EXCEPT AS OTHERWISE DISCLOSED IN WRITING TO BUYER OR SELLER, THE SELLING BROKER, LISTING BROKER, AND FIRMS HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OR CONDUCTED ANY INDEPENDENT INVESTIGATION CONCERNING THE LEGAL EFFECT OF THIS AGREEMENT, BUYER'S OR SELLER'S FINANCIAL STRENGTH, BOOKS, RECORDS, REPORTS, STUDIES, OR OPERATING STATEMENTS; THE CONDITION OF THE PROPERTY OR ITS IMPROVEMENTS; THE FITNESS OF THE PROPERTY FOR BUYER'S INTENDED USE; OR OTHER MATTERS RELATING TO THE PROPERTY, INCLUDING WITHOUT LIMITATION, THE PROPERTY'S ZONING, BOUNDARIES, AREA, COMPLIANCE WITH APPLICABLE LAWS (INCLUDING LAWS REGARDING ACCESSIBILITY FOR DISABLED PERSONS), OR HAZARDOUS OR TOXIC MATERIALS INCLUDING MOLD OR OTHER ALLERGENS. SELLER AND BUYER ARE EACH ADVISED TO ENGAGE QUALIFIED EXPERTS TO ASSIST WITH THESE DUE DILIGENCE AND FEASIBILITY MATTERS, AND ARE FURTHER ADVISED TO SEEK INDEPENDENT LEGAL AND TAX ADVICE RELATED TO THIS AGREEMENT.

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28. IDENTIFICATION OF THE PARTIES. The following is the contact information for the parties involved in this Agreement:

Buyer

Contact: Kitsap Transit &/or Assigns

Address: 60 Washington
Bremerton, Washington 98337

Business Phone: 360-478-6931

Mobile Phone: 360-340-1388

Fax: 360-377-7086

Email: wendyc@kitsaptransit.com

Selling Firm

NONE

Assumed Name (if applicable): _____

Selling Broker: _____

Address: _____

Business Phone: _____

Mobile Phone: _____

Email: _____

Fax: _____

MLS Office No.: _____

Licensed Office of Selling Broker

Address: _____

Business Phone: _____

Mobile Phone: _____

Fax: _____

CBA Office No.: _____

Courtesy Copy of Notices to Buyer to:

Name: Ronald C. Templeton

Address: 3212 N.W. Byron St.

Silverdale, Washington 98383

Business Phone: 360-692-6415

Fax: 360-698-1614

Mobile Phone: _____

Email: rctempleton@telebyte.com

Seller

Contact: Viking Way Industrial Park, LLC

Address: P.O. Box 908
Poulsbo, Washington 98370

Business Phone: 360-373-7918

Mobile Phone: 360-620-8450

Fax: 360-377-0011

Email: john@viking fence.biz

Listing Firm

JCM Property Management, LLC

Assumed Name (if applicable): _____

Listing Broker: Jeff Coombe

Address: 9351 Bayshore Dr. N.W.

Silverdale, Washington 98383

Business Phone: 360-620-5300

Mobile Phone: 360-620-5300

Email: jeff@jcmpm.com

Fax: 360-620-5300

MLS Office No.: 51504

Licensed Office of Listing Broker

Address: 9351 Bayshore Dr. N.W.

Silverdale, Washington 98383

Business Phone: _____

Mobile Phone: _____

Fax: _____

CBA Office No.: _____

Courtesy Copy of Notices to Seller to:

Name: _____

Address: _____

Business Phone: _____

Fax: _____

Mobile Phone: _____

Email: _____

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BUYER _____ DATE _____

SELLER _____ DATE _____

SELLER _____ DATE _____



**COMMERCIAL & INVESTMENT REAL ESTATE
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EXHIBIT A*
[Legal Description]

*Kitsap County Assessor's Tax Identification Number 102601-1-019-2000.
A complete legal description will be provided by Pacific NW Title and escrow.*

* To ensure accuracy in the legal description, consider substituting the legal description contained in the preliminary commitment for title insurance or a copy of the Property's last vesting deed for this page. Do not neglect to label the substitution "Exhibit A." You should avoid transcribing the legal description because any error in transcription may render the legal description inaccurate and this Agreement void and unenforceable.

INITIALS: BUYER _____ DATE _____ SELLER _____ DATE _____
BUYER _____ DATE _____ SELLER _____ DATE _____

