

**CITY COUNCIL AGENDA ITEM**  
CITY OF SHORELINE, WASHINGTON

<b>AGENDA TITLE:</b>	Amendment of Purchase Agreement for 3 acres of South Woods
<b>DEPARTMENT:</b>	City Manager's Office; City Attorney's Office
<b>PRESENTED BY:</b>	Ian Sievers, City Attorney

**EXECUTIVE SUMMARY:**

The Council approved a Purchase and Sale Agreement for the acquisition of approximately three acres from the Shoreline School District at its meeting of December 27, 2006. The purchase price was \$720,000.

One of the conditions of the purchase was approval of a final plat that would segregate the three acre parcel in the location selected by the City. The 15.6 acre South Woods has been held by the School District and the Shoreline Water District as tenants-in-common, with each owning an equal undivided interest.

The districts filed a short plat application with Planning and Development Services. State law (RCW 58.17.110) requires that a proposed subdivision and dedication shall not be approved unless a city finds that appropriate provisions are made for streets, other public ways and sidewalks. One of the Shoreline requirements for subdivision of property is the installation or bonding of frontage improvements including curb, gutter and sidewalk where existing streets have not been improved to city standards for these improvements as detailed in the Engineering Development Guide. SMC 20.70.030 C and 20.70.220.

The School District has asked that the purchase agreement be adjusted to assign the additional cost of providing curb, gutter and sidewalk along N. 150<sup>th</sup> to the City. No additional right of way is required. The total estimated cost of the total frontage improvements to N. 150<sup>th</sup> St. is \$124,876, with the School Districts proportionate share at approximately \$37,000. The School District and Water District would agree that their parcels would be subject to a latercomers agreement reimbursing the City for their proportionate share of the installed street improvements that would otherwise be required with the next stage of development.

The District is making its request based on mutual misunderstanding. Staff agrees with this position. During the course of negotiating the sale price the District was only asking to recoup its purchase price per acre when it acquired the property along with the water district from the State Department of Natural Resources. That sale was based on a 1999 appraisal of \$240,000 per acre. This was the sale price to the City and no new appraisal or time adjustment was made to the price. To compensate for a price that is probably below current fair market value, the City did agree to a deed restriction limiting use to parks, recreation and open space use and allowing continued access to the site by the School District for educational purposes so long as access does not conflict with City use. There was no acknowledgment in the purchase agreement that the property would be improved with the frontage improvements prior to transfer, and in fact the Agreement states the "Buyer is purchasing the property 'As is Where is' in its present condition."

Hopefully, the City will be able to buy both district properties with the park bond issue within a year of the short plat approval. Without the proposed amendment, the frontage performance bond would be assigned as part of the negotiated purchase prices, and the City would be obligated to construct the improvements under the assignment. Similarly, under the proposed amendment the latecomers repayment obligation would be reflected in negotiations for purchase of the balance of the South Woods properties. If the City is unable to acquire the rest of South Woods, the City would have the latecomers agreement in place to receive reimbursement whenever either district or their successor plats or develops the remaining property in South Woods abutting N. 150<sup>th</sup> St. In this second scenario the City would eventually pay only its proportionate share of N. 150<sup>th</sup> frontage costs for its three acre parcel.

The Water District has expressed unwillingness to continue with the short plat if it is required to pay its share of frontage costs with this short plat approval. Even if the sidewalk improvements were bonded for one year bond, there is a possibility that the City or another party would not purchase the Water District's parcels and frontage construction obligation within this year, requiring the District to fulfill the construction commitment. Without their consent as co-owner of the property, the short plat condition of the current purchase agreement will fail and the agreement will terminate.

It is recommended the City agree to amend the Purchase Option Agreement to assume the N. 150<sup>th</sup> frontage responsibilities. The proposed Council motion includes direction to amend the 2006-2011 Capital Improvement Plan to add the N. 150<sup>th</sup> sidewalks as the financial guarantee required for the short plat approval.

## **FINANCIAL IMPACT**

The total City obligation for frontage improvements would be \$124,876. If the City does not acquire the balance of the South Woods it is anticipated all but \$37,463 will be reimbursed to the City with further development through a latecomers agreement. The City will include construction funding in the CIP for 2006 to meet the one year deadline for construction.

## **RECOMMENDATION**

Staff recommends that Council

1) authorize the City Manager to execute amendments to the Purchase and Sale Agreement for three acres of South Woods assigning to the City the short plat approval condition to construct frontage improvements on N. 150th; and

2) direct that the 2006-2011 CIP be amended to include \$125,000 for curb, gutter and sidewalk N. 150<sup>th</sup> St.

Approved By:      City Manager \_\_\_\_\_      City Attorney \_\_\_\_\_

Attachments:

- A. Staff Report for Meeting of 12/27/05 on Purchase of 3 acres of South Woods Parcel.

**CITY COUNCIL AGENDA ITEM**  
CITY OF SHORELINE, WASHINGTON

<b>AGENDA TITLE:</b>	<b>Purchase of 3 acres of South Woods Parcel from Shoreline School District</b>
<b>DEPARTMENT:</b>	<b>City Manager's Office; Parks, Recreation and Cultural Services; City Attorney's Office</b>
<b>PRESENTED BY:</b>	<b>Bob Olander, Acting City Manager</b>

**EXECUTIVE SUMMARY:**

The 2006-2011 Capital Improvement Program passed in July (Ordinance No. 395) included \$6 million for acquisition of the total South Woods Parcel south of Shorecrest High School. Based on preliminary discussions with one of the owners, the Shoreline School District, the Council approved a motion to allocate \$720,000 to purchase three acres on July 11, 2005.

The School District Board of Directors accepted the City's proposal in August and agreed to delay sale of the remainder of the District's interest to allow the City to raise additional funding. The District's 'at cost' offer was conditioned upon a covenant restricting development to parks and open space and a payment of one-half of the proceeds before the end of 2005.

The proposed Option and Purchase Agreement is the result of negotiations on terms of sale and the location of a three acre parcel that will be included in a final short plat of the larger 15.6 acre parcel prior to closing. Council action is needed to ratify the terms of the agreement, particularly the covenant restricting use and the location of the parcel, which were not included in the July 11<sup>th</sup> motion.

**FINANCIAL IMPACT:**

The purchase price of \$720,000 is the cost paid by the School District per acre. The City has recently appraised 8.32 acres with the same zoning north of Hamlin Park owned by Seattle Public Utilities at a higher per acre fair market value.

The purchase price will be made in two payments. The first payment due by December 30, 2005 consists of the Premium Option of \$360,000 and Earnest Money of \$20,000. A second payment will be made in 2006, in the amount of \$340,000. King County has awarded the City \$450,000 in Conservation Futures to use toward the purchase of South Woods. Conservation Futures requires a 50 percent match. The City will get reimbursed approximately 50% of each of the payments that are made to the School District up to \$360,000. The remaining conservation futures funds will be used towards future acquisition costs of the remaining South Woods acreage.

The 2005 General Capital Fund budget has adequate appropriation authority for the initial payment to the School District.

**RECOMMENDATION**

Staff recommends the Council approve the terms of the Purchase Option Agreement, accept the Property and authorize the City Manager to exercise the option to purchase upon final short plat approval segregating the City parcel approximately as shown in Exhibit A to the Agreement.

Approved By:

City Manager

A circular stamp with a signature inside, likely an official seal or signature of the City Manager.

City Attorney

A stylized, handwritten signature of the City Attorney.

## **BACKGROUND**

Early this year the Shoreline School District surplused its interest in a 15.6 acre parcel abutting NE 150<sup>th</sup> St between 20<sup>th</sup> Ave NE and 25<sup>th</sup> Ave NE jointly owned by the School District and the Shoreline Water District. The Shoreline Water District followed with its own decision to surplus its interest. Following these actions the City Council raised the acquisition priority of the entire South Woods property to Priority 1A in the Parks, Recreation and Open Space Plan from Priority 3 on May 23, 2005. The 2006-2011 Capital Improvement Program passed in July (Ordinance No. 395) included \$6 million for acquisition of the total South Woods parcel.

The South Woods presents a rare opportunity to acquire a large forested site of this size within an urban area. With the surplus property directives of the school and water districts, the window of availability of this parcel became predictably short, with each agency obligated to liquidate the property once it is no longer needed for by the agencies for their projects. Council's change in priority to acquire the property reflects this urgency.

Based on a view expressed by the City Manager that the District would accept \$720,000 for three acres to meet immediate cash needs, on July 11<sup>th</sup> the Council approved a motion to allocate \$720,000 to purchase three acres with funding sources identified as future grants, bond proceeds, other City funds, and \$350,000 from the Conservation Future Trust grant. Since that time King County has notified the City that there is an additional \$300,000 in Conservation Futures available for South Woods, of which \$100,000 has already been awarded to the City and the other \$200,000 should be formally awarded in early 2006.

The two districts own an undivided one-half interest in the property, which is also a single parcel. A short plat is in progress to partition the interests of the two districts and to define a three acre parcel for immediate sale to the City. The location of the three acre parcel was not known at the time of the motion. Also not reflected in the motion is a condition to restrict the use to parks and open space, the timing of the sale and payment dates. Council should confirm their prior general authorization with these details.

## **DISCUSSION**

The Property .- The proposed three acre wooded parcel is depicted on the map attached to the Option Purchase Agreement and is situated at the northeast corner of NE 150<sup>th</sup> St. and 20<sup>th</sup> Ave NE. This location may allow a connecting corridor to Hamlin Park if Fircrest is redeveloped north of our south woods acquisition.

The property size is suitable for a neighborhood park if no other property is acquired, but there are no current development plans or funds appropriated beyond the acquisition cost. Once the final size is determined through any additional purchases

from the School District or Water District, a public participation process will be initiated to determine what improvements should be made to the new park.

The property will be conveyed subject to a restrictive covenant limiting the use of the property for parks and recreation which is the intended use of the property but which adds value to the School District's property adjacent to the City parcel. As with other city parks, the School District has access for educational and environmental studies which do not conflict with the City's uses of the property.

The Terms of Option Purchase Agreement. The Agreement is structured as an option and purchase agreement. The Option allows the City Manager to execute the agreement under our purchasing ordinance since there is no financial obligation until the end of the City's due diligence period on December 30, 2005. This contingency period allows the City Council to ratify the agreement and for staff to conduct inspections of the property. The City completed its Phase I environmental site assessment on December 9, 2005 and staff recommends that the City proceed with acquisition without further environmental review. The recommended motion for Council action includes authorization for the City Manager to accept the property and exercise the option upon completion of the final short plat.

The second purpose of the option is to allow an early payment for the Option itself which is immediately made available to the School District to meet its cash flow needs. This \$360,000 payment is applicable to the purchase price, as is the cash earnest money of \$20,000. Both payments are refundable if the final short plat is not approved creating the city's parcel as approximately depicted in Exhibit A to the agreement. The final plat must be received by February 24, 2006. These are also refundable if there is a failure of any of the other conditions of closing.

Part of the negotiated consideration is the "right of first opportunity" set out in Article XIV. From the date of the Purchase Option until June 6, 2006 the City has an opportunity to purchase any of the School District's remaining property on the same terms and conditions set forth in the Purchase Option agreement. The District may market the property before this date, but must first give the City a 14 day notice to allow the City to purchase the property under this clause.

### **RECOMMENDATION**

Staff recommends the Council approve the terms of the Purchase Option Agreement, accept the Property, and authorize the City Manager to exercise the option to purchase upon final short plat approval segregating the City parcel approximately as shown in Exhibit A to the Agreement.

### **ATTACHMENTS**

Attachment A – Proposed Purchase Option Agreement

**PURCHASE OPTION AGREEMENT**  
**SOUTH WOODS PROPERTY**  
**SHORELINE, WASHINGTON**

THIS PURCHASE OPTION AGREEMENT ("AGREEMENT") IS MADE AND ENTERED INTO AS OF THIS \_\_\_\_ DAY OF DECEMBER, 2005, BY AND BETWEEN THE CITY OF SHORELINE ("BUYER") AND SHORELINE SCHOOL DISTRICT NO. 412 ("SELLER").

In consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer agree as follows:

**ARTICLE I. OPTION TO PURCHASE PROPERTY**

Subject to the terms and conditions set forth herein, Seller hereby grants to Buyer an option to purchase that certain parcel of real property located in the City of Shoreline, King County, Washington, commonly known as a portion of the South Woods Property, and more particularly described on Exhibit A hereto (the "Property"). Buyer shall have the right to exercise its option to purchase the Property by providing Seller written notice of exercise (the "Exercise Notice") within twenty-one (21) days after Buyer's receipt of the Plat Approval Notice pursuant to Section 5.2 below. Following Buyer's timely delivery of the Exercise Notice, the parties shall proceed to Closing as set forth herein. Should Buyer fail to timely deliver the Exercise Notice after it receives the Plat Approval Notice, Buyer's option to purchase the Property shall terminate and Seller shall retain the Option Premium and Earnest Money.

**ARTICLE II. PURCHASE PRICE**

2.1 Purchase Price. The purchase price for the Property (the "Purchase Price") shall be Seven Hundred Twenty Thousand Dollars (\$720,000), subject to adjustments, if any, as provided for under this Agreement. The Purchase Price is based on a price of Two Hundred Forty Thousand Dollars (\$240,000) per acre. The Purchase Price shall be paid by Buyer in immediately available funds on the Closing Date (as defined below).

2.2 Escrow Holder. Fidelity National Title Insurance Company, ("Escrow Holder" in its capacity as escrow holder and "Title Company" in its capacity as title insurer) has been designated as Escrow Holder hereunder by mutual agreement of Seller and Buyer. Upon execution of this Agreement by the last of Seller and Buyer (such date herein referred to as the "Date of this Agreement"), Escrow Holder shall open a closing escrow for the benefit of Buyer and Seller in accordance with the terms of this Agreement.

2.3 Earnest Money. Not later than two (2) days following the Date of this Agreement, Buyer shall deposit with Escrow Holder the sum of Twenty Thousand Dollars (\$20,000) in the form of a promissory note payable upon the satisfaction of Buyer's due diligence contingency under Article IV. Such amount, together with interest earned thereon, is referred to herein collectively, as the "Earnest Money". Upon closing of this transaction, the Earnest Money shall be credited against the Purchase Price. In the event this transaction fails to close as a result of Seller's default, the failure of any of Seller's contingencies under Article V, or the failure of any condition precedent to Buyer's obligations set forth in Article VI, the Earnest Money shall be returned to Buyer. In the event this transaction fails to close as a result of Buyer's default or any reason other than the failure of any of Seller's contingencies under



Article V, or the failure of any condition precedent to Buyer's obligations set forth in Article VI, Escrow Holder shall deliver the Earnest Money to Seller and retention of the Earnest Money by Seller shall be Seller's sole and exclusive remedy. Escrow Holder shall deposit the Earnest Money in an interest bearing account at a financial institution approved by Buyer and Seller.

### **ARTICLE III. TITLE**

3.1 Review of Title. Within five (5) days after the Date of this Agreement, Seller shall provide Buyer with a preliminary commitment for title insurance for the Property issued by the Title Company, together with complete and legible copies of all exceptions and encumbrances noted thereon (the "Preliminary Commitment"). Buyer shall have fifteen (15) days after the Date of this Agreement to advise Seller in writing of any encumbrances, restrictions, easements or other matters in the Preliminary Commitment (collectively "Exceptions") to which Buyer objects. All Exceptions to which Buyer does not object in writing within the 15-day period shall be deemed accepted by Buyer.

If Buyer objects to any Exceptions within the 15-day period, Seller shall advise Buyer in writing within ten (10) days after receipt of Buyer's written objections: (a) which Exceptions Seller will remove at Closing, (b) which Exceptions the Title Company has agreed to insure over in the title policy to be issued at Closing (together with the proposed form of endorsement), and (c) which Exceptions will not be removed or insured over by Seller. If Seller does not respond to Buyer's objections within such ten (10) day period, Seller shall be deemed to have responded that it will not remove or insure over any Exceptions objected to by Buyer.

Within five (5) days after receipt of Seller's response to Buyer's written objections, or if Seller does not respond then within five (5) days after expiration of the time period for Seller's response, if Seller has not agreed to remove or cause Title Company to insure over all Exceptions to which Buyer objects, Buyer shall notify Seller in writing of Buyer's election either to waive its objections to the Exceptions Seller will not remove or insure over, in which event such Exceptions shall be deemed accepted by Buyer, or terminate this Agreement. If Buyer does not notify Seller of its election within such five (5) day period, Buyer shall be deemed to have waived its objections.

The term "Permitted Exceptions" as used hereafter means: (a) the Exceptions accepted or deemed accepted by Buyer as provided above; (b) the lien of real estate taxes and assessments for the current calendar year which shall be prorated to the Closing Date as provided in Section 8.5; and (c) local, state and federal laws, ordinances and governmental regulations.

3.2 Title Insurance. Subject to Buyer fulfilling its obligations hereunder, and if requested by Buyer in writing, Seller shall cause Title Company to make available to Buyer at Closing a Standard Coverage Owner's Policy of title insurance or, if Buyer so requests in writing, an Extended Coverage Owner's Policy of title insurance, issued by Title Company in the amount of the Purchase Price, dated the date of Closing, insuring Buyer's title to the Property subject to no exceptions other than the standard printed exceptions and the Permitted Exceptions (the "Title Policy"). The Title Policy may contain such endorsements as Buyer may specify and which Title Company is willing to issue. Buyer shall pay all costs associated with the Title Policy and the cost of any survey required for extended coverage.

3.3 Conveyance of Property. At Closing Seller shall convey to Buyer fee simple title to the Property by execution and delivery of a quit claim deed (the "Deed").

3.4 Restrictive Covenant. At Closing Buyer and Seller shall record a restrictive covenant against title to the Property in a form to be agreed upon during the Due Diligence Period, restricting the use of the Property in perpetuity to park and recreational purposes, and confirming the continued right of Seller to access and use the Property for the purpose of conducting educational and environmental studies which do not conflict with the City's uses (the "Covenant").

#### **ARTICLE IV. INSPECTION OF DOCUMENTS AND EVALUATION OF THE PROPERTY**

4.1 Buyer's Due Diligence. Buyer shall have until 5:00 p.m. Pacific time on December 30, 2005 ("Due Diligence Expiration Date") to inspect the Property and obtain any necessary authorization to complete its purchase of the Property (the period of time expiring on the Due Diligence Expiration Date, the "Due Diligence Period"). During the Due Diligence Period, Buyer at its sole expense may inspect the physical condition of the Property and conduct any environmental or other inspections as it deems appropriate; provided, however, Buyer shall have the right to enter upon and inspect the Property only in accordance with the following terms and conditions:

- (a) This Agreement has not been terminated;
- (b) Any entry upon the Property shall be only for the purpose of inspections, studies and surveys upon prior written notice to Seller.
- (c) No invasive drilling or testing shall be conducted without Seller's prior written and specific approval; and
- (d) Buyer shall indemnify, defend and hold Seller harmless from any and all damages, claims, liens, causes of action, or obligations by persons or entities which arise out of or are in any way related to Buyer's activities on the Property prior to Closing, including without limitation Seller's costs, expenses and attorney's fees. Notwithstanding anything to the contrary contained in this Agreement, this indemnity shall survive the termination, expiration and consummation of this Agreement.

If Buyer is dissatisfied in its sole discretion with the results of its inspection of the Property, Buyer may terminate this Agreement by delivering written notice of such termination to Seller at any time prior to the Due Diligence Expiration Date. Upon such termination, any materials provided to Buyer by Seller relating to the Property shall be promptly returned to Seller without retention of any copies or abstracts thereof, the Earnest Money shall be immediately returned to Buyer, the parties shall have no further obligations hereunder other than those obligations which expressly survive by their terms, and Buyer shall deliver to Seller a copy of all reports and studies prepared by third parties in connection with its due diligence activities. If Buyer fails to timely deliver notice of termination, Buyer shall be deemed to be satisfied with the results of its inspection of the Property.

4.2 Option Premium. If Buyer is satisfied in its sole discretion with the results of its inspection of the Property, Buyer shall deliver to Seller at any time prior to the Due Diligence Expiration Date notice of its approval of the Property, together with an option premium in the

amount of Three Hundred Sixty Thousand Dollars (\$360,000) (the "Option Premium"). The Option Premium shall be applicable to the Purchase Price at Closing, but, except in case of Seller's default, failure of any of Seller's contingencies under Article V below, or failure of any condition precedent in Article VI below, shall be non-refundable as consideration for Seller's efforts pursuing Final Plat Approval and for taking the Property off the market.

## **ARTICLE V. SELLER'S CONTINGENCIES**

5.1 Board Approval. Seller's obligation to sell the Property to Buyer is contingent upon Seller obtaining all necessary approval of such sale from its Board of Directors ("Board Approval") on or before December 12, 2005. In the event Seller fails to receive Board Approval for the sale of the Property within such time, the Agreement shall be null and void, the Earnest Money shall be returned to Buyer, the Agreement shall automatically terminate and be of no further force or effect and Seller and Buyer shall have no further obligation to one another. If Seller obtains Board Approval within such time, this contingency shall be satisfied and this Agreement shall remain in full force and effect.

5.2 Final Plat Approval. Buyer acknowledges that the Property does not currently constitute a legally subdivided parcel, but rather comprises a portion of a larger parcel jointly owned by Seller and the Shoreline Water District as tenants in common (such larger parcel is referred to herein as the "South Woods Property"). In addition to the other contingencies described in the Agreement, Seller's obligation to sell the Property to Buyer is specifically contingent upon Seller's partitioning the Property from the tenancy in common in which the South Woods Property is now held, and Seller's receipt of final approval of a short plat or other subdivision establishing the Property as a separate legal lot owned by Seller alone (such partition and subdivision collectively, "Final Plat Approval") on or before February 24, 2006. In the event Seller fails to receive Final Plat Approval for the Property within such time due to no fault or inaction of Seller and provided Seller has used all reasonable efforts to obtain Final Plat Approval, the Agreement shall be null and void, the Earnest Money and Option Premium shall be returned to Buyer, the Agreement shall automatically terminate and be of no further force or effect and Seller and Buyer shall have no further obligation to one another. If Seller obtains Final Plat Approval within such time, this contingency shall be satisfied and this Agreement shall remain in full force and effect. Upon Final Plat Approval, Seller shall provide notice to Buyer (the "Plat Approval Notice"), and the final legal description of the Property shall be attached to this Agreement as Exhibit A, replacing the description currently attached hereto as Exhibit A.

## **ARTICLE VI. CONDITIONS PRECEDENT TO CLOSING**

Buyer's obligations under this Agreement are expressly conditioned on, and subject to satisfaction of, the following conditions precedent:

6.1 Removal of Contingencies. The satisfaction or waiver of all express contingencies set forth in this Agreement to Buyer's obligation to purchase the Property.

6.2 Performance by Seller. Seller shall have performed all material obligations required by this Agreement to be performed by it.

6.3 Title Policy. Title Company shall be ready, willing and able to issue the Title Policy provided Buyer has fulfilled its obligations with respect thereto.

The conditions set forth in Sections 6.1 through 6.3 above are intended solely for the benefit of Buyer. If any of the foregoing conditions are not satisfied as of the Closing Date, Buyer shall have the right at its sole election either to waive the condition in question and proceed with the purchase of the Property or, in the alternative, to terminate this Agreement, whereupon the Earnest Money and Option Premium shall be returned to Buyer and the parties shall have no further obligations hereunder other than those obligations which survive the termination of this Agreement by their express terms.

Seller's obligations under this Agreement are expressly conditioned on, and subject to satisfaction of, the following conditions precedent:

6.4 Removal of Contingencies. The satisfaction or waiver of all express contingencies set forth in this Agreement to Seller's obligation to sell the Property.

6.5 Performance by Buyer. Buyer shall have performed all material obligations required by this Agreement to be performed by it.

The conditions set forth in Sections 6.4 and 6.5 above are intended solely for the benefit of Seller. If any of the foregoing conditions are not satisfied as of the Closing Date, Seller shall have the right at its sole election either to waive the condition in question and proceed with the sale or, in the alternative, to terminate this Agreement. No such termination, however, shall waive Seller's right to retain the Earnest Money if Buyer is then in default under this Agreement.

## **ARTICLE VII. PENDING CLOSING**

At all times prior to Closing or the sooner termination of this Agreement, Seller agrees not to enter into any contracts or agreements to sell or otherwise transfer the Property except for backup offers which are subordinate to this Agreement so long as it remains in effect.

## **ARTICLE VIII. CLOSING AND ESCROW**

8.1 Closing. The Closing hereunder (the "Closing" or the "Closing Date") shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made at the offices of the Escrow Holder on or before the date that is fifteen (15) days after Buyer's delivery of its Exercise Notice pursuant to Article I above.

8.2 Delivery by Seller. On or prior to the Closing Date, Seller shall deposit with Escrow Holder, the following:

- (a) The duly executed and acknowledged Deed ready for recordation on the Closing Date together with a duly executed real estate excise tax affidavit;
- (b) The duly executed and acknowledged Covenant ready for recordation on the Closing Date; and
- (c) A certificate of non-foreign status.

8.3 Delivery by Buyer. On or prior to the Closing Date Buyer shall deposit with Escrow Holder the following:

- 8.6); (a) The Purchase Price (as adjusted pursuant to Sections 8.5 and
- (b) A duly executed counterpart of the real estate excise tax affidavit;
- and
- (c) A duly executed and acknowledged counterpart of the Covenant.

8.4 Title Policy; Other Instruments. Title Company shall issue the Title Policy if requested by Buyer at Closing or as soon thereafter as practicable. Seller and Buyer shall each deposit such other instruments as are reasonably required by Escrow Holder, Title Company or otherwise required to close the escrow and consummate the purchase and sale of the Property in accordance with the terms hereof.

8.5 Prorations. All revenues and all expenses of the Property shall be prorated as of 12:01 a.m. on the Closing Date.

8.6 Closing Costs and Expenses. Buyer and Seller shall each pay their own attorneys fees and expenses to perform their obligations hereunder in addition to the following:

- (a) Seller shall pay:
  - (i) All real estate excise taxes, and other transfer taxes applicable to the transfer of the Property, if any;
  - (ii) One-half (1/2) of the fees for the Escrow Holder; and
  - (iii) One-half (1/2) of the recording costs for the Deed and Covenant.
- (b) Buyer shall pay:
  - (i) All costs and expenses of Buyer's consultants and investigations during the Due Diligence Period;
  - (ii) All costs in connection with the Title Policy;
  - (iii) One-half (1/2) of the fees for the Escrow Holder; and
  - (iv) One-half (1/2) of the recording costs for the Deed and Covenant.

8.7 Closing Statements. The prorations shall be made on the basis of a written closing statement submitted by Escrow Holder to Buyer and Seller prior to the Closing Date and approved by Buyer and Seller, which approval shall not unreasonably be withheld, conditioned or delayed. In the event any prorations or apportionments made hereunder shall prove to be incorrect for any reason, then either party shall be entitled to an adjustment to correct the same. Any item which cannot be prorated because of the unavailability of information shall be

tentatively prorated on the basis of the best data then available and re-prorated between Buyer and Seller when the information is available. Notwithstanding the foregoing, any adjustments or re-prorations shall be made, if at all, within ninety (90) days after the Closing Date.

#### **ARTICLE IX. "AS IS" SALE**

BUYER IS PURCHASING THE PROPERTY "AS IS WHERE IS" IN ITS PRESENT CONDITION. BUYER HAS THE OPPORTUNITY TO INSPECT THE PROPERTY AS PROVIDED HEREIN. EXCEPT AS PROVIDED UNDER ARTICLE X, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO, AND SHALL HAVE NO LIABILITY FOR: (a) THE CONDITION OF THE PROPERTY; (b) ANY APPLICABLE LAWS OR REGULATIONS OR WITH RESPECT TO COMPLIANCE THEREWITH OR WITH RESPECT TO THE EXISTENCE OF OR COMPLIANCE WITH ANY REQUIRED PERMITS, IF ANY, OF ANY GOVERNMENTAL AGENCY; (c) THE AVAILABILITY OR EXISTENCE OF ANY WATER, SEWER OR UTILITIES, ANY RIGHTS THERETO, OR ANY WATER, SEWER OR UTILITY DISTRICTS; (d) ACCESS TO ANY PUBLIC OR PRIVATE SANITARY SEWER OR DRAINAGE SYSTEM; OR (e) THE PRESENCE OF ANY HAZARDOUS SUBSTANCES AT THE PROPERTY OR IN ANY IMPROVEMENTS ON THE PROPERTY, INCLUDING WITHOUT LIMITATION ASBESTOS OR UREA-FORMALDEHYDE, OR THE PRESENCE OF ANY ENVIRONMENTALLY HAZARDOUS WASTES OR MATERIALS ON OR UNDER THE PROPERTY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER SHALL HAVE NO LIABILITY WITH RESPECT TO THE CONDITION OF THE PROPERTY UNDER COMMON LAW, OR ANY FEDERAL, STATE, OR LOCAL LAW OR REGULATION, INCLUDING BUT NOT LIMITED TO THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980 AS AMENDED, 42 U.S.C.A. SECTIONS 9601 ET SEQ., OR WASHINGTON STATE MODEL TOXICS CONTROL ACT AS CODIFIED IN RCW 70.105D, AND BUYER HEREBY RELEASES AND WAIVES ANY AND ALL CLAIMS WHICH THE BUYER HAS OR MAY HAVE AGAINST THE SELLER WITH RESPECT TO THE CONDITION OF THE PROPERTY. BUYER ACKNOWLEDGES THAT BUYER IS GIVEN THE OPPORTUNITY UNDER THIS AGREEMENT TO FULLY INSPECT THE PROPERTY AND BUYER ASSUMES THE RESPONSIBILITY AND RISKS OF ALL DEFECTS AND CONDITIONS, INCLUDING, WITHOUT LIMITATION, SUCH DEFECTS AND CONDITIONS, IF ANY, THAT CANNOT BE OBSERVED BY CASUAL INSPECTION. THIS PARAGRAPH SHALL SURVIVE CLOSING.

#### **ARTICLE X. REPRESENTATIONS AND WARRANTIES**

10.1 Seller's Representations and Warranties. Seller represents and warrants to Buyer that the following facts are true as of the date of Seller's execution hereof, except to the extent disclosed herein or otherwise known to Buyer prior to the expiration of the Due Diligence Period:

10.1.1 Authority. Subject to Article V above, Seller has the right, power and authority to execute, deliver and perform this Agreement without obtaining any consents or approvals from, or the taking of any other actions with respect to, any third parties. This Agreement, when executed and delivered by Buyer and Seller, and all documents executed by Seller pursuant hereto, will constitute the valid and binding agreement of Seller.

10.1.2 Litigation. To Seller's knowledge, there is no action, suit, investigation or proceeding (administrative or otherwise) pending or threatened against Seller or affecting the Property or any portion(s) of the Property, which might affect Seller's performance under this Agreement or the right of Buyer to own, operate, develop, or possess the Property, or which might have a material effect on the business of the Property or result in any liability of Buyer with respect thereto.

10.1.3 Encumbrances and Existing Agreements.

10.1.3.1 Seller's execution, delivery and consummation of this Agreement shall not result in any default or violation of any agreement or law by which Seller is bound or which will result in any lien, charge or encumbrance on the Property.

10.1.3.2 To Seller's knowledge, there are no undisclosed or unrecorded agreements or restrictions affecting the Property (other than matters of record, applicable laws, regulations, ordinances or judicial decisions). Seller shall continue to make all payments required by Seller under the terms of any existing financing agreements associated with the Property, if any, and shall not suffer or permit a default to arise thereunder. In the event that, prior to Closing, Seller defaults in its obligations thereunder or the Property must be released from a lien of any existing financing agreement(s), Seller shall complete such release or reconveyance at Seller's cost.

10.1.4 Hazardous Substances. To Seller's knowledge: (a) there are no underground storage tanks on the Property; (b) the Property will be free of asbestos and asbestos-containing materials at Closing; (c) Seller has not caused or permitted to be stored, disposed of, transferred, produced, or processed on the Property "Hazardous Substances" (as defined below) except in compliance with all applicable federal, state, and local laws or regulations; (d) no "Release" (as defined below) of any Hazardous Substances on or off-site of the Property which might affect the Property or for which Buyer may be liable Property relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from Hazardous Substances; and (e) no substances or conditions on the Property (or off-site to the extent affecting the Property) may support a claim or cause of action, whether by a governmental agency or body, private party or individual, under any "Environmental Law" (as defined below). For purposes of this Agreement, the term "Release" shall have the meaning given to it under CERCLA, as amended; the term "Hazardous Substance" shall mean asbestos, petroleum or petroleum byproducts, PCBs, and any other waste, substance of material now or hereafter defined, listed or designated as hazardous, toxic, a pollutant, waste, or otherwise harmful to human health or the environment under any law, statute, regulation or ordinance; and the term "Environmental Law" shall mean any current or future federal, state or local law, regulation, ordinance or code regarding the manufacture, processing, use, handling, release, transportation, storage, or disposal of Hazardous Substances.

10.1.5 Compliance. Seller has received no notice of non-compliance with respect to the Property or Seller's use thereof.

10.1.6 Leases. There are no leases or rental agreements affecting the Property, and subject to Article V above no party has any right to the present or future possession or use of the Property other than Seller.

10.1.7 Contracts. There are no maintenance, advertising, management, leasing, employment, service, or other contracts affecting the Property which will be in effect at Closing.

10.1.8 Liens. Except as may be disclosed on a current title commitment for the Property, there are no mechanics', materialmen's or similar claims or liens presently claimed or which will be claimed against the Property for work performed or commenced prior to Closing. Seller agrees to hold Buyer harmless from all costs, expenses, liabilities, losses and charges arising from or relating to any such lien or any similar lien claimed against the Property and arising from work performed or commenced on behalf of Seller prior to Closing.

10.1.9 Disclosure. Seller has not knowingly made any untrue statements or representations in connection with this Agreement. Seller has not failed to state or disclose any material fact known to Seller in connection with the transactions contemplated by this Agreement.

Seller hereby agrees to defend, protect, indemnify and hold Buyer harmless from any and all loss, damage, liability or expense, including attorneys' fees and costs, Buyer may suffer as a result of any breach of or any inaccuracy of the foregoing representations and warranties. These representations and warranties shall survive Closing for a period of six (6) months and shall terminate as of the end of such period except to the extent that Buyer advises Seller in writing of an alleged breach thereof prior to such termination date and commences an action against Seller within thirty (30) days after the termination of such six (6) month period.

10.2 Buyer's Warranties. Buyer represents and warrants to Seller that the following facts are true as of the date of Seller's execution hereof and will be true as of Closing.

10.2.1 Authority. All requisite action has been taken by Buyer in connection with entering into this Agreement, the instruments referenced herein, and the consummation of the transaction contemplated hereby. Buyer has the right, power and authority to execute, deliver and perform this Agreement, but must obtain authorization of the Shoreline City Council to exercise the Option; provided that such authorization shall not be a contingency or condition precedent to Buyer's obligations hereunder. This Agreement, when executed and delivered by Seller and Buyer, and all documents executed by Buyer pursuant hereto, will constitute the valid and binding agreement of Buyer.

10.3 Subsequent Knowledge. If prior to Closing, either Buyer or Seller obtains actual knowledge of any fact, circumstance or condition of which it did not have actual knowledge at the time this Agreement was executed and the same would adversely and materially affect or make untrue or misleading any of the representations, warranties, or disclosures of Seller presently made hereunder as if the same were made as of the date of Closing, then the party obtaining such knowledge shall notify the other in writing of the same within five (5) days of learning of the same but not later than the date of Closing. As to any such matter disclosed by Seller or otherwise learned by Buyer prior to Closing, Buyer shall have five (5) days from receipt of Seller's notice or otherwise learning of any such matter either to elect by written notice to Seller (a) to terminate this Agreement as its sole remedy, in which case, the Agreement shall terminate, the Earnest Money shall be returned to Buyer and thereafter neither party shall have any further liability hereunder except as otherwise provided herein, or (b) to proceed with the purchase of the Property, in which case Buyer will take the Property subject to such disclosed matter, and Seller will have no obligation or contractual liability to Buyer under this Agreement.



as to such disclosed matter. Buyer's failure to elect either of the options set forth in the preceding sentence within such five-day period shall be deemed to be an election to proceed with the purchase under option (b). The date of Closing shall be extended to the extent necessary to accommodate the five-day evaluation period specified herein.

10.4 Seller's Knowledge. References to "Seller's knowledge" shall refer only to the current actual knowledge of Dr. James Welsh, and shall not be construed, by imputation or otherwise, to refer to the knowledge of any property manager, agent, representative or other employee of Seller, and without any obligation to undertake any investigation or take any affirmative action to acquire any knowledge.

#### **ARTICLE XI. LOSS BY FIRE OR OTHER CASUALTY: CONDEMNATION**

In the event that all or any material portion of the Property is damaged or destroyed by any casualty or is the subject of a taking or condemnation under the provisions of eminent domain law after the Date of this Agreement but prior to the Closing Date, Buyer may terminate this Agreement and the Earnest Money shall be returned to Buyer. If Buyer does not elect to terminate this Agreement, then Seller shall have no obligation to repair or replace any damage or destruction caused by the foregoing nor shall the Purchase Price be reduced, but the following shall apply at the Closing: (a) in the event of a casualty, Buyer shall receive an assignment of the proceeds of any casualty insurance otherwise payable to Seller; and (b) in the event of a taking, Seller shall assign to Buyer its rights to any condemnation proceeds resulting from such taking and shall not make any settlements without Buyer's prior written approval.

#### **ARTICLE XII. POSSESSION**

Possession of the Property shall be delivered to Buyer on the Closing Date.

#### **ARTICLE XIII. DEFAULT; REMEDIES**

13.1 Default by Buyer. If Buyer fails, without legal excuse, to complete the purchase of the Property in accordance with the terms of this Agreement or otherwise defaults hereunder, Seller's sole and exclusive remedy shall be to retain the Earnest Money as liquidated damages (the parties acknowledging that the Option Premium is fully earned and non-refundable as of the time it is paid by Buyer, and is not part of Seller's liquidated damages). Buyer expressly agrees that the delivery to and the retention of the Earnest Money by Seller represents a reasonable estimation of the damages in the event of Buyer's default, that actual damages may be difficult to ascertain and that this provision does not constitute a penalty. The foregoing limitation on the liability of Buyer shall not be applicable with respect to Buyer's obligations to be performed or enforced after Closing.

13.2 Default by Seller. If Seller fails, without legal excuse, to complete the sale of the Property in accordance with the terms of this Agreement or otherwise defaults hereunder, Buyer may elect to pursue any one or more of the following remedies: (a) terminate this Agreement and receive a refund of the Earnest Money and Option Premium or (b) sue for actual damages, but in no event shall Buyer be entitled to recovery of any consequential or punitive damages.

13.3 Attorneys' Fees. In the event either party brings an action or any other proceeding against the other party to enforce or interpret any of the terms, covenants or conditions hereof, the party substantially prevailing in any such action or proceeding shall be

paid all costs and reasonable attorneys' fees by the other party in such amounts as shall be set by the court, at trial and on appeal.

#### **ARTICLE XIV. RIGHT OF FIRST OPPORTUNITY**

14.1 Grant; Duration. Seller hereby grants to Buyer a right of first opportunity to purchase all or any portion of the South Woods Property that is owned entirely by Seller following the partition described in Article V above, on the terms and conditions set forth herein (the "ROFO"). The ROFO shall commence on the Date of this Agreement, and shall terminate on June 6, 2006, unless earlier terminated pursuant to the terms set forth herein.

14.2 Right of First Opportunity. Seller agrees that before it sells, publicly advertises, lists for sale, or markets all or any portion of the ROFO Property, it shall notify Buyer in writing of the portion of the ROFO Property that it intends to sell (the "ROFO Subject Property"). Buyer shall have fourteen (14) days following receipt of such notice (the "Offer Period") to present an offer to Seller and negotiate an agreement to purchase the ROFO Subject Property. During the Offer Period, the parties shall negotiate in good faith for Buyer's acquisition of the Subject ROFO Property.

14.3 Failure to Reach Agreement. If the parties have not reached a mutually acceptable agreement by the end of the Offer Period, Seller shall have the right to discontinue negotiations with Buyer and offer the Subject ROFO Property for sale to third parties. In such event, then with respect to the Subject ROFO Property, Buyer shall have no further Right of First Opportunity based on this Agreement.

14.4 Termination. Should this Agreement terminate for any reason prior to Closing, the ROFO shall terminate concurrently with such termination of this Agreement.

#### **ARTICLE XV. MISCELLANEOUS**

15.1 Brokers and Finders. Each party represents and warrants to the other that no broker or finder has been involved in this transaction. In the event of a claim for broker's fee, finder's fee, commission or other similar compensation in connection with this Agreement, Buyer, if such claim is based upon any agreement alleged to have been made by Buyer, hereby agrees to indemnify Seller against any and all damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and costs) which Seller may sustain or incur by reason of such claim. Seller, if such claim is based upon any agreement alleged to have been made by Seller, hereby agrees to indemnify Buyer against any and all damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and costs) which Buyer may sustain or incur by reason of such claim. Notwithstanding anything to the contrary herein, the provisions of this Section 15.1 shall survive the termination of this Agreement or the Closing.

15.2 Notices. All notices, demands, requests, consents and approvals which may, or are required to, be given by any party to any other party hereunder shall be in writing and shall be deemed to have been duly given if (i) delivered personally, (ii) sent by a nationally recognized overnight delivery service, (iii) electronically transmitted with confirmation sent by another method specified in this Section 15.2 or (iv) mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

Buyer at: City of Shoreline  
17544 Midvale Avenue N.  
Shoreline, WA 98155  
Attn: Ian R. Sievers, City Attorney  
Telephone No. (206) 546-5945  
Fax No. (206) 546-2200

Seller at: Shoreline School District No. 412  
18560 1st Avenue NE  
Shoreline, WA 98155  
Attn: Sue Walker, Assistant Superintendent  
Telephone No. (206) 361-4322  
Fax No. (206) 361-4414

With a copy to: Foster Pepper & Shefelman PLLC  
1111 Third Avenue, Suite 3400  
Seattle, WA 98101  
Attn: Richard Chamberlain  
Telephone No. (206) 447-2893  
Fax No. (206) 749-1983

or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery.

15.3 Amendment, Waiver. Except as expressly set forth herein with regard to attaching the final legal description of the Property following Final Plat Approval, no modification, termination or amendment of this Agreement may be made except by written agreement. No failure by Seller or Buyer to insist upon the strict performance of any covenant, agreement, or condition of this Agreement or to exercise any right or remedy shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. All the terms, provisions, and conditions of this Agreement shall inure to the benefit of and be enforceable by Seller's or Buyer's permitted successors and assigns.

15.4 Survival. All provisions of this Agreement which involve obligations, duties or rights to be performed after the Closing Date or the recording of the Deed shall survive the Closing Date and/or the recording of the Deed only to the extent expressly provided herein.

15.5 Captions. The captions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement.

15.6 Merger of Prior Agreements; No Reliance. This Agreement and the exhibits hereto constitute the final and complete agreement between the parties with respect to the purchase and sale of the Property and supersede all prior and contemporaneous agreements, letters of intent and understandings between the parties hereto relating to the subject matter of this Agreement. There are no oral or other agreements, including but not limited to any representations or warranties, which modify or affect this Agreement. Seller shall not be bound by, nor liable for, any warranties, representations or statements of fact or opinion made by any

other person, partnership, corporation or other entity, including, without limitation, the Title Company, any surveyor and any consultants. Buyer acknowledges to Seller that in entering into this Agreement, Buyer is not relying on any warranties made by Seller.

15.7 No Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Buyer and Seller. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

15.8 Governing Law; Time. This Agreement and the rights of the parties hereto shall be governed by and construed in accordance with the internal laws of the State of Washington. "Day" as used herein means a calendar day and "business day" means any day on which commercial banks are generally open for business. Any period of time which would otherwise end on a non-business day shall be extended to the next following business day. Time is of the essence of this Agreement.

15.9 Exhibits. All exhibits attached hereto or referenced herein are incorporated in this Agreement.

15.10 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such provisions had not been contained herein.

15.11 Counterparts. This Agreement and the documents to be delivered hereunder may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

15.12 Assignment. Buyer's rights under this Agreement are not assignable without the prior written consent of Seller. No such assignment to which Seller may consent shall relieve Buyer of any obligation hereunder. Seller's rights under this Agreement are not assignable without the prior written consent of Buyer.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the day and year first above written.

SELLER:

SHORELINE SCHOOL DISTRICT NO. 412

By \_\_\_\_\_  
Its \_\_\_\_\_

BUYER:

CITY OF SHORELINE

By: \_\_\_\_\_  
Robert Olander, Acting City Manager

Approved as to form:

\_\_\_\_\_  
Ian R. Sievers, City Attorney

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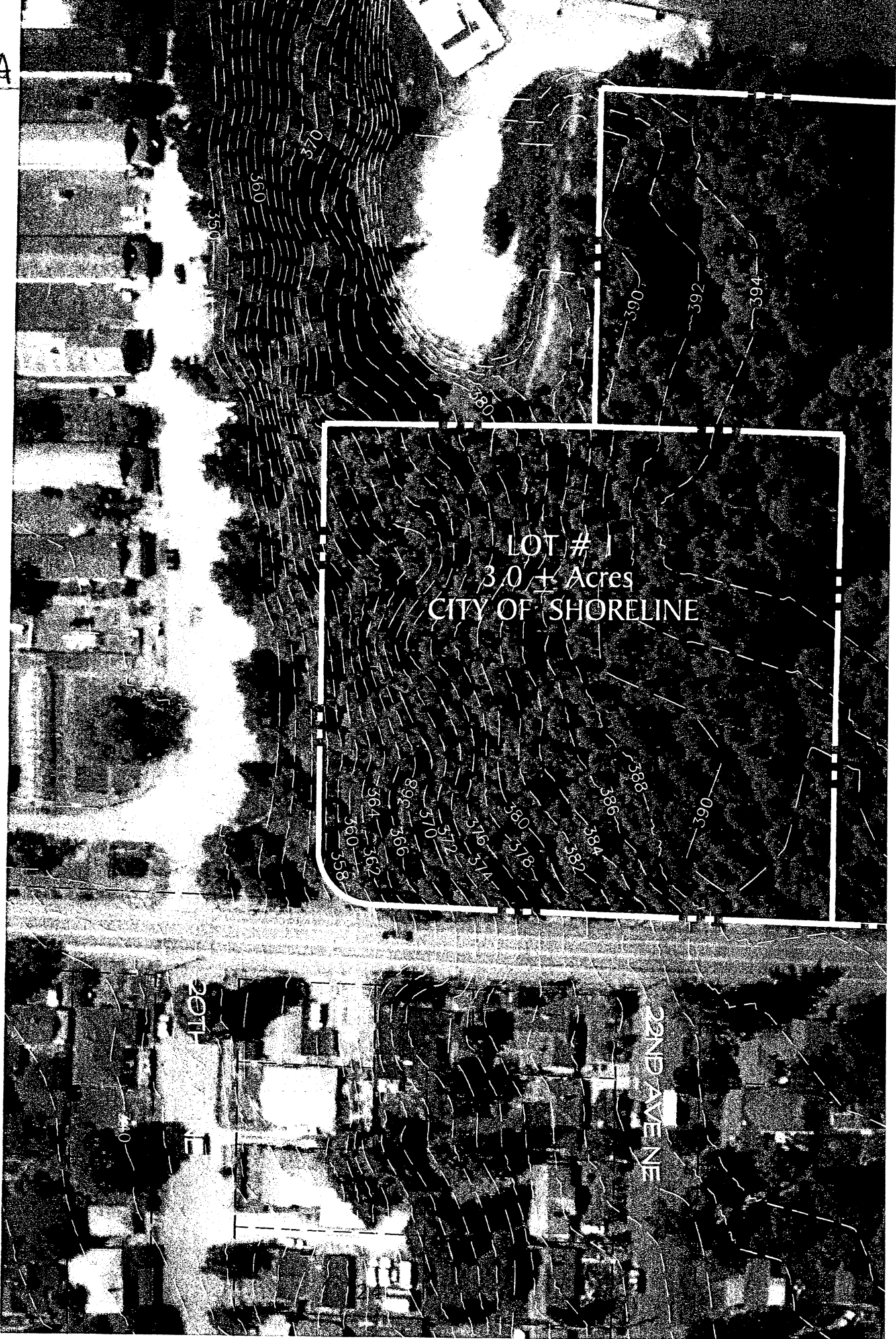
EXHIBIT A

Legal Description of the Property

Approximately three acres at the west end of the following property:

That portion of the NE 1/4 of the SW 1/4 of Section 16, Township 26 North, Range 4 East, Willamette Meridian, King County, Washington, shown as Parcel 'D' on DNR Final Map No. 439, recorded February 28, 1983 in Book 35 of Surveys at Page 57, under Auditor's File No. 8302289001, King County Records.

EXHIBIT A  
(cont.)



LOT # 1  
3.0 ± Acres  
CITY OF SHORELINE

22ND AVE NE

20TH