

**EVERETT SCHOOL DISTRICT NO. 2**

**Snohomish County, Washington**

**November 4, 2003**

**RESOLUTION NO. 781**

A resolution of the Board of Directors ("Board") of Everett School District No. 2 ("District") to purchase real property for a student transportation facility.

WHEREAS, the District has identified a need for additional real property for school purposes; and

WHEREAS, the Musland Family Limited Liability Company ("Seller") owns property ("Musland Property") legally described on Exhibit A of the Earnest Money Receipt and Agreement attached hereto as Attachment 1 and incorporated herein by this reference ("Agreement"), which Musland Property appears suitable for the District's use for such purposes; and

WHEREAS, the District's Associate Superintendent Finance and Operations and the Seller have executed the Agreement, for the Board's approval, for the District to purchase the Musland Property, subject to and in accordance with the terms of the Agreement; and

WHEREAS, the Board desires to acquire the Musland Property, but only if it is free of hazardous and dangerous materials and wastes, the District will acquire adequate title, the property (after investigation) is otherwise suitable for the District's use, and the financial terms of the Agreement (upon review of a professionally designated real estate appraisal (as defined in RCW 74.46.020)) are consistent with applicable law;

NOW, THEREFORE, BE IT RESOLVED that the actions of the District's Superintendent, Carol Whitehead (and her authorized designees), in negotiating and executing the Agreement are hereby ratified, affirmed and approved;

AND FURTHER RESOLVED that the District should acquire the Musland Property, subject to and in accordance with the terms of the Agreement, provided that the following conditions, at a minimum, are satisfied:

(a) the Musland Property shall have been professionally inspected for hazardous and dangerous materials and wastes, and the District shall not purchase the Musland Property unless the Musland Property is free of such materials and wastes; provided that the District, in the District's determination in its sole discretion, may, but shall not be obligated to, accept materials and wastes typically found in older structures such as those on the Musland Property as long as such materials and wastes may be disposed of during building demolition completely, legally, safely, and for a cost which is not inconsistent with the District's experience with demolition projects generally;

(b) the District's title to the Musland Property shall be free and clear of all liens and encumbrances except those which are not, in the District's determination in its sole discretion, inconsistent with the District's intended use of the Musland Property, and shall be insurable to meet such standard;

(c) the District shall have obtained (at the District's expense) a market value appraisal of the Musland Property by a professionally-designated real estate appraiser (as defined by RCW 74.46.020), and the District shall have determined, upon review of such appraisal, that the terms and conditions of the Agreement are consistent with applicable law; and

(d) the Seller, as defined in the Agreement, shall comply with the Agreement;

AND FURTHER RESOLVED that the District's Superintendent, Carol Whitehead (or her authorized designees), be, and she hereby is, authorized and directed to purchase the Musland Property subject to and in accordance with the terms of this resolution on behalf of the District and take such other and further actions as may be necessary or appropriate to accomplish the purchase.

ADOPTED this 4th day of November, 2003.

EVERETT SCHOOL DISTRICT NO. 2  
a political subdivision of the State of  
Washington

By Karen Madsen  
Karen Madsen, President

By Kristie Dutton, Vice-President

By Roy Yates, Member

By Paul Roberts, Member

By Sue Cooper, Member

ATTEST:

By Carol Whitehead  
Carol Whitehead, Ed.D.  
Secretary for the Board

# ATTACHMENT 1

## EARNEST MONEY RECEIPT AND AGREEMENT FOR REAL PROPERTY

Everett, Washington

Sept 4, 2003

EVERETT SCHOOL DISTRICT NO. 2, a political subdivision of the State of Washington ("Purchaser"), hereby agrees to purchase, and the Musland Family Limited Liability Company ("Seller"), hereby agrees to sell, the real estate located in Everett, Washington, more particularly described on EXHIBIT A attached hereto and incorporated herein by this reference ("Premises").

### AGREEMENT

In consideration of the foregoing and the performance of the mutual covenants herein contained, Seller and Purchaser agree as follows:

#### 1. Earnest Money

Purchaser will deposit a refundable earnest money note in the form of EXHIBIT B attached hereto ("Note") with BayTown Escrow, Inc. ("Escrow Company") in the amount of Fifty Thousand and No/100 (\$50,000.00) within seven (7) days of Purchaser's approval of the condition of title pursuant to Section 2 below. Upon satisfaction or waiver of the Contingencies listed in Paragraph 16, the Note shall be paid and the earnest money shall become nonrefundable absent a default by Seller. Any interest earned on the earnest money shall be credited against the Purchase Price or returned to Purchaser, as the case may be.

#### 2. Title

(a) Seller agrees to furnish and deliver, as soon as procurable, a preliminary commitment for title insurance ("Preliminary Commitment"), issued by a title insurance company chosen by Purchaser at Purchaser's sole discretion ("Title Company"). Title insurance shall insure that, at closing, the Premises is free of encumbrances or defects, except "Permitted Exceptions," herein defined as (i) non-delinquent taxes and (ii) such other exceptions as are approved by Purchaser pursuant to subsection (b) of this Section.

(b) Purchaser shall give written notice to Seller of any defects or encumbrances in Seller's title, other than non-delinquent taxes, to which Purchaser objects. Such notice will be given within thirty (30) days following Seller's delivery

of the Preliminary Commitment described above to Purchaser, or all objections to defects and encumbrances shall be deemed waived. Seller shall have the option of curing such defects and encumbrances to which Purchaser objects prior to closing and shall give Purchaser written notice of its intent to do so, or not do so, ten (10) days after Seller's receipt of Purchaser's notice of title objections. In the event Seller elects not to cure such defects or encumbrances, Purchaser must elect to accept such defects or encumbrances in Seller's title as Seller declines to cure (which defects shall thereafter be deemed Permitted Exceptions) or, alternatively, elect to terminate this Earnest Money Receipt and Agreement for Real Property ("Agreement") within thirty (30) days after receipt of Seller's notice of its election regarding defects and encumbrances. In the event Purchaser so elects to terminate this Agreement, Escrow Agent shall disburse the Note or the earnest money to Purchaser, and any and all rights or obligations of Seller and Purchaser under this Agreement shall terminate and be of no further force or effect, except as otherwise provided herein.

(c) Seller shall instruct Title Company to deliver to Purchaser as soon as practicable after closing, an owner's ALTA extended coverage policy of title insurance, insuring Purchaser's fee simple title to the Premises in the face amount of the purchase price containing no exceptions other than the form printed exceptions and the Permitted Exceptions ("Title Policy"), and containing such other endorsements as may be requested by Purchaser; provided, however, Purchaser shall determine the availability of such endorsements, and elect whether or not to proceed with this transaction based upon such availability, on or before the expiration of the period provided for determination of Permitted Exceptions in 2(b), above. Seller shall pay the cost of an owner's ALTA standard coverage policy of title insurance. Purchaser shall pay the additional cost of the owner's ALTA extended coverage policy of title insurance, the cost of any endorsements required by Purchaser and the cost of the survey of the Premises. In addition, Purchaser may require the Title Company to increase the amount of the Title Policy, at Purchaser's sole cost and expense and at a premium not greater than the Title Company's standard rates therefor, to reflect the value of improvements placed upon the Premises by Purchaser after the closing date.

### **3. Personal Property**

The following Personal Property shall be included with the sale of the Premises:

- (a) Large air compressor
- (b) Large bridge crane (5-Ton capacity)
- (c) All small jig boom cranes

Seller represents that the above listed personal property has no value to Seller.

#### **4. Purchase Price**

The total purchase price for the Premises is Two Million Four Hundred Twelve Thousand Five Hundred and No/100 Dollars (\$2,412,500.00) of which the earnest money and Extension Money, if any, are a part. The purchase price, including earnest money and Extension Money, if any, shall be paid to Seller in cash through escrow.

#### **5. Tenants**

Seller represents that certain portions of the Premises are currently being leased or subleased to certain tenants ("Tenants") and subtenants ("Subtenants") under leases between Seller, as landlord, and Tenants ("Leases"), and under subleases between Tenants and Subtenants ("Subleases"), as set forth on EXHIBIT C. Seller shall deliver to Purchaser full, true and correct copies of the Leases and Subleases within fifteen (15) days of the date of this Agreement. Seller warrants that the Leases and Subleases are currently in full force and effect, no event of default on the part of the Tenants or Subtenants having been declared, except for the Lease with RSI. Seller represents that RSI is in default as a result of non-payment of rent as of the date of this Agreement, and warrants that Seller will evict RSI before closing if RSI continues to be in default. To the best of Seller's knowledge, information and belief, no act or omission which, with the passage of time or the giving of notice, or both, would constitute such an event of default has occurred and is continuing under the Leases or Subleases, with the exception of the Lease with RSI. Seller further represents that no Tenant has prepaid more than one month's rent under the Leases. Seller warrants that the Leases may be assigned to Purchaser upon closing. Seller shall deliver any deposits and sums for last month's rent, paid by Lessees to Seller under the Leases, to Escrow Company for transfer to Purchaser upon closing. Seller shall not, without Purchaser's consent, in Purchaser's sole discretion, enter into any new lease which affects the Property, extend the term of any of the Leases, or permit the extension of any Sublease term. Notwithstanding the generality of the foregoing, Seller shall be permitted to convert any of the Leases or approve of the conversion of any Sublease to a month-to-month tenancy or subtenancy. Before the end of the Due Diligence Period, and also upon closing, Seller shall deliver to Purchaser estoppel certificates from each of the Tenants in the form of EXHIBIT D.

#### **6. Conveyance of Title**

Seller shall convey good and merchantable title to Purchaser at closing by statutory warranty deed, subject only to matters specified in Section 2 hereof.

## **7. Risk of Loss**

Seller shall deliver the Premises to Purchaser at closing in the same condition existing as of the date hereof. Risk of loss of or damage to the Premises shall be borne by Seller until the date of closing. Thereafter, Purchaser shall bear the risk of loss. In the event of loss of or damage to the Premises, or a portion thereof, prior to the date upon which Purchaser assumes the risk, Purchaser may terminate this Agreement and the earnest money shall be refunded; provided, however, that Purchaser shall not terminate this Agreement if Seller agrees in writing to restore the Premises substantially to the present condition by the date of closing. Notwithstanding Purchaser's right to terminate this Agreement in the event of loss of or damage to all or a portion of the Premises, Purchaser may elect to purchase the Premises in the condition existing on the date of closing, and the purchase price shall be reduced by an amount equal to the proceeds paid or payable under any policies of insurance carried by Seller.

## **8. Condemnation**

In the event that the Premises are or become the subject of a condemnation proceeding, Purchaser shall have the right, at Purchaser's option, to terminate this Agreement by giving written notice thereof to Seller on or before the date fixed for closing, in which event Purchaser's obligations hereunder shall be null and void and of no further effect and Purchaser's earnest money deposit shall be returned to Purchaser. If Purchaser does not so terminate this Agreement, the purchase price for the Premises shall be reduced by the total of any awards or other proceeds received by Seller at or prior to closing with respect to any taking and at closing Seller shall assign to Purchaser all rights of Seller in and to any awards or other proceeds payable by reason of any taking. Seller agrees to notify Purchaser of eminent domain proceedings within five (5) days after Seller learns thereof.

## **9. Possession**

Purchaser shall be entitled to possession on closing.

## **10. Broker/Commissions**

Each party represents to the other that it has engaged no broker or agent in connection with the negotiations leading to this Agreement. If any claims for brokerage commissions or finder's fees or like payments arise out of or in connection with this transaction, all such claims and costs including reasonable attorney fees shall be defended by, and if sustained, paid by, the party whose alleged actions or commitment form the basis of such claims.

## **11. Closing Agent**

The sale shall be closed in escrow in the office of Escrow Company on a date specified by Purchaser within forty-five (45) days following satisfaction or waiver of the contingencies set forth in Section 16 herein. Purchaser and Seller shall, on demand, deposit in escrow with the closing agent all instruments and monies necessary to complete the sale in accordance with this Agreement.

## **12. Proration of Taxes, etc.**

Taxes for the current year, interest and rents shall be prorated as of closing.

## **13. Closing Costs**

Seller shall pay the following closing costs:

- (a) premium for an owner's ALTA standard coverage policy of title insurance in the face amount of the purchase price;
- (b) State of Washington real estate excise taxes;
- (c) cost of recording the deed;
- (d) one-half of Closing Agent's escrow fee; and
- (e) a commission of four percent (4%) of the purchase price to Puget Sound Properties Commercial Real Estate Services, L.L.C.

Purchaser shall pay the following closing costs:

- (a) the additional premium for an owner's ALTA extended coverage policy of title insurance in the face amount of the purchase price;
- (b) all endorsements to the owner's ALTA extended coverage policy of title insurance;
- (c) survey of the Premises, prepared in accordance with Paragraph 16; and
- (d) one-half of Closing Agent's escrow fee.

## **14. Seller's Representations and Warranties**

Seller represents and warrants to Purchaser that except for those discrepancies listed on the Schedule of Exceptions set forth on Exhibit E (which may be supplemented by Seller and, as supplemented, delivered to Purchaser within five (5)



days of mutual execution of this Agreement (all of which Exceptions Seller shall, at a minimum, bring into compliance with applicable laws prior to Closing)):

(a) The execution and delivery of this Agreement by Seller, and the consummation of the transaction contemplated hereby, has been duly authorized by all necessary action on the part of Seller, and such documents constitute valid and enforceable obligations of Seller legally enforceable in accordance with their terms;

(b) Seller has received no notice from any governmental authority that the Premises, or any part thereof, is in violation of any law or regulation applicable to the Premises, and Seller has no knowledge of any facts which might be a basis for any such notice;

(c) Seller has no knowledge of any obvious or unobvious defects in the Premises or any portion thereof;

(d) All persons and corporations supplying labor, materials, equipment, services or other items to the Premises have been paid, and there are no claims or liens therefor;

(e) No local improvement district assessments, payable in annual installments or otherwise, have been made against the Premises which are unpaid;

(f) There are no actions, suits, claims or legal proceedings or any other proceedings affecting the Premises, at law or equity, before any court or governmental agency;

(g) Seller has no knowledge of any pending changes in real estate taxation with respect to the Premises, including any planned assessments affecting the Premises or changes to the assessed value of the Premises or any pending or threatened condemnation actions with respect to the Premises;

(h) Seller has good, indefeasible, insurable and marketable title to the Premises in fee simple;

(i) Seller has not failed to disclose to Purchaser any material adverse fact or condition affecting Seller or the Premises that would affect the transaction contemplated by this Agreement;

(j) Seller is not in default or breach under any agreement, contract, or other document or matter which affects the Premises;

(k) The Premises and any improvements thereon, to the best of Seller's knowledge, do not materially violate any applicable building or zoning ordinances, and Seller is unaware of any material defect in the Premises or improvements thereon;

(l) Seller has no knowledge of any release(s) of "Hazardous Substances," as defined below, on the Premises during the prior twenty (20) years;

(m) The Premises are free of the presence of Hazardous Substances; the Premises have not at any time been used for the generation, transportation, management, treatment, manufacture, emission, disposal or deposit of any Hazardous Substances or material containing Hazardous Substances; any Hazardous Substances that may have been used on the Premises have been used in compliance with all environmental laws, however and wherever promulgated; and the Premises are in compliance with all environmental laws, however and wherever promulgated;

(n) No Hazardous Substances have been deposited, stored or treated on the Premises by Seller or any of Seller's tenants or agents during Seller's ownership, and Seller is not and has not been a transporter, operator or generator of Hazardous Substances; and

(o) Seller has no knowledge of any underground storage tanks on the Premises, including, without limitation, abandoned or empty tanks or tanks filled with inert substances such as sand.

"Hazardous Substances" means any industrial waste, toxic waste, chemical contaminant or other substance considered hazardous to life, health or property, including, without limitation, any substance designated as hazardous or toxic under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, the Safe Water Drinking Act, 42 U.S.C. § 300F, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, the Hazardous Waste Management Statute, Chapter 70.95 RCW, the Hazardous Waste Fee Statute, Chapter 70.105A RCW, any "mini-superfund" or other statutes enacted by the Washington Legislature, including, without limitation, Chapter 70.105B RCW and any substance defined as hazardous, dangerous or toxic by any governmental authority with jurisdiction over the Premises.

Should any of the foregoing representations or warranties prove to be untrue or inaccurate, Seller hereby agrees, to the fullest extent permitted by applicable law, to release, defend, indemnify and hold harmless Purchaser (and Purchaser's officers, directors, shareholders, agents, employees, and representatives) and their successors and assigns from and against any and all claims, demands, costs, penalties, fees, expenses, harm, injury, damages or liability (including, but not limited to, attorneys' fees) arising directly or indirectly on account of or in connection with the facts and circumstances giving rise to the untruth or inaccuracy of such representations and warranties. These representations and warranties by the Seller shall not merge into the deed, but survive for one (1) year following the closing of this transaction.

#### **15. Assignment of Warranties**

Seller hereby assigns to Purchaser, without recourse to Seller, all builders' and manufacturers' warranties with respect to the Premises, the improvements thereon, and the Personal Property.

#### **16. Contingencies**

The obligations of Purchaser under this Agreement and consummation of Closing are, at Purchaser's option and in its sole and complete discretion, subject to the complete satisfaction or waiver of the contingencies listed below, all as determined by Purchaser in Purchaser's sole discretion ("Contingencies"):

- (a) A professional feasibility study of Purchaser's plans for improvements to the Premises, prepared by Purchaser's experts or consultants, at Purchaser's sole cost, in form and content satisfactory to Purchaser in its sole discretion;
- (b) Final approvals of permitting agencies, not subject to further appeal, for Purchaser to use the Premises as a maintenance and storage facilities for buses and to construct improvements related thereto on the Premises, all on terms and conditions satisfactory to Purchaser, in Purchaser's sole discretion ("Governmental Approvals"). These approvals may include, but are not limited to, a special property use permit, a building permit, a rezoning of the Premises and any required modifications to other existing permits.
- (c) A professional traffic study of the Premises, prepared by Purchaser's experts or consultants, at Purchaser's sole cost, in form and content satisfactory to Purchaser in its sole discretion; ;
- (d) A professional geotechnical inspection of the Premises, prepared by Purchaser's experts or consultants, at Purchaser's sole cost, in form and content satisfactory to Purchaser in its sole discretion;

(e) A professional inspection of the Premises for hazardous and dangerous materials and wastes, prepared by Purchaser's experts or consultants, at Purchaser's sole cost, in form and content satisfactory to Purchaser in its sole discretion;

(f) A professional study and delineation of all wetlands located on or near the Premises, prepared by Purchaser's experts or consultants, at Purchaser's sole cost, in form and content satisfactory to Purchaser in its sole discretion;

(g) The preparation of an ALTA/ACSM survey of the Premises (the "Survey"), prepared by a registered Washington land surveyor, setting forth (i) the legal description of the Premises; (ii) the location of any then existing improvements on the Premises (including without limitation, light standards and utility poles and vaults, curb cuts, driveways, signs, etc.), and all "setback" or building lines and other restrictions in respect thereof that are of record or that have been established by an applicable zoning or building code or ordinance; (iii) the location of all easements and rights-of-way on the Premises, identifying each by a recorded document number; (iv) all encroachments of improvements onto the Premises from adjoining property, and all encroachments of improvements from the Premises onto adjoining property or upon or over any such "setback" or building lines; (v) access to the Premises from a public street or highway; (vi) a vicinity map showing the property surveyed in reference to nearby highways and major street intersections, including any fire hydrants located within three hundred feet of any portion of the Premises boundary; and (vii) flood zone designation (with proper annotation based on Federal Flood Insurance Rate Maps or state or local equivalent by scaled map location and graphic plotting only).

(h) Purchaser's (i) receipt (at Purchaser's expense) of a market value appraisal of the Premises by a professionally designated real estate appraiser (as defined in RCW 74.46.020), to be selected by Purchaser's board of directors; and (ii) determination, upon review of such appraisal, that the terms and conditions of this Agreement are consistent with applicable law;

(i) That at the time of the making and delivery of the deed conveying the Premises to Purchaser, the grantor in said deed shall be lawfully seized of an indefeasible estate in fee simple in and to the Premises therein described, and shall have good right and full power to convey the same; that the Premises shall then be free from all encumbrances, except those approved by Purchaser, that Purchaser, its successors and assigns, shall have and enjoy the quiet and peaceable possession of the Premises; and that Seller will defend the title thereto against all persons who may lawfully claim the same; and

(j) Within forty-five (45) days of the date of this Agreement, the approval of the terms and conditions of this Agreement by the Board of Directors of Everett School District No. 2, in its sole discretion.

## 17. Due Diligence Period

Purchaser shall have ninety (90) days from the date of execution hereof, in order to satisfy or waive the Contingencies ("Due Diligence Period"). Purchaser may extend the Due Diligence Period as follows:

(a) Purchaser may extend the Due Diligence Period for an additional sixty (60) days by paying to Seller, prior to the expiration of the Due Diligence Period, the sum of Fifteen Thousand and No/100 Dollars (\$15,000.00), which shall be non-refundable but applicable to the Purchase Price ("First Extension").

(b) Purchaser may further extend the Due Diligence Period for an additional sixty (60) days by paying to Seller, prior to the expiration of the Due Diligence Period as extended by the First Extension, the sum of Twenty-five Thousand and No/100 Dollars (\$25,000.00), which shall be non-refundable but applicable to the Purchase Price ("Second Extension").

(c) Purchaser may further extend the Due Diligence Period for an additional sixty (60) days by paying to Seller, prior to the expiration of the Due Diligence Period as extended by the Second Extension, the sum of Twenty-five Thousand and No/100 Dollars (\$25,000.00), which shall be non-refundable ~~but~~ *not* applicable to the Purchase Price ("Third Extension").

*SR*  
*DF*  
*AM* Any money paid hereunder for the First Extension, the Second Extension and the Third Extension shall apply toward the Purchase Price, and is non-refundable except as otherwise provided in this Agreement. Purchaser is not entitled to any interest on said Extension Money. If Purchaser does not extend the Due Diligence Period by paying said Extension Money into escrow prior to the expiration of the Due Diligence Period, as it may have been extended, or provide timely written notice that the Contingencies have been met or waived, this Agreement shall terminate. In the event of such termination, Escrow Agent shall disburse any Extension Money (without interest) to Seller and disburse the Note or earnest money to Purchaser, and neither party shall have any further obligation to the other thereafter.

## 18. Development Approvals

Subject to the restrictions set forth in this Agreement, so long as this Agreement remains in effect, Purchaser shall have the exclusive right, in consultation with Seller, to pursue and obtain all necessary approvals for developing the Premises

in such manner as Purchaser shall deem appropriate in its sole discretion. Seller hereby grants to Purchaser the right, as Seller's agent and in Seller's name if so required, to (i) enter into discussions and negotiations regarding the Premises with all governmental authorities having jurisdiction, and (ii) apply for, prosecute, participate in and/or cause to be issued and finally approved any plat, permit, rezoning, change in comprehensive plan designation, development agreement, variance or conditional use request, binding site plan, local improvement district, or other approval which may be required incident to Purchaser's planned development. Seller shall cooperate with Purchaser in all respects in connection with obtaining all Governmental Approvals, which cooperation shall include, without limitation, the giving of written or oral testimony supportive of Purchaser's contemplated development of the Premises at any governmental proceeding, and execution and delivery of any applications, agreements, approvals, licenses, plans, permits and other instruments and assurances as may be required by Purchaser. Notwithstanding anything herein to the contrary, unless or until Purchaser gives notice that the Contingencies have been satisfied or waived, Purchaser shall not, without Seller's prior written consent, irrevocably commit the Property to any rezone, dedication, change of comprehensive plan designation, or development agreement that would result in any improvement on the Property becoming a non-conforming use or reduce the uses that may be made of the Property, nor commit Seller or the Property to participate in (or agree not to protest) any local improvement district, or to any other binding contractual, financial or property use restriction or obligation that would bind the Property if Purchaser did not close the transaction. However, nothing in this Agreement shall (or shall be deemed to) restrict Purchaser's ability to advocate changes to laws, codes or ordinances of general applicability (including without limitation textual change to applicable zoning codes that may, if enacted, authorize or facilitate Purchaser's intended use of the Property).

## **19. Default**

Time is of the essence of this Agreement. In the event Purchaser fails, without legal excuse, to complete the purchase of the Premises, the Earnest Money shall be forfeited to Seller as the sole and exclusive remedy available to Seller for such failure. If Seller fails to perform any covenant or agreement that Seller is obligated to perform under this Agreement and such failure continues for fifteen (15) days following written notice of such failure by Purchaser, the Purchaser may elect to (a) recover damages or (b) specifically enforce this Agreement. In the event of any litigation between the parties under this Agreement (including, without limitation, litigation concerning entitlement to the Note or earnest money), the prevailing party shall be entitled to reasonable attorneys' fees and court costs through all trial and appellate levels. The provisions of this paragraph shall survive the closing and any termination of this Agreement.

## **20. Nonmerger**

The provisions of this Agreement shall not be deemed merged into the deed but shall survive the closing and continue in full force and effect.

## **21. Notices**

All notices required or permitted to be given hereunder shall be in writing and shall be personally delivered or sent by U.S. certified mail, return receipt requested, addressed as set forth below:

- (a) All notices to be given to Seller shall be addressed as follows:

Musland Family Limited Liability Company  
P. O. Box 1509  
Edmonds, WA 98020

- (b) All notices to be given to Purchaser shall be addressed as follows:

Everett School District No. 2  
P.O. Box 2098  
4730 Colby Avenue  
Everett, WA 98203  
Attn: Mike Gunn  
Director of Facilities and Planning

With a copy to:

Perkins Coie, LLP  
The Puget Sound Energy Building  
10885 N.E. 4th Street, Suite 700  
Bellevue, WA 98004  
Attn: R. Gerard Lutz

Either party hereto may by proper notice to the other designate such other address for the giving of notices as deemed necessary. All notices shall be deemed given on the day such notice is personally served or on the third day following the day such notice is mailed in accordance with this section.

## **22. Governing Law**

This Agreement shall be construed according to the laws of the State of Washington.

### **23. Negotiation and Construction**

This Agreement and each of the terms and provisions hereof are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either party.

### **24. Cooperation in Connection with Section 1031 Exchange**

If Seller intends for this transaction to be part of a like-kind exchange, pursuant to Internal Revenue Code Section 1031, Purchaser shall cooperate in the completion of the like-kind exchange; provided that the additional costs or expenses of Purchaser on account of such cooperation shall be the responsibility of and paid by Seller (including reasonable attorneys and accountants fees which the Purchaser may incur in connection with professional advice incident to such exchange). Such additional costs and expenses shall be paid for or reimbursed to Purchaser prior to closing.

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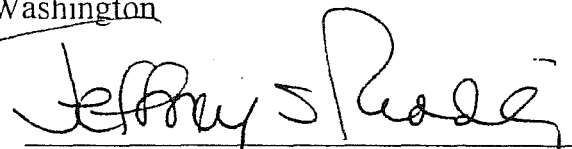


IN WITNESS WHEREOF the parties have executed this Agreement as of the date above set forth.

**Purchaser:**

EVERETT SCHOOL DISTRICT NO. 2,  
a political subdivision of the State  
of Washington

By

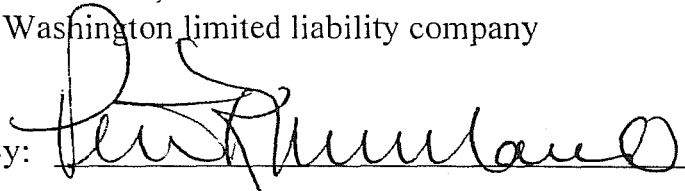
  
Jeffrey S. Riddle, Associate Superintendent,  
Finance and Operations

The undersigned Seller on this 17<sup>th</sup> day of September, 2003, hereby approves and accepts the offer set forth and agrees to carry out all terms thereof on the part of the Seller.

**Seller:**

MUSLAND FAMILY LIMITED LIABILITY  
COMPANY,  
a Washington limited liability company

By:



Its:

MEMBER

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF SNOHOMISH    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2003, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared CAROL A. WHITEHEAD, to me known to be the person who signed as Superintendent of EVERETT SCHOOL DISTRICT NO. 2, the political subdivision that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said political subdivision for the uses and purposes therein mentioned, and on oath stated that she was duly elected, qualified and acting as said officer of the political subdivision, that she was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said political subdivision.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public in and for the State of Washington,  
residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF SNOHOMISH    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2003, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the person who signed as \_\_\_\_\_ of the MUSLAND FAMILY LIMITED LIABILITY COMPANY, the company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that he was duly elected, qualified and acting as said officer of the company, that he was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public in and for the State of Washington,  
residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

## EXHIBIT A

### LEGAL DESCRIPTION OF PREMISES

That portion of Lot 19, Beverly Berry Tracts, Division No. 2, according to the plat thereof recorded in Volume 10 of Plats, page 20, records of Snohomish County, Washington; lying Northerly of State Highway SR 526; AND EXCEPT the North 30 feet thereof as condemned by the State of Washington under Snohomish County Superior Court Cause No. 92881, AND;

the following described real estate in the County of Snohomish, State of Washington, together with all after acquired title of the grantor(s) therein:

#### PARCEL A:

Lot 18, Beverly Berry Tracts, Division No. 2, according to the plat thereof recorded in Volume 10 of Plats, page 20, records of the Auditor of the County of Snohomish, State of Washington.

EXCEPT the south 630 Feet thereof.

AND EXCEPT that portion deeded to the State of Washington under Auditor's File No. 2008793.

#### PARCEL B:

That portion, if any, of the South 630 feet of Lot 18, Beverly Berry Tracts, Division No. 2, according to the plat thereof recorded in Volume 10 of Plats, page 20, records of the Auditor of the County of Snohomish, State of Washington, lying North of State Route SR526, as conveyed under Auditor's File No. 2008793.

**EXHIBIT B**

**EARNEST MONEY NOTE**

\$50,000.00

Everett, Washington  
\_\_\_\_\_, 2003

FOR VALUE RECEIVED, the undersigned promises to pay to BayTown Escrow, Inc. for the account of the Musland Family Limited Liability Company, the sum of Fifty Thousand and No/100 Dollars (\$50,000.00) with no interest thereon, payable as follows:

Upon demand, seven (7) days after the undersigned's satisfaction with or waiver of the contingencies set forth in that certain Earnest Money Receipt and Agreement for Real Property dated \_\_\_\_\_, 2003, between the Musland Family Limited Liability Company, as Seller and the undersigned as Purchaser.

This Note shall bear interest at the rate of ten percent (10%) per annum, if not paid seven days after demand as above provided. If this Note shall be placed in the hands of an attorney for collection, or if suit shall be brought to collect any of the principal or interest of this Note, the undersigned promises to pay reasonable attorneys' fees incurred thereby.

EVERETT SCHOOL DISTRICT NO. 2,  
a political subdivision of the  
State of Washington

By \_\_\_\_\_ [Exhibit Only--Do Not Sign]  
Carol A. Whitehead, Superintendent

**EXHIBIT C**  
**LIST OF TENANTS AND SUBTENANTS**

Tenants:

1. Paul Rachev (Eclipse Gear)
2. China Town Trucking, Inc. (d/b/a Norm Burns Trucking Company)
3. Yellow Freight System, Inc.
4. Roofing Services, Inc. (RSI)
5. McLarnan Trucking

Subtenants:

1. Roofing Services, Inc. (RSI), subtenant of China Town Trucking, Inc.

**EXHIBIT D**  
**ESTOPPEL CERTIFICATE**

Property Location: \_\_\_\_\_

Current Lessee: \_\_\_\_\_

Date of Lease: \_\_\_\_\_

The undersigned (whether one or more, referred to jointly and severally as "Lessee") hereby represents and warrants to, and covenants and agrees with, the Lessor named herein below, as follows:

1. The lease (or sublease, as the case may be) described above (the "Lease") is currently in full force and effect, no event of default on the part of the Lessee having been declared. To the best of Lessee's knowledge, information and belief, no act or omission which, with the passage of time or the giving of notice, or both, would constitute such an event of default has occurred and is continuing.
2. Lessee claims no offsets, set-offs, rebates, concessions, abatements, "free" rent or defenses against or with respect to any rent payable under the terms of the Lease but reserves any and all rights Lessee may have to do as provided for by the Lease.
3. The Commencement Date of the term of the Lease is \_\_\_\_\_, \_\_\_\_\_. The date of expiration of the current term is \_\_\_\_\_, 20\_\_\_\_. Lessee has the option to renew the Lease for \_\_\_\_\_ ( ) additional terms of \_\_\_\_\_ ( ) years each.
4. Current rent under the Lease is \$\_\_\_\_\_ per year. All rentals and other sums due under the Lease through \_\_\_\_\_ have been paid in full (except any percentage rentals, tax and insurance reimbursements, or other similar items not currently due and payable).
5. No rent under the Lease has been paid more than one (1) month in advance of its due date, unless said prepayment was required under the Lease.
6. Lessee has delivered to Lessor, and Lessor currently holds, the sum of \$\_\_\_\_\_, which is the deposit and last month's rent delivered to Lessor pursuant to the terms of the Lease.

7. The Lease has not been amended or modified, nor any of its provisions waived.

8. *[Other representations, certifications or warranties which Purchaser may request.]*

IN WITNESS WHEREOF, Lessor has executed this instrument by its or their undersigned duly authorized signatures effective as of the \_\_\_\_ day of \_\_\_\_\_, 2003.

<b>LESSOR:</b>  MUSLAND FAMILY LIMITED LIABILITY COMPANY, a Washington limited liability company  By: _____ _____ Its: _____  Date: _____	<b>LESSEE:</b>    By: _____ _____ Its: _____  Date: _____
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## **EXHIBIT E**

### **Schedule of Exceptions**

**(Note: Seller may supplement this Schedule by document delivered to Purchaser within five (5) days of mutual execution of this Agreement)**

1. Light pole located in the parking lot has been disconnected and removed. Appurtenant electrical connections have been buried in the electrical vault located at the site at which the light pole was previously located.
2. Openings in the building on the Premises have been cut out of the side of the building. Everett Fire Department has notified Seller that the openings must be sealed up or a fire door must be placed in the openings.