



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

May 16, 2000

Ordinance 13854

Proposed No. 2000-0246.2

Sponsors Phillips and McKenna

1 AN ORDINANCE authorizing the Executive to enter into a
2 settlement agreement resolving litigation regarding the
3 Torrance property.
4
5

6 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

7 SECTION 1. The King County Executive is hereby authorized to execute an
8 agreement in settlement of litigation regarding the Torrance property under King County
9 Superior Court Cause Number 96-2-21755-1 SEA in a form and according to terms

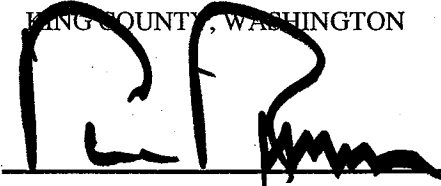
10 substantially similar to Attachment A.

11

Ordinance 13854 was introduced on 4/10/00 and passed by the Metropolitan King County Council on 5/15/00, by the following vote:

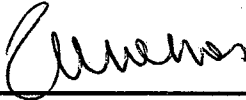
Yes: 13 - Mr. von Reichbauer, Ms. Miller, Ms. Fimia, Mr. Phillips, Mr. Pelz, Mr. McKenna, Ms. Sullivan, Mr. Nickels, Mr. Pullen, Mr. Gossett, Ms. Hague, Mr. Vance and Mr. Irons
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



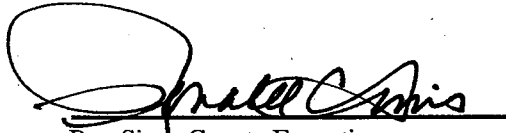
Pete von Reichbauer, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 23 day of May, 2000.



Ron Sims, County Executive

Attachments A. Settlement Agreement revised 05-05-00

SETTLEMENT AGREEMENT
[REVISED 5/5/00]

WHEREAS, John R. Torrance and William S. Torrance, individually and as Trustee of the William S. Torrance Living Trust, (hereinafter collectively "Torrance"), have brought suit against King County, a subdivision of the State of Washington, under King County Superior Court cause number 96-2-21755-1 SEA ("the Lawsuit"), alleging regulatory taking, substantive and procedural due process, and RCW 64.40 claims related to two parcels of real property owned by Torrance identified by tax parcel numbers 000680-0023-0 (Parcel A) and 000680-0021-02 (Parcel B), more fully described on Exhibit A to this Settlement Agreement, attached hereto and incorporated herein by this reference (hereinafter the "subject property");

WHEREAS, King County has denied liability as to each of these claims;

WHEREAS, Torrance and King County, recognizing the inherent delay, cost, and uncertainty of litigation, wish to fully and finally resolve all claims Torrance may have against King County, including, without limitation, those asserted in the Lawsuit; and

WHEREAS, the King County Council has authorized the Executive to enter into a settlement agreement resolving the Lawsuit pursuant to Ordinance No. _____;

NOW, THEREFORE, for and in consideration of the mutual promises and conditions set forth in this Settlement Agreement (the "Settlement Agreement"), the parties agree as follows:

- 1. Total Compensation and Payment Schedule.** King County will pay Torrance a total of three million dollars (\$3,000,000.00). The payment will be paid in two installments. The first installment payment in the amount of \$1,500,000.00 will be paid into escrow pursuant to Paragraph 9.2 of the Real Estate Purchase and Sale Agreement (the "Purchase and Sale Agreement"), attached hereto as Exhibit B and incorporated herein by this reference, no later than fourteen (14) days following approval of this Settlement Agreement by the King County Council or seven (7) days following execution by all signatories, whichever is later. If all non-County signatures have been duly executed, the County's first installment payment shall be paid into escrow no later than June 1, 2000. The second installment payment in the amount of \$1,500,000.00 will be paid no later than January 31, 2001.
- 2. Property Conveyance.** Torrance will convey clear title to both tax parcels comprising the subject property to King County pursuant to the terms of the Purchase and Sale Agreement. The parties agree that Torrance will convey clear title to the subject property by way of a Statutory Warranty Deed and will provide evidence acceptable to the County of the satisfaction of any outstanding financial obligations secured by the property or for which the property has been used as collateral.

3. **Allocation of Funds and Appraisal of Subject Property.** The parties agree that King County will at its discretion allocate the sums payable in paragraph 1 of this Settlement Agreement between acquisition of the subject property and resolution of the litigation. The parties further understand and agree that King County will conduct an appraisal of the subject property for purposes of allocating funds.
4. **Acceptance of Gift Donation of Difference in Fair Market Values.** The parties recognize and acknowledge that they disagree about the fair market value of the subject property. The parties further understand and agree that the acquisition price of the property will be determined by King County as set forth in Paragraph 3 of this Settlement Agreement. However, in recognition of the parties' disagreement regarding the fair market value of the subject property, and in no way modifying the purchase price as allocated by King County pursuant to Paragraph 3 of this Settlement Agreement, King County will accept as a gift the difference between Torrance's fair market valuation of the subject property and the County's fair market valuation of the subject property.
5. **Dismissal of Lawsuit with Prejudice.** Upon execution of this Settlement Agreement by all parties and approval of this Settlement Agreement by the King County Council, the parties shall cause their attorneys to execute a Stipulation and Order of Dismissal of the Lawsuit in the form attached hereto as Exhibit C (the "Order of Dismissal"). The parties hereby waive any right to appeal from the Order of Dismissal. As reflected in the Order of Dismissal, the parties agree that dismissal of the Lawsuit will be with prejudice and without costs or attorneys' fees to any party.
6. **Stay of Court Dates.** The parties agree that all Court dates are stayed pending the King County Council's approval of this Settlement Agreement.
7. **No Admission of Liability.** The parties understand and agree that this Settlement Agreement is a compromise resolution and constitutes the settlement of disputed claims. The parties further understand and agree that neither this Settlement Agreement nor performance under the terms of this Settlement Agreement is, or shall be construed as, an admission of liability, an admission as to the existence or extent of any damages and/or losses allegedly suffered by any party, or an admission for any other purpose.
8. **Release.** Torrance, and their marital communities, heirs, executors, administrators and assigns, hereby releases, acquits, promises not to sue, and forever discharges King County, and its officers, officials, directors, employees, representatives and agents, from any and all causes of action, claims, damages, liabilities, attorneys' fees, costs, and demands of any nature whatsoever, whether known or unknown, relating to the allegations and/or claims which were or could have been made in the Lawsuit.

- 9. Authority to Bind.** William S. Torrance, in executing this Settlement Agreement and the Purchase and Sale Agreement, acknowledges and represents that he has authority to bind the William S. Torrance Living Trust as Trustee of the William S. Torrance Living Trust. John R. Torrance and William S. Torrance further acknowledge and represent that they are competent and of lawful age, have been fully advised by legal counsel in connection with the execution of this Settlement Agreement and the Purchase and Sale Agreement, and that they do so voluntarily.
- 10. Governing Law; Venue.** This Settlement Agreement and the Purchase and Sale Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The venue of any action under either Agreement shall be King County, Washington.
- 11. Entire Agreement.** This Settlement Agreement, together with the Real Estate Purchase and Sale Agreement set forth at Exhibit B and incorporated herein by reference, constitutes the entire understanding between the parties and supersedes all prior or contemporaneous understandings and representations. No modification of this Settlement Agreement or the Purchase and Sale Agreement shall be effective unless agreed in writing and signed by all parties. The parties to this Settlement Agreement and to the Purchase and Sale Agreement shall be deemed to have cooperated in the drafting and preparation of both Agreements. As such, any construction to be made of either Agreement shall not be construed against any party.

KING COUNTY

TORRANCE

BY: _____
STEPHANIE WARDEN
Director
Office of Regional Policy and Planning

BY: _____
JOHN R. TORRANCE
By and for himself individually

DATED: _____

DATED: _____

BY: _____
WILLIAM S. TORRANCE
By and for himself individually, and for
the William S. Torrance Living Trust as
Trustee of the William S. Torrance
Living Trust

DATED: _____

APPROVED AS TO FORM:

NORM MALENG
King County Prosecuting Attorney

GRAHAM & DUNN, P.C.

BY: _____
CHERYL D. CARLSON, WSBA #19844
Senior Deputy Prosecuting Attorney
Attorneys for Defendant King County

BY: _____
ELAINE L. SPENCER, WSBA #6963
Attorneys for Plaintiffs John R. Torrance
and William S. Torrance, individually
and as Trustee of the William S.
Torrance Living Trust

DATED: _____

DATED: _____

EXHIBIT A

LEGAL DESCRIPTION OF SUBJECT PROPERTY

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LEGAL DESCRIPTION OF SUBJECT PROPERTY

PARCEL A:

That portion of the John M. Thomas Donation Land Claim Number 42, Sections 25 and 36, Township 22 North, Range 4 East, W.M., in King County, Washington, described as follows:

From the southeast corner of said Donation Claim running north 0°09'20" west along the east boundary line thereof 1,696.22 feet;
thence south 88°47'30" west 18.60 feet to the west line of State Highway Number 5 and the true point of beginning;
thence continuing south 88°47'30" west 639.50 feet to the east line of the Northern Pacific Railroad Company right-of-way;
thence north 0°09'20" west along said right-of-way line 992.41 feet to the south bank of the Green River;
thence south 78°29' east along the bank of Green River 418.41 feet;
thence north 81°45'30" east 231.94 feet to the west line of State Highway Number 5;
thence south 0°09'20" east along said highway line 928.65 feet to the true point of beginning.

PARCEL B:

A portion of the J.M. Thomas Donation Claim Number 42, in Sections 25 and 36, Township 22 North, Range 4 East, W.M. in King County, Washington, described as follows:

Beginning at the southeast corner of the said Donation Claim running north 0°09'20" west along the east boundary line thereof 891 feet;
thence north 89°47'30" west 18.60 feet to the west line of State Highway Number 5 and the true point of beginning;
thence continuing north 89°47'30" west 639.41 feet to the east line of the Northern Pacific Railroad right-of-way;
thence north 0°09'20" along said right-of-way line 788.99 feet;
thence north 88°47'30" east 639.50 feet to the west line of said State Highway;
thence south 0°09'20" east along the highway line 804.76 feet to the true point of beginning.

EXHIBIT B

REAL ESTATE PURCHASE AND SALE AGREEMENT

EXHIBIT B**REAL ESTATE PURCHASE AND SALE AGREEMENT**

This Real Estate Purchase and Sale Agreement (the "Purchase and Sale Agreement") is made as of the date this instrument is fully executed by and between JOHN R. TORRANCE and WILLIAM S. TORRANCE, individually and as Trustee of the William S. Torrance Living Trust, (hereinafter collectively "Seller"), and KING COUNTY ("Buyer"), for purchase and sale of that certain property situated in King County, Washington, described on Exhibit "A" to this Purchase and Sale Agreement, attached hereto and incorporated herein by this reference, and all rights appurtenant (the "Property").

This Purchase and Sale Agreement is entered into by the parties in consideration of the execution and entry of the Settlement Agreement, subject to the conditions described below in Section 1 and the promises and mutual covenants contained herein, and other valuable consideration, receipt and sufficiency of which are hereby acknowledged.

1. **SETTLEMENT AGREEMENT:** This Purchase and Sale Agreement is executed by Buyer and Seller in accordance with the terms of the Settlement Agreement between the parties executed concurrently with this Purchase and Sale Agreement. The Settlement Agreement is incorporated by reference herein. Buyer's obligation to purchase the Property is contingent upon Seller's execution of such Settlement Agreement, this Purchase and Sale Agreement, and Seller's compliance with the terms of both Agreements. If Seller refuses to execute the Settlement Agreement, this Purchase and Sale Agreement, or violates any of the terms of either Agreement, then all of Buyer's obligations under this Purchase and Sale Agreement shall terminate. Buyer's obligations under this Purchase and Sale Agreement are also contingent on approval of the Settlement Agreement by the King County Council.
2. **PROPERTY TO BE SOLD:** Subject to and upon the terms and conditions set forth in this Agreement, Seller shall sell, convey, transfer and deliver to Buyer on the Closing Date (hereinafter defined) and buyer shall buy, assume and accept from Seller on the Closing Date the following assets and properties (the "Purchased Assets"):
 - (a) All of Seller's right, title and interest in the Property described in Exhibit A;
 - (b) All of Seller's right, title and interest in improvements and structures located on the Property, if any;
 - (c) All of Seller's right, title and interest in and to tangible personal property, if any, owned by the Seller and attached or appurtenant to or used in connection with the Property ("Personal Property");

(d) All of Seller's tenements, hereditaments, easements and rights appurtenant to the Property, if any, including but not limited to, all of the Seller's right, title and interest in and to streets, alleys or other public ways adjacent to the Property, easements for public utilities; all sewers and service drainage easements; all rights of connection to sewers; all rights of ingress and egress; and all leases, licenses, government approvals and permits affecting the Property.

3. PURCHASE PRICE: The total purchase price for the Property is One Million Five Hundred Thousand and No/100 Dollars (US \$1,500,000.00) ("Purchase Price"). The Purchase Price is payable according to the terms set forth in the Settlement Agreement as well as Paragraph 9.2 of this Purchase and Sale Agreement. Seller and Buyer agree that the entire Purchase Price is allocable to real property and that the value of Personal Property, if any, is *de minimus*.

4. TITLE:

4.1 Deed: At closing, Seller will execute and deliver to Buyer a Statutory Warranty Deed conveying and warranting good and marketable title to the Property free and clear of all defects or encumbrances except for the lien of real estate taxes and drainage service charges not yet due and payable and those defects and/or encumbrances identified on Exhibit "B" to this Purchase and Sale Agreement (collectively, "Permitted Exceptions") attached hereto and incorporated herein by this reference. Monetary encumbrances not assumed by Buyer shall be paid by Seller on or before closing.

4.2 Title Insurance: It is Buyer's responsibility to obtain (at Buyer's expense) an owner's Standard ALTA policy of title insurance, dated as of the closing date and insuring Buyer in the amount of the Purchase Price against loss or damage by reason of defect in Buyer's title to the Property subject only to the printed exclusions appearing in the policy form and any Permitted Exceptions.

5. AGENCY/BROKER FEES: Each party represents to the other that no broker or agent has been involved in this sale. If any claims for brokerage or agent commissions, finder's fees, or like payment arise out of or in connection with the sale as provided herein, each such claim shall be handled and paid by the party through whom such claim is made, and such party agrees to indemnify and hold harmless the other party from and against any and all costs, losses, damages, or expenses (including reasonable attorneys' fees and court costs, whether incurred in arbitration, or at the trial, appellate or administrative levels), incurred by the non-indemnifying party with respect to such claims.

6. SURVIVAL OF WARRANTIES: All written warranties, representations, covenants, obligations and agreements contained in or arising out of this Purchase and Sale Agreement shall not merge in the deed of conveyance, but shall survive the Closing

and the transfer and conveyance of the Property thereunder and any and all performance thereunder.

7. RISK OF LOSS: Seller will bear the risk of loss of or damage to the Property prior to closing. In the event of such loss or damage to the Property, Seller shall promptly notify Buyer thereof and Buyer may, in its sole discretion, terminate this Agreement by giving notice of termination to the Seller.

8. SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS: Seller represents, warrants and covenants to the Buyer at the date of execution of this Purchase and Sale Agreement and the date of closing that:

8.1 Authority: Seller, and the person(s) signing on behalf of Seller, has full power and authority to execute this Agreement and perform Seller's obligations, and if Seller is a corporation, all necessary corporate action to authorize this transaction has been taken.

8.2 No Leases: The Property is not subject to any leases, tenancies or rights of persons in possession.

8.3 No Material Defect: Seller is unaware of any material defect in the property.

8.4 Hazardous Materials Disclosure: Seller warrants that they have not placed, stored, dumped, discharged, etc., any toxic or hazardous waste on this Property, and that they have never allowed, nor have any knowledge of any toxic or hazardous materials or waste produced, stored, or discharged from this Property. Seller covenants and agrees to indemnify and hold Buyer harmless from any and all claims and/or liability associated with any toxic or hazardous waste or material produced, stored or discharged on the Property of which the Seller had knowledge, or reasonably should have had knowledge.

8.5 Indemnification: Seller agrees to indemnify, defend, and hold harmless Buyer, its employees, agents, heirs and assigns, from and against any and all damage, claim liability, or loss, including reasonable attorneys' and other fees, arising out of or in any way connected to the breach of any representation or warranty contained herein. Such duty of indemnification shall include, but not be limited to damage, liability, or loss pursuant to all federal environmental laws, Washington State environmental laws, strict liability and common law.

9. CLOSING:

9.1 Time for Closing: The sale will be closed in the office of the Closing Agent not later than fifteen (15) work days from the date the first installment payment referenced in Paragraph 2 of the Settlement Agreement has been paid into escrow, or as soon thereafter as practicable.

9.2 Escrow: Buyer and Seller shall deposit in escrow with the Closing Agent all instruments, documents and monies necessary to complete the sale in accordance with this Purchase and Sale Agreement. As used in this Purchase and Sale Agreement, "closing" and "date of closing" means the date on which all necessary and appropriate documents are recorded and proceeds of the sale are available for disbursement to Seller. The Closing Agent shall be Pacific Northwest Title Insurance Company of Washington, Inc.

9.3 Prorations; Closing Costs: Seller will pay real estate excise taxes (if any are due) and real property taxes prorated through the date of closing. Buyer will pay the premium for its owners title insurance policy, the cost of recording the Statutory Warranty Deed from the Seller, and the Closing Agent's escrow fees.

9.4 Possession: Buyer shall be entitled to possession of the Property at closing.

10. WASTE; ALTERATION OF PROPERTY: From the date hereof, Seller shall not commit waste on the Property, nor shall Seller remove trees or other vegetation, coal, minerals or other valuable materials nor shall Seller substantially alter the surface or subsurface of the Property without the express written consent of Buyer.

11. NOTICES: Any notices required herein shall be given to the parties at the addresses listed below:

If to Buyer: King County
 c/o Prosecuting Attorney's Office, Civil Division
 ATTN: Cheryl D. Carlson, Senior Deputy Prosecuting Attorney
 E550 King County Courthouse
 Seattle, WA 98104-2312
 Telephone: (206) 296-9015
 Facsimile: (206) 296-0191

If to Seller: Mr. John R. Torrance
 c/o Elaine L. Spencer, Esq.
 GRAHAM & DUNN
 1420 Fifth Avenue, 33rd Floor
 Seattle, WA 98101-2390
 Telephone: (206) 624-8300
 Facsimile: (206) 340-9599

EXHIBITS: EXHIBIT A, Legal Description of Subject Property

EXHIBIT A
(To Real Estate Purchase and Sale Agreement)

LEGAL DESCRIPTION OF SUBJECT PROPERTY

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(To Real Estate Purchase and Sale Agreement)

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EXHIBIT B
(To Real Estate Purchase and Sale Agreement)

PERMITTED EXCEPTIONS/TITLE REPORT

EXHIBIT B
(To Real Estate Purchase and Sale Agreement)

PERMITTED EXCEPTIONS/TITLE REPORT

Those special exceptions listed on PACIFIC NORTHWEST TITLE INSURANCE COMPANY Title Report Order Number 37054 dated January 8, 1999, and any supplements thereto, including Supplemental Title Report Number 1, dated February 2, 1999, and Supplemental Title Report Number 2, dated February 2, 2000, which Title Report and Supplements are incorporated into this Purchase and Sale Agreement by this reference.

Buyer agrees to accept title subject to Paragraphs 1 through 10 set forth on Schedule B of the Title Report Numbered 37054.

Any and all remaining encumbrances not accepted by Buyer herein by designation as permitted exceptions shall be removed by Seller prior to closing.

EXHIBIT C

STIPULATION AND ORDER OF DISMISSAL

THE HONORABLE SHARON S. ARMSTRONG

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

JOHN R. TORRANCE and WILLIAM TORRANCE,)	
individually and as Trustee of the William S. Torrance Living)	
Trust,)	No. 96-2-21775-1 SEA
)	
)	
Plaintiffs,)	
)	STIPULATION AND ORDER OF
vs.)	DISMISSAL
)	
KING COUNTY, a subdivision of the State of Washington,)	
)	
Defendant.)	
)	
)	

I. STIPULATION

IT IS HEREBY STIPULATED, by and between the parties hereto, by and through their counsel of record, that the above-entitled cause, having been fully settled and compromised, may be dismissed with prejudice and without costs to any party.

DATED this ____ day of April, 2000.

NORM MALENG
King County Prosecuting Attorney

GRAHAM & DUNN, P.C.

By: _____
CHERYL D. CARLSON, WSBA #19844
Senior Deputy Prosecuting Attorney
Attorneys for King County

By: _____
ELAINE L. SPENCER, WSBA #6963
Attorneys for John and William Torrance

II. ORDER OF DISMISSAL

THIS MATTER having come on regularly before the undersigned Judge of the above-entitled Court upon the stipulation of the parties hereto, and it appearing to the Court that the matter has been fully settled and compromised,

NOW, THEREFORE, IT IS HEREBY

ORDERED, ADJUDGED, AND DECREED that the above-entitled cause; and each and every claim brought by plaintiffs in connection with the above-entitled cause, be and is hereby dismissed with prejudice and without costs to any party.

DONE IN OPEN COURT this _____ day of April, 2000.

THE HONORABLE SHARON S. ARMSTRONG, JUDGE

Presented by:

NORM MALENG
King County Prosecuting Attorney

By: _____
CHERYL D. CARLSON, WSBA #19844
Senior Deputy Prosecuting Attorney
Attorneys for King County

Notice of Presentation Waived; Accepted as to Form:

GRAHAM & DUNN, P.C.

By: _____
ELAINE L. SPENCER, WSBA #6963
Attorneys for John and William Torrance