

1 **COOPERATIVE AGREEMENT # 813**2 **Operation and Maintenance of the SR 240 Richland Wye Park and Ride Lot**
3

4 THIS COOPERATIVE AGREEMENT (hereinafter Agreement) for the operation
5 and maintenance of the SR 240 Richland Wye Park and Ride Lot is made and entered into by and
6 between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION (hereinafter
7 WSDOT) and BENTON FRANKLIN TRANSIT, a municipal corporation (hereinafter
8 TENANT).

9 **RECITALS**

10 Due to an increased need for Park and Ride Lot capacity, TENANT, in cooperation with
11 WSDOT, is constructing a park and ride lot and improvements thereto, to be commonly known as
12 the SR 240 Richland Wye Park and Ride Lot located in the vicinity of Columbia Park Trail and
13 Nevada Street, Richland, WA (hereinafter Park and Ride Lot);

14 The joint Park and Ride Lot construction project is pursuant to Agreement Number GCA
15 5412, made and entered into by WSDOT and TENANT on August 24, 2007, as detailed in
16 **Exhibit "E"**, attached hereto and by this reference made a part hereof.

17 The Park and Ride Lot is located on real property owned in fee by WSDOT and which
18 was acquired with WSDOT motor vehicle funds;

19 TENANT provides public transportation within the Tri-Cities metropolitan area, and has
20 adopted a comprehensive plan to provide mass transit for said metropolitan area, which includes
21 providing transit services at the Park and Ride Lot;

22 TENANT agrees to operate and maintain the Park and Ride Lot in exchange for the right
23 to use a portion of the Park and Ride Lot to provide transit services; and

24 WSDOT and TENANT are authorized to enter into this agreement pursuant to RCW
25 47.28.140.

26 NOW, THEREFORE, in consideration of the terms, conditions, covenants and
27 performances contained herein, IT IS MUTUALLY AGREED THAT:

28 **1. PREMISES.**

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1 A. The premises covered by this Agreement is shown hachured on **Exhibit A**,
2 attached hereto and by this reference made a part hereof, and defined as follows:

3 That portion of Short Plat No. 2121, according to the survey thereof recorded under Auditor's
4 Recording No. 94-35360, records of Benton County, Washington, and that portion of Pardini's
5 Plat, according to the plat thereof recorded in Volume 4 of Plats, page 16, records of Benton
6 County, Washington, and that portion of the south half of the northwest quarter of Section 30,
7 Township 9 North, Range 29 East, W.M., described as beginning at a point opposite Highway
8 Engineer's Station (hereinafter referred to as HES) CPT 125+00 L/A on the CPT line survey of
9 SR 240, Richland Wye Interchange to Columbia Center Blvd. and 55 feet southerly therefrom;
10 thence westerly parallel to said line survey to a point opposite HES CPT 122+11.21; thence
11 southerly to a point opposite HES LE 134+25.84 on the LE line survey of said highway and
12 358.22 feet northeasterly therefrom; thence southerly and southeasterly along the arc of a curve to
13 the left having a radius of 300 feet and an arc length of 259.48 feet to a point opposite HES LE
14 136+61.83 on said line survey and 238.92 feet northeasterly therefrom; thence southeasterly to a
15 point opposite HES LE 138+32.97 on said line survey and 222 feet northeasterly therefrom;
16 thence northerly to a point opposite HES CPT 124+44.72 on the CPT line survey of said
17 highway and 308.54 feet southerly therefrom; thence northeasterly to a point opposite HES CPT
18 125+00 on said line survey and 140 feet southerly therefrom; thence northerly to the point of
19 beginning
20

21 Situated in Benton County, State of Washington.
22

23 The lands herein described contain an area of 3.7 acres more or less, the specific details
24 concerning all of which are to be found in that certain map of definite location now of record and
25 on file in the office of the Secretary of Transportation at Olympia, and bearing date of approval
26 August 23, 2002 and revised September 14, 2006

27 B. TENANT has examined the Premises and accepts it in its present condition as part
28 of the consideration of this Agreement.

29 2. **TERM.** This Agreement shall be for fifteen (15) years, commencing January 1, 2008.

30 3. **RENEWAL.**

31 A. This Agreement may be renewed for one (1) ten (10) year period (Renewal
32 Period); Provided that; (1) TENANT is not in default and has not been in default during the term
33 or any Renewal Period of this Agreement; (2) there is no other public need for the Premises; (3)
34 the Park and Ride Lot is, in WSDOT's determination, continuing to serve a functional highway

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1 purpose; and (4) the terms and conditions of this Agreement conform to then existing state
2 policies or practices, laws, regulations and contracts, or provided TENANT is willing to amend
3 this Agreement to bring it into compliance with such policies, practices, laws, regulations, and
4 contracts.

5 B. The Agreement for the Renewal Period shall be on the same terms and conditions
6 as set forth herein, except as modified by any changes in policies, practices, laws, regulations or
7 contracts, as reflected in a written amendment signed by both parties.

8 C. TENANT shall give notice of its intent to renew this Agreement for the Renewal
9 Period at least ninety (90) days, but not more than six (6) months prior to the expiration of this
10 Agreement, or any renewal thereof.

11 4. TERMINATION BY WSDOT.

12 A. WSDOT may terminate this Agreement, in whole or in part, without penalty or
13 further liability as follows:

14 (1) upon thirty (30) days written notice to TENANT, if TENANT defaults,
15 and fails to cure such default within that thirty (30) day period, or such longer period, as may be
16 determined by WSDOT in its sole judgment, if TENANT is diligently working to cure the
17 default;

18 (2) upon sixty (60) days written notice, unless an emergency exists, then
19 immediately, if WSDOT determines that it is in the best interest of the State of Washington to
20 terminate this Agreement; and

21 (3) immediately, upon written notice, if a receiver is appointed to take
22 possession of TENANT's assets, TENANT makes a general assignment for the benefit of
23 creditors, or TENANT becomes insolvent or takes or suffers under the Bankruptcy Act.

24 B. Waiver or acceptance of any default of the terms of this Agreement by WSDOT
25 shall not operate as a release of TENANT's responsibility for any prior or subsequent default.

26 C. If TENANT defaults on any provision in this Agreement three (3) times within a
27 twelve (12)-month period, then the third default shall be deemed "non-curable" and this
28 Agreement may be terminated by WSDOT on thirty (30) days written notice.

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5. TERMINATION BY TENANT.

A. The TENANT may terminate this Agreement, in whole or in part, without penalty or further liability as follows:

1. Upon not less than sixty (60) days prior written notice.

2. Upon not less than thirty (30) days prior written notice to WSDOT, if WSDOT defaults, and fails to cure such default within that thirty (30) day period, or such longer period, as may be determined by TENANT in its sole judgment, if WSDOT is diligently working to cure the default.

3. Immediately, upon written notice, if in TENANT's judgment the Park and Ride Lot is destroyed or damaged so as to substantially and adversely affect TENANT's authorized use of the Park and Ride Lot.

6. CONSIDERATION. In exchange for the use of the Premises by TENANT to operate a park and ride lot in conjunction with transit services, as described elsewhere herein, the TENANT agrees to perform the maintenance services on the Premises, as provided elsewhere herein.

7. USE OF PREMISES.

A. No use other than operation and maintenance of a park and ride lot in conjunction with transit services shall be permitted without the prior written approval of WSDOT. Operation of transit services are the transfer of motorists from private vehicles to buses or to or from private carpool vehicles, bus to bus transfers, transfers to TENANT van pools, and necessary security activities. Any other use authorized by WSDOT will be pursuant to separate written agreement. This provision applies to other uses by the TENANT and uses by third parties.

B. TENANT shall have access to the Premises at the location shown on **Exhibit "B"**, attached hereto and by this reference made a part hereof.

C. In using the Premises, TENANT must comply with all policies and regulations heretofore adopted or hereafter promulgated by WSDOT relative to the location, operation, and maintenance of improvements located on the Premises.

D. In using the Premises, it is expressly agreed that TENANT must comply with all applicable federal, state, and local laws, ordinances, and regulations, including environmental

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requirements, that are in force or which may hereafter be in force and secure and maintain all necessary permits and licenses.

E. TENANT agrees to maintain the following park and ride parking spaces on the Premises, unless otherwise agreed to in writing by the parties: Total 250 (cars and vans) as follows: 242 Standard; and 8 Handicapped;

F. Signs, display lights, or advertising media/materials are not permitted on the Premises except on transit buses, unless shown on a separate plan sheet and must receive prior written WSDOT approval. The signs as shown on **Exhibit "C"**, attached hereto and by this reference made a part hereof, are hereby approved.

G. TENANT will not disturb markers installed by a WSDOT franchise/permit holder or lessee and will contact and provide notice to any franchise/permit holder or lessee and all owners of underground facilities prior to any excavation on the Premises. TENANT shall contact WSDOT and call the Underground Utility Locating Service, or its successor organization as part of its efforts to ascertain any and all owners of underground facilities and to locate the underground facility. TENANT shall not damage legally installed underground facilities. TENANT shall comply with all applicable provisions of Chapter 19.122 RCW relating to underground facilities. Excavation on the Premises is considered to be new construction subject to the terms and conditions set forth in **paragraph 12** herein.

8. MAINTENANCE.

A. TENANT agrees to maintain the Premises in accordance with WSDOT standards set forth in the WSDOT Maintenance Manual, and any amendments thereto, which by this reference are incorporated herein. Maintenance responsibility shall include, but not be limited to, paved areas (including striping), lighting fixtures, landscaping, and signage. Maintenance shall also include snow and ice removal from the Premises.

B. Fences shall be maintained by TENANT. If any fence is damaged as a result of TENANT's activities, TENANT will promptly repair such damage at its cost to the WSDOT's satisfaction.

C. WSDOT reserves the right to periodically observe and inspect the maintenance work conducted by TENANT on the Premises. WSDOT shall provide written notice to TENANT to include details of those elements or areas not in compliance with specifically referenced WSDOT maintenance requirements. The notice will set a specified reasonable period of time in which requested corrective action must be taken; Provided, that if an emergency exists, corrective

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action must be taken immediately. If corrective measures are not completed within the specified time period, WSDOT may either perform the maintenance as provided elsewhere herein, or issue a notice of default as provided elsewhere herein.

9. WSDOT RESERVATION OF RIGHT.

A. Right of Entry.

(1) Nothing herein shall affect WSDOT's, its agent's and contractor's, and the Federal Highway Administration's, right to enter upon and use the Premises at any time for any purpose.

(2) Other than in an emergency, WSDOT, as a matter of courtesy, will attempt to give TENANT a minimum of thirty (30) working days notice of any entry that will unreasonably disrupt TENANT's operation or maintenance on the Premises. All reasonable steps will be taken to minimize impacts to TENANT's operation and maintenance, however, WSDOT assumes no liability of any kind for any such disruption.

B. Right to Grant, Maintain, and Operate Utility Franchises, Permits, Easements, and Leases.

(1) Nothing in this Agreement shall affect WSDOT's right to grant franchises, easements, permits, or enter into leases or other documents concerning the use of the Premises; Provided, that such use does not unreasonably interfere with TENANT's operation or maintenance of the Premises.

(2) Nothing in this Agreement shall affect the right for franchisees, permittees, or lessees, to enter upon the Premises to maintain, repair and enhance existing facilities and install, maintain and repair new facilities.

(3) Any installation, maintenance and repair of the Premises by a franchisee, permittee, or lessee will be accomplished in such a manner as to minimize any disruption to TENANT's operation and maintenance on the Premises. Except in the event of an emergency, the franchisee, permittee, or lessee will be required to notify TENANT of activities that will involve the use of the Premises prior to such use. In addition, the franchisee, permittee, or lessee will be required to restore paving and grading damaged by the installation, maintenance and/or repair.

10. TAXES, ASSESSMENTS, AND UTILITIES.

A. TENANT agrees to pay all assessments that benefit the Premises and/or which may hereafter become a lien on the interest of TENANT in accordance with RCW 79.44.010. TENANT shall have the right to appeal disputed charges.

B. TENANT also agrees to pay all taxes that may hereafter be levied or imposed upon TENANT or by reason of this Agreement. TENANT shall have the right to appeal disputed charges.

C. TENANT agrees, except as noted herein, to pay the cost for all utility bills incurred at the Park and Ride Lot, including, but not limited to, sewer, electric, water, surcharges, and rate adjustments that serve the Premises.

11. IMPROVEMENTS. TENANT may install up to 9 light standards and landscaping on the Premises at the locations previously agreed to by the parties and as shown on **Exhibit "D"**, attached hereto and by this reference incorporated herein. Prior to the installation of these improvements TENANT shall notify WSDOT and the parties shall coordinate their activities to facilitate such installations. The above approved improvements shall be in accordance with the Final Construction Plans to follow, which by this reference are incorporated herein.

12. CONSTRUCTION. Except for that construction allowed pursuant to **Exhibit "E"**, no construction of new or reconstruction of existing improvements is permitted without the prior written approval of the WSDOT. TENANT covenants that any regrading or improvements to be constructed on the Premises will not at any time during or after construction either damage, threaten to damage, or otherwise adversely affect any part or element of the highway facility or the operation thereof. WSDOT shall be furnished with two (2) sets of complete plans, details, and specifications and revisions thereto for grading and all improvements proposed to be placed on the Premises, and no work shall be done without prior written approval of such plans by WSDOT. All construction work shall be done in conformity with the plans and specifications as approved. WSDOT may take any action necessary, including directing that work be temporarily stopped or that additional work be done, to ensure observation of the plans and specifications, protection of all parts and elements of the highway facility, and compliance with WSDOT's construction and safety standards. The improvements shall be designed and constructed in a manner that will permit access to the Premises for the purpose of inspection, maintenance, and construction when necessary.

13. LIENS.

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A. Nothing in this Agreement shall be deemed to make TENANT the agent of WSDOT for purposes of construction, repair, alteration, or installation of structures, improvements, equipment, or facilities on the Premises. TENANT acknowledges that WSDOT may not, and shall not, be subject to claims or liens for labor or materials in connection with such activities by TENANT.

B. TENANT shall at all times indemnify and save WSDOT harmless from all claims for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Premises, and from the cost of defending against such claims, including attorney fees.

C. In the event a lien is filed upon the Premises, TENANT shall either:

(1) Record a valid release of lien; or

(2) Deposit sufficient cash with WSDOT to cover the amount of the claim on the lien in question, and authorize payment to the extent of said deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to lienholder claim; or

(3) Procure and record a bond which releases the Premises from the claim of the lien and from any action brought to foreclose the lien.

Should TENANT fail to accomplish either (1), (2) or (3) above within sixty (60) days after the filing of such a lien, this Agreement shall be in default.

14. PERSONAL PROPERTY.

A. WSDOT shall not be liable in any manner for, or on account of, any loss or damage sustained to any property of whatsoever kind stored, kept, or maintained in or about the Premises, except for such claims or losses that may be caused by WSDOT or its authorized agents or employees.

B. TENANT shall not be liable in any manner for, or on account of, any loss or damage sustained to any WSDOT, its franchisees, lessees and permittees, or other authorized users' personal property of whatsoever kind stored, kept, or maintained on or about the Premises, except for such claims or losses that may be caused by TENANT or its authorized agents or employees.

C. Upon termination of this Agreement, WSDOT or its agent may remove all personal property of TENANT remaining on the Premises at TENANT's expense and dispose of

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1 it in any manner WSDOT deems appropriate. TENANT agrees to reimburse WSDOT for the
2 costs of such removal and disposal within thirty (30) days of the date of WSDOT's invoice.
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5 **15. VACATION OF PREMISES.**
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7 Upon termination of this Agreement, TENANT shall cease its operations on the Premises and, if
8 so directed by WSDOT, restore the Premises to its condition prior to TENANT's occupancy.
9 This restoration shall include the removal of personal property.. This work shall be done at
10 TENANT's expense and to the reasonable satisfaction of WSDOT. In the event TENANT fails
11 to vacate and, if so directed by WSDOT, restore the Premises prior to the date of termination,
12 TENANT shall be liable for any and all costs to WSDOT arising from such failure and agrees to
13 reimburse WSDOT for all such costs within thirty (30) days of the date of WSDOT's invoice for
14 such costs.
15

16 **16. NON-APPLICABILITY OF RELOCATION ASSISTANCE.** TENANT
17 acknowledges that the signing of this Agreement does not entitle TENANT to assistance under
18 the Uniform Relocation and Real Property Acquisition Policy (Ch. 8.26 RCW).
19

20 **17. ENVIRONMENTAL REQUIREMENTS.**
21

22 A. WSDOT and TENANT each represent, warrant and agree that it will conduct its
23 activities on and off the Premises in compliance with all applicable environmental laws. As used
24 in this Agreement, "Environmental Laws" means all federal, state and local environmental laws,
25 rules, regulations, ordinances, judicial or administrative decrees, orders, decisions, authorizations
26 or permits, including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C.
27 § 6901, et seq., the Clean Air Act, 42 U.S.C. § 7401, et seq., the Federal Water Pollution
28 Control Act, 33 U.S.C. § 1251, et seq., the Emergency Planning and Community Right to Know
29 Act, 42 U.S.C. § 11001, et seq., the Comprehensive Environmental Response, Compensation and
30 Liability Act, 42 U.S.C. § 9601, et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601, et
31 seq., the Oil Pollution Control Act, 33 U.S.C. § 2701, et seq., and Washington or any other
32 comparable local, state, or federal statute or ordinance pertaining to the environment or natural
33 resources and all regulations pertaining thereto, including all amendments and/or revisions to said
34 laws and regulations.
35

36 B. Toxic or hazardous substances are not allowed on the Premises without the
37 express written permission of WSDOT and under such terms and conditions as may be specified
38 by WSDOT. For the purposes of this Agreement, "Hazardous Substances," shall include all those
39 substances identified as hazardous under the Comprehensive Environmental Response,
40 Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., and the Washington Model Toxics
41 Control Act, RCW 70.105D et seq., including all amendments and/or revisions to said laws and

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1 regulations, and shall include gasoline and other petroleum products. TENANT is hereby
2 authorized to bring on to the Premises gasoline and petroleum products necessary to carryout the
3 maintenance and operation requirements set forth in this Agreement. In the event such permission
4 is granted, the disposal of such materials must be done in a legal manner by TENANT.

5
6 C. TENANT agrees to cooperate in any environmental investigations conducted by
7 WSDOT staff or independent third parties where there is evidence of contamination on the
8 Premises, or where WSDOT is directed to conduct such audit by an agency or agencies having
9 jurisdiction. TENANT will reimburse WSDOT for the cost of such investigations, where the
10 need for said investigation is determined to be caused by TENANT's operations. TENANT will
11 provide WSDOT with notice of any inspections of the Premises, notices of violations, and orders
12 to clean up contamination. TENANT will permit WSDOT to participate in all settlement or
13 abatement discussions. In the event that TENANT fails to take remedial measures as duly
14 directed by a state, federal, or local regulatory agency within ninety (90) days of such notice,
15 WSDOT may elect to perform such work, and TENANT covenants and agrees to reimburse
16 WSDOT for all direct and indirect costs associated with WSDOT's work where said
17 contamination is determined to have resulted from the TENANT's use of the Premises. TENANT
18 further agrees that the use of the Premises shall be such that no hazardous or objectionable
19 smoke, fumes, vapor, odors, or discharge of any kind shall rise above the grade of the right of
20 way.

21
22 D. For the purposes of this Agreement, "Costs" shall include, but not be limited to, all
23 response costs, disposal fees, investigatory costs, monitoring costs, civil or criminal penalties, and
24 attorney fees and other litigation costs incurred in complying with state or federal environmental
25 laws, which shall include, but not be limited to the Comprehensive Environmental Response,
26 Compensation and Liability Act, 42 U.S.C. § 9601, et seq.; the Clean Water Act, 33 U.S.C. §
27 1251; the Clean Air Act, 42 U.S.C. § 7401; the Resource Conservation and Recovery Act, 42
28 U.S.C. § 6901; and the Washington Model Toxics Control Act, RCW 70.105D et seq., including
29 all amendments and/or revisions to said laws and regulations.

30
31 E. TENANT agrees to defend, indemnify and hold WSDOT harmless from and
32 against any and all claims, causes of action, demands and liability including, but not limited to, any
33 costs, liabilities, damages, expenses, assessments, penalties, fines, losses, judgments and
34 attorneys' fees associated with the removal or remediation of any Hazardous Substances that have
35 been released, or otherwise come to be located on the Premises, including those that may have
36 migrated from the Premises through water or soil to other properties which are caused by or
37 result from TENANT'S activities on the Premises. TENANT further agrees to retain, defend,
38 indemnify and hold WSDOT harmless from any and all liability arising from the offsite disposal,
39 handling, treatment, storage, or transportation of any such Hazardous Substances removed from
40 said Premises.

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F. WSDOT agrees to indemnify, defend and hold TENANT harmless from and against any and all claims, causes of action, demands and liability including, but not limited to, any costs, liabilities, damages, expenses, assessments, penalties, fines, losses, judgments and attorneys' fees associated with the existence of, and/or removal or remediation of any Hazardous Substances that have been released, or otherwise come to be located on the Premises, including those that may have migrated from the Premises through water or soil to the other properties, which are caused by or result from the WSDOT's activities on the Premises. WSDOT further agrees to retain indemnify, defend, and hold TENANT harmless from any and all liability arising from the off site disposal, handling, treatment, storage or transportation of any such Hazardous Substances removed from the Premises.

G. The provisions of this section shall survive the termination or expiration of this Agreement.

18. INSURANCE.

A. TENANT's insurance policy of self insurance must provide liability coverage for the Premises, including public liability coverage for bodily injury, property damage, and personal injury of not less than TWO MILLION (\$2,000,000.00) combined single limit per occurrence, with a general aggregate amount of not less than FOUR MILLION (\$4,000,000.00) per policy period and naming WSDOT as an additional insured. TENANT certifies that it is self-insured, and agrees to provide acceptable evidence of its self-insured status to WSDOT. TENANT agrees that WSDOT may require increases in said coverage amounts by written notice to TENANT, as WSDOT deems reasonably necessary.

B. In the event TENANT, after commencement of this Agreement, elects to terminate its self-insured status and secure commercial liability coverage, TENANT will promptly notify WSDOT, and provide a certificate of insurance from an insurer licensed to conduct business in the State of Washington.

C. Coverage, if obtained by TENANT in compliance with this section, shall not be deemed as having relieved TENANT of any liability.

19. INDEMNIFICATION.

A. To the extent allowed by law, TENANT its successors and assigns, will protect, save, and hold harmless WSDOT, its authorized agents and employees, from all claims, actions, costs, damages, or expenses of any nature whatsoever by reason of the acts or omissions of TENANT, its agents, contractors, or employees, arising out of, or in connection with, its acts or activities or the acts or activities of its, agents, contractors, or employees, related to this Agreement. TENANT further agrees to defend WSDOT, its agents or employees, in any

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1 litigation, including payment of any costs or attorneys' fees, for any claims or action commenced,
2 arising out of, or in connection with, the acts or activities related to this Agreement. The
3 obligations in this paragraph shall not include such claims, costs, damages, or expenses to the
4 extent caused by the acts of WSDOT or its authorized agents or employees; PROVIDED, that if
5 the claims or damages are caused by or result from the concurrent acts of (a) WSDOT, its agents,
6 contractors, or employees and (b) TENANT, its agents, contractors, or employees, or involves
7 those actions covered by Ch. 4.24.115 RCW, this indemnity provision shall be valid and
8 enforceable only to the extent of the acts of TENANT's agents or employees.
9

10 B. To the extent allowed by law, WSDOT, its successors and assigns, will protect,
11 save, and hold harmless TENANT, its authorized agents and employees, from all claims, actions,
12 costs, damages, or expenses of any nature whatsoever by reason of the acts or omissions of
13 WSDOT, its agents, contractors, or employees, arising out of or in connection with its acts or
14 activities or the acts or activities of its agents, contractors, or employees, related to this
15 Agreement. WSDOT further agrees to defend TENANT, its agents or employees, in any
16 litigation, including payment of any costs or attorneys' fees, for any claims or action commenced,
17 arising out of, or in connection with, the acts or activities related to this Agreement. The
18 obligations in this paragraph shall not include such claims, costs, damages, or expense to the
19 extent caused by the acts of TENANT or its authorized agents or employees; PROVIDED, that if
20 the claims or damages are caused by or result from the concurrent acts of (a) TENANT, its
21 agents, contractors, or employees by or result from the concurrent acts of, (b) WSDOT, its
22 agents, contractors, or employees, or involves those actions covered by Ch. 4.24.115 RCW, this
23 indemnity provision shall be valid and enforceable only to the extent of the acts of WSDOT or the
24 WSDOT's agents or employees.
25

26 C. TENANT specifically assumes potential liability for actions brought by
27 TENANT's own employees against WSDOT and, solely for the purpose of this indemnification
28 and defense, TENANT specifically waives any immunity under the state industrial insurance law,
29 Title 51 RCW and has been mutually negotiated by the parties.
30

31 D. WSDOT specifically assumes potential liability for actions brought by WSDOT's
32 own employees against TENANT and, solely for the purpose of this indemnification and defense,
33 WSDOT specifically waives any immunity under the state industrial insurance law, Title 51 RCW
34 and has been mutually negotiated by the parties.
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36 E. The indemnification provisions in this paragraph shall survive the expiration or
37 termination of this Agreement.
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39 **20. PERFORMANCE BY WSDOT.**
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1 A. If TENANT defaults in the performance or observation of any covenant or
2 agreement contained in this Agreement, WSDOT, without notice if deemed by WSDOT that an
3 emergency exists, or if no emergency, with thirty (30) days notice, may direct TENANT to stop
4 work and may itself perform or cause to be performed such covenant or agreement. Such
5 emergency shall include, but not be limited to, endangerment of the life or safety of users of the
6 Park and Ride Lot and the adjacent highway facility, or the endangerment of the Park and Ride
7 Lot or the adjacent highway facility.

8
9 B. TENANT shall reimburse WSDOT the entire cost and expense of such
10 performance by WSDOT within thirty (30) days of the date of WSDOT's invoice.

11
12 C. Any act or thing done by WSDOT under the provisions of this paragraph shall not
13 be construed as a waiver of any agreement or condition herein contained or the performance
14 thereof.

15
16 **21. NONDISCRIMINATION.** TENANT, for itself, its successors and assigns, as part of the
17 consideration hereof, do hereby agree to comply with all applicable civil rights and
18 antidiscrimination requirements, including but not limited to Chapter 49.60 RCW.

19
20 **22. INDEPENDENT CAPACITY.** TENANT shall be deemed an independent contractor
21 for all purposes and the employees of TENANT or any of its contractors, subcontractors, and
22 employees thereof shall not in any manner be deemed employees of WSDOT.

23
24 **23. ASSIGNMENT.** Neither this Agreement nor any rights created by it may be assigned,
25 sublet, or transferred.

26
27 **24. BINDING CONTRACT.** This Agreement shall not become binding upon WSDOT
28 unless and until executed by both WSDOT signatories.

29
30 **25. ATTORNEYS' FEES.** In the event of any controversy, claim, or dispute arising out of
31 this Agreement, each party shall be solely responsible for the payment of its own attorney's fees
32 and costs.

33
34 **26. MODIFICATIONS.** This instrument contains all the agreements and conditions made
35 between the parties hereto and may not be modified orally or in any manner other than by an
36 agreement in writing signed by all parties thereto. No failure on the part of either party to enforce
37 any covenant or provision herein contained, nor any waiver of any right thereunder, unless in
38 writing, shall discharge or invalidate such covenant or provision or affect the right of the either
39 party to enforce the same in the event of any subsequent breach or default.

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1 **27. INTERPRETATION.** This Agreement shall be governed by and interpreted in
2 accordance with the laws of the state of Washington. The title to paragraphs or sections of this
3 Agreement are for convenience only and shall have no effect on the construction or interpretation
4 of any part hereof.
5

6 **28. TOTALITY OF AGREEMENT.** It is understood that no guarantees, representations,
7 promises, or statements expressed or implied have been made by either party except to the extent
8 that the same are expressed in the Agreement.
9

10 **29. SEVERABILITY.** If any covenant or provision or part thereof, of the Agreement be
11 adjudged void, such adjudication shall not affect the validity, obligation or performance of any
12 other covenant or provision or part thereof, which in itself is valid, if such remainder conforms to
13 the terms and requirements of applicable law and the intent of this Agreement.
14

15 **30. DISPUTE RESOLUTION.**
16

17 A. The following individuals are the Designated Representatives for the purpose of
18 resolving disputes that arise under this Agreement:

19 WSDOT: Bill Preston, Planning Engineer
20 South Central Region
21 Washington Department of Transportation
22

23 TENANT: Richard G. Ciccone
24 Ben-Franklin Transit
25

26 B. The WSDOT Designated Representative and the TENANT Designated
27 Representative shall confer to resolve disputes that arise under this Agreement as requested by
28 either party. The Designated Representatives shall use their best efforts and exercise good faith to
29 resolve such disputes.

30 C. In the event the Designated Representatives are unable to resolve the dispute, the
31 appropriate WSDOT Regional Administrator and the General Manager for TENANT shall confer
32 and exercise good faith to resolve the dispute.

33 D. In the event the WSDOT Regional Administrator and the General Manager for
34 TENANT are unable to resolve the dispute, the parties may, if mutually agreed in writing, submit
35 the matter to non-binding mediation. The parties shall then seek to mutually agree upon the
36 mediation process, who shall serve as the mediator, and the time frame the parties are willing to
37 discuss the disputed issue(s).

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E. Each party shall bring to the mediation session, unless excused from doing so by the mediator, a representative from its side with full settlement authority. In addition, each party shall bring counsel and such other persons as needed to contribute to a resolution of the dispute. The mediation process is to be considered settlement negotiations for the purpose of all state and federal rules protecting disclosures made during such conference from later discovery or use in evidence; Provided that any settlement executed by the parties shall not be considered confidential and may be disclosed. Each party shall pay its own costs for mediation and share equally in the cost of the mediator. The venue for the mediation shall be in Olympia, Washington, unless the parties mutually agree in writing to a different location.

F. If the parties cannot mutually agree as to the appropriateness of mediation, the mediation process, who shall serve as mediator, or the mediation is not successful, then either party may institute a legal action in the County of Thurston, State of Washington, unless other venue is mutually agreed to in writing. The parties agree that they shall have no right to seek relief in a court of law until and unless each of the above procedural steps has been exhausted.

31. VENUE. In the event any party deems it necessary to institute legal action or proceedings to ensure any right or obligation under this Agreement, the parties hereto agree that such action or proceedings shall be brought in a court of competent jurisdiction situated in Thurston County, Washington.

32. AGREEMENT MANAGEMENT.

A. The Program Manager for each of the parties shall be responsible for administration of this Agreement and shall be the contact person for all communications and billings regarding the administration of this Agreement, which expressly excludes notices of default and reporting and correcting defects covered under warranty.

B. The Program Manager for TENANT is: Richard G. Ciccone
Ben Franklin Transit
1000 Columbia Park Trail
Richland, WA 99352

C. The Program Manager for WSDOT is: Larry L. Hook.
Washington Dept. of Transportation
P.O. Box 12560
Yakima, WA 98909-2560

D. Either party may, from time to time, by notice in writing served upon the other party as required elsewhere herein, designate an additional and/or a different mailing address or an

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1 additional and/or different person to whom such notice, request, report or other communication
2 are thereafter to be addressed.

3
4 **33. NOTICES.**

5
6 A. Wherever in this Agreement written notices are to be given or made, they will be
7 served, personally delivered or sent by certified mail or overnight mail addressed to the
8 appropriate party(ies) at the addresses provided herein, unless a different address is designated in
9 writing or delivered to the other party.

10
11 B. Notices of default of this Agreement shall be given to the Program Manager and
12 the individuals listed below:

13
14 (1) TENANT: Richard G. Ciccone, Ben Franklin-Transit, 1000 Columbia
15 Park Trail, Richland, WA 99352

16 (2) WSDOT: Bill Preston, Planning Engineer, WSDOT South Central Region,
17 P.O. Box 12560, 2809 Rudkin Rd., Yakima, WA 98909-2560; and.

18
19 (3) Department of Transportation, Attn: Cynthia Tremblay, Assistant Director,
20 Property Management Program, 243 Israel Road S.E., Building #3, Tumwater, WA 98501 or
21 P.O. Box 4-7338, Olympia, WA 98504-7338.

22
23 C. Either party may, from time to time, by notice in writing served upon the other
24 party as required elsewhere herein, designate an additional and/or a different mailing address or an
25 additional and/or different person to whom notices of default are to thereafter to be addressed.

AGREEMENT

GCA 5412

Parcel No.5-06128, 06129, 06130

etal

IC# 5-03-07058

AA 5-12209

1

<p>BEN FRANKLIN TRANSIT</p> <p>Date: <u>March 27, 2008</u></p> <p>By: <u>[Signature]</u></p> <p>Timothy J. Frederickson, General Manager</p>	<p>WASHINGTON STATE DEPARTMENT OF TRANSPORTATION</p> <p>Date: <u>April 8, 2008</u></p> <p>By: <u>[Signature]</u></p> <p>Gerald L. Gallinger, Director, Real Estate Services</p> <p>Date: <u>3.31.08</u></p> <p>By: <u>[Signature] / for</u></p> <p>Don Whitehouse, P.E., WSDOT South Central Region Administrator</p>
<p>APPROVED AS TO FORM</p> <p>By: <u>[Signature]</u></p>	<p>APPROVED AS TO FORM</p> <p>By: <u>[Signature]</u></p> <p>Assistant Attorney General</p>

2

etal

IC# 5-03-07058

AA 5-12209

1 STATE OF WASHINGTON)

2 ss:

3 COUNTY OF BENTON _____)

4

5 On this 27th day of March 2008, before me personally appeared, Timothy J.
6 Frederickson to me known to be the General Manager of the corporation that executed the
7 foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed
8 of said corporation, for the uses and purposes therein mentioned, and on oath stated that he_ was
9 authorized to execute said instrument by resolution of the Board of the Ben Franklin Transit..

10

11 GIVEN under my hand and official seal the day and year last above written.

12

13

14

15

16



Delisa G. Pospical

17

18

19

Notary Public in and for the state of Washington,
residing at 1000 Columbia Park Trail, Richland, WA
My commission expires 3/21/2011.

etal

IC# 5-03-07058

AA 5-12209

1

2 STATE OF WASHINGTON)

3 ss:

4 COUNTY OF THURSTON)

5

6 I, the undersigned, a Notary Public in and for the state of Washington, do hereby certify that
7 on this 8th day of April, 2008, before me personally appeared Gerald L.
8 Gallinger, Director, Real Estate Services, for the state of Washington Department of
9 Transportation, and that he executed the within and foregoing instrument and acknowledged the
10 said instrument to be the free and voluntary act and deed of said state of Washington, for the uses
11 and purposes therein set forth, and on oath states that he is authorized to execute said instrument.

12

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

15

16

17

18

19



20

21

22

Karen M. Rennaker

Notary Public in and for the state of Washington,
residing at Puyallup
My commission expires 5-30-12.

AGREEMENT

GCA 5412

Parcel No.5-06128, 06129, 06130

etal

IC# 5-03-07058

AA 5-12209

1 STATE OF WASHINGTON)

2 ss:

3 COUNTY OF YAKIMA)

4

5 I, the undersigned, a Notary Public in and for the state of Washington, do hereby certify that
6 on this 31st day of March, 2008, before me personally appeared ~~Don~~ Phil Nickson
7 Active ~~Whitehouse~~, Region Administrator for the state of Washington Department of Transportation,
8 South Central Region, and that he executed the within and foregoing instrument and
9 acknowledged the said instrument to be the free and voluntary act and deed of said state of
10 Washington, for the uses and purposes therein set forth, and on oath states that he is authorized to
11 execute said instrument.

12

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

15

16

17

18

19



20

21

22

Stewart L Reif

Notary Public in and for the state of Washington,
residing at Yakima, Wa.
My commission expires 3/16/2010.

23

AGREEMENT

GCA 5412

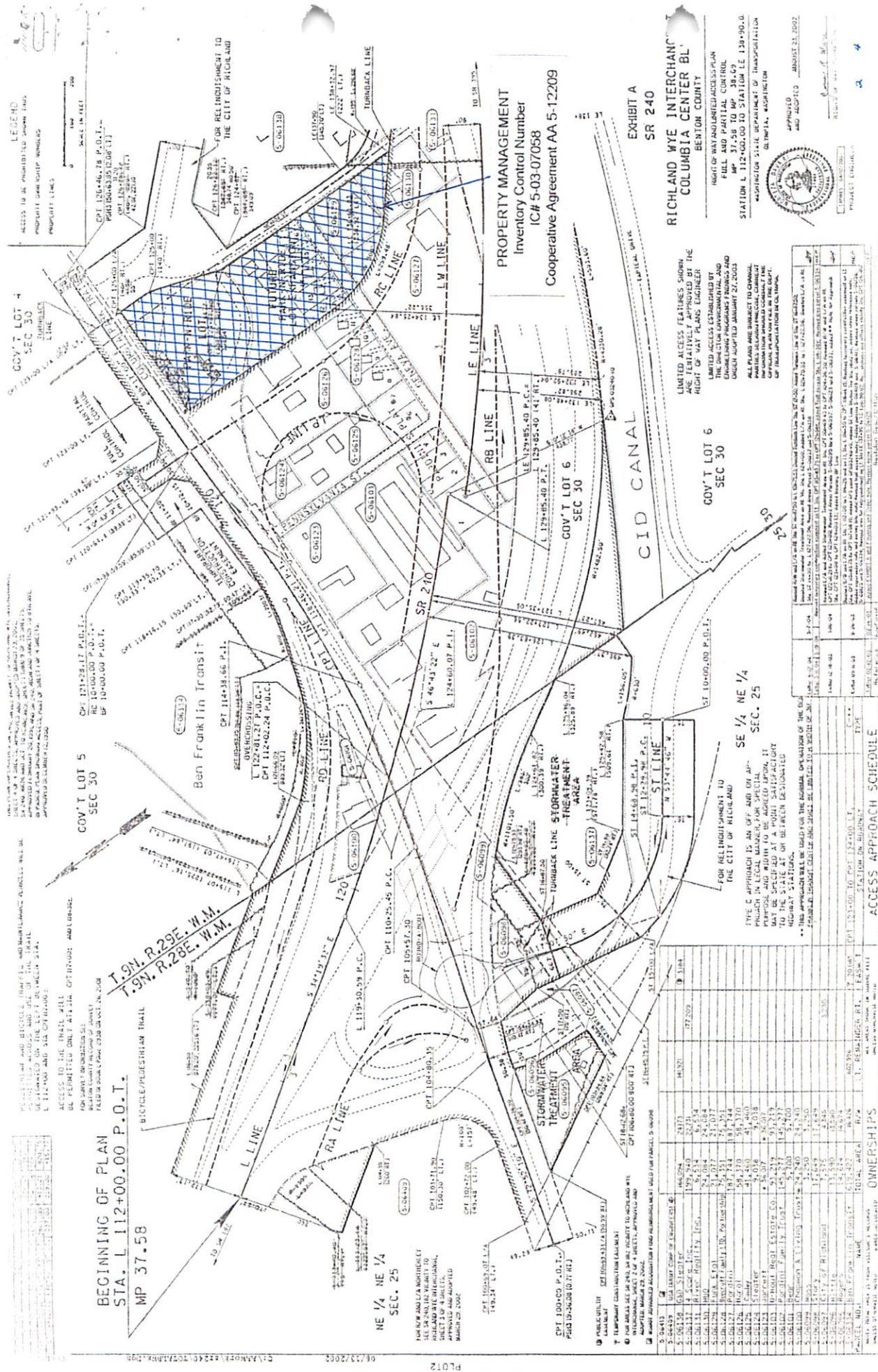
Parcel No.5-06128, 06129, 06130

etal

IC# 5-03-07058

AA 5-12209

1



RICHLAND WYE INTERCHANGE
COLUMBIA CENTER BL'

BENTON COUNTY

RIGHT OF WAY AND LIMITED ACCESS PLAN

FULL AND PARTIAL CONTROL

67.85 4M D1 85.15 4M

L 112•CO.00 YO STATION LE 130•90.0.

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

GLYNN, A. WASHINGTON

01/04/2004

07141196

James A. Watson

$\frac{d}{dt} \left(\frac{\partial L}{\partial \dot{x}} \right) = \frac{\partial L}{\partial x}$

[illegible]

43

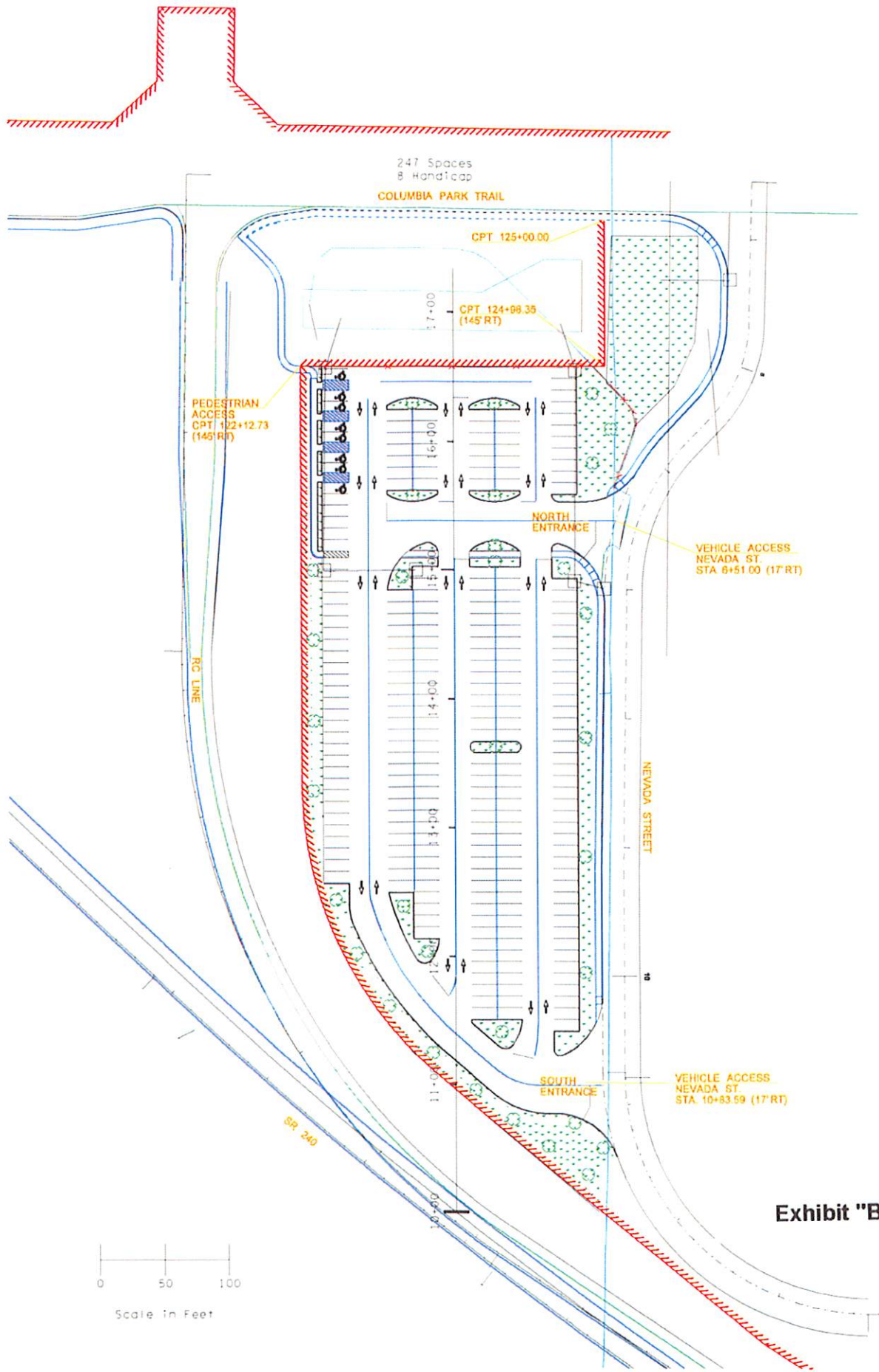


Exhibit "B"

SIGN REMOVAL

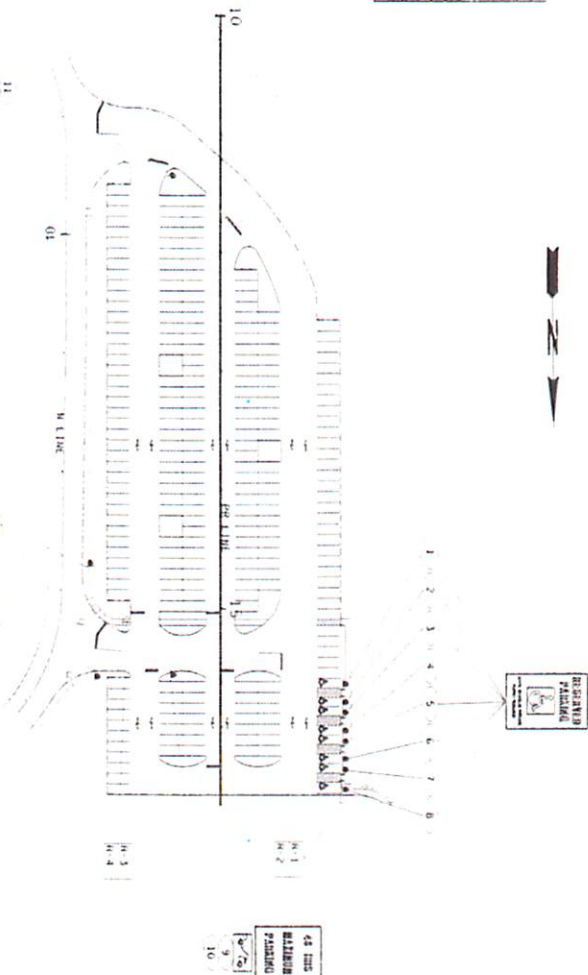
1	48 INCH SIGNAGE	10'x14'	10'	24"	10'	24"
2	48 INCH SIGNAGE	10'x14'	10'	12"	10'	12"
3	48 INCH SIGNAGE	10'x14'	10'	12"	10'	12"
4	48 INCH SIGNAGE	10'x14'	10'	12"	10'	12"

SIGN RELOCATION

1	48 INCH SIGNAGE	10'x14'	10'	24"	10'	24"
2	48 INCH SIGNAGE	10'x14'	10'	12"	10'	12"
3	48 INCH SIGNAGE	10'x14'	10'	12"	10'	12"
4	48 INCH SIGNAGE	10'x14'	10'	12"	10'	12"

NEW SIGNS

1	48 INCH SIGNAGE	10'x14'	10'	24"	10'	24"
2	48 INCH SIGNAGE	10'x14'	10'	12"	10'	12"
3	48 INCH SIGNAGE	10'x14'	10'	12"	10'	12"
4	48 INCH SIGNAGE	10'x14'	10'	12"	10'	12"
5	48 INCH SIGNAGE	10'x14'	10'	12"	10'	12"
6	48 INCH SIGNAGE	10'x14'	10'	12"	10'	12"
7	48 INCH SIGNAGE	10'x14'	10'	12"	10'	12"
8	48 INCH SIGNAGE	10'x14'	10'	12"	10'	12"
9	48 INCH SIGNAGE	10'x14'	10'	12"	10'	12"
10	48 INCH SIGNAGE	10'x14'	10'	12"	10'	12"
11	48 INCH SIGNAGE	10'x14'	10'	12"	10'	12"
12	48 INCH SIGNAGE	10'x14'	10'	12"	10'	12"



SIGN LEGEND

1	48 INCH SIGNAGE
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0 50 100
SCALE IN FEET



SR 240
BEN FRANKLIN TRANSIT
PARK & RIDE
SIGNING PLAN

DATE	10/25/2007	DATE	
PROJECT NO.	10-00000000	PROJECT NO.	
DESIGNED BY		DESIGNED BY	
CHECKED BY		CHECKED BY	
PROJECT NAME	SR 240 BEN FRANKLIN TRANSIT PARK & RIDE		
REVISION	DATE	BY	
1			
2			
3			
4			
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