



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

May 6, 2008

Ordinance 16084

Proposed No. 2008-0226.3

Sponsors Patterson, Gossett, Ferguson,
Phillips and Constantine

1 AN ORDINANCE approving and authorizing the county
2 executive to participate with the Port of Seattle in a
3 transaction to acquire the BNSF Eastside Rail Corridor; and
4 declaring an emergency.

5
6 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

7 SECTION 1. Findings:

8 A. On April 14, 2008, the King County executive transmitted to the King County
9 council an interlocal agreement, a proposed purchase and sale agreement and a proposed
10 donation agreement involving Burlington Northern Santa Fe Railway Company
11 ("BNSF"), the Port of Seattle, and King County. Among other things, these agreements
12 provide that the Port of Seattle at closing will grant the county a Public Multipurpose
13 Easement for the county's use of the railbanked portion of the corridor; and that the
14 county will serve as the "Interim Trail User" in accordance with 49 C.F.R. 1152.29 and
15 Section 8(d) of the National Trails System Act (also known as the "Rails-to-Trails Act").

16 B. The proposed purchase and sale agreement and the donation agreement
17 require the county to obtain necessary authorization for the transactions from its

18 governing body by May 15, 2008, or the county may terminate the agreements by written
19 notice given to BNSF by that date. Enactment of this ordinance as an emergency
20 ordinance is necessary to make this authorization legally effective before that date.

21 C. In 2003, BNSF announced its intent to divest itself of the Woodinville
22 Subdivision and Redmond Spur, which together are referred to as the Eastside Rail
23 Corridor ("ERC"), a one-of-a-kind forty-two-mile corridor vital to the economic future of
24 King County and six separate eastside jurisdictions.

25 D. On May 16, 2005, the King County executive announced that King County
26 had entered into exclusive negotiations with BNSF to acquire this vital corridor into
27 public ownership for use as a trail and to preserve its potential for additional
28 transportation options in the future.

29 E. Since 2006, King County councilmembers, the Port of Seattle and the
30 executive have been in discussions to find a collaborative and mutually beneficial way to
31 acquire this vital transportation corridor through a regional partnership.

32 F. On December 17, 2007, the county council approved Ordinance 15995 by a
33 vote of eight ayes, no nos and one excused, authorizing and requesting the King County
34 executive to negotiate agreements with the Port of Seattle and BNSF that contained the
35 following elements:

36 1. Waiver of the county's exclusive right to negotiate a purchase and sale
37 agreement with BNSF to allow the Port of Seattle to negotiate a purchase and sale
38 agreement for the ERC with BNSF;

39 2. The port's execution of a purchase and sale agreement for the ERC by
40 December 31, 2007;

41 3. A right of first refusal for King County in the event the Port of Seattle
42 determined to sell any or all of the ERC, and a subsequent right of first refusal to any
43 other public agency authorized by Washington state to provide transit, rail services, or
44 trails;

45 4. Agreement between the Port of Seattle and the county on the principle of dual
46 usage; and

47 5. Agreement between the port and the county to create a formal multiagency
48 process to plan for dual uses of the corridor.

49 G. King County recognizes and expresses gratitude to BNSF for its willingness to
50 make a valuable donation to the public of a substantial portion of the ERC, thus enabling
51 this transaction to move forward.

52 H. King County further recognizes the participating parties' efforts to forge a
53 collaborative approach to protect the interests of the citizens of King County in acquiring
54 the ERC and to provide new transportation options for our region.

55 I. King County and the Port of Seattle have many mutual interests and shared
56 goals, such as: infrastructure improvements that make the region more globally
57 competitive; improved freight mobility and public transportation; the promotion of
58 tourism and recreational activities in the region; and enhancement of mobility, air quality
59 and healthy lifestyles through development of additional alternative transportation
60 modalities.

61 J. King County sincerely appreciates the Port of Seattle's efforts to acquire this
62 unique and vital transportation corridor to ensure it is preserved in public ownership, and
63 the Port of Seattle's interest in providing King County the opportunity to develop a public

64 trail that complements potential future commuter and non-interstate freight rail uses of
65 the corridor.

66 K. The county desires the railbanked portion to be used for commuter and non-
67 interstate freight rail purposes and a public trail that provides both recreational and
68 alternative transportation uses. Since the proposal was transmitted, the King County
69 council and executive have collaborated with the Port of Seattle's leadership to ensure
70 that the terms of the easement and an interlocal agreement appropriately recognize the
71 value of accommodating both commuter and non-interstate freight rail use and trail use,
72 recognizing that a trail promotes alternative transportation modalities in the corridor.

73 L. The King County council further appreciates the opportunity to work in a
74 collaborative manner with the Port of Seattle and the King County executive to develop a
75 formal, multiagency Regional Process to recommend appropriate uses of the corridor.

76 SECTION 2.

77 A. The King County council hereby approves King County's participation with
78 the Port of Seattle in the transaction to acquire the ERC consistent with agreements in
79 substantially the form of the Interlocal Agreement, the Purchase and Sale Agreement and
80 the Donation Agreement, and their exhibits, all as attached to this ordinance as
81 Attachments A through C to this ordinance.

82 B. The King County executive is hereby authorized to execute agreements in
83 substantially the form of the Interlocal Agreement, the Purchase and Sale Agreement and
84 the Donation Agreement, all as attached to this ordinance, and to implement the terms of
85 these agreements and to execute any documents necessary to carry out the transaction
86 authorized by these agreements.

87 C. The Interlocal Agreement and Easement have a number of joint
88 determinations to be made by the port and the county.

89 D. Agreement between the county and the port on the essential elements of the
90 Regional Process, including its timeframe, participants, and the resources to be provided
91 by each agency for the process, shall be contingent upon authorization by county
92 ordinance. It is the county's intent to negotiate such an agreement and to enact such an
93 ordinance, all no later than July 15, 2008.

94 E. Agreement with the port on the joint determination of the appropriate location
95 and size of the Trail Area shall be contingent upon authorization by county ordinance.

96 F. Agreement with the port on the joint determination of the appropriate timeline
97 for development of the trail shall be contingent upon authorization by county ordinance.

98 G. The King County executive shall provide quarterly reports to the council on
99 any proposed trail relocations or realignments that may be contemplated pursuant to
100 Section 2.2.2 of the Public Multipurpose Easement.

101 H. Any election by the county under Section 2.1.2 of the Public Multipurpose
102 Easement not to proceed with Trail Development and to take action to terminate this
103 agreement shall be contingent upon authorization by county ordinance.

104 SECTION 3. It is the intent of King County to consider seeking to renegotiate
105 certain terms of the Multipurpose Public Easement with the Port of Seattle, particularly
106 the terms related to the allocation of costs associated with relocation of the Trail Area
107 under Section 2.2.2 of the easement, and to do so following the conclusion of the joint
108 determination of the appropriate location and size of the trail and prior to commencement
109 of Trail Development, but no later than five years after Closing.

110 SECTION 4. The council acknowledges that the executive intends to acquire the
111 easement from the Port of Seattle using CFT funds previously appropriated in the 2007
112 Adopted Budget (Ordinance 15652) for project 315758 (MUL – Eastside Rail Trail). The
113 council wishes to consider other potential funding sources that may not carry the same
114 conditions as CFT, and will explore and consider the use of other funding sources prior to
115 closing. The council requests that the executive cooperate with the council to explore the
116 potential use of other funding sources.

117 SECTION 5. For the reasons set forth in section 1 of this ordinance, the council
118 finds as a fact that an emergency exists and that this ordinance is necessary for the

119 immediate preservation of public peace, health or safety or for the support of county
120 government and its existing public institutions.

121

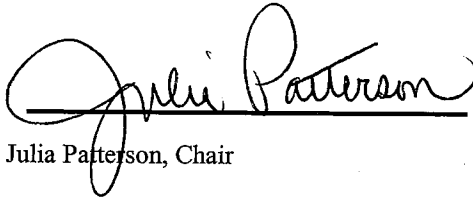
Ordinance 16084 was introduced on 4/14/2008 and passed as amended by the
Metropolitan King County Council on 5/5/2008, by the following vote:

Yes: 9 - Ms. Patterson, Mr. Dunn, Mr. Constantine, Ms. Lambert, Mr. von
Reichbauer, Mr. Ferguson, Mr. Gossett, Mr. Phillips and Ms. Hague

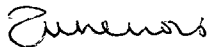
No: 0

Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Julia Patterson, Chair

ATTEST:



Anne Noris, Clerk of the Council

Attachments A. Interlocal Agreement Between King County and the Port of Seattle Regarding
Eastside Rail Corridor, dated May 3, 2008, B. Purchase and Sale Agreement--
Woodinville Subdivision - North Rail Line, dated May 2, 2008, C. Donation
Agreement--Woodinville Subdivision - South Rail Line, dated May 2, 2008

ATTACHMENT A

**INTERLOCAL AGREEMENT BETWEEN KING COUNTY AND THE
PORT OF SEATTLE REGARDING EASTSIDE RAIL CORRIDOR**

This Agreement is hereby entered into by King County, a home rule charter County and political subdivision of the State of Washington (the "County"), and the Port of Seattle, a municipal corporation of the State of Washington (the "Port").

WHEREAS, the Port and County are entering into a purchase and sale agreement and a donation agreement ("Acquisition Agreements") with the BNSF Railway Co. ("BNSF") to acquire the Eastside Rail Corridor ("Subdivision"), which is a railroad corridor that includes a portion of the Woodinville Subdivision extending north approximately from mile post 5.0 in Renton, Washington to and including the railroad bridge at milepost 38.4 in Snohomish County, Washington, and a portion of the Redmond Spur extending approximately from milepost 0.0 in Woodinville south to milepost 7.3 in Redmond;

WHEREAS, at closing the Port will acquire a portion of the Subdivision subject to continuing freight railroad service (the "Freight Property"), and will acquire a portion of the Subdivision in railbanked status (the "Property"). The Freight Property is located in the Woodinville Subdivision between milepost 23.8 and milepost 38.4 in Snohomish County. The Property is located in the Woodinville Subdivision between milepost 23.8 and approximately mile post 5.0, and within the Redmond Spur between mile post 0.0 and mile post 7.3;

WHEREAS, the County has performed substantial negotiations with BNSF and due diligence regarding the Subdivision, which work is of significant benefit to the Port for its acquisition of the Subdivision;

WHEREAS, the Parties desire to convert the Property to public uses, including trail uses, following the acquisition of the Subdivision by the Port pursuant to and in accordance with 49 C.F.R. 1152.29 and Section 8(d) of the National Trails System Act (also known as the "Rails-to-Trails Act"), 16 U.S.C. 1247(d) (collectively, and as any of the foregoing may hereafter be amended or interpreted by binding judicial or administrative authority, the "Railbanking Legislation");

WHEREAS, the Port desires the County to be the Interim Trail User for the Property because the County has substantial expertise and experience in acquiring, developing, maintaining and operating public trails, and the County is willing to assume this responsibility so long as it has sufficient rights to the Property to serve as the Interim Trail User and develop, maintain and operate a public trail thereon;

WHEREAS, the Parties intend that the Property will be put to use for regional recreational trail and for other public transportation use, including but not limited to rail or other transportation purposes other than interstate freight service ("Transportation Use"), and that the intended trail use will not prevent Transportation Use on the Property, but rather will be designed and developed to accommodate Transportation Use on the Property;

WHEREAS, the Parties acknowledge and agree that any railbanking, trail use or other public purpose proposed for the Property will be subject to the authorization and jurisdiction of the Surface Transportation Board ("STB" or the "Board"). STB authorization for the intended railbanking will be obtained upon the issuance of a Notice of Interim Trail Use ("NITU") in accordance with the Board's applicable rules and procedures;

WHEREAS, to facilitate the role of the County as the Interim Trail User, the County is a party to the Acquisition Agreements for the limited purpose of securing its rights to the Property by contributing to the purchase price, acquiring a Public Multipurpose Easement (defined below) from the Port on the Property at closing, and obtaining the same rights and obligations under the Acquisition Agreements with BNSF related to the inspections, title, representations, warranties, condition of property, environmental matters, contingencies, and remedies with regard to the Public Multipurpose Easement on the Property as the County would have were it to obtain the Easement directly from BNSF under the Agreements;

WHEREAS, the Parties agree that it may be in the public interest for the County to acquire directly from BNSF certain segments of the Property at closing through a partial assignment to the County of the Port's rights and obligations in the Acquisition Agreements with BNSF;

WHEREAS, the Parties agree that if after closing the Port in good faith determines to transfer any or all of the Subdivision, that the County and other appropriate public agencies in the state should have the first opportunity to acquire such property;

WHEREAS, the Parties agree that acquisition of the Property is of substantial benefit to the region, that the Port and the County will jointly carry out a formal, multi-agency process ("Regional Process") to plan and recommend appropriate uses of the Property, and that the existing rails will be kept in place while the Regional Process considers the appropriate uses of the Property; and

WHEREAS, the parties are each authorized to enter into this Agreement pursuant to RCW 39.34 (the Interlocal Cooperation Act), RCW 39.33 (Intergovernmental Disposition of Property) and Article 11 of the Washington State Constitution.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by the parties as follows:

1. Purpose of the Agreement and relationship to Acquisition Agreements.

1.1 The purpose of this Agreement is to facilitate the acquisition, planning, development, maintenance and operation of the Subdivision for the benefit of the public, and to coordinate between the Port and the County implementation of the Acquisition Agreements.

1.2 Unless otherwise indicated, all terms used herein are defined as in the Acquisition Agreements.

2. King County and Port to Provide Negotiation and Due Diligence Materials.

2.1 The County will promptly provide to the Port copies of the following materials that have resulted from the County's significant negotiation and due diligence activities:

2.1.1 Preliminary title commitments;

2.1.2 The County's reviews of the preliminary title commitments to the extent such reviews are completed;

2.1.3 Maps and documents prepared by Pacific Northwest Title;

2.1.4 One set of GIS aerial photographs of the Subdivision prepared by the County;

2.1.5 Track maps provided from BNSF to the County;

2.1.6 One set of value section maps provided from BNSF to the County;

2.1.7 All written materials provided to the County by RL Banks and Associates;

2.1.8 The completed appraisal of the Subdivision prepared for the County by Allen Brackett Shedd Real Estate Appraisers; and

2.1.9 The completed Screening Level Environmental Review of the Subdivision prepared for the County by Camp Dresser & McKee, Inc. ("CDM"), the associated materials provided with the Review, and any follow-up materials provided by CDM.

2.2 All materials will be provided by the County in AS IS condition, with no representation or warranty as to the accuracy or completeness of the contents of the materials.

2.3 The Port will pay the County \$500,000 for these materials at Closing.

2.4 Upon request of the County, Port will promptly provide to the County copies of materials in its possession that are comparable in nature and subject matter to the materials to be provided by the County under Section 2.1 of this Agreement and Port will receive from County reasonable compensation for such materials to be mutually agreed to by Port and County. All such materials will be provided by the Port in AS IS condition, with no representation or warranty as to the accuracy or completeness of the contents of the materials.

2.5 Under this Section 2, neither Party shall be obligated to provide any materials to the other that are attorney-client or attorney work product materials.

3. Obligations of the Port and the County relating to the Acquisition Agreements.

3.1 The County shall be the Interim Trail User under 49 C.F.R. 1152.29 and 16 U.S.C. 1247(d) for the Property, and in doing so shall assume the following obligations regarding the Property in the manner required by the Statement of Willingness to Assume Financial

Responsibility required as a condition precedent to the issuance of a NITU (the "SWAFR") in accordance with the Railbanking Legislation: (i) all responsibility for the management of the Property; (ii) all responsibility for all legal liabilities arising out of or relating to the transfer, use, possession, management, operation or control of the Property; and (iii) all other obligations arising under the NITU, the SWAFR, and/or the Railbanking Legislation as it applies to the Property (together "Railbanking Obligations").

3.2 Consistent with Section 8.1 of the Acquisition Agreements, BNSF will file a request with the STB for authorization to abandon the Property, and the County shall timely take the steps necessary to apply to the STB to become the Interim Trail User for the Property and to receive the reactivation rights at Closing, including the SWAFR, and shall at Closing and after STB approval execute a Trail Use Agreement with BNSF that includes transfer to the County of the reactivation rights for the Property.

3.3 Consistent with Section 9.2 of the Acquisition Agreements, the Port shall at Closing grant the County a Public Multipurpose Easement over the Property ("Easement") in substantially the form attached to hereto and incorporated herein as Exhibit A. The terms of the Easement shall be enforceable as a matter of contract under this Agreement, and as binding easement obligations running with the land.

3.4 Consistent with Section 2 of the Acquisition Agreements the County shall pay the Port \$1,903,000 at Closing for the Easement.

3.5 The County and Port shall participate in the implementation of the Acquisition Agreements according to their respective interests therein and in cooperation with one another. Each Party shall, upon request, share with the other, all materials concerning the Property provided to it by BNSF. Such materials will be provided in AS IS condition, with no representation or warranty as to the accuracy or completeness of the contents of the materials. Each Party shall have the right to participate in all discussions and negotiations with BNSF concerning or affecting the Property.

3.6 With regard to Section 4.3 of the Acquisition Agreements concerning the Title/Survey Inspection for the Property, the Port, with the agreement of the County, shall give timely joint notice of any objections to title, which notice shall include any objections raised by either Party.

3.7 With regard to Section 10.1 of the Acquisition Agreements concerning Port or County's Default, in the event of a material default where BNSF elects to terminate the Acquisition Agreements and retain \$5,000,000 (five million dollars) of Earnest Money, Port shall be responsible for such damages if it causes such Breach, County shall be responsible for such damages if it causes such breach, and if both Port and County cause such breach, each shall be responsible for damages based on each Party's relative contribution to such breach.

3.8 With regard to Section 10.2 of the Acquisition Agreements concerning BNSF's default, in the event of a material default by BNSF the Port and the County will cooperate in good faith to make a joint determination and provide notice to BNSF as to their remedy election.

If both Port and County desire to obtain specific performance of BNSF's obligations under the Acquisition Agreements, then the Parties shall together elect to obtain specific performance under Section 10.2 of the Acquisition Agreements, and each Party shall bear its own expenses to pursue such remedy. If Port desires to obtain specific performance of BNSF's obligations under the Acquisition Agreements and the County does not, then the Parties shall together elect to obtain specific performance under Section 10.2 of the Acquisition Agreements and the County shall if requested in writing by the Port participate in and support any effort to obtain specific performance, provided the Port shall pay and/or reimburse all costs and liabilities, including legal fees and expert fees, of such effort or that may result from such effort, both on behalf of itself and the County. If County desires to obtain specific performance of BNSF's obligations under the Acquisition Agreements and the Port does not, then the Parties shall together elect to terminate the Acquisition Agreements under Section 10.2 of the Acquisition Agreements.

3.9 The County shall have the right to enforce directly against BNSF the terms of the Acquisition Agreements for the Property, including without limitation issues that relate to title, condition of the property, and environmental matters. The Port may also seek to enforce the terms of the Acquisition Agreements for the Property. To the extent that both Parties seek to enforce those terms, the Port and the County shall cooperate with one another to do so, and with regard to the liability of the Port and the County on one hand and BNSF on the other hand, the Port and County will allocate liability between themselves pursuant to this Agreement and the Easement.

4. Rights and Obligations of the Port and the County Regarding the Property; Planning Period.

4.1. The rights and obligations of the Port and the County regarding the Property are set forth in detail in the Easement.

4.2 Planning Period.

The rights and obligations of the Parties in the Easement shall be supplemented by this Agreement as to the limited period of time between the execution of this Agreement and the joint determination of the Parties under Section 2.1.1 of the Easement. This period of time shall be referred to as the Planning Period.

4.2.1 Prior to Closing the Port and the County will jointly decide what capital improvements, such as fencing, barriers or signage, if any, are initially needed to address safety concerns on the Property. After Closing such capital improvements shall be carried out as set forth in Section 3.2.1 of the Easement.

4.2.2 During the Planning Period the Port and the County will not remove any existing rails on the Property.

4.2.3 During the Planning Period the County and Port may conduct surveys, mapping, geotechnical, environmental investigations or other similar activities ("Planning Activities") on any portion of the Property not subject to Transportation Use associated with the Regional Process, provided the Port shall provide the County written notice of any invasive

activities, and thereafter the Port and the County will coordinate the conduct of such activities. The County shall have the right to perform Planning Activities for any portion of the Property that is subject to Transportation Use during the Planning Period in coordination with the Transportation User.

5. Indemnification, Insurance and Hazardous Substances Liability.

Indemnification, insurance and hazardous substances liability issues related to the Property are as set forth in the Easement.

6. King County Right to Partial Assignment of Acquisition Agreements.

6.1 On or before 5:00 pm on July 1, 2008, Port may, subject to King County Council approval, assign to County all of its rights under the Acquisition Agreements to acquire the segment of the Property on the Woodinville Subdivision between approximately mile post 5.0 in Renton and mile post 11.8 in Bellevue at a point just north of the Wilburton Trestle, the Redmond Spur, or both, such that at closing the County would acquire ownership of such segments by paying to the Port a per-segment price to be determined by the appraisal by appraiser Murray Brackett of Allen Brackett Shedd Real Estate Appraisers referenced in Section 2.1.8 of this Agreement.

6.2 If the Port assigns to the County the right to purchase one or more segments of the Subdivision, then upon such assignment County shall assume all the rights and obligations of the Port vis-a-vis BNSF under the terms of the Acquisition Agreements as to such segments, and the provisions of this Agreement relating to the grant by the Port of the Easement shall not apply to any such segments.

7. Future Disposition of Subdivision.

7.1 King County Right of First Opportunity to Acquire.

After Closing, should the Port in good faith determine to offer or agree to transfer ownership of any or all of the Subdivision to any entity, the Port shall provide the County with one-hundred-twenty days notice of such determination and offer the County the right to purchase such property at an amount as determined by the appraisal prepared by appraiser Murray Brackett of Allen Brackett Shedd Real Estate Appraisers referenced in Section 2.1.8 of this Agreement, plus compounded annual interest from the date the Port acquired the Subdivision from BNSF at a rate equal to three percent per annum (the "Price"). If the County does not exercise the right to purchase such property within that period, the right to purchase such property in an amount no greater than the Price may be exercised within one hundred twenty days thereafter by any other public agency in the State authorized to provide transit, rail services or public trails. If no such agency exercises the right to purchase such property within that period, all rights of the County under this section as to that particular portion of the Subdivision shall immediately terminate, and the Port may transfer that particular portion of the Subdivision to any entity and on any terms it deems appropriate.

7.2 Railbanking Freight Property.

After Closing, should any entity seek to abandon or discontinue the obligations to provide freight common carrier service for any or all of the Freight Property, then Port and County shall cooperate to allow the County or another appropriate entity to seek a NITU or CITU in order to railbank such Property.

7.3 The rights and obligations in this Section 7 shall continue in full force and effect so long as the Port continues to own all or a portion of the Subdivision.

8. Regional Planning Process for BNSF Corridor.

The Port and the County will cooperate in good faith with one another to jointly carry out a formal, multi-agency process to plan and recommend appropriate uses of the Property.

9. Agreement Contingency.

This Agreement is contingent on Closing as required by the Acquisition Agreements. If the Acquisition Agreements are terminated without the Closing having occurred, this Agreement will terminate, except that it will continue in full force and effect as to any obligations or disputes that arose under the Acquisition Agreements or under this Agreement prior to or as part of such termination.

10. Duration.

This Agreement shall continue in effect so long as the Port owns all or a portion of the Property and the County is the Interim Trail User and holder of the Easement for all or a portion of the Property. If this Agreement expires under this Section 10, it will only be partially terminated. In such case, the Agreement will continue in full force and effect as to any obligations or disputes that arose prior to such expiration and it will continue in full force and effect as to the terms of Section 7.

11. Administration and Identification of Contacts.

This Agreement shall be administered by _____ and _____, which shall be contacted as follows:

County:

Port:

12. Dispute Resolution.

12.1 Any claim, dispute or other matter in question arising out of or related to this Agreement, including any inability of the Parties to make joint determinations as called for by this Agreement ("Disputes") shall be exclusively subject to the following alternative dispute resolution procedure as a condition precedent to the institution of legal or equitable proceedings by either party. This requirement cannot be waived except by an explicit written waiver signed by the Parties.

12.2 The Parties shall negotiate in good faith and use their best efforts to resolve any Disputes that may develop under this Agreement. The Port's Chief Executive Officer (or his/her designee) and the King County Executive (or his/her designee) along with any staff or technical persons any of the Parties desire, shall meet within seven (7) days after written request from either party and attempt to resolve a Dispute. The Parties may agree to extend the time provided for in this Section for an additional seven (7) days.

12.3 If a Dispute is not resolved under the procedure set forth in Section 12.2, or within such additional time as the Parties mutually agree, then the Parties shall endeavor to resolve a Dispute by mediation with a mediator agreed to by the Parties. A Party shall submit a request for mediation in writing to the other Party. Mediation shall proceed in advance of legal or equitable proceedings. Any contractual or statutory deadlines as between the Parties, including without limitation statutes of limitation, shall be tolled pending mediation for a period of 60 (sixty) days from the date of the mediation request, unless tolled for a longer period by agreement of the parties. Final authority for settlement may be subject to the approval of the Parties respective legislative bodies.

12.4 The Parties shall not commence litigation on a Dispute unless the Dispute has been properly raised and considered in the above mediation procedure. The Parties shall share equally on the costs of the mediation. Any mediation under this Agreement shall be held in King County, Washington. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

12.5 If Port or County reasonably determine that circumstances require immediate action to prevent or mitigate significant damage to or loss of the Property, then such Party may pursue any immediate remedy available at law or in equity without having to follow these alternative dispute resolution procedures in this Section, and then pursue such alternative dispute resolution procedures.

12.6 This Section 12 shall not apply to any dispute between the Parties that also relates to a dispute with BNSF.

13. General Terms and Conditions.

13.1 Headings. The headings in this Easement are for convenience only and shall not be deemed to expand, limit, or otherwise affect the substantive terms of this Agreement.

13.2 Neutral Authorship. Each party has been represented by counsel in connection with the negotiation, execution and delivery of this Agreement. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of both parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same will apply in connection with the construction or interpretation of any of the provisions of this Agreement.

13.3 Records, Audits, and Inspections. During this Term of this Agreement, each party's books, records and other materials related to any matters covered by this Agreement and not otherwise privileged shall be subject to inspection, review, and/or audit by the other party at the inspecting party's sole expense. Such books, records and other materials shall be made available for inspection during regular business hours within a reasonable time of the request.

13.4 Assignment. Neither party may assign its rights under this Agreement or any interest therein without the other party's prior written approval.

13.5 Governing Law; Jurisdiction and Venue; Attorneys' Fees. The laws of the State of Washington shall govern the interpretation and enforcement of this Agreement. The parties agree that the Superior Court in King County, Washington, shall be the sole and exclusive venue for any action or legal proceeding for an alleged breach of any of the terms and conditions set forth herein, or to enforce, protect, determine or establish any term, covenant or provision of this Easement or the rights hereunder of either party; and the parties hereby agree to submit to the personal jurisdiction of said court. If either party brings such an action or legal proceeding, the prevailing party shall be entitled to recover from the non-prevailing party, as part of such action or proceedings, or in a separate action brought for that purpose, reasonable attorneys' fees and costs, expert witness fees and court costs, including those incurred upon appeal, as may be fixed by the court.

13.6 Severability. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable unless striking such provision materially alters the intention of the parties. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provisions it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

13.7 Non-Waiver. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right subsequently to enforce and compel strict compliance with every provision of this Agreement.

13.8 Entire Agreement; Relation to Easement and Acquisition Agreements. This Agreement, the Acquisition Agreements and the Easement set forth the entire agreement between the Parties with respect to the subject matter hereof, and are intended by the Parties to be read in harmony with one another. There are no understandings or agreements between the parties respecting the subject matter hereof, written or oral, other than as set forth in those documents. If, however, there is any conflict between this Agreement and the Easement, the Easement shall

control. And if there is any conflict between this Agreement and the Acquisition Agreements, this Agreement shall control. This Agreement may be amended by the mutual written agreement of the Parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed.

KING COUNTY

Ron Sims
King County Executive
Approved as to Form:

Dated

By: _____
Senior Deputy Prosecuting Attorney

Dated

PORT OF SEATTLE

Tay Yoshitani
Port of Seattle Chief Executive Officer
Approved as to Form:

Dated

By: _____
Port Counsel

Dated

16084

PURCHASE AND SALE AGREEMENT
(Woodinville Subdivision - North Rail Line)

THIS PURCHASE AND SALE AGREEMENT is made and entered into as of the ___ day of April, 2008, by and between BNSF RAILWAY COMPANY ("BNSF"), the PORT OF SEATTLE, a municipal corporation of the State of Washington ("Port") and KING COUNTY, a political subdivision of the State of Washington ("County").

RECITALS

A. BNSF owns certain real property (the "Woodinville Subdivision," or "Subdivision") in King County, Washington and Snohomish County, Washington, and operates over such Subdivision, a railroad line from the City of Renton, Washington to the City of Snohomish, Washington.

B. The Port desires to enter into this Agreement for the purchase of a portion of such BNSF property and railroad facilities thereon, subject to a easement for freight operations on the Freight Portion of the Property (defined below) under which at Closing the holder of the easement for freight operations will provide freight rail service and will have the exclusive right and obligation to provide such freight service on the Freight Portion of the Property.

C. BNSF is willing to sell the North Rail Line (defined below) portion of the Subdivision in the manner described in this Agreement.

D. The County desires to use the Railbanked Portion (defined below) for public trail and other transportation purposes following the acquisition of the Woodinville Subdivision by the Port, and, accordingly, the County and BNSF will enter into at Closing an agreement for railbanking and for public space pursuant to and in accordance with 49 C.F.R. 1152.29 and Section 8(d) of the National Trails System Act (also known as the "Rails-to-Trails Act"), 16 U.S.C. 1247(d) (collectively, and as any of the foregoing may be amended or interpreted before Closing by binding judicial or administrative authority, the "Railbanking Legislation").

E. The Port at Closing will grant the County a Public Multipurpose Easement for the County's use of the Railbanked Portion.

F. This Purchase and Sale Agreement concerns the North Rail Line portion of the Subdivision, as defined with greater specificity herein. The South Rail Line portion of the Subdivision, as defined with greater specificity herein, is the subject of a separate Donation Agreement between the Port, County and BNSF, and is not the subject of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. Definitions and Exhibits.

1.1 Definitions. For purposes of this Agreement, each of the following terms, when used herein with an initial capital letter, shall have the meaning set forth below:

Agreement. This Purchase and Sale Agreement.

Assignment. The Assignment and Assumption of Leases and Licenses concerning the Property substantially in the form attached hereto as Exhibit E.

Bill of Sale. The Bill of Sale substantially in the form attached hereto as Exhibit I.

Closing. The consummation of the transaction contemplated in this Agreement.

Closing Date. September 30, 2008, provided that BNSF may elect to extend the Closing Date to no later than December 29, 2008.

Contract Date. The date upon which this Agreement shall be deemed effective, which shall be the date first above written.

Deeds. The quitclaim deeds substantially in the form attached as Exhibits B-1 and B-2.

Entry Agreement. Collectively, those certain Entry Agreements entered into between BNSF and Port and BNSF and County as originally executed and hereafter amended concerning the entry by Port and County respectively onto the Woodinville Subdivision for purposes of conducting inspections of the Woodinville Subdivision.

Escrow Agent. Pacific Northwest Title Company.

Fiber Optic Agreements. Those Third Party Leases/Licenses concerning fiber optic or other telecommunication facilities located on the Property.

Freight Easement Sale Agreement. An agreement for the conveyance of the Reserved Freight Easement to a third party operator ("TPO") substantially in the form attached hereto as Exhibit H.

Freight Portion. That portion of the Woodinville Subdivision north of milepost 23.8 in Woodinville to milepost 38.4 in Snohomish County, Washington.

North Rail Line. The real and personal property comprising the Woodinville Subdivision north of milepost 23.45 in Woodinville, and the Redmond Spur.

Operations and Maintenance Agreement and Railroad Right of Way License. Agreements to be entered into at Closing between Port and the TPO named in the Freight Easement Sale Agreement, substantially in the form attached as exhibits to the Freight Easement Sale Agreement.

Other Agreements. Means the Entry Agreement, the South Agreement, the Freight Easement Sale Agreement, the Freight Easement, the Operations and Maintenance Agreement, the Railroad Right of Way License, the Snohomish Bridge Easement, the Trail Use Agreement, and the Public Multipurpose Easement.

Property. The tracts or parcels of land situated in the Counties of King and Snohomish, State of Washington, described in Exhibit A attached hereto (the "Land") that makes up the North Rail Line, together with:

All of BNSF's right, title, and interest in and to the buildings (if any) located on the Land (the "Buildings");

All of BNSF's right, title and interest in any tangible personal property and fixtures of any kind owned by BNSF and attached to or used exclusively in connection with the ownership, maintenance or operation of the Land or the Buildings, if any, and together with the bridge structure and associated improvements for the railroad bridge crossing over BNSF's mainline right of way and over the Snohomish River (the "Personalty"); and

All of BNSF's right, title and interest (subject to the provisions of the Assignment) in and to the Third Party Leases/Licenses other than the Fiber Optic Agreements as of the date of Closing.

Railbanked Portion. The Redmond Spur and that portion of the Property extending from milepost 23.45 to 23.8 in Woodinville.

Redmond Spur. That portion of the Property extending from milepost 0.0 in Woodinville south to milepost 7.3 in Redmond.

Easement Agreement for Snohomish Bridge. An easement in the form attached hereto as Exhibit J whereby BNSF conveys the right to maintain and operate over BNSF's mainline the bridge structure conveyed in the Bill of Sale over the Snohomish River.

South Agreement. That certain agreement dated as of the date hereof between BNSF, Port and County concerning conveyance by BNSF to Port of the South Rail Line.

Purchase Price. As defined in Section 2.

Reserved Freight Easement. That certain reserved easement for freight operations on the Freight Portion of the Property as described in the Deeds.

Review Period. The period commencing on the Contract Date and ending at 5:00 p.m. on May 15, 2008.

South Rail Line. The real and personal property comprising the Woodinville Subdivision from milepost 23.45 in Woodinville south to milepost 5.0 in Renton, and not including the Redmond Spur. The South Rail Line is the subject of the South Agreement, is not the subject of this Agreement, and is not part of the Property as defined herein.

Third Party Leases/Licenses. The existing leases, franchises, occupancy agreements, licenses or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting or relating to, the Property, as listed on Exhibit F attached hereto.

Trail Use Agreement. An agreement substantially in the form attached hereto as Exhibit K to be entered into on or before Closing between BNSF and County concerning the Railbanked Portion.

Woodinville Subdivision. A rail corridor extending from approximately mile post 5.0 in Renton, Washington to and including the bridge structure at milepost 38.25 in Snohomish County, Washington, and including the Redmond Spur.

1.2 Exhibits. Attached hereto and forming an integral part of this Agreement are the following exhibits, all of which are incorporated into this Agreement as fully as if the contents thereof were set out in full herein at each point of reference thereto:

Exhibit A	Legal Description of the Property
Exhibits B-1	Form of Deed for Freight Portion
Exhibit B-2	Form of Deed for Railbanked Portion
Exhibit C	BNSF Disclosures
Exhibit D	Port and County Disclosures
Exhibit E	Form of Assignment of Third Party Leases/ Licenses
Exhibit F	List of Known Third Party Leases/ License
Exhibit G	Form of Exchange Assignment
Exhibit H	Form of Freight Easement Sale Agreement
Exhibit I	Form of Bill of Sale conveying the Personality
Exhibit J	Form of Easement Agreement for Snohomish Bridge
Exhibit K	Form of Trail Use Agreement
Exhibit L	Form of Public Multipurpose Easement Agreement
Exhibit M	Property Reports

Section 2. Purchase and Sale.

BNSF agrees to sell to Port, and Port agrees to purchase from BNSF, the Property. Port shall pay to BNSF \$106,903,000 (ONE HUNDRED SIX MILLION NINE HUNDRED AND THREE THOUSAND DOLLARS) (the “Purchase Price”). The Purchase Price shall be paid as follows:

a. Port shall cause the principal amount of \$10,000,000 (Ten Million Dollars) (such sum shall be referred to herein as the “Earnest Money”) to be delivered to Escrow Agent, to be held pursuant to the terms of this Agreement. The Earnest Money shall be delivered to Escrow Agent no later than three business days after execution of this Agreement, and Port shall promptly provide evidence of such delivery to BNSF. The Earnest Money will be deposited into an interest bearing escrow account by Escrow Agent at a financial institution approved by BNSF, and half of the interest accruing thereon shall belong to BNSF and shall not be applied to the Purchase Price as consideration for holding the Property available for sale during the Review Period.

b. At Closing (i) County shall pay the Port \$1,903,000 (ONE MILLION NINE HUNDRED AND THREE THOUSAND DOLLARS), and (ii) Port shall pay BNSF the balance of the Purchase Price that remains after applying the Earnest Money, the Extension Fee (defined below) if applicable and half of the interest accruing on the Earnest Money to the Purchase Price, subject to prorations and adjustments as set forth in this Agreement.

The Purchase Price shall be paid to BNSF in United States dollars, by Federal Reserve System wire transfer (in accordance with written wire transfer instructions provided by BNSF to Port) or other immediately available funds acceptable to BNSF. Port acknowledges that, except as stated in Sections 4, 8 and 10.2 of this Agreement, the Earnest Money is non-refundable and represents a portion of the consideration for BNSF’s holding the Property available for purchase during the Review Period but shall be applied to the Purchase Price at Closing as stated above. The parties agree it is appropriate for BNSF to retain P G P Valuation, Inc., at BNSF’s expense, for a fair market appraisal of the Property, which would be available for the use of the parties as needed. To the extent that the fair market value of the Property exceeds the Purchase Price, (i) at Closing BNSF will make a charitable contribution of such excess value of the Property to Port, (ii) Port shall take all actions and execute all documents that may be necessary or helpful to confirm that Port is a qualified donee described in section 170(c)(1) of the Code in connection with BNSF's bargain sale of the Property to Port, and (iii) within 30 days of Closing, based on the fair market value appraisal, BNSF shall prepare and Port shall execute the Donee Acknowledgement section of Internal Revenue Service Form, 8283, Noncash Charitable Contributions.

Section 3. Adjustments.

3.1 Third Party Leases/Licenses. BNSF shall be entitled to all sums due from any Third Party Leases/Licenses (collectively, "**Third Party Rents**") owing for the month in which the Closing occurs (regardless of when the Third Party Rents are paid) for the portion of the Property to which such Third Party Leases/Licenses relate. BNSF shall not receive a credit for any such Third Party Rents that are due but unpaid as of the Closing Date but Port shall remit to BNSF any such Third Party Rents received by it after such Closing. Port shall be entitled to any Third Party Rents owing for time periods after the month in which the Closing occurs (regardless of when the Third Party Rents are paid) for the portion of the Property to which such Third Party Leases/Licenses relate and BNSF shall pay to Port any such Third Party Rents received by BNSF, if any. Within 90 days after Closing BNSF shall pay to Port the amount, if any, of all rents under the Leases and all security deposits held by BNSF under the Leases.

3.2 [Intentionally Deleted]

3.3 Taxes and Monetary Liens.

(a) Taxes. There shall be no proration of taxes attributable to the Property. BNSF shall be liable for the payment when due of all taxes and assessments related to the Property, including without limitation real property ad valorem taxes, special benefit assessments and other governmental impositions (collectively, "**Taxes**"), for the time period up to Closing. From and after the Closing, to the extent any Taxes applicable to the Property are due and owing under applicable laws such Taxes shall be paid by Port except to the extent such taxes are paid by a Tenant pursuant to a Third Party Lease/License or applicable law. Each party shall indemnify, defend and hold the other harmless from the obligation to pay Taxes as set forth in this Section 3.3(a).

(b) Monetary Liens. Notwithstanding the provisions of Section 4, Port and County shall not be entitled to object to any monetary lien against BNSF which may appear of record as a monetary lien against the Property. BNSF shall pay such monetary liens asserted against BNSF and the Property, or if BNSF desires to contest such monetary lien, it may take reasonable and diligent steps to challenge the validity or amount of such lien and shall not be required to pay unless and until it is judicially determined to be valid. BNSF hereby indemnifies, defends and holds harmless the Port and County for all loss arising out of BNSF's failure to have a monetary lien so settled and satisfied.

(c) Notwithstanding the foregoing provisions of Section 3.3(b), neither Port nor County shall be entitled to object to the lien of any of BNSF's mortgages. Within one hundred eighty (180) days after the first meeting of BNSF's Board of Directors held after the Closing, BNSF shall deliver to Port, who shall place of record, good and sufficient releases of the liens of any mortgages on the Property securing indebtedness to which BNSF is obligated to pay and provide a copy thereof to County. In the event BNSF shall be unable to obtain said releases for any reason, BNSF shall indemnify, defend and hold harmless Port and County against and from any loss or damage to a maximum of the Purchase Price arising out of any actions taken to foreclose on, or actual foreclosures of such mortgages. The foregoing indemnity shall terminate upon the recording of sufficient releases of the liens of such railroad mortgages.

3.4 Closing Costs. BNSF shall pay one-half of any escrow or closing agent charges in connection with the Closing and the real estate excise tax associated with this transaction up to \$2,000,000. Port, County and BNSF shall each pay their own attorneys' fees and costs in connection with the negotiation of this Agreement and the closing hereunder. Port shall pay the following closing costs:

(a) the cost of recording the Deeds;

- (b) the cost of any title insurance Port wishes to obtain in connection with the acquisition of the Property;
- (c) one-half of any escrow or closing agent charges in connection with the Closing;
- (d) all costs of any surveys, reports or other due diligence Port obtains or undertakes in connection with the transactions contemplated herein; and
- (e) all costs associated with any loan or other financing obtained by Port in connection with the acquisition of the Property.

Section 4. Inspections.

4.1 Physical/Environmental Inspection.

(a) BNSF, as information only, has provided Port and County access to, or copies of, certain documents including those listed in attached Exhibit M (such documents previously delivered and any additional items to be delivered as contemplated below are collectively referred to as the “**Property Reports**”). Port and County acknowledge and agree that BNSF does not represent the accuracy or completeness of the Property Reports and that Port and County will rely only on their own due diligence. If BNSF obtains knowledge (as defined in Section 5.3 of this Agreement) of any additional Property Reports in BNSF’s possession or the possession of its agents or contractors before the Closing Date that relate to items previously furnished then BNSF will promptly provide Port and County with copies of any such other Property Reports later received or obtained by BNSF relating to the Property. BNSF is not required to provide attorney-client or attorney work product materials or documents to Port or County. BNSF shall provide a description of any materials not provided to Port and County by BNSF because such materials are attorney-client or attorney work product.

(b) Subject to the terms of the Entry Agreement, BNSF will allow Port and County and their agents to have access to the Property for the purpose of conducting environmental due diligence as specified in Section 6 of this Agreement and subject to the requirements of the Entry Agreement. Port and County acknowledge that invasive testing, such as drilling or boring, is not allowed under the Entry Agreement. If Port and/or County desire to perform such testing Port and/or County shall submit a work plan to BNSF for its review and approval, which work plan must reasonably describe its intended testing. BNSF shall not unreasonably withhold, condition or delay its approval of such work plan. Upon BNSF’s written approval and provided Port and/or County as applicable has entered into BNSF’s standard license agreement for such testing, Port and/or County as applicable may then perform such testing in compliance with the terms of said license and the approved work plan.

(c) BNSF shall cooperate in good faith with Port’s and County’s due diligence activities and make appropriate employees, agents or contractors available to answer reasonable inquiries from Port and/or County concerning the condition of the Property, subject to the terms of Section 6 of this Agreement. BNSF shall cooperate in good faith to promptly provide additional information requested by the Port provided such information is not attorney-client privileged, attorney work product, confidential or proprietary, provided that sampling reports and data alone shall not be considered attorney-client privileged, attorney work product or confidential or proprietary under this Agreement.

(d) All Property Reports and other environmental studies, reports, plans, and information including, but not limited to, those listed in this Agreement, and delivered by one Party to the other shall be held in confidence by the Parties, their agents, employees, officers, directors and contractors, and will not be disclosed to any third party unless this disclosure is compelled by order of a court or is otherwise legally required to be produced, including under the Washington Public Disclosure Act, RCW ch. 42.56, or if the other Party consents in writing to the production of such materials. The Parties will inform their respective

agents and contractors of the requirements of this Section 4.1(d) and shall require such agents and contractors to comply with such requirements.

4.2 Port and County Contingencies.

(a) Port and County shall have until the end of the Review Period to determine in their sole and absolute discretion (i) whether Port has obtained any necessary authorizations from its governing body, and (ii) if there are any physical conditions including, but not limited to, environmental conditions affecting the Property that BNSF is not willing to cure as contemplated herein and that are unacceptable to the Port or County in their sole discretion. If (i) the Port does not obtain the necessary authorizations from its governing body by the end of the Review Period or (ii) Port or County identify an existing condition affecting the Property (an **"Identified Condition"**) that is unacceptable to the Port or County in either entity's sole discretion and such Identified Condition is not an Identified Condition that BNSF agrees in writing to Cure (defined below) pursuant to Section 7 of this Agreement, *then* Port and County may terminate this Agreement and the South Agreement together by written notice to BNSF received no later than the expiration of the Review Period. If *either* (i) both Port and County do so timely terminate this Agreement under this Section 4.2 (a) or (ii) the Port does so timely terminate this Agreement under this Section 4.2(a), then subject to Section 4.2(c), this Agreement and the South Agreement shall terminate and Escrow Agent shall refund to Port the Earnest Money and half the interest earned thereon as contemplated in Section 2 of this Agreement and shall pay the other half of such interest to BNSF and none of the parties shall have any further obligation hereunder except those that expressly survive termination.

(b) County shall have until May 15, 2008 to obtain any necessary authorizations from its governing body with respect to the transactions contemplated herein. If County does not obtain such authorizations it may terminate its rights and obligations under this Agreement and the South Agreement together by written notice to BNSF delivered no later than May 15, 2008.

(c) Notwithstanding the provisions of Section 4.2(a) or (b), if the County exercises its right to terminate as stated above or pursuant to Section 4.3 below and the Port does not wish to so terminate then the Port may continue this Agreement in effect by paying to BNSF the additional sum of \$2,000,000 (the **"Extension Fee"**) in which case Port shall have until June 15, 2008 (the **"Extension Date"**) to assume on its own or find a third party replacement for the County's obligations contemplated herein and in such case the Earnest Money shall not be refunded to Port as provided above. The Extension Fee shall be non-refundable except in the event BNSF breaches its obligation to Close but shall be applied to the Purchase Price. If the Port does not find such a replacement then Port may terminate this Agreement and the South Agreement together by written notice to BNSF received no later than the Extension Date in which case the Escrow Agent shall refund to Port the Earnest Money and half the interest earned thereon as contemplated in Section 2 of this Agreement and shall pay the other half of such interest to BNSF, BNSF shall retain the Extension Fee and none of the parties shall have any further obligation hereunder except those that expressly survive termination. If this Agreement is not terminated as contemplated in Section 4.2, the parties (except County if County has terminated and Port has not) shall proceed to Closing according to the remaining provisions of this Agreement. Promptly upon BNSF's written request, Port and County shall deliver a copy of any written inspection report, survey or test result received by Port or County. If any of such items reveal any adverse conditions for which BNSF would be responsible for under Section 7 of this Agreement, BNSF may terminate this Agreement by written notice to Port and County by the end of the Review Period and Escrow Agent shall refund the Earnest Money and half the interest earned thereon as contemplated in Section 2 of this Agreement and shall pay the other half of such interest to BNSF and in which case none of the parties shall have any further obligation hereunder except those that expressly survive termination.

4.3 Title/Survey Inspection. Port and County will have until May 15, 2008 to obtain any title

reports, title commitments or surveys of the Property, to examine such reports, commitments or surveys, to determine whether Port and County will be able to obtain any title insurance endorsements they desire, and to identify any title or survey concerns it may have. If Port and County are not, for any reason, satisfied with the status of any such reports, commitments or surveys then Port or County may elect, by written notice to BNSF to terminate this Agreement and the South Agreement together by written notice to BNSF delivered no later than May 15, 2008, in which case Escrow Agent shall refund the Earnest Money and half the interest earned thereon as contemplated in Section 2 of this Agreement to Port and pay the other half of such interest to BNSF and none of the parties shall have any further rights or obligations hereunder, except for those which expressly survive any such termination. If Port or County fail to so give BNSF notice of its election by such date, it shall be deemed to have elected to waive any right to object to any title exceptions or defects. Port and County shall have the right at any time prior to their respective election to terminate to waive any objections that it may have made and, thereby, to preserve this Agreement in full force and effect. Port and County shall promptly upon request deliver to BNSF a copy of any such title report, title commitment or survey obtained by Port or County.

4.4 Nature of Title. The Property shall be conveyed with no warranties of title except as stated below and shall be subject to all matters affecting the Property whether of record or not including but not limited to (i) the lien of unpaid taxes not yet due and payable; (ii) matters which would be disclosed by a current, accurate survey of the Property; and (iii) the rights granted to third parties pursuant to any Third Party Lease/License. Port and County acknowledge and affirm that BNSF may not hold fee simple title to the Property, that BNSF's interest in all or part of the Property, if any, may rise only to the level of an easement for railroad purposes. Port and County are willing to accept the Property on this basis. BNSF does represent and warrant that BNSF's ownership interest in and to the Property, even subject to the Third Party Leases/Licenses, is sufficient to permit railroad operations on the Property, including passenger railroad operations; and to permit BNSF to convey the Property as contemplated in this Agreement and the Other Agreements. Port and County acknowledge that BNSF's predecessor in interest to the Property acquired a railroad right-of-way ownership interest in portions of the Property from the United States of America, pursuant to Section 2 of the General Right-of-Way Act of March 3, 1875, and Port and County each agrees to the conditions and limitations imposed by this General Right-of-Way Act.

Section 5. Representations and Warranties.

5.1 BNSF. As of the Contract Date and Closing Date, BNSF hereby represents and warrants to Port and County that the following statements are materially true except as may otherwise be disclosed on Exhibit C:

(a) BNSF is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, is authorized to do business and in good standing in the State of Washington and has full power and authority to enter into this Agreement and to fulfill its obligations hereunder.

(b) BNSF has taken all corporate action necessary to authorize the execution and delivery by BNSF of this Agreement and the other documents to be delivered by BNSF at Closing and the performance of its obligations hereunder and thereunder.

(c) This Agreement and the other documents to be delivered by BNSF at Closing have been, or before the Closing Date will have been, duly authorized and executed (and acknowledged where necessary) and delivered by BNSF, and all other necessary actions have been, or before the Closing Date will have been, taken, so that this Agreement, and all documents to be executed by BNSF pursuant hereto constitute, or before the Closing Date will constitute the legally valid and binding obligations of BNSF, enforceable against BNSF in accordance with their terms, except as the enforceability of this Agreement may be subject to or limited by bankruptcy, or insolvency or other similar laws relating to or affecting the rights of contracting parties generally.

(d) The execution and performance by BNSF of this Agreement and the other documents to be delivered by BNSF at Closing do not violate or conflict with BNSF's articles of incorporation or bylaws or any law, court order, administrative agency order or regulatory agency order binding upon BNSF or any of its properties.

(e) BNSF has not received any written notice of and BNSF has no knowledge of any actual or pending litigation, proceeding or claim by any organization, person, individual or governmental agency against BNSF (i) that could materially impair BNSF's ability to perform its obligations under this Agreement, or (ii) asserting that BNSF does not have sufficient ownership interest in the Property for conducting railroad operations.

(f) BNSF has not received any written notice of and BNSF has no knowledge of any actual or pending litigation asserting through a claim of adverse possession or other prescriptive rights that BNSF does not own the Property or any portion of the Property.

(g) BNSF is not a "foreign person" as that term is defined in the Internal Revenue Code of 1986, as amended and the Regulations promulgated pursuant thereto.

(h) BNSF has not received any written notice of and BNSF has no knowledge of any written notice from any governmental authority alleging any uncured existing violation of any applicable governmental laws, statutes, ordinances, rules, codes, regulations or orders, including Environmental Laws, affecting the Property or the conduct of railroad operations on the Property.

(i) Port and County will not, as a result of the execution of this Agreement or conveyance of any of the Property be bound by any labor contracts entered into by BNSF.

(j) BNSF has no knowledge of the existence at any time, whether still occurring or not, of any of the following activities on the Property:

- (1) fueling of trains or train related equipment;
- (2) treatment of railroad ties;
- (3) creosote treating operations;
- (4) above ground or underground storage tanks;
- (5) transformers; or
- (6) repair shops.

(k) To BNSF's actual knowledge, the Property is not subject to any leases, tenancies or rights of persons in possession, franchises, occupying agreements, unrecorded easements or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting the Property (collectively, "**Third Party Rights**") other than the Third Party Leases/Licenses. However, Port and County acknowledges that BNSF does not warrant beyond its actual knowledge that there are not other Third Party Rights. To BNSF's actual knowledge: the Third Party Leases/Licenses are in full force and effect in accordance with their respective terms, BNSF has not delivered or received a written notice of default that remains uncured under any Third Party Lease/License, or any other existing lease, franchise, easement, occupancy agreement, license or other agreement demising space in, providing for the use or occupancy of, or otherwise similarly affecting or relating to, or affecting the Property, and no tenant thereunder has asserted in writing any claim that remains outstanding for offsets or credits to rent thereunder, except as disclosed in writing to Port.

(l) To BNSF's actual knowledge, the copies of the Third Party Leases/ Licenses, are true and

correct copies of originals of such documentation in BNSF's possession.

5.2 Port and County. As of the Contract Date, Port and County individually hereby represent and warrant to BNSF that the following statements are materially true except as may otherwise be disclosed on Exhibit D:

5.2.1 Port:

(a) Port is a municipal corporation of the State of Washington, duly organized, validly existing and in good standing under the laws of the State of Washington, is authorized to do business in the State of Washington, and has full power and authority to enter into this Agreement and to fulfill its obligations hereunder.

(b) Port has taken all corporate action necessary to authorize the execution and delivery by Port of this Agreement and has taken or, before the expiration of the Review Period, will have taken, all corporate action necessary to authorize the execution and delivery of the other documents to be delivered by Port at Closing and the performance of its obligations hereunder and thereunder.

(c) This Agreement and the other documents to be delivered by Port at Closing have been, or before the Closing Date will have been, duly authorized and executed (and acknowledged where necessary) and delivered by Port, and all other necessary actions have been, or before the Closing Date will have been, taken, so that this Agreement and the other documents to be delivered by Port pursuant hereto constitute, or before the Closing Date will constitute the legally valid and binding obligations of Port, enforceable against Port in accordance with their terms.

(d) The execution and performance by Port of this Agreement and the other documents to be delivered by Port at Closing do not violate or conflict with the Port's charter or code or with any law, court order, administrative agency order or regulatory agency order binding upon Port or any of its properties.

(e) Port has received no written notice of any actual or pending litigation or proceeding by any organization, person, individual or governmental agency against the Port concerning the Property.

(f) Port is a qualified donee as described in Internal Revenue Code Section 170(c)(1).

5.2.2 County:

(a) County is a political subdivision of the State of Washington, duly organized, validly existing and in good standing under the laws of the State of Washington, is authorized to do business in the State of Washington, and has full power and authority to enter into this Agreement and to fulfill its obligations hereunder;

(b) County has taken all corporate action necessary to authorize the execution and delivery by County of this Agreement and has taken, or before May 15, 2008, will have taken, all corporate action necessary to authorize the execution and delivery of the other documents to be delivered by County at Closing and the performance of its obligations hereunder.

(c) This Agreement and the other documents to be delivered by County at Closing have been, or before the Closing Date, will have been duly authorized and executed (and acknowledged where necessary) and delivered by County, and all other necessary actions have been, or before the Closing Date will have been, taken so that this Agreement and the other documents to be delivered by County pursuant hereto

constitute, or before the Closing Date will constitute, the legally valid and binding obligations of County, enforceable against County in accordance with their terms.

(d) The execution and performance by County of this Agreement and the other documents to be delivered by County at Closing do no violate or conflict with the County's charter or code or any law, court order, administrative agency order or regulatory agency order binding upon County or any of its properties.

(e) County has received no written notice of any actual or pending litigation or proceeding by any organization, person, individual or governmental agency against County concerning the Property.

(f) County is a qualified donee as described in Internal Revenue Code Section 170(c)(1).

5.3 Miscellaneous. (a) As used in this Agreement, the phrase "BNSF's knowledge" or any derivation thereof shall mean the actual knowledge of the following persons, based on their reasonable inquiry in the file locations where the relevant information would normally be filed of: David P. Schneider, General Director of Real Estate; Bruce Sheppard, Manager Environmental Remediation, Carol Sanders, Regional Manager for Staubach Global Services, which provides property management services to BNSF with regard to the Property, and Jerome M. Johnson, Assistant Vice President, Network Development.

(b) It shall be a condition of the parties' respective obligation to Close that the representations and warranties of the other party contained in this Section 5 are true and correct in all material respects at the Closing Date as described herein. In the event that BNSF on the one hand or Port or County on the other learns that any of County's or Port's on the one hand or BNSF's on the other representations or warranties becomes inaccurate between the Contract Date and the Closing Date, BNSF or Port or County, as applicable, shall immediately notify the other parties in writing of such change. In the event the party whose representation or warranty becomes inaccurate (BNSF on the one hand or Port or County on the other the "**Representing Party**") cures such inaccuracy prior to the Closing Date this Agreement shall remain in full force and effect. If the Representing Party does not so cure such inaccuracy, the other party may pursue any remedy provided for in Section 10 (i.e., if BNSF's representations are inaccurate then County or Port may pursue such remedy and vice versa) provided, however, if the non-Representing Party closes with knowledge of any such inaccuracy then the representations and warranties of the Representing Party shall be deemed to be amended such that the applicable inaccuracy is an exception to the Representing Party's representations and warranties for all purposes under this Agreement. It shall not be a condition of either the County's or Port's obligations hereunder that the other's representations and warranties to BNSF are accurate, and County and Port shall not have enforcement rights as between each other as to such representations and warranties.

(c) In the event the non-Representing Party first learns after the Closing contemplated in this Agreement that any representations or warranties made by the Representing Party (as may be amended as provided above) were materially inaccurate as of the Closing Date, then the Representing Party shall reimburse the non-Representing Party for all out-of-pocket expenses incurred by the non-Representing Party as a result of such inaccuracy provided that (i) the non-Representing Party notifies the Representing Party in writing within sixty (60) months after the Closing Date of such expenses and inaccuracy, and (ii) the Representing Party shall in no event be responsible for any consequential or punitive damages resulting from such inaccuracy. Notwithstanding anything to the contrary contained in this Agreement, the non-Representing Party shall have no right to recover from, or proceed against, the Representing Party in any manner whether based upon breach of contract, tort or otherwise upon the expiration of such sixty (60) month period except to the extent the non-Representing Party has so notified the Representing Party in accordance with the terms of this Agreement within such sixty (60) month period. Nothing in this Section 5 shall modify any obligations imposed on any of the Parties pursuant to Section 7 of this Agreement or as such obligations are incorporated into the Deeds.

Section 6. Condition of Property. (a) Port and County have been, or by Closing will have been, allowed to make an inspection of the Property. Subject to BNSF's express representations, warranties and obligations under this Agreement and the Deeds, **PORT AND COUNTY ARE PURCHASING THEIR INTERESTS IN THE PROPERTY IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, ARE NOT RELYING ON, AND HEREBY WAIVE ANY WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM BNSF WITH RESPECT TO ANY MATTERS CONCERNING THE PROPERTY** including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Property with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, or under the Property; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Property; the condition of title to the Property, and the Third Party Leases/Licenses permits, orders, or other agreements, affecting the Property (collectively, the "**Condition of the Property**").

(b) Port and County individually represent and warrant for itself to BNSF that except for BNSF's express representations, warranties and obligations under this Agreement and the Deeds, Port and County each has not relied and will not rely on, and BNSF is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto made or furnished by BNSF, the manager of the Property, or any real estate broker or agent representing or purporting to represent BNSF, to whomever made or given, directly or indirectly, orally or in writing.

(c) Subject to BNSF's express representations, warranties and obligations under this Agreement and the Deeds Port and County assume the risk that Hazardous Substances or other adverse matters may affect the Property that were not revealed by Port's or County's inspection and except to the extent of BNSF's express representations, warranties and obligations under this Agreement and the Deeds, Port and County each waives, releases and discharges forever BNSF and BNSF's officers, directors, shareholders, employees and agents (collectively, "**BNSF Parties**") from any and all present or future claims or demands, and any and all damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown (collectively, "**Losses**"), which Port or County might have asserted or alleged against BNSF Parties arising from or in any way related to the Condition of the Property or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Property. Losses shall include without limitation (a) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) Losses for injury or death of any person, and (c) Losses arising under any Environmental Law enacted after transfer. The term "**Environmental Law**" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Model Toxics Control Act, the Water Pollution Control Act, laws concerning above ground or underground storage tanks, and any similar or comparable state or local law. The term "**Hazardous Substance**" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under

any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

BNSF, Port and County acknowledge that the compensation to be paid to BNSF for the Property reflects that the Property is being conveyed subject to the provisions of this Section 6 which provisions shall be included in the Deeds and which shall be covenants running with the Land.

Section 7. Environmental Obligations.

(a) Consistent with Section 4.2 of this Agreement, if, prior to the expiration of the Review Period, the Port or County notifies BNSF in writing of an existing condition affecting the Property (an “**Identified Condition**”) that is unacceptable to the Port or County, as determined by the Port and County in their respective sole and absolute discretion, and BNSF does not verify in writing by the earlier of: (i) fifteen (15) business days thereafter or the end of the Review Period, that such Condition is a condition that BNSF is obligated to Cure in a manner acceptable to the identifying Party pursuant to this Section 7, then the Port or County may terminate this Agreement and the South Agreement together, by written notice to BNSF in accordance with the provisions of Section 4.2 of this Agreement. If the Port or County timely notifies BNSF in writing of an Identified Condition, the Port, County and BNSF shall negotiate diligently and in good faith to reach agreement on Curing such condition. If the portion of the Property affected by an Identified Condition can be excluded from the sale without materially interfering with Port’s and County’s future use of the Property, as determined by the Port and County (as applicable) in their respective sole and absolute discretion, then BNSF may affect Cure prior to Closing by excluding such affected portion of the Property without any price adjustment and to the extent so excluded BNSF shall have satisfied its obligations under this Agreement to Cure the portion of the Property so excluded, provided, however, that any such Cure by exclusion must first be agreed to in writing by the Port (and County, if it relates to the Railbanked Portion.) If Port and County do not terminate this Agreement under Sections 4.2 and 7(a) and proceed to Closing, they shall not be deemed to have waived or released BNSF from any obligations to Cure set forth in Section 7(c), below.

(b) BNSF shall be responsible to investigate, remediate, respond to or otherwise cure (collectively, “**Cure**”) as and when required by and in accordance with Environmental Laws any Identified Condition that concerns a release of Hazardous Substances on the Property occurring prior to the Closing or a violation of Environmental Laws concerning the Property occurring prior to the Closing to the extent that BNSF has agreed to Cure, and to the standards that BNSF has agreed to satisfy, in writing prior to the expiration of the Review Period. Notwithstanding the preceding sentence, BNSF shall not be responsible to Cure any such Identified Conditions to the extent Port or County or their respective agents, or contractors materially exacerbate such Identified Condition during construction performed by or for Port or County, excluding superficial or *de minimis* activity performed by Port or County. Further, BNSF shall not be responsible to Cure any Identified Condition that was not caused by BNSF or its agents, contractors or invitees. Port and County shall cooperate with BNSF in its efforts to Cure any Identified Condition concerning a release of Hazardous Substances on the Property.

(c) (i) For Hazardous Substances released on the Property that BNSF has not agreed to Cure prior to Closing, whether or not BNSF has been notified under Section 7 (a) that such releases are an Identified Condition, BNSF shall pay to the Port or County the costs to investigate, remediate, respond to or otherwise cure (collectively “**Remediate**” or “**Remediation**”) any such Hazardous Substance releases, or any violation of Environmental Laws prior to Closing, to the extent occurring as a result of the operations of BNSF or its corporate predecessors, or the agents, employees, invitees or contractors of BNSF or its corporate predecessors. BNSF shall pay to the Port or County such costs to Remediate as and when required by and in accordance with Environmental Laws to standards for the Property that the applicable regulatory agency would apply had the Property continued to be used as a freight railroad, and to standards for other affected properties that the applicable regulatory agency would apply for such properties. BNSF shall not be

responsible for (1) any costs of Remediation to the extent the Port or County or their respective agents, contractors or invitees materially exacerbate the released Hazardous Substances during construction performed by or for Port or County (excluding superficial or *de minimis* activity performed by Port or County), or (2) any duplication of efforts by County or Port or their respective agents, contractors or invitees.

(ii) As among BNSF, Port and County, any Remediation for which this Section 7(c) applies would be carried out by the Port or County. BNSF shall cooperate with such Remediation.

(iii) The obligations of BNSF under this Section 7(c) apply only to Remediation ordered or approved by the applicable regulatory agency, provided that for Remediation approved by the applicable regulatory agency BNSF shall have agreed in writing to the Remediation prior to such approval, which agreement by BNSF shall not be unreasonably withheld, conditioned or delayed. The obligations of BNSF, Port and County under this Section 7(c) also apply regardless of which entity is issued an order by the applicable regulatory agency.

(d) Other than BNSF's obligations under this Section 7, as among BNSF, Port and County, Port and County will be responsible for all other costs of Remediation of Hazardous Substances released on or from the Property or violations of Environmental Laws.

(e) The Section 7 obligations running from BNSF to the Port and County, and the Section 7 rights running to BNSF from the Port and the County, will be allocated as between the Port and County in the manner separately agreed to by the Port and the County.

(f) The provisions of this Section 7 shall be included in the Deeds and shall run with the land.

Section 8. Conditions to Closing. The parties' respective obligation to proceed to Closing under this Agreement is subject to the conditions precedent described in this Section 8:

8.1 Surface Transportation Board Approval Contingency.

(a) Port shall, at Port's sole expense, apply for any necessary authority or exemption from the Surface Transportation Board ("STB") to complete the transaction contemplated in this Agreement or obtain a ruling from the STB that the acquisition of the Property is not subject to the jurisdiction of the STB. BNSF shall reasonably cooperate with Port in connection with any hearings or submittals required to obtain the necessary authority or a jurisdictional ruling from the STB. Prior to any Port filing with the STB regarding this transaction, Port shall provide a copy of the proposed filing to BNSF for BNSF's review. Port shall make the requisite STB filing within 15 days after the Contract Date.

(b) BNSF will assign and transfer at Closing the retained Freight Easement to the TPO selected by BNSF at the Port's request and approved by the Port ("**Freight Easement Designee**") and named in the Freight Easement Sale Agreement. The Freight Easement Designee shall, at the Freight Easement Designee's sole expense, apply for the necessary exemption from the STB to permit the transfer of the retained Freight Easement from BNSF to the Freight Easement Designee. BNSF shall reasonably cooperate with the Freight Easement Designee with any hearings or submittals required to obtain the necessary exemption from the STB. The Freight Easement Designee shall file a Notice of Exemption under 49 C.F.R. Part 1150, Subpart D or Subpart E, whichever is applicable, at least 30 days prior to the Closing Date, and shall comply with the requirements of 49 C.F.R. § 1150.32(e) or § 1150.42(e), if either is applicable, at least 60 days prior to the Closing Date.

(c) BNSF shall, at BNSF's sole expense, file one or more appropriate notices and/or petitions

with the STB authorizing the abandonment of the Railbanked Portion and shall coordinate with County with respect to such filings. Within the prescribed time periods, County shall file with the STB a trail use/rail banking request for all of the Railbanked Portion of the North Rail Line, and BNSF shall concurrently file a letter concurring in the request. Prior to the Closing Date, County shall file with the STB a request for approval of the transfer from BNSF to County the right and/or obligation to restore rail freight service over the Railbanked Portion. In the event the STB does not approve such transfer to King County then Port shall file with the STB a request for approval of the transfer of such right and/or obligation to the Port or to another entity designated by Port and approved by STB. As part of the Trail Use Agreement to be delivered at Closing, BNSF shall transfer to County, and County shall accept, at Closing the right and/or obligation to the reactivation rights on the Railbanked Portion on the Closing Date.

(d) In the event that the STB does not approve of all of the items contemplated in subsections (a) through (c) above prior to or at the Closing then any Party who has not breached its obligations in (a) through (c) above may extend the Closing Date by delivering notice to the other parties prior to or on the Closing Date in which case the Closing Date shall be extended to a date that is no later than December 29, 2008 to give additional time to satisfy the foregoing conditions and the parties shall proceed with the terms of this Agreement except that if the foregoing conditions are not satisfied by such extended Closing Date then this Agreement and the South Agreement shall terminate unless all the Parties agree in writing to a further extension. Upon such termination, Escrow Agent shall return the Earnest Money and half the interest earned thereon to Port and pay the other half of such interest to BNSF, and thereafter none of the parties shall have any further obligation hereunder except those that expressly survive the termination of this Agreement.

8.2 Other Conditions Precedent to Closing.

(a) Each party's obligation to Close is conditioned upon the other party to this Agreement having performed and satisfied each and all such other party's obligations under this Agreement.

(b) Each party's obligation to Close is conditioned upon the simultaneous Closing on the conveyance of the South Rail Line by BNSF consistent with the terms of the South Agreement.

(c) Port's and BNSF's obligation to Close is conditioned upon the simultaneous closing under the Freight Easement Sale Agreement of BNSF's conveyance of the Retained Freight Easement to a TPO. The TPO shall be one selected by BNSF at the Port's request and approved in writing by the Port, which approval shall not be unreasonably withheld, conditioned or delayed. The parties agree to cooperate together in good faith to pursue such closing.

In the event any of the foregoing conditions in this Section 8.2 are not satisfied prior to or at the Closing then, subject to Section 5.3 hereof, either Party may pursue the remedies set forth in this Agreement or the South Agreement, to the extent applicable.

Section 9. Closing.

9.1 Time and Place. Subject to the terms of this Agreement, the Closing shall take place on the Closing Date at the Pier 69 offices of the Port or such other location as is mutually agreeable to Port and BNSF.

9.2 Closing Deliveries. At the Closing, BNSF, Port and County (as applicable) shall execute and deliver to the appropriate party the following documents (all of which shall be duly executed, and witnessed and/or notarized as necessary):

(a) The Purchase Price

- (b) The Deeds conveying the Property.
- (c) A Closing Statement in form and substance mutually satisfactory to Port, BNSF and County.
- (d) Such transfer tax, certificate of value or other similar documents customarily required of BNSF in the county in which the Property is located.
- (e) Such further instructions, documents and information, including, but not limited to a Form 1099-S, as the other party may reasonably request as necessary to consummate the purchase and sale contemplated by this Agreement.
- (f) The Assignment.
- (g) The Exchange Assignment to the extent requested as described in Section 11 below.
- (h) The Bill of Sale.
- (i) The Easement Agreement for Snohomish Bridge
- (j) The Trail Use Agreement.
- (k) The Public Multipurpose Easement, in substantially the form as attached hereto as Exhibit L or as otherwise agreed to by the Port and the County.

Section 10. Default and Remedies.

10.1 Port's or County's Default. Subject to Section 5.3, in the event of a material default by Port or County under the terms of this Agreement or any Other Agreement prior to the Closing that is not cured within any applicable notice and cure periods, BNSF may elect as its exclusive remedy to either (a) terminate this Agreement and the South Agreement in which case BNSF may retain \$5,000,000 (Five Million Dollars) of the Earnest Money and none of the parties shall have any further obligation under this Agreement except those that expressly survive termination, or (b) waive such default and proceed to Closing in accordance with the terms of this Agreement. The parties acknowledge and agree that the damages BNSF would incur for such breach are difficult to ascertain and that such amount retained by BNSF is not a penalty and represents a reasonable estimate of such damages. Subject to Section 5.3 and Section 10.4, nothing in this Agreement shall waive or diminish any right or remedy BNSF may have at law, in equity or in contract for Port's or County's default under any document entered into by Port or County at Closing or under any Other Agreement or Port's or County's default under this Agreement after Closing.

10.2 BNSF's Default. Subject to Section 5.3 in the event of a material default by BNSF under the terms of this Agreement prior to the Closing that is not cured within any applicable notice and cure periods, Port and County together may elect as their exclusive remedy to (a) terminate this Agreement and the South Agreement together in which case the Earnest Money, all the interest earned thereon, and the Extension Fee, if applicable, shall be returned to the Port and none of the parties shall have any further obligation under this Agreement except those that expressly survive termination, (b) obtain specific performance of BNSF's obligations under this Agreement and the South Agreement (and in seeking any equitable remedies, Port and County shall not be required to prove or establish that Port and County do not have an adequate remedy at law and BNSF hereby waives the requirement of any such proof and acknowledges that County would not have an

adequate remedy at law in the event of a material default by BNSF), or (c) waive such default and proceed to Closing in accordance with the terms of this Agreement. Subject to Section 5.3 and Section 10.4, nothing in this Agreement shall waive or diminish any right or remedy Port and County may have at law, in equity or in contract for BNSF's default under any document entered into by BNSF at Closing or under any Other Agreement or BNSF's default after Closing under this Agreement.

10.3 Remedies as Between Port and County. As between Port and County, each shall have all remedies available at law or equity against one another for a material default under this Agreement, except as limited by separate written agreement between the Port and County.

10.4 Arbitration.

A. General Provisions. The parties shall use commercially reasonable efforts to prevent or resolve any disputes that may arise after Closing concerning their respective rights and obligations under this Agreement. In the event a dispute arising after Closing concerning the parties' respective rights and obligations under Sections 6 or 7 (but not other Sections) of this Agreement cannot be resolved by the parties, the parties shall submit such dispute to mediation before a mediator acceptable to the parties. If such dispute is not resolved within 45 business days after submission to mediation by the parties then the parties shall submit such dispute to binding arbitration as set forth in this Section 10.4. All such disputes shall be finally resolved by binding arbitration in accordance with the following provisions and the American Arbitration Association ("AAA") Commercial Arbitration Rules (AAA-CAR) in effect at the time arbitration is demanded (even if the matter is not submitted to the AAA). The parties may submit (but shall not be required to submit unless consensus over the selection of the arbitrator(s) is not reached), disputes to the AAA for administrative purposes. In the event that any provisions in this Agreement differ from the AAA-CAR, this Agreement shall govern.

B. Commencement of the Arbitration. Subject to the provisions of Section 10.4(A) above, any party may initiate arbitration by serving a demand at any time. The written demand for arbitration shall include a short and plain statement identifying the provisions of this Agreement which are in dispute, a summary of the facts or circumstances giving rise to the dispute, and describing the relief requested. Any party served with an arbitration demand may respond by serving upon the other party a written answer or a written counterclaim identifying additional claims to be considered in the arbitration, with a short and plain statement identifying the provisions of this Agreement which are in dispute, a summary of the facts or circumstances giving rise to the dispute, and describing the relief requested.

C. Selection of Arbitrator. The parties agree to submit arbitration disputes to a single arbitrator. The parties shall attempt to select an arbitrator by consensus within ten (10) business days after a demand has been served. In the event consensus is not reached by the parties, the arbitrator shall be selected in accordance with AAA-CAR and this Agreement. The arbitrator must be a retired state or federal judge or magistrate or someone of similar stature with experience in interpreting and enforcing complex commercial contracts involving environmental remediation obligations, or the type of matters at issue in the arbitration.

D. Authority to Grant Comprehensive Relief. The arbitrator shall have all legal and equitable powers necessary to interpret and to enforce the terms of this Agreement, but not to modify or vary its terms. The parties expressly agree that the arbitrator may fashion all necessary and appropriate relief, including money damages and/or injunctive relief, so long as any equitable remedy is consistent with the obligations of the parties under this Agreement

E. Award. Notwithstanding any AAA-CAR to the contrary, the arbitrator's award shall be in writing and include findings of fact and conclusions of law supporting that written decision. Any action to

compel arbitration under this Agreement, to enforce an arbitration award, or to vacate an arbitration award must be brought, if jurisdiction exists, in federal court in the Western District of Washington. Otherwise, such actions must be brought in state court in King County, Washington. However, in actions seeking to vacate an award, the standard of review to be applied to the arbitrator's findings of fact and conclusions of law will be the same as that applied by an appellate court reviewing a decision of a trial court sitting without a jury.

F. Payment of Fees and Costs of Arbitrator(s). The parties shall split and pay in equal shares the fees and costs of the arbitrator. Otherwise, the parties expressly reject any fee shifting, and each party shall pay all its own expenses associated with the arbitration, including all fees and costs relating to its own witnesses, exhibits, and counsel.

G. Amendment of Deadlines. The parties may, by mutual stipulation, agree to shorten or extend any of the deadlines set forth in this Section. The arbitrator also may, for good cause shown, alter any of those same deadlines.

10.5 The County enters into this Agreement only as it relates to the Railbanked Portion. The County does not enter into this Agreement in any way or for any purpose related to the Freight Portion, and shall not have any rights or obligations associated therewith.

Section 11. Assignment.

11.1 No Party may assign its rights under this Agreement without the prior written consent of the other except as expressly stated herein. Prior to Closing, BNSF may assign the rights to the Purchase Price and this Agreement to Apex Property & Track Exchange, Inc. ("Apex") or another qualified intermediary within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, for the purpose of completing a tax-deferred exchange under said Section 1031. BNSF shall bear all expenses associated with the use of Apex, or necessary to qualify this transaction as a tax-deferred exchange, and, except as otherwise provided herein, shall protect, reimburse, indemnify and hold harmless Port from and against any and all reasonable and necessary additional costs, expenses, including attorneys fees, and liabilities which Port may incur as a result of BNSF's use of Apex or other qualified intermediary, or the qualification of this transaction as a tax-deferred transaction pursuant to Section 1031. Upon request Port shall execute and deliver on or before Closing the document attached as Exhibit G (the "Exchange Assignment") and shall cooperate with BNSF with respect to this tax-deferred exchange, and upon BNSF's request, shall execute any other documents as may be reasonably required to effect this tax-deferred exchange.

11.2 On or before 5:00 pm on July 1, 2008, Port may, subject to King County Council approval, assign to County all of its right and obligations in this Agreement as to the Railbanked Portion only, provided County assumes all such obligations in writing and County and Port notify BNSF in writing of such assignment and assumption before said date.

Section 12. Brokers and Brokers' Commissions. Port, County and BNSF each warrant and represent to the other that each has not employed a real estate broker or agent in connection with the transaction contemplated hereby. Each party agrees to indemnify, defend and hold the others harmless from any loss or cost suffered or incurred by it as a result of the other's representation herein being untrue.

Section 13. Notices.

Except as otherwise expressly provided in this Agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Agreement shall be in writing and shall either be: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered via facsimile, with confirmation of receipt with an original deposited postage prepaid in the first class mails of the United States. Such notices shall be addressed to Port, County and BNSF at:

Port (if delivered):
Port of Seattle Legal Department
2711 Alaskan Way
Seattle, WA 98121
Attn: General Counsel

Port (if mailed):
Port of Seattle Legal Department
P.O. Box 1209
Seattle, WA 98111
Attn: General Counsel
Fax No. 206 728-3205

County:
King County
701 Fifth Avenue, Suite 3210
Seattle, WA 98104
Attn: Rod Brandon
Fax No.: 206-296-0194

Office of the King County Prosecuting Attorney
Civil Division
400 King County Courthouse
516 Third Avenue
Seattle, WA 98102
ATTN: Peter G. Ramels
Fax No.:206-296-0191

BNSF:
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76131
ATTN: Rick Weicher
Fax No.: 312-850-5677

With additional copy to:

BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76131
Attn: David Rankin
Fax No.: 817-352-2398

or to such person and at such other addresses as either party may at any time or from time to time designate for itself by notice in accordance herewith. Each such request, notice, demand, authorization, direction, consent, waiver or other document shall be deemed to be delivered to a party when received at its address set forth or designated as above provided. All notices provided under this Agreement to one party shall be provided to all other parties to this Agreement.

Section 14. Miscellaneous.

14.1 Governing Law; Headings; Rules of Construction. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without reference to the conflicts of laws or choice of law provisions thereof. The titles of sections and subsections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein. All references herein to the singular shall include the plural, and vice versa. The parties agree that this Agreement is the result of negotiation by the parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed against the maker thereof.

14.2 No Waiver. Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

14.3 Entire Agreement. Except for the Other Agreements and the agreements and instruments required to be executed under this Agreement, this Agreement contains the entire agreement of the parties hereto with respect to the Property and any other prior understandings or agreements concerning the Property are merged herein; and as between the parties, any representations, inducements, promises or agreements, oral or otherwise, not expressly embodied herein or incorporated herein by express reference, shall be of no force or effect.

14.4 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns (subject to Section 11 above).

14.5 Amendments. No amendment to this Agreement shall be binding on any of the parties hereto unless such amendment is in a single writing executed by the parties to this Agreement.

14.6 Date for Performance. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires on a Saturday, Sunday or legal or bank holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day. If no time is indicated for a day on which any action must be undertaken under this agreement, the time shall be 5:00 p.m. All references to time shall be to Pacific time.

14.7 Recording. BNSF, Port and County agree that they will not record this Agreement and that they will not record a short form of this Agreement.

14.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute but one and the same instrument.

14.9 Time of the Essence. Time is of the essence of this Agreement and each and every term and condition hereof.

14.10 Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any term or provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be held to be invalid or unenforceable, then such term or provision shall be ignored, and to the maximum extent possible, this Agreement shall continue in full force and effect, but without giving effect to such term or provision.

14.11 Attorneys' Fees. In the event any party shall bring an action or legal proceeding for an alleged breach of any provision of this Agreement or any representation, warranty, covenant or agreement herein set forth, or to enforce, protect, determine or establish any term, covenant or provision of this Agreement or the rights hereunder of either party, the prevailing party shall be entitled to recover from the non-prevailing party, as a part of such action or proceedings, or in a separate action brought for that purpose, reasonable attorneys' fees and costs, expert witness fees and court costs, including those incurred upon appeal, as may be fixed by the court or a jury.

14.12 Relationship. Nothing in this Agreement or the Other Agreements shall be deemed or construed by the parties hereto, nor by any other party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto.

14.13 Publicity. BNSF, Port and County shall discuss and coordinate with respect to any public filing or announcement concerning the purchase and sale contemplated hereunder.

14.14 Survival. The terms of this Agreement shall survive Closing and the delivery of the Deeds.

14.15 Waiver of Trial by Jury, Venue and Personal Jurisdiction. BNSF, PORT AND COUNTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO, THIS AGREEMENT. King County Superior Court or the Federal District Court for the Western District of Washington, both in King County, Washington, shall be the sole and exclusive venues for any action or legal proceeding for an alleged breach of any provision of this Agreement or any representation, warranty, covenant or agreement herein set forth, or to enforce, protect, determine or establish any term, covenant or provision of this Agreement or the rights hereunder of either party; and the parties hereby agree to submit to the personal jurisdiction of said courts.

14.16 Condemnation. In the event any portion of the Property becomes subject to condemnation proceedings after the Contract Date and prior to Closing, BNSF will promptly notify Port and County in writing of such fact.

(a) If such condemnation concerns a crossing of the Property by a pipeline, electricity or telecommunication facility or other utility and is valued at less than \$25,000 then BNSF shall handle such condemnation or conveyance in lieu of condemnation in accordance with its normal practice and inform Port and County of the interests conveyed, and Port and County shall not be entitled to any proceeds from such condemnation or conveyance or any reduction in the Purchase Price. Such conveyance shall not however, in any way alter the obligations of BNSF under this Agreement other than BNSF's inability to convey at Closing the interests conveyed by BNSF to a third party under this Section 14.16.

(b) If such condemnation is not subject to the terms of Section 14.16(a), then Port and County together but not separately may elect to terminate this Agreement and the South Agreement together, in which

case Escrow Agent shall refund to Port the Earnest Money and half the interest thereon and shall pay BNSF the other half of such interest and none of the parties shall have any further obligation hereunder except those that expressly survive termination.

14.17 Right of First Refusal. County shall have a right of first refusal to purchase that real and personal property constituting BNSF's rail corridor from Milepost 0.0 to Milepost 5.0 (the "**Renton Corridor**") located in King County, Washington as contemplated in this Section. At any time BNSF wishes to sell the Renton Corridor to an unaffiliated third party, BNSF shall deliver written notice (the "**ROFR Notice**") to County setting forth the terms of such proposed sale. County may either elect to purchase the Renton Corridor in accordance with the terms set forth in the ROFR Notice or elect to refuse to purchase the Renton Corridor in accordance with such terms. If County does elect to purchase the Renton Corridor according to the terms set forth in the ROFR Notice, County may do so by notifying BNSF in writing within thirty (30) days after delivery of the ROFR Notice. Within sixty (60) days after such notification by County, County and BNSF shall enter into a sale agreement substantially in the form of this Agreement, as modified to reflect the terms set forth in the ROFR Notice. If County fails to enter into such agreement within such sixty days or if County does not notify BNSF within such thirty days of County's exercise of its right of first refusal, then BNSF may sell the Renton Corridor to any party without again complying with the provisions of this Section 14.17 on terms substantially the same as set forth in the ROFR Notice and with a sale price of not less than 90% of the price set forth in the ROFR Notice. Notwithstanding anything to the contrary contained in this Agreement, (a) BNSF shall have the right to encumber the Renton Corridor or grant easements, licenses or other use rights affecting the Renton Corridor, and (b) County's right of first refusal pursuant to this Section 14.17 shall expire and be of no further force and effect on December 29, 2013.

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IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized signatory, effective as of the day and year first above written.

BNSF RAILWAY COMPANY

By: _____
Name: Richard E. Weicher
Title: Vice President & General Counsel - Regulatory

PORT OF SEATTLE

By: _____
Name: Tay Yoshitani
Title: Chief Executive Officer

KING COUNTY

By: _____
Name: Ron Sims
Title: King County Executive

EXHIBIT A

DESCRIPTION OF PROPERTY

NORTH

All that portion of BNSF Railway Company's (formerly Northern Pacific Railway Company) Snohomish (MP 38.25) to Woodinville (MP 23.45), Washington Branch Line right of way, varying in width on each side of said Railway Company's Main Track centerline, as now located and constructed upon, over and across Snohomish County and King County, Washington, more particularly described as follows, to-wit:

SNOHOMISH COUNTY

That portion of that certain 60.0 foot wide Branch Line right of way being 30.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across State Street, as said street is shown on plat of Snohomish City Eastern Part, recorded as Instrument No. 187204125001 in Book 1, Page 7, records of the Snohomish County, Washington Auditor, lying southerly of the Easterly prolongation of the centerline of vacated Commercial Street, as said Commercial Street is shown on said plat; also

That portion of the Southerly half of vacated Commercial Street as said street is shown on the plat of Snohomish City Eastern Part, recorded as Instrument No. 187204125001 in Book 1, Page 7, records of the Snohomish County, Washington, vacated by ordinance No. 354 of the City of Snohomish, State of Washington, passed May 16, 1911, described as follows:

Beginning at the northeast corner of Lot 5, Block 2 of said plat of Snohomish City Eastern Part; thence Westerly, along the northerly line of said Lot 5, a distance of 20 feet, more or less, to a point 50 feet distant westerly, when measured at right angles from the centerline of State Street, as said State Street is shown on said plat; thence Northerly, along a line 50 feet westerly from the center line of said State Street, 30 feet, more or less to the centerline of said Commercial Street; thence Easterly, along said centerline of Commercial Street, 20 feet, more or less to the northerly prolongation of the east line of said Lot 5, thence Southerly, along said northerly prolongation, 30 feet, more or less, to Point of Beginning; also,

Lots 4 and 5, of Block 2 as shown on plat of Snohomish City Eastern Part, recorded as Instrument No. 187204125001 in Book 1, Page 7, records of the Snohomish County, Washington; also,

That portion of that certain 50.0 foot wide Branch Line right of way being 25.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across Government Lot 4, Section 18, Township 28 North, Range 6 East, W. M., bounded Northeasterly by the Southwesterly Bank of the Snohomish River, an bounded Southwesterly by a line parallel with and distant 50.0 feet Northeasterly from, measured at right angles to said Railway Company's (formerly Great Northern Railway Company) Everett to Spokane Main Track centerline as originally located and constructed, together with all right, title and interest if any, to accommodate said railway company's facilities and operations over and across the Snohomish River; also

That portion of that certain 50.0 foot wide Branch Line right of way being 25.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across Government Lot 4, Section 18, Township 28 North, Range 6 East, W. M., bounded Northeasterly by a line parallel with and distant 150.0 feet Southwesterly from, measured at right angles to said Railway Company's (formerly Great Northern Railway Company) Everett to Spokane Main Track centerline as originally located and constructed, and bounded Southerly by the Southerly line of said Government Lot 4; also

A triangular shaped tract of land being that portion of Government Lot 4, Section 18, Township 28 North,

Range 6 East, W. M., bounded Northeasterly by a line parallel with and distant 150.0 feet Southwesterly from, measured at right angles to said Railway Company's (formerly Great Northern Railway Company) Everett to Spokane Main Track centerline as originally located and constructed, bounded Northwesterly by a line parallel with and distant 25 feet Easterly from, measured at right angles to said Railway Company's Branch Line right of way Main Track centerline as originally located and constructed and bounded Southerly by the Southerly line of said Government Lot 4; also

That certain 0.11 acre strip of land described in deed dated September 9, 1903 from J. H. Shadinger and Hattie E. Shadinger to Northern Pacific Railway Company recorded September 19 in Book 80, Page 296, records of Snohomish County, Washington, said 0.11 acre strip of land being described in said deed for reference as follows:

"A strip of land eighty (80) feet in width across that certain thrity-three (33) foot strip of land in Lot four (4), Section eighteen (18), Township twenty-eight (28) north, Range six (6) east, W.M., which lies immediately south of, parallel with and contiguous to the right of way of the Great Northern Railway Company across said subdivision; said eighty (80) foot strip of land having for its east and west boundaries two lines that are parallel with and respectively distant twenty-six (26) feet on the northeasterly side and fifty-four (54) feet on the southwesterly side of the center line of the proposed track which is to connect the Great Northern Railway with the Northern Pacific Railway as the same is located, staked and constructed over and across said subdivision; containing 0.11 acres, more or less."; also,

That certain 1.94 acre strip of land described in deed dated September 9, 1903 from Kate G. Ford, D. A. Ford, Ruth S. Ford and D. A. Ford as sole executor to Northern Pacific Railway Company recorded September 19 in Book 80, Page 298, records of Snohomish County, Washington, said 1.94 acre strip of land being described in said deed for reference as follows:

"All that portion of Lot four (4), Section eighteen (18) and of Lot one (1) (or the northwest quarter of the northwest quarter) of Section nineteen (19), Township twenty-eight (28) north, Range six (6) east, W.M., lying westerly of the Northern Pacific Railway Company's right of way and southerly of a line drawn parallel with and thirty-three (33) feet distant southerly from the south line of the Great Northern Railway Company's right of way and between lines drawn parallel with and respectively distant twenty-six (26) feet easterly from and fifty-four (54) feet westerly from the center line of the proposed track which is to connect the Northern Pacific Railway with the Great Northern Railway as the same is now located, staked out and to be constructed over and across said premises; said strip of land containing 1.94 acres, more or less."; also;

That certain .08 acre strip of land described in deed dated April 25, 1908 from Robert Henry and Margaret R. Henry to Northern Pacific Railway Company recorded June 1, 1908 in Book 110 of Deeds, Page 509, records of the County Auditor, Snohomish County, Washington, said .08 acre strip of land being described in said deed for reference as follows:

"A strip of land thirty (30) feet wide described as follows: Beginning at a point on the section line between Sections 18 and 19, Township 28 North, Range 6 East, Willamette Meridian, fifty-five (55) feet distant measured at right angles from the center line of the main track of the said Railway Company as the same is now located, constructed, maintained and operated through said sections; thence northeasterly on a line parallel with and fifty-five (55) feet distant from said center line one hundred ten (110) feet, more or less, to the south line of the Tacoma Power Company's right of way; thence southeasterly along the south line of said Tacoma Power Company's right of way thirty (30) feet to the westerly line of the present right of way of said Northern Pacific Railway Company, which line at that point is twenty-five (25) feet from the center line of the main track of said Railway Company; thence southwesterly along said westerly line of the right of way one hundred ten (110) feet, more or less, to the point where said right of way widens to fifty (50) feet on each side of said center line; thence westerly twenty-five (25) feet to point of intersection with the above described section line; thence west along said section line five (5) feet, more or less, to place of beginning, said strip being situated in Lot four (4) Section eighteen (18) and Lot one (1) Section nineteen (19) all in Township

twenty-eight (28) North, Range six (6) East, Willamette Meridian and containing eight hundredths (.08) of an acre, more or less.”; also,

That portion of said Railway Company’s property in Government Lot 4, Section 18, Township 28 North, Range 6 East, W.M., Snohomish County, Washington, bounded Northeasterly and Southwesterly by two lines drawn parallel with and distant Southwesterly 150.0 feet and 183.0 feet, respectively, from, measured at right angles to said Railway Company’s (formerly Great Northern Railway Company) Everett to Spokane Main Track centerline as originally located and constructed and bounded Southeasterly and Northwesterly by two lines drawn parallel with and distant Northwesterly 25.0 feet and 50.0 feet, respectively, from, measured at right angles to said Railway Company’s Branch Line Main Track centerline as now located and constructed; also,

That portion of that certain 100.0 foot wide Branch Line right of way, in the Town of Bromart, Snohomish County, Washington, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across Lots 1 and 2, Section 19, Township 28 North, Range 6 East, W. M., Snohomish County, Washington, bounded Northerly by the North line of said Section 19, and bounded Westerly by the West line of said Section 19; also,

That portion of said Railway Company’s property in Lots 1 and 2, Section 19, Township 28 North, Range 6 East, W. M., Snohomish County, Washington, bounded as follows: Westerly by a line parallel with and distant 50.0 feet Easterly from, measured at right angles to said Railway Company’s Branch Line Main Track centerline as now located and constructed; Northerly by the North line of said Section 19 and Easterly by the following described line:

Beginning at a point on a line parallel with and distant 50.0 feet Southerly from, measured at right angles to said Railway Company’s (formerly Great Northern Railway Company) Everett to Spokane Main Track centerline, as originally located and constructed, opposite Station 512+68.45, said point of beginning being the point of a curve to the left having a radius of 621.20 feet; thence westerly, along the arc of said curve to the left and consuming a central angle of 90°57’06”, an arc distance of 986.10 feet to the point of tangency of said curve, said point of tangency being 125 feet easterly, when measured at right angles from Station 1963+97.51 on said Railway Company’s Branch Line Main Track centerline; thence southerly, along a line drawn parallel and/or concentric with and 125 feet easterly, when measured at right angles and/or radially, from said Branch Line Main Track centerline, to a point opposite Station 1956+00 on said Railway Company’s Branch Line Main Track centerline; thence westerly, along a line drawn radially with the centerline of said Railway Company’s Branch Line Main Track centerline, a distance of 25 feet; thence southerly, along a line drawn concentric with and 100 feet easterly, when measured radially, from the centerline of said Railway Company’s Branch Line Main Track centerline, to a point opposite Station 1953+00 on the centerline of said Railway Company’s Branch Line Main Track centerline; thence westerly along a line drawn radially with the centerline of said Railway Company’s Branch Line Main Track centerline, a distance of 25 feet; thence southerly, along a line drawn concentric with and 75 feet easterly, when measured radially from said Railway Company’s Branch Line Main Track centerline to the west line of said Section 19, also being the terminus of the herein described line.

EXCEPTING THEREFROM, a strip of land 30 feet wide, the center line of which is 435 feet north from and parallel with the East and West centerline of said Section 19, extending from the west line of said Section 19 to the East boundary of said hereinabove described tract; **ALSO EXCEPTING THEREFROM**, that portion of said hereinabove described tract lying northerly of a line parallel with and distant 150.0 feet Southerly from, measured at right angles to said Railway Company’s (formerly Great Northern Railway Company) Everett to Spokane Main Track centerline, as originally located and constructed, also,

That portion of that certain 100.0 foot wide Branch Line right of way, in the Town of Bromart, Snohomish County, Washington, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the E½E½ Section 24, the E½NE¼ Section 25, all in Township 28 North,

Range 5 East, W. M., bounded Northerly by the East line of said E $\frac{1}{2}$ E $\frac{1}{2}$ Section 24, and bounded Southerly by the East line of said E $\frac{1}{2}$ NE $\frac{1}{4}$ Section 25; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across Government Lots 1, 2, 3, 5, 6, of Section 30, Township 28 North, Range 6 East, W. M., bounded Westerly by the West lines of said Lots 1 and 2 and bounded Southerly by the South line of said Lot 5; also,

That portion of that certain 110.0 foot wide Branch Line right of way, being 60.0 feet Westerly and 50.0 feet Easterly of said Main Track centerline, as originally located and constructed, upon, over and across Government Lot 8 of Section 31, Township 28 North, Range 6 East, W. M., bounded Northerly and Southerly by the North and South lines of said Lot 8; also,

That portion of that certain 200.0 foot wide Branch Line right of way, being 100.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across Government Lot 3, the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 31, Township 28 North, Range 6 East, W. M., bounded Northerly by the North line of said SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 31, and bounded Southerly by the South line of said Government Lot 3 and its easterly prolongation; also,

That certain 2.0 acre tract of land described in deed dated April 13, 1918 from John S. Eby to the Northern Pacific Railway Company, recorded April 20, 1918 in Volume 180 of Deeds, Page 451, records of Snohomish County, Washington, said tract being described in said deed for reference as follows:

"That property of the grantor (being the north nine hundred forty-five and five tenths (945.5) feet, more or less, of the south eleven hundred forty-three and five tenths (1143.5) feet of the north-half of the southwest quarter (N $\frac{1}{2}$ of SW $\frac{1}{4}$) of section thirty-one (31) in Township twenty-eight (28) north of range six (6) east of the Willamette Meridian, west of the present right of way of said Railway Company lying between lines parallel with and distant respectively one hundred (100) and one hundred fifty (150) feet westerly from the center line of the present main track of said Railway Company, as the same is now constructed and operated over and across said section; also that portion of said N $\frac{1}{2}$ of SW $\frac{1}{4}$ lying between lines parallel with and distant respectively one hundred fifty (150) and two hundred (200) feet westerly from said above named main track center line and between a line parallel with and distant one hundred ninety-eight (198) feet northerly from the south line of said government subdivision and a line drawn at right angles to said main track center line at a point distant twenty-one hundred thirty-four and eight tenths (2134.8) feet northerly from its point intersection with the south line of said section 31, containing in all two (2) acres, more or less."; also,

That certain 0.35 acre tract of land described in deed dated March 25, 1918 from John Grinier and Alice Grinier to the Northern Pacific Railway Company, recorded April 10, 1918 in Volume 180 of Deeds, Page 401, records of Snohomish County, Washington, said tract being described in said deed for reference as follows:

~~"A strip of land of the Westerly side of and adjacent to the present two hundred (200) foot right of way of said Railway Company in the south six (6) acres (or the south one hundred ninety-eight (198) feet more or less, of the north-half of the southwest quarter (N $\frac{1}{2}$ of SW $\frac{1}{4}$) of section thirty-one (31) in Township twenty-eight (28) north of range six (6) east of the Willamette Meridian, said strip of land being more particularly described as follows:~~

~~"Beginning at a point on the south line of said N $\frac{1}{2}$ of SW $\frac{1}{4}$, one hundred (100) feet distant westerly, measured at right angles, from the present main track of said Railway Company, as the same is now, constructed and operated over and across said section; thence northerly on a line parallel with and one hundred (100) feet distant westerly from said center line to the north line of the property of said grantors (being the north line of the south 198 feet, more or less of the above named government subdivision); thence west along said north line to a point two hundred (200) feet distant westerly, measured at right angles, from~~

said main track center line; thence southeasterly in a straight line to a point on the south line of said above named government subdivision fifty-five (55) feet west of the point of beginning; thence east to the point of beginning, containing thirty-five hundredths (35/100) acres, more or less.”; also,

That certain tract of land described in deed dated December 15, 1937 from Ella L. Moulton to the Northern Pacific Railway Company recorded February 19, 1938 in Volume 238 of Deeds, Page 102, records of Snohomish County, Washington, said tract of land being described in said deed for reference as follows:

“That portion of Tract No. 139 as shown on the official plat of CATHCART on file and of record in the office of the Auditor of said County situate within the south half of southwest quarter (S $\frac{1}{2}$ of SW $\frac{1}{4}$) of section thirty-one (31) in township twenty-eight (28) north of range six (6) east of the Willamette Meridian, lying easterly of a line parallel with and distant fifty (50) feet westerly measured at right angles, from the center line of the present main track of the Northern Pacific Railway Company as the same is now constructed and operated over and across said section thirty-one.”; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across Government Lot 4 in Section 31, Township 28 North, Range 6 East, W. M., Government Lots 4, 5, 6 and 7 in Section 6, Government Lots 1, 2, 3, 4 and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 7, Government Lots 2, 3, 4 and the E $\frac{1}{2}$ NW $\frac{1}{4}$ Section 18, Government Lots 1 and 2 Section 19, all in Township 27 North, Range 6 East, W. M., the E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ Section 12, and the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 24, all in Township 27 North, Range 5 East, W. M., bounded Northerly by the North line of said Government Lot 4 in Section 31, and bounded Southerly the West line of said NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 24; also

That portion of that certain 200.0 foot wide Maltby Station Ground property, being 100.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the W $\frac{1}{2}$ SE $\frac{1}{4}$ Section 24, Township 27 North, Range 5 East, W. M., bounded Easterly and Westerly by the East and West lines of said W $\frac{1}{2}$ SE $\frac{1}{4}$ Section 24, **EXCEPTING THEREFROM**, that portion of said 200.0 foot wide Station Ground property lying Northwesterly of a line concentric with and distant 25.0 feet Northwesterly from, measured radially to said Railway Company’s Main Track centerline as now located and constructed; also

That portion of that certain 100.0 foot wide Maltby Station Ground property, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the E $\frac{1}{2}$ SW $\frac{1}{4}$ Section 24, Township 27 North, Range 5 East, W. M., bounded Northerly by the East line of said SW $\frac{1}{4}$ Section 24 and bounded Southerly by the South Line of said SW $\frac{1}{4}$ Section 24, **EXCEPTING THEREFROM**, that portion lying Northwesterly of a line concentric with and distant 25.0 feet Northwesterly from, measured radially to said Railway Company’s Main Track centerline as originally located and constructed, bounded Northeasterly by the East line of said SW $\frac{1}{4}$ Section 24, and bounded Southwesterly by the Easterly edge of the travelway of the Street connecting 91st Avenue SE with Yew Way in the City of Maltby, Washington, as now located and constructed in a generally Southerly direction from 91st Avenue SE, and about 100 feet Southwesterly of the North-South quarter line of said Section 24, as measured along said Main Track centerline; also,

That portion of that certain 200.0 foot wide Maltby Station Ground property, being 100.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the NW $\frac{1}{4}$ Section 25, Township 27 North, Range 5 East, W. M., bounded Northerly and Southerly by the North and South lines of said NW $\frac{1}{4}$ Section 25; also

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, Township 27 North, Range 5 East, W. M., bounded Northerly and Westerly by the North and West lines of said NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25; also,

That portion of that certain 200.0 foot wide Branch Line right of way, being 100.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and the NE $\frac{1}{4}$ Section 26, all in Township 27 North, Range 5 East, W. M., bounded on the East by the East line of said NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, and bounded on the West by the West line of said NE $\frac{1}{4}$ Section 26; also

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 26, Township 27 North, Range 5 East, W. M., bounded Easterly by the East line of said SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 26, and bounded Westerly by the West line of said NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 26; also,

That portion of that certain 200.0 foot wide Branch Line right of way, being 100.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the W $\frac{1}{2}$ SW $\frac{1}{4}$ Section 26, and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 35, all in Township 27 North, Range 5 East, W. M., bounded on the East by the East line of said W $\frac{1}{2}$ SW $\frac{1}{4}$ Section 26, and bounded on the South by the South line of said NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 35, **EXCEPTING THEREFROM**, that portion lying Westerly of a line parallel and/or concentric with and distant 50.0 feet Westerly from, measured at right angles and/or radially to said Railway Company's Main Track centerline as originally located and constructed, bounded on the North by the North line of said Section 35, and bounded on the South by a line radial to said Main Track centerline at a point 530.0 feet South of the North line of said Section 35, as measured along said Main Track centerline; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 35, the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34, all in Township 27 North, Range 5 East, W. M., bounded on the North by the North line of said SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 35, and bounded on the South by the South line of said NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34; also,

That portion of that certain 50.0 foot wide Branch Line right of way, being 25.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34, Township 27 North, Range 5 East, W. M., bounded on the North by the North line of said SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34, and bounded on the South by a line radial to said Railway Company's Main Track centerline, as originally located and constructed, at a point distant 600 feet Southwesterly of said North line of said SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34, as measured along said Main Track centerline; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the S $\frac{1}{2}$ SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 34, Township 27 North, Range 5 East, W. M., bounded on the North by a line radial to said Railway Company's Main Track centerline, as originally located and constructed, at a point distant 600 feet Southwesterly of said North line of said SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34, as measured along said Main Track centerline, and bounded on the South by the South line of said Section 34, said line also being the South line of Snohomish County Washington.

KING COUNTY

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the Lots 2, 3, the S $\frac{1}{2}$ N $\frac{1}{2}$, and the E $\frac{1}{2}$ SW $\frac{1}{4}$ Section 3, the NW $\frac{1}{4}$ Section 10, all in Township 26 North, Range 5 East, W. M., bounded on the North by the North line of said Section 3, said line also being the North line of King County, Washington, and bounded on the West by the West line of said NW $\frac{1}{4}$ Section 10, **EXCEPTING THEREFROM**, that portion lying Easterly of a line parallel with and distant 20 feet Easterly from, measured at right angles to said Railway Company's Main Track centerline as now located and constructed, bounded on the North by the

South line of 8th Street, according to the recorded plat of Bear Creek Addition to Day City, Washington, and bounded on the South by a line perpendicular to said Railway Company's Main Track centerline distant 450.0 feet Southerly from the North line of said ~~E¹/₂SW¹/₄ Section 3, as measured along said Main Track centerline;~~ also,

A 100 foot wide strip of land being that portion of that certain 100.0 foot wide strip of land described in deed dated June 8, 1887 from Ira Woodin and Susan Woodin to Seattle and West Coast Railway, recorded June 14, 1887 in Book 42 of Deeds, Page 410, records of King County, Washington, that portion of that certain 100.0 foot wide strip of land described in deed dated July 26, 1890 from Ira Woodin and Susan Woodin to Seattle and West Coast Railway, recorded November 10, 1890 in Book 112 of Deeds, Page 556, records of King County, Washington, and that certain 100.0 foot wide strip of land described in deed dated June 14, 1887 from Mary B. Jaderholm to Seattle and West Coast Railway, recorded June 14, 1887 in Book 41 of Deeds, Page 385, records of King County, Washington, lying in Section 9, Township 26 North, Range 5 East, W. M., bounded on the East by the East line of said Section 9, and bounded on the West by a line drawn radially to said Railway Company's Main Track centerline, distant 1867.0 feet Easterly of the West line of said Section 9, also being the Easterly boundary of that certain Tract VIII described in deed dated December 19, 1985 from Burlington Northern Railroad Company to King County, recorded in the records of King County, Washington as Instrument No. 198512191094, **EXCEPTING THEREFROM**, that certain tract of land described in Deed dated June 29, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 2000 as Document No. 20000522001158, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in deed dated November 17, 1998 from The Burlington Northern and Santa Fe Railway Company to Tjossem Properties IV, LLC and Tjossem Properties V, LLC, recorded December 23, 1998 as Instrument No. 9812240021, which lies within said 100.0 foot strip of land; also,

That certain 0.32 acre tract of land described in deed dated July 24, 1903 from Frank A. Woodin and Anna Woodin to Northern Pacific Railway Company recorded July 30, 1903 in Book 370 of Deeds, Page 89, records of King County Washington, said 0.32 acre tract being described in said deed for reference as follows:

"All that portion of the Southeast quarter of the Northeast quarter (SE/4 of NE/4) of Section Nine (9), Township Twenty-six (26) North, Range Five (5) East, W.M., described by metes and bounds as follows: Beginning at the point where the southeasterly line of the present right of way of the Northern Pacific Railway intersects the south line of the said Southeast quarter of the Northeast quarter (SE/4 of NE/4) and running thence east along the south line of said Southeast quarter of the Northeast quarter (SE/4 of NE/4) a distance of 190 feet, more or less, to a point which is 50 feet distant from, when measured at right angles to, the center line of the proposed Seattle Belt Line Branch of the Northern Pacific Railway as the same is now located, staked out and to be constructed over and across said Government subdivision; thence running northeasterly and parallel with and 50 feet distant from said center line of the Seattle Belt Line Branch a distance of 400 feet, more or less, to a point in the southeasterly line of the present right of way of the Northern Pacific Railway, thence southwesterly along said right of way line to point of beginning; containing 0.32 acres, more or less."

~~A 100 foot wide strip of land lying in the N/2 of the SE/4 of Section 9, Township 26 North, Range 5 East, W. M., being that certain 1.91 acre tract of land described in deed dated May 19, 1903 from Mary B. Hansen and Anders Hansen to Northern Pacific Railway Company recorded May 28, 1903 in Volume 361 of Deeds, Page 48, records of King County, Washington and that certain 0.92 acre tract of land described in deed dated July 1, 1903 from A. J. Milton and Anna Milton to Northern Pacific Railway Company recorded July 10, 1903 in Volume 363 of Deeds, Page 211, records of records of King County, Washington, said 100 foot wide strip being described as follows:~~

A 100 foot wide strip of land being 50.0 feet on each side of said Railway Company's Seattle Belt Line Main Track centerline as originally located and constructed, upon, over and across said N/2 of the SE/4 of Section 9, bounded Northerly and Southerly by the North and South lines of said N/2 of the SE/4 of Section 9; also,

That certain 0.03 acre triangular tract of land described in deed dated June 4, 1923 from Mary B. Hansen and A. Hansen to Northern Pacific Railway Company recorded June 8, 1923 in Volume 1192 of Deeds, Page 539, records of King County, Washington, said 0.03 acre tract being described in said deed for reference as follows:

“That certain triangular portion of the northeast quarter of southeast quarter (NE¼ of SE¼) of section nine (9) in township twenty-six (26) north of range five (5) east of the Willamette Meridian, lying easterly of and between the rights of way of the Northern Pacific Railway Company for its Snoqualmie Branch and its Lake Washington Belt Line and westerly of a line parallel with and distant twenty-five (25) feet easterly, measured at right angles from the center line of the proposed wye track connection between said branch lines as the same is now located, staked out and to be constructed over and across said premises, containing three hundredths (0.03) acres, more or less.”; also,

That certain 4.02 acre tract of land described in deed dated November 13, 1903 from Emanuel Neilsen and Grete Neilsen to Northern Pacific Railway Company recorded November 16, 1903 in Volume 358 of Deeds, Page 543, records of King County, Washington, said 4.02 acre tract being described in said deed for reference as follows:

“A strip of land over and across the south half of the southeast quarter (S/2 of SE/4) of Section nine, Township twenty-six (26) north, Range five (5) east, W.M., consisting of a strip of land one hundred ten (110) feet wide, being fifty (50) feet wide on the southwesterly side of the center line of the proposed Seattle Belt line railroad of the Northern Pacific Railway Company, as the same is surveyed and staked out across said premises, and sixty (60) feet in width on the northeasterly side of said center line; and an additional strip of land twenty (20) feet in width on the northeasterly side of said above described strip from Station 29 of said railroad center line extending to the south line of said Section 9, a distance of 580 feet, said additional strip being 20 feet wide and 580 feet long; containing 4.02 acres, more or less.” EXCEPTING THEREFROM, All that portion of the Southwesterly 35.0 feet of Parcels “A” and “B” of Boundary Line Adjustment Number S92L0145R, King County, Washington, according to the recorded plat thereof.

Redmond Spur

All that portion of BNSF Railway Company’s (formerly Northern Pacific Railway Company) Redmond Spur Right of Way, varying in width on each side of said Railway Company’s Main Track centerline, as now located and constructed, between Woodinville (Milepost 0.0) to Redmond (Milepost 7.3), King County, Washington, more particularly described as follows, to-wit:

That certain tract of land described in deed dated December 28, 1931 from John DeYoung and Ellen DeYoung to Northern Pacific Railway Company recorded in Volume 1511 of Deeds, Page 495, records of King County, Washington, lying in the N/2 of SE/4 Section 9, Township 26 North, Range 5 East, W. M., ~~EXCEPTING THEREFROM, that portion of that certain tract of land described in deed dated November 17, 1998 from The Burlington Northern and Santa Fe Railway Company to Tjossem Properties IV, LLC and Tjossem Properties V, LLC, recorded December 23, 1998 as Instrument No. 9812240021, which lies within said tract described in deed dated December 28, 1931; also,~~

That portion of that certain 100.0 foot wide Redmond Spur right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the E½ Section 9, the NE¼NE¼ Section 16, the NW¼ Section 15, all in Township 26 North, 5 East, W. M., bounded Northerly by a line concentric with and distant 50.0 feet Southwesterly from, measured radially to said Railway Company’s Seattle to Sumas Main Track centerline as now located and constructed, and bounded Southerly by the South line of said NW¼ Section 15, **EXCEPTING THEREFROM**, that portion of that certain tract of land described in deed dated November 17, 1998 from The Burlington Northern and Santa Fe Railway Company to

Tjossem Properties IV, LLC and Tjossem Properties V, LLC, recorded December 23, 1998 as Instrument No. 9812240021, which lies within said 100.0 foot wide right of way, **ALSO EXCEPTING THEREFROM**, that portion of that certain 100.0 foot wide Seattle Belt Line right of way described in deed dated May 19, 1903 from Mary B. Hansen and Anders Hansen to Northern Pacific Railway Company recorded May 28, 1903 in Volume 361 of Dees, Page 48, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, the Northeasterly 25.0 feet of said 100.0 foot wide Redmond Spur right of way, bounded on the South by the South line of said E $\frac{1}{2}$ Section 9 and bounded Northwesterly by a line perpendicular to said Railway Company's Main Track centerline, at a point distant 1,060.0 feet Northwesterly of said South line of the E $\frac{1}{2}$ Section 9, as measured along said Main Track centerline, being that certain tract of land described in Deed dated June 29, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded February 11, 2003 as Document No. 20030211000429, records of King County, Washington; also,

That portion of that certain 50.0 foot wide Redmond Spur right of way, being 25.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SW $\frac{1}{4}$ Section 15, Township 26 North, 5 East, W. M., bounded Northerly and Easterly by the North and East lines of said SW $\frac{1}{4}$ Section 15; also,

That portion of that certain 100.0 foot wide Redmond Spur right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, Township 26 North, 5 East, W. M., bounded Westerly and Southerly by the West and South lines of said SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15; also,

That portion of that certain 30.0 foot wide Redmond Spur right of way, being 15.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the W $\frac{1}{2}$ NE $\frac{1}{4}$ Section 22, Township 26 North, 5 East, W. M., bounded Northerly and Southerly by the North and South lines of said W $\frac{1}{2}$ NE $\frac{1}{4}$ Section 22

That portion of that certain 100.0 foot wide Redmond Spur right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22, W. M., bounded Northerly and Southerly by the North and South lines of said NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22; also,

That portion of that certain 50.0 foot wide Redmond Spur right of way, being 25.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22, and the W $\frac{1}{2}$ NE $\frac{1}{4}$ Section 27, Township 26 North, 5 East, W. M., bounded Northerly by the North line of said SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22, and bounded Westerly by the West line of said W $\frac{1}{2}$ NE $\frac{1}{4}$ Section 27; also,

That portion of that certain 100.0 foot wide Redmond Spur right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 27, Township 26 North, 5 East, W. M., bounded Easterly and Southerly by the East and South lines of said SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 27; also,

That portion of that certain 100.0 foot wide Redmond Spur right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the S $\frac{1}{2}$ Section 27, Township 26 North, 5 East, W. M., bounded Northerly and Southerly by the North and South lines of said S $\frac{1}{2}$ Section 27; also,

That portion of that certain 50.0 foot wide Redmond Spur right of way, being 25.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 34, Township 26 North, 5 East, W. M., bounded Northerly and Southerly by the North and South lines of said W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 34; also,

A 50.0 foot wide strip of land lying immediately adjacent to and Westerly of said Railway Company's 50.0

57

foot wide right of way in the $W\frac{1}{2}NE\frac{1}{4}$ of Section 34, Township 26 North, 5 East, W. M., bounded Northerly by the North line of said $W\frac{1}{2}NE\frac{1}{4}$ of Section 34, and bounded Southerly by a line perpendicular to said Railway Company's Main Track centerline at a point 1400 feet Southerly of the North line of said $W\frac{1}{2}NE\frac{1}{4}$ Section 34, as measured along said Railway Company's Main Track centerline, as originally located and constructed; also

That portion of that certain 100.0 foot wide Redmond Spur right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the $W\frac{1}{2}SE\frac{1}{4}$ Section 34, Township 26 North, 5 East, W. M., the $NE\frac{1}{4}$ Section 3, $SW\frac{1}{4}SW\frac{1}{4}NW\frac{1}{4}$, the $SW\frac{1}{4}$, and the $SW\frac{1}{4}SW\frac{1}{4}SE\frac{1}{4}$ Section 2, all in Township 25 North, 5 East, W. M., bounded Northerly by the North line of said $W\frac{1}{2}SE\frac{1}{4}$ Section 34, and bounded Southerly by the South line of said Section 2, **EXCEPTING THEREFROM**, the Easterly 25.0 feet of said 100.0 foot wide Redmond Spur right of way, upon, over and across the $W\frac{1}{2}SE\frac{1}{4}$ of Section 34, Township 26 North, Range 5 East, and the $N\frac{1}{2}NE\frac{1}{4}$ of Section 3, Township 25 North, Range 5 East, W. M., King County, Washington, lying between two lines drawn parallel and concentric with and distant, respectively, 25.0 feet and 50.0 feet Easterly, as measured at right angles and radially from said Main Track centerline, bounded on the North by the North line of said $W\frac{1}{2}SE\frac{1}{4}$ of Section 34, Township 26 North, Range 5 East, and bounded on the Southeast by a line drawn parallel with and distant 40.0 feet Northwesterly, as measured at right angles from the centerline of Northeast 98th Court, as now located and constructed upon, over and across the said $N\frac{1}{2}NE\frac{1}{4}$ of Section 3, Township 25 North, Range 5 East; also,

That portion of that certain 100.0 foot wide Redmond Spur right of way, being 75.0 feet on the Northerly side and 25.0 feet on the Southerly side of said Main Track centerline, as originally located and constructed, upon, over and across the $N\frac{1}{2}NE\frac{1}{4}$ and the $NE\frac{1}{4}NW\frac{1}{4}$ Section 11, and the $W\frac{1}{2}NW\frac{1}{4}$ Section 12, all in Township 25 North, 5 East, W. M., bounded Northerly by the North line of said Section 11, and bounded Easterly by the East line of said $W\frac{1}{2}NW\frac{1}{4}$ Section 12, **EXCEPTING THEREFROM**, that portion of said 100.0 foot wide Redmond Spur right of way in the $NE\frac{1}{4}NE\frac{1}{4}$ of said Section 11, lying between two lines parallel with and distant, respectively, 25.0 feet and 75.0 feet Northerly, as measured at right angles from said Main Track centerline, as now located and constructed, bounded Easterly by the Southerly extension of the Westerly line of Leary Street, according to the recorded plat thereof, and bounded Westerly by a line parallel with and distant 110.0 feet Westerly, as measured at right angles from said Southerly extension of the Westerly line of Leary Street, **ALSO EXCEPTING THEREFROM**, that portion of said 100.0 foot wide Redmond Spur right of way in the $NE\frac{1}{4}NE\frac{1}{4}$ of said Section 11, lying between two lines parallel with and distant, respectively, 25.0 feet and 75.0 feet Northeasterly, as measured at right angles from said Main Track centerline, as now located and constructed, the most Northerly parallel line also being the Southwesterly lines of Block 1 and 2 of the Original Town of Redmond, bounded Northwesterly by the Southwesterly extension of the Easterly line of Leary Street, according to the recorded plat of the City of Redmond, Washington, and bounded Southeasterly by a line perpendicular to said Main Track centerline that extends Northeasterly to the intersection of a line parallel with and distant 75.0 feet Northeasterly, as measured at right angles from said Main Track centerline with the East line of said $NE\frac{1}{4}NE\frac{1}{4}$ of said Section 11; also,

A 25.0 foot wide strip of land lying immediately adjacent to and Southerly of said Railway Company's 100.0 foot wide right of way in the $NW\frac{1}{4}NE\frac{1}{4}$ Section 11, Township 25 North, 5 East, W. M., lying Northwesterly of a line perpendicular to said Railway Company's Main Track centerline at a point 855 feet Southeasterly of said North line of Section 11, as measured along said Railway Company's Main Track centerline, as originally located and constructed; also

That portion of that certain 100.0 foot wide Redmond Spur right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the $SE\frac{1}{4}NW\frac{1}{4}$ Section 12, Township 25 North, 5 East, W. M., bounded Westerly and Easterly by the West and East lines of said $SE\frac{1}{4}NW\frac{1}{4}$ Section 12, **EXCEPTING THEREFROM**, that portion of that certain 100.0 foot wide Redmond Spur right of way in said $SE\frac{1}{4}NW\frac{1}{4}$ Section 12, described as follows: Beginning at the intersection of the West line of said $SE\frac{1}{4}NW\frac{1}{4}$ Section 12 with the Southerly line of said 100.0 foot wide right of way; Thence North $01^{\circ}10'44''$ East, along said West line, 26.55 feet to a point 25 feet Southwesterly of, as measured at

right angles from said Main Track centerline; thence South $69^{\circ}07'30''$ East, parallel with the centerline of said Main Track centerline, 639.91 feet to the Southerly extension of the Westerly right of way line of 170th Avenue N.E., said right of way being 70 feet in width; thence South $23^{\circ}37'30''$ West, along the Southerly extension of the Westerly right of way of 170th Avenue N.E., 25.03 feet to the Southerly right of way line of said 100.0 foot wide right of way; thence North $69^{\circ}07'30''$ West, along the Southerly right of way line of said 100.0 foot wide right of way, 629.76 feet to the point of beginning.

EXHIBIT B - 1

FORM OF DEED FOR FREIGHT PORTION

After Recording Return To:

Port of Seattle
Legal Department
P. O. Box 1209
Seattle, WA 98111
Attn: Isabel R. Safora

QUIT CLAIM DEED

Woodinville North
Freight Portion

Grantor: BNSF RAILWAY COMPANY ("BNSF")

Grantee: PORT OF SEATTLE ("Port")

Legal Description: See Exhibit A attached hereto and incorporated herein (the "Property").

Grantor, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) conveys and quit claims to Grantee, the Property, situated in the County of King, State of Washington, together with all after acquired title of the Grantor therein;

EXCEPTING AND RESERVING THEREFROM, an exclusive easement for freight rail purposes for Grantor and its successors and assigns.

Port, King County Washington ("County") and BNSF are parties to that certain Purchase and Sale Agreement dated as of _____ concerning the Property. Port and BNSF for themselves and their respective successors and assigns hereby covenant and agree that the provisions of Sections 6 and 7 of said Agreement attached hereto as Exhibit B, are incorporated herein by reference (with all references to Port and/or County together therein deemed to be references to Port only for the purposes of this Deed) and shall be covenants running with the land that are enforceable by Port, BNSF and their respective successors and assigns.

IN WITNESS WHEREOF, BNSF, and Port have executed this Deed as of the ____ day of _____, 200_

BNSF RAILWAY COMPANY

By _____
Its

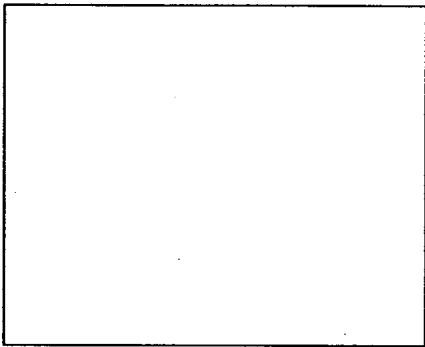
PORT OF SEATTLE

By _____
Its

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



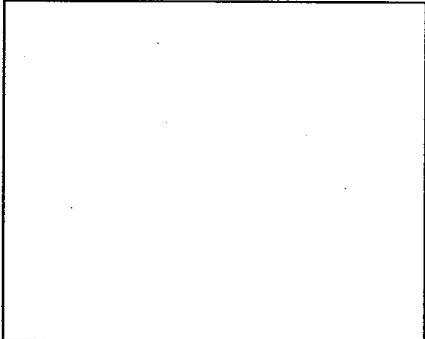
Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)

Exhibit A to Deed for Freight Portion

Legal Description

Exhibit B to Deed for Freight Portion

COVENANTS

Section 6. Condition of Property.

(a) Port and County have been, or by Closing will have been, allowed to make an inspection of the Property. Subject to BNSF's express representations, warranties and obligations under this Agreement and the Deed, **PORT AND COUNTY ARE PURCHASING THEIR INTERESTS IN THE PROPERTY IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, ARE NOT RELYING ON, AND HEREBY WAIVE ANY WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM BNSF WITH RESPECT TO ANY MATTERS CONCERNING THE PROPERTY** including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Property with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, or under the Property; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Property; the condition of title to the Property, and the Third Party Leases/Licenses permits, orders, or other agreements, affecting the Property (collectively, the "**Condition of the Property**").

(b) Port and County individually represent and warrant for itself to BNSF that except for BNSF's express representations, warranties and obligations under this Agreement and the Deed, Port and County each has not relied and will not rely on, and BNSF is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto made or furnished by BNSF, the manager of the Property, or any real estate broker or agent representing or purporting to represent BNSF, to whomever made or given, directly or indirectly, orally or in writing.

(c) Subject to BNSF's express representations, warranties and obligations under this Agreement and the Deed Port and County assume the risk that Hazardous Substances or other adverse matters may affect the Property that were not revealed by Port's or County's inspection and except to the extent of BNSF's express representations, warranties and obligations under this Agreement and the Deed, Port and County each waives, releases and discharges forever BNSF and BNSF's officers, directors, shareholders, employees and agents (collectively, "**BNSF Parties**") from any and all present or future claims or demands, and any and all damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown (collectively, "**Losses**"), which Port or County might have asserted or alleged against BNSF Parties arising from or in any way related to the Condition of the Property or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Property. Losses shall include without limitation (a) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law, that is

required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) Losses for injury or death of any person, and (c) Losses arising under any Environmental Law enacted after transfer. The term "**Environmental Law**" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Model Toxics Control Act, the Water Pollution Control Act, laws concerning above ground or underground storage tanks, and any similar or comparable state or local law. The term "**Hazardous Substance**" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

BNSF, Port and County acknowledge that the compensation to be paid to BNSF for the Property reflects that the Property is being conveyed subject to the provisions of this Section 6 which provisions shall be included in the deed and which shall be covenants running with the Land.

Section 7. Environmental Obligations.

(a) Consistent with Section 4.2 of this Agreement, if, prior to the expiration of the Review Period, the Port or County notifies BNSF in writing of an existing condition affecting the Property (an "**Identified Condition**") that is unacceptable to the Port or County, as determined by the Port and County in their respective sole and absolute discretion, and BNSF does not verify in writing by the earlier of: (i) fifteen (15) business days thereafter or the end of the Review Period, that such Condition is a condition that BNSF is obligated to Cure in a manner acceptable to the identifying Party pursuant to this Section 7, then the Port or County may terminate this Agreement and the South Agreement together, by written notice to BNSF in accordance with the provisions of Section 4.2 of this Agreement. If the Port or County timely notifies BNSF in writing of an Identified Condition, the Port, County and BNSF shall negotiate diligently and in good faith to reach agreement on Curing such condition. If the portion of the Property affected by an Identified Condition can be excluded from the sale without materially interfering with Port's and County's future use of the Property, as determined by the Port and County (as applicable) in their respective sole and absolute discretion, then BNSF may affect Cure prior to Closing by excluding such affected portion of the Property without any price adjustment and to the extent so excluded BNSF shall have satisfied its obligations under this Agreement to Cure the portion of the Property so excluded, provided, however, that any such Cure by exclusion must first be agreed to in writing by the Port (and County, if it relates to the Railbanked Portion.) If Port and County do not terminate this Agreement under Sections 4.2 and 7(a) and proceed to Closing, they shall not be deemed to have waived or released BNSF from any obligations to Cure set forth in Section 7(c), below.

(b) BNSF shall be responsible to investigate, remediate, respond to or otherwise cure (collectively, "**Cure**") as and when required by and in accordance with Environmental Laws any Identified Condition that concerns a release of Hazardous Substances on the Property occurring prior to the Closing or a violation of Environmental Laws concerning the Property occurring prior to the Closing to the extent that BNSF has agreed to Cure, and to the standards that BNSF has agreed to satisfy, in writing prior to the expiration of the Review Period. Notwithstanding the preceding sentence, BNSF shall not be responsible to Cure any such Identified Conditions to the extent Port or County or their respective agents, or contractors materially exacerbate such Identified Condition during construction performed by or for Port or County, excluding

superficial or *de minimis* activity performed by Port or County. Further, BNSF shall not be responsible to Cure any Identified Condition that was not caused by BNSF or its agents, contractors or invitees. Port and County shall cooperate with BNSF in its efforts to Cure any Identified Condition concerning a release of Hazardous Substances on the Property.

(c) (i) For Hazardous Substances released on the Property that BNSF has not agreed to Cure prior to Closing, whether or not BNSF has been notified under Section 7 (a) that such releases are an Identified Condition, BNSF shall pay to the Port or County the costs to investigate, remediate, respond to or otherwise cure (collectively "**Remediate**" or "**Remediation**") any such Hazardous Substance releases, or any violation of Environmental Laws prior to Closing, to the extent occurring as a result of the operations of BNSF or its corporate predecessors, or the agents, employees, invitees or contractors of BNSF or its corporate predecessors. BNSF shall pay to the Port or County such costs to Remediate as and when required by and in accordance with Environmental Laws to standards for the Property that the applicable regulatory agency would apply had the Property continued to be used as a freight railroad, and to standards for other affected properties that the applicable regulatory agency would apply for such properties. BNSF shall not be responsible for (1) any costs of Remediation to the extent the Port or County or their respective agents, contractors or invitees materially exacerbate the released Hazardous Substances during construction performed by or for Port or County (excluding superficial or *de minimis* activity performed by Port or County), or (2) any duplication of efforts by County or Port or their respective agents, contractors or invitees.

(ii) As among BNSF, Port and County, any Remediation for which this Section 7(c) applies would be carried out by the Port or County. BNSF shall cooperate with such Remediation.

(iii) The obligations of BNSF under this Section 7(c) apply only to Remediation ordered or approved by the applicable regulatory agency, provided that for Remediation approved by the applicable regulatory agency BNSF shall have agreed in writing to the Remediation prior to such approval, which agreement by BNSF shall not be unreasonably withheld, conditioned or delayed. The obligations of BNSF, Port and County under this Section 7(c) also apply regardless of which entity is issued an order by the applicable regulatory agency.

(d) Other than BNSF's obligations under this Section 7, as among BNSF, Port and County, Port and County will be responsible for the all other costs of Remediation of Hazardous Substances released on or from the Property or violations of Environmental Laws.

(e) The Section 7 obligations running from BNSF to the Port and County, and the Section 7 rights running to BNSF from the Port and the County, will be allocated as between the Port and County in the manner separately agreed to by the Port and the County.

(f) The provisions of this Section 7 shall be included in the Deed and shall run with the land.

EXHIBIT B - 2

FORM OF DEED FOR RAILBANKED PORTION

After Recording Return To:
Port of Seattle
Legal Department
P. O. Box 1209
Seattle, WA 98111
Attn: Isabel R. Safora

QUIT CLAIM DEED

Woodinville North
Railbanked Portion

Grantor: BNSF RAILWAY COMPANY ("BNSF")

Grantee: PORT OF SEATTLE ("Port")

Legal Description: See Exhibit A attached hereto and incorporated herein (the "Property").

Grantor, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) conveys and quit claims to Grantee, the Property, situated in the County of King, State of Washington, together with all after acquired title of the Grantor therein;

Port, King County Washington ("County") and BNSF are parties to that certain Purchase and Sale Agreement dated as of _____ concerning the Property. Port, County and BNSF for themselves and their respective successors and assigns hereby covenant and agree that the provisions of Sections 6 and 7 of said Agreement attached hereto as Exhibit B, are incorporated herein by reference and shall be covenants running with the land that are enforceable by Port, County, BNSF and their respective successors and assigns.

IN WITNESS WHEREOF, BNSF, Port and County have executed this Deed as of the ____ day of _____, 200_

BNSF RAILWAY COMPANY

By _____
Its

PORT OF SEATTLE

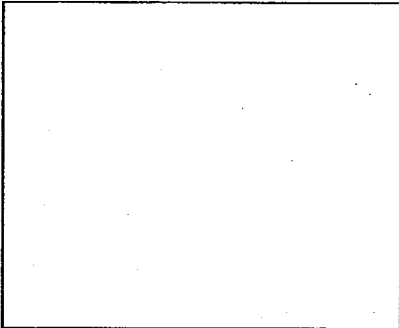
By _____
Its

KING COUNTY, WASHINGTON

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



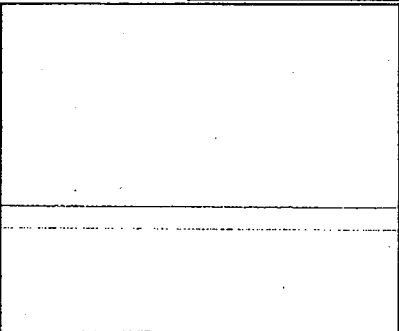
Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)

STATE OF WASHINGTON)
) ss:
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____



Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)

Exhibit A to Deed for Railbanked Portion

Legal Description

Exhibit B to Deed for Railbanked Portion

COVENANTS

Section 6. Condition of Property.

(a) Port and County have been, or by Closing will have been, allowed to make an inspection of the Property. Subject to BNSF's express representations, warranties and obligations under this Agreement and the Deed, **PORT AND COUNTY ARE PURCHASING THEIR INTERESTS IN THE PROPERTY IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, ARE NOT RELYING ON, AND HEREBY WAIVE ANY WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM BNSF WITH RESPECT TO ANY MATTERS CONCERNING THE PROPERTY** including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Property with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, or under the Property; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Property; the condition of title to the Property, and the Third Party Leases/Licenses permits, orders, or other agreements, affecting the Property (collectively, the **"Condition of the Property"**).

(b) Port and County individually represent and warrant for itself to BNSF that except for BNSF's express representations, warranties and obligations under this Agreement and the Deed, Port and County each has not relied and will not rely on, and BNSF is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto made or furnished by BNSF, the manager of the Property, or any real estate broker or agent representing or purporting to represent BNSF, to whomever made or given, directly or indirectly, orally or in writing.

(c) Subject to BNSF's express representations, warranties and obligations under this Agreement and the Deed Port and County assume the risk that Hazardous Substances or other adverse matters may affect the Property that were not revealed by Port's or County's inspection and except to the extent of BNSF's express representations, warranties and obligations under this Agreement and the Deed, Port and County each waives, releases and discharges forever BNSF and BNSF's officers, directors, shareholders, employees and agents (collectively, **"BNSF Parties"**) from any and all present or future claims or demands, and any and all damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown (collectively, **"Losses"**), which Port or County might have asserted or alleged against BNSF Parties arising from or in any way related to the Condition of the Property or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Property. Losses shall include without limitation (a) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) Losses for injury or death of any person, and (c) Losses arising under any Environmental Law enacted after transfer. The term **"Environmental Law"** means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Model Toxics Control Act, the Water Pollution Control Act, laws concerning above ground or underground storage

tanks, and any similar or comparable state or local law. The term "**Hazardous Substance**" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

BNSF, Port and County acknowledge that the compensation to be paid to BNSF for the Property reflects that the Property is being conveyed subject to the provisions of this Section 6 which provisions shall be included in the deed and which shall be covenants running with the Land.

Section 7. Environmental Obligations.

(a) Consistent with Section 4.2 of this Agreement, if, prior to the expiration of the Review Period, the Port or County notifies BNSF in writing of an existing condition affecting the Property (an "**Identified Condition**") that is unacceptable to the Port or County, as determined by the Port and County in their respective sole and absolute discretion, and BNSF does not verify in writing by the earlier of: (i) fifteen (15) business days thereafter or the end of the Review Period, that such Condition is a condition that BNSF is obligated to Cure in a manner acceptable to the identifying Party pursuant to this Section 7, then the Port or County may terminate this Agreement and the South Agreement together, by written notice to BNSF in accordance with the provisions of Section 4.2 of this Agreement. If the Port or County timely notifies BNSF in writing of an Identified Condition, the Port, County and BNSF shall negotiate diligently and in good faith to reach agreement on Curing such condition. If the portion of the Property affected by an Identified Condition can be excluded from the sale without materially interfering with Port's and County's future use of the Property, as determined by the Port and County (as applicable) in their respective sole and absolute discretion, then BNSF may affect Cure prior to Closing by excluding such affected portion of the Property without any price adjustment and to the extent so excluded BNSF shall have satisfied its obligations under this Agreement to Cure the portion of the Property so excluded, provided, however, that any such Cure by exclusion must first be agreed to in writing by the Port (and County, if it relates to the Railbanked Portion.) If Port and County do not terminate this Agreement under Sections 4.2 and 7(a) and proceed to Closing, they shall not be deemed to have waived or released BNSF from any obligations to Cure set forth in Section 7(c), below.

(b) BNSF shall be responsible to investigate, remediate, respond to or otherwise cure (collectively, "**Cure**") as and when required by and in accordance with Environmental Laws any Identified Condition that concerns a release of Hazardous Substances on the Property occurring prior to the Closing or a violation of Environmental Laws concerning the Property occurring prior to the Closing to the extent that BNSF has agreed to Cure, and to the standards that BNSF has agreed to satisfy, in writing prior to the expiration of the Review Period. Notwithstanding the preceding sentence, BNSF shall not be responsible to Cure any such Identified Conditions to the extent Port or County or their respective agents, or contractors materially exacerbate such Identified Condition during construction performed by or for Port or County, excluding superficial or *de minimis* activity performed by Port or County. Further, BNSF shall not be responsible to Cure any Identified Condition that was not caused by BNSF or its agents, contractors or invitees. Port and County shall cooperate with BNSF in its efforts to Cure any Identified Condition concerning a release of Hazardous Substances on the Property.

(c) (i) For Hazardous Substances released on the Property that BNSF has not agreed to Cure prior to Closing, whether or not BNSF has been notified under Section 7 (a) that such releases are an Identified Condition, BNSF shall pay to the Port or County the costs to investigate, remediate, respond to or otherwise cure (collectively "**Remediate**" or "**Remediation**") any such Hazardous Substance releases, or any violation of Environmental Laws prior to Closing, to the extent occurring as a result of the operations of BNSF or its corporate predecessors, or the agents, employees, invitees or contractors of BNSF or its corporate predecessors. BNSF shall pay to the Port or County such costs to Remediate as and when required by and in accordance with Environmental Laws to standards for the Property that the applicable regulatory agency would apply had the Property continued to be used as a freight railroad, and to standards for other affected properties that the applicable regulatory agency would apply for such properties. BNSF shall not be responsible for (1) any costs of Remediation to the extent the Port or County or their respective agents,

contractors or invitees materially exacerbate the released Hazardous Substances during construction performed by or for Port or County (excluding superficial or *de minimis* activity performed by Port or County), or (2) any duplication of efforts by County or Port or their respective agents, contractors or invitees.

(ii) As among BNSF, Port and County, any Remediation for which this Section 7(c) applies would be carried out by the Port or County. BNSF shall cooperate with such Remediation.

(iii) The obligations of BNSF under this Section 7(c) apply only to Remediation ordered or approved by the applicable regulatory agency, provided that for Remediation approved by the applicable regulatory agency BNSF shall have agreed in writing to the Remediation prior to such approval, which agreement by BNSF shall not be unreasonably withheld, conditioned or delayed. The obligations of BNSF, Port and County under this Section 7(c) also apply regardless of which entity is issued an order by the applicable regulatory agency.

(d) Other than BNSF's obligations under this Section 7, as among BNSF, Port and County, Port and County will be responsible for the all other costs of Remediation of Hazardous Substances released on or from the Property or violations of Environmental Laws.

(e) The Section 7 obligations running from BNSF to the Port and County, and the Section 7 rights running to BNSF from the Port and the County, will be allocated as between the Port and County in the manner separately agreed to by the Port and the County.

(f) The provisions of this Section 7 shall be included in the Deed and shall run with the land.

EXHIBIT C

BNSF DISCLOSURES

The information contained in the Property Reports.

EXHIBIT D

PORT AND COUNTY DISCLOSURES

None

EXHIBIT E

ASSIGNMENT OF THIRD PARTY LEASES/LICENSES AND OTHER CONTRACTS

THIS ASSIGNMENT AND ASSUMPTION OF THIRD PARTY LEASES/LICENSES (this "Assignment") is entered into as of _____, 2008, BNSF RAILWAY COMPANY ("Assignor") and PORT OF SEATTLE ("Assignee").

RECITALS

A. Assignor and Assignee are parties to that certain Purchase and Sale Agreement (Woodinville Subdivision – North Rail Line) dated as of _____, 2008 (the "Agreement"), pursuant to which Assignee has agreed to purchase and Assignor has agreed to sell certain real property (the "Property").

B. Assignor is a party to the Third Party Leases/Licenses as described in the Agreement.

C. Assignor wishes to assign, and Assignee wishes to assume, all of Assignor's right, title and interest in and to the Third Party Leases/Licenses excluding all Fiber Optic Agreements (collectively, the "Assigned Agreements"). It is the intent of the parties that their respective rights and obligations under the Fiber Optic Agreements as they relate to the Property shall be governed by applicable law and the parties do not intend to modify the operation of law with respect thereto.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor, and Assignee hereby agree as follows:

- 1 **Assignment.** To the extent assignable, Assignor hereby assigns, transfers, and sets over unto Assignee all of Assignor's right, title and interest in and under the Assigned Agreements subject to the following sentences of this Section. To the extent any Assigned Agreement relates to other property owned by Assignor ("**Other Property**") then the foregoing assignment shall only apply as to the Property and not apply as to Other Property. For Assigned Agreements that relate to more than just the Property, Assignee shall not be entitled to any rent or proration of rent thereunder.
- 2 **Assumption; Succession.** To the extent assigned as set forth above, Assignee hereby assumes all of Assignor's duties and obligations under the Assigned Agreements arising and accruing from and after the date of this Assignment and Assignee succeeds to the interests of Assignor under the Assigned Agreements. Assignee hereby agrees to indemnify, defend and hold Assignor harmless from and against any and all claims of any kind or nature arising from or related to such Assigned Agreements on or after the date hereof. Assignor hereby agrees to indemnify, defend and hold Assignee harmless from and against any and all claims of any kind or nature arising from or related to such Assigned Agreements prior to the date hereof.
- 3 ~~**Binding Effect.** This Assignment shall be binding upon and shall inure to the benefit of the parties thereto and their respective successors and assigns.~~
- 4 **Governing Law.** This Assignment shall be governed by and interpreted in accordance with the laws of the State of Washington.
- 5 **Execution in Counterparts.** This Assignment may be executed in counterparts, each of which shall constitute an original and all of which together shall be deemed a single document.

The parties hereto have executed this Assignment as of the date first written above.

BNSF RAILWAY COMPANY

By: _____
Name:
Title:

PORT OF SEATTLE

By: _____
Name:
Title:

EXHIBIT F

LIST OF THIRD PARTY LEASES/LICENSES

[See Attached]

EXHIBIT F

SALE - LS, 403/404 MP. 0 TO 7.3 AND MP. 23.45 TO 98.25

Type	Contract No.	Contractor(s)	Description	Location	Date	L/S/MP	DOT No.	Annualized Billing	Notes
PRPL	NP-00038159	BAILEY, AM	ELECTRIC WIRE LINE NEAR MP. 36; SNOHOMISH COUNTY	WA-BROMART	1/15/1921				
PRPL	LC-00221744	BUELER, FRANK J	18 INCH DRAIN WATER PIPELINE, SS. 1911-453, SNOHOMISH COUNTY	WA-BROMART	5/16/1976	MP. 36.96		\$5.00	
PRPL	LC-00214400	CROSS VALLEY WATER ASSOC INC.	2 INCH WATER PIPELINE, SNOHOMISH COUNTY, CANCEL'S NP97893	WA-BROMART	6/16/1974				
PRPL	NP-00082027	DUBUQUE, GEORGE, HANSEN, AO	2 INCH WATER PIPELINE, SNOHOMISH COUNTY, CANCEL'S CONTRACT NP 64192	WA-BROMART	12/26/1956				FNE
PRPW	NP-00038176	FORD, GW	ELECTRIC WIRE LINE NEAR MP. 37, SNOHOMISH COUNTY	WA-BROMART	12/1/1921				
PRPL	NP-00044872	FORD, GW	1 INCH WATER PIPELINE NEAR MP. 37, SNOHOMISH COUNTY	WA-BROMART	8/25/1927				
PMLO	NP-00084594	HOUCK BERNARD	2 INCH WATER PIPELINE NEAR MP. 38; SNOHOMISH COUNTY	WA-BROMART	6/17/1958				FNE
PRPL	NP-00068081	HOUCK, BERNARD J	PASTURE	WA-BROMART	2/19/1948				
PMLO	NP-00084528	MCCOLM, AM	CHD ELECTRIC WIRE LINE NEAR MP. 37; SNOHOMISH COUNTY	WA-BROMART	8/1/1944				
PRPW	NP-00074518	PUBLIC UTILITY DISTRICT NO. 1 FO SNOHOMISH COUNTY	CHD ELECTRIC WIRE LINE NEAR MP. 38; SNOHOMISH COUNTY	WA-BROMART	2/15/1952				
PRPW	NP-00043713	PUGET SOUND POWER & LIGHT CO	CHD ELECTRIC WIRE LINE NEAR MP. 36; SNOHOMISH COUNTY	WA-BROMART	9/20/1925				
PRPW	UNIK2966	PUGET SOUND POWER & LIGHT CO.; SNOHOMISH COUNTY PUBLIC UTILITY DISTRICT NO. 1	WOODEN WATER PIPELINE INSTALLATION TO SUPPLY WATER TO LOCOMOTIVES; SNOHOMISH COUNTY	WA-BROMART	11/29/1948				PARTIAL ASSIGNMENT
PRPW	NP-00084325	STOCKER, GEORGE	6 INCH UNTREATED WOOD WATER PIPELINE, SNOHOMISH COUNTY	WA-BROMART	8/1/1944				
PRPL	NP-00011233	STOCKER, GEORGE	ELECTRIC WIRE LINE NEAR MP. 36; SNOHOMISH COUNTY	WA-BROMART	12/5/1921				
PRPL	NP-00062962	STOCKER, WA R	PRIVATE CROSSING NEAR MP. 36, SNOHOMISH COUNTY	WA-BROMART	6/16/1937				
PRPW	NP-00046157	WEST COAST TELEPHONE CO. NKA GENERAL TELEPHONE CO. OF THE NORTHWEST	ONE GUY STUB & TWO ANCHORS, SNOHOMISH COUNTY	WA-BROMART	9/15/1928				
PRPW	NP-00081568	WEST COAST TELEPHONE CO. NKA GENERAL TELEPHONE CO. OF THE NORTHWEST INC.	CHD ELECTRIC WIRE LINE NEAR MP. 36; SNOHOMISH COUNTY	WA-BROMART	11/20/1956				
PRPW	NP-00082224	WEST COAST TELEPHONE CO. NKA GENERAL TELEPHONE CO. OF THE NORTHWEST INC.	CHD TELEPHONE CABLE NEAR MP. 38, SNOHOMISH COUNTY	WA-BROMART	4/15/1957	MP. 37.82			
PRPL	LC-00229579	CROSS VALLEY WATER ASSOCIATION INC.	6 INCH POTABLE WATER PIPELINE, SS. 40+32, SNOHOMISH COUNTY	WA-CATHCART	9/16/1978	MP. 33.61		\$10.00	FNE
PRPL	PX-01016124	CROSS VALLEY WATER DISTRICT GENERAL TELEPHONE CO. OF THE NORTHWEST, INC.	8 INCH POTABLE WATER PIPELINE, SS. 1797+48, SNOHOMISH COUNTY	WA-CATHCART	7/1/1991	MP. 34.71			
PRPW	LC-00233834	GENERAL TELEPHONE CO. OF THE NORTHWEST, INC.	UGD TELEPHONE WIRE LINE, SS. 83+72, SNOHOMISH COUNTY	WA-CATHCART	2/16/1980	MP. 32.54			
PRPL	NP-00045260	MALCOLM, JAMES T.	2 INCH WATER PIPELINE NEAR MP. 34; SNOHOMISH COUNTY	WA-CATHCART	11/15/1927			\$10.00	

EXHIBIT F

Type	Contract No.	Contractor(s)	Description	Location	Date	LS/MP	DOT No.	Annualized Billing	Notes
PRPW	PX-90016111	VIACOM CABLEVISION INC	UGD TELEVISION WIRE LINE INSIDE A 2 INCH CASING, SS. 1683+70, SNOHOMISH COUNTY	WA-CATHCART	6/1/1990	LS. 0408, MP. 32.54			
PRPL	PX-89016053	WASHINGTON NATURAL GAS CO.	FOUR INCH UNDERGROUND NATURAL GAS PIPELINE CROSSING, SS. 1683+30, SNOHOMISH COUNTY	WA-CATHCART	3/15/1989	LS. 0408, MP. 82.54			
GVHB	NP-00018502	WASHINGTON, STATE OF	RAILWAY CHANGES INVOLVING REPLACEMENT OF BRIDGES 9.46 AND 10 TO CARRY TRACKS OVER INTERSTATE HWY. 90 AND HENRY BROOK ROAD.	WA-FACTORIA	9/18/1967	MP. 9.75, MP. 10.18			
PRPW	PX-91016234	GTE NORTHWEST INC	TELEPHONE CABLE SURVEY STATION 184+04, MP. 3.49, LINE SEGMENT 0404	WA-HOLLYWOOD	12/2/1991				
PRPC	NP-70746	MACBRIDE, PHILIP D.	3 PRIVATE CROSSINGS	WA-HOLLYWOOD	7/20/1949				
PRPL	NP-73359	MACBRIDE, PHILIP D.	DRAIN PIPELINE, LS. 404, MP. 2.28	WA-HOLLYWOOD	5/1/1951				
PRPL	NP-74623	MACBRIDE, PHILIP D.	10 INCH TILE DRAIN PIPELINE, LS. 404, MP. 2.15	WA-HOLLYWOOD	4/15/1952				
GVXS	NP-00021266	WASHINGTON, STATE OF, DEPT. OF STATE HWYS.	INSTALL AFLS AT PRIMARY STATE HWY. NO. 2 GRADE CROSSING, SNOQUALMIE BRANCH	WA-HOLLYWOOD	3/26/1952	MP. 1.86			
PRPC	BF-00009720	BURTESSHAW, DEVERE JERRY & ANGELINA D.	16 FOOT PLANK PRIVATE ROAD CROSSING, 403, MP. 29.49; CANCELS NP LD #82099.	WA-MALTBY	4/22/1999				
PMLO	LC-00500029	CLEARVIEW ESTATES ROAD MAINTENANCE ASSN.	ACCESS TO LOTS FOR ROAD, WATER & POWER, CANCELS LC249521 & LC247116	WA-MALTBY	5/1/1989	LS. 0408			
PRPL	LC-00224571	CROSS VALLEY WATER ASSN., INC.	8 INCH WATER PIPELINE, SS. 1498+50, SNOHOMISH COUNTY	WA-MALTBY	3/1/1977	LS. 0408, MP. 29.03			
PRPL	NP-00086039	CROSS VALLEY WATER ASSN., INC.	TWO 6 INCH WATER PIPELINES, SS. 1655+00, & SS. 1549+40.50; SNOHOMISH COUNTY	WA-MALTBY	8/4/1966	LS. 0408, MP. 32.54, & MP. 32.29			
PRPL	PX-89016014	CROSS VALLEY WATER ASSN., INC.	16 INCH WATER PIPELINE, SS. 1551+62, SNOHOMISH COUNTY	WA-MALTBY	3/1/1988	LS. 0408, MP. 30.04			
PRPL	BF-00000845	CROSS VALLEY WATER DISTRICT	12 INCH SEWAGE PIPELINE CROSSING, SNOHOMISH COUNTY	WA-MALTBY	4/1/1997	LS. 0408, MP. 28.15			
PRPL	BF-00000846	CROSS VALLEY WATER DISTRICT	12 INCH WATER PIPELINE, SNOHOMISH COUNTY	WA-MALTBY	4/1/1997	LS. 0408, MP. 30.29			
PRPL	BF-00000848	CROSS VALLEY WATER DISTRICT	12 INCH SEWAGE WATER PIPELINE, SNOHOMISH COUNTY	WA-MALTBY	4/1/1997	LS. 0408, MP. 26.38			
PRPL	BF-00000849	CROSS VALLEY WATER DISTRICT	12 INCH SEWAGE PIPELINE, SNOHOMISH COUNTY	WA-MALTBY	4/1/1997	LS. 0408, MP. 29.23			
PRPL	BF-00000850	CROSS VALLEY WATER DISTRICT	8 INCH SEWAGE PIPELINE, SNOHOMISH COUNTY	WA-MALTBY	4/1/1997	LS. 0408, MP. 27.96			
PRPL	BF-00000851	CROSS VALLEY WATER DISTRICT	12 INCH WATER PIPELINE, SNOHOMISH COUNTY	WA-MALTBY	4/1/1997	LS. 0408, MP. 28.13			
PRPL	BF-00000852	CROSS VALLEY WATER DISTRICT	18 INCH WATER PIPELINE, SNOHOMISH COUNTY	WA-MALTBY	4/1/1997	LS. 0408, MP. 29.45			
PRPL	BF-00000853	CROSS VALLEY WATER DISTRICT	12 INCH SEWAGE PIPELINE, SNOHOMISH COUNTY	WA-MALTBY	4/1/1997	LS. 0408, MP. 29.51			
PRPL	BF-00001082	CROSS VALLEY WATER DISTRICT	12 INCH SEWER PIPELINE, LS. 403, MP. 29.69 TO MP. 29.72.	WA-MALTBY	4/1/1997	LS. 0408, MP. 29.69 TO MP. 29.72			
PRPL	BF-00001834	CROSS VALLEY WATER DISTRICT GENERAL TELEPHONE CO. OF THE NORTHWEST INC.	8 INCH WATER PIPELINE, SNOHOMISH COUNTY	WA-MALTBY	5/12/1997	LS. 0408, MP. 30.20			
PRPW	LC-00201164	CROSS VALLEY WATER DISTRICT	UGD TELEPHONE CABLE, SS. 51+14, SNOHOMISH COUNTY	WA-MALTBY	8/16/1970	LS. 0408, MP. 31.04			

EXHIBIT F

Type	Contract No.	Contractor(s)	Description	Location	Date	L/S/MP	DOT No.	Annualized Billing	Notes
PRPW	LC-02202968	GENERAL TELEPHONE CO. OF THE NORTHWEST INC.	1 POLE ON RIGHT OF WAY, SS. 1566+03; SNOHOMISH COUNTY	WA-MALTBY	3/6/1971	LS. 0403			
PRPW	NP-00081392	GENERAL TELEPHONE CO. OF THE NORTHWEST INC.	OHD TELEPHONE WIRE LINE NEAR MP. 31, SNOHOMISH COUNTY	WA-MALTBY	4/15/1968	LS. 0403			
PRPW	NP-0100373	GENERAL TELEPHONE CO. OF THE NORTHWEST INC.	UGD TELEPHONE CABLE NEAR MP. 32, SNOHOMISH COUNTY	WA-MALTBY	9/15/1968	LS. 0403			
PRPW	BF-00006989	GTE NORTHWEST INC.	UGD TELEPHONE CABLE, SNOHOMISH COUNTY	WA-MALTBY	7/30/1998	LS. 0403, MP. 26.61			
PRPW	NP-00094568	GTE NORTHWEST INC.	UGD TELEPHONE CABLE AT SS. 1496+67 & SS. 1520+87, SNOHOMISH COUNTY	WA-MALTBY	8/1/1964	LS. 0403, MP. 29.46			
PRPW	PX-90016005	GTE NORTHWEST INC.	TELEPHONE CABLE INSIDE A 12 INCH CASING, SS. 1681+41, SNOHOMISH COUNTY	WA-MALTBY	1/2/1990	LS. 0403, MP. 32.50			
IDIT	BF-00035699	INDUSTRIAL FINISHINGS, LLC DBA CALVERT INDUSTRIES	BNSF OWNS & MAINTAINS POINT OF SWITCH TO RIGHT OF WAY OF TRACK NO. 1; INDUSTRY OWNS & MAINTAINS 887 FEET OF TRACK NO. 1; RIGHT OF WAY TO END OF TRACK; 860 FEET OF TRACK NO. 2 POINT OF SWITCH TO END OF TRACK.	WA-MALTBY	2/1/2005	LS. 0403, MP. 29.72			
PMLO	LC-00247176	KUKUK, KENNETH	30 FOOT ROADWAY, SS. 80+29 TO SS. 83+29, SNOHOMISH COUNTY	WA-MALTBY	9/1/1994	LS. 0403, MP. 32.49 TO MP. 32.54			
GVGN	NP-00091876	MARSHLAND FLOOD CONTROL DISTRICT OF SNOHOMISH COUNTY	MAINTAIN LEAVES, ETC., & INCIDENTAL WORK ALONG SUMAS BRANCH	WA-MALTBY	10/1/1962	LS. 0403			
IDIT	BN-00006090	MAUK LUMBER PRODUCTS, INC.	C&O SPUR TRACK; RR TO MAINTAIN INDUSTRY OWNED TRACK AT INDUSTRY EXPENSE;	WA-MALTBY	2/5/1975	LS. 0403			
PRPL	NP-00081338	NORTHWEST PIPELINE CORP.	8 INCH NATURAL GAS PIPELINE, SS. 105+82, SNOHOMISH COUNTY	WA-MALTBY	7/25/1956	LS. 0403, MP. 32.52			
PRPL	BF-00035313	PSM PROPERTIES, LLC	26 INCH STORM WATER PIPELINE, SNOHOMISH COUNTY	WA-MALTBY	5/24/2005	LS. 403, MP. 29.98			
PRPW	NP-00048911	PUGET SOUND POWER & LIGHT CO.; SNOHOMISH COUNTY PUD NO. 1	OHD ELECTRIC WIRE LINE, SS. 1457+12 TO SS. 1457+93, SNOHOMISH COUNTY	WA-MALTBY	2/16/1931	LS. 0403, MP. 28.27			
PRPW	NP-00051946	PUGET SOUND POWER & LIGHT CO.; SNOHOMISH COUNTY PUD NO. 1	OHD ELECTRIC WIRE LINE NEAR MP. 31, SNOHOMISH COUNTY	WA-MALTBY	1/5/1934	LS. 0403			
PRPW	NP-00052542	PUGET SOUND POWER & LIGHT CO.; SNOHOMISH COUNTY PUD NO. 1	OHD ELECTRIC WIRE LINE NEAR MP. 29, SNOHOMISH COUNTY	WA-MALTBY	7/3/1934	LS. 0403, MP. 29.15			
PRPW	NP-00064134	PUGET SOUND POWER & LIGHT CO.; SNOHOMISH COUNTY PUD NO. 1	OHD ELECTRIC WIRE LINE NEAR MP. 32, SNOHOMISH COUNTY	WA-MALTBY	12/1/1944	LS. 0403, MP. 32.54			
PRPW	LC-00227665	SNOHOMISH COUNTY PUD NO. 1	OHD POWER CABLE, SS. 1566+57, SNOHOMISH COUNTY, CANCELS NP97225;	WA-MALTBY	2/1/1978				
PRPW	NP-00075780	SNOHOMISH COUNTY PUD NO. 1	OHD ELECTRIC WIRE LINE NEAR MP. 31, SNOHOMISH COUNTY	WA-MALTBY	10/1/1953	LS. 0403			
PRPW	NP-00093656	SNOHOMISH COUNTY PUD NO. 1	OHD ELECTRIC WIRE LINE NEAR MP. 26, SNOHOMISH COUNTY	WA-MALTBY	12/24/1957	LS. 0403			
PRPW	PX-99016006	SNOHOMISH COUNTY PUD NO. 1	POWER CABLE CROSSING, SS. 80+29 TO SS. 83+29, SNOHOMISH COUNTY;	WA-MALTBY	1/15/1989	LS. 0403, MP. 32.49 TO 32.54			FNF
PRPW	PX-99016281	SNOHOMISH COUNTY PUD NO. 1	OHD ELECTRIC WIRE LINE, SNOHOMISH COUNTY	WA-MALTBY		LS. 0403, MP. 27.95			

EXHIBIT F

Type	Contract No.	Contractor(s)	Description	Location	Date	LS/MP	DOT No.	Annualized Billing	Notes
PRPW	PX-45020595	SNOHOMISH COUNTY PUD NO. 1	OHD ELECTRIC WIRE LINE NEAR SH-522; SNOHOMISH COUNTY	WA-MALTBY	4/28/1995	LS. 0403, MP. 29.60			
PMLO	NP-40027681	SNOHOMISH, COUNTY OF	EASEMENT FOR PUBLIC ROADWAY PURPOSES INSTALL A/E/S/GATES AT 91ST AVENUE GRADE CROSSING, SNOHOMISH COUNTY;	WA-MALTBY	5/25/1914	LS. 0403			
GVXS	BF-40011784	SNOHOMISH, COUNTY OF	INSTALL AUTOMATIC FLASHING LIGHT SIGNALS AT 180TH STREET SE.; SS. 1683+59; SNOHOMISH COUNTY	WA-MALTBY	10/22/1999	LS. 403, MP. 30.31	091814T		
GVXS	BN-40032132	SNOHOMISH, COUNTY OF	PRIVATE CROSSING NEAR MP. 30. SS. 1522+08.5, SNOHOMISH COUNTY	WA-MALTBY	11/7/1990	LS. 0403, MP. 32.54	091816G		
PRPC	NP-40082093	TSCHERNICH, ANTON	2 INCH NATURAL GAS PIPELINE AT 212TH STREET & MALTBY ROAD, SS. 1551+15, SNOHOMISH COUNTY	WA-MALTBY	1/29/1957	LS. 0403			
PRPL	LC-400216018	WASHINGTON NATURAL GAS CO.	4 INCH NATURAL GAS PIPELINE, SS. 1597+36, SNOHOMISH COUNTY	WA-MALTBY	11/1/1974	LS. 0403, MP. 30.03			
PRPL	LC-400226770	WASHINGTON NATURAL GAS CO.	LOADING DOCKS & STORAGE OF STEEL	WA-MALTBY	11/1/1977	LS. 0403, MP. 30.91			
PMLO	LC-400247618	WASHINGTON STEEL INDUSTRIES INC	NON-ENVIRONMENTAL SOIL & BORING TESTING;	WA-MALTBY	12/16/1984	LS. 0403, MP. 30.04 TO MP. 30.26			
PRGN	BF-400222168	WASHINGTON, STATE OF	PAVING ALONG SR-524 AT SR-522 IN THE VICINITY OF MALTBY ROAD; KING COUNTY;	WA-MALTBY	6/3/2002	LS. 0403, MP. 30.04	091814T		
GVXS	BN-40040422	WASHINGTON, STATE OF	LEASE OF PREMISES FOR SIGNBOARD	WA-MALTBY	8/16/1996	LS. 0403, MP. 30.04			
PMLO	LC-400200278	WEST COAST TELEPHONE CO. NKA GENERAL TELEPHONE CO. OF THE NORTHWEST, INC.	OHD TELEPHONE WIRE LINE NEAR MP. 29; SNOHOMISH COUNTY	WA-MALTBY	9/30/1970	LS. 0403			
PRPW	NP-400778871		REMOVE EXISTING CROSSING & INSTALL TWO NEW 32 FOOT PRIVATE CROSSINGS NEAR SE 80TH STREET, SS. 943+35, KING COUNTY	WA-QUENDALL	1/3/1955	MP. 5.43			
PRPC	LC-400213282	QUENDALL TERMINALS	BEAUTIFICATION & CULTIVATION ASPHALT ROAD CROSSING, SS. 286+83, KING COUNTY	WA-REDMOND	3/11/1974	MP. 5.43			FNF
PMLO	NP-40093163	BARRETT DONALD W	LEASE OF LAND FOR CONSTRUCTION OF A TEMPORARY FOUNDATION LAYBACK; KING COUNTY	WA-REDMOND	9/1/2005	LS. 404, MP. 6.53			
PMLO	NP-40094485	BARRETT MS MARY H	UGD CATV WIRE LINE, KING COUNTY	WA-REDMOND	10/3/2006	LS. 404, MP. 6.67			
PMLO	LC-400249439	BROUGHTON DAN E	17.4 INCH DUCTILE IRON PIPELINE, SS. 261+43, KING COUNTY	WA-REDMOND	11/1/1991	LS. 0404, MP. 4.95;			
PRPC	LC-400213282	CEDAR KING LUMBER CO., INC.	BEAUTIFICATION NEAR MP. 7, KING COUNTY ROADWAY	WA-REDMOND	4/1/1983	LS. 404			FNF
PMLO	BF-40036396	CLEVELAND STREET DEVELOPMENT LLC	16 FOOT PLANK TEMPORARY PRIVATE CROSSING, KING COUNTY	WA-REDMOND	6/11/1998	LS. 404, MP. 4.21			
PRPC	BF-40006250	FAIRWAYS NORTHWEST	32 FOOT CONCRETE PRIVATE CROSSING, KING COUNTY	WA-REDMOND	6/11/1998	LS. 404, MP. 4.70			
PRPC	BF-40006251	FAIRWAYS NORTHWEST		WA-REDMOND					

EXHIBIT F

Type	Contract No	Contractor(s)	Description	Location	Date	L/S/MP	DOT No.	Annualized Billing	Notes
PRPC	BF-00017781	FAIRWAYS NORTHWEST	3 GRADE CROSSING CLOSURES RELEASE AGMT.	WA-REDMOND	10/23/2000	L.S. 404, MP 4.00, MP 4.40, MP 4.66	091902D, 091904S, 091906F		
PMLO	BF-00015118	FAIRWAYS NW II, INC.	MAINTAINING TREES, SHRUBS & ASSOC. IRRIGATION SYSTEM;	WA-REDMOND	9/1/2000	L.S. 404			
PRPL	LC-00210280	FS LANG MANUFACTURING CO.	8 INCH SANITARY SEWER PIPELINE, KING COUNTY, SS. 286+36.5;	WA-REDMOND	5/1/1973	L.S. 404			FNE
PMLO	LC-00241163	GAUDY OLIVER M	DRAINAGE CULVERTS	WA-REDMOND	6/6/1982	L.S. 404			FNE
PRPW	NP-00068922	GENERAL TELEPHONE CO. OF THE NORTHWEST INC.	LONGITUDINAL TELEPHONE WIRE LINE, MP. 7; CANCELS NP30513	WA-REDMOND	5/1/1948	L.S. 0404			FNE
PRPW	LC-00201372	GENERAL TELEPHONE CO. OF THE NORTHWEST, INC.	UGD TELEPHONE CABLE WIRELINE, SS. 366+68 TO SS. 361+75, KING COUNTY	WA-REDMOND	9/1/1970	L.S. 404			FNE
PRPW	LC-00214474	GENERAL TELEPHONE CO. OF THE NORTHWEST, INC.	UGD TELEPHONE WIRE LINE, SS. 294+74, KING COUNTY	WA-REDMOND	7/1/1974	MP. 5.58			FNE
PRPW	LC-00232220	GENERAL TELEPHONE CO. OF THE NORTHWEST, INC.	UGD TELEPHONE WIRE LINE, SS. 289+84, KING COUNTY	WA-REDMOND	8/1/1979	MP. 5.68			FNE
PRPW	LC-00232249	GENERAL TELEPHONE CO. OF THE NORTHWEST, INC.	OH D TELEPHONE WIRE LINE, SS. 178+60, KING COUNTY	WA-REDMOND	8/16/1979	MP. 3.38			FNE
PRPW	LC-00233957	GENERAL TELEPHONE CO. OF THE NORTHWEST, INC.	UGD TELEPHONE WIRE LINE, SS. 282+19, KING COUNTY	WA-REDMOND	1/16/1980	MP. 5.53			
PRPW	LC-00200279	GENERAL TELEPHONE COMPANY OF THE NO	WIRE XING	WA-REDMOND	6/16/1970	L.S. 404			FNE
PRPW	LC-00206082	GENERAL TELEPHONE COMPANY OF THE NO	WIRE XING MP 7+1615	WA-REDMOND	3/1/1972	L.S. 404			FNE
PRPW	LC-00216003	GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INC.	2 UGD TELEPHONE CABLES, SS. 286+70, KING COUNTY, CANCELS NP99106	WA-REDMOND	10/16/1974	MP. 5.43			FNE
PRPC	LC-00237030	GEOFF HOBBS HOLDINGS, INC.; 85 ACRES REDMOND WASHINGTON GENERAL PARTNERSHIP	4 PRIVATE ROAD CROSSINGS, KING COUNTY, CANCELS MP #72365	WA-REDMOND	11/1/1980	MP. 4+3828, MP. 4+3135, MP. 4+2771, MP. 4+2241			FNE
PRPW	PX-87016069	GTE NORTHWEST	UGD TELEPHONE WIRE LINE, SS. 282+92, KING COUNTY	WA-REDMOND	5/15/1987	MP. 5.55			
PRPW	PX-87016186	GTE NORTHWEST	UGD TELEPHONE CABLE CROSSING, SS. 277+71, KING COUNTY	WA-REDMOND	11/16/1987	MP. 5.26			
PRPW	PX-94020127	GTE NORTHWEST, INC.	4 INCH PVC TELEPHONE WIRE LINE, KING COUNTY	WA-REDMOND	6/9/1994	L.S. 0404, MP. 4.86			
PRPW	PX-94021161	GTE NORTHWEST, INC.	215 FOOT UGD LONGITUDINAL POWER CABLE, KING COUNTY	WA-REDMOND	9/27/1994	L.S. 0404, MP. 6.82 TO 6.86;			
PRPL	PX-95021184	GTE NORTHWEST, INC.	UGD FIBER OPTIC PIPELINE, KING COUNTY	WA-REDMOND	10/18/1995	L.S. 404, MP. 7.16			
PRPC	NP-00090450	HAGEN, EH	NON-EXECUTED PRIVATE CROSSING, PARTY REFUSED TO SIGN, MP. 5+1136;	WA-REDMOND	10/16/1961	L.S. 404			FNE
PRPC	CX-96022870	HALVORSON, E. KENT	PRIVATE ROAD CROSSING, KING COUNTY	WA-REDMOND	10/31/1996	L.S. 404, MP. 4.95			
PRPL	PX-96020022	HALVORSON, KENT & SUSAN	12 INCH STORM WATER PIPELINE, KING COUNTY	WA-REDMOND	1/30/1996	L.S. 404, MP. 5			
PRPC	NP-00096652	HARPUJ, EUGENE A., & KATHERINE	PRIVATE CROSSING, ES. 422+32, PROPERTY SOLD TO JOHN O. HANSEN, NO TRANSFER OF PERMIT EXECUTED, CANCELS NP75399	WA-REDMOND	1/1/1986	L.S. 0404, MP. 8.76			
PRPL	LC-00227042	HUGHES WILLIAM F	WATER PIPELINE MP 10+222	WA-REDMOND	11/16/1977	L.S. 404			FNE

EXHIBIT F

Type	Contract No.	Contractor(s)	Description	Location	Date	LS/MP	DOT No.	Annualized Billing	Notes
PRPC	LC-00224186	JE WORK, INC.	12 INCH WATER PIPELINE, SS. 156+50; KING COUNTY	WA-REDMOND	1/1/1977	MP. 5.72			FNE
PRPL	LC-00228603	KING COUNTY WATER DISTRICT NO. 81	12 INCH WATER PIPELINE, SS. 306+25; KING COUNTY	WA-REDMOND	6/1/1978	LS. 0404 MP. 21.11			FNE
PRPL	LC-00229874	KING COUNTY WATER DISTRICT NO. 81	2 INCH WATER PIPELINE, SS. 298+55; KING COUNTY	WA-REDMOND	10/16/1978	LS. 0404 MP. 5.80			FNE
PRPL	NP-00094604	KING COUNTY WATER DISTRICT NO. 81	8 INCH WATER PIPELINE, SS. 283+77; KING COUNTY	WA-REDMOND	8/15/1984	LS. 0404 MP. 5.65			FNE
PRPL	NP-00095150	KING COUNTY WATER DISTRICT NO. 81	INSTALL AFIS/ GATES & NEW CONCRETE CROSSING AT NE 124TH STREET, CANCEL'S NP #17925; KING COUNTY;	WA-REDMOND	10/30/1984	LS. 0404 MP. 5.55			FNE
GVXS	BF-00006992	KING. COUNTY OF	GRANT ROW EASEMENT TO C&M PUBLIC ROADWAY	WA-REDMOND	5/28/1998	LS. 404, MP. 3.39	091898R		
GVXS	NP-00028357	KING. COUNTY OF LAKE SAMMAMISH PRESERVATION GROUP	PARKING	WA-REDMOND	1/7/1915	MP. 5			
PMLO	LC-00248111	LAKE WASHINGTON YOUTH SOCCER ASSN.	GRADE CROSSING CLOSURE RELEASE PARKING, DRIVEWAY, PORTIONS OF BARN & PORTIONS OF SOCCER FIELDS; CANCEL'S NP #98480	WA-REDMOND	4/1/1985	LS. 404			FNE
PRPC	BF-18388	LAKE WASHINGTON YOUTH SOCCER ASSN.	UGD CONDUIT CONTAINING 8 PVC PIPES, LS. 404, MP. 5.52;	WA-REDMOND	9/12/2002	MP. 3.5, LS. 404		\$5,245.09	
PMLO	LC-00500848	LAKE WASHINGTON YOUTH SOCCER ASSN.	12 FOOT PRIVATE CROSSING, MP. 3, LS. 404	WA-REDMOND	8/1/1994	LS. 404			
PRPW	BF-00017827	LEVEL 3 COMMUNICATIONS, LLC.	UGD FIBER OPTIC CABLE CROSSING, KING COUNTY LS. 0404, MP. 6.76;	WA-REDMOND	2/19/2001	LS. 404			
PRPC	NP-65611	MAGBRIDE, PHILIP D.	42 INCH HCP SEWER PIPELINE, KING COUNTY; SS. 328+15.2,	WA-REDMOND	4/15/1947	LS. 404, MP.			
PRPL	PX-95020207	MFS NETWORK TECHNOLOGIES, INC. MUNICIPALITY OF METROPOLITAN SEATTLE	NON-EXCLUSIVE ROADWAY & PARKING AREA CONVEYOR FOR UNLOADING GRAIN, KING COUNTY	WA-REDMOND	11/17/1995	6.76;			
PRPL	LC-00209542	SEATTLE	INDEFINITE TERM LEASE, PARKING PURPOSES 12.5 INCH STORM WATER PIPELINE, KING COUNTY	WA-REDMOND	1/1/1973	MP. 6.21			
PMLO	LC-00248704	NORQUIST B W & TRUDI FEED, INC.	WIDENING OF ROAD, KING COUNTY UGD FIBER OPTIC COMMUNICATION CABLE CROSSING, LS. 404, MP. 3.88;	WA-REDMOND	6/3/1985	LS. 404			FNE
PMLO	NP-00062909	NORQUIST FEED MILLS, INC.; T-D OLSON, LEROY L. DBA CLEVELAND STREET SQUARE	NON-EXCLUSIVE ROADWAY & STEPS	WA-REDMOND	7/21/1944	LS. 404			FNE
PMLO	LC-500864	OLSON, LEROY L. DBA CLEVELAND STREET SQUARE	UGD FIBER OPTIC COMMUNICATION CABLE CROSSING, LS. 404, MP. 3.88;	WA-REDMOND	5/1/1996	LS. 404			
PRPL	PX-96020044	OVERLAKE CHRISTIAN CHURCH	INDEFINITE TERM LEASE, PARKING PURPOSES 12.5 INCH STORM WATER PIPELINE, KING COUNTY	WA-REDMOND	2/26/1996	4.95			
PRGN	RM-95020140	OVERLAKE CHRISTIAN CHURCH	WIDENING OF ROAD, KING COUNTY UGD FIBER OPTIC COMMUNICATION CABLE CROSSING, LS. 404, MP. 3.88;	WA-REDMOND	7/18/1995	LS. 404, MP. 4.90 TO MP. 5.23			
PRPW	BF-00010224	PACIFIC FIBER LINK, LLC.	NON-EXCLUSIVE ROADWAY & STEPS	WA-REDMOND	5/20/1999	LS. 404			
PMLO	LC-00248707	PROPOST R CO	UGD FIBER OPTIC COMMUNICATION CABLE CROSSING, LS. 404, MP. 3.88;	WA-REDMOND	10/1/1995	LS. 404			FNE
PRPW	PX-94021139	PUGET POWER	215 FOOT UGD LONGITUDINAL POWER CABLE INSIDE A 4 INCH CONDUIT, KING COUNTY	WA-REDMOND	9/27/1994	6.62 TO 6.66;			
PRPW	PX-94028296	PUGET POWER	3 OHD LONGITUDINAL ELECTRIC SUPPLY LINES, LS. 404, MP. 5.36 TO MP. 5.50;	WA-REDMOND	9/27/1994	LS. 404			FNE
PRPW	BF-00007646	PUGET SOUND ENERGY, INC.		WA-REDMOND	8/10/1998	LS. 404			

EXHIBIT F

Type	Contract No	Contractor(s)	Description	Location	Date	LS/MP	DOT No.	Annualized Billing	Notes
PRPW	BF-00007776	PUGET SOUND ENERGY, INC.	12 UGD LONGITUDINAL ELECTRIC SUPPLY CABLES & 8 JUNCTION, PULLING & TRANSFORMER VAULTS, LS. 404, MP. 5.27 TO MP. 5.52.	WA-REDMOND	8/10/1998	LS. 404			
PRPW	BF-00009842	PUGET SOUND ENERGY, INC.	3 UGD ELECTRIC SUPPLY CABLES CROSSING, LS. 404, MP. 5.44;	WA-REDMOND	4/9/1999	LS. 404			
PRGN	BF-00011706	PUGET SOUND ENERGY, INC.	UGD ELECTRIC SUPPLY CABLES WITH 3 VAULTS, LS. 404, MP. 6.39;	WA-REDMOND	10/7/1999	LS. 404			
PRPW	LC-00204718	PUGET SOUND POWER & LIGHT CO.	OHD ELECTRIC WIRE LINES OVER ROW, SS. 356+79, KING COUNTY	WA-REDMOND	9/16/1971	MP. 61+4021			FNF
PRPW	LC-00204895	PUGET SOUND POWER & LIGHT CO.	2 UGD ELECTRIC WIRE LINES, SS. 335+38, BENEATH BRIDGE NO. 6, KING COUNTY	WA-REDMOND	10/1/1971	MP. 6.16			FNF
PRPW	LC-00208433	PUGET SOUND POWER & LIGHT CO.	3 ANCHORS ON ROW FOR GUY WIRE LINES, SS. 283+30, SS. 299+84, SS. 308+83, KING COUNTY	WA-REDMOND	9/5/1972	MP. 5.36, MP. 5.68, MP. 5.85			FNF
PRPW	LC-00214475	PUGET SOUND POWER & LIGHT CO.	UGD ELECTRIC WIRE LINE, SS. 294+74, KING COUNTY	WA-REDMOND	7/1/1974	LS. 404, MP. 5.58			FNF
PRPW	LC-00218503	PUGET SOUND POWER & LIGHT CO.	OHD POWER CABLE, SS. 377+89, KING COUNTY	WA-REDMOND	6/16/1975	MP. 7.016			FNF
PRPW	LC-00230241	PUGET SOUND POWER & LIGHT CO.	UGD ELECTRIC WIRE LINE, SS. 278+80, KING COUNTY	WA-REDMOND	12/1/1978	MP. 5.28			FNF
PRPW	LC-00237395	PUGET SOUND POWER & LIGHT CO.	OHD ELECTRIC WIRE LINE, SS. 369+93, KING COUNTY	WA-REDMOND	5/1/1981	MP. 5.1			FNF
PMLO	LC-00237808	PUGET SOUND POWER & LIGHT CO.	ISOLATED STUB, GUY WIRE & ANCHOR, KING COUNTY	WA-REDMOND	6/16/1981	LS. 404			FNF
PRPW	NP-00049405	PUGET SOUND POWER & LIGHT CO.	ELECTRIC WIRE LINE, KING COUNTY	WA-REDMOND	7/10/1931	5.00			
PRPW	NP-00050968	PUGET SOUND POWER & LIGHT CO.	CM&O OHD ELECTRIC WIRELINE, MP. 5; KING COUNTY	WA-REDMOND	12/16/1932	LS. 404			
PRPW	NP-00099066	PUGET SOUND POWER & LIGHT CO.	OHD ELECTRIC WIRE LINE, KING COUNTY	WA-REDMOND	1/2/1968	LS. 0404, MP. 8.80			FNF
PRPW	NP-00099067	PUGET SOUND POWER & LIGHT CO.	OHD ELECTRIC WIRE LINE, KING COUNTY	WA-REDMOND	1/2/1968	LS. 0404, MP. 4.08			FNF
PRPW	PX-94020104	PUGET SOUND POWER & LIGHT CO.	THREE 15 KV UGD CABLES, KING COUNTY	WA-REDMOND	6/6/1994	LS. 0404, MP. 4.65			
PRPW	PX-95020841	PUGET SOUND POWER & LIGHT CO.	UGD WIRE LINE, KING COUNTY	WA-REDMOND	9/28/1995	LS. 404, MP. 6.76			
PRPW	PX-95021022	PUGET SOUND POWER & LIGHT CO.	UGD WIRE LINE, KING COUNTY	WA-REDMOND	3/1/1995	LS. 404, MP. 5.01			
PMLO	LC-00248695	QUADRANT CORP.	LANDSCAPING & BEAUTIFICATION INSIDE A 12.38 INCH CASING, SS. 265+20, KING COUNTY	WA-REDMOND	10/1/1985	LS. 404			FNF
PRPL	PX-94020003	QUADRANT CORP.		WA-REDMOND	1/5/1994	LS. 0404, MP. 5.03;			
PMLO	NP-00078793	RAAB GEORGE W.		WA-REDMOND		LS. 404			FNF
PRPC	LC-00221387	REDCO REDMOND WOOD PRODUCTS, INC.	PRIVATE ROAD CROSSING, SS. 302+21, KING COUNTY, CANCELLED NP88980;	WA-REDMOND	1/1/1976	MP. 5.72			FNF
PRPL	LC-00234292	REDCO REDMOND WOOD PRODUCTS, INC.	SAN SEWER LINE SS. 419+15	WA-REDMOND	4/16/1980	LS. 404			FNF
PMLO	LC-00249371	REDCO REDMOND WOOD PRODUCTS, INC.	SAN SEWER LINE SS. 419+15	WA-REDMOND	1/1/1976	MP. 5.72			FNF
PMLO	S-00002078	REDCO REDMOND WOOD PRODUCTS, INC.	SAN SEWER LINE SS. 419+15	WA-REDMOND	4/16/1980	LS. 404			FNF
PMPS	S-00002150	REDCO REDMOND WOOD PRODUCTS, INC.	SAN SEWER LINE SS. 419+15	WA-REDMOND	6/3/1974	LS. 404			FNF
PMPS	S-00004242	REDCO REDMOND WOOD PRODUCTS, INC.	SAN SEWER LINE SS. 419+15	WA-REDMOND	6/5/1979	LS. 404			FNF

EXHIBIT F

Type	Contract No.	Contractor(s)	Description	Location	Date	LS/MP	DOT No.	Annualized Billing	Notes
PMLD	LC-00500247	REDMOND LOCKERS & CUSTOM MEATS	COLD STORAGE LOCKER PLANT, CANCELS LC #400518;	WA-REDMOND	1/16/1991	LS. 404			
PRPL	BF-00002094	REDMOND, CITY OF	24 INCH STORM WATER PIPELINE, KING COUNTY	WA-REDMOND	3/13/1997	LS. 404, MP. 4.06			
PRGN	BF-00007172	REDMOND, CITY OF	LICENSE FOR STORM DRAINAGE FACILITIES AT NE 90TH STREET & WILLOWS ROAD, KING COUNTY	WA-REDMOND	8/10/1998	LS. 404, MP. 5.42 TO MP. 5.50			
GVXS	BF-00007558	REDMOND, CITY OF	EASEMENT TO WIDEN & IMPROVE WILLOWS ROAD, BETWEEN NORTHEAST 90TH STREET & NORTHEAST 95TH STREET;	WA-REDMOND	8/27/1998	LS. 404, MP. 5.26 TO MP. 5.56			
GVXS	BF-00010487	REDMOND, CITY OF	INSTALL ADVANCE PRE-EMPTION AT INTERSECTION 95TH STREET NE & WILLOWS ROAD;	WA-REDMOND	6/18/1998	LS. 404, MP. 5.26			
PRPL	BF-00011080	REDMOND, CITY OF	12 INCH WATER PIPELINE CROSSING; LS. 404, MP. 4.70;	WA-REDMOND	3/31/1999	LS. 404			
GVXS	BN-00003801	REDMOND, CITY OF	PUBLIC ROADWAY CROSSING: AFLS/CANTILEVERS, 170TH AVE. NORTHEAST; KING COUNTY;	WA-REDMOND	10/16/1973	MP. 7+892, LS. 404	101319K		
GVXS	BN-00008191	REDMOND, CITY OF	INSTALL AFLS/CANTILEVER AT N.E. 90TH STREET GRADE CROSSING; KING COUNTY;	WA-REDMOND	10/4/1977	MP. 5.56, LS. 404	091911C		
GVXS	BN-00008470	REDMOND, CITY OF	INSTALL AFLS/CANTILEVER/GATES AT LEARY WAY GRADE CROSSING; KING COUNTY;	WA-REDMOND	10/24/1977	MP. 6+3522, LS. 404	091915E		
GVXS	BN-00011872	REDMOND, CITY OF	CONSTRUCT CROSSING & INSTALL AFLS/CANTILEVER/GATES AT N. E. 95TH STREET, CANCELS CONTRACT BN #10549;	WA-REDMOND	2/5/1980	LS. 404, MP. 5.25			
GVXS	BN-00025003	REDMOND, CITY OF	CONSTRUCT GRADE CROSSING; REMOVE EXISTING GRADE CROSSING; INSTALL AFLS/GATES/ CANTILEVERS;	WA-REDMOND	10/20/1987	MP. 5.54	091911C		
GVHB	BN-00027797	REDMOND, CITY OF	CONSTRUCT RR. BRIDGE, WEST LAKE SAMMAMISH PARKWAY, SR-901, KING COUNTY	WA-REDMOND	7/13/1989	LS. 0404, MP. 6.14			
GVXS	BN-00032823	REDMOND, CITY OF	WIDEN & IMPROVE GRADE CROSSING, LEARY WAY NORTH EAST; REMOVE EXISTING CROSSING INSTALL RUBBER CROSSING, RELOCATE AFLS/CANTILEVER;	WA-REDMOND	10/23/1991	LS. 0404, MP. 6.67	091915E		
GVXS	BN-00032824	REDMOND, CITY OF	CONSTRUCT N.E. 100TH COURT GRADE CROSSING, INSTALL AFLS/CANTILEVER; KING COUNTY;	WA-REDMOND	10/23/1991	LS. 0404, MP. 4.95			
GVXS	BN-00038288	REDMOND, CITY OF	CONSTRUCT WILLOWS RUN CROSSING, INSTALL AFLS & GATE; PLACE CONCRETE CROSSING;	WA-REDMOND	2/3/1995	LS. 0404, MP. 4.52;	091905Y		
GVXS	BN-00039829	REDMOND, CITY OF	CONSTRUCT 186TH AVENUE NE GRADE CROSSING & INSTALL AFLS/GATES; KING COUNTY;	WA-REDMOND	2/16/1996	LS. 0404, MP. 6.9	101373D		
GVXS	BN-00039978	REDMOND, CITY OF	WIDEN & IMPROVE 170TH AVE. N.E. CROSSING; CONSTRUCT NE 98TH COURT GRADE CROSSING, INSTALL AFLS/GATES; KING COUNTY;	WA-REDMOND	2/16/1996	LS. 404, MP. 7.15	101319K		
GVXS	BN-00040111	REDMOND, CITY OF	CONSTRUCT NE 98TH COURT GRADE CROSSING, INSTALL AFLS/GATES; KING COUNTY;	WA-REDMOND	1/23/1996	LS. 404, MP. 5.01	101372W		
PRPL	LC-00208633	REDMOND, CITY OF	12 INCH SANITARY SEWER PIPELINE, SS. 293+24, KING COUNTY	WA-REDMOND	10/18/1972	LS. 404			

EXHIBIT F

Type	Contract No.	Contractor(s)	Description	Location	Date	LS/MP	DOT No.	Annualized Billing	Notes
PRPL	LC-00211394	REDMOND, CITY OF	12 INCH SANITARY SEWER PIPELINE, KING COUNTY, SS. 205+427.	WA-REDMOND	7/10/1973	LS. 404			
PRPL	LC-00220169	REDMOND, CITY OF	10 INCH WATER PIPELINE & 4 INCH SEWER PIPELINE, SS. 377+56, KING COUNTY	WA-REDMOND	11/1/1975	MP 7.15			FNF
PRPL	LC-00230090	REDMOND, CITY OF	12 INCH WATER PIPELINE & 14 INCH SANITARY SEWER PIPELINE, KING COUNTY	WA-REDMOND	11/16/1978	LS. 404			FNF
GVXS	NP-00019466	REDMOND, CITY OF	EASEMENT GRANTING PERMISSION FOR HWY PURPOSES; INCLUDING GRADE CROSSING; KING COUNTY;	WA-REDMOND	10/28/1964	MP 5+2942			
PRPW	PX-88016113	REDMOND, CITY OF	2 INCH UGD POWER CABLE, SS. 205+21, KING COUNTY	WA-REDMOND	9/15/1988	LS. 0404, MP. 3.89			
PRPL	PX-91016215	REDMOND, CITY OF	12 INCH WATER PIPELINE INSIDE A 24 INCH CASING, SS. 351+97, KING COUNTY	WA-REDMOND	11/1/1991	LS. 0404, MP. 6.67			
PRPL	PX-94020564	REDMOND, CITY OF	12.46 INCH WATER PIPELINE, SS. 241+99, KING COUNTY	WA-REDMOND	5/6/1994	LS. 0404, MP. 4.52			
PRPL	PX-94020565	REDMOND, CITY OF	8.4 INCH PVC SEWER PIPELINE INSIDE A 20 INCH CASING, KING COUNTY, SS. 241+24,	WA-REDMOND	5/6/1994	LS. 0404, MP. 6.90			
PRPL	PX-94020586	REDMOND, CITY OF	4.5 INCH NATURAL GAS PIPELINE, KING COUNTY	WA-REDMOND	6/16/1994	LS. 404, MP. 5.33			
PRPL	PX-95020121	REDMOND, CITY OF	8.66 INCH UGD SANITARY SEWER PIPELINE INSIDE A 16 INCH CASING, SS. 265+20, KING COUNTY	WA-REDMOND	6/13/1995	LS. 0404, MP. 5.02			
PRPL	PX-95020122	REDMOND, CITY OF	12.74 INCH POTABLE WATER PIPELINE, SS. 264+22, KING COUNTY	WA-REDMOND	6/13/1995	LS. 0404, MP. 5.01			
PRPL	PX-96020001	REDMOND, CITY OF	13 INCH WATER PIPELINE INSIDE A 20 INCH CASING, KING COUNTY	WA-REDMOND	1/4/1996	LS. 0404, MP. 6.76			
PRPL	PX-96020035	REDMOND, CITY OF	13.2 INCH WATER PIPELINE INSIDE A 20 INCH CASING, KING COUNTY	WA-REDMOND	2/21/1996	LS. 0404, MP. 6.90			
PRPL	PX-96021056	REDMOND, CITY OF	17.4 INCH WASTEWATER PIPELINE INSIDE A 31 INCH CASING AR WILLOWS ROAD, SS. 281+43, KING COUNTY	WA-REDMOND	4/3/1996	LS. 0404, MP. 4.95			
PRGN	RW-96021054	REDMOND, CITY OF	ROW FOR 3 FIRE HYDRANTS & LIGHT POLE, KING COUNTY, PARTIAL ASSIGNMENT TO TLCSCG; SEE CONTRACT BF788	WA-REDMOND	4/1/1996	LS. 0404, MP. 6.65 TO MP. 7.30			
GVHB	BN-00001416	WASHINGTON, DIRECTOR OF HIGHWAYS;	RECONSTRUCTION OF HWY. BRIDGE NO. 6.1, SS. 385+73; HWY. UNDERCROSSING; KING COUNTY	WA-REDMOND	11/12/1971	MP 6+1915			
PRPL	NP-00083490	REDMOND, TOWN OF	14 INCH SEWER PIPELINE & 8 INCH SEWER PIPELINE, KING COUNTY	WA-REDMOND	10/30/1957	LS. 404			
PRPL	PX-89016158	ROSE HILL WATER DISTRICT	12 INCH POTABLE WATER PIPELINE INSIDE AN 18 INCH CASING, SS. 290+57, KING COUNTY	WA-REDMOND	7/17/1989	LS. 0405, MP. 5.51			
PRPL	PX-93016154	ROSE HILL WATER DISTRICT	12.74 INCH WATER PIPELINE, SS. 195+38, KING COUNTY	WA-REDMOND	7/14/1993	LS. 405, MP. 20.38			
PMLO	LC-00235125	SCHLEPP AUGUST W	BEAUTIFICATION & ROADWAY	WA-REDMOND	7/1/1980	LS. 404			FNF
PRPL	PX-90016089	SEATTLE, CITY OF; WATER DEPT.	64 INCH WATER PIPELINE, SS. 269+78, KING COUNTY	WA-REDMOND	4/2/1990	LS. 404, MP. 5.11			
PRPC	CX-95023535	SFEERS REAL ESTATE CORP.	PRIVATE ROAD CROSSING, SS. 272+83, KING COUNTY, CANCELLED LC #234468	WA-REDMOND	8/11/1995	LS. 0404, MP. 5.17			FNF
PRPC	BF-00006508	SOUTH COVE VENTURES II, LLC.	40 FOOT PAVED PRIVATE ROAD CROSSING, LS. 404, MP. 5.44;	WA-REDMOND	6/9/1998				
PRPL	BF-00006534	SOUTH COVE VENTURES II, LLC.	8 INCH WATER PIPELINE, LS. 404, MP. 5.44;	WA-REDMOND	6/9/1998				

EXHIBIT F

Type	Contract No.	Contractor(s)	Description	Location	Date	LS/MP	DOT No.	Annualized Billing	Notes
PMLO	LC-00241164	SPAUDING OLIVER M	PARKING & ACCESS AREA	WA-REDMOND	6/16/1992	LS. 404			FNF
PRPW	PX-96021011	TOWN CENTER ASSOCIATES	UGD WIRE LINE INSIDE A 12 INCH CASING AT 166TH AVENUE NORTHEAST, KING COUNTY	WA-REDMOND	2/6/1996	LS. 0404, MP. 6.90			
PRPW	PX-96021013	TOWN CENTER ASSOCIATES	UGD WIRE LINE INSIDE A 20 INCH CASING, KING COUNTY	WA-REDMOND	2/14/1996	LS. 0404, MP. 6.76			
PRPC	NP-00079818	VAN SL YKE, HOWARD W.	PRIVATE ROAD CROSSING, KING COUNTY	WA-REDMOND	2/15/1995	LS. 0404, MP. 5.51			
PRPW	PX-94020068	VIACOM CABLE	OHD .591 INCH FIBER OPTIC WIRELINE, KING COUNTY	WA-REDMOND	4/15/1994	LS. 0404, MP. 3.38			
PRPW	LC-00238501	VIACOM CABLEVISION, INC.	UGD COAXIAL TV CABLE, SS. 357-401, KING COUNTY	WA-REDMOND	8/16/1981	MP. 6.77			FNE
PRPW	LC-00241664	VIACOM CABLEVISION, INC.	UGD TV CABLE, SS. 276+86, KING COUNTY	WA-REDMOND	7/21/1982	MP. 5.25			FNE
PRPW	BF-00009445	VISTA CABLE TV (DBA) TCI	UGD FIBER OPTIC COMMUNICATION CABLE, LS. 404, MP. 5.54	WA-REDMOND	2/26/1999	LS. 404			
PRGN	BF-00009826	VISTA CABLE TV (DBA) TCI	4 INCH PVC UGD EMPTY CONDUIT, LS. 404, MP. 5.54	WA-REDMOND	2/26/1999	LS. 404			
PRPW	BF-00012622	VISTA TV CABLE, INC. DBA TCI OF WASHINGTON	UGD FIBER OPTIC TV CABLE, LS. 404, MP. 6.91	WA-REDMOND	6/15/1999	LS. 404			
PRPL	LC-00206753	WASHINGTON NATURAL GAS CO.	6 INCH GAS PIPELINE, SS. 335+31, KING COUNTY	WA-REDMOND	5/1/1972	MP. 6.35			FNE
PRPL	LC-00212206	WASHINGTON NATURAL GAS CO.	2 INCH NATURAL GAS PIPELINE, KING COUNTY	WA-REDMOND	11/16/1973	MP. 5.54			
PRPL	LC-00212892	WASHINGTON NATURAL GAS CO.	8 INCH NATURAL GAS PIPELINE, SS. 367+96.5, KING COUNTY	WA-REDMOND	11/16/1973	MP. 6.97			FNE
PRPL	LC-00229574	WASHINGTON NATURAL GAS CO.	6 INCH NATURAL GAS PIPELINE, SS. 179+06, KING COUNTY	WA-REDMOND	9/16/1978	MP. 3.39			FNE
PRPL	LC-00229575	WASHINGTON NATURAL GAS CO.	4 INCH NATURAL GAS PIPELINE, SS. 276+64, KING COUNTY	WA-REDMOND	9/16/1978	MP. 5+1287			FNE
PRPL	NP-00088404	WASHINGTON NATURAL GAS CO.	6 INCH NATURAL GAS PIPELINE PASSING BENEATH BRIDGE NO. 6.1, KING COUNTY	WA-REDMOND	7/15/1980	LS. 0404, MP. 6.09			FNE
PRPL	NP-00094466	WASHINGTON NATURAL GAS CO.	2 INCH NATURAL GAS PIPELINE, SS. 298.70, KING COUNTY	WA-REDMOND	6/1/1984	LS. 0404, MP. 5.66			FNE
PRPL	NP-00095193	WASHINGTON NATURAL GAS CO.	4 INCH NATURAL GAS PIPELINE, ES. 293+19, KING COUNTY	WA-REDMOND	11/16/1984	LS. 0404, MP. 5.56			FNE
PRPL	NP-00099043	WASHINGTON NATURAL GAS CO.	2 INCH NATURAL GAS PIPELINE, KING COUNTY	WA-REDMOND	12/15/1987	LS. 0404, MP. 5.43			
PRPL	PX-92016163	WASHINGTON NATURAL GAS CO.	2 INCH GAS PIPELINE INSIDE A 6 INCH CASING, SS. 377+13, KING COUNTY	WA-REDMOND	10/1/1992	LS. 0404, MP. 7.15			
PRPL	PX-95020623	WASHINGTON NATURAL GAS CO.	2.375 INCH NATURAL GAS PIPELINE INSIDE A 4.5 INCH CASING, KING COUNTY	WA-REDMOND	8/22/1995	LS. 0404, MP. 5.03			
PMPS	S-00000943	WASHINGTON STATE OF	EASEMENT FOR HWY PURPOSES	WA-REDMOND	7/15/1971	LS. 404			FNE
PMPS	S-00003654	WASHINGTON STATE OF	HIGHWAY EASEMENT	WA-REDMOND	3/15/1977	LS. 404			FNE
PRPW	NP-00081064	WEST COAST TELEPHONE CO.	OHD TELEPHONE WIRELINE, KING COUNTY	WA-REDMOND	6/22/1956	LS. 0404, MP. 6			
PRPW	NP-00081358	WEST COAST TELEPHONE CO.	OHD TELEPHONE WIRELINE, KING COUNTY	WA-REDMOND	8/1/1956	LS. 0404, MP. 4.91			
PRPW	NP-00094412	WEST COAST TELEPHONE CO.	UGD TELEPHONE CABLE, ES. 335+92.1, KING COUNTY	WA-REDMOND	4/30/1984	LS. 0404, MP. 6.36			FNE
PRPW	BF-00012430	WORLD WIDE FIBER NETWORKS, INC.	6 UGD LONGITUDINAL 4 INCH PVC CONDUITS FOR FIBER OPTIC COMMUNICATION CABLES; LS. 404, MP. 5.27 TO MP. 5.50	WA-REDMOND	12/2/1999	LS. 404			

EXHIBIT F

Type	Contract No.	Contractor(s)	Description	Location	Date	LS/MP	DOT No.	Annualized Billing	Notes
PRPL	BF-00040687	KING COUNTY DEPT. OF NATURAL RESOURCES & PARKS	12 INCH STORM WATER PIPELINE, SNOHOMISH COUNTY	WA-WOODINVILLE	6/16/2006	LS. 403, MP. 27.31			
PMPs	P-00000788	KING COUNTY OF	SUPR TRACK FRANCHISE, WOODINVILLE TO KENMOR	WA-WOODINVILLE	3/17/1975				FNE
PMPs	S-00004277	KING COUNTY OF	ESMT FOOT BICYCLE HORSE TRAIL, S-REDMON	WA-WOODINVILLE	7/26/1978				PARTIAL ASSIGNMENT
PRPL	LC-00226480	KING COUNTY WATER DISTRICT 104	3 SEWER PIPELINES, KING COUNTY, MP. 0-900, MP. 24-2616, MP. 24.7	WA-WOODINVILLE	10/1/1977				PARTIAL ASSIGNMENT
PRPL	LC-0212716	KING COUNTY WATER DISTRICT 104	POTABLE WATER PIPELINE S813+12	WA-WOODINVILLE	11/19/1973	LS. 403			
PRPL	LC-00243381	KING COUNTY WATER DISTRICT NO. 104	9 INCH WATER PIPELINE, SS. 1374+72; MP. 26+3596 FT.;	WA-WOODINVILLE	2/4/1983				
PRPL	LC-00228504	KING COUNTY WATER DISTRICT NO. 104	10 INCH WATER PIPELINE, MP. 25+4580;	WA-WOODINVILLE	6/1/1978				
PRPL	LC-00230683	KING COUNTY WATER DISTRICT NO. 104	TWO 8.5 INCH SANITARY SEWER PIPELINES, LS. 404, MP. 1.84 AND MP. 1.57	WA-WOODINVILLE	2/1/1979				FNE
PRPL	PX-85-16035	KING COUNTY WATER DISTRICT NO. 104	ESTABLISHMENT PUBLIC CROSSING @ NORTHEASE 200TH STREET ON BLACK RIVER TO SIJMAS LINE, KING COUNTY	WA-WOODINVILLE	6/5/1985				PARTIAL ASSIGNMENT
GVHB	BN-00001739	KING. COUNTY OF	INSTALLATION OF SIGNALS, NE 200TH STREET, CONSTRUCT CROSSING & INSTALL SIGNALS, 195TH ST.; KING COUNTY;	WA-WOODINVILLE	3/16/1972	MP. 26+581			
GVXS	BN-00024524	KING. COUNTY OF	WIDEN & IMPROVE NE 190TH STREET & WOODINVILLE-SNOHOMISH ROAD CROSSING, REMOVE CONCRETE CROSSING, PLACE RUBBER CROSSING, GRANT EASEMENT; KING COUNTY;	WA-WOODINVILLE	2/18/1987	MP. 26.11	091808P		
GVXS	BN-00027951	KING. COUNTY OF	INSTALL AFS/GATES, NE 190TH ST. & WOODINVILLE SNOHOMISH RD.;	WA-WOODINVILLE	10/20/1989	LS. 0403, MP. 25.86	077824P		
GVXS	BN-00032462	KING. COUNTY OF	48 INCH & 30 INCH SANITARY SEWER, SS. 176+84, MP. 3.35, LS. 0404;	WA-WOODINVILLE	7/24/1991	LS. 403, MP. 25.63	091802Y		FNE
PRPL	PX-90016264	METRO MUNICIPALITY OF METROPOLITA	ROAD SLOPES & DRAINAGE, MP. 24+2734 & 24+2975;	WA-WOODINVILLE	3/26/1991				
GVGN	BN-00001221	SEATTLE	STRIP OF LAND FOR BEAUTIFICATION PURPOSES, KING COUNTY	WA-WOODINVILLE	11/1/1990				
PML0	PX-90016053	NETWORK REAL ESTATE SERVICES	OVERHEAD FIBER OPTIC LINE - ONE CONDUCTOR; KING COUNTY	WA-WOODINVILLE	9/20/1971				
PRPW	BF-00027122	NORTHSHORE SCHOOL DISTRICT	4 INCH NATURAL GAS PIPELINE; INDEMNITY LETTER;	WA-WOODINVILLE	2/15/1990	LS. 0404, MP. 26.38 TO MP. 26.19			
PRPL	NP-00095295	OLYMPIC PIPE LINE CO	4 INCH NATURAL GAS PIPELINE; INDEMNITY LETTER;	WA-WOODINVILLE	9/18/2003	LS. 0403, MP. 25.87			
PRPW	BF-00009524	PACIFIC FIBER LINK, LLC.	4 INCH NATURAL GAS PIPELINE; INDEMNITY LETTER;	WA-WOODINVILLE	11/2/1998				
PRPL	BF-00021072	PUGET SOUND ENERGY	4 INCH NATURAL GAS PIPELINE; INDEMNITY LETTER;	WA-WOODINVILLE	3/18/2002	LS. 403, MP. 26.11			
PRPW	BF-00046127	PUGET SOUND ENERGY	4 INCH NATURAL GAS PIPELINE, SNOHOMISH COUNTY	WA-WOODINVILLE	7/2/2007	LS. 404, MP. 00.16			
PRPL	BF-00046594	PUGET SOUND ENERGY, INC.	4 INCH NATURAL GAS PIPELINE, SNOHOMISH COUNTY	WA-WOODINVILLE	7/31/2007	LS. 403, MP. 26.73			
PRPW	PX-85016112	PUGET SOUND POWER & LIGHT CO	POWER WIRE KING AT MP. 24.35	WA-WOODINVILLE	12/16/1985				
PRPW	LC-00207998	PUGET SOUND POWER & LIGHT CO	POWER WIRE KING AT MP. 26+1616	WA-WOODINVILLE	8/16/1972				\$8.00
PRPW	LC-00210233	PUGET SOUND POWER & LIGHT CO	POWER CABLE KING MP. 26+1229	WA-WOODINVILLE	5/1/1973				\$4.00

EXHIBIT F

Type	Contract No.	Contractor(s)	Description	Location	Date	L/SMP	DOT No.	Annualized Billing	Notes
PRPW	LC-00211609	PUGET SOUND POWER & LIGHT CO	ONE ISOLATED ANCHOR MP 25+3977	WA-WOODINVILLE	8/16/1973			\$2.00	
PRPW	LC-00244143	PUGET SOUND POWER & LIGHT CO	POWER LINE KING MP 24+4801	WA-WOODINVILLE	6/1/1983				
PRPW	LC-00218874	PUGET SOUND POWER & LIGHT CO.	OHD POWER WIRELINE, SS, 98+68, MP, 1+4611;	WA-WOODINVILLE	6/1/1976			\$6.00	
PRPW	LC-00231815	PUGET SOUND POWER & LIGHT CO.	OHD POWER WIRE LINE, SS, 133076, MP, 25+4598 FT.; CANCELS NP #95964;	WA-WOODINVILLE	6/16/1979			\$10.00	
PRPW	LC-00232210	PUGET SOUND POWER & LIGHT CO.	OHD POWER WIRE LINE, SS, 73+75, MP, 1+2118 FT.;	WA-WOODINVILLE	8/1/1979			\$10.00	FNF
PRPW	NP-00045231	PUGET SOUND POWER & LIGHT CO.	OHD ELECTRIC WIRE LINE, MP, 26+1000;	WA-WOODINVILLE	5/1/1928				
PRPW	NP-00095864	PUGET SOUND POWER & LIGHT CO.	OHD POWER WIRE LINE, NEAR MP, 26+00;	WA-WOODINVILLE	5/1/1965				
PRPW	NP-45171	PUGET SOUND POWER & LIGHT CO.	ELECTRIC WIRELINE CROSSING	WA-WOODINVILLE	10/20/1927				
PRPW	NP-53203	PUGET SOUND POWER & LIGHT CO.	OHD ELECTRIC WIRELINE CROSSING	WA-WOODINVILLE	3/16/1935				
PRPW	NP-56873	PUGET SOUND POWER & LIGHT CO.	OHD ELECTRIC WIRELINE CROSSING	WA-WOODINVILLE	12/1/1938				
PRPW	NP-62059	PUGET SOUND POWER & LIGHT CO.	ELECTRIC WIRELINE CROSSING	WA-WOODINVILLE	8/16/1943				
PRPW	PX-90016262	PUGET SOUND POWER & LIGHT CO.	OHD TRIPLEX WIRE LINE CROSSING, SS	WA-WOODINVILLE	11/1/1990	LS, 0403, MP, 24.20			
PRPL	NP-18267	ROSE, ALBERT	1.5 INCH WATER PIPELINE	WA-WOODINVILLE	9/15/1954				
PRPC	LC-233714	SATHER & NELSON	PRIVATE 32 FOOT PLANK ROAD, MP, 26.67	WA-WOODINVILLE	10/1/1979	LS, 403			
PRPL	BF-00027569	SCANDIA BUSINESS PARK, LLC	3 PIPELINES, TWO 12-INCH AND ONE 18-INCH PIPELINE CROSSING FOR STORM WATER DRAINAGE; KING COUNTY;	WA-WOODINVILLE	10/22/2003	LS, 0403, MP, 28.16	03-24936		PARTIAL ASSIGNMENT
GYXS	NP-00086725	SEATTLE, CITY OF	CROSSING RRS: S 50 FOOT ROW, ES 52+57.2, MP, 1; CROSSING RRS 100 FOOT ROW, ES, 109+94, MP, 22;	WA-WOODINVILLE	6/30/1989				
PRPL	BF-00035162	SNOHOMISH COUNTY	24 INCH STORM WATER PIPELINE, SNOHOMISH COUNTY	WA-WOODINVILLE	3/24/2005	LS, 403, MP, 26.70			
PRPW	LC-00215883	SNOHOMISH COUNTY PUD 1	POWER WIRE KING MP 26+3427 FT	WA-WOODINVILLE	9/24/1974				
PRPW	BF-00037796	SNOHOMISH COUNTY PUD NO. 1	UGD ELECTRIC WIRE LINE, SNOHOMISH COUNTY	WA-WOODINVILLE	12/21/2005	LS, 403, MP, 26.95			
PRPW	BF-00037798	SNOHOMISH COUNTY PUD NO. 1	OHD ELECTRIC WIRE LINE, SNOHOMISH COUNTY	WA-WOODINVILLE	12/21/2005	LS, 403, MP, 26.81			
GYXS	BF-00039920	SNOHOMISH, COUNTY OF	INSTALL FLASHING LIGHT SIGNALS WITH GATES & CONSTANT WARNING CIRCUITRY AT 240TH STREET; SNOHOMISH COUNTY;	WA-WOODINVILLE	10/7/2005	LS, 0403, MP, 26.83	091811X		
GYXS	BN-00032131	SNOHOMISH, COUNTY OF	INSTALL AELS AT 240TH STREET;	WA-WOODINVILLE	11/7/1990	LS, 0405, MP, 26.82	091811X		
IDIT	BN-00010114	SPECTRUM GLASS CO., INC.	CM&O SPUR TRACK;	WA-WOODINVILLE	1/25/1979				
PRPW	LC-00229730	SPECTRUM GLASS CO., INC.	UGD POWER WIRE LINE, SS, 1370+23, MP, 26+3147 FT.;	WA-WOODINVILLE	10/1/1978			\$10.00	
PMLO	PX-89016065	SPIEKER-HOSFORD-JEFFERSON NO. 166	SLOPE & BEAUTIFICATION OF OUTER 10 FEET OF NORTH RIGHT-OF-WAY, SS, 44+00 TO SS, 51+72, KING COUNTY	WA-WOODINVILLE	6/15/1988	MP, 24.21 TO MP, 24.36			
PRPW	PX-89016120	166; CALWEST INDUSTRIAL PROPERTIES, LLC	UGD ELECTRIC WIRE LINE, KING COUNTY	WA-WOODINVILLE	10/31/1988	MP, 24.44			
PRPC	CX-85016004	TJOSSEM ROBERT P & SILVERNALE GRANT J JR	M&O PRIVATE ROAD CROSSING, MP, 24.44	WA-WOODINVILLE	2/3/1986				
PRPL	PX-86016008	TJOSSEM, ROBERT P. & SILVERNALE, G. J.; SPIEKER-HOSFORD-JEFFERSON NO. 166; CALWEST INDUSTRIAL PROPERTIES, LLC.	8 INCH CMP STORM DRAINAGE PIPELINE, KING COUNTY; CANCELS LC #235148	WA-WOODINVILLE	2/3/1986	LS, 403, MP, 24.44			

EXHIBIT F

Type	Contract No.	Contractor(s)	Description	Location	Date	L/S/MP	DOT No.	Annualized Billing	Notes
PRPC	CX-89016031	UNDERWOOD 122	M&O PRIVATE ROAD CROSSING, SURVEY STATION 1240+18, MP. 24.14	WA-WOODINVILLE	7/3/1989	L.S. 403, MP. 26.36		\$20.00	
PRGN	BF-00041211	UNDERWOOD GARTLAND 9 LLC	TEMPORARY OCCUPANCY FOR RE-GRADING, SNOHOMISH COUNTY	WA-WOODINVILLE	7/14/2006	L.S. 403, MP. 26.58	091810R		
PRPC	BF-00036944	UNDERWOOD GARTLAND 9, LLC	PRIVATE AT-GRADE CROSSING, SNOHOMISH COUNTY	WA-WOODINVILLE	10/12/2005				
GVGN	NP-00017225	UNITED STATES		WA-WOODINVILLE	3/1/1983				
PRPC	CX-86016046	VINTAGE AUTO PARTS INC	M&O PRIVATE ROAD CROSSING, MP. 24.9	WA-WOODINVILLE	6/16/1986	MP. 24.9		\$10.00	
PRPW	BF-00012260	VISTA TELEVISION CABLE, INC.	UGD FIBER OPTIC TV CABLE, I.S. 403, MP. 24.46; UGD FIBER OPTIC WIRE LINE, I.S. 403, MP. 24.46;	WA-WOODINVILLE	11/2/1999				FNF
PRPW	BF-00015504	VISTA TELEVISION CABLE, INC.	24.46;	WA-WOODINVILLE	8/29/2000				
PRPL	LC-00210098	WASHINGTON NATURAL GAS CO	NATURAL GAS PIPE LINE MP 25+1400 FEET	WA-WOODINVILLE	2/16/1973				
PRPL	LC-0211198	WASHINGTON NATURAL GAS CO	NATURAL GAS PIPE LINE MP 26+1387 FEET	WA-WOODINVILLE	7/16/1973				
PRPL	LC-00230821	WASHINGTON NATURAL GAS CO	GAS PIPELINE MP 26+3144 FT	WA-WOODINVILLE	2/1/1979				
PRPL	PX-87016162	WASHINGTON NATURAL GAS CO	1.36 INCH NATURAL GAS PIPELINE CROSSING, SURVEY STATION 1265+45, MP. 24.44	WA-WOODINVILLE	10/1/1987				
PRPL	LC-00220089	WASHINGTON NATURAL GAS CO.	2 INCH NATURAL GAS PIPE LINE, SS. 15+38, MP. 24+000.	WA-WOODINVILLE	12/1/1975				
PRPL	LC-00223432	WASHINGTON NATURAL GAS CO.	4 INCH NATURAL GAS PIPELINE, SS. 74+16;	WA-WOODINVILLE	9/1/1979				FNF
PRPL	LC-00233665	WASHINGTON NATURAL GAS CO.	2 INCH GAS CROSSING MP. 25+120	WA-WOODINVILLE	2/1/1980				
PRPL	NP-00094415	WASHINGTON NATURAL GAS CO.	2 INCH NATURAL GAS PIPELINE, SS. 111+395, MP. 24657.	WA-WOODINVILLE	4/30/1964				
PRPL	PX-90016191	WASHINGTON NATURAL GAS CO.	1 1/2 INCH NATURAL GAS PIPELINE, SS. 39+64, KING COUNTY	WA-WOODINVILLE	7/16/1990	L.S. 0403, MP. 24.13			
PRPL	PX-46020038	WASHINGTON NATURAL GAS CO.	12 INCH UGD NATURAL GAS PIPELINE INSIDE A 16 INCH STEEL CASING, KING COUNTY	WA-WOODINVILLE	2/21/1996	L.S. 0404, MP. 1.8			
GVGN	BN-00019503	WASHINGTON, STATE OF	EASEMENT TO IMPROVE 139TH AVENUE NE;	WA-WOODINVILLE	12/28/1984	MP. 23.81, 26.01			
GVXS	BN-00022774	WASHINGTON, STATE OF	INSTALL AFLS;	WA-WOODINVILLE	8/22/1985	MP. 23.97	091797E		
GVXS	BN-00025372	WASHINGTON, STATE OF	INSTALL AFLS.	WA-WOODINVILLE	2/26/1988	MP. 1.86	091897J		
GVXS	BN-00039828	WASHINGTON, STATE OF	WIDEN & IMPROVE THE SR 202 GRADE CROSSING;	WA-WOODINVILLE	2/15/1996	L.S. 404, MP. 1.87	091897J		
GVXS	NP-00013950	WASHINGTON, STATE OF	INSTALL AFLS AT STATE SECONDARY HWY. 1-A GRADE CROSSING;	WA-WOODINVILLE	2/4/1952	MP. 25+8407			
GVHB	NP-00016004	WASHINGTON, STATE OF	CONSTRUCTION OF OHD HWY. CROSSING;	WA-WOODINVILLE	11/2/1967	MP. 23.69			
GVHB	NP-00016163	WASHINGTON, STATE OF	CONSTRUCTION OF UNDERCROSSING;	WA-WOODINVILLE	3/13/1959	MP. 27+858			
GVHB	NP-00017126	WASHINGTON, STATE OF	TEMPORARY AND PERMANENT CHANGES IN TRACKS; RECONSTRUCTION OF BRIDGE NO. 24.1;	WA-WOODINVILLE	10/3/1962	MP. 24+3549			
GVXS	NP-00069045	WASHINGTON, STATE OF	C&M PUBLIC ROADWAY NEAR MP. 27, SNOHOMISH & KING COUNTIES;	WA-WOODINVILLE	7/15/1948	MP. 27+425 TO MP. 28+2148			
PRPL	LC-00222090	WATER DISTRICT NO. 104	8 INCH SANITARY SEWER PIPELINE, SS. 1157+34, MP. 1+477;	WA-WOODINVILLE	8/1/1979			\$10.00	FNF
PRPL	LC-00224275	WATER DISTRICT NO. 104	8.51 INCH WATER PIPELINE, SS. 1345+06, MP. 26+629;	WA-WOODINVILLE	10/19/1982				
PRPW	NP-00082089	WEST COAST TELEPHONE CO.	TELEPHONE WIRELINE, MP. 2;	WA-WOODINVILLE	1/22/1957				

EXHIBIT F

Type	Contract No.	Contractor(s)	Description	Location	Date	LS/MP	DOT No.	Annualized Billing	Notes
PRPW	NP-76781	WEST COAST TELEPHONE CO.	UGD TELEPHONE WIRELINE, MP. 27	WA-WOODINVILLE	10/1/1953				
PRPW	NP-81434	WEST COAST TELEPHONE CO.	OHJ TELEPHONE WIRELINE, KING COUNTY	WA-WOODINVILLE	8/5/1956				
PRPW	NP-82209	WEST COAST TELEPHONE CO.	TELEPHONE WIRELINE CROSSING	WA-WOODINVILLE	4/8/1957				
PRPW	NP-00082029	WEST COAST TELEPHONE CO.	TELEPHONE WIRELINE, MP. 2.	WA-WOODINVILLE	1/22/1957				FNF
PRPC	NP-00019219	WESTERN SAWDUST PRODUCTS INC. NKA BASSETT WESTERN, INC.	PRIVATE CROSSING, MP. 26; CONVERTED TO A PUBLIC CROSSING & CANCELLED, DOT NO. 091808P, CONNECTS NE 144TH & 200TH STREETS	WA-WOODINVILLE	3/15/1968				FNF
PMLO	BF-00007074	WILCOXON F., LP.	LAND LEASE FOR PARKING VEHICLES & LANDSCAPING; LS. 404, .04	WA-WOODINVILLE	9/1/1998			\$5.00	
PMLO	BF-00007586	WOODINVILLE LANDING, LLC.	DRIVEWAY, PARKING & LANDSCAPING	WA-WOODINVILLE	4/6/1998			\$9,760.28	
PRPL	BF-00013343	WOODINVILLE WATER DISTRICT	8 INCH SANITARY SEWER PIPELINE CROSSINGS AT 2 LOCATIONS & LONGITUDINAL ENCROACHMENT; LS. 404, MP. 3.38; LS. 405, MP. 21.43; CANCELS PX #96021170;	WA-WOODINVILLE	11/12/1999				PARTIAL ASSIGNMENT
PRPL	NP-00091897	WOODINVILLE WATER DISTRICT	SIX INCH WATER PIPE	WA-WOODINVILLE					PARTIAL ASSIGNMENT
PRPL	PX-96021075	WOODINVILLE WATER DISTRICT	SANITARY SEWER PIPELINE, KING COUNTY	WA-WOODINVILLE	5/2/1/1996	LS. 403, MP. 25.16			
GVXS	BF-00018880	WOODINVILLE, CITY OF	INSTALL INTERTIE TO THE NE 200TH STREET CROSSING;	WA-WOODINVILLE	8/31/2001	LS. 403, MP. 28.12	091808P		
GVXS	BF-00023097	WOODINVILLE, CITY OF	INSTALL ADVANCE PRE-EMPTION TO NE 178TH PLACE;	WA-WOODINVILLE	9/12/2002	LS. 403, MP. 25.13	916758X		
PRGN	BF-00045055	WOODINVILLE, CITY OF	TEMPORARY OCCUPANCY FOR GEOTECHNICAL ASSESSMENTS, KING COUNTY	WA-WOODINVILLE	4/1/1/2007	LS. 0403, MP. 23.97 & MP. 24.42			
GVXS	BN-00040969	WOODINVILLE, CITY OF	REHAB CROSSING & INSTALL AFLS CANTLEVERGATES AT NE 138TH AVENUE, KING COUNTY	WA-WOODINVILLE	11/1/1996	LS. 0403, MP. 25.16	916758X		
	CX-94020577		LS. 403, MP. 26.88	WA-WOODINVILLE					
	PX-92013113		LS. 403, MP. 25.65	WA-WOODINVILLE					FNF
	RW-93016260		LS. 403, MP. 26.01	WA-WOODINVILLE					
	RW-93016269		LS. 402, MP. 25.4 - 26.1	WA-WOODINVILLE					
FNF	File not found; location unknown.								
PARTIAL ASSIGNMENT Contract covers area partially located in area to be conveyed									

EXHIBIT G

**ASSIGNMENT OF RIGHTS UNDER CONTRACT
TO REAL ESTATE**

APEX PROPERTY & TRACK EXCHANGE, INC., a Massachusetts corporation, of 2036 Washington Street, Hanover, Massachusetts 02339, (hereinafter called "Assignee"), **BNSF RAILWAY COMPANY**, a Delaware corporation, (hereinafter called "Exchangor"), and _____, a _____ corporation (hereinafter called "Buyer").

Whereas, Exchangor and Buyer heretofore entered into an Agreement dated _____, 200__ (the "Contract"), wherein Exchangor agrees to assign the rights to the Contract, but not the obligations and warranties over to Assignee, as it pertains to the following described Relinquished Property:

"See **EXHIBIT "A"** attached hereto and made a part hereof".

Now, Therefore, Exchangor hereby assigns to Assignee all of the Exchangor's rights under the Contract, as contemplated by Treasury Regulations Section 1.1031 (k)-1(g)(4)(v), including all deposits received prior to issuing a Deed transferring legal title. Exchangor's obligations and warranties under the Contract remain with the Exchangor, including the authority to issue a Deed transferring legal title to the Relinquished Property over to the Buyer.

Assignee previously represented, warranted and covenanted to Exchangor, under the Master Exchange Agreement dated January 1, 1997, that it will not transfer, assign, mortgage or hypothecate the rights that it is receiving from the Exchangor and that Assignee shall not amend, terminate, modify, supplement or otherwise alter any term, condition or other provision of the Contract. At the same time the Deed goes into effect transferring legal title to the Buyer, rights received under this Assignment of Rights are transferred to Exchangor.

Assignee is participating in this transaction only as a Qualified Intermediary and that for purposes of any dispute regarding the Relinquished Property, Exchangor and Buyer shall look solely to each other with respect to resolving any such dispute and neither one shall look to the Assignee. This shall be binding upon and shall inure to the respective heirs, successors and assigns of Exchangor and Buyer.

This instrument may be executed in any number of counterparts, each of which, when duly executed, shall constitute an original hereof.

In Witness Whereof, the parties hereto have executed this Assignment of Rights Under Contract, to be effective as of the date on which the last party hereto signs.

Exchangor:

BNSF RAILWAY COMPANY,
a Delaware corporation

By: _____ Date: _____

D. P. Schneider
General Director Real Estate

Assignee:

APEX PROPERTY & TRACK EXCHANGE, INC.,
a Massachusetts corporation

By: _____ Date: _____

Buyer:

a _____ corporation

By: _____ Date: _____

Name: _____

Title: _____

BNSF _____

Attach EXHIBIT "A" to 1031 Assignment

EXHIBIT H

FORM OF FREIGHT EASEMENT SALE AGREEMENT

THIS FREIGHT EASEMENT SALE AGREEMENT is made and entered into as of the ___ day of _____, 2008, by and between BNSF RAILWAY COMPANY ("BNSF") and _____ ("TPO").

RECITALS

A. BNSF and the Port of Seattle (the "Port") have entered into that certain Purchase and Sale Agreement (Woodinville Subdivision – North Rail Line) and that certain Donation Agreement (Woodinville Subdivision – South Rail Line) each dated as of _____ (the "Real Estate Agreements"), pursuant to which BNSF has agreed to convey and Port has agreed to accept certain real property (the "Woodinville Subdivision," or "Subdivision") in King County, Washington and Snohomish County, Washington.

B. Pursuant to the terms of the Real Estate Agreements, (i) BNSF shall retain at closing an exclusive easement for freight rail purposes over the Freight Portion of the Woodinville Subdivision (defined below) and (ii) BNSF shall grant the Port a non-exclusive easement for the Snohomish Bridge included in the sale of the Freight Portion.

C. TPO desires to enter into this Agreement for the acquisition of the Retained Freight Easement and BNSF, at the direction of the Port, is willing to convey the Retained Freight Easement in the manner described in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. Definitions and Exhibits.

1.1 Definitions. For purposes of this Agreement, each of the following terms, when used herein with an initial capital letter, shall have the meaning set forth below:

Agreement. This Freight Easement Sale Agreement.

Bridge Easement. The Easement Agreement between the Port and BNSF for the Snohomish Bridge in the form attached hereto as Exhibit E.

Closing. The consummation of the transaction contemplated in this Agreement.

Closing Date. September 30, 2008, provided that BNSF may elect to extend the Closing Date to no later than December 29, 2008.

Contract Date. The date upon which this Agreement shall be deemed effective, which shall be the date first above written.

Deed. A quitclaim deed in the form attached hereto as Exhibit B whereby BNSF quitclaims to TPO all right, title and interest BNSF has in and to the Reserved Freight Easement.

Entry Agreement. That certain Entry Agreement entered into between BNSF and TPO dated _____ as originally executed and hereafter amended concerning the entry by the Port onto the Subdivision for purposes of conducting inspections of the Subdivision.

Escrow Agent. _____

Freight Portion. That portion of the Woodinville Subdivision from milepost 23.8 in Woodinville to milepost 38.4 in Snohomish County, Washington.

Interchange Agreement. That certain Interchange Agreement in the form attached hereto as Exhibit D.

Operations & Maintenance Agreement. That certain Operations and Maintenance Agreement in the form attached hereto as Exhibit C.

Other Agreements. Means the Entry Agreement and the Real Estate Agreements.

Reserved Freight Easement. That certain reserved easement for freight operations on the Freight Portion as more particularly described in Exhibit A attached hereto.

Review Period. The period commencing on the Contract Date and ending at 5:00 p.m. on _____, 2008.

Woodinville Subdivision. A rail corridor extending (i) from approximately milepost 5.0 in Renton, Washington to milepost 38.4 in Snohomish County, Washington including the bridge over the Snohomish River, and (ii) from milepost 0.0 in Woodinville south to milepost 7.3 in Redmond (the "Redmond Spur").

1.2 Exhibits. Attached hereto and forming an integral part of this Agreement are the following exhibits, all of which are incorporated into this Agreement as fully as if the contents thereof were set out in full herein at each point of reference thereto:

Exhibit A	Legal Description of the Property
Exhibit B	Form of Deed
Exhibit C	Form of Operations and Maintenance Agreement
Exhibit D	Form of Interchange Agreement
Exhibit E	Form of Easement Agreement for Snohomish Bridge

Section 2. Conveyance.

BNSF agrees to convey to TPO, and TPO agrees to accept from BNSF, the Reserved Freight Easement in accordance with the terms of this Agreement.

Section 3. Adjustments.

3.1 Taxes and Monetary Liens.

(a) Taxes. There shall be no proration of taxes attributable to the Reserved Freight Easement. BNSF shall be liable for the payment when due of all taxes and assessments related to the Reserved Freight Easement, including without limitation real property ad valorem taxes, special benefit assessments and other governmental impositions (collectively, "Taxes"), for the time period up to Closing. From and after the Closing, to the extent any Taxes applicable to the Reserved Freight Easement are due and owing under applicable laws such Taxes shall be paid by TPO. Each party shall indemnify, defend and hold the other harmless from the obligation to pay Taxes as set forth in this Section 3.1(a).

3.2 Closing Costs. BNSF shall pay one-half of any escrow or closing agent charges in connection with the Closing. TPO and BNSF shall each pay their own attorneys' fees and costs in connection with the

negotiation of this Agreement and the closing hereunder. TPO shall pay the following closing costs:

-
- (a) the cost of recording the Deed including any transfer taxes associated therewith;
 - (b) the cost of any title insurance TPO wishes to obtain in connection with the acquisition of the Reserved Freight Easement;
 - (c) one-half of any escrow or closing agent charges in connection with the Closing; and
 - (d) all costs of any surveys, reports or other due diligence TPO obtains or undertakes in connection with the transactions contemplated herein.
 - (e) all costs associated with any loan or other financing obtained by TPO in connection with the acquisition of the Reserved Freight Easement; and

Section 4. Inspections.

4.1 Physical/Environmental Inspection.

(a) BNSF, as information only, has provided TPO access to, or copies of, certain documents (such documents previously delivered and items that may subsequently be delivered are collectively referred to as the "Property Reports".) TPO acknowledges and agrees that BNSF does not represent the accuracy or completeness of the Property Reports and that TPO will rely only on its own due diligence. If BNSF obtains knowledge (as defined in Section 5.3 of this Agreement) of any additional Property Reports in BNSF's possession or the possession of its agents or contractors before the Closing Date then BNSF will promptly provide TPO with copies of any such other reports later received or obtained by BNSF relating to the Reserved Freight Easement. BNSF is not required to provide attorney-client or attorney work product materials or documents to TPO. BNSF shall provide a description of any materials not provided to TPO by BNSF because such materials are attorney-client or attorney work product. :

(b) Subject to the terms of the Entry Agreement, BNSF will allow TPO and its agents to have access to the Freight Portion for the purpose of conducting environmental due diligence as specified in Section 6 of this Agreement and subject to the requirements of the Entry Agreement. TPO acknowledges that invasive testing, such as drilling or boring, is not allowed under the Entry Agreement. If TPO desires to perform such testing TPO shall submit a work plan to BNSF for its review and approval, which work plan must reasonably describe its intended testing.

(c) All Property Reports and other environmental studies, reports, plans, and information including, but not limited to, those listed in this Agreement, and delivered by one Party to the other shall be held in confidence by the Parties, their agents, employees, officers, directors and contractors, and will not be disclosed to any third party unless this disclosure is compelled by order of a court or is otherwise legally required to be produced, including under the Washington Public Disclosure Act, RCW ch. 42.56, or if the other Party consents in writing to the production of such materials. The Parties will inform their respective agents and contractors of the requirements of this Section 4.1(c) and shall require such agents and contractors to comply with such requirements.

4.2 TPO Contingencies.

(a) TPO shall have until the end of the Review Period to determine in its sole and absolute discretion if there are any physical conditions including, but not limited to, environmental conditions affecting the Freight Portion that BNSF is not willing to cure as contemplated herein and that are unacceptable to the TPO in its sole discretion.

(b) If the TPO does identify an existing condition affecting the Freight Portion (an "Identified Condition") that is unacceptable to the TPO in its sole discretion and such Identified Condition is not an Identified Condition that BNSF agrees in writing to Cure (defined below) pursuant to Section 7 of this Agreement, then TPO may terminate this Agreement by written notice to BNSF received no later than the

expiration of the Review Period. If TPO does so terminate this Agreement under this Section 4.2 then neither party shall have any further obligation hereunder except those that expressly survive termination. If TPO does not so terminate this Agreement prior to the end of the Review Period, the parties shall proceed to Closing according to the remaining provisions of this Agreement. Promptly upon BNSF's written request, TPO shall deliver a copy of any written inspection report, survey or test result received by TPO. If any of such items reveal any adverse conditions for which BNSF would be responsible for under Section 7 of this Agreement, BNSF may terminate this Agreement by written notice to TPO and neither party shall have any further obligation hereunder except those that expressly survive termination.

4.3 Nature of Title. The Reserved Freight Easement shall be conveyed with no warranties of title and shall be subject to all matters affecting the Reserved Freight Easement whether of record or not including but not limited to (i) the lien of unpaid taxes not yet due and payable; and (ii) matters which would be disclosed by a current, accurate survey of the Freight Portion. TPO acknowledges and affirms that BNSF may not hold fee simple title to the Freight Portion, that BNSF's interest in all or part of the Freight Portion, if any, may rise only to the level of an easement for railroad purposes. TPO is willing to accept the Reserved Freight Easement on this basis. TPO acknowledges that BNSF's predecessor in interest to the Freight Portion acquired a railroad right-of-way ownership interest in the Freight Portion from the United States of America, pursuant to Section 2 of the General Right-of-Way Act of March 3, 1875, and TPO agrees to the conditions and limitations imposed by this General Right-of-Way Act.

Section 5. Representations and Warranties.

5.1 BNSF. As of the Contract Date and Closing Date, BNSF hereby represents and warrants to TPO that the following statements are materially true:

(a) BNSF is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, is authorized to do business and in good standing in the State of Washington and has full power and authority to enter into this Agreement and to fulfill its obligations hereunder.

(b) BNSF has taken all corporate action necessary to authorize the execution and delivery by BNSF of this Agreement and the other documents to be delivered by BNSF at Closing and the performance of its obligations hereunder and thereunder.

(c) This Agreement and the other documents to be delivered by BNSF at Closing have been, or before the Closing Date will have been, duly authorized and executed (and acknowledged where necessary) and delivered by BNSF, and all other necessary actions have been, or before the Closing Date will have been, taken, so that this Agreement, the Other Agreements and all documents to be executed by BNSF pursuant hereto constitute, or before the Closing Date will constitute the legally valid and binding obligations of BNSF, enforceable against BNSF in accordance with their terms, except as the enforceability of this Agreement may be subject to or limited by bankruptcy, or insolvency or other similar laws relating to or affecting the rights of contracting parties generally.

(d) The execution and performance by BNSF of this Agreement and the other documents to be delivered by BNSF at Closing do not violate or conflict with BNSF's articles of incorporation or bylaws or by any law, court order, administrative agency order or regulatory agency order binding upon BNSF or any of its properties.

5.2 TPO. As of the Contract Date, TPO hereby represents and warrants to BNSF that the following statements are materially true:

(a) TPO is a _____ of the State of Washington, duly organized, validly existing and in good standing under the laws of the State of Washington, is authorized to do business in the State of Washington, and has full power and authority to enter into this Agreement and to fulfill its obligations

hereunder.

~~(b) TPO has taken all corporate action necessary to authorize the execution and delivery by TPO of this Agreement and has taken or, by Closing, will have taken, all corporate action necessary to authorize the execution and delivery of the other documents to be delivered by TPO at Closing and the performance of its obligations hereunder and thereunder.~~

(c) This Agreement and the other documents to be delivered by TPO at Closing have been, or before the Closing Date will have been, duly authorized and executed (and acknowledged where necessary) and delivered by TPO, and all other necessary actions have been, or before the Closing Date will have been, taken, so that this Agreement and the other documents to be delivered by TPO pursuant hereto constitute, or before the Closing Date will constitute the legally valid and binding obligations of TPO, enforceable against TPO in accordance with their terms.

(d) The execution and performance by TPO of this Agreement and the other documents to be delivered by TPO at Closing do not violate or conflict with any law, court order, administrative agency order or regulatory agency order binding upon TPO or any of its properties.

5.3 Miscellaneous.

(a) As used in this Agreement, the phrase "BNSF's knowledge" or any derivation thereof shall mean the actual knowledge of the following persons, based on their reasonable inquiry in the file locations where the relevant information would normally be filed of: David P. Schneider, General Director of Real Estate; Bruce Sheppard, Manager of Environmental Remediation and Carol Sanders, Regional Manager for Staubach which provides property management services to BNSF with regard to the Reserved Freight Easement, and Jerome M Johnson, Assistant Vice President, Network Development.

(b) It shall be a condition of the parties' respective obligation to Close that the representations and warranties of the other party contained in this Section 5 are true and correct in all material respects at the Closing Date. In the event that BNSF or TPO learns that any of either party's representations or warranties becomes inaccurate between the Contract Date and the Closing Date, BNSF or TPO, as applicable, shall immediately notify the other party in writing of such change. In the event the party whose representation or warranty becomes inaccurate (the "**Representing Party**") cures such inaccuracy prior to the Closing Date this Agreement shall remain in full force and effect. If the Representing Party does not so cure such inaccuracy, the other party may pursue any remedy provided for in Section 10 provided, however, if the non-Representing Party closes with knowledge of any such inaccuracy then the representations and warranties of the Representing Party shall be deemed to be amended such that the applicable inaccuracy is an exception to the Representing Party's representations and warranties for all purposes under this Agreement.

(c) In the event the non-Representing Party first learns after the Closing contemplated in this Agreement that any representations or warranties made by the Representing Party (as may be amended as ~~provided above~~) were materially inaccurate as of the Closing Date, then the Representing Party shall reimburse the non-Representing Party for all out-of-pocket expenses incurred by the non-Representing Party as a result of such inaccuracy provided that (i) the non-Representing Party notifies the Representing Party in writing within sixty (60) months after the Closing Date of such expenses and inaccuracy, and (ii) the Representing Party shall in no event be responsible for any consequential or punitive damages resulting from such inaccuracy. Notwithstanding anything to the contrary contained in this Agreement, the non-Representing Party shall have no right to recover from, or proceed against, the Representing Party in any manner whether based upon breach of contract, tort or otherwise upon the expiration of such twelve (12) month period except to the extent the non-Representing Party has so notified the Representing Party in accordance with the terms of this Agreement within such twelve (12) month period.

Section 6. Condition of Property. (a) TPO has been, or by Closing will have been, allowed to make

an inspection of the Freight Portion. Subject to BNSF's express representations, warranties and obligations under this Agreement, ~~TPO IS PURCHASING THE RESERVED FREIGHT EASEMENT IN THE FREIGHT PORTION IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, IS NOT RELYING ON, AND HEREBY WAIVES ANY WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM BNSF WITH RESPECT TO ANY MATTERS CONCERNING THE FREIGHT PORTION~~ including, but not limited to the physical condition of the Freight Portion; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Freight Portion with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Freight Portion; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, or under the Freight Portion; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Freight Portion; the condition of title to the Freight Portion, and the Third Party Leases/Licenses permits, orders, or other agreements, affecting the Freight Portion (collectively, the "Condition of the Freight Portion").

(b) TPO represents and warrants to BNSF that except for BNSF's express representations, warranties and obligations under this Agreement, TPO has not relied and will not rely on, and BNSF is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Freight Portion or relating thereto made or furnished by BNSF, the manager of the Freight Portion, or any real estate broker or agent representing or purporting to represent BNSF, to whomever made or given, directly or indirectly, orally or in writing.

(c) Subject to BNSF's express representations, warranties and obligations under this Agreement TPO assumes the risk that Hazardous Substances or other adverse matters may affect the Property that were not revealed by TPO's inspection and except to the extent of BNSF's express representations, warranties and obligations under this Agreement, TPO waives, releases and discharges forever BNSF and BNSF's officers, directors, shareholders, employees and agents (collectively, "BNSF Parties") from any and all present or future claims or demands, and any and all damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown, which TPO might have asserted or alleged against BNSF Parties arising from or in any way related to the Condition of the Freight Portion or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Freight Portion. Losses shall include without limitation (a) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) losses for injury or death of any person, and (c) losses arising under any Environmental Law enacted after transfer. The term "**Environmental Law**" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Model Toxics Control Act, the Water Pollution Control Act, laws concerning above ground or underground storage tanks, and any similar or comparable state or local law. The term "**Hazardous Substance**" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

BNSF and TPO acknowledge that the compensation to be paid to BNSF for the Reserved Freight Easement reflects that the Reserved Freight Easement is being conveyed subject to the provisions of this Section 6 which provisions shall be included in the Deed and which shall be covenants running with the land.

Section 7. Environmental Obligations.

(a) Consistent with Section 4.2 of this Agreement, if, prior to the expiration of the Review Period, the TPO notifies BNSF in writing of an existing condition affecting the Freight Portion (an "**Identified Condition**") that is unacceptable to the TPO, as determined by the TPO in its sole and absolute discretion, and BNSF does not verify in writing within fifteen (15) business days thereafter that such Condition is a condition that BNSF is obligated to Cure pursuant to this Section 7, then the TPO may terminate this Agreement by written notice to BNSF in accordance with the provisions of Section 4.2 of this Agreement. If the TPO timely notifies BNSF in writing of an Identified Condition, the TPO and BNSF shall negotiate diligently and in good faith to reach agreement on Curing such condition. If the portion of the Freight Portion affected by an Identified Condition can be excluded from the sale of the Reserved Freight Easement without materially interfering with TPO's future use of the Reserved Freight Easement, as determined by the TPO in its sole and absolute discretion, then BNSF may affect Cure prior to Closing by excluding such affected portion of the Freight Portion without any price adjustment and to the extent so excluded BNSF shall have satisfied its obligations under this Agreement to Cure the portion of the Freight Portion excluded from the Reserved Freight Easement, provided, however, that any such Cure by exclusion must first be agreed to in writing by the TPO. If TPO does not terminate this Agreement under Sections 4.2 and 7.1 and proceeds to Closing, it shall be deemed to have waived and released BNSF from any obligations with respect to such Identified Condition.

(b) BNSF shall be responsible to investigate, remediate, respond to or otherwise cure (collectively, "**Cure**") as and when required by and in accordance with Environmental Laws any Identified Condition that concerns a release of Hazardous Substances on the Freight Portion occurring prior to the Closing or a violation of Environmental Laws concerning the Freight Portion occurring prior to the Closing to the extent that BNSF has agreed to Cure, and to the standards that BNSF has agreed to satisfy, in writing prior to the expiration of the Review Period. Notwithstanding the preceding sentence, BNSF shall not be responsible to Cure any such Identified Conditions to the extent TPO, its agents, or contractors materially exacerbate such Identified Condition during construction performed by or for TPO, excluding superficial or *de minimis* activity performed by TPO. Further, BNSF shall not be responsible to Cure any Identified Condition that was not caused by BNSF or its agents, contractors or invitees. TPO shall cooperate with BNSF in its efforts to Cure any Identified Condition concerning a release of Hazardous Substances on the Freight Portion.

(c) The provisions of this Section 7 shall be included in the Deed and shall run with the land.

Section 8. Conditions to Closing. The parties' respective obligation to proceed to Closing under this Agreement is subject to the conditions precedent described in this Section 8:

8.1 Surface Transportation Board Approval Contingency.

(a) TPO shall, at its sole expense, obtain the necessary exemption from the Surface Transportation Board (the "**STB**") to permit the transfer of the Reserved Freight Easement from BNSF. ~~BNSF shall reasonably cooperate with TPO as to any hearings or submittals required to obtain the necessary exemption from the STB. TPO shall file a Notice of Exemption under 49 C.F.R. Part 1150, Subpart D or Subpart E, whichever is applicable, at least thirty (30) days prior to the Closing Date, and shall comply with the requirements of 49 C.F.R. § 1150.32(e) or § 1150.42(e), if either is applicable, at least sixty (60) days prior to the Closing Date.~~

(b) In the event STB does not approve the exemption described above prior to or at the Closing then either Party may extend the Closing Date by delivering notice to the other party prior to or on the Closing Date in which case the Closing Date shall be extended to a date that is no later than December 29, 2008 to give additional time to satisfy the foregoing conditions and the parties shall proceed with the terms of this Agreement except that if the foregoing conditions are not satisfied by such extended Closing Date then this Agreement and the South Agreement shall terminate unless all the Parties agree in writing to a further extension. Upon such termination,

neither of the parties shall have any further obligation hereunder except those that expressly survive the termination of this Agreement.

8.2 Other Conditions Precedent to Closing.

(a) Each party's obligation to Close is conditioned upon the other party to this Agreement having performed and satisfied each and all such other party's obligations under this Agreement.

(b) Each party's obligation to Close is conditioned upon the simultaneous Closing on the conveyance of the Woodinville Subdivision to the Port as contemplated in the Real Estate Agreements.

In the event any of the foregoing conditions in this Section 8.2 are not satisfied prior to or at the Closing then, subject to Section 5.3 hereof, either Party may pursue the remedies set forth in this Agreement, to the extent applicable.

Section 9. Closing.

9.1 Time and Place. Subject to the terms of this Agreement, the Closing shall take place on the Closing Date at the location of the closings under the Real Estate Agreements or such other location as is mutually agreeable to TPO and BNSF.

9.2 Closing Deliveries. At the Closing, BNSF and TPO shall execute and deliver to the other party the following documents (all of which shall be duly executed, and witnessed and/or notarized as necessary):

(a) The Deed conveying BNSF's interest to the Reserved Freight Easement, subject to the Bridge Easement.

(b) A Closing Statement in form and substance mutually satisfactory to TPO and BNSF.

(c) Such transfer tax, certificate of value or other similar documents customarily required of BNSF in the counties in which the Freight Portion is located.

(d) The Interchange Agreement.

(e) The Operation and Maintenance Agreement.

(f) Such further instructions, documents and information, including, but not limited to a Form 1099-S, as the other party may reasonably request as necessary to consummate the purchase and sale contemplated by this Agreement.

[THIS LIST OF DOCUMENTS TO BE COMPLETED AS NECESSARY]

Section 10. Default and Remedies.

10.1 TPO's Default. Subject to Section 5.3, in the event of a material default by TPO under the terms of this Agreement or any Other Agreement prior to the Closing that is not cured within any applicable notice and cure periods, BNSF may elect as its exclusive remedy to either (a) terminate this Agreement in which case BNSF shall be entitled to the sum of _____ as liquidated damages and neither party shall have any further obligation under this Agreement except those that expressly survive termination, or (b) waive such default and proceed to Closing in accordance with the terms of this Agreement. The parties acknowledge and agree that the damages BNSF would incur for such breach are difficult to ascertain and that such amount retained by BNSF is not a penalty and represents a reasonable estimate of such damages. Subject to Section 5.3 and Section 10.3, nothing in this Agreement shall waive or diminish any right or remedy BNSF may have at law, in equity or in

contract for TPO's default under any document entered into by TPO at Closing or under any Other Agreement or TPO's default under this Agreement after Closing.

10.2 BNSF's Default. Subject to Section 5.3 and Section 10.3, in the event of a material default by BNSF under the terms of this Agreement prior to the Closing that is not cured within any applicable notice and cure periods, TPO may elect as its exclusive remedy to (a) terminate this Agreement and neither party shall have any further obligation under this Agreement except those that expressly survive termination, (b) obtain specific performance of BNSF's obligations under this Agreement (and in seeking any equitable remedies, TPO shall not be required to prove or establish that TPO does not have an adequate remedy at law: BNSF hereby waives the requirement of any such proof and acknowledges that TPO would not have an adequate remedy at law in the event of a material default by BNSF), or (c) waive such default and proceed to Closing in accordance with the terms of this Agreement. Subject to Section 5.3, nothing in this Agreement shall waive or diminish any right or remedy TPO may have at law, in equity or in contract for BNSF's default under any document entered into by BNSF at Closing or under any Other Agreement or BNSF's default after Closing under this Agreement.

10.3 Arbitration.

A. General Provisions. The parties shall use commercially reasonable efforts to prevent or resolve any disputes that may arise after Closing concerning their respective rights and obligations under this Agreement. In the event a dispute arising after Closing concerning the parties' respective rights and obligations under this Agreement cannot be resolved by the parties, the parties shall submit such dispute to mediation before acceptable to the parties. If such dispute is not resolved within 45 business days after submission to mediation by the parties then the parties shall submit such dispute to binding arbitration as set forth in this Section 10.3. All such disputes shall be finally resolved by binding arbitration in accordance with the following provisions and the American Arbitration Association ("AAA") Commercial Arbitration Rules (AAA-CAR) in effect at the time arbitration is demanded (even if the matter is not submitted to the AAA). The parties may submit (but shall not be required to submit unless consensus over the selection of the arbitrator(s) is not reached), disputes to the AAA for administrative purposes. In the event that any provisions in this Agreement differ from the AAA-CAR, this Agreement shall govern.

B. Commencement of the Arbitration. Subject to the provisions of Section 10.3(A) above, any party may initiate arbitration by serving a demand at any time. The written demand for arbitration shall include a short and plain statement identifying the provisions of this Agreement which are in dispute, a summary of the facts or circumstances giving rise to the dispute, and describing the relief requested. Any party served with an arbitration demand may respond by serving upon the other party a written answer or a written counterclaim identifying additional claims to be considered in the arbitration, with a short and plain statement identifying the provisions of this Agreement which are in dispute, a summary of the facts or circumstances giving rise to the dispute, and describing the relief requested.

C. Selection of Arbitrator. The parties agree to submit arbitration disputes to a single arbitrator. The parties shall attempt to select an arbitrator by consensus within ten (10) business days after a demand has been served. ~~In the event consensus is not reached by the parties, the arbitrator shall be selected in accordance with AAA-CAR and this Agreement.~~ The arbitrator must be a retired state or federal judge or magistrate or someone of similar stature with experience in interpreting and enforcing complex commercial contracts involving environmental remediation obligations, or the type of matters at issue in the arbitration.

D. Authority to Grant Comprehensive Relief. The arbitrator shall have all legal and equitable powers necessary to interpret and to enforce the terms of this Agreement, but not to modify or vary its terms. The parties expressly agree that the arbitrator may fashion all necessary and appropriate relief, including money damages and/or injunctive relief, so long as any equitable remedy is consistent with the obligations of the parties under this Agreement

E. Award. Notwithstanding any AAA-CAR to the contrary, the arbitrator's award shall be in

writing and include findings of fact and conclusions of law supporting that written decision. Any action to compel arbitration under this Agreement, to enforce an arbitration award, or to vacate an arbitration award must be brought, if jurisdiction exists, in federal court in the Western District of Washington. Otherwise, such actions must be brought in state court in King County, Washington. However, in actions seeking to vacate an award, the standard of review to be applied to the arbitrator's findings of fact and conclusions of law will be the same as that applied by an appellate court reviewing a decision of a trial court sitting without a jury.

F. Payment of Fees and Costs of Arbitrator(s). The parties shall split and pay in equal shares the fees and costs of the arbitrator. Otherwise, the parties expressly reject any fee shifting, and each party shall pay all its own expenses associated with the arbitration, including all fees and costs relating to its own witnesses, exhibits, and counsel.

G. Amendment of Deadlines. The parties may, by mutual stipulation, agree to shorten or extend any of the deadlines set forth in this Section. The arbitrator also may, for good cause shown, alter any of those same deadlines.

Section 11. Assignment. Prior to Closing, neither Party may assign its rights under this Agreement without the prior written consent of the other. BNSF shall have the option, which may be exercised in its sole discretion at any time prior to Closing, to terminate this Agreement upon seven (7) days' written notice to TPO in the event that TPO or any parent or affiliate of TPO is a party to any transaction involving a change in control or ownership that results in any change, directly or indirectly, in the ownership, control or management of TPO.

Section 12. Brokers and Brokers' Commissions. TPO and BNSF each warrant and represent to the other that neither party has employed a real estate broker or agent in connection with the transaction contemplated hereby. Each party agrees to indemnify, defend and hold the other harmless from any loss or cost suffered or incurred by it as a result of the other's representation herein being untrue.

Section 13. Notices.

Except as otherwise expressly provided in this Agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Agreement shall be in writing and shall either be: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered via facsimile, with confirmation of receipt with an original deposited postage prepaid in the first class mails of the United States. Such notices shall be addressed to TPO at:

TPO

With an additional copy to:

or to BNSF at:

BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76131
ATTN: Rick Weicher
Fax No.: 312-850-5677

With additional copy to:

BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76131
Attn: David Rankin
Fax No.: 817-352-2398

or to such person and at such other addresses as either party may at any time or from time to time designate for itself by notice in accordance herewith. Each such request, notice, demand, authorization, direction, consent, waiver or other document shall be deemed to be delivered to a party when received at its address set forth or designated as above provided.

Section 14. Miscellaneous.

14.1 Governing Law; Headings; Rules of Construction. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without reference to the conflicts of laws or choice of law provisions thereof. The titles of sections and subsections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein. All references herein to the singular shall include the plural, and vice versa. The parties agree that this Agreement is the result of negotiation by the parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed against the maker thereof.

14.2 No Waiver. Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

14.3 Entire Agreement. Except for the Other Agreements and the agreements and instruments required to be executed under this Agreement, this Agreement contains the entire agreement of the parties hereto with respect to the Reserved Freight Easement and any other prior understandings or agreements concerning the Reserved Freight Easement are merged herein; and as between the parties, any representations, inducements, promises or agreements, oral or otherwise, not expressly embodied herein or incorporated herein by express reference, shall be of no force or effect.

14.4 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns (subject to Section 11 above).

14.5 Amendments. No amendment to this Agreement shall be binding on any of the parties hereto unless such amendment is in a single writing executed by both parties to this Agreement.

~~14.6 Date for Performance. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires on a Saturday, Sunday or legal or bank holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.~~

14.7 Recording. BNSF and TPO agree that they will not record this Agreement and that they will not record a short form of this Agreement.

14.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute but one and the same instrument.

14.9 Time of the Essence. Time is of the essence of this Agreement and each and every term and condition hereof.

14.10 Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any term or provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be held to be invalid or unenforceable, then such term or provision shall be ignored, and to the maximum extent possible, this Agreement shall continue in full force and effect, but without giving effect to such term or provision.

14.11 Attorneys' Fees. In the event that either party shall bring an action or legal proceeding for an alleged breach of any provision of this Agreement or any representation, warranty, covenant or agreement herein set forth, or to enforce, protect, determine or establish any term, covenant or provision of this Agreement or the rights hereunder of either party, the prevailing party shall be entitled to recover from the non-prevailing party, as a part of such action or proceedings, or in a separate action brought for that purpose, reasonable attorneys' fees and costs, expert witness fees and court costs, including those incurred upon appeal, as may be fixed by the court or a jury.

14.12 Relationship. Nothing in this Agreement or the Other Agreements shall be deemed or construed by the parties hereto, nor by any other party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto.

14.13 Publicity. BNSF and TPO shall discuss and coordinate with respect to any public filing or announcement concerning the purchase and sale contemplated hereunder.

14.14 Survival. The terms of this Agreement shall survive Closing and the delivery of the Deed.

14.15 Waiver of Trial by Jury, Venue and Personal Jurisdiction. BNSF AND TPO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO, THIS AGREEMENT. King County Superior Court or the Federal District Court for the Western District of Washington, both in King County, Washington, shall be the sole and exclusive venues for any action or legal proceeding for an alleged breach of any provision of this Agreement or any representation, warranty, covenant or agreement herein set forth, or to enforce, protect, determine or establish any term, covenant or provision of this Agreement or the rights hereunder of either party; and the parties hereby agree to submit to the personal jurisdiction of said courts.

14.16 Condemnation. In the event any Portion of the Property becomes subject to condemnation proceedings after the Contract Date and prior to Closing, BNSF will promptly notify TPO in writing of such fact.

(a) If such condemnation concerns a crossing of the Property by a pipeline, electricity or telecommunication facility or other utility and is valued at less than \$25,000 then BNSF shall handle such condemnation or conveyance in lieu of condemnation in accordance with its normal practice and inform TPO of the interests conveyed, and TPO shall not be entitled to any proceeds from such condemnation or conveyance or any reduction in the Purchase Price. Such conveyance shall not however, in any way alter the obligations of BNSF under this Agreement other than BNSF's inability to convey at Closing to TPO the interests conveyed by BNSF to a third party under this Section 14.16.

(b) If such condemnation is not subject to the terms of Section 14.16(a), then TPO may elect to terminate this Agreement and neither party shall have any further obligation hereunder except those that expressly survive termination.

Section 15. Interchange

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BNSF and TPO shall interchange rail freight cars and equipment to and from each other pursuant to the terms of the Interchange Agreement at or near Snohomish, Washington.

Section 16. Freight Car Equipment

16.1 BNSF shall make reasonable efforts to make freight cars available at TPO's request on an interchange track as needed by TPO for rail service from or to facilities located on or along the Freight Portion where BNSF is a line haul carrier in the route and receives a division of the freight revenues, on a non-discriminatory basis between BNSF's car needs on similar rail lines and TPO's car needs; however, BNSF makes no guarantee of equipment supply to TPO. BNSF shall make reasonable efforts to make freight cars available at TPO's request on an interchange track as needed by TPO for rail service from or to facilities on or along the Freight Portion where BNSF is not a line haul carrier in the route and does not receive a division of the freight revenues; however, BNSF may give preference to providing empty equipment to customers not located on or along the Freight Portion where BNSF is a line haul carrier in the route and receives a division of the freight revenues. It is the responsibility of TPO to provide all locomotives, freight equipment for local traffic, and maintenance of way equipment.

16.2 The Association of American Railroads' Code of Car Hire Rules, Code of Trailer and Container Reporting Rules, and Tariff RPS 6007-J or any successor rules or tariffs, as amended from time to time, will govern all car hire matters on rolling stock and equipment interchanged and settled pursuant to this Agreement. The party in possession of any car shall be responsible for all car hire costs, per diem expenses and mileage allowances payable with respect to such car, for any per diem charges for trailers or containers carried by such car, or for any equipment use charges applicable to any RoadRailer equipment or similar carless intermodal technology. TPO shall be responsible for all demurrage for cars on the Freight Portion.

16.3 TPO must, prior to the effective date of any Interchange Agreement, comply with the following provisions and continue to comply with the following requirements for the term of the Interchange Agreement:

- (a) Be a signatory to the American Rail Box Company Form BX contract and the Railgon Form G car contract;
- (b) Be a permanent nonmember payor of the TTX Company Form A Car contract; and
- (c) Adopt and be a participating carrier in Freight Tariff RPS 6007 (private car mileage) and Freight Tariff RPS 6740 (heavy duty flatcars), as each may be amended from time to time.

16.4 Empty cars received by TPO, at the instructions of BNSF, without valid car orders will be handled on a case-by-case basis between BNSF and TPO. Cars ordered by BNSF to TPO without valid car orders will be subject to reclaim. Empty cars directed to TPO at the instruction of any entity or person other than BNSF, without valid car orders, will be handled by TPO with the entity or person issuing instructions for the empty placement of the car.

16.5 BNSF retains the right to pre-position empty cars in anticipation of future loadings from or to the Freight Portion where either: 1) the total number of pre-positioned cars does not exceed the customer's track capacity; or 2) with the prior consent of TPO, BNSF may pre-position empty cars in anticipation of future loadings from or to the Freight Portion. BNSF will waive all per diem charges on cars pre-positioned by BNSF from time interchanged to TPO until the time interchanged back to BNSF either loaded or empty. Pre-positioned empty cars are defined as any car sent to a customer on the Freight Portion without a valid car order from that customer.

16.6 Cars sent to TPO with valid car orders, but received earlier than the "want date" on the

customer's car order, shall not be considered pre-positioned empty cars. However, TPO may claim per diem relief for empty cars interchanged to TPO from BNSF more than twenty-four (24) hours prior to "want date" on a valid customer's car order. ~~BNSF shall grant TPO per diem relief for all time between interchange and twenty-four (24) hours of the "want date."~~

Section 17. Rates And Routes

Unless otherwise agreed in writing by the parties, TPO must establish its own Rule 11 rates over the interchange point governed by the Interchange Agreement and BNSF will, in turn, revise its tariffs, contracts, rate circulars and other revenue communication media to reflect its own Rule 11 rates to/from such interchange point.

Section 18. Transition of Rail Operations

18.1 The transition of rail freight operations on the Property on the effective date of the Interchange Agreement, which is the Closing Date hereunder, (the "**Transition Date**") and the apportionment of transportation revenues and expenses, if any, shall be governed by the terms of this Section 18.

18.2 BNSF will be responsible for processing and accounting for all unreported waybills (including freight billing of prepaid shipments originating and waybilled prior to the Transition Date and collect shipments terminating prior to the Transition Date) and submission of interline settlements, for all shipments that reach public team tracks or private sidings on the Freight Portion prior to the Transition Date.

18.3 BNSF will make an inventory of all cars on the Freight Portion as of the Transition Date. BNSF shall be entitled to all demurrage charges attributable to cars subject which are actually or constructively placed on the Freight Portion prior to the Transition Date, regardless of whether such cars remain placed on the Freight Portion on or after the Transition Date. TPO shall be entitled to all demurrage charges attributable to cars subject which are actually or constructively placed on the Freight Portion on or after the Transition Date.

18.4 Revenue for services other than line haul service and demurrage shall be billed and retained by the carrier providing the service.

18.5 Liability for any overcharge claim on a shipment for which revenue is allocated hereunder shall be assumed by TPO.

18.6 As between the parties hereto, and notwithstanding any provision to the contrary in this Agreement, BNSF shall be responsible for and shall indemnify, defend, and hold harmless TPO from freight loss and damage claims arising from events which can be ascertained to have occurred on the Freight Portion prior to the Transition Date. TPO and its operator, if any, shall be responsible for and shall indemnify, defend, and hold harmless BNSF from freight loss and damage claims arising from events which can be ~~ascertained to have occurred on the Freight Portion after the Transition Date. If the date or location of an event giving rise to a claim cannot be determined, freight loss and damage liability attributable to movements~~ over the Freight Portion shall be assumed by TPO and BNSF in accordance with AAR Freight Claims Rules, except to the extent expressly provided otherwise herein. This Section provides only for the allocation between TPO and BNSF of responsibility for valid claims for freight loss and damage with respect to shipments on the Freight Portion at the Transition Date, and is not intended, and shall not be interpreted, as an admission or acknowledgement of liability by TPO or BNSF to any third party with respect to any claim for freight loss and damage. For purposes of this Section and notwithstanding any provision to the contrary in the AAR Freight Claim Rules, when freight is in the possession custody or control of BNSF, TPO and its operator, if any, shall assume owner carrier responsibility for all freight loss and damage related thereto, regardless of whether TPO is acting as a handling carrier for BNSF or whether said cars shall be in the account of BNSF at the time such freight loss or damage occurs.

18.7 Any payments required by this Section to be paid from one party to the other shall be settled and made in accordance with AAR Accounting Rules. ~~Customers are to be advised to pay freight bills to the railroad submitting the bill. Any payment erroneously received by BNSF or TPO which should have been made to the other party, shall be adjusted as reflected in this Agreement. The parties will process loss and damage claims in accordance with AAR Rules, Principles and Practices.~~

Section 19 Rail Operations.

19.1 Within ninety (90) days following the Transition Date, transaction reporting by TPO shall meet all industry standards for Electronic Data Interchange (EDI), including but not limited to the ability to send and receive electronically waybills and bills of lading, advance consists. To the extent TPO and BNSF provide through blocking for each other, blocking instructions, as well as Train II reports and passing/placement reports for performance purposes shall also be available in electronic format.

(a) Interline Waybills and Bills of Lading (417 and 404).

- i.) **Timeliness.** No later than two hours after car(s) are released by customer(s), TPO will transmit interline waybills (via an electronic 417 report) to BNSF. In no event shall TPO interchange cars to BNSF prior to sending BNSF a 417 report.
- ii.) **Accuracy.** 417 reports sent by TPO to BNSF must be complete and accurate as determined by the applicable industry standard.

(b) Advance Consist (418)

- i.) **Timeliness.** No later than eight hours prior to actual interchange, TPO must transmit advance consists (via an electronic 418 report) to BNSF.
- ii.) **Accuracy.** 418 reports sent by TPO to BNSF will be complete and accurate as determined by the applicable industry standard.

(c) Blocking Instructions (419 and 420)

- i.) **Timeliness.** TPO must take no more than two hours to transmit a 420 (blocking instruction) to BNSF upon receipt of BNSF's 419 (request for blocking instructions). TPO must send a 419 (request for blocking instruction) for each car to be blocked for interchange to BNSF no less than 2 hours before interchanging cars to BNSF. TPO and its operator, if any, are not relieved of responsibility to block cars for BNSF by either TPO's or its operator's failure to process BNSF's 420, BNSF's lack of response to TPO's or its operator's 419 due to errors therewith, or TPO's or its operator's failure to send a 419.
- ii.) **Accuracy.** 419 and 420 transmissions sent by TPO to BNSF must be complete and accurate as determined by the applicable industry standard.

(d) Train II Reports.

- i.) Minimum Train II reporting shall include:
 - 1) Interchange Received;
 - 2) Interchange Forwarded;
 - 3) Constructive Placement;
 - 4) Placed for Loading or Unloading; and
 - 5) Released Loaded or Empty.
- ii.) **Timeliness.** TPO must transmit Train II Reports within two hours of each event or in compliance with the applicable industry standard, whichever is sooner.

The parties agree that the terms of this Agreement impose a liability on TPO to maintain whatever current industry standards are, from time to time, in effect for electronic data interchange. If TPO, for any reason, is unable to comply with the terms set forth above in all material respects, TPO will pay BNSF fifteen

112

percent (15%) of its Rule 11 per car divisions set forth in this Agreement through the date of TPO's compliance with the terms of this Section 19.1.

If BNSF, at its sole discretion, may request additional informational systems, TPO agrees to negotiate in good faith with BNSF to reach a mutually beneficial solution to implement such systems.

19.2 TPO and its operator, if any, must enter into an Interline Service Agreement ("ISA") upon the written request of BNSF, if BNSF deems it necessary or appropriate for either the efficient interchange of traffic between BNSF and TPO, or in order to provide customers (either the shipping party or the receiving party) on the Freight Portion with competitive and reliable rail service.

19.3 Except to the extent expressly provided otherwise in Section 18 governing transition of freight rail operations, the following shall apply to the parties:

- (a) Before the Transition Date, BNSF shall be responsible for:
 - (i) all rail operations, including car supply, on the Freight Portion;
 - (ii) any freight loss and damage claims attributable to rail operations over the Freight Portion, regardless of BNSF's Handling Carrier status; and
 - (iii) all car hire and car mileage allowance payments relating to rail operations over the Freight Portion.
- (b) On and after the Transition Date, TPO shall be responsible for:
 - (i) all rail operations, including car supply, on the Freight Portion;
 - (ii) any freight loss and damage claims attributable to rail operations over the Freight Portion; and
 - (iii) all car hire and car mileage allowance payments relating to rail operations over the Freight Portion.

19.4 BNSF and TPO shall comply with all accident and incident reporting related to the Freight Portion and required by any applicable law.

Section 20 Labor Provisions.

20.1 TPO shall consider for employment those of BNSF's employees who want to work for TPO on the terms and conditions of employment that are offered by TPO, at TPO's sole discretion. TPO shall give ~~priority-hiring consideration to employees of BNSF who work on the Freight Portion and are represented by the Brotherhood of Maintenance of Way Employees (or successor organization).~~ Any such individual who TPO, in its sole discretion, determines to be qualified for a job that TPO has available, shall be offered such job by TPO on the terms and conditions that TPO establishes, in TPO's sole discretion. TPO promptly shall notify BNSF of the name of each of BNSF's current employees who TPO offers to hire and also the name of each of these employees who TPO actually hires. TPO shall assume a neutral stance in any Brotherhood of Maintenance of Way Employees (or successor organization) organizing effort.

21.2 TPO shall assume and bear (and indemnify, defend and hold harmless BNSF against) all costs, liability, losses or expenses resulting from any claims made by any employees of TPO at any time for work related to the performance of any rail operations on the Freight Portion or any labor protection arising or resulting from the parties' implementation of or the termination or expiration of the terms of this Agreement

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(including, without limitation, any labor protection claims of TPO's employees imposed by any governmental body as a result of TPO's operation on the Freight Portion or cessation of operations over the Freight Portion). ~~BNSF shall assume and bear (and indemnify, defend and hold harmless TPO against) all costs, liability, losses or expenses resulting from any claims made by any employees of BNSF for work related to the performance of any rail operations on the Freight Portion prior to Transition Date or any labor protection claims of BNSF's employees arising or resulting from the parties' implementation of the terms of this Agreement. Liability and indemnity for labor claims and labor protection under this Section is intended to cover liability for claims related to right to work, work rules and/or compensation rights covered under a collective bargaining agreement or any other rights covered under the Railway Labor Act (as it may be amended from time to time) and federal laws, regulations, and orders of any governmental body with jurisdiction over such matters. In no event shall liability and indemnity under this Section apply to claims for personal injury or death of persons (including without limitation, FELA claims) or property damage, whether or not such claims are work related.~~

[Remainder of Page Intentionally Left Blank]

~~IN WITNESS WHEREOF~~, each of the parties hereto has caused this Agreement to be executed by its
duly authorized signatory, effective as of the day and year first above written.

BNSF RAILWAY COMPANY

By: _____
Name:
Title:

By: _____
Name:
Title:

Exhibit A
~~To Freight Easement Sale Agreement~~
Description of Property

To Be Attached

Exhibit B
To Freight Easement Sale Agreement
Form of Deed

After Recording Return To:

QUIT CLAIM DEED
Woodinville Freight Easement

Grantor: BNSF RAILWAY COMPANY ("BNSF")

Grantee: _____ ("TPO")

Legal Description: See Exhibit A attached hereto and incorporated herein (the "Property").

WHEREAS, BNSF has conveyed to the Port of Seattle (the "Port") the Property pursuant to that certain Quit Claim Deed dated as of _____ and recorded in the real estate records of King County, Washington in Book _____, Page _____ and in the real estate records of Snohomish County, Washington in Book _____, Page _____; and

WHEREAS, BNSF reserved in said deed an exclusive easement for freight rail purposes over the Property (the "Reserved Freight Easement").

NOW, THEREFORE, BNSF, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) conveys and quit claims to TPO all of BNSF's right, title and interest in and to the Reserved Freight Easement, together with all after acquired title of BNSF therein.

TPO and BNSF are parties to that certain Freight Easement Sale Agreement dated as of _____ concerning the sale of the Reserved Freight Easement in and to the Property. TPO and BNSF for themselves and their respective successors and assigns hereby covenant and agree that the provisions of Sections 6 and 7 of said Agreement attached hereto as Exhibit B, are incorporated herein by reference and shall be covenants running with the land that are enforceable by TPO, BNSF and their respective successors and assigns.

IN WITNESS WHEREOF, BNSF and TPO have executed this Deed as of the _____ day of _____, 200_

BNSF RAILWAY COMPANY

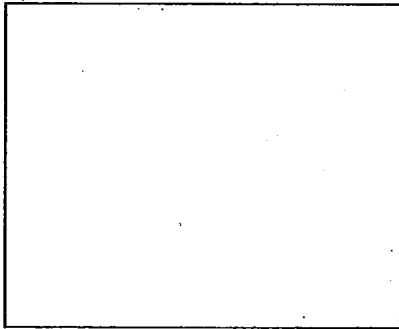
By _____
Its

By _____
Its _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



Notary Public
Print Name _____
My commission expires _____

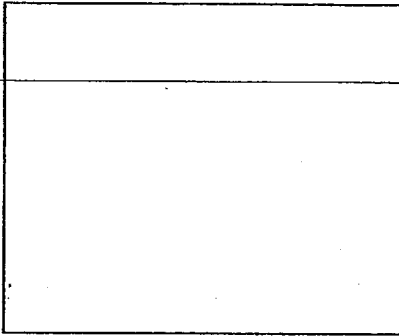
(Use this space for notarial stamp/seal)

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

107



Notary Public _____

Print Name _____

My commission expires _____

(Use this space for notarial stamp/seal)

EXHIBIT A
(to Freight Easement Deed)

[To be Attached]

EXHIBIT B
(to Freight Easement Deed)

Section 6. Condition of Property. (a) TPO has been, or by Closing will have been, allowed to make an inspection of the Freight Portion. Subject to BNSF's express representations, warranties and obligations under this Agreement, **TPO IS PURCHASING THE RESERVED FREIGHT EASEMENT IN THE FREIGHT PORTION IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, IS NOT RELYING ON, AND HEREBY WAIVES ANY WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM BNSF WITH RESPECT TO ANY MATTERS CONCERNING THE FREIGHT PORTION** including, but not limited to the physical condition of the Freight Portion; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Freight Portion with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Freight Portion; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, or under the Freight Portion; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Freight Portion; the condition of title to the Freight Portion, and the Third Party Leases/Licenses permits, orders, or other agreements, affecting the Freight Portion (collectively, the "Condition of the Freight Portion").

(b) TPO represents and warrants to BNSF that except for BNSF's express representations, warranties and obligations under this Agreement, TPO has not relied and will not rely on, and BNSF is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Freight Portion or relating thereto made or furnished by BNSF, the manager of the Freight Portion, or any real estate broker or agent representing or purporting to represent BNSF, to whomever made or given, directly or indirectly, orally or in writing.

(c) Subject to BNSF's express representations, warranties and obligations under this Agreement TPO assumes the risk that Hazardous Substances or other adverse matters may affect the Property that were not revealed by TPO's inspection and except to the extent of BNSF's express representations, warranties and obligations under this Agreement, TPO waives, releases and discharges forever BNSF and BNSF's officers, directors, shareholders, employees and agents (collectively, "BNSF Parties") from any and all present or future claims or demands, and any and all damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown, which TPO might have asserted or alleged against BNSF Parties arising from or in any way related to the Condition of the Freight Portion or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Freight Portion. Losses shall include without limitation (a) the cost of any investigation, removal, remedial or other response action that is ~~required by any Environmental Law, that is required by judicial order or by order of or agreement with any~~ governmental authority; or that is necessary or otherwise is reasonable under the circumstances, (b) losses for injury or death of any person, and (c) losses arising under any Environmental Law enacted after transfer. The term "Environmental Law" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Model Toxics Control Act, the Water Pollution Control Act, laws concerning above ground or underground storage tanks, and any similar or comparable state or local law. The term "Hazardous Substance" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

BNSF and TPO acknowledge that the compensation to be paid to BNSF for the Reserved Freight Easement reflects that the Reserved Freight Easement is being conveyed subject to the provisions of this Section 6 which provisions shall be included in the Deed and which shall be covenants running with the land.

Section 7. Environmental Obligations.

(a) Consistent with Section 4.2 of this Agreement, if, prior to the expiration of the Review Period, the TPO notifies BNSF in writing of an existing condition affecting the Freight Portion (an “**Identified Condition**”) that is unacceptable to the TPO, as determined by the TPO in its sole and absolute discretion, and BNSF does not verify in writing within fifteen (15) business days thereafter that such Condition is a condition that BNSF is obligated to Cure pursuant to this Section 7, then the TPO may terminate this Agreement by written notice to BNSF in accordance with the provisions of Section 4.2 of this Agreement. If the TPO timely notifies BNSF in writing of an Identified Condition, the TPO and BNSF shall negotiate diligently and in good faith to reach agreement on Curing such condition. If the portion of the Freight Portion affected by an Identified Condition can be excluded from the sale of the Reserved Freight Easement without materially interfering with TPO’s future use of the Reserved Freight Easement, as determined by the TPO in its sole and absolute discretion, then BNSF may affect Cure prior to Closing by excluding such affected portion of the Freight Portion without any price adjustment and to the extent so excluded BNSF shall have satisfied its obligations under this Agreement to Cure the portion of the Freight Portion excluded from the Reserved Freight Easement, provided, however, that any such Cure by exclusion must first be agreed to in writing by the TPO. If TPO does not terminate this Agreement under Sections 4.2 and 7.1 and proceeds to Closing, it shall be deemed to have waived and released BNSF from any obligations with respect to such Identified Condition.

(b) BNSF shall be responsible to investigate, remediate, respond to or otherwise cure (collectively, “**Cure**”) as and when required by and in accordance with Environmental Laws any Identified Condition that concerns a release of Hazardous Substances on the Freight Portion occurring prior to the Closing or a violation of Environmental Laws concerning the Freight Portion occurring prior to the Closing to the extent that BNSF has agreed to Cure, and to the standards that BNSF has agreed to satisfy, in writing prior to the expiration of the Review Period. Notwithstanding the preceding sentence, BNSF shall not be responsible to Cure any such Identified Conditions to the extent TPO, its agents, or contractors materially exacerbate such Identified Condition during construction performed by or for TPO, excluding superficial or *de minimis* activity performed by TPO. Further, BNSF shall not be responsible to Cure any Identified Condition that was not caused by BNSF or its agents, contractors or invitees. TPO shall cooperate with BNSF in its efforts to Cure any Identified Condition concerning a release of Hazardous Substances on the Freight Portion.

(c) The provisions of this Section 7 shall be included in the Deed and shall run with the land.

**OPERATIONS AND MAINTENANCE AGREEMENT
BETWEEN
THE PORT OF SEATTLE
AND
[THIRD PARTY OPERATOR]**

TABLE OF CONTENTS

SECTION 1. Definitions	2
1.1 "Additions and Alterations".....	2
1.2 "Automatic Warning Devices".....	2
1.3 "BNSF".....	2
1.4 "Corridor".....	2
1.5 "Deed".....	2
1.6 "Easement".....	2
1.7 "Environmental Laws".....	2
1.8 "Excluded Conduct".....	3
1.9 "Excursion Rail Service".....	3
1.10 "Execution Date".....	3
1.11 "Facilities".....	3
1.12 "FRA".....	3
1.13 "Freight Rail Service".....	3
1.14 "Hazardous Materials".....	3
1.15 "Invoice".....	3
1.16 "Loss" or "Losses".....	4
1.17 "Port".....	4
1.18 "Port Property".....	4
1.19 "TPO".....	4
SECTION 2. Freight Rail Service	4
2.1 TPO's Rights and Obligations.....	4
2.2 Port's Rights and Obligations.....	5
SECTION 3. Maintenance, Repair and Replacement Obligations	6
3.1 General Maintenance, Repair and Replacement Obligations.....	6
3.2 Remedies.....	6
3.3 Grade Crossing Reconstruction.....	7
SECTION 4. Construction of Additions and Alterations	7
4.1 Design and Construction Standards.....	7
4.2 Design Review.....	7
4.3 Grade Separation Projects.....	8
SECTION 5. Operations	8
5.1 TPO's Operations.....	8
SECTION 6. Access	8
6.1 Reciprocal Access and Notice Rights.....	8
SECTION 7. Liability	9
7.1 Assumption of Responsibility.....	9
7.2 Allocation of Responsibilities.....	10
7.3 Excluded Conduct.....	11

7.4	Scope of Indemnification.....	11
7.5	Procedure.....	12
7.6	Compliance With Laws.....	13
7.7	Delay/Interruption of Service.....	14
7.8	No Limitation on Risk Allocation.....	14
7.9	Statutory Defenses.....	14
SECTION 8.	Insurance.....	14
8.1	TPO Insurance.....	14
8.2	Failure to Maintain Insurance.....	15
8.3	Waiver of Subrogation.....	16
SECTION 9.	Compensation and Billing.....	16
9.1	Invoices.....	16
9.2	Audit.....	16
9.3	Supporting Documentation.....	16
9.4	Rent.....	17
SECTION 10.	Coordination.....	17
10.1	Coordination Committee.....	17
SECTION 11.	Binding Arbitration.....	17
11.1	Controversies Subject to Arbitration.....	17
11.2	Selection of Arbitrator.....	17
11.3	Expedited Arbitration Schedule.....	18
11.4	Pending Resolution.....	19
11.5	Cost of Arbitration.....	19
SECTION 12.	Term and Termination.....	19
12.1	Term.....	19
12.2	Termination for Abandonment.....	19
12.3	Offers of Financial Assistance ("OFA").....	19
12.4	Railbanking.....	20
12.5	Binding Successors; Assignment.....	20
12.6	Notices.....	20
12.7	Headings.....	21
12.8	Integration, Amendment, and Waiver.....	21
12.9	Counterparts.....	21
12.10	Governing Law.....	21
12.11	Time of Essence.....	21
12.12	Agreement Runs With Land; Recordation.....	21
12.13	Not for the Benefit of Others.....	22
12.14	Attorneys' Fees.....	22
12.15	Regulatory Requirements.....	22
SIGNATURES	21

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EXHIBITS 23
Exhibit A 23
Exhibit B 24
Exhibit C 25
Exhibit D 26

OPERATIONS AND MAINTENANCE AGREEMENT
BETWEEN
THE PORT OF SEATTLE
AND
[THIRD PARTY OPERATOR]

This Operations and Maintenance Agreement (the "Agreement") is entered into as of the ____ day of _____, 200__ ("Execution Date"), between the PORT OF SEATTLE, a Washington Municipal Corporation ("Port"), and [THIRD PARTY OPERATOR], a _____ corporation ("TPO"). This Agreement shall become effective on the Execution Date (as defined in Section 1.10 below).

Recitals

A. Pursuant to the Purchase and Sale Agreement between Port and BNSF Railway Company, a Delaware corporation ("BNSF"), dated _____, 200__, as shown on **Exhibit A**, attached hereto and incorporated herein; Port acquired certain rights-of-way from BNSF ("Port Property") and BNSF reserved for itself certain freight easement rights under the Quitclaim Deed ("Deed") to the Port as shown in **Exhibit B**, attached hereto and incorporated herein; and

B. BNSF has conveyed its freight easement rights to TPO by quit claim deed dated of even date herewith ("Easement"), as shown on **Exhibit C**, attached hereto and incorporated herein. The Easement gives TPO the right to operate on a portion of the Port Property (as defined in Section __ below, the "Corridor"), and

C. TPO intends to use the Corridor to provide Freight Rail Service and Excursion Rail Service (defined below); and

D. Pursuant to a Railroad Right-of-Way License Agreement ("License") between Port dated of even date herewith, attached hereto and incorporated herein as **Exhibit D**, TPO intends to use the Excursion Spur (as defined in the License) to provide Excursion Rail Service on the Excursion Spur.

E. The parties desire to set forth in this Agreement their respective rights and obligations with respect to TPO's use of the Corridor and adjacent Port Property for Freight Rail Service and related activities.

Agreement

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

SECTION 1. Definitions.

1.1 "Additions and Alterations" means any improvements constructed by or on behalf of either party on the Corridor after the Execution Date, including, without limitation, additions, alterations and betterments of any Facilities, and any construction, reconstruction, modifications and renewals thereof or any reconstruction, modification or renewal of additional Facilities, but excluding maintenance items.

1.2 "Automatic Warning Devices" means traffic control devices at railroad-street at-grade crossings and at railroad-pedestrian at-grade crossings, including, without limitation, any combination of flashing light signals, bells, automatic gates, active advance warning devices, highway traffic signals and their associated activation and control devices, control relays and batteries, microprocessor technology, and associated electrical circuitry.

1.3 "BNSF" is defined in Recital A.

1.4 "Corridor" means the portion of rail line to which TPO acquired certain rights pursuant to the Easement, located between milepost 23.8 in Woodinville, King County, Washington north to milepost 38.25 in Snohomish, Snohomish County, Washington.

1.5 "Deed" is defined in Recital A.

1.6 "Easement" is defined in Recital A.

1.7 "Environmental Laws" means any and all applicable laws, statutes, regulations, enforceable requirements, orders, decrees, judgments, injunctions, permits, approvals, authorizations, licenses, permissions or binding agreements issued, promulgated or entered into by any governmental agency having jurisdiction over the environmental condition of the Corridor, relating to the environment, to preservation or reclamation of natural resources, or to the management, release or threatened release of contaminants or noxious odors, including, without limitation, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and the Hazardous and Solid Waste

Amendments of 1984, the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, the Clean Air Act of 1970, as amended by the Clean Air Act Amendments of 1990, the Toxic Substances Control Act of 1976, and any similar or implementing state law, and all amendments or regulations promulgated thereunder.

1.8 "Excluded Conduct" is defined in Section 7.3.

1.9 "Excursion Rail Service" means the deployment and operation of trains using the facilities for purposes other than hauling common carrier freight or in service other than Freight Rail Service. This could include but not be limited to dinner train operations.

1.10 "Execution Date" means the date on which this Agreement is executed and becomes effective.

1.11 "Facilities" means all rails, fastenings, switches, switch mechanisms and frogs with associated materials, ties, ballast, signals and communications devices (and associated equipment), Additions and Alterations, drainage facilities, Automatic Warning Devices, traction power substations, overhead catenary systems, bumpers, roadbed, embankments, bridges, trestles, culverts, and any other structures or things necessary for the support thereof and, if any portion thereof is located in a thoroughfare, the term includes pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing materials at vehicular and pedestrian crossings of tracks, and any and all structures and facilities required by lawful authority in connection with the construction, renewal, maintenance and operation of any of the foregoing.

1.12 "FRA" means the Federal Railroad Administration.

1.13 "Freight Rail Service" means the common carrier freight rail operations conducted by TPO or TPO's tenants or assignees on the Corridor.

1.14 "Hazardous Materials" means any material or substance: (a) the presence of which requires investigation or remediation under any Environmental Law; or (b) which is defined as a "hazardous waste," "hazardous substance," "pollutant" or "contaminant" under any Environmental Law; or (c) the presence of which on, under or over adjacent properties constitutes a trespass by the owners of the Corridor and poses a hazard to the health or safety of persons on adjacent properties; or (d) the presence of which on, under, or over the Corridor causes a nuisance on adjacent properties and poses a hazard to the health or safety of persons on adjacent properties.

1.15 "Invoice" is defined in Section 9.1.

1.16 "Loss" or "Losses" means all losses, damages, claims, demands, costs, liabilities, judgments, fines, fees (including, without limitation, reasonable attorneys' fees) and expenses (including, without limitation, costs of investigation, defense expenses at arbitration, trial or appeal and without institution of arbitration or suit, and, with respect to damage or destruction of property, cleanup, repair and replacement expenses) of any nature arising from or in connection with death of or injury to persons, including, without limitation, employees or tenants of the parties, or damage to or destruction of property, including, without limitation, property owned by either of the parties or their tenants, in connection with Freight Rail Service or Excursion Rail Service on the Corridor.

1.17 "Port" is defined in the preamble.

1.18 "Port Property" means the rights-of-way acquired by Port from BNSF under the Deed that are subject to TPO's rights under this Agreement; provided, that if Port transfers individual parcel(s) to third parties not affiliated with Port, and the transferred parcel(s) do not remain subject to this Agreement as provided in Section 12.12, such individual parcel(s) shall not be deemed "Port Property."

1.19 "TPO" is defined in the preamble.

SECTION 2. Freight Rail Service.

2.1 TPO's Rights and Obligations. TPO shall have the exclusive right and obligation (subject to TPO's unfettered right to abandon or discontinue Freight Rail Service) to provide, by itself and/or by or through any entity designated by TPO, Freight Rail Service and/or Excursion Rail Service on and over the Corridor. TPO, and/or its designee, shall also have the right to:

- (a) Modify, maintain, replace, remove and operate the industry/drill tracks constructed upon and across the Corridor in order to fulfill common carrier obligations to existing shippers and receivers of freight.
- (b) Construct, modify, maintain, replace, remove and operate industry/drill and/or Excursion Rail Service-related tracks upon and across the Corridor in order to fulfill common carrier obligations to future prospective shippers and receivers of freight, at the expense of entities other than Port.
- (c) Use existing trackage in the Corridor for switching cars to or from industries served by industry/drill tracks described in

subparagraphs (a) and (b), which use includes setting out or picking up cars but excludes car classification or storage.

- (d) In the event the construction of any excursion or industry/drill tracks under subparagraph (b), or modification to any excursion or industry tracks under subparagraphs (a) or (b), necessitates the construction of new Port Facilities, or modifications to, or relocations of, Port's existing Facilities, such construction, modifications and/or relocations shall be at the expense of entities other than Port.
- (e) The design, construction, modification or removal of any industry/drill tracks under subparagraph (b), the modification or removal of any industry/drill tracks under subparagraph (a), and any new, modified or relocated Port Facilities necessitated thereby, shall be subject to Port's prior review and approval, which approval shall not be unreasonably withheld, conditioned or delayed.
- (f) Use existing trackage in the Corridor for performing Excursion Rail Service described in Sections 2.1 and 5.1.
- (g) TPO acknowledges and agrees that, consistent with Section 2.2, Port may permit certain transportation uses on the Corridor (e.g., commuter rail service) during the term of this Agreement that are not inconsistent with TPO's rights under this Agreement and do not materially interfere with TPO's right and obligation to operate Freight Rail Service on the Corridor. TPO shall cooperate with Port's permitted users to ensure the accommodation of such transportation uses on the Corridor.

2.2 Port's Rights and Obligations. Port expressly declines to assume any obligation to provide common carrier freight rail service on the Corridor. Neither Port nor any person or entity other than TPO (or its permitted successors or assigns) shall be permitted to provide any type of freight rail service on the Corridor.

- (b) Port, at Port's election, may perform any of the work of construction, modification, repair, removal or maintenance of industry/drill tracks on the Port Property that TPO would otherwise perform or cause to be performed. Any such work by Port shall be performed in accordance with TPO's schedule and design (as approved by Port under subparagraph 2.1 (e) above),

and the reasonable documented out-of-pocket cost thereof shall be reimbursed by TPO to Port in accordance with Section 9.1.

SECTION 3. Maintenance, Repair and Replacement Obligations.

3.1 General Maintenance, Repair and Replacement Obligations.

- (a) Except as otherwise provided in this Agreement, TPO shall provide general maintenance and maintenance of way services, including without limitation, inspection, maintenance, repair, installation, alteration and replacement (as necessary) of all rail traction electrification, signal systems, trackage, properties and Facilities, including without limitation, Automatic Warning Devices and grade crossings (including embankments, crossing panels or planking, pavement and curbing) to the extent the same are subject to governmental requirements in connection with grade crossings, located within the Port Property, including the Corridor, in accordance with all applicable laws, rules and regulations, and in a condition reasonably suitable for TPO's intended use of the Corridor.
- (b) Notwithstanding the provisions of subparagraph (a) above, any damage to or destruction of Facilities caused by a party or its employees, contractors, invitees or licensees shall be repaired or replaced at the sole cost of such party.

3.2 Remedies.

- (a) In the event that TPO, as the responsible party for maintenance, repair and replacement of any item, fails to perform its maintenance obligations under this Agreement, and such failure results in an imminent and substantial danger to human health or safety or to property, Port may perform such obligations immediately upon notifying TPO by telephone at the number set forth below, and shall be entitled to full reimbursement from TPO within thirty (30) days after submission of a written Invoice therefor.
- (b) In the event that TPO or Port discovers any malfunction of, or damage to, Automatic Warning Devices, the discovering party shall promptly notify the other party by telephone at the telephone number set forth below, and TPO shall follow its usual

response practices in the event of any malfunction of, or damage to, Automatic Warning Devices.

Port Telephone Contact: Telephone No. _____

TPO Telephone Contact: Telephone No. _____

3.3 Grade Crossing Reconstruction. The parties acknowledge that certain maintenance procedures may cause an increase in the surface elevation of grade crossings, and that TPO may, from time to time, need to perform additional maintenance or reconstruction work in order to prevent unsafe elevation differentials between the tracks used by TPO and other tracks. TPO will be responsible for any such maintenance and reconstruction work of any such grade crossings.

SECTION 4. Construction of Additions and Alterations.

4.1 Design and Construction Standards. The design and construction of any Additions and Alterations on the Corridor shall comply with all applicable laws, rules and regulations. The party constructing Additions and Alterations shall follow its customary safety procedures and shall use reasonable efforts to perform work on Additions and Alterations at such times and in such manner as not to materially interfere with, delay or endanger the equipment, Facilities or other facilities of the other party.

4.2 Design Review. In the course of designing Additions and Alterations, the constructing party shall reasonably notify and consult with the other party with respect to the design and construction of the Additions and Alterations. If requested by the other party, the constructing party shall deliver to the other party for review and comment copies of each set of plans for Additions and Alterations during the planning and design process. The other party shall notify the constructing party in writing within fifteen (15) days after its receipt of the plans as to whether it wishes to comment on the plans. If so, then the other party shall have the right to provide the constructing party, within thirty (30) days after the other party's receipt of any such set of plans, written comments and suggestions regarding such plans. If the other party timely disapproves such plans, the parties shall meet within fifteen (15) days after disapproval to negotiate in good faith to develop plans acceptable to both. If the parties are unable to agree upon changes to the plans, either party may submit the matter to arbitration pursuant to Section 11. Upon completion of final plans, the constructing party shall give a copy of the final plans to the other party for review to ensure the incorporation of all agreed-upon changes to the plans.

4.3 Grade Separation Projects. In the event of a public grade separation project, TPO shall be solely responsible for any costs assessed thereunder. If TPO determines that a proposed grade separation project is desirable and is not feasible unless TPO contributes more than the costs that would be assessed to TPO under applicable laws, then Port agrees to consider in good faith the desirability of the proposed project and whether TPO's additional contribution should be reimbursed by Port; provided, however, that Port shall have no obligation to reimburse TPO for such additional contribution except to consider it in good faith as provided above.

SECTION 5. Operations.

5.1 TPO's Operations. TPO shall have exclusive authority to manage, direct and control all activities on the Corridor to provide Freight Rail Service and Excursion Rail Service, including, without limitation, the operations of all trains, locomotives, rail cars and rail equipment, and the movement and speed of the same on the Corridor.

SECTION 6. Access.

6.1 Reciprocal Access and Notice Rights. Subject to the procedures set forth below, and to be in compliance with all applicable rules and regulations of the FRA, the parties shall have the following reciprocal access rights:

- (a) Port may enter upon the Corridor for the purposes set forth in Sections 3.1 and 3.2.
- (b) In the event of an emergency of any kind, Port may enter upon the Corridor (i) to warn TPO's trains by any reasonable means, including, without limitation, use of flaggers or placement of torpedoes upon TPO's tracks, or (ii) in the event of a wreck or derailment of train or equipment, to clear the train, equipment or other debris from TPO's tracks. Port shall provide immediate notice of such events to TPO's dispatcher by radiotelephone.
- (c) Security personnel of either party in pursuit of a criminal suspect may enter upon the Corridor for the purposes of apprehending the suspect.
- (d) TPO may enter upon the Port Property for the purposes set forth in Sections 2.1 and 3.1.

- (e) Except for emergencies when reasonable notice under the circumstances shall be given, Port shall give TPO at least forty-eight (48) hours' prior telephonic notice of any entry onto the Corridor, and shall not enter upon the Corridor until a valid work permit is issued by TPO. If flagging is necessary, no entry shall be made until TPO has made arrangements for flagging.
- (f) Any entry by Port (or its contractors, invitees or licensees) on any portion of the Corridor within twenty feet (20') of the track center of the Corridor shall be subject to the notice and flagging requirements under subparagraph (e) above, unless the parties agree to an alternative procedure.
- (g) Hazardous Materials may be brought by TPO onto the Corridor only to the extent necessary for the purposes for which entry is allowed under this Section 6, and in all events in compliance with all applicable Environmental Laws.
- (h) In the event of leakage, spillage, release, discharge or disposal of any Hazardous Materials by TPO (including, without limitation, by explosion), TPO shall give Port prompt notice of such event, and at its sole cost and expense, clean or remediate Port's property to the standards required by law or by any governmental agency or public body having jurisdiction in the matter. Should any such leakage, spillage, release, discharge or disposal result in a fine, penalty, cost, or charge, TPO shall promptly and fully pay such fine, penalty, cost or charge. TPO shall be responsible for any such leakage, spillage, release, discharge or disposal by any third party it admits to the Corridor. TPO shall indemnify, protect, defend, and hold harmless Port, its trustees, directors, officers, employees, agents, contractors, parent corporations and subsidiaries from and against any and all liabilities or claims for all loss, damage, injury, and death arising as a result of any such leakage, spillage, release, discharge or disposal. The provisions of this Section 6.1(h) are in addition to and not in limitation of the provisions of Section 7 hereof, except that the provisions of Sections 7.2(a) and 7.2(b) shall govern Losses with respect to personal injury (including bodily injury and death).

SECTION 7. Liability.

7.1 Assumption of Responsibility.

- (a) Except as otherwise expressly provided in this Section 7, TPO will assume all Losses and will indemnify Port for all Losses which arise from TPO's presence on the Corridor or on Port Property without regard to fault, failure, negligence, misconduct, malfeasance, or misfeasance of TPO or its employees, agents or servants.
- (b) The allocation of responsibility for Losses under this Section 7 applies only to Losses proximately caused by incidents occurring on or adjacent to the Corridor or Port Property, and arising out of TPO's presence on the Corridor, or on Port Property.
- (c) All costs and expenses incurred in connection with the investigation, adjustment and defense of any claim or suit shall be included as part of the Loss for which responsibility is assumed under the terms of this Section 7, including, without limitation, salaries or wages and associated benefits of, and out-of-pocket expenses incurred by or with respect to, employees of either party engaged directly in such work and a reasonable amount of allocated salaries and wages of employees providing support services to the employees so engaged directly in such work.

7.2 Allocation of Responsibilities.

- (a) Invitees. Losses arising out of personal injury (including bodily injury and death) to, or property damage suffered by, an invitee of either party shall be the responsibility of and borne and paid solely by TPO, except as otherwise provided in Section 7.2(a)(i) and Section 7.3. Consultants and contractors of TPO, and any person who is on, or has property on, a train or other rolling stock operated by or for the account of TPO or admitted to operate on the Corridor (other than an employee of TPO engaged in performing duties for TPO), shall rebuttably be presumed to be an invitee of TPO.
 - (i) If an invitee of Port is negligent and causes Losses to TPO or Port, Port will be responsible for such Losses and will indemnify TPO.
- (b) Persons Other Than Invitees. Except as provided in Section 7.3, Losses arising out of personal injury (including bodily injury and death) to, or property damage directly suffered by any person

who is not an invitee of Port or TPO (including, without limitation, Port, TPO, employees of Port or TPO while engaged in the performance of their duties as an employee, persons in adjacent public streets (including public sidewalks), and trespassers), shall be the responsibility of and borne and paid exclusively by TPO.

- (c) Unenforceability. If any of the provisions of this Section 7.2 would otherwise be prohibited by or unenforceable under the laws of Washington State (including a determination by a final judgment of a Washington State court with jurisdiction that indemnification under the circumstances involved is against the public policy of Washington State), the indemnity provided by such provision shall be deemed to be limited to and operative only to the maximum extent permitted by law. Without limitation, if it is determined by a final judgment of a Washington State court with jurisdiction that any law or public policy of Washington State prohibits the indemnification of a party for its own sole negligence in any instance covered by the provisions of this Section 7.2, those provisions shall be deemed to exclude indemnification for such party's sole negligence but to permit full indemnification, as specified in this Section 7.2, if both parties were negligent.

7.3 Excluded Conduct. "Excluded Conduct" shall mean conduct by a supervisory level or higher employee of one of the parties, which such conduct is alleged in a properly filed complaint by a plaintiff or plaintiffs as the basis for an award of exemplary or punitive damages under Washington State law, and actually results in an award of exemplary or punitive damages by a jury after trial of the issues and exhaustion of judicial appeals which would permit the award of exemplary or punitive damages. Neither party shall be indemnified for any Loss resulting from its own Excluded Conduct, and in any such case such party shall be responsible for and bear the Loss in proportion to its relative degree of fault and be responsible for and bear all exemplary or punitive damages, if any, resulting from its Excluded Conduct. If a party asserts that the other was guilty of Excluded Conduct and denies liability for indemnification of the other party based thereon, the party asserting such Excluded Conduct shall have the burden of proof in establishing such conduct.

7.4 Scope of Indemnification. In any case where a party is required under the provisions of this Section 7 to bear a Loss, it shall pay, satisfy and discharge such Loss and all judgments that may be rendered by reason thereof and all costs, charges and expenses incident thereto, and such party shall forever indemnify, defend and hold harmless the other party and its commissioners, trustees, directors, officers, agents, employees, shareholders, parent

corporations, subsidiaries and affiliated companies, or governmental entities from, against and with respect to any and all Losses which arise out of or result from the incident giving rise thereto. TPO hereby waives any immunity TPO may have under applicable workers' compensation benefit or disability laws (including but not limited to Title 51 RCW) in connection with the foregoing indemnity. Such waiver shall not prevent TPO from asserting such immunity against any other person or entities. TPO AND PORT AGREE AND ACKNOWLEDGE THAT THIS PROVISION IS THE PRODUCT OF MUTUAL NEGOTIATION.

- (b) TPO shall indemnify, hold harmless and defend Port from any and all Railroad Unemployment Insurance Act (45 U.S.C.A. §§ 351 et seq.), Railroad Retirement Act (45 U.S.C. §231 et seq.), Railway Labor Act (45 U.S.C. Sec. 151 et. seq.), Federal Employers Liability Act (45 U.S.C. Sec 51 et. seq.), common carrier obligations pursuant to (49 U.S.C. Sec. 10101 et. seq.), and any Federal rail safety legislation, that arise from TPO's use of the Corridor and the Port Property.

7.5 Procedure.

- (a) If any claim or demand (short of a lawsuit) shall be made by any person against an indemnified party under this Section 7, the indemnified party shall, within thirty (30) days after actual notice of such claim or demand, cause written notice thereof to be given to the indemnifying party, provided that failure to notify the indemnifying party shall not relieve the indemnifying party from any liability which it may have to the indemnified party under this Section 7 except to the extent that the rights of the indemnifying party are in fact prejudiced by such failure. The indemnifying party shall have the right, at its sole cost and expense, to control (including the selection of counsel reasonably satisfactory to the indemnified party) or to participate in the defense of, negotiate or settle, any such claim or demand, and the parties agree to cooperate fully with each other in connection with any such defense, negotiation or settlement. In any event, the indemnified party shall not make any settlement of any claims or demands which might give rise to liability on the part of the indemnifying party under this Section 7 without either providing the indemnifying party with a full release with respect to such liability or obtaining the prior written consent of the indemnifying party,

which consent shall not be unreasonably withheld, conditioned or delayed.

- (b) In the event any lawsuit is commenced against either party for or on account of any Loss for which the other party may be solely or jointly liable under this Agreement, the party sued shall give the other party timely written notice of the pendency of such action, and thereupon the party so notified may assume or join in the defense thereof. If the party so notified is liable therefor under this Agreement, then, to the extent of such liability, such party shall defend, indemnify and save harmless the party so sued from Losses in accordance with the liability allocations set forth in this Agreement. Neither party shall be bound by any judgment against the other party unless it shall have been so notified and shall have had reasonable opportunity to assume or join in the defense of the action. When so notified and the opportunity to assume or join in the defense of the action has been afforded, the party so notified shall, to the extent of its liability under this Agreement, be bound by the final judgment of the court in such action.
- (c) Subject to the provisions of Section 7.5(a), on each occasion that the indemnified party is entitled to indemnification or reimbursement under this Section 7, the indemnifying party shall, at each such time, promptly pay the amount of such indemnification or reimbursement. If the indemnified party is entitled to indemnification under this Section 7 and the indemnifying party does not elect to control any legal proceeding in connection therewith, the indemnifying party shall pay to the indemnified party an amount equal to the indemnified party's reasonable legal fees and other costs and expenses arising as a result of such proceeding.
- (d) Any dispute between the parties as to the right to indemnification or the amount to which it is entitled pursuant to such right with respect to any matter shall be submitted to arbitration pursuant to Section 11 of this Agreement.

7.6 Compliance With Laws. Both parties shall comply with all applicable federal, state and local laws and regulations, and all applicable rules, regulations or orders promulgated by any court, agency, municipality, board or commission. If any failure of either party to comply with such laws, regulations, rules or orders in respect to that party's use of the Corridor results in any fine, penalty, cost or charge being

assessed against the other party, or any Loss, the party which failed to comply agrees to reimburse promptly and indemnify, protect, defend (with counsel reasonably acceptable to the indemnified party) and hold harmless the other party for such amount.

7.7 Delay/Interruption of Service. Port shall not be held liable for any delay or interruption to the trains, locomotives or cars of TPO unless due to Excluded Conduct or except as otherwise provided for in Section 7.2(a)(i)

7.8 No Limitation on Risk Allocation. The provisions of this Section 7 shall apply notwithstanding the provisions of Section 8. In no event shall the indemnification provisions of this Section 7 be limited to the insurance coverage required under Section 8.

7.9 Statutory Defenses. All statutory defenses and limitations applicable to Port shall be retained by Port with respect to parties other than TPO, and none are intended to be waived with respect to parties other than TPO by Port under this Agreement.

SECTION 8. Insurance.

8.1 TPO Insurance.

- (a) [TPO shall obtain and maintain general liability insurance written on an "occurrence" basis, with minimum limits of [] Dollars (\$) per occurrence. Coverage for punitive damages shall be included to the extent such coverage is permitted under Washington State law. Insurance shall be placed with a company having a current Best's Insurance Guide Rating of at least A, or equivalent, and which is a carrier admitted as an insurer by the Washington State Office of the Insurance Commissioner. TPO may self-insure to an amount not to exceed [] Dollars (\$), provided that total coverage limits (self-insurance plus excess liability insurance) are at least [] Dollars (\$) per occurrence, provided, however, that this sentence shall not inure to the benefit of TPO's successors or assigns absent the reasonable written consent of Port. In the event Port does not reasonably consent to self-insurance by a successor or assign of TPO, the self-insured amount for such successor or assign shall not exceed [] Dollars (\$). The foregoing policy limits shall be adjusted by the parties every three (3) years to reflect industry standards, liability claim trends and market conditions. In any event, however, the total coverage

(self-insurance plus excess liability) shall not be less than [] Dollars (\$). The foregoing self-insurance limit shall not exceed _____ percent (__%) of the total coverage limits (self-insurance plus excess liability insurance) maintained by TPO; provided, however, that the foregoing self-insurance limit may be increased by up to an additional _____ percent (__%) of the total coverage limits if TPO provides adequate security acceptable to and approved by Port for the increased self-insurance amount over and above the initial _____ percent (__%) limit.]

- (b) TPO's insurance shall be primary with respect to its obligations under this Agreement and with respect to the interest of the Port as an additional insured. TPO shall provide Port with evidence that it has named the Port as an additional insured under TPO's policy. Any other insurance maintained by an additional insured shall be excess of the coverage herein defined as primary and shall not contribute with it.
- (c) TPO's insurance shall be maintained for the full term of this Agreement and shall not be permitted to expire or be canceled or materially changed. Each such insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or limits except after thirty (30) days' prior written notice has been given to each insured and additional insured.
- (d) Prior to the Effective Date, TPO shall provide Port with certified copies of its policies, as well as certificates of insurance and endorsements evidencing the insurance required by this Section. Certificates of insurance shall be issued on the ACORD or equivalent form.
- (e) All statutory defenses and limitations applicable to TPO shall be retained by TPO with respect to parties other than Port, and none are intended to be waived with respect to parties other than Port by TPO by the acquisition of insurance by TPO or under this Agreement.

8.2 Failure to Maintain Insurance. A failure of TPO to maintain the insurance required by this Section 8 shall not relieve TPO of any of its liabilities or obligations under this Agreement.

8.3 Waiver of Subrogation. Every policy of insurance required under this Section 8 to be held by TPO shall include a waiver of all rights of subrogation against Port.

SECTION 9. Compensation and Billing.

9.1 Invoices. Any Invoice or Invoices submitted to the parties under this Agreement ("Invoice" or "Invoices") must be itemized with a detailed description of the work performed, the date of such work, the person performing such work, the time expended and the associated hourly billing rate or charge for such work, and any reimbursable expenses (including, without limitation, the cost of materials used) incurred in the performance of the work. The party requesting reimbursement shall certify that it has actually incurred the expenses set out in its Invoice. Invoices for reimbursable expenses may not exceed the out-of-pocket expense for such items. Invoices shall be paid within thirty (30) days after receipt thereof by the payor. If a party disputes any items on an Invoice, that party may deduct the disputed item from the payment, but shall not delay payment for the undisputed portions. The amounts and reasons for such deductions, if any, shall be documented to the other party within thirty (30) days after receipt of the Invoice. Once documentation is given for the disputed amounts, and accepted by the paying party, the disputed amounts shall be paid by the paying party with fifteen (15) days after receipt of the documentation. No Invoice shall be submitted later than one hundred twenty (120) days after the last day of the calendar month in which the reimbursable expense or cost covered thereby is incurred.

9.2 Audit. So much of the books, accounts and records (except for privileged or confidential records) of each party hereto as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection and audit by the authorized representatives and agents of the parties. All accounting records and other supporting papers shall be maintained for a minimum of three (3) years from the date thereof. If work relating to this Agreement is funded in whole or in part by a federal grant, the Comptroller General of the United States and authorized representatives of the federal agency furnishing the grant shall have the right to examine and audit such books, accounts, and records in accordance with applicable federal laws and regulations.

9.3 Supporting Documentation. Upon request, a party disputing the accuracy of any Invoice shall be entitled to receive from the invoicing party copies of such supporting documentation and/or records as are kept in the ordinary course of the invoicing party's business and which are reasonably necessary to verify the accuracy of the Invoice as rendered.

9.4 Fees. TPO shall pay Port \$_____ per month in rental compensation for use of the Corridor. This amount shall escalate by _____ when carloads exceed _____ per _____.

SECTION 10. Coordination.

10.1 Coordination Committee. Port and TPO shall establish a Coordination Committee consisting of at least two (2) representatives of each party. The Coordination Committee shall be a forum for the parties to share information, discuss matters submitted by one party to the other party for review and/or approval, and seek resolution of any issues between the parties with respect to this Agreement. The Coordination Committee shall meet regularly (in person or telephonically) and also as necessary to address issues between the parties that require prompt resolution.

SECTION 11. Binding Arbitration.

11.1 Controversies Subject to Arbitration. Any and all claims, disputes or controversies between Port and TPO arising out of or concerning the interpretation, application, or implementation of this Agreement that cannot be resolved by the parties through the Coordination Committee or by negotiations shall be submitted to binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, except as otherwise provided in this Section 11. If the AAA discontinues promulgation of the Commercial Arbitration Rules, the parties shall use the AAA's designated successor rules, and if the AAA does not designate successor rules, the parties shall agree on other rules. The judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

11.2 Selection of Arbitrator. In the event a claim, dispute or controversy arises, either party may serve a written demand for arbitration upon the other party. If the claim, dispute or controversy is not resolved by the parties within thirty (30) days after the service of the demand, the matter shall be deemed submitted to arbitration. If within forty (40) days after service of the demand, the parties have not selected a single arbitrator, each party shall within an additional ten (10) days thereafter select an arbitrator. (In such case, if either party has not selected an arbitrator within ten (10) days after receipt of notice that the other party has selected an arbitrator, the arbitrator selected by the other party shall arbitrate the claim, dispute or controversy.) The two selected arbitrators shall select a third arbitrator. If the two arbitrators are unable to agree upon the third arbitrator within ten (10) days of the selection of the two selected arbitrators, the AAA shall select the third arbitrator. The arbitrator(s) shall be disinterested.

11.3 Expedited Arbitration Schedule.

- (a) In the event either party reasonably finds that the issues of any claim, dispute or controversy are likely to directly, imminently, materially and adversely affect human health or safety, either party may request, in the arbitration demand delivered pursuant to Section 11.2, an expedited arbitration procedure as set forth in this Section 11.3 solely for the purpose of obtaining a provisional remedy that by law or in equity could be imposed in a court proceeding against a rail carrier subject to the jurisdiction of the Surface Transportation Board (e.g., temporary restraining order, preliminary injunction or injunction).
- (b) Within five (5) days after service of a demand for expedited arbitration, the parties shall agree on an arbitrator. If the parties fail to agree on an arbitrator within such five-day period, each party shall within two (2) days select an arbitrator. In such case, if either party has not selected an arbitrator within two (2) days after receipt of notice that the other party has selected an arbitrator, the arbitrator selected by the other party shall arbitrate the claim, dispute or controversy. The two selected arbitrators shall select a third arbitrator. If the two arbitrators are unable to agree upon the third arbitrator within two (2) days of the deadline for the selection of the two selected arbitrators, the AAA shall select the third arbitrator. The arbitrator(s) shall be disinterested.
- (c) The expedited arbitration hearing shall commence no later than ten (10) days after service of a demand for expedited arbitration and shall be concluded on the same day. The arbitration decision shall be rendered by the arbitrator(s) in writing on or before the day following the arbitration hearing.
- (d) Prior to rendering any decision, the arbitrator must find that the issues of the claim, dispute or controversy are likely to directly, imminently, materially and adversely affect human health or safety. In the event the arbitrator finds that the foregoing criteria have not been met, the proceeding shall be dismissed without prejudice and the parties shall proceed with the arbitration procedure and schedule set forth in Sections 11.1 and 11.2; provided, however, that no new demand for arbitration need be served by the party demanding arbitration.

11.4 Pending Resolution. During the pendency of such arbitration proceedings, the business and the operations to be conducted, and compensation for service under this Agreement, to the extent that they are the subject of such controversy, shall continue to be transacted, used and paid in the manner and form existing prior to the arising of such controversy, unless the arbitrator shall make a preliminary ruling to the contrary.

11.5 Cost of Arbitration. Each party solely shall bear the attorneys' fees, costs and expenses incurred by it in connection with such arbitration; provided, however, the arbitrator shall have the power to award attorneys' fees and costs to either party if the arbitrator determines in its reasonable discretion that the position of the other party to the arbitration was frivolous.

SECTION 12. Term and Termination.

12.1 Term. The initial term of this Agreement shall expire on the 10th anniversary of the Execution Date. So long as TPO is not in default with respect to a material term or condition of this Agreement, TPO may elect to continue this Agreement for one (1) additional renewal term of 10 years by giving Port written notice of such intent at least one (1) year prior to the expiration of the initial term. Notwithstanding the foregoing, this Agreement shall terminate 60 days after written notice by Port to TPO that TPO is in default with respect to a material term or condition of this Agreement, which default has not been cured on or prior to such 60th day.

12.2 Termination for Abandonment. In the event that TPO, or a permitted successor or assign, lawfully abandons, discontinues or otherwise lawfully ceases to provide Freight Rail Service on the Corridor by obtaining any necessary authority or exemption from the Surface Transportation Board ("STB"), Port may choose to (1) terminate this Agreement upon ninety (90) days written notice to TPO; or (2) terminate all the rights of TPO, or that of a permitted successor or assign, to provide Freight Rail Service over the Corridor under this Agreement. Notwithstanding the previous sentence, after the termination of this Agreement under this Section 12.2, TPO may, with Port's approval, continue to provide Excursion Rail Service over the Corridor. In all events, TPO shall remain liable for all accrued or continuing obligations under this Agreement, and all obligations required upon termination and surrender of the Corridor.

12.3 Offers of Financial Assistance ("OFA"). In the event TPO, or a permitted successor or assign, seeks STB authority (or an exemption therefrom) to abandon any portion or segment of the Corridor, if TPO receives an OFA with respect thereto, TPO shall promptly notify Port, Port (or its designee) shall submit its own OFA and TPO shall accept the OFA submitted by Port (or its designee) for the offer amount of \$1.

12.4 Railbanking. In the event TPO, or a permitted successor or assign, seeks STB authority (or an exemption therefrom) to abandon any portion or segment of the Corridor, if Port, King County ("County"), or the designee of either of them timely files with the STB a Statement of Willingness to Assume Financial Responsibility ("SWAFR") meeting the requirements of the STB's regulations, TPO shall file with the STB: (i) an expression of willingness to enter into a railbanking/trail use agreement; (ii) a statement that TPO and Port, or TPO and County, or TPO and such designee, have entered into such an agreement; and (iii) a request that the STB issue a Notice of Interim Trail Use ("NITU") or a Certificate of Interim Trail Use ("CITU") (as appropriate). Upon the effective date of each such NITU or CITU, TPO shall transfer to Port, (or Port's designee) TPO's right to restart freight rail service on the portion of the Corridor that is the subject of the SWAFR.

12.5 Binding Successors; Assignment. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective permitted successors and assigns, except that TPO may not assign its rights and obligations under this Agreement without the prior written consent of Port, which consent may not be unreasonably denied, delayed or conditioned. Any assignment, encumbrance or other transfer in violation of the foregoing shall be void. Port may assign its rights and obligations under this Agreement freely.

12.6 Notices. Except as otherwise expressly provided in this Agreement, all notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (a) on the date of delivery, if delivered personally to the party to whom notice is given, or if made by telecopy directed to the applicable telecopy number listed below and the transmission is confirmed by mail as provided under (b) below which is deposited on the first business day after the transmission, or (c) at the earlier of actual receipt or the third business day following deposit in the United States mail, postage prepaid. Notices and other communications shall be directed to the parties at the addresses shown below. A party may change its person designated to receive notice, its telecopy number or its address from time to time by giving notice to the other party in accordance with the procedures set forth in this Section.

Port: PORT OF SEATTLE
[ADDRESS]
Telephone No. _____
Telecopy: _____

TPO: [THIRD PARTY OPERATOR]
[ADDRESS]

Telephone No. _____
Telecopy: _____

12.7 Headings. The section and subsection headings in this Agreement are for convenience only and shall not be used in its interpretation or considered part of this Agreement.

12.8 Integration, Amendment, and Waiver. This Agreement controls all the rights and obligations of TPO and Port as to the operation of Freight Rail Service and Excursion Rail Service on the Corridor. (The License controls all the rights and obligations of TPO and Port as to the operation of Excursion Rail Service on the Excursion Spur). This Agreement is the entire agreement, and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties concerning the subject matter hereof. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by both of the parties. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

12.9 Counterparts. This Agreement may be executed in any number of counterparts, and by different parties in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Facsimile signatures shall be deemed original for all purposes.

12.10 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of Washington State.

12.11 Time of Essence. Time is of the essence of each and every provision of this Agreement.

12.12 Agreement Runs With Land; Recordation. This Agreement is made for the benefit of the Corridor and shall run with the land, except that any parcel transferred by a party to an unaffiliated person or entity for purposes other than rail operations or trail use that does not contain any facilities used in connection with the rail operations intended by this Agreement shall be deemed removed from the Corridor or Port Property as applicable. This Agreement shall bind and inure to the benefit of the parties' respective successors in interest in the Corridor to the extent stated in the prior sentence. This Agreement shall be recorded, and each party, upon request of the other party, agrees to execute a document in recordable form evidencing the removal of any parcel from the Corridor or the Port Property.

12.13 Not for the Benefit of Others. This Agreement and each and every provision herein is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein shall be construed to create or increase any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

12.14 Attorneys' Fees. If any legal action or any arbitration or other proceeding is brought for the enforcement or interpretation of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs in connection with that action or proceeding, in addition to any other relief to which it or they may be entitled.

12.15 Regulatory Requirements. If any governmental agency imposes any requirement on either or both of Port and TPO which Port can reasonably demonstrate would not have been imposed but for TPO's use of the Corridor for TPO's Freight Rail Service or Excursion Rail Service, the entire cost of compliance shall be borne solely by TPO, including, without limitation, costs and expenses for construction and maintenance of improvements, relocation of Facilities, implementation of safety procedures, and the filing of or participation in regulatory proceedings. Both parties shall reasonably cooperate to ensure compliance with all such governmental requirements. Notwithstanding the foregoing sentence, TPO's cooperation shall not include any modification to, or restriction of, its operations in the Corridor; provided, however, that TPO's cooperation may include modifications to the Facilities to the extent such modifications do not restrict TPO's operations, and subject to TPO's obligation to bear all costs and expenses thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the Execution Date.

PORT OF SEATTLE,
a Washington Municipal Corporation

By: _____
Name: _____
Title: _____

[THIRD PARTY OPERATOR],
a _____ corporation

By: _____
Name: _____
Title: _____

11

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On _____, 200__, before me, a Notary Public in and for said County and State, personally appeared _____, of the PORT OF SEATTLE, a Washington Municipal Corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

(SEAL)

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On _____, 200__, before me, a Notary Public in and for said County and State, personally appeared _____, of [THIRD PARTY OPERATOR], a _____ corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

(SEAL)

Exhibit A
Purchase and Sale Agreement

Exhibit B

Grant of Railroad Easement

Exhibit C
Quitclaim Deed

1/1/11

EXHIBIT D

Railroad Right-Of-Way License Agreement

RAILROAD RIGHT OF WAY LICENSE

by and between

THE PORT OF SEATTLE

and

[THIRD PARTY OPERATOR]

_____, 2008

7/16

TABLE OF CONTENTS

Section 1. Definitions..... 1

Section 2. TPO’s Rights and Obligations. 3

Section 3. Port’s Rights and Obligations. 4

Section 4. Maintenance, Repair and Replacement Obligations. 4

Section 5. Construction of Additions and Alterations. 5

Section 6. Effective Date and Term of the License. 6

Section 7. Access. 7

Section 8. Liability..... 8

Section 9. Insurance..... 12

Section 10. Compensation and Billing..... 13

Section 11. Coordination. 14

Section 12. Binding Arbitration..... 14

Section 13. Miscellaneous Provisions..... 16

RAILROAD RIGHT OF WAY LICENSE

THIS RAILROAD RIGHT OF WAY LICENSE ("License") is made this ___ day of _____, 2008 ("Effective Date"), between the PORT OF SEATTLE, a Washington municipal corporation ("Port ") and [THIRD PARTY OPERATOR], a _____ corporation ("TPO").

RECITALS

- A. Pursuant to the Purchase and Sale Agreement and the Donation Agreement between Port and BNSF Railway Company, a Delaware corporation ("BNSF"), both dated as of _____, 200__ (the "Acquisition Agreements") Port acquired BNSF's right, title and interest in BNSF's railroad right of way (i) from milepost 5.0 in Renton, Washington to and including the railroad bridge at milepost 38.25 in Snohomish County, Washington, and (ii) from milepost 0.0 in Woodinville south to milepost 7.3 in Redmond (the "Redmond Spur") (together, the "Woodinville Subdivision"), as shown on and described in **Exhibit A** attached hereto and incorporated herein.
- B. Port and TPO have entered into an Operations and Maintenance Agreement (the "O&M Agreement") setting forth their respective rights and obligations with respect to freight rail operations, Excursion Rail Service, and maintenance on portions of the Woodinville Subdivision from milepost 23.8 in Woodinville, King County, Washington north to milepost 38.25 in Snohomish, Snohomish County, Washington (the "Corridor"), as described in **Exhibit B** attached hereto and incorporated herein.
- C. TPO also desires the right to use and operate the Excursion Spur, a portion of the Woodinville Subdivision and further described below, for Excursion Rail Service (as defined in Section 1.4 below).
- D. Port is willing to grant TPO the right to use and operate the Excursion Spur in the manner described in this License.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants in this License and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

Section 1. Definitions.

For the purposes of this License, the following terms shall have the following meanings:

- 1.1 "Additions and Alterations" means any improvements constructed by or on behalf of either party on the Corridor after the Effective Date, including, without limitation, additions, alterations and betterments of any Facilities, and any construction, reconstruction, modifications and renewals thereof or any reconstruction, modification or renewal of additional Facilities, but excluding maintenance items.

- 1.2 “Automatic Warning Devices” means traffic control devices at railroad-street at-grade crossings and at railroad-pedestrian at-grade crossings, including, without limitation, any combination of flashing light signals, bells, automatic gates, active advance warning devices, highway traffic signals and their associated activation and control devices, control relays and batteries, microprocessor technology, and associated electrical circuitry.
- 1.3 “Environmental Law” means any and all applicable laws, statutes, regulations, enforceable requirements, orders, decrees, judgments, injunctions, permits, approvals, authorizations, license, permissions or binding agreements issued, promulgated or entered into by any governmental agency having jurisdiction over the environmental condition of the Excursion Spur, relating to the environment, to preservation or reclamation of natural resources, or to the management, release or threatened release of contaminants or noxious odors, including, without limitation, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (“CERCLA”), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and the Hazardous and Solid Waste Amendments of 1984, the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, the Clean Air Act of 1970, as amended by the Clean Air Act Amendments of 1990, the Toxic Substances Control Act of 1976, and any similar or implementing state law, and all amendment or regulations promulgated thereunder.
- 1.4 “Excursion Rail Service” means the deployment and operation of trains using the facilities for purposes other than hauling common carrier freight or in service other than freight rail operations over and on the Excursion Spur. This could include but not be limited to dinner train operations.
- 1.5 “Excursion Spur” means (i) that portion of the Woodinville Subdivision from milepost 23.8 in Woodinville south to milepost 11.9 in Bellevue and (ii) that portion of the Redmond Spur from milepost 0.0 in Woodinville south to milepost 1.86 in Woodinville, Washington.
- 1.6 “Facilities” means all rails, fastenings, switches, switch mechanisms and frogs with associated materials, ties, ballast, signals and communications devices (and associated equipment), drainage facilities, Automatic Warning Devices, traction power substations, overhead catenary systems, bumpers, roadbed, embankments, bridges, trestles, culverts, and any other structures or things necessary for the support hereof and, if any portion thereof is located in a thoroughfare, the term includes pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing materials at vehicular and pedestrian crossings of tracks, and any and all structures and facilities required by lawful authority in connection with the construction, renewal, maintenance and operation of any of the foregoing.

- 1.7 “Hazardous Materials” means any material or substance: (a) the presence of which requires investigation or remediation under any Environmental Law; or (b) which is defined as a “hazardous waste,” “hazardous substance,” “pollutant” or “contaminant” under any Environmental Law; or (c) the presence of which on, under or over adjacent properties constitutes a trespass by the owners of the Excursion Spur and poses a hazard to the health or safety of persons on adjacent properties; or (d) the presence of which on, under, or over the Excursion Spur causes a nuisance on adjacent properties and poses a hazard to the health or safety of persons on adjacent properties.
- 1.8 “Invoice” is defined in Section 10.1.
- 1.9 “Loss” or “Losses” means all losses, damages, claims, demands, costs, liabilities, judgments, fines, fees (including, without limitation, reasonable attorneys’ fees) and expense (including, without limitation, costs of investigation, defense, expenses at arbitration, trial or appeal and without institution of arbitration or suit, and, with respect to damage or destruction of property, cleanup, repair and replacement expenses) of any nature arising from or in connection with death or injury to persons, including, without limitation, employees or tenants of the parties, or damage to or destruction of property, including, without limitation, property owned by either of the parties or their tenants, in connection with Excursion Rail Service on the Excursion Spur.
- 1.10 “Multipurpose Easement” means that certain easement between Port and King County, a home rule charter county and political subdivision of the State of Washington (“County”) pursuant to which the County acquired certain rights on those portions of the Woodinville Subdivision from (i) milepost 23.8 in Woodinville south to milepost 5.0 in Renton, and (ii) the Redmond Spur, including the right to develop, construct and operate a recreational trail consistent with rail or other transportation uses thereon.
- 1.11 “O&M Agreement” has the meaning set forth in Recital B.
- 1.12 “Purchase Agreement” has the meaning set forth in Recital A.
- 1.13 “Term” has the meaning set forth in Section 6.

Section 2. TPO’s Rights and Obligations.

- 2.1 Subject to transportation uses permitted by the Port as provided in Section 2.5, TPO shall have the exclusive right and obligation to provide, by itself and/or by or through any entity designated by TPO, Excursion Rail Service on and over the Excursion Spur.
- 2.2 TPO shall have the exclusive authority to manage, direct and control all activities related to the provision of Excursion Rail Service on the Excursion Spur, including, without limitation, the operation of all trains, locomotives, rail cars and rail equipment, and the movement and speed of the same on the Excursion Spur.

TPO shall employ and discharge all personnel required to perform TPO's Excursion Rail Service, shall comply with all governmental laws, rules, regulations and orders applicable to TPO's Excursion Rail Service, and shall pay all real property taxes separately levied on TPO's rights under this License and for all utilities consumed by TPO in carrying out TPO's Excursion Rail Service. All equipment and materials required for TPO's Excursion Rail Service shall be provided by TPO at the sole cost and expense of entities other than Port except as provided in this License.

- 2.3 TPO acknowledges and agrees that the County is the grantee under the Multipurpose Easement. TPO agrees that it shall, at all times, cooperate fully with the County to accommodate any trail uses on the Excursion Spur adjacent to the Excursion Spur Facilities.
- 2.4 TPO or its designee shall have the right to use existing trackage in the Excursion Spur for performing Excursion Rail Service as described in this Section.
- 2.5 TPO acknowledges and agrees that, consistent with Section 3, the Port may permit certain transportation uses on the Excursion Spur (e.g. commuter rail service) during the Term that are not inconsistent with TPO's rights under this License. TPO shall cooperate with the Port's permitted transportation users to ensure the accommodation of such uses on the Excursion Spur.
- 2.6 In addition to all other rights granted to TPO under this License, TPO shall have the right to utilize the Excursion Spur between milepost 0.0 in Woodinville and milepost ___ for all head and tail operations necessary for TPO's freight rail operations under the O & M Agreement

Section 3. Port's Rights and Obligations.

- 3.1 Port shall have the right to use the Excursion Spur and to grant easements, licenses or permits affecting the Excursion Spur as long as such use, easements, licensees or permits do not interfere with or create safety hazards for TPO's continuous and uninterrupted use of the Excursion Spur under the terms of this License.

Section 4. Maintenance, Repair and Replacement Obligations.

- 4.1 General Maintenance, Repair and Replacement Obligations.
 - (a) Except as otherwise provided in this License, TPO shall provide general maintenance and maintenance of way services, including without limitation, inspection, maintenance, repair, installation, alteration and replacement (as necessary) of all rail traction electrification, signal systems, trackage, properties and Facilities, including without limitation, Automatic Warning Devices and grade crossings (including embankments, crossing panels or planking, pavement and curbing) to the extent the same are subject to governmental requirements in connection with grade

crossings, located within the Excursion Spur, in accordance with all applicable laws, rules and regulations, and in a condition reasonably suitable for TPO's intended use of the Excursion Spur.

- (b) Notwithstanding the provisions of subparagraph (a) above, any damage to or destruction of Facilities caused by a party or its employees, contractors, invitees or licensees shall be repaired or replaced at the sole cost of such party.

4.2 Remedies.

- (a) In the event that TPO, as the responsible party for maintenance, repair and replacement of any item, fails to perform its maintenance obligations under this License, and such failure results in an imminent and substantial danger to human health or safety or to property, Port may perform such obligations immediately upon notifying TPO by telephone at the number set forth below, and shall be entitled to full reimbursement from TPO within thirty (30) days after submission of a written Invoice therefor.
- (b) In the event that TPO or Port discovers any malfunction of, or damage to, Automatic Warning Devices, the discovering party shall promptly notify the other party by telephone at the telephone number set forth below, and TPO shall follow its usual response practices in the event of any malfunction of, or damage to, Automatic Warning Devices.

Port Telephone Contact: _____ Telephone No. _____

TPO Telephone Contact: _____ Telephone No. _____

- 4.3 **Grade Crossing Reconstruction.** The parties acknowledge that certain maintenance procedures may cause an increase in the surface elevation of grade crossings, and that TPO may, from time to time, need to perform additional maintenance or reconstruction work in order to prevent unsafe elevation differentials between TPO's tracks and other tracks. TPO will be responsible for any such maintenance and reconstruction work of any such grade crossings.

Section 5. Construction of Additions and Alterations.

- 5.1 Design and Construction Standards. The design and construction of any Additions and Alterations on the Excursion Spur shall comply with all applicable laws, rules and regulations. The party constructing Additions and Alterations shall follow its customary safety procedures and shall use reasonable efforts to perform work on Additions and Alterations at such times in such manner as not to materially interfere with, delay or endanger the equipment, Facilities or other facilities of the other party.
- 5.2 Design Review. In the course of designing Additions and Alterations, the constructing party shall reasonably notify and consult with the other party with

respect to the design and construction of the Additions and Alterations. If requested by the other party, the constructing party shall deliver to the other party for review and comment copies of each set of plans for Additions and Alterations during the planning and design process. The other party shall notify the constructing party in writing within fifteen (15) days after its receipt of the plans as to whether it wishes to comment on the plans. If so, then the other party shall have the right to provide the constructing party, within thirty (30) days after the other party's receipt of any such set of plans, written comments and suggestions regarding such plans. If the other party timely disapproves such plans, the parties shall meet within fifteen (15) days after disapproval to negotiate in good faith to develop plans acceptable to both. If the parties are unable to agree upon changes to the plans, either party may submit the matter to arbitration pursuant to Section 13.9. Upon completion of final plans, the constructing party shall give a copy of the final plans to the other party for review to ensure the incorporation of all agreed-upon changes to the plans.

- 5.3 Grade Separation Projects. In the event of a public grade separation project, TPO shall be solely responsible for any costs assessed thereunder. If TPO determines that a proposed grade separation project is desirable and is not feasible unless TPO contributes more than the costs that would be assessed to TPO under applicable laws, then Port agrees to consider in good faith the desirability of the proposed project and whether TPO's additional contribution should be reimbursed by Port; provided, however, that Port shall have no obligation to reimburse TPO for such additional contribution except to consider it in good faith as provided above.

Section 6. Effective Date and Term of the License.

- 6.1 The initial term of this License shall expire on the 10th anniversary of the Effective Date. So long as TPO is not in default with respect to a material term or condition of this License, TPO may elect to continue this License for one (1) additional renewal term of ten (10) years by giving Port written notice of such intent at least one (1) year prior to the expiration of the initial term. (the "Term"). Notwithstanding the foregoing, this License shall terminate sixty (60) days after written notice by Port to TPO that TPO is in default with respect to a material term or condition of this License, which default has not been cured on or prior to such 60th day. In the event the O&M Agreement is terminated under Section 12.2 thereof, TPO may, with Port's written approval and so long as TPO is not in default under this License or the O & M Agreement, continue to provide Excursion Rail Service over the Corridor and the Excursion Spur. In such event, this License will be amended to include the Corridor in the expanded Excursion Spur.
- 6.2 TPO may terminate this License by giving Port not less than sixty (60) days' notice of termination. Upon such termination, TPO shall have no further right under this License to use the Excursion Spur.

Section 7. Access.

- 7.1 Port may enter upon the Excursion Spur and/or use the Facilities located on the Excursion Spur, provided that the exercise of such rights by Port shall not materially interfere with Excursion Rail Service of TPO or its designees.
- 7.2 Reciprocal Access and Notice Rights. Subject to the procedures set forth below, and to be in compliance with all applicable rules and regulations of the Federal Railroad Administration where applicable, the parties shall have the following reciprocal access rights:
- (a) In addition to its access rights under Section 7.1, Port may enter upon the Excursion Spur for the purposes set forth in Sections 4.1 and 4.2.
 - (b) In the event of an emergency of any kind, Port may enter upon the Excursion Spur (i) to warn TPO's trains by any reasonable means, including, without limitation, use of flaggers or placement of torpedoes upon TPO's tracks, or (ii) in the event of a wreck or derailment of train or equipment, to clear the train, equipment or other debris from TPO's tracks. Port shall provide immediate notice of such events to TPO's dispatcher by radiotelephone.
 - (c) Security personnel of either party in pursuit of a criminal suspect may enter upon the Excursion Spur for the purpose of apprehending the suspect.
 - (d) TPO may enter upon the Woodinville Subdivision for the purposes set forth in Section 2 and Section 4.1.
 - (e) Except for emergencies when reasonable notice under the circumstances shall be given, Port shall give TPO at least forty-eight (48) hours prior telephonic notice of any entry onto the Excursion Spur, and shall not enter upon the Excursion Spur until a valid work permit is issued by TPO. If flagging is necessary, no entry shall be made until TPO has made arrangements for flagging.
 - (f) Any entry by Port (or its contractors, invitees or licensees) on any portion of the Excursion Spur within twenty feet (20') of the track center of the Excursion Spur shall be subject to the notice and flagging requirements under subparagraph (e) above, unless the parties agree to an alternative procedure.
 - (g) No Hazardous Materials may be brought by TPO on to the Excursion Spur.
 - (h) In the event of leakage, spillage, release, discharge or disposal of any Hazardous Materials by TPO (including, without limitation, by explosion) on the Excursion Spur, TPO shall give Port prompt notice of such event,

and at its sole cost and expense, clean or remediate the Excursion Spur and any affected portion of the Woodinville Subdivision to the standards required by law or by any governmental agency or public body having jurisdiction in the matter. Should any such leakage, spillage, release, discharge or disposal result in a fine, penalty, cost, or charge, TPO shall promptly and fully pay such fine, penalty, cost or charge. TPO shall be responsible for any such leakage, spillage, release, discharge or disposal by any third party it admits to the Excursion Spur. TPO shall indemnify, protect, defend, and hold harmless Port, its trustees, directors, officers, employees, agents, contractors, parent corporations and subsidiaries from and against any and all liabilities or claims for all loss, damage, injury, and death arising as a result of any such leakage, spillage, release, discharge or disposal. The provisions of this Section 7.2(h) are in addition to and not in limitation of the provisions of Section 8 hereof, except that the provisions of Sections 8.2(a) and (b) shall govern Losses with respect to personal injury (including bodily injury and death).

Section 8. Liability.

8.1 Assumption of Responsibility.

- (a) Except as otherwise expressly provided in this Section 8, TPO shall assume all Losses and will indemnify Port for all Losses which arise from TPO's presence on the Excursion Spur, or on Port Property without regard to fault, failure, negligence, misconduct, malfeasance, or misfeasance of TPO or its employees, agents or servants.
- (b) TPO shall indemnify, hold harmless and defend Port and County from any and all Railroad Unemployment Insurance Act (45 U.S.C.A. §§ 351 et seq.), Railroad Retirement Act (45 U.S.C. §231 et seq.), Railway Labor Act (45 U.S.C. Sec. 151 et. seq.), Federal Employers Liability Act (45 U.S.C. Sec 51 et. seq.), common carrier obligations pursuant to (49 U.S.C. Sec. 10101 et. seq.), and any Federal rail safety legislation, that arise from TPO's use of the Port Property, including the Excursion Spur.
- (c) The allocation of responsibility for Losses under this Section 8 applies only to Losses proximately caused by incidents occurring on or adjacent to the Excursion Spur or the Woodinville Subdivision, and arising out of TPO's presence on the Excursion Spur, or on the Woodinville Subdivision.
- (d) All costs and expenses incurred in connection with the investigation, adjustment and defense of any claim or suit shall be included as part of the Loss for which responsibility is assumed under the terms of this Section 8 including, without limitation, salaries or wages and associated benefits of, and out-of-pocket expenses incurred by or with respect to, employees of either part engaged directly in such work and a reasonable amount of

allocated salaries and wages of employees providing support services to the employees so engaged directly in such work.

8.2 Allocation of Responsibilities.

(a) Invitees. Losses arising out of personal injury (including bodily injury and death) to, or property damage suffered by, an invitee of either party shall be the responsibility of and borne and paid solely by TPO, except as otherwise provided in subsection (a)(i) or Section 8.3. Consultants and contractors of TPO, and any person who is on, or has property on, a train or other rolling stock operated by or for the account of TPO or admitted to operate on the Excursion Spur (other than an employee of TPO engaged in performing duties for TPO), shall rebuttably be presumed to be an invitee of TPO.

(i) If an invitee of Port is negligent and causes Losses to TPO or Port, Port will be responsible for such Losses and will indemnify TPO.

(b) Persons Other Than Invitees. Except as provided in Section 8.3, Losses arising out of personal injury (including bodily injury and death) to, or property damage directly suffered by any person who is not an invitee of Port or TPO (including, without limitation, Port, TPO, employees of Port or TPO while engaged in the performance of their duties as an employee, persons in adjacent public streets (including public sidewalks), and trespassers), shall be the responsibility of and borne and paid exclusively by TPO.

(c) Unenforceability. If any of the provisions of this Section 8.2 would otherwise be prohibited by or unenforceable under the laws of Washington State (including a determination by a final judgment of a Washington State court with jurisdiction that indemnification under the circumstances involved is against the public policy of Washington State), the indemnity provided by such provision shall be deemed to be limited to and operative only to the maximum extent permitted by law. Without limitation, if it is determined by a final judgment of Washington State court with jurisdiction that any law or public policy of Washington State prohibits the indemnification of a party for its own sole negligence in any instance covered by the provisions of this Section 8.2, those provisions shall be deemed to exclude the indemnification for such party's sole negligence but to permit full indemnification, as specified in this Section 8.2 if both parties were negligent.

8.3 Excluded Conduct. "Excluded Conduct" shall mean conduct by a supervisory level or higher employee of one of the parties, which such conduct is alleged in a properly filed complaint by a plaintiff or plaintiffs as the basis for an award of exemplary or punitive damages under Washington State law, and actually results in an award of exemplary or punitive damages by a jury after trial of the issues

and exhaustion of judicial appeals which would permit the award of exemplary or punitive damages. Neither party shall be indemnified for any Loss resulting from its own Excluded Conduct, and in any such case such party shall be responsible for and bear the Loss in proportion to its relative degree of fault and be responsible for and bear all exemplary or punitive damages, if any, resulting from its Excluded Conduct. If a part asserts that the other was guilty of Excluded Conduct and denies liability for indemnification of the other party based thereon, the party asserting such Excluded Conduct shall have the burden of proof in establishing such conduct.

8.4 Scope of Indemnification. In any case where a party is required under the provisions of this Section 8 to bear a Loss, it shall pay, satisfy and discharge such Loss and all judgments that may be rendered by reason thereof and all costs, charges and expenses incident thereto, and such party shall forever indemnify, defend and hold harmless the other party and its commissioners, trustees, directors, officers, agents, employees, shareholders, parent corporations, subsidiaries and affiliated companies, or governmental entities from, against and with respect to any and all Losses which arise out of or result from the incident giving rise thereto. TPO hereby waives any immunity TPO may have under applicable workers' compensation benefit or disability laws (including but not limited to Title 51 RCW) in connection with the foregoing indemnity. Such waiver shall not prevent TPO from asserting such immunity against any other person or entities. TPO AND PORT AGREE AND ACKNOWLEDGE THAT THIS PROVISION IS THE PRODUCT OF MUTUAL NEGOTIATION.

8.5 Procedure.

- (a) If any claim or demand (short of a lawsuit) shall be made by any person against an indemnified party under this Section 8, the indemnified party shall, within thirty (3) days after actual notice of such claim or demand cause written notice thereof to be given to the indemnifying party, provided that failure to notify the indemnifying party shall not relieve the indemnifying party from any liability which it may have to the indemnified party under this Section 8 except to the extent that the rights of the indemnifying party are in fact prejudiced by such failure. The indemnifying party shall have the right, at its sole cost and expense, to control (including the selection of counsel reasonably satisfactory to the indemnified party) or to participate in the defense of, negotiate or settle, any such claim or demand, and the parties agree to cooperate fully with each other in connection with any such defense, negotiation or settlement. In any event, the indemnified party shall not make any settlement of any claims or demands which might give rise to liability on the part of the indemnifying party under this Section 8 without either providing the indemnifying party with a full release with respect to such liability or obtaining the prior written consent of the indemnifying party, which consent shall not be unreasonably withheld, conditions or delayed.

- (b) In the event any lawsuit is commenced against either party for or on account of any Loss for which the other party may be solely or jointly liable under this License, the party sued shall give the other party timely written notice of the pendency of such action, and thereupon the party so notified may assume or join in the defense thereof. If the party so notified is liable therefor under this License, then, to the extent of such liability, such party shall defend, indemnify and save harmless the party so sued from Losses in accordance with the liability allocations set forth in this License. Neither party shall be bound by any judgment against the other party unless it shall have been so notified and shall have had reasonable opportunity to assume or join in the defense of the action. When so notified and the opportunity to assume or join in the defense of the action has been afforded, the party so notified shall, to the extent of its liability under this License, be bound by the final judgment of the court in such action.
- (c) Subject to the provisions of Section 8.5(a), on each occasion that the indemnified party is entitled to indemnification or reimbursement under this Section 8, the indemnifying party shall, at each such time, promptly pay the amount of such indemnification or reimbursement. If the indemnified party is entitled to indemnification under this Section 8 and the indemnifying party does not elect to control any legal proceeding in connection therewith, the indemnifying party shall pay to the indemnified party an amount equal to the indemnified party's reasonable legal fees and other costs and expense arising as a result of such proceeding.
- (d) Any dispute between the parties as to the right to indemnification or the amount to which it is entitled pursuant to such right with respect to any matter shall be submitted to arbitration pursuant to Section 12 of this License.

8.6 Compliance With Laws. Both parties shall comply with all applicable federal state and local laws and regulations, and all applicable rules, regulations or orders promulgated by any court, agency, municipality, board or commission. If any failure of either party to comply with such laws, regulations, rules or orders in respect to that party's use of the Excursion Spur results in any fine, penalty, cost or charge being assessed against the other party, or any Loss, the party which failed to comply agrees to reimburse promptly and indemnify, protect, defense (with counsel reasonably acceptable to the indemnified party) and hold harmless the other party for such amount.

8.7 Delay/Interruption of Service. Port shall not be held liable for any delay or interruption to the trains, locomotives or cars of TPO unless due to Excluded Conduct or except as otherwise provided for in Section 8.2(a)(i).

8.8 No Limitation on Risk Allocation. The provisions of this Section 8 shall apply notwithstanding the provisions of Section 9. In no event shall the indemnification

provisions of this Section 8 be limited to the insurance coverage required under Section 9.

- 8.9 Statutory Defenses. All statutory defense and limitations applicable to Port shall be retained by Port with respect to parties other than TPO, and none are intended to be waived with respect to parties other than TPO by Port under this License.

Section 9. Insurance.

9.1 TPO Insurance.

- (a) TPO shall obtain and maintain general liability insurance written on an "occurrence" basis, with minimum limits of [] Dollars (\$) per occurrence. Coverage for punitive damages shall be included to the extent such coverage is permitted under Washington State law. Insurance shall be placed with a company having a current Best's Insurance Guide Rating of at least A, or equivalent, and which is a carrier admitted as an insurer by the Washington State Office of the Insurance Commissioner. TPO may self-insure to an amount not to exceed [] Dollars (\$), provided that total coverage limits (self-insurance plus excess liability insurance) are at least [] Dollars (\$) per occurrence, provided, however, that this sentence shall not inure to the benefit of TPO's successors or assigns absent the reasonable written consent of Port. In the event Port does not reasonably consent to self-insurance by a successor or assign of TPO, the self-insured amount for such successor or assign shall not exceed [] Dollars (\$). The foregoing policy limits shall be adjusted by the parties every three (3) years to reflect industry standards liability claim trends and market conditions. In any event, however, the total coverage (self-insurance plus excess liability) shall not be less than [] Dollars (\$). The foregoing self-insurance limit shall not exceed ___ percent (%) of the total coverage limits (self-insurance plus excess liability insurance) maintained by TPO; provided, however, that the foregoing self-insurance limit may be increased by up to an additional ___ percent (%) of the total coverage limits if TPO provides adequate security acceptable to and approved by Port for the increased self-insurance amount over and above the initial ___ percent (%) limit.
- (b) TPO's insurance shall be primary with respect to its obligations under this License and with respect to the interests of Port and County as additional insureds. TPO shall provide Port with evidence that it has named the Port and County as additional insureds under TPO's policy. Any other insurance maintained by an additional insured shall be excess of the coverage herein defined as primary and shall not contribute with it.
- (c) TPO's insurance shall be maintained for the full term of this License and shall not be permitted to expire or be canceled or materially changed.

Each such insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or limits except after thirty (30) days' prior written notice has been given to each insured and additional insured.

- (d) Prior to the Effective Date, TPO shall provide Port with certified copies of its policies, as well as certificates of insurance and endorsements evidencing the insurance required by this Section. Certificates of insurance shall be issued on the ACORD or equivalent form.
- (e) All statutory defenses and limitations applicable to TPO shall be retained by TPO with respect to parties other than Port, and none are intended to be waived with respect to parties other than Port by TPO by the acquisition of insurance by TPO or under this License.

9.2 Failure to Maintain Insurance. A failure of TPO to maintain the insurance required by this Section 9 shall not relieve TPO of any of its liabilities or obligations under this License.

9.3 Waiver of Subrogation. Every policy of insurance required under this Section 9 to be held by TPO shall include a waiver of all rights of subrogation against Port.

Section 10. Compensation and Billing.

10.1 Invoices. Any Invoice or Invoices submitted to the parties under this License ("Invoice or Invoices") must be itemized with a detailed description of the work performed, the date of such work, the person performing such work, the time expended and the associated hourly billing rate or charge for such work, and any reimbursable expenses (including, without limitation, the cost of materials used) incurred in the performance of the work. The party requesting reimbursement shall certify that it has actually incurred the expenses set out in its Invoice. Invoices for reimbursable expenses may not exceed the out-of-pocket expense for such items. Invoices shall be paid within thirty (30) days after receipt thereof by the payor. If a party disputes any items on an Invoice, that party may deduct the disputed item from the payment, but shall not delay payment for the undisputed portions. The amounts and reasons for such deductions, if any, shall be documented to the other party within thirty (30) days after receipt of the Invoice. Once documentation is given for the disputed amounts, and accepted by the paying party, the disputed amounts shall be paid by the paying party with fifteen (15) days after receipt of the documentation. No Invoice shall be submitted later than one hundred twenty (120) days after the last day of the calendar month in which the reimbursable expense or cost covered thereby is incurred.

10.2 Audit. So much of the books, accounts and records (except for privileged or confidential records) of each party hereto as are related to the subject matter of this License shall at all reasonable times be open to inspection and audit by the authorized representatives and agents of the parties. All accounting records and

other supporting papers shall be maintained for a minimum of three (3) years from the date thereof. If work relating to this License is funded in whole or in part by a federal grant, the Comptroller General of the United States and authorized representatives of the federal agency furnishing the grant shall have the right to examine and audit such books, accounts, and records in accordance with applicable federal laws and regulations.

10.3 Supporting Documentation. Upon request, a party disputing the accuracy of any Invoice shall be entitled to receive from the invoicing party copies of such supporting documentation and/or records as are kept in the ordinary course of the invoicing party's business and which are reasonably necessary to verify the accuracy of the Invoice as rendered.

10.4 Fees. TPO shall pay Port \$ _____ in compensation for use of the Excursion Spur. This amount shall escalate _____.

Section 11. Coordination.

11.1 Coordination Committee. Port and TPO shall establish a Coordination Committee and shall invite the County to participate. The Coordination Committee shall consist of at least two (2) representatives of each party, and shall be a forum for the parties to share information, discuss matters submitted by one party to the other party for review and/or approval, and seek resolution of any issues between the parties with respect to this License. The Coordination Committee shall meet regularly (in person or telephonically) and also as necessary to address issues between the parties that require prompt resolution.

Section 12. Binding Arbitration.

12.1 Controversies Subject to Arbitration. Any and all claims, disputes or controversies between Port and TPO arising out of or concerning the interpretation, application, or implementation of this License that cannot be resolved by the parties through the Coordination Committee or by negotiations shall be submitted to binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, except as otherwise provided in this Section 12. If the AAA discontinues promulgation of the Commercial Arbitration Rules, the parties shall use the AAA's designated successor rules, and if the AAA does not designate successor rules, the parties shall agree on other rules. The judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

12.2 Selection of Arbitrator. In the event a claim, dispute or controversy arises, either party may serve a written demand for arbitration upon the other party. If the claim, dispute or controversy is not resolved by the parties within thirty (30) days after the service of the demand, the matter shall be deemed submitted to arbitration. If within forty (40) days after service of the demand, the parties have not selected a single arbitrator, each party shall within an additional ten (10) days

thereafter select an arbitrator. (In such case, if either party has not selected an arbitrator within ten (10) days after receipt of notice that the other party has selected an arbitrator, the arbitrator selected by the other party shall arbitrate the claim, dispute or controversy.) The two selected arbitrators shall select a third arbitrator. If the two arbitrators are unable to agree upon the third arbitrator within ten (10) days of the selection of the two selected arbitrators, the AAA shall select the third arbitrator. The arbitrator(s) shall be disinterested.

12.3 Expedited Arbitration Schedule.

- (a) In the event either party reasonably finds that the issues of any claim, dispute or controversy are likely to directly, imminently, materially and adversely affect human health or safety, either party may request, in the arbitration demand delivered pursuant to Section 12.1, an expedited arbitration procedure as set forth in this Section 12.3 solely for the purpose of obtaining a provisional remedy that by law or in equity could be imported in a court proceeding against a rail carrier subject to the jurisdiction of the Surface Transportation Board (e.g., temporary restraining order, preliminary injunction or injunction).
- (b) Within five (5) days after service of a demand for expedited arbitration, the parties shall agree on an arbitrator. If the parties fail to agree on an arbitrator within such five-day period, each party shall within two (2) days select an arbitrator. In such case, if either party has not selected an arbitrator within two (2) days after receipt of notice that the other party has selected an arbitrator, the arbitrator selected by the other party shall arbitrate the claim, dispute or controversy. The two selected arbitrators shall select a third arbitrator. If the two arbitrators are unable to agree upon the third arbitrator within two (2) days of the deadline for the selection of the two selected arbitrators, the AAA shall select the third arbitrator. The arbitrator(s) shall be disinterested.
- (c) The expedited arbitration hearing shall commence no later than ten (10) days after service of a demand for expedited arbitration and shall be concluded on the same day. The arbitration decision shall be rendered by the arbitrator(s) in writing on or before the day following the arbitration hearing.
- (d) Prior to rendering any decision, the arbitrator must find that the issues of the claim, dispute or controversy are likely to directly, imminently, materially and adversely affect human health or safety. In the event the arbitrator finds that the foregoing criteria have not been met, the proceeding shall be dismissed without prejudice and the parties shall proceed with the arbitration procedure and schedule set forth in Sections 12.1 and 12.1; provided, however, that no new demand for arbitration need be served by the party demanding arbitration.

- 12.4 Pending Resolution. During the pendency of such arbitration proceedings, the business and the operations to be conducted, and compensation for service under this License, to the extent that they are the subject of such controversy, shall continue to be transacted, used and paid in the manner and form existing prior to the arising of such controversy, unless the arbitrator shall make a preliminary ruling to the contrary.
- 12.5 Cost of Arbitration. Each party solely shall bear the attorneys' fees, costs and expenses incurred by it in connection with such arbitration; provided, however, the arbitrator shall have the power to award attorneys' fees and costs to either party if the arbitrator determines in its reasonable discretion that the position of the other party to the arbitration was frivolous.

Section 13. Miscellaneous Provisions.

- 13.1 Binding Successors; Assignment. This License shall be binding upon, and inure to the benefit of, the parties hereto and their respective permitted successors and assigns, except that TPO may not assign its rights and obligations under this License without the prior written consent of the Port, which consent may not be unreasonably withheld, denied, delayed or conditioned. Any assignment, encumbrance or other transfer in violation of the foregoing shall be void. Port may assign its rights and obligations under this License freely.
- 13.2 Notices. Except as otherwise expressly provided in this License, all notices and other communications under this License shall be in writing and shall be deemed to have been duly given (a) on the date of delivery, if delivered personally to the party to whom notice is given, or if made by telecopy directed to the applicable telecopy number listed below and the transmission is confirmed by mail as provided under (b) below which is deposited on the first business day after the transmission, or (c) at the earlier of actual receipt or the third business day following deposit in the United States mail, postage prepaid. Notices and other communications shall be directed to the parties at the addresses shown below. A party may change its person designated to receive notice, its telecopy number or its address from time to time by giving notice to the other party in accordance with the procedures set forth in this Section.

POS: PORT OF SEATTLE
 [ADDRESS]
 Telephone No. _____
 Telecopy: _____

TPO: [THIRD PARTY OPERATOR]
 [ADDRESS]
 Telephone No. _____
 Telecopy: _____

- 13.3 Headings. The section and subsection headings in this License are for convenience only and shall not be used in its interpretation or considered part of this License.
- 13.4 Integration, Amendment, and Waiver. This License controls all the rights and obligations of TPO and Port as to the operation of the Excursion Rail Service on the Excursion Spur. The O&M Agreement controls all the rights and obligations of TPO and Port as to the operation of freight rail service and Excursion Rail Service on the Corridor. This License is the entire agreement, and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties concerning the subject matter hereof. No supplement, modification, or amendment of this License shall be binding unless executed in writing by both of the parties. No waiver of any provision of this License shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
- 13.5 Counterparts. This License may be executed in any number of counterparts, and by different parties in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Facsimile signatures shall be deemed original for all purposes.
- 13.6 Governing Law. This License shall be construed and interpreted in accordance with the laws of Washington State.
- 13.7 Time of Essence. Time is of the essence of each and every provision of this License.
- 13.8 Not for the Benefit of Others. This License and each and every provision herein are for the exclusive benefit of the parties to this License and not for the benefit of any third party. Nothing herein shall be construed to create or increase any right in any third party to recover by way of damages or otherwise against either of the parties to this License.
- 13.9 Attorneys' Fees. If any legal action or any arbitration or other proceeding is brought for the enforcement or interpretation of this License, or because of any alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this License, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs in connection with that action or proceeding in addition to any other relief to which it or they may be entitled.

(Signatures on following page)

IN WITNESS WHEREOF, the parties hereto have executed this License effective as of the Effective Date.

PORT OF SEATTLE
a Washington Municipal Corporation

By: _____
Name: Tay Yoshitani
Title: Chief Executive Officer

[THIRD PARTY OPERATOR],
a _____ corporation

By: _____
Name: _____
Title: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On _____, 200__, before me, a Notary Public in and for said County and State, personally appeared _____, of the PORT OF SEATTLE, a Washington Municipal Corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

(SEAL)

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On _____, 200__, before me, a Notary Public in and for said County and State, personally appeared _____, of [THIRD PARTY OPERATOR], a _____ corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

(SEAL)

Exhibit A

Purchase and Sale Agreement

Exhibit B

Operations and Maintenance Agreement

Exhibit D
To Freight Easement Sale Agreement
Form of Interchange Agreement

AGREEMENT FOR INTERCHANGE AT

**BETWEEN
BNSF RAILWAY COMPANY
AND**

[_____]

THIS INTERCHANGE AGREEMENT, made and entered into this _____ day of _____, 200__, by and between BNSF RAILWAY COMPANY, a Delaware corporation (hereinafter referred to as "BNSF") and _____, a _____ corporation (hereinafter referred to as "TPO").

WITNESSETH:

WHEREAS, the parties hereto have entered into that certain Freight Easement Sale Agreement dated _____ ("Original Agreement"); and

WHEREAS, pursuant to the terms of the Original Agreement, the parties hereto now desire to develop a direct interchange between themselves and enter into an agreement covering the interchange of loaded and empty freight cars at _____ located at _____ subject to the terms and conditions set forth herein;

NOW THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1. INTERCHANGE PROVISIONS

(a) BNSF grants to TPO the right to use tracks at _____ as shall be designated, from time to time by BNSF; allowing use of such other trackage as is necessary to reach the trackage designated for interchange, said trackage hereinafter called "Interchange Track" for the sole purpose of interchanging traffic between the parties. _____ shall be designated as the point of interchange for freight cars to be interchanged between the parties. Interchange Track ("Interchange Track") shall be defined as any of the tracks in the limits of _____ that will be used to effect interchange under this Interchange Agreement. Specific track designations to be used for interchange may be changed from time to time at BNSF's local operating officers' sole discretion. Interchange shall be on a [daily] basis unless otherwise mutually agreed. BNSF shall and does hereby grant TPO the right to use trackage along said Interchange Track solely for the rights of interchange as described in this Section 1 (a). Use by TPO of BNSF's tracks under this Interchange Agreement is granted without charge.

(b) It is understood and agreed that the Interchange Track which is the property of BNSF may be used by BNSF for other purposes so long as it does not unreasonably interfere with the interchange provided for herein, and this Interchange Agreement does not vest any right of ownership to TPO in the Interchange Trackage.

(c) BNSF shall deliver cars to TPO on the Interchange Track and such cars shall be considered interchanged to TPO at the time the cars arrive at the Interchange Track, BNSF's crew uncouples from said cars and cars are preceded by or accompanied by necessary data for forwarding to insure delivery. TPO shall deliver cars to BNSF on the Interchange Track and such cars shall be considered interchanged to BNSF at the time the cars are placed on the Interchange Track and are preceded by or accompanied by necessary data for forwarding to insure delivery.

(d) Except to the extent provided herein or as may be expressly provided otherwise in the Original Agreement, the interchange, car service and car hire rules of the Association of American Railroads governing the interchange of cars between railroads shall govern the interchange of cars hereunder, as such rules may be amended from time to time.

(e) Each party undertakes and agrees, in respect to its use of the tracks referred to herein and the operation of equipment and appliances thereon and thereover, to comply with all applicable Federal and State laws or regulations, and all applicable rules, regulations and orders promulgated by any Municipality, Board or Commission with respect thereto for the protection of employees or other persons or parties. If any failure by a party to comply with such regulations, laws and rules shall result in a fine, penalty, cost or charge being assessed, imposed or charged against any other party hereto, the non-compliant party agrees promptly to reimburse and indemnify the other party for or on account of such fine, penalty, cost or charge, and further agrees in the event of any such action, upon notice thereof being given by such other party, to defend such action free of cost, charge and expense to the other party.

(f) In the event the use of the Interchange Track or other tracks shall be interrupted or traffic thereover be delayed at any time from any cause, no party shall have any claim against the other for liability under this Interchange Agreement on account of loss or damage or any kind resulting from such interruption or delay.

SECTION 2. GRANT OF LIMITED OPERATING RIGHTS

Solely for the purposes set forth in this Section 2, BNSF hereby grants to TPO the limited right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as the "Operating Rights") over the following segment(s) of BNSF's railroad _____ (hereinafter referred to as "Subject Trackage"). The parties hereto agree, subject to the terms and conditions herein provided, that TPO shall have these limited Operating Rights over the Subject Trackage for the sole purpose of TPO using same for the delivering and receiving of traffic between the parties hereto at _____.

The Subject Trackage is the property of BNSF and this Interchange Agreement does not vest any right of ownership to TPO or any other right other than for the purpose to access the Interchange Track(s) at _____ for the purposes of facilitating interchange between BNSF and TPO and for no other purposes whatsoever.

TPO shall enter upon the Subject Trackage in coordination with BNSF operating personnel, and its entry upon and use of the Subject Trackage is subject to TPO's acceptance of the condition of the trackage AS IS WHERE IS and with all faults. TPO shall release, indemnify, defend and hold harmless, BNSF, its officers, shareholders, employees, agents, contractors, and representatives for any liabilities, costs, expenses or damages arising out of or related to TPO's use of the Subject Trackage.

Solely for the purposes set forth in this Section 2, TPO grants to BNSF the limited right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as the "BNSF Operating Rights") over the following segment(s) of TPO's railroad _____ (hereinafter referred to as "BNSF Subject Trackage"). The parties hereto agree, subject to the terms and conditions herein provided, that BNSF shall have these limited BNSF Operating Rights over the BNSF Subject Trackage for the sole purpose of BNSF using same for the delivering and receiving of traffic between the parties hereto at _____.

The BNSF Subject Trackage is the property of TPO and/or Port of Seattle and this Interchange Agreement does not vest any right of ownership to BNSF or any other right other than for the purpose to access the Interchange Track(s) at _____ for the purposes of facilitating interchange between BNSF and TPO and for no other purposes whatsoever.

BNSF shall enter upon the BNSF Subject Trackage in coordination with TPO operating personnel, and its entry upon and use of the BNSF Subject Trackage is subject to BNSF's acceptance of the condition of the trackage AS IS WHERE IS and with all faults. BNSF shall release, indemnify, defend and hold harmless, TPO and the Port of Seattle, and their respective officers, shareholders, employees, agents, contractors, and representatives for any liabilities, costs, expenses or damages arising out of or related to BNSF's use of the TPO Subject Trackage. BNSF acknowledges and agrees that Port of Seattle is a third party beneficiary of the provisions of this paragraph.

SECTION 3. ADDITIONS, RETIREMENTS AND ALTERATIONS

BNSF, from time to time, shall have the right but not the obligation to make such changes in, additions and betterments to, or retirements from the Interchange Track(s) as shall, in its sole judgment, be necessary or desirable or as may be required by a law, rule, regulation or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become part of the Interchange Track(s) and such retirements shall be excluded from the Interchange Track(s).

SECTION 4. MAINTENANCE OF INTERCHANGE TRACK(S)

BNSF shall maintain and repair the Interchange Track(s) with its own supervision and labor. BNSF shall maintain all existing clearances at no less than those in effect on this date. TPO accepts the Interchange Track AS IS WHERE IS. BNSF does not guarantee, represent or warrant the condition of the Interchange Track(s) now or in the future or that operation thereover will not be interrupted. Furthermore, TPO shall not by reason of failure or neglect on the part of BNSF to maintain or repair the Interchange Track(s), have or make any claim or demand against BNSF for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, resulting from any such neglect or failure.

BNSF shall also perform, at the sole expense of TPO, such additional maintenance as TPO may reasonably request.

SECTION 5. MANAGEMENT AND OPERATION

(a) TPO shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other laws, regulations or rules, state or federal, respecting the operation, condition, inspection or safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars and equipment are operated over the Interchange Track(s). TPO shall defend, indemnify, protect and save BNSF harmless from all fines, penalties and liabilities imposed upon BNSF under any such laws, rules and regulations by any public authority or court having jurisdiction in the premises, to the extent such liabilities are attributable to the failure of TPO to comply with its obligations in this regard.

(b) TPO agrees that in its use of the Interchange Track(s), it will comply in all respects with the operating rules and regulations of BNSF (including, but not limited to, BNSF's weight restriction of a maximum weight of 286,000 pounds per car), and that the movement of BNSF's trains, locomotives, cars and cabooses over the Interchange Track(s) shall at all times be subject to the orders of BNSF. TPO shall defend, indemnify, protect and save BNSF harmless from all fines, penalties and liabilities imposed upon BNSF under any such laws, rules and regulations by any public authority or court having jurisdiction in the premises, to the extent such liabilities are attributable to the failure of TPO to comply with its obligation in this regard.

(c) TPO shall, at TPO's sole expense, secure and establish the appropriate frequency on BNSF's radios on BNSF's trains operating over the Interchange Track(s).

(d) TPO shall make such arrangements which may be required to have all of its employees who shall operate its trains, locomotives, cars and cabooses over the Interchange Track(s) qualified for operation thereover, and TPO shall pay to BNSF, promptly upon receipt of bills therefor, at the rate of \$100.00 for each employee who is examined by BNSF, as well as the cost of pilots furnished by BNSF, until such time as such employees are deemed by the appropriate examining officer of BNSF to be properly qualified for operation as herein contemplated. In addition, BNSF will furnish TPO with Switch Keys, Timetables, Rule Books, Rule Interpretation Books and Safety Books and TPO shall pay \$5.00 for each Switch Key and \$10.00 for each book and timetable so furnished.

(e) In the event of any investigation or hearing concerning the violation of any operating rules or practice of BNSF by TPO's employees, as the result of such investigation or hearing described above, to be in violation of BNSF's rules, regulations, orders, practices or instructions issued by Timetable or otherwise. TPO shall be notified in advance of any such investigation or hearing, and such investigation or hearing may be attended by an official designated by TPO, and any such investigation or hearing shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to TPO's employee or employees required to attend such hearings.

(f) BNSF shall have the right to exclude from the Interchange Track(s) any employee of TPO determined by

BNSF in its sole and absolute discretion, as the result of such investigation or hearing described above, to be in violation of BNSF's rules, regulations, orders, practices or instructions issued by Timetable or otherwise. TPO shall release, indemnify, defend and save harmless BNSF and its officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.

(g) If the disciplinary action is appealed by the employee of TPO to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not be barred from service on the Interchange Track(s) by reason of such occurrence (unless an arbitration concerning such matter is held pursuant to this Interchange Agreement and this arbitration upholds BNSF's continued exclusion of such employee).

(h) It is understood that the trains, locomotives, cars and cabooses of TPO and BNSF and any other present or future user of the Interchange Track(s) or any portion thereof shall be operated without prejudice or partiality to any party and consistent with industry custom and practice. Decisions as to terminal departure times, priorities for meeting and passing trains destination terminal receiving times, en-route delays for track maintenance and the scheduling of maintenance windows shall be made on a non-discriminatory basis. When practicable, TPO shall be given substantially the same advance notice of maintenance plans and schedules as is provided to BNSF's transportation personnel.

(i) If it becomes necessary to make repairs to TPO's equipment, or to adjust or transfer the lading of crippled or defective cars in order to move them, such work shall be done by BNSF, with costs thereof to be borne by TPO.

SECTION 6. CLEARING OF WRECKS

Whenever TPO's use of the Interchange Track(s) requires rerailling, wrecking service or wrecking train service, BNSF shall perform such service as BNSF deems appropriate, including the repair and restoration of roadbed, track and structures. The cost and expense thereof, including without limitation loss of, damage to and destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be apportioned in accordance with the provisions of Section 7 hereof. All locomotives, cars and cabooses and salvage from the same so picked up and removed which are owned by or under the management and control of or used by TPO at the time of such wreck shall be promptly picked up by TPO or delivered to TPO and all cost and expense therefor shall be in accordance with the provisions of Section 7 hereof.

SECTION 7. LIABILITY

The responsibility of the parties hereto as between themselves for loss of, damage to, or destruction of any property whatsoever or injury to or death of any person or persons whomsoever, resulting from, arising out of, incidental to, or occurring in connection with the Operating Rights or the interchange operations set forth in this Interchange Agreement shall be determined as follows:

(a) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars or equipment of, or in the account of, TPO being involved, without the trains, locomotives, cars, or equipment of, or in the account of, BNSF being involved, TPO shall assume all liability therefor and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Section 6 hereof, and shall forever protect, defend, indemnify, and save harmless BNSF and its directors, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of BNSF or its directors, officers, agents or employees.

(b) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, BNSF being involved, without the trains, locomotives, cars, or equipment of, or in the account of, TPO being involved, BNSF shall assume all liability therefor and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Section 6 hereof, and shall forever protect, defend, indemnify, and save harmless TPO and its directors, officers, agents, and employees

from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of TPO or its directors, officers, agents, or employees.

(c) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, both BNSF and TPO being involved, BNSF and TPO shall separately assume and bear all liability, cost, and expense for loss of and damage to said trains, locomotives, cars (including without limitation lading), and equipment operated by each of them and for injury to and death of each of their directors, officers, agents, and employees, and persons in each of their care and custody (without regard to which party was negligent or at fault), and BNSF and TPO further agree that all liability, cost, and expense for injury to and death of any other person or persons whomsoever, for loss of, damage to, or destruction of all other property (including without limitation the Interchange Track(s)) and for any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, so occurring shall be borne equally by BNSF and TPO, including without limitation all cost and expense referred to in Section 6 hereof (without regard to which party was negligent or at fault) subject to reduction for any amount recovered from another carrier using the Interchange Trackage or from a third party. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Interchange Agreement and its directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it.

(d) Notwithstanding the foregoing, the allocation of liability provided for herein shall not apply to punitive or exemplary damages, and neither party hereto shall be liable for or indemnify the other party against any punitive or exemplary damages resulting from the acts or omissions of the other party or its employees, officers, agents, invitees or contractors.

(e) For the purposes of this Section 7, the word "Equipment" shall mean and be confined to (i) trains, locomotives, cars and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Interchange Track(s), and (iii) vehicles and machinery that, at the time of an occurrence, are on the Interchange Track(s), or their rights-of-way, for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.

(f) For the purpose of this Section 7, Equipment of any third party railroad company or companies being detoured or admitted by BNSF to operate over the Interchange Track(s) and all persons other than BNSF or TPO employees engaged in moving such Equipment, shall be considered the Equipment and employees of the party hereto under whose detour agreement or other auspices such movement is being made.

(g) In every case of death or injury suffered by an employee of either BNSF or TPO, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either party under the provisions of this Interchange Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Interchange Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(h) For purposes of this Section 7, pilots furnished by BNSF to TPO pursuant to Section 5 (d) of this Interchange Agreement shall be considered as the employees under the custody and control of TPO while such employees are on duty as pilots.

SECTION 8. INSURANCE REQUIREMENTS

TPO shall, at its sole cost and expense, procure and maintain during the life of this Interchange Agreement all insurance coverage set forth below:

(a) TPO shall, at its sole cost and expense, procure and maintain during the life of this Interchange Agreement the following insurance coverage:

1. Railroad liability policy of insurance acceptable to BNSF in an amount of at least TWO MILLION DOLLARS (\$2,000,000) per occurrence, FOUR MILLION DOLLARS (\$4,000,000) in the aggregate.

- (i) Such insurance shall include coverage for:
- injury to or death of persons whomsoever, Personal Injury, Federal Employers Liability Act, property damage liability including but not limited to, damage or destruction of any and all property including public liability, bill of lading and foreign line rolling stock;
 - seepage and pollution coverage, including without limitation, coverage applicable in the event of railroad accident, derailment or overturn;
 - contractual liability; and
 - evacuation expense coverage.
- (ii) If coverage is purchased on a "claims made" basis, TPO hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this contract.
- (iii) This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
- Waiver of subrogation acceptable to BNSF
 - Additional insured endorsement in favor of BNSF and acceptable to BNSF
 - Separation of insureds
 - The policy shall be primary and non-contributing with respect to any insurance carried by BNSF.
- (iv) No other endorsements limiting coverage as respects to obligations under this Interchange Agreement or work being performed under this Interchange Agreement may be included on the policy.

2. Business Automobile Insurance.

- (i) This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:
- Bodily injury and property damage
 - Any and all vehicles owned, used or hired
- (ii) This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
- Waiver of subrogation acceptable to BNSF
 - Additional insured endorsement acceptable to BNSF
 - Separation of insureds
 - The policy shall be primary and non-contributing with respect to any insurance carried by BNSF.
-

3. If applicable, Workers Compensation and Employers Liability

- (i) This insurance shall include coverage for, but not be limited to:
- TPO's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.

- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
- ~~All such coverage shall include coverage for the Federal Employers Liability Act and include an alternate employer endorsement naming BNSF as the alternate employer with coverage for the Federal Employers Liability Act. The term Alternate Employer as used herein and above is being used solely as an insurance term of art. By TPO's actions of obtaining insurance coverage as set forth above TPO is in no way intending or evidencing an alternate or dual employment relationship with BNSF. The parties agree: (1) BNSF has no right to direct or control TPO's employees with respect to the physical conduct or the performance of services; (2) BNSF does not supervise, nor does it have the right to supervise, details of TPO's employees' work or the manner in which such work is accomplished; (3) BNSF retains no control over the details of the TPO's employees' work; and (4) BNSF has no right to select, hire, train or fire TPO's employees.~~

(ii) This policy shall also contain Waiver of subrogation acceptable to BNSF which shall be indicated on the certificate of insurance:

4. All risks property insurance covering all of TPO's property including property in the care, custody or control of TPO. Coverage shall include the following:

- Issued on a replacement cost basis
- Shall provide that in respect of the interest of BNSF the insurance shall not be invalidated by any action or inaction of TPO or any other person and shall insure the respective interests of BNSF as they appear, regardless of any breach or violation of any warranty, declaration or condition contained in such policies by TPO or any other person.
- Include a standard loss payable endorsement naming BNSF as the loss payee as its interests may appear
- Include a waiver of subrogation in favor of BNSF.

Other Requirements:

(b) Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

(c) TPO agrees to waive its right of recovery against BNSF for all claims and suits against BNSF. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against BNSF for all claims and suits. TPO further waives its right of recovery, and its insurers also waive their right of subrogation against BNSF for loss of its owned or leased property or property under TPO's care, custody or control.

(d) Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

~~(e) TPO is not allowed to self-insure without the prior written consent of BNSF. If granted by BNSF, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by TPO in lieu of insurance. Any and all BNSF liabilities that would otherwise, in accordance with the provisions of this Interchange Agreement, be covered by TPO's insurance will be covered as if TPO elected not to include a deductible, self-insured retention or other financial responsibility for claims.~~

(f) Prior to commencing the Work, TPO shall furnish to BNSF an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage, endorsements, and amendments.

(g) The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify BNSF in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance.

(h) Any insurance policy shall be written by a reputable insurance company acceptable to BNSF or ~~with a current Best's Guide Rating of A and Class VII or better, and authorized to do business in the state(s) in~~ which the service is to be provided.

(i) TPO represents that this Interchange Agreement has been thoroughly reviewed by TPO's insurance agent(s)/broker(s), who have been instructed by TPO to procure the insurance coverage required by this Interchange Agreement. Not more frequently than once every five years, BNSF may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

SECTION 9. INVESTIGATION

(a) Each party will investigate the injuries, property damage and losses sustained by its own employees and persons in its care or custody and adjust or defend any claims by such employees or persons other claims, injuries, property damage and losses shall be investigated, adjusted and defended by the party whose train, locomotive, car or equipment is involved in the accident from which the injury, loss or claim arises (excluding, however, freight loss and damage claims filed in accordance with Section 11706 of Title 49 of the U. S. Code).

(b) Each party will investigate, adjust and defend all freight loss and damage claims filed or demands made against it in accordance with Section 11706 of Title 49 of the U. S. Code.

(c) In the event a claim or suit is asserted against TPO or BNSF which is the other's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other party shall, upon request take over the investigation, adjustment and defense of such claim or suit.

(d) All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Interchange Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Interchange Agreement, except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either party engaged directly or indirectly in such work shall be assumed by such party.

(e) Excluding freight loss and damage claims filed in accordance with Section 11706 of Title 49 of the U. S. Code, neither party shall settle nor compromise any claim, demand, suit or cause of action for which the other party has any liability under this Interchange Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds \$25,000.00.

(f) It is understood that nothing in this Section shall modify or waive the conditions, obligations, assumptions or apportionment provided in Sections 7 and 10 hereof.

SECTION 10. LABOR CLAIMS

Each party agrees to indemnify and hold harmless the other party against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, either pursuant to employee protective conditions imposed by a governmental agency as conditions for that agency's approval of this Interchange Agreement and operations ~~hereunder, or pursuant to a collective bargaining agreement. It is also the intention of the parties that each party~~ shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees.

SECTION 11. PAYMENTS OF BILLS

(a) All payments called for under this Interchange Agreement shall be made within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The non-privileged records of each party hereto, insofar as they reasonably pertain to matters covered by this Interchange Agreement, shall be open at all reasonable times to inspection by the other party.

(b) Bills rendered pursuant to the provisions of this Interchange Agreement, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed.

SECTION 12. MISCELLANEOUS PROVISIONS

The terms of the Original Agreement shall be incorporated herein by reference and shall apply to the terms and conditions of this Interchange Agreement:

SECTION 13. DEFAULT AND TERMINATION

Notwithstanding any provision to the contrary, in the event of material default of the terms of this Interchange Agreement or the Original Agreement and failure to substantially cure such default(s) within thirty (30) days of written notice thereof, BNSF may terminate this Interchange Agreement at any time thereafter on ten (10) days' written notice to TPO.

SECTION 14. SUCCESSORS AND ASSIGNS

This Interchange Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto; provided, however, that TPO shall not assign or transfer this Interchange Agreement, or any of its rights, interests or obligations hereunder, by merger or otherwise to any person, firm, or corporation without obtaining the prior written consent of BNSF.

IN WITNESS WHEREOF, the parties hereto have caused this Interchange Agreement to be duly executed as of the day and year first above written.

BNSF RAILWAY COMPANY

By: _____

Printed: _____

Title: _____

Date: _____

By: _____

Printed: _____

Title: _____

Date: _____

Exhibit E
Form of Easement Agreement for Snohomish Bridge

[Attach Exhibit J from Woodinville North PSA]

EXHIBIT I

FORM OF BILL OF SALE

This **Bill of Sale** is entered into by and between BNSF RAILWAY COMPANY, a Delaware corporation, of 2500 Lou Menk Drive, Fort Worth, Texas 76131-2830 ("**Grantor**") and THE PORT OF SEATTLE, a municipal corporation of the State of Washington with an address _____ ("**Grantee**").

WHEREAS Grantor and Grantee have entered into that certain Purchase and Sale Agreement (Woodinville Subdivision – North Rail Line) dated as of March __, 2008 (the "**Real Estate Agreement**"), pursuant to which BNSF has agreed to convey and Port has agreed to accept certain real property in King County, Washington and Snohomish County, Washington.

WHEREAS, pursuant to the terms of the Real Estate Agreement Grantor and Grantee have executed and delivered that certain Quitclaim Deed dated of even date herewith pursuant to which Grantor has conveyed and Grantee has accepted the real property that is the subject of the Real Estate Agreement (the "**Real Property**"); and

WHEREAS, in accordance with the terms of the Real Estate Agreement Grantor and Grantee are entering into this Bill of Sale.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Grantor has quitclaimed and by these presents does hereby quitclaim unto the Grantee, without any covenants of warranty whatsoever and without recourse to the Grantor, all its right, title and interest, if any, in and to any personal property located on the Real Property together with that certain bridge structure over the Snohomish River connecting portions of the Real Property (collectively, the "**Personal Property**").

This Bill of Sale is executed by Grantor and accepted by Grantee subject to any and all restrictions, reservations, covenants, conditions, rights-of-way, easements, and encumbrances, whether of record or not, if any. The terms and conditions set forth in the above stated deed are incorporated herein by reference.

TO HAVE AND TO HOLD the Property unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this Bill of Sale to be signed by its duly authorized officers this ____ day of _____, 20__.

GRANTOR

BNSF RAILWAY COMPANY

By: _____

Name: _____

Title: _____

GRANTEE

PORT OF SEATTLE

By: _____

Name: _____

Title: _____

EXHIBIT J

FORM OF EASEMENT AGREEMENT FOR SNOHOMISH BRIDGE

THIS EASEMENT AGREEMENT FOR SNOHOMISH BRIDGE ("**Easement Agreement**") is made and entered into as of the ____ day of _____ 20__ ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**Grantor**"), and PORT OF SEATTLE, a municipal corporation of the State of Washington ("**Grantee**").

A. Grantor owns or controls certain real property situated at or near the vicinity of _____, County of Snohomish, State of Washington, between Mile Post _____, as depicted on **Exhibit "A"** attached hereto and made a part hereof (the "**Premises**").

B. Pursuant to that certain Bill of Sale dated as of the date hereof and in accordance with the terms of that certain Purchase and Sale Agreement (Woodinville Subdivision – North Rail Line) dated as of _____ the terms and conditions of which are incorporated herein by reference, Grantor has conveyed to Grantee the bridge that is partially located on the Premises.

C. Pursuant to that certain Freight Easement Sale Agreement dated as of _____, Grantor has conveyed to a third party operator and its successors and assigns ("**TPO**") a certain reserved easement for freight operations as more particularly described in **Exhibit B** attached hereto and made a part hereof (the "**Freight Easement**").

D. Grantee has entered into a certain Operations and Maintenance Agreement with the TPO dated as of _____, authorizing TPO's use of the bridge, in accordance with the terms thereof.

E. Grantor and Grantee wish to enter into this Agreement to allow said bridge to remain on the Premises, subject to the terms and conditions set forth in this Easement Agreement.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1 Granting of Easement.

1.1 Easement Purpose. The "**Easement Purpose**" shall be for the maintenance, repair, replacement of the existing bridge located on the Premises for the purpose of providing freight rail transportation and pedestrian access/trail (referred to herein as "**Improvements**") by Grantee. The Improvements shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the Plans and Specifications (as hereinafter defined) approved as set forth in **Section 2**.

1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("**Easement**") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature ~~whether or not of record, if any, relating to the Premises and subject to all Laws (as hereinafter defined), including~~ without limitation zoning laws, regulations, and ordinances of municipal and other governmental authorities, if any.

1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "**Lines**") upon, over, under or across the Premises;
- (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and

relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and

- (c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

1.4 Term of Easement. The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual.

Section 2 Plans and Specifications for Improvements. If Grantee desires to make any modifications to the Improvements within the Premises, Grantee shall submit to Grantor for its review and approval detailed information concerning the design, location and configuration of such Improvements ("**Plans and Specifications**"). No later than fifteen (15) days after Grantor's receipt of the Plans and Specifications and other information required by Grantor about the proposed location of the Improvements, Grantor will notify Grantee in writing whether Grantor has approved or disapproved the design, location and configuration of the proposed Improvements or the Plans and Specifications, and shall include one or more reasons for any disapproval. Grantor may disapprove the Plans and Specifications only where, in Grantor's reasonable sole judgment, construction, maintenance, operation or removal of all or any part of the Improvements to be constructed in accordance with the Plans and Specifications would cause Grantee to violate any of the provisions of this Easement Agreement. Following any disapproval, Grantee shall have the right to modify the location, configuration or other aspects of the Plans and Specifications of the proposed Improvements and to resubmit such modified information to Grantor for its further review and approval. Grantor may approve or disapprove of the Plans and Specifications in Grantor's sole discretion, but only where, in Grantor's reasonable sole judgment, construction, maintenance, operation or removal of all or any part of the Improvements to be constructed in accordance with the Plans and Specifications would cause Grantee to violate any of the provisions of this Easement Agreement. Any approval or consent by Grantor of any of such plans shall in no way obligate Grantor in any manner with respect to the finished product design and/or construction. Any such consent or approval shall mean only that such Plans and Specifications meet the subjective standards of Grantor, and such consent or approval by Grantor shall not be deemed to mean that such Plans and Specifications or construction are structurally sound and appropriate or that such Plans and Specifications or construction meet the applicable construction standards or codes. Any deficiency in design or construction, notwithstanding the prior approval of Grantor shall be solely the responsibility of Grantee.

Section 3 Improvements.

3.1 Construction of Improvements. If the construction or modification of any Improvements on the Premises is approved by Grantor pursuant to **Section 2** above, Grantee, and Grantee's Contractors, at Grantee's sole cost and expense, shall locate, configure, construct and maintain the Improvements: (i) in a good and workmanlike manner and in strict accordance with the Plans and Specifications approved by Grantor pursuant to the provisions of **Section 2** above, (ii) in conformance with applicable building uses and all applicable engineering, safety and other Laws, (iii) in accordance with the highest accepted industry standards of care, skill and diligence, and (iv) in such a manner as shall not adversely affect the structural integrity or maintenance of the Premises, any structures on or near the Premises, or any lateral support of structures adjacent to or in the proximity of the Premises. ~~The construction of the Improvements within the Premises shall be completed by Grantee and Grantee's Contractors within one (1) year after Grantor's approval pursuant to **Section 2**. Grantee shall provide as built drawings of all Improvements to Grantor promptly upon completion of construction and shall use its best efforts to cause such as built drawings to be electronically accessible to Grantor.~~

3.2 Maintenance of Improvements. Grantee shall at all times during the term of this Easement Agreement, at Grantee's sole cost and expense, keep and maintain the Improvements located upon the Premises in a structurally safe and sound condition, in good repair and in compliance with the Plans and Specifications and this Easement Agreement. Grantee shall also promptly repair any damage to the Premises or the Improvements caused, either in whole or in part, by Grantee Parties (as hereinafter defined). Grantee shall not cause or permit another person to cause any damage to the Premises or the Improvements, and Grantee shall be responsible for any such damage which may occur as a result of any Grantee Party's action or inaction. Grantee shall not permit the existence of any nuisance or the accumulation of junk, debris or other unsightly materials on the Premises and

shall keep the Premises in a clean and safe condition. Grantee shall, at its sole cost and expense, remove ice and snow from the Premises. Grantee shall keep the Premises free and clear from combustible materials and to ~~cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on the Premises,~~ said work of cutting and removal to be done at such times and with such frequency as to comply with local Laws and regulations and abate any and all hazard of fire. Grantor shall have no obligation whatsoever, monetary or non-monetary, to maintain the Improvements in the Premises.

3.3 No Interference. During the construction of, and any subsequent maintenance performed on, operation of, or removal of, all or any portion of the Improvements, Grantee, at Grantee's sole cost, shall perform all activities and work on or near Grantor's rail corridor or property and/or the Premises in such a manner as to preclude injury to persons or damage to the property of Grantor, or any party on or with property on Grantor's rail corridor or property, and shall ensure that there is no interference with the railroad operations or other activities of Grantor, or anyone present on Grantor's rail corridor or property with the authority or permission of Grantor. Grantee shall not disturb any improvements of Grantor or Grantor's existing lessees, licensees, license beneficiaries or lien holders, if any, or interfere with the use of such improvements. Grantor may direct one of its field engineers to observe or inspect the construction, maintenance, operation or removal of the Improvements, or any portion thereof, at any time to ensure such safety and noninterference, and to ensure that the Improvements comply with the Plans and Specifications. If any Grantee Party is ordered at any time to leave the Premises or to halt any activity on the Premises, then the party conducting that activity immediately shall cease such activity and leave the Premises, if the order was issued by Grantor's personnel to promote safety, such noninterference with other activities or property, or because the Improvements were not in compliance with this Easement Agreement. Notwithstanding the foregoing right of Grantor, Grantor has no duty or obligation to observe or inspect, or to halt work on, the Premises, it being solely Grantee's responsibility to ensure that the Improvements are constructed, maintained, operated and removed in strict accordance with all Laws, safety measures, such noninterference and the Plans and Specifications and in compliance with all terms hereof. Neither the exercise nor the failure by Grantor to exercise any right set forth in this **Section 3.3** shall alter the liability allocation set forth in this Easement Agreement.

3.4 No Alterations. Except as may be shown in the Plans and Specifications approved by Grantor for the Easement, Grantee may not make any alterations to the Premises, or permanently affix anything to the Premises, without Grantor's prior written consent. If Grantee desires to change either the location of any of the Improvements or any other aspect of the Plans and Specifications of any of the Improvements, Grantee shall submit such change and modified Plans and Specifications to Grantor in writing for its approval in the same manner as provided for in **Section 2**. Grantee shall have no right to commence any such change until after Grantee has received Grantor's approval of such change in writing.

3.5 Approvals; Compliance with Laws and Safety Rules.

- (a) Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required approvals or authorizations from applicable governmental authorities.
- (b) Prior to entering the Premises, and at all times during the term of this Easement Agreement, Grantee shall comply, and shall cause its contractor, any subcontractor, ~~any assignee, and any contractor or subcontractor of any assignee performing work on~~ the Premises or entering the Premises on behalf of Grantee (collectively, "**Grantee's Contractors**"), to comply, with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) (collectively, "**Laws**"), and all of Grantor's applicable safety rules and regulations including those found on the website noted below in **Section 3.5(c)**.
- (c) No Grantee Party may enter the Premises without first having completed Grantor's safety orientation found on the website: www.contractororientation.com.

3.6 Other Improvements. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively,

"Other Improvements"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist.

3.7 Flagging and Other Costs. Grantee shall not conduct any activities on, or be present on, any portion of the Premises or Grantor's rail corridor or property that is within twenty-five (25) feet of any active railroad track, except in the presence of a flagman. In any case where a flagman or flagmen are required in connection with the presence of individuals on Grantor's rail corridor or the Premises, Grantee shall provide as much advance notice as possible prior to any entry upon the Premises. Grantor shall arrange for the presence of the flagman or flagmen as soon as practicable after receipt of such notice from Grantee. Grantee shall reimburse to Grantor, within thirty (30) days following Grantee's receipt of each bill therefor, Grantor's costs in arranging for and providing the flagman or flagmen, which shall be billed to Grantee at Grantor's then applicable standard rate. Grantee agrees to reimburse Grantor (within thirty (30) days after receipt of a bill therefor) for all other costs and expenses incurred by Grantor in connection with Grantee's use of the Premises or the presence, construction, maintenance, and use of any Improvements situated thereon.

3.8 No Unauthorized Tests or Digging. Grantee, and Grantee's Contractors, must not conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on Grantor's rail corridor or property (whether or not such centerline is located within the Premises), except after Grantee has obtained written approval from Grantor, and then only in strict accordance with the terms and any conditions of such approval.

3.9 Boring. Prior to conducting any boring work on or near Grantor's rail corridor or property (which shall only be permitted within the Premises), Grantee and Grantee's Contractors shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, Grantee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Upon Grantee's written request, which shall be made thirty (30) business days in advance of Grantee's proposed construction or modification of any Improvements, Grantor will provide to Grantee any information that Grantor has in the possession of its Engineering Department concerning the existence and approximate location of Grantor's underground utilities and pipelines at or near the vicinity of any proposed Improvements. Prior to conducting any boring work, Grantee, and Grantee's Contractors, shall review all such material. Grantor does not warrant the accuracy or completeness of information relating to subsurface conditions and Grantee's, and Grantee's Contractors', operations at all times shall be subject to the liability provisions set forth herein. For all bores greater than 20 inches in diameter and at a depth less than ten (10) feet below the bottom of a rail, Grantee, and Grantee's Contractors, shall perform a soil investigation which must be reviewed by Grantor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Grantor's reasonable opinion that granular material is present, Grantor may select a new location for Grantee's use, or may require Grantee, and Grantee's Contractors, to furnish for Grantor's review and approval, in Grantor's sole discretion, a remedial plan to deal with the granular material. Once Grantor has approved any such remedial plan in writing, Grantee, and Grantee's Contractors, at Grantee's sole cost, shall carry out the approved plan in accordance with all terms thereof and hereof. Any open hole, boring or well constructed on the Premises by Grantee, or Grantee's Contractors, shall be safely covered and secured at all times when anyone who is not creating it, working in it or using it as permitted hereunder is present in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises shall be promptly filled in by Grantee and Grantee's Contractors to surrounding ground level with compacted bentonite grout, or otherwise secured or retired in accordance with any applicable Laws. No excavated materials may remain on Grantor's rail corridor or property for more than ten (10) days, and must be properly disposed of by Grantee and Grantee's Contractors in accordance with applicable Laws.

3.10 Drainage of Premises and Property. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Premises shall be made and maintained by Grantee in such manner, form and to the extent as will provide adequate drainage of and from the Premises and Grantor's adjoining right of way; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from the Premises and Grantor's adjoining right of way, Grantee shall construct and maintain such culverts or drains within the Premises as may be requisite to preserve such natural and pre-existing drainage. Grantee shall wherever necessary, construct extensions of existing drains, culverts or ditches through or along the Property, such extensions to be of adequate sectional dimensions to preserve flowage of drainage or other waters, and/or material and workmanship equally as good as those now existing.

3.11 Taxes. Grantee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the Improvements.

3.12 Modification or Relocation of Improvements. If at any time, Grantor desires the use of its rail corridor in such a manner that, in Grantor's reasonable opinion, would be interfered with by any portion of any Improvements, Grantee, at Grantee's sole cost, shall make such reasonable changes in the Improvements that, are necessary to avoid interference with the proposed use of the Premises while allowing the Improvements to remain in operation consistent with the Easement Purpose. Where it is practicable to do so, Grantor shall provide to Grantee at least one hundred twenty (120) days prior written notice that Improvements must be modified, and in circumstances where one hundred twenty (120) days notice is not practicable, Grantor shall provide to Grantee as much notice as it reasonably can, and in no case less than twenty (20) days prior written notice. Grantee shall ensure that all Improvements are modified as required on or before the date set forth in Grantor's written notice.

Section 4 Indemnification.

4.1 TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTEE SHALL, AND SHALL CAUSE GRANTEE'S CONTRACTORS, SUBCONTRACTORS, AGENTS, INVITEES, LESSEES, LICENSEES AND PERMITTEES TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS GRANTOR AND GRANTOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY, "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

- (i) THIS EASEMENT AGREEMENT, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
- (ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS EASEMENT AGREEMENT,**

- (iii) OCCUPATION AND USE OF THE PREMISES BY GRANTEE, OR GRANTEE'S CONTRACTORS, SUBCONTRACTORS, AGENTS, INVITEES, LESSEES, LICENSEES AND PERMITTEES, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER (INDIVIDUALLY, A "GRANTEE PARTY," AND COLLECTIVELY, "GRANTEE PARTIES"),**
- (iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY GRANTEE PARTIES, OR**
- (v) ANY ACT OR OMISSION OF GRANTEE PARTIES,**

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY

NEGLIGENCE OF ANY INDEMNITEE, WHERE ANY SUCH INDEMNITEE IS ACTING IN ITS PROPRIETARY CAPACITY AS OWNER OF THE PREMISES. THE ONLY LIABILITIES WITH RESPECT TO WHICH GRANTEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES (I) TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE OR (II) LIABILITIES THAT ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE, WHERE SUCH INDEMNITEE IS ACTING IN ITS CAPACITY AS A RAILROAD OPERATOR.

4.2 GRANTEE FURTHER AGREES THAT GRANTEE'S USE OF THE PREMISES AS CONTEMPLATED BY THIS EASEMENT AGREEMENT SHALL NOT IN ANY WAY SUBJECT GRANTOR TO CLAIMS THAT GRANTOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. OTHER THAN AS OTHERWISE PROVIDED IN THIS SECTION 4, GRANTOR SHALL NOT BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

4.3 TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTEE SHALL AND SHALL CAUSE GRANTEE'S CONTRACTORS, SUBCONTRACTORS, AGENTS, INVITEES, LESSEES, LICENSEES AND PERMITTEES TO, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF GRANTEE, OR ANY OF ITS CONTRACTORS, SUBCONTRACTORS, AGENTS, INVITEES, LESSEES, LICENSEES OR PERMITTEES, CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

4.4 Upon written notice from Grantor, Grantee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this Easement Agreement for which Grantee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Grantee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

Section 5 Insurance. Grantee shall, at its sole cost and expense, procure and maintain during the life of this Easement Agreement the following insurance coverage:

A. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 ISO occurrence or equivalent and include coverage for, but not limited to, the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The employee and workers compensation related exclusions in the above policy shall not apply with respect to claims related to railroad employees.
- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Any exclusions related to the explosion, collapse and underground hazards shall be removed.

No other endorsements limiting coverage may be included on the policy.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

C. Workers Compensation and Employers Liability Insurance. This insurance shall include coverage for, but not limited to:

- ◆ Grantee's statutory liability under the worker's compensation Laws of the state(s) in which the work is to be performed. If optional under State Law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

D. Railroad Protective Liability Insurance is required if there is any construction or demolition activities. This insurance shall name only the Railway as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to include Evacuation Expense Coverage Endorsement.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the Railway prior to performing any work or services under this Easement Agreement

If available and in lieu of providing a Railroad Protective Liability Policy, Grantee may participate in the Railway's Blanket Railroad Protective Liability Insurance Policy available to Grantee or its contractor. The limits of coverage are the same as above. The cost is \$_____.

- I elect to participate in Grantor's Blanket Policy;
- I elect not to participate in Grantor's Blanket Policy.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Grantee agrees to waive its right of recovery against Railway for all claims and suits against Railway. In addition, its insurers, through policy endorsement, waive their right of subrogation against Railway for all claims and suits. The certificate of insurance must reflect waiver of subrogation endorsement. Grantee further waives its right of recovery, and its insurers also waive their right of subrogation against Railway for loss of its owned or leased property or property under its care, custody, or control.

Grantee's insurance policies through policy endorsement, must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by Railway. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) shall include a severability of interest endorsement and shall name Railway and Staubach Global Services - RR, Inc. as an additional insured with respect to work performed under this Easement Agreement. Severability of interest and naming Railway and Staubach Global Services - RR, Inc. as an additional insured shall be indicated on the certificate of insurance.

Grantee is not allowed to self-insure without the prior written consent of Railway. If granted by Railway, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Grantee in lieu of insurance. ~~Any and all Railway liabilities that would otherwise, in accordance with the provisions of this Easement Agreement, be covered by Grantee's insurance will be covered as if Grantee elected not to include a deductible, self-insured retention, or other financial responsibility for claims.~~

Grantee maintains a self-insurance program for its liabilities, including injuries to persons and property damage. Grantee purchases excess liability insurance for claims that exceed \$ 1 million per occurrence. Grantor acknowledges that the Grantee is self-funded for all of its primary liability exposures. Grantee agrees, at its own expense, to maintain, through its self-funded program and excess insurance liability program, coverage for all of its liability exposures for this Easement Agreement. Grantee agrees to provide Grantor with at least 30 days prior written notice of any material change in Grantee's self-funded program or excess insurance program and upon request to provide Grantor with a certificate of insurance for the excess insurance which overlays Grantee's self-insurance program as adequate proof of coverage.

Should Grantee elect to cease self-insuring its primary liability exposures and purchase primary Commercial General Liability insurance, Grantee agrees to add Railroad and Staubach Global Services, Inc. as an additional insured. Grantee agrees to cover any deductibles, self-insured retentions, and other financial responsibility for claims not covered by insurance.

Prior to commencing work, Grantee shall furnish to Railway an acceptable certificate(s) of insurance showing insurance coverage in excess of the Grantee's self-insurance program and written description of Grantee's self-insurance program from an authorized representative evidencing the required coverage and endorsements. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railway in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from Railway, a certified duplicate original of any required policy shall be furnished. If Grantor accepts Grantee's program of self-insurance, then Grantee is only obligated to notify Grantor in writing, 30 days in advance of any proposed changes that would alter the self-insurance program of Grantee, including any significant financial changes to Grantee's net worth that would impact Grantee's ability to pay claims from its program of self-insurance.

Any insurance policy shall be written by a reputable insurance company acceptable to Railway or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Grantee represents that this Easement Agreement has been thoroughly reviewed by Grantee's insurance agent(s)/broker(s), who have been instructed by Grantee to procure the insurance coverage required by this Easement Agreement, ; or where applicable the excess insurance that sits above Grantee's self-insurance program. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Railway may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Grantee, Grantee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Railway as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Railway to the same extent and under the same terms and conditions as Grantee is required to release, defend and indemnify Railway herein.

Failure to provide evidence as required by this **Section 5** shall entitle, but not require, Railway to terminate the Easement immediately. Acceptance of a certificate that does not comply with this **Section 8** shall not operate as a waiver of Grantee's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Grantee shall not be deemed to release or diminish the liability of Grantee including, without limitation, liability under the indemnity

provisions of this Easement Agreement. Damages recoverable by Railway shall not be limited by the amount of the required insurance coverage.

For purposes of this **Section 5**, Railway shall mean "Burlington Northern Santa Fe Corporation", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

Section 6 **Environmental.**

6.1 **Compliance with Environmental Laws.** Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "**Environmental Laws**"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

6.2 **Notice of Release.** Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

6.3 **Preventative Measures.** Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee, of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

6.4 **Evidence of Compliance.** Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this **Section 6**. Should Grantee not comply fully with the above-stated obligations of this **Section 6**, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice of termination upon Grantee. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in **Section 7**.

Section 7 **Default and Termination.**

7.1 **Grantor's Performance Rights.** If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

7.2 **Grantor's Termination Rights.** Grantor may, at its option, terminate this Easement Agreement by serving thirty (30) days' notice in writing upon Grantee: (i) if default shall be made in any of the covenants or agreements of Grantee contained in this Easement Agreement and Grantee fails to cure such default within ninety (90) days of receiving Grantor's notice thereof, or (ii) if Grantee should abandon or cease to use the Premises for the Easement Purpose for a continuous period of one hundred and eighty (180) days without first notifying Grantor. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

7.3 Effect of Termination or Expiration. Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by **Section 8**.

7.4 Non-exclusive Remedies. The remedies set forth in this **Section 7** shall be in addition to, and not in limitation of, any other remedies that Grantor may have at law or in equity.

Section 8 Surrender of Premises. Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform the following:

- (a) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises; and
- (c) remedy any unsafe conditions on the Premises created or aggravated by Grantee.

Section 9 Liens. Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to **Section 3**. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this **Section 9** or any other section of this Easement Agreement.

Section 10 Notices. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Grantor: BNSF Railway Company
 2500 Lou Menk Dr. – AOB3
 Fort Worth, Texas 76131
 Attn: Director of Real Estate

With a copy to: BNSF Railway Company
 2500 Lou Menk Drive
 Fort Worth, Texas 76131

Attention: _____

If mailed to Grantee: Port of Seattle
 Real Estate Division
 P. O. Box 1209
 Seattle, WA 98111

If delivered to Grantee: Port of Seattle
 Real Estate Division

Section 11 **Miscellaneous.**

11.1 Whenever the term Grantee is used in this Easement Agreement, it shall be meant to include the TPO or any other entity with whom Grantee has contracted to permit use of the Improvements, whether for freight rail transportation, other transportation uses and/or pedestrian access/trail operations.

11.2 This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

11.3 If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

11.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

11.5 This Easement Agreement, the Bill of Sale and the Purchase and Sale Agreement are the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises. However, nothing herein is intended to terminate any surviving obligation of Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

11.6 Time is of the essence for the performance of this Easement Agreement.

Witness the execution of this Easement Agreement as of the date first set forth above.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

GRANTEE:

PORT OF SEATTLE, a municipal corporation of the State of
Washington

By: _____
Name: Tay Yoshitani
Title: Chief Executive Officer

ATTACH - EXHIBIT "A" AND EXHIBIT B

EXHIBIT K

FORM OF TRAIL USE AGREEMENT

THIS TRAIL USE AGREEMENT (this "Agreement") is made as of _____, 2008, by and between BNSF Railway Company, a Delaware corporation ("BNSF"), and King County, Washington, a political subdivision and body corporate and politic of the State of Washington ("County") (each, individually, a "Party" and, collectively, the "Parties").

RECITALS

WHEREAS, BNSF is the owner of that certain real estate known as the "Woodinville Subdivision", located in King County, Washington, and Snohomish County, Washington (the "Woodinville Subdivision" or "Subdivision") and conducts rail operations over the Subdivision from the City of Renton, Washington to the City of Snohomish, Washington; and

WHEREAS, the Port of Seattle ("Port") has negotiated with BNSF a purchase and sale agreement pursuant to which the Port intends to acquire the Subdivision, and the County is a party to those agreements and has contributed to the purchase price for the purpose of railbanking a portion of the Subdivision; and

WHEREAS, the Port does not desire to take on any rail operating responsibility with respect to the Subdivision, and, accordingly, BNSF will seek abandonment of its rail common carrier obligation on three segments of the Subdivision, and will transfer its rail operating responsibility on the remainder to a short line operator; and

WHEREAS, the County desires to convert three segments of the Subdivision to public trail use and potentially other public purposes, and, accordingly, the County and BNSF desire to enter into this Agreement for railbanking and for public space pursuant to and in accordance with 49 C.F.R. 1152.29 and Section 8(d) of the National Trails System Act (also known as the "Rails-to-Trails Act"), 16 U.S.C. 1247(d) (collectively, and as any of the foregoing may hereafter be amended or interpreted by binding judicial or administrative authority, the "Railbanking Legislation"); and

WHEREAS, the purpose of this Agreement is to delineate the responsibilities of each of the Parties pursuant to the Railbanking Legislation, as such responsibilities may be appropriately allocated during each phase of the development and use of a trail or other facilities by the County; and

WHEREAS, the Parties acknowledge that any railbanking, trail use or other public purpose proposed by the County, including this Agreement, will be subject to the authorization and jurisdiction of the Surface Transportation Board ("STB" or the "Board"); and

WHEREAS, the Parties acknowledge that STB authorization has been obtained upon the issuance of a Notice of Interim Trail Use ("NITU") for each segment of the Subdivision being abandoned by BNSF in accordance with the Board's rules and procedures; and

WHEREAS, the Parties acknowledge that the County has applied for, obtained and is the holder

~~of the NITUs, and, further, the County acknowledges that, pursuant to the requirements of the Railbanking Legislation, freight service may be reactivated on the three segments of the Subdivision and the County must make the three segments of the Subdivision available for such reactivation of freight service; and~~

WHEREAS, subject to the request of the Port or other requests for service reactivation, the Parties intend that the County is also obtaining the right and obligation to permit or effect reactivation, which has been approved by the STB, and pursuant thereto to permit the person requesting reactivation to take such steps as may be required to permit or effect that reactivation; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and the County's contribution to the purchase price of the Subdivision and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BNSF and the County agree as follows:

AGREEMENT

1. RAIL LINES BEING RAILBANKED

The segments of the Subdivision being railbanked are located: (a) between milepost 5 and milepost 10.6; (b) between milepost 11.25 and milepost 23.90; and (c) between milepost 0.0 and milepost 7.3 of the Redmond Spur (collectively the "Railbanked Segments"). A map of the Subdivision with an indication of the three Railbanked Segments is attached hereto as **Exhibit A**.

2. RAILBANKING OBLIGATIONS

(a) Unless otherwise defined in this Agreement, terms used herein will have the meanings defined in the Railbanking Legislation.

(b) For the purposes of this Agreement, authorization by the STB of the County's trail use will be referred to herein as the "NITUs".

(c) Pursuant to 49 C.F.R. 1152.29, the County assumes the following obligations in respect to the Railbanked Segments in accordance with the Statement of Willingness to Assume Financial Responsibility required as a condition precedent to the issuance of a NITU (the "SWAFR"), the form of which is attached to this Agreement as **Exhibit B**, and otherwise in accordance with the Railbanking Legislation: (i) all responsibility for the management of the Railbanked Segments; (ii) all responsibility for all legal liabilities arising out of or relating to the transfer, use, possession, management, operation or control of the Railbanked Segments; and (iii) all other obligations arising under the NITUs, the SWAFR, and/or the Railbanking Legislation as it applies to the Railbanked Segments.

(d) BNSF hereby transfers to the County the right and/or obligation to permit reactivation of the Railbanked Segments for rail service.

(e) The Parties agree that this Agreement will constitute prima facie evidence of a valid and continuing purpose on the part of the County to initiate interim trail use along the Railbanked Segments.

3. TERMINATION OF NITU

It is the understanding and intent of the parties that all right and/or obligation to permit reactivation of the Railbanked Segments for rail service has been transferred by BNSF to County and that BNSF no longer retains any such right or obligation. If notwithstanding this the STB receives a request from BNSF that rail service be restored on all or portion(s) of the Railbanked Segments, the County agrees that it will make its interest in the corresponding portion(s) of the Railbanked Segments available for such restoration and BNSF will compensate the County for such interests and any improvements that have been made by the County on the Railbanked Segments at their then fair market value. If (a) the County, after the date of this Agreement, has removed any railroad tracks or any railroad equipment or supporting apparatus within the portion(s) of the Railbanked Segments being reactivated pursuant to such a request by BNSF, or (b) any equipment or improvements (“Post-Railbanking Installations”) installed on the portion(s) of the Railbanked Segments being reactivated pursuant to such a request by BNSF after the date of this Agreement would prevent or otherwise impede the restoration of rail service, then BNSF will either restore any required railroad infrastructure or remove any Post-Railbanking Installations at its sole expense, and will undertake at its sole expense any work necessary to restore rail service on the portion(s) of the Railbanked Segments. In the event of a request to reactivate service on any Railbanked Segment(s) pursuant to such a request by BNSF and of the receipt of any required approvals by the STB, the County will cause the NITUs to be vacated on the subject Railbanked Segment(s), in whole or in part, and will file at the STB any required notice and/or other information as may be necessary at that time.

4. NOTICES

Except as otherwise expressly provided in this Agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Agreement shall be in writing and shall either be: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered via facsimile, with confirmation of receipt with an original deposited postage prepaid in the first class mails of the United States. Such notices shall be addressed to County at:

County
King County Office of the Executive
701 Fifth Avenue
Suite 3210
Seattle, WA 98104
ATTN: Chief of Staff

With an additional copy to:

~~Office of the King County Prosecuting Attorney~~
Civil Division
400 King County Courthouse
516 Third Avenue
Seattle, WA 98102
ATTN: Chief Civil Deputy

or to BNSF at:

BNSF Railway Company
2500 Lou Menk Drive

Fort Worth, Texas 76131

ATTN: Rick Weicher

Fax No.: 312-850-5677

With an additional copy to:

BNSF Railway Company

2500 Lou Menk Drive

Fort Worth, Texas 76131

Attn: David Rankin

Fax No.: 817-352-2398

or to such person and at such other addresses as either Party may at any time or from time to time designate for itself by notice in accordance herewith. Each such request, notice, demand, authorization, direction, consent, waiver or other document shall be deemed to be delivered to a Party when received at its address set forth or designated as above provided.

5. GENERAL TERMS

(a) Entire Agreement. This Agreement, together with any amendments or exhibits, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and may be modified only by a writing executed by the Parties.

(b) No Third Party Beneficiaries. Except as otherwise provided in this Agreement, nothing contained in this Agreement, in any provision or exhibit to this Agreement, or in any agreement or provision included in this Agreement by reference, will operate or be construed as being for the benefit of any third person.

(c) Parties. Wherever used in this Agreement, the terms "BNSF" and "County" shall be construed in the singular or plural as the context may require or admit, and shall include the permitted successors and assigns of such parties.

(d) Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any term or provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be held to be invalid or unenforceable, then such term or provision shall be ignored, and to the maximum extent possible, this Agreement shall continue in full force and effect, but without giving effect to such term or provision.

~~(e) Governing Law; Headings; Rules of Construction. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without reference to the conflicts of laws or choice of law provisions thereof. The titles of sections and subsections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein. All references herein to the singular shall include the plural, and vice versa. The Parties agree that this Agreement is the result of negotiation by the Parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed against the maker thereof.~~

(f) No Waiver. Neither the failure of either Party to exercise any power given such Party hereunder or to insist upon strict compliance by the other Party with its obligations hereunder, nor any custom or practice of the Parties at variance with the terms hereof shall constitute a waiver of either Party's

right to demand exact compliance with the terms hereof.

(g) Assignability. The County may assign this Agreement at its discretion, subject to regulatory requirements for transfer of the NITUs.

(h) Time is of the Essence. Time is of the essence in the performance of each Party's obligations under this Agreement.

(i) Incorporation of Exhibits. All exhibits attached to this Agreement will be incorporated by this reference and made a part of this Agreement for all purposes.

(j) Multiple Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

(k) Waiver of Trial by Jury, Venue and Personal Jurisdiction. BNSF AND THE COUNTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO, THIS AGREEMENT. King County Superior Court or the Federal District Court for the Western District of Washington, both in King County, Washington, shall be the sole and exclusive venues for any action or legal proceeding for an alleged breach of any provision of this Agreement or any representation, warranty, covenant or agreement herein set forth, or to enforce, protect, determine or establish any term, covenant or provision of this Agreement or the rights hereunder of either Party; and the Parties hereby agree to submit to the personal jurisdiction of said courts.

(l) Relationship. Nothing in this Agreement shall be deemed or construed by the Parties, nor by any other person, as creating the relationship of principal and agent or of partnership or of joint venture between the Parties.

(m) Authorization. BNSF represents and warrants that it has obtained all necessary corporate approvals authorizing the execution and delivery of this Agreement, and that the execution and delivery of this Agreement will not violate the articles of incorporation or bylaws of such corporation, and will not constitute a material breach of any contract by which such corporation is bound. The County represents and warrants that it has obtained all necessary legislative approvals authorizing the execution and delivery of this Agreement, and that the execution and delivery of this Agreement will not violate the County's Charter or code, and will not constitute a material breach of any contract by which the County is bound.

(n) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized signatory, effective as of the day and year first above written.

BNSF RAILWAY COMPANY

By: _____
Name:
Title:

KING COUNTY

By: _____
Name:
Title:

EXHIBIT A

To Trail Use Agreement

Form of Statement of Willingness to Assume Financial Responsibility

Statement of Willingness to Assume Financial Responsibility

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29, King County, a political subdivision and body corporate and politic of the State of Washington (Interim Trail User) is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way. The property extends from: (1) railroad milepost 5.0 on the Woodinville Subdivision near _____ (Station Name), to railroad milepost 10.60, near _____ (Station name), a distance of 5.6 miles in King County, Washington; (2) railroad milepost 11.25 on the Woodinville Subdivision near _____ (Station Name), to railroad milepost 23.8, near _____ (Station name), a distance of _____ miles in King County, Washington; and (3) railroad milepost 0.0 on the Redmond Spur near _____ (Station Name), to railroad milepost 7.3, near _____ (Station name), a distance of 7.3 miles in King County, Washington. The right-of-way described in item (1) is part of a line of railroad proposed for abandonment in STB Docket No. AB-6 (Sub-No. 464X). The right-of-way described in item (2) is part of a line of railroad proposed for abandonment in STB Docket No. AB-6 (Sub-No. 465X). The right-of-way described in item (3) is part of a line of railroad proposed for abandonment in STB Docket No. AB-6 (Sub-No. 463X).

King County acknowledges that use of the right-of-way is subject to the user continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

1997

EXHIBIT B
To Trail Use Agreement

Map of Three Railbanked Segments

Recording Requested By And
When Recorded Return to:

King County

Seattle, WA

PUBLIC MULTIPURPOSE EASEMENT

Grantor: Port of Seattle

Grantee: King County

Legal Description (abbreviated): _____, Additional legal(s) on Page _____.

Assessor's Tax Parcel ID# _____.

Reference Nos. Of Documents Released or Assigned: _____.

Project [Area]: _____.

Parcel [#]: _____.

This easement is granted this _____ day of _____, 2008, by the PORT OF SEATTLE a Washington State municipal corporation ("Grantor"), to KING COUNTY, a home rule charter county and political subdivision of the State of Washington ("Grantee").

WITNESSETH

RECITALS

1. Grantor and Grantee executed a Purchase and Sale Agreement and Donation Agreement ("Acquisition Agreements") with BNSF Railway Company ("BNSF"), by and through which BNSF agreed to convey a rail corridor with rails in place, known as the Woodinville Subdivision ("Subdivision"), to Grantor. In the Acquisition Agreements, Grantee received a right of first opportunity to purchase portions of the Subdivision from Grantor.
2. Grantee has been approved as an Interim Trail User by the Surface Transportation Board ("STB") for the purpose of "railbanking" the Property, and Grantee is accordingly subject to certain legal obligations related to the Property, which are referred to herein as the "Railbanking Obligations." The Railbanking Obligations consist of those obligations imposed through Section 8(d) of the National Trails System Act, also known as the Rails-to-Trails Act, 16 U.S.C. 1247(d), and 49 C.F.R. 1152.29 (collectively, and as any of the foregoing may hereafter be amended or interpreted by binding judicial or administrative authority, the "Railbanking Legislation"), the Notice of Interim Trail Use ("NITU") for the Property issued by the STB; the Trail Use Agreement ("TUA") entered into between BNSF and Grantee for the Property under which Grantee agrees to accept, exercise, and fulfill all

of the legal rights, duties, and obligations of an Interim Trail User, and the Statement of Willingness to Accept Financial Responsibility ("SWAFR"). Under the TUA, Grantee has also received BNSF's rail service reactivation rights and/or obligations for the Property as approved by the STB.

3. Grantor desires Grantee to be the Interim Trail User for the Property because Grantee has substantial expertise and experience in acquiring, developing, maintaining and operating public trails, and Grantee is willing to assume this responsibility so long as it has sufficient rights to the Property to serve as the Interim Trail User for purposes of the Railbanking Legislation.
4. At the closing on the Acquisition Agreements ("Closing"), Grantor and Grantee separately entered into a Master Interlocal Agreement ("Interlocal") regarding their mutual rights and obligations concerning the Property. The Interlocal is premised on the Parties' intent that the Property be used for regional recreational trail and other transportation purposes, including but not limited to rail or other transportation purposes other than interstate freight service ("Transportation Use").
5. It is anticipated that such Transportation Use will be carried out by a Third Party Operator ("TPO") with rights granted by separate agreement affecting or relating to the Property ("TPO Agreements").
6. The Parties intend that if interstate freight service should be reactivated in the future, such service should be able to be integrated with and not necessarily displace the Parties' intended regional trail and Transportation Uses.
7. The Parties agree that acquisition of the Property is of substantial benefit to the region because of its potential for use for regional recreational trail use and Transportation Use, and therefore the Interlocal includes a binding commitment to undertake a formal, multi-agency process to plan and recommend appropriate uses of the Property ("Regional Process").
8. Grantor and Grantee intend that the development of a public trail authorized by this Easement will not prevent Transportation Uses on the Property, but rather will be designed and developed to accommodate Transportation Uses.

NOW, THEREFORE, the PORT OF SEATTLE and KING COUNTY, in consideration of each other's duties and obligations under this Easement, the Acquisition Agreements, the TUA, and the Interlocal, and all of them, and in exchange for the other good and valuable consideration described therein, the sufficiency of which is hereby acknowledged, do hereby agree as follows:

TERMS AND CONDITIONS

1. Overview of Grantee's Easement Rights

Grantor grants to Grantee, its successors and assigns, a non-exclusive, perpetual easement ("Easement") over, under, through, along and across certain parcels of land situated in King County, Washington, as legally described in Exhibit "A" attached hereto and incorporated herein (the "Property") solely for the following purposes:

1.1 To develop, operate, maintain, repair and improve a public hard- and/or soft-surface regional trail for public pedestrian, bicycle, or other non-motorized uses ("Trail") over a portion of the Property to be designated by Grantor and Grantee in a future amendment to this Easement ("Trail Area"), in accordance with Section 2.1.1 below; and

1.2 To carry out Grantee's Railbanking Obligations over the full width and length of the Property.

1.3 Grantee's Easement rights shall be subject to all preexisting fully executed recorded or unrecorded easements, leases, permits, franchises, occupancy agreements, licenses or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting or relating to the Property in favor of Puget Sound Energy for facilities/utilities that are physically located on or in the Property at the time this Easement is granted ("PSE Instruments"). If any such PSE Instruments are renewed or extended, such renewal or extension shall be subject to this Easement.

1.4 Any TPO Agreement shall be subject to this Easement.

2. Grantee's Trail Use Rights

This Easement gives Grantee the right to, at Grantee's sole cost and expense, develop, operate, maintain, repair and improve a Trail upon commencement of "Trail Development". For purposes of this Easement, "Trail Development" means the initial construction or any substantial re-construction of a Trail. Trail Development shall commence on the date that Grantee specifies to Grantor, in writing, as the date for breaking ground in a particular, identified segment of the Trail Area. In the event Grantee fails to break ground within five (5) days of the specified date, Trail Development shall not be deemed to have commenced until Grantee provides a new date in writing to Grantor, *provided*, if Grantee has broken ground in a segment in accordance with the requirements of Section 2.1.6 but without having provided Grantor written notice of the date, Grantee may cure the lack of notice at any time for such segment such that Trail Development shall be deemed to have commenced for such segment on the date Grantee broke ground as determined by Grantee's construction contracts.

2.1 Scope of Trail Use Upon Commencement of Trail Development

2.1.1 Grantor and Grantee will jointly determine, after the completion of and in consideration of the recommendations of the Regional Process, the appropriate location and size of the Trail Area. Grantee may initiate negotiation of the joint determination through written notice to Grantor no sooner than the earlier of the completion of the Regional Process or one (1) year after Closing. Thereafter the Parties shall negotiate in a good faith and reasonable manner to reach agreement. The joint determination shall be made within eighteen (18) months after the initiation of negotiation. If the joint determination is not made within that time, either Party may start Dispute Resolution under Section 4.3. After the joint determination as to the location and size of the Trail Area is made, Grantor and Grantee shall amend this Easement to incorporate a legal description of the Trail Area, and if thereafter the Trail Area is moved consistent with the terms of this Easement, Grantor and Grantee will further amend this Easement to incorporate a revised legal description of the Trail Area. Grantor and Grantee agree that under generally applicable trail development standards for regional trails, the Trail Area will generally range from 10 feet in width to 30 feet in width depending on the Parties' joint determination as to the uses to be undertaken on the Property, and the physical constraints of the Property. The Parties acknowledges that the Trail Area could be wider than 10 to 30 feet in width where additional width is needed to accommodate all necessary slopes for cuts and fills for the Trail; to install abutments, pilings, or other structural elements of trail bridges or tunnels; to allow grade or other physical separation of the Trail and any active rail lines on the Property; or to install storm water drainage or detention facilities or other facilities required by a permitting agency in support of or as mitigation for the Trail. Grantor and Grantee further agree that the location and size of the Trail Area will accommodate, and not prevent, future Transportation Use of the Property.

2.1.2 At the conclusion of the earlier of the joint determination process or the eighteen (18) month period for negotiating the joint determination as set forth in Section 2.1.1 herein, and prior to commencement of Trail Development but no later than five (5) years after Closing, Grantee may at its sole discretion elect not to proceed with Trail Development and may take action to terminate this agreement and request STB approval to transfer or terminate Grantee's Interim Trail User status and Railbanking Obligations on one-hundred and twenty (120) days written notice to Grantor. In the event of such notice, Grantor may engage a substitute Interim Trail User consistent with all current and future STB requirements, and Grantee shall cooperate fully and as necessary to support such effort. If Grantee fails to exercise this option to terminate within the earlier of five (5) years after Closing or prior to Trail Development, the Grantee's option to terminate under this Section 2.1.2 is forever waived without further action by either party. Upon approval by the STB of the transfer of Grantee's Interim Trail User status and Railbanking Obligations or the termination of Grantee's Interim Trail User status and Railbanking Obligations, the Easement shall, at Grantor's written option, be assigned to a replacement Interim Trail User or terminated. Upon such assignment or termination, Grantor shall pay Grantee for its Easement rights in the amount of \$1,903,000.

2.1.3 Grantor and Grantee will jointly determine, after completion of and in consideration of the Regional Process, the appropriate timeline for the development of the Trail. Grantee may develop the Trail in phases. At the time jointly determined by Grantor and Grantee, but no later than five (5) years after Closing, Grantee shall have the right to commence Trail Development in the Trail Area as to any segment of the Trail Area for which Grantee notifies Grantor in accordance with Section 2 above.

2.1.4 Grantee shall have the right to use the Trail Area for all purposes necessary or incidental to Grantee's installation, construction, ownership, use, operation, maintenance, inspection, repair, replacement, renovation, improvement, removal and enhancement of a Trail, including, but not limited to, the rights of ingress and egress across the surface of the Property, *provided*, such ingress and egress shall not interfere with any Transportation Use on the Property, if any; the right to use motorized vehicles for the improvement, construction, alteration, repair, maintenance and operation of a Trail and for emergency purposes; the right to install, construct, operate, maintain, modify, repair, replace, improve, remove and use the Trail Area for any Trail-related purposes as Grantee may now or hereafter deem appropriate, including the addition, removal or replacement of Trail improvements at Grantee's election, either in whole or in part with either like or different improvements. All Trail-related improvements of any kind that are now or hereafter acquired, constructed or installed by Grantee, at Grantee's sole cost and expense within the Trail Area shall be and shall at all times remain the property of Grantee.

2.1.5 Grantee's rights under this Easement include the further right to temporarily stage equipment and material on the Property in and around the Trail Area as reasonably necessary to construct, operate, maintain, improve, or remove the Trail, *provided*, such temporary staging shall not interfere with any Transportation Use on the Property, if any; *and further provided*, that Grantee shall not commence such temporary staging on the Property until Grantee has prepared a restoration plan for the affected portions of the Property, the surface of which shall be restored, at Grantee's sole cost and expense, as nearly as possible to the condition in which it existed prior to construction, or to such other condition as the Grantor and Grantee may agree.

2.1.6 Grantee may construct, operate, and maintain Trail crossings over, under, or across any railroad tracks or other transportation facilities on the Property, *provided* that such crossings shall be consistent with applicable law, trail or crossing design standards and shall not interfere with any Transportation Uses on the Property, and *provided further* that Grantee shall be responsible for performing and paying for Custodial Activities as defined in this Easement as to any of the crossing improvements, but not to the railroad tracks or other transportation facilities in the area of the crossing.

2.1.7 At least ninety (90) days prior to the commencement of any Trail Development or any other activity related to Trail Development, Grantee shall provide Grantor with (i) a copy of all plans and specifications for such proposed Trail Development and (ii) a plan for coordinating the proposed Trail Development with any then current or reasonably foreseeable Transportation Uses or other uses by Grantor on the Property. Grantee shall not commence any such Trail Development construction, work or activity

unless and until Grantor agrees in writing to the proposal, which shall not be unreasonably withheld, conditioned or delayed.

2.1.8 Grantee shall, at its sole cost and expense, comply with all stormwater requirements for Trail Development to the extent any such requirements are applicable to Grantee's Trail Development, including, but not limited to: (i) Grantee shall be the sole applicant for any Washington State construction stormwater general permit for Trail Development, and shall be liable for any fines or other liability that derives from non-compliance with any such permit; (ii) Grantee shall be the applicant for any construction stormwater permits for Trail Development required by any local jurisdiction that the Property is located in, and shall be responsible for any costs associated with drainage review by any such local jurisdiction; (iii) Grantee shall perform its own drainage reviews and pay all drainage review fees required under King County Code for Trail Development for sections of the Property located within Grantee's jurisdiction; (iv) Grantee shall have all maintenance obligations for any drainage facilities it constructs for Trail Development pursuant to this Easement; and (v) Grantee shall provide Grantor with copies of all correspondence between Grantee and Washington State or any local jurisdiction related to construction stormwater permits associated with Grantee's activities under this Easement.

2.1.8.1 Grantee acknowledges and agrees that Grantor is bound under its Municipal Stormwater Permit ("Permit") and that the Property is subject to the Permit terms. Grantee agrees to cooperate with Grantor in Grantor's compliance of its obligations under the Permit including, but not limited to, Grantor's right to inspect the Property, map pipes on the Property, provide stormwater education and enforce Permit provisions.

2.2 Trail Use and Transportation Use of Property

2.2.1 Grantee understands, acknowledges, and agrees that Grantor or a TPO may undertake Transportation Use of the Property outside of the Trail Area. Outside of the Trail Area, and except as set forth in this Easement, Grantee shall not take any action on or in the Property to limit such Transportation Uses or to limit ingress and egress to any part of the Property for such Transportation Use, unless such action is specifically approved in writing by Grantor.

2.2.2 If Grantor or any TPO is required, or may desire at any time, or from time to time to engage in any Transportation Use or to add to or to improve railroad infrastructure or other Transportation Use facilities in the Trail Area, or to change the grade or location of any railroad infrastructure or other Transportation Use facilities in the Trail Area (collectively "Transportation Infrastructure Change"), and such change would unreasonably interfere with Grantee's then existing or future development of the Trail Area, including but not limited to trail crossings of Transportation Use facilities in the Property in accordance with the rights granted under this Easement, or Grantee's then existing or future development of the Trail Area would interfere with the Transportation Use related to the Transportation Infrastructure Change, then Grantor or such TPO may make such change in its facilities in the Trail Area, and Grantor and Grantee will jointly determine a new Trail Area location to replace the affected portion of the Trail Area and any Trail or Trail-related

improvements. If Grantee elects to replace any Trail or Trail-related improvements in the relocated Trail Area, such replacement shall be at Grantee's sole cost. Any such relocation shall occur within the Property and any affected Trail Area shall be relocated in a location that is consistent with the standards in Section 2.1.1 and that is consistent with Grantee's Railbanking Obligations; *provided*, that if there is no reasonably practicable alternative for such relocation within the Property consistent with Section 2.1.1, then such relocation on the Property may be to standards less than required by Section 2.1.1 so long as the Parties make a good faith effort to allow for a Trail Area no less than ten feet in width and the relocation meets the minimum standards necessary to satisfy Grantee's Railbanking Obligations. Grantee may, at its sole cost, relocate any affected Trail or Trail-related improvements off the Property. At least one hundred twenty (120) days before Grantor may take any action that would require a joint determination under this Section 2.2.2, it shall initiate negotiation of such joint determination through written notice to Grantee accompanied by a detailed description of its proposed action. Thereafter the Parties shall negotiate in a good faith and reasonable manner to reach agreement. The joint determination shall be made within one hundred twenty (120) days after the initiation of negotiation. If the joint determination is not made within that time, either Party may start Dispute Resolution under Section 4.3 to make the joint determination of the new Trail Area location and to seek all available remedies, and Grantor or TPO may make such Transportation Infrastructure Change even if the joint determination has not been made. "Reasonably practicable" as used in this Easement shall mean capable of being implemented in a reliable and effective manner including consideration of cost. When considering cost, an alternative shall not be considered reasonably practicable if the incremental costs of the alternative are substantially disproportionate to the incremental degree of benefits provided by the alternative.

2.2.3 If a portion of the Property is subject to Transportation Use when Grantee commences Trail Development within the Trail Area, then Grantee shall be responsible for installing barriers to separate such portion of the Property from the Trail Area. If Grantor or a TPO commences Transportation Use of a portion of the Property that is adjacent to a portion of Trail Area where Trail Development has commenced, then Grantor or TPO shall be responsible for installing barriers separating such portion of the Property from the Trail Area. Grantee and Grantor (or TPO if designated by Grantor) shall jointly determine the type and scope of barriers (e.g. jersey barriers, fencing, or grade separation) or other measures reasonably needed to separate the Trail Area from the Transportation Use, which barriers shall at a minimum meet any applicable regulatory standards; *provided*, that after initial barrier installation is completed, Grantee shall be responsible, at Grantee's sole cost and expense, to inspect, maintain and replace any barriers or other measures that will separate the Trail Area from the Transportation Use. Before either Party may take any action that would require a joint determination under this Section 2.2.5, it shall initiate negotiation of such joint determination through written notice to the other Party accompanied by a detailed description of the proposed barriers. Thereafter the Parties shall negotiate in a good faith and reasonable manner to reach agreement. The joint determination shall be made within ninety (90) days after the initiation of negotiation. If the joint determination is not made within that time, either Party may start Dispute Resolution under Section 4.3.

2.3. Grantor's Retained Rights to the Trail Area

2.3.1 Grantor retains the right to use and allow others to use the Trail Area in any manner that does not unreasonably interfere with Grantee's easement rights and is consistent with the terms of this Easement.

2.3.2 Grantor may make improvements in the Trail Area, including surface or subsurface improvements that are not part of, and do not relate to, Grantee's Trail (collectively, "Other Improvements"), *provided*, that Grantor shall coordinate with Grantee to (i) prevent unreasonable interference with Grantee's Easement rights, (ii) ensure reasonable integration of the Trail and Transportation Uses on the Property, (iii) prevent any health or safety risk; (iv) avoid or minimize to the greatest practicable extent any disruption to Trail uses; and (v) restore the Trail Area to a condition substantially similar to that existing prior to the alteration. Such Other Improvements may not cause the Trail Area to be relocated.

2.3.3 Grantee shall reasonably cooperate with PSE to site future PSE facilities authorized under PSE Instruments, or future fully executed instruments in which Grantor grants an interest in the Property to PSE, within the Trail Area if such facilities can reasonably collocate within the Trail Area with Grantee's Trail use.

2.3.4 At least ninety (90) days prior to the commencement of any construction or substantial reconstruction of Other Improvements by Grantor in the Trail Area, Grantor shall provide Grantee with (i) a copy of all plans and specifications for such proposed Other Improvements and (ii) a plan for coordinating the proposed Other Improvements with Grantee's use of the Trail Area. Grantor shall not commence any such construction unless and until Grantee agrees in writing to the proposal, which shall not be unreasonably withheld, conditioned or delayed.

3. Railbanking Obligations On the Property

This Easement gives Grantee the right to carry out all Railbanking Obligations, including Custodial Activities, over the full width and length of the Property.

3.1 Custodial Activities and Transportation Use

3.1.1 "Custodial Activities" are those activities that a Property owner would reasonably take to manage the Property in order to keep the Property in a physical condition suitable for its use, to maintain the physical integrity of the Property, to prevent health and safety hazards, and to manage public access in a manner appropriate for the Property's use, which may range from allowing public access to prohibiting such access, depending on circumstances. Custodial Activities include both "Routine Maintenance" and "Capital Improvements." "Routine Maintenance" includes, but is not limited to, inspecting the property, litter and garbage pick up, brush and hazardous tree trimming or removal, drainage maintenance or repair, and fencing or signage maintenance. "Capital Improvements" includes capital investments in the Property that go beyond Routine Maintenance, including, but not

limited to, the installation of fences, barriers, or signs, or the repair of a wash-out on the Property. Custodial Activities do not include any activities related to granting or managing easements, leases, permits, franchises, occupancy agreements, licenses or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting or relating to the Property, which activities shall be the sole responsibility of Grantor.

3.1.2 A Transportation Use is undertaken when Grantor or a TPO begins to use the Property for the operation of a Transportation Use; and a Transportation Use is terminated when such use ceases and (a) the Grantor or a TPO notifies Grantee in writing that such use will not resume for a period of at least ninety (90) days, or (b) when Grantee notifies Grantor in writing that it has determined, in good faith and upon reasonable investigation, that such use will not resume for a period of at least ninety (90) days. Both Grantor and Grantee have a duty to notify each other as in subsections 3.1.2(a) and (b) if they become aware that Transportation Use has terminated.

3.1.3 "Trail-Side Area" means an area between the Trail Area and the Property boundary that is not being used for Transportation Use.

3.2 Custodial Activities Performance and Cost Allocation

Custodial Activities will be performed and paid for in the following manner depending on the uses present on the Property:

3.2.1 In any portion of the Property where there Trail Development has not commenced and there is no Transportation Use, Grantee shall be responsible for performing all Custodial Activities. Grantor shall compensate Grantee for the actual cost and expense of performing Routine Maintenance. Should more than Routine Maintenance be needed to carry out Custodial Activities, Grantor and Grantee will jointly decide what Capital Improvements are needed to address any such conditions identified by Grantor or Grantee. Grantor will pay Grantee the actual cost and expense of carrying out such Capital Improvements. Grantee shall make such Capital Improvements. Either Party may initiate negotiation of a joint determination under this Section 3.2.1 through written notice to the other Party accompanied by a detailed description of the identified condition and proposed Capital Improvements. Thereafter the Parties shall negotiate in a good faith and reasonable manner to reach agreement. The joint determination shall be made within ninety (90) days after the initiation of negotiation. If the joint determination is not made within that time, either Party may start Dispute Resolution under Section 4.3. Either party may start Dispute Resolution earlier if circumstances require a shorter time to make a joint determination in order to prevent or mitigate significant damage to or loss of the Property.

3.2.2 In any portion of the Property where Trail Development has commenced but there is no Transportation Use, Grantee shall be responsible for performing and paying for all Custodial Activities.

3.2.3 In any portion of the Property where Trail Development has commenced and there is Transportation Use, Grantee shall be responsible for performing

and paying for all Custodial Activities inside the Trail Area, inside any Trail-Side Area, and inside any portion of the Property used by Grantee under Sections 2.1.4 of this Easement. Grantor or the TPO undertaking Transportation Use shall be responsible for performing and paying for all Custodial Activities on the remainder of such Property.

3.2.4 In any portion of the Property where there is Transportation Use but Trail Development has not commenced, Grantor or the TPO undertaking Transportation Use shall be responsible for performing and paying for all Custodial Activities.

3.3 Cost Allocation Framework to be Implemented by Contract

Grantor and Grantee shall separately contract to implement the cost allocation framework set forth in Section 3.2, and such contract may be revised from time to time as the Parties may agree.

3.4 Custodial Activities Following Termination of Transportation Use

If and when Transportation Use is terminated on a segment of the Property consistent with Section 3.1.2 of this Easement, then Grantee shall resume performing Custodial Activities for such segment if requested to do so by Grantor in writing or if Grantee elects to do so in written notice to Grantor.

3.5 The Property shall be subject to the Railbanking Obligations. In the event Grantee determines that it is no longer reasonably practicable to carry out Railbanking Obligation because of actions taken by Grantor or any other entity using or claiming ownership of the Property, then Grantee, after unsuccessfully engaging in the dispute resolution process pursuant to Sections 4.3.1 and 4.3.2, may notify the STB that Grantee will no longer serve as the Interim Trail User for all or a portion of the Property, and request that Grantee's Railbanking Obligations be extinguished as to the identified land pursuant to the Railbanking Legislation. If Grantee seeks extinguishment of its Railbanking Obligations as to all or a portion of the Property, Grantee shall, if requested by Grantor, cooperate to transfer, as to the identified land, its Interim Trail User status and its interest in this Easement to a replacement Interim Trail User. As to any portion of the Property for which Railbanking Obligations are terminated, Grantor or a replacement Interim Trail User may acquire from Grantee its Easement rights in exchange for an amount equal to a pro rata share of the County's payment \$1,903,000 to the Port for the Easement, plus compounded annual interest on that amount from the date of the grant of this Easement at a rate equal to three percent per annum.

3.6 The Parties recognize and agree that a portion of the Property between milepost 10.6 and 11.25 ("Wilburton Segment") has not been subject to Interim Trail Use and the Railbanking Obligations, but rather was abandoned with the approval of the STB prior to Grantor's acquisition of the Property. The Wilburton Segment is a critical link in the maintenance of the remainder of the Property in compliance with the Railbanking Obligations. Therefore, the Wilburton Segment is subject to the terms of this Easement and shall be deemed to be and treated under this Easement as if it was subject to Interim Trail

Use and the Railbanking Obligations, including specifically, but without limitation, the requirement to keep ownership of the Wilburton Segment intact and available with the remainder of the Property for reactivated interstate freight rail service.

4. Other Terms and Conditions.

4.1. Reactivation of Interstate Rail Service Under the Railbanking Legislation

4.1.1 Grantor and Grantee understand, acknowledge and agree that if the STB receives a request to use all or any portion of the Property for federally regulated interstate freight rail service, then Grantor and Grantee may each be required to, and will if so required, make available some or all of their respective interests in the Property to accommodate reactivated freight rail service.

4.1.2 Grantor and Grantee agree that if the STB receives a request for approval to use the Property for reactivated freight rail service, then Grantor and Grantee will cooperate in order to cause the party making such request, including Grantor or Grantee if either makes the request, (a) to bear all costs to restore or improve the Property for reactivated freight rail service; (b) to bear responsibility to take all steps necessary before the STB and any other regulatory agency, governmental or quasi-governmental body having jurisdiction over such work, to cause the relevant NITU to be vacated; and (c) to compensate Grantor and Grantee for the fair market value of any and all of their respective rights or interests in the Property, or in improvements thereon that may be destroyed, lost, compromised, or otherwise reduced in value or function when the Property or any portion of it is put to use for reactivated freight rail service.

4.1.3 Grantor will indemnify, hold harmless, and defend Grantee, its officers, employees, agents and contractors from all costs or liability arising out of or relating to Grantor's failure to make available its interests in the Property to accommodate reactivated freight rail service in compliance with the Railbanking Obligations.

4.1.4 Grantee will indemnify, hold harmless, and defend Grantor, its officers, employees, agents and contractors from all costs or liability arising out of or relating to Grantee's failure to make available its interests in the Property to accommodate reactivated freight rail service in compliance with the Railbanking Obligations.

4.2 Insurance, Indemnification, and Hazardous Substances

4.2.1 Grantee As Additional Insured for Transportation Use

Grantor shall require any entity utilizing the Property for Transportation Uses to name Grantee as an additional insured on any insurance policy maintained by the entity or required under the applicable TPO Agreement.

4.2.2 Indemnification by Grantor

Without in any way limiting the provisions of Section 4.2.5, and subject to the provisions of Subsection of 4.2.2.1, Grantor will indemnify, hold harmless, and defend Grantee, its officers, employees, agents and contractors from all liability arising out of or relating to the transfer, condition, use, possession, management, operation, or control of the Property, including without limitation public access, the Custodial Activities, Transportation Uses, and challenges to Grantor's authority to acquire or own the Property.

4.2.3 Indemnification by Grantee

4.2.3.1 Without in any way limiting the provisions of Section 4.2.5, Grantee will indemnify, hold harmless and defend Grantor, its officers, employees, agents and contractors from all liability arising out of or relating to Grantee's, its officers, employees, agents or contractors' negligence in the exercise of Grantee's rights and obligations under this Easement.

4.2.3.2 Grantee agrees to defend, indemnify and hold Grantor harmless from any and all claims, causes of action, regulatory demands, changes in permits and/or regulatory requirements for the Property, liabilities, fines, penalties, losses, costs and expenses (including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from stormwater discharges caused by Grantee's exercise of its Trail rights and obligations on the Property under Section 2.1 of this Easement.

4.2.4 Indemnification for Transportation Use

Grantor shall require any entity utilizing the Property for rail-based or fixed guideway Transportation Uses to indemnify, hold harmless and defend Grantee from any and all obligations imposed by Railroad Unemployment Insurance Act (45 U.S.C.A. §§ 351 et seq.), Railroad Retirement Act (45 U.S.C. §231 et seq.), Railway Labor Act (45 U.S.C. Sec. 151 et. seq.), Federal Employers Liability Act (45 U.S.C. Sec 51 et. seq.), common carrier obligations pursuant to (49 U.S.C. Sec. 10101 et. seq.), and any Federal rail safety legislation, that arise from such Transportation Use of the Property.

4.2.5 Hazardous Substances

4.2.5.1 The Parties are acquiring their respective interests in the Property through the Acquisition Agreements. Section 6 and 7 of the Acquisition Agreements spells out the obligations of BNSF, Grantor and Grantee with regard to Hazardous Substances and Environmental Laws. These Sections are also included within the Deed for the Property. Section 7(e) says that the Section 7 obligations running from BNSF to Grantor and Grantee, and the Section 7 rights running to BNSF from Grantor and Grantee, will be allocated as between Grantor and Grantee in the manner separately agreed to by Grantor and Grantee. The liability for Hazardous Substances generally and the allocation as between the Grantor and Grantee referenced in Section 7 shall be as follows:

4.2.5.2 Grantor shall be responsible for the Remediation of, and shall indemnify, defend and hold harmless Grantee, its officers, employees, agents and contractors from all liability arising out of the discovery of Hazardous Substances released on the Property before or after Closing, and the Grantor shall be entitled to all rights running from BNSF under Section 7 and shall be subject to all obligations running to BNSF under Section 7, except that:

(a) Grantee shall be responsible for the Remediation of, and shall indemnify, defend and hold harmless Grantor, its officers, employees, agents or contractors from all liability arising out of Hazardous Substances released on the Property by the Grantee, its officers, employees, agents or contractors after Closing, and

(b) Grantee shall be responsible for the Remediation of, and shall indemnify, defend and hold harmless Grantor, its officers, employees, agents and contractors, from all liability arising out of Hazardous Substances released after Closing by third parties within the Trail Area related to the development, operation, maintenance or use of the Trail; and

(c) Grantee shall be entitled to the rights running from BNSF under Section 7 and shall be subject to the obligations running to BNSF under Section 7 to the extent that the Hazardous Substances at issue are discovered within the Trail Area as a result of Grantee's Trail Development on the Property, in which case the Grantee shall be entitled to the pro rata share of any costs paid by BNSF to Remediate such Hazardous Substances within the Trail Area, and shall be responsible for carrying out and bearing the costs of Remediation of such Hazardous Substances within the Trail Area.

4.2.5.3 In the event Hazardous Substances are discovered on the Property, Grantor and Grantee shall promptly give notice to the other Party of such discovery and shall in good faith cooperate with one another to carry out the terms of this Agreement. Each Party shall have the right to enforce directly against BNSF the terms of the Acquisition Agreements relating to Hazardous Substances. To the extent that both Parties seek to enforce those terms, the Grantor and Grantee shall also in good faith cooperate with one another to do so.

4.2.5.4 In the event a dispute arises between the Grantor and Grantee as to the allocation of rights and obligations between each other relating to Section 7 of the Acquisition Agreements and Grantor and Grantee are also in a dispute with BNSF under Section 7, or in the event a dispute arises between Grantee and the Grantor only as to Hazardous Substances under this Easement, but does not involve Section 7 of the Acquisition Agreements, then in either case Grantor and Grantee as between each other shall be bound to resolve the dispute through the Arbitration provisions of Section 10.4 of the Acquisition Agreements.

4.2.6 Each party agrees that its obligations under this Section 4.2 extend to any claim, demand, and/or cause of action brought by or on behalf of any employees, or agents. For this purpose, each party, by mutual negotiation, hereby waives, with respect to the other party only, any immunity that would otherwise be available against such claims

under the Industrial Insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify the other party.

4.3 Dispute Resolution.

Any claim, dispute or other matter in question arising out of or related to this Easement, including any inability of Grantor and Grantee to make joint determinations called for by this Agreement ("Disputes") shall be exclusively subject to the following alternative dispute resolution procedure as a condition precedent to the institution of legal or equitable proceedings by either party. This requirement cannot be waived except by an explicit written waiver signed by the Parties.

4.3.1 Informal Process.

The Parties shall negotiate in good faith and use their best efforts to resolve any Disputes that may develop under this Agreement. The Port's Chief Executive Officer (or his/her designee) and the King County Executive (or his/her designee) along with any staff or technical persons any of the Parties desire, shall meet within seven (7) days after written request from either party and attempt to resolve a Dispute. The Parties may agree to extend the time provided for in this Section for an additional seven (7) days.

4.3.2 Mediation.

If a Dispute is not resolved under the procedure set forth in Section 4.3.1, or within such additional time as the Parties mutually agree, then the Parties shall endeavor to resolve a Dispute by mediation with a mediator agreed to by the Parties. A Party shall submit a request for mediation in writing to the other Party. Mediation shall proceed in advance of legal or equitable proceedings. Any contractual or statutory deadlines, including without limitation statutes of limitation, shall be tolled pending mediation for a period of 60 (sixty) days from the date of the mediation request, unless tolled for a longer period by agreement of the parties. Final authority for settlement may be subject to the approval of the Parties' respective legislative bodies.

4.3.3 Right to Litigate Contingent on Prior Effort to Mediate.

The Parties shall not commence litigation on a Dispute unless the Dispute has been properly raised and considered in the above mediation procedure. The Parties shall share equally in the costs of the mediation. Any mediation under this Agreement shall be held in King County, Washington. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

4.3.4 Immediate Action

If Grantee or Grantor reasonably determine that circumstances require immediate action to prevent or mitigate significant damage to or loss of the Property, then such Party may pursue any immediate remedy available at law or in equity without having to follow

these alternative dispute resolution procedures in this Section, and then pursue such alternative dispute resolution procedures.

4.3.5 Matters Not Subject to Alternative Dispute Resolution

This Section on alternative dispute resolution procedures shall not apply to any dispute between the Parties that also relates to a dispute with BNSF or any dispute between the Parties concerning Hazardous Substances. This Section on alternative dispute resolution shall also only apply to Disputes between the original Grantor and Grantee, and not to their respective heirs, legal representatives, successors and assigns, or TPOs, unless such parties to a Dispute agree to alternative dispute resolution, except that this Section will apply to any Disputes between Grantor and Grantee and their respective heirs, legal representatives, successors and assigns or TPOs (if applicable) related to Sections 2.1.1, 2.2.2, 2.2.3 and 3.2.1.

4.3.6 In addition to the specific remedies set forth in this Easement, and except for the limitations on remedies for Hazardous Substances set forth in Section 4.2.3 of this Easement, Grantor and Grantee, following the alternative dispute resolution procedure called for herein, shall be entitled to all remedies in law or equity. Further, should the Grantor and Grantee be unable to make any joint determination called for by this Agreement and be unable to resolve the Dispute through the alternative dispute resolution procedure called for herein, then Grantor and Grantee agree that a Court shall have the authority to decide the terms of the joint determination in question.

4.4 Litigation Regarding Title; Encroachments.

4.4.1 Grantor makes no warranty of title as to the Property or the Easement. If Grantor or Grantee receives any written document or lawsuit challenging or questioning Grantor's title to any portion of the Property, then within ten (10) business days of receipt the receiving Party shall transmit to the other Party a copy of such document. Grantor and Grantee shall in good faith cooperate and confer with one another as to the appropriate response to any such challenge in order to carry out the Parties' intended uses of the Property as expressed in the Easement.

4.4.2 Should either Party identify an unauthorized encroachment on the Property, such party shall reasonably promptly notify the other in writing, and the Parties shall in good faith cooperate and confer with one another as to the appropriate action to take with regard to the encroachment in order to carry out the Parties' intended uses of the Property as expressed in the Easement.

4.5 Taxes.

4.5.1 Grantee shall be solely responsible to pay on a current basis any taxes and assessments related to the Property, if any, including without limitation real property ad valorem taxes, special benefit assessments and other governmental impositions (collective "Taxes") that may apply to its interests in the Property, its activities upon the Property, or its

improvements to the Property, including all stormwater management fees assessed by any jurisdiction in which the Trail Area is located that are triggered by or arising from Grantee's exercise of its Trail rights and obligations on the Property under Section 2.1 of this Easement. Grantor shall be solely responsible to pay on a current basis any Taxes that may apply to its activities upon the Property, or its improvements to the Property, and to require any third party with an interest in the Property or any TPO to pay on a current basis any Taxes that may apply to their respective interests in the Property, activities upon the Property, or improvements to the Property. Nothing contained herein shall modify the Parties' respective rights to contest any such Tax, and neither party shall be deemed to be in default as long as it shall, in good faith, be contesting the validity or amount of any such Taxes.

4.6 Effect of Easement; Assignment.

This Easement creates a servitude running with the land that comprises the Property. It conveys an easement that is appurtenant to, for the benefit of, and shall run with Grantee's regional system of trails and parks and all real property and real property interests now owned or hereafter acquired for park or trail purposes by Grantee and its heirs, legal representatives, successors and assigns. The terms and conditions contained in this Easement shall also be deemed covenants running with the land that comprises the Property, and shall bind the Grantor, and its heirs, legal representatives, successors and assigns. The terms "Grantor" and "Grantee" are expressly defined to mean the Port of Seattle and King County, respectively, and their respective heirs, legal representatives, successors and assigns. Grantee may assign its rights in this Easement to another entity so long as such entity is approved by the STB as a replacement Interim Trail User and assumes all Railbanking Obligations associated therewith, and so long as such entity is approved by Grantor, which approval shall not be unreasonably withheld, conditioned or delayed.

4.7 Headings.

The headings in this Easement are for convenience only and shall not be deemed to expand, limit, or otherwise affect the substantive terms of the Easement rights and the covenant obligations that it embodies.

4.8 Neutral Authorship.

Each party has been represented by counsel in connection with the negotiation, execution and delivery of this Easement. Each of the provisions of this Easement has been reviewed and negotiated, and represents the combined work product of both parties hereto. No presumption or other rules of construction which would interpret the provisions of this Easement in favor of or against the party preparing the same will apply in connection with the construction or interpretation of any of the provisions of this Easement.

4.9 Governing Law; Jurisdiction and Venue; Attorneys' Fees.

The laws of the State of Washington shall govern the interpretation and enforcement of this Easement. The parties agree that the Superior Court in King County, Washington, shall be the sole and exclusive venue for any action or legal proceeding for an alleged breach of any of the terms and conditions set forth herein, or to enforce, protect, determine or establish any term, covenant or provision of this Easement or the rights hereunder of either party; and the parties hereby agree to submit to the personal jurisdiction of said court. If either party brings such an action or legal proceeding, the prevailing party shall be entitled to recover from the non-prevailing party, as part of such action or proceedings, or in a separate action brought for that purpose, reasonable attorneys' fees and costs, expert witness fees and court costs, including those incurred upon appeal, as may be fixed by the court.

4.10 Severability.

If any provision of this Easement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable unless striking such provision materially alters the intention of the parties. If a court finds that any provision of this Easement is invalid or unenforceable, but that by limiting such provisions it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

4.11 Non-Waiver.

The failure of either party to enforce any provision of this Easement shall not be construed as a waiver or limitation of that party's right subsequently to enforce and compel strict compliance with every provision of this Easement.

4.12 Entire Agreement; Relation to Master Agreement and Acquisition Agreements

This Easement, the Acquisition Agreements and the Interlocal set forth the entire agreement between the Parties with respect to the subject matter hereof, and are intended by the Parties to be read in harmony with one another. There are no understandings or agreements between the parties respecting the subject matter hereof, written or oral, other than as set forth in those documents. If, however, there is any conflict between this Easement and the Interlocal, or between this Easement and the Acquisition Agreements, then the terms of this Easement shall control. This Easement may be amended by the mutual written agreement of the Parties.

IN WITNESS WHEREOF, the said Grantor and Grantee have signed this _____ day of _____, 2008.

GRANTOR

PORT OF SEATTLE
Approved as to Form:

By _____
General Counsel

By _____
Tay Yoshitani
Chief Executive Officer

KING COUNTY
Approved as to Form:

By _____
Senior Deputy Prosecuting Attorney

By _____
Ron Sims
King County Executive

5/2

EXHIBIT 1

LEGAL DESCRIPTION FOR THE PROPERTY

EXHIBIT M
PROPERTY REPORTS

- (1) All Third Party Leases/Licenses (as defined in Section 1 of the Agreement)
- (2) Copies of the Right of Way and Track Maps for the Property;
- (3) Renton Traffic Data – Year 2000 through 2007 by origin and destination with lading tonnage – Excel spreadsheet
- (4) Hazardous Materials – Year 2000 through 2007 by origin and destination with lading tonnage – Excel spreadsheet
- (5) Latest Annual Bridge Inspection – Active Bridge Lists for LS 403, 404 and 405 (11/14/07) – PDF copy
- (6) All Open Non-Informational Bridge Exception Summaries (11/14/07) –PDF copy
- (7) Current Bridge Rating – Woodinville Subdivision Bridge Ratings Summary – PDF copy – created 2/14/08
- (8) BNSF Northwest Division Timetable No. 3 – In Effect April 26, 2006 7:00 AM (PCT) – PDF copy
- (9) BNSF Woodinville Subdivision Track Chart – Snohomish Jct. West, WA (MP 1.2) to Black River, WA (MP 9.5) – latest revision 8/15/06 – PDF copy and BNSF Redmond Spur Track Chart – Redmond, WA (MP 7.3) to Woodinville, WA (MP 0.1) – latest revision 8/15/06 – PDF copy
- (10) Limiting Gross Locomotive and Car Weights – Included in Woodinville Subdivision Timetable No. 3, page 67
- (11) Permanent Slow Orders – Included in Woodinville Subdivision Timetable No. 3, page 67
- (12) Rail Weight – Included in respective track chart – various pages
- (13) Geometry Car Results – Latest run (5/4/07), (5/15/07) and (5/4/07) – PDF copy
- (14) Latest Culvert Inspection Report – Active Culvert Lists (11/14/07) – PDF copy
- (15) All Open Culvert Exception Summaries (11/14/07) –PDF copy
- (16) Road Crossing Inventory – (1/9/08) – PDF copy
- (17) Rail Defects – (3/31/06) – PDF copy

16084

DONATION AGREEMENT
(Woodinville Subdivision - South Rail Line)

THIS DONATION AGREEMENT is made and entered into as of the ___ day of April, 2008, by and between BNSF RAILWAY COMPANY ("BNSF"), the PORT OF SEATTLE, a municipal corporation of the State of Washington ("Port") and KING COUNTY, a political subdivision of the State of Washington ("County").

RECITALS

A. BNSF owns certain real property (the "Woodinville Subdivision," or "Subdivision") in King County, Washington and Snohomish County, Washington, and operates over such Subdivision, a railroad line from the City of Renton, Washington to the City of Snohomish, Washington.

B. The Port desires to enter into this Agreement for the acquisition of a portion of such BNSF property and railroad facilities thereon.

C. BNSF is willing to donate the South Rail Line (defined below) portion of the Subdivision in the manner described in this Agreement.

D. The County desires to use the Railbanked Portion (defined below) for public trail and other transportation purposes following the acquisition of the Woodinville Subdivision by the Port, and, accordingly, the County and BNSF will enter into at Closing an agreement for railbanking and for public space pursuant to and in accordance with 49 C.F.R. 1152.29 and Section 8(d) of the National Trails System Act (also known as the "Rails-to-Trails Act"), 16 U.S.C. 1247(d) (collectively, and as any of the foregoing may be amended or interpreted before Closing by binding judicial or administrative authority, the "Railbanking Legislation").

E. The Port at Closing will grant the County a Public Multipurpose Easement for the County's use of the Railbanked and Wilburton Portions.

F. This Agreement concerns the South Rail Line portion of the Subdivision. The North Rail Line portion of the Subdivision, as defined with greater specificity herein, is the subject of a separate Purchase and Sale Agreement between the Port, County and BNSF, and is not the subject of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. Definitions and Exhibits.

1.1 Definitions. For purposes of this Agreement, each of the following terms, when used herein with an initial capital letter, shall have the meaning set forth below:

Agreement. This Donation Agreement.

Assignment. The Assignment and Assumption of Leases and Licenses concerning the Property substantially in the form attached hereto as Exhibit E.

Bill of Sale. The Bill of Sale substantially in the form attached hereto as Exhibit H.

Closing. The consummation of the transaction contemplated in this Agreement.

Closing Date. September 30, 2008, provided that BNSF may elect to extend the Closing Date to no later than December 29, 2008.

Contract Date. The date upon which this Agreement shall be deemed effective, which shall be the date first above written.

Deed. A quitclaim deed in the form attached as Exhibit B.

Entry Agreement. Collectively, those certain Entry Agreements entered into between BNSF and Port and BNSF and County as originally executed and hereafter amended concerning the entry by Port and County respectively onto the Woodinville Subdivision for purposes of conducting inspections of the Woodinville Subdivision.

Escrow Agent. Pacific Northwest Title Company.

Fiber Optic Agreements. Those Third Party Leases/Licenses concerning fiber optic or other telecommunication facilities located on the Property.

North Agreement. That certain agreement dated as of the date hereof between BNSF, Port and County concerning conveyance by BNSF to Port of the North Rail Line.

North Rail Line. The real and personal property comprising the Woodinville Subdivision north of milepost 23.45 in Woodinville, and the Redmond Spur. The North Rail Line is the subject of the North Agreement, is not the subject of this Agreement, and is not part of the Property as defined herein.

Other Agreements. Means the Entry Agreement, the North Agreement, the Railroad Right of Way License, the Trail Use Agreement, and the Public Multipurpose Easement.

Property. The tracts or parcels of land situated in King County, Washington, described in Exhibit A attached hereto (the "Land") that makes up the South Rail Line, together with:

All of BNSF's right, title, and interest in and to the buildings (if any) located on the Land (the "Buildings");

All of BNSF's right, title and interest in any tangible personal property and fixtures of any kind owned by BNSF and attached to or used exclusively in connection with the ownership, maintenance or operation of the Land or the Buildings, if any (the "Personalty"); and

All of BNSF's right, title and interest (subject to the provisions of the Assignment) in and to the Third Party Leases/Licenses other than the Fiber Optic Agreements as of the date of Closing.

Railbanked Portion. The South Rail Line less and except that portion between mileposts 10.6 and 11.25.

Redmond Spur. That portion of the Property extending from milepost 0.0 in Woodinville south

to milepost 7.3 in Redmond.

Review Period. The period commencing on the Contract Date and ending at 5:00 p.m. on May 15, 2008.

South Rail Line. The real and personal property comprising the Woodinville Subdivision from milepost 23.45 in Woodinville south to milepost 5.0 in Renton, and not including the Redmond Spur, subject to the provisions of Section 4.5.

Third Party Leases/Licenses. The existing leases, franchises, occupancy agreements, licenses or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting or relating to, the Property, as listed on Exhibit F attached hereto.

Trail Use Agreement. An agreement substantially in the form attached as Exhibit K to the North Agreement and to be entered into on or before Closing between BNSF and County concerning the Railbanked Portion.

Wilburton Portion. That portion of the Property extending from milepost 10.6 north to milepost 11.25.

Woodinville Subdivision. A rail corridor extending from approximately mile post 5.0 in Renton, Washington to and including the bridge structure at milepost 38.25 in Snohomish County, Washington, and including the Redmond Spur.

1.2 Exhibits. Attached hereto and forming an integral part of this Agreement are the following exhibits, all of which are incorporated into this Agreement as fully as if the contents thereof were set out in full herein at each point of reference thereto:

Exhibit A	Legal Description of the Property
Exhibit B	Form of Deed
Exhibit C	BNSF Disclosures
Exhibit D	Port and County Disclosures
Exhibit E	Form of Assignment of Third Party Leases/ Licenses
Exhibit F	List of Known Third Party Leases/ License
Exhibit G	[Intentionally Deleted]
Exhibit H	Form of Bill of Sale

Section 2. Conveyance.

BNSF agrees to donate and convey to Port, and Port agrees to accept from BNSF, the Property. The parties agree it is appropriate for BNSF to retain P G P Valuation, Inc., at BNSF's expense, for a fair market appraisal of the Property, which would be available for the use of the parties as needed. At Closing BNSF will make a charitable contribution of the value of the Property to Port, (ii) Port shall take all actions and execute all documents that may be necessary or helpful to confirm that Port is a qualified donee described in section 170(c)(1) of the Code in connection with BNSF's charitable contribution of the Property to Port, and (iii) within 30 days of Closing, based on the fair market value appraisal, BNSF shall prepare and Port shall execute the Donee Acknowledgement section of Internal Revenue Service Form, 8283, Noncash Charitable Contributions.

Section 3. Adjustments.

3.1 Third Party Leases/Licenses. BNSF shall be entitled to all sums due from any Third Party Leases/Licenses (collectively, "**Third Party Rents**") owing for the month in which the Closing occurs (regardless of when the Third Party Rents are paid) for the portion of the Property to which such Third Party Leases/Licenses relate. BNSF shall not receive a credit for any such Third Party Rents that are due but unpaid as of the Closing Date but Port shall remit to BNSF any such Third Party Rents received by it after such Closing. Port shall be entitled to any Third Party Rents owing for time periods after the month in which the Closing occurs (regardless of when the Third Party Rents are paid) for the portion of the Property to which such Third Party Leases/Licenses relate and BNSF shall pay to Port any such Third Party Rents received by BNSF, if any. Within 90 days after Closing BNSF shall pay to Port the amount, if any, of all rents under the Leases and all security deposits held by BNSF under the Leases.

3.2 [Intentionally Deleted]

3.3 Taxes and Monetary Liens.

(a) Taxes. There shall be no proration of taxes attributable to the Property. BNSF shall be liable for the payment when due of all taxes and assessments related to the Property, including without limitation real property ad valorem taxes, special benefit assessments and other governmental impositions (collectively, "**Taxes**"), for the time period up to Closing. From and after the Closing, to the extent any Taxes applicable to the Property are due and owing under applicable laws such Taxes shall be paid by Port except to the extent such taxes are paid by a Tenant pursuant to a Third Party Lease/License or applicable law. Each party shall indemnify, defend and hold the other harmless from the obligation to pay Taxes as set forth in this Section 3.3(a).

(b) Monetary Liens. Notwithstanding the provisions of Section 4, Port and County shall not be entitled to object to any monetary lien against BNSF which may appear of record as a monetary lien against the Property. BNSF shall pay such monetary liens asserted against BNSF and the Property, or if BNSF desires to contest such monetary lien, it may take reasonable and diligent steps to challenge the validity or amount of such lien and shall not be required to pay unless and until it is judicially determined to be valid. BNSF hereby indemnifies, defends and holds harmless the Port and County for all loss arising out of BNSF's failure to have a monetary lien so settled and satisfied.

(c) Notwithstanding the foregoing provisions of Section 3.3(b), neither Port nor County shall be entitled to object to the lien of any of BNSF's mortgages. Within one hundred eighty (180) days after the first meeting of BNSF's Board of Directors held after the Closing, BNSF shall deliver to Port, who shall place of record, good and sufficient releases of the liens of any mortgages on the Property securing indebtedness to which BNSF is obligated to pay and provide a copy thereof to County.

3.4 Closing Costs. BNSF shall pay one-half of any escrow or closing agent charges in connection with the Closing. Port, County and BNSF shall each pay their own attorneys' fees and costs in connection with the negotiation of this Agreement and the closing hereunder. Port shall pay the following closing costs:

- (a) the cost of recording the Deed;
- (b) the cost of any title insurance Port wishes to obtain in connection with the acquisition of the Property;
- (c) one-half of any escrow or closing agent charges in connection with the Closing;
- (d) all costs of any surveys, reports or other due diligence Port obtains or undertakes in connection with the transactions contemplated herein; and
- (e) all costs associated with any loan or other financing obtained by Port in connection with

the acquisition of the Property.

Section 4. Inspections.

4.1 Physical/Environmental Inspection.

(a) BNSF, as information only, has provided Port and County access to, or copies of, certain documents including those listed in Exhibit M attached to the North Agreement (such documents previously delivered and any additional items to be delivered as contemplated below are collectively referred to as the “**Property Reports**”). Port and County acknowledge and agree that BNSF does not represent the accuracy or completeness of the Property Reports and that Port and County will rely only on their own due diligence. If BNSF obtains knowledge (as defined in Section 5.3 of this Agreement) of any additional Property Reports in BNSF’s possession or the possession of its agents or contractors before the Closing Date that relate to items previously furnished then BNSF will promptly provide Port and County with copies of any such other Property Reports later received or obtained by BNSF relating to the Property. BNSF is not required to provide attorney-client or attorney work product materials or documents to Port or County. BNSF shall provide a description of any materials not provided to Port and County by BNSF because such materials are attorney-client or attorney work product.

(b) Subject to the terms of the Entry Agreement, BNSF will allow Port and County and their agents to have access to the Property for the purpose of conducting environmental due diligence as specified in Section 6 of this Agreement and subject to the requirements of the Entry Agreement. Port and County acknowledge that invasive testing, such as drilling or boring, is not allowed under the Entry Agreement. If Port and/or County desire to perform such testing Port and/or County shall submit a work plan to BNSF for its review and approval, which work plan must reasonably describe its intended testing. BNSF shall not unreasonably withhold, condition or delay its approval of such work plan. Upon BNSF’s written approval and provided Port and/or County as applicable has entered into BNSF’s standard license agreement for such testing, Port and/or County as applicable may then perform such testing in compliance with the terms of said license and the approved work plan.

(c) BNSF shall cooperate in good faith with Port’s and County’s due diligence activities and make appropriate employees, agents or contractors available to answer reasonable inquiries from Port and/or County concerning the condition of the Property, subject to the terms of Section 6 of this Agreement. BNSF shall cooperate in good faith to promptly provide additional information requested by the Port provided such information is not attorney-client privileged, attorney work product, confidential or proprietary, provided that sampling reports and data alone shall not be considered attorney-client privileged, attorney work product or confidential or proprietary under this Agreement.

(d) All Property Reports and other environmental studies, reports, plans, and information including, but not limited to, those listed in this Agreement, and delivered by one Party to the other shall be held in confidence by the Parties, their agents, employees, officers, directors and contractors, and will not be disclosed to any third party unless this disclosure is compelled by order of a court or is otherwise legally required to be produced, including under the Washington Public Disclosure Act, RCW ch. 42.56, or if the other Party consents in writing to the production of such materials. The Parties will inform their respective agents and contractors of the requirements of this Section 4.1(d) and shall require such agents and contractors to comply with such requirements.

4.2 Port and County Contingencies.

(a) Port and County shall have until the end of the Review Period to determine in their sole and

absolute discretion (i) whether Port has obtained any necessary authorizations from its governing body, and (ii) if there are any physical conditions including, but not limited to, environmental conditions affecting the Property that BNSF is not willing to cure as contemplated herein and that are unacceptable to the Port or County in their sole discretion. If (i) the Port does not obtain the necessary authorizations from its governing body by the end of the Review Period *or* (ii) Port or County identify an existing condition affecting the Property (an “**Identified Condition**”) that is unacceptable to the Port or County in either entity’s sole discretion and such Identified Condition is not an Identified Condition that BNSF agrees in writing to Cure (defined below) pursuant to Section 7 of this Agreement, *then* Port and County may terminate this Agreement and the North Agreement together by written notice to BNSF received no later than the expiration of the Review Period. If *either* (i) both Port and County do so timely terminate this Agreement under this Section 4.2 (a) *or* (ii) the Port does so timely terminate this Agreement under this Section 4.2(a), then subject to Section 4.2(c) this Agreement and the North Agreement shall terminate and none of the parties shall have any further obligation hereunder except those that expressly survive termination.

(b) County shall have until May 15, 2008 to obtain any necessary authorizations from its governing body with respect to the transactions contemplated herein. If County does not obtain such authorizations it may terminate its rights and obligations under this Agreement and the North Agreement together by written notice to BNSF delivered no later than May 15, 2008.

(c) Notwithstanding the provisions of Section 4.2 (a) or (b), if the County exercises its right to terminate as stated above or pursuant to Section 4.3 below and the Port does not wish to so terminate then the Port may continue this Agreement in effect so long as Port has also elected to continue the North Agreement in effect in compliance with its terms in which case Port shall have until June 15, 2008 (the “**Extension Date**”) to assume on its own or find a third party replacement for the County’s obligations contemplated herein. If the Port does not find such a replacement then Port may terminate this Agreement and the North Agreement together by written notice to BNSF received no later than the Extension Date and none of the parties shall have any further obligation hereunder except those that expressly survive termination. If this Agreement is not terminated as contemplated in Section 4.2, the parties (except County if County has terminated and Port has not) shall proceed to Closing according to the remaining provisions of this Agreement. Promptly upon BNSF’s written request, Port and County shall deliver a copy of any written inspection report, survey or test result received by Port or County. If any of such items reveal any adverse conditions for which BNSF would be responsible for under Section 7 of this Agreement, BNSF may terminate this Agreement by written notice to Port and County by the end of the Review Period in which case none of the parties shall have any further obligation hereunder except those that expressly survive termination

4.3 Title/Survey Inspection. Port and County will have until May 15, 2008 to obtain any title reports, title commitments or surveys of the Property, to examine such reports, commitments or surveys, to determine whether Port and County will be able to obtain any title insurance endorsements they desire, and to identify any title or survey concerns it may have. If Port and County are not, for any reason, satisfied with the status of any such reports, commitments or surveys then Port or County may elect, by written notice to BNSF to terminate this Agreement and the North Agreement together by written notice to BNSF delivered no later than May 15, 2008, in which case none of the parties shall have any further rights or obligations hereunder, except for those which expressly survive any such termination. If Port or County fail to so give BNSF notice of its election by such date, it shall be deemed to have elected to waive any right to object to any title exceptions or defects. Port and County shall have the right at any time prior to their respective election to terminate to waive any objections that it may have made and, thereby, to preserve this Agreement in full force and effect. Port and County shall promptly upon request deliver to BNSF a copy of any such title report, title commitment or survey obtained by Port or County.

4.4 Nature of Title. The Property shall be conveyed with no warranties of title except as stated

below and shall be subject to all matters affecting the Property whether of record or not including but not limited to (i) the lien of unpaid taxes not yet due and payable; (ii) matters which would be disclosed by a current, accurate survey of the Property; and (iii) the rights granted to third parties pursuant to any Third Party Lease/License. Port and County acknowledge and affirm that BNSF may not hold fee simple title to the Property, that BNSF's interest in all or part of the Property, if any, may rise only to the level of an easement for railroad purposes. Port and County are willing to accept the Property on this basis. BNSF does represent and warrant that BNSF's ownership interest in and to the Property, even subject to the Third Party Leases/Licenses, is sufficient to permit railroad operations on the Property, including passenger railroad operations; and to permit BNSF to convey the Property as contemplated in this Agreement and the Other Agreements. Port and County acknowledge that BNSF's predecessor in interest to the Property acquired a railroad right-of-way ownership interest in portions of the Property from the United States of America, pursuant to Section 2 of the General Right-of-Way Act of March 3, 1875, and Port and County each agrees to the conditions and limitations imposed by this General Right-of-Way Act.

4.5 Modification of Property Description. Port shall have the right to modify the southern ending point of the South Rail Line to a point chosen by Port that is between the originally contemplated ending point at milepost 5.00 in Renton to a point no further north than the northernmost boundary of the parcel on which milepost 6.5 is located. Port may exercise this right by sending written notice of its election and milepost designation to BNSF no later than June 4, 2008. If Port timely exercises such right the applicable definitions in this Agreement shall be deemed modified to reflect such ending point designated in compliance with this Section and the parties shall cooperate with each other to appropriately amend any filings with the STB contemplated herein and modify the legal description attached as Exhibit A to reflect such change.

Section 5. Representations and Warranties.

5.1 BNSF. As of the Contract Date and Closing Date, BNSF hereby represents and warrants to Port and County that the following statements are materially true except as may otherwise be disclosed on Exhibit C:

(a) BNSF is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, is authorized to do business and in good standing in the State of Washington and has full power and authority to enter into this Agreement and to fulfill its obligations hereunder.

(b) BNSF has taken all corporate action necessary to authorize the execution and delivery by BNSF of this Agreement and the other documents to be delivered by BNSF at Closing and the performance of its obligations hereunder and thereunder.

(c) This Agreement and the other documents to be delivered by BNSF at Closing have been, or before the Closing Date will have been, duly authorized and executed (and acknowledged where necessary) and delivered by BNSF, and all other necessary actions have been, or before the Closing Date will have been, taken, so that this Agreement and all documents to be executed by BNSF pursuant hereto constitute, or before the Closing Date will constitute the legally valid and binding obligations of BNSF, enforceable against BNSF in accordance with their terms, except as the enforceability of this Agreement may be subject to or limited by bankruptcy, or insolvency or other similar laws relating to or affecting the rights of contracting parties generally.

(d) The execution and performance by BNSF of this Agreement and the other documents to be delivered by BNSF at Closing do not violate or conflict with BNSF's articles of incorporation or bylaws or any law, court order, administrative agency order or regulatory agency order binding upon BNSF or any of its properties.

(e) BNSF has not received any written notice of and BNSF has no knowledge of any actual or pending litigation, proceeding or claim by any organization, person, individual or governmental agency against BNSF (i) that could materially impair BNSF's ability to perform its obligations under this Agreement, or (ii) asserting that BNSF does not have sufficient ownership interest in the Property for conducting railroad operations.

(f) BNSF has not received any written notice of and BNSF has no knowledge of any actual or pending litigation asserting through a claim of adverse possession or other prescriptive rights that BNSF does not own the Property or any portion of the Property.

(g) BNSF is not a "foreign person" as that term is defined in the Internal Revenue Code of 1986, as amended and the Regulations promulgated pursuant thereto.

(h) BNSF has not received any written notice of and BNSF has no knowledge of any written notice from any governmental authority alleging any uncured existing violation of any applicable governmental laws, statutes, ordinances, rules, codes, regulations or orders, including Environmental Laws, affecting the Property or the conduct of railroad operations on the Property.

(i) Port and County will not, as a result of the execution of this Agreement or conveyance of any of the Property be bound by any labor contracts entered into by BNSF.

(j) BNSF has no knowledge of the existence at any time, whether still occurring or not, of any of the following activities on the Property:

- (1) fueling of trains or train related equipment;
- (2) treatment of railroad ties;
- (3) creosote treating operations;
- (4) above ground or underground storage tanks;
- (5) transformers; or
- (6) repair shops.

(k) To BNSF's actual knowledge, the Property is not subject to any leases, tenancies or rights of persons in possession, franchises, occupying agreements, unrecorded easements or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting the Property (collectively, "**Third Party Rights**") other than the Third Party Leases/Licenses. However, Port and County acknowledges that BNSF does not warrant beyond its actual knowledge that there are not other Third Party Rights. To BNSF's actual knowledge: the Third Party Leases/Licenses are in full force and effect in accordance with their respective terms, BNSF has not delivered or received a written notice of default that remains uncured under any Third Party Lease/License, or any other existing lease, franchise, easement, occupancy agreement, license or other agreement demising space in, providing for the use or occupancy of, or otherwise similarly affecting or relating to, or affecting the Property, and no tenant thereunder has asserted in writing any claim that remains outstanding for offsets or credits to rent thereunder, except as disclosed in writing to Port.

(l) To BNSF's actual knowledge, the copies of the Third Party Leases/ Licenses, are true and correct copies of originals of such documentation in BNSF's possession.

5.2 Port and County. As of the Contract Date, Port and County individually hereby represent and warrant to BNSF that the following statements are materially true except as may otherwise be disclosed on

Exhibit D:

5.2.1 Port:

(a) Port is a municipal corporation of the State of Washington, duly organized, validly existing and in good standing under the laws of the State of Washington, is authorized to do business in the State of Washington, and has full power and authority to enter into this Agreement and to fulfill its obligations hereunder.

(b) Port has taken all corporate action necessary to authorize the execution and delivery by Port of this Agreement and has taken or, before the expiration of the Review Period, will have taken, all corporate action necessary to authorize the execution and delivery of the other documents to be delivered by Port at Closing and the performance of its obligations hereunder and thereunder.

(c) This Agreement and the other documents to be delivered by Port at Closing have been, or before the Closing Date will have been, duly authorized and executed (and acknowledged where necessary) and delivered by Port, and all other necessary actions have been, or before the Closing Date will have been, taken, so that this Agreement and the other documents to be delivered by Port pursuant hereto constitute, or before the Closing Date will constitute the legally valid and binding obligations of Port, enforceable against Port in accordance with their terms.

(d) The execution and performance by Port of this Agreement and the other documents to be delivered by Port at Closing do not violate or conflict with the Port's charter or code or with any law, court order, administrative agency order or regulatory agency order binding upon Port or any of its properties.

(e) Port has received no written notice of any actual or pending litigation or proceeding by any organization, person, individual or governmental agency against the Port concerning the Property.

(f) Port is a qualified donee as described in Internal Revenue Code Section 170(c)(1).

5.2.2 County:

(a) County is a political subdivision of the State of Washington, duly organized, validly existing and in good standing under the laws of the State of Washington, is authorized to do business in the State of Washington, and has full power and authority to enter into this Agreement and to fulfill its obligations hereunder;

(b) County has taken all corporate action necessary to authorize the execution and delivery by County of this Agreement and has taken, or before May 15, 2008, will have taken, all corporate action necessary to authorize the execution and delivery of the other documents to be delivered by County at Closing and the performance of its obligations hereunder.

(c) This Agreement and the other documents to be delivered by County at Closing have been, or before the Closing Date, will have been duly authorized and executed (and acknowledged where necessary) and delivered by County, and all other necessary actions have been, or before the Closing Date will have been, taken so that this Agreement and the other documents to be delivered by County pursuant hereto constitute, or before the Closing Date will constitute, the legally valid and binding obligations of County, enforceable against County in accordance with their terms.

(d) The execution and performance by County of this Agreement and the other documents to be delivered by County at Closing do no violate or conflict with the County's charter or code or any law, court order, administrative agency order or regulatory agency order binding upon County or any of its properties.

(e) County has received no written notice of any actual or pending litigation or proceeding by any organization, person, individual or governmental agency against County concerning the Property.

(f) County is a qualified donee as described in Internal Revenue Code Section 170(c)(1).

5.3 Miscellaneous. (a) As used in this Agreement, the phrase "BNSF's knowledge" or any derivation thereof shall mean the actual knowledge of the following persons, based on their reasonable inquiry in the file locations where the relevant information would normally be filed of: David P. Schneider, General Director of Real Estate; Bruce Sheppard, Manager Environmental Remediation, Carol Sanders, Regional Manager for Staubach Global Services, which provides property management services to BNSF with regard to the Property, and Jerome M. Johnson, Assistant Vice President, Network Development.

(b) It shall be a condition of the parties' respective obligation to Close that the representations and warranties of the other party contained in this Section 5 are true and correct in all material respects at the Closing Date as described herein. In the event that BNSF on the one hand or Port or County on the other learns that any of County's or Port's on the one hand or BNSF's on the other representations or warranties becomes inaccurate between the Contract Date and the Closing Date, BNSF or Port or County, as applicable, shall immediately notify the other parties in writing of such change. In the event the party whose representation or warranty becomes inaccurate (BNSF on the one hand or Port or County on the other the "**Representing Party**") cures such inaccuracy prior to the Closing Date this Agreement shall remain in full force and effect. If the Representing Party does not so cure such inaccuracy, the other party may pursue any remedy provided for in Section 10 (i.e., if BNSF's representations are inaccurate then County or Port may pursue such remedy and vice versa) provided, however, if the non-Representing Party closes with knowledge of any such inaccuracy then the representations and warranties of the Representing Party shall be deemed to be amended such that the applicable inaccuracy is an exception to the Representing Party's representations and warranties for all purposes under this Agreement. It shall not be a condition of either the County's or Port's obligations hereunder that the other's representations and warranties to BNSF are accurate, and County and Port shall not have enforcement rights as between each other as to such representations and warranties.

(c) In the event the non-Representing Party first learns after the Closing contemplated in this Agreement that any representations or warranties made by the Representing Party (as may be amended as provided above) were materially inaccurate as of the Closing Date, then the Representing Party shall reimburse the non-Representing Party for all out-of-pocket expenses incurred by the non-Representing Party as a result of such inaccuracy provided that (i) the non-Representing Party notifies the Representing Party in writing within sixty (60) months after the Closing Date of such expenses and inaccuracy, and (ii) the Representing Party shall in no event be responsible for any consequential or punitive damages resulting from such inaccuracy. Notwithstanding anything to the contrary contained in this Agreement, the non-Representing Party shall have no right to recover from, or proceed against, the Representing Party in any manner whether based upon breach of contract, tort or otherwise upon the expiration of such sixty (60) month period except to the extent the non-Representing Party has so notified the Representing Party in accordance with the terms of this Agreement within such sixty (60) month period. Nothing in this Section 5 shall modify any obligations imposed on any of the Parties pursuant to Section 7 of this Agreement or as such obligations are incorporated into the Deed.

Section 6. Condition of Property. (a) Port and County have been, or by Closing will have been, allowed to make an inspection of the Property. Subject to BNSF's express representations, warranties and obligations under this Agreement and the Deed, **PORT AND COUNTY ARE PURCHASING THEIR INTERESTS IN THE PROPERTY IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, ARE NOT RELYING ON, AND HEREBY WAIVE ANY WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM BNSF WITH RESPECT TO ANY MATTERS CONCERNING THE PROPERTY** including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Property with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, or under the Property; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Property; the condition of title to the Property, and the Third Party Leases/Licenses permits, orders, or other agreements, affecting the Property (collectively, the "**Condition of the Property**").

(b) Port and County individually represent and warrant for itself to BNSF that except for BNSF's express representations, warranties and obligations under this Agreement and the Deed, Port and County each has not relied and will not rely on, and BNSF is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto made or furnished by BNSF, the manager of the Property, or any real estate broker or agent representing or purporting to represent BNSF, to whomever made or given, directly or indirectly, orally or in writing.

(c) Subject to BNSF's express representations, warranties and obligations under this Agreement and the Deed Port and County assume the risk that Hazardous Substances or other adverse matters may affect the Property that were not revealed by Port's or County's inspection and except to the extent of BNSF's express representations, warranties and obligations under this Agreement and the Deed, Port and County each waives, releases and discharges forever BNSF and BNSF's officers, directors, shareholders, employees and agents (collectively, "**BNSF Parties**") from any and all present or future claims or demands, and any and all damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown (collectively, "**Losses**"), which Port or County might have asserted or alleged against BNSF Parties arising from or in any way related to the Condition of the Property or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Property. Losses shall include without limitation (a) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) Losses for injury or death of any person, and (c) Losses arising under any Environmental Law enacted after transfer. The term "**Environmental Law**" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Model Toxics Control Act, the Water Pollution Control Act, laws concerning above ground or underground storage tanks, and any similar or comparable state or local law. The term "**Hazardous Substance**" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

BNSF, Port and County acknowledge that BNSF's willingness to convey the Property reflects that the Property is being conveyed subject to the provisions of this Section 6 which provisions shall be included in the deed and which shall be covenants running with the Land.

Section 7. Environmental Obligations.

(a) Consistent with Section 4.2 of this Agreement, if, prior to the expiration of the Review Period, the Port or County notifies BNSF in writing of an existing condition affecting the Property (an "**Identified Condition**") that is unacceptable to the Port or County, as determined by the Port and County in their respective sole and absolute discretion, and BNSF does not verify in writing by the earlier of: (i) fifteen (15) business days thereafter or the end of the Review Period, that such Condition is a condition that BNSF is obligated to Cure in a manner acceptable to the identifying Party pursuant to this Section 7, then the Port or County may terminate this Agreement and the North Agreement together, by written notice to BNSF in accordance with the provisions of Section 4.2 of this Agreement. If the Port or County timely notifies BNSF in writing of an Identified Condition, the Port, County and BNSF shall negotiate diligently and in good faith to reach agreement on Curing such condition. If the portion of the Property affected by an Identified Condition can be excluded from the conveyance without materially interfering with Port's and County's future use of the Property, as determined by the Port and County (as applicable) in their respective sole and absolute discretion, then BNSF may affect Cure prior to Closing by excluding such affected portion of the Property and to the extent so excluded BNSF shall have satisfied its obligations under this Agreement to Cure the portion of the Property so excluded, provided, however, that any such Cure by exclusion must first be agreed to in writing by the Port and County. If Port and County do not terminate this Agreement under Sections 4.2 and 7(a) and proceed to Closing, they shall not be deemed to have waived or released BNSF from any obligations to Cure set forth in Section 7(c), below.

(b) BNSF shall be responsible to investigate, remediate, respond to or otherwise cure (collectively, "**Cure**") as and when required by and in accordance with Environmental Laws any Identified Condition that concerns a release of Hazardous Substances on the Property occurring prior to the Closing or a violation of Environmental Laws concerning the Property occurring prior to the Closing to the extent that BNSF has agreed to Cure, and to the standards that BNSF has agreed to satisfy, in writing prior to the expiration of the Review Period. Notwithstanding the preceding sentence, BNSF shall not be responsible to Cure any such Identified Conditions to the extent Port or County or their respective agents, or contractors materially exacerbate such Identified Condition during construction performed by or for Port or County, excluding superficial or *de minimis* activity performed by Port or County. Further, BNSF shall not be responsible to Cure any Identified Condition that was not caused by BNSF or its agents, contractors or invitees. Port and County shall cooperate with BNSF in its efforts to Cure any Identified Condition concerning a release of Hazardous Substances on the Property.

(c) (i) For Hazardous Substances released on the Property that BNSF has not agreed to Cure prior to Closing, whether or not BNSF has been notified under Section 7 (a) that such releases are an Identified Condition, BNSF shall pay to the Port or County the costs to investigate, remediate, respond to or otherwise cure (collectively "**Remediate**" or "**Remediation**") any such Hazardous Substance releases, or any violation of Environmental Laws prior to Closing, to the extent occurring as a result of the operations of BNSF or its corporate predecessors, or the agents, employees, invitees or contractors of BNSF or its corporate predecessors. BNSF shall pay to the Port or County such costs to Remediate as and when required by and in accordance with Environmental Laws to standards for the Property that the applicable regulatory agency would apply had the Property continued to be used as a freight railroad, and to standards for other affected properties that the applicable regulatory agency would apply for such properties. BNSF shall not be responsible for (1) any costs of Remediation to the extent the Port or County or their respective agents,

contractors or invitees materially exacerbate the released Hazardous Substances during construction performed by or for Port or County (excluding superficial or *de minimis* activity performed by Port or County), or (2) any duplication of efforts by County or Port or their respective agents, contractors or invitees.

(ii) As among BNSF, Port and County, any Remediation for which this Section 7(c) applies would be carried out by the Port or County. BNSF shall cooperate with such Remediation.

(iii) The obligations of BNSF under this Section 7(c) apply only to Remediation ordered or approved by the applicable regulatory agency, provided that for Remediation approved by the applicable regulatory agency BNSF shall have agreed in writing to the Remediation prior to such approval, which agreement by BNSF shall not be unreasonably withheld, conditioned or delayed. The obligations of BNSF, Port and County under this Section 7(c) also apply regardless of which entity is issued an order by the applicable regulatory agency.

(d) Other than BNSF's obligations under this Section 7, as among BNSF, Port and County, Port and County will be responsible for all other costs of Remediation of Hazardous Substances released on or from the Property or violations of Environmental Laws.

(e) The Section 7 obligations running from BNSF to the Port and County, and the Section 7 rights running to BNSF from the Port and the County, will be allocated as between the Port and County in the manner separately agreed to by the Port and the County.

(f) The provisions of this Section 7 shall be included in the Deed and shall run with the land.

Section 8. Conditions to Closing. The parties' respective obligation to proceed to Closing under this Agreement is subject to the conditions precedent described in this Section 8:

8.1 Surface Transportation Board Approval Contingency.

(a) BNSF shall, at BNSF's sole expense, file one or more appropriate notices and/or petitions with the STB authorizing the abandonment of the Railbanked Portion and shall coordinate with County with respect to such filings. Within the prescribed time periods, County shall file with the STB a trail use/rail banking request for all of the Railbanked Portion of the South Rail Line, and BNSF shall concurrently file a letter concurring in the request. Prior to the Closing Date, County shall file with the STB a request for approval of the transfer from BNSF to County the right and/or obligation to restore rail freight service over the Railbanked Portion. In the event the STB does not approve such transfer to King County then Port shall file with the STB a request for approval of the transfer of such right and/or obligation to the Port or to another entity designated by Port and approved by STB. As part of the Trail Use Agreement to be delivered at Closing, BNSF shall transfer to County, and County shall accept, at Closing the right and/or obligation to the reactivation rights on the Railbanked Portion on the Closing Date.

(b) In the event that the STB does not approve of all of the items contemplated in subsection (a) above prior to or at the Closing then any Party who has not breached its obligations in (a) above may extend the Closing Date by delivering notice to the other parties prior to or on the Closing Date in which case the Closing Date shall be extended to a date that is no later than December 29, 2008 to give additional time to satisfy the foregoing conditions and the parties shall proceed with the terms of this Agreement except that if the foregoing conditions are not satisfied by such extended Closing Date then this Agreement and the North Agreement shall terminate unless all the Parties agree in writing to a further extension. Upon such termination, none of the parties shall have any further obligation hereunder except those that expressly survive the termination of this Agreement.

8.2 Other Conditions Precedent to Closing.

(a) Each party's obligation to Close is conditioned upon the other party to this Agreement having performed and satisfied each and all such other party's obligations under this Agreement.

(b) Each party's obligation to Close is conditioned upon the simultaneous Closing on the conveyance of the North Rail Line by BNSF consistent with the terms of the North Agreement.

In the event any of the foregoing conditions in this Section 8.2 are not satisfied prior to or at the Closing then, subject to Section 5.3 hereof, either Party may pursue the remedies set forth in this Agreement or the North Agreement, to the extent applicable.

Section 9. Closing.

9.1 Time and Place. Subject to the terms of this Agreement, the Closing shall take place on the Closing Date at the Pier 69 offices of the Port or such other location as is mutually agreeable to Port and BNSF.

9.2 Closing Deliveries. At the Closing, BNSF, Port and County (as applicable) shall execute and deliver to the appropriate party the following documents (all of which shall be duly executed, and witnessed and/or notarized as necessary):

- (a) [Intentionally Deleted]
- (b) The Deed conveying the Property.
- (c) A Closing Statement in form and substance mutually satisfactory to Port, BNSF and County.
- (d) Such transfer tax, certificate of value or other similar documents customarily required of BNSF in the county in which the Property is located.
- (e) Such further instructions, documents and information, including, but not limited to a Form 1099-S, as the other party may reasonably request as necessary to consummate the purchase and sale contemplated by this Agreement.
- (f) The Assignment.
- (g) [Intentionally Deleted]
- (h) The Bill of Sale.
- (i) [Intentionally Deleted]
- (j) The Trail Use Agreement.
- (k) The Public Multipurpose Easement, in substantially the form as attached as Exhibit L to the North Agreement or as otherwise agreed to by the Port and the County.

Section 10. Default and Remedies.

10.1 Port's or County's Default. Subject to Section 5.3, in the event of a material default by Port or County under the terms of this Agreement or any Other Agreement prior to the Closing that is not cured within any applicable notice and cure periods, BNSF may elect as its exclusive remedy to either (a) terminate this Agreement and the North Agreement in which case none of the parties shall have any further obligation under this Agreement except those that expressly survive termination, or (b) waive such default and proceed to Closing in accordance with the terms of this Agreement. Subject to Section 5.3 and Section 10.4, nothing in this Agreement shall waive or diminish any right or remedy BNSF may have at law, in equity or in contract for Port's or County's default under any document entered into by Port or County at Closing or under any Other Agreement or Port's or County's default under this Agreement after Closing.

10.2 BNSF's Default. Subject to Section 5.3 in the event of a material default by BNSF under the terms of this Agreement prior to the Closing that is not cured within any applicable notice and cure periods, Port and County together may elect as their exclusive remedy to (a) terminate this Agreement and the North Agreement together in which case none of the parties shall have any further obligation under this Agreement except those that expressly survive termination, (b) obtain specific performance of BNSF's obligations under this Agreement and the North Agreement (and in seeking any equitable remedies, Port and County shall not be required to prove or establish that Port and County do not have an adequate remedy at law and BNSF hereby waives the requirement of any such proof and acknowledges that County would not have an adequate remedy at law in the event of a material default by BNSF), or (c) waive such default and proceed to Closing in accordance with the terms of this Agreement. Subject to Section 5.3 and Section 10.4, nothing in this Agreement shall waive or diminish any right or remedy Port and County may have at law, in equity or in contract for BNSF's default under any document entered into by BNSF at Closing or under any Other Agreement or BNSF's default after Closing under this Agreement.

10.3 Remedies as Between Port and County. As between Port and County, each shall have all remedies available at law or equity against one another for a material default under this Agreement, except as limited by separate written agreement between the Port and County.

10.4 Arbitration.

A. General Provisions. The parties shall use commercially reasonable efforts to prevent or resolve any disputes that may arise after Closing concerning their respective rights and obligations under this Agreement. In the event a dispute arising after Closing concerning the parties' respective rights and obligations under Sections 6 or 7 (but not other Sections) of this Agreement cannot be resolved by the parties, the parties shall submit such dispute to mediation before a mediator acceptable to the parties. If such dispute is not resolved within 45 business days after submission to mediation by the parties then the parties shall submit such dispute to binding arbitration as set forth in this Section 10.4. All such disputes shall be finally resolved by binding arbitration in accordance with the following provisions and the American Arbitration Association ("AAA") Commercial Arbitration Rules (AAA-CAR) in effect at the time arbitration is demanded (even if the matter is not submitted to the AAA). The parties may submit (but shall not be required to submit unless consensus over the selection of the arbitrator(s) is not reached), disputes to the AAA for administrative purposes. In the event that any provisions in this Agreement differ from the AAA-CAR, this Agreement shall govern.

B. Commencement of the Arbitration. Subject to the provisions of Section 10.4(A) above, any party may initiate arbitration by serving a demand at any time. The written demand for arbitration shall include a short and plain statement identifying the provisions of this Agreement which are in dispute, a summary of the facts or circumstances giving rise to the dispute, and describing the relief requested. Any party served with an arbitration demand may respond by serving upon the other party a written answer or a

written counterclaim identifying additional claims to be considered in the arbitration, with a short and plain statement identifying the provisions of this Agreement which are in dispute, a summary of the facts or circumstances giving rise to the dispute, and describing the relief requested.

C. Selection of Arbitrator. The parties agree to submit arbitration disputes to a single arbitrator. The parties shall attempt to select an arbitrator by consensus within ten (10) business days after a demand has been served. In the event consensus is not reached by the parties, the arbitrator shall be selected in accordance with AAA-CAR and this Agreement. The arbitrator must be a retired state or federal judge or magistrate or someone of similar stature with experience in interpreting and enforcing complex commercial contracts involving environmental remediation obligations, or the type of matters at issue in the arbitration.

D. Authority to Grant Comprehensive Relief. The arbitrator shall have all legal and equitable powers necessary to interpret and to enforce the terms of this Agreement, but not to modify or vary its terms. The parties expressly agree that the arbitrator may fashion all necessary and appropriate relief, including money damages and/or injunctive relief, so long as any equitable remedy is consistent with the obligations of the parties under this Agreement

E. Award. Notwithstanding any AAA-CAR to the contrary, the arbitrator's award shall be in writing and include findings of fact and conclusions of law supporting that written decision. Any action to compel arbitration under this Agreement, to enforce an arbitration award, or to vacate an arbitration award must be brought, if jurisdiction exists, in federal court in the Western District of Washington. Otherwise, such actions must be brought in state court in King County, Washington. However, in actions seeking to vacate an award, the standard of review to be applied to the arbitrator's findings of fact and conclusions of law will be the same as that applied by an appellate court reviewing a decision of a trial court sitting without a jury.

F. Payment of Fees and Costs of Arbitrator(s). The parties shall split and pay in equal shares the fees and costs of the arbitrator. Otherwise, the parties expressly reject any fee shifting, and each party shall pay all its own expenses associated with the arbitration, including all fees and costs relating to its own witnesses, exhibits, and counsel.

G. Amendment of Deadlines. The parties may, by mutual stipulation, agree to shorten or extend any of the deadlines set forth in this Section. The arbitrator also may, for good cause shown, alter any of those same deadlines.

Section 11. Assignment.

11.1 No Party may assign its rights under this Agreement without the prior written consent of the other except as expressly stated herein.

11.2 On or before 5:00 pm on July 1, 2008 Port may, subject to King County Council approval, assign to County all of its right and obligations in this Agreement as to the portion of the South Rail Line between milepost 5.0 in Renton and milepost 11.8 in Bellevue, provided County assumes all such obligations in writing and County and Port notify BNSF in writing of such assignment and assumption before said date.

Section 12. Brokers and Brokers' Commissions. Port, County and BNSF each warrant and represent to the other that each has not employed a real estate broker or agent in connection with the transaction contemplated hereby. Each party agrees to indemnify, defend and hold the others harmless from any loss or cost suffered or incurred by it as a result of the other's representation herein being untrue.

Section 13. Notices.

Except as otherwise expressly provided in this Agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Agreement shall be in writing and shall either be: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered via facsimile, with confirmation of receipt with an original deposited postage prepaid in the first class mails of the United States. Such notices shall be addressed to Port, County and BNSF at:

Port (if delivered):

Port of Seattle Legal Department
2711 Alaskan Way
Seattle, WA 98121
Attn: General Counsel

Port (if mailed):

Port of Seattle Legal Department
P.O. Box 1209
Seattle, WA 98111
Attn: General Counsel
Fax No. 206 728-3205

County:

King County
701 Fifth Avenue, Suite 3210
Seattle, WA 98104
Attn: Rod Brandon
Fax No.: 206-296-0194

Office of the King County Prosecuting Attorney
Civil Division
400 King County Courthouse
516 Third Avenue
Seattle, WA 98102
ATTN: Peter G. Ramels
Fax No.:206-296-0191

BNSF:

BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76131
ATTN: Rick Weicher
Fax No.: 312-850-5677

With additional copy to:

BNSF Railway Company
2500 Lou Menk Drive

Fort Worth, Texas 76131
Attn: David Rankin
Fax No.: 817-352-2398

or to such person and at such other addresses as either party may at any time or from time to time designate for itself by notice in accordance herewith. Each such request, notice, demand, authorization, direction, consent, waiver or other document shall be deemed to be delivered to a party when received at its address set forth or designated as above provided. All notices provided under this Agreement to one party shall be provided to all other parties to this Agreement.

Section 14. Miscellaneous.

14.1 Governing Law; Headings; Rules of Construction. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without reference to the conflicts of laws or choice of law provisions thereof. The titles of sections and subsections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein. All references herein to the singular shall include the plural, and vice versa. The parties agree that this Agreement is the result of negotiation by the parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed against the maker thereof.

14.2 No Waiver. Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

14.3 Entire Agreement. Except for the Other Agreements and the agreements and instruments required to be executed under this Agreement, this Agreement contains the entire agreement of the parties hereto with respect to the Property and any other prior understandings or agreements concerning the Property are merged herein; and as between the parties, any representations, inducements, promises or agreements, oral or otherwise, not expressly embodied herein or incorporated herein by express reference, shall be of no force or effect.

14.4 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns (subject to Section 11 above).

14.5 Amendments. No amendment to this Agreement shall be binding on any of the parties hereto unless such amendment is in a single writing executed by the parties to this Agreement.

14.6 Date for Performance. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires on a Saturday, Sunday or legal or bank holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day. If no time is indicated for a day on which any action must be undertaken under this agreement, the time shall be 5:00 p.m. All references to time shall be to Pacific time.

14.7 Recording. BNSF, Port and County agree that they will not record this Agreement and that they will not record a short form of this Agreement.

14.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which

shall be deemed to be an original, but all of which, when taken together, shall constitute but one and the same instrument.

14.9 Time of the Essence. Time is of the essence of this Agreement and each and every term and condition hereof.

14.10 Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any term or provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be held to be invalid or unenforceable, then such term or provision shall be ignored, and to the maximum extent possible, this Agreement shall continue in full force and effect, but without giving effect to such term or provision.

14.11 Attorneys' Fees. In the event any party shall bring an action or legal proceeding for an alleged breach of any provision of this Agreement or any representation, warranty, covenant or agreement herein set forth, or to enforce, protect, determine or establish any term, covenant or provision of this Agreement or the rights hereunder of either party, the prevailing party shall be entitled to recover from the non-prevailing party, as a part of such action or proceedings, or in a separate action brought for that purpose, reasonable attorneys' fees and costs, expert witness fees and court costs, including those incurred upon appeal, as may be fixed by the court or a jury.

14.12 Relationship. Nothing in this Agreement or the Other Agreements shall be deemed or construed by the parties hereto, nor by any other party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto.

14.13 Publicity. BNSF, Port and County shall discuss and coordinate with respect to any public filing or announcement concerning the purchase and sale contemplated hereunder.

14.14 Survival. The terms of this Agreement shall survive Closing and the delivery of the Deed.

14.15 Waiver of Trial by Jury, Venue and Personal Jurisdiction. BNSF, PORT AND COUNTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO, THIS AGREEMENT. King County Superior Court or the Federal District Court for the Western District of Washington, both in King County, Washington, shall be the sole and exclusive venues for any action or legal proceeding for an alleged breach of any provision of this Agreement or any representation, warranty, covenant or agreement herein set forth, or to enforce, protect, determine or establish any term, covenant or provision of this Agreement or the rights hereunder of either party; and the parties hereby agree to submit to the personal jurisdiction of said courts.

14.16 Condemnation. In the event any portion of the Property becomes subject to condemnation proceedings after the Contract Date and prior to Closing, BNSF will promptly notify Port and County in writing of such fact.

(a) If such condemnation concerns a crossing of the Property by a pipeline, electricity or telecommunication facility or other utility and is valued at less than \$25,000 then BNSF shall handle such condemnation or conveyance in lieu of condemnation in accordance with its normal practice and inform Port and County of the interests conveyed, and Port and County shall not be entitled to any proceeds from such condemnation or conveyance or any reduction in the Purchase Price. Such conveyance shall not however, in any way alter the obligations of BNSF under this Agreement other than BNSF's inability to convey at Closing the interests conveyed by BNSF to a third party under this Section 14.16.

(b) If such condemnation is not subject to the terms of Section 14.16(a), then Port and County together but not separately may elect to terminate this Agreement and the North Agreement together, in which case none of the parties shall have any further obligation hereunder except those that expressly survive termination.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized signatory, effective as of the day and year first above written.

BNSF RAILWAY COMPANY

By: _____
Name: Richard E. Weicher
Title: Vice President & General Counsel - Regulatory

PORT OF SEATTLE

By: _____
Name: Tay Yoshitani
Title: Chief Executive Officer

KING COUNTY

By: _____
Name: Ron Sims
Title: King County Executive

EXHIBIT ADESCRIPTION OF PROPERTY
SOUTH

All that portion of BNSF Railway Company's (formerly Northern Pacific Railway Company) Woodinville (MP 23.45) to Kennydale (MP 5.0), Washington Branch Line right of way, varying in width on each side of said Railway Company's Main Track centerline, as now located and constructed upon, over and across King County, Washington, more particularly described as follows, to-wit:

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the NE $\frac{1}{4}$ Section 16, and the W $\frac{1}{2}$ Section 15, all in Township 26 North, Range 5 East, W. M., bounded on the North by the North line of said NE $\frac{1}{4}$ Section 16, and bounded on the South by South line of said W $\frac{1}{2}$ Section 15; also,

That portion of that certain 50.0 foot wide Branch Line right of way, being 25.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 22, Township 26 North, Range 5 East, W. M., bounded on the North by the North line of said Section 22, and bounded on the South by South line of said NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 22; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the E $\frac{1}{2}$ Section 22, the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 27, all in Township 26 North, Range 5 East, W. M., bounded on the North by the North line of said E $\frac{1}{2}$ Section 22, and bounded on the South by South line of said NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 27; also,

That certain 4.43 acre tract of land described in deed dated April 3, 1903 from Nellie Nelson to Northern Pacific Railway Company recorded April 3, 1903 in Book 342 of Deeds, Page 371, records of King County, Washington, said 4.43 acre tract being described in said deed for record as follows:

"All that portion of the Southeast Quarter (S.E. 1/4) of the Northwest Quarter (N.W. 1/4) of Section 27, Township 26 North, Range 5 East, lying between the easterly line of the present right of way of the Northern Pacific Railway Company, which line is 50 feet distant southeasterly from the center line of the railroad track of said company, as now located and constructed over and across said premises and a line drawn parallel to and 50 feet distant southeasterly from, when measured at right angles to the center line of the proposed railroad track as now staked out and to be constructed, over and across said premises;

"Also all that portion of said Southeast Quarter (S.E. 1/4) of the Northwest Quarter (N.W. 1/4) of Section 27, Township 26, lying within 50 feet of that certain straight line which connects the center line of the present track of the Northern Pacific Railway Company line with the center line of the proposed track of the Northern Pacific Railway Company line and being tangent to the curves of both of said center lines, containing in all 4.43 acres, be the same more or less." **EXCEPTING THEREFROM**, Lot 3, King County Short Plat Number 1078060, recorded under King County Recording Number 8003270855, being a subdivision of: That portion of the southeast quarter of the northwest quarter of Section 27, Township 26 North, Range 5 East, W.M., King County, Washington, lying northerly and westerly of the northerly and westerly right of way of the Northern Pacific Railway Company's "Seattle Belt Line", and south of the southerly right of way line of that road conveyed to King County by deed recorded under Recording Number 2695175 and northeasterly of a line described as follows: Beginning at the northwest corner of the southeast quarter of the northwest quarter of said Section 27; thence south 1°58'24" west along the west line of the southeast quarter of the northwest quarter of said Section 27, a distance of 265 feet; thence north 65°33'39" east 444.80 feet to the true point of

2008-0226 Attachment C

beginning of the following described line; thence south 18°15'21" east, 640 feet, more or less, to the northerly right of way line of said Northern Pacific Railway Company's "Seattle Belt Line", said northerly right of way line being 50' Northeast of the center line of the maintrack as now constructed and the terminus of said line.; also,

That certain 0.05 acre tract of land described in deed dated August 25, 1904 from Otto Weppeler et al. to Northern Pacific Railway Company recorded September 7, 1904 in Book 375, Page 507, records of King County, Washington, said 0.05 acre tract being described in said deed for reference as follows:

"All that piece or parcel of land in the southeast quarter of the northwest quarter (SE/4 of NW/4) of Section twenty-seven (27), Township twenty-six (26), Range five (5) east, W. M. which lies northwesterly of the original Seattle Belt Line right of way as described in deed recorded in Volume 116 of Deeds, Page 289, Records of King County, and within fifty (50) feet of the center line of the revised location of the track of the Seattle Belt Line as the same is now surveyed and being constructed over and across said subdivision, containing 5/100 acres, more or less."; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the SW¼NW¼ Section 27 the S½NE¼, NW¼SE¼, SW¼ Section 28, W½NW¼, NW¼SW¼ Section 33, SE¼ Section 32, all in Township 26 North, Range 5 East, W. M., bounded on the East by the East line of said SW¼NW¼ Section 27, and bounded on the South by South line of said SE¼ Section 32, **EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805260805, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 30, 1998 as Document No. 9807301468, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805260791, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Quitclaim Deed dated January 6, 2000 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded February 11, 2000 as Document No. 20000211000454, records of King County, Washington, ; also,

That portion of that certain 100.0 foot wide Branch Line right of way in the City of Kirkland, Washington, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Blocks 3, 4, 5, 6, 11, 12, 13, 14, 18, 19, 23, 24, 25 and 26, the vacated alley between Blocks 13 and 14, and vacated Arlington Avenue between Blocks 14 and 19, as said Blocks and Streets are shown on plat of Lake Avenue Addition to Kirkland as recorded in Volume 6 of Plats, Page 86, Records of said County, together with any right title and interest, if any to those portions of Victoria Avenue, Harrison Avenue, Moreton Avenue; Jefferson Avenue, and Washington Avenue and Maple Street and alleys within said Blocks which lie within said 100.0 foot wide Branch Line right of way, **EXCEPTING THEREFROM**, that portion of Lot 3, Block 5, Lake Avenue Addition to Kirkland, according to the official plat thereof in the office of the Auditor of King County, Washington lying between two lines drawn parallel with and distant, respectively, 34.0 feet and 50.0 feet Westerly of, as measured at right angles from The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway) Main Track centerline as now located and constructed upon, over, and across said Block 5; also,

That portion of that certain 100.0 foot wide Branch Line right of way in the City of Kirkland, Washington, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Blocks 220, 223, 224, 232, 233, 238, and 241 as said Blocks are shown on the Supplementary Plat to

2008-0226 Attachment C

Kirkland as filed in Volume 8 of King County Plats, at page 5, together with any right title and interest, if any to those portions of Massachusetts Avenue, Madison Avenue, Michigan Avenue, Olympia Avenue, Piccadilly Avenue, Cascade Avenue, Clarkson Avenue, Fir Street, and alleys within said Blocks which lie within said 100.0 foot wide Branch Line right of way; also,

That portion of Lots 1, 2, 4, 37, and all of Lots 3, 38, and 39, Block 227 as said Lots and Blocks are shown on the Supplementary Plat to Kirkland as filed in Volume 8 of King County Plats, at page 5, which lie Northeasterly of a line parallel with and distant 50 feet Southwesterly from, measured at right angles to said Railway Company's Main Track centerline as now located and constructed and Southwesterly of a line parallel with and distant 50 feet Northeasterly from, measured at right angles to said Railway Company's Main Track centerline as originally located and constructed; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the, S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 5, NW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, Section 8, all in Township 25 North, Range 5 East, W. M., bounded on the North by the South right of way line of Clarkson Avenue, City of Kirkland, Washington, and bounded on the West by the West line of said E $\frac{1}{2}$ SW $\frac{1}{4}$, Section 8, **EXCEPTING THEREFROM**, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805260787, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Quitclaim Deed dated May 15, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded August 5, 1999 as Document No. 19990805001402, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281544, records of King County, Washington, also;

That certain 0.23 acre tract of land described in deed dated July 15, 1903 from Samuel F. French to Northern Pacific Railway Company recorded August 8, 1903 in Book 361 of Deeds, Page 249, records of King County, Washington, said 0.23 acre tract being described in said deed for reference as follows:

"Commencing at a point in the east line of Lot four (4), Section eight (8), Township twenty-five (25) North, Range five (5) east, W.M., that is 395 feet north of the southeast corner of said lot, and running thence west parallel with the south line of said Lot four (4) 67 feet, more or less, to a point that is 50 feet distant from, when measured at right angles to, the center line of the proposed Seattle Belt Line Branch of the Northern Pacific Railway Company as the same is now located, staked out and to be constructed across said Section eight (8); thence running northeasterly parallel with said railway center line 200 feet; thence westerly at right angles to said railway center line 30 feet; thence northeasterly parallel with said railway center line, and 80 feet distant therefrom, 130 feet, more or less, to the east line of said Lot four (4); thence south along said east line of said Lot four (4) 322 feet, more or less, to the point of beginning; containing 0.23 acres, more or less."; also,

That certain strip of land described in deed dated March 3, 1904 from Seattle and Shanghai Investment Company to Northern Pacific Railway Company recorded March 9, 1904 in Book 387, Page 243, records of King County, Washington, said strip being described in said deed for reference as follows:

"A strip of land Two Hundred twenty-five (225) feet in width across that certain parcel of land designated as Tract "B" in deed from the Kirkland Land and Improvement Company to H. A. Noble, dated July 13, 1899 of record in the Auditor's office of King County, Washington in Volume 245 of Deeds, at page 41, reference thereto being had. Said strip of land hereby conveyed, having for its boundaries two lines that are parallel with and respectively distant One Hundred (100) feet easterly from, and One Hundred Twenty-Five (125) feet

2008-0226 Attachment C

westerly from, when measured at right angles to, the center line of the Seattle Belt Line branch of the NORTHERN PACIFIC RAILWAY COMPANY, as the same is now constructed and located across said Tract "B", which said Tract "B" is located in Section 17 of Township 25, North of Range 5 east of the Willamette Meridian"; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Government Lot 4, Section 8, Government Lots 1, 2, and 3, the E $\frac{1}{2}$ SW $\frac{1}{4}$ Section 17, and the NE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ Section 20, all in Township 25 North, Range 5 East, W. M., bounded on the North by the South line of that certain hereinabove described 0.23 acre tract of land described in deed dated July 15, 1903 from Samuel F. French to Northern Pacific Railway Company recorded August 8, 1903 in Book 361 of Deeds, Page 249, records of King County, Washington and the East line of said Government Lot 4, Section 8, and bounded on the South by the South line of said NE $\frac{1}{4}$ Section 20, together with such additional widths as may be necessary to catch the slope of the fill in the N $\frac{1}{2}$ of said Government Lot 2, Section 17 as delineated in the 7th described parcel in deed dated June 20, 1903 from Kirkland Land and Improvement Company to Northern Pacific Railway Company recorded June 26, 1903 in Book 352, Page 582, records of King County, Washington. **EXCEPTING THEREFROM**, that portion of said 100.0 foot wide right of way lying within said hereinabove described parcel of land designated as Tract "B" in deed from the Kirkland Land and Improvement Company to H. A. Noble, dated July 13, 1899 of record in the Auditor's office of King County, Washington in Volume 245 of Deeds, at page 41.; also,

That certain tract of land described in deed dated December 26, 1952 from Alma F. Robinson and William G. Robinson et al. to Northern Pacific Railway Company recorded January 14, 1953 in Book 3220 of Deeds, Page 301, in the records of the Auditor's office of King County, Washington, said tract of land being described in said deed for reference as follows:

"That portion of the south half of the northeast quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$) of Section 20, Township 25 North, Range 5 East of the Willamette Meridian, described as follows: Commencing at the center of said section; thence north 0 degrees 18 minutes 24 seconds west along the north and south quarter line of said section 738.60 feet to the center of the county road; thence along said road south 77 degrees 7 minutes east 500.00 feet; thence south 71 degrees 54 minutes east 308.27 feet, more or less; thence north 34 degrees 38 minutes east 18.00 feet to a stake in the north margin of said road; thence north 34 degrees 38 minutes east 609.40 feet, more or less, to the southwesterly margin of the Grantee's right of way, said margin being concentric with and distant 50 feet southwesterly, measured radially, from the center line of the main track of the Grantee's Belt Line as now constructed; thence southeasterly along said margin approximately 150 feet to a point distant 50 feet southwesterly, measured along the radius of the curve of said center line, from station 511 plus 50 in said center line (which station is distant 2337.6 feet southeasterly measured along said center line, from the north line of said section), the last-described point being the true point of beginning; thence southeasterly and southerly along said margin to a point distant 50 feet westerly, measured along the radius of said curve, from station 515 plus 60 in said center line; thence northwesterly in a straight line to a point distant 110 feet southwesterly measured along the radius of said curve, from station 514 plus 28 in said center line; thence northwesterly in a straight line to a point distant 110 feet southwesterly, measured along the radius of said curve, from station 513 plus 28 in said center line; thence northerly in a straight line to the true point of beginning.", also,

That portion of that certain 100.0 foot wide Branch Line right of way at said Railway Company's Northrup Station, being 50.0 feet on each side of said Branch Line's Main Track centerline, as originally located and constructed, upon, over and across Blocks 12, 13, 14, 15, 16, 21, 22, 23 and 24, all within Kirkland Syndicate First Addition to Seattle, together with any right title and interest, if any to those portions of Maple Street, Nelson Street, Bixby Street, Kirkland Avenue, Hawks Avenue and Fransen Avenue which lie within said

100.0 foot wide Branch Line right of way; also,

Those portion of Lots 10, 11, and 12, Block 14, Lots 1, 2, 3, and 4, Block 23 and Lot 10, Block 24, all within Kirkland Syndicate First Addition to Seattle, lying Southwesterly of a line parallel with and distant 50 feet Southwesterly from, measured at right angles to said Railway Company's Main Track centerline as originally located and constructed; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Railway Company's Main Track centerline, as originally located and constructed, upon, over and across the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 20, and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 21, all in Township 25 North, Range 5 East, W. M., bounded on the North by the North line of said SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 20, and bounded on the South by the South line of said SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 21, together with any right title and interest, if any to those portions of Fransen Avenue, Jordan Avenue, Elkoos Avenue, and Railroad Avenue, which lie within said 100.0 foot wide Branch Line right of way; also,

That portion of Block 7, of Kirkland Syndicate's Second Addition to Kirkland Washington, situate in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 20, and that portion of said Railway Company's property situate in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 21, and in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 28, all in Township 25 North, Range 5 East, W. M., lying Easterly of a line parallel with and distant 50.0 feet Westerly from, measured at right angles and/or radially to said Railway Company's Main Track centerline as now located and constructed and Westerly of a line parallel with and distant 50.0 feet Westerly from, measured at right angles to said Railway Company's Main Track centerline as originally located and constructed, bounded on the West by the West line of said Block 7 and its Northerly prolongation, and bounded on the South by the intersection of said parallel lines, together with any right, title and interest, if any, to Houghton Street and Railroad Avenue of Kirkland Syndicate's Second Addition to Kirkland Washington; also,

That certain 0.63 acre tract of land described in deed dated November 13, 1904 from Nathan P. Dodge Et Ux. to the Northern Pacific Railway Company recorded February 9, 1905 in Volume 408 of Deeds, Page 263, records of King County, Washington, said 0.63 acre being described in said deed for reference as follows:

"That part of southwest quarter of southwest quarter (SW/4 of SW/4), Section twenty-one (21), Township twenty-five (25) north, Range five (5) east, W. M., described by metes and bounds as follows:

"Beginning at a point in the south line of said Section twenty-one (21) fifty (50) feet east from, when measured at right angles to, the original right of way of Seattle Belt Line Branch of the Northern Pacific Railway Company, as conveyed by deed executed by Roscoe Dunn and Ann Dunn his wife, dated Oct. 4th, 1890 and recorded Dec. 4th, 1890 in volume 116 of deeds, page 114, and running thence north 8° 40' west parallel with and 50 feet distant easterly from said original right of way line a distance of 270 feet to a point of curve; thence northwesterly along a curve to the left having a radius of 716.8 feet, a distance of 492.7 feet; thence north 48° 5' west a distance of 135 feet more or less, to a point on the said easterly line of the original right of way of said railway; thence southeasterly along said original easterly right of way line on a curve to the right having a radius of 859 feet, a distance of 591 feet; thence continuing along said easterly right of way line south 8° 40' east, a distance of 260 feet, more or less, to an intersection of said right of way line with the southern boundary line of said section 21; thence east 50.5 feet, more or less, to point of beginning, containing 0.63 acres, more or less, situated in the County of King, State of Washington."; also,

That certain strip of land described in deed dated August 3, 1904 from John Zwiefelhofer and Aloisia Zwiefelhofer to Northern Pacific Railway Company recorded August 6, 1904 in Book 404 of Deeds, Page 44, records of King County, Washington, said strip of land being described in said deed for reference as follows:

2008-0226 Attachment C

“A strip of land fifty (50) feet wide lying immediately east of the right of way of said Railway Company and extending South from the North line of Section 28, Township 25 North Range 5 East a distance of Six Hundred feet (600) and containing 0.69 acres in the Northwest Quarter of the Northwest quarter (NW¼NW¼) of Section 28 Tp 25 N R 5 E WM.”, **EXCEPTING THEREFROM**, that portion of said 50 foot wide strip lying Northerly of a line parallel to and 400.0 feet Southerly of the North line of said NW¼NW¼ of Section 28 ; also,

Parcel 3, of City of Bellevue Short Plat No. 80-16, according to the Short Plat recorded under King County Recording No. 8101239001, **EXCEPTING THEREFROM**, that certain tract of land described in deed dated December 13, 1996 from Burlington Northern Railroad Company to Fibres International, recorded December 13, 1996 as Document No. 9612130870, records of King County, Washington; also,

Tract B, of City of Bellevue Short Plat No. 80-16, according to the Short Plat recorded under King County Recording No. 8101239001; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Railway Company’s Main Track centerline, as now located and constructed, upon, over and across the W½W½ Section 28, W½NW¼ Section 33, all in Township 25 North, Range 5 East, W. M., bounded on the North by the North line of said W½W½ Section 28, and bounded on the South by the South line of said W½NW¼ Section 33, **EXCEPTING THEREFROM**, that portion of said 100.0 foot wide right of way lying Easterly of a line parallel with and distant 35 feet Easterly from, measured at right angles to said Railway Company’s Main Track centerline as now located and constructed and Northerly of a line parallel to and 400.0 feet Southerly of the North line of said NW¼NW¼ of Section 28, **ALSO EXCEPTING THEREFROM**, that portion of said 100 foot wide Branch Line right of way lying within that certain tract of land described in Special Warranty Deed dated June 29, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 2000 as Document No. 20000522001155, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805221787, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Special Warranty Deed dated June 8, 2001 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded January 3, 2003 as Document No. 20030103001327, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded December 28, 1998 as Document No. 9812282942, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Special Warranty Deed dated March 17, 2000 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded October 4, 2000 as Document No. 20001004000767, records of King County, Washington, , also;

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across Lots 1, 2, 3, 4 and 8 of Strawberry Lawn, King County Washington, recorded in Volume 4 of Plats, page 30½, King County, Washington recorder, together with such additional widths as are necessary to catch the slopes of the cuts and fills of the roadbed of said Railway in said Lots 1 and 8 of Strawberry Lawn, King County Washington, as delineated in deed dated August 31, 1903 from Henry Hewitt, Jr. and Rocena L. Hewitt to the Northern Pacific Railway Company, **EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805260792, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No.

9807281537, records of King County, Washington, also;

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the W $\frac{1}{2}$ Section 4, Government Lots 1 and 4, E $\frac{1}{2}$ W $\frac{1}{2}$ Section 9, Government Lot 1, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 16, Government Lots 4 and 5 Section 17, Government Lots 1, 2, 3 and 4 Section 20, Government Lots 1, 2, 3, 4 and 5 Section 29, all in Township 24 North, Range 5 East, W. M., bounded on the North by the North line of W $\frac{1}{2}$ Section 4, and bounded on the South by the South line of said Government Lot 5, Section 29, together with such additional widths or strips of land as are necessary to catch the slopes of the cuts and fills of the roadbed of said Railway in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 4, which said roadbed is to be constructed having a width at grade of 22 feet and the cuts to have a slope of one to one and the fills to have a slope of one and one half to one, as delineated in deed dated September 8, 1903 from Lake Washington Land Company to Northern Pacific Railway Company, recorded in Volume 386 of Deeds, Page 147, records of King County, Washington, **EXCEPTING THEREFROM**, that certain tract of land described in Correction Special Warranty Deed dated April 30, 2001 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 2001 as Document No. 20010522000186, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281547, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281545, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281546, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281543, records of King County, Washington, **ALSO EXCEPTING THEREFROM** that certain tract of land described in deed dated June 26, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded April 30, 2001 as Document No. 20010430000977, records of King County, Washington, **ALSO EXCEPTING THEREFROM** that certain tract of land described in deed dated June 26, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded December 15, 1998 as Document No. 9812151238, records of King County, Washington; also,

That certain Tract I and that certain Tract II described in deed dated September 19, 1967 from State of Washington to Northern Pacific Railway Company filed for record December 13, 1967 in Book 5023, Page 546, Auditor's No. 6278130, records of King County, Washington, said Tracts being described in said deed for reference as follows:

"Tract I: (Fee)

"All those portion of the Southeast quarter of the Northwest quarter and the Northeast quarter of the Southwest quarter, Section 9, Township 24 North, Range 5 East, W.M., lying Westerly of the existing 100 foot right of way of the Northern Pacific Railway Company and Easterly of a line described as follows: Beginning at a point opposite Station REL. R.R. 737+00 on the Relocated Railroad Center Line (as hereinafter described) and 50 feet Westerly therefrom when measured radially thereto (which point also lies on the Westerly line of said existing railroad right of way); thence Southerly parallel with said relocated railroad center line to a point opposite REL. R.R. 739+00 thereon; thence Southwesterly in a straight line to a point opposite REL. R.R. 740+00 on said relocated railroad center line and 130 feet Westerly therefrom when measured radially thereto; thence Southerly parallel with said relocated railroad center line a distance of 350 feet, more or less, to an intersection with the Northerly right of way line of State Highway Project entitled

2008-0226 Attachment C

Primary State Highway No. 2 (SR 90), East Channel Bridge to Richards Road (as hereinafter described); thence North $84^{\circ}13'42''$ East along said Northerly right of way line a distance of 125 feet, more or less to an intersection with said Westerly line of said existing railroad right of way and the end of this line description:

“Tract II: (Fee)

“All those portion of Lots 13 and 14, Block 1, Mercer Addition, according to the plat thereof recorded in Volume 17 of Plats, page 8, records of King County and of the Northeast quarter of the Southwest quarter, Section 9, Township 24 North, Range 5 East, W.M., lying Northwesterly of the existing 100 foot right of way of the Northern Pacific Railway Company and Southeasterly of a line described as follows: Beginning at the Southeast corner of said Lot 13, which point also lies on the Northwesterly line of said existing railroad right of way; thence Northeasterly in a straight line to a point opposite REL. R.R. 753+00 on the Relocated Railroad Center Line (as hereinafter described) and 50 feet Northwesterly therefrom when measured at right angles thereto; thence Northeasterly in a straight line to a point opposite REL. R.R. 752+00 on said relocated railroad center line and 90 feet Northwesterly therefrom when measured at right angles thereto; thence Northeasterly parallel with said relocated railroad center line a distance of 120 feet, more or less, to an intersection with the Southerly right of way line of State Highway Project entitled Primary State Highway No. 2 (SR 90), East Channel Bridge to Richards Road (as hereinafter described); thence South $79^{\circ}37'46''$ East a distance of 105 feet, more or less, to an intersection with said Westerly line of said existing railroad right of way and the end of this line description: ...

...”RELOCATED RAILROAD CENTER LINE DESCRIPTION:

“Beginning at Railroad Station 734+80 on the existing main line center line of the Northern Pacific Railway Company’s Track in the Southeast quarter of the Northwest quarter, Section 9, Township 24 North, Range 5 East, W.M., in the vicinity of Factoria, Washington, which point equals Relocated Railroad Station (hereinafter referred to as REL. R.R.) 734+80; thence South $20^{\circ}44'04''$ East a distance of 21.1 feet to REL. R.R. 735+01.10 T.S.; thence on the arc of an increasing spiral curve to the right having an “A” value of 5 a distance of 80 feet to REL. R.R. 735+81.10 S.C.; thence on the arc of a 4° circular curve to the right thru a central angle of $49^{\circ}18'$ a distance of 1232.50 feet to REL. R.R. 748+13.60 C.S.; thence on the arc of a decreasing spiral curve to the right having an “A” value of 5, a distance of 80 feet to R.R. 743+93.60 S.T.; thence South $31^{\circ}46'$ West a distance of 683.96 feet to REL. R.R. 755+77.56 T.S.; thence on the arc of an increasing spiral curve to the left having an “A” value of 5 a distance of 80 feet to REL. R.R. 756+57.56 S.C. which point equals Railroad Station 756+91.53 ahead on said existing main line center line of track in the Southeast quarter of the Southwest quarter, Section 9, and the end of this center line description.

“SOUTHERLY RIGHT OF WAY LINE OF PRIMARY STATE HIGHWAY NO. 2 (SR 90), EAST CHANNEL BRIDGE TO RICHARDS ROAD:

“Beginning at the Southwest corner of Lot 21, Block 4, Mercer Addition, according to the plat thereof recorded in Volume 17 of Plats, page 8, records of King County, and running thence North $79^{\circ}37'46''$ West a distance of 324.08 feet.

“NORTHERLY RIGHT OF WAY LINE OF PRIMARY STATE HIGHWAY NO. 2 (SR 90), EAST CHANNEL BRIDGE TO RICHARDS ROAD:

“Beginning at REL. R.R. 746+28.83 P.O.C. on the Relocated Railroad Center Line (as above described); thence South $84^{\circ}03'37''$ West a distance of 344.01 feet; thence North $5^{\circ}56'23''$ West a distance of 212.5 feet; thence North $80^{\circ}02'48''$ East a distance of 109.27 feet; thence North $5^{\circ}56'23''$ West a distance of 25 feet; thence North $70^{\circ}51'54''$ East a distance of 196.18 feet to the true point of beginning of this line description;

thence North 84°13'42" East a distance of 294.43 feet.”; also

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Government Lot 1, Section 32, Township 24 North, Range 5 East, W. M., Snohomish County, Washington, bounded on the North and South by the North and South lines of said Government Lot 1; also,

That certain 100.0 foot wide Branch Line right of way, upon, over and across Government Lot 2, Section 32, and Government Lots 3 and 4 Section 31, all in Township 24 North, Range 5 East, W. M., Snohomish County, Washington, as described in Deed dated September 8, 1903 from Lake Washington Belt Line Company to Northern Pacific Railway Company, recorded in Volume 386 of Deeds, Page 147, records of King County, Washington. **EXCEPTING THEREFROM**, that certain tract of land described in deed dated September 14, 2001 from The Burlington Northern and Santa Fe Railway Company to Barbee Forest Products, Inc., **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in deed dated March 23, 1936 from Northern Pacific Railway Company to Frank Walloch, lying within said Government Lot 2, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated May 8, 1990 from Burlington Northern Railroad Company to Robert J. Phelps and Nancy C. Phelps, recorded as document 9005101552, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated March 19, 1992 from Burlington Northern Railroad Company to Gilbert A. Schoos and Alice G. Shoos; also, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated February 1, 1937 from Northern Pacific Railway Company to Carl Jorgensen and Christine Jorgensen, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Quitclaim Deed dated February 28, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded April 20, 1999 as Document Number 9904210268, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 26, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000619, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 5, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000620, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Quitclaim Deed dated June 26, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000618, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 6, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000621, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 6, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded February 24, 1998 as Document Number 20001030000428, records of King County, Washington; also,

That certain tract of land described in deed dated March 17, 1904 from The Lake Washington Land Company to Northern Pacific Railway Company, situated in Lot 3, Section 31, Township 24 North, Range 5 East, W. M., Snohomish County, Washington, said tract being described in said deed for reference as follows:

“All that portion of said Lot three (3) lying between the eastern line of the right of way of the Northern Pacific Railway Company over and across said lot and a line drawn parallel with and twelve and one-half (12-1/2) feet distant easterly from the center line of said Seattle Belt Line Branch of the Northern Pacific Company as the same is now temporarily located and constructed over and across said lot, and containing on-fourth of an acre, more or less ...” **EXCEPTING THEREFROM**, that portion of that certain tract of land described in Quitclaim Deed dated February 28, 1998 from The Burlington Northern and Santa Fe Railway Company to

2008-0226 Attachment C

ANT, LLC recorded April 20, 1999 as Document Number 9904210268, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 26, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000619, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 5, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000620, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Quitclaim Deed dated June 26, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000618, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 6, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000621, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 6, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded February 24, 1998 as Document Number 20001030000428, records of King County, Washington; also,

That portion of said Railway Company's property situated in Government Lot 1, Section 6, Township 23 North, Range 5 East, W. M., Snohomish County, Washington, lying Southwesterly of a line parallel with and distant 50.0 feet Northeasterly from, measured at right angles to said Railway Company's Branch Line Main Track centerline as originally located and constructed, and Northeasterly of the Southwesterly boundary of that certain 100 foot strip described in Judgment and decree of Appropriation, No. 40536, dated February 8, 1904 in the Superior Court of the State of Washington in and for the County of King, bounded on the North by the North line of said Lot 1, Section 6, and bounded on the South by a line radial to said Railway Company's Main Track centerline, as now located and constructed at a point distant 65.5 feet Northwesterly of the East line of said Lot 1, Section 6, as measured along said Main Track centerline

EXHIBIT B

FORM OF DEED

After Recording Return To:
Port of Seattle
Legal Department
P. O. Box 1209
Seattle, WA 98111
Attn: Isabel R. Safora

QUIT CLAIM DEED

Woodinville South

Grantor: BNSF RAILWAY COMPANY ("BNSF")

Grantee: PORT OF SEATTLE ("Port")

Legal Description: See Exhibit A attached hereto and incorporated herein (the "Property").

Grantor, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) conveys and quit claims to Grantee, the Property, situated in the County of King, State of Washington, together with all after acquired title of the Grantor therein;

Port, King County Washington ("County") and BNSF are parties to that certain Purchase and Sale Agreement dated as of _____ concerning the Property. Port, County and BNSF for themselves and their respective successors and assigns hereby covenant and agree that the provisions of Sections 6 and 7 of said Agreement, attached hereto as Exhibit B, are incorporated herein by reference and shall be covenants running with the land that are enforceable by Port, County, BNSF and their respective successors and assigns.

IN WITNESS WHEREOF, BNSF, Port and County have executed this Deed as of the ____ day of _____, 200_

BNSF RAILWAY COMPANY

By _____
Its

PORT OF SEATTLE

By _____
Its

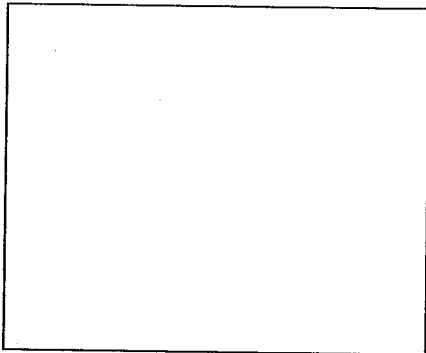
KING COUNTY, WASHINGTON

By _____
Its _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



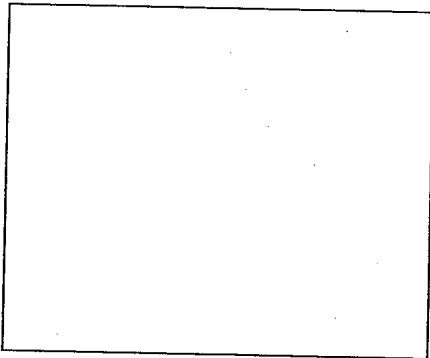
Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



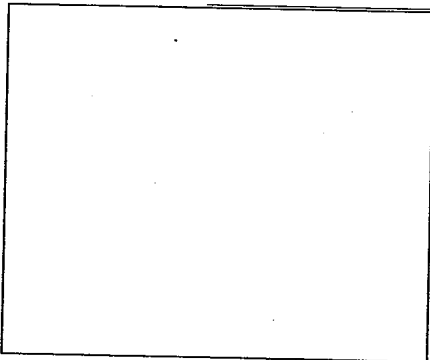
(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

STATE OF WASHINGTON)
) ss:
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

Exhibit B to DeedCOVENANTSSection 6. Condition of Property.

- (a) Port and County have been, or by Closing will have been, allowed to make an inspection of the Property. Subject to BNSF's express representations, warranties and obligations under this Agreement and the Deed, **PORT AND COUNTY ARE PURCHASING THEIR INTERESTS IN THE PROPERTY IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, ARE NOT RELYING ON, AND HEREBY WAIVE ANY WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM BNSF WITH RESPECT TO ANY MATTERS CONCERNING THE PROPERTY** including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Property with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, or under the Property; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Property; the condition of title to the Property, and the Third Party Leases/Licenses permits, orders, or other agreements, affecting the Property (collectively, the "**Condition of the Property**").
- (b) Port and County individually represent and warrant for itself to BNSF that except for BNSF's express representations, warranties and obligations under this Agreement and the Deed, Port and County each has not relied and will not rely on, and BNSF is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto made or furnished by BNSF, the manager of the Property, or any real estate broker or agent representing or purporting to represent BNSF, to whomever made or given, directly or indirectly, orally or in writing.
- (c) Subject to BNSF's express representations, warranties and obligations under this Agreement and the Deed Port and County assume the risk that Hazardous Substances or other adverse matters may affect the Property that were not revealed by Port's or County's inspection and except to the extent of BNSF's express representations, warranties and obligations under this Agreement and the Deed, Port and County each waives, releases and discharges forever BNSF and BNSF's officers, directors, shareholders, employees and agents (collectively, "**BNSF Parties**") from any and all present or future claims or demands, and any and all damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown (collectively, "**Losses**"), which Port or County might have asserted or alleged against BNSF Parties arising from or in any way related to the Condition of the Property or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Property. Losses shall include without limitation (a) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) Losses for injury or death of any person, and (c) Losses arising under any Environmental Law enacted after transfer. The term "**Environmental Law**" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the

2008-0226 Attachment C

environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Model Toxics Control Act, the Water Pollution Control Act, laws concerning above ground or underground storage tanks, and any similar or comparable state or local law. The term "**Hazardous Substance**" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

BNSF, Port and County acknowledge that the compensation to be paid to BNSF for the Property reflects that the Property is being conveyed subject to the provisions of this Section 6 which provisions shall be included in the deed and which shall be covenants running with the Land.

Section 7. Environmental Obligations.

(a) Consistent with Section 4.2 of this Agreement, if, prior to the expiration of the Review Period, the Port or County notifies BNSF in writing of an existing condition affecting the Property (an "**Identified Condition**") that is unacceptable to the Port or County, as determined by the Port and County in their respective sole and absolute discretion, and BNSF does not verify in writing by the earlier of: (i) fifteen (15) business days thereafter or the end of the Review Period, that such Condition is a condition that BNSF is obligated to Cure in a manner acceptable to the identifying Party pursuant to this Section 7, then the Port or County may terminate this Agreement and the South Agreement together, by written notice to BNSF in accordance with the provisions of Section 4.2 of this Agreement. If the Port or County timely notifies BNSF in writing of an Identified Condition, the Port, County and BNSF shall negotiate diligently and in good faith to reach agreement on Curing such condition. If the portion of the Property affected by an Identified Condition can be excluded from the sale without materially interfering with Port's and County's future use of the Property, as determined by the Port and County (as applicable) in their respective sole and absolute discretion, then BNSF may affect Cure prior to Closing by excluding such affected portion of the Property without any price adjustment and to the extent so excluded BNSF shall have satisfied its obligations under this Agreement to Cure the portion of the Property so excluded, provided, however, that any such Cure by exclusion must first be agreed to in writing by the Port (and County, if it relates to the Railbanked Portion.) If Port and County do not terminate this Agreement under Sections 4.2 and 7(a) and proceed to Closing, they shall not be deemed to have waived or released BNSF from any obligations to Cure set forth in Section 7(c), below.

(b) BNSF shall be responsible to investigate, remediate, respond to or otherwise cure (collectively, "**Cure**") as and when required by and in accordance with Environmental Laws any Identified Condition that concerns a release of Hazardous Substances on the Property occurring prior to the Closing or a violation of Environmental Laws concerning the Property occurring prior to the Closing to the extent that BNSF has agreed to Cure, and to the standards that BNSF has agreed to satisfy, in writing prior to the expiration of the Review Period. Notwithstanding the preceding sentence, BNSF shall not be responsible to Cure any such Identified Conditions to the extent Port or County or their respective agents, or contractors materially exacerbate such Identified Condition during construction performed by or for Port or County, excluding superficial or *de minimis* activity performed by Port or County. Further, BNSF shall not be responsible to Cure any Identified Condition that was not caused by BNSF or its agents, contractors or invitees. Port and County shall cooperate with BNSF in its efforts to Cure any Identified Condition concerning a release of Hazardous Substances on the Property.

(c) (i) For Hazardous Substances released on the Property that BNSF has not agreed to Cure prior to Closing, whether or not BNSF has been notified under Section 7 (a) that such releases are an Identified Condition, BNSF shall pay to the Port or County the costs to investigate, remediate, respond to or otherwise cure (collectively "**Remediate**" or "**Remediation**") any such Hazardous Substance releases, or any violation of Environmental Laws prior to Closing, to the extent occurring as a result of the operations of

2008-0226 Attachment C

BNSF or its corporate predecessors, or the agents, employees, invitees or contractors of BNSF or its corporate predecessors. BNSF shall pay to the Port or County such costs to Remediate as and when required by and in accordance with Environmental Laws to standards for the Property that the applicable regulatory agency would apply had the Property continued to be used as a freight railroad, and to standards for other affected properties that the applicable regulatory agency would apply for such properties. BNSF shall not be responsible for (1) any costs of Remediation to the extent the Port or County or their respective agents, contractors or invitees materially exacerbate the released Hazardous Substances during construction performed by or for Port or County (excluding superficial or *de minimis* activity performed by Port or County), or (2) any duplication of efforts by County or Port or their respective agents, contractors or invitees.

(ii) As among BNSF, Port and County, any Remediation for which this Section 7(c) applies would be carried out by the Port or County. BNSF shall cooperate with such Remediation.

(iii) The obligations of BNSF under this Section 7(c) apply only to Remediation ordered or approved by the applicable regulatory agency, provided that for Remediation approved by the applicable regulatory agency BNSF shall have agreed in writing to the Remediation prior to such approval, which agreement by BNSF shall not be unreasonably withheld, conditioned or delayed. The obligations of BNSF, Port and County under this Section 7(c) also apply regardless of which entity is issued an order by the applicable regulatory agency.

(d) Other than BNSF's obligations under this Section 7, as among BNSF, Port and County, Port and County will be responsible for the all other costs of Remediation of Hazardous Substances released on or from the Property or violations of Environmental Laws.

(e) The Section 7 obligations running from BNSF to the Port and County, and the Section 7 rights running to BNSF from the Port and the County, will be allocated as between the Port and County in the manner separately agreed to by the Port and the County.

(f) The provisions of this Section 7 shall be included in the Deed and shall run with the land.

EXHIBIT C

BNSF DISCLOSURES

The information contained in the Property Reports.

EXHIBIT D

PORT AND COUNTY DISCLOSURES

None

EXHIBIT EASSIGNMENT OF THIRD PARTY LEASES/LICENSES AND OTHER CONTRACTS

THIS ASSIGNMENT AND ASSUMPTION OF THIRD PARTY LEASES/LICENSES (this "Assignment") is entered into as of _____, 2008, BNSF RAILWAY COMPANY ("Assignor") and PORT OF SEATTLE ("Assignee").

RECITALS

A. Assignor and Assignee are parties to that certain Purchase and Sale Agreement (Woodinville Subdivision – North Rail Line) dated as of _____, 2008 (the "Agreement"), pursuant to which Assignee has agreed to purchase and Assignor has agreed to sell certain real property (the "Property").

B. Assignor is a party to the Third Party Leases/Licenses as described in the Agreement.

C. Assignor wishes to assign, and Assignee wishes to assume, all of Assignor's right, title and interest in and to the Third Party Leases/Licenses excluding all Fiber Optic Agreements (collectively, the "Assigned Agreements"). It is the intent of the parties that their respective rights and obligations under the Fiber Optic Agreements as they relate to the Property shall be governed by applicable law and the parties do not intend to modify the operation of law with respect thereto.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor, and Assignee hereby agree as follows:

- 1 **Assignment.** To the extent assignable, Assignor hereby assigns, transfers, and sets over unto Assignee all of Assignor's right, title and interest in and under the Assigned Agreements subject to the following sentences of this Section. To the extent any Assigned Agreement relates to other property owned by Assignor ("Other Property") then the foregoing assignment shall only apply as to the Property and not apply as to Other Property. For Assigned Agreements that relate to more than just the Property, Assignee shall not be entitled to any rent or proration of rent thereunder.
- 2 **Assumption; Succession.** To the extent assigned as set forth above, Assignee hereby assumes all of Assignor's duties and obligations under the Assigned Agreements arising and accruing from and after the date of this Assignment and Assignee succeeds to the interests of Assignor under the Assigned Agreements. Assignee hereby agrees to indemnify, defend and hold Assignor harmless from and against any and all claims of any kind or nature arising from or related to such Assigned Agreements on or after the date hereof. Assignor hereby agrees to indemnify, defend and hold Assignee harmless from and against any and all claims of any kind or nature arising from or related to such Assigned Agreements prior to the date hereof.
- 3 **Binding Effect.** This Assignment shall be binding upon and shall inure to the benefit of the parties thereto and their respective successors and assigns.
- 4 **Governing Law.** This Assignment shall be governed by and interpreted in accordance with the laws of the State of Washington.
- 5 **Execution in Counterparts.** This Assignment may be executed in counterparts, each of which shall constitute an original and all of which together shall be deemed a single document.

The parties hereto have executed this Assignment as of the date first written above.

BNSF RAILWAY COMPANY

By: _____
Name:
Title:

PORT OF SEATTLE

By: _____
Name:
Title:

EXHIBIT F

LIST OF THIRD PARTY LEASES/LICENSES

[See Attached]

EXHIBIT G

[Intentionally Deleted]

EXHIBIT H
BILL OF SALE

This Bill of Sale is entered into by and between BNSF RAILWAY COMPANY, a Delaware corporation, of 2500 Lou Menk Drive, Fort Worth, Texas 76131-2830 ("**Grantor**") and THE PORT OF SEATTLE, a municipal corporation of the State of Washington with an address _____ ("**Grantee**").

WHEREAS Grantor and Grantee have entered into that certain Donation Agreement (Woodinville Subdivision – South Rail Line) dated as of April __, 2008 (the "**Real Estate Agreement**"), pursuant to which BNSF has agreed to convey and Port has agreed to accept certain real property in King County, Washington and Snohomish County, Washington.

WHEREAS, pursuant to the terms of the Real Estate Agreement Grantor and Grantee have executed and delivered that certain Quitclaim Deed dated of even date herewith pursuant to which Grantor has conveyed and Grantee has accepted the real property that is the subject of the Real Estate Agreement (the "**Real Property**"); and

WHEREAS, in accordance with the terms of the Real Estate Agreement Grantor and Grantee are entering into this Bill of Sale.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Grantor has quitclaimed and by these presents does hereby quitclaim unto the Grantee, without any covenants of warranty whatsoever and without recourse to the Grantor, all its right, title and interest, if any, in and to any personal property located on the Real Property together with that certain bridge structure over the Snohomish River connecting portions of the Real Property (collectively, the "**Personal Property**").

This Bill of Sale is executed by Grantor and accepted by Grantee subject to any and all restrictions, reservations, covenants, conditions, rights-of-way, easements, and encumbrances, whether of record or not, if any. The terms and conditions set forth in the above stated deed are incorporated herein by reference.

TO HAVE AND TO HOLD the Property unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this Bill of Sale to be signed by its duly authorized officers this ____ day of _____, 20__.

GRANTOR
BNSF RAILWAY COMPANY

By: _____
Name:
Title:

GRANTEE
PORT OF SEATTLE

By: _____
Name:
Title: