

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 not 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.

[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 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 thirty-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 NW¹/₄SW¹/₄ Section 25, the NE¹/₄SE¹/₄ and the NE¹/₄ Section 26, all in Township 27 North, Range 5 East, W. M., bounded on the East by the East line of said NW¹/₄SW¹/₄ Section 25, and bounded on the West by the West line of said NE¹/₄ 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 SE¹/₄NW¹/₄ and the NW¹/₄NE¹/₄SW¹/₄ Section 26, Township 27 North, Range 5 East, W. M., bounded Easterly by the East line of said SE¹/₄NW¹/₄ Section 26, and bounded Westerly by the West line of said NW¹/₄NE¹/₄SW¹/₄ 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 W¹/₂SW¹/₄ Section 26, and the NW¹/₄NW¹/₄ Section 35, all in Township 27 North, Range 5 East, W. M., bounded on the East by the East line of said W¹/₂SW¹/₄ Section 26, and bounded on the South by the South line of said NW¹/₄NW¹/₄ 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 SW¹/₄NW¹/₄ Section 35, the SE¹/₄SE¹/₄NE¹/₄ and the NE¹/₄SE¹/₄ Section 34, all in Township 27 North, Range 5 East, W. M., bounded on the North by the North line of said SW¹/₄NW¹/₄ Section 35, and bounded on the South by the South line of said NE¹/₄SE¹/₄ 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 SE¹/₄SE¹/₄ Section 34, Township 27 North, Range 5 East, W. M., bounded on the North by the North line of said SE¹/₄SE¹/₄ 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 SE¹/₄SE¹/₄ 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 S¹/₂SE¹/₄ and the SE¹/₄SW¹/₄ 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 SE¹/₄SE¹/₄ 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 S¹/₂N¹/₂, and the E¹/₂SW¹/₄ Section 3, the NW¹/₄ 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 NW¹/₄ 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 E½SW¼ 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 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°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)

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

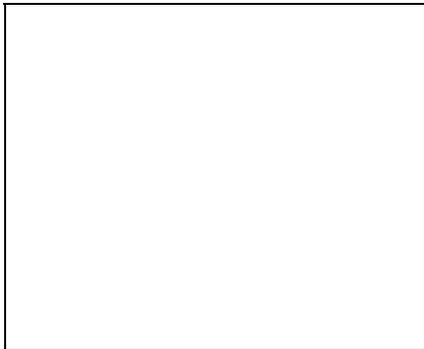
By _____
Its

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: _____



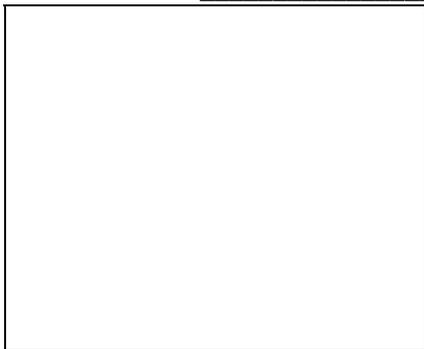
Notary Public
Print Name _____
My commission expires _____

(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 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: _____
D. P. Schneider
General Director Real Estate

Date: _____

Assignee:

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

By: _____

Date: _____

Buyer:

a _____ corporation

By: _____
Name: _____
Title: _____

Date: _____

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

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 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 (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”).

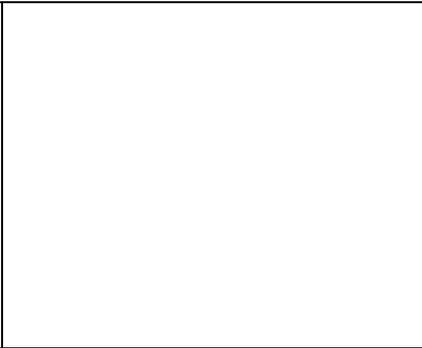
NOW, THEREFORE, BNSF, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) conveys and quit claims to TPO all of BNSF’s right, title and interest in and to the Reserved Freight Easement, together with all after acquired title of BNSF therein.

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



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

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.

Exhibit C
To Freight Easement Sale Agreement
Form of O&M Agreement

[See Attached]

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 IT 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
2711 Alaskan Way
Seattle, WA 98121

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:

A G R E E M E N T

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.

EXHIBIT B
To Trail Use Agreement

Map of Three Railbanked Segments

EXHIBIT L

FORM OF PUBLIC MULTIPURPOSE EASEMENT AGREEMENT

[See Attached]

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