

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

238495

STB Docket No. FD 35905

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Office of Proceedings  
May 29, 2015  
Part of  
Public Record

**CITY OF WOODINVILLE, WA –  
AMENDED PETITION FOR DECLARATORY ORDER**

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**EXPEDITED CONSIDERATION REQUESTED**

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Dated: May 29, 2015

Attorneys for City of Woodinville, WA

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**CITY OF WOODINVILLE, WA –  
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The City of Woodinville, a municipal corporation of the State of Washington (the “City”) files this Amended Petition to substitute for and replace the original petition (the “Original Petition”) filed with the Board on February 3, 2015. The City is filing this Amended Petition because of changes in the subject transaction, as more fully explained below.

By this Amended Petition, the City requests that the Board exercise its discretion under 49 USC §721 and 5 USC §554(e) to remove uncertainty, and declare that the transaction described herein between the City and the Port of Seattle, another municipal corporation of the State of Washington, are not subject to the Board’s regulatory authority, and that upon consummation of the transaction, the City will not be subject to the Board’s regulatory authority as a carrier under the Board’s precedents, namely *State of Maine, Department of Transportation – Acquisition and Operation Exemption – Maine Central Railroad*, 8 ICC 2d 835 (1991) (“*State of Maine*”) and its progeny.

The City proposes to acquire the land and physical assets of a 2.58-mile line of railroad (the “Subject Line”) currently owned by the Port of Seattle between approximately milepost 23.8 and approximately milepost 26.38, primarily in the City with a small portion in the neighboring City of Bothell, in King County, Washington. The Subject Line is shown on the map attached

hereto as Attachment 1.<sup>1</sup> The Subject Line is subject to a rail freight service easement currently owned by Eastside Community Rail, LLC (“ECR”) and leased to Ballard Terminal Railroad Company, LLC (“Ballard”). The Board previously determined that the Port of Seattle is not a carrier with respect to the Subject Line, and the City wants to substitute for the Port of Seattle as the non-carrier owner. Because the Port of Seattle does not have any common carrier interests in the Subject Line, the transfer of its interests to the City is outside the jurisdiction of the Board. However, closing on the purchase by the City from the Port of Seattle is conditioned on a Board finding that the transactions are consistent with *State of Maine*, and that the City will not become a carrier as a consequence of the transactions.

### **BACKGROUND**

In 2009, the Port of Seattle acquired from BNSF Railway Company (“BNSF”), among other property, the land, trackage and other physical assets comprising BNSF’s line of railroad between MP 26.38 in King County, Washington, and MP 38.25 in Snohomish County, Washington (the “Corridor”).<sup>2</sup> In the quitclaim deed to the Port of Seattle, BNSF retained a permanent and exclusive freight rail easement which it agreed to transfer to GNP Rly, Inc. (“GNP”).<sup>3</sup> The Port of Seattle and GNP also agreed to enter into an Operations and Maintenance Agreement (the “O&M Agreement”), a copy of which is attached hereto as Attachment 2. After

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<sup>1</sup> The attachments are included in a separate Appendix being filed together with this Petition.

<sup>2</sup> The Subject Line that is the subject of the proposed sales to the City comprise the portion of the Corridor located in King County, Washington.

<sup>3</sup> In connection with the sale to the Port of Seattle and the transfer of the easement from BNSF to GNP, GNP obtained common carrier authority from the Board. *GNP Rly Inc.—Acquisition and Operation Exemption—BNSF Railway Company*, STB Finance Docket No. 35213 (served February 13, 2009).

examining the quitclaim deed/retained easement and the O&M Agreement, the Board found that the Port of Seattle was not acquiring any common carrier obligations with respect to the Corridor, and that the Port of Seattle would not become a carrier upon its acquisition of the Corridor. *The Port of Seattle—Acquisition Exemption—Certain Assets of BNSF Railway Company*, STB Finance Docket No. 35128 (served October 27, 2008) (“*Port Dismissal Decision*”).

In 2012, through an involuntary bankruptcy proceeding, GNP’s common carrier authority, the retained freight easement and the O&M Agreement were transferred to ECR. *Eastside Community Rail, LLC—Acquisition and Operation Exemption—GNP RLY, Inc.*, STB Docket No. FD 35692 (served November 23, 2012). Ballard was subsequently authorized to lease from ECR, and operate over the Corridor. *Ballard Terminal Railroad Company, LLC—Lease Exemption—Line of Eastside Community Rail, LLC*, STB Docket No. 35730 (served April 18, 2013).

The City now wishes to acquire the rights of the Port of Seattle to the portion of the Corridor lying in King County (and mostly within the City limits). To do so, the City has entered into an Amended and Restated Real Estate Purchase and Sale Agreement dated as of May 1, 2015 (the “Amended Agreement”) with the Port of Seattle to purchase the land and physical assets comprising the portion of the Corridor in King County, including the Subject Line.<sup>4</sup> A copy of the Amended Agreement is attached hereto as Attachment 3. Pursuant to the

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<sup>4</sup> Originally, the City planned to enter into two agreements with the Port of Seattle, an Ancillary Agreement under which the City would acquire certain designated ancillary parcels that did not contain any of the railroad facilities, and a Main Agreement under which it would acquire the Subject Line. The Original Petition was based on that structure. However, the City and the Port of Seattle subsequently decided to change the structure of the transaction so that the entire portion of the Corridor in King County will be acquired altogether pursuant to the Amended Agreement.

Amended Agreement, the land and physical assets acquired by the City will remain subject to the retained freight rail easement and the O&M Agreement. The O&M Agreement will be partially assigned to the City to the extent it applies to the portion of the Corridor being sold to the City. A copy of the proposed partial assignment is attached hereto as Attachment 4. The Port of Seattle does not have any common carrier obligation with respect the Subject Line, and thus, the City will not be acquiring any common carrier obligation. In essence, the City will merely be substituting for the Port of Seattle as the non-carrier owner of a portion of the Corridor.

In this Amended Petition, the City requests that the Board confirm that the sales to the City of the portion of the Corridor in King County, including the Subject Line are outside of the Board's jurisdiction and do not require Board authorization, and that the City will not become a common carrier freight railroad upon the consummation of the acquisition.

## **LEGAL DISCUSSION**

### **A. *State of Maine Standards***

The decision of the Interstate Commerce Commission in *State of Maine*, 8 ICC 2d at 836-37, generally provides that authorization is not required when only the physical assets will be conveyed, and the common carrier rights and obligations that attach to the line will not be transferred to the purchaser. As the Board has explained the key question under *State of Maine*:

The Board examines in each case whether, once the transaction takes effect, the entity retaining or obtaining the freight carrier obligation will have sufficient access to conduct existing and reasonably foreseeable freight operations so that it can satisfy the common carrier obligation. A transaction will not result in a common carrier obligation being imposed on a noncarrier if the transaction does not unduly impair the carrier's ability to provide service.

*Wisconsin Department of Transportation – Petition for Declaratory Order – Rail Line in Sheboygan County*, WI, STB Docket No. FD 35195 (served April 20, 2009) (“*WisDOT-*

*Sheboygan*”) at 3 (footnote omitted). See also *Florida Department of Transportation – Acquisition Exemption – Certain Assets of CSX Transportation, Inc.*, STB Docket No. FD 35110 (served December 15, 2010); *Massachusetts Department of Transportation – Acquisition Exemption – Certain Assets of CSX Transportation, Inc.*, STB Docket No. FD 35312 (served May 3, 2010) (“*MassDOT*”). Indeed, as the Board explained when the Port of Seattle acquired the Corridor: “[A]s long as the transferor retains, or the third-party transferee obtains, the common carrier rights and obligations along with sufficient contractual rights to meet those obligations, the acquisition of the right-of-way is not a transaction requiring Board authorization.” *Port Dismissal Decision* at 3-4. The Board has recently reaffirmed this interpretation of 49 USC 10901 in cases involving the acquisition of the physical assets and associated right of way by the Massachusetts Department of Transportation from Pan Am Southern LLC and from Housatonic Railroad Company, Inc. See *Massachusetts Department of Transportation – Acquisition Exemption – Certain Assets of Pan Am Southern LLC*, STB Docket No. FD 35863 (served December 24, 2014); *Massachusetts Department of Transportation – Acquisition Exemption – Certain Assets of Housatonic Railroad Company, Inc.*, STB Docket No. FD 35866 (served December 24, 2014).

The operator’s rights do not need to be absolute. Use of the property for other than freight service is also acceptable so long as the uses will not unduly interfere with the provision of freight service. See *MassDOT*, at 9 (reasonable restrictions on freight operations acceptable); *FDOT* (freight and commuter operating windows permitted); *Port Dismissal Decision*, at 4-5 (future commuter service).

**B. The transfer of the portion of the Corridor in King County is not subject to the Board's jurisdiction.**

In the *Port Dismissal Decision*, the Board reviewed the same deed/reserved freight easement and O&M Agreement as will apply to the Subject Line and Remaining Corridor, and found that the Port would not be acquiring any common carrier obligations, and that its acquisition from BNSF would not bring it within the jurisdiction of the Board.<sup>5</sup> Because the Port did not acquire any common carrier obligations with respect to the Subject Line or the portion of the Corridor in King County, it stands to reason that the Port's proposed transfer to the City likewise cannot involve any common carrier obligations. Indeed, the Board, on the same basis, recently found that Snohomish County could purchase from the Port of Seattle the portion of the Corridor in Snohomish County, without becoming a carrier. *See Snohomish County, WA – Petition for Declaratory Order – Jurisdiction Determination*, STB Docket No. FD 35830 (served March 5, 2015), slip op. at 2. The substitution of one non-carrier owner for another does raise any issues that would bring the transaction within the jurisdiction of the Board.

**REQUESTED RELIEF**

Since there will be no changes in the ability of ECR or Ballard to conduct freight rail operations, or in the O&M Agreement which has already been determined by the Board not to or restrict common carrier operations over the Subject Line, the City requests that the Board (1) reiterate its findings in STB Finance Docket No. 31528 with respect to the Port of Seattle's acquisition of the Subject Line, and its findings in STB Docket No. FD 35830 with respect to the substitution of Snohomish County as a non-carrier owner, (2) find that the proposed transaction is consistent with *State of Maine*, and (3) find that the acquisition of the portion of the Corridor

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<sup>5</sup> The City recognizes that the Board will still have authority over Subject Line, and over the railroad operator of the line as the freight common carrier. *See Friends of the Aquifer*, STB Finance Docket No. 33966 (served August 15, 2001), slip op. at 4.

in King County by the City from the Port of Seattle will not constitute the acquisition of a railroad line under 49 USC §10901(a)(4), or cause the City to become a rail carrier.

**EXPEDITED CONSIDERATION REQUESTED**

The Amended Agreement provides that the City will seek a determination from the Board that the City will not become a carrier as a result of the acquisitions from the Port of Seattle described therein. Amended Agreement, ¶10. However, the Agreements each also provide that, absent agreement otherwise, closing must be held by July 31, 2015, or the Amended Agreement may be terminated. Amended Agreement, ¶¶ 10, 15.3. In order to make sure that the parties have time to make final preparations for closing prior to the deadline, the City requests that the Board issue its decision in this proceeding by July 10, 2015, and that the Board make its decision effective immediately upon issuance. In order that the Board's processing can be expedited, although not required, the City is serving copies on the potentially affected parties as shown on the certificate of service attached hereto.

Respectfully submitted,

  
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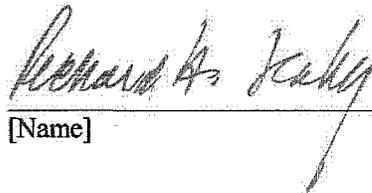
Dated: May 29, 2015

Attorneys for City of Woodinville, WA

**VERIFICATION**

I, Richard A. Leahy, City Manager of the City of Woodinville, WA, verify under penalty of perjury that statements contained in the foregoing Petition for Declaratory Order are true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to file this Verification.

Executed on May 29, 2015.

  
\_\_\_\_\_  
[Name]

**CERTIFICATE OF SERVICE**

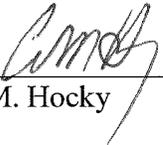
I hereby certify that on the date set forth below, I caused a copy of the foregoing Petition for Declaratory Order to be served email upon the following parties and their anticipated counsel as follows:

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Dated: May 29, 2015

  
\_\_\_\_\_  
Eric M. Hocky

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STB Docket No. FD 35905

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**EXPEDITED CONSIDERATION REQUESTED**

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**APPENDIX**

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Dated: May 29, 2015

Attorneys for City of Woodinville, WA

## **TABLE OF ATTACHMENTS**

- 1. Map of Subject Line**
- 2. Operations and Maintenance Agreement**
- 3. Amended and Restated Real Estate Purchase and Sale Agreement**
- 4. Form of Partial Assignment and Assumption Agreement**

**ATTACHMENT 1**

**MAP OF SUBJECT LINE**

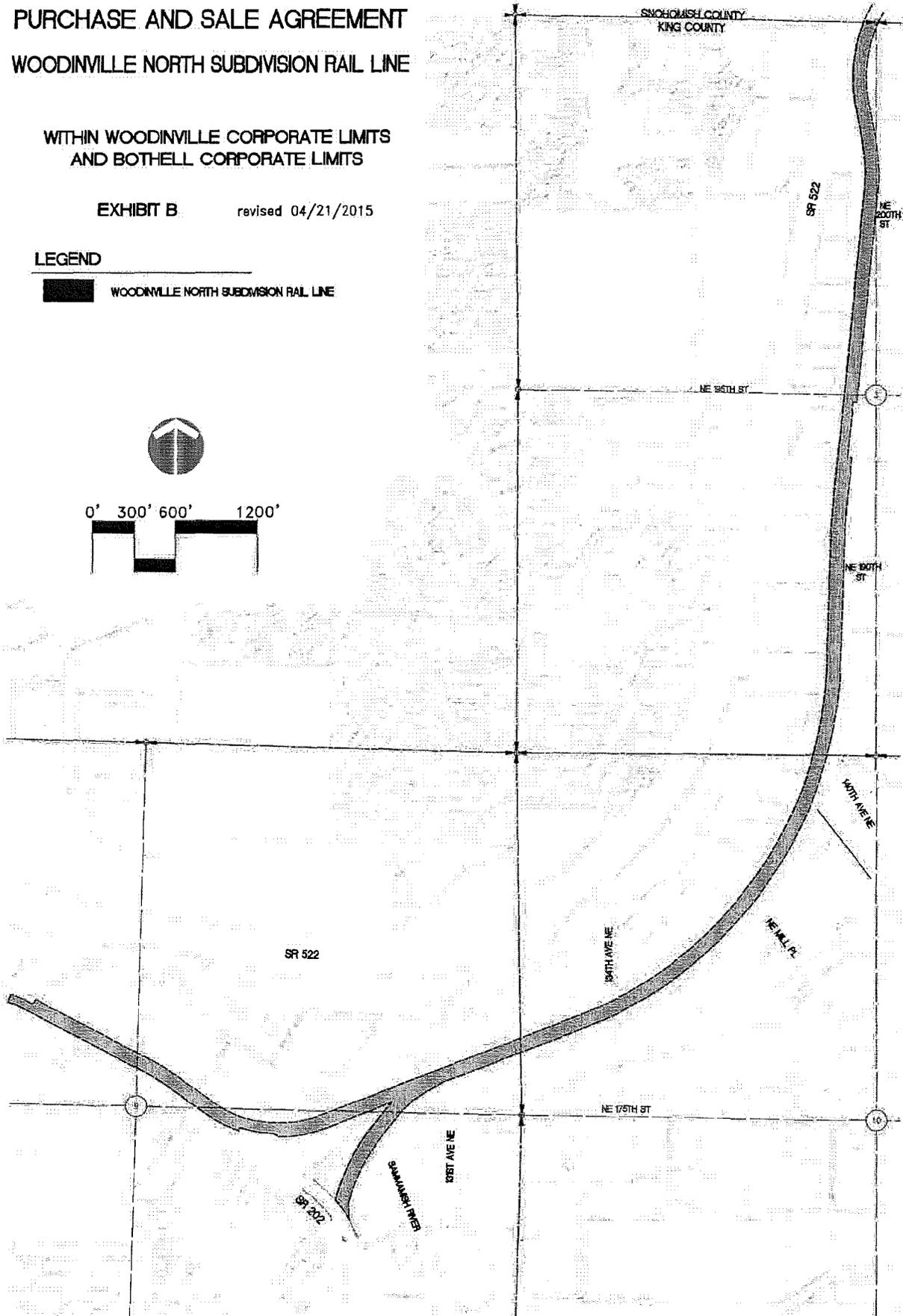
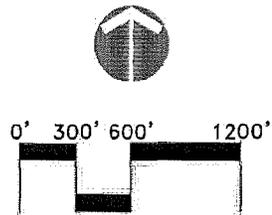
# PURCHASE AND SALE AGREEMENT WOODINVILLE NORTH SUBDIVISION RAIL LINE

WITHIN WOODINVILLE CORPORATE LIMITS  
AND BOTHELL CORPORATE LIMITS

EXHIBIT B revised 04/21/2015

## LEGEND

 WOODINVILLE NORTH SUBDIVISION RAIL LINE



**ATTACHMENT 2**

**OPERATIONS AND MAINTENANCE AGREEMENT**

**OPERATIONS AND MAINTENANCE AGREEMENT  
BETWEEN  
PORT OF SEATTLE  
AND  
GNP RLY. INC.**

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**OPERATIONS AND MAINTENANCE AGREEMENT  
BETWEEN  
PORT OF SEATTLE  
AND  
GNP RLY. INC.**

This Operations and Maintenance Agreement (the "Agreement") is entered into as of the 18 day of DECEMBER, 2009 ("Execution Date"), between the PORT OF SEATTLE, a Washington Municipal Corporation ("Port"), and GNP RLY. INC., a Washington corporation ("TPO").

**Recitals**

- A. Pursuant to the Purchase and Sale Agreement between Port and BNSF Railway Company, a Delaware corporation ("BNSF"), dated May 12, 2008, as amended; Port acquired certain rights-of-way from BNSF ("Port Property") and BNSF reserved for itself certain freight easement rights under the Quitclaim Deed ("Deed") to the Port; and
- B. BNSF has conveyed its freight easement rights to TPO by quit claim deed dated of even date herewith ("Easement"). The Easement gives TPO the right to operate on a portion of the Port Property (as defined in Section 1.4 below, the "Corridor"), and
- C. TPO intends to use the Corridor to provide Freight Rail Service and Excursion Rail Service (defined below); and
- D. Pursuant to a Railroad Right-of-Way License Agreement ("License") between Port dated of even date herewith, attached hereto and incorporated herein as Exhibit A, TPO intends to use the Excursion Spur (as defined in the License) to provide Excursion Rail Service on the Excursion Spur, which is "railbanked" as set forth more fully in Recital D of the License.
- E. The parties desire to set forth in this Agreement their respective rights and obligations with respect to TPO's use of the Corridor and adjacent Port Property for Freight Rail Service and related activities.
- F. The TPO has been qualified by the Surface Transportation Board ("STB") and is willing to provide railroad freight transportation service to the public upon the terms and conditions contained herein.
- G. The TPO intends to work in partnership with local governments, economic development authorities, shippers and Class 1 railroads to develop innovative and efficient operating and shipping methods and improvements in order to provide competitive rail service for the region's rail shippers.

## Agreement

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

### SECTION 1. Definitions

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

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

1.3 "BNSF" is defined in Recital A.

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

1.5 "Deed" is defined in Recital A.

1.6 "Easement" is defined in Recital A.

1.7 "Environmental Laws" means any and all applicable laws, statutes, regulations, enforceable requirements, orders, decrees, judgments, injunctions, permits, approvals, authorizations, licenses, permissions or binding agreements issued, promulgated or entered into by any governmental agency having jurisdiction over the environmental condition of the Corridor, relating to the environment, to preservation or reclamation of natural resources, or to the management, release or threatened release of contaminants or noxious odors, including, without limitation, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and the Hazardous and Solid Waste Amendments of 1984, the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, the Clean Air Act of 1970, as amended by the Clean Air Act Amendments of 1990, the Toxic Substances Control Act of 1976, and any similar or implementing state law, and all amendments or regulations promulgated thereunder.

1.8 "Excluded Conduct" is defined in Section 7.4.

1.9 "Excursion Rail Service" means the deployment and operation of trains using the facilities for excursion passenger service and not for commuter rail passenger service or any other service.

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

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

1.12 "FRA" means the Federal Railroad Administration.

1.13 "Freight Rail Service" means only (a) the common carrier freight rail operations conducted by TPO or TPO's tenants or assignees on the Corridor and (b) the head and tail operations associated therewith and conducted on the Excursion Spur in accordance with the License, and no other freight service.

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

1.15 "Invoice" is defined in Section 9.1.

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

1.17 "Port" is defined in the preamble.

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

1.19 "Track" means any and all main track, sidings, yards, spurs and other track constructed or to be constructed upon and across the Corridor.

1.20 "TPO" is defined in the preamble.

## SECTION 2. Rail Service

### 2.1 TPO's Rights and Obligations

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

a) Modify, construct, maintain, replace, remove and operate the Tracks upon and across the Corridor in order to fulfill common carrier obligations to existing and prospective shippers and receivers of freight, at the expense of entities other than Port.

b) Perform any work prescribed by any FRA inspector.

c) Use existing Tracks in the Corridor for switching cars to or from industries served by industry tracks, which use includes setting out or picking up cars; provided, that TPO shall not transport or store on the Corridor or on Port Property any toxic inhalation hazards ("TIHs") or poison inhalation hazards ("PIHs").

d) In the event that construction of any Tracks or TPO's operations requires the construction of new Port Facilities, or modifications to, or relocations of Port's existing Facilities, such construction, modifications and/or relocations shall be at the expense of entities other than Port.

e) The design, construction, modification or removal of any Tracks and any new, modified or relocated Port Facilities necessitated thereby, shall be subject to Port's prior review and approval, which approval shall not be unreasonably withheld, conditioned or delayed.

f) Use existing Tracks in the Corridor for performing Excursion Rail Service described in Sections 1.9 and 5.1. TPO or its designee shall commence Excursion Rail Service on the Corridor no later than six (6) months after the Execution Date, unless TPO and the Port agree, in writing, to a later date.

g) The parties acknowledge that TPO intends to designate Ballard Terminal Railroad Company, LLC. ("Ballard Shortlines") as the entity that will conduct the

Freight Rail Service authorized under this Agreement. Prior to commencement of Freight Rail Service by Ballard Shortlines on the Corridor, TPO shall provide for the Port's approval a copy of the signed agreement between TPO and Ballard Shortlines for such operations. The agreement between TPO and Ballard Shortlines shall incorporate and be subject to all of the terms and provisions of this Agreement.

h) TPO acknowledges and agrees that, consistent with Section 2.2, Port may enter into agreements with one or more third parties for certain non-freight, passenger transportation uses on the Corridor (e.g., commuter rail service) during the term of this Agreement, that are not inconsistent with TPO's rights under this Agreement and do not materially interfere with TPO's right and obligation to operate Freight Rail Service on the Corridor. TPO shall cooperate with those parties authorized by the Port to ensure the accommodation of such passenger transportation uses on the Corridor.

## 2.2 Port's Rights and Obligations.

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

b) Port, at Port's election, may perform a semi-annual joint inspection of the Corridor by representatives of the Port upon reasonable advance notice for the first two (2) years, and annual joint inspections thereafter. Appropriate representatives from both Port and the TPO shall participate in and cooperate with the joint inspection(s) via hi-rail or other suitable means of railroad track inspection. The Port may perform more frequent inspections of the Corridor, at its election, at any time during the term of the Agreement so long as the following conditions are met: (1) Port provides advance notice to TPO in accordance with Section 6.1 e); (2) Port complies with all reasonable safety requirements of the TPO or as required by law applicable to the Corridor; (3) Port obtains the appropriate authorizations from TPO to be on the designated portions of the Corridor; (4) TPO will be allowed to participate in any inspection; and (5) the inspections are planned and coordinated with TPO to minimize any interference with TPO's operations on the Corridor. The Port may request, at its sole discretion, that the inspections be performed by an authorized FRA inspector, whose findings shall be binding on the Port and the TPO.

c) In the event the TPO fails to or is unable to perform any work it is required to perform under this Agreement, the Port may perform such work. Any such work by Port shall be performed in accordance with TPO's schedule and design, (as approved by Port under Section 2.1. above, and the reasonable documented out-of-pocket cost thereof shall be reimbursed by TPO to Port in accordance with Section .

d) Port shall have the right to contract with third parties for certain non-freight, passenger transportation uses on the Corridor (e.g., commuter rail service) during the term of this Agreement, and to grant easements, licenses or permits affecting the Corridor as long as such use, easements, licenses or permits do not interfere with or create safety hazards for TPO's continuous and uninterrupted use of the Corridor under the terms of this Agreement.

SECTION 3: Maintenance, Repair and Replacement Obligations

3.1 General Maintenance, Repair and Replacement Obligations

a) Except as otherwise provided in this Agreement, TPO shall provide general maintenance and maintenance of way services, including without limitation, inspection, maintenance, repair, installation, alteration and replacement (as necessary) of all Tracks and Facilities, including without limitation, Automatic Warning Devices and grade crossings (including embankments, crossing panels or planking, pavement and curbing) to the extent the same are subject to governmental requirements in connection with grade crossings, located within the Port Property, including the Corridor, in accordance with all applicable laws, rules and regulations, and in a condition reasonably suitable for TPO's intended use of the Corridor.

b) Notwithstanding the provisions of Section 3.1 above, any damage to or destruction of Facilities caused by a party or its employees, contractors, invitees or licensees shall be repaired or replaced at the sole cost of such party.

c) The TPO shall allow the Port to conduct inspections of the Corridor as provided in Section 2.2 b).

3.2 Remedies

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

b) In the event that TPO or Port discovers, or receive notice of, any malfunction of, or damage to, Automatic Warning Devices, the discovering party shall promptly notify the other party by telephone at the telephone number set forth below, and TPO shall follow its usual response practices in the event of any malfunction of, or damage to, Automatic Warning Devices.

Port Duty Officer Telephone No.: \_\_\_\_\_

TPO Duty Officer Telephone No.: \_\_\_\_\_

3.3 Grade Crossing Reconstruction

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

#### SECTION 4. Construction of Additions and Alterations.

##### 4.1 Design and Construction Standards.

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

##### 4.2 Design Review.

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

##### 4.3 Grade Separation Projects.

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

#### SECTION 5. Operations.

##### 5.1 TPO's Operations.

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

SECTION 6. Access.

6.1 Reciprocal Access and Notice Rights.

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

- a) Port may enter upon the Corridor for the purposes set forth in Sections 2.2 and 3.2.
- b) In the event the Port becomes aware of or is notified of an emergency of any kind, Port shall provide immediate notice of such events to TPO's duty officer at the contact number set forth in Section 3.2.
- c) Security personnel of either party in pursuit of a criminal suspect may enter upon the Corridor for the purposes of apprehending the suspect.
- d) TPO may enter upon the Port Property for the purposes set forth in this Agreement.
- e) Except for emergencies when reasonable notice under the circumstances shall be given, Port shall give TPO at least forty-eight (48) hours' prior telephonic notice of any entry onto the Corridor, and shall not enter upon the Corridor until a valid work permit is issued by TPO. If flagging is necessary, no entry shall be made until TPO has made arrangements for flagging.
- f) Any entry by Port (or its contractors, invitees or licensees) on any portion of the Corridor within twenty feet (20') of the track center of the Corridor shall be subject to the notice and flagging requirements under subparagraph above, unless the parties agree to an alternative procedure.
- g) Hazardous Materials may be brought by TPO onto the Corridor only to the extent necessary for the purposes for which entry is allowed under Section 7.1, and in all events in compliance with all applicable Environmental Laws. Notwithstanding the foregoing, TPO shall not transport, bring onto, or store on the Corridor or Port Property any THIs or PHIs.
- h) In the event of leakage, spillage, release, discharge or disposal of any Hazardous Materials by TPO (including, without limitation, by explosion), TPO shall give Port prompt notice of such event, and at its sole cost and expense, clean or remediate Port's property to the standards required by law or by any governmental agency or public body having jurisdiction in the matter. Should any such leakage, spillage, release, discharge or disposal result in a fine, penalty, cost, or charge, TPO shall promptly and fully pay such fine, penalty, cost or charge. TPO shall be responsible for any such leakage, spillage, release, discharge or disposal by any third party it admits to the Corridor. TPO shall indemnify, protect, defend, and hold harmless Port, its trustees, directors, officers, employees, agents, contractors, parent corporations and subsidiaries from and against any and all liabilities or claims for all loss, damage, injury, and death arising as a result of any such leakage, spillage, release, discharge or disposal. The

provisions of this Section 6.1 h) are in addition to and not in limitation of the provisions of hereof, and shall survive the termination of this Agreement.

SECTION 7. Liability.

7.1 Hazardous Materials and Environmental Liability.

a) If the performance of this Agreement creates any solid or Hazardous Materials (e.g., the removal of any materials from the trains that require disposal), said Hazardous Materials shall be properly disposed of in accordance with federal, state and local laws, at the expense of the TPO. In no event shall the Port be identified as the generator of the Hazardous Materials. The TPO shall notify the Port of any such Hazardous Materials and the Port shall receive a copy of the results of any tests conducted on the wastes. The TPO shall hold harmless, indemnify and defend the Port from any claims, costs, damages, fines or other penalties arising from the disposal of any Hazardous Materials created by the performance of this Agreement, regardless of the absence of negligence or other malfeasance by TPO. This provision shall survive the termination or expiration of this Agreement.

b) At no time during the term of this Agreement shall the TPO or its designee, without first obtaining the written consent of the Port, maintain, treat, dispose of, store or have on the Corridor and/or Port Property, or permit any other party to have, maintain, treat, dispose of, or store on the Corridor and/or Port Property, anything which is classified by federal, state or local laws as Hazardous Materials or which requires a permit for the storage, treatment, disposal, handling or maintenance of it from any government authority. This excludes (1) transport or storage of materials by or on rail as long as said transport or storage complies with all Environmental Laws, including the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, *et seq.*, and Sections 2.1 c) and 6.1 g) of this Agreement, and (2) petroleum products, lubricants, antifreeze and such other materials that may be normally consumed in the daily operations of a railroad. Any permits required in compliance with this provision and all federal, state or local laws shall be obtained at TPO's sole cost.

c) The TPO further agrees to indemnify and hold Port harmless from all costs, expenses, liabilities, demands, claims, causes of action at law or in equity whatsoever arising from its, or any of its contractors, agents or invitees', treatment, disposal, storage, maintenance or handling of any Hazardous Materials on the Corridor and/or Port Property during the term of this Agreement, including, but not limited to, the cost of clean-up, environmental damage assessments, defense and reasonable attorney's fees. The Port agrees to cooperate in the prosecution and collection of all costs, expenses, liabilities, demands, and claims, associated with any treatment, disposal, storage, maintenance or handling of any Hazardous Materials on the Corridor and/or Port Property, including, but not limited to, the cost of clean-up, environmental assessments, defense and reasonable attorney's fees, prior to occupancy by the TPO, against any identified responsible party.

d) The provisions of Sections 7.2 through 7.6 shall in no way limit or reduce the application, enforceability or effect of this Section 7.1.

## 7.2 Assumption of Responsibility.

a) Except as otherwise expressly provided in this, TPO will assume all Losses and will indemnify Port for all Losses which arise from TPO's presence on the Corridor or on Port Property without regard to fault, failure, negligence, misconduct, malfeasance, or misfeasance of TPO or its employees, agents or servants.

b) The allocation of responsibility for Losses under this applies only to Losses proximately caused by incidents occurring on or adjacent to the Corridor or Port Property, and arising out of TPO's presence on the Corridor, or on Port Property.

c) All costs and expenses incurred in connection with the investigation, adjustment and defense of any claim or suit shall be included as part of the Loss for which responsibility is assumed under the terms of this, including, without limitation, salaries or wages and associated benefits of, and out-of-pocket expenses incurred by or with respect to, employees of either party engaged directly in such work and a reasonable amount of allocated salaries and wages of employees providing support services to the employees so engaged directly in such work.

## 7.3 Allocation of Responsibilities.

a) Invitees. Losses arising out of personal injury (including bodily injury and death) to, or property damage suffered by, an invitee of either party shall be the responsibility of and borne and paid solely by TPO, except as otherwise provided in Section 7.3 a) i and Section 7.4. Consultants and contractors of TPO, and any person who is on, or has property on, a train or other rolling stock operated by or for the account of TPO or admitted to operate on the Corridor (other than an employee of TPO engaged in performing duties for TPO), shall rebuttably be presumed to be an invitee of TPO.

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

b) Persons Other Than Invitees. Except as provided in Section 7.4, Losses arising out of personal injury (including bodily injury and death) to, or property damage directly suffered by any person who is not an invitee of Port or TPO (including, without limitation, Port, TPO, employees of Port or TPO while engaged in the performance of their duties as an employee, persons in adjacent public streets (including public sidewalks), and trespassers), shall be the responsibility of and borne and paid exclusively by TPO.

c) Unenforceability. If any of the provisions of this Section 7.3 would otherwise be prohibited by or unenforceable under the laws of Washington State (including a determination by a Washington State court with jurisdiction that indemnification under the circumstances involved is against the public policy of Washington State), the indemnity provided by such provision shall be deemed to be limited to and operative only to the maximum extent permitted by law. Without limitation, if it is determined by a final judgment of a Washington State court with jurisdiction that any law or public policy of Washington State prohibits the indemnification of a party for its own sole negligence in any instance covered by the provisions of this Section 7.3, those provisions shall be deemed to

exclude indemnification for such party's sole negligence but to permit full indemnification, as specified in this Section 7.3, if both parties were negligent.

7.4 Excluded Conduct.

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

7.5 Scope of Indemnification.

a) In any case where a party is required under the provisions of this to bear a Loss, it shall pay, satisfy and discharge such Loss and all judgments that may be rendered by reason thereof and all costs, charges and expenses incident thereto, and such party shall forever indemnify, defend and hold harmless the other party and its commissioners, trustees, directors, officers, agents, employees, shareholders, parent corporations, subsidiaries and affiliated companies, or governmental entities from, against and with respect to any and all Losses which arise out of or result from the incident giving rise thereto.

b) TPO hereby waives any immunity TPO may have under applicable workers' compensation benefit or disability laws (including but not limited to Title 51 RCW) in connection with the foregoing indemnity. Such waiver shall not prevent TPO from asserting such immunity against any other person or entities. TPO AND PORT AGREE AND ACKNOWLEDGE THAT THIS PROVISION IS THE PRODUCT OF MUTUAL NEGOTIATION.

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

7.6 Procedure.

a) If any claim or demand (short of a lawsuit) shall be made by any person against an indemnified party under this , the indemnified party shall, within thirty (30) days after actual notice of such claim or demand, cause written notice thereof to be given to the indemnifying party, provided that failure to notify the indemnifying party shall not relieve the

indemnifying party from any liability which it may have to the indemnified party under this except to the extent that the rights of the indemnifying party are in fact prejudiced by such failure. The indemnifying party shall have the right, at its sole cost and expense, to control (including the selection of counsel reasonably satisfactory to the indemnified party) or to participate in the defense of, negotiate or settle, any such claim or demand, and the parties agree to cooperate fully with each other in connection with any such defense, negotiation or settlement. In any event, the indemnified party shall not make any settlement of any claims or demands which might give rise to liability on the part of the indemnifying party under this without either providing the indemnifying party with a full release with respect to such liability or obtaining the prior written consent of the indemnifying party, which consent shall not be unreasonably withheld, conditioned or delayed.

b) In the event any lawsuit is commenced against either party for or on account of any Loss for which the other party may be solely or jointly liable under this Agreement, the party sued shall give the other party timely written notice of the pendency of such action, and thereupon the party so notified may assume or join in the defense thereof. If the party so notified is liable therefor under this Agreement, then, to the extent of such liability, such party shall defend, indemnify and save harmless the party so sued from Losses in accordance with the liability allocations set forth in this Agreement. Neither party shall be bound by any judgment against the other party unless it shall have been so notified and shall have had reasonable opportunity to assume or join in the defense of the action. When so notified and the opportunity to assume or join in the defense of the action has been afforded, the party so notified shall, to the extent of its liability under this Agreement, be bound by the final judgment of the court in such action.

c) Subject to the provisions of Section 7.6 a), on each occasion that the indemnified party is entitled to indemnification or reimbursement under this, the indemnifying party shall, at each such time, promptly pay the amount of such indemnification or reimbursement. If the indemnified party is entitled to indemnification under this and the indemnifying party does not elect to control any legal proceeding in connection therewith, the indemnifying party shall pay to the indemnified party an amount equal to the indemnified party's reasonable legal fees and other costs and expenses arising as a result of such proceeding.

d) Any dispute between the parties as to the right to indemnification or the amount to which it is entitled pursuant to such right with respect to any matter shall be submitted to arbitration pursuant to of this Agreement.

#### 7.7 Compliance with Laws.

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

7.8 Delay/Interruption of Service.

Port shall not be held liable for any delay or interruption to the trains, locomotives or cars of TPO unless due to Excluded Conduct or except as otherwise provided for in Section 7.3 i.

7.9 No Limitation on Risk Allocation.

The provisions of this Section 7 shall apply notwithstanding the provisions of Section 8. In no event shall the indemnification provisions of this Section 7 be limited to the insurance coverage required under Section 8.

7.10 Statutory Defenses.

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

7.11 Survival.

The provisions of this Section 7 shall survive the termination or expiration of this Agreement.

SECTION 8. Insurance.

8.1 Freight Rail Service Coverage.

TPO shall obtain and maintain freight service general liability insurance written on an "occurrence" basis, with minimum limits of Five Million Dollars (\$5,000,000) per occurrence. The Port shall be listed as an additional insured for ongoing and completed operations. Coverage shall include contractual liability coverage with no exclusions relative to rail operation. Coverage for punitive damages shall be included to the extent such coverage is permitted under Washington State law. Insurance shall be placed with a company having a current A. M. Best's Insurance Guide Rating of at least "A" or equivalent, and admitted as an insurer by the Washington State Office of the Insurance Commissioner. TPO may self-insure to an amount not to exceed One Million Dollars (\$1,000,000) provided that total coverage limits (self-insurance plus excess liability insurance) are at least to the amounts stated within this Section, provided further, that this sentence shall not inure to the benefit of TPO's successors or assigns without the reasonable written consent of the Port.

a) The policy required under this Section 8.1 shall include general liability property damage and bodily injury coverage for operation of Freight Rail Service along with any related operation, maintenance, and construction on or about the Corridor and Port Property by the TPO. If the policy excludes maintenance and construction on or about the Corridor and Port Property, a separate railroad protective liability policy shall be issued in the name of the Port with minimum limits of Two Million Dollars (\$ 2,000,000) per occurrence for bodily injury and property damage, and Five Million Dollars (\$ 5,000,000) in the aggregate.

b) The policy required under this Section 8.1 shall also include pollution coverage whether incurred during operations or during maintenance or construction. If the general liability policy contains pollution exclusion, a separate pollution policy shall be purchased with minimum limits of Three Million Dollars (\$3,000,000) per occurrence, and Five Million Dollars (\$5,000,000) in the aggregate.

c) The policy limits required under this Section 8.1 shall be adjusted by the parties every three (3) years to reflect industry standards, liability claim trends and market conditions.

#### 8.2 Excursion Rail Service Coverage.

TPO shall obtain and maintain general liability insurance with an excursion/passenger endorsement, and written on an "occurrence" basis, with minimum limits of Twenty-five Million Dollars (\$25,000,000) per occurrence and in the aggregate for all Excursion Rail Service in which total passenger and crew count is 50 or less; and Fifty Million Dollars (\$50,000,000) per occurrence and in the aggregate for all Excursion Rail Service in which total passenger and crew count exceeds 50. The Port shall be listed as an additional insured for ongoing and completed operations. Coverage shall include contractual liability coverage with no exclusions relative to rail operation. Coverage for punitive damages shall be included to the extent such coverage is permitted under Washington State law. Insurance shall be placed with a company having a current A. M. Best's Insurance Guide Rating of at least "A" or equivalent, and admitted as an insurer by the Washington State Office of the Insurance Commissioner. TPO may self-insure to an amount not to exceed Five Million Dollars (\$5,000,000) provided that total coverage limits (self-insurance plus excess liability insurance) are at least to the amounts stated within this Section; provided further, that this sentence shall not inure to the benefit of TPO's successors or assigns without the reasonable written consent of Port.

a) The policy required under this Section 8.2 shall include general liability property damage and bodily injury coverage for operation of Excursion Rail Service along with any related operation, maintenance, and construction, on or about the Corridor and Port Property by the TPO. If the policy excludes maintenance and construction on or about the Corridor and Port Property, a separate railroad protective liability policy shall be issued in the name of the Port with minimum limits of Two Million Dollars (\$2,000,000) per occurrence for bodily injury and property damage, and Six Million Dollars (\$6,000,000) in the aggregate.

b) The policy required under this Section 8.2 shall also include pollution coverage whether incurred during operations or during maintenance or construction. If the general liability policy contains pollution exclusion, a separate pollution policy shall be purchased with minimum limits of Three Million Dollars (\$3,000,000) per occurrence, and Six Million Dollars (\$6,000,000) in the aggregate.

c) The policy limits required under this Section 8.2 shall be adjusted by the parties every three (3) years to reflect industry standards, liability claim trends and market conditions.

### 8.3 Automobile Coverage.

TPO shall maintain general automobile liability insurance of not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit for bodily injury and property damage using ISO Form CA 00 01 (or equivalent). Coverage shall extend to all owned, non-owned, hired, leased, rented, or borrowed vehicles. The policy shall contain a waiver of subrogation in favor of the Port.

### 8.4 Evidence of Insurance.

Prior to the Execution Date, and annually thereafter, TPO shall forward evidence of insurance as required in this Section including evidence of the Port's status as an additional insured for the Freight Rail Service and Excursion Rail Service policies; and a written copy of the waiver of subrogation for the automobile liability policy. Upon request from the Port, TPO shall forward certified copies, within 30 days of the request from the Port, of any binders, policies, and declarations of insurance that is required by this Agreement.

### 8.5 No Port Deductible.

No policies obtained by TPO for this Agreement shall contain a deductible obligation for the Port. If the policy is issued with a deductible option, the TPO shall be liable for all deductibles, as well as any applicable allocated loss adjustment expenses if applicable. All costs incurred by a program of self-insurance, including self-insurance as identified in Sections 8.1 and 8.2 are to be borne by TPO.

### 8.6 Additional Documentation - Self Insurance.

If self-insurance is utilized for a portion of the coverage permitted in Sections 8.1 and 8.2, evidence must be provided to the Port of the TPO's net worth, a copy of the most recent audited financials, and a written description of the self-insurance program. This must be submitted with the other documentation required in Section 8.4.

### 8.7 Applicability of Workers' Compensation.

TPO is fully responsible for ascertaining the applicability of Title 51 Industrial Insurance, of the Revised Code of Washington, as well as any federal laws that pertain to workers compensation coverage for railroad employees and operators, such as the Federal Employers' Liability Act (FELA). TPO shall comply with all required workers compensation requirements whether through purchase of commercial insurance or as a qualified self insurer. In the event FELA is the applicable coverage under this Agreement, TPO shall provide the Port with evidence of coverage. An insurance certificate shall be additionally required to show evidence of other applicable worker compensation coverage.

a) In the event Title 51 of the Revised Code of Washington applies to this Agreement, TPO shall submit a current employer liability certificate as issued by the Washington Department of Labor and Industries that shows the status of TPO worker compensation account prior to the Execution Date of this Agreement. TPO shall list here their UBI Number 602-672-764 and their State Worker Compensation Account Number

TPO shall also provide the Port with Washington State Stop Gap employers' liability insurance. This shall be in an amount of One Million Dollars (\$1,000,000) per accident and One Million Dollars (\$1,000,000) per disease using ISO CG 04 42 11 03 or equivalent. This coverage may be provided by endorsing the primary general liability policies identified in Sections 8.1 and 8.2. To the extent applicable, there shall be no exclusions relative to railroad workers or workers covered under the Federal Employers' Liability Act.

8.8 Primary Insurance.

TPO's insurance shall be primary with respect to its obligations under this Agreement and non-contributory with respect to any coverage the Port may have.

8.9 Maintaining Insurance Requirements.

TPO's insurance requirements shall be maintained for the full term of this Agreement and shall not be permitted to expire or be canceled or materially changed. Each such insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or limits except after thirty (30) days' prior written notice has been given to each insured and additional insured, including the Port.

8.10 Statutory Defenses.

All statutory defenses and limitations applicable to TPO shall be retained by TPO with respect to parties other than the Port, and none are intended to be waived by TPO with respect to parties other than the Port by the acquisition of insurance by TPO or under this Agreement.

8.11 Failure to Maintain Insurance.

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

8.12 Waiver of Subrogation.

Every policy of insurance required under this Agreement to be held by TPO shall include a waiver of all rights of subrogation against the Port.

8.13 Other Insurance.

TPO shall require that all of its contractors and sub-subcontractors carry a railroad protective liability policy with minimum limits of Two Million Dollars (\$ 2,000,000) per occurrence for bodily injury and property damage, and with an aggregate policy limit of no less than Six Million Dollars (\$6,000,000). Said policy shall name the Port as an additional insured.

SECTION 9. Compensation and Billing.

9.1 Invoices.

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

9.2 Audit.

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

9.3 Supporting Documentation.

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

9.4 Fees.

9.4 Fees. TPO shall pay the Port:

- a) A fee of Ten Thousand Dollars (\$10,000.00) payable on the closing of the transaction between the Port and BNSF referenced in Recital A; and

follows: b) A quarterly fee based on the TPO's traffic volume calculated as

\$10.00 per loaded freight car, and

\$.10 per excursion passenger carried. For purposes of this Section 9.4, the term "excursion passengers" shall include passengers carried by another operator pursuant to a contract with TPO; and

5% of gross miscellaneous revenue, including but not limited to, car storage revenue.

c) Additional Fee: TPO represents and warrants that its written application for RRIF financing, which it has heretofore submitted to the FRA, expressly anticipates using a portion of the RRIF funds to pay the Additional Fee described herein, and that 45 USC §822(b)(1), provides that RRIF funds may be used to (A) acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track, components of track, bridges, yards, buildings, and shops; (B) refinance outstanding debt incurred for the purposes described in subparagraph (A); or (C) develop or establish new intermodal or railroad facilities." Upon TPO receiving documentation from the FRA acknowledging receipt of any required credit risk premium payment by TPO and approving the disbursement of RRIF loan financing to TPO for the Additional Fee, an additional fee of Nine Hundred Ninety Thousand Dollars (\$990,000.00) shall be payable to the Port within thirty (30) days of said disbursement; This fee shall be in addition to the fees and payments required under Section 9.4 b):

d) All fees payable by TPO under Sections 9.4 b) shall be payable at the end of the quarter following the quarter during which the fees accrued. For example, fees for Quarter 1 (January-March) shall be payable at the end of Quarter 2 (April-June), or on June 30<sup>th</sup>. Notwithstanding the foregoing, any fees owed at the termination or expiration of the Agreement shall be paid to the Port within 30 days of said expiration or termination.

e) When submitting payments to the Port under Sections 9.4 b), TPO shall include a statement of its traffic and passenger volumes, including all car counts and tonnages in support of the amount of the fees.

f) All fees referenced in this Section 9.4 are the same and are not in addition to the fees payable under Section 10.4 of the License.

#### SECTION 10. Coordination:

##### 10.1 Coordination Committee.

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

## SECTION 11. Binding Arbitration.

### 11.1 Controversies Subject to Arbitration.

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

### 11.2 Selection of Arbitrator.

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

### 11.3 Expedited Arbitration Schedule.

a) In the event either party reasonably finds that the issues of any claim, dispute or controversy are likely to directly, imminently, materially and adversely affect human health or safety, either party may request, in the arbitration demand delivered pursuant to Section 11.2, an expedited arbitration procedure as set forth in this Section solely for the purpose of obtaining a provisional remedy that by law or in equity could be imposed in a court proceeding against a rail carrier subject to the jurisdiction of the Surface Transportation Board (e.g., temporary restraining order, preliminary injunction or injunction).

b) Within five (5) days after service of a demand for expedited arbitration, the parties shall agree on an arbitrator. If the parties fail to agree on an arbitrator within such five (5) day period, each party shall within two (2) days thereafter select an arbitrator. In such case, if either party has not selected an arbitrator within two (2) days after receipt of notice that the other party has selected an arbitrator, the arbitrator selected by the other party shall arbitrate the claim, dispute or controversy. Otherwise, the two selected arbitrators shall select a third arbitrator. If the two arbitrators are unable to agree upon the third arbitrator within two (2) days of the deadline for the selection of the two selected arbitrators, the AAA shall select the third arbitrator. The arbitrator(s) shall be disinterested.

c) The expedited arbitration hearing shall commence no later than ten (10) days after service of a demand for expedited arbitration and shall be concluded on the same day. The arbitration decision shall be rendered by the arbitrator(s) in writing on or before the day following the arbitration hearing.

d) Prior to rendering any decision, the arbitrator must find that the issues of the claim, dispute or controversy are likely to directly, imminently, materially and adversely affect human health or safety. In the event the arbitrator finds that the foregoing criteria have not been met, the proceeding shall be dismissed without prejudice and the parties shall proceed with the arbitration procedure and schedule set forth in Sections 11.1 and 11.2 and; provided, however, that no new demand for arbitration need be served by the party demanding arbitration.

#### 11.4 Pending Resolution.

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

#### 11.5 Cost of Arbitration.

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

### SECTION 12. Term and Termination.

#### 12.1 Term.

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

#### 12.2 Termination for Abandonment.

In the event that TPO, or a permitted successor or assign, lawfully abandons, discontinues or otherwise lawfully ceases to provide Freight Rail Service on the Corridor by obtaining any necessary authority or exemption from the Surface Transportation Board ("STB"), Port may choose to (1) terminate this Agreement upon ninety (90) days written notice to TPO; or

(2) terminate all the rights of TPO, or that of a permitted successor or assign, to provide Freight Rail Service over the Corridor under this Agreement. Notwithstanding the previous sentence, after the termination of this Agreement under this Section, TPO may, with Port's approval, continue to provide Excursion Rail Service over the Corridor. In all events, TPO shall remain liable for all accrued or continuing obligations under this Agreement, and all obligations required upon termination and surrender of the Corridor.

12.3 Offers of Financial Assistance ("OFA").

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

12.4 Railbanking.

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

12.5 Binding Successors; Assignment.

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

12.6 Notices.

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

Port: Port of Seattle  
P. O. Box 1209  
Real Estate Division  
Seattle, WA 98111  
Telephone No. 206-728-3722

If delivered:  
Port of Seattle  
2711 Alaskan Way  
Seattle, WA 98121

TPO: GNP Rly. Inc.  
403 Garfield Street #20  
Tacoma, WA 98444  
Attention: Thomas Payne  
Telephone No. 253-459-9702

#### 12.7 Headings.

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

#### 12.8 Integration, Amendment, and Waiver.

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

#### 12.9 Counterparts.

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

#### 12.10 Governing Law.

This Agreement shall be construed and interpreted in accordance with the laws of Washington State and/or federal law, where applicable.

12.11 Time of Essence.

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

12.12 Agreement Runs with Land; Recordation.

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

12.13 Not for the Benefit of Others.

This Agreement and each and every provision herein is for the exclusive benefit of the parties hereto and not for the benefit of any third party, except that the provisions related to railbanking in Section 12.4 are for the benefit of the County. Nothing herein shall be construed to create or increase any right in any third party to recover by way of damages or otherwise against either of the parties hereto, except for the rights of the County under Section 12.4.

12.14 Attorneys' Fees.

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

12.15 Regulatory Requirements.

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

12.16 TPO Operating Data.

In the event of termination of TPO's operations, TPO shall, at the Port's request and expense, provide to the Port or the Port's designee all data associated with TPO's operations on the Corridor, including, but not limited to, car tracing, shipper identification and rates, and accounting records. Provided, that in the event TPO's operations terminate as a result of TPO transferring its rights to another operator, with the Port's consent, such operating data shall be transferred by TPO to its successor at TPO's cost or that of TPO's successor.

12.17 Removal of TPO's Property.

Upon termination of this Agreement, TPO shall have ninety days from the date of termination to remove all of TPO's personal property and trade fixtures, so long as such removal does not damage the Corridor or Port Property. If damage results to the Corridor or to Port Property as a result of TPO's activities under this Section 12.17, TPO shall, at its sole expense, restore or reimburse the Port for the cost to restore the Corridor or Port Property to as good condition as they were prior to TPO's removal activities, normal wear and tear excepted. If TPO fails to remove any of the personal property and trade fixtures within the time authorized under this Section, the Port may remove TPO's property at TPO's expense, subject to offset by any net proceeds received by the Port from the sale of TPO's property. TPO's obligation to (i) restore the Port for any damage to the Corridor or Port Property, and (ii) repay the Port for the cost of any property removal shall survive the termination of this Agreement. All other property or improvements placed on the Corridor or Port Property by TPO during the term of the Agreement that do not constitute personal property or trade fixtures, shall become the property of the Port upon termination of this Agreement.

12.18 Encumbrances.

TPO may pledge or otherwise encumber its rights under this Agreement to secure its obligations under any loan agreement or similar or related document; provided, however, that such pledge or other encumbrance shall be subject to and subordinate to the rights of the Port and its assigns under this Agreement.

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

PORT OF SEATTLE,  
a Washington municipal corporation

By: [Signature]  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

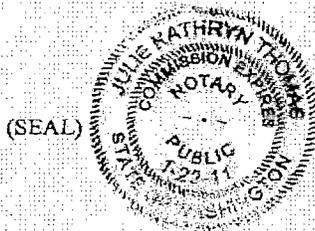
GNP RLY, INC.,  
a Washington corporation

By: [Signature]  
Name: Thomas Payne  
Title: Chairman + C.O.O.

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF King )

On Dec. 17, 2007, before me, a Notary Public in and for said County and State, personally appeared Jay Yoshitani of the Port of Seattle, a Washington municipal corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

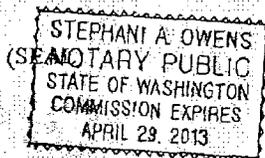


Julie Kathryn Thomas  
Printed Name  
Julie Kathryn Thomas  
NOTARY PUBLIC in and for the State of  
Washington, residing at Bothell, Wa  
My commission expires 1-22-11

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF King )

On 12-18, 2009, before me, a Notary Public in and for said County and State, personally appeared Thomas Payne, of GNP Rly. Inc., a Washington corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.



Stephanie A. Owens  
Printed Name  
Stephanie A. Owens  
NOTARY PUBLIC in and for the State of  
Washington, residing at Everett  
My commission expires 4-29-2013

**ATTACHMENT 3**

**AMENDED AND RESTATED REAL ESTATE PURCHASE AND SALE AGREEMENT**

**AMENDED AND RESTATED  
REAL ESTATE PURCHASE AND SALE AGREEMENT**

**Woodinville North Subdivision Rail Line**

**(Within Woodinville Corporate Limits and Bothell Corporate Limits)**

THIS AMENDED AND RESTATED REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into as of this ~~14~~ day of May, 2015, and amends and restates in its entirety that Real Estate Purchase and Sale Agreement dated the 24th day of July, 2014 (the "Effective Date"), by and between the Port of Seattle, a municipal corporation of the State of Washington ("Port") and the City of Woodinville, a municipal corporation of the State of Washington ("City"), acting in its governmental capacity. The Port and the City are hereinafter sometimes referred to jointly as the "Parties".

**RECITALS**

A. On or about December 18, 2009, the Port acquired from BNSF Railway Company ("BNSF") pursuant to a Quit Claim Deed (the "BNSF Deed") recorded under King County Auditor's File No. 20091218001536, real property developed as a rail corridor and commonly known as the Woodinville Subdivision.

B. Sections of the Woodinville Subdivision are improved with rail tracts and certain commercial and industrial structures and fixtures associated with rail operations (the "Improvements"). The Improvements were acquired by the Port from BNSF pursuant to a Bill of Sale (the "BNSF Bill of Sale") executed on or about December 18, 2009.

C. The BNSF Deed, among other things, obligates BNSF to pay the Port and/or King County the costs to investigate, remediate, respond to or otherwise cure any hazardous substance releases or violations of environmental law to the extent such hazardous substance releases or violations of environmental law (i) occurred as a result of the operations of BNSF, its agents, employees, invitees or contractors, or its corporate predecessors and their agents, employees, invitees or contractors, and (ii) have been ordered to be cured by an applicable regulatory agency; provided, however, that BNSF need only pay for such costs as are necessary to bring the Woodinville Subdivision up to the standards for a freight railway or the standards that the regulatory agency would apply for other affected properties (the "BNSF Remediation Obligation").

D. In the BNSF Deed, BNSF reserved for itself an exclusive easement for freight rail purposes over a portion of the Woodinville Subdivision (the "Freight Easement"). BNSF thereafter conveyed the Freight Easement to GNP Rly, Inc., a Washington corporation ("GNP"), by Quit Claim Deed executed on or about December 18, 2009, and recorded under Snohomish County Auditor's File No. 200912210439.

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REAL ESTATE PURCHASE AND SALE AGREEMENT

E. On or about December 18, 2009, the Port entered into an Operations and Maintenance Agreement between Port of Seattle and GNP Rly, Inc. (the "O&M Agreement"). The O&M Agreement sets forth the rights, obligations, terms and conditions as between the Port and GNP with respect to GNP's use of the Woodinville Subdivision for freight rail operations.

F. On or about December 8, 2012, through an involuntary bankruptcy proceeding, the assets of GNP, including the right to operate under the Freight Easement and the O&M Agreement, were conveyed to Eastside Community Rail, LLC, a Washington limited liability company ("Eastside Community Rail"). Eastside Community Rail assumed all rights and obligations of GNP under the O&M Agreement with the Port.

G. The City desires to acquire from the Port, and the Port desires to sell to the City, pursuant to Chapter 39.33 of the Revised Code of Washington (Intergovernmental Property Disposition Act) and the terms and conditions described below, all that portion of the Woodinville Subdivision located within the City or the City of Bothell and any of the Improvements located within and along that portion of the Woodinville Subdivision lying within the City or the City of Bothell (collectively referred to hereafter as the "Property"). The Property is legally described on Exhibit A to this Agreement. A diagram map showing the approximate location of the Property is attached to this Agreement as Exhibit B.

H. The Property is subject to an easement recorded on December 21, 2010, under King County Auditor's File No. 201012211000998 in favor of Puget Sound Energy (the "PSE Easement"), as amended by amendment recorded on February 12, 2013, under King County Auditor's File No. 20130212002422.

I. By Real Estate Purchase and Sale Agreement dated February 8, 2013, King County, a political subdivision of the State of Washington, contracted to purchase from the Port (i) a fee interest over a portion of the Woodinville Subdivision located in King County that does not include the Property, and (ii) a trail easement over a portion of the Woodinville Subdivision, including all or a portion of the Property, which easement was recorded on February 13, 2013, under King County Auditor's No. 2013021300164 (the "King County Easement").

J. The Property is further subject to other rights and interests granted to third parties pursuant to unrecorded third party leases, licenses, contracts, permits or other agreements for the use and/or occupancy of portions of the Woodinville Subdivision as further defined in Section 9.1 ("Third Party Leases, Licenses and Contracts").

K. The City had previously identified certain ancillary portions of the Property (the "Ancillary Property") that it intended to purchase separately pursuant to an Ancillary Property Purchase and Sale Agreement between the parties dated July 24, 2014 (the "Ancillary Agreement"). The parties wish to terminate that Ancillary Agreement. The Ancillary Property will instead be purchased pursuant to this Agreement and is included in the definition of "Property" herein. Exhibit A to this Agreement has been revised to reflect a corrected description of the Property to include the Ancillary Property.

## AGREEMENT

NOW, THEREFORE, in consideration of the respective agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. Purchase and Sale of the Property.** The Port shall sell and convey to the City, and the City shall purchase from the Port, subject to the terms and conditions set forth below: (i) all of the Port's right, title and interest in and to the Property, as defined in Recital G above and including the real property, all Improvements, and all other rights, privileges and easements appurtenant to the Property; and (ii) all of the Port's right, title and interest in and to all Third Party Leases, Licenses and Contracts, as defined in Section 9.1 below, associated with the Property as of the date of closing.

**2. Purchase Price.** The purchase price for the Property (the "Purchase Price") shall be paid in cash at closing, by wire transfer or other immediate available funds. The Purchase Price is One Million One Hundred Thousand Dollars (\$1,100,000.00).

**3. Earnest Money.** No earnest money deposit shall be made or required.

**4. Title Insurance.**

**4.1 Preliminary Commitment.** The Port, at its sole cost, provided the City with a preliminary commitment for an ALTA owner's standard coverage policy of title insurance covering the Property (the "Preliminary Commitment"), issued by the Chicago Title Insurance Company (the "Title Company"), together with complete legible copies of all documents referenced in the Preliminary Commitment. The initial Preliminary Commitment issued included the Ancillary Property.

**4.2 Permitted Exceptions.** At the closing of the transaction contemplated by this Agreement, title to the Property is to be free of encumbrances or defects, except for the following (each, a "Permitted Exception," and, collectively, the "Permitted Exceptions"): (i) the general exceptions contained in the title policy; (ii) the Freight Easement; (iii) the King County Easement; (iv) the PSE Easement; (v) any special exceptions shown on the Preliminary Commitment that are accepted by the City pursuant to Section 4.3 below; and (vi) any Third Party Leases, Licenses and Contracts, as defined in Section 9.1 below, which are accepted by the City pursuant to Section 4.3 below. Should any new or additional encumbrances on title to the Property be discovered prior to closing, the City shall have the right to object to the same, using the procedures specified in Section 4.3 below. The Port acknowledges that the City may seek to negotiate modifications to some or all of the above Permitted Exceptions during the Due Diligence Period described in Section 5 below.

**4.3 Title Review.** The City has completed its review of the Property's title and did not deliver to the Port within thirty (30) days after receiving the Preliminary Commitment, written notice of any objections the City may have relating to matters shown on or referenced in the Preliminary Commitment or identified in Exhibit C relating to Third Party Leases, Licenses and Contracts, as defined in Section 9.1 below (the "Title Objection Notice"). Any exception, encumbrance or other matter to which the City did not timely object shall be a

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REAL ESTATE PURCHASE AND SALE AGREEMENT

“Permitted Exception.” In the event any supplement to the Preliminary Commitment results in additional exceptions to title, the following process shall apply: The City shall within ten (10) days after receiving the supplement to the Preliminary Commitment deliver written notice to the Port regarding any objections relating to matters shown on or referenced in the supplement to the Preliminary Commitment. The Port shall have ten (10) days from the date on which the Port receives the City’s Title Objection Notice to deliver written notice of the City stating whether or not the Port will, prior to closing, remove or otherwise cure some or all of the matters described in the City’s Title Objection Notice. Should the Port fail to timely respond to the City’s Title Objection Notice, the Port shall be deemed to have refused to remove or cure all of the matters described in the City’s Title Objection Notice. Should the Port refuse to remove or cure any of the matters objected to in the City’s Title Objection Notice, the City must elect one of the following: (i) to accept the defects or encumbrances on title that the Port refuses to remove or cure, in which case such defects or encumbrances shall become Permitted Exceptions, and proceed with the transaction contemplated by this Agreement; or (ii) to terminate this Agreement. The City shall provide the Port with written notice of its decision within thirty (30) days of receiving the Port’s response to the City’s Title Objection Notice. Should the City fail to deliver written notice of the City’s decision to the Port within the time period specified above, the City shall be deemed to have elected to terminate this Agreement. In the event the City elects to terminate this Agreement pursuant to this Section 4.3, all rights and obligations of the Port and the City under this Agreement shall terminate and be of no further force or effect.

**4.4 Title Insurance Policy.** At Closing, the Port shall deliver to the City the Title Company’s irrevocable commitments to issue the Title Policy (as defined below). The Port shall deliver to the City, as soon as reasonably possible after the Closing Date, at the Port’s sole cost and expense, an ALTA owner’s standard coverage form title insurance policy in favor of the City, insuring the City’s title in and to the Property in the amount of the full Purchase Price, subject only to the standard form printed exceptions and the Permitted Exceptions (the “Title Policy”). The City may, at its own expense, obtain endorsements to the Title Policy.

## **5. Due Diligence.**

**5.1 City’s Due Diligence.** The City has completed its Due Diligence.

**5.2 Reports, Studies and Other Materials.** The Port has delivered to the City copies of all material information in the Port’s possession concerning the physical condition of the Property, including: soil, air or groundwater tests; engineering inspections, studies or reports; environmental studies, records, audits or reports; notices from and/or correspondence with government entities; court orders and/or consent decrees; maps; plans; permits; as-builts operating agreements and records; leases; contract; surveys; and any other documents or materials relevant to the City’s proposed acquisition of the Property (collectively, the “Reports”). The Port makes no representations or warranties with respect to the accuracy or completeness, methodology of preparation or otherwise concerning the contents of such reports. The Port has delivered to the City copies of all Third Party Leases, Licenses and Contracts (as defined in Section 9.1) and such other agreements as may impact the Property, including all outdoor advertising agreements for the Property, if any.

**6. Conveyance of Title.** Upon the closing of the transaction contemplated by this Agreement, the Port shall deliver to the City a Quit Claim Deed for the Property, in the form attached to this Agreement as Exhibit D (the “Deed”), subject only to the Permitted Exceptions. In addition, upon the closing of the transaction contemplated by this Agreement, the Port shall deliver to the City a Bill of Sale for the Improvements, in the form attached to this Agreement as Exhibit E.

**7. Condition of the Property.**

**7.1 Disclaimer of Warranties.** Subject to the Port’s express representations, warranties, covenants and obligations under this Agreement, **THE CITY IS NOT RELYING ON, AND HEREBY WAIVES WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM THE PORT 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, as defined in Section 13 below, or other laws, statutes, ordinances, or decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances, as defined in Section 13 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, Contracts, permits, orders, or other agreements, affecting the Property.

**7.2 No Reliance by City.** The City represents and warrants to the Port that except for the Port’s express representations, warranties, covenants and obligations under this Agreement, the exhibits hereto and the BNSF Remediation Obligation, the City has not relied and will not rely on, and the Port 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 the Port, any agent or contractor of the Port, or any real estate broker or agent representing or purporting to represent the Port, to whomever made or give, directly or indirectly, orally or in writing.

**7.3 Survival.** Notwithstanding any provision of this Agreement to the contrary, the provisions of this Section 7 shall survive the closing of the transaction contemplated herein and the delivery of the Deed to the City. The City and the Port acknowledge that their willingness to enter into this Agreement reflects that the Property is being conveyed subject to the provisions of this Section 7.

**8. Partial Assignment and Assumption of O&M Agreement.**

**8.1 Active Rail Service.** The City acknowledges that as of the Effective Date of this Agreement, the Property is not “railbanked” (as defined and described in Section 8(d) of the National Trails Systems Act, also known as the “Rails to Trails Act,” 16 USC §1247(d) and 49 CFR §1152.29) and is presently subject to active freight rail operations pursuant to the O&M

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REAL ESTATE PURCHASE AND SALE AGREEMENT

Agreement as described in Recital E. As of the Effective Date of this Agreement, Excursion Rail Service (as defined in the O & M Agreement) on the Property is not an active use and was not commenced in a timely manner by GNP Rly., Inc., the original "TPO" under the O&M Agreement.

**8.2 Partial Assignment of O&M Agreement.** Upon the closing of the transaction contemplated by this Agreement, the Port shall assign to the City, by means of an assignment agreement substantially in the form attached to this Agreement as Exhibit F (the "Partial Assignment and Assumption of Operations and Maintenance Agreement"), the Port's right, title and interest in the O&M Agreement to the extent the O&M Agreement affects the Property. This partial assignment of the O&M Agreement includes the right to enforce any breaches by the "TPO" under the O & M Agreement that may have accrued with regard to the Property prior to Closing. The Port, its assigns, transferees, or other successors in interest, shall retain all its right, title and interest in the O&M Agreement to the extent the O&M Agreement affects other areas of the Woodinville Subdivision that do not include the Property.

**9. Assignment and Assumption of Third Party Leases, Licenses and Contracts.**

**9.1 Existence of Third Party Leases, Licenses and Contracts.** The Property is currently encumbered by multiple unrecorded third party leases, licenses, contracts, permits or other agreements as more specifically identified in Exhibit C (the "Third Party Leases, Licenses and Contracts"). The parties agree to amend Exhibit C as needed once the legal description of the Property is amended in accordance with Section 4.4.

**9.2 Assignment of Third Party Leases, Licenses and Contracts.** Upon the closing of the transaction contemplated by this Agreement, the Port shall assign all of its right, title and interest in the Third Party Leases, Licenses and Contracts affecting the Property to the City by means of an assignment agreement substantially in the form attached to this Agreement as Exhibit G (the "Assignment and Assumption of Third Party Leases, Licenses and Contracts").

**10. Surface Transportation Board.** The City shall apply for an exemption or seek a ruling of non-jurisdiction from the Surface Transportation Board as may be necessary to complete the transaction contemplated by this Agreement. In addition, the City will file with the Surface Transportation Board seeking a determination that the City will not become a common carrier as a result of its acquisition of the Property subject to the freight easement. The Port shall reasonably cooperate with the City in connection with any hearings or filings necessary to obtain the determination exemption or jurisdictional ruling. In the event that the Surface Transportation Board does not approve of the determination, exemption or issue a ruling of non-jurisdiction prior to the Closing Date, which has been extended by agreement of the parties to July 31, 2015, may be extended beyond July 31, 2015 by written agreement of the parties' Chief Executives or their designees to a further extension. The City shall also have the option of terminating this Agreement if the Surface Transportation Board does not provide approval by the Closing Date or any extension thereof. Upon termination of this Agreement pursuant to this Section 10, this Agreement shall immediately terminate without penalty to the City and be of no further force and effect.

**11. Covenants, Representations and Warranties of the Port.** The Port hereby makes the following covenants, representations and warranties to the City, which covenants,

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representations and warranties shall be deemed made by the Port to the City as of the Effective Date and again as of the Closing Date:

(i) The 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, has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations under this Agreement and the transactions contemplated hereby;

(ii) From the Effective Date to the Closing Date, the Port will notify the City of each event of which the Port becomes aware is affecting the Property or any part thereof, promptly upon learning of the occurrence of such event;

(iii) There is no litigation, action, proceeding or investigation pending or threatened which pertains to the Property or the Port's ownership thereof, other than the letter dated February 18, 2014, from Eastside Community Rail to Joe McWilliams, Managing Director Real Estate Division, previously provided to the City by the Port.

(iv) To the best of the Port's knowledge, neither the whole nor any portion of the Property is subject to temporary requisition or use by any governmental authority or has been condemned or taken in any proceeding similar to a condemnation proceeding, nor is any such proceeding contemplated;

(v) To the best of the Port's knowledge, there is no claim of adverse possession being made to any portion of the Property by any third party nor does the Port have knowledge of existing facts which would enable any third party to successfully assert such a claim;

(vi) The Port has not received any written notice of, and the Port 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;

(vii) The Port has no knowledge, nor has the Port received written notice, of any default or breach by the Port under any covenants, conditions, restrictions, rights of way, easements, leases, licenses or contracts affecting the Property or any portion thereof;

(viii) From the Effective Date to the Closing Date, the Port will not grant or create any easement, right-of-way, encumbrance, lien, restriction, covenant, lease, license, option to purchase or other right which would affect the Property prior to or after closing without the City's written consent first having been obtained;

In the event any of the covenants, representations or warranties contained in this Section 11 become untrue prior to the date of closing as a result of occurrences or information received by the Port subsequent to the Effective Date of this Agreement, the Port shall promptly notify the City, in writing, and, within ten (10) days after receiving such notice, the City may elect to (i) proceed with Closing, or (ii) terminate this Agreement by delivering written notice of termination to the Port. The covenants and representations made by the Port in this Section 11 shall survive the closing of the transaction contemplated by this Agreement and shall not merge into the Deed.

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**12. Covenants, Representations and Warranties of the City.** The City hereby makes the following covenants, representations and warranties to the Port, which covenants, representations and warranties shall be deemed made by the City to the Port as of the Effective Date and again as of the Closing Date:

(i) The City 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, has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations under this Agreement and the transactions contemplated hereby;

(ii) From the Effective Date to the Closing Date, the City will timely perform all of its monetary and non-monetary obligations required by the terms of this Agreement to be performed by the City; and

(iii) There is no litigation, action, proceeding or investigation pending or threatened against the City that could prevent or impair the City's obligations hereunder.

In the event any of the covenants, representations or warranties contained in Section 12 become untrue prior to the date of closing as a result of occurrences or information received by the City subsequent to the Effective Date of this Agreement, the City shall promptly notify the Port, in writing, and, within ten (10) days after receiving such notice, the Port may elect to (i) waive any objections and proceed with Closing, or (ii) terminate this Agreement by delivering written notice of termination to the City. The covenants and representations made by the City in this Section 12 shall survive the closing of the transaction contemplated by this Agreement and shall not merge into the Deed.

**13. Hazardous Substances.**

**13.1 Definition of Environmental Law.** 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.

**13.2 Definition of Hazardous Substance.** 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.

**13.3 Release from Liability.** The City acknowledges that the Property may contain Hazardous Substances, and that Hazardous Substances released onto the Property may have migrated onto neighboring properties at times prior to the Effective Date. The Port acknowledges that the City is not in possession or control of the Property as of the Effective Date. Except as otherwise provided in this Section 13 and Section 7, the City waives, releases and discharges forever the Port from any and all present or future claims or demands and any

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and all damages, losses, injuries, liabilities, causes of action (including without limitation, causes of action in tort), costs and expenses (including without limitation fines, penalties and judgments and attorney's fees) of any and every kind or character, known or unknown (collectively "Losses") that the City might have asserted against the Port arising from or in any way related to environmental conditions in, at, on, under or originating from the Property or the 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 the Effective Date. Nothing in this Agreement shall be construed to waive or discharge any rights or claims the City may hold under the Environmental Laws, agreements or deeds, including the BNSF Remediation Obligation, to seek indemnity or contribution from BNSF or other parties other than the Port for Losses arising from or in any way related to environmental conditions on the Property. Nothing herein shall be deemed to be an assumption by the City of any existing liability of the Port under the Environmental Laws caused by resulting from or materially exacerbated by the acts of the Port or its officers, employees, agents, or contractors.

**13.4 Indemnification by the City.** The BNSF Remediation Obligation obligates BNSF, in specified situations, to investigate, remediate, respond to or otherwise cure (collectively, "Remediate" or "Remediation") certain environmental conditions related to releases of Hazardous Substances or the violation of any Environmental Law. Effective upon the closing of the transaction contemplated by this Agreement, and pursuant to the BNSF Deed and the Clarification to Assignment of BNSF Remediation Obligation described in Section 13.5 below, the Port assigns to the City all rights and obligations it holds to the BNSF Remediation Obligation in so far as those rights and obligations pertain to the Property. Thereafter, as between the City and the Port, the City will be responsible for all costs of Remediation of Hazardous Substances released on or from the Property or violations of any Environmental Law relating to the Property except to the extent (i) caused by or resulting from the acts of the Port or its officers, employees, agents or contractors, or (ii) materially exacerbated by the acts of the Port or its officers, employees, agents or contractors so as to release BNSF from or reduce its liability under the BNSF Remediation Obligation. The City shall have no duty to indemnify or defend the Port for Losses sustained as a result of claims (A) attributable to the operations of GNP and/or Eastside Community Rail, and (B) that arose during any period of time in which there was a lapse in the insurance required of GNP, Eastside Community Rail and/or Ballard Terminal Railroad Company LLC (subcontractor to Eastside Community Rail) by the O&M Agreement. The Port agrees that in the event the City is required to Remediate Hazardous Substances released on or from the Property, the Port shall cooperate with the City to obtain reimbursement of costs of Remediation from BNSF as provided in the BNSF Remediation Obligation found in the BNSF Deed. The City's obligations under this Section 13 do not include any losses for which the Port is required to provide indemnification under Section 14.

**13.5 Clarification to Assignment of BNSF Remediation Obligation.** Upon the closing of the transaction contemplated by this Agreement, the Port shall deliver to the City a copy of a letter executed by the Port and King County clarifying the intent of the Port and King County regarding the allocation of rights and obligations as to BNSF Remediation Obligation

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(the "Clarification to Assignment Agreement"), in a form negotiated between the Port, the City, and King County. The Clarification to Assignment Agreement shall clarify that the BNSF Remediation Obligation was allocated to King County only insofar as such obligations and rights apply to the section of the Woodinville Subdivision purchased by King County in fee, as described in Recital I, and not to the King County Easement.

**13.6 Survival.** The provisions of this Section 13 shall survive the closing of the transaction contemplated by this Agreement and shall not merge into the Deed. The City and the Port acknowledge that their willingness to enter into this Agreement reflects that the Property is being conveyed subject to the provisions of this Section 13.

#### **14. Indemnification.**

**14.1 Immunity Under Applicable Law.** Nothing in this Section 14 shall limit the ability of the Port, the City or both of them to avail themselves of the protection offered by any applicable law affording immunity to the Port or the City, including, to the extent applicable, RCW 4.24.210, or any successor statute.

**14.2 Indemnification by Port.** Subject to and without in any way limiting the provisions of Section 7 and Section 13 of this Agreement, the Port shall indemnify, defend and hold the City, its successors and assigns, harmless from and against all liabilities, suits, losses, costs, damages, claims, expenses, penalties and/or charges, including, without limitation, reasonable attorneys' fees and disbursements, suffered or incurred by reason of (i) the breach of any representation, warranty or agreement of the Port set forth in this Agreement; (ii) the failure of the Port to perform any obligation required to be performed by it under this Agreement; (iii) any liabilities arising out of the ownership, maintenance and/or operation of the Property by the Port prior to closing; or (iv) any accidents, damages or injuries to persons or property from any cause occasioned in whole or in part by any acts or omissions of the Port, its agents and employees, that occur prior to closing. The Port upon notice from the City shall defend any such claim at its expense and with counsel reasonably satisfactory to the City. This indemnification is intended for the sole benefit of the City and shall not inure to the benefit of any third party.

**14.3 Indemnification by City.** Subject to and without in any way limiting the provisions of Section 7 and Section 13 of this Agreement, the City shall indemnify, defend and hold the Port, its successors and assigns, harmless from and against all liabilities, suits, losses, costs, damages, claims, expenses, penalties and/or charges, including, without limitation, reasonable attorneys' fees and disbursements, suffered or incurred by reason of (i) the breach of any representation, warranty or agreement of the City set forth in this Agreement; (ii) the failure of the City to perform any obligation required to be performed by it under this Agreement; (iii) any liabilities arising out of the ownership, maintenance and/or operation of the Property by the City after closing; or (iv) any injuries to persons or property from any cause occasioned in whole or in part by any acts or omissions of the City, its agents and employees, that occur after closing. The City upon notice from the Port shall defend any such claim at its expense and with counsel reasonably satisfactory to the Port. This indemnification is intended for the sole benefit of the Port and shall not inure to the benefit of any third party.

**14.4 Waiver of Immunity.** Solely to give full force and effect to the indemnities contained herein and not for the benefit of any third party, each Party specifically and expressly waives any immunity it may have under Washington State Industrial Act, RCW Title 51, and acknowledges that this waiver was mutually negotiated by the parties herein. This provision shall not be interpreted or construed as a waiver of any party's right to assert such immunity, defense or protection directly against any of its own employees. In no event shall either party's indemnification obligations under this Agreement be limited to the extent of any insurance available to or provided by the obligated party.

**14.5 Survival.** The provisions of this Section 14 shall survive the closing of the transaction contemplated by this Agreement and shall not merge into the Deed.

**15. Conditions Precedent; Closing.**

**15.1 City's Conditions Precedent to Closing.** The City's obligation to close the transaction hereunder shall be subject to the City's right of termination pursuant to Section 10, and the satisfaction by the Port or waiver in writing by the City of the following conditions precedent to the City's obligation to close:

(i) Each of the representations and warranties of the Port hereunder shall be true and true and correct and the Port will not be in breach of such representations and warranties as of Closing.

(ii) The Port shall not be in breach of any covenant made hereunder,

(iii) The Port shall have delivered to escrow each of the deliveries described in Section 15.4 below.

(iv) Neither the City nor the Port have been made the subject of, or threatened with, litigation by any third party in connection with the Property or the City's intended use of the Property.

**15.2 Port's Conditions Precedent to Closing.** The Port's obligation to close the transaction hereunder shall be subject to the satisfaction by the City or waiver in writing by the Port of the following conditions precedent to the Port's obligation to close:

(i) Each of the representations and warranties of the City hereunder shall be true and true and correct and the City will not be in breach of such representations and warranties as of Closing.

(ii) The City shall not be in breach of any covenant made hereunder,

(iii) The City shall have delivered to escrow each of the deliveries described in Section 15.5 below.

(iv) Neither the City nor the Port have been made the subject of, or threatened with, litigation by any third party in connection with the Property or the City's intended use of the Property.

**15.3 Closing Date.** The closing of the transaction contemplated by this Agreement (the "Closing") shall occur through the escrow department of the Title Company (the "Escrow Agent") on or about July 31, 2015 (the "Closing Date") unless the parties mutually agree to the an earlier closing date;. Except as provided in Section 10, if the transaction fails to close by the Closing Date, either party may terminate this Agreement by delivering written notice of termination to the other party. Alternatively, the Parties may further extend the Closing Date by amending this Agreement as provided in Section 21.7 below.

**15.4 Escrow Deposits by Port.** On or before the Closing Date, the Port shall deliver the following to the Escrow Agent:

(i) The duly executed and acknowledged Deed, in the form attached to this Agreement as Exhibit D;

(ii) An executed Real Estate Excise Tax Affidavit for the Property, in the form required by Washington law;

(iii) The duly executed and acknowledged Bill of Sale, in the form attached to this Agreement as Exhibit E;

(iv) Two (2) executed and acknowledged counterpart originals of a Partial Assignment and Assumption of Operations and Maintenance Agreement, in the form attached to this Agreement as Exhibit F;

(v) Two (2) executed and acknowledged counterpart originals of an Assignment and Assumption of Third Party Leases, Licenses and Contracts Agreement, in the form attached to this Agreement as Exhibit G and including an updated schedule of any Third Party Leases, Licenses and Contracts of which the Port has become aware or has entered into since the Effective Date pursuant to Section 16 below;

(vi) An original affidavit pursuant to Section 1445(b)(2) of the Federal Internal Revenue Code (the "Federal Code"), certifying that the Port is not a foreign person under the meaning of the Federal Code, in the form attached to this Agreement as Exhibit H;

(vii) A copy of a duly executed and acknowledged Clarification to Assignment of Rights and Obligations as to BNSF Remediation Obligation as described in Section 13.5 above;

(viii) The Port's approved estimated settlement statement;

(ix) An irrevocable commitment by the Title Company to issue the Title Policy in form satisfactory to the City; and

(x) Any other documents, instruments, records or correspondence reasonably required by the Escrow Agent to consummate the purchase of the Property in accordance with the terms of this Agreement.

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**15.5 Escrow Deposits by City.** On or before the Closing Date, the City shall deliver the following to the Escrow Agent:

- (i) The Purchase Price, in cash (United States funds);
- (ii) One duly executed and acknowledged counterpart original of the Deed, in the form attached to this Agreement as Exhibit D;
- (iii) An executed Real Estate Excise Tax Affidavit for the Property, in the form required by Washington law;
- (iv) One duly executed and acknowledged counterpart original of the Bill of Sale, in the form attached to this Agreement as Exhibit E;
- (v) Two (2) executed and acknowledged counterpart originals of a Partial Assignment and Assumption of Operations and Maintenance Agreement, in the form attached to this Agreement as Exhibit E;
- (vi) Two (2) executed and acknowledged counterpart originals of an Assignment and Assumption of Third Party Leases, Licenses and Contracts Agreement, in the form attached to this Agreement as Exhibit G;
- (vii) The City's approved estimated settlement statement;
- (viii) Any other documents, instruments, records or correspondence reasonably required by the Escrow Agent to consummate the purchase of the Property in accordance with the terms of this Agreement.

**15.6 Closing Costs.** Through escrow at Closing, the Port shall pay (i) the premium for the Title Policy described in Section 4 of this Agreement and (ii) one half of the Escrow Agent's escrow fee. Through escrow at Closing, the City shall pay (a) the cost of recording the Deed, (b) one half of the Escrow Agent's escrow fee, (c) the cost of any endorsements to the Title Policy requested by the City. Each party shall bear its own legal fees. Property taxes for the current year, if any, will be pro-rated as of Closing. Water and other utilities shall be pro-rated as of Closing. Rents under any Third Party Leases, Licenses or Contracts burdening the Property shall be pro-rated as of Closing, provided, that the requirement for pro-ration of rents shall apply only to Third Party Leases, Licenses or Contracts with cumulative annual payments exceeding Five Hundred Dollars (\$500.00). All other costs of Closing, if any, shall be borne by the Port and the City in a manner consistent with local practice for the county in which the Property is located. Upon the request of either party, adjustments shall be made between the parties after the date of closing for the actual amount of any pro-rations made on the basis of estimates as of the date of closing.

**16. Leases, Licenses and Contracts Affecting the Property.** During the period of time between the Effective Date of this Agreement and the date of closing, the Port shall not enter into any leases, sub-leases, licenses or other contracts affecting all or any portion of the Property without the prior approval of the City. The City shall give written notice to the Port of

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its approval or disapproval of any such proposed contract within thirty (30) days of receiving same from the Port. Should the City fail to respond to a request for approval of a proposed contract within the specified time period, the City's approval of such contract shall be deemed given.

17. **Risk of Loss.** In the event of material loss of or damage to the Property prior to the closing, the City may terminate this Agreement by giving written notice of termination to the Port.

18. **Eminent Domain.** If prior to the date for closing, title to all or any part of the Property is taken by eminent domain, the City may, by written notice to the Port, elect to cancel this Agreement prior to the date set for closing by delivering written notice of its election to the Port. In the event the City elects to terminate this Agreement pursuant to this Section 18, all rights or obligations of the Port and the City under this Agreement shall immediately terminate and be of no further force and effect. Unless this Agreement is so canceled, it shall remain in full force and effect and the Port shall assign, transfer and set over to the City all the Port's right, title and interest in and to any awards that may be made for such taking.

19. **Default and Remedies.** If there is an event of default under this Agreement by either Party, the non-defaulting Party will be entitled (i) to seek specific performance of the defaulting Party's obligations under this Agreement or (ii) to terminate this Agreement by written notice to the defaulting Party and Escrow Agent. If the non-defaulting Party elects to terminate this Agreement, all documents will be immediately returned to the Party who deposited them, and neither Party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement, other than that the defaulting Party shall pay any costs of terminating the escrow and any cancellation fee for the Preliminary Commitment.

20. **Notices.** All notices to be given by each Party to the other pursuant to this Agreement shall be delivered in person, by facsimile, nationally recognized overnight courier services or deposited in the United States mail, properly addressed, postage fully prepaid, for delivery by certified or registered mail, return receipt requested. Notices given by personal delivery or facsimile shall be deemed effective upon receipt (provided notice by facsimile is on a business day and receipt is acknowledged); notices given by mail or overnight courier shall be deemed effective on the third business day after deposit. Notices may be given at the following addresses and facsimile numbers, until further notice by either party:

If to the Port:                    Port of Seattle  
Real Estate Division  
PO Box 1209  
Seattle, WA 98111  
Attn: Managing Director Real Estate Division  
Facsimile: (206) 787-3280

With a copy to:                    Port of Seattle Legal Department  
PO Box 1209  
Seattle, WA 98111  
Attn: General Counsel

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Facsimile: (206) 787-3205

If to the City: City of Woodinville  
17301 133rd AVE NE  
Woodinville, WA 98072  
Attn: Richard Leahy  
Facsimile: (206) 489-2705

With a copy to: Greg A. Rubstello, Esq.  
Ogden Murphy Wallace, PLLC  
901 5th Avenue, Suite 3500  
Seattle, WA 98164-2008  
Facsimile: (206) 447-0215

## 21. Miscellaneous.

**21.1 Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and any and all prior agreements, understandings or representations, including the Ancillary Agreement (see section 21.14 below), with respect to its subject matter are hereby canceled in their entirety and are of no further force or effect.

**21.2 Governing Law.** This Agreement shall be governed by and enforced in accordance with the laws of the State of Washington. The venue of any action arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for King County.

**21.3 Interpretation.** This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the parties hereto. The captions and headings in this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

**21.4 Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

**21.5 Legislative Approval.** The parties' performances under this Agreement are contingent on approval of this Agreement by each party's respective legislative body and in accordance with applicable law.

**21.6 Warranty of Authority.** Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the Party for whom he or she purports to sign the Agreement. Each person signing this

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Agreement also represents and warrants that no other person's signature is needed in order (i) for this Agreement to be binding on such Party; or (ii) to release the claims, demands, actions and causes of action that such Party is purporting to release.

**21.7 Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid, unless in writing and signed by all of the Parties hereto.

**21.8 No Waiver.** No term or condition of this Agreement will be deemed to have been waived or amended unless expressed in writing, and the waiver of any condition or the breach of any term will not be a waiver of any subsequent breach of the same or any other term or condition.

**21.9 No Third Party Beneficiaries.** This Agreement is made for the exclusive benefit of the Parties hereto. There are not third party beneficiaries to this Agreement.

**21.10 No Joint Venture.** Nothing contained in this Agreement shall be construed as creating any type or manner of partnership, joint venture or other joint enterprise between the parties.

**21.11 No Brokers.** The Port and the City hereby represent to and agrees with the other that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who can claim a right to a commission or finder's fee as a procuring cause of the purchase and sale contemplated by this Agreement. If any broker or finder perfects a claim for a commission or finder's fee based on any other contract, dealings or communication, the party through whom the broker or finder makes his or her claim will be responsible for that commission or fee and shall indemnify, defend, and hold harmless the other party from and against any liability, cost or damages (including attorneys' fees and costs) arising out of that claim. The provisions of this Section 21.11 shall survive the Closing or earlier termination of this Agreement.

**21.12 No Merger.** The terms and provisions of this Agreement shall not merge into, but shall survive, the Closing of the transaction contemplated by this Agreement and the Deed to be delivered pursuant hereto.

**21.13 Time of the Essence.** Time is of the essence of each and every provision of this Agreement. The Parties agree that strict compliance by both of them is required with respect to any date set forth in this Agreement.

**21.14 Termination of Ancillary Property Agreement.** The signing by the parties of this Amended and Restated Agreement will be the parties' agreement to and will hereby terminate the Ancillary Agreement without further cost or liability to either party. The Ancillary Property is now included in the Property as described in Exhibit A to this Agreement.

**21.15 Exhibits.** The following Exhibits, which are attached to this Agreement, are incorporated herein and by this reference made a part of this Agreement:

EXHIBIT A - Legal Description of the Property

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- EXHIBIT B - Diagram Map Showing the Property
- EXHIBIT C - Schedule of Third Party Leases, Licenses and Contracts
- EXHIBIT D - Form of Quit Claim Deed
- EXHIBIT E - Form of Bill of Sale
- EXHIBIT F - Form of Partial Assignment and Assumption of Operations and Maintenance Agreement
- EXHIBIT G - Form of Assignment and Assumption of Third Party Leases, Licenses and Contracts
- EXHIBIT H - Non-Foreign Person Affidavit

**21.16 Computation of Time.** Except where expressly provided to the contrary, as used in this Agreement, the word "day" shall mean "calendar day," and the computation of time shall include all Saturdays, Sundays and holidays for the purposes of determining time periods specified in this Agreement. If the final date of any period of time set out in any provision of this Agreement falls on a Saturday or a Sunday or a legal holiday, then in such event, the time of such period shall be extended to the next day that is not a Saturday, Sunday or legal holiday. As used in this Agreement, the term "Business Day" shall mean a day that is not a Saturday, Sunday or a legal holiday.

**21.17 Execution in Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

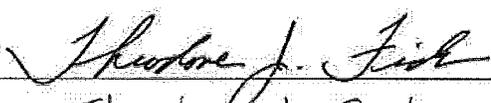
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

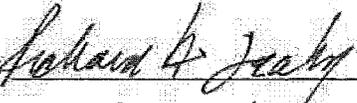
**PORT:**

Port of Seattle, a municipal corporation of the State of Washington

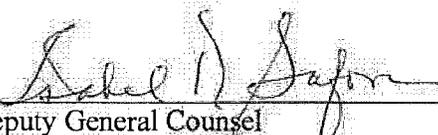
**CITY:**

City of Woodinville, a municipal corporation of the State of Washington

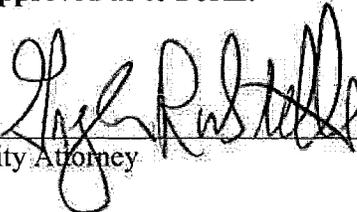
By:   
 Name: Theodore J. Fick  
 Title: Chief Executive Officer

By:   
 Name: RICHARD A. LEAHY  
 Title: CITY MANAGER

**Approved as to Form:**

  
 Deputy General Counsel

**Approved as to Form:**

  
 City Attorney

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## EXHIBIT 'A'

All that portion of the BNSF Railway Company's (formerly Northern Pacific Railway Company) Snohomish to Woodinville, Washington Branch Line right-of-way, varying in width on each side of said Railway Company's Main Track centerline, as now located, and as conveyed by deed recorded under Recording No. 20091218001536, King County, Washington, being a portion of Sections 3, 9 and 10, Township 26 North, Range 5 East, W.M., more particularly described as follows, to-wit:

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the Lots 2, 3, the S $\frac{1}{2}$ N $\frac{1}{2}$ , and the E $\frac{1}{2}$ SW $\frac{1}{4}$  Section 3, the NW $\frac{1}{4}$  Section 10, all in Township 26 North, Range 5 East, W.M., bounded on the North by the North line of said Section 3, said line also being the North line of King County, Washington, and bounded on the West by the West line of said NW $\frac{1}{4}$  Section 10, **EXCEPTING THEREFROM**, that portion lying Easterly of a line parallel with and distant 20 feet Easterly from, measured at right angles to said Railway Company's Main Track centerline as now located and constructed, bounded on the North by the South line of 8<sup>th</sup> 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 E $\frac{1}{2}$ SW $\frac{1}{4}$  Section 3, as measured along said Main Track centerline; also,

A 100 foot wide strip of land being that portion of that certain 100.0 foot wide strip of land described in deed dated June 8, 1887 from Ira Woodin and Susan Woodin to Seattle and West Coast Railway, recorded June 14, 1887 in Book 42 of Deeds, Page 410, under recording number 13894, 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, under recording number 66520, 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, under recording number 13895, records of King County, Washington, lying in 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. 8512191094, **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 approximately 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, under recording number 269856, 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 be 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 distant 400 feet, more or less, to a point in the southeasterly line of the present right of way of Northern Pacific Railway, thence southwesterly along said right of way line to point of beginning; EXCEPT that portion of said southeast quarter of the northeast quarter lying southeasterly of the southeasterly line of the 100-foot wide Sumas Branch right-of-way and northwesterly of the northwesterly line of the 100-foot wide Seattle Belt Line right-of-way; containing 0.32 acres, more or less.”; also,

That portion of that certain 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, under recording number 264622, 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, under recording number 268209, 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.”;

**EXCEPTING THEREFROM**, that portion lying Southerly of the Northeasterly boundary of that certain 100 foot wide tract of land described in deed dated May 4, 1887 from Mary B.

Jaderholm to Seattle Lake Shore and Eastern Railway Company, recorded May 5, 1887 in Volume 40 of Deeds, Page 288, records of said County; also,

That certain approximately 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, under recording number 1746823, records of King County, Washington, said approximately 0.03 acre tract being described in said deed for reference as follows:

“That certain triangular portion of the northeast quarter of southeast quarter (NE $\frac{1}{4}$  of SE $\frac{1}{4}$ ) 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 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 that portion the N $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 9, Township 26 North, Range 5 East, W.M., King County, Washington, lying Northerly of the Southwesterly boundary of that certain 100 foot wide tract of land described in deed dated June 14, 1887 from Mary B. Jaderholm to Seattle and West Coast Railway, recorded June 14, 1887 in Volume 41 of Deeds, Page 385, under recording number 13895, records of said County.

Containing an area of 30.394 acres more or less

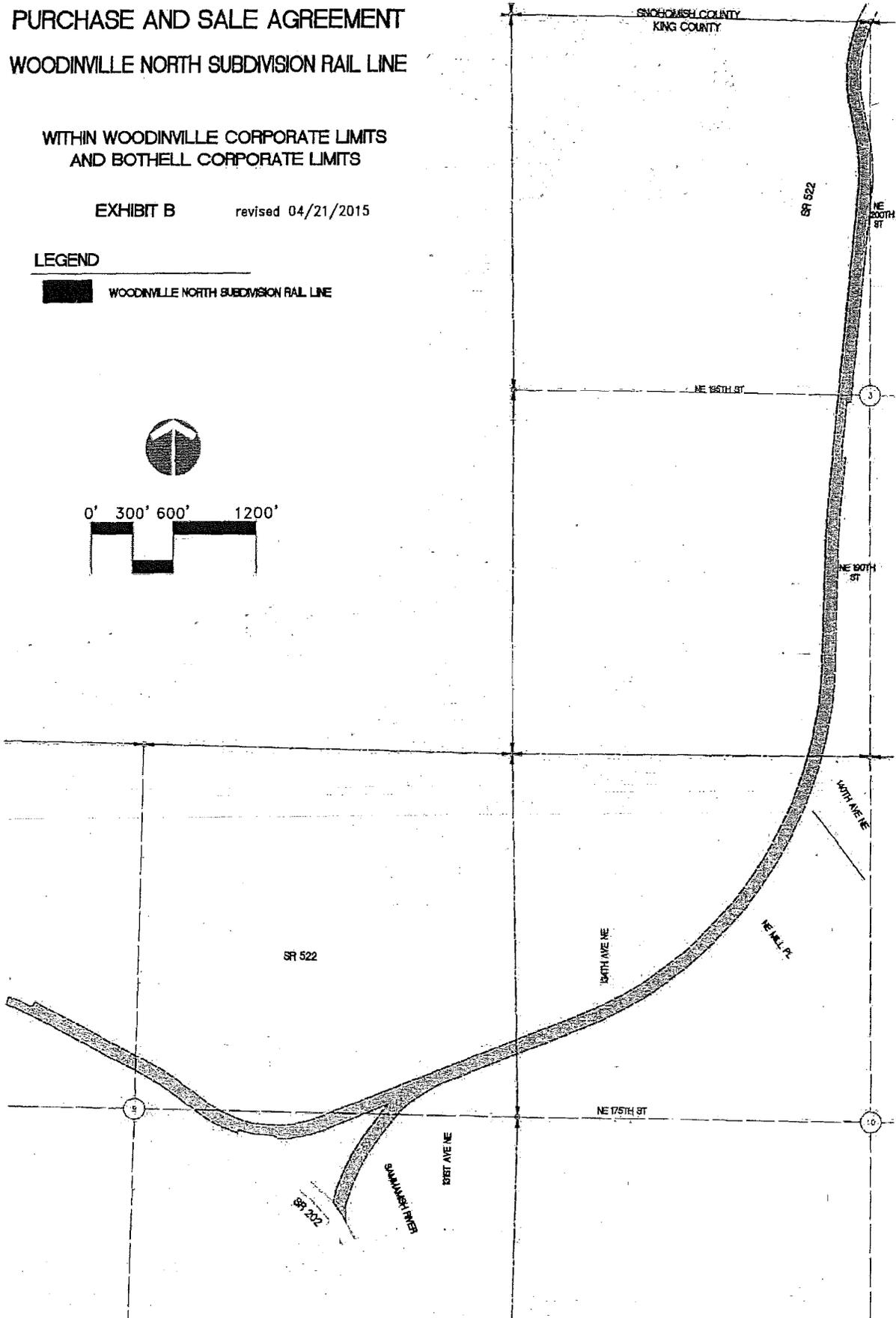
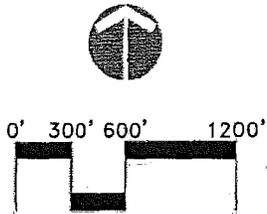
# PURCHASE AND SALE AGREEMENT WOODINVILLE NORTH SUBDIVISION RAIL LINE

WITHIN WOODINVILLE CORPORATE LIMITS  
AND BOTHELL CORPORATE LIMITS

EXHIBIT B revised 04/21/2015

## LEGEND

 WOODINVILLE NORTH SUBDIVISION RAIL LINE



Type	Contract No.	Contractor(s)	Description	Location	Date	LS/MP	MP
			Woodinville MP 23.8-MP 26.37				
PORT	2286	WOODINVILLE LANDING, LLC.	DRIVEWAY, PARKING & LANDSCAPING	WA-WOODINVILLE	4/1/2012		23.8
PRPW	LC-00246261	GENERAL TELEPHONE COMPANY OF THE NO	PHONE CABLE XING SS 7+15	WA-WOODINVILLE	2/16/1984		23.92
PRPL	PX-90016251	GTE NORTHWEST INC	TWO FOUR INCH PVC CARRIER PIPES, SURVEY STATION 6+78.5, MP. 23.95, LINE SEGMENT 0403	WA-WOODINVILLE	10/15/1990		23.95
PRPC	CX-88016011	HOLLISTER, DALE F.	2 PRIVATE AT-GRADE CROSSINGS, KING COUNTY	WA-WOODINVILLE	4/15/1988	MP. 24.02	24.02
PRPC	CX-88016012	ALLIED INVESTMENT CORP.	PRIVATE AT-GRADE CROSSING, KING COUNTY	WA-WOODINVILLE	4/15/1988	MP. 24.02	24.02
PRPC	BF-00013663	CALWEST INDUSTRIAL PROPERTIES, LLC.; CALWEST INDUSTRIAL HOLDINGS, LLC.	TWO 40 FOOT ASPHALT PAVED PRIVATE ROAD CROSSINGS; CANCELS CX #88016060;	WA-WOODINVILLE	2/29/2000	LS. 403, MP. 24.14	24.14
PRPC	CX-89016031	UNDERWOOD 122	M&O PRIVATE ROAD CROSSING, SURVEY STATION 1240+18, MP. 24.14	WA-WOODINVILLE	7/3/1989		24.14
PRPC	CX-90016097	CRAFTSMEN SIGNS	M&O OF PRIVATE ROAD CROSSING, SURVEY STATION 1240+19, MP. 24.14, LINE SEGMENT 403	WA-WOODINVILLE	11/15/1990		24.14
PRPL	PX-92016071	BOTHELL CITY OF	12 INCH WATER LINE CROSSING, SURVEY STATION 2443+36, MP. 24.22, LINE SEGMENT 0403	WA-WOODINVILLE	5/1/1992		24.22
PRPC	BF-00013659	CALWEST INDUSTRIAL PROPERTIES, LLC.; CALWEST INDUSTRIAL HOLDINGS, LLC.	40 FOOT ASPHALT PAVED PRIVATE ROAD CROSSING, 2 SLOPE AREAS, 10 FOOT & 20 FOOT ROADWAY; CANCELS CX #87016030;	WA-WOODINVILLE	2/29/2000	LS. 403, MP. 24.44	24.44
PRPL	PX-86016008	TJOSSEM, ROBERT P. & SILVERNALE, G. J.; SPIEKER-HOSFORD-JEFFERSON NO. 166; CALWEST INDUSTRIAL PROPERTIES, LLC.	8 INCH CMP STORM DRAINAGE PIPELINE, KING COUNTY; CANCELS LC #235148	WA-WOODINVILLE	2/3/1986	LS. 403, MP. 24.44	24.44
PRPW	PX-88016052	GTE NORTHWEST, INC.	UGD TELEPHONE WIRE LINE, KING COUNTY	WA-WOODINVILLE	6/15/1988	MP. 24.44	24.44
PRPW	PX-88016120	SPIEKER-HOSFORD-JEFFERSON NO. 166; CALWEST INDUSTRIAL PROPERTIES, LLC.	UGD ELECTRIC WIRE LINE, KING COUNTY	WA-WOODINVILLE	10/31/1988	MP. 24.44	24.44
PRPW	BF-00012260	VISTA TELEVISION CABLE, INC.	UGD FIBER OPTIC TV CABLE; LS. 403, MP. 24.46;	WA-WOODINVILLE	11/2/1999		24.46
PRPW	BF-00015504	VISTA TELEVISION CABLE, INC.	UGD FIBER OPTIC WIRE LINE; LS. 403, MP. 24.46;	WA-WOODINVILLE	8/29/2000		24.46

GVHB	NP-00017126	WASHINGTON, STATE OF	TEMPORARY AND PERMANENT CHANGES IN TRACKS; RECONSTRUCTION OF BRIDGE NO. 24.1;	WA-WOODINVILLE	10/3/1962	MP. 24+3549	24.67
PRPL	LC-212716	KING COUNTY WATER DISTRICT 104	3 SEWER PIPELINES, KING COUNTY, MP. 0+900, MP. 24+2616, MP. 24.7	WA-WOODINVILLE	11/19/1973	LS. 403	24.7
PRPW	PX-92016213	GTE NORTHWEST INC	TELEPHONE CABLE, SURVEY STATION 1274+00, MP. 24.78, LINE SEGMENT 0403	WA-WOODINVILLE	11/16/1992		24.78
PRPC	CX-86616046	VINTAGE AUTO PARTS INC	M&O PRIVATE ROAD CROSSING, MP. 24.9	WA-WOODINVILLE	6/16/1986	MP. 24.9	24.9
IDIT	NP-00019067	GEORGIA PACIFIC CORP		WA-WOODINVILLE	9/5/1969		24.9
PRPC	NP-83580	HORTON, WALLACE	PRIVATE CROSSING NEAR MP. 25	WA-WOODINVILLE	2/12/1958		25
GVXS	BF-00023097	WOODINVILLE, CITY OF	INSTALL ADVANCE PRE-EMPTION TO NE 178TH PLACE;	WA-WOODINVILLE	9/12/2002	LS. 403, MP. 25.13	25.13
PORT	2102	Comcast of Washington IV	Communication Line or Television Cable	WA-WOODINVILLE	7/19/2011		25.14
GVXS	BN-00040969	WOODINVILLE, CITY OF	REHAB CROSSING & INSTALL AFLS CANTILEVER/GATES AT NE 138TH AVENUE, KING COUNTY	WA-WOODINVILLE	11/1/1996	LS. 0403, MP. 25.16	25.16
PRPL	PX-96021075	WOODINVILLE WATER DISTRICT	SANITARY SEWER PIPELINE, KING COUNTY	WA-WOODINVILLE	5/21/1996	LS. 403, MP. 25.16	25.16
PRPW	LC-00237525	GENERAL TELEPHONE CO. OF THE NORTHWEST, INC.	TELEPHONE CABLE, MP. 25+980, SS. 1295+20;	WA-WOODINVILLE	5/16/1981		25.19
PRPL	NP-78267	ROSE, ALBERT	1.5 INCH WATER PIPELINE	WA-WOODINVILLE	9/15/1954		25.53
PRPW	BF-00009524	PACIFIC FIBER LINK, LLC.	UGD FIBER OPTIC CABLE, LS. 403, MP. 25.63;	WA-WOODINVILLE	11/2/1998		25.63
GVXS	BN-00032460	KING, COUNTY OF	WIDEN & IMPROVE NE 190TH STREET & WOODINVILLE-SNOHOMISH ROAD CROSSING, REMOVE CONCRETE CROSSING, PLACE RUBBER CROSSING, GRANT EASEMENT; KING COUNTY;	WA-WOODINVILLE	7/24/1991	LS. 403, MP. 25.63	25.63
GVXS	BN-00032462	KING, COUNTY OF	INSTALL AFLS/GATES, NE 190TH ST. & WOODINVILLE SNOHOMISH RD.;	WA-WOODINVILLE	3/26/1991	LS. 403, MP. 25.63	25.63
PRPW	LC-00213163	GENERAL TELEPHONE COMPANY OF THE NO	PHONE CABLE XING MP 25+3341 FT	WA-WOODINVILLE	2/16/1974		25.63
PRPW	PX-91016015	GTE NORTHWEST, INC.	SIX TELEPHONE CABLES, SURVEY STATION 1319+62, MP. 25.64, LINE SEGMENT 0403	WA-WOODINVILLE	2/1/1991		25.64
GVXS	NP-00013950	WASHINGTON, STATE OF	INSTALL AFLS AT STATE SECONDARY HWY. 1-A GRADE CROSSING;	WA-WOODINVILLE	2/4/1952	MP. 25+3407	25.65
	PX-92013113		LS. 403, MP. 25.65	WA-WOODINVILLE			25.65
PRPL	LC-00226480	KING COUNTY WATER DISTRICT 104	SEWER PIPELINE MP 25+4140	WA-WOODINVILLE	10/1/1977		25.78

PRPL	LC-00236565	DYAD CONSTRUCTION, INC.	12 INCH STORM SEWER PIPELINE;	WA-WOODINVILLE	1/1/1981		25.78
PRPC	LC-00221825	DYAD CONSTRUCTION INC	PRIVATE ROAD CROSSING, SS. 1329+08, MP. 25.83, LS. 403, CANCELS LC #219549;	WA-WOODINVILLE	1/1/1976		25.83
GVXS	BN-00027951	KING, COUNTY OF	CONSTRUCT CROSSING & INSTALL SIGNALS, 195TH ST.; KING COUNTY;	WA-WOODINVILLE	10/20/1989	LS. 0403, MP. 25.86	25.86
PRPL	LC-00230683	KING COUNTY WATER DISTRICT NO. 104	10 INCH WATER PIPELINE, MP. 25+4560;	WA-WOODINVILLE	2/1/1979		25.86
PRPW	BF-00027122	NORTHSHORE SCHOOL DISTRICT	OVERHEAD FIBER OPTIC LINE - ONE CONDUCTOR; KING COUNTY	WA-WOODINVILLE	9/18/2003	LS. 0403, MP. 25.87	25.87
PRPW	LC-00211140	GENERAL TELEPHONE COMPANY OF THE NO	PHONE WIRE XING MP 25+4596 FT	WA-WOODINVILLE	7/16/1973		25.87
PRPW	NP-82209	WEST COAST TELEPHONE CO.	TELEPHONE WIRELINE CROSSING	WA-WOODINVILLE	4/3/1957		25.99
PRPC	NP-00019219	WESTERN SAWDUST PRODUCTS INC. NKA BASSETT WESTERN, INC.	PRIVATE CROSSING, MP. 26; CONVERTED TO A PUBLIC CROSSING & CANCELLED, DOT NO. 091808P, CONNECTS NE 144TH & 200TH STREETS	WA-WOODINVILLE	3/15/1968		26
	RW-93016260		LS. 403, MP. 26.01	WA-WOODINVILLE			26.01
GVHB	BN-00001739	KING, COUNTY OF	ESTABLISHMENT PUBLIC CROSSING @ NORTHEASE 200TH STREET ON BLACK RIVER TO SUMAS LINE: KING COUNTY	WA-WOODINVILLE	3/16/1972	MP. 26+581	26.11
GVXS	BN-00024524	KING, COUNTY OF	INSTALLATION OF SIGNALS, NE 200TH STREET;	WA-WOODINVILLE	2/18/1987	MP. 26.11	26.11
PRPW	LC-00214937	GENERAL TELEPHONE COMPANY OF THE NO	PHONE CABLE XING MP 26+601 FT	WA-WOODINVILLE	8/16/1974		26.11
PRPW	LC-00239667	GENERAL TELEPHONE CO. OF THE NORTHWEST, INC.	OHD TELEPHONE CABLE, MP. 26+601, SS. 1344+77;	WA-WOODINVILLE	12/16/1981		26.11
GVXS	BF-00018880	WOODINVILLE, CITY OF	INSTALL INTERTIE TO THE NE 200TH STREET CROSSING;	WA-WOODINVILLE	8/31/2001	LS. 403, MP. 26.12	26.12
PRPL	LC-00242575	WATER DISTRICT NO. 104	8.51 INCH WATER PIPELINE, SS. 1345+05, MP. 26+629;	WA-WOODINVILLE	10/19/1982		26.12
PRPW	PX-93016191	GTE NORTHWEST, INC.	UGD COMMUNICATION WIRE LINE, KING COUNTY	WA-WOODINVILLE	8/9/1993	LS. 403, MP. 26.12	26.12
PRPW	LC-00210838	GENERAL TELEPHONE COMPANY OF THE NO	PHONE CABLE XING MP 26+1229 FT	WA-WOODINVILLE	6/16/1973		26.23
PRPC	NP-00097880	KIEWIT PETER SONS CO		WA-WOODINVILLE	12/5/1966		26.27
PRGN	BF-00041211	UNDERWOOD GARTLAND 9 LLC	TEMPORARY OCCUPANCY FOR RE-GRADING, SNOHOMISH COUNTY	WA-WOODINVILLE	7/14/2006	LS. 403, MP. 26.36	26.36

GVXS	BN-00022774	WASHINGTON, STATE OF	INSTALL AFLS;	WA-WOODINVILLE	8/22/1985	MP. 23.81, MP. 23.97	23.81- 23.97
PRGN	BF-00045055	WOODINVILLE, CITY OF	TEMPORARY OCCUPANCY FOR GEOTECHNICAL ASSESSMENTS, KING COUNTY	WA-WOODINVILLE	4/11/2007	LS. 0403, MP. 23.97 & MP. 24.42	23.97, 24.42
PMLO	PX-88016065	SPIEKER HOSFORD JEFFERSON NO. 166	SLOPE & BEAUTIFICATION OF OUTER 10 FEET OF NORTH RIGHT-OF-WAY, SS. 44+00 TO SS. 51+72, KING COUNTY	WA-WOODINVILLE	6/15/1988	MP. 24.21 TO MP. 24.36	24.21- 24.36
GVGN	BN-00001221	MUNICIPALITY OF METROPOLITA SEATTLE	ROAD SLOPES & DRAINAGE, MP. 24+2734 & 24+2975;	WA-WOODINVILLE	9/20/1971		24.52, 24.56
GVGN	BN-00019503	WASHINGTON, STATE OF	EASEMENT TO IMPROVE 139TH AVENUE NE;	WA-WOODINVILLE	12/28/1984	LS. 0405, MP. 25.74 TO MP. 26.01	25.74- 26.01
PRPL	NP-00091837	WOODINVILLE WATER DISTRICT	SIX INCH WATER PIPE OPERATIONS AND MAINTENANCE AGREEMENT	WA-WOODINVILLE			
PORT	2470	EASTSIDE COMMUNITY RAIL, LLC		WA-WOODINVILLE	12/18/2009		
PORT	1872	TW TELECOM OF WASHINGTON, LLC	Communication Line or Television Cable	WA-WOODINVILLE	8/13/2010		25.86
BN		NORTHSHORE SCHOOL DISTRICT	OVERHEAD FIBER OPTIC LINE	WA-WOODINVILLE	11/18/2008		25.63
BN		NORTHSHORE SCHOOL DISTRICT	OVERHEAD FIBER OPTIC LINE	WA-WOODINVILLE	11/18/2008		24.69
PMLO		STARCOM SERVICE CORP.	FIBER OPTIC TRANSMISSION SYSTEM	WA-VARIOUS	12/10/1992		
PMLO	PX-90016053	NETWORK REAL ESTATE SERVICES	STRIP OF LAND FOR BEAUTIFICATION PURPOSES, KING COUNTY	WA-WOODINVILLE	2/15/1990	LS. 0404, MP. 26.38 TO MP. 26.19	26.19- 26.38
PRPL	NP-00095295	OLYMPIC PIPE LINE CO		WA-WOODINVILLE			
PRPW	NP-81434	WEST COAST TELEPHONE CO.	OHD TELEPHONE WIRELINE, KING COUNTY	WA-WOODINVILLE	8/15/1956		
PRPW	LC-00233401	GENERAL TELEPHONE CO. OF THE NORTHWEST	TWO PHONE CABLES, SS. 1318+67 & SS. 2+99;	WA-WOODINVILLE	1/1/1980		
		FILE NOT FOUND LOCATION UNKNOWN					
		PARTIAL					
		UNASSIGNED					

**EXHIBIT D**  
**Form of Quit Claim Deed**

**Return Address:**

**Document Title(s)** (or transactions contained therein):

1. Quit Claim Deed

**Reference Number(s) of Documents assigned or released:** N/A

(on page \_\_\_ of documents(s))

**Grantor(s)** (Last name first, then first name and initials):

1. Port of Seattle, a municipal corporation of the State of Washington

**Grantee(s)** (Last name first, then first name and initials):

1. City of Woodinville, a municipal corporation of the State of Washington

**Legal description** (abbreviated: i.e. lot, block, plat or section, township, range)

[TO BE INSERTED]

**Assessor's Property Tax Parcel/Account Number**

N/A

**QUIT CLAIM DEED**

The Grantor, PORT OF SEATTLE, a municipal corporation of the State of Washington, for and in consideration of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration paid in hand, hereby conveys and quitclaims to the Grantee, CITY OF WOODINVILLE, a municipal corporation of the State of Washington, certain real property located in Snohomish County, Washington, as more fully described on Exhibit A (the "Property"), subject to matters of record, and together with any interest therein which the Grantor may hereafter acquire.

DATED \_\_\_\_\_, 20\_\_

PORT OF SEATTLE, a municipal corporation of the  
State of Washington

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*[The remainder of this page is intentionally left blank.]*

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the person who signed as \_\_\_\_\_ of the PORT OF SEATTLE, a municipal corporation of the State of Washington, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that \_\_\_\_\_ was duly elected, qualified and acting as said officer or member of the municipal corporation, and that \_\_\_\_\_ was authorized to execute said instrument on behalf of said municipal corporation.

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

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

**Exhibit A  
to  
Quit Claim Deed**

**Legal Description of the Property**

*[See attached.]*

**EXHIBIT E**  
**Form of Bill of Sale**

**BILL OF SALE**

THIS BILL OF SALE is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the Port of Seattle, a municipal corporation of the State of Washington (the "Port") and the City of Woodinville, a municipal corporation of the State of Washington (the "City").

A. The Port and the City have entered into that certain Ancillary Property Purchase and Sale Agreement dated \_\_\_\_\_, 20\_\_\_ (the "Agreement"), pursuant to which the Port has agreed to convey and quitclaim to the City and the City has agreed to accept certain real property located in King County, Washington, as more particularly described in the Agreement (the "Property").

B. The Property is improved with personal property consisting of rail tracks and certain commercial and industrial structures and fixtures associated with rail operations (the "Improvements").

C. Pursuant to the terms of the Agreement, the Port has executed and the City has acknowledged that certain Quit Claim Deed dated of even date herewith pursuant to which the Port has conveyed and quitclaimed and the City has accepted the Property.

D. In accordance with the terms of the Agreement, the parties are entering into this Bill of Sale for the transfer and conveyance of the Improvements.

NOW, THEREFORE, for and in consideration of the above recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Port does by these presents convey, quitclaim and deliver unto the City all of its right, title, and interest, if any, in and to any Improvements located on the Property.

TO HAVE AND TO HOLD the Improvements unto the City, its successors and assigns, forever.

*[Signatures appear on next page.]*

IN WITNESS WHEREOF, the Port and the City have executed this Bill of Sale as of the day and year first above written.

**PORT:**

Port of Seattle,  
a municipal corporation of the State of  
Washington

**CITY:**

City of Woodinville,  
a municipal corporation of the State of  
Washington

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT F**  
**Form of Partial Assignment and Assumption of**  
**Operations and Maintenance Agreement**

**PARTIAL ASSIGNMENT AND ASSUMPTION OF**  
**OPERATIONS AND MAINTENANCE AGREEMENT**

THIS PARTIAL ASSIGNMENT AND ASSUMPTION OF OPERATIONS AND MAINTENANCE AGREEMENT (this "Assignment") is executed on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Port of Seattle, a municipal corporation of the State of Washington ("Assignor"), and the City of Woodinville, a municipal corporation of the State of Washington ("Assignee").

**RECITALS**

A. Assignor and Assignee are parties to that certain Real Estate Purchase and Sale Agreement dated as of \_\_\_\_\_, 20\_\_\_\_ (the "Agreement"), pursuant to which Assignor has agreed to sell and Assignee has agreed to buy the real property legally described in Exhibit A of this Assignment (the "Property").

B. Assignor is a party to the Operations and Maintenance Agreement between Port of Seattle and Eastside Community Rail LLC, successor in interest to GNP Rly, Inc., (the "O&M Agreement"), which sets forth the rights, obligations, terms and conditions for freight rail operations over the Woodinville Subdivision. Attached hereto as Schedule 1 and incorporated herein by this reference is a true and correct copy of the O&M Agreement.

C. Pursuant to the Agreement, Assignee wishes to succeed Assignor to all right, title and interest in and to the O&M Agreement so far as it applies to the Property.

**AGREEMENT**

NOW, THEREFORE, in consideration of the promises and conditions contained in this Assignment, the parties agree as follows:

1. **Partial Assignment of O&M Agreement.** Assignor hereby assigns and transfers to Assignee all of Assignor's right, title and interest in and to the O&M Agreement to the extent that the O&M Agreement affects and applies to rail operations over the Property.

2. **Partial Assumption of O&M Agreement.** To the extent assigned as set forth above, Assignee hereby assumes all of Assignor's duties and obligations under the O&M Agreement arising and accruing from and after the date of this Assignment, and Assignee further succeeds to the interests of Assignor under the O&M Agreement.

**3. Indemnification.**

**3.1 Indemnification by Assignor.** Assignor agrees to fully, completely and unconditionally indemnify and hold Assignee harmless from and against all claims, losses, expenses, liabilities, damages, including without limitation, interest and penalties, attorneys' fees, and all amounts paid in settlement of any claim, that may be asserted against Assignee, or which Assignee may incur or suffer and that arise under the O&M Agreement (i) prior to the date of closing of the transaction contemplated in the Agreement, or (ii) to the extent the O&M Agreement affects and applies to real property and improvements outside the Property that remain under Port ownership.

**3.2 Indemnification by Assignee.** Assignee agrees to fully, completely and unconditionally indemnify and hold Assignor harmless from and against all claims, losses, expenses, liabilities, damages, including without limitation, interest and penalties, attorneys' fees, and all amounts paid in settlement of any claim, that may be asserted against Assignor, or which Assignor may incur or suffer and that arise under the O&M Agreement (i) after the date of closing of the transaction contemplated in the Agreement, and (ii) to the extent the O&M Agreement affects and applies to the Property.

**4. Binding Effect.** This Assignment shall be binding on and inure to the benefit of the Assignor, Assignee and their respective successors in interest and assigns.

**5. Governing Law.** This Assignment shall be construed and enforced in accordance with the laws of the State of Washington. Venue for any action regarding this Assignment shall be the Superior Court in and for King County.

*[Signatures appear on next page.]*

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment the day and year first above written.

**ASSIGNOR:**

Port of Seattle, a municipal corporation of the State of Washington

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

City of Woodinville, a municipal corporation of the State of Washington

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the person who signed as \_\_\_\_\_ of the PORT OF SEATTLE, a municipal corporation of the State of Washington, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that \_\_\_\_\_ was duly elected, qualified and acting as said officer or member of the municipal corporation, and that \_\_\_\_\_ was authorized to execute said instrument on behalf of said municipal corporation.

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

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the person who signed as \_\_\_\_\_ of the CITY OF WOODINVILLE, a municipal corporation of the State of Washington that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that \_\_\_\_\_ was duly elected, qualified and acting as said officer or member of the county, and that \_\_\_\_\_ was authorized to execute said instrument on behalf of said county.

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

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_;  
My appointment expires: \_\_\_\_\_.

**Exhibit A**  
**Legal Description of the Property**

[See attached.]

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**Schedule I**  
**to**  
**Partial Assignment and Assumption of Operations and Maintenance Agreement**

*[See attached.]*

**EXHIBIT G**  
**Form of Assignment and Assumption of**  
**Third Party Leases, Licenses and Contracts**

**ASSIGNMENT AND ASSUMPTION OF**  
**THIRD PARTY LEASES, LICENSES AND CONTRACTS**

THIS ASSIGNMENT AND ASSUMPTION OF THIRD PARTY LEASES, LICENSES AND CONTRACTS (this "Assignment") is executed on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Port of Seattle, a municipal corporation of the State of Washington ("Assignor"), and the City of Woodinville, a municipal corporation of the State of Washington ("Assignee").

**RECITALS**

A. Assignor and Assignee are parties to that certain Ancillary Property Purchase and Sale Agreement dated as of \_\_\_\_\_, 20\_\_ (the "Agreement"), pursuant to which Assignor has agreed to sell and Assignee has agreed to buy the real property legally described in Exhibit A of the Agreement (the "Property").

B. Assignor is a party to the Third Party Leases, Licenses and Contracts as defined and described in the Agreement and in the attached Schedule 1.

C. Pursuant to the Agreement, 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 and Contracts.

**AGREEMENT**

NOW, THEREFORE, in consideration of the promises and conditions contained in this Assignment, the parties agree as follows:

1. **Assignment of Third Party Leases, Licenses and Contracts.** Assignor hereby assigns and transfers to Assignee all of Assignor's right, title and interest in and to the Third Party Leases, Licenses and Contracts identified in Schedule 1, attached hereto and incorporated herein by this reference. If after the date of this Assignment the Parties discover any additional Third Party Leases, Licenses and Contracts encumbering the Property, each shall reasonably cooperate with the other to assign such agreements consistent with the terms of the Agreement and this Assignment.

2. **Assumption of Third Party Leases, Licenses and Contracts.** To the extent assigned as set forth above, Assignee hereby assumes all of Assignor's duties and obligations under the Third Party Leases, Licenses and Contracts arising and accruing from and after the date of this Assignment, and Assignee further succeeds to the interests of Assignor under the Third Party Leases, Licenses and Contracts.

**3. Indemnification.**

**3.1 Indemnification by Assignor.** Assignor agrees to fully, completely and unconditionally indemnify and hold Assignee harmless from and against all claims, losses, expenses, liabilities, damages, including without limitation, interest and penalties, attorneys' fees, and all amounts paid in settlement of any claim, that may be asserted against Assignee, or which Assignee may incur or suffer and that arise under a Third Party Lease, License or Contract prior to the date of closing of the transaction contemplated in the Agreement.

**3.2 Indemnification by Assignee.** Assignee agrees to fully, completely and unconditionally indemnify and hold Assignor harmless from and against all claims, losses, expenses, liabilities, damages, including without limitation, interest and penalties, attorneys' fees, and all amounts paid in settlement of any claim, that may be asserted against Assignor, or which Assignor may incur or suffer and that arise under a Third Party Lease, License or Contract after the date of closing of the transaction contemplated in the Agreement.

**4. Binding Effect.** This Assignment shall be binding on and inure to the benefit of the Assignor, Assignee and their respective successors in interest and assigns.

**5. Governing Law.** This Assignment shall be construed and enforced in accordance with the laws of the State of Washington. Venue for any action regarding this Assignment shall be the Superior Court in and for King County.

*[Signatures appear on next page.]*

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment the day and year first above written.

**ASSIGNOR:**

PORT OF SEATTLE, municipal corporation of the State of Washington

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

CITY OF WOODINVILLE, a municipal corporation of the State of Washington

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF KING         )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the person who signed as \_\_\_\_\_ of the PORT OF SEATTLE, a municipal corporation of the State of Washington, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that \_\_\_\_\_ was duly elected, qualified and acting as said officer or member of the municipal corporation, and that \_\_\_\_\_ was authorized to execute said instrument on behalf of said municipal corporation.

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

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the person who signed as \_\_\_\_\_ of the CITY OF WOODINVILLE, the municipal corporation of the State of Washington that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that \_\_\_\_\_ was duly elected, qualified and acting as said officer or member of the county, and that \_\_\_\_\_ was authorized to execute said instrument on behalf of said county.

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

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

**Schedule 1**  
**to**  
**Assignment and Assumption of Third Party Leases, Licenses and Contracts**

**Schedule of Third Party Leases, Licenses and Contracts**

*[See attached.]*

**EXHIBIT H**  
**Form of Non-Foreign Person Affidavit**

**NON-FOREIGN PERSON AFFIDAVIT**

Under Section 1445 of the Internal Revenue Code of 1986, as amended (the "U.S. Code"), a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the CITY OF WOODINVILLE, a municipal corporation of the State of Washington, (the "Transferee"), that withholding of tax will not be required upon the transfer to Transferee by the PORT OF SEATTLE, a municipal corporation of the State of Washington (the "Transferor"), of that certain real property located in the State of Washington and more particularly described in Schedule 1 attached hereto (the "Property"), the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate, as those terms are defined in the U.S. Code and the Income Tax Regulations promulgated thereunder;
2. Transferor is not a disregarded entity as defined in Section 1.1445-2(b)(2)(iii) of the Income Tax Regulations; and
3. Transferor's U.S. employer identification number is \_\_\_\_\_.

Transferor understands that this Certification may be disclosed to the Internal Revenue Service and that any false statement contained herein could be punished by fine, imprisonment, or both.

Transferor understands that Transferee is relying on this Certificate in determining whether withholding is or will be required in connection with the transfer of the Property by Transferor to Transferee, and that Transferee may face liabilities if any statement contained in this certificate is false.

Transferor hereby indemnifies Transferee, and agrees to hold Transferee harmless, from any liability or cost which such Transferee may incur as a result of: (i) the Transferor's failure to pay any U.S. Federal Income tax which Transferor is required to pay under applicable federal law or (ii) any false or misleading statement contained herein. Under penalties of perjury, I declare that I have examined this Certification and to the best of my knowledge declare that I have authority to sign this document on behalf of Transferor.

*[Signature appears on next page.]*

DATED \_\_\_\_\_, 20\_\_.

TRANSFEROR:

PORT OF SEATTLE, a municipal corporation of the  
State of Washington

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Schedule 1  
to  
Non-Foreign Person Affidavit**

**Legal Description of the Property Being Transferred**

*[See attached.]*

**ATTACHMENT 4**

**FORM OF PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT**

**EXHIBIT F**  
**Form of Partial Assignment and Assumption of**  
**Operations and Maintenance Agreement**

**PARTIAL ASSIGNMENT AND ASSUMPTION OF**  
**OPERATIONS AND MAINTENANCE AGREEMENT**

THIS PARTIAL ASSIGNMENT AND ASSUMPTION OF OPERATIONS AND MAINTENANCE AGREEMENT (this "Assignment") is executed on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the Port of Seattle, a municipal corporation of the State of Washington ("Assignor"), and the City of Woodinville, a municipal corporation of the State of Washington ("Assignee").

**RECITALS**

A. Assignor and Assignee are parties to that certain Real Estate Purchase and Sale Agreement dated as of \_\_\_\_\_, 20\_\_\_ (the "Agreement"), pursuant to which Assignor has agreed to sell and Assignee has agreed to buy the real property legally described in Exhibit A of this Assignment (the "Property").

B. Assignor is a party to the Operations and Maintenance Agreement between Port of Seattle and Eastside Community Rail LLC, successor in interest to GNP Rly, Inc., (the "O&M Agreement"), which sets forth the rights, obligations, terms and conditions for freight rail operations over the Woodinville Subdivision. Attached hereto as Schedule 1 and incorporated herein by this reference is a true and correct copy of the O&M Agreement.

C. Pursuant to the Agreement, Assignee wishes to succeed Assignor to all right, title and interest in and to the O&M Agreement so far as it applies to the Property.

**AGREEMENT**

NOW, THEREFORE, in consideration of the promises and conditions contained in this Assignment, the parties agree as follows:

1. **Partial Assignment of O&M Agreement.** Assignor hereby assigns and transfers to Assignee all of Assignor's right, title and interest in and to the O&M Agreement to the extent that the O&M Agreement affects and applies to rail operations over the Property.

2. **Partial Assumption of O&M Agreement.** To the extent assigned as set forth above, Assignee hereby assumes all of Assignor's duties and obligations under the O&M Agreement arising and accruing from and after the date of this Assignment, and Assignee further succeeds to the interests of Assignor under the O&M Agreement.

**3. Indemnification.**

**3.1 Indemnification by Assignor.** Assignor agrees to fully, completely and unconditionally indemnify and hold Assignee harmless from and against all claims, losses, expenses, liabilities, damages, including without limitation, interest and penalties, attorneys' fees, and all amounts paid in settlement of any claim, that may be asserted against Assignee, or which Assignee may incur or suffer and that arise under the O&M Agreement (i) prior to the date of closing of the transaction contemplated in the Agreement, or (ii) to the extent the O&M Agreement affects and applies to real property and improvements outside the Property that remain under Port ownership.

**3.2 Indemnification by Assignee.** Assignee agrees to fully, completely and unconditionally indemnify and hold Assignor harmless from and against all claims, losses, expenses, liabilities, damages, including without limitation, interest and penalties, attorneys' fees, and all amounts paid in settlement of any claim, that may be asserted against Assignor, or which Assignor may incur or suffer and that arise under the O&M Agreement (i) after the date of closing of the transaction contemplated in the Agreement, and (ii) to the extent the O&M Agreement affects and applies to the Property.

**4. Binding Effect.** This Assignment shall be binding on and inure to the benefit of the Assignor, Assignee and their respective successors in interest and assigns.

**5. Governing Law.** This Assignment shall be construed and enforced in accordance with the laws of the State of Washington. Venue for any action regarding this Assignment shall be the Superior Court in and for King County.

*[Signatures appear on next page.]*

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment the day and year first above written.

**ASSIGNOR:**

Port of Seattle, a municipal corporation of the State of Washington

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

City of Woodinville, a municipal corporation of the State of Washington

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF WASHINGTON    )  
  ) ss.  
COUNTY OF KING         )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the person who signed as \_\_\_\_\_ of the PORT OF SEATTLE, a municipal corporation of the State of Washington, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that \_\_\_\_\_ was duly elected, qualified and acting as said officer or member of the municipal corporation, and that \_\_\_\_\_ was authorized to execute said instrument on behalf of said municipal corporation.

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

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_.  
My appointment expires: \_\_\_\_\_.

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the person who signed as \_\_\_\_\_ of the CITY OF WOODINVILLE, a municipal corporation of the State of Washington that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that \_\_\_\_\_ was duly elected, qualified and acting as said officer or member of the county, and that \_\_\_\_\_ was authorized to execute said instrument on behalf of said county.

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

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_.  
My appointment expires: \_\_\_\_\_.

**Exhibit A**  
**Legal Description of the Property**

*[See attached.]*

**Schedule 1**  
**to**  
**Partial Assignment and Assumption of Operations and Maintenance Agreement**

*[See attached.]*