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BEFORE THE
SURFACE TRANSPORTATION BOARD

April 25, 2013

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FINANCE DOCKET NO. 35730

BALLARD TERMINAL RAILROAD COMPANY, L.L.C.
— LEASE EXEMPTION —
LINE OF EASTSIDE COMMUNITY RAIL, LLC

PETITION FOR STAY OF
THE PORT OF SEATTLE

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Dated: April 25, 2013

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**PETITION FOR STAY OF
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The Port of Seattle (the “Port”) hereby petitions the Surface Transportation Board (the “Board”) to impose a temporary housekeeping stay and extend the May 2, 2013, effective date of the Notice of Exemption filed by Ballard Terminal Railroad Company, L.L.C. (“Ballard”) in this proceeding for two weeks until May 16, 2013.

BACKGROUND

On April 2, 2013, Ballard Terminal Railroad Company, L.L.C. (“Ballard”) filed a Verified Notice of Exemption (the “Ballard Notice”) in this proceeding, pursuant to 49 C.F.R. § 1150.41 *et seq.*, to lease from Eastside Community Rail, LLC (“ECRR”) and operate a line of railroad of extending from Snohomish, Washington, a total distance of approximately 14.45 route miles in King and Snohomish Counties, Washington (the “Line”).¹ The exemption becomes effective on May 2, 2013, and petitions for stay must be filed by April 25, 2013.

The Port owns the real estate associated with the Line, which it acquired from BNSF.² ECRR owns a permanent freight operating easement on the Line pursuant to an Asset Purchase Agreement with the Bankruptcy Trustee for the bankrupt GNP RLY, Inc.

¹ Ballard Notice at 1.

(“GNP”).³ Ballard currently operates the Line under an agency relationship / interim operating agreement with ECRR.⁴ The Port and ECRR are parties to an Operations and Maintenance Agreement (“O&M Agreement”) governing maintenance, capital improvements, and day-to-day operations on the Line, attached hereto as Exhibit A.⁵ The O&M Agreement permits ECRR “to assign its rights under the agreement subject to the written consent of the Port,” and provides that “neither the Port nor any other person or entity will be permitted to provide any type of freight rail service unless the rights are appropriately assigned.”⁶

The Port provided Ballard with a copy of the O&M Agreement on April 16, 2013, and Ballard indicated that it was agreeable to incorporating the O&M Agreement terms into the Ballard-ECRR lease at issue in this proceeding (the “Ballard- ECRR Lease” or the “Lease”). On April 22, not having received a draft from Ballard, the Port provided Ballard with a list of many of the required changes to the Lease (including important insurance and tort liability provisions). The same day Ballard indicated that it would send a draft Lease to the Port in the next couple days. Yesterday afternoon, not having received a draft from Ballard, the Port asked whether Ballard would agree to an extension of the effective date of the Ballard Notice. Yesterday evening, Ballard sent the Port language that Ballard was *considering*, which was intended to incorporate the O&M Agreement terms into the Lease. However, even if Ballard approved this

² See *The Port of Seattle—Acquisition Exemption—Certain Assets of BNSF Ry.*, STB Finance Docket No. 35128 (STB served June 20, 2008) (“2008 Port Acquisition”).

³ See *Eastside Community Rail, LLC—Acquisition and Operation Exemption—GNP RLY, Inc.*, STB Finance Docket No. 35692 (STB served Nov. 23, 2012) (“2012 ECRR Acquisition”).

⁴ Ballard Notice at 2.

⁵ GNP and the Port were the original parties to the O&M Agreement. ECRR subsequently acquired all of GNP’s rights and interests under the O&M Agreement. See *2012 ECRR Acquisition*, slip op. at 1, n. 1.

⁶ See *2008 Port Acquisition*, slip op. at 2.

language, the language does not make the Lease co-terminus with the O&M Agreement and even though the language provides that the O&M Agreement terms control over the Lease terms, the two agreements contain different language on many material points (including insurance coverage) and incorporation by reference does not solve these ambiguities. As of this filing, Ballard has not consented to a jointly stipulated stay or extension of the effective date of its Notice.⁷

ARGUMENT

The Port petitions the Board to impose a temporary housekeeping stay and extend the May 2, 2013, effective date of the Ballard Notice for two weeks, until May 16, 2013, to allow the Port and Ballard to ensure that the Ballard-ECRR Lease will comply with the Port-ECRR O&M Agreement. Should the Ballard Notice become effective on May 2, 2013, Ballard could become a rail carrier with respect to the Line by executing a Ballard-ECRR Lease that does not comply with the Port-ECRR O&M Agreement and leaves the Port exposed to, among other things, significant tort liability without concomitant insurance protections. The extension would allow time for Ballard and the Port to agree on a Lease that meets all of the requirements of the O&M Agreement.

The Board regularly issues housekeeping stays of the effective date of exemptions in order to allow time for parties to provide additional information and permit full consideration of the issues presented in a proceeding by a party petitioning the Board to stay an exemption. *See, e.g., Rail Switching Services, Inc.—Operation Exemption—Pemiscot County Port Authority*, STB Finance Docket No. 35686, et al (STB served Nov. 12, 2012); *Genesee & Wyo. Inc.—Control Exemption—Md. Midland Ry., Inc.*, STB

⁷ The communications and exchanges summarized in this paragraph were made through counsel.

Finance Docket No. 35098, et al (STB served Nov. 30, 2007); *General Ry. Corp. d/b/a Ia. Nw. R.R.—Exemption for Acquisition of a R.R. Line—In Osceola and Dickenson Counties, IA*, STB Finance Docket No. 34867 (STB served July 3, 2006); *Ne. Interchange Ry., LLC—Lease and Operation Exemption—Line in Croton-in-Hudson, NY*, STB Finance Docket No. 34734, slip op. at 4 (STB served Aug. 5, 2005).

The traditional stay criteria require a party seeking a stay to establish that: (1) there is a likelihood that it will prevail on the merits of any challenge to the action sought to be stayed; (2) it will suffer irreparable harm in the absence of a stay; (3) other interested parties will not be substantially harmed by a stay; and (4) the public interest supports the granting of the stay. *See, e.g., Washington Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977).

Regarding the first prong of the stay standard, the Port will likely prevail on the merits of any challenge to the Ballard-ECRR Lease, because the Lease does not comply with the Port-ECRR O&M Agreement by not including certain important provisions from that Agreement, as discussed above. As to the second prong, the Port will suffer irreparable harm in the absence of a stay: the absence of these important Ballard-ECRR Lease provisions would expose the Port to liability and leave the Port without the protection of required insurance obligations; monetary damages for such liability could easily exceed the assets available to Ballard.⁸ To the third prong, issuing a stay will not prejudice any party, including Ballard or ECRR, because Ballard will continue operating the Line under its agency relationship / interim operating agreement with ECRR and no shippers will experience any change in service. Lastly, the public interest supports

⁸ Ballard is a Class III rail carrier that currently owns or leases approximately 8 miles of railroad in the State of Washington. Ballard Petition at 2.

granting the stay, because the stay would preserve the rights of the Port (a public agency), and protect the Port against potential liability that would require diversion of public funds that the Port would otherwise use for operations or capital expenditures.⁹

CONCLUSION

For the reasons set forth herein, the Port respectfully requests the Board to impose a temporary housekeeping stay and extend the May 2, 2013, effective date of the Ballard Notice for two weeks to May 16, 2013.

⁹ In addition to regularly issuing housekeeping stays, the Board has determined in a number of decisions that “[w]here a notice raises issues of concern to the Board, . . . effectiveness of that exemption may be held in abeyance to allow the applicant to provide an explanation through the filing of supplemental information.” *See, e.g., MCM Rail Services LLC d/b/a Baltimore Indus. R.R.—Operation Exemption—HRE Sparrows Point, LLC*, STB Finance Docket No. 35725, *et al*, slip op. at 2 (STB served Apr. 5, 2013). Furthermore, the Board has held the effectiveness of class exemption notices in abeyance in order for parties to facilitate resolution of commercial issues. *See Port of Ivory, LLC—Operation Exemption—Line of R.R. in Tulare County, Cal.*, STB Finance Docket No. 35475 (STB served Apr. 5, 2011).

Respectfully submitted,

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Dated: April 25, 2013

EXHIBIT A

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 final judgment of a Washington State court with jurisdiction that indemnification under the circumstances involved is against the public policy of Washington State), the indemnity provided by such provision shall be deemed to be limited to and operative only to the maximum extent permitted by law. Without limitation, if it is determined by a final judgment of a Washington State court with jurisdiction that any law or public policy of Washington State prohibits the indemnification of a party for its own sole negligence in any instance covered by the provisions of this Section 7.3, 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 30th. 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 10th anniversary of the Execution Date. So long as TPO is not in default with respect to a material term or condition of this Agreement, TPO may elect to continue this Agreement for one (1) additional renewal term of 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 60th day.

12.2 Termination for Abandonment.

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

(2) terminate all the rights of TPO, or that of a permitted successor or assign, to provide Freight Rail Service over the Corridor under this Agreement. Notwithstanding the previous sentence, after the termination of this Agreement under this Section, 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.

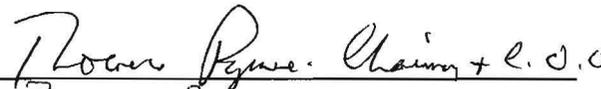
TPO may pledge or otherwise encumber its rights under this Agreement to secure its obligations under any loan agreement or similar or related document; provided, however, that such pledge or other encumbrance shall be subject to and subordinate to the rights of the Port and its assigns under this Agreement.

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

PORT OF SEATTLE,
a Washington municipal corporation

By: 
Name: _____
Title: _____

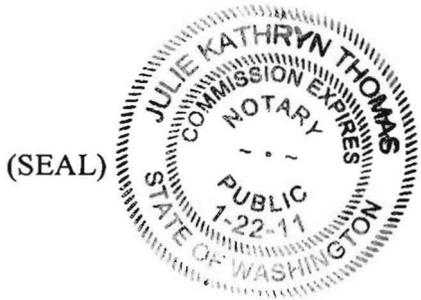
GNP RLY. INC.,
a Washington corporation

By: 
Name: Thomas Payne
Title: Chairman & C.O.O.

STATE OF WASHINGTON)
) ss.
COUNTY OF King)

On Dec. 17, 2009, 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.

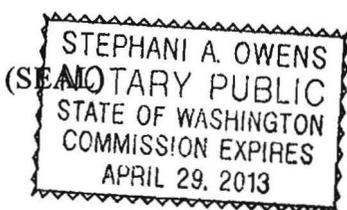


Julie Kathryn Thomas
Printed Name
Julie Kathryn Thomas
NOTARY PUBLIC in and for the State of
Washington, residing at Bothell, Wa
My commission expires 1-22-11

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 Pague, 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.



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

Exhibit A

Railroad Right-Of-Way License Agreement
(Attached)

**RAILROAD RIGHT OF WAY LICENSE
BETWEEN
PORT OF SEATTLE
AND
GNP RLY. INC.**

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RAILROAD RIGHT OF WAY LICENSE

THIS RAILROAD RIGHT OF WAY LICENSE ("License") is entered into as of the ____ day of ____, 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 and the Donation Agreement between Port and BNSF Railway Company, a Delaware corporation ("BNSF"), both dated as of May 12, 2008 (together, the "Acquisition Agreements") Port acquired BNSF's right, title and interest in BNSF's railroad right of way (i) from milepost 5.0 in Renton, Washington to and including the railroad bridge at milepost 38.25 in Snohomish County, Washington, and (ii) from milepost 0.0 in Woodinville south to milepost 7.3 in Redmond (the "Redmond Spur") (together, the "Port Property").

B. Port and TPO have entered into an Operations and Maintenance Agreement ("O&M Agreement") setting forth their respective rights and obligations with respect to Freight Rail Service, Excursion Rail Service, and maintenance on portions of the Woodinville Subdivision from milepost 23.8 in Woodinville, King County, Washington north to milepost 38.25 in Snohomish, Snohomish County, Washington ("Corridor"), as described in **Exhibit A** attached hereto and incorporated herein.

C. TPO also desires the right to use and operate the Excursion Spur, a portion of the Woodinville Subdivision and further described below, for Excursion Rail Service (as defined in Section 1.6 below).

D. Upon acquisition of the Corridor by the Port, the Excursion Spur, along with the railroad right of way (i) from milepost 5.0 in Renton, Washington to milepost 23.8 in Woodinville, Washington, and (ii) within the Redmond Spur, was "railbanked." King County ("County") was approved as an Interim Trail User by the Surface Transportation Board ("STB") for the purpose of railbanking, and County is accordingly subject to certain legal obligations related to the Excursion Spur, which are referred to herein as the "Railbanking Obligations." The Railbanking Obligations consist of those obligations imposed through Section 8(d) of the National Trails System Act, also known as the Rails-to-Trails Act, 16 U.S.C. 1247(d), and 49 C.F.R. 1152.29 (collectively, and as any of the foregoing may hereafter be amended or interpreted by binding judicial or administrative authority, the "Railbanking Legislation"), the Notice of Interim Trail Use ("NITU") related to the Excursion Spur issued by the STB and any conditions or requirements imposed related thereto; the Trail Use Agreement ("TUA") entered into between BNSF and County related to the Excursion Spur under which County agreed to accept, exercise, and fulfill all of the legal rights, duties, and obligations of an Interim Trail User, and the Statement of Willingness to Accept Financial Responsibility ("SWAFR"). To carry out the Railbanking Obligations, County has been granted by the Port a Public Multipurpose Easement dated _____ and recorded under recorded number _____, under which County acquired certain rights on the Excursion Spur and the other portions of the Corridor

subject to railbanking, including the right to develop, construct and operate a recreational trail consistent with rail or other transportation uses thereon.

E. Port is willing to grant TPO the right to use and operate the Excursion Spur in the manner described in this License.

AGREEMENT

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

Section 1. Definitions.

1.1 Additions and Alterations - Means any improvements constructed by or on behalf of either party on the Excursion Spur 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 Corridor is defined in Recital B.

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

1.5 Excluded Conduct - Is defined in Section 8.4.

1.6 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, except for head and tail operations as referred to Section 1.11.

1.7 Excursion Spur - Means that portion of the Redmond Spur from milepost 0.0 in Woodinville south to milepost 2.5 in Woodinville, Washington.

1.8 Execution Date - Means the date on which this License is executed and becomes effective.

1.9 Facilities - Means all rails, fastenings, switches, switch mechanisms and frogs with associated materials, ties, ballast, signals and communications devices (and associated equipment), drainage facilities, Automatic Warning Devices, traction power substations, overhead catenary systems, bumpers, roadbed, embankments, bridges, trestles, culverts, 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.

1.10 FRA - Means the Federal Railroad Administration.

1.11 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 this License, and no other freight service.

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

1.13 Invoice - Is defined in Section 10.1.

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

1.15 Multipurpose Easement - Means that certain easement between Port and King County, a home rule charter county and political subdivision of the State of Washington ("County") pursuant to which the County acquired certain rights on those portions of the Woodinville Subdivision from (i) milepost 23.8 in Woodinville south to milepost 5.0 in Renton, and (ii) the

Redmond Spur, including the right to develop, construct and operate a recreational trail consistent with rail or other transportation uses thereon.

1.16 O&M Agreement - Has the meaning set forth in Recital B.

1.17 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 13.8, such individual parcel(s) shall not be deemed "Port Property."

1.18 Track - Means any and all main track, sidings, yards, spurs and other track constructed or to be constructed upon and across the Excursion Spur.

Section 2. TPO's Rights and Obligations.

2.1 Subject to transportation uses permitted or performed by the Port as provided in Section 3, TPO shall have the exclusive right and obligation to provide, by itself and/or by or through any entity designated by TPO, Excursion Rail Service on and over the Excursion Spur.

2.2 TPO shall have the exclusive authority to manage, direct and control all activities related to the provision of Excursion Rail Service on the Excursion Spur, including, without limitation, the operation of all trains, locomotives, rail cars and rail equipment, and the movement and speed of the same on the Excursion Spur; provided, that TPO shall not transport or store on the Excursion Spur or on Port Property any toxic inhalation hazards ("TIHs") or poison inhalation hazards ("PIHs"). *Notwithstanding* the foregoing, TPO is prohibited from using the Excursion Spur at any time for the purpose of setting out or picking up rail cars.

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

2.4 Subject to the rights of and coordination with the Port and those entities that the Port may authorize to provide transportation uses on the Excursion Spur pursuant to Section 3 and with County with regard to any then current or future trail use, and solely at the expense of entities other than the Port, TPO may modify, construct, maintain, replace and remove the Tracks upon and across the Excursion Spur as may be necessary in order to operate in accordance with this License, provided that TPO may not change the location of the Tracks.

a) In the event that construction of any Tracks requires the construction of new Facilities, or modifications to, existing Facilities, such construction or modifications shall be at the expense of entities other than Port.

b) The design, construction, modification or removal of any Tracks and any new, or modified Facilities necessitated thereby, shall not unreasonably interfere with the rights the Port may exercise or grant under Section 3.1 and 3.2 of this License and that the County may exercise with regard to any then current or future trail use, shall result in the location of any modified Facilities being unchanged and the condition of any modified Facilities being of equal or better condition and functionality than such Facilities were prior to the modification, and shall be subject to Port's prior review and written approval.

2.5 TPO acknowledges and agrees that the County is the grantee under the Multipurpose Easement and that this license is subject to and incorporates herein by this reference the terms of the Multipurpose Easement as set forth in Section 1.4 of that Easement. In the event that County acquires from Port additional rights, title and interests in the Excursion Spur, the incorporated terms of the Multipurpose Easement shall survive the expiration or extinguishment of the Multipurpose Easement through the doctrine of merger, provided that (a) if no "Trail Area" has been established under the Multipurpose Easement, then County may designate a Trail Area of sufficient size to accommodate a regional trail under generally applicable trail development standards as described in Section 2.1.1 of the Multipurpose Easement and provided further that (b) TPO shall be the beneficiary of the rights of "TPO" under such Multipurpose Easement that affect the Transportation Use and that apply to TPO's rights and responsibilities under this License. TPO agrees that it shall, at all times, cooperate fully with the County to accommodate any trail uses on the Excursion Spur adjacent to the Excursion Spur Facilities, and shall comply with all Railbanking Obligations.

2.6 TPO or its designee shall have the right to use existing Tracks in the Excursion Spur for performing Excursion Rail Service as described in this Section.

2.7 TPO acknowledges and agrees that, consistent with Section 3, the Port may itself perform or grant rights to or enter into agreements with one or more third parties for certain non-freight, passenger transportation uses on the Excursion Spur (e.g., commuter rail service or other public transportation) during the Term of this License, that are not inconsistent with TPO's rights under this License. TPO shall cooperate with those parties authorized by the Port to ensure the accommodation of such passenger transportation uses on the Excursion Spur.

2.8 In addition to all other rights granted to TPO under this License, TPO shall have the right to utilize the Excursion Spur between milepost 0.0 in Woodinville and milepost 1.0 for all head and tail operations necessary for TPO's Rail Freight Service under the O & M Agreement, but shall have no right to operate other common carrier or contract freight rail service on the Excursion Spur.

Section 3. Port's Rights and Obligations.

3.1 Port shall have the right to use the Excursion Spur and to grant easements, licenses or permits affecting the Excursion Spur as long as such use, easements, licenses or permits do not unreasonably interfere with or create safety hazards for TPO's continuous and uninterrupted use of the Excursion Spur under the terms of this License. TPO shall cooperate with any entity granted such easements, licenses or permits to ensure accommodation of the uses authorized by such easements, licenses or permits so long as such uses do not unreasonably interfere with or

create safety hazards for TPO's continuous and uninterrupted use of the Excursion Spur under the terms of this License.

3.2 Port shall have the right to itself provide or grant rights to or contract with third parties for certain non-freight, passenger transportation uses on the Excursion Spur (e.g., commuter rail service or other public transportation) during the Term of this License so long as such uses do not unreasonably interfere with or create safety hazards for TPO's continuous and uninterrupted use of the Excursion Spur under the terms of this License.

3.3 Port, at Port's election, may perform a semi-annual joint inspection of the Excursion Spur 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 Excursion Spur, at its election, at any time during the term of this License so long as the following conditions are met: (1) Port provides advance notice to TPO in accordance with Section 7.5; (2) Port complies with all reasonable safety requirements of the TPO or as required by law applicable to the Excursion Spur; (3) Port obtains the appropriate authorizations from TPO to be on the designated portions of the Excursion Spur; (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 Excursion Spur. 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.

3.4 In the event the TPO fails to or is unable to perform any work it is required to perform under this License, the Port may perform such work. Any such work by Port shall be performed in accordance with TPO's schedule and design, and the reasonable documented out-of-pocket cost thereof shall be reimbursed by TPO to Port in accordance with Section 10.1.

Section 4. Maintenance, Repair and Replacement Obligations.

4.1 General Maintenance, Repair and Replacement Obligations.

a) Except as otherwise provided in this License, TPO shall provide general maintenance and maintenance of way services, including without limitation, inspection, maintenance, repair, installation, alteration and replacement (as necessary) of all 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 Excursion Spur, in accordance with all applicable laws, rules and regulations, and in a condition reasonably suitable for TPO's intended use of the Excursion Spur.

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

c) The TPO shall allow the Port to conduct inspections of the Excursion Spur as provided in Section 3.3.

4.2 Remedies.

a) In the event that TPO, as the responsible party for maintenance, repair and replacement of any item, fails to perform its maintenance obligations under this License, and such failure results in an imminent and substantial danger to human health or safety or to property, Port 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 receives 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.: _____

4.3 Grade Crossing Reconstruction - The parties acknowledge that certain maintenance procedures may cause an increase in the surface elevation of grade crossings, and that TPO may, from time to time, need to perform additional maintenance or reconstruction work in order to prevent unsafe elevation differentials between 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 5. Construction of Additions and Alterations.

5.1 Design and Construction Standards - The design and construction of any Additions and Alterations on the Excursion Spur shall comply with all applicable laws, rules and regulations. The party constructing Additions and Alterations shall follow customary safety procedures in accordance with good practice in the railroad industry and with applicable laws, rules and regulations and shall use reasonable efforts to perform work on Additions and Alterations at such times and in such manner as not to unreasonably interfere with, delay or endanger the equipment, Facilities or other facilities of the other party.

5.2 Design Review - In the course of designing Additions and Alterations, the constructing party shall reasonably notify and consult with the other party with respect to the design and construction of the Additions and Alterations. If requested by the other party, the constructing party shall deliver to the other party for review and comment copies of each set of plans for Additions and Alterations during the planning and design process. The other party shall notify the constructing party in writing within fifteen (15) days after its receipt of the plans as to whether it wishes to comment on the plans. If so, then the other party shall have the right to provide the constructing party, within thirty (30) days after the other party's receipt of any such

set of plans, written comments and suggestions regarding such plans. If the other party timely disapproves such plans, the parties shall meet within fifteen (15) days after disapproval to negotiate in good faith to develop plans acceptable to both. If the parties are unable to agree upon changes to the plans, either party may submit the matter to arbitration pursuant to Section 12. Upon completion of final plans, the constructing party shall give a copy of the final plans to the other party for review to ensure the incorporation of all agreed-upon changes to the plans.

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

Section 6. Execution Date and Term of the License.

6.1 The initial term of this License shall expire on the 10th anniversary of the Execution Date. So long as TPO is not in default with respect to a material term or condition of this License, TPO may elect to continue this License for one (1) additional renewal term of ten (10) years by giving Port written notice of such intent at least one (1) year prior to the expiration of the initial term. ("Term"). *Notwithstanding* the foregoing, this License shall terminate sixty (60) days after written notice by Port to TPO that TPO is in default with respect to a material term or condition of this License, which default has not been cured on or prior to such 60th day. In the event the O&M Agreement is terminated under Section 12.2 thereof but Excursion Rail Service is allowed to continue on the Corridor as authorized in Section 12.2, TPO may, with Port's written approval and so long as TPO is not in default under this License or the O & M Agreement, continue to provide Excursion Rail Service over the Excursion Spur.

6.2 TPO may terminate this License by giving Port not less than sixty (60) days' notice of termination. Upon such termination, TPO shall have no further right under this License to use the Excursion Spur.

6.3 TPO or its designee shall commence excursion passenger service as referred to in Section 1.6 of this License on the Excursion Spur no later than two years after the Execution Date. If TPO does not commence excursion passenger service by that time, or if TPO ceases excursion passenger service for more than two years, Port may terminate the right to provide excursion passenger service under this License by giving TPO not less than sixty (60) days notice of such termination. In such case, this License will be limited in scope to allow for only head and tail operations as referred to in Section 1.11.

Section 7. Reciprocal Access and Notice Rights.

7.1 Port and any entity to which it has granted rights in the Excursion Spur consistent with the terms of this license ("Port Grantees") may enter upon the Excursion Spur and/or use the Facilities located on the Excursion Spur, provided that the exercise of such rights by Port shall not unreasonably interfere with Excursion Rail Service of TPO or its designees.

7.2 Port may enter upon the Excursion Spur for the purposes set forth in Sections 3 and 4.

7.3 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 4.2.(b).

7.4 Security personnel of either party in pursuit of a criminal suspect may enter upon the Excursion Spur for the purpose of apprehending the suspect.

7.5 Any entry by Port (or its contractors, invitees or licensees) or Port Grantees on any portion of the Excursion Spur within twenty feet (20') of the track center of the Excursion Spur shall, except for (a) scheduled commuter rail or other transit operations, (b) any use related to an existing or planned trail in the Excursion Spur, or emergencies when reasonable notice under the circumstances shall be given, be preceded by at least forty-eight (48) hours prior telephonic notice, and shall not enter upon the Excursion Spur until a valid work permit is issued by TPO and arrangements have been made for flagging.

7.6 Hazardous Materials may be brought by TPO onto the Excursion Spur only to the extent necessary for the operation of trains or when TPO is performing head and tail operations as authorized under Section 8 of this License, and in all events in compliance with all applicable Environmental Laws. Notwithstanding the foregoing, TPO shall not transport, bring onto, or store on the Excursion Spur or Port Property any THIs or PHIs.

7.7 In the event of leakage, spillage, release, discharge or disposal of any Hazardous Materials by TPO (including, without limitation, by explosion) on the Excursion Spur, TPO shall give Port prompt notice of such event, and at its sole cost and expense, clean or remediate the Excursion Spur to the standards required by law or by any governmental agency or public body having jurisdiction in the matter. Should any such leakage, spillage, release, discharge or disposal result in a fine, penalty, cost, or charge, TPO shall promptly and fully pay such fine, penalty, cost or charge. TPO shall be responsible for any such leakage, spillage, release, discharge or disposal by any third party it admits to the Excursion Spur. TPO shall indemnify, protect, defend, and hold harmless Port, its trustees, directors, officers, employees, agents, contractors, parent corporations and subsidiaries from and against any and all liabilities or claims for all loss, damage, injury, and death arising as a result of any such leakage, spillage, release, discharge or disposal. The provisions of this Section are in addition to and not in limitation of the provisions of hereof, and shall survive the termination of this License.

Section 8. Liability.

8.1 Hazardous Materials and Environmental Liability

a) If the performance of this License 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 License, regardless of the absence of negligence or other malfeasance by TPO. This provision shall survive the termination or expiration of this License.

b) At no time during the term of this License shall the TPO or its designee, without first obtaining the written consent of the Port, maintain, treat, dispose of, store or have on the Excursion Spur and/or Port Property, or permit any other party to have, maintain, treat, dispose of, or store on the Excursion Spur 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 for authorized head and tail operations 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 and of this License, 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 Excursion Spur and/or Port Property during the term of this License, 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 Excursion Spur 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 8.2 through 8.6 shall in no way limit or reduce the application, enforceability or effect of this Section 8.1.

8.2 Assumption of Responsibility.

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

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

8.3 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 8.3 a) i. and Section 8.4. 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 Excursion Spur (other than an employee of TPO engaged in performing duties for TPO), shall rebuttably be presumed to be an invitee of TPO.

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

b) Persons Other Than Invitees. Except as provided in Section 8.4, 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 8.3 would otherwise be prohibited by or unenforceable under the laws of Washington State (including a determination by a final judgment of a Washington State court with jurisdiction that indemnification under the circumstances involved is against the public policy of Washington State), the indemnity provided by such provision shall be deemed to be limited to and operative only to the maximum extent permitted by law. Without limitation, if it is determined by a final judgment of Washington State court with jurisdiction that any law or public policy of Washington State prohibits the indemnification of a party for its own sole negligence in any instance covered by the provisions of this Section 8.3, those provisions shall be deemed to exclude the indemnification for such party's sole negligence but to permit full indemnification, as specified in this Section 8.3 if both parties were negligent.

8.4 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 part asserts that the other was guilty of Excluded Conduct and denies liability for indemnification of the other party based thereon, the party asserting such Excluded Conduct shall have the burden of proof in establishing such conduct.

8.5 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, as respects the Port only, 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 is the rail carrier employer under the 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.), and is the entity with responsibility for compliance with the 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 Excursion Spur. TPO shall indemnify, hold harmless and defend Port and County from any and all cost, expense, liability, claim, damage or other obligation that is asserted against the Port and/or the County pursuant to the statutes and regulations listed in this Section.

8.6 Procedure.

a) If any claim or demand (short of a lawsuit) shall be made by any person against an indemnified party under this Section 8, the indemnified party shall, within thirty (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 License, the party sued shall give the other party timely written notice of the pendency of such action, and

thereupon the party so notified may assume or join in the defense thereof. If the party so notified is liable therefor under this License, then, to the extent of such liability, such party shall defend, indemnify and save harmless the party so sued from Losses in accordance with the liability allocations set forth in this License. Neither party shall be bound by any judgment against the other party unless it shall have been so notified and shall have had reasonable opportunity to assume or join in the defense of the action. When so notified and the opportunity to assume or join in the defense of the action has been afforded, the party so notified shall, to the extent of its liability under this License, be bound by the final judgment of the court in such action.

c) Subject to the provisions of Section 8.6a), on each occasion that the indemnified party is entitled to indemnification or reimbursement under this Section 8, the indemnifying party shall, at each such time, promptly pay the amount of such indemnification or reimbursement. If the indemnified party is entitled to indemnification under this and the indemnifying party does not elect to control any legal proceeding in connection therewith, the indemnifying party shall pay to the indemnified party an amount equal to the indemnified party's reasonable legal fees and other costs and expense arising as a result of such proceeding.

d) Any dispute between the parties as to the right to indemnification or the amount to which it is entitled pursuant to such right with respect to any matter shall be submitted to arbitration pursuant to Section 12 of this License, except if the binding arbitration requirement is no longer in force as provided for in Section 12.1 of this License.

8.7 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 Excursion Spur results in any fine, penalty, cost or charge being assessed against the other party, or any Loss, the party which failed to comply agrees to reimburse promptly and indemnify, protect, defend (with counsel reasonably acceptable to the indemnified party) and hold harmless the other party for such amount.

8.8 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 8.3 a) i.

8.9 No Limitation on Risk Allocation - The provisions of this Section 8 shall apply notwithstanding the provisions of Section 9. In no event shall the indemnification provisions of this Section 8 be limited to the insurance coverage required under Section 9.

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

8.11 Survival - The provisions of this Section 8 shall survive the termination or expiration of this License.

Section 9. Insurance.

9.1 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 and the County shall be listed as additional insureds 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 and County.

a) The policy required under this Section 9.1 shall include general liability property damage and bodily injury coverage for operation of Freight Rail Service, *provided*, that such Freight Rail Service shall be limited to head and tail operations on the Excursion Spur, along with any related operation, maintenance, and construction on or about the Excursion Spur and Port Property by the TPO. If the policy excludes maintenance and construction on or about the Excursion Spur and Port Property, a separate railroad protective liability policy shall be issued in the name of the Port and the County 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 9.1 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 9.1 shall be adjusted by the parties every three (3) years to reflect industry standards, liability claim trends and market conditions.

9.2 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 and County shall be listed as additional insureds 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 and County.

a) The policy required under this Section 9.2 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 Excursion Spur and Port Property by the TPO. If the policy excludes maintenance and construction on or about the Excursion Spur and Port Property, a separate railroad protective liability policy shall be issued in the name of the Port and County 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 9.2 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 9.2 shall be adjusted by the parties every three (3) years to reflect industry standards, liability claim trends and market conditions.

9.3 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 and County.

9.4 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 and the County's status as additional insureds 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, of any binders, policies, and declarations of insurance that is required by this License.

9.5 No Port Deductible - No policies obtained by TPO for this License shall contain a deductible obligation for the Port or County. 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 9.1 and 9.2 are to be borne by TPO.

9.6 Additional Documentation – Self Insurance - If self-insurance is utilized for a portion of the coverage permitted in Sections 9.1 and 9.2, evidence must be provided to the Port and County 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 9.4.

9.7 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 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 License, 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 License, 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 License. TPO shall list here their UBI Number 602-672-764 and their State Worker Compensation Account Number _____. TPO shall also provide the Port and the County 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 9.1 and 9.2. To the extent applicable, there shall be no exclusions relative to railroad workers or workers covered under the Federal Employers' Liability Act.

9.8 Primary Insurance - TPO's insurance shall be primary with respect to its obligations under this License and with respect to the interests of Port and County as additional insureds. Any other insurance maintained by an additional insured shall be excess of the coverage herein defined as primary and shall not contribute with it. In addition to the specific requirements in this License to name the Port and County as additional insureds on certain types of insurance, TPO shall also include Port and County as additional insureds on any other policy it maintains that provides coverage related to the Excursion Spur.

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

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

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

9.12 Waiver of Subrogation - Every policy of insurance required under this License to be held by TPO shall include a waiver of all rights of subrogation against the Port and the County.

9.13 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 Five Million Dollars (\$5,000,000). Said policy shall name the Port and County as additional insureds.

Section 10. Compensation and Billing.

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

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

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

10.4 As compensation for the rights granted under this License (as well as for the rights granted under the O&M Agreement), TPO shall pay the Port the fees described in Section 9.4 of the O&M Agreement.

Section 11. Coordination Committee - Port and TPO shall establish a Coordination Committee and shall invite the County to participate. The Coordination Committee shall consist of at least two (2) representatives of each party, and shall be a forum for the parties to share

information, discuss matters submitted by one party to the other party for review and/or approval, and seek resolution of any issues between the parties with respect to this License. The Coordination Committee shall meet regularly (in person or telephonically) and also as necessary to address issues between the parties that require prompt resolution.

Section 12. Binding Arbitration.

12.1 Controversies Subject to Arbitration - Any and all claims, disputes or controversies between Port and TPO arising out of or concerning the interpretation, application, or implementation of this License that cannot be resolved by the parties through the Coordination Committee or by negotiations shall be submitted to binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, except as otherwise provided in this Section 12. If the AAA discontinues promulgation of the Commercial Arbitration Rules, the parties shall use the AAA's designated successor rules, and if the AAA does not designate successor rules, the parties shall agree on other rules. The judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, the requirement for binding arbitration shall not apply to any dispute wherein the Port and TPO are included, either in the initial complaint or through subsequent pleadings, in a lawsuit brought by a third party. In such case, the dispute may be litigated in court. Further, the requirement for binding arbitration shall not apply if the Port assigns its rights and obligations under this License to the County or conveys its right, title and interest in the Excursion Spur to the County.

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

12.3 Expedited Arbitration Schedule.

a) In the event either party reasonably finds that the issues of any claim, dispute or controversy are likely to directly, imminently, materially and adversely affect human health or safety, either party may request, in the arbitration demand delivered pursuant to Section 12.2, an expedited arbitration procedure as set forth in this Section 12.3 solely for the purpose of obtaining a provisional remedy that by law or in equity could be 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 12.1 and 12.2; provided, however, that no new demand for arbitration need be served by the party demanding arbitration.

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

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

Section 13. Miscellaneous Provisions.

13.1 Binding Successors; Assignment - This License shall be binding upon, and inure to the benefit of, the parties hereto and their respective permitted successors and assigns, except that TPO may not assign its rights and obligations under this License without the prior written consent of the Port, which consent may not be unreasonably withheld, denied, delayed or conditioned. Any assignment, encumbrance or other transfer in violation of the foregoing shall be void. Port may assign its rights and obligations under this License freely. If Port desires to assign its rights and obligations under this License or to convey its right, title and interest in the Excursion Spur, then TPO and the potential assignee or acquiring entity shall negotiate in good faith to revise the terms of this License to address their respective interests.

13.2 Notices - Except as otherwise expressly provided in this License, all notices and other communications under this License shall be in writing and shall be deemed to have been duly given (a) on the date of delivery, if delivered personally to the party to whom notice is given, or (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
Attention: Joe McWilliams
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

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

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

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

13.6 Governing Law - This License shall be construed and interpreted in accordance with the laws of Washington State and/or federal law where applicable, and the parties shall be entitled to all remedies in law and equity as provided for thereunder.

13.7 Time of Essence - Time is of the essence of each and every provision of this License.

13.8 Changes to Port Property - 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 License shall be deemed removed from the Excursion Spur or Port Property as applicable.

13.9 Not for the Benefit of Others - This License and each and every provision herein are for the exclusive benefit of the parties to this License and County and not for the benefit of any third party, except 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 to this License.

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

13.11 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 Excursion Spur, including, but not limited to, car tracing, 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.

13.12 Removal of TPO's Property - Upon termination of this License, 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 Excursion Spur or Port Property. If damage results to the Excursion Spur or to Port Property as a result of TPO's activities under this Section 13.12, TPO shall, at its sole expense, restore or reimburse the Port for the cost to restore the Excursion Spur 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 Excursion Spur or Port Property, and (ii) repay the Port for the cost of any property removal shall survive the termination of this License. All other property or improvements placed on the Excursion Spur or Port Property by TPO during the term of the License that do not constitute personal property or trade fixtures, shall become the property of the Port upon termination of this License.

13.13 Railbanking Requirements in Event of Abandonment - If TPO or any successor, assignee or designee of TPO (each an "Abandonment Applicant") elects to seek authority from the Surface Transportation Board or any successor agency to abandon or discontinue its freight common carrier obligation over some or all of the Corridor, then such Abandonment Applicant shall consent to a request by any or each of County, the Port, the Central Puget Sound Regional Transit Authority or the successor or designee of any of them (each a "Trail Use Applicant") for the implementation of interim trail use in accordance with Section 8(d) of the National Trails System Act, codified at 16 U.S.C. 1247(d), and 49 C.F.R. 1152.29, as such provisions may be amended or interpreted by binding judicial or administrative authority. The Abandonment Applicant shall cooperate with any or each Trail Use Applicant in any application for authority to implement interim trail use over all or any portion of the Property on which the Abandonment Applicant seeks authority to abandon or discontinue its freight common carrier obligation. If TPO or any successor, assignee or designee of TPO ceases operations on the Corridor but fails within a reasonable period of time to (a) seek abandonment authority, and (b) respond to inquiries from any potential Trail Use Applicant as to the status of its operations, any Trail Use Applicant may elect to seek authority from the Surface Transportation Board or any successor authority for a third-party abandonment and interim trail use over some or all of the Corridor on which operations have ceased. TPO and any successor, assignee or designee shall not oppose any such action by a Trail Use Applicant.

13.14 Railbanking Conditions - As part of the approvals for railbanking the Excursion Spur, the STB conditioned its approval concerning salvage activities and archaeological remains, which conditions must be complied with by TPO. TPO agrees that:

(a) Prior to beginning any salvage activities,

- (i) To consult with Washington Department of Ecology ("WDE") regarding possible impacts of abandonment activities on wetlands located along the line and to ensure compliance with the Clean Water Act's National Pollution Discharge Elimination System ("NPDES") permitting requirements, and
- (ii) To consult with the Army Corps of Engineers ("Corps") regarding possible impacts of abandonment activities to water bodies and wetlands, and to ensure compliance with Corps permitting requirements; and

(b) In the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, TPO shall immediately cease all work and jointly with Port and County notify the STB's Section of Environmental Analysis ("SEA"), interested Federally recognized tribes and the Washington State Historic Preservation Officer ("SHPO"), pursuant to 36 CFR 800.13(b). SEA shall then consult with the SHPO, interested Federally recognized tribes, TPO, Port and County, and any other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

13.15 Encumbrances - TPO may pledge or otherwise encumber its rights under this license to secure its obligations under any loan agreement or similar or related document; provided, however, that notice of such pledge is provided to Port, and that such pledge or other encumbrance shall be subject to and subordinate to the rights of the Port and its assigns as licensor hereunder.

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

PORT OF SEATTLE
a Washington municipal corporation

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

GNP RLY. INC.
a Washington corporation

By: _____
Name: _____
Title: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

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

WITNESS my hand and official seal.

(SEAL) _____
Printed Name

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On _____, 200__, before me, a Notary Public in and for said County and State, personally appeared _____, 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.

(SEAL) _____
Printed Name

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

EXHIBIT A

Operations and Maintenance Agreement

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2013, I served the foregoing PETITION FOR STAY OF THE PORT OF SEATTLE upon the following parties of record in this proceeding:

Myles L Tobin
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 920
Chicago, IL 60606-2875



Peter W. Denton
Counsel for the Port of Seattle