

ORIGINAL

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

228470

**STB FINANCE DOCKET NO. 35407
GNP RLY INC.**

**- ACQUISITION AND OPERATION EXEMPTION -
REDMOND SPUR AND WOODINVILLE SUBDIVISION**



228471

**STB DOCKET NO. AB-6 (SUB NO. 463X)
BNSF RAILWAY COMPANY
- ABANDONMENT EXEMPTION -
IN KING COUNTY, WA**

228472

**STB DOCKET NO. AB-6 (SUB NO. 465X)
BNSF RAILWAY COMPANY
- ABANDONMENT EXEMPTION -
IN KING COUNTY, WA**

ENTERED
Office of Proceedings
DEC 16 2010
Part of
Public Record

**GNP RLY INC.'s EXHIBITS IN SUPPORT OF ITS REPLY TO THE
COMMENTS OF OTHER PARTIES**

PUBLIC VERSION

Submitted By:

John D. Heffner, PLLC
1750 K Street, NW - Suite 200
Washington, DC 20006
Tel. (202) 296-3333

James H. M. Savage
Tel. (202) 296-3335
Of Counsel

Attorneys for GNP Rly Inc.

Dated: December 15, 2010

Table of GNP Reply Exhibits

PUBLIC VERSION

- Exhibit A 12/10/10 Verified Statement of Tom Payne
- Exhibit Payne 1 GNP 01/22/08 Executive Summary
- Exhibit Payne 2 12/11/07 Letter to Port of Seattle (Creighton)
- Exhibit Payne 3 05/05/10 Letter to Port of Seattle (Yoshitani)
- Exhibit B King County-Port of Seattle 05/03/08 Interlocal Agreement
- Exhibit C BNSF- POS- King County 05/12/08 Purchase & Sale Agreement
- Exhibit D 5 Party 11/05/09 Memorandum of Understanding
- Exhibit E BNSF-King County 12/18/09 Trail Use Agreement
- Exhibit F Port of Seattle-King County 12/18/09 Public Multipurpose Easement
- Exhibit G 12/01/10 Deposition Transcript of Pam Bissonette
- Exhibit H ***Highly Confidential Information filed separately under seal***
Investor – GNP 12/14/10 Memorandum of Understanding
- Exhibit I 11/30/10 Verified Statement of John Snow, Jr.
- Exhibit J 12/09/10 Verified Statement of Matt Surowiecki, Jr.
- Exhibit K ***Confidential Information filed separately under seal***
12/13/10 Verified Statement of Rob Finley
- Exhibit L 12/09/10 Verified Statement of Read Fay
- Exhibit M 12/06/10 Inspection Report of Read Fay
- Exhibit N ***Confidential Information filed separately under seal***
Railworks 08/26/10 Estimate

Exhibit O ***Confidential Information filed separately under seal***
Harmer Steel Products 08/03/10 Estimate

EXHIBIT A

VERIFIED STATEMENT OF THOMAS PAYNE

1. I, Thomas Payne, am GNP Rly Inc.'s (GNP) Chairman of the Board and Chief Operating Officer. I make this Verified Statement in reply to comments submitted by other parties to this proceeding.

2. When GNP originally developed its comprehensive rail service plan for the Woodinville Subdivision and the Redmond Spur, and submitted it to BNSF and the Port of Seattle, it always planned and stated that its first priority was the establishment, development and expansion of freight services. Additionally, it planned to emphasize the development of a passenger rail excursion service and, in time, commuter rail passenger service as well.

3. That comprehensive rail service plan was accepted by BNSF in full and GNP was selected to be the TPO for the Freight Easement and excursion portions of the railway. Additionally, GNP was granted a license by the Port of Seattle for operations over the railbanked portions of the line for excursion passenger service. GNP proposed joint "rail and trail" use of the right of way and as well as agreed in its contracts with the Port of Seattle to cooperate with the establishment of commuter service on the line of railway.

4. GNP's business plan has evolved and changed over the past year as several new and former freight customers have emerged. They have expressed, in writing, their strong desire for new and restored rail freight service, respectively. GNP's earlier projections about the amount of on-line freight traffic on the Freight Easement have been revised upwards by several orders of magnitude. Our now known and presently estimated

freight traffic show projected freight revenues sufficient to justify this venture.

5. Solicitation of new and "dormant" railroad customers is an accepted standard short line industry business practice.

6. GNP is currently providing local freight service over the Freight Easement and is actively involved in soliciting substantial additional volumes of freight traffic for movement over the Freight Easement and the Redmond Spur.

7. Active planning for the establishment of an excursion passenger service over both the Freight Easement and the Redmond Spur to MP 2.5, as required by our contract with the Port of Seattle) is ongoing. GNP seeks in the longer term to provide common carrier commuter rail service over the Freight Easement either on its own account or in cooperation with Sound Transit.

8. Since before January 22, 2008 GNP has been actively discussing restoration of rail service over the Redmond Spur and the portion of the Woodinville Subdivision between MP 22.0 and MP 23.8 ("the Lines") with numerous public and private stakeholders, including the public agency parties to this proceeding. GNP has consistently sought discussions with all public agencies. On 5 May 2010, GNP advised the Port of Seattle of its desire to reactivate freight services on a portion of the lines of railway in the railbank and extend its passenger services to Redmond.

For example see the following documents:

- January 22, 2008 Confidential Executive Summary of GNP Rail

Proposal issued to the Port of Seattle at P.4 thereof, which lists prior consults with 37 stakeholders and media outlets, including King County, Redmond, the Port of Seattle, and BNSF, annexed hereto as Exhibit Payne 1.

- December 11, 2007 Thomas Payne letter to Port of Seattle President John Creighton re: Eastside Rail Corridor, annexed hereto as Exhibit Payne 2.
- May 5, 2010 Thomas Payne letter to Port of Seattle C.E.O., annexed hereto as Exhibit Payne 3.

9. The Port of Seattle requested GNP have discussions with the City of Redmond and King County, as was appropriate, considering that, in the case of Redmond, it was about to purchase a portion of the Redmond Spur, and King County held reactivation rights to the railbanked portions of the corridor. GNP agreed so to do.

10. By August of 2010, it became apparent after several meetings that no consensus for either removal of the lines from the railbank (or, for that matter, the extension of GNP passenger services) was likely to be formed by continuing negotiations indefinitely. GNP therefore filed its Petition for reactivation authority.

11. King County has ignored or rebuffed GNP in its efforts to engage the stakeholders in negotiations.

12. Since an initial confidential meeting on 15 November 2010, held with BNSF's regional officers for traffic development BNSF has been working with GNP to develop substantial new inbound and outbound interstate as well as local freight traffic both on the Freight Easement and

interstate as well as local freight traffic both on the Freight Easement and Redmond Spur.

13. At that confidential meeting, all the traffic potential for the Lines was discussed including the revived traffic on the spur. The BNSF officers expressed the view that that GNP's recently identified Redmond Spur locally generated traffic of several hundred cars per annum was significant.

14. GNP is actively working with BNSF and Waste Management on developing a service plan for their recently announced MRF facility at Maltby which would initially generate a minimum of 3,640 cars of outbound traffic per annum of containerized recyclable waste by rail on the Freight Easement.

15. Waste Management train frequency would be twice weekly. This traffic is new traffic.

16. Though several of GNP's prospective customers are currently using truck to meet their transportation needs and the availability of rail service would constrain their truckers' ability to raise rates, rail provides these customers with additional sources for inbound traffic or outbound products than they would otherwise not have.

17. On 6 December 2010, GNP conducted an inspected the entire Freight Easement and GNP's currently operated portion of the Redmond Spur to reconfirm both GNP's inspection findings and the costs of remedial work required to prepare the Redmond Spur for service. The inspection was conducted by the GNP's Chief Operating Officer, Thomas Payne, and the recently retired regional superintendent of the BNSF, Read

inspection results and recommended repairs. See Read Fay Verified Statement annexed hereto as Exhibit Payne 4.

18. GNP on 26 August 2010 received a quotation for the scope of work required from RAILWORKS Track Systems, a nationally recognized rail contractor who currently performs work for Sound Transit and other regional railways in the Seattle Area. The estimated labor and material cost of the immediate repairs to restore the lines on the Redmond Spur to excepted service is \$ [REDACTED] and could be accomplished in one month. The incremental cost of improving the line from excepted track status to Class 1 standard would be \$ [REDACTED] and could be accomplished with a further month's work. See RAILWORKS Track System labor quotation, annexed hereto as Exhibit Payne 5. See Harmer Steel Product tie quotation, annexed hereto as Exhibit Payne 6.

19. There are no currently identified bridge repairs required on the Redmond Spur which are necessary or requisite for the reestablishment of freight traffic on the Redmond Spur.

20. GNP would support inclusion in any railroad operating agreement terms requiring the reactivation of the trail use should GNP fail to consummate or terminate rail service on any portion of the Lines.

21. GNP currently works with WSDOT, Snohomish County PUD, the City of Woodinville and the Port of Seattle, all of which are state or local agencies. GNP enjoys cooperative and efficient working relationships with them and is likewise prepared to work with Sound Transit, King County, and Redmond

22. Since deregulation in 1980, Class 1 railways have reordered their business plans to specialize on point-to-point long haul unit train movements. Local and regional lines gradually have become uneconomic given the cost structures of the major carriers across North America. Class III railways have stepped into the vacuum created by service "rationalization" and reverse decline of the line to forestall abandonment. Here, over time, service reductions from daily service declined to two or three days a week service, and then to unscheduled, "as and when" required service. Delivery times become unreliable and empty cars were left unmoved with attendant demurrage charges being accrued. Shippers chose to change modes of transport to motor carrier. Randy Mann of Building Specialties, located on the Redmond Spur, gave testimony about these problems at his October 26, 2010 deposition.

23. I have personally restored declining local and regional railway Lines to thriving condition in Canada. Those restored railways typically regain substantial amounts of previously lost traffic and invariably, as here, new sources for large quantities of new traffic are discovered. Regional railways provide 30-40% of ALL traffic carried in the Class 1 and 2 carriers.

24. GNP is agreeable to paying reasonable compensation for utilizing the reactivated track and right of way.

25. GNP does not contend that the Board has jurisdiction over intrastate passenger service whether excursion service or common carrier commuter service.

26. Fears of reversionary land claims by adjacent landowners to the

right of way are exaggerated. GNP has on hand, and has supplied to the Port of Seattle Real Estate department the original NPR right-of-way plat plans and land title books of record for the lines of railway of the Woodinville Subdivision and the Redmond Spur. Those original records indicate that the line is owned in fee simple. Current title documents and land descriptions from the closing of the purchase and sale between the Port of Seattle and BNSF conform to those descriptions.

<<Balance of page blank intentionally>>

VERIFICATION

STATE OF WASHINGTON)

) SS

COUNTY OF PIERCE)

I, Thomas Payne, being duly sworn according to law, hereby depose and state that I am authorized to make this Verification, that I have read the foregoing document, and that I know the facts asserted therein are true and accurate as stated, to the best of my knowledge, information and belief.

Thomas Payne

Thomas Payne

Subscribed and sworn to before me, a Notary Public, in and for the County of Pierce, in the State of Washington, this 10th day of December, 2010.

Yvonne S. DeGuzman

Notary Public

My Commission expires:

10/01/2014

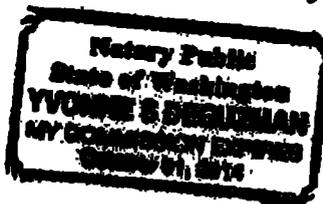


EXHIBIT B

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.1.1 Preliminary title commitments:

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

2.1.3 Maps and documents prepared by Pacific Northwest Title:

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

2.1.5 Track maps provided from BNSF to the County:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.8 With regard to Section 10.2 of the Acquisition Agreements concerning BNSF's *défault*, in the event of a material default by BNSF the Port and the County will cooperate in good faith to make a joint determination and provide notice to BNSF as to their remedy election. If both Port and County desire to obtain specific performance of BNSF's obligations under the

EXHIBIT C

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

THIS PURCHASE AND SALE AGREEMENT is made and entered into as of the 12 day of MAY, 2008, by and between BNSF RAILWAY COMPANY ("BNSF"), the PORT OF SEATTLE, a municipal corporation of the State of Washington ("Port") and KING COUNTY, a political subdivision of the State of Washington ("County").

RECITALS

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

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

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

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

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

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

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

Section 1. Definitions and Exhibits.

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

Agreement. This Purchase and Sale Agreement.

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

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

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

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

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

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

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

Escrow Agent. Pacific Northwest Title Company.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Purchase Price. As defined in Section 2.

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

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

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

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

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

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

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

Exhibit A	Legal Description of the Property
Exhibits B-1	Form of Deed for Freight Portion
Exhibit B-2	Form of Deed for Railbanked Portion
Exhibit C	BNSF Disclosures
Exhibit D	Port and County Disclosures
Exhibit E	Form of Assignment of Third Party Leases Licenses
Exhibit F	List of Known Third Party Leases/ License

Exhibit G	Form of Exchange Assignment
Exhibit H	Form of Freight Easement Sale Agreement
Exhibit I	Form of Bill of Sale conveying the Personalty
Exhibit J	Form of Easement Agreement for Snohomish Bridge
Exhibit K	Form of Trail Use Agreement
Exhibit L	Form of Public Multipurpose Easement Agreement
Exhibit M	Property Reports

Section 2. Purchase and Sale.

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

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

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

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

Section 3. Adjustments.

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

Leases/Licenses relate and BNSF shall pay to Port any such Third Party Rents received by BNSF, if any. Within 90 days after Closing BNSF shall pay to Port the amount, if any, of all rents under the Leases and all security deposits held by BNSF under the Leases.

3.2 [Intentionally Deleted]

3.3 Taxes and Monetary Liens.

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

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

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

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

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

Section 4. Inspections.

4.1 Physical/Environmental Inspection.

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

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

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

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

4.2 Port and County Contingencies.

(a) Port and County shall have until the end of the Review Period to determine in their sole and absolute discretion (i) whether Port has obtained any necessary authorizations from its governing body, and (ii) if there are any physical conditions including, but not limited to, environmental conditions affecting the Property that BNSF is not willing to cure as contemplated herein and that are unacceptable to the Port or County in their sole discretion. If (i) the Port does not obtain the necessary authorizations from its governing body by the end of the Review Period or (ii) Port or County identify an existing condition affecting the Property (an "Identified Condition") that is unacceptable to the Port or County in either entity's sole discretion and such Identified Condition is not an Identified Condition that BNSF agrees in writing to Cure

(defined below) pursuant to Section 7 of this Agreement, *then* Port and County may terminate this Agreement and the South Agreement together by written notice to BNSF received no later than the expiration of the Review Period. If either (i) both Port and County do so timely terminate this Agreement under this Section 4.2 (a) or (ii) the Port does so timely terminate this Agreement under this Section 4.2(a), then subject to Section 4.2(c), this Agreement and the South Agreement shall terminate and Escrow Agent shall refund to Port the Earnest Money and half the interest earned thereon as contemplated in Section 2 of this Agreement and shall pay the other half of such interest to BNSF and none of the parties shall have any further obligation hereunder except those that expressly survive termination.

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

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

If this Agreement is not terminated as contemplated in Section 4.2, the parties (except County if County has terminated and Port has not) shall proceed to Closing according to the remaining provisions of this Agreement. Promptly upon BNSF's written request, Port and County shall deliver a copy of any written inspection report, survey or test result received by Port or County. If any of such items reveal any adverse conditions for which BNSF would be responsible for under Section 7 of this Agreement, BNSF may terminate this Agreement by written notice to Port and County by the end of the Review Period and Escrow Agent shall refund the Earnest Money and half the interest earned thereon as contemplated in Section 2 of this Agreement and shall pay the other half of such interest to BNSF and in which case none of the parties shall have any further obligation hereunder except those that expressly survive termination.

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

4.4 Nature of Title. The Property shall be conveyed with no warranties of title except as stated

below and shall be subject to all matters affecting the Property whether of record or not including but not limited to (i) the lien of unpaid taxes not yet due and payable; (ii) matters which would be disclosed by a current, accurate survey of the Property; and (iii) the rights granted to third parties pursuant to any Third Party Lease/License. Port and County acknowledge and affirm that BNSF may not hold fee simple title to the Property, that BNSF's interest in all or part of the Property, if any, may rise only to the level of an easement for railroad purposes. Port and County are willing to accept the Property on this basis. BNSF does represent and warrant that BNSF's ownership interest in and to the Property, even subject to the Third Party Leases/Licenses, is sufficient to permit railroad operations on the Property, including passenger railroad operations; and to permit BNSF to convey the Property as contemplated in this Agreement and the Other Agreements. Port and County acknowledge that BNSF's predecessor in interest to the Property acquired a railroad right-of-way ownership interest in portions of the Property from the United States of America, pursuant to Section 2 of the General Right-of-way Act of March 3, 1875, and Port and County each agrees to the conditions and limitations imposed by this General Right-of-way Act.

Section 5. Representations and Warranties.

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

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

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

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

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

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

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

(g) BNSF is not a "foreign person" as that term is defined in the Internal Revenue Code of 1986, as

amended and the Regulations promulgated pursuant thereto.

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

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

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

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

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

(l) To BNSF's actual knowledge, the copies of the Third Party Leases/ Licenses, are true and correct copies of originals of such documentation in BNSF's possession.

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

5.2.1 Port:

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

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

(c) This Agreement and the other documents to be delivered by Port at Closing have been, or

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

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

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

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

5.2.2 County:

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

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

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

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

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

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

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

(b) It shall be a condition of the parties' respective obligation to Close that the representations and warranties of the other party contained in this Section 5 are true and correct in all material respects at the Closing

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

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

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

(b) Port and County individually represent and warrant for itself to BNSF that except for BNSF's express representations, warranties and obligations under this Agreement and the Deeds, Port and County each has not relied and will not rely on, and BNSF is not liable for or bound by, any warranties, guaranties,

statements, representations or information pertaining to the Property or relating thereto made or furnished by BNSF, the manager of the Property, or any real estate broker or agent representing or purporting to represent BNSF, to whomever made or given, directly or indirectly, orally or in writing.

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

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

Section 7. Environmental Obligations.

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

BNSF from any obligations to Cure set forth in Section 7(c), below.

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

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

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

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

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

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

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

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

8.1 Surface Transportation Board Approval Contingency.

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

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

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

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

8.2 Other Conditions 11 Closing.

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

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

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

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

Section 9. Closing.

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

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

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

Section 10. Default and Remedies.

10.1 Port's or County's Default. Subject to Section 5.3, in the event of a material default by Port or County under the terms of this Agreement or any Other Agreement prior to the Closing that is not cured within any applicable notice and cure periods, BNSF may elect as its exclusive remedy to either (a) terminate this

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

10.2 BNSF's Default. Subject to Section 5.3 in the event of a material default by BNSF under the terms of this Agreement prior to the Closing that is not cured within any applicable notice and cure periods, Port and County together may elect as their exclusive remedy to (a) terminate this Agreement and the South Agreement together in which case the Earnest Money, all the interest earned thereon, and the Extension Fee, if applicable, shall be returned to the Port and none of the parties shall have any further obligation under this Agreement except those that expressly survive termination, (b) obtain specific performance of BNSF's obligations under this Agreement and the South Agreement (and in seeking any equitable remedies, Port and County shall not be required to prove or establish that Port and County do not have an adequate remedy at law and BNSF hereby waives the requirement of any such proof and acknowledges that County would not have an adequate remedy at law in the event of a material default by BNSF), or (c) waive such default and proceed to Closing in accordance with the terms of this Agreement. Subject to Section 5.3 and Section 10.4, nothing in this Agreement shall waive or diminish any right or remedy Port and County may have at law, in equity or in contract for BNSF's default under any document entered into by BNSF at Closing or under any Other Agreement or BNSF's default after Closing under this Agreement.

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

10.4 Arbitration.

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

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

statement identifying the provisions of this Agreement which are in dispute, a summary of the facts or circumstances giving rise to the dispute, and describing the relief requested.

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

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

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

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

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

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

Section 11. Assignment.

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

to effect this tax-deferred exchange.

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

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

Section 13. Notices.

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

Port (if delivered):

Port of Seattle Legal Department
2711 Alaskan Way
Seattle, WA 98121
Attn: General Counsel

Port (if mailed):

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

County:

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

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

BNSF:

BNSF Railway Company

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

With additional copy to:

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

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

Section 14. Miscellaneous.

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

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

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

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

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

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

indicated for a day on which any action must be undertaken under this agreement, the time shall be 5:00 p.m. All references to time shall be to Pacific time.

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

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

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

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

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

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

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

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

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

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

(a) If such condemnation concerns a crossing of the Property by a pipeline, electricity or telecommunication facility or other utility and is valued at less than \$25,000 then BNSF shall handle such

condemnation or conveyance in lieu of condemnation in accordance with its normal practice and inform Port and County of the interests conveyed, and Port and County shall not be entitled to any proceeds from such condemnation or conveyance or any reduction in the Purchase Price. Such conveyance shall not however, in any way alter the obligations of BNSF under this Agreement other than BNSF's inability to convey at Closing the interests conveyed by BNSF to a third party under this Section 14.16.

(b) If such condemnation is not subject to the terms of Section 14.16(a), then Port and County together but not separately may elect to terminate this Agreement and the South Agreement together, in which case Escrow Agent shall refund to Port the Earnest Money and half the interest thereon and shall pay BNSF the other half of such interest and none of the parties shall have any further obligation hereunder except those that expressly survive termination.

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

BNSF RAILWAY COMPANY

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

PORT OF SEATTLE

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

KING COUNTY

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

EXHIBIT D

MEMORANDUM OF UNDERSTANDING
Regarding Acquisition of the
Woodinville Subdivision

This MEMORANDUM OF UNDERSTANDING is made by and among the Port of Seattle, a Washington municipal corporation ("Port"), Sound Transit, a regional transit authority ("Sound Transit"), King County, a political subdivision of Washington ("King County"), the City of Redmond, a Washington municipal corporation ("Redmond"), the Cascade Water Alliance, a Washington non-profit corporation ("Cascade"), and Puget Sound Energy, Inc., a Washington corporation ("PSE") (collectively, the "Parties") as of the 5th day of November, 2009.

WHEREAS:

(A) BNSF desires to sell in part and donate in part the Woodinville Subdivision, which is a railroad corridor extending from the City of Renton northerly to the City of Snohomish, and including a spur corridor extending from the City of Woodinville to the City of Redmond; and

(B) The Port, King County and BNSF previously executed a purchase and sale agreement and donation agreement for the acquisition and partial railbanking of the Woodinville Subdivision; and

(C) Additional regional partners have been identified to share in the cost of acquiring the Woodinville Subdivision for public ownership; and

(D) The alignments under consideration for Sound Transit's Eastlink light rail project require property rights within the Woodinville Subdivision; and

(E) Sound Transit, Redmond, Cascade and PSE have each expressed an interest in participating in the acquisition and preservation of the Woodinville Subdivision in public ownership for recreational trail use, as well as for use as a public transportation and utility corridor.

(F) It is the express purpose of Sound Transit, King County, and Redmond, that the Woodinville Subdivision be developed and operated to ensure that it is available for the dual purposes of recreational trail and public transportation use; and

(G) Consistent with federal railbanking requirements, King County and Redmond have interests in developing a recreational trail within the Woodinville Subdivision; and

(H) The financial contributions to be made by the Port, King County, Sound Transit and Redmond towards this collective acquisition may not be in proportion to the fair market value of the rights in the Woodinville Subdivision that are expected to be received by these entities and, in all instances, the fair market value of the rights to be received by each governmental entity in the Woodinville Subdivision may materially exceed the amount of such entity's respective financial contribution.

NOW, THEREFORE, the Parties have reached the following understanding:

SECTION 1. Purpose.

The Port intends to close its acquisition of the Woodinville Subdivision in 2009. The Parties have envisioned and are working to complete a future transaction for their mutual benefit and for the benefit of the public. The Parties wish to set forth their understandings in this Memorandum of Understanding ("MOU") with respect to their respective interests in the transaction. This MOU is a non-binding document that creates no rights and imposes no obligations on any Party. While the Parties are committed to working cooperatively, expeditiously and efficiently to document the components of the transaction through binding agreements ("Agreements") using this MOU as a guide, the allocation of interests described in this MOU are tentative and subject to review and modification as the Parties move forward with their discussions.

SECTION 2. Key Acquisition Elements.

The key elements of the proposed transaction are as follows:

2.1 This transaction concerns the portion of the Woodinville Subdivision main line corridor between Renton and Snohomish (approximately mile posts 5.0 and 38.4), and a spur corridor between Woodinville and Redmond (between approximately mile posts 0.0 and 7.3) ("Redmond Spur"). Collectively, the main line corridor and the Redmond Spur constitute the "Woodinville Subdivision." The portion of the Woodinville Subdivision north of mile post 23.8 in Woodinville to milepost 38.4 in Snohomish County is referred to as the "Freight Portion." The portion of the Redmond Spur between approximately mileposts 0.0 and 3.1 is referred to as the "County Portion of the Redmond Spur." The portion of the Redmond Spur between approximately mileposts 3.1 and 7.3 is referred to as the "City Portion of the Redmond Spur." Together, the Freight Portion and the Redmond Spur are referred to as the "Northern Portion." The portion of the Woodinville Subdivision south of Woodinville, excluding the Redmond Spur, is referred to as the "Southern Portion." The specific line segments and designated portions will be further defined in the Agreements.

2.2 The Parties have expressed a desire for the future allocation of interests in the Woodinville Subdivision as follows:

2.2.1 The Port will retain, subject to a freight rail easement granted by BNSF to a freight rail operator, all of the title, interest and obligations in the real and personal property of the Freight Portion.

2.2.2 Sound Transit is interested in acquiring a real property interest in the Southern Portion and the Redmond Spur.

2.2.3 King County is interested in acquiring a real property interest in the Southern Portion and the County Portion of the Redmond Spur.

2.2.4 Redmond is interested in acquiring a real property interest in the City Portion of the Redmond Spur.

2.2.5 Cascade is interested in acquiring a utility easement over the Southern Portion and will have the right to negotiate with the County and Redmond for utility easements over the Redmond Spur.

2.2.6 PSE is interested in acquiring utility easements throughout the entirety of the Woodinville Subdivision, except for the City Portion of the Redmond Spur, for PSE's existing and future facilities and infrastructure. For the City Portion of the Redmond Spur, PSE and Redmond anticipate a value for value exchange of perpetual easements for existing PSE facilities and infrastructure within the Redmond right-of-way and Redmond trail facilities on PSE properties, based on the appraised value of the properties in question. Provided, that PSE's new facilities and infrastructure shall be subject to otherwise applicable public approval, construction and permitting processes.

2.3 The identification of which entities will grant and which entities will receive these interests and the order in which these interests will be acquired will be further defined in the Agreements.

SECTION 3. Proposed Key Future Use Elements.

3.1 Freight rail service subject to the jurisdiction of the Surface Transportation Board ("STB") will continue on the Freight Portion.

3.2 Utility corridor uses by PSE and Cascade.

3.3 Interim trail use ("railbanking") will be established on the Southern Portion and the Redmond Spur under the National Trails Systems Act, 16 U.S.C. 1247(d) as of the closing of the Port's transaction with BNSF. The Parties recognize that for any portion subject to railbanking, future local, regional or national transportation needs may require reconstruction and reactivation of the right-of-way for freight rail service. King County will be the trail sponsor for the Southern Portion and the County Portion of the Redmond Spur. The Agreements will provide that in the event Redmond acquires an interest in the City Portion of the Redmond Spur, King County and Redmond will cooperate in seeking Surface Transportation Board authorization for Redmond to assume the role of trail sponsor for the City Portion of the Redmond Spur.

3.4 The Parties intend that the Agreements will provide that, consistent with railbanking, the Southern Portion and the Redmond Spur will, in addition to public trail use, be available for public transportation uses such as high capacity transit or bus transportation. The Freight Portion may be made available for public transportation purposes and recreational trail purposes to the extent consistent with ongoing freight rail operations. Should the Freight Portion ever be proposed for abandonment, the Parties with an interest in the Freight Portion shall cooperate to allow the Freight Portion to be railbanked.

3.5 Upon consummation of the Agreements, a process will be established for the entities with interests in the Southern Portion and the Redmond Spur to periodically meet in order to consult and coordinate activities related to the development, maintenance and use of those portions of the Woodinville Subdivision. Said entities agree to coordinate planning and development activities to the extent possible to ensure effective use of the Southern Portion and the Redmond Spur for the uses outlined in this MOU, based on the ownership interests acquired by

each, and consistent with the express goal of developing and operating a dual use corridor for recreational trail and transit purposes. The Agreements shall ensure that no party may frustrate dual use of the corridor for both public transportation and recreational trail purposes.

3.6 If the Port ever determines to offer or to agree to transfer any or all of the Freight Portion, then Sound Transit, King County and any other public agency in the State authorized to provide transit, rail services or public trails shall have a right of first refusal to acquire such property.

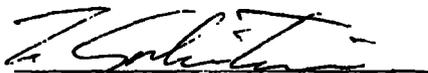
3.7 If BNSF ever determines to offer or to agree to transfer any or all of that portion of the Woodinville Subdivision between approximately mileposts 0-5.0, King County will have the right of first refusal to acquire that portion of such property. If King County acquires this property, it will make it available to the other Parties on terms similar to their interests in the acquired portions of the Woodinville Subdivision.

SECTION 4. Negotiation, Cooperation, and Timing.

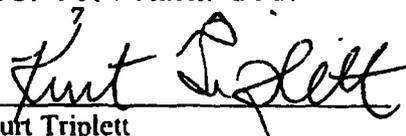
4.1. The Parties shall cooperate to (i) reach agreement on press releases and other public announcements related to the transactions described herein, and (ii) make any filings with the STB to the extent such filings are necessary to effectuate the transactions contemplated by this MOU.

4.2 By no later than December 14, 2009, the Parties shall seek any necessary authorizations from their respective boards or legislative bodies to negotiate the transactions contemplated in this MOU.

PORT OF SEATTLE

By: 
Tay Yoshitani
Chief Executive Officer

KING COUNTY, WASHINGTON

By: 
Kurt Triplett
County Executive

SOUND TRANSIT

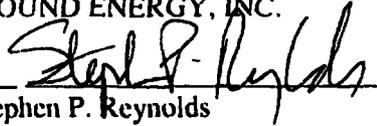
By: 
Joni Earl
Chief Executive Officer

CITY OF REDMOND, WASHINGTON

By: _____
John Marchione
Mayor

PUGET SOUND ENERGY, INC.

By:


Stephen P. Reynolds
President and Chief Executive Officer

CASCADE WATER ALLIANCE

By:


Chuck Clarke
Chief Executive Officer

EXHIBIT E

TRAIL USE AGREEMENT

THIS TRAIL USE AGREEMENT (this "Agreement") is made as of December 18, 2009, by and between BNSF Railway Company, a Delaware corporation ("BNSF"), and King County, Washington, a political subdivision and body corporate and politic of the State of Washington ("County") (each, individually, a "Party" and, collectively, the "Parties").

RECITALS

WHEREAS, BNSF is the owner of that certain real estate known as the "Woodinville Subdivision", located in King County, Washington, and Snohomish County, Washington (the "Woodinville Subdivision" or "Subdivision") and conducts rail operations over the Subdivision from the City of Renton, Washington to the City of Snohomish, Washington; and

WHEREAS, the Port of Seattle ("Port") has negotiated with BNSF a purchase and sale agreement pursuant to which the Port intends to acquire the Subdivision, and the County is a party to those agreements and has contributed to the purchase price for the purpose of railbanking a portion of the Subdivision; and

WHEREAS, the Port does not desire to take on any rail operating responsibility with respect to the Subdivision, and, accordingly, BNSF sought abandonment of its rail common carrier obligation on three segments of the Subdivision, and will transfer its rail operating responsibility on the remainder to a short line operator; and

WHEREAS, the County desires to convert three segments of the Subdivision to public trail use and potentially other public purposes, and, accordingly, the County and BNSF desire to enter into this Agreement for railbanking and for public space pursuant to and in accordance with 49 C.F.R. 1152.29 and Section 8(d) of the National Trails System Act (also known as the "Rails-to-Trails Act"), 16 U.S.C. 1247(d) (collectively, and as any of the foregoing may hereafter be amended or interpreted by binding judicial or administrative authority, the "Railbanking Legislation"); and

WHEREAS, the purpose of this Agreement is to delineate the responsibilities of each of the Parties pursuant to the Railbanking Legislation, as such responsibilities may be appropriately allocated during each phase of the development and use of a trail or other facilities by the County; and

WHEREAS, the Parties acknowledge that any railbanking, trail use or other public purpose proposed by the County, including this Agreement, will be subject to the authorization and jurisdiction of the Surface Transportation Board ("STB" or the "Board"); and

WHEREAS, the Parties acknowledge that STB authorization has been obtained upon the issuance of a Notice of Interim Trail Use ("NITU") for each segment of the Subdivision being abandoned by BNSF in accordance with the Board's rules and procedures; and

WHEREAS, the Parties acknowledge that the County has applied for, obtained and is the holder of the NITUs, and, further, the County acknowledges that, pursuant to the requirements of the Railbanking Legislation, freight service may be reactivated on the three segments of the Subdivision and the County must make the three segments of the Subdivision available for such reactivation of freight service; and

WHEREAS, subject to the request of the Port or other requests for service reactivation, the Parties intend that the County is also obtaining the right and obligation to permit or effect reactivation,

which has been approved by the STB, and pursuant thereto to permit the person requesting reactivation to take such steps as may be required to permit or effect that reactivation; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and the County's contribution to the purchase price of the Subdivision and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BNSF and the County agree as follows:

AGREEMENT

1. RAIL LINES BEING RAILBANKED

The segments of the Subdivision being railbanked are located: (a) between milepost 5 and milepost 10.6; (b) between milepost 11.25 and milepost 23. 90; and (c) between milepost 0.0 and milepost 7.3 of the Redmond Spur (collectively the "Railbanked Segments") A map of the Subdivision with an indication of the three Railbanked Segments is attached hereto as Exhibit B.

2. RAILBANKING OBLIGATIONS

(a) Unless otherwise defined in this Agreement, terms used herein will have the meanings defined in the Railbanking Legislation.

(b) For the purposes of this Agreement, authorization by the STB of the County's trail use will be referred to herein as the "NITUs".

(c) Pursuant to 49 C.F.R. 1152.29, the County assumes the following obligations in respect to the Railbanked Segments in accordance with the Statement of Willingness to Assume Financial Responsibility required as a condition precedent to the issuance of a NITU (the "SWAFR"), the form of which is attached to this Agreement as Exhibit A, and otherwise in accordance with the Railbanking Legislation: (i) all responsibility for the management of the Railbanked Segments; (ii) all responsibility for all legal liabilities arising out of or relating to the transfer, use, possession, management, operation or control of the Railbanked Segments; and (iii) all other obligations arising under the NITUs, the SWAFR, and/or the Railbanking Legislation as it applies to the Railbanked Segments.

(d) BNSF hereby transfers to the County the right and/or obligation to permit reactivation of the Railbanked Segments for rail service. King County has obtained authorization for the transfer of BNSF's right to restart rail service from the Surface Transportation Board.

(e) The Parties agree that this Agreement will constitute prima facie evidence of a valid and continuing purpose on the part of the County to initiate interim trail use along the Railbanked Segments.

3. TERMINATION OF NITU

It is the understanding and intent of the parties that all right and/or obligation to permit reactivation of the Railbanked Segments for rail service has been transferred by BNSF to County and that BNSF no longer retains any such right or obligation. If notwithstanding this the STB receives a request from BNSF that rail service be restored on all or portion(s) of the Railbanked Segments, the County agrees that it will make its interest in the corresponding portion(s) of the Railbanked Segments available for such restoration and BNSF will compensate the County for such interests and any improvements that have been made by the County on the Railbanked Segments at their then fair market value. If (a) the

County, after the date of this Agreement, has removed any railroad tracks or any railroad equipment or supporting apparatus within the portion(s) of the Railbanked Segments being reactivated pursuant to such a request by BNSF, or (b) any equipment or improvements ("Post-Railbanking Installations") installed on the portion(s) of the Railbanked Segments being reactivated pursuant to such a request by BNSF after the date of this Agreement would prevent or otherwise impede the restoration of rail service, then BNSF will either restore any required railroad infrastructure or remove any Post-Railbanking Installations at its sole expense, and will undertake at its sole expense any work necessary to restore rail service on the portion(s) of the Railbanked Segments. In the event of a request to reactivate service on any Railbanked Segment(s) pursuant to such a request by BNSF and of the receipt of any required approvals by the STB, the County will cause the NITUs to be vacated on the subject Railbanked Segment(s), in whole or in part, and will file at the STB any required notice and/or other information as may be necessary at that time.

4. NOTICES

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

County
King County Office of the Executive
701 Fifth Avenue
Suite 3210
Seattle, WA 98104
ATTN: Chief of Staff

With an additional copy to:

Office of the King County Prosecuting Attorney
Civil Division
400 King County Courthouse
516 Third Avenue
Seattle, WA 98102
ATTN: Chief Civil Deputy

or to BNSF at:

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

With an additional copy to:

BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76131
Attn: David Rankin

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

5. GENERAL TERMS

(a) Entire Agreement. This Agreement, together with any amendments or exhibits, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and may be modified only by a writing executed by the Parties.

(b) No Third Party Beneficiaries. Except as otherwise provided in this Agreement, nothing contained in this Agreement, in any provision or exhibit to this Agreement, or in any agreement or provision included in this Agreement by reference, will operate or be construed as being for the benefit of any third person.

(c) Parties. Wherever used in this Agreement, the terms "BNSF" and "County" shall be construed in the singular or plural as the context may require or admit, and shall include the permitted successors and assigns of such parties.

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

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

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

(g) Assignability. The County may assign this Agreement at its discretion, subject to regulatory requirements for transfer of the NITUs.

(h) Time is of the Essence. Time is of the essence in the performance of each Party's obligations under this Agreement.

(i) Incorporation of Exhibits. All exhibits attached to this Agreement will be incorporated by this reference and made a part of this Agreement for all purposes.

(j) Multiple Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

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

(l) Relationship. Nothing in this Agreement shall be deemed or construed by the Parties, nor by any other person, as creating the relationship of principal and agent or of partnership or of joint venture between the Parties.

(m) Authorization. BNSF represents and warrants that it has obtained all necessary corporate approvals authorizing the execution and delivery of this Agreement, and that the execution and delivery of this Agreement will not violate the articles of incorporation or bylaws of such corporation, and will not constitute a material breach of any contract by which such corporation is bound. The County represents and warrants that it has obtained all necessary legislative approvals authorizing the execution and delivery of this Agreement, and that the execution and delivery of this Agreement will not violate the County's Charter or code, and will not constitute a material breach of any contract by which the County is bound.

(n) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

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

BNSF RAILWAY COMPANY

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

KING COUNTY

By: Dow Constantine
Name: Dow Constantine
Title: King County Executive

EXHIBIT A
To Trail Use Agreement
Form of Statement of Willingness to Assume Financial Responsibility

Statement of Willingness to Assume Financial Responsibility

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29, King County, a political subdivision and body corporate and politic of the State of Washington (Interim Trail User) is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way. The property extends from: (1) railroad milepost 5.0 on the Woodinville Subdivision near _____ (Station Name), to railroad milepost 10.60, near _____ (Station name), a distance of 5.6 miles in King County, Washington; (2) railroad milepost 11.25 on the Woodinville Subdivision near _____ (Station Name), to railroad milepost 23.8, near _____ (Station name), a distance of _____ miles in King County, Washington; and (3) railroad milepost 0.0 on the Redmond Spur near _____ (Station Name), to railroad milepost 7.3, near _____ (Station name), a distance of 7.3 miles in King County, Washington. The right-of-way described in item (1) is part of a line of railroad proposed for abandonment in STB Docket No. AB-6 (Sub-No. 464X). The right-of-way described in item (2) is part of a line of railroad proposed for abandonment in STB Docket No. AB-6 (Sub-No. 465X). The right-of-way described in item (3) is part of a line of railroad proposed for abandonment in STB Docket No. AB-6 (Sub-No. 463X).

King County acknowledges that use of the right-of-way is subject to the user continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

EXHIBIT B
To Trail Use Agreement

Map of Three Railbanked Segments
(Attached)

EXHIBIT F

Recording Requested By And
When Recorded Return to:

CONFORMED COPY

King County
ATTN: Neil DeGoojer
Water and Lands Resources Division
Open Space Acquisitions Section
201 S. Jackson St. Suite 600
Seattle, WA 98104-3855

20091218001538

PACIFIC MULTITITLE EAS 101.00
PAGE-001 OF 040
12/18/2009 15:30

PUBLIC MULTIPURPOSE EASEMENT

Grantor: Port of Seattle

Grantee: King County

Legal Description (abbreviated): Ptns. Secs 9, 15, 16, 22, 27, 28, 32 and 33, T26N, R5E; Ptns. Lake Avenue Addition to Kirkland, Vol. 6, pg 86; ptns, Supplementary Plat to Kirkland, Vol. 8, pg. 5; Ptns. Secs. 8, 17, 20, 21, 28 and 33, T25N, R5E; Ptns. Kirkland Syndicate's First Addition to Kirkland, Washington, Vol. 7, pg. 23; and Kirkland Syndicate's Second Addition to Kirkland, Washington, Vol. 7, pg. 75; Ptns. Strawberry Lawn, Vol. 4, pg. 30½; Ptns. Secs. 9, 16, 17, 20, 29, 31 and 32, T24N, R5E. Additional legal(s) on Pages 22-35.

This easement is granted this 18 day of December 2009, by the PORT OF SEATTLE a Washington State municipal corporation ("Grantor"), to KING COUNTY, a home rule charter county and political subdivision of the State of Washington ("Grantee").

WITNESSETH

RECITALS

1. Grantor and Grantee executed a Purchase and Sale Agreement and Donation Agreement ("Acquisition Agreements") with BNSF Railway Company ("BNSF"), by and through which BNSF agreed to convey a rail corridor with rails in place, known as the Woodinville Subdivision ("Subdivision"), to Grantor. In the Acquisition Agreements, Grantee received a right of first opportunity to purchase portions of the Subdivision from Grantor.
2. Grantee has been approved as an Interim Trail User by the Surface Transportation Board ("STB") for the purpose of "railbanking" the Property, and Grantee is accordingly subject to certain legal obligations related to the Property, which are referred to herein as the "Railbanking Obligations." The Railbanking Obligations consist of those obligations

imposed through Section 8(d) of the National Trails System Act, also known as the Rails-to-Trails Act, 16 U.S.C. 1247(d), and 49 C.F.R. 1152.29 (collectively, and as any of the foregoing may hereafter be amended or interpreted by binding judicial or administrative authority, the "Railbanking Legislation"), the Notice of Interim Trail Use ("NITU") for the Property issued by the STB; the Trail Use Agreement ("TUA") entered into between BNSF and Grantee for the Property under which Grantee agrees to accept, exercise, and fulfill all of the legal rights, duties, and obligations of an Interim Trail User, and the Statement of Willingness to Accept Financial Responsibility ("SWAFR"). Under the TUA, Grantee has also received BNSF's rail service reactivation rights and/or obligations for the Property as approved by the STB.

3. Grantor desires Grantee to be the Interim Trail User for the Property because Grantee has substantial expertise and experience in acquiring, developing, maintaining and operating public trails, and Grantee is willing to assume this responsibility so long as it has sufficient rights to the Property to serve as the Interim Trail User for purposes of the Railbanking Legislation.

4. Prior to the closing on the Acquisition Agreements ("Closing"), Grantor and Grantee separately entered into an Interlocal Agreement ("Interlocal") regarding their mutual rights and obligations concerning the Property. The Interlocal is premised on the Parties' intent that the Property be used for regional recreational trail and other transportation purposes, including but not limited to rail or other transportation purposes other than interstate freight service ("Transportation Use").

5. It is anticipated that such Transportation Use will be carried out by a Third Party Operator ("TPO") with rights granted by separate agreement affecting or relating to the Property ("TPO Agreements").

6. The Parties intend that if interstate freight service should be reactivated in the future, such service should be able to be integrated with and not necessarily displace the Parties' intended regional trail and Transportation Uses.

7. The Parties agree that acquisition of the Property is of substantial benefit to the region because of its potential for use for regional recreational trail use and Transportation Use, and therefore the Interlocal includes a binding commitment to undertake a formal, multi-agency process to plan and recommend appropriate uses of the Property ("Regional Process").

8. Grantor and Grantee intend that the development of a public trail authorized by this Easement will not prevent Transportation Uses on the Property, but rather will be designed and developed to accommodate Transportation Uses.

NOW, THEREFORE, the PORT OF SEATTLE and KING COUNTY, in consideration of each other's duties and obligations under this Easement, the Acquisition

Agreements, the TUA, and the Interlocal, and all of them, and in exchange for the other good and valuable consideration described therein, the sufficiency of which is hereby acknowledged, do hereby agree as follows:

TERMS AND CONDITIONS

1. Overview of Grantee's Easement Rights

Grantor grants to Grantee, its successors and assigns, a non-exclusive, perpetual easement ("Easement") over, under, through, along and across certain parcels of land situated in King County, Washington, as legally described in Exhibit "A" attached hereto and incorporated herein (the "Property") solely for the following purposes:

1.1 To develop, operate, maintain, repair and improve a public hard- and/or soft-surface regional trail for public pedestrian, bicycle, or other non-motorized uses ("Trail") over a portion of the Property to be designated by Grantor and Grantee in a future amendment to this Easement ("Trail Area"), in accordance with Section 2.1.1 below; and

1.2 To carry out Grantee's Railbanking Obligations over the full width and length of the Property.

1.3 Grantee's Easement rights shall be subject to all preexisting fully executed recorded or unrecorded easements, leases, permits, franchises, occupancy agreements, licenses or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting or relating to the Property in favor of Puget Sound Energy for facilities/utilities that are physically located on or in the Property at the time this Easement is granted ("PSE Instruments"). If any such PSE Instruments are renewed or extended, such renewal or extension shall be subject to this Easement.

1.4 Any TPO Agreement shall be subject to this Easement.

2. Grantee's Trail Use Rights

This Easement gives Grantee the right to, at Grantee's sole cost and expense, develop, operate, maintain, repair and improve a Trail upon commencement of "Trail Development". For purposes of this Easement, "Trail Development" means the initial construction or any substantial re-construction of a Trail. Trail Development shall commence on the date that Grantee specifies to Grantor, in writing, as the date for breaking ground in a particular, identified segment of the Trail Area. In the event Grantee fails to break ground within five (5) days of the specified date, Trail Development shall not be deemed to have commenced until Grantee provides a new date in writing to Grantor, *provided*, if Grantee has broken ground in a segment in accordance with the requirements of Section 2.1.7 but without having provided Grantor written notice of the date, Grantee may cure the lack of notice at any time for such segment such that Trail Development shall be deemed to have commenced for such segment on the date Grantee broke ground as determined by Grantee's construction contracts.

2.1 Scope of Trail Use Upon Commencement of Trail Development

2.1.1 Grantor and Grantee will jointly determine, after the completion of and in consideration of the recommendations of the Regional Process, the appropriate location and size of the Trail Area. Grantee may initiate negotiation of the joint determination through written notice to Grantor no sooner than the earlier of the completion of the Regional Process or one (1) year after Closing. Thereafter the Parties shall negotiate in a good faith and reasonable manner to reach agreement. The joint determination shall be made within eighteen (18) months after the initiation of negotiation. If the joint determination is not made within that time, either Party may start Dispute Resolution under Section 4.3. After the joint determination as to the location and size of the Trail Area is made, Grantor and Grantee shall amend this Easement to incorporate a legal description of the Trail Area, and if thereafter the Trail Area is moved consistent with the terms of this Easement, Grantor and Grantee will further amend this Easement to incorporate a revised legal description of the Trail Area. Grantor and Grantee agree that under generally applicable trail development standards for regional trails, the Trail Area will generally range from 10 feet in width to 30 feet in width depending on the Parties' joint determination as to the uses to be undertaken on the Property, and the physical constraints of the Property. The Parties acknowledges that the Trail Area could be wider than 10 to 30 feet in width where additional width is needed to accommodate all necessary slopes for cuts and fills for the Trail; to install abutments, pilings, or other structural elements of trail bridges or tunnels; to allow grade or other physical separation of the Trail and any active rail lines on the Property; or to install storm water drainage or detention facilities or other facilities required by a permitting agency in support of or as mitigation for the Trail. Grantor and Grantee further agree that the location and size of the Trail Area will accommodate, and not prevent, future Transportation Use of the Property.

2.1.2 At the conclusion of the earlier of the joint determination process or the eighteen (18) month period for negotiating the joint determination as set forth in Section 2.1.1 herein, and prior to commencement of Trail Development but no later than five (5) years after Closing, Grantee may at its sole discretion elect not to proceed with Trail Development and may take action to terminate this agreement and request STB approval to transfer or terminate Grantee's Interim Trail User status and Railbanking Obligations on one-hundred and twenty (120) days written notice to Grantor. In the event of such notice, Grantor may engage a substitute Interim Trail User consistent with all current and future STB requirements, and Grantee shall cooperate fully and as necessary to support such effort. If Grantee fails to exercise this option to terminate within the earlier of five (5) years after Closing or prior to Trail Development, the Grantee's option to terminate under this Section 2.1.2 is forever waived without further action by either party. Upon approval by the STB of the transfer of Grantee's Interim Trail User status and Railbanking Obligations or the termination of Grantee's Interim Trail User status and Railbanking Obligations, the Easement shall, at Grantor's written option, be assigned to a replacement Interim Trail User

or terminated. Upon such assignment or termination, Grantor shall pay Grantee for its Easement rights in the amount of \$1,903,000.

2.1.3 Grantor and Grantee will jointly determine, after completion of and in consideration of the Regional Process, the appropriate timeline for the development of the Trail. Grantee may develop the Trail in phases. At the time jointly determined by Grantor and Grantee, but no later than five (5) years after Closing, Grantee shall have the right to commence Trail Development in the Trail Area as to any segment of the Trail Area for which Grantee notifies Grantor in accordance with Section 2 above.

2.1.4 Grantee shall have the right to use the Trail Area for all purposes necessary or incidental to Grantee's installation, construction, ownership, use, operation, maintenance, inspection, repair, replacement, renovation, improvement, removal and enhancement of a Trail, including, but not limited to, the rights of ingress and egress across the surface of the Property, *provided*, such ingress and egress shall not interfere with any Transportation Use on the Property, if any; the right to use motorized vehicles for the improvement, construction, alteration, repair, maintenance and operation of a Trail and for emergency purposes; the right to install, construct, operate, maintain, modify, repair, replace, improve, remove and use the Trail Area for any Trail-related purposes as Grantee may now or hereafter deem appropriate, including the addition, removal or replacement of Trail improvements at Grantee's election, either in whole or in part with either like or different improvements. All Trail-related improvements of any kind that are now or hereafter acquired, constructed or installed by Grantee, at Grantee's sole cost and expense within the Trail Area shall be and shall at all times remain the property of Grantee.

2.1.5 Grantee's rights under this Easement include the further right to temporarily stage equipment and material on the Property in and around the Trail Area as reasonably necessary to construct, operate, maintain, improve, or remove the Trail, *provided*, such temporary staging shall not interfere with any Transportation Use on the Property, if any; *and further provided*, that Grantee shall not commence such temporary staging on the Property until Grantee has prepared a restoration plan for the affected portions of the Property, the surface of which shall be restored, at Grantee's sole cost and expense, as nearly as possible to the condition in which it existed prior to construction, or to such other condition as the Grantor and Grantee may agree.

2.1.6 Grantee may construct, operate, and maintain Trail crossings over, under, or across any railroad tracks or other transportation facilities on the Property, *provided* that such crossings shall be consistent with applicable law, trail or crossing design standards and shall not interfere with any Transportation Uses on the Property, and *provided further* that Grantee shall be responsible for performing and paying for Custodial Activities as defined in this Easement as to any of the crossing improvements, but not to the railroad tracks or other transportation facilities in the area of the crossing.

2.1.7 At least ninety (90) days prior to the commencement of any Trail Development or any other activity related to Trail Development, Grantee shall provide Grantor with (i) a copy of all plans and specifications for such proposed Trail Development and (ii) a plan for coordinating the proposed Trail Development with any then current or reasonably foreseeable Transportation Uses or other uses by Grantor on the Property. Grantee shall not commence any such Trail Development construction, work or activity unless and until Grantor agrees in writing to the proposal, which shall not be unreasonably withheld, conditioned or delayed.

2.1.8 Grantee shall, at its sole cost and expense, comply with all stormwater requirements for Trail Development to the extent any such requirements are applicable to Grantee's Trail Development, including, but not limited to: (i) Grantee shall be the sole applicant for any Washington State construction stormwater general permit for Trail Development, and shall be liable for any fines or other liability that derives from non-compliance with any such permit; (ii) Grantee shall be the applicant for any construction stormwater permits for Trail Development required by any local jurisdiction that the Property is located in, and shall be responsible for any costs associated with drainage review by any such local jurisdiction; (iii) Grantee shall perform its own drainage reviews and pay all drainage review fees required under King County Code for Trail Development for sections of the Property located within Grantee's jurisdiction; (iv) Grantee shall have all maintenance obligations for any drainage facilities it constructs for Trail Development pursuant to this Easement; and (v) Grantee shall provide Grantor with copies of all correspondence between Grantee and Washington State or any local jurisdiction related to construction stormwater permits associated with Grantee's activities under this Easement.

2.1.8.1 Grantee acknowledges and agrees that Grantor is bound under its Municipal Stormwater Permit ("Permit") and that the Property is subject to the Permit terms. Grantee agrees to cooperate with Grantor in Grantor's compliance of its obligations under the Permit including, but not limited to, Grantor's right to inspect the Property, map pipes on the Property, provide stormwater education and enforce Permit provisions.

2.2 Trail Use and Transportation Use of Property

2.2.1 Grantee understands, acknowledges, and agrees that Grantor or a TPO may undertake Transportation Use of the Property outside of the Trail Area. Outside of the Trail Area, and except as set forth in this Easement, Grantee shall not take any action on or in the Property to limit such Transportation Uses or to limit ingress and egress to any part of the Property for such Transportation Use, unless such action is specifically approved in writing by Grantor.

2.2.2 If Grantor or any TPO is required, or may desire at any time, or from time to time to engage in any Transportation Use or to add to or to improve railroad infrastructure or other Transportation Use facilities in the Trail Area, or to change the grade or location of any railroad infrastructure or other Transportation Use facilities in the Trail

Area (collectively "Transportation Infrastructure Change"), and such change would unreasonably interfere with Grantee's then existing or future development of the Trail Area, including but not limited to trail crossings of Transportation Use facilities in the Property in accordance with the rights granted under this Easement, or if Grantee's then existing or future development of the Trail Area would interfere with the Transportation Use related to the Transportation Infrastructure Change, then Grantor or such TPO may make such change in its facilities in the Trail Area, and Grantor and Grantee will jointly determine a new Trail Area location to replace the affected portion of the Trail Area and any Trail or Trail-related improvements. If Grantee elects to replace any Trail or Trail-related improvements in the relocated Trail Area, such replacement shall be at Grantee's sole cost. Any such relocation shall occur within the Property and any affected Trail Area shall be relocated in a location that is consistent with the standards in Section 2.1.1 and that is consistent with Grantee's Railbanking Obligations; *provided*, that if there is no reasonably practicable alternative for such relocation within the Property consistent with Section 2.1.1, then such relocation on the Property may be to standards less than required by Section 2.1.1 so long as the Parties make a good faith effort to allow for a Trail Area no less than ten feet in width and the relocation meets the minimum standards necessary to satisfy Grantee's Railbanking Obligations. Grantee may, at its sole cost, relocate any affected Trail or Trail-related improvements off the Property. At least one hundred twenty (120) days before Grantor may take any action that would require a joint determination under this Section 2.2.2, it shall initiate negotiation of such joint determination through written notice to Grantee accompanied by a detailed description of its proposed action. Thereafter the Parties shall negotiate in a good faith and reasonable manner to reach agreement. The joint determination shall be made within one hundred twenty (120) days after the initiation of negotiation. If the joint determination is not made within that time, either Party may start Dispute Resolution under Section 4.3 to make the joint determination of the new Trail Area location and to seek all available remedies, and Grantor or TPO may make such Transportation Infrastructure Change even if the joint determination has not been made. "Reasonably practicable" as used in this Easement shall mean capable of being implemented in a reliable and effective manner including consideration of cost. When considering cost, an alternative shall not be considered reasonably practicable if the incremental costs of the alternative are substantially disproportionate to the incremental degree of benefits provided by the alternative.

2.2.3 If a portion of the Property is subject to Transportation Use when Grantee commences Trail Development within the Trail Area, then Grantee shall be responsible for installing barriers to separate such portion of the Property from the Trail Area. If Grantor or a TPO commences Transportation Use of a portion of the Property that is adjacent to a portion of Trail Area where Trail Development has commenced, then Grantor or TPO shall be responsible for installing barriers separating such portion of the Property from the Trail Area. Grantee and Grantor (or TPO if designated by Grantor) shall jointly determine the type and scope of barriers (e.g. jersey barriers, fencing, or grade separation) or other measures reasonably needed to separate the Trail Area from the Transportation Use, which barriers shall at a minimum meet any applicable regulatory standards; *provided*, that after initial barrier installation is completed, Grantee shall be

responsible, at Grantee's sole cost and expense, to inspect, maintain and replace any barriers or other measures that will separate the Trail Area from the Transportation Use. Before either Party may take any action that would require a joint determination under this Section 2.2.3, it shall initiate negotiation of such joint determination through written notice to the other Party accompanied by a detailed description of the proposed barriers. Thereafter the Parties shall negotiate in a good faith and reasonable manner to reach agreement. The joint determination shall be made within ninety (90) days after the initiation of negotiation. If the joint determination is not made within that time, either Party may start Dispute Resolution under Section 4.3.

2.3. Grantor's Retained Rights to the Trail Area

2.3.1 Grantor retains the right to use and allow others to use the Trail Area in any manner that does not unreasonably interfere with Grantee's easement rights and is consistent with the terms of this Easement.

2.3.2 Grantor may make improvements in the Trail Area, including surface or subsurface improvements that are not part of, and do not relate to, Grantee's Trail (collectively, "Other Improvements"), *provided*, that Grantor shall coordinate with Grantee to (i) prevent unreasonable interference with Grantee's Easement rights, (ii) ensure reasonable integration of the Trail and Transportation Uses on the Property, (iii) prevent any health or safety risk; (iv) avoid or minimize to the greatest practicable extent any disruption to Trail uses; and (v) restore the Trail Area to a condition substantially similar to that existing prior to the alteration. Such Other Improvements may not cause the Trail Area to be relocated.

2.3.3 Grantee shall reasonably cooperate with PSE to site future PSE facilities authorized under PSE Instruments, or future fully executed instruments in which Grantor grants an interest in the Property to PSE, within the Trail Area if such facilities can reasonably collocate within the Trail Area with Grantee's Trail use.

2.3.4 At least ninety (90) days prior to the commencement of any construction or substantial reconstruction of Other Improvements by Grantor in the Trail Area, Grantor shall provide Grantee with (i) a copy of all plans and specifications for such proposed Other Improvements and (ii) a plan for coordinating the proposed Other Improvements with Grantee's use of the Trail Area. Grantor shall not commence any such construction unless and until Grantee agrees in writing to the proposal, which shall not be unreasonably withheld, conditioned or delayed.

3. Railbanking Obligations On the Property

This Easement gives Grantee the right to carry out all Railbanking Obligations, including Custodial Activities, over the full width and length of the Property.

3.1 Custodial Activities and Transportation Use

3.1.1 "Custodial Activities" are those activities that a Property owner would reasonably take to manage the Property in order to keep the Property in a physical condition suitable for its use, to maintain the physical integrity of the Property, to prevent health and safety hazards, and to manage public access in a manner appropriate for the Property's use, which may range from allowing public access to prohibiting such access, depending on circumstances. Custodial Activities include both "Routine Maintenance" and "Capital Improvements." "Routine Maintenance" includes, but is not limited to, inspecting the property, litter and garbage pick up, brush and hazardous tree trimming or removal, drainage maintenance or repair, and fencing or signage maintenance. "Capital Improvements" includes capital investments in the Property that go beyond Routine Maintenance, including, but not limited to, the installation of fences, barriers, or signs, or the repair of a wash-out on the Property. Custodial Activities do not include any activities related to granting or managing easements, leases, permits, franchises, occupancy agreements, licenses or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting or relating to the Property, which activities shall be the sole responsibility of Grantor.

3.1.2 A Transportation Use is undertaken when Grantor or a TPO begins to use the Property for the operation of a Transportation Use; and a Transportation Use is terminated when such use ceases and (a) the Grantor or a TPO notifies Grantee in writing that such use will not resume for a period of at least ninety (90) days, or (b) when Grantee notifies Grantor in writing that it has determined, in good faith and upon reasonable investigation, that such use will not resume for a period of at least ninety (90) days. Both Grantor and Grantee have a duty to notify each other as in subsections 3.1.2(a) and (b) if they become aware that Transportation Use has terminated.

3.1.3 "Trail-Side Area" means an area between the Trail Area and the Property boundary that is not being used for Transportation Use.

3.2 Custodial Activities Performance and Cost Allocation

Custodial Activities will be performed and paid for in the following manner depending on the uses present on the Property:

3.2.1 In any portion of the Property where Trail Development has not commenced and there is no Transportation Use, Grantee shall be responsible for performing all Custodial Activities. Grantor shall compensate Grantee for the actual cost and expense of performing Routine Maintenance. Should more than Routine Maintenance be needed to carry out Custodial Activities, Grantor and Grantee will jointly decide what Capital Improvements are needed to address any such conditions identified by Grantor or Grantee. Grantor will pay Grantee the actual cost and expense of carrying out such Capital Improvements. Grantee shall make such Capital Improvements. Either Party may initiate negotiation of a joint determination under this Section 3.2.1 through written notice to the

other Party accompanied by a detailed description of the identified condition and proposed Capital Improvements. Thereafter the Parties shall negotiate in a good faith and reasonable manner to reach agreement. The joint determination shall be made within ninety (90) days after the initiation of negotiation. If the joint determination is not made within that time, either Party may start Dispute Resolution under Section 4.3. Either party may start Dispute Resolution earlier if circumstances require a shorter time to make a joint determination in order to prevent or mitigate significant damage to or loss of the Property.

3.2.2 In any portion of the Property where Trail Development has commenced but there is no Transportation Use, Grantee shall be responsible for performing and paying for all Custodial Activities.

3.2.3 In any portion of the Property where Trail Development has commenced and there is Transportation Use, Grantee shall be responsible for performing and paying for all Custodial Activities inside the Trail Area, inside any Trail-Side Area, and inside any portion of the Property used by Grantee under Section 2.1.5 of this Easement. Grantor or the TPO undertaking Transportation Use shall be responsible for performing and paying for all Custodial Activities on the remainder of such Property.

3.2.4 In any portion of the Property where there is Transportation Use but Trail Development has not commenced, Grantor or the TPO undertaking Transportation Use shall be responsible for performing and paying for all Custodial Activities.

3.3 Cost Allocation Framework to be Implemented by Contract

Grantor and Grantee shall separately contract to implement the cost allocation framework set forth in Section 3.2, and such contract may be revised from time to time as the Parties may agree.

3.4 Custodial Activities Following Termination of Transportation Use

If and when Transportation Use is terminated on a segment of the Property consistent with Section 3.1.2 of this Easement, then Grantee shall resume performing Custodial Activities for such segment if requested to do so by Grantor in writing or if Grantee elects to do so in written notice to Grantor.

3.5 The Property shall be subject to the Railbanking Obligations. In the event Grantee determines that it is no longer reasonably practicable to carry out Railbanking Obligation because of actions taken by Grantor or any other entity using or claiming ownership of the Property, then Grantee, after unsuccessfully engaging in the dispute resolution process pursuant to Sections 4.3.1 and 4.3.2, may notify the STB that Grantee will no longer serve as the Interim Trail User for all or a portion of the Property, and request that Grantee's Railbanking Obligations be extinguished as to the identified land pursuant to the Railbanking Legislation. If Grantee seeks extinguishment of its Railbanking Obligations

as to all or a portion of the Property, Grantee shall, if requested by Grantor, cooperate to transfer, as to the identified land, its Interim Trail User status and its interest in this Easement to a replacement Interim Trail User. As to any portion of the Property for which Railbanking Obligations are terminated, Grantor or a replacement Interim Trail User may acquire from Grantee its Easement rights in exchange for an amount equal to a pro rata share of the County's payment \$1,903,000 to the Port for the Easement, plus compounded annual interest on that amount from the date of the grant of this Easement at a rate equal to three percent per annum.

3.6 The Parties recognize and agree that a portion of the Property between milepost 10.6 and 11.25 ("Wilburton Segment") has not been subject to Interim Trail Use and the Railbanking Obligations, but rather was abandoned with the approval of the STB prior to Grantor's acquisition of the Property. The Wilburton Segment is a critical link in the maintenance of the remainder of the Property in compliance with the Railbanking Obligations. Therefore, the Wilburton Segment is subject to the terms of this Easement and shall be deemed to be and treated under this Easement as if it was subject to Interim Trail Use and the Railbanking Obligations, including specifically, but without limitation, the requirement to keep ownership of the Wilburton Segment intact and available with the remainder of the Property for reactivated interstate freight rail service.

4. Other Terms and Conditions.

4.1. Reactivation of Interstate Rail Service Under the Railbanking Legislation

4.1.1 Grantor and Grantee understand, acknowledge and agree that if the STB receives a request to use all or any portion of the Property for federally regulated interstate freight rail service, then Grantor and Grantee may each be required to, and will if so required, make available some or all of their respective interests in the Property to accommodate reactivated freight rail service.

4.1.2 Grantor and Grantee agree that if the STB receives a request for approval to use the Property for reactivated freight rail service, then Grantor and Grantee will cooperate in order to cause the party making such request, including Grantor or Grantee if either makes the request, (a) to bear all costs to restore or improve the Property for reactivated freight rail service; (b) to bear responsibility to take all steps necessary before the STB and any other regulatory agency, governmental or quasi-governmental body having jurisdiction over such work, to cause the relevant NITU to be vacated; and (c) to compensate Grantor and Grantee for the fair market value of any and all of their respective rights or interests in the Property, or in improvements thereon that may be destroyed, lost, compromised, or otherwise reduced in value or function when the Property or any portion of it is put to use for reactivated freight rail service.

4.1.3 Grantor will indemnify, hold harmless, and defend Grantee, its officers, employees, agents and contractors from all costs or liability arising out of or relating to Grantor's failure to make available its interests in the Property to accommodate reactivated freight rail service in compliance with the Railbanking Obligations.

4.1.4 Grantee will indemnify, hold harmless, and defend Grantor, its officers, employees, agents and contractors from all costs or liability arising out of or relating to Grantee's failure to make available its interests in the Property to accommodate reactivated freight rail service in compliance with the Railbanking Obligations.

4.2 Insurance, Indemnification, and Hazardous Substances

4.2.1 Grantee As Additional Insured for Transportation Use

Grantor shall require any entity utilizing the Property for Transportation Uses to name Grantee as an additional insured on any insurance policy maintained by the entity or required under the applicable TPO Agreement.

4.2.2 Indemnification by Grantor

Without in any way limiting the provisions of Section 4.2.5, and subject to the provisions of Subsection of 4.2.3.1, Grantor will indemnify, hold harmless, and defend Grantee, its officers, employees, agents and contractors from all liability arising out of or relating to the transfer, condition, use, possession, management, operation, or control of the Property, including without limitation public access, the Custodial Activities, Transportation Uses, and challenges to Grantor's authority to acquire or own the Property.

4.2.3 Indemnification by Grantee

4.2.3.1 Without in any way limiting the provisions of Section 4.2.5, Grantee will indemnify, hold harmless and defend Grantor, its officers, employees, agents and contractors from all liability arising out of or relating to Grantee's, its officers, employees, agents or contractors' negligence in the exercise of Grantee's rights and obligations under this Easement.

4.2.3.2 Grantee agrees to defend, indemnify and hold Grantor harmless from any and all claims, causes of action, regulatory demands, changes in permits and/or regulatory requirements for the Property, liabilities, fines, penalties, losses, costs and expenses (including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from stormwater discharges caused by Grantee's exercise of its Trail rights and obligations on the Property under Section 2.1 of this Easement.

4.2.4 Indemnification for Transportation Use

Grantor shall require any entity utilizing the Property for rail-based or fixed guideway Transportation Uses to indemnify, hold harmless and defend Grantee from any and all obligations imposed by Railroad Unemployment Insurance Act (45 U.S.C.A. § 351 et seq.), Railroad Retirement Act (45 U.S.C. §231 et seq.), Railway Labor Act (45 U.S.C. Sec. 151 et. seq.), Federal Employers Liability Act (45 U.S.C. Sec 51 et. seq.), common carrier obligations pursuant to 49 U.S.C. Sec. 10101 et. seq., and any Federal rail safety legislation, that arise from such Transportation Use of the Property.

4.2.5 Hazardous Substances

4.2.5.1 The Parties are acquiring their respective interests in the Property through the Acquisition Agreements. Section 6 and 7 of the Acquisition Agreements spells out the obligations of BNSF, Grantor and Grantee with regard to Hazardous Substances and Environmental Laws. These Sections are also included within the Deed for the Property. Section 7(e) says that the Section 7 obligations running from BNSF to Grantor and Grantee, and the Section 7 rights running to BNSF from Grantor and Grantee, will be allocated as between Grantor and Grantee in the manner separately agreed to by Grantor and Grantee. The liability for Hazardous Substances generally and the allocation as between the Grantor and Grantee referenced in Section 7 shall be as follows:

4.2.5.2 Grantor shall be responsible for the Remediation of, and shall indemnify, defend and hold harmless Grantee, its officers, employees, agents and contractors from all liability arising out of the discovery of Hazardous Substances released on the Property before or after Closing, and the Grantor shall be entitled to all rights running from BNSF under Section 7 and shall be subject to all obligations running to BNSF under Section 7, except that:

(a) Grantee shall be responsible for the Remediation of, and shall indemnify, defend and hold harmless Grantor, its officers, employees, agents or contractors from all liability arising out of Hazardous Substances released on the Property by the Grantee, its officers, employees, agents or contractors after Closing, and

(b) Grantee shall be responsible for the Remediation of, and shall indemnify, defend and hold harmless Grantor, its officers, employees, agents and contractors, from all liability arising out of Hazardous Substances released after Closing by third parties within the Trail Area related to the development, operation, maintenance or use of the Trail; and

(c) Grantee shall be entitled to the rights running from BNSF under Section 7 and shall be subject to the obligations running to BNSF under Section 7 to the extent that the Hazardous Substances at issue are discovered within the Trail Area as a result of Grantee's Trail Development on the Property, in which case the Grantee shall be entitled to the pro rata share of any costs paid by BNSF to Remediate such Hazardous Substances within the Trail Area, and shall be responsible for carrying out and bearing the costs of Remediation of such Hazardous Substances within the Trail Area.

4.2.5.3 In the event Hazardous Substances are discovered on the Property, Grantor and Grantee shall promptly give notice to the other Party of such discovery and shall in good faith cooperate with one another to carry out the terms of this Agreement. Each Party shall have the right to enforce directly against BNSF the terms of the Acquisition Agreements relating to Hazardous Substances. To the extent that both Parties seek to enforce those terms, the Grantor and Grantee shall also in good faith cooperate with one another to do so.

4.2.5.4 In the event a dispute arises between the Grantor and Grantee as to the allocation of rights and obligations between each other relating to Section 7 of the Acquisition Agreements and Grantor and Grantee are also in a dispute with BNSF under Section 7, or in the event a dispute arises between Grantee and the Grantor only as to Hazardous Substances under this Easement, but does not involve Section 7 of the Acquisition Agreements, then in either case Grantor and Grantee as between each other shall be bound to resolve the dispute through the Arbitration provisions of Section 10.4 of the Acquisition Agreements.

4.2.6 Each party agrees that its obligations under this Section 4.2 extend to any claim, demand, and/or cause of action brought by or on behalf of any employees, or agents. For this purpose, each party, by mutual negotiation, hereby waives, with respect to the other party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify the other party.

4.3 Dispute Resolution

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

4.3.1 Informal Process

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

4.3.2 Mediation

If a Dispute is not resolved under the procedure set forth in Section 4.3.1, or within such additional time as the Parties mutually agree, then the Parties shall endeavor to resolve a Dispute by mediation with a mediator agreed to by the Parties. A Party shall submit a request for mediation in writing to the other Party. Mediation shall proceed in advance of legal or equitable proceedings. Any contractual or statutory deadlines, including without limitation statutes of limitation, shall be tolled pending mediation for a period of 60 (sixty) days from the date of the mediation request, unless tolled for a longer period by agreement of the parties. Final authority for settlement may be subject to the approval of the Parties' respective legislative bodies.

4.3.3 Right to Litigate Contingent on Prior Effort to Mediate

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

4.3.4 Immediate Action

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

4.3.5 Matters Not Subject to Alternative Dispute Resolution

This Section on alternative dispute resolution procedures shall not apply to any dispute between the Parties that also relates to a dispute with BNSF or any dispute between the Parties concerning Hazardous Substances. This Section on alternative dispute resolution shall also only apply to Disputes between the original Grantor and Grantee, and not to their respective heirs, legal representatives, successors and assigns, or TPOs, unless such parties to a Dispute agree to alternative dispute resolution, except that this Section will apply to any Disputes between Grantor and Grantee and their respective heirs, legal representatives, successors and assigns or TPOs (if applicable) related to Sections 2.1.1, 2.2.2, 2.2.3 and 3.2.1.

4.3.6 In addition to the specific remedies set forth in this Easement, and except for the limitations on remedies for Hazardous Substances set forth in Section 4.2.5 of this Easement, Grantor and Grantee, following the alternative dispute resolution procedure called for herein, shall be entitled to all remedies in law or equity. Further, should the Grantor and Grantee be unable to make any joint determination called for by this Agreement and be unable to resolve the Dispute through the alternative dispute resolution procedure called for herein, then Grantor and Grantee agree that a Court shall have the authority to decide the terms of the joint determination in question.

4.4 Litigation Regarding Title; Encroachments

4.4.1 Grantor makes no warranty of title as to the Property or the Easement. If Grantor or Grantee receives any written document or lawsuit challenging or questioning Grantor's title to any portion of the Property, then within ten (10) business days of receipt the receiving Party shall transmit to the other Party a copy of such document. Grantor and

Grantee shall in good faith cooperate and confer with one another as to the appropriate response to any such challenge in order to carry out the Parties' intended uses of the Property as expressed in the Easement.

4.4.2 Should either Party identify an unauthorized encroachment on the Property, such party shall reasonably promptly notify the other in writing, and the Parties shall in good faith cooperate and confer with one another as to the appropriate action to take with regard to the encroachment in order to carry out the Parties' intended uses of the Property as expressed in the Easement.

4.5 Taxes

4.5.1 Grantee shall be solely responsible to pay on a current basis any taxes and assessments related to the Property, if any, including without limitation real property ad valorem taxes, special benefit assessments and other governmental impositions (collectively "Taxes") that may apply to its interests in the Property, its activities upon the Property, or its improvements to the Property, including all stormwater management fees assessed by any jurisdiction in which the Trail Area is located that are triggered by or arising from Grantee's exercise of its Trail rights and obligations on the Property under Section 2.1 of this Easement. Grantor shall be solely responsible to pay on a current basis any Taxes that may apply to its activities upon the Property, or its improvements to the Property, and to require any third party with an interest in the Property or any TPO to pay on a current basis any Taxes that may apply to their respective interests in the Property, activities upon the Property, or improvements to the Property. Nothing contained herein shall modify the Parties' respective rights to contest any such Tax, and neither party shall be deemed to be in default as long as it shall, in good faith, be contesting the validity or amount of any such Taxes.

4.6 Effect of Easement; Assignment

This Easement creates a servitude running with the land that comprises the Property. It conveys an easement that is appurtenant to, for the benefit of, and shall run with Grantee's regional system of trails and parks and all real property and real property interests now owned or hereafter acquired for park or trail purposes by Grantee and its heirs, legal representatives, successors and assigns. The terms and conditions contained in this Easement shall also be deemed covenants running with the land that comprises the Property, and shall bind the Grantor, and its heirs, legal representatives, successors and assigns. The terms "Grantor" and "Grantee" are expressly defined to mean the Port of Seattle and King County, respectively, and their respective heirs, legal representatives, successors and assigns. Grantee may assign its rights in this Easement to another entity so long as such entity is approved by the STB as a replacement Interim Trail User and assumes all Railbanking Obligations associated therewith, and so long as such entity is approved by Grantor, which approval shall not be unreasonably withheld, conditioned or delayed.

4.7 Headings

The headings in this Easement are for convenience only and shall not be deemed to expand, limit, or otherwise affect the substantive terms of the Easement rights and the covenant obligations that it embodies.

4.8 Neutral Authorship

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

4.9 Governing Law; Jurisdiction and Venue; Attorneys' Fees

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

4.10 Severability

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

4.11 Non-Waiver

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

4.12 Entire Agreement; Relation to Master Agreement and Acquisition Agreements

This Easement, the Acquisition Agreements and the Interlocal set forth the entire agreement between the Parties with respect to the subject matter hereof, and are intended by the Parties to be read in harmony with one another. There are no understandings or agreements between the parties respecting the subject matter hereof, written or oral, other than as set forth in those documents. If, however, there is any conflict between this Easement and the Interlocal, or between this Easement and the Acquisition Agreements, then the terms of this Easement shall control. This Easement may be amended by the mutual written agreement of the Parties.

IN WITNESS WHEREOF, the said Grantor and Grantee have signed this 18 day of ~~December~~ ^{December} 2009.

GRANTOR

PORT OF SEATTLE
Approved as to Form:

By *Sadeh D. Safon*
Deputy General Counsel

By *T. Yoshitani*
Tay Yoshitani
Chief Executive Officer

KING COUNTY
Approved as to Form:

By *Paul R. Rands*
Senior Deputy Prosecuting Attorney

By *Dow Constantine*
Dow Constantine
King County Executive

EXHIBIT 1

LEGAL DESCRIPTION FOR THE PROPERTY

Washington Branch Line

12/16/09

All that portion of BNSF Railway Company's (formerly Northern Pacific Railway Company) Woodinville (MP 23.8) to Kenndale (MP 5.0), Washington Branch Line right of way, varying in width on each side of said Railway Company's Main Track centerline, as now located and constructed upon, over and across King County, Washington, more particularly described as follows, to-wit:

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across that portion of the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 9, Township 26 North, Range 5 East, W. M., King County, Washington lying Southerly of the Southwesterly boundary of that certain 100 foot wide tract of land described in deed dated June 14, 1887 from Mary B. Jaderholm to Seattle and West Coast Railway, recorded June 14, 1887 in Volume 41 of Deeds, Page 385, records of said County; also,

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

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

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and

across the NE $\frac{1}{4}$ Section 16, and the W $\frac{1}{2}$ Section 15, all in Township 26 North, Range 5 East, W. M., bounded on the North by the North line of said NE $\frac{1}{4}$ Section 16, and bounded on the South by South line of said W $\frac{1}{2}$ Section 15; also,

That portion of that certain 50.0 foot wide Branch Line right of way, being 25.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the ~~NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$~~ and the ~~NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$~~ Section 22, Township 26 North, Range 5 East, W. M., bounded on the North by the North line of said Section 22, and bounded on the South by South line of said NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 22; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the E $\frac{1}{2}$ Section 22, the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 27, all in Township 26 North, Range 5 East, W. M., bounded on the North by the North line of said E $\frac{1}{2}$ Section 22, and bounded on the South by South line of said NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 27; also,

That certain 4.43 acre tract of land described in deed dated April 3, 1903 from Nellie Nelson to Northern Pacific Railway Company recorded April 3, 1903 in Book 342 of Deeds, Page 371, records of King County, Washington, said 4.43 acre tract being described in said deed for record as follows:

"All that portion of the Southeast Quarter (S.E. 1/4) of the Northwest Quarter (N.W. 1/4) of Section 27, Township 26 North, Range 5 East, lying between the easterly line of the present right of way of the Northern Pacific Railway Company, which line is 50 feet distant southeasterly from the center line of the railroad track of said company, as now located and constructed over and across said premises and a line drawn parallel to and 50 feet distant southeasterly from, when measured at right angles to the center line of the proposed railroad track as now staked out and to be constructed, over and across said premises;

"Also all that portion of said Southeast Quarter (S.E. 1/4) of the Northwest Quarter (N.W. 1/4) of Section 27, Township 26, lying within 50 feet of that certain straight line which connects the center line of the present track of the Northern Pacific Railway Company line with the center line of the proposed track of the Northern Pacific Railway Company line and being tangent to the curves of both of said center lines, containing in all 4.43 acres, be the same more or less." EXCEPTING THEREFROM, Lot 3, King County Short Plat Number 1078060, recorded under King County Recording Number 8003270855, being a subdivision of: That portion of the southeast quarter of the northwest quarter of Section 27, Township 26 North, Range 5 East, W.M., King County, Washington, lying northerly and westerly of the northerly and westerly right of way of the Northern Pacific Railway Company's "Seattle Belt Line", and south of the southerly right of way line of that road conveyed to King County by deed recorded under Recording Number 2695175 and northeasterly of a line described as follows: Beginning at the northwest corner of the southeast quarter of the northwest quarter of said Section 27; thence south 1°58'24" west along the west line of the southeast quarter of the northwest quarter of said Section 27, a distance of 265 feet; thence

north 65°33'39" east 444.80 feet to the true point of beginning of the following described line; thence south 18°15'21" east, 640 feet, more or less, to the northerly right of way line of said Northern Pacific Railway Company's "Seattle Belt Line", said northerly right of way line being 50' Northeast of the center line of the maintrack as now constructed and the terminus of said line.; also,

That certain 0.05 acre tract of land described in deed dated August 25, 1904 from Otto Wepler et al. to Northern Pacific Railway Company recorded September 7, 1904 in Book 375, Page 507, records of King County, Washington, said 0.05 acre tract being described in said deed for reference as follows:

"All that piece or parcel of land in the southeast quarter of the northwest quarter (SE/4 of NW/4) of Section twenty-seven (27), Township twenty-six (26), Range five (5) east, W. M. which lies northwesterly of the original Seattle Belt Line right of way as described in deed recorded in Volume 116 of Deeds, Page 289, Records of King County, and within fifty (50) feet of the center line of the revised location of the track of the Seattle Belt Line as the same is now surveyed and being constructed over and across said subdivision, containing 5/100 acres, more or less."; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the SW¼NW¼ Section 27 the S½NE¼, NW¼SE¼, SW¼ Section 28, W½NW¼, NW¼SW¼ Section 33, SE¼ Section 32, all in Township 26 North, Range 5 East, W. M., bounded on the East by the East line of said SW¼NW¼ Section 27, and bounded on the South by South line of said SE¼ Section 32, **EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805260805, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 30, 1998 as Document No. 9807301468, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805260791, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Quitclaim Deed dated January 6, 2000 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded February 11, 2000 as Document No. 20000211000454, records of King County, Washington, ; also,

That portion of that certain 100.0 foot wide Branch Line right of way in the City of Kirkland, Washington, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Blocks 3, 4, 5, 6, 11, 12, 13, 14, 18, 19, 23, 24, 25 and 26, the vacated alley between Blocks 13 and 14, and vacated Arlington Avenue between Blocks 14 and 19, as said Blocks and Streets are shown on plat of Lake Avenue

Addition to Kirkland as recorded in Volume 6 of Plats, Page 86, Records of said County, together with any right title and interest, if any to those portions of Victoria Avenue, Harrison Avenue, Moreton Avenue; Jefferson Avenue, and Washington Avenue and Maple Street and alleys within said Blocks which lie within said 100.0 foot wide Branch Line right of way, **EXCEPTING THEREFROM**, that portion of Lot 3, Block 5, Lake Avenue Addition to Kirkland, according to the official plat thereof in the office of the Auditor of King County, ~~Washington lying between two lines drawn parallel with and distant, respectively, 34.0 feet and 50.0 feet Westerly of, as measured at right angles from The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway) Main Track centerline as now located and constructed upon, over, and across said Block 5;~~ also,

That portion of that certain 100.0 foot wide Branch Line right of way in the City of Kirkland, Washington, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Blocks 220, 223, 224, 232, 233, 238, and 241 as said Blocks are shown on the Supplementary Plat to Kirkland as filed in Volume 8 of King County Plats, at page 5, together with any right title and interest, if any to those portions of Massachusetts Avenue, Madison Avenue, Michigan Avenue, Olympia Avenue, Piccadilly Avenue, Cascade Avenue, Clarkson Avenue, Fir Street, and alleys within said Blocks which lie within said 100.0 foot wide Branch Line right of way; also,

That portion of Lots 1, 2, 4, 37, and all of Lots 3, 38, and 39, Block 227 as said Lots and Blocks are shown on the Supplementary Plat to Kirkland as filed in Volume 8 of King County Plats, at page 5, which lie Northeasterly of a line parallel with and distant 50 feet Southwesterly from, measured at right angles to said Railway Company's Main Track centerline as now located and constructed and Southwesterly of a line parallel with and distant 50 feet Northeasterly from, measured at right angles to said Railway Company's Main Track centerline as originally located and constructed; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the, S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 5, NW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, Section 8, all in Township 25 North, Range 5 East, W. M., bounded on the North by the South right of way line of Clarkson Avenue, City of Kirkland, Washington, and bounded on the West by the West line of said E $\frac{1}{2}$ SW $\frac{1}{4}$, Section 8, **EXCEPTING THEREFROM**, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805260787, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Quitclaim Deed dated May 15, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded August 5, 1999 as Document No. 19990805001402, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC

recorded July 28, 1998 as Document No. 9807281544, records of King County, Washington, also;

That certain 0.23 acre tract of land described in deed dated July 15, 1903 from Samuel F. French to Northern Pacific Railway Company recorded August 8, 1903 in Book 361 of Deeds, Page 249, records of King County, Washington, said 0.23 acre tract being described in said deed for reference as follows:

"Commencing at a point in the east line of Lot four (4), Section eight (8), Township twenty-five (25) North, Range five (5) east, W.M., that is 395 feet north of the southeast corner of said lot, and running thence west parallel with the south line of said Lot four (4) 67 feet, more or less, to a point that is 50 feet distant from, when measured at right angles to, the center line of the proposed Seattle Belt Line Branch of the Northern Pacific Railway Company as the same is now located, staked out and to be constructed across said Section eight (8); thence running northeasterly parallel with said railway center line 200 feet; thence westerly at right angles to said railway center line 30 feet; thence northeasterly parallel with said railway center line, and 80 feet distant therefrom, 130 feet, more or less, to the east line of said Lot four (4); thence south along said east line of said Lot four (4) 322 feet, more or less, to the point of beginning; containing 0.23 acres, more or less."; also;

That certain strip of land described in deed dated March 3, 1904 from Seattle and Shanghai Investment Company to Northern Pacific Railway Company recorded March 9, 1904 in Book 387, Page 243, records of King County, Washington, said strip being described in said deed for reference as follows:

"A strip of land Two Hundred twenty-five (225) feet in width across that certain parcel of land designated as Tract "B" in deed from the Kirkland Land and Improvement Company to H. A. Noble, dated July 13, 1899 of record in the Auditor's office of King County, Washington in Volume 245 of Deeds, at page 41, reference thereto being had. Said strip of land hereby conveyed, having for its boundaries two lines that are parallel with and respectively distant One Hundred (100) feet easterly from, and One Hundred Twenty-Five (125) feet westerly from, when measured at right angles to, the center line of the Seattle Belt Line branch of the NORTHERN PACIFIC RAILWAY COMPANY, as the same is now constructed and located across said Tract "B", which said Tract "B" is located in Section 17 of Township 25, North of Range 5 east of the Willamette Meridian"; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Government Lot 4, Section 8, Government Lots 1, 2, and 3, the E $\frac{1}{2}$ SW $\frac{1}{4}$ Section 17, and the NE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ Section 20, all in Township 25 North, Range 5 East, W. M., bounded on the North by the South line of that certain hereinabove described 0.23 acre tract of land described in deed dated July 15, 1903 from Samuel F. French to Northern Pacific Railway Company recorded August 8, 1903 in Book 361 of Deeds, Page 249, records of King County, Washington and the East line of said Government Lot 4, Section 8, and

bounded on the South by the South line of said NE¼ Section 20, together with such additional widths as may be necessary to catch the slope of the fill in the N½ of said Government Lot 2, Section 17 as delineated in the 7th described parcel in deed dated June 20, 1903 from Kirkland Land and Improvement Company to Northern Pacific Railway Company recorded June 26, 1903 in Book 352, Page 582, records of King County, Washington. EXCEPTING THEREFROM, that portion of said 100.0 foot wide right of way lying within said hereinabove-described parcel of land designated as Tract "B" in deed from the Kirkland Land and Improvement Company to H. A. Noble, dated July 13, 1899 of record in the Auditor's office of King County, Washington in Volume 245 of Deeds, at page 41.; also,

That certain tract of land described in deed dated December 26, 1952 from Alma F. Robinson and William G. Robinson et al. to Northern Pacific Railway Company recorded January 14, 1953 in Book 3220 of Deeds, Page 301, in the records of the Auditor's office of King County, Washington, said tract of land being described in said deed for reference as follows:

"That portion of the south half of the northeast quarter (S½NE¼) of Section 20, Township 25 North, Range 5 East of the Willamette Meridian, described as follows: Commencing at the center of said section; thence north 0 degrees 18 minutes 24 seconds west along the north and south quarter line of said section 738.60 feet to the center of the county road; thence along said road south 77 degrees 7 minutes east 500.00 feet; thence south 71 degrees 54 minutes east 308.27 feet, more or less; thence north 34 degrees 38 minutes east 18.00 feet to a stake in the north margin of said road; thence north 34 degrees 38 minutes east 609.40 feet, more or less, to the southwesterly margin of the Grantee's right of way, said margin being concentric with and distant 50 feet southwesterly, measured radially, from the center line of the main track of the Grantee's Belt Line as now constructed; thence southeasterly along said margin approximately 150 feet to a point distant 50 feet southwesterly, measured along the radius of the curve of said center line, from station 511 plus 50 in said center line (which station is distant 2337.6 feet southeasterly measured along said center line, from the north line of said section), the last-described point being the true point of beginning; thence southeasterly and southerly along said margin to a point distant 50 feet westerly, measured along the radius of said curve, from station 515 plus 60 in said center line; thence northwesterly in a straight line to a point distant 110 feet southwesterly measured along the radius of said curve, from station 514 plus 28 in said center line; thence northwesterly in a straight line to a point distant 110 feet southwesterly, measured along the radius of said curve, from station 513 plus 28 in said center line; thence northerly in a straight line to the true point of beginning", also,

That portion of that certain 100.0 foot wide Branch Line right of way at said Railway Company's Northrup Station, being 50.0 feet on each side of said Branch Line's Main Track centerline, as originally located and constructed, upon, over and across Blocks 12, 13, 14, 15, 16, 21, 22, 23 and 24, all within Kirkland Syndicate First Addition to Seattle, together with any right title and interest, if any to those portions of Maple Street, Nelson Street,

Bixby Street, Kirkland Avenue, Hawks Avenue and Fransen Avenue which lie within said 100.0 foot wide Branch Line right of way; also,

Those portion of Lots 10, 11, and 12, Block 14, Lots 1, 2, 3, and 4, Block 23 and Lot 10, Block 24, all within Kirkland Syndicate First Addition to Seattle, lying Southwesterly of a line parallel with and distant 50 feet Southwesterly from, measured at right angles to said Railway Company's Main Track centerline as originally located and constructed; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Railway Company's Main Track centerline, as originally located and constructed, upon, over and across the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 20, and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 21, all in Township 25 North, Range 5 East, W. M., bounded on the North by the North line of said SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 20, and bounded on the South by the South line of said SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 21, together with any right title and interest, if any to those portions of Fransen Avenue, Jordan Avenue, Elkoos Avenue, and Railroad Avenue, which lie within said 100.0 foot wide Branch Line right of way; also,

That portion of Block 7, of Kirkland Syndicate's Second Addition to Kirkland Washington, situate in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 20, and that portion of said Railway Company's property situate in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 21, and in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 28, all in Township 25 North, Range 5 East, W. M., lying Easterly of a line parallel with and distant 50.0 feet Westerly from, measured at right angles and/or radially to said Railway Company's Main Track centerline as now located and constructed and Westerly of a line parallel with and distant 50.0 feet Westerly from, measured at right angles to said Railway Company's Main Track centerline as originally located and constructed, bounded on the West by the West line of said Block 7 and its Northerly prolongation, and bounded on the South by the intersection of said parallel lines, together with any right, title and interest, if any, to Houghton Street and Railroad Avenue of Kirkland Syndicate's Second Addition to Kirkland Washington; also,

That certain 0.63 acre tract of land described in deed dated November 13, 1904 from Nathan P. Dodge Et Ux. to the Northern Pacific Railway Company recorded February 9, 1905 in Volume 408 of Deeds, Page 263, records of King County, Washington, said 0.63 acre being described in said deed for reference as follows:

"That part of southwest quarter of southwest quarter (SW/4 of SW/4), Section twenty-one (21), Township twenty-five (25) north, Range five (5) east, W. M., described by metes and bounds as follows:

"Beginning at a point in the south line of said Section twenty-one (21) fifty (50) feet east from, when measured at right angles to, the original right of way of Seattle Belt Line Branch of the Northern Pacific Railway Company, as conveyed by deed executed by Roscoe Dunn and Ann Dunn his wife, dated Oct. 4th, 1890 and recorded Dec. 4th, 1890 in volume 116 of deeds, page 114, and running thence north 8° 40' west parallel with and 50 feet distant

easterly from said original right of way line a distance of 270 feet to a point of curve; thence northwesterly along a curve to the left having a radius of 716.8 feet, a distance of 492.7 feet; thence north 48° 5' west a distance of 135 feet more or less, to a point on the said easterly line of the original right of way of said railway; thence southeasterly along said original easterly right of way line on a curve to the right having a radius of 859 feet, a distance of 591 feet; thence continuing along said easterly right of way line south 8° 40' east, a distance of 260 feet, more or less, to an intersection of said right of way line with the southern boundary line of said section 21; thence east 50.5 feet, more or less, to point of beginning, containing 0.63 acres, more or less, situated in the County of King, State of Washington.”; also,

That certain strip of land described in deed dated August 3, 1904 from John Zwiefelhofer and Aloisia Zwiefelhofer to Northern Pacific Railway Company recorded August 6, 1904 in Book 404 of Deeds, Page 44, records of King County, Washington, said strip of land being described in said deed for reference as follows:

“A strip of land fifty (50) feet wide lying immediately east of the right of way of said Railway Company and extending South from the North line of Section 28, Township 25 North Range 5 East a distance of Six Hundred feet (600) and containing 0.69 acres in the Northwest Quarter of the Northwest quarter (NW¼NW¼) of Section 28 Tp 25 N R. 5 E WM.”, EXCEPTING THEREFROM, that portion of said 50 foot wide strip lying Northerly of a line parallel to and 400.0 feet Southerly of the North line of said NW¼NW¼ of Section 28 ; also,

Parcel 3, of City of Bellevue Short Plat No. 80-16, according to the Short Plat recorded under King County Recording No. 8101239001, EXCEPTING THEREFROM, that certain tract of land described in deed dated December 13, 1996 from Burlington Northern Railroad Company to Fibres International, recorded December 13, 1996 as Document No. 9612130870, records of King County, Washington; also,

Tract B, of City of Bellevue Short Plat No. 80-16, according to the Short Plat recorded under King County Recording No. 8101239001; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Railway Company's Main Track centerline, as now located and constructed, upon, over and across the W½W½ Section 28, W¼NW¼ Section 33, all in Township 25 North, Range 5 East, W. M., bounded on the North by the North line of said W½W½ Section 28, and bounded on the South by the South line of said W¼NW¼ Section 33, EXCEPTING THEREFROM, that portion of said 100.0 foot wide right of way lying Easterly of a line parallel with and distant 35 feet Easterly from, measured at right angles to said Railway Company's Main Track centerline as now located and constructed and Northerly of a line parallel to and 400.0 feet Southerly of the North line of said NW¼NW¼ of Section 28, ALSO EXCEPTING THEREFROM, that portion of said 100 foot wide Branch Line right of way lying within that certain tract of land described in Special

Warranty Deed dated June 29, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 2000 as Document No. 20000522001155, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805221787, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Special Warranty Deed dated June 8, 2001 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded January 3, 2003 as Document No. 20030103001327, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded December 28, 1998 as Document No. 9812282942, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Special Warranty Deed dated March 17, 2000 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded October 4, 2000 as Document No. 20001004000767, records of King County, Washington, also;

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across Lots 1, 2, 3, 4 and 8 of Strawberry Lawn, King County Washington, recorded in Volume 4 of Plats, page 30½, King County, Washington recorder, together with such additional widths as are necessary to catch the slopes of the cuts and fills of the roadbed of said Railway in said Lots 1 and 8 of Strawberry Lawn, King County Washington, as delineated in deed dated August 31, 1903 from Henry Hewitt, Jr. and Rocena L. Hewitt to the Northern Pacific Railway Company, **EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805260792, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281537, records of King County, Washington, also;

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the W½ Section 4, Government Lots 1 and 4, E½W½ Section 9, Government Lot 1, SW¼NW¼, NW¼SW¼ Section 16, Government Lots 4 and 5 Section 17, Government Lots 1, 2, 3 and 4 Section 20, Government Lots 1, 2, 3, 4 and 5 Section 29, all in Township 24 North, Range 5 East, W. M., bounded on the North by the North line of W½ Section 4, and bounded on the South by the South line of said Government Lot 5, Section 29, together with such additional widths or strips of land as are necessary to catch the slopes of the cuts and fills of the roadbed of said Railway in the NW¼NW¼ of said Section 4, which said roadbed is to be constructed having a width at grade of 22 feet and the cuts to have a slope of one to one and the fills to have a slope of one and one half to one, as delineated in deed

dated September 8, 1903 from Lake Washington Land Company to Northern Pacific Railway Company, recorded in Volume 386 of Deeds, Page 147, records of King County, Washington, **EXCEPTING THEREFROM**, that certain tract of land described in Correction Special Warranty Deed dated April 30, 2001 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 2001 as Document No. 20010522000186, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281547, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281545, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281546, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281543, records of King County, Washington, **ALSO EXCEPTING THEREFROM** that certain tract of land described in deed dated June 26, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded April 30, 2001 as Document No. 20010430000977, records of King County, Washington, **ALSO EXCEPTING THEREFROM** that certain tract of land described in deed dated June 26, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded December 15, 1998 as Document No. 9812151238, records of King County, Washington; also,

That certain Tract I and that certain Tract II described in deed dated September 19, 1967 from State of Washington to Northern Pacific Railway Company filed for record December 13, 1967 in Book 5023, Page 546, Auditor's No. 6278130, records of King County, Washington, said Tracts being described in said deed for reference as follows:

"Tract I: (Fee)

"All those portion of the Southeast quarter of the Northwest quarter and the Northeast quarter of the Southwest quarter, Section 9, Township 24 North, Range 5 East, W.M., lying Westerly of the existing 100 foot right of way of the Northern Pacific Railway Company and Easterly of a line described as follows: Beginning at a point opposite Station REL. R.R. 737+00 on the Relocated Railroad Center Line (as hereinafter described) and 50 feet Westerly therefrom when measured radially thereto (which point also lies on the Westerly line of said existing railroad right of way); thence Southerly parallel with said relocated railroad center line to a point opposite REL. R.R. 739+00 theteon; thence Southwesterly in a straight line to a point opposite REL. R.R. 740+00 on said relocated railroad center line and 130 feet Westerly therefrom when measured radially thereto; thence Southerly parallel with said relocated railroad center line a distance of 350 feet, more or less, to an intersection with

the Northerly right of way line of State Highway Project entitled Primary State Highway No. 2 (SR 90), East Channel Bridge to Richards Road (as hereinafter described); thence North $84^{\circ}13'42''$ East along said Northerly right of way line a distance of 125 feet, more or less to an intersection with said Westerly line of said existing railroad right of way and the end of this line description:

"Tract II: (Fee)

"All those portion of Lots 13 and 14, Block 1, Mercer Addition, according to the plat thereof recorded in Volume 17 of Plats, page 8, records of King County and of the Northeast quarter of the Southwest quarter, Section 9, Township 24 North, Range 5 East, W.M., lying Northwesterly of the existing 100 foot right of way of the Northern Pacific Railway Company and Southeasterly of a line described as follows: Beginning at the Southeast corner of said Lot 13, which point also lies on the Northwesterly line of said existing railroad right of way, thence Northeasterly in a straight line to a point opposite REL. R.R. 753+00 on the Relocated Railroad Center Line (as hereinafter described) and 50 feet Northwesterly therefrom when measured at right angles thereto; thence Northeasterly in a straight line to a point opposite REL. R.R. 752+00 on said relocated railroad center line and 90 feet Northwesterly therefrom when measured at right angles thereto; thence Northeasterly parallel with said relocated railroad center line a distance of 120 feet, more or less, to an intersection with the Southerly right of way line of State Highway Project entitled Primary State Highway No. 2 (SR 90), East Channel Bridge to Richards Road (as hereinafter described); thence South $79^{\circ}37'46''$ East a distance of 105 feet, more or less, to an intersection with said Westerly line of said existing railroad right of way and the end of this line description: ...

..."RELOCATED RAILROAD CENTER LINE DESCRIPTION:

"Beginning at Railroad Station 734+80 on the existing main line center line of the Northern Pacific Railway Company's Track in the Southeast quarter of the Northwest quarter, Section 9, Township 24 North, Range 5 East, W.M., in the vicinity of Factoria, Washington, which point equals Relocated Railroad Station (hereinafter referred to as REL. R.R.) 734+80; thence South $20^{\circ}44'04''$ East a distance of 21.1 feet to REL. R.R. 735+01.10 T.S.; thence on the arc of an increasing spiral curve to the right having an "A" value of 5 a distance of 80 feet to REL. R.R. 735+81.10 S.C.; thence on the arc of a 4° circular curve to the right thru a central angle of $49^{\circ}18'$ a distance of 1232.50 feet to REL. R.R. 748+13.60 C.S.; thence on the arc of a decreasing spiral curve to the right having an "A" value of 5, a distance of 80 feet to R.R. 743+93.60 S.T.; thence South $31^{\circ}46'$ West a distance of 683.96 feet to REL. R.R. 755+77.56 T.S.; thence on the arc of an increasing spiral curve to the left having an "A" value of 5 a distance of 80 feet to REL. R.R. 756+57.56 S.C. which point equals Railroad Station 756+91.53 ahead on said existing main line center line of track in the Southeast quarter of the Southwest quarter, Section 9, and the end of this center line description.

"SOUTHERLY RIGHT OF WAY LINE OF PRIMARY STATE HIGHWAY NO. 2 (SR 90), EAST CHANNEL BRIDGE TO RICHARDS ROAD:

"Beginning at the Southwest corner of Lot 21, Block 4, Mercer Addition, according to the plat thereof recorded in Volume 17 of Plats, page 8, records of King County, and running thence North 79°37'46" West a distance of 324.08 feet.

"NORTHERLY RIGHT OF WAY LINE OF PRIMARY STATE HIGHWAY NO. 2 (SR 90), EAST CHANNEL BRIDGE TO RICHARDS ROAD:

"Beginning at REL. R.R. 746+28.83 P.O.C. on the Relocated Railroad Center Line (as above described); thence South 84°03'37" West a distance of 344.01 feet; thence North 5°56'23" West a distance of 212.5 feet; thence North 80°02'48" East a distance of 109.27 feet; thence North 5°56'23" West a distance of 25 feet; thence North 70°51'54" East a distance of 196.18 feet to the true point of beginning of this line description; thence North 84°13'42" East a distance of 294.43 feet."; also

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Government Lot 1, Section 32, Township 24 North, Range 5 East, W. M., King County, Washington, bounded on the North and South by the North and South lines of said Government Lot 1; also,

That certain 100.0 foot wide Branch Line right of way, upon, over and across Government Lot 2, Section 32, and Government Lots 3 and 4 Section 31, all in Township 24 North, Range 5 East, W. M., King County, Washington, as described in Deed dated September 8, 1903 from Lake Washington Belt Line Company to Northern Pacific Railway Company, recorded in Volume 386 of Deeds, Page 147, records of King County, Washington. **EXCEPTING THEREFROM**, that certain tract of land described in deed dated September 14, 2001 from The Burlington Northern and Santa Fe Railway Company to Barbee Forest Products, Inc., **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in deed dated March 23, 1936 from Northern Pacific Railway Company to Frank Walloch, lying within said Government Lot 2, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated May 8, 1990 from Burlington Northern Railroad Company to Robert J. Phelps and Nancy C. Phelps, recorded as document 9005101552, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated March 19, 1992 from Burlington Northern Railroad Company to Gilbert A. Schoos and Alice G. Schoos; also, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated February 1, 1937 from Northern Pacific Railway Company to Carl Jorgensen and Christine Jorgensen, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Quitclaim Deed dated February 28, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded April 20, 1999 as Document Number 9904210268, records of King County, Washington, **ALSO EXCEPTING**

THEREFROM, that portion of that certain tract of land described in Correction Deed dated May 26, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000619, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 5, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000620, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Quitclaim Deed dated June 26, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000618, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 6, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000621, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 6, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded February 24, 1998 as Document Number 20001030000428, records of King County, Washington; also,

That certain tract of land described in deed dated March 17, 1904 from The Lake Washington Land Company to Northern Pacific Railway Company, situated in Lot 3, Section 31, Township 24 North, Range 5 East, W. M., King County, Washington, said tract being described in said deed for reference as follows:

“All that portion of said Lot three (3) lying between the eastern line of the right of way of the Northern Pacific Railway Company over and across said lot and a line drawn parallel with and twelve and one-half (12-1/2) feet distant easterly from the center line of said Seattle Belt Line Branch of the Northern Pacific Company as the same is now temporarily located and constructed over and across said lot, and containing on-fourth of an acre, more or less ...” **EXCEPTING THEREFROM**, that portion of that certain tract of land described in Quitclaim Deed dated February 28, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded April 20, 1999 as Document Number 9904210268, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 26, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000619, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 5, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000620, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Quitclaim Deed dated June 26, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000618, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land

described in Correction Deed dated May 6, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000621, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 6, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded February 24, 1998 as Document Number 20001030000428, records of King County, Washington; also,

That portion of said Railway Company's property situated in Government Lot 1, Section 6, Township 23 North, Range 5 East, W. M., King County, Washington, lying Southwesterly of a line parallel with and distant 50.0 feet Northeasterly from, measured at right angles to said Railway Company's Branch Line Main Track centerline as originally located and constructed, and Northeasterly of the Southwesterly boundary of that certain 100 foot strip described in Judgment and decree of Appropriation, No. 40536, dated February 8, 1904 in the Superior Court of the State of Washington in and for the County of King, bounded on the North by the North line of said Lot 1, Section 6, and bounded on the South by a line radial to said Railway Company's Main Track centerline, as now located and constructed at a point distant 65.5 feet Northwesterly of the East line of said Lot 1, Section 6, as measured along said Main Track centerline.

Redmond Spur

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

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

That portion of that certain 100.0 foot wide Redmond Spur right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the E $\frac{1}{2}$ Section 9, the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 16, the NW $\frac{1}{4}$ Section 15, all in Township 26 North, 5 East, W. M., bounded Northerly by a line concentric with and distant

50.0 feet Southwesterly from, measured radially to said Railway Company's Seattle to Sumas Main Track centerline as now located and constructed, and bounded Southerly by the South line of said NW $\frac{1}{4}$ Section 15, **EXCEPTING THEREFROM**, that portion of that certain tract of land described in deed dated November 17, 1998 from The Burlington Northern and Santa Fe Railway Company to Tjossem Properties IV, LLC and Tjossem Properties V, LLC, recorded December 23, 1998 as Instrument No. 9812240021, which lies within said 100.0 foot wide right of way, **ALSO EXCEPTING THEREFROM**, that portion of that certain 100.0 foot wide Seattle Belt Line right of way described in deed dated May 19, 1903 from Mary B. Hansen and Anders Hansen to Northern Pacific Railway Company recorded May 28, 1903 in Volume 361 of Dees, Page 48, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, the Northeasterly 25.0 feet of said E $\frac{1}{2}$ Section 9 and bounded Northwesterly by a line perpendicular to said Railway Company's Main Track centerline, at a point distant 1,060.0 feet Northwesterly of said South line of the E $\frac{1}{2}$ Section 9, as measured along said Main Track centerline, being that certain tract of land described in Deed dated June 29, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded February 11, 2003 as Document No. 20030211000429, records of King County, Washington; also;

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

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

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

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

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

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

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

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

A 50.0 foot wide strip of land lying immediately adjacent to and Westerly of said Railway Company's 50.0 foot wide right of way in the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 34, Township 26 North, 5 East, W. M., bounded Northerly by the North line of said W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 34, and bounded Southerly by a line perpendicular to said Railway Company's Main Track centerline at a point 1400 feet Southerly of the North line of said W $\frac{1}{2}$ NE $\frac{1}{4}$ Section 34, as measured along said Railway Company's Main Track centerline, as originally located and constructed; also

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

That portion of that certain 100.0 foot wide Redmond Spur right of way, being 75.0 feet on the Northerly side and 25.0 feet on the Southerly side of said Main Track centerline, as originally located and constructed, upon, over and across the N $\frac{1}{2}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ NW $\frac{1}{4}$

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

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

That portion of that certain 100.0 foot wide Redmond Spur right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 12, Township 25 North, 5 East, W. M., bounded Westerly and Easterly by the West and East lines of said SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 12, **EXCEPTING THEREFROM**, that portion of that certain 100.0 foot wide Redmond Spur right of way in said SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 12, described as follows: Beginning at the intersection of the West line of said SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 12 with the Southerly line of said 100.0 foot wide right of way; Thence North 01°10'44" East, along said West line, 26.55 feet to a point 25 feet Southwesterly of, as measured at right angles from said Main Track centerline; thence South 69°07'30" East, parallel with the centerline of said Main Track centerline, 639.91 feet to the Southerly extension of the Westerly right of way line of 170th Avenue N.E., said right of way being 70 feet in width; thence South 23°37'30" West, along the Southerly extension of the Westerly right of way of 170th Avenue N.E., 25.03 feet to the Southerly right of way line of said 100.0 foot wide right of way; thence North 69°07'30" West, along the Southerly right of way line of said 100.0 foot wide right of way, 629.76 feet to the point of beginning.

EXHIBIT G

**Byers & Anderson Court Reporters/Video/Videoconferencing
Seattle/Tacoma, Washington**

BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35407)
GNP RLY INC.)
-ACQUISITION AND EXEMPTION-)
REDMOND SPUR AND)
WOODINVILLE SUBDIVISION)
STB DOCKET NO. AB-6 (SUB NO. 463X))
BNSF RAILWAY COMPANY)
-ABANDONMENT EXEMPTION-)
IN KING COUNTY, WA)
STB DOCKET NO. AB-6 (SUB. NO. 465X))
BNSF RAILWAY COMPANY)
-ABANDONMENT EXEMPTION-)
IN KING COUNTY, WA)
)
)

DEPOSITION OF PAMELA A. BISSONNETTE

December 1, 2010

Seattle, Washington

Byers & Anderson, Inc.

Court Reporters/Video/Videoconferencing

One Union Square	2208 North 30th Street, Suite 202
600 University St.	Tacoma, WA 98403
Suite 2300	(253) 627-6401
Seattle, WA 98101	(253) 383-4884 Fax
(206) 340-1316	scheduling@byersanderson.com
(800) 649-2034	www.byersanderson.com.
Serving Washington's Legal Community since 1980	

**Pamela A. Bissonnette
December 1, 2010**

1 Q And one of the dual uses is rail?

2 A Yes.

3 Q Does that include freight rail?

4 A I don't know. We haven't defined what-- in the planning
5 process what the rail piece is.

6 Q Okay. So it's an open question, as we sit here today?

7 A Yes.

8 Q It's possible that freight might be an element and it's
9 possible that it might not?

10 A Correct.

11 Q Do you recall telling Kirkland transportation committee
12 that King County doesn't do rail?

13 A I do recall something like that, yes.

14 Q What did you mean?

15 A When Sound Transit was authorized by the state
16 legislature, they gave them the exclusive right to do
17 high capacity and commuter rail, and King County, who up
18 to that point had been the regional transit agency, no
19 longer has that authority, so we don't do rail.

20 Q Okay. Does King County do freight rail?

21 A No.

22 Q Does King County own any obligations or responsibilities
23 with regard to freight rail?

24 MR. PILSK: Objection; calls for a
25 legal conclusion.

1 You can answer.

2 THE WITNESS: Well, when I inherited
3 this project in December last year, I understood
4 subsequently, as I researched, that we have obtained the
5 reactivation rights of the corridor, but that is all I
6 know.

7 I don't even know what it means to have them.

8 Q (By Mr. Savage) If you were to seek guidance with regard
9 to learning about what it means to have reactivation
10 rights, where would you seek that guidance from?

11 A **From legal experts, people like to my left here.**

12 Q To the best of your knowledge, have you participated in
13 any discussions with nonlegal employees of King County
14 with regard to reactivation rights?

15 A **No.**

16 Q Have you ever heard the term "common carrier obligation"?

17 A **I have heard the term.**

18 Q What is your understanding of that term?

19 A **I don't know what the definition is.**

20 Q Have you-- do you have any understanding of the context
21 of the term, what it's related to or associated with?

22 A **Not particularly.**

23 Q Have you ever been informed that King County has a common
24 carrier obligation with respect to reactivation of
25 freight rail service on the Redmond spur?

1 Q To your knowledge has King County ever been confronted
2 with a request for reactivation of a rail banked line
3 prior to this?

4 A Not that I'm aware of.

5 Q Do you recall telling the Kirkland transportation
6 committee that "The law is not clear on the rights of a
7 third party to reopen rail service"?

8 A I don't recall saying that.

9 Q Do you recall telling Kirkland transportation committee
10 that "We could be bought out or hung out"?

11 A I don't remember saying that.

12 Q Are you familiar with an escape clause in the easement--
13 let me rephrase the question.

14 Are you familiar with an escape clause with regard
15 to King County and King County's investment in the
16 Eastside Rail Corridor?

17 A What do you mean by "an escape clause"?

18 Q Are you aware of any provisions of any agreements that
19 would provide for the County to have the right to
20 terminate the easement and to recoup its original
21 purchase price of 1.9 million?

22 A I don't personally know that, no.

23 Q Are you familiar with the easement document, formally
24 reflecting the easement that King County purchased?

25 A I read it when I first inherited this project, but I have

1 THE WITNESS: I don't know.

2 Q (By Mr. Savage) Does King County currently have any
3 agreements with freight rail operators to operate freight
4 rail service anywhere in the county?

5 A I don't know.

6 Q On the County's behalf?

7 A I don't know.

8 Q Does King County have a department which is responsible
9 for overseeing freight rail matters?

10 A I don't know.

11 Q Does King County have a Department of Transportation?

12 A Yes.

13 Q To your knowledge, is there a freight division in the
14 Department of Transportation?

15 A Not to my knowledge.

16 Q Is there a rail division?

17 A Not to my knowledge.

18 Q Have you identified for us today, in the context of this
19 deposition and in the course of this deposition, all of
20 your meetings with GNP?

21 A I believe so.

22 Q To your knowledge, is GNP bound by the interlocal
23 agreement between the Port of Seattle and King County?

24 MR. PILSK: Objection; calls for a
25 legal conclusion.

1 THE WITNESS: I don't know.

2 Q (By Mr. Savage) Did you request that an amendment be
3 made to the interlocal agreement to ensure that GNP would
4 be bound-- excuse me, I'll withdraw that.

5 Did you request, on behalf of King County, an
6 amendment to the license agreement between GNP and the
7 Port of Seattle to ensure that GNP would be bound by the
8 interlocal agreement?

9 A I don't know.

10 I don't believe I did because I don't know what's in
11 the interlocal agreement.

12 I don't even know what interlocal agreement you're
13 talking about.

14 Q Did you attend any meetings with GNP or the Port of
15 Seattle in December of 2009, at which time the license
16 agreement and the interlocal agreement were discussed?

17 A I attended a meeting in December of 2009, and my
18 recollection of the meeting was that it was almost
19 exclusively about the license.

20 I don't remember anything about the interlocal
21 agreement.

22 Q Do you have any knowledge or understanding of any
23 communication by GNP at any time in which GNP represented
24 that it was not committed to re-establishing freight rail
25 service on the Redmond spur or disavowed the intention to

1 re-establish freight rail service on the Redmond spur?

2 A No, but nor do I remember any intention that they were
3 until August 4th.

4 Q What is your understanding of the term "rail trail"?

5 A I don't know of such a term.

6 Q What is your understanding of the term "rail banked"?

7 A "Rail banked" means, to me, in my capacity at the County,
8 that we can use the-- a former rail corridor for a trail
9 to keep it in contiguous ownership until and unless it's
10 needed for future freight service.

11 Q Okay. And what is your understanding of the obligation
12 of the party that holds the interim trail user status for
13 the rail bank trail when and if there's an application
14 for reinstatement of freight service?

15 MR. PILSK: I am going to object to
16 the extent it calls for a legal opinion, conclusion.

17 You can answer.

18 THE WITNESS: Well, from an
19 operational standpoint, which was my role in DNRP, was to
20 keep it in continuous ownership and not allow
21 encroachments and just keep it there.

22 Q (By Mr. Savage) Is it your understanding that the
23 interim trail user must cooperate with the reinstatement
24 of freight service or reactivation of the line?

25 MR. PILSK: Objection; same objection.

1 THE WITNESS: We haven't conducted the
2 regional process, planning process to determine if future
3 use is both rail and trail of the corridor.

4 That process would yield such answers.

5 Q (By Mr. Savage) If a shipper contacted you tomorrow and
6 requested freight service over the rail banked portion of
7 the corridor, what would the County do? What would their
8 response be?

9 MR. PILSK: Objection; calls for
10 speculation.

11 Q (By Mr. Savage) Does the County have a contingency plan
12 for that?

13 MR. PILSK: Objection; compound, calls
14 for speculation.

15 You can answer.

16 THE WITNESS: I would ask our rail
17 experts what our obligations are.

18 Q (By Mr. Savage) Who is your rail expert?

19 THE WITNESS: What is your firm?

20 Q (By Mr. Savage) You would ask counsel?

21 A Yes.

22 Q So King County does not currently employ nonlegal rail
23 experts or operational rail experts?

24 A No.

25 Q Are you familiar with the National Trails Act?

EXHIBIT H

PUBLIC VERSION

REDACTED

EXHIBIT I

VERIFIED STATEMENT OF JOHN SNOW JR.,

RETIRED PRESIDENT AND OWNER OF DRYWALL DISTRIBUTORS, INC.

1. I am the past (retired) President and owner of Drywall Distributors, Inc. (DWD) 16026 Woodinville/Redmond Rd. Woodinville, WA 98072. I owned DWD from 1983 to its sale in 2001 to Scott McDonald; my son, John T. Snow, is now a partner. My wife and I retain ownership of the property and buildings.
2. For over twenty- eight (28) years Drywall Distributors has supplied gypsum wall board to various residential, commercial and multi-family construction projects; also, we supply metal framing, components, fasteners, insulation and related equipment for the construction industry.
3. It is my understanding that Scott McDonald has sent an "intent to ship" letter for the Federal Surface Transportation Board in support of GNP Railway's submission for reactivation of the Redmond Spur; I am partly responsible for encouraging that commitment.
4. As I remain owner of the property, (and father of one of the owners), I continue to be attentive to the success of the business and the value of the property. When I became aware that the line might be reactivated, and that rail shipping might be a possibility, on my own and without any outside encouragement, contacted the G.N.P. and inquired about the possibility of a new spur on DWD's property and the delivery of product by rail.
5. Mr. Tom Payne and another gentleman, (Mr. Jones), made an appointment to visit with me and McDonald at the business site. We discussed the possibility of receiving shipments by rail and the construction of a siding.
6. The existing track lies in the middle of a 100 foot rail right-of-way directly in front of the DWD offices and warehouses, with approximately 50 feet of lawn on each side of the rail. To the west side of the rail is a 50' strip of grass that borders the Woodinville-Redmond Rd; to the East of the rail is a 50' strip of grass that borders DWD's gravel/pavement parking area. We discussed off-loading wallboard off both sides of a railcar that would be parked in front of our offices; we concluded the eastside of the existing rail line would be optimal for the siding to be constructed. Forklifts would carry the unloaded wallboard back to our warehouses.
7. Mr. Payne questioned as to whether the unloading scenario was practical and whether we had ever unloaded product in that manner. I recounted that in the 1990's we had unloaded product in that manner using our boom (crane) trucks; we used the team tracks in downtown Woodinville to stage and unload the cars - we would then transfer the unloaded product to our warehouse - approximately 3 miles south of the team siding.

8. We found that shipping by rail was more economical than trucks, but our main concern was the access to, and availability of wallboard product. There were times when local manufacturers "rationed" product; thus, with a siding we would be able to take shipments from "out of the region manufacturers" and assure availability. We briefly discussed a cost sharing of the construction of the siding, but no conclusion was reached.
9. We, also, discussed extending the siding to serve the two businesses to the South of DWD - Woodinville Lumber and Matheus Lumber. I understand some informal discussions have occurred, but I do not know the details.
10. Our cost for shipping from downtown Woodinville to DWD's warehouse would be proportionate to the rate in the 90's (even allowing for inflation.)
11. I believe the American economy will bounce back from the current recession, and that DWD needs to be in position to prosper, once again; rail service will definitely improve our current position in our market as well as an upgrade to the real estate that we own.

VERIFICATION

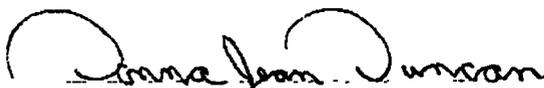
State of Washington
County of King
ss:

John Snow Jr. being duly sworn deposes and says that he has read the foregoing statement, knows the facts asserted there to be true and that the same are true as stated.



John Snow Jr.

Subscribed and sworn before me this 30 day of November 2010



Notary Public of the State of Washington

Commission expires December 19 2011

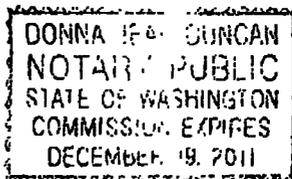


EXHIBIT J

VERIFIED STATEMENT OF MATT SUROWIECKI JR.,
CORPORATE PURCHASING MANAGER, STEELER, INC.

1. I am Matt Surowiecki, Jr., Corporate Purchasing manager for Steeler, Inc. Created in 1974 by Founder, President and my father, Matt Surowiecki in Seattle, WA, Steeler is very proud that we are the only continuously operated Steel Stud manufacturer that has been in business in the U.S. since 1974 without being sold or declaring bankruptcy. I have been actively with the company for eleven years, and involved with purchasing and shipping during that period.
2. We are a manufacturer of steel framing products for the interior walls of commercial and other construction projects, and are also the exclusive manufacturer of Steeler-Designed, high-quality construction screws. In addition we manufacture a wide line of steel track, joists, custom shapes, engineered slide clips, Shaft Wall Studs, CRC/DWC, resilient channel, "black track", slip track, deflection track, corner bead and hanger wire, for the drywall and interior finish industry. We produce ten million pounds of custom steel framing monthly.
3. Steeler is also a distributor of drywall products including gypsum wallboard, drywall mud, cornerbeads, finishing products, tools, replacement parts and many other accessories. In total we provide 12 product lines to the Drywall Industry.
4. Our products have been used in a variety of widely recognized projects including; both SeaTac and the San Francisco international airports, Key Arena in Seattle, Redmond (WA) Town Center and the famous Whistler Ski Resort, site of the 2010 Winter Olympics.
5. Steeler operates twelve locations in the Western United States and Canada, including our manufacturing facility in Tacoma, our central office in Seattle and our newest location in Redmond, WA. Other locations include; Bakersfield, CA, Portland, OR, Spokane, WA, Delta, B.C, North Highlands (Sacramento), CA, Newark, CA, San Diego, CA, Tucson, AZ, and Phoenix, AZ.

lines, or have rail spurs. The facilities that currently use rail service are: Tacoma, WA, Spokane, WA, Seattle, WA (Via our Tacoma Reload Facility), North Highlands, CA, Newark, CA, San Diego, CA, Phoenix, AZ, and Tucson, AZ.

6. During the summer of 2010 we were looking for an Eastside Puget Sound location. We chose the former site of Cedar King Lumber in Redmond because of the location, and since it was located near the Redmond Spur, we thought there could be a possibility of getting rail service at that location. When we read the article in the Seattle Times about the intent to re-activate this line, we contacted the GNP Railroad on September 14, 2010 upon our return to Seattle from a business trip. I e-mailed the railroad seeking to reopen the line, and that afternoon Mr. Tom Payne, the President of GNP Railroad visited with my father and me at the Redmond site.
7. We use rail. For example, as I write this statement, Steeler has en-route, eleven (11) railcars of product destined for three of our different facilities, and more on order with our vendors. Those 11 cars come from a mix of three different vendors, each of which has several plants that we procure from.
8. Our experience is that universally across our facilities that we save fifteen to twenty-five percent (15%- 25%) in shipping costs by using rail truck to receive raw material or product, when we can do so. Many if not most of our suppliers only ship by rail because truck freight is not an option (costs double or more to ship by truck for certain plants).
9. I have been provided with the City of Redmond's comments regarding my September 14, 2010 letter supporting GNP's proposal. Redmond's comments are misleading and inaccurate. During our meeting with GNP, we discussed the logistics of receiving rail service. Our facility sits in the Wallace Business Park accessed by a private driveway off Willows Rd, which parallels the Redmond Spur. The Spur crosses the access drive near its intersection with Willows Rd. An existing rail siding known as the Wallace Siding comes off the Spur directly below the access road. Using our forklift or boom truck we could unload product from "center-beam" railcars on the siding, and transport the product down the street to our warehouse by truck, a distance of less than 150 yards.

10. I have also been provided with King County's comments. On pages 33 and 34 the County states, "UniSea, Steeler and Drywall Distributors are not located on the Spur or an industry track. In order to gain access to the Spur, industry track would have to be constructed and permission from adjacent property owners would have to be obtained." These statements are materially false and misleading. The logistics are correctly set out in Paragraph 9 above. The business park owner supports GNP. Co-tenant permission is *not* required for Steeler to begin receiving rail service. No one from King County or Redmond contacted me to verify any of the information set forth in their comments.
11. Once rail service begins, we intend to investigate options for extending the delivery track from the Wallace Siding directly into our facility.
12. We are anxious to receive product by rail immediately. We have investigated with the GNP Railway the possibility of receiving products via rail up at their "Wye" track in Woodinville, and believe we have found a temporary transload site there. That would entail our trucking a forklift six miles to the delivery point and loading product off the railcar onto our truck for road delivery to our facility. Direct delivery to our facility by rail would be cheaper and quicker by saving significant diesel fuel and time, and would reduce truck traffic on Willows Road and Highway 202.
13. Our original estimate given in our "intent to ship" letter to the STB supporting the reactivation of the line, from 120 to 240 cars per year still holds, and we desire service as soon as reactivation can occur. In fact, Steeler has already ordered Railcar Wallboard product for our Redmond Warehouse, via our Tacoma Railcar reload facility. The product is arriving now at our Tacoma warehouse and must be trucked to Redmond.
14. Upon GNP obtaining STB authority to provide freight service over the Redmond Spur, Steeler would commit to using GNP's rail service for a minimum of 120 car loads of traffic per year, with the ultimate intent to increase volume as the construction industry improves and use rail for 85-95% of our purchases of wallboard. If the spur line is approved, it would ultimately remove 540 semi-trucks or more (based on 120 cars @ 4.5 trucks per carload) from the local roads and highways every year.

VERIFICATION

STATE OF WASHINGTON)
) SS
COUNTY OF KING)

I, Matt Surowiecki, Jr., being duly sworn according to law, hereby depose and state that I am authorized to make this Verification, that I have read the foregoing document, and that I know the facts asserted therein are true and accurate as stated, to the best of my knowledge, information and belief.

Matt Surowiecki, Jr.

Subscribed and sworn to before me, a Notary Public, in and for the County of King, in the State of Washington, this 7th day of

December, 2010
[Signature]

My Commission expires:

1/9/13



EXHIBIT K

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35407

GNP RLY INC.
Acquisition and Operation Exemption
Redmond Spur and Woodinville Subdivision

VERIFIED STATEMENT OF ROBERT C. FINLEY

My name is Robert C. Finley, and my business address is 2 Olde Barn Way, Acton, MA 01720. I have been retained by GNP Rly. Inc. ("GNP") to review the financial forecast used by the railroad for future operations. The question posed to me was how viable is the GNP and are future results reasonable. I conclude that GNP will become viable on a system-wide basis after an initial start up period of 3 years and its system-wide cash flow should be sufficient to offset losses on the lines at issue here until they become profitable in their own right after 7 years.

I have approximately 35 years experience in the railroad industry, primarily in the area of finance. My railroad career began in 1974 with the Southern Railway System, where I was a management trainee and assistant economist. I took a position with the United States Railway Association, where my duties included management of a portion of the litigation regarding the value of the Penn Central assets and oversight of the marketing and sales activities of Conrail. In 1982, I joined the Southern Pacific Transportation Co. At Southern Pacific, my duties included line sales and abandonments, including the filing of applications and submission of verified statements to the Interstate Commerce Commission, tariff route restructuring and merger related traffic analyses.

Following my tenure at Southern Pacific, I worked for the Chicago West Pullman Transportation Co., a short line holding company, where my duties included line acquisitions and sales efforts and where I undertook a number of analyses of the cost of operations of rail lines. In 1998, I became Chief Financial Officer at the Iowa Interstate Railroad. My responsibilities there included all of administrative aspects of the railroad's operations, in addition to financial and budgeting oversight. At Iowa Interstate, I focused carefully on operating costs and developed models for specific carload costing that were used by the marketing department in order to set prices. The budgeting process at Iowa Interstate placed considerable emphasis on the cost of each segment of rail operations.

Following my employment at Iowa Interstate, I worked as a transportation consultant at PHB Hagler Bailly, an international economic and management consulting firm. My assignments there included assistance to Wheeling & Lake Erie Railway concerning the impact of the breakup of Conrail and advice to the State of Victoria, Australia, concerning the value of the state owned railroad in a privatized market.

Currently, I am the Vice President of Finance for Housatonic Railroad, a short line operating in Connecticut and Massachusetts. In addition, since January 1, 2000, I have been providing outside consulting services to the short line freight and passenger rail industries under the business name Harford & Associates. In this capacity, I was retained by Camas Prairie RailNet, Inc., in 2000 to do the avoidable loss and related economic analyses for their abandonment application (AB-564) and also by San Pedro Rail Operating Company in 2005 in connection with the abandonment of their line known as the Douglas Branch in a proceeding before the Board (AB-1081X). A copy of my curriculum vitae is attached.

GNP presented me with their latest financial forecast model that includes income statements for both their freight operations and planned excursion operations. Also included in the model are a balance sheet, a cash flow statement, a source and use of funds statement and a variety of spreadsheets documenting assumptions, expenses and revenue. Projections are for a ten year period from 2011 to 2020.

I began my assignment of determining GNP's viability by breaking GNP's operations into two components: 1) GNP's operations overall including the existing Freight Easement between MP 38.25 at Snohomish and MP 23.8 at Woodinville and 2) the southern-most 9.1 miles of railroad at issue here which we will call "the Lines." For my analysis, I focused on the freight projections. First I looked at the expected sources for freight revenue. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] I questioned Douglas Engle, GNP's chief financial officer, about their customer base and how carload projections were estimated. Mr. Engle discussed the letters of intent GNP has or will receive from various shippers and what those letters meant in carload volume. The types of shippers and commodities he described are consistent with the typical shortline railroad. The large carload volume projection for certain customers makes sense based on contracts now in place or expected in the near future. Also built into the carload forecast are three construction projects that will move volumes over limited periods. Two projects last three years; one is for six years. [REDACTED]

[REDACTED]

[REDACTED]

Projections of carload growth by customer are based on shipper estimates. I believe the carload projections are reasonable. Although there is steep growth it does not occur until the third year. That performance would be consistent with the time it typically takes a start up shortline to build its business. Also included in the GNP carload estimates is switching activity for cars moved on a customers' siding in three locations in 2012 and 2013, then two locations for the balance of the ten year forecast.

One of the areas that can financially challenge a new railroad is the estimate of revenue per car including annual rate increases. There is a tendency to overestimate how much a shortline will receive per car when in many cases the interchanging Class I carrier will dictate the shortline's share of revenue. I reviewed the estimated revenue per car. Average revenue per car [REDACTED]. This rate is somewhat lower than the typical shortline, and is inflated by about 2% per year. Realistically, revenue per car does not increase by the same percentage each year, but over time a 2% average increase is probably low. Beginning in 2012 GNP forecasts some project specific traffic that has considerably higher revenue per car. The project work is already under contract thus the higher carload revenue is justified.

Overall I found the revenue estimates cautious but reasonable. The fact that most of the revenue is based on potential GNP customers who have offered letters of intent reinforces my conclusion.

I reviewed the cost estimates of the GNP forecast model. There are numerous detailed calculations of cost by the various operating areas. Operating cost assumptions are in line with my experiences in the shortline industry. Particularly noteworthy is the addition of contingency

expense recognizing that nothing works as well as planned. Costs are broken down by direct operating costs including people, Port of Seattle fees, and train operations.¹

The GNP model also classifies some of the operating costs as allocated. This group includes rail administration, maintenance of way and maintenance of equipment. The model allocates costs between the freight operation and planned excursion operations by the car mile.

GNP's model indicates losses in the first three years, then a steady growth in net income. The losses of the first three years are essentially recouped by the end of the ten year forecast.

My assignment was to review the financial viability of the freight railroad. To that extent I took the GNP freight income statement for the first five years and eliminated the allocation of some costs to excursions. The GNP model assumes that track will be maintained at a FRA Class II standard because of planned excursion trains. I replaced GNP's track maintenance estimates with the generally accepted \$6,000 per mile per year cost for FRA Class I trackage. I inflated the track maintenance cost by two per cent per year. I then added the interest expense, depreciation and other expenses listed in the GNP model. Some of the interest, depreciation and other expenses are associated with the excursions but I elected not to back them out. (To some extent this decision is not fair to GNP as much of their debt is for upgrading track to passenger rather than freight standards.) My findings are shown in Exhibit 1. Like the GNP model there are losses in the first three years. But my total losses were lower than GNP's. For the two years of profit, my version is better than the GNP model.

Finally I wanted to gauge the impact of the Lines to the overall GNP operation. GNP's traffic data is broken down by location. I identified revenue for the two stations on the line - Redmond and Hollywood. The GNP model has a wealth of statistical information for allocations, but the integration of excursion costs made a detailed allocation to the Lines

¹ The GNP model does include increased Port of Seattle fees for the operation over the Lines.

difficult. I resorted to allocating system expenses based on the Lines as a percentage of the system. I did not allocate interest, depreciation or other expenses. The results are in Exhibit 2. The Lines show positive margin by the third year.

My conclusion is like most start up shortline railroads there are losses at the beginning for GNP. But once GNP's shippers have their operations at planned capacity the entity is financially viable. However, I also conclude that the cash flow that GNP generates from revenues overall are sufficient to cover losses incurred on the Lines until they become profitable in their own right.

I have also been asked to respond to an assertion by GNP's opponents regarding traffic solicitation. These parties would denigrate GNP's traffic and revenue projections because it was GNP that solicited some of these customers, rather than the other way around. Based upon my years of experience in the short line industry, it is common practice for short lines to solicit traffic from customers that have never used rail before or have not used rail in recent years ("dormant customers"). Many of these customers never approach a railroad about moving their freight by rail because of adverse experiences in the past. Accordingly, it is standard practice for a short line to approach a potential customer with a service package that addresses rates, service, car supply, and other matters without first waiting for the customer to contact the railroad.

VERIFICATION

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing statements made by me are true and correct.

Executed on: December 13, 2010


Robert C. Finley

FINLEY EXHIBIT 1

PUBLIC VERSION

REDACTED

FINLEY EXHIBIT 2

PUBLIC VERSION

REDACTED

ROBERT C. FINLEY—Principal

M.B.A. Finance, Wharton School of the University of Pennsylvania
B.A. Economics and Accounting, Muskingum College

Robert Finley has over three decades of executive experience in the transportation industry, specifically in the areas of finance, marketing, workouts, acquisitions, and leasing. He has successfully reduced costs and increased productivity for a number of companies, while carefully balancing performance and market demand. In addition to establishing aggressive line sales, he spearheaded a small company's growth from \$5 million to \$30 million; he restructured a failing company, for which he attained equity infusion and restored profitability; and he implemented a new form of tax advantage financing for regional railroads. Mr. Finley is recognized for his innovative marketing and finance techniques.

Mr. Finley advised the Transport Reform Unit of the Victoria, Australia, government about the financial strategies for privatization of their freight and passenger railroad operations. Initial studies for the state indicated the freight operations could be sold for \$20 to \$40 million but would require financial assistance and subsidies. Based on Mr. Finley's suggested alterations to the financial plan and offering memorandum, the freight operations were sold for \$167 million with no requirements for state assistance.

He has acted as the independent financial analyst for the Federal Railroad Administration determining the viability of regional and shortline railroads applying for government loans under the Railroad Rehabilitation and Improvement Financing Program (RRIF). These assignments are particularly challenging as the analysis has to determine that the applicant could not obtain conventional financing but will be able to repay the Federal government over a more extended period of time.

Mr. Finley assisted the Camas Prairie RailNet in one of the few heavily contested abandonment applications since the formation of the Surface Transportation Board. His responsibilities included preparation of carload costing projections using the Uniform Rail Costing System (URCS) and financial statements based on those projections.

Mr. Finley advised the trustee of the bankrupt Bangor & Aroostook Railroad about the financial viability of certain segments of the property. In this capacity he had to develop forecasts of income and estimates of expenses with a minimum of historical information due to the reorganization of the property. He then created the exhibits necessary to file for abandonment.

He has assisted the British Columbia government while it was selling its BC Rail operation. In the assignment Mr. Finley assembled financial impact statements assuring the government that it was receiving fair value in the sale.

ROBERT C. FINLEY—Page 2

He has advised the Montreal, Maine & Atlantic Railroad concerning its budgeting and weekly forecast process. During three separate assignments, he stepped in on an emergency basis as the corporate controller. He is now retained on a quarterly basis to assist in preparation of financial documents for the board of directors

Mr. Finley assisted the San Pedro Southwestern Railroad with a detailed abandonment application when the Surface Transportation Board determined that an exemption petition was insufficient. He assembled all the economic and financial information needed and presented the analysis to the STB using their prescribed format.

Recently Mr. Finley has established the going concern value of two shortline railroads, one currently operating in Louisiana and the other a possibly start up on Long Island, NY.

Currently Mr. Finley assists the Housatonic Railroad, a shortline railroad located in western Massachusetts and Connecticut serving as their Vice President of Finance. He oversees the finance and many administrative functions of the property.

MAJOR ACCOMPLISHMENTS

As executive vice president of Iowa Interstate Railroad Limited, a \$30 million regional railroad operating from Chicago to Omaha, he directed finance and human resources. He directly affected all corporate functions, organizing the company from near bankruptcy and coordinated debt restructuring and equity infusion. Among numerous successful accomplishments at Iowa Interstate, Mr. Finley:

- Helped merge Iowa Interstate, at the time an almost bankrupt railroad, with Heartland Rail Corporation. He negotiated with creditors, found new sources of secured debt, gained approval from government lenders, issued stock, centralized corporate offices and stabilized the financial structure and profitability of the line—all within a single year.
- Reorganized the corporate accounting department, solving an outside auditor's premerger "material weakness qualification."
- Managed a 1993 flood crisis, not only saving the company but also turning a modest profit.
- Identified a willing investor whose major cash injection stabilized the company's financial position.
- Negotiated debt restructuring through a tax-advantaged sale/leaseback of in-use mainline rail, generating \$11.8 million in the process, and he utilized NOI.s, lowering cash needs by \$1.1 million.
- Acquired rail lines in the Des Moines area, thus boosting Iowa Interstate's customer base.

ROBERT C. FINLEY—Page 3

- Lowered liability and property insurance expenses by 50 percent.
- Convinced Iowa Interstate's largest customer to stay in Iowa by building a new rail yard, intermodal transfer facility and engine repair facility, using grants and forgivable loans from the state and county.
- Thwarted another company's unacceptable attempt to purchase Iowa Interstate.
- Developed a cost accounting system and model that enabled Iowa Interstate to set prices that fully reflected allocated costs, thus ensuring that all traffic moved at a profit.

As vice president of Chicago West Pullman Transportation Corporation, a growth and acquisition-oriented company, Mr. Finley managed all aspects of new property purchases while assisting in selected marketing efforts. Specifically, he:

- Grew the company from four to seven operating properties, increasing revenues by \$25 million.
- Developed an acquisition strategy, identified purchase candidates, assembled proposals, managed bidding, coordinated purchases and assisted in the start-up of the acquisitions.
- Implemented a new business plan that turned around a stagnant property and grew the business 25 percent.
- Coordinated financing with a holding company and directed customer service and sales for selected properties.

As assistant vice president of marketing services at the Southern Pacific Transportation Company, a \$3 billion railroad, Mr. Finley directed a staff of 40, including market research, intermodal development, labor negotiations, telemarketing, advertising, freight equipment planning, information systems and branch line development and abandonment. In this position, he:

- Set the company's commercial direction to help it become an aggressive user of the newly deregulated environment.
- Eliminated circuitous routing (in transit storage), resulting in a savings of \$50 million and causing minimal disruption to customers and competing railroads.
- Liquidated \$10 million of losing operations and sold \$50 million of unprofitable operations for \$75 million.
- Negotiated union contract rule changes that enabled the company to capture \$25 million in new revenues. The company subsequently received the Golden Freight Car, which recognizes the most innovative marketing program.

ROBERT C. FINLEY—Page 4

He has been responsible for the finance and administrative functions of two start-up corporations. One, a publicly financed venture, was an attempt to privatize the railroad equipment maintenance for the Massachusetts Bay Transportation Authority. Mr. Finley was coordinating the hiring of more than 500 people in less than six weeks when the effort was thwarted by legal and political issues outside of the venture's control. A second venture, privately funded, reintroduced the use of railroad boxcars for fast delivery of small volume shipments.

Mr. Finley has also held positions with the United States Railway Association and the Southern Railway System.

EXHIBIT L

PUBLIC VERSION

**Verified Statement of Read Fay Regarding the
GNP Railroad Woodinville Line and Redmond Spur**

- 1) I am a former BNSF employee and have worked in the Pacific Northwest since 1988, retiring in 2005. At the time of my retirement, I was the General Director of Transportation for the Seattle Division of BNSF. As the GDT, I was responsible for the transportation plan and scheduling of service for all rail traffic from Seattle east to Whitefish, Mt., and south to Keddie, Ca. The service planning portion included trains, locals and road switchers, part of which included the Woodinville Subdivision, located in eastern King County in the state of Washington.**
- 2) After retirement, I continued to remain involved in this line. As recently as November of 2007, I did a walking inspection and review of the entire corridor's condition for the Discovery Institute.**
- 3) On December 6, 2010, I was able to hi-rail the line from between Redmond and Woodinville, Wa., to the end of the line at Snohomish Jct. to verify and reaffirm my findings from the previous write up**

done in November of 2007. Though not able to hi-rail the line between Redmond to that point, I believe the line to be in the same similar condition.

- 4) At present, this line is excepted trackage and in need of some repair to enable it to handle freight traffic in the future. For the most part, the line would require a tie program, surfacing and spot ballast renewal to bring it up to full class I standards. While the majority is 112# jointed track, there has been some CWR 115# rail relay installed and a program started to tighten and replace cracked and broken angle bars. Drainage for the most part is adequate, switches and frogs are not an issue and there has been and continues to be an effective crossing program.
- 5) Referencing the previously mentioned tie program, tie replacement would appear to be in the 300-500 ties per mile range. This would be spread over a 3 to 5 year program, coupled with surfacing and alignment.
- 6) It is my belief that this line could very quickly be upgraded to handle freight traffic safely and efficiently.

VERIFICATION

State of Washington

County of King

ss:

I Read Fay being duly sworn deposes and says that he has read the foregoing statement, knows the facts asserted there to be true and that the same are true as stated.

Read Fay
Read Fay

Suscribed and sworn before me this 9 day of December 2010

SK Adams SK Adams
Notary Public of the State of Washington
Commission expires 10-19-14



EXHIBIT M

PUBLIC VERSION

GNP Rly Inc. Issaquah (Redmond) Spur Inspection

6 December 2010

1 GENERAL

The Issaquah (Redmond) Spur runs geographically from North to South from Woodinville Junction milepost (MP) 0.0 to Redmond MP 7.3.

The inspection was conducted by hyrail from MP 1.85 to MP 0.0 (south to north) by the GNP's Chief Operating Officer, Thomas Payne, and the recently retired regional superintendent of the BNSF, Read Fay.

2. OBSERVATIONS AND FINDINGS

The following was observed:

The line is generally in Class 1 condition (10 mph freight, 15 mph passenger) but is being operated at 10 mph while under repair.

The line is constructed of #90 and #100 jointed rail. Rail manufacturing dates range from the 1940's to the 1960's. Rail dates would ensure controlled cooling. Rail head wear is medium.

Drainage is good to fair, with some spot ditching and cleaning required.

Joints are in poor condition requiring program maintenance and are of 4 bolt pattern.

The line is moderately anchored, with spots requiring further anchoring.

Ballast is 80% crushed gravel and pit run gravel. Ballast is generally thin, but is adequate for present service levels.

Ties are in fair to poor condition; the defective tie count ranges between 25 and 50% depending upon location.

Brush conditions are good to fair with some emerging vegetation.

A photographic record is attached as Appendix A.

3. RECOMMENDATIONS

- (a) A 20 - 30% tie replacement program should be conducted in each year for the next three years,

- (b) Shoulder ballast should be applied in areas of thin ballast.
- (c) The line, after each program of tie replacement should be spot ballasted, lined, tamped and regulated.
- (d) A vegetation control program is recommended for 2011. Lineside trees and brush to be trimmed and cleaned up.

4. CONCLUSIONS

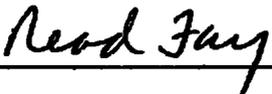
The line between MP 0.0 and 2.5 is generally in poor Class 1 (10 mph freight, 15 mph passenger) condition. The track between MP 2.5 to 7.3 is currently railbanked in excepted condition which would permit 10 mph freight service.

Higher operating speeds for both freight and passenger service depend upon completion of planned program maintenance.

The traffic levels on the line from industrial shippers on the line, some of whom were former BNSF shippers, would be adequate to ensure the continuing economic viability of the spur over the long term.

Submitted,

December 6, 2010



Read Fay, Consultant

APPENDIX A - Photographs



001 Issaquah(Redmond) Spur - Woodinville Junction Switch



002 Issaquah Sub MP 0.28



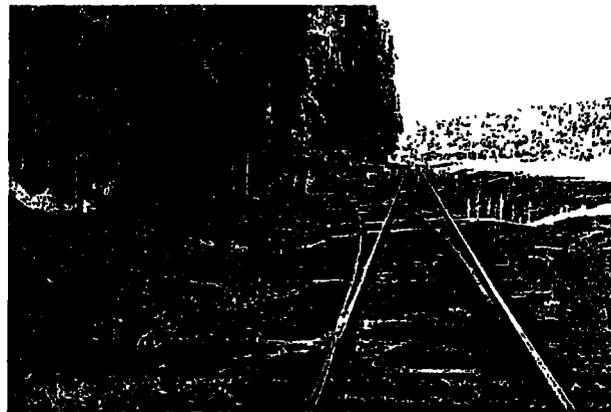
003 Issaquah Sub MP 0.88 - Drywall Distributors



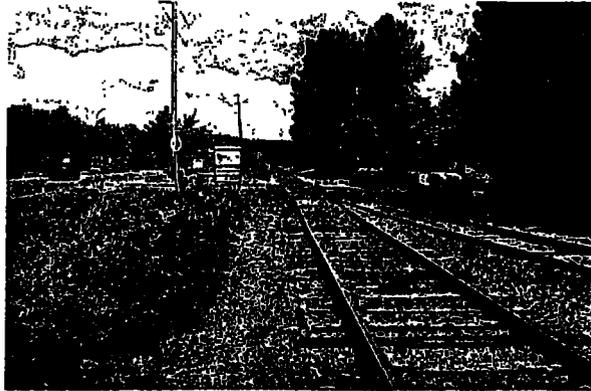
004 Issaquah Sub MP 0.93 - Woodinville Lumber



005 Issaquah Sub MP 0.99 - Matheus Lumber



006 Issaquah Sub MP 2.26 – Ste Michelle Winery Switch, look N.



007 Issaquah Spur MP 5.42, Wallace/GNP spur, look N.



008 Issaquah Spur MP 5.42 - Building Specialties – Wallace/GNP Spur to rear

EXHIBIT N

PUBLIC VERSION



*EMailed
8/26/10*

Date: August 26, 2010

To: Tom Payne
Director and COO
410 Garfield St. S
Tacoma, WA 98444

Subject: Woodinville Subdivision Cluster Tie Replacement
Redmond, Washington
RailWorks Track Systems, Inc. Bid No. 214-140112

Per your request for proposal and our site visit, RailWorks Track Systems, Inc. (RailWorks) offers the attached budget proposal and following additional clarifications for subject project.

Clarifications:

- One mobilization has been considered.
- Flagging, railroad protective insurance, traffic control, testing and permits are not included.
- Sales tax is not included.
- Performance and Payment Bond is not included.
- RailWorks has not considered overtime.
- Preparation of new sub-grade and geotextile materials are not considered.
- Contaminated, hazardous and/or unsuitable materials not considered.
- Pricing contingent on a mutually agreed construction schedule.
- Railroad signals and bonding are not considered.
- RailWorks is an open shop contractor; prevailing wages have not been considered.
- Engineering, design and as built drawings are not included.
- Removed materials to remain onsite.
- All materials to be supplied by railroad. RailWorks autospiker does not accept reclaimed spikes.

If you have any questions or concerns please contact the undersigned.

Chad Holmes
RailWorks Track Systems Inc.
Estimator
(360) 262-9444
cholmes@railworks.com

Line No.	Pay Item No.	Description Subtotal Description	Quantity	Unit of Measure	Unit Price	Total Price
1	1	Mobilization Includes RailWorks equipment and crew.	1.00	Lump Sum		
2	2	Cluster Tie Installation Includes loading ties at the Malby staging area MP 30.18 and distributing in areas along the alignment between MP 23.9 and MP 37.5. GNP Railway to mark ties selected for replacement. Removed ties will be stockpiled at the Malby staging area for disposal by others.	1,500.00	Each		
3	3	Spike Machine Daily Rate Includes labor and equipment to drive high spikes.	5.00	Day		
4	4	Rail replacement at 240th street crossing Includes removal of existing rubber crossing panels and rail as required. Replacement considers 1 Thermite weld, spikes bolts, washers and tie plugs. Rail to be supplied by owner. Road will need to be closed for a minimum eight hours. Asphalt removal/replacement has not been considered. Traffic control by others.	1.00	Each		

GRAND TOTAL: [REDACTED]

EXHIBIT O

PUBLIC VERSION

