

16084

DONATION AGREEMENT
(Woodinville Subdivision - South Rail Line)

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

RECITALS

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

B. The Port desires to enter into this Agreement for the acquisition of a portion of such BNSF property and railroad facilities thereon.

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

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

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

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

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

Section 1. Definitions and Exhibits.

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

Agreement. This Donation Agreement.

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

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

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

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

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

Deed. A quitclaim deed in the form attached as Exhibit B.

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

Escrow Agent. Pacific Northwest Title Company.

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

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

North Rail Line. The real and personal property comprising the Woodinville Subdivision north of milepost 23.45 in Woodinville, and the Redmond Spur. The North Rail Line is the subject of the North Agreement, is not the subject of this Agreement, and is not part of the Property as defined herein.

Other Agreements. Means the Entry Agreement, the North Agreement, the Railroad Right of Way License, the Trail Use Agreement, and the Public Multipurpose Easement.

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

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

All of BNSF's right, title and interest in any tangible personal property and fixtures of any kind owned by BNSF and attached to or used exclusively in connection with the ownership, maintenance or operation of the Land or the Buildings, if any (the "Personalty"); and

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

Railbanked Portion. The South Rail Line less and except that portion between mileposts 10.6 and 11.25.

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

to milepost 7.3 in Redmond.

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

South Rail Line. The real and personal property comprising the Woodinville Subdivision from milepost 23.45 in Woodinville south to milepost 5.0 in Renton, and not including the Redmond Spur, subject to the provisions of Section 4.5.

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

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

Wilburton Portion. That portion of the Property extending from milepost 10.6 north to milepost 11.25.

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

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

Exhibit A	Legal Description of the Property
Exhibit B	Form of Deed
Exhibit C	BNSF Disclosures
Exhibit D	Port and County Disclosures
Exhibit E	Form of Assignment of Third Party Leases/ Licenses
Exhibit F	List of Known Third Party Leases/ License
Exhibit G	[Intentionally Deleted]
Exhibit H	Form of Bill of Sale

Section 2. Conveyance.

BNSF agrees to donate and convey to Port, and Port agrees to accept from BNSF, the Property. The parties agree it is appropriate for BNSF to retain P G P Valuation, Inc., at BNSF's expense, for a fair market appraisal of the Property, which would be available for the use of the parties as needed. At Closing BNSF will make a charitable contribution of the value of the Property to Port, (ii) Port shall take all actions and execute all documents that may be necessary or helpful to confirm that Port is a qualified donee described in section 170(c)(1) of the Code in connection with BNSF's charitable contribution of the Property to Port, and (iii) within 30 days of Closing, based on the fair market value appraisal, BNSF shall prepare and Port shall execute the Donee Acknowledgement section of Internal Revenue Service Form, 8283, Noncash Charitable Contributions.

Section 3. Adjustments.

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

3.2 [Intentionally Deleted]

3.3 Taxes and Monetary Liens.

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

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

(c) Notwithstanding the foregoing provisions of Section 3.3(b), neither Port nor County shall be entitled to object to the lien of any of BNSF's mortgages. Within one hundred eighty (180) days after the first meeting of BNSF's Board of Directors held after the Closing, BNSF shall deliver to Port, who shall place of record, good and sufficient releases of the liens of any mortgages on the Property securing indebtedness to which BNSF is obligated to pay and provide a copy thereof to County.

3.4 Closing Costs. BNSF shall pay one-half of any escrow or closing agent charges in connection with the Closing. Port, County and BNSF shall each pay their own attorneys' fees and costs in connection with the negotiation of this Agreement and the closing hereunder. Port shall pay the following closing costs:

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

the acquisition of the Property.

Section 4. Inspections.

4.1 Physical/Environmental Inspection.

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

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

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

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

4.2 Port and County Contingencies.

(a) Port and County shall have until the end of the Review Period to determine in their sole and

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

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

(c) Notwithstanding the provisions of Section 4.2 (a) or (b), if the County exercises its right to terminate as stated above or pursuant to Section 4.3 below and the Port does not wish to so terminate then the Port may continue this Agreement in effect so long as Port has also elected to continue the North Agreement in effect in compliance with its terms in which case Port shall have until June 15, 2008 (the “**Extension Date**”) to assume on its own or find a third party replacement for the County’s obligations contemplated herein. If the Port does not find such a replacement then Port may terminate this Agreement and the North Agreement together by written notice to BNSF received no later than the Extension Date and none of the parties shall have any further obligation hereunder except those that expressly survive termination. If this Agreement is not terminated as contemplated in Section 4.2, the parties (except County if County has terminated and Port has not) shall proceed to Closing according to the remaining provisions of this Agreement. Promptly upon BNSF’s written request, Port and County shall deliver a copy of any written inspection report, survey or test result received by Port or County. If any of such items reveal any adverse conditions for which BNSF would be responsible for under Section 7 of this Agreement, BNSF may terminate this Agreement by written notice to Port and County by the end of the Review Period in which case none of the parties shall have any further obligation hereunder except those that expressly survive termination

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

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

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

4.5 Modification of Property Description. Port shall have the right to modify the southern ending point of the South Rail Line to a point chosen by Port that is between the originally contemplated ending point at milepost 5.00 in Renton to a point no further north than the northernmost boundary of the parcel on which milepost 6.5 is located. Port may exercise this right by sending written notice of its election and milepost designation to BNSF no later than June 4, 2008. If Port timely exercises such right the applicable definitions in this Agreement shall be deemed modified to reflect such ending point designated in compliance with this Section and the parties shall cooperate with each other to appropriately amend any filings with the STB contemplated herein and modify the legal description attached as Exhibit A to reflect such change.

Section 5. Representations and Warranties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit D:

5.2.1 Port:

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

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

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

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

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

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

5.2.2 County:

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 7. Environmental Obligations.

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

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

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

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

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

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

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

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

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

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

8.1 Surface Transportation Board Approval Contingency.

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

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

8.2 Other Conditions Precedent to Closing.

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

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

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

Section 9. Closing.

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

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

(a) [Intentionally Deleted]

(b) The Deed conveying the Property.

(c) A Closing Statement in form and substance mutually satisfactory to Port, BNSF and County.

(d) Such transfer tax, certificate of value or other similar documents customarily required of BNSF in the county in which the Property is located.

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

(f) The Assignment.

(g) [Intentionally Deleted]

(h) The Bill of Sale.

(i) [Intentionally Deleted]

(j) The Trail Use Agreement.

(k) The Public Multipurpose Easement, in substantially the form as attached as Exhibit L to the North Agreement or as otherwise agreed to by the Port and the County.

Section 10. Default and Remedies.

10.1 Port's or County's Default. Subject to Section 5.3, in the event of a material default by Port or County under the terms of this Agreement or any Other Agreement prior to the Closing that is not cured within any applicable notice and cure periods, BNSF may elect as its exclusive remedy to either (a) terminate this Agreement and the North Agreement in which case none of the parties shall have any further obligation under this Agreement except those that expressly survive termination, or (b) waive such default and proceed to Closing in accordance with the terms of this Agreement. Subject to Section 5.3 and Section 10.4, nothing in this Agreement shall waive or diminish any right or remedy BNSF may have at law, in equity or in contract for Port's or County's default under any document entered into by Port or County at Closing or under any Other Agreement or Port's or County's default under this Agreement after Closing.

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

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

10.4 Arbitration.

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

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

written counterclaim identifying additional claims to be considered in the arbitration, with a short and plain statement identifying the provisions of this Agreement which are in dispute, a summary of the facts or circumstances giving rise to the dispute, and describing the relief requested.

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

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

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

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

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

Section 11. Assignment.

11.1 No Party may assign its rights under this Agreement without the prior written consent of the other except as expressly stated herein.

11.2 On or before 5:00 pm on July 1, 2008 Port may, subject to King County Council approval, assign to County all of its right and obligations in this Agreement as to the portion of the South Rail Line between milepost 5.0 in Renton and milepost 11.8 in Bellevue, provided County assumes all such obligations in writing and County and Port notify BNSF in writing of such assignment and assumption before said date.

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

Section 13. Notices.

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

Port (if delivered):

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

Port (if mailed):

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

County:

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

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

BNSF:

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

With additional copy to:

BNSF Railway Company
2500 Lou Menk Drive

Fort Worth, Texas 76131
Attn: David Rankin
Fax No.: 817-352-2398

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

Section 14. Miscellaneous.

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

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

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

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

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

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

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

14.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which

shall be deemed to be an original, but all of which, when taken together, shall constitute but one and the same instrument.

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

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

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

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

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

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

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

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

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

(b) If such condemnation is not subject to the terms of Section 14.16(a), then Port and County together but not separately may elect to terminate this Agreement and the North Agreement together, in which case none of the parties shall have any further obligation hereunder except those that expressly survive termination.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

BNSF RAILWAY COMPANY

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

PORT OF SEATTLE

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

KING COUNTY

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

EXHIBIT ADESCRIPTION OF PROPERTYSOUTH

All that portion of BNSF Railway Company's (formerly Northern Pacific Railway Company) Woodinville (MP 23.45) to Kennydale (MP 5.0), Washington Branch Line right of way, varying in width on each side of said Railway Company's Main Track centerline, as now located and constructed upon, over and across King County, Washington, more particularly described as follows, to-wit:

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the NE $\frac{1}{4}$ Section 16, and the W $\frac{1}{2}$ Section 15, all in Township 26 North, Range 5 East, W. M., bounded on the North by the North line of said NE $\frac{1}{4}$ Section 16, and bounded on the South by South line of said W $\frac{1}{2}$ Section 15; also,

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

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

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

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

"Also all that portion of said Southeast Quarter (S.E. 1/4) of the Northwest Quarter (N.W. 1/4) of Section 27, Township 26, lying within 50 feet of that certain straight line which connects the center line of the present track of the Northern Pacific Railway Company line with the center line of the proposed track of the Northern Pacific Railway Company line and being tangent to the curves of both of said center lines, containing in all 4.43 acres, be the same more or less." **EXCEPTING THEREFROM**, Lot 3, King County Short Plat Number 1078060, recorded under King County Recording Number 8003270855, being a subdivision of: That portion of the southeast quarter of the northwest quarter of Section 27, Township 26 North, Range 5 East, W.M., King County, Washington, lying northerly and westerly of the northerly and westerly right of way of the Northern Pacific Railway Company's "Seattle Belt Line", and south of the southerly right of way line of that road conveyed to King County by deed recorded under Recording Number 2695175 and northeasterly of a line described as follows: Beginning at the northwest corner of the southeast quarter of the northwest quarter of said Section 27; thence south 1°58'24" west along the west line of the southeast quarter of the northwest quarter of said Section 27, a distance of 265 feet; thence north 65°33'39" east 444.80 feet to the true point of

2008-0226 Attachment C

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

That certain 0.05 acre tract of land described in deed dated August 25, 1904 from Otto Weppler 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 SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 27 the S $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ Section 28, W $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 33, SE $\frac{1}{4}$ Section 32, all in Township 26 North, Range 5 East, W. M., bounded on the East by the East line of said SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 27, and bounded on the South by South line of said SE $\frac{1}{4}$ Section 32, **EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805260805, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 30, 1998 as Document No. 9807301468, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805260791, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Quitclaim Deed dated January 6, 2000 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded February 11, 2000 as Document No. 20000211000454, records of King County, Washington, ; also,

That portion of that certain 100.0 foot wide Branch Line right of way in the City of Kirkland, Washington, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Blocks 3, 4, 5, 6, 11, 12, 13, 14, 18, 19, 23, 24, 25 and 26, the vacated alley between Blocks 13 and 14, and vacated Arlington Avenue between Blocks 14 and 19, as said Blocks and Streets are shown on plat of Lake Avenue Addition to Kirkland as recorded in Volume 6 of Plats, Page 86, Records of said County, together with any right title and interest, if any to those portions of Victoria Avenue, Harrison Avenue, Moreton Avenue; Jefferson Avenue, and Washington Avenue and Maple Street and alleys within said Blocks which lie within said 100.0 foot wide Branch Line right of way, **EXCEPTING THEREFROM**, that portion of Lot 3, Block 5, Lake Avenue Addition to Kirkland, according to the official plat thereof in the office of the Auditor of King County, Washington lying between two lines drawn parallel with and distant, respectively, 34.0 feet and 50.0 feet Westerly of, as measured at right angles from The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway) Main Track centerline as now located and constructed upon, over, and across said Block 5; also,

That portion of that certain 100.0 foot wide Branch Line right of way in the City of Kirkland, Washington, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Blocks 220, 223, 224, 232, 233, 238, and 241 as said Blocks are shown on the Supplementary Plat to

2008-0226 Attachment C

Kirkland as filed in Volume 8 of King County Plats, at page 5, together with any right title and interest, if any to those portions of Massachusetts Avenue, Madison Avenue, Michigan Avenue, Olympia Avenue, Piccadilly Avenue, Cascade Avenue, Clarkson Avenue, Fir Street, and alleys within said Blocks which lie within said 100.0 foot wide Branch Line right of way; also,

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

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the, S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 5, NW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, Section 8, all in Township 25 North, Range 5 East, W. M., bounded on the North by the South right of way line of Clarkson Avenue, City of Kirkland, Washington, and bounded on the West by the West line of said E $\frac{1}{2}$ SW $\frac{1}{4}$, Section 8, **EXCEPTING THEREFROM**, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805260787, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Quitclaim Deed dated May 15, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded August 5, 1999 as Document No. 19990805001402, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281544, records of King County, Washington, also;

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

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

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

“A strip of land Two Hundred twenty-five (225) feet in width across that certain parcel of land designated as Tract “B” in deed from the Kirkland Land and Improvement Company to H. A. Noble, dated July 13, 1899 of record in the Auditor's office of King County, Washington in Volume 245 of Deeds, at page 41, reference thereto being had. Said strip of land hereby conveyed, having for its boundaries two lines that are parallel with and respectively distant One Hundred (100) feet easterly from, and One Hundred Twenty-Five (125) feet

2008-0226 Attachment C

westerly from, when measured at right angles to, the center line of the Seattle Belt Line branch of the NORTHERN PACIFIC RAILWAY COMPANY, as the same is now constructed and located across said Tract "B", which said Tract "B" is located in Section 17 of Township 25, North of Range 5 east of the Willamette Meridian"; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Government Lot 4, Section 8, Government Lots 1, 2, and 3, the E $\frac{1}{2}$ SW $\frac{1}{4}$ Section 17, and the NE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ Section 20, all in Township 25 North, Range 5 East, W. M., bounded on the North by the South line of that certain hereinabove described 0.23 acre tract of land described in deed dated July 15, 1903 from Samuel F. French to Northern Pacific Railway Company recorded August 8, 1903 in Book 361 of Deeds, Page 249, records of King County, Washington and the East line of said Government Lot 4, Section 8, and bounded on the South by the South line of said NE $\frac{1}{4}$ Section 20, together with such additional widths as may be necessary to catch the slope of the fill in the N $\frac{1}{2}$ of said Government Lot 2, Section 17 as delineated in the 7th described parcel in deed dated June 20, 1903 from Kirkland Land and Improvement Company to Northern Pacific Railway Company recorded June 26, 1903 in Book 352, Page 582, records of King County, Washington. **EXCEPTING THEREFROM**, that portion of said 100.0 foot wide right of way lying within said hereinabove described parcel of land designated as Tract "B" in deed from the Kirkland Land and Improvement Company to H. A. Noble, dated July 13, 1899 of record in the Auditor's office of King County, Washington in Volume 245 of Deeds, at page 41,; also,

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

"That portion of the south half of the northeast quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$) of Section 20, Township 25 North, Range 5 East of the Willamette Meridian, described as follows: Commencing at the center of said section; thence north 0 degrees 18 minutes 24 seconds west along the north and south quarter line of said section 738.60 feet to the center of the county road; thence along said road south 77 degrees 7 minutes east 500.00 feet; thence south 71 degrees 54 minutes east 308.27 feet, more or less; thence north 34 degrees 38 minutes east 18.00 feet to a stake in the north margin of said road; thence north 34 degrees 38 minutes east 609.40 feet, more or less, to the southwesterly margin of the Grantee's right of way, said margin being concentric with and distant 50 feet southwesterly, measured radially, from the center line of the main track of the Grantee's Belt Line as now constructed; thence southeasterly along said margin approximately 150 feet to a point distant 50 feet southwesterly, measured along the radius of the curve of said center line, from station 511 plus 50 in said center line (which station is distant 2337.6 feet southeasterly measured along said center line, from the north line of said section), the last-described point being the true point of beginning; thence southeasterly and southerly along said margin to a point distant 50 feet westerly, measured along the radius of said curve, from station 515 plus 60 in said center line; thence northwesterly in a straight line to a point distant 110 feet southwesterly measured along the radius of said curve, from station 514 plus 28 in said center line; thence northwesterly in a straight line to a point distant 110 feet southwesterly, measured along the radius of said curve, from station 513 plus 28 in said center line; thence northerly in a straight line to the true point of beginning."; also,

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

100.0 foot wide Branch Line right of way; also,

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

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

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

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

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

"Beginning at a point in the south line of said Section twenty-one (21) fifty (50) feet east from, when measured at right angles to, the original right of way of Seattle Belt Line Branch of the Northern Pacific Railway Company, as conveyed by deed executed by Roscoe Dunn and Ann Dunn his wife, dated Oct. 4th, 1890 and recorded Dec. 4th, 1890 in volume 116 of deeds, page 114, and running thence north 8° 40' west parallel with and 50 feet distant easterly from said original right of way line a distance of 270 feet to a point of curve; thence northwesterly along a curve to the left having a radius of 716.8 feet, a distance of 492.7 feet; thence north 48° 5' west a distance of 135 feet more or less, to a point on the said easterly line of the original right of way of said railway; thence southeasterly along said original easterly right of way line on a curve to the right having a radius of 859 feet, a distance of 591 feet; thence continuing along said easterly right of way line south 8° 40' east, a distance of 260 feet, more or less, to an intersection of said right of way line with the southern boundary line of said section 21; thence east 50.5 feet, more or less, to point of beginning, containing 0.63 acres, more or less, situated in the County of King, State of Washington."; also,

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

2008-0226 Attachment C

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

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

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

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Railway Company’s Main Track centerline, as now located and constructed, upon, over and across the W½W½ Section 28, W½NW¼ Section 33, all in Township 25 North, Range 5 East, W. M., bounded on the North by the North line of said W½W½ Section 28, and bounded on the South by the South line of said W½NW¼ Section 33, **EXCEPTING THEREFROM**, that portion of said 100.0 foot wide right of way lying Easterly of a line parallel with and distant 35 feet Easterly from, measured at right angles to said Railway Company’s Main Track centerline as now located and constructed and Northerly of a line parallel to and 400.0 feet Southerly of the North line of said NW¼NW¼ of Section 28, **ALSO EXCEPTING THEREFROM**, that portion of said 100 foot wide Branch Line right of way lying within that certain tract of land described in Special Warranty Deed dated June 29, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 2000 as Document No. 20000522001155, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805221787, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Special Warranty Deed dated June 8, 2001 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded January 3, 2003 as Document No. 20030103001327, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded December 28, 1998 as Document No. 9812282942, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Special Warranty Deed dated March 17, 2000 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded October 4, 2000 as Document No. 20001004000767, records of King County, Washington, , also;

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

9807281537, records of King County, Washington, also;

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the 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 thereon; thence Southwesterly in a straight line to a point opposite REL. R.R. 740+00 on said relocated railroad center line and 130 feet Westerly therefrom when measured radially thereto; thence Southerly parallel with said relocated railroad center line a distance of 350 feet, more or less, to an intersection with the Northerly right of way line of State Highway Project entitled

2008-0226 Attachment C

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

“Tract II: (Fee)

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

...”RELOCATED RAILROAD CENTER LINE DESCRIPTION:

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

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

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

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

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

thence North 84°13'42" East a distance of 294.43 feet.”; also

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

That certain 100.0 foot wide Branch Line right of way, upon, over and across Government Lot 2, Section 32, and Government Lots 3 and 4 Section 31, all in Township 24 North, Range 5 East, W. M., Snohomish County, Washington, as described in Deed dated September 8, 1903 from Lake Washington Belt Line Company to Northern Pacific Railway Company, recorded in Volume 386 of Deeds, Page 147, records of King County, Washington. **EXCEPTING THEREFROM**, that certain tract of land described in deed dated September 14, 2001 from The Burlington Northern and Santa Fe Railway Company to Barbee Forest Products, Inc., **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in deed dated March 23, 1936 from Northern Pacific Railway Company to Frank Walloch, lying within said Government Lot 2, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated May 8, 1990 from Burlington Northern Railroad Company to Robert J. Phelps and Nancy C. Phelps, recorded as document 9005101552, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated March 19, 1992 from Burlington Northern Railroad Company to Gilbert A. Schoos and Alice G. Shoos; also, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated February 1, 1937 from Northern Pacific Railway Company to Carl Jorgensen and Christine Jorgensen, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Quitclaim Deed dated February 28, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded April 20, 1999 as Document Number 9904210268, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 26, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000619, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 5, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000620, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Quitclaim Deed dated June 26, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000618, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 6, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000621, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 6, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded February 24, 1998 as Document Number 20001030000428, records of King County, Washington; also,

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

“All that portion of said Lot three (3) lying between the eastern line of the right of way of the Northern Pacific Railway Company over and across said lot and a line drawn parallel with and twelve and one-half (12-1/2) feet distant easterly from the center line of said Seattle Belt Line Branch of the Northern Pacific Company as the same is now temporarily located and constructed over and across said lot, and containing on-fourth of an acre, more or less ...” **EXCEPTING THEREFROM**, that portion of that certain tract of land described in Quitclaim Deed dated February 28, 1998 from The Burlington Northern and Santa Fe Railway Company to

2008-0226 Attachment C

ANT, LLC recorded April 20, 1999 as Document Number 9904210268, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 26, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000619, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 5, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000620, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Quitclaim Deed dated June 26, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000618, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 6, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000621, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 6, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded February 24, 1998 as Document Number 20001030000428, records of King County, Washington; also,

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

EXHIBIT B

FORM OF DEED

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

QUIT CLAIM DEED

Woodinville South

Grantor: BNSF RAILWAY COMPANY ("BNSF")

Grantee: PORT OF SEATTLE ("Port")

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

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

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

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

BNSF RAILWAY COMPANY

By _____
Its

PORT OF SEATTLE

By _____
Its

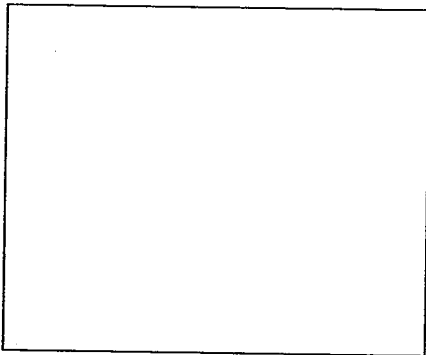
KING COUNTY, WASHINGTON

By _____
Its _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

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

Dated: _____



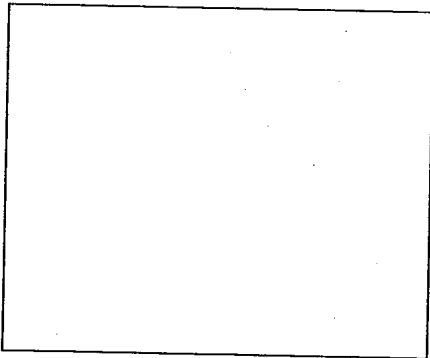
Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

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

Dated: _____



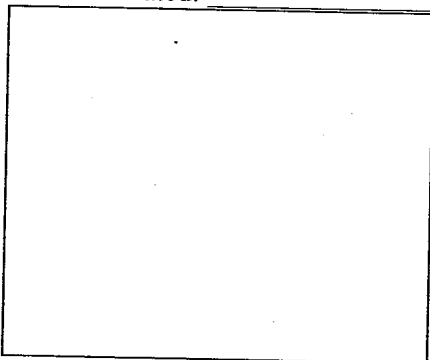
(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

STATE OF WASHINGTON)
) ss:
COUNTY OF _____)

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

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

Exhibit B to DeedCOVENANTSSection 6. Condition of Property.

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

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

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

2008-0226 Attachment C

environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Model Toxics Control Act, the Water Pollution Control Act, laws concerning above ground or underground storage tanks, and any similar or comparable state or local law. The term "**Hazardous Substance**" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

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

Section 7. Environmental Obligations.

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

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

(c) (i) For Hazardous Substances released on the Property that BNSF has not agreed to Cure prior to Closing, whether or not BNSF has been notified under Section 7 (a) that such releases are an Identified Condition, BNSF shall pay to the Port or County the costs to investigate, remediate, respond to or otherwise cure (collectively "**Remediate**" or "**Remediation**") any such Hazardous Substance releases, or any violation of Environmental Laws prior to Closing, to the extent occurring as a result of the operations of

2008-0226 Attachment C

BNSF or its corporate predecessors, or the agents, employees, invitees or contractors of BNSF or its corporate predecessors. BNSF shall pay to the Port or County such costs to Remediate as and when required by and in accordance with Environmental Laws to standards for the Property that the applicable regulatory agency would apply had the Property continued to be used as a freight railroad, and to standards for other affected properties that the applicable regulatory agency would apply for such properties. BNSF shall not be responsible for (1) any costs of Remediation to the extent the Port or County or their respective agents, contractors or invitees materially exacerbate the released Hazardous Substances during construction performed by or for Port or County (excluding superficial or *de minimis* activity performed by Port or County), or (2) any duplication of efforts by County or Port or their respective agents, contractors or invitees.

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

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

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

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

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

EXHIBIT C

BNSF DISCLOSURES

The information contained in the Property Reports.

EXHIBIT D

PORT AND COUNTY DISCLOSURES

None

EXHIBIT EASSIGNMENT OF THIRD PARTY LEASES/LICENSES AND OTHER CONTRACTS

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

RECITALS

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

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

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

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

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

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

BNSF RAILWAY COMPANY

By: _____
Name:
Title:

PORT OF SEATTLE

By: _____
Name:
Title:

EXHIBIT F

LIST OF THIRD PARTY LEASES/LICENSES

[See Attached]

EXHIBIT G

[Intentionally Deleted]

EXHIBIT H
BILL OF SALE

This **Bill of Sale** is entered into by and between BNSF RAILWAY COMPANY, a Delaware corporation, of 2500 Lou Menk Drive, Fort Worth, Texas 76131-2830 ("**Grantor**") and THE PORT OF SEATTLE, a municipal corporation of the State of Washington with an address _____ ("**Grantee**").

WHEREAS Grantor and Grantee have entered into that certain Donation Agreement (Woodinville Subdivision – South Rail Line) dated as of April __, 2008 (the "**Real Estate Agreement**"), pursuant to which BNSF has agreed to convey and Port has agreed to accept certain real property in King County, Washington and Snohomish County, Washington.

WHEREAS, pursuant to the terms of the Real Estate Agreement Grantor and Grantee have executed and delivered that certain Quitclaim Deed dated of even date herewith pursuant to which Grantor has conveyed and Grantee has accepted the real property that is the subject of the Real Estate Agreement (the "**Real Property**"); and

WHEREAS, in accordance with the terms of the Real Estate Agreement Grantor and Grantee are entering into this Bill of Sale.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Grantor has quitclaimed and by these presents does hereby quitclaim unto the Grantee, without any covenants of warranty whatsoever and without recourse to the Grantor, all its right, title and interest, if any, in and to any personal property located on the Real Property together with that certain bridge structure over the Snohomish River connecting portions of the Real Property (collectively, the "**Personal Property**").

This Bill of Sale is executed by Grantor and accepted by Grantee subject to any and all restrictions, reservations, covenants, conditions, rights-of-way, easements, and encumbrances, whether of record or not, if any. The terms and conditions set forth in the above stated deed are incorporated herein by reference.

TO HAVE AND TO HOLD the Property unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this Bill of Sale to be signed by its duly authorized officers this ____ day of _____, 20__.

GRANTOR
BNSF RAILWAY COMPANY

By: _____
Name:
Title:

GRANTEE
PORT OF SEATTLE

By: _____
Name:
Title: