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AUG 30 2005

SURFACE
TRANSPORTATION BOARD August 29, 2005

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AUG 29 2005

SURFACE
TRANSPORTATION BOARD

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Finance Docket No. 34747, Central Puget Sound Regional Transit Authority - -
Acquisition Exemption - - The Burlington Northern And Santa Fe Railway
Company In Pierce County, Washington

Dear Sir:

I am enclosing an original and ten (10) copies of the following documents for filing in the above-referenced matter:

- (1) Notice of Exemption of the Central Puget Sound Regional Transit Authority; and
- (2) Motion of the Central Puget Sound Regional Transit Authority to Dismiss the Notice of Exemption.

An extra copy of each is enclosed for date stamp and return to our messenger. In addition, we are enclosing a diskette that includes the text of each document.

No filing fee is included for these documents pursuant to 49 C.F.R. § 1002.2(e)(1). The Central Puget Sound Regional Transit Authority is a local government entity, and is not a quasi-governmental corporation or government subsidized transportation company.

ENTERED
Office of Proceedings

AUG 29 2005

Part of
Public Record

Sincerely,

Charles A. Spitulnik

Enclosure

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AUG 30 2005

**SURFACE
TRANSPORTATION BOARD**

Before the
Surface Transportation Board



Finance Docket No. 34747

**CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY - -
ACQUISITION EXEMPTION - -
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
IN PIERCE COUNTY, WASHINGTON**

ENTERED
Office of Proceedings

AUG 29 2005

VERIFIED NOTICE OF EXEMPTION

FILED

AUG 29 2005

Part of
Public Record

**SURFACE
TRANSPORTATION BOARD**

Now comes the Central Puget Sound Regional Transportation Authority (“Sound Transit”), a public agency existing under the authority of the laws of the state of Washington, with a notice that (a) on September 28, 2004, it acquired a line of railroad between Milepost 2.15 in Tacoma and Milepost 8.9 in Lakeview, on the Lakeview Subdivision located in Pierce County, Washington (the “Lakeview North Segment”), from the Burlington Northern Santa Fe Railway Company (“BNSF”), and that (b) on September 28, 2005 it will acquire a second line from the BNSF between Milepost 8.9 in Lakeview and Milepost 24.5 in Nisqually, also on the Lakeview Subdivision (the “Lakeview South Segment”) also located in Pierce County, Washington. BNSF initially retained an exclusive freight easement over both line segments in order to fulfill its common carrier freight obligations on both, and Sound Transit acquired no right to operate freight service on the segments. BNSF has transferred its freight common carrier easement with respect to both segments to the City of Tacoma, Washington, subject to retained trackage rights along a portion of the line it conveyed to the City. *See STB F.D. No. 34555, City of Tacoma, Department of Public Utilities, Beltline Division, d/b/a Tacoma Rail or Tacoma Municipal Beltline or TMBL–Acquisition and Operation Exemption–Lakeview Subdivision,*

Quadlok-St. Clair and Belmore-Olympia Rail Lines in Pierce and Thurston Counties, WA
(Service Date Oct. 19, 2004). Sound Transit is acquiring the two line segments for the purpose of providing wholly intrastate commuter rail passenger operations.

This Notice of Exemption is filed under 49 C.F.R. § 1150.31(1) *et seq.* because Sound Transit is a non-carrier and BNSF has retained, and subsequently transferred to a third party, the right and obligation to provide freight service on the line segments. Because Sound Transit has not acquired either rights or obligations that implicate in any way the freight common carrier operations that remain attached to both line segments and thus has not become a rail carrier providing transportation subject to the jurisdiction of the Board, Sound Transit is simultaneously filing a Motion to Dismiss this Notice of Exemption.

The following is the information required by the regulations:

- (1) § 1150.33(a) *The full name and address of the applicant*

Central Puget Sound Regional Transit Authority
401 S. Jackson Street
Seattle, WA 98104-2826

- (2) § 1150.33(b) *The name, address and telephone number of the representative of the applicant who should receive correspondence*

Charles A. Spitulnik
Alex Menendez
McLeod, Watkinson & Miller
One Massachusetts Avenue, N.W.
Suite 800
Washington, D.C. 20001
(202) 842-2345

- (3) § 1150.33(c) *A statement that an agreement has been reached or detail about when an agreement will be reached*

Sound Transit has executed a Purchase and Sale Agreement with respect to both segments. Copies of the Purchase and Sale Agreements, as amended, are attached hereto as Exhibits A (Lakeview North Segment Purchase and Sale Agreement, dated December 17, 2003, as amended on September 28, 2004 and November 23,

2004) and B (Lakeview South Segment Purchase and Sale Agreement, dated December 17, 2003, as amended on November 23, 2004).

(4) § 1150.33(d) *Operator of the property*

BNSF retained an exclusive freight easement with respect to operation of freight trains on the two line segments. The terms and conditions of the joint use of the line segments are set forth in the Joint Use Agreement Between Sound Transit and BNSF, dated December 17, 2003, a copy of which is attached as Exhibit C. Subsequently, BNSF transferred its retained freight easement to the City of Tacoma, Washington. See, STB F. D. No. 34555, *City of Tacoma, supra*. The City of Tacoma, d/b/a Tacoma Rail is the operator of freight service on the line. Sound Transit will provide wholly intrastate commuter rail service on the line segments.

(5) *The name and address of the railroad transferring the subject property*

The Burlington Northern Santa Fe Railway Company
2500 Lou Menck Drive
Fort Worth, TX 76131

(6) *The proposed time schedule for the consummation of the transaction*

The transfer of the Lakeview North Segment occurred on September 28, 2004. The closing of the Lake South Segment transaction is scheduled to occur on September 28, 2005.

(7) *The mile-posts of the subject property, including any branch lines*

Lakeview North Segment: Mileposts 2.15 to 8.9.
Lakeview South Segment: Mileposts 8.9 to 24.5.

(8) The total route miles being acquired

Lakeview North Segment: 6.75 miles, all of which miles remain subject to an unextinguished rail freight service easement held by Tacoma Rail.

Lakeview South Segment: 15.6 miles, all of which miles remain subject to an unextinguished rail freight service easement held by Tacoma Rail.

(9) *A map that clearly indicates the area to be served, including origins, terminals, stations, cities, counties and states*

See Exhibit D.

- (10) *A certificate that applicants projected revenues do not exceed those that would qualify it as a Class III carrier*

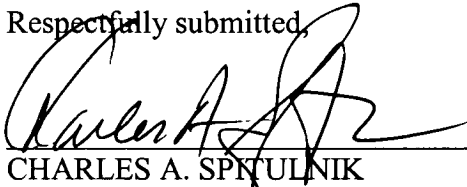
See Verification and Certification attached.

No environmental review is necessary for this transaction because the railroad operations on the two line segments that are subject to the Board's jurisdiction are not affected by the acquisition of the two line segments by Sound Transit. *See* 49 C.F.R. 1105.6 (c)(2).

A proposed caption summary for publication in the Federal Register is attached as Exhibit E.

Dated: August 29, 2005

Respectfully submitted,



CHARLES A. SPITULNIK

ALEX MENENDEZ

McLeod, Watkinson & Miller

One Massachusetts Avenue, N.W.

Suite 800

Washington, D.C. 20001

(202) 842-2345

Counsel for the Central Puget Sound Regional
Transit Authority

A

PURCHASE AND SALE AGREEMENT
(Lakeview North Rail Line Property)

THIS PURCHASE AND SALE AGREEMENT is made and entered into as of the 17th day of December, 2003, by and between THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY ("BNSF") and CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY ("Sound Transit").

A. BNSF owns certain real property in Pierce County, Washington and operates over such real property, a railroad line from Tacoma, Washington to Lakewood, Washington.

B. Sound Transit pursuant to Resolution No. R2003-17 has heretofore authorized condemnation of such BNSF property and railroad facilities thereon, subject to BNSF's retention of a permanent and unconditional common carrier rail easements upon such BNSF property. Sound Transit is willing and able to exercise its powers of eminent domain immediately to condemn such property subject to such retained railroad easement.

C. In order to avoid the expense and delay of such a condemnation action by Sound Transit, BNSF is willing to sell, and Sound Transit is willing to purchase such property subject to such retained railroad easement in lieu of such condemnation action on the terms and conditions set forth in this Agreement.

D. Conveyance of the property subject to such retained railroad easement by BNSF under the terms of this Agreement and operation of such retained easement under the terms of the Lakeview Joint Use Agreement will leave BNSF with sufficient property rights to conduct common carrier rights and obligations under 49 USC §11101 and with sufficient rights of access to maintain, operate and renew the railroad line.

E. Sound Transit has no intention or ability to assume such common carrier obligations.

F. Sound Transit is acquiring the property for its Sounder Commuter Rail Project. The Sounder Commuter Rail Project is intended to alleviate major congestion and safety concerns and thereby promotes public health and safety in a manner consistent with federal rail transportation policy, 49 USC §10101.

G. Acquisition and use of the property by Sound Transit in accordance with the terms and conditions of this Agreement and the terms and conditions of the Lakeview Joint Use Agreement for the Sounder Commuter Rail Project will not unreasonably burden interstate commerce or unduly affect or interrupt BNSF's rail service.

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

Section 1. Definitions and Exhibits.

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

Agreement. This Purchase and Sale Agreement.

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

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

Closing Date. September 28, 2004.

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

Deed. A quit-claim deed conveying the Property and reserving to BNSF and its successors and/or assigns the Retained Railroad Easement, in the form attached hereto as Exhibit B.

Entry Agreement. That certain Entry Agreement dated as of September 2, 2003 concerning the Lakeview Subdivision between BNSF and Sound Transit, as amended.

Lakeview Joint Use Agreement. That certain Joint Use Agreement dated as of December 15, 2003 between BNSF and Sound Transit concerning the Lakeview Subdivision.

Lakeview Station Parcels Sale Agreement. That certain Purchase and Sale Agreement (Lakeview Station Parcels Property) dated as of the date hereof between BNSF and Sound Transit pursuant to which BNSF will sell to Sound Transit and Sound Transit will purchase from BNSF certain property along the Lakeview Subdivision in or about Tacoma and Lakewood, Washington, which properties are on or about the area that Sound Transit contemplates using as a commuter station and upon which Sound Transit will operate commuter rail services, and which is more particularly described therein.

Lakeview South Sale Agreement. That certain Purchase and Sale Agreement (Lakeview South Rail Line Property) dated as of the date hereof between BNSF and Sound Transit pursuant to which BNSF will sell to Sound Transit and Sound Transit will purchase from BNSF a portion of the Lakeview Subdivision not conveyed pursuant to this Agreement and as more particularly described therein.

Other Agreements. The Lakeview South Sale Agreement, Lakeview Parcels Sale Agreement, Lakeview Joint Use Agreement, the Entry Agreement, the Seattle-Tacoma South Service Agreement (as amended by the Seattle-Tacoma Service Agreement Amendment), and any other agreement to be executed by BNSF or Sound Transit pursuant to the terms of any of the foregoing agreements.

Property. The North Rail Line Property.

Purchase Price. As defined in Section 2.

North Rail Line Property. That portion of BNSF's Lakeview Subdivision more particularly described on Exhibit A attached hereto (the "Land") together with:

All of BNSF's right, title, and interest in and to the buildings 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"); All of BNSF's right, title and interest (subject to the provisions of the Assignment) in and to the Third Party Leases/Easements/Licenses as of the date of Closing.

North Rail Line Property Note. The Promissory Note in the form attached hereto as Exhibit G.

Retained Railroad Easement. That permanent and unconditional common carrier rail easement reserved by BNSF in the Deed.

Review Period. The period commencing on the Contract Date and ending on September 1, 2004.

Seattle-Tacoma South Service Agreement. That certain Commuter Rail Service Agreement between Sound Transit and BNSF dated as of April 6, 2000.

Seattle-Tacoma Service Agreement Amendment. That certain Amendment dated as of the date hereof to the Seattle-Tacoma South Service Agreement.

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

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	Description of North Rail Line Property
Exhibit B	Form of Deed
Exhibit C	BNSF Disclosures
Exhibit D	Sound Transit Disclosures
Exhibit E	Assignment of Third Party Leases/Easements/Licenses
Exhibit F	List of Known Third Party Leases/Easements/Licenses
Exhibit G	Form of North Rail Line Property Note

Section 2. Purchase and Sale.

BNSF agrees to sell to Sound Transit, and Sound Transit agrees to purchase from BNSF, the North Rail Line Property. Sound Transit shall pay BNSF the purchase price of \$13,400,000 (the "Purchase Price") for the Property as follows:

1. On the Contract Date Sound Transit shall pay the sum of \$1,400,000 (the "Earnest Money").
2. On the Closing Date Sound Transit shall pay the sum of \$6,000,000 and shall execute and deliver the North Rail Line Property Note in the amount of \$6,000,000.
3. Sound Transit shall pay amounts due under the North Rail Line Property Note as and when stated therein.

The Purchase Price shall be paid to BNSF in United States dollars, by Federal Reserve System wire transfer (in accordance with written wire transfer instructions provided by BNSF to Sound Transit) or other immediately available funds acceptable to BNSF. The Purchase Price shall be subject to prorations and adjustments as set forth in this Agreement. Sound Transit acknowledges that, except as stated in Section 4.1 and Section 10.2 of this Agreement, the Earnest Money is non-refundable and represents a portion of the consideration for BNSF's Seller's holding the Property available for purchase during the Review Period but shall be applied to the Purchase Price at Closing as stated above.

Section 3. Adjustments.

3.1 Third Party Leases/Easements/Licenses. BNSF shall be entitled to all sums due from any Third Party Leases/Easements/Licenses (collectively, "**Third Party Rents**") for the month in which the Closing occurs on the portion of the Property to which such Third Party Leases/Easements/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 Sound Transit shall remit to BNSF any such Third Party Rents received by it after such Closing. Sound Transit shall be entitled to any Third Party Rents that relate to time periods after the month in which the Closing occurs on the portion of the Property to which such Third Leases/Easements/Licenses relate and BNSF shall pay to Sound Transit any such Third Party Rents received by BNSF, if any. Within 90 days after Closing BNSF will pay to Sound Transit the amount, if any, of all rents under the Leases and all security deposits held by BNSF under the Leases.

3.2 Taxes. There will be no proration of real estate taxes. From and after the Closing, the payment of future real estate taxes for their respective improvements on the Property; provided however that Tenants shall pay all leasehold excise taxes assessed against the Property to the extent set forth in the applicable Third Party Lease/Easement/License.

3.3 Closing Costs. BNSF shall pay one-half of any escrow or closing agent charges in connection with the Closing. Sound Transit and BNSF shall each pay their own attorneys' fees and costs in connection with the negotiation of this Agreement, the Other Agreements and the closings hereunder. Sound Transit shall pay all other closing costs associated with the closings of the transactions contemplated herein including, but not limited to, the following:

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

Section 4. Inspections.

4.1 Physical/Environmental Inspection. Sound Transit shall have until the end of the Review Period to determine if there are any physical conditions including, but not limited to, environmental conditions affecting the Property that would make the Property unsuitable for Sound Transit's intended use of the Property for commuter operations. If Sound Transit identifies an existing condition affecting the Property (a "**Physical Condition**") that would make the Property unsuitable for Sound Transit's intended use of the Property and BNSF is not willing to verify in writing that such Physical Condition is a condition for which BNSF is obligated to remediate, repair, maintain or provide indemnification for Sound Transit pursuant to Section 7 of this Agreement, then Sound Transit may terminate this Agreement by written notice to BNSF received no later than the expiration of the Review Period. If Sound Transit does so terminate this Agreement then BNSF shall retain the Earnest Money and neither party shall have any further obligation hereunder except those that expressly survive termination. If Sound Transit does not so terminate this Agreement prior to the end of the Review Period, the parties shall proceed to Closing according to the remaining provisions of this Agreement. Promptly upon BNSF's written request, Sound Transit shall deliver a copy of any written inspection report, survey or test result received by Sound Transit. If any of such items reveal any adverse

conditions for which BNSF would be responsible for under Section 7 of this Agreement or the Lakeview Joint Use Agreement, BNSF may terminate this Agreement by written notice to Sound Transit and refund of the Earnest Money in which case neither party shall have any further obligation hereunder except those that expressly survive termination

4.2 Title/Survey Inspection. Sound Transit will have until the expiration of the Review Period to obtain any title reports, title commitments or surveys of the Property and examine such reports, commitments or surveys, determine whether Sound Transit will be able to obtain any title insurance endorsements it desires, and give written notice to BNSF of any objections to the title or the matters disclosed by the survey that Sound Transit may have. If Sound Transit fails to give any notice to BNSF by such date, Sound Transit shall be deemed to have waived such right to object to any title exceptions or defects. If Sound Transit does give BNSF timely notice of objection to any title exceptions or defects or, subject to the provisions of Section 4.1 regarding Physical Conditions, survey matters (collectively, "Title/Survey Objections") then BNSF may elect to cure or satisfy any such Title/Survey Objections, which cure may be accomplished by providing an endorsement or other title insurance to insure against any such Title/Survey Objections. If BNSF does not so elect to cure or satisfy any Title/Survey Objection then Sound Transit may elect, by written notice to BNSF either to (a) terminate this Agreement by written notice to BNSF delivered no later than the date that is 15 business days after BNSF notifies Sound Transit of its election not to cure such Title/Survey Objection in which BNSF shall retain the Earnest Money and neither party shall have any further rights or obligations hereunder, except for those which expressly survive any such termination, or (b) waive its objections hereunder and proceed with the transaction pursuant to the remaining terms and conditions of this Agreement. If Sound Transit fails to so give BNSF notice of its election by such date, it shall be deemed to have elected the option contained in subpart (b) above. If BNSF does so cure or satisfy such Title/Survey Objections to the reasonable satisfaction of Sound Transit, then this Agreement shall continue in full force and effect. Sound Transit shall have the right at any time to waive any objections that it may have made and, thereby, to preserve this Agreement in full force and effect. Sound Transit shall promptly upon receipt deliver to BNSF a copy of any such title report, title commitment or survey obtained by Sound Transit.

4.3 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/Easement/License. Sound Transit acknowledges and affirms 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. Sound Transit is willing to accept the Property on this basis. BNSF does represent and warrant that BNSF's ownership interest in and to the Property subject to the Third Party Leases/Easements/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.

Section 5. Representations and Warranties.

5.1 BNSF. As of the Contract Date and Closing Date, BNSF hereby represents and warrants to Sound Transit 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 each Closing and the performance of its obligations hereunder and thereunder.

(c) This Agreement and the other documents to be delivered by BNSF at each Closing have been, or before the Closing Date will have been, duly authorized and executed (and acknowledged where necessary) and delivered by BNSF, and all other necessary actions have been, or before the Closing Date will have been, taken, so that this Agreement, the Other Agreements and all documents to be executed by BNSF pursuant hereto constitute, or before the Closing Date will constitute the legally valid and binding obligations of BNSF, enforceable against BNSF in accordance with their terms, except as the enforceability of this Agreement may be subject to or limited by bankruptcy, insolvency, reorganization, arrangement, moratorium 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 each Closing do not violate or conflict with BNSF's articles of incorporation or bylaws or by any law, court order, administrative agency order or regulatory agency order binding upon BNSF or any of its properties.

(e) BNSF has not received any written notice of any actual or pending litigation or proceeding by any organization, person, individual or governmental agency against BNSF asserting that that BNSF does not have sufficient ownership interest in the Property for conducting railroad operations.

(f) 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.

(g) 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 affecting the Property.

(h) Sound Transit 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.

(i) BNSF has no knowledge of any written notice of any alleged violation of any Environmental Laws concerning the Property that remain uncured.

(j) To BNSF's actual knowledge, the Property is not subject to any leases, tenancies or rights of persons in possession other than the Third Party Leases/Easements/Licenses. However, Sound Transit acknowledges that BNSF does not warrant that there are not other existing leases, franchises, easements, occupancy agreements, licenses or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting or relating to, or affecting the Property. To BNSF's actual knowledge: the Third Party Leases/Easements/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/Easement/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 Sound Transit.

(k) To BNSF's actual knowledge, the copies of the Third Party Leases/Easements/Licenses, are true and correct copies of originals of such documentation in BNSF's possession. BNSF shall deliver to Sound Transit within 90 days after Closing the originals of such Third Party Leases/Easements/Licenses.

5.2 Sound Transit. As of the Contract Date, Sound Transit hereby represents and warrants to BNSF that the following statements are materially true except as may otherwise be disclosed on Exhibit D:

(a) Sound Transit is a regional transit authority duly organized, validly existing and in good standing under the laws of the State of Washington, 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) Sound Transit has taken all corporate action necessary to authorize the execution and delivery by Sound Transit of this Agreement and the other documents to be delivered by Sound Transit at each Closing and the performance of its obligations hereunder and thereunder.

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

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

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

5.3 Miscellaneous. As used herein, the phrase "BNSF's knowledge" or any derivation thereof shall mean the actual knowledge of David P. Schneider, General Director of Real Estate for BNSF without any obligation on the part of such individual to investigate the matters represented and warranted. It shall be a condition of the parties' respective obligation to Close that the representations and warranties of the other party contained in this Section 5 are true and correct in all material respects at the Closing Date. In the event that BNSF or Sound Transit learns that any of either party's representations or warranties becomes inaccurate between the Contract Date and the Closing Date, BNSF or Sound Transit, as applicable, shall immediately notify the other party in writing of such change. In the event the party whose representation or warranty becomes inaccurate (the "**Representing Party**") cures such inaccuracy prior to the next Closing Date this Agreement shall remain in full force and effect. If the Representing Party does not so cure such inaccuracy, the other party may pursue any remedy provided for in Section 10 provided, however, if the non-Representing Party closes with knowledge of any such inaccuracy then the representations and warranties of the Representing Party shall be deemed to be amended such that the applicable inaccuracy is an exception to the Representing Party's

representations and warranties for all purposes under this Agreement. 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 twelve (12) months after the Closing Date of such expenses and inaccuracy, and (ii) the Representing Party shall in no event be responsible for any consequential or punitive damages resulting from such inaccuracy. Notwithstanding anything to the contrary contained in this Agreement, the non-Representing Party shall have no right to recover from, or proceed against, the Representing Party in any manner whether based upon breach of contract, tort or otherwise upon the expiration of such twelve month period except to the extent the non-Representing Party has so notified the Representing Party in accordance with the terms of this Agreement within such twelve month period.

Section 6. Condition of Property. Sound Transit has been, or by Closing will have been, allowed to make an inspection of the Property. Subject to BNSF's obligations under the Lakeview Joint Use Agreement or Section 7 of this Agreement **SOUND TRANSIT IS PURCHASING ITS INTERESTS IN THE PROPERTY IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, IS NOT RELYING ON, AND HEREBY WAIVES ANY WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM BNSF WITH RESPECT TO ANY MATTERS CONCERNING THE 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, under, or in proximity to 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 (except as otherwise provided in Section 5.1 hereof), and the Third Party Leases/Easements/Licenses permits, orders, or other agreements, affecting the Property (collectively, the "**Condition of the Property**"). Sound Transit represents and warrants to BNSF that except for the express representations and warranties of BNSF in this Agreement, Sound Transit 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. Subject to BNSF's obligations under the Lakeview Joint Use Agreement or Section 7 of this Agreement Sound Transit assumes the risk that Hazardous Substances or other adverse matters may affect the Property that were not revealed by Sound Transit's inspection and except to the extent of BNSF's obligations under the Lakeview Joint Use Agreement or Section 7 of this Agreement, waives, releases and discharges forever BNSF and BNSF's officers, directors, shareholders, employees and agents (collectively, "**Releasees**") from any and all present or future claims or demands, and any and all damages, Losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown, which Sound Transit might have asserted or alleged against Releasees 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, and any similar or comparable state or local law. The term **"Hazardous Substance"** means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

BNSF and Sound Transit 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.

Section 7. Environmental Obligations.

7.1 **Definitions.** The following additional capitalized terms shall have the meanings ascribed to them below when used in this Section 7:

(a) **"BNSF Party"** means one or more of (i) BNSF's officers, directors, employees, agents, or contractors while using or on the Property, in connection with performing duties of any kind for BNSF, including, among others, performing duties related to the Property, providing Commuter Rail Service, or otherwise providing Contract Services under that certain Commuter Rail Service Agreement between BNSF and Sound Transit dated as of April 6, 2000 as amended from time to time (the **"Seattle/Tacoma Commuter Service Agreement"**) and under the Lakeview Joint Use Agreement, but excluding any such person who is a fare paying passenger on board a passenger train operating in Commuter Rail Service, (ii) Customers, or (iii) Grantees/Tenants.

(b) **"Commuter Rail Service"** means any of Sound Transit's or Sound Transit Parties' operations on the Property including, but not limited to, operations performed by contractors of Sound Transit and operations defined as **"Commuter Rail Service"** under the Seattle/Tacoma Commuter Service Agreement.

(c) **"Customers"** means any persons (other than a Sound Transit Party) who receive services of BNSF involving use of the Property.

(d) **"Environmental Loss or Damage"** means all fines, penalties, liability, cost, damages, injuries, deaths, losses, expenses, fees, charges, cleanups, removals, remediations, or any other cost, requirement, or liability whatsoever and all expenses and attorneys' fees, arising from, resulting from, related to, or incurred in connection with actions, judgments, suits, claims, (formal or informal), or contentions of any kind or nature whatsoever, raised by any person or entity of any kind at any time with respect to contamination, waste (hazardous and non-hazardous), pollution, garbage, trash, hazardous materials, or environmental hazards or conditions of any kind or nature whatsoever, and including without limitation damages or injuries to a person or private or public property (real or personal, and including without limitation natural resources) but shall not include damages related to diminution in value of the Property.

(e) **"Grantee/Tenant"** means Persons (other than a Sound Transit Party) that used the Property themselves on or prior to the Closing under authority of or by agreement with BNSF.

(f) **"Parties"** means, collectively, BNSF and Sound Transit.

(g) **"Sound Transit Party"** means one or more of (i) Sound Transit's officers, directors, employees, agents or contractors including any operator of commuter service (other than a BNSF

Party) while on or using the Property or performing duties related to the Property, or performing duties related to the provision of Commuter Rail Service, (ii) any passenger of a Sound Transit train (other than a BNSF Party) while such passenger is on the Property, or (iii) any other person (other than a BNSF Party) at or proximate to a commuter rail station used by Sound Transit who is there for the purpose of (A) boarding or detraining from a Sound Transit train, meeting or accompanying a ticketed passenger or a person intending to become a ticketed passenger on a Sound Transit train, purchasing a Sound Transit commuter rail ticket, making a reservation for a Sound Transit train, attending a special event sponsored by or held on behalf of Sound Transit, or obtaining information about Sound Transit Commuter Rail Service or conducting business with Sound Transit, or (B) providing local transportation to or accompanying a person described in this subsection in (g)(iii)(A) above.

(h) **“Third Party”** means a person or entity that is not a BNSF Party or a Sound Transit Party.

7.2 Environmental.

A. Subject to Subsections 7.3 and 7.2.E., as between the Parties, Sound Transit shall bear all Environmental Loss or Damage, other than to a BNSF Party, caused by or arising or resulting from the operation of Commuter Rail Service.

B. Subject to Subsections 7.3 and 7.2.E., as between the Parties, BNSF shall bear all Environmental Loss or Damage, other than to a Sound Transit Party, caused by or arising or resulting from (i) the use of the Property after Closing, other than operation of Commuter Rail Service, by BNSF or Customers, or (ii) any Physical Conditions caused by BNSF's or BNSF Parties' use of the Property on or prior to the Closing.

C. Subject to Subsection 7.3, if any Environmental Loss or Damage is caused by or arises or results from both the operation of Commuter Rail Service and BNSF's or a BNSF Party's past, present, or future use of the Property other than operation of Commuter Rail Service, then, as between the Parties, Sound Transit shall bear so much of such Environmental Loss or Damage as was contributed by the operation of Commuter Rail Service, and BNSF shall bear so much of such Environmental Loss or Damage as was contributed by (i) the use of the Property after Closing, other than operation of Commuter Rail Service, by BNSF or Customers, or (ii) any Physical Conditions caused by BNSF's or BNSF Parties' use of the Property on or prior to the Closing.

D. The responsibility for obtaining permits and mitigation of environmental impacts for improvements to be constructed on the Property post-Closing shall be as set forth in the Lakeview Joint Use Agreement.

E. Subject to Subsection 7.3., if any Environmental Loss or Damage is caused by or arises or results from both (a) the operation of Commuter Rail Service and (b) (i) the use of the Property after Closing, other than operation of Commuter Rail Service, by BNSF or Customers, or (ii) any Physical Conditions caused by BNSF's or BNSF Parties' use of the Property on or prior to the Closing, then, as between the Parties, Sound Transit shall bear so much of such Environmental Loss or Damage as was contributed by the operation of Commuter Rail Service, and BNSF shall bear so much of such Environmental Loss or Damage as was contributed by (i) the use of the Property after Closing, other than operation of Commuter Rail Service, by BNSF or Customers, or (ii) BNSF's or BNSF Parties' use of the Property on or prior to the Closing.

F. Sound Transit agrees to release BNSF (including for all purposes of this paragraph, BNSF's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns) from any claims it could otherwise assert against BNSF for Environmental Loss or Damage to the extent Sound Transit is liable under the provisions of this Section 7, whether or not such Environmental Loss or Damage is the result of the negligence of BNSF (other than gross negligence or willful or wanton misconduct or negligence), including without limitation any Environmental Loss or Damage awarded in any court action.

G. BNSF agrees to release Sound Transit (including for all purposes of this paragraph Sound Transit's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns, the State of Washington, and King, Pierce, and Snohomish counties in the State of Washington), from any claims it could otherwise assert against Sound Transit for Environmental Loss or Damage to the extent that BNSF is liable under the provisions of this Section 7, whether or not such Environmental Loss or Damage is the result of the negligence of Sound Transit (other than gross negligence or willful or wanton misconduct or negligence), including without limitation any Environmental Loss or Damage awarded in any court action.

H. To the extent permitted by law, each party shall pay all Environmental Loss or Damage for which such party shall be liable under the provisions of this Section 7, and shall defend, indemnify and hold harmless the other party (including without limitation the other party's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns), against such Environmental Loss or Damage.

I. The indemnification obligations assumed by the Parties hereunder shall include without limitation any liability, suits, claims, damages, judgments, lawsuits, demands, causes of action, losses and expenses under the Federal Employer's Liability Act, the Safety Appliance Act, or the Boiler Inspection Act, including claims for strict liability.

J. For purposes of this Section 7, BNSF and Sound Transit, by mutual negotiation, hereby waive, with respect to the other only, any immunity against claims for which they have assumed and indemnification obligation hereunder that would otherwise be available under the industrial insurance provisions of Title 51 Revised Code of Washington or other applicable disability benefits or employee benefits acts.

K. Other provisions of this Agreement notwithstanding, nothing in this Agreement is intended to be construed as a requirement for an indemnification against gross negligence or willful or wanton misconduct or negligence.

L. In the event BNSF or Sound Transit incurs attorney's fees, costs or other legal expenses to enforce the provisions of this Section 7 against the other, it shall have the right to recover all such reasonable fees, costs and expenses from the other including those incurred on appeal.

M. If any provision of this Agreement purports to indemnify a party against Environmental Loss or Damage and such indemnification would be prohibited by or unenforceable under the binding laws of the State of Washington (including a determination that indemnification under the circumstances involved is against public policy of the State of Washington), the indemnity provided by such provision shall be deemed to be limited to and operative only to the maximum extent permitted by law.

N. Each party to this Agreement shall have the right to settle, or cause to be settled for it, all claims for Environmental Loss or Damage for which such party is liable under the provisions of

this Section 7 and to defend or cause to be defended all suits for the recovery of any such Environmental Loss or Damage.

O. In the event a suit is commenced against any party hereto or a claim is asserted for or on account of an Environmental Loss or Damage for which another party hereto may be solely or jointly liable under the provisions of this Section 7, the party so sued or against whom the claim is asserted shall promptly notify the other party in writing of the pendency of the suit or claim, and thereupon such other party shall assume or join in the defense of such suit or claim.

P. In the event that both of the Parties may be liable for any Environmental Loss or Damage and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the Parties who may be jointly liable therefor, a release from liability shall be taken for and in the name of all of the Parties who may be so liable. Prior to settling any claim or suit for an amount in excess of one hundred thousand dollars (\$100,000), the settling party shall obtain the written consent of the other party, which consent shall not be unreasonably withheld. The party being requested to give consent shall provide a response within 30 days of the request being made. In the event that a response is not received within said 30 days it shall be conclusively presumed that such consent has been given. Giving of such consent, impliedly or expressly, shall not be deemed an admission that such claim involves joint liability.

Q. Neither party hereto shall be conclusively bound by any judgment against the other party, unless the party shall have had reasonable notice requiring it to defend and reasonable opportunity to make such defense. As between the Parties only, when such notice and opportunity shall have been given, the party so notified shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit.

7.3 Except to the extent of any insurance covering such liability required to be maintained by either party pursuant to any agreement between the parties, as between the Parties, to the extent Environmental Loss or Damage is caused by or arises from the gross negligence or willful or wanton misconduct of a party to this Agreement (including that party's officers, directors, agents, employees, and contractors), such Environmental Loss or Damage shall be borne exclusively by that party.

Section 8. Conditions to Closing. Each party's obligation to proceed to Closing under this Agreement is subject to the following conditions precedent:

- (a) The other party to this Agreement shall have performed and satisfied each and all such other party's obligations under this Agreement and Other Agreements; and
- (b) Each and all of such other party's representations and warranties set forth in this Agreement and the Other Agreements shall be true and correct at the Contract Date and at the Closing Date.

In the event any of the foregoing conditions are not satisfied prior to or at the Closing, subject to Section 5.3 hereof, the party for whom such condition applies may terminate this Agreement by written notice to such other party and thereafter shall have no obligation to proceed with the Closing and neither party shall have any further obligation hereunder except those that expressly survive the termination of this Agreement.

Section 9. Closing.

9.1 Time and Place. Provided that all of the conditions set forth in this Agreement are theretofore fully satisfied or performed, on each Closing Date, Closing shall occur at the office of Preston, Gates and Ellis at

925 Fourth Avenue, Suite 2900, Seattle, Washington or such other location as is mutually agreeable to Sound Transit and BNSF.

9.2 Closing Deliveries. (a) At the Closing, Sound Transit shall deliver the cash portion of the Purchase Price as contemplated in Section 2 of this Agreement and the North Rail Line Property Note.

(b) At the Closing, BNSF and Sound Transit shall execute and deliver to the other party the following documents (all of which shall be duly executed, and witnessed and/or notarized as necessary):

- (1) The Deed conveying the North Rail Line Property.
- (2) A Closing Statement in form and substance mutually satisfactory to Sound Transit and BNSF.
- (3) The Assignment concerning the North Rail Line Property.
- (4) Such transfer tax, certificate of value or other similar documents customarily required of BNSF in the county in which the Property is located.
- (5) 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.

Section 10. Default and Remedies.

10.1 Sound Transit's Default. Subject to Section 5.3, in the event of a material default by Sound Transit under the terms of this Agreement or any Other Agreement prior to the Closing and that is not cured within any applicable notice and cure periods, BNSF may elect to either (a) terminate this Agreement and retain the Earnest Money, in which case neither party shall have any further obligation under this Agreement except those that expressly survive termination, or (b) waive such default and proceed to Closing in accordance with the terms of this Agreement. Subject to Section 5.3, nothing in this Agreement shall waive or diminish any right or remedy BNSF may have at law, in equity or in contract for Sound Transit's default under any document entered into by Sound Transit at Closing or under any Other Agreement or Sound Transit'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 or any Other Agreement prior to the Closing and that is not cured within any applicable notice and cure periods, Sound Transit may elect to (a) terminate this Agreement and receive a refund of the Earnest Money upon which case neither party shall have any further obligation under this Agreement except those that expressly survive termination, (b) obtain specific performance of BNSF's obligations under this Agreement, or (c) waive such default and proceed to Closing in accordance with the terms of this Agreement. Subject to Section 5.3, nothing in this Agreement shall waive or diminish any right or remedy Sound Transit 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.

Section 11. Assignment. Sound Transit may not assign its rights under this Agreement. BNSF may assign its rights and obligations under this Agreement to any entity who succeeds BNSF as the owner of the Property.

Section 12. Brokers and Brokers' Commissions. Sound Transit and BNSF each warrant and represent to the other that neither party has employed a real estate broker or agent in connection with the transaction

contemplated hereby. Each party agrees to indemnify and hold the other harmless from any loss or cost suffered or incurred by it as a result of the other's representation herein being untrue.

Section 13. Notices.

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

Sound Transit
401 S. Jackson St
Seattle, WA 98104-2826
ATTN: CEO

With an additional copy to:

Sound Transit
401 S. Jackson St
Seattle, WA 98104-2826
ATTN: Commuter Rail Director

or to BNSF at:

The Burlington Northern and
Santa Fe Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76131
ATTN: Rick Weicher

With additional copy to:

The Burlington Northern and
Santa Fe Railway Company
401 S. Jackson St
Seattle, WA 98104-2826
ATTN: Superintendent of Commuter Operations

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

Section 14. Miscellaneous.

14.1 Governing Law; Headings; Rules of Construction. This Agreement shall be governed by and construed in accordance with the internal 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 Entry Agreement and the Other Agreements; this Agreement contains the entire agreement of the parties hereto with respect to the Property and any other prior understandings or agreements are merged herein and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein or incorporated herein by reference shall be of any force or effect.

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

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

14.6 Date For Performance. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires on a Saturday, Sunday or legal or bank holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.

14.7 Recording. BNSF and Sound Transit 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 shall be of the essence of this Agreement and each and every term and condition hereof.

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

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

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

14.13 Publicity. BNSF and Sound Transit 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. BNSF AND SOUND TRANSIT 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.

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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.

**THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY**

By: *Muhammad Nore*
Name: _____
Title: *CEO*

**CENTRAL PUGET SOUND REGIONAL TRANSIT
AUTHORITY**

By: *Joan M. Earl*
Name: *JOAN M. EARL*
Title: *CEO*

EXHIBIT A

DESCRIPTION OF NORTH RAIL LINE PROPERTY

The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway Company) property along the portion of the subdivision commonly known as the Lakeview Subdivision from Tacoma (Milepost 2.15) to Lakeview (MP 8.9), Pierce County, Washington, the centerline of such property being described as follows:

Beginning at the point of intersection of said Main Track centerline with the centerline of South Tacoma Avenue, said point being 360 feet East and 110 feet South of the West Quarter Corner of Section 9, Township 20 North, Range 3 East, W. M., in the City of Tacoma, Washington; thence Southwesterly along a $5^{\circ} 45'$ curve concave Northwesterly, central angle of $29^{\circ} 40'$, length of 515.9 feet to a point of spiral, said curve intersects the West line of said Section 9 at a point 411.5 feet South of the West Quarter Corner of said Section 9; thence Southwesterly along a spiral to the right 161 feet to a point of tangent; thence Southwesterly 38.1 feet to a point of spiral; thence Southwesterly along a spiral to the left 160 feet to a point of curve; thence Southwesterly along a $7^{\circ} 30'$ curve concave Southeasterly, central angle of $18^{\circ} 00'$, length of 240 feet to a point of spiral; thence Southwesterly along a spiral to the left 160 feet; thence Southwesterly 130.2 feet to a point of spiral; thence Southwesterly along a spiral to the right 180 feet to a point of curve; thence Southwesterly along an $8^{\circ} 24'$ curve concave Northwesterly, central angle of $26^{\circ} 00'$, length of 309.5 feet to a point of spiral; thence Southwesterly along a spiral to the right 180 feet to a point of tangent; thence Southwesterly 252.9 feet to a point of spiral; thence Westerly along a spiral to the right 154 feet to a point of curve; thence Westerly along a $6^{\circ} 06'$ curve concave Northerly, central angle of $13^{\circ} 03'$, length of 213.9 to a point of spiral; thence Westerly along a spiral to the right 154 feet to a point of tangent; thence Northwesterly 709.1 feet to a point of curve; thence Northwesterly along a 1° curve concave Southwesterly, central angle of $3^{\circ} 15'$, length of 325 feet to a point of tangent; thence Northwesterly 1,515.6 feet to a point of curve; thence Westerly along a 2° curve concave Southerly, central angle of $28^{\circ} 20'$, length of 1,416.7 feet to a point of tangent; thence Southwesterly 1,341.8 feet to a point of curve; thence Southwesterly along a 2° curve concave Southeasterly, central angle of $27^{\circ} 02'$, length of 1,351.67 feet to a point of tangent; thence Southwesterly to a point on the South line of Section 7, T20N, R3E, distant 1,242.8 feet West of the Southwest corner of said Section 7; thence continuing Southwesterly along the last described course 1,673.5 feet to a point of curve; thence Southwesterly and Southerly along a 2° curve concave Easterly, central angle of $48^{\circ} 58'$, length of 2,448.3 feet to a point of tangent; thence Southerly 7,189 feet, more or less, to a point on the South line of Section 24, T20N, R2E distant 334 feet East of the Southeast corner of said Section 24; thence continuing Southerly along the last described course 1,389.4 feet to a point of curve; thence Southerly along a 1° curve concave Westerly, central angle of $7^{\circ} 30'$, length of 750 feet to a point of compound curve; thence Southerly along a $0^{\circ} 24'$ curve concave Westerly, central angle of $9^{\circ} 36'$, length of 2,400 feet to a point of tangent; thence Southwesterly 814 feet, more or less, to a point on the South line of Section 25, T20N, R2E distant 860.5 feet West of the Southeast corner of said Section 25; thence continuing Southwesterly along the last described course 5,455.2 feet, more or less, to a point on the South line of Section 36, T20N, R2E distant 442.6 feet East of the South Quarter Corner of said Section 36; thence continuing Southwesterly along the last described course 317.3 feet to a point of curve; thence Southerly along a 1° concave Easterly, central angle of $8^{\circ} 30'$, length of 850 feet to a point of tangent; thence Southerly 1,917.5 feet to the headblock of American Lake Line; thence Southerly through a No. 9 turnout along a $7^{\circ} 30'$ curve to the right a distance of 99.3 feet; thence Southerly tangent to said curve 75 feet to a point of curve; thence Southerly along a 5° curve to the left, central angle of $6^{\circ} 21' 35''$, length of 84.5 feet to a point of tangent; thence Southerly 1,595.2 feet to a point of curve; thence Southwesterly along a $5^{\circ} 22'$ curve concave Westerly, a distance of 315 feet, more or less, to the point of intersection with the South line of Section 1, T19N, R2E distant 355

feet West of the South Quarter Corner of said Section 1; thence continuing Southwesterly along the last described curve a distance of 157.5 feet to a point of compound curve; thence continuing Southwesterly along a 4° 33' curve concave Northwesterly, central angle of 17° 49', length of 391.6 feet to a point of tangent; thence Southwesterly along said American Lake Line, through the NW¼ of Section 12, being the centerline of Bridgeport Way SW and there terminating.

Prior to the Closing Date, BNSF shall provide Sound Transit (at BNSF's expense) a metes and bounds legal description of the boundaries of the property whose centerline is described above, which shall be used in the legal description contained in the Deed.

LESS AND EXCEPT:

1. The property lying outside of 50 feet in either direction from the centerline of the above referenced property between: (a) milepost 4.14 to milepost 5.97, and (b) milepost 7.93 to milepost 8.34. Prior to the Closing Date, BNSF shall provide Sound Transit (at BNSF's expense) a legal description of the property described in this paragraph 1 which shall be used in the legal description contained in the Deed.
2. All that portion of The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway Company) 100.0 foot wide Tacoma to Lakeview, Washington Branch Line right of way, being 50.0 feet wide on each side of said Railway Company's Main Track centerline, as originally located and constructed upon, over and across the E½SE¼ of Section 24, Township 20 North, Range 2 East, W. M., Pierce County, Washington, bounded on the North by the South right of way line of South 56th Street, and bounded on the South by the North right of way line of South 60th Street in the City of Tacoma, Washington, EXCEPTING THEREFROM, 15.0 foot wide corridor, being 7.5 feet wide on each side of said Main Track centerline, as now located and constructed.
3. All that portion of The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway Company) 100.0 foot wide Lakeview to Nisqually, Washington Branch Line right of way, being 50.0 feet wide on each side of said Railway Company's Main Track centerline, as originally located and constructed upon, over and across the NW¼ of Section 12, Township 19 North, Range 2 East, W. M., Pierce County, Washington, bounded on the Northeast by a line drawn parallel with and 200.0 feet normally distant Westerly from said Railway Company's Lakeview to Tenino, Washington Main Track centerline, as originally located and constructed, and bounded on the Southwest by the East right of way line of Bridgeport Way SW, EXCEPTING THEREFROM, 15.0 foot wide corridor, being 7.5 feet wide on each side of said Main Track centerline, as now located and constructed.
4. That portion of The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway Company) 400.0 foot wide Station Ground property at Lakeview, Washington, being 200.0 feet wide on each side of said Railway Company's Lakeview to Tenino, Washington Main Track centerline, as originally located and constructed upon, over and across the E½NW¼ of said Section 12, Township 19 North, Range 2 East, W. M., Pierce County, Washington, lying between two lines drawn parallel with and distant, respectively, 25.0 feet and 200.0 feet Westerly, as measured at right angles from said Main Track centerline, bounded on the South by the Northwesterly right of way line of Pacific Highway SW, and bounded on the North by a line drawn at right angles to said Main Track centerline from a point 155.0 feet Southerly of the North line of said Section 12, as measured along said Main Track centerline, EXCEPTING THEREFROM, 15.0 foot wide corridor, being 7.5 feet wide on each side of said Main Track centerline, as now located and constructed.

EXHIBIT B

After Recording Return To:

Central Puget Sound Regional
Transit Authority
401 S. Jackson St
Seattle, WA 98104-2826
Attn: Jordan Wagner, Esq.

QUIT CLAIM DEED
(Lakeview North Line Sale)

Grantor: THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Grantee: CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY

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), and under threat of condemnation, conveys and quit claims to Grantee, the Property, situated in the County of Pierce, State of Washington, together with all after acquired title of the Grantor therein;

EXCEPTING AND RESERVING THEREFROM, the following easements, covenants, conditions and restrictions, which Grantor and Grantee acknowledge and agree shall run with the land and be binding upon the successors and assigns of Grantor and Grantee:

(1) Grantor reserves for itself and its successors and assigns an exclusive easement for freight railroad purposes, including, but not limited to, the construction, maintenance, repair, replacement and operation of freight rail and associated facilities, subject to the provisions of the Lakeview Joint Use Agreement (defined below).

(2) Grantor and Grantee have entered into that certain Joint Use Agreement (Lakeview) dated as of December 17, 2003 (the "Lakeview Joint Use Agreement") concerning the operation and use of the Property. The terms and conditions of the Lakeview Joint Use Agreement are incorporated herein as restrictions encumbering the Property as if fully set forth in this instrument and such terms shall be in full force and effect for purposes of this instrument even if the Lakeview Joint Use Agreement is, for whatever reason, no longer in effect, unless otherwise agreed by the parties in a document signed by both parties and recorded in the real estate records for the County of Pierce.

(3) Grantee must operate any commuter passenger train and related equipment on the Property in a manner that (a) complies with the requirements of 49 C.F.R. Part 238, as such requirements may be amended or waived by the Federal Railroad Administration or any successor agencies (collectively, the "FRA"), and (b) uses only trains and other equipment that do not qualify as

light rail operations (as determined by the FRA) if such light rail operations would inhibit freight rail operations.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Deed as of the _____ day of _____, 200_

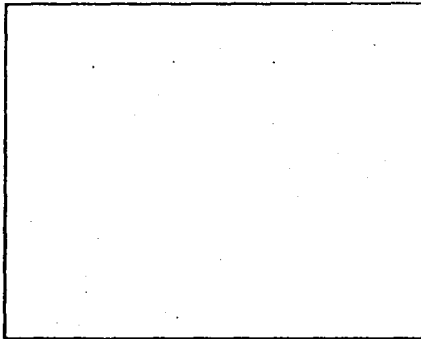
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

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: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

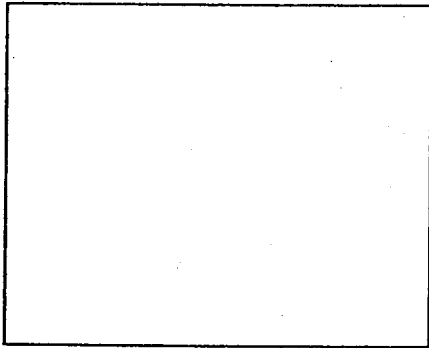
CENTRAL PUGET SOUND REGIONAL TRANSIT
AUTHORITY

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, and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____.



Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)

[Attach Exhibit A]

EXHIBIT C

BNSE Disclosures
(Lakeview North Line Sale)

1. A portion of the Property located between milepost 4.14 to milepost 5.97 contains or contained environmental contamination and is or was included as a superfund site.

EXHIBIT D

Sound Transit Disclosures
(Lakeview North Line Sale)

None.

EXHIBIT E

ASSIGNMENT AND ASSUMPTION OF THIRD PARTY LEASES/EASEMENTS/LICENSES (Lakeview North Line Sale)

THIS ASSIGNMENT AND ASSUMPTION OF THIRD PARTY LEASES/EASEMENTS/LICENSES (this "Assignment") is entered into as of _____, 2003, THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY ("Assignor") and CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY ("Sound Transit") ("Assignee").

RECITALS

- A. Assignor and Assignee are parties to that certain Purchase and Sale Agreement (Lakeview North Line Property) dated as of _____, 2003 (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 those certain leases, easements, and licenses more fully described on Schedule A (the "Third Party Leases/Easements/Licenses").
- 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/Easements/Licenses.

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.** Assignor hereby assigns, grants, transfers and sets over, conveys and delivers unto Assignee all of Assignor's right, title and interest in and under the Third Party Leases/Easements/Licenses subject to the following sentences of this Section. To the extent any Third Party Lease/Easement/License relates to other property owned by Assignor ("Other Property") and to the extent of any rights of Assignor to use any facilities installed on the Property pursuant to such Third Party Lease/License/Easement (such as the right to use fiber optic or other telecommunications capacity) ("Use Rights") then the foregoing assignment shall only apply as to the Property and not apply as to Other Property or to Use Rights (except that to the extent the Use Rights permit Assignor and Assignee to use the Use Rights in common then Assignee may use such Use Rights in common with Assignor.) Assignor and Assignee shall each have the right to exercise any right contained in any Third Party Lease/Easement/License to require the other party thereto to relocate its facilities in connection if required or desirable for either of their respective operations or improvements.
2. **Assumption; Succession.** Assignee hereby assumes all of Assignor's duties and obligations under the Third Party Leases/Easements/Assignments arising and accruing from and after the date of this Assignment and Assignee succeeds to the interests of Assignor under the Third Party Leases/Easements/Assignments. 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 Third Party Leases/Easements/Licenses 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 Third Party Leases/Easements/Licenses prior to the date hereof or related to Other Property or (except to the extent Assignee uses the Use Rights in common with Assignor) the Use Rights not assigned hereunder.
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.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY

By: _____
Name: _____
Title: _____

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY

By: _____
Name: _____
Title: _____

Schedule A – Third Party Leases/Easements/Licenses

**EXHIBIT F
List of Leases**

(North)

Lease #	Lessee	Location	Mile Post	Line Segment	Lease Area SF
235072	Merritt & Pardini	Tacoma	1.28	400	4200
501175	Dale Chihuly	Tacoma	1.57	400	14244
242740	Frank Pupo	Tacoma	1.63	400	20300
242739	Frank Pupo	Tacoma	1.63	400	384
BF 19763	Tacoma Rescue Mission	Tacoma	2.02	400	6750
500126	Atlas Foundry	Tacoma	3	400	15246
500129	Atlas Foundry	Tacoma	3	400	390
500125	Atlas Foundry	Tacoma	3	400	200
501087	South Tacoma Way LLC	Tacoma	3.17	400	5000
500160	Vernon Weber	Tacoma	4.4	400	2700
211567	Northwest Pipe & Steel	Tacoma	4.5	400	45000
81309	Puget Sound Power	Lakeview	8.1	400	4500
59707	Pacific NW Bell	Lakeview	8.2	400	83000
88432	Puget Sound Power	Lakeview	8.4	400	6000
248405	Pacific NW Bell	Lakeview	8.53	400	20
71428	Lakewood Water District	Lakeview	9.1	400	4275
93858**	Puget Sound Power	Lakeview	0.12	401	47200

* Lease is included in all three areas

** Lease is included in Parcels sale area and Lakeview Sub North area

Mile Posts, Distance From Track and Lease Areas are all approximate

EXHIBIT F
List of Easements

(NORTH)

Easement	Title Memo	Party	Location	Date	Description	Notes	Acres		
Easement	BNSF-01056-12	BNSF Ry.	MCI Communications	10/29/1998	10' Eas't extending from M.P. 9.5 to 1.0	Shown on CAD map s62213	Not Shown	S-03a	
Easement	555	N.P. Ry. Co.	City of Tacoma	08/13/1928	Near Intersection of Center St. and Yakima Ave.	Eas't for slope rights along roadway	D-4/14	S-03b	2.24
Easement	720	N.P. Ry. Co.	City of Tacoma	08/15/1960		For Public Stairway Purposes	D-4/14	S-03b	2.28
						Shown as Agreement in Plat book, but as an easement on CAD map s62214			
Agreement	723	N.P. Ry. Co.	City of Tacoma	08/19/1960	Crossing of Yakima Avenue	CAD map s62214	D-4/14	S-03b	2.31
Easement	93.13	BNSF Ry.	Viacom		Crossing of Yakima Avenue	Signboard Easement	Not Shown	S-03b	2.31
Easement	716	N.P. Ry. Co.	City of Tacoma	12/21/1969	Crossing of S. "W" Street		D-4/14	S-03b	2.72
Easement	93.13	BNSF Ry.	Viacom		Crossing of S. "W" Street		Not Shown	S-03b	2.72
						Signboard Easement			
						Ry. Co. admits that the public has obtained prescriptive rights by user to a 32' crossing at Alaska St., 60' at Chandler St., and 80' at Wilkeson St.			
Prescriptive Right	Title Memo 582	N.P. Ry. Co.	Public	04/26/1928	Alaska St., Chandler St. and Wilkeson St.		D-4/12	S-03b	Various
Easement	BNSF-03064	BNSF Ry.	State of Washington	05/08/2003			D-4/11	S-03b	3.28
Easement	760	N.P. Ry. Co.	State of Washington	05/02/1969	Near Ferry Street		D-4/11	S-03c	3.3
Easement	S-811	B.N. Inc.	City of Tacoma	09/16/1971	At Pine Street		D-4/9	S-03c	3.81
Easement	609	N.P. Ry. Co.	City of Tacoma	11/24/1941			D-4/7		4.14
Easement	BNSF-01182	BNSF Ry.	City of Tacoma	02/24/1999			D-4/7		4.2
Easement	93.13	N.P. Ry. Co.	Viacom			Signboard Easement	Not Shown		4.41
Easement	761	N.P. Ry. Co.	City of Tacoma	01/14/1970			D-4/7		4.45
Easement	93.13	BNSF Ry.	Viacom			Signboard Easement	Not shown		4.46
Easement	93.13	BNSF Ry.	Viacom			Signboard Easement	Not shown		4.46
Easement	93.13	BNSF Ry.	Viacom			Easement for 8" Water Main	D-4/7		4.47
Easement	S-2105	B.N. Inc.	City of Tacoma	06/10/1974	Southwest of Union Avenue		D-4/4		4.47
Easement	S-7492	B.N. Inc.	City of Tacoma	08/13/1980		Easement for Water Line	D-4/4		5.44
Easement	S-1511	B.N. Inc.	City of Tacoma	12/15/1972	At 56th Street	Easement for roadway purposes	D-4/2		5.81
Easement	S-7490	B.N. Inc.	City of Tacoma	05/30/1979	At 50th Street	Easement for roadway purposes	D-4/2		5.43
Easement	S-7491	B.N. RR. Co.	City of Tacoma	11/13/1981	At 50th Street	Easement for electric system	D-4/2		5.43
Easement	674	N.P. Ry. Co.	City of Tacoma	10/08/2026	At 66th Street		D-4/53		6.42
Easement	924	N.P. Ry. Co.	State of Washington	05/19/1930		Easement for Highway purposes	D-6/2		7.92
Easement	S-4820	B.N. Inc.	Pierce County	08/12/1980		Easement for Highway purposes	D-6/2		8.0+/-
Easement	S-2453	B.N. Inc.	Pierce County	03/25/1975		Easement for Highway purposes	D-6/3	WA-05/5	8.56
Easement	1059	N.P. Ry. Co.	Pierce County	09/08/1964			D-6/3		8.56
Easement	93.13	BNSF Ry.	Viacom			Signboard Easement	Not shown		8.56
Easement	93.13	BNSF Ry.	Viacom			Signboard Easement	Not shown		8.56
Easement	93.13	BNSF Ry.	Viacom			Signboard Easement	Not shown		8.56

Easement	93.13	BNSF Ry. BNSF Ry.	Viacom Viacom	Signboard Easement Signboard Easement	Not shown Not shown	5	8.56
Easement	93.13	BNSF Ry. BNSF Ry.	Viacom Viacom	Signboard Easement Signboard Easement	Not shown Not shown	5	8.56

EXHIBIT F
List of Licenses

Contract Type	Contract No.	Contractor	Location	Contract Date	Term Date	Description/Line Segment Milepost
PRPW	BF-1554	US WEST COMMUNICATIONS INC.	WA-TACOMA	1997-06-17		FIBER OPTIC CABLE, L.S. 402, MP 11.67
PRPW	BF-1554	US WEST COMMUNICATIONS INC.	WA-TACOMA	1997-06-17		FIBER OPTIC CABLE, L.S. 400, MP 7.89
PRPW	BF-1554	US WEST COMMUNICATIONS INC.	WA-TACOMA	1997-06-17		OHD FIBER OPTIC TELEPHONE CABLE, L.S. 400, MP 0.36
PRPW	BF-1554	US WEST COMMUNICATIONS INC.	WA-TACOMA	1997-07-14		OHD FIBER OPTIC TELEPHONE CABLE, L.S. 400, MP 1.74
PRPW	BF-3819	ELECTRIC LIGHTWAVE INC.	WA-TACOMA	1997-07-03		OHD FIBER OPTIC TELEPHONE CABLE, L.S. 400, MP 4.13
PRPW	BF-3520	ELECTRIC LIGHTWAVE INC.	WA-TACOMA	1997-07-03		OHD FIBER OPTIC TELEPHONE CABLE, L.S. 400, MP 1.90
PRPW	BF-3521	ELECTRIC LIGHTWAVE INC.	WA-TACOMA	1997-07-03		OHD FIBER OPTIC TELEPHONE CABLE, L.S. 400, MP 1.88
PRPW	BF-3522	ELECTRIC LIGHTWAVE INC.	WA-TACOMA	1997-07-14		OHD FIBER OPTIC TELEPHONE CABLE CROSSING, L.S. 400, MP 1.58
PRPW	BF-3523	ELECTRIC LIGHTWAVE INC.	WA-TACOMA	1997-07-14		OHD FIBER OPTIC TELEPHONE CABLE CROSSING, L.S. 400, MP 1.58
PRPW	BF-10829	ADVANCED TELCOM GROUP	WA-TACOMA	1997-07-15		OHD FIBER OPTIC COMMUNICATION CABLE CROSSING, L.S. 400, MP 1.58
PRPW	BF-10830	ADVANCED TELCOM GROUP	WA-TACOMA	1999-11-18		OHD FIBER OPTIC COMMUNICATION CABLE CROSSING, L.S. 400, MP 1.35
PRPW	BF-10830	ADVANCED TELCOM GROUP	WA-TACOMA	1999-11-18		OHD FIBER OPTIC COMMUNICATION CABLE CROSSING, L.S. 400, MP 1.35
PRPW	BF-10830	ADVANCED TELCOM GROUP	WA-TACOMA	1999-11-18		OHD FIBER OPTIC COMMUNICATION CABLE CROSSING, L.S. 400, MP 1.35
PRPW	BF-12542	UNIVERSITY OF WASHINGTON	WA-TACOMA	1999-11-18		OHD FIBER OPTIC COMMUNICATION CABLE CROSSING, L.S. 400, MP 1.28
PRPW	BF-12543	UNIVERSITY OF WASHINGTON	WA-TACOMA	2000-09-20		OHD FIBER OPTIC COMMUNICATION CABLE CROSSING, L.S. 400, MP 1.39
PRPW	BF-15585	METRO MEDIA FIBER NETWORK SERVICES INC.	WA-TACOMA	2000-06-27		OHD PEDESTRIAN UTILITY SKYBRIDGE, L.S. 400, MP 1.39
PRPW	BF-15885	BOARD OF REGENTS OF UNIVERSITY OF WASHINGTON	WA-TACOMA	2000-06-28		6 INCH WATER PIPELINE, L.S. 400, MP 1.39
PRPW	BF-15885	BOARD OF REGENTS OF UNIVERSITY OF WASHINGTON	WA-TACOMA	2000-06-28		6 INCH WATER PIPELINE, L.S. 400, MP 1.39
PRPW	BF-15890	BOARD OF REGENTS OF UNIVERSITY OF WASHINGTON	WA-TACOMA	2000-06-28		6 INCH SANITARY SEWAGE PIPELINE, L.S. 400, MP 1.39
PRPW	BF-15891	BOARD OF REGENTS OF UNIVERSITY OF WASHINGTON	WA-TACOMA	2000-06-28		6 INCH SANITARY SEWAGE PIPELINE, L.S. 400, MP 1.39

PRPW	BF-15928	BOARD OF REGENTS OF UNIVERSITY OF WASHINGTON	WA-TACOMA	2000-06-28	5 COMMUNICATION CABLES; LS 400, MP 1.39
PRPW	BF-15929	BOARD OF REGENTS OF UNIVERSITY OF WASHINGTON	WA-TACOMA	2000-06-28	2 ELECTRIC WIRE LINES; LS 400, MP 1.39
PRPL	BF-16294	BOARD OF REGENTS OF UNIVERSITY OF WASHINGTON	WA-TACOMA	2000-06-28	6 INCH WATER PIPELINE; LS 400, MP 1.39
PRPL	BF-18012	BOARD OF REGENTS OF UNIVERSITY OF WASHINGTON	WA-TACOMA	2001-04-16	36 INCH WATER PIPELINE; LS 400, MP 3.06
PRPL	BF-19530	TCI UNITED CORP	WA-TACOMA	2001-10-22	10, 16 & 16 INCH STORM WATER PIPELINES; LS 400, MP 3.08
PRPW	BF-20777	TCI UNITED CORP	WA-TACOMA	2001-02-14	FIBER OPTIC COMMUNICATIONS WIRE LINE; LS 400, MP 1.87
PRGN	BF-24282	DIARY OF ELLEN RIMBAUER PRODUCTIONS INC	WA-TACOMA	2003-01-23	SITE FOR FILMING A SCENE FOR TV MOVIE DIARY OF ELLENRIMBAUER; LS 400, MP 1.90
PRGN	BF-28410	ENVIROSPHERE	WA-TACOMA	1989-08-03	TEMPORARY LICENSE PERMITTING EWATRY TO PROPERTY
PRGN	BF-28757	WYCKOFF FARMS INC	WA-TACOMA	1990-02-05	TEMPORARY LICENSE PERMITTING EWATRY TO PROPERTY
PRGN	BF-32134	EBASCO ENVIRONMENTAL	WA-TACOMA	1991-01-16	ENVIRONMENTAL ACCESS TO PROPERTY TO INSTALL OR OPERAT GROUND WATER MONITORING WELLS
PRPW	GN-33429	US WEST COMMUNICATIONS INC.	WA-TACOMA	1943-06-01	TELEPHONE WIRE LINE CROSSING
PRPW	GN-59757	COMPANY; ASSIGNED TO US WEST COMMUNICATIONS INC	WA-TACOMA	1967-09-01	UGD TELEPHONE CABLE
PRPW	NP-13953	TACOMA CITY OF	WA-TACOMA	1951-11-26	
PRPW	NP-19044	US WEST COMMUNICATIONS INC.	WA-TACOMA	1969-08-18	
PRPW	NP-19045	TACOMA CITY OF	WA-TACOMA	1969-08-14	
PRPW	NP-73174	TACOMA CITY OF	WA-TACOMA	1951-01-15	
PRPW	NP-101176	ATLAS FOUNDRY & MACHINE CO	WA-TACOMA	1969-07-15	
PRPL	NP-16484	TACOMA CITY OF	WA-TACOMA	1960-03-31	STOR M & SANITARY SEWER LINES, MP 2-2196 ALONG TACOMA WAY OR WAKEFIELD DRIVE
PRPL	NP-19176	WASHINGTON IRRIGATION & DEVELOPMENT	WA-TACOMA	1970-01-14	
PRPL	NP-19177	WASHINGTON IRRIGATION & DEVELOPMENT	WA-TACOMA	1970-01-14	
PRPL	NP-19255	TACOMA CITY OF	WA-TACOMA	1968-12-01	18 INCH SANITARY SEWER PIPELINE
PRPC	NP-74443	TACOMA CITY OF	WA-TACOMA	1952-02-8	PRIVATE ROADWAY, PIERCE COUNTY
PRPL	NP-85959	TACOMA CITY OF	WA-TACOMA	1960-02-11	TWO 72 INCH STORM SEWER PIPELINES, ONE EACH AT Q & T STREETS, MP 38-2190

PRPW	NP-93879	TACOMA CITY OF	WA-TACOMA	1964-01-31	OHD POWER WIRE LINE, OAKES STREET; 1465 FT NE OF MP 4.00
PRPL	NP-97941	WASHINGTON NATURAL GAS CO	WA-TACOMA	1966-11-15	4 INCH NATURAL GAS PIPELINE IN PROW AT EAST D STREET
PRPC	NP-100640	OWEN TERRY B & MILLER JOHN M	WA-TACOMA	1969-01-15	
PRPL	NP-101286	ATLAS FOUNDRY & MACHINE CO	WA-TACOMA	1969-10-22	
PRPL	NP-91079	TACOMA CITY OF	WA-TACOMA	1962-06-29	12" WATER PIPE LINE MP 0+1275
PRPW	NP-91123	TACOMA CITY OF	WA-TACOMA	1962-01-29	ELECTRIC LINE CROSSIN MP 1+1835.2
PRPW	NP-91181	NORTHWEST BELL TELEPHONE CO	WA-TACOMA	1962-03-13	1 PAIR OF TELEPHONE LINE ATTACHED TO NINE RR POLES
PRPL	NP-91826	TACOMA CITY OF	WA-TACOMA	1962-08-07	12" WATER PIPE LINE SOUTH OF 56TH STREET
PRPL	NP-92369	TACOMA CITY OF	WA-TACOMA	1962-10-31	10" STORM DRAIN MP 3+3165
PRPL	NP-93024	TACOMA CITY OF	WA-TACOMA	1963-04-01	2 SEWER LINES; SUBJECT TO LEASE #90293
PRPW	NP-93798	TACOMA CITY OF	WA-TACOMA	1963-12-15	ELECTRIC LINE CROSSING SAWYER STREET MP 3+685
PRPL	NP-93820	WALTERS, GLEN	WA-TACOMA	1963-12-15	6" SANITARY SEWER PIPE LINE
PRPL	NP-93835	WASHINGTON NATURAL GAS CO	WA-TACOMA	1964-01-02	4" NATURAL GAS PIPE LINE CROSSING AT POINT DEFACE LINE IN STARR STREET
PRPL	NP-93974	UNITED SUPPLY CO	WA-TACOMA	1964-04-01	8" STORM SEWER PIPE LINE
PRPL	NP-94465	TACOMA CITY OF	WA-TACOMA	1964-07-06	18" SANITARY SEWER PIPE LINE
PRPL	NP-95298	TACOMA CITY OF	WA-TACOMA	1965-05-04	18" SANITARY SEWER PIPE LINE AT 3. 21TH & RIVER STREET
PRPW	NP-95354	TACOMA CITY OF	WA-TACOMA	1965-03-08	ELECTRIC LINE CROSS EAST Q STREET, MP .38+3320
PRPL	NP-95908	OLYMPIC PIPE LINE CO	WA-TACOMA	1965-05-01	8" PETROLEUM PRODUCT PIPE LINE EAST 15TH STREET, ST PAUL AVE AND EAST F ST
PRPL	NP-96491	TACOMA CITY OF	WA-TACOMA	1965-12-16	SEWER LINE ENCROACHMENTS & UNDERCROSSING AT VARIOUS LOCATION BETWEEN MP 2+1588 & MP 5+1775
PRPL	NP-96467	HYGRADE FOOD PRODUCTS CORP	WA-TACOMA	1965-12-01	8" WATER MAIN CROSSING UNDER TRACKS
PRPL	NP-96515	WASHINGTON NATURAL GAS CO	WA-TACOMA	1965-11-01	2.375" NATURAL GAS DISTRIBUTION LINE ENCASED IN A 6.625" STEEL PIPE
PRPL	NP-97106	WASHINGTON NATURAL GAS CO	WA-TACOMA	1966-03-15	4" NATURAL GAS PIPELINE D STREET
PRPL	NP-97151	TACOMA CITY OF	WA-TACOMA		CORRESPONDENCE ONLY

PRPW	NP-97201	TACOMA CITY OF	WA-TACOMA	1966-05-10	3-WIRE ELECTRIC LINE CROSSING
PRPL	NP-97914	TACOMA CITY OF	WA-TACOMA	1966-11-01	12" WATER MAIN & FIRE HYDRANT
PRGN	NP-98021	PACIFIC COMMUNICATIONS INC	WA-TACOMA	1967-03-01	SIGN BOARDS TWO LOCATIONS
PRPL	NP-98593	WASHINGTON NATURAL GAS CO	WA-TACOMA	1967-07-15	4" NATURAL GAS MAIN CROSSING INDUSTRIAL SPUR TRACK AT LINCOLN AVENUE
PRPL	NP-98921	PORT OF TACOMA	WA-TACOMA	1968-01-03	24" STORM SEWER; EAST 18TH STREET
PRPL	NP-100123	WASHINGTON NATURAL GAS CO	WA-TACOMA	1968-05-15	2 3/8" NATURAL GAS LINE CROSSING UNDER TRACKS THROUGH A 16" STEEL PIPE
PRPL	NP-100576	TACOMA CITY OF	WA-TACOMA	1968-12-01	18" RCP SANITARY SEWER PIPE LINE UNDER CROSSING MP 4+4236
PRPL	NP-100635	WASHINGTON NATURAL GAS CO	WA-TACOMA	1969-02-01	4" NATURAL GAS MAIN ENCASED IN AN 8" STEEL PIPE CROSSING SPUR TRACK SERVING ST. PAUL & TACOMA LUMBER CO

EXHIBIT G

\$6,000,000

September __, 2004

PROMISSORY NOTE
(Lakeview North Line Sale)

FOR VALUE RECEIVED, the undersigned CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a regional transit authority under the laws of the State of Washington ("**Sound Transit**"), hereby promises to pay to the order of THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("**BNSF**") the principal amount of SIX MILLION DOLLARS (\$6,000,000) (the "**Principal Amount**");

TOGETHER WITH interest on any and all principal amounts remaining unpaid hereunder from the Maturity Date (defined below) until payment in full (after as well as before judgment, and whether before or after the commencement of any bankruptcy proceeding in respect of Sound Transit), to be calculated and paid as set forth below.

On the Maturity Date the remaining principal balance, all other sums then remaining unpaid hereunder, and under any other document executed in connection herewith, whether interest, expenses or other amounts, shall be due and payable in full.

1. As used in this Note, the following terms shall have the following meanings:

"**Default Rate**" shall be an annual rate equal to the greater of (a) for the period January 1 through June 30 of any year, the prime rate last published in *The Wall Street Journal* on the preceding December 31 plus four and one-half percent (4 1/2%), and for the period July 1 through December 31 of any year, the prime rate last published in *The Wall Street Journal* on the preceding June 30 plus four and one-half percent (4 1/2%), or (b) twelve percent (12%), subject to the provisions of Section 8 of this Note. If either December 31 or June 30 fall on a weekend or a date in which *The Wall Street Journal* is not published, the rate will be set on the next date of publication of *The Wall Street Journal*.

"**Event of Default**" means any breach of Sound Transit's obligations under this Note.

"**Lakeview South Property**" means that portion of BNSF's right of way commonly known as the Lakeview Subdivision generally from Bridgeport Way, Lakewood, Washington to Nisqually, Washington and as more particularly described in the Lakeview South Purchase Agreement (defined below).

"**Lakeview South Purchase Agreement**" means that certain Purchase and Sale Agreement dated as of December __, 2003 between BNSF and Sound Transit concerning the purchase of the Lakeview South Property.

"**Loan**" shall mean the loan made to Sound Transit by BNSF evidenced by this Note.

"**Maturity Date**" shall be determined as follows:

- (a) if Sound Transit does not purchase the Lakeview South Property as and when contemplated in the Lakeview South Purchase Agreement for any reason (including, but

not limited to, Sound Transit's exercise of any termination right contained in Section 4 of the Lakeview South Purchase Agreement) other than as a result of BNSF's material breach of the Lakeview South Purchase Agreement then the Maturity Date shall be September 28, 2005, or

- (b) if Sound Transit does purchase under the Lakeview South Property as and when contemplated in the Lakeview South Purchase Agreement then the Maturity Date shall be September 28, 2006.

"Note" means this Note, as amended, supplemented or otherwise modified from time to time.

"Principal Amount" means the amount of Six Million Dollars as set forth in the preamble of this Note.

2. Time is of the essence hereof. Upon the Maturity Date then this Note and/or any note(s) or other instrument(s) that may be taken in renewal or extension of all or any part of the indebtedness evidenced hereby shall be due and payable without any further presentment, demand, protest or notice of any kind, and thereafter interest determined as provided herein shall accrue. Furthermore, upon the occurrence of any Event of Default, BNSF shall have all of the rights and remedies available to BNSF at law, in equity or otherwise.

3. Any principal or interest or other amount payable hereunder that is not paid as and when due shall bear interest from the date on which such amount is due until such amount is paid in full, payable on demand, at a rate per annum equal the Default Rate. Sound Transit acknowledges that during the time that any such amount shall be in default, BNSF will incur losses which are impracticable, costly, and inconvenient to ascertain. Such losses include without limitation the ability to invest amounts then due at the current rate of return, unavailability of liquid funds, and delay in using such funds in the making of new loans. Sound Transit agrees that interest paid at the Default Rate represents a reasonable sum considering all the circumstances existing on the date of the execution of this Note and represents a reasonable estimate of the losses that BNSF will incur by reason of late payment. Sound Transit further agrees that proof of such actual losses would be costly, inconvenient, impracticable, and extremely difficult to fix. Acceptance of such interest shall not constitute a waiver of the default with respect to the overdue payment and shall not prevent BNSF from exercising any of the other rights and remedies available hereunder. Neither the failure of BNSF to exercise any power given BNSF hereunder or to insist upon strict compliance by Sound Transit with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of BNSF's right to demand exact compliance with the terms hereof.

4. Both principal and interest are payable in lawful money of the United States of America at such place as BNSF or the legal holder(s) of this Note may from time to time in writing appoint, and in the absence of such appointment, then to The Burlington Northern and Santa Fe Railway Company, 2500 Lou Menk Drive, Fort Worth, TX, 76131, Attn: _____. This Note shall constitute a general obligation bond as that term is used in RCW 81.112.130, and shall be payable from the general revenues received by Sound Transit from its operations, Local Option Taxes and any proceeds from dispositions of assets owned by Sound Transit. This Note may not be accelerated for default, and following the occurrence of any default by Sound Transit under this Note, Local Option Taxes may not be used to pay the principal of or interest on the Note unless all required principal and interest payments have been made on Sound Transit's Sales Tax and Motor Vehicle Excise Tax Bonds, Series 1999 and any other bonds issued on a parity of lien therewith. As used in the previous sentence, "Local Option Taxes" means the special motor vehicle excise tax and rental care sales and use tax authorized by RCW 81.104.160 and the sales and use tax authorized by RCW 81.104.170.

5. BNSF may transfer this Note and deliver to the transferee(s) all or any part of the property then

held by it as security hereunder, and the transferee(s) shall thereupon become vested with all the powers and rights herein given to BNSF with respect thereto; and BNSF shall thereafter be forever relieved and fully discharged from any liability or responsibility in the matter, but BNSF shall retain all rights and powers hereby given with respect to property not so transferred.

6. At the option of Sound Transit, the entire outstanding amount of the Loan may be prepaid in whole or in part without penalty or premium.

7. Sound Transit hereby waives presentment for payment, demand, notice of dishonor, and protest of this Note and further agrees that this Note shall be deemed to have been made under and shall be governed by the laws of the State of Washington in all respects, including matters of construction, validity and performance, and that none of its terms or provisions may be waived, altered, modified or amended except as BNSF may consent thereto in writing duly signed by BNSF. The parties agree that this Note is the result of negotiation by the parties, each of whom was represented by counsel, and thus, this Note shall not be construed against BNSF.

8. This Note is limited so that in no contingency or event whatsoever shall the amount paid or agreed to be paid to BNSF for the use, forbearance, or detention of the Principal Amount exceed the maximum permissible under applicable law. If, from any circumstance whatsoever, fulfillment of any provision hereof, at the time performance of such provision shall be due, shall be prohibited by law, the obligation to be fulfilled shall be reduced to the maximum not so prohibited, and if from any circumstance BNSF should ever receive as interest hereunder an amount that would exceed the highest lawful rate, such amount as would be excessive interest shall be applied to the reduction of the principal of this Note and not to the payment of interest. This provision shall control every other provision of all agreements between Sound Transit and BNSF.

9. Sound Transit agrees to pay all costs, including, without limitation, reasonable attorneys' fees and expert witness fees, incurred by the holder hereof in enforcing payment or other obligations of Sound Transit under this Note, whether or not suit is filed, including without limitation, all costs, attorneys' fees and expenses and experts witnesses' fees and expenses incurred by the holder hereof in connection with any court action, insolvency, bankruptcy, reorganization, arrangement (including any appeals thereof) or other similar proceedings, involving Sound Transit that in any way affect the exercise by the holder hereof of its rights and remedies hereunder. Any and all costs incurred by the holder hereof in any action undertaken to obtain relief from the stay of bankruptcy statutes are specifically included in those costs and expenses to be paid by Sound Transit pursuant hereto. Sound Transit hereby waives to the full extent permitted by law all right to plead any statute of limitations as a defense to any action hereunder.

10. All requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Note 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 by telephone, with an original deposited postage prepaid in the first class mails of the United States, addressed to Sound Transit at:

Sound Transit
401 S. Jackson St
Seattle, WA 98104-2826
ATTN: CEO

With an additional copy to:

Sound Transit
401 S. Jackson St
Seattle, WA 98104-2826
ATTN: Commuter Rail Director

or to BNSF at:

The Burlington Northern and
Santa Fe Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76131
ATTN: Rick Weicher

With additional copy to:

The Burlington Northern and
Santa Fe Railway Company
401 S. Jackson St
Seattle, WA 98104-2826
ATTN: Superintendent of Commuter Operations

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.

11. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BNSF AND SOUND TRANSIT 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 NOTE.

12. NOTICE: ORAL AGREEMENTS, PROMISES, OR COMMITMENTS TO: (1) LOAN MONEY, (2) EXTEND CREDIT, (3) MODIFY OR AMEND ANY TERMS OF THE LOAN DOCUMENTS, (4) RELEASE ANY GUARANTOR, (5) FORBEAR FROM ENFORCING REPAYMENT OF THE LOAN OR THE EXERCISE OF ANY REMEDY UNDER THE LOAN DOCUMENTS, OR (6) MAKE ANY OTHER FINANCIAL ACCOMMODATION PERTAINING TO THE LOAN ARE ALL UNENFORCEABLE UNDER WASHINGTON LAW.

IN WITNESS WHEREOF, the undersigned have caused this Note to be executed as of the day and year first above written.

CENTRAL PUGET SOUND REGIONAL TRANSIT
AUTHORITY

By: _____

Name:

Title:



AMENDMENT TO PURCHASE AND SALE AGREEMENT
(Lakeview North Rail Line Property)

This Amendment to Purchase and Sale Agreement ("Amendment") is entered into as of the 28th day of September, 2004 between CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY ("Sound Transit") and THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY ("BNSF").

A. Sound Transit and BNSF entered into that certain Purchase and Sale Agreement (Lakeview North Rail Line Property) dated as of December 17, 2003 (the "Agreement") pursuant to which BNSF agreed to sell, and Sound Transit agreed to purchase, that portion of BNSF's Lakeview Subdivision as more particularly described in the Agreement.

B. Because certain sites within the Property leased to third parties lie on both sides of the boundary line for the Property, Sound Transit and BNSF wish to modify the boundary line of the Property so that the Property being conveyed to Sound Transit will either wholly include or wholly exclude all such lease sites.

C. In connection with the amendment to the boundary line for the Property the parties wish to amend the list of Third Party Leases/Easements/Licenses.

D. The parties wish to clarify that BNSF will convey the Property to Sound Transit subject to that certain Easement Deed and Agreement recorded in the real property records of Pierce County under recording number 9901220855 (the "MCI Easement") and to express their agreement with regard to relocation of the facilities of the easement holder under the MCI Easement.

E. The parties also wish to enter into this amendment to further clarify certain portions of the Agreement relating to the condition of the Property.

NOW, THEREFORE, for and in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sound Transit and BNSF agree as follows:

1. Exhibit A to the Agreement is deleted in its entirety and replaced with the Exhibit A attached hereto and incorporated herein. All references in the Agreement to Exhibit A shall be deemed references to the Exhibit A attached to this Amendment.

2. Exhibit E to the Agreement is deleted in its entirety and replaced with Exhibit E attached hereto and incorporated herein. All references in the Agreement to Exhibit E shall be deemed references to Exhibit E attached to this Amendment.

3. Exhibit F to the Agreement is deleted in its entirety and replaced with the Exhibit F attached hereto and incorporated herein. All references in the Agreement to Exhibit F shall be deemed references to the Exhibit F attached to this Amendment.

4. Section 5.1(j) is amended to read as follows:

To BNSF's actual knowledge, the Property is not subject to any leases, tenancies or rights of persons in possession other than the Third Party Leases/Easements/Licenses and the MCI Easement, the claimed interest of Bardon Enterprises disclosed to Sound Transit, and encroachments of Excel Feed

and Time Oil/Son Pei. However, Sound Transit acknowledges that BNSF does not warrant that there are not other existing leases, franchises, easements, occupancy agreements, licenses or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting or relating to, or affecting the Property ("Other Property Rights"). To the extent that there are claims relating to Other Property Rights or encroachments, BNSF will cooperate with Sound Transit by providing Sound Transit with reasonable access to any information or witnesses that may have information relating to such claims, except for information that is proprietary, privileged or for which it is legally bound to keep confidential. To BNSF's actual knowledge: the Third Party Leases/Easements/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/Easement/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 Sound Transit. Certain of the Third Party Leases/Easements/Licenses have not yet been provided to Sound Transit, as noted on Exhibit F. BNSF shall take reasonable steps to locate such instruments within BNSF's records and forward them to Sound Transit.

5. Section 6 of the Agreement is amended by deleting the fourth sentence thereof and replacing said sentence with the following:

Subject to BNSF's obligations under the Lakeview Joint Use Agreement, under the Consent Decree dated January 10, 1997 (the "STF Consent Decree") regarding the South Tacoma Field Operable Unit of the Commencement Bay South Tacoma Channel Superfund Site, which the United States Environmental Protection Agency placed on the National Priorities List, 40 C.F.R. Part 300 ("South Tacoma Field") and pursuant to which Environmental Protection Restrictive Covenant and Access Easements (the "Restrictive Covenants") encumbering a portion of the Property were recorded in the Pierce County Recorder of Deeds Office as Instrument Nos. 9702130297 and 9702130298, or under Section 7 of this Agreement, Sound Transit assumes the risk that Hazardous Substances or other adverse matters may affect the Property that were not revealed by Sound Transit's inspection and except to the extent of BNSF's obligations under the Lakeview Joint Use Agreement, this Agreement, and STF Consent Decree, waives, releases and discharges forever BNSF and BNSF's officers, directors, shareholders, employees and agents (collectively, "Releasees") from any and all present or future claims or demands, and any and all damages, Losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown, which Sound Transit might have asserted or alleged against Releasees 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.

6. Section 7.2 of the Agreement is amended by deleting subsection B, C, E and F thereof and replacing said subsections with the following:

B. Subject to Subsections 7.3 and 7.2.E., as between the Parties, BNSF shall bear all Environmental Loss or Damage, other than to a Sound Transit Party, caused by or arising or resulting from (i) the use of the Property after Closing, other than operation of Commuter Rail Service, by BNSF or a BNSF Party, or (ii) any Condition of the Property caused by BNSF's or BNSF Parties' use of the Property on or prior to the Closing.

C. Subject to Subsection 7.3, if any Environmental Loss or Damage is caused by or arises or results from both the operation of Commuter Rail Service and BNSF's or a BNSF Party's past, present, or future use of the Property other than operation of Commuter Rail Service, then, as between the Parties, Sound Transit shall bear so much of such Environmental Loss or Damage as was contributed by the operation of Commuter Rail Service, and BNSF shall bear so much of such Environmental Loss or Damage as was contributed by (i) the use of the Property after Closing, other than operation of Commuter Rail Service, by BNSF or a BNSF Party, or (ii) any Condition of the Property caused by BNSF's or BNSF Parties' use of the Property on or prior to the Closing.

E. Subject to Subsection 7.3, if any Environmental Loss or Damage is caused by or arises or results from both (a) the operation of Commuter Rail Service and (b) (i) the use of the Property after Closing, other than operation of Commuter Rail Service, by BNSF or BNSF Parties, or (ii) any Condition of the Property caused by BNSF's or BNSF Parties' use of the Property on or prior to the Closing, then, as between the Parties, Sound Transit shall bear so much of such Environmental Loss or Damage as was contributed by the operation of Commuter Rail Service, and BNSF shall bear so much of such Environmental Loss or Damage as was contributed by (i) the use of the Property after Closing, other than operation of Commuter Rail Service, by BNSF or a BNSF Party, or (ii) BNSF's or BNSF Parties' use of the Property on or prior to the Closing.

F. Subject to BNSF's obligations under this Agreement, the Lakeview Joint Use Agreement, or the STF Consent Decree, Sound Transit agrees to release BNSF (including for all purposes of this paragraph, BNSF's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns) from any claims it could otherwise assert against BNSF for Environmental Loss or Damage to the extent Sound Transit is liable under the provisions of this Section 7, whether or not such Environmental Loss or Damage is the result of the negligence of BNSF (other than gross negligence or willful or wanton misconduct or negligence), including without limitation any Environmental Loss or Damage awarded in any court action.

7. Section 8 of the Agreement is amended by adding the following subsection (c):

(c) BNSF has not breached its obligations under the STF Consent Decree.

8. Except as expressly modified by this Amendment, the Agreement remains unmodified, in full force and effect and the parties ratify and confirm the Agreement as modified by this Amendment.

9. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute the same instrument.

IN WITNESS WHEREOF, BNSF and Sound Transit have executed this Amendment as of the date and year first above written.

CENTRAL PUGET SOUND TRANSIT AUTHORITY

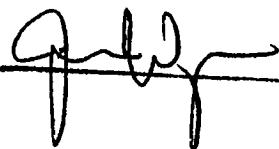
By: _____
Name:
Title:

THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

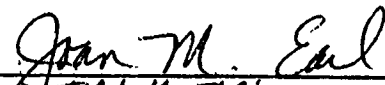
By: Richard E. Weicher
Name: Richard E. Weicher
Title: Vice President and Senior Regulatory Counsel

IN WITNESS WHEREOF, BNSF and Sound Transit have executed this Amendment as of the date and year first above written.

Office of Legal Counsel
Approved as to Form

By: 

CENTRAL PUGET SOUND TRANSIT AUTHORITY

By: 
Name: JOAN M. EARL
Title: CEO

THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

By: _____
Name:
Title:

EXHIBIT A

All of The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway Company) property along said Railway Company's Lakeview Subdivision from Tacoma (Milepost 2.15) to Lakeview (MP 9.34), Pierce County, Washington, varying in width on each side of said Railway Company's hereinafter described Main Track centerline, more particularly described as follows, to-wit:

That portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, Township 20 North, Range 3 East, W. M. in the City of Tacoma, described as follows:

Beginning at the intersection of the West line of said Section 9 with the Southeasterly right of way line of Center Street (80 feet wide); thence Northeasterly along said Southeasterly right of way line 175 feet, more or less, to the Southerly line of Lot 20, Block 2713 of Tacoma Land Company's 1st Addition; thence Easterly to a point on the Northwesterly right of way line of old Hood Street (80 feet wide) distant 134.22 feet Southwesterly from the Southeast corner of Block 2712 of Tacoma Land Company's 1st Addition, as measured along said Northwesterly right of way line; thence Northeasterly along the South line of said Block 2712, and along the said Northwesterly right of way line, a distance of 134.22 feet to the Southeast corner of said Block 2712; thence South along the West right of way line of South Tacoma Avenue to the Northeast corner of Block 2712 $\frac{1}{2}$ of Tacoma Land Company's 1st Addition; thence Southwesterly along the Northwesterly line of said Block 2712 $\frac{1}{2}$ a distance of 415 feet, more or less, to the West line of said Section 9; thence North along said West line 165 feet, more or less, to the Point of Beginning.

ALSO,

That portion of said Railway Company's Original 400.0 foot wide Charter Right of Way, situated in the SE $\frac{1}{4}$ of Section 8, Township 20 North, Range 3 East, W. M. in the City of Tacoma, described as follows:

Beginning at the intersection of the Northwesterly right of way line of South Tacoma Way, as conveyed by deed dated August 13, 1928 from Northern Pacific Railway Company to City of Tacoma, with the East line of said Section 8; thence Southwesterly along said Northwesterly right of way line of South Tacoma Way to the West line of Van Dusen's Addition to Tacoma, also being the West line of the E $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 8; thence North along said West line to a point 40.0 feet normally distant Southerly from said hereinafter described Main Track centerline; thence Westerly parallel with said Main Track centerline to the intersection with the South line of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 8; thence West along said South line to the Northeast corner of Block 6 of Oumette's 2nd Addition; thence South along the East line of said Block 6 to the intersection with a line drawn parallel with and 50.0 feet normally distant Northerly from the centerline of South Tacoma Way; thence Southwesterly along said parallel line to the West line of said Block 6; thence North to the Northwest corner of said Block 6; thence West to the Northeast corner of Block 5 of Oumette's 2nd Addition; thence South along the East line of said Block 5 to the intersection with a line drawn parallel with and 50.0 feet normally distant Northerly from the centerline of South Tacoma Way; thence Southwesterly along said parallel line to the West line of said Block 5; thence North along the West line of said Block 5 to the South line of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 8; thence West along said South line to the intersection with the Southerly extension of the West line of South "M" Street in Orchard's Addition to Tacoma; thence North along said Southerly extension 40 feet, more or less, to the Northeast corner of a certain parcel of land described in deed dated September 14, 1920 from Northern Pacific Railway Company to Thomas B. Ball; thence North 75° 02' West (deed) to a stone monument at the Northwest corner of said parcel of land, and being 83 feet, more or less, North of the South line of said NW $\frac{1}{4}$ SE $\frac{1}{4}$; thence continuing North 75° 02' West, along the Northerly line of a certain parcel of land described in deed dated March 20, 1911 to Tacoma Foundry & Machine Company a distance of 239.02 feet to a gas pipe monument on the West line of said NW $\frac{1}{4}$ SE $\frac{1}{4}$; thence North along

said West line to 103 feet, more or less, to the Southwest corner of a certain parcel of land described in Quitclaim Deed recorded September 29, 1997 as Document No. 9709290101; thence East along the South line of the last described parcel of land, and along the Easterly extension thereof, a distance of 363 feet, more or less, to the Southeast corner of Lot 22, Block 11 of Orchard's Addition to Tacoma; thence South 25 feet to the intersection with the Westerly extension of the South line of Lot 23, Block 12 of Orchard's Addition to Tacoma; thence East along the South line of said Lot 23, and its Easterly extension a distance of 360 feet to the intersection with the Southerly extension of the West line of Block 14 of Orchard's Addition; thence South along said Southerly extension to a line drawn parallel with and 90.0 feet normally distant Northerly from said hereinafter described Main Track centerline; thence Easterly along the last described parallel line to the West line of the E $\frac{1}{2}$ SE $\frac{1}{4}$ of said Section 8; thence North along said West line to the intersection with a line drawn concentric with and 140 feet normally distant Northerly from said hereinafter described Main Track centerline; thence Easterly along said concentric line to the intersection with the Southerly extension of the East line of Block 9 of Van Dusen's Addition; thence North along said Southerly extension to the Northerly boundary of said Original 400.0 foot wide Charter Right of Way; thence Northeasterly along said Northerly boundary to the West line of Block 10 of Van Dusen's Addition; thence South along said West line 40 feet, more or less, to the Southwest corner of Lot 16, said Block 10; thence East along the South line of said Lot 16 a distance of 120.0 feet to the Southeast corner of said Lot 16; thence North along the East line of said Block 10 a distance of 150 feet, more or less, to the Northerly boundary of said Original 400.0 foot wide Charter Right of Way; thence Northeasterly along said Northerly boundary 160 feet, more or less, to the South line of Lot 5, Block 11 of Van Dusen's Addition; thence East along said South line 50 feet, more or less, to the Southeast corner of said Block 11; thence North along the East line of said Block 11 a distance of 65 feet, more or less, to the Northerly boundary of said Original 400.0 foot wide Charter Right of Way; thence Northeasterly along said Northerly boundary 115 feet, more or less, to a point on the Southerly right of way line of Center Street (Jefferson Avenue Extension); thence South 00° 37' East along the Southerly extension of the East line of "I" Street to a point North 89° 23' East, 40 feet, and South 00° 37' East, 97.46 feet from the intersection of the centerline of Center Street and "I" Street; thence South 87° 14' West, 11.9 feet; thence South 00° 36' East, 58.1 feet; thence North 74° 15' East, 16.9 feet; thence South 16° 43' East, 6.11 feet to a point 100 feet normally distant Northwesterly from said Railway Company's Original Main Track centerline; thence Northeasterly along a curve concave Southeasterly having a radius of 1035.366 feet and concentric with and 100 feet normally distant Northwesterly from said Original Main Track centerline a distance of 190 feet, more or less, to the Southerly extension of the East line of a certain parcel of land described in deed dated August 13, 1931 from Northern Pacific Railway Company to Lyle Abrahamson; thence Northerly parallel with the Southerly extension of the East line of "I" Street to the Southerly line of Center Street; thence Easterly along the Southerly line of Center Street 645 feet, more or less, to the East line of said Section 8; thence South along said East line of Section 8 a distance of 295 feet, more or less, to the Point of Beginning.

ALSO,

All that portion of said Railway Company's 80 foot wide right of way situated in the SW $\frac{1}{4}$ of said Section 8, Township 20 North, Range 3 East, W. M. in the City of Tacoma, being 40 feet wide on each side of the hereinafter described Main Track centerline, bounded on the East and West by the East and West lines of said SW $\frac{1}{4}$; also

All that portion of said Railway Company's 100 foot wide right of way situated in the S $\frac{1}{2}$ of Section 7, Township 20 North, Range 3 East, W. M. in the City of Tacoma, being 50 feet wide on each side of the hereinafter described Main Track centerline, bounded on the East by the East line of said Section 7, and bounded on the Southwest by the South line of said Section 7; also,

That portion of Government Lot 4 of said Section 7, Township 20 North, Range 3 East, W. M. in the City of Tacoma, lying contiguous to and Northwesterly of the hereinabove described 100 foot wide right of way, and lying Southeasterly of a line drawn parallel with and 100 feet normally distant Northwesterly from said hereinafter described Main Track centerline, bounded on the East and South by the East and South lines of said Government Lot 4; also,

A 100.0 foot wide corridor, being 50.0 feet wide on each side of the hereinafter described Main Track centerline, situated in the NW $\frac{1}{4}$ of Section 18, Township 20 North, Range 3 East, and in the E $\frac{1}{2}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, Township 20 North, Range 2 East, W. M., all in the City of Tacoma, bounded on the North by the North line of said Section 18, and bounded on the South by the South line of said NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13; also,

An additional 50.0 foot wide strip of land lying contiguous to and Southeasterly of the hereinabove described 100.0 foot wide corridor, situated in the NE $\frac{1}{4}$ of said Section 13, Township 20 North, Range 2 East, bounded on the Northeast by a line drawn parallel with and 30 feet West, measured at right angles from the East line of said Section 13, and bounded on the Southwest by a line drawn radially to said hereinafter described Main Track centerline at a point distant 720 feet Southwesterly from the East line of said Section 13, as measured along said hereinafter described Main Track centerline; also,

An additional 50.0 foot wide strip of land lying contiguous to and Easterly of the hereinabove described 100.0 foot wide corridor, situated in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, Township 20 North, Range 2 East, W. M., in the City of Tacoma, bounded on the North by the Westerly extension of a line drawn parallel with and 10 feet South of the North line of Lot 7, Block 3 of Wallace Grove Addition to Tacoma, and bounded on the South by the South line of said NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, Township 20 North, Range 2 East; also,

All that portion of said Railway Company's 58 foot wide right of way, being 25 feet wide on the West side and 33 feet wide on the East side of said hereinafter described Main Track centerline upon, over and across the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 13, and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, all in Township 20 North, Range 2 East, W. M., bounded on the North by the North line of said SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 13, and bounded on the South by the centerline of South 50th Street; also,

All that portion of said Railway Company's 75 foot wide right of way, being 25 feet wide on the West side and 50 feet wide on the East side of said hereinafter described Main Track centerline upon, over and across the E $\frac{1}{2}$ NE $\frac{1}{4}$ of said Section 24, Township 20 North, Range 2 East, W. M., bounded on the North by the centerline of South 50th Street, and bounded on the South by the North right of way line of South 56th Street; also,

All that portion of said Railway Company's 100 foot wide right of way, being 50 feet wide on each side of said hereinafter described Main Track centerline upon, over and across the E $\frac{1}{2}$ SE $\frac{1}{4}$ of said Section 24, and the William P. Dougherty Donation Land Claim No. 37 in Section 25, all in Township 20 North, Range 2 East, bounded on the North by the North right of way line of South 56th Street, and bounded on the South by the South line of said William P. Dougherty Donation Land Claim No. 37 in Section 25, **EXCEPTING THEREFROM**, the Westerly 42.5 feet and the Easterly 42.5 feet lying between the South right of way line of South 56th Street and the North right of way line of South 60th Street in the City of Tacoma; also,

All that portion of said Railway Company's 200 foot wide right of way, being 100 feet wide on each side of said hereinafter described Main Track centerline upon, over and across Government Lot 4 of said Section 25; Township 20 North, Range 2 East, bounded on the North and West by the North and West lines of said Government Lot 4; also,

All that portion of said Railway Company's 100 foot wide right of way, being 50 feet wide on each side of said hereinafter described Main Track centerline upon, over and across the $W\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$ of said Section 25, and the $NE\frac{1}{4}$ and the North 334.6 feet of the $N\frac{1}{2}N\frac{1}{2}SE\frac{1}{4}$ of Section 36, all in Township 20 North, Range 2 East, bounded on the Northeast by the East line of said $W\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$ of said Section 25, and bounded on the South by the South line of said North 334.6 feet of the $N\frac{1}{2}N\frac{1}{2}SE\frac{1}{4}$ of Section 36; also,

A 100.0 foot wide corridor, being 50.0 feet wide on each side of the hereinafter described Main Track centerline, situated in the $W\frac{1}{2}SE\frac{1}{4}$ of said Section 36, Township 20 North, Range 2 East, bounded on the North by the South line of the North 334.6 feet of said $W\frac{1}{2}SE\frac{1}{4}$, and bounded on the South by the South line of said Section 36, **EXCEPTING THEREFROM**, [South Tacoma Glass BN 19452] that portion of said 100.0 foot wide corridor lying South of a line drawn parallel with and 60 feet South, measured at right angles from the North line of said Section 36, and lying West of a line drawn parallel and concentric with and 25 feet normally distant Westerly from the centerline of an existing spur track and said hereinafter described Main Track centerline, **ALSO EXCEPTING THEREFROM**, [Lease #400,280] the Westerly 38.0 feet of said 100.0 foot wide corridor lying between two lines drawn at right angles to said hereinafter described Main Track centerline distant, respectively, 600.0 feet and 1,250.0 feet Southerly of the South line of the North 334.6 feet of the $N\frac{1}{2}N\frac{1}{2}SE\frac{1}{4}$ of Section 36, as measured along said hereinafter described Main Track centerline, **ALSO EXCEPTING THEREFROM**, [Lease #400,280] the Westerly 32.0 feet of said 100.0 foot wide corridor lying between two lines drawn at right angles to said hereinafter described Main Track centerline distant, respectively, 1,250.0 feet and 2,010.0 feet Southerly of the South line of the North 334.6 feet of the $N\frac{1}{2}N\frac{1}{2}SE\frac{1}{4}$ of Section 36, as measured along said hereinafter described Main Track centerline.

ALSO,

All that portion of said Railway Company's 400 foot wide right of way, being 200 feet wide on each side of said hereinafter described Main Track centerline upon, over and across Section 1, Township 19 North, Range 2 East, bounded on the North and South by the North and South lines of said Section 1, **EXCEPTING THEREFROM**, that portion of Section 1, Township 19 North, Range 2 East, W.M., City of Lakewood, Pierce County, Washington, described as follows: Beginning at the intersection of the Easterly line of said 400 foot wide right of way with the North line of said Section 1; thence Southerly along said Easterly line 70 feet; thence Northwesterly at right angles 150 feet; thence Northeasterly parallel with said hereinafter described Main Track centerline to the North line of said Section 1; thence East along said North line to the Point of Beginning, **ALSO EXCEPTING THEREFROM**, that portion of said Section 1 described as follows: Commencing at the Southwest corner of the Northwest Quarter of the Southeast Quarter of said Section 1; thence North $01^{\circ}10'55''$ West along the West line of said Northwest Quarter a distance of 20.00 feet to the North margin line of 108th Street Southwest; thence North $89^{\circ}59'45''$ West along said margin line a distance of 258.97 feet to the East margin line of Lakeview Avenue Southwest and the True Point of Beginning; thence North $05^{\circ}23'40''$ East along said East margin line a distance of 2570.81 feet to the South margin line of 100th Street Southwest; thence South $89^{\circ}56'35''$ East along said South margin line a distance of 33.45 feet to a point of curvature; along a curve to the left having a radius of 507.50 feet a central angle of $10^{\circ}24'01''$, an arc distance of 92.12 feet to a point 20.00 feet Westerly when measured perpendicular to the centerline most Westerly Main Track of The Burlington Northern and Santa Fe Railway Company's tracks; thence meandering Southerly parallel with and 20.00 feet West of said most Westerly Main Track centerline to the North margin line of said 108th Street Southwest; thence Westerly 103.03 feet to the True Point of Beginning, **EXCEPT** the South 180.00 feet of the above described property.

MAIN TRACK CENTERLINE DESCRIPTION

Beginning at the point of intersection of said Main Track centerline with the centerline of South Tacoma Avenue, said point being 360 feet East and 110 feet South of the West Quarter Corner of Section 9, Township 20 North, Range 3 East, W. M., in the City of Tacoma, Washington; thence Southwesterly along a $5^{\circ} 45'$ curve concave Northwesterly, central angle of $29^{\circ} 40'$, length of 515.9 feet to a point of spiral, said curve intersects the West line of said Section 9 at a point 411.5 feet South of the West Quarter Corner of said Section 9; thence Southwesterly along a spiral to the right 161 feet to a point of tangent; thence Southwesterly 38.1 feet to a point of spiral; thence Southwesterly along a spiral to the left 160 feet to a point of curve; thence Southwesterly along a $7^{\circ} 30'$ curve concave Southeasterly, central angle of $18^{\circ} 00'$, length of 240 feet to a point of spiral; thence Southwesterly along a spiral to the left 160 feet; thence Southwesterly 130.2 feet to a point of spiral; thence Southwesterly along a spiral to the right 180 feet to a point of curve; thence Southwesterly along an $8^{\circ} 24'$ curve concave Northwesterly, central angle of $26^{\circ} 00'$, length of 309.5 feet to a point of spiral; thence Southwesterly along a spiral to the right 180 feet to a point of tangent; thence Southwesterly 252.9 feet to a point of spiral; thence Westerly along a spiral to the right 154 feet to a point of curve; thence Westerly along a $6^{\circ} 06'$ curve concave Northerly, central angle of $13^{\circ} 03'$, length of 213.9 to a point of spiral; thence Westerly along a spiral to the right 154 feet to a point of tangent; thence Northwesterly 709.1 feet to a point of curve; thence Northwesterly along a 1° curve concave Southwesterly, central angle of $3^{\circ} 15'$, length of 325 feet to a point of tangent; thence Northwesterly 1,515.6 feet to a point of curve; thence Westerly along a 2° curve concave Southerly, central angle of $28^{\circ} 20'$, length of 1,416.7 feet to a point of tangent; thence Southwesterly 1,341.8 feet to a point of curve; thence Southwesterly along a 2° curve concave Southeasterly, central angle of $27^{\circ} 02'$, length of 1,351.67 feet to a point of tangent; thence Southwesterly to a point on the South line of Section 7, T20N, R3E, distant 1,242.8 feet West of the Southwest corner of said Section 7; thence continuing Southwesterly along the last described course 1,673.5 feet to a point of curve; thence Southwesterly and Southerly along a 2° curve concave Easterly, central angle of $48^{\circ} 58'$, length of 2,448.3 feet to a point of tangent; thence Southerly 7,189 feet, more or less, to a point on the South line of Section 24, T20N, R2E distant 334 feet East of the Southeast corner of said Section 24; thence continuing Southerly along the last described course 1,389.4 feet to a point of curve; thence Southerly along a 1° curve concave Westerly, central angle of $7^{\circ} 30'$, length of 750 feet to a point of compound curve; thence Southerly along a $0^{\circ} 24'$ curve concave Westerly, central angle of $9^{\circ} 36'$, length of 2,400 feet to a point of tangent; thence Southwesterly 814 feet, more or less, to a point on the South line of Section 25, T20N, R2E distant 860.5 feet West of the Southeast corner of said Section 25; thence continuing Southwesterly along the last described course 5,455.2 feet, more or less, to a point on the South line of Section 36, T20N, R2E distant 442.6 feet East of the South Quarter Corner of said Section 36; thence continuing Southwesterly along the last described course 317.3 feet to a point of curve; thence Southerly along a 1° concave Easterly, central angle of $8^{\circ} 30'$, length of 850 feet to a point of tangent; thence Southerly, tangent to the last described curve, a distance of 4,132.6 feet, more or less, to a point on the South line of Section 1, T19N, R2E distant 2,345.4 feet East of the Southwest corner of said Section 1 and there terminating.

EXHIBIT E

ASSIGNMENT AND ASSUMPTION OF THIRD PARTY LEASES/EASEMENTS/LICENSES (Lakeview North Line Sale)

THIS ASSIGNMENT AND ASSUMPTION OF THIRD PARTY LEASES/EASEMENTS/LICENSES (this "Assignment") is entered into as of September 28, 2004, THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY ("Assignor") and CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY ("Sound Transit") ("Assignee").

RECITALS

A. Assignor and Assignee are parties to that certain Purchase and Sale Agreement (Lakeview North Line Property) dated as of December 17, 2003 (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 those certain leases, easements, and licenses more fully described on Schedule A (the "Third Party Leases/Easements/Licenses").

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/Easements/Licenses.

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.** Assignor hereby assigns, grants, transfers and sets over, conveys and delivers unto Assignee all of Assignor's right, title and interest in and under existing leases, franchises, easements, occupancy agreements, licenses or other agreements demising space, providing for the use or occupancy of, or otherwise similarly affecting or relating to the Property, including but not limited to the Third Party Leases/Easements/Licenses subject to the following sentences of this Section. To the extent any Third Party Leases/Easements/Licenses relates to other property owned by Assignor ("Other Property") and to the extent of any rights of Assignor to use any facilities installed on the Property pursuant to such Third Party Leases/Licenses/Easements (such as the right to use fiber optic or other telecommunications capacity) ("Use Rights") then the foregoing assignment shall only apply as to the Property and not apply as to Other Property or to Use Rights (except that to the extent the Use Rights permit Assignor and Assignee to use the Use Rights in common then Assignee may use such Use Rights in common with Assignor.) Assignor and Assignee shall each have the right to exercise any right contained in any Third Party Leases/Easements/Licenses or any master agreement related to the Third Party Leases/Easements/Licenses as it relates to the Property to require the other party thereto to relocate its facilities in connection if required or desirable for either of their respective operations or improvements. Assignor is not assigning, and Assignor is not assuming, that certain Easement Deed recorded in the real property records of Pierce County under recording number 9901220855 (the "MCI Easement"). However, if Assignee requires that the facilities installed by the grantee under the MCI Easement ("MCI") relocate its facilities pursuant to any relocation provision in the MCI Easement, then Assignor shall enforce such relocation provision on Assignee's behalf. Assignor shall have no liability for any failure of MCI to so relocate its facilities.
2. **Assumption; Succession.** Assignee hereby assumes all of Assignor's duties and obligations under existing leases, franchises, easements, occupancy agreements, licenses or other agreements demising space, providing for the use or occupancy of, or otherwise similarly affecting or relating to the Property, including but not limited to the Third Party Leases/Easements/Assignments arising and

accruing from and after the date of this Assignment and Assignee succeeds to the interests of Assignor under the Third Party Leases/Easements/Assignments. 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 Third Party Leases/Easements/Licenses 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 Third Party Leases/Easements/Licenses prior to the date hereof or related to Other Property or (except to the extent Assignee uses the Use Rights in common with Assignor) the Use Rights not assigned hereunder.

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.

THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

By: _____
Name: _____
Title: _____

CENTRAL PUGET SOUND REGIONAL TRANSIT
AUTHORITY

By: _____
Name: _____
Title: _____

**EXHIBIT F
List of Leases**

(North)

Lease #	Lessee	Location	Mile Post	Line Segment	Area SF
500126	Atlas Foundry	Tacoma	3	400	15246
500129	Atlas Foundry	Tacoma	3	400	390
500125	Atlas Foundry	Tacoma	3	400	200
501087	South Tacoma Way LLC	Tacoma	3.17	400	5000
211587***	Northwest Pipe & Steel	Tacoma	4.5	400	45000
81309	Puget Sound Power	Lakeview	8.1	400	4500
59707***	Pacific NW Bell	Lakeview	8.2	400	83000
88432***	Puget Sound Power	Lakeview	8.4	400	6000
248405	Pacific NW Bell	Lakeview	8.53	400	20
71428	Lakewood Water District	Lakeview	9.1	400	4275
93858**	Puget Sound Power	Lakeview	0.12	401	47200
500522***	Tool Gauge & Machine Works		5	400	11200
500263	GSP Bldg Inc. (George Pessemier)		0.25	401	25725
249317	CoCamm LLC		3.41	400	7500

- * Lease is included in all three areas
- ** Lease is included in Parcels sale area and Lakeview Sub North area
- *** Lease straddles both sides of the sale area
- **** Documents not provided by BNSF as of the time of closing.

Mile Posts, Distance From Track and Lease Areas are all approximate.

EXHIBIT F
List of Easements

(North)

Easement ****	555	N.P. Ry. Co.	City of Tacoma	08/13/1928	Near intersection of Center St. and Yakima Ave.	Easmt for slope rights along roadway	D-4/14	S-03b	2.24
Easement ****	720	N.P. Ry. Co.	City of Tacoma	08/15/1960		For Public Stairway purposes	D-4/14	S-03b	2.28
Agreement ****	723	N.P. Ry. Co.	City of Tacoma	08/19/1960	Crossing of Yakima Avenue	Shown as Agreement in Plat book, but as an easement on CAD map s82214	D-4/14	S-03b	2.32
Easement ****	93.13	BNSF Ry.	Viacom		Crossing of Yakima Avenue	Signboard Easement	Not Shown	S-03b	2.31
Easement ****	716	N.P. Ry. Co.	City of Tacoma	12/21/1959	Crossing of S. "M" Street		D-4/14	S-03b	2.72
Prescriptive Right ****	Title Memo 582	N.P. Ry. Co.	Public	04/26/1928	Alaska St., Chandler St. and Wilkeson St.	Ry. Co. admits that the public has obtained prescriptive rights by user to a 32' crossing at Alaska St., 60' at Chandler St., and 80' at Wilkeson St.	D-4/12	S-03b	Various
Easement ****	BNSF-03064	BNSF Ry.	State of Washington	05/08/203			D-4/11	S-03b	3.28
Easement ****	780	N.P. Ry. Co.	State of Washington	05/02/1989	Near Ferry Street		D-4/11	S-03c	3.3
Easement ****	S-811	B.N. Inc.	City of Tacoma	09/16/1971	At Pine Street		D-4/9	S-03c	3.81
Easement ****	609	N.P. Ry. Co.	City of Tacoma	11/24/1941			D-4/7	4	4.14
Easement ****	BNSF-01182	BNSF Ry.	City of Tacoma	02/24/1999			D-4/7	4	4.2
Easement ****	781	N.P. Ry. Co.	City of Tacoma	01/14/1970			D-4/7	4	4.45
Easement	93.13	BNSF Ry.	Viacom			Signboard Easement	Not shown	4	4.48

Easement ****	S-2105	B.N. Inc.	City of Tacoma	06/10/1974	Southwest of Union Avenue	Easement for 8" water main	D-4/7	4	4.47
Easement ****	S-7492	B.N. Inc.	City of Tacoma	08/13/1980		Easement for water line	D-4/4	4	5.44
Easement ****	S-1511	B.N. Inc.	City of Tacoma	12/15/1972	At 56 th Street	Easement for roadway purposes	D-4/2	4	6.81
Easement ****	S-7490	B.N. Inc.	City of Tacoma	05/30/1979	At 50 th Street	Easement for roadway purposes	D-4/2	4	6.43
Easement ****	S-7491	B.N. RR Co.	City of Tacoma	11/13/1981	At 50 th Street	Easement for electric system	D-4/2	4	6.43
Easement ****	674	N.P. Ry. Co.	City of Tacoma	10/08/2026	At 66 th Street		D-4/53	4	6.42
Easement	93.13	BNSF Ry.	Viacom			Signboard Easement	Not shown	4	6.59
Easement	93.13	BNSF Ry.	Viacom			Signboard Easement	Not shown	4	6.91
Easement	93.13	BNSF Ry.	Viacom			Signboard Easement	Not shown	4	6.91
Easement	93.13	BNSF Ry.	Viacom			Signboard Easement	Not shown	4	6.91
Easement	93.13	BNSF Ry.	Viacom			Signboard Easement	Not shown	4	7.86
Easement	93.13	BNSF Ry.	Viacom			Signboard Easement	Not shown	4	7.89
Easement ****	924	N.P. Ry. Co.	State of Washington	05/19/1930		Easement for Highway purposes	D-6/2	4	7.92
Easement	93.13	BNSF Ry.	Viacom			Signboard Easement	Not shown	4	7.93
Easement ****	S-4820	B.N. Inc.	Pierce County	08/12/1980		Easement for Highway purposes	D-6/2	4	8.04
Easement	93.13	BNSF Ry.	Viacom			Signboard Easement	Not shown	4	8.54
Easement ****	S-2453	B.N. Inc.	Pierce County	03/25/1975		Easement for Highway purposes	D-6/3	WA-05/5	8.56
Easement ****	1059	N.P. Ry. Co.	Pierce County	09/08/1964			D-6/3	5	8.56
Easement	93.13	BNSF Ry.	Viacom			Signboard Easement	Not shown	5	8.56

Easement	93.13	BNSF Ry.	Viacom	Signboard Easement	Not shown	5	8.76
Easement	93.13	BNSF Ry.	Viacom	Signboard Easement	Not shown	5	8.76
Easement	93.13	BNSF Ry.	Viacom	Signboard Easement	Not shown	5	8.61
Easement	93.13	BNSF Ry.	Viacom	Signboard Easement	Not shown	5	8.83
Easement	93.13	BNSF Ry.	Viacom	Signboard Easement	Not shown	5	9.08
Easement	93.13	BNSF Ry.	Viacom	Signboard Easement	Not shown	5	9.08
Easement	93.13	BNSF Ry.	Viacom	Signboard Easement	Not shown	5	9.39
Easement	93.13	BNSF Ry.	Viacom	Signboard Easement	Not shown	5	9.59

EXHIBIT F
List of Licenses

Contract Type	Contract No.	Contractor	Location	Contract Date	Term. Date	Description/Line Segment Milepost
PRPW	BF-3519	Electric Lightwave, Inc.	WA-TACOMA	1997-06-17		OHD Fiber Optic Telephone Cable; LS 400, MP. 7.89
PRPW	BF-3522	Electric Lightwave, Inc.	WA-TACOMA	1997-07-03		OHD Fiber Optic Telephone Cable; LS400, MP. -4.13
PRPL	BF-18012	Tacoma Public Utility	WA-TACOMA	2001-04-16		36 inch Water Pipeline; LS 400, MP. 3.08
PRPL	BF-19530	TCI United Corp	WA-TACOMA	2001-10-22		10, 16 & 16 inch Storm Water Pipelines; LS 400, MP. 3.08
PRPW	GN-59757	Company, assigned to US West Communications Inc.	WA-TACOMA	1967-09-01		UGD Telephone Cable
PRPW	NP-101176	Atlas Foundry & Machine Co.	WA-TACOMA	1969-07-15		
PRPL	NP-16484	Tacoma, City of	WA-TACOMA	1960-03-31		Storm & Sanitary Sewer Lines, MP 2+2196 along Tacoma Way or Wakefield Drive
PRPL	NP-74443	Tacoma, City of	WA-TACOMA	1952-02-08		Private Roadway, Pierce County
PRPW	NP-93879	Tacoma, City of	WA-TACOMA	1964-01-31		OHD Power Wire Line, Oakes Street; 1485 ft NE of MP 4.00
PRPL	NP-101286	Atlas Foundry & Machine Co.	WA-TACOMA	1969-10-22		
PRPL	NP-91826	Tacoma, City of	WA-TACOMA	1962-08-07		12" Water Pipeline South of 56 th Street
PRPL	NP-93024	Tacoma, City of	WA-TACOMA	1963-04-01		2 Sewer Lines; Subject to Lease #90293
PRPW	NP-93798	Tacoma, City of	WA-TACOMA	1963-12-15		Electric Line Crossing Sawyer Street, MP 3+685
PRPL	NP-93820	Walters, Gene	WA-TACOMA	1963-12-15		6" Sanitary Sewer Pipeline
PRPL	NP-93974	United Supply Co.	WA-TACOMA	1964-04-01		8" Storm Sewer Pipeline
PRGN	NP-98021	Pacific Communications Inc.	WA-TACOMA	1967-03-01		Sign Boards Two Locations

PRPL	NP-100123	Washington Natural Gas Co.	WA-TACOMA	1968-05-15	2 3/8" Natural Gas Line Crossing Under Tracks Through a 16" Steel Pipe
PRPL	NP-100576	Tacoma, City of	WA-TACOMA	1968-12-01	18" RCP Sanitary Sewer Pipeline Under Crossing MP 4+4236
	NP 53389	State of Washington		1935-05-16	Drain pipe and Dike
	NP 62031	Tacoma, City of		1944-11-01	12" cast iron water main
	NP 71429	Lakewood Water District		1950-02-17	12" water main
	NP 80297	Tacoma, City of		1956-01-16	Electric Line
	NP 81538	Washington Natural Gas Co.		1956-10-25	4" gas transmission line
	NP 82019	Lakewood Water District		1956-12-18	8" water pipe line
	NP 87473	Washington Natural Gas Co.		1959-12-31	2" gas distribution pipe line
	NP 87576	Washington Natural Gas Co.		1960-01-20	6" gas distribution main
	NP 87601	Tacoma, City of		1960-02-01	Electric Line
	NP 88331	Pierce County		1960-06-01	12" storm sewer pipe line
	NP 93983	Washington Natural Gas Co.		1964-04-01	4" natural gas pipe line
	NP 100687	Pierce County		1969-03-01	30" reinforced concrete sewer pipe
	NP 101138	Tacoma, City of		1969-07-01	aerial electric line crossing
	NP 101341	Tacoma, City of		1969-11-15	12" water pipe line
	BF 14116	Cable TV Puget Sound, Inc.		2000-05-20	one aerial cable
	BF 14117	Cable TV Puget Sound, Inc.		2000-05-20	one aerial cable
	BF 14118	TCI of Tacoma, Inc.		2000-05-20	one aerial cable

**SECOND AMENDMENT
TO
PURCHASE AND SALE AGREEMENT**
(Lakeview North Rail Line Property)

This Second Amendment to Purchase and Sale Agreement ("**Second Amendment**") is entered into as of the 23rd day of November, 2004 between THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY ("**BNSF**") and CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY ("**Sound Transit**").

A. BNSF and Sound Transit entered into that certain Purchase and Sale Agreement (Lakeview South Rail Line Property) dated December 17, 2003, and recorded in the Pierce County Recorder's Office as Instrument No. 200312190087 (the "**Lakeview South PSA**").

B. BNSF and Sound Transit entered into that certain Purchase and Sale Agreement ("**Lakeview North Rail Line Property**") dated December 17, 2003 and recorded in the Pierce County Recorder's Office as Instrument No. 200312180726 as amended by a First Amendment dated September 28, 2004 (the "**Lakeview North PSA**").

C. BNSF and Sound Transit entered into that certain First Amendment to the Purchase and Sale Agreement (Lakeview North Rail Line Property) on September 28, 2004 (the "**1st Amendment to Lakeview North PSA**").

C. BNSF and Sound Transit wish to (i) modify the terms of the promissory notes contemplated to be delivered by Sound Transit at the respective closings under the Lakeview South PSA and Lakeview North PSA as described in this Amendment, and (ii) correct scrivener's errors in the deed delivered at closing under the Lakeview North PSA.

D. BNSF and Sound Transit intend to concurrently execute a First Amendment to the Lakeview South PSA.

NOW, THEREFOR, for and in consideration of the foregoing recitals, which are incorporated herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follow:

1. Simultaneously with the execution of this Second Amendment, BNSF shall execute and deliver a deed with a corrected legal description of the Property in the form attached hereto as Exhibit A of this Second Amendment.

2. Simultaneously with the execution and delivery of this Second Amendment (a) Sound Transit shall execute a Promissory Note (the "**Lakeview North Replacement Note**") in the form of Exhibit H attached hereto, and (b) BNSF shall return to Sound Transit the Promissory Note executed by Sound Transit on September 28, 2004 (the "**Lakeview North Original Note**"). Upon delivery of the Lakeview North Replacement Note by Sound Transit, the Lakeview North Original Note will be of no further force.

3. Except as expressly modified by this Amendment, the Lakeview North PSA, as amended by the 1st Amendment to Lakeview North PSA, remains in full force and effect. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute the same instrument.

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

THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

By: Richard E. Weicher
Name: Richard E. Weicher
Title: Vice President

CENTRAL PUGET SOUND REGIONAL TRANSIT
AUTHORITY

By: _____
Name:
Title:

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

THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

By: _____
Name:
Title:

CENTRAL PUGET SOUND REGIONAL TRANSIT
AUTHORITY

By: Joan M. Earl
Name:
Title:

Office of Legal Counsel
Approved as to Form

By: [Signature]

EXHIBIT A

DEED

After Recording Return To:

Central Puget Sound Regional
Transit Authority
401 S. Jackson St
Seattle, WA 98104-2826
Attn: Jordan Wagner, Esq.

CORRECTED QUIT CLAIM DEED

(Lakeview North Line Sale)

Grantor: THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Grantee: CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY

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

WHEREAS, Grantor has executed and delivered to Grantee that certain Quit Claim Deed dated as of September 28, 2004 which was recorded in the Pierce County Recorder's Office as Instrument No. 200409281270 (the "Original Deed") for the Property.

WHEREAS, Grantor and Grantee have discovered that the Original Deed contained scrivener errors in the legal description attached thereto and wish to issue this corrected, which shall replace in its entirety the Original Deed.

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

EXCEPTING AND RESERVING THEREFROM, the following easements, covenants, conditions and restrictions, which Grantor and Grantee acknowledge and agree shall run with the land and be binding upon the successors and assigns of Grantor and Grantee:

(1) Grantor reserves for itself and its successors and assigns an exclusive easement for freight railroad purposes, including, but not limited to, the construction, maintenance, repair, replacement and operation of freight rail and associated facilities, subject to the provisions of the Lakeview Joint Use Agreement (defined below).

(2) Grantor and Grantee have entered into that certain Joint Use Agreement (Lakeview) dated as of December 17, 2003 (the "Lakeview Joint Use Agreement") concerning the operation and use of the Property. The terms and conditions of the Lakeview Joint Use Agreement are incorporated herein as restrictions encumbering the Property as if fully set forth in this instrument and such terms shall be in full force and effect for purposes of this instrument

even if the Lakeview Joint Use Agreement is, for whatever reason, no longer in effect, unless otherwise agreed by the parties in a document signed by both parties and recorded in the real estate records for the County of Pierce.

(3) Grantee must operate any commuter passenger train and related equipment on the Property in a manner that (a) complies with the requirements of 49 C.F.R. Part 238, as such requirements may be amended or waived by the Federal Railroad Administration or any successor agencies (collectively, the "FRA"), and (b) uses only trains and other equipment that do not qualify as light rail operations (as determined by the FRA) if such light rail operations would inhibit freight rail operations.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Deed as of the ____ day of November, 2004.

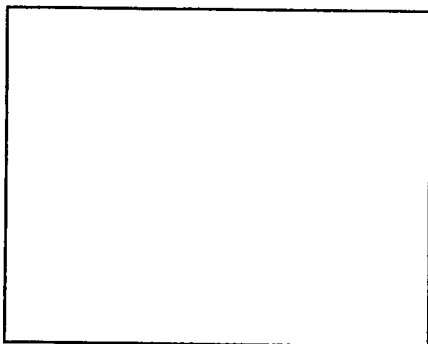
THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

By _____
Its

STATE OF TEXAS)
) ss.
COUNTY OF TARRANT)

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 _____

[Attach Exhibit A with corrected legal description]

EXHIBIT A

DESCRIPTION OF NORTH RAIL LINE PROPERTY

All of The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway Company) property along said Railway Company's Lakeview Subdivision from Tacoma (Milepost 2.15) to Lakeview (MP 9.34), Pierce County, Washington, varying in width on each side of said Railway Company's hereinafter described Main Track centerline, more particularly described as follows, to-wit:

That portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, Township 20 North, Range 3 East, W. M. in the City of Tacoma, described as follows:

Beginning at the intersection of the West line of said Section 9 with the Southeasterly right of way line of Center Street (80 feet wide); thence Northeasterly along said Southeasterly right of way line 175 feet, more or less, to the Southerly line of Lot 20, Block 2713 of Tacoma Land Company's 1st Addition; thence Easterly to a point on the Northwesterly right of way line of old Hood Street (80 feet wide) distant 134.22 feet Southwesterly from the Southeast corner of Block 2712 of Tacoma Land Company's 1st Addition, as measured along said Northwesterly right of way line; thence Northeasterly along the South line of said Block 2712, and along the said Northwesterly right of way line, a distance of 134.22 feet to the Southeast corner of said Block 2712; thence South along the West right of way line of South Tacoma Avenue to the Northeast corner of Block 2712 $\frac{1}{2}$ of Tacoma Land Company's 1st Addition; thence Southwesterly along the Northwesterly line of said Block 2712 $\frac{1}{2}$ a distance of 415 feet, more or less, to the West line of said Section 9; thence North along said West line 165 feet, more or less, to the Point of Beginning.

ALSO,

That portion of said Railway Company's Original 400.0 foot wide Charter Right of Way, situated in the SE $\frac{1}{4}$ of Section 8, Township 20 North, Range 3 East, W. M. in the City of Tacoma, described as follows:

Beginning at the intersection of the Northwesterly right of way line of South Tacoma Way, as conveyed by deed dated August 13, 1928. from Northern Pacific Railway Company to City of Tacoma, with the East line of said Section 8; thence Southwesterly along said Northwesterly right of way line of South Tacoma Way to the West line of Van Dusen's Addition to Tacoma, also being the West line of the E $\frac{1}{2}$ SE $\frac{1}{4}$ of said Section 8; thence North along said West line to a point 40.0 feet normally distant Southerly from said hereinafter described Main Track centerline; thence Westerly parallel with said Main Track centerline to the intersection with the South line of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 8; thence West along said South line to the Northeast corner of Block 6 of Oumette's 2nd Addition; thence South along the East line of said Block 6 to the intersection with a line drawn parallel with and 50.0 feet normally distant Northerly from the centerline of South Tacoma Way; thence Southwesterly along said parallel line to the West line of said Block

6; thence North to the Northwest corner of said Block 6; thence West to the Northeast corner of Block 5 of Oumette's 2nd Addition; thence South along the East line of said Block 5 to the intersection with a line drawn parallel with and 50.0 feet normally distant Northerly from the centerline of South Tacoma Way; thence Southwesterly along said parallel line to the West line of said Block 5; thence North along the West line of said Block 5 to the South line of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 8; thence West along said South line to the intersection with the Southerly extension of the West line of South "M" Street in Orchard's Addition to Tacoma; thence North along said Southerly extension 40 feet, more or less, to the Northeast corner of a certain parcel of land described in deed dated September 14, 1920 from Northern Pacific Railway Company to Thomas B. Ball; thence North 75° 02' West (deed) to a stone monument at the Northwest corner of said parcel of land, and being 83 feet, more or less, North of the South line of said NW $\frac{1}{4}$ SE $\frac{1}{4}$; thence continuing North 75° 02' West, along the Northerly line of a certain parcel of land described in deed dated March 20, 1911 to Tacoma Foundry & Machine Company a distance of 239.02 feet to a gas pipe monument on the West line of said NW $\frac{1}{4}$ SE $\frac{1}{4}$; thence North along said West line to 103 feet, more or less, to the Southwest corner of a certain parcel of land described in Quitclaim Deed recorded September 29, 1997 as Document No. 9709290101; thence East along the South line of the last described parcel of land, and along the Easterly extension thereof, a distance of 363 feet, more or less, to the Southeast corner of Lot 22, Block 11 of Orchard's Addition to Tacoma; thence South 25 feet to the intersection with the Westerly extension of the South line of Lot 23, Block 12 of Orchard's Addition to Tacoma; thence East along the South line of said Lot 23, and its Easterly extension a distance of 360 feet to the intersection with the Southerly extension of the West line of Block 14 of Orchard's Addition; thence South along said Southerly extension to a line drawn parallel with and 90.0 feet normally distant Northerly from said hereinafter described Main Track centerline; thence Easterly along the last described parallel line to the West line of the E $\frac{1}{2}$ SE $\frac{1}{4}$ of said Section 8; thence North along said West line to the intersection with a line drawn concentric with and 140 feet normally distant Northerly from said hereinafter described Main Track centerline; thence Easterly along said concentric line to the intersection with the Southerly extension of the East line of Block 9 of Van Dusen's Addition; thence North along said Southerly extension to the Northerly boundary of said Original 400.0 foot wide Charter Right of Way; thence Northeasterly along said Northerly boundary to the West line of Block 10 of Van Dusen's Addition; thence South along said West line 40 feet, more or less, to the Southwest corner of Lot 16, said Block 10; thence East along the South line of said Lot 16 a distance of 120.0 feet to the Southeast corner of said Lot 16; thence North along the East line of said Block 10 a distance of 150 feet, more or less, to the Northerly boundary of said Original 400.0 foot wide Charter Right of Way; thence Northeasterly along said Northerly boundary 160 feet, more or less, to the South line of Lot 5, Block 11 of Van Dusen's Addition; thence East along said South line 50 feet, more or less, to the Southeast corner of said Block 11; thence North along the East line of said Block 11 a distance of 65 feet, more or less, to the Northerly boundary of said Original 400.0 foot wide Charter Right of Way; thence Northeasterly along said Northerly boundary 115 feet, more or less, to a point on the Southerly right of way line of Center Street (Jefferson Avenue Extension); thence South 00° 37' East along the Southerly extension of the East line of "T" Street to a point North 89° 23' East, 40 feet, and South 00° 37' East, 97.46 feet

from the intersection of the centerline of Center Street and "I" Street; thence South 87° 14' West, 11.9 feet; thence South 00° 36' East, 58.1 feet; thence North 74° 15' East, 16.9 feet; thence South 16° 43' East, 6.11 feet to a point 100 feet normally distant Northwesterly from said Railway Company's Original Main Track centerline; thence Northeasterly along a curve concave Southeasterly having a radius of 1035.366 feet and concentric with and 100 feet normally distant Northwesterly from said Original Main Track centerline a distance of 190 feet, more or less, to the Southerly extension of the East line of a certain parcel of land described in deed dated August 13, 1931 from Northern Pacific Railway Company to Lyle Abrahamson; thence Northerly parallel with the Southerly extension of the East line of "I" Street to the Southerly line of Center Street; thence Easterly along the Southerly line of Center Street 645 feet, more or less, to the East line of said Section 8; thence South along said East line of Section 8 a distance of 295 feet, more or less, to the Point of Beginning.

ALSO,

All that portion of said Railway Company's 80 foot wide right of way situated in the SW $\frac{1}{4}$ of said Section 8, Township 20 North, Range 3 East, W. M. in the City of Tacoma, being 40 feet wide on each side of the hereinafter described Main Track centerline, bounded on the East and West by the East and West lines of said SW $\frac{1}{4}$; also

All that portion of said Railway Company's 100 foot wide right of way situated in the S $\frac{1}{2}$ of Section 7, Township 20 North, Range 3 East, W. M. in the City of Tacoma, being 50 feet wide on each side of the hereinafter described Main Track centerline, bounded on the East by the East line of said Section 7, and bounded on the Southwest by the South line of said Section 7; also,

That portion of Government Lot 4 of said Section 7, Township 20 North, Range 3 East, W. M. in the City of Tacoma, lying contiguous to and Northwesterly of the hereinabove described 100 foot wide right of way, and lying Southeasterly of a line drawn parallel with and 100 feet normally distant Northwesterly from said hereinafter described Main Track centerline, bounded on the East and South by the East and South lines of said Government Lot 4; also,

A 100.0 foot wide corridor, being 50.0 feet wide on each side of the hereinafter described Main Track centerline, situated in the NW $\frac{1}{4}$ of Section 18, Township 20 North, Range 3 East, and in the E $\frac{1}{2}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, Township 20 North, Range 2 East, W. M., all in the City of Tacoma, bounded on the North by the North line of said Section 18, and bounded on the South by the South line of said NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13; also,

An additional 50.0 foot wide strip of land lying contiguous to and Southeasterly of the hereinabove described 100.0 foot wide corridor, situated in the NE $\frac{1}{4}$ of said Section 13, Township 20 North, Range 2 East, bounded on the Northeast by a line drawn parallel with and 30 feet West, measured at right angles from the East line of said Section 13, and bounded on the Southwest by a line drawn radially to said hereinafter described Main

Track centerline at a point distant 720 feet Southwesterly from the East line of said Section 13, as measured along said hereinafter described Main Track centerline; also,

An additional 50.0 foot wide strip of land lying contiguous to and Easterly of the hereinabove described 100.0 foot wide corridor, situated in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, Township 20 North, Range 2 East, W. M., in the City of Tacoma, bounded on the North by the Westerly extension of a line drawn parallel with and 10 feet South of the North line of Lot 7, Block 3 of Wallace Grove Addition to Tacoma, and bounded on the South by the South line of said NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, Township 20 North, Range 2 East; also,

All that portion of said Railway Company's 58 foot wide right of way, being 25 feet wide on the West side and 33 feet wide on the East side of said hereinafter described Main Track centerline upon, over and across the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 13, and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, all in Township 20 North, Range 2 East, W. M., bounded on the North by the North line of said SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 13, and bounded on the South by the centerline of South 50th Street; also,

All that portion of said Railway Company's 75 foot wide right of way, being 25 feet wide on the West side and 50 feet wide on the East side of said hereinafter described Main Track centerline upon, over and across the E $\frac{1}{2}$ NE $\frac{1}{4}$ of said Section 24, Township 20 North, Range 2 East, W. M., bounded on the North by the centerline of South 50th Street, and bounded on the South by the North right of way line of South 56th Street; also,

All that portion of said Railway Company's 100 foot wide right of way, being 50 feet wide on each side of said hereinafter described Main Track centerline upon, over and across the E $\frac{1}{2}$ SE $\frac{1}{4}$ of said Section 24, and the William P. Dougherty Donation Land Claim No. 37 in Section 25, all in Township 20 North, Range 2 East, bounded on the North by the North right of way line of South 56th Street, and bounded on the South by the South line of said William P. Dougherty Donation Land Claim No. 37 in Section 25, **EXCEPTING THEREFROM**, the Westerly 42.5 feet and the Easterly 42.5 feet lying between the South right of way line of South 56th Street and the North right of way line of South 60th Street in the City of Tacoma; also,

All that portion of said Railway Company's 200 foot wide right of way, being 100 feet wide on each side of said hereinafter described Main Track centerline upon, over and across Government Lot 4 of said Section 25, Township 20 North, Range 2 East, bounded on the North and West by the North and West lines of said Government Lot 4; also,

All that portion of said Railway Company's 100 foot wide right of way, being 50 feet wide on each side of said hereinafter described Main Track centerline upon, over and across the W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 25, and the NE $\frac{1}{4}$ and the North 334.6 feet of the N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 36, all in Township 20 North, Range 2 East, bounded on the Northeast by the East line of said W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 25, and bounded on the South by the South line of said North 334.6 feet of the N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 36; also,

A 115.0 foot wide corridor, being 50.0 feet wide on the West side and 65.0 feet wide on the East side of the hereinafter described Main Track centerline, situated in the $W\frac{1}{2}SE\frac{1}{4}$ of said Section 36, Township 20 North, Range 2 East, bounded on the North by the South line of the North 334.6 feet of said $W\frac{1}{2}SE\frac{1}{4}$, and bounded on the South by the South line of said Section 36, **EXCEPTING THEREFROM, [including but not limited to South Tacoma Glass BN 19452]** that portion of said 115.0 foot wide corridor lying South of a line drawn parallel with and 60 feet South, measured at right angles from the South line of the North 334.6 feet of said $W\frac{1}{2}SE\frac{1}{4}$, and northerly of a line drawn at right angle to said hereinafter described Main Track centerline distant 600 feet Southerly of the south line of the North 334.6 feet of the $N\frac{1}{2}N\frac{1}{2}SE\frac{1}{4}$ of Section 36, and lying West of a line drawn parallel and concentric with and 25 feet normally distant Westerly from the centerline of an existing spur track and said hereinafter described Main Track centerline, **ALSO EXCEPTING THEREFROM, [Lease #400,280]** the Westerly 38.0 feet of said 115.0 foot wide corridor lying between two lines drawn at right angles to said hereinafter described Main Track centerline distant, respectively, 600.0 feet and 1,250.0 feet Southerly of the South line of the North 334.6 feet of the $N\frac{1}{2}N\frac{1}{2}SE\frac{1}{4}$ of Section 36, as measured along said hereinafter described Main Track centerline, **ALSO EXCEPTING THEREFROM, [Lease #400,280]** the Westerly 32.0 feet of said 115.0 foot wide corridor lying between two lines drawn at right angles to said hereinafter described Main Track centerline distant, respectively, 1,250.0 feet and 2,010.0 feet Southerly of the South line of the North 334.6 feet of the $N\frac{1}{2}N\frac{1}{2}SE\frac{1}{4}$ of Section 36, as measured along said hereinafter described Main Track centerline.

ALSO,

All that portion of said Railway Company's 400 foot wide right of way, being 200 feet wide on each side of said hereinafter described Main Track centerline upon, over and across Section 1, Township 19 North, Range 2 East, bounded on the North and South by the North and South lines of said Section 1, **EXCEPTING THEREFROM**, that portion of Section 1, Township 19 North, Range 2 East, W.M., City of Lakewood, Pierce County, Washington, described as follows: Beginning at the intersection of the Easterly line of said 400 foot wide right of way with the North line of said Section 1; thence Southerly along said Easterly line 70 feet; thence Northwesterly at right angles to said Easterly line 135 feet; thence Northeasterly parallel with said hereinafter described Main Track centerline to the North line of said Section 1; thence East along said North line to the Point of Beginning, **ALSO EXCEPTING THEREFROM**, that portion of said Section 1 described as follows: Commencing at the Southwest corner of the Northwest Quarter of the Southeast Quarter of said Section 1; thence North $01^{\circ}10'55''$ West along the West line of said Northwest Quarter a distance of 20.00 feet to the North margin line of 108th Street Southwest; thence North $89^{\circ}59'45''$ West along said margin line a distance of 258.97 feet to the East margin line of Lakeview Avenue Southwest and the True Point of Beginning; thence North $05^{\circ}23'40''$ East along said East margin line a distance of 2570.81 feet to the South margin line of 100th Street Southwest; thence South $89^{\circ}56'35''$ East along said South margin line a distance of 33.45 feet to a point of curvature; along a curve to the left having a radius of 507.50 feet a central angle of $10^{\circ}24'01''$, an arc distance of 92.12 feet to a point 20.00 feet Westerly when measured perpendicular to the

centerline most Westerly Main Track of The Burlington Northern and Santa Fe Railway Company's tracks; thence meandering Southerly parallel with and 20.00 feet West of said most Westerly Main Track centerline to the North margin line of said 108th Street Southwest; thence Westerly 103.03 feet to the True Point of Beginning, **EXCEPT** the South 180.00 feet of the above described property.

MAIN TRACK CENTERLINE DESCRIPTION

Beginning at the point of intersection of said Main Track centerline with the centerline of South Tacoma Avenue, said point being 360 feet East and 110 feet South of the West Quarter Corner of Section 9, Township 20 North, Range 3 East, W. M., in the City of Tacoma, Washington; thence Southwesterly along a $5^{\circ} 45'$ curve concave Northwesterly, central angle of $29^{\circ} 40'$, length of 515.9 feet to a point of spiral, said curve intersects the West line of said Section 9 at a point 411.5 feet South of the West Quarter Corner of said Section 9; thence Southwesterly along a spiral to the right 161 feet to a point of tangent; thence Southwesterly 38.1 feet to a point of spiral; thence Southwesterly along a spiral to the left 160 feet to a point of curve; thence Southwesterly along a $7^{\circ} 30'$ curve concave Southeasterly, central angle of $18^{\circ} 00'$, length of 240 feet to a point of spiral; thence Southwesterly along a spiral to the left 160 feet; thence Southwesterly 130.2 feet to a point of spiral; thence Southwesterly along a spiral to the right 180 feet to a point of curve; thence Southwesterly along an $8^{\circ} 24'$ curve concave Northwesterly, central angle of $26^{\circ} 00'$, length of 309.5 feet to a point of spiral; thence Southwesterly along a spiral to the right 180 feet to a point of tangent; thence Southwesterly 252.9 feet to a point of spiral; thence Westerly along a spiral to the right 154 feet to a point of curve; thence Westerly along a $6^{\circ} 06'$ curve concave Northerly, central angle of $13^{\circ} 03'$, length of 213.9 to a point of spiral; thence Westerly along a spiral to the right 154 feet to a point of tangent; thence Northwesterly 709.1 feet to a point of curve; thence Northwesterly along a 1° curve concave Southwesterly, central angle of $3^{\circ} 15'$, length of 325 feet to a point of tangent; thence Northwesterly 1,515.6 feet to a point of curve; thence Westerly along a 2° curve concave Southerly, central angle of $28^{\circ} 20'$, length of 1,416.7 feet to a point of tangent; thence Southwesterly 1,341.8 feet to a point of curve; thence Southwesterly along a 2° curve concave Southeasterly, central angle of $27^{\circ} 02'$, length of 1,351.67 feet to a point of tangent; thence Southwesterly to a point on the South line of Section 7, T20N, R3E, distant 1,242.8 feet West of the Southwest corner of said Section 7; thence continuing Southwesterly along the last described course 1,673.5 feet to a point of curve; thence Southwesterly and Southerly along a 2° curve concave Easterly, central angle of $48^{\circ} 58'$, length of 2,448.3 feet to a point of tangent; thence Southerly 7,189 feet, more or less, to a point on the South line of Section 24, T20N, R2E distant 334 feet East of the Southeast corner of said Section 24; thence continuing Southerly along the last described course 1,389.4 feet to a point of curve; thence Southerly along a 1° curve concave Westerly, central angle of $7^{\circ} 30'$, length of 750 feet to a point of compound curve; thence Southerly along a $0^{\circ} 24'$ curve concave Westerly, central angle of $9^{\circ} 36'$, length of 2,400 feet to a point of tangent; thence Southwesterly 814 feet, more or less, to a point on the South line of Section 25, T20N, R2E distant 860.5 feet West of the Southeast corner of

said Section 25; thence continuing Southwesterly along the last described course 5,455.2 feet, more or less, to a point on the South line of Section 36, T20N, R2E distant 442.6 feet East of the South Quarter Corner of said Section 36; thence continuing Southwesterly along the last described course 317.3 feet to a point of curve; thence Southerly along a 1° concave Easterly, central angle of $8^{\circ} 30'$, length of 850 feet to a point of tangent; thence Southerly, tangent to the last described curve, a distance of 4,132.6 feet, more or less, to a point on the South line of Section 1, T19N, R2E distant 2,345.4 feet East of the Southwest corner of said Section 1 and there terminating.

Lakeview North – Sound Transit Revised November 22, 2004

EXHIBIT H

\$6,000,000

November __, 2004

REPLACEMENT PROMISSORY NOTE
(Lakeview North Line Sale)

WHEREAS, CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a regional transit authority under the laws of the State of Washington ("Sound Transit") has executed and delivered to THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("BNSF") that certain Promissory Note (Lakeview North Line Sale) executed September 28, 2004 (the "Original Note"); and

WHEREAS, Sound Transit and BNSF have agreed to modify the payment terms provided for under the Original Note, to replace the Original Note with this instrument and that upon execution and delivery of this instrument by Sound Transit that the Original Note shall be of no further force and effect.

NOW, THEREFOR, FOR VALUE RECEIVED, Sound Transit hereby promises to pay to the order of BNSF the principal amount of SIX MILLION DOLLARS (\$6,000,000) (the "Principal Amount");

TOGETHER WITH interest on any and all principal amounts remaining unpaid hereunder from the due date until such amount due is paid in full (after as well as before judgment, and whether before or after the commencement of any bankruptcy proceeding in respect of Sound Transit), to be calculated and paid as set forth below.

The Principal Amount shall be due and payable as follows:

(a) If the Maturity Date, as defined below, is September 28, 2005 then Sound Transit shall pay on the Maturity Date the Principal Amount and all other sums then remaining unpaid hereunder, and under any other document executed in connection herewith, whether interest, expenses or other amounts, shall be due and payable in full.

(b) If the Maturity Date, as defined below, is September 28, 2006 then Sound Transit shall pay the Principal Amount in two installments as follows:

(i) On September 28, 2005 Sound Transit shall pay the sum of Three Million Dollars (\$3,000,000).

(ii) On the Maturity Date, Sound Transit shall pay Three Million Dollars (\$3,000,000) and all other sums then remaining unpaid hereunder, and under any other document executed in connection herewith, whether interest, expenses or other amounts, shall be due and payable in full.

1. As used in this Note, the following terms shall have the following meanings:

"Default Rate" shall be an annual rate equal to the greater of (a) for the period January 1 through June 30 of any year, the prime rate last published in *The Wall Street Journal* on the preceding December 31 plus four and one-half percent (4 1/2%), and for the period July 1 through December 31 of any year, the prime rate last published in *The Wall Street Journal* on the preceding June 30 plus four and one-half percent (4 1/2%), or (b) twelve percent (12%), subject

to the provisions of Section 8 of this Note. If either December 31 or June 30 fall on a weekend or a date in which *The Wall Street Journal* is not published, the rate will be set on the next date of publication of *The Wall Street Journal*.

“Event of Default” means any breach of Sound Transit’s obligations under this Note.

“Lakeview South Property” means that portion of BNSF’s right of way commonly known as the Lakeview Subdivision generally from Bridgeport Way, Lakewood, Washington to Nisqually, Washington and as more particularly described in the Lakeview South Purchase Agreement (defined below).

“Lakeview South Purchase Agreement” means that certain Purchase and Sale Agreement dated as of December 17, 2003 between BNSF and Sound Transit concerning the purchase of the Lakeview South Property.

“Loan” shall mean the loan made to Sound Transit by BNSF evidenced by this Note.

“Maturity Date” shall be determined as follows:

- (a) if Sound Transit does not purchase the Lakeview South Property as and when contemplated in the Lakeview South Purchase Agreement for any reason (including, but not limited to, Sound Transit’s exercise of any termination right contained in Section 4 of the Lakeview South Purchase Agreement) other than as a result of BNSF’s material breach of the Lakeview South Purchase Agreement then the Maturity Date shall be September 28, 2005, or
- (b) if Sound Transit does purchase under the Lakeview South Property as and when contemplated in the Lakeview South Purchase Agreement then the Maturity Date shall be September 28, 2006.

“Note” means this Note, as amended, supplemented or otherwise modified from time to time.

“Principal Amount” means the amount of Six Million Dollars as set forth in the preamble of this Note.

2. Time is of the essence hereof. Upon the Maturity Date then this Note and/or any note(s) or other instrument(s) that may be taken in renewal or extension of all or any part of the indebtedness evidenced hereby shall be due and payable without any further presentment, demand, protest or notice of any kind, and thereafter interest determined as provided herein shall accrue. Furthermore, upon the occurrence of any Event of Default, BNSF shall have all of the rights and remedies available to BNSF at law, in equity or otherwise.

3. Any principal or interest or other amount payable hereunder that is not paid as and when due shall bear interest from the date on which such amount is due until such amount is paid in full, payable on demand, at a rate per annum equal the Default Rate. Sound Transit acknowledges that during the time that any such amount shall be in default, BNSF will incur losses which are impracticable, costly, and inconvenient to ascertain. Such losses include without limitation the ability to invest amounts then due at the current rate of return, unavailability of liquid funds, and delay in using such funds in the making of new loans. Sound Transit agrees that interest paid at the Default Rate represents a reasonable sum considering all the circumstances existing on the date of the execution of this Note and represents a

reasonable estimate of the losses that BNSF will incur by reason of late payment. Sound Transit further agrees that proof of such actual losses would be costly, inconvenient, impracticable, and extremely difficult to fix. Acceptance of such interest shall not constitute a waiver of the default with respect to the overdue payment and shall not prevent BNSF from exercising any of the other rights and remedies available hereunder. Neither the failure of BNSF to exercise any power given BNSF hereunder or to insist upon strict compliance by Sound Transit with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of BNSF's right to demand exact compliance with the terms hereof.

4. Both principal and interest are payable in lawful money of the United States of America at such place as BNSF or the legal holder(s) of this Note may from time to time in writing appoint, and in the absence of such appointment, then to The Burlington Northern and Santa Fe Railway Company, 2500 Lou Menk Drive, Fort Worth, TX, 76131, Attn: Capital Investment Accounting. This Note shall constitute a general obligation bond as that term is used in RCW 81.112.130, and shall be payable from the general revenues received by Sound Transit from its operations, Local Option Taxes and any proceeds from dispositions of assets owned by Sound Transit. This Note may not be accelerated for default, and following the occurrence of any default by Sound Transit under this Note, Local Option Taxes may not be used to pay the principal of or interest on the Note unless all required principal and interest payments have been made on Sound Transit's Sales Tax and Motor Vehicle Excise Tax Bonds, Series 1999 and any other bonds issued on a parity of lien therewith. As used in the previous sentence, "Local Option Taxes" means the special motor vehicle excise tax and rental care sales and use tax authorized by RCW 81.104.160 and the sales and use tax authorized by RCW 81.104.170.

5. BNSF may transfer this Note and deliver to the transferee(s) all or any part of the property then held by it as security hereunder, and the transferee(s) shall thereupon become vested with all the powers and rights herein given to BNSF with respect thereto; and BNSF shall thereafter be forever relieved and fully discharged from any liability or responsibility in the matter, but BNSF shall retain all rights and powers hereby given with respect to property not so transferred.

6. At the option of Sound Transit, the entire outstanding amount of the Loan may be prepaid in whole or in part without penalty or premium.

7. Sound Transit hereby waives presentment for payment, demand, notice of dishonor, and protest of this Note and further agrees that this Note shall be deemed to have been made under and shall be governed by the laws of the State of Washington in all respects, including matters of construction, validity and performance, and that none of its terms or provisions may be waived, altered, modified or amended except as BNSF may consent thereto in writing duly signed by BNSF. The parties agree that this Note is the result of negotiation by the parties, each of whom was represented by counsel, and thus, this Note shall not be construed against BNSF.

8. This Note is limited so that in no contingency or event whatsoever shall the amount paid or agreed to be paid to BNSF for the use, forbearance, or detention of the Principal Amount exceed the maximum permissible under applicable law. If, from any circumstance whatsoever, fulfillment of any provision hereof, at the time performance of such provision shall be due, shall be prohibited by law, the obligation to be fulfilled shall be reduced to the maximum not so prohibited, and if from any circumstance BNSF should ever receive as interest hereunder an amount that would exceed the highest lawful rate, such amount as would be excessive interest shall be applied to the reduction of the principal of this Note and not to the payment of interest. This provision shall control every other provision of all agreements between Sound Transit and BNSF.

9. Sound Transit agrees to pay all costs, including, without limitation, reasonable attorneys'

fees and expert witness fees, incurred by the holder hereof in enforcing payment or other obligations of Sound Transit under this Note, whether or not suit is filed, including without limitation, all costs, attorneys' fees and expenses and experts witnesses' fees and expenses incurred by the holder hereof in connection with any court action, insolvency, bankruptcy, reorganization, arrangement (including any appeals thereof) or other similar proceedings, involving Sound Transit that in any way affect the exercise by the holder hereof of its rights and remedies hereunder. Any and all costs incurred by the holder hereof in any action undertaken to obtain relief from the stay of bankruptcy statutes are specifically included in those costs and expenses to be paid by Sound Transit pursuant hereto. Sound Transit hereby waives to the full extent permitted by law all right to plead any statute of limitations as a defense to any action hereunder.

10. All requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Note 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 by telephone, with an original deposited postage prepaid in the first class mails of the United States, addressed to Sound Transit at:

Sound Transit
401 S. Jackson St
Seattle, WA 98104-2826
ATTN: CEO

With an additional copy to:

Sound Transit
401 S. Jackson St
Seattle, WA 98104-2826
ATTN: Commuter Rail Director

or to BNSF at:

The Burlington Northern and
Santa Fe Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76131
ATTN: Rick Weicher

With additional copy to:

The Burlington Northern and
Santa Fe Railway Company
401 S. Jackson St
Seattle, WA 98104-2826
ATTN: Superintendent of Commuter Operations

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.

11. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BNSF AND SOUND TRANSIT 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 NOTE.

12. NOTICE: ORAL AGREEMENTS, PROMISES, OR COMMITMENTS TO: (1) LOAN MONEY, (2) EXTEND CREDIT, (3) MODIFY OR AMEND ANY TERMS OF THE LOAN DOCUMENTS, (4) RELEASE ANY GUARANTOR, (5) FORBEAR FROM ENFORCING REPAYMENT OF THE LOAN OR THE EXERCISE OF ANY REMEDY UNDER THE LOAN DOCUMENTS, OR (6) MAKE ANY OTHER FINANCIAL ACCOMMODATION PERTAINING TO THE LOAN ARE ALL UNENFORCEABLE UNDER WASHINGTON LAW.

IN WITNESS WHEREOF, the undersigned have caused this Note to be executed as of the day and year first above written.

CENTRAL PUGET SOUND REGIONAL TRANSIT
AUTHORITY

By: _____
Name:
Title:

B

PURCHASE AND SALE AGREEMENT

(Lakeview South Rail Line Property)

THIS PURCHASE AND SALE AGREEMENT is made and entered into as of the 17th day of December, 2003, by and between THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY ("BNSF") and CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY ("Sound Transit").

A. BNSF owns certain real property in Pierce County, Washington and operates over such real property, a railroad line from Tacoma, Washington to Lakewood, Washington.

B. Sound Transit pursuant to Resolution No. R2003-17 has heretofore authorized condemnation of such BNSF property and railroad facilities thereon, subject to BNSF's retention of a permanent and unconditional common carrier rail easements upon such BNSF property. Sound Transit is willing and able to exercise its powers of eminent domain immediately to condemn such property subject to such retained railroad easement.

C. In order to avoid the expense and delay of such a condemnation action by Sound Transit, BNSF is willing to sell, and Sound Transit is willing to purchase such property subject to such retained railroad easement in lieu of such condemnation action on the terms and conditions set forth in this Agreement.

D. Conveyance of the property subject to such retained railroad easement by BNSF under the terms of this Agreement and operation of such retained easement under the terms of the Lakeview Joint Use Agreement will leave BNSF with sufficient property rights to conduct common carrier rights and obligations under 49 USC §11101 and with sufficient rights of access to maintain, operate and renew the railroad line.

E. Sound Transit has no intention or ability to assume such common carrier obligations.

F. Sound Transit is acquiring the property for its Sounder Commuter Rail Project. The Sounder Commuter Rail Project is intended to alleviate major congestion and safety concerns and thereby promotes public health and safety in a manner consistent with federal rail transportation policy, 49 USC §10101.

G. Acquisition and use of the property by Sound Transit in accordance with the terms and conditions of this Agreement and the terms and conditions of the Lakeview Joint Use Agreement for the Sounder Commuter Rail Project will not unreasonably burden interstate commerce or unduly affect or interrupt BNSF's rail service.

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

Section 1. Definitions and Exhibits.

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

Agreement. This Purchase and Sale Agreement.

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

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

Closing Date. September 28, 2005.

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

Deed. A quit-claim deed conveying the Property and reserving to BNSF and its successors and/or assigns the Retained Railroad Easement, in the form attached hereto as Exhibit B.

Entry Agreement. That certain Entry Agreement dated as of September 2, 2003 concerning the Lakeview Subdivision between BNSF and Sound Transit, as amended.

Lakeview Joint Use Agreement. That certain Joint Use Agreement dated as of December 17, 2003 between BNSF and Sound Transit concerning the Lakeview Subdivision.

Lakeview North Sale Agreement. That certain Purchase and Sale Agreement (Lakeview North Rail Line Property) dated as of the date hereof between BNSF and Sound Transit pursuant to which BNSF will sell to Sound Transit and Sound Transit will purchase from BNSF a portion of the Lakeview Subdivision not conveyed pursuant to this Agreement and as more particularly described therein.

Lakeview Station Parcels Sale Agreement. That certain Purchase and Sale Agreement (Lakeview Station Parcels Property) dated as of the date hereof between BNSF and Sound Transit pursuant to which BNSF will sell to Sound Transit and Sound Transit will purchase from BNSF certain property along the Lakeview Subdivision in or about Tacoma and Lakewood, Washington, which properties are on or about the area that Sound Transit contemplates using as a commuter station and upon which Sound Transit will operate commuter rail services, and which is more particularly described therein.

Other Agreements. The Lakeview North Sale Agreement, Lakeview Parcels Sale Agreement, Lakeview Joint Use Agreement, the Entry Agreement, the Tacoma South Service Agreement (as amended by the Tacoma Service Agreement Amendment), and any other agreement to be executed by BNSF or Sound Transit pursuant to the terms of any of the foregoing agreements.

Property. The South Rail Line Property.

Purchase Price. As defined in Section 2.

Retained Railroad Easement. That permanent and unconditional common carrier rail easement reserved by BNSF in the Deed.

Review Period. The period commencing on the Contract Date and ending on September 1, 2005.

South Rail Line Property. That portion of BNSF's Lakeview Subdivision more particularly described on Exhibit A attached hereto (the "Land") together with:

All of BNSF's right, title, and interest in and to the buildings 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"); All of BNSF's right, title and interest (subject to the provisions of the Assignment) in and to the Third Party Leases/Easements/Licenses as of the date of Closing.

South Rail Line Property Note. The Promissory Note in the form attached hereto as Exhibit G.

Tacoma South Service Agreement. That certain Commuter Rail Service Agreement between Sound Transit and BNSF dated as of April 6, 2000.

Tacoma Service Agreement Amendment. That certain Amendment dated as of the date hereof to the Tacoma South Service Agreement.

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

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	Description of South Rail Line Property
Exhibit B	Form of Deed
Exhibit C	BNSF Disclosures
Exhibit D	Sound Transit Disclosures
Exhibit E	Assignment of Third Party Leases/Easements/Licenses
Exhibit F	List of Known Third Party Leases/Easements/Licenses
Exhibit G	Form of South Rail Line Property Note

Section 2. Purchase and Sale.

BNSF agrees to sell to Sound Transit, and Sound Transit agrees to purchase from BNSF, the South Rail Line Property. Sound Transit shall pay BNSF the purchase price of \$15,000,000 ("**Purchase Price**") for the Property as follows:

1. On the Contract Date Sound Transit shall pay the sum of \$3,000,000 (the "**Earnest Money**").
2. On the Closing Date Sound Transit shall pay the sum of \$6,000,000 and shall execute and deliver the South Rail Line Property Note in the amount of \$6,000,000.
3. Sound Transit shall pay amounts due under the South Rail Line Property Note as and when stated therein.

The Purchase Price shall be paid to BNSF in United States dollars, by Federal Reserve System wire transfer (in accordance with written wire transfer instructions provided by BNSF to Sound Transit) or other immediately available funds acceptable to BNSF. The Purchase Price shall be subject to prorations and adjustments as set forth in this Agreement. Sound Transit acknowledges that, except as stated in Section 4.1 and Section 10.2 of this Agreement, the Earnest Money is non-refundable and represents a portion of the consideration for BNSF's Seller's holding the Property available for purchase during the Review Period but shall be applied to the Purchase Price at Closing as stated above.

Section 3. Adjustments.

3.1 Third Party Leases/Easements/Licenses. BNSF shall be entitled to all sums due from any Third Party Leases/Easements/Licenses (collectively, "**Third Party Rents**") for the month in which the Closing occurs on the portion of the Property to which such Third Party Leases/Easements/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 Sound Transit shall remit to BNSF any such Third Party Rents received by it after such Closing. Sound Transit shall be entitled to any Third Party Rents that relate to time periods after the month in which the Closing occurs on the

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

3.2 Taxes. There will be no proration of real estate taxes. From and after the Closing, the payment of future real estate taxes for their respective improvements on the Property; provided however that Tenants shall pay all leasehold excise taxes assessed against the Property to the extent set forth in the applicable Third Party Lease/Easement/License.

3.3 Closing Costs. BNSF shall pay one-half of any escrow or closing agent charges in connection with the Closing. Sound Transit and BNSF shall each pay their own attorneys' fees and costs in connection with the negotiation of this Agreement, the Other Agreements and the closings hereunder. Sound Transit shall pay all other closing costs associated with the closings of the transactions contemplated herein including, but not limited to, the following:

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

Section 4. Inspections.

4.1 Physical/Environmental Inspection. Sound Transit shall have until the end of the Review Period to determine if there are any physical conditions including, but not limited to, environmental conditions affecting the Property that would make the Property unsuitable for Sound Transit's intended use of the Property for commuter operations. If Sound Transit identifies an existing condition affecting the Property (a "Physical Condition") that would make the Property unsuitable for Sound Transit's intended use of the Property and BNSF is not willing to verify in writing that such Physical Condition is a condition for which BNSF is obligated to remediate, repair, maintain or provide indemnification for Sound Transit pursuant to Section 7 of this Agreement, then Sound Transit may terminate this Agreement by written notice to BNSF received no later than the expiration of the Review Period. If Sound Transit does so terminate this Agreement then BNSF shall retain the Earnest Money and neither party shall have any further obligation hereunder except those that expressly survive termination. If Sound Transit does not so terminate this Agreement prior to the end of the Review Period, the parties shall proceed to Closing according to the remaining provisions of this Agreement. Promptly upon BNSF's written request, Sound Transit shall deliver a copy of any written inspection report, survey or test result received by Sound Transit. If any of such items reveal any adverse conditions for which BNSF would be responsible for under Section 7 of this Agreement or the Lakeview Joint Use Agreement, BNSF may terminate this Agreement by written notice to Sound Transit and refund of the Earnest Money in which case neither party shall have any further obligation hereunder except those that expressly survive termination

4.2 Title/Survey Inspection. Sound Transit will have until the expiration of the Review Period to obtain any title reports, title commitments or surveys of the Property and examine such reports, commitments or surveys, determine whether Sound Transit will be able to obtain any title insurance endorsements it desires, and give written notice to BNSF of any objections to the title or the matters disclosed by the survey that Sound Transit may have. If Sound Transit fails to give any notice to BNSF by such date, Sound Transit shall be deemed

to have waived such right to object to any title exceptions or defects. If Sound Transit does give BNSF timely notice of objection to any title exceptions or defects or, subject to the provisions of Section 4.1 regarding Physical Conditions, survey matters (collectively, "Title/Survey Objections") then BNSF may elect to cure or satisfy any such Title/Survey Objections, which cure may be accomplished by providing an endorsement or other title insurance to insure against any such Title/Survey Objections. If BNSF does not so elect to cure or satisfy any Title/Survey Objection then Sound Transit may elect, by written notice to BNSF either to (a) terminate this Agreement by written notice to BNSF delivered no later than the date that is 15 business days after BNSF notifies Sound Transit of its election not to cure such Title/Survey Objection in which BNSF shall retain the Earnest Money and neither party shall have any further rights or obligations hereunder, except for those which expressly survive any such termination, or (b) waive its objections hereunder and proceed with the transaction pursuant to the remaining terms and conditions of this Agreement. If Sound Transit fails to so give BNSF notice of its election by such date, it shall be deemed to have elected the option contained in subpart (b) above. If BNSF does so cure or satisfy such Title/Survey Objections to the reasonable satisfaction of Sound Transit, then this Agreement shall continue in full force and effect. Sound Transit shall have the right at any time to waive any objections that it may have made and, thereby, to preserve this Agreement in full force and effect. Sound Transit shall promptly upon receipt deliver to BNSF a copy of any such title report, title commitment or survey obtained by Sound Transit.

4.3 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/Easement/License. Sound Transit acknowledges and affirms 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. Sound Transit is willing to accept the Property on this basis. BNSF does represent and warrant that BNSF's ownership interest in and to the Property subject to the Third Party Leases/Easements/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.

Section 5. Representations and Warranties.

5.1 BNSF. As of the Contract Date and Closing Date, BNSF hereby represents and warrants to Sound Transit 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 each Closing and the performance of its obligations hereunder and thereunder.

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

bankruptcy, insolvency, reorganization, arrangement, moratorium 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 each Closing do not violate or conflict with BNSF's articles of incorporation or bylaws or by any law, court order, administrative agency order or regulatory agency order binding upon BNSF or any of its properties.

(e) BNSF has not received any written notice of any actual or pending litigation or proceeding by any organization, person, individual or governmental agency against BNSF asserting that BNSF does not have sufficient ownership interest in the Property for conducting railroad operations.

(f) 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.

(g) 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 affecting the Property.

(h) Sound Transit 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.

(i) BNSF has no knowledge of any written notice of any alleged violation of any Environmental Laws concerning the Property that remain uncured.

(j) To BNSF's actual knowledge, the Property is not subject to any leases, tenancies or rights of persons in possession other than the Third Party Leases/Easements/Licenses. However, Sound Transit acknowledges that BNSF does not warrant that there are not other existing leases, franchises, easements, occupancy agreements, licenses or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting or relating to, or affecting the Property. To BNSF's actual knowledge: the Third Party Leases/Easements/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/Easement/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 Sound Transit.

(k) To BNSF's actual knowledge, the copies of the Third Party Leases/Easements/Licenses, are true and correct copies of originals of such documentation in BNSF's possession. BNSF shall deliver to Sound Transit within 90 days after Closing the originals of such Third Party Leases/Easements/Licenses.

5.2 **Sound Transit.** As of the Contract Date, Sound Transit hereby represents and warrants to BNSF that the following statements are materially true except as may otherwise be disclosed on Exhibit D:

(a) Sound Transit is a regional transit authority duly organized, validly existing and in good standing under the laws of the State of Washington, 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) Sound Transit has taken all corporate action necessary to authorize the execution and delivery by Sound Transit of this Agreement and the other documents to be delivered by Sound Transit at each Closing and the performance of its obligations hereunder and thereunder.

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

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

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

5.3 **Miscellaneous.** As used herein, the phrase "BNSF's knowledge" or any derivation thereof shall mean the actual knowledge of David P. Schneider, General Director of Real Estate for BNSF without any obligation on the part of such individual to investigate the matters represented and warranted. It shall be a condition of the parties' respective obligation to Close that the representations and warranties of the other party contained in this Section 5 are true and correct in all material respects at the Closing Date. In the event that BNSF or Sound Transit learns that any of either party's representations or warranties becomes inaccurate between the Contract Date and the Closing Date, BNSF or Sound Transit, as applicable, shall immediately notify the other party in writing of such change. In the event the party whose representation or warranty becomes inaccurate (the "Representing Party") cures such inaccuracy prior to the next Closing Date this Agreement shall remain in full force and effect. If the Representing Party does not so cure such inaccuracy, the other party may pursue any remedy provided for in Section 10 provided, however, if the non-Representing Party closes with knowledge of any such inaccuracy then the representations and warranties of the Representing Party shall be deemed to be amended such that the applicable inaccuracy is an exception to the Representing Party's representations and warranties for all purposes under this Agreement. 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 twelve (12) months after the Closing Date of such expenses and inaccuracy, and (ii) the Representing Party shall in no event be responsible for any consequential or punitive damages resulting from such inaccuracy. Notwithstanding anything to the contrary contained in this Agreement, the non-Representing Party shall have no right to recover from, or proceed against, the Representing Party in any manner whether based upon breach of contract, tort or otherwise upon the expiration of such twelve month period except to the extent the non-Representing Party has so notified the Representing Party in accordance with the terms of this Agreement within such twelve month period.

Section 6. Condition of Property. Sound Transit has been, or by Closing will have been, allowed to make an inspection of the Property. Subject to BNSF's obligations under the Lakeview Joint Use Agreement or Section 7 of this Agreement **SOUND TRANSIT IS PURCHASING ITS INTERESTS IN THE PROPERTY IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND**

LATENT DEFECTS, IS NOT RELYING ON, AND HEREBY WAIVES ANY WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM BNSF WITH RESPECT TO ANY MATTERS CONCERNING THE 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, under, or in proximity to 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 (except as otherwise provided in Section 5.1 hereof), and the Third Party Leases/Easements/Licenses permits, orders, or other agreements, affecting the Property (collectively, the "Condition of the Property"). Sound Transit represents and warrants to BNSF that except for the express representations and warranties of BNSF in this Agreement, Sound Transit 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. Subject to BNSF's obligations under the Lakeview Joint Use Agreement or Section 7 of this Agreement Sound Transit assumes the risk that Hazardous Substances or other adverse matters may affect the Property that were not revealed by Sound Transit's inspection and except to the extent of BNSF's obligations under the Lakeview Joint Use Agreement or Section 7 of this Agreement, waives, releases and discharges forever BNSF and BNSF's officers, directors, shareholders, employees and agents (collectively, "Releasees") from any and all present or future claims or demands, and any and all damages, Losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown, which Sound Transit might have asserted or alleged against Releasees 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, and any similar or comparable state or local law. The term "Hazardous Substance" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

BNSF and Sound Transit 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.

Section 7. Environmental Obligations.

7.1 Definitions. The following additional capitalized terms shall have the meanings ascribed to them below when used in this Section 7:

- (a) "BNSF Party" means one or more of (i) BNSF's officers, directors, employees, agents, or contractors while using or on the Property, in connection with performing duties of any kind for BNSF, including, among others, performing duties related to the Property, providing

Commuter Rail Service, or otherwise providing Contract Services under that certain Commuter Rail Service Agreement between BNSF and Sound Transit dated as of April 6, 2000 as amended from time to time (the "Seattle/Tacoma Commuter Service Agreement") and under the Lakeview Joint Use Agreement, but excluding any such person who is a fare paying passenger on board a passenger train operating in Commuter Rail Service, (ii) Customers, or (iii) Grantees/Tenants.

(b) "Commuter Rail Service" means any of Sound Transit's or Sound Transit Parties' operations on the Property including, but not limited to, operations performed by contractors of Sound Transit and operations defined as "Commuter Rail Service" under the Seattle/Tacoma Commuter Service Agreement.

(c) "Customers" means any persons (other than a Sound Transit Party) who receive services of BNSF involving use of the Property.

(d) "Environmental Loss or Damage" means all fines, penalties, liability, cost, damages, injuries, deaths, losses, expenses, fees, charges, cleanups, removals, remediations, or any other cost, requirement, or liability whatsoever and all expenses and attorneys' fees, arising from, resulting from, related to, or incurred in connection with actions, judgments, suits, claims, (formal or informal), or contentions of any kind or nature whatsoever, raised by any person or entity of any kind at any time with respect to contamination, waste (hazardous and non-hazardous), pollution, garbage, trash, hazardous materials, or environmental hazards or conditions of any kind or nature whatsoever, and including without limitation damages or injuries to a person or private or public property (real or personal, and including without limitation natural resources) but shall not include damages related to diminution in value of the Property.

(e) "Grantee/Tenant" means Persons (other than a Sound Transit Party) that used the Property themselves on or prior to the Closing under authority of or by agreement with BNSF.

(f) "Parties" means, collectively, BNSF and Sound Transit.

(g) "Sound Transit Party" means one or more of (i) Sound Transit's officers, directors, employees, agents or contractors including any operator of commuter service (other than a BNSF Party) while on or using the Property or performing duties related to the Property, or performing duties related to the provision of Commuter Rail Service, (ii) any passenger of a Sound Transit train (other than a BNSF Party) while such passenger is on the Property, or (iii) any other person (other than a BNSF Party) at or proximate to a commuter rail station used by Sound Transit who is there for the purpose of (A) boarding or detraining from a Sound Transit train, meeting or accompanying a ticketed passenger or a person intending to become a ticketed passenger on a Sound Transit train, purchasing a Sound Transit commuter rail ticket, making a reservation for a Sound Transit train, attending a special event sponsored by or held on behalf of Sound Transit, or obtaining information about Sound Transit Commuter Rail Service or conducting business with Sound Transit, or (B) providing local transportation to or accompanying a person described in this subsection in (g)(iii)(A) above.

(h) "Third Party" means a person or entity that is not a BNSF Party or a Sound Transit Party.

7.2 Environmental.

A. Subject to Subsections 7.3 and 7.2.E., as between the Parties, Sound Transit shall bear all Environmental Loss or Damage, other than to a BNSF Party, caused by or arising or resulting from the operation of Commuter Rail Service.

B. Subject to Subsections 7.3 and 7.2.E., as between the Parties, BNSF shall bear all Environmental Loss or Damage, other than to a Sound Transit Party, caused by or arising or resulting from (i) the use of the Property after Closing, other than operation of Commuter Rail Service, by BNSF or Customers, or (ii) any Physical Conditions caused by BNSF's or BNSF Parties' use of the Property on or prior to the Closing.

C. Subject to Subsection 7.3, if any Environmental Loss or Damage is caused by or arises or results from both the operation of Commuter Rail Service and BNSF's or a BNSF Party's past, present, or future use of the Property other than operation of Commuter Rail Service, then, as between the Parties, Sound Transit shall bear so much of such Environmental Loss or Damage as was contributed by the operation of Commuter Rail Service, and BNSF shall bear so much of such Environmental Loss or Damage as was contributed by (i) the use of the Property after Closing, other than operation of Commuter Rail Service, by BNSF or Customers, or (ii) any Physical Conditions caused by BNSF's or BNSF Parties' use of the Property on or prior to the Closing.

D. The responsibility for obtaining permits and mitigation of environmental impacts for improvements to be constructed on the Property post-Closing shall be as set forth in the Lakeview Joint Use Agreement.

E. Subject to Subsection 7.3., if any Environmental Loss or Damage is caused by or arises or results from both (a) the operation of Commuter Rail Service and (b) (i) the use of the Property after Closing, other than operation of Commuter Rail Service, by BNSF or Customers, or (ii) any Physical Conditions caused by BNSF's or BNSF Parties' use of the Property on or prior to the Closing, then, as between the Parties, Sound Transit shall bear so much of such Environmental Loss or Damage as was contributed by the operation of Commuter Rail Service, and BNSF shall bear so much of such Environmental Loss or Damage as was contributed by (i) the use of the Property after Closing, other than operation of Commuter Rail Service, by BNSF or Customers, or (ii) BNSF's or BNSF Parties' use of the Property on or prior to the Closing.

F. Sound Transit agrees to release BNSF (including for all purposes of this paragraph, BNSF's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns) from any claims it could otherwise assert against BNSF for Environmental Loss or Damage to the extent Sound Transit is liable under the provisions of this Section 7, whether or not such Environmental Loss or Damage is the result of the negligence of BNSF (other than gross negligence or willful or wanton misconduct or negligence), including without limitation any Environmental Loss or Damage awarded in any court action.

G. BNSF agrees to release Sound Transit (including for all purposes of this paragraph Sound Transit's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns, the State of Washington, and King, Pierce, and Snohomish counties in the State of Washington), from any claims it could otherwise assert against Sound Transit for Environmental Loss or Damage to the extent that BNSF is liable under the provisions of this Section 7, whether or not such Environmental Loss or Damage is the result of the negligence of Sound Transit (other than gross negligence or willful or wanton misconduct or negligence), including without limitation any Environmental Loss or Damage awarded in any court action.

H. To the extent permitted by law, each party shall pay all Environmental Loss or Damage for which such party shall be liable under the provisions of this Section 7, and shall defend, indemnify and hold harmless the other party (including without limitation the other party's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns), against such Environmental Loss or Damage.

I. The indemnification obligations assumed by the Parties hereunder shall include without limitation any liability, suits, claims, damages, judgments, lawsuits, demands, causes of action, losses and expenses under the Federal Employer's Liability Act, the Safety Appliance Act, or the Boiler Inspection Act, including claims for strict liability.

J. For purposes of this Section 7, BNSF and Sound Transit, by mutual negotiation, hereby waive, with respect to the other only, any immunity against claims for which they have assumed and indemnification obligation hereunder that would otherwise be available under the industrial insurance provisions of Title 51 Revised Code of Washington or other applicable disability benefits or employee benefits acts.

K. Other provisions of this Agreement notwithstanding, nothing in this Agreement is intended to be construed as a requirement for an indemnification against gross negligence or willful or wanton misconduct or negligence.

L. In the event BNSF or Sound Transit incurs attorney's fees, costs or other legal expenses to enforce the provisions of this Section 7 against the other, it shall have the right to recover all such reasonable fees, costs and expenses from the other including those incurred on appeal.

M. If any provision of this Agreement purports to indemnify a party against Environmental Loss or Damage and such indemnification would be prohibited by or unenforceable under the binding laws of the State of Washington (including a determination that indemnification under the circumstances involved is against public policy of the State of Washington), the indemnity provided by such provision shall be deemed to be limited to and operative only to the maximum extent permitted by law.

N. Each party to this Agreement shall have the right to settle, or cause to be settled for it, all claims for Environmental Loss or Damage for which such party is liable under the provisions of this Section 7 and to defend or cause to be defended all suits for the recovery of any such Environmental Loss or Damage.

O. In the event a suit is commenced against any party hereto or a claim is asserted for or on account of an Environmental Loss or Damage for which another party hereto may be solely or jointly liable under the provisions of this Section 7, the party so sued or against whom the claim is asserted shall promptly notify the other party in writing of the pendency of the suit or claim, and thereupon such other party shall assume or join in the defense of such suit or claim.

P. In the event that both of the Parties may be liable for any Environmental Loss or Damage and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the Parties who may be jointly liable therefor, a release from liability shall be taken for and in the name of all of the Parties who may be so liable. Prior to settling any claim or suit for an amount in excess of one hundred thousand dollars (\$100,000), the settling party shall obtain the written consent of the other party, which consent shall not be unreasonably withheld. The party being requested to give consent shall provide a response within 30 days of the request being made. In the event that a response is not received within said 30 days it shall be conclusively presumed that such consent has been given. Giving of such consent, impliedly or expressly, shall not be deemed an admission that such claim involves joint liability.

Q. Neither party hereto shall be conclusively bound by any judgment against the other party, unless the party shall have had reasonable notice requiring it to defend and reasonable opportunity to make such defense. As between the Parties only, when such notice and opportunity shall have been given, the party so notified shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit.

7.3 Except to the extent of any insurance covering such liability required to be maintained by either party pursuant to any agreement between the parties, as between the Parties, to the extent Environmental Loss or Damage is caused by or arises from the gross negligence or willful or wanton misconduct of a party to this Agreement (including that party's officers, directors, agents, employees, and contractors), such Environmental Loss or Damage shall be borne exclusively by that party.

Section 8. Conditions to Closing.

8.1 Each party's obligation to proceed to Closing under this Agreement is subject to the following conditions precedent:

- (a) The other party to this Agreement shall have performed and satisfied each and all such other party's obligations under this Agreement and Other Agreements; and
- (b) Each and all of such other party's representations and warranties set forth in this Agreement and the Other Agreements shall be true and correct at the Contract Date and at the Closing Date.

In the event any of the foregoing conditions are not satisfied prior to or at the Closing, subject to Section 5.3 hereof, the party for whom such condition applies may terminate this Agreement by written notice to such other party and thereafter shall have no obligation to proceed with the Closing and neither party shall have any further obligation hereunder except those that expressly survive the termination of this Agreement.

8.2 Sound Transit's shall have no obligation to proceed to Closing under this Agreement if Sound Transit terminates the Lakeview North Sale Agreement pursuant to the terms thereof.

Section 9. Closing.

9.1 Time and Place. Provided that all of the conditions set forth in this Agreement are theretofore fully satisfied or performed, on each Closing Date, Closing shall occur at the office of Preston, Gates and Ellis at 925 Fourth Avenue, Suite 2900, Seattle, Washington or such other location as is mutually agreeable to Sound Transit and BNSF.

9.2 Closing Deliveries. (a) At the Closing, Sound Transit shall deliver the cash portion of the Purchase Price as contemplated in Section 2 of this Agreement and the South Rail Line Property Note.

(b) At the Closing, BNSF and Sound Transit shall execute and deliver to the other party the following documents (all of which shall be duly executed, and witnessed and/or notarized as necessary):

- (1) The Deed conveying the South Rail Line Property.
- (2) A Closing Statement in form and substance mutually satisfactory to Sound Transit and BNSF.
- (3) The Assignment concerning the South Rail Line Property.
- (4) Such transfer tax, certificate of value or other similar documents customarily required of BNSF in the county in which the Property is located.
- (5) 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.

Section 10. Default and Remedies.

10.1 Sound Transit's Default. Subject to Section 5.3, in the event of a material default by Sound Transit under the terms of this Agreement or any Other Agreement prior to the Closing and that is not cured within any applicable notice and cure periods, BNSF may elect to either (a) terminate this Agreement and retain the Earnest Money, in which case neither party shall have any further obligation under this Agreement except those that expressly survive termination, or (b) waive such default and proceed to Closing in accordance with the terms of this Agreement. Subject to Section 5.3, nothing in this Agreement shall waive or diminish any right or remedy BNSF may have at law, in equity or in contract for Sound Transit's default under any document entered into by Sound Transit at Closing or under any Other Agreement or Sound Transit'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 or any Other Agreement prior to the Closing and that is not cured within any applicable notice and cure periods, Sound Transit may elect to (a) terminate this Agreement and receive a refund of the Earnest Money upon which case neither party shall have any further obligation under this Agreement except those that expressly survive termination, (b) obtain specific performance of BNSF's obligations under this Agreement, or (c) waive such default and proceed to Closing in accordance with the terms of this Agreement. Subject to Section 5.3, nothing in this Agreement shall waive or diminish any right or remedy Sound Transit 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.

Section 11. Assignment. Sound Transit may not assign its rights under this Agreement. BNSF may assign its rights and obligations under this Agreement to any entity who succeeds BNSF as the owner of the Property.

Section 12. Brokers and Brokers' Commissions. Sound Transit and BNSF each warrant and represent to the other that neither party has employed a real estate broker or agent in connection with the transaction contemplated hereby. Each party agrees to indemnify and hold the other harmless from any loss or cost suffered or incurred by it as a result of the other's representation herein being untrue.

Section 13. Notices.

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

Sound Transit
401 S. Jackson St
Seattle, WA 98104-2826
ATTN: CEO

With an additional copy to:

Sound Transit
401 S. Jackson St
Seattle, WA 98104-2826
ATTN: Commuter Rail Director

or to BNSF at:

The Burlington Northern and
Santa Fe Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76131
ATTN: Rick Weicher

With additional copy to:

The Burlington Northern and
Santa Fe Railway Company
401 S. Jackson St
Seattle, WA 98104-2826
ATTN: Superintendent of Commuter Operations

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

Section 14. Miscellaneous.

14.1 Governing Law; Headings; Rules of Construction. This Agreement shall be governed by and construed in accordance with the internal 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 Entry Agreement and the Other Agreements; this Agreement contains the entire agreement of the parties hereto with respect to the Property and any other prior understandings or agreements are merged herein and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein or incorporated herein by reference shall be of any force or effect.

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

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

14.6 Date For Performance. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires on a Saturday, Sunday or legal or bank holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.

14.7 Recording. BNSF and Sound Transit 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 shall be of the essence of this Agreement and each and every term and condition hereof.

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

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

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

14.13 Publicity. BNSF and Sound Transit 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. BNSF AND SOUND TRANSIT 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.

[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.

**THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY**

By: *M. A. Rose*
Name: _____
Title: CEO

**CENTRAL PUGET SOUND REGIONAL TRANSIT
AUTHORITY**

By: *Joan M. Earl*
Name: JOAN M. EARL
Title: CEO

EXHIBIT A

DESCRIPTION OF SOUTH RAIL LINE PROPERTY

The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway Company) property along the portion of the subdivision commonly known as the Lakeview Subdivision from Lakeview (MP 8.9) to Nisqually (MP 24.5), Pierce County, Washington, the centerline of such property being described as follows:

Beginning at the intersection of said Main Track centerline with the East line of Section 11, Township 19 North, Range 2 East, W. M. said East line also being the centerline of Bridgeport Way SW; thence Southwesterly through said Section 11, the NW $\frac{1}{4}$ of Section 14, Section 15, the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22, Section 21 and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20, all in Township 19 North, Range 2 East, to a point on the South line of said Section 20 distant 123.8 feet West of the Southeast corner of said Section 20; thence continuing Southwesterly along the last described course a distance of 262.5 feet to a point of curve; thence Southwesterly along a 2° curve concave Northwesterly, central angle of 18° 02', length of 901.67 feet to a point of tangent; thence Southwesterly along said American Lake Line, through the N $\frac{1}{2}$ of Section 29, the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and the S $\frac{1}{2}$ of Section 30, all in Township 19 North, Range 2 East, a distance of 8,933 feet to a point of curve; thence Southwesterly along a 2° concave Southeasterly, central angle of 13° 30', length of 675 feet to a point of tangent; thence Southwesterly along said American Lake Line, through the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 30, T19N, R2E, the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25 and the NE $\frac{1}{4}$ of Section 36, all in Township 19 North, Range 1 East, a distance of 2,747.2 feet to a point of curve; thence Southwesterly along a 2° curve concave Northwesterly, central angle of 16° 12', length of 810 feet to a point of tangent; thence Southwesterly along said American Lake Line, through the W $\frac{1}{2}$ NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ of said Section 36, through Section 35 and the SE $\frac{1}{4}$ of Section 34, all in T19N, R1E, a distance of 9,834.8 feet to a point of curve; thence Southwesterly along a 1° concave Northwesterly, central angle of 8° 24', length of 840 feet to a point of tangent; thence Southwesterly along said American Lake Line, through the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and the S $\frac{1}{2}$ SW $\frac{1}{4}$ of said Section 34, all in T19N, R1E, a distance of 3,376.4 feet to a point of curve; thence Southwesterly along an 8° curve concave Southeasterly, central angle of 48°, length of 600 feet to a point of tangent; thence Southwesterly along said American Lake Line, through the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4, T18N, R1E a distance of 689 feet to a point of curve; thence Southwesterly along a 7° curve concave Northwesterly, central angle of 36° 46', length of 524.5 feet to a point of tangent; thence Southwesterly through the NE $\frac{1}{4}$ of said Section 4, T18N, R1E a distance of 1,820.6 feet to a point of curve; thence Southwesterly along a 3° curve concave Northwesterly, central angle of 12° 00', length of 400 feet to a point of tangent; thence Southwesterly through the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 4, T18N, R1E a distance of 308.1 feet to a point of spiral; thence Westerly along a spiral to the left 160 feet to a point of curve; thence Southwesterly along a 6° curve concave Southeasterly, central angle of 40° 27', length of 674.2 feet to a point of spiral; thence Southwesterly along a spiral to the left 160 feet to a point of tangent; thence Southwesterly along said American Lake Line, through the W $\frac{1}{2}$ SW $\frac{1}{4}$ of said Section 4, T18N, R1E, a distance of 2,700 feet, more or less, to a point on the South line of said Section 4 distant 274 feet, more or less, East of the Southwest corner of said Section 4, and there terminating.

Prior to the Closing Date, BNSF shall provide Sound Transit (at BNSF's expense) a metes and bounds legal description of the boundaries of the property whose centerline is described above, which shall be used in the legal description contained in the Deed.

LESS AND EXCEPT:

1. All that portion of The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway Company) 100.0 foot wide Tacoma to Lakeview, Washington Branch Line right of way, being 50.0 feet wide on each side of said Railway Company's Main Track centerline, as originally

located and constructed upon, over and across the E½SE¼ of Section 24, Township 20 North, Range 2 East, W. M., Pierce County, Washington, bounded on the North by the South right of way line of South 56th Street, and bounded on the South by the North right of way line of South 60th Street in the City of Tacoma, Washington, EXCEPTING THEREFROM, 15.0 foot wide corridor, being 7.5 feet wide on each side of said Main Track centerline, as now located and constructed.

2. All that portion of The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway Company) 100.0 foot wide Lakeview to Nisqually, Washington Branch Line right of way, being 50.0 feet wide on each side of said Railway Company's Main Track centerline, as originally located and constructed upon, over and across the NW¼ of Section 12, Township 19 North, Range 2 East, W. M., Pierce County, Washington, bounded on the Northeast by a line drawn parallel with and 200.0 feet normally distant Westerly from said Railway Company's Lakeview to Tenino, Washington Main Track centerline, as originally located and constructed, and bounded on the Southwest by the East right of way line of Bridgeport Way SW, EXCEPTING THEREFROM, 15.0 foot wide corridor, being 7.5 feet wide on each side of said Main Track centerline, as now located and constructed.

3. That portion of The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway Company) 400.0 foot wide Station Ground property at Lakeview, Washington, being 200.0 feet wide on each side of said Railway Company's Lakeview to Tenino, Washington Main Track centerline, as originally located and constructed upon, over and across the E½NW¼ of said Section 12, Township 19 North, Range 2 East, W. M., Pierce County, Washington, lying between two lines drawn parallel with and distant, respectively, 25.0 feet and 200.0 feet Westerly, as measured at right angles from said Main Track centerline, bounded on the South by the Northwesterly right of way line of Pacific Highway SW, and bounded on the North by a line drawn at right angles to said Main Track centerline from a point 155.0 feet Southerly of the North line of said Section 12, as measured along said Main Track centerline, EXCEPTING THEREFROM, 15.0 foot wide corridor, being 7.5 feet wide on each side of said Main Track centerline, as now located and constructed.

EXHIBIT B

After Recording Return To:

Central Puget Sound Regional
Transit Authority
401 S. Jackson St
Seattle, WA 98104-2826
Attn: Jordan Wagner, Esq.

QUIT CLAIM DEED
(Lakeview South Line Sale)

Grantor: THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Grantee: CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY

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), and under threat of condemnation, conveys and quit claims to Grantee, the Property, situated in the County of Pierce, State of Washington, together with all after acquired title of the Grantor therein;

EXCEPTING AND RESERVING THEREFROM, the following easements, covenants, conditions and restrictions, which Grantor and Grantee acknowledge and agree shall run with the land and be binding upon the successors and assigns of Grantor and Grantee:

(1) Grantor reserves for itself and its successors and assigns an exclusive easement for freight railroad purposes, including, but not limited to, the construction, maintenance, repair, replacement and operation of freight rail and associated facilities, subject to the provisions of the Lakeview Joint Use Agreement (defined below).

(2) Grantor and Grantee have entered into that certain Joint Use Agreement (Lakeview) dated as of December 17, 2003 (the "Lakeview Joint Use Agreement") concerning the operation and use of the Property. The terms and conditions of the Lakeview Joint Use Agreement are incorporated herein as restrictions encumbering the Property as if fully set forth in this instrument and such terms shall be in full force and effect for purposes of this instrument even if the Lakeview Joint Use Agreement is, for whatever reason, no longer in effect, unless otherwise agreed by the parties in a document signed by both parties and recorded in the real estate records for the County of Pierce.

(3) Grantee must operate any commuter passenger train and related equipment on the Property in a manner that (a) complies with the requirements of 49 C.F.R. Part 238, as such requirements may be amended or waived by the Federal Railroad Administration or any successor agencies (collectively, the "FRA"), and (b) uses only trains and other equipment that do not qualify as light rail operations (as determined by the FRA) if such light rail operations would inhibit freight rail operations.

EXHIBIT C

BNSF Disclosures (Lakeview South Line Sale)

1. A portion of the property subject to the Lakeview North Sale Agreement located between milepost 4.14 to milepost 5.97 of such property contains or contained environmental contamination and is or was included as a superfund site.

EXHIBIT D

Sound Transit Disclosures
(Lakeview South Line Sale)

None.

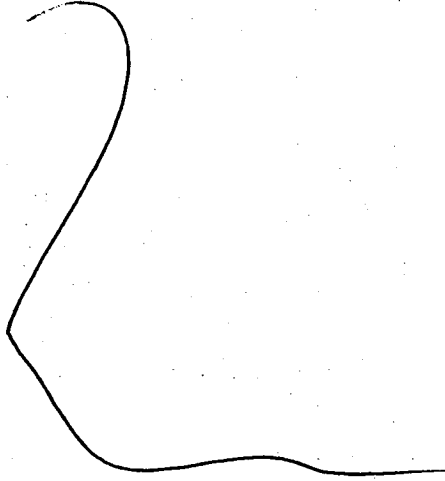


EXHIBIT E

ASSIGNMENT AND ASSUMPTION OF THIRD PARTY LEASES/EASEMENTS/LICENSES (Lakeview South Line Sale)

THIS ASSIGNMENT AND ASSUMPTION OF THIRD PARTY LEASES/EASEMENTS/LICENSES (this "Assignment") is entered into as of _____, 2003, THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY ("Assignor") and CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY ("Sound Transit") ("Assignee").

RECITALS

- A. Assignor and Assignee are parties to that certain Purchase and Sale Agreement (Lakeview South Line Property) dated as of _____, 2003 (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 those certain leases, easements, and licenses more fully described on Schedule A (the "Third Party Leases/Easements/Licenses").
- 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/Easements/Licenses.

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.** Assignor hereby assigns, grants, transfers and sets over, conveys and delivers unto Assignee all of Assignor's right, title and interest in and under the Third Party Leases/Easements/Licenses subject to the following sentences of this Section. To the extent any Third Party Lease/Easement/License relates to other property owned by Assignor ("Other Property") and to the extent of any rights of Assignor to use any facilities installed on the Property pursuant to such Third Party Lease/License/Easement (such as the right to use fiber optic or other telecommunications capacity) ("Use Rights") then the foregoing assignment shall only apply as to the Property and not apply as to Other Property or to Use Rights (except that to the extent the Use Rights permit Assignor and Assignee to use the Use Rights in common then Assignee may use such Use Rights in common with Assignor.) Assignor and Assignee shall each have the right to exercise any right contained in any Third Party Lease/Easement/License to require the other party thereto to relocate its facilities in connection if required or desirable for either of their respective operations or improvements.
2. **Assumption; Succession.** Assignee hereby assumes all of Assignor's duties and obligations under the Third Party Leases/Easements/Assignments arising and accruing from and after the date of this Assignment and Assignee succeeds to the interests of Assignor under the Third Party Leases/Easements/Assignments. 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 Third Party Leases/Easements/Licenses 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 Third Party Leases/Easements/Licenses prior to the date hereof or related to Other Property or (except to the extent Assignee uses the Use Rights in common with Assignor) the Use Rights not assigned hereunder.
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.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY

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

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY

By: _____
Name: _____
Title: _____

Schedule A – Third Party Leases/Easements/Licenses

**EXHIBIT F
List of Leases**

(South)

249089	Ponders Pawn	Lakeview	1.05	401	1300
500812	Ponders Collision	Lakeview	1.08	401	3750
501170	Ruben Arias	Lakeview	1.67	401	6000
209393	WA State Dir of Hwy	Tillicum	2-4	401	
500227	Ferrellgas Inc	Tillicum	2.5	401	26400
250218	US West	Tillicum	3.05	401	200
236889	Galloping Gerties	Tillicum	3.9	401	5250
BF24712	Northwest Restaurants	Tillicum	4	401	8712
249399	Carl Cunningham	Tillicum	4	401	3000
501036	Moon Lee	Tillicum	4.11	401	1500

* Lease is included in all three areas

Mile Posts, Distance From Track and Lease Areas are all approximate

EXHIBIT F
List of Easements
(South)

Easement	BN RR Co.	Pierce County	05/11/1982 At 108th Street	D-6/3	5	0.14
Easement	S-5422	Pierce County	05/11/1982 At 108th Street	Not shown	5	0.14
Easement	BNSF-01053.024	Viacom		Not shown	5	0.14
Easement	93.13	Viacom				
Easement	Tac to Kal 937B	State of Washington	01/07/1944	D-6/4	WA-27A/1	0.45
Easement	93.13	Viacom		N-2/2	1	0.48
Easement	93.13	Viacom		N-2/2	1	0.48
Easement	93.13	Viacom		N-2/2 & 3	1	0.65
Easement	93.13	Viacom		N-2/2 & 3	1	0.65
Easement	306	State of Washington	08/01/1941 306A	Various	1	Various
Easement	306A	State of Washington	12/30/1941	Various	1	Various
Decree	310	N.P. Ry. Co.	08/31/1942 Gravelly Lake Drive SW	N-2/4	1	2
Agreement	323E	N.P. Ry. Co.	08/12/1953	Various	1	Various
Easement	332	N.P. Ry. Co.	06/11/1958	N-2/4	1	2
Easement	229	N.P. Ry. Co.	09/29/2014	N-2/5	1	2.01
Easement	323	N.P. Ry. Co.	03/11/1953	Various	1	Various
Agreement	323D	N.P. Ry. Co.	06/24/1953	Various	1	Various
Order	323F	N.P. Ry. Co.	10/22/1953	N-2/9	2	4.74
Easement	307	N.P. Ry. Co.	04/17/1941	N-2/10	2	5.83
QCD	307A	U.S.A.	08/03/1961	N-2/10	2	5.83
Easement	329	N.P. Ry. Co.	05/23/1957	N-2/10	2	6.52
Easement	309	N.P. Ry. Co.	08/18/1942	N-2/12	2	7.55
Order	309B	Wash. Public Service Comm.	06/22/1956	N-2/12	2	7.55
Release of Access	S-1920	B.N. Inc.	10/12/1973	N-2/12	2	7.38
QCD/Easement	S-13586	B.N. RR	10/16/1986	N-2/12	2	7.57
Easement	311	N.P. Ry. Co.	04/15/1943	N-2/13	3	8.95
Easement	311A	N.P. Ry. Co.	04/15/1943	N-2/13	3	8.95
Easement	311B	N.P. Ry. Co.	06/23/1943	N-2/13	3	8.95
Easement	S-13612	B.N. RR	09/23/1986	N-2/13	3	8.95
Easement	S-13613	B.N. RR	09/23/1986	N-2/13	3	8.41

GROSSING AT
229th BRIDGEPORTWAY

Easement superseded by

Right to extend highway slopes
Permits U.S.A. Perpetual
easement to construct, etc 8"
water pipe line on 10' strip
across the RW in NW1/4 of
NW1/4

This is a Limited Access
Release Agreement covering
any abutter's rights of access to
Ry. RW.

Forever closing & abandoning
of highway grade crossing

Relinquished 50' wide strip
across right-of-way

Gives State right to reconstruct
highway

Easement	336	N.P. Ry. Co.	Pierce County	11/27/1959	N-2/14	3	9.87
Easement	366	N.P. Ry. Co.	State of Washington	02/01/1967	N-2/14	3	9.93
Easement	366A	N.P. Ry. Co.	State of Washington	07/11/1967	N-2/14	3	9.93
Easement	S-1185	B.N. Inc.	State of Washington	12/17/1971	N-2/14	3	9.62
Easement	302	N.P. Ry. Co.	State of Washington	11/08/1935	N-2/16	3	10.15
Easement	494	N.P. Ry. Co.	State of Washington	12/30/1935	D-5/56	WA-31/10,11	10.98
Easement	475	N.P. Ry. Co.	State of Washington	03/30/2028	D-5/56	WA-31/10,11	11.07
QCD/Easement	233	N.P. Ry. Co.	State of Washington	09/16/2015	D-5/56	WA-31/11	11.27
Easement	BNSF-01056-11	BNSF Ry.	MCI Communications	10/29/1998	Various	Various	Various
Agreement	BF-7080	BNSF Ry.	Level 3 Communications	06/15/1998	Various	Various	Various

This easement lies northerly of and is adjacent to corridor at M.P. 10.98

See Title Memo 268 - Under date of Aug. 19, 1915, that portion of the Olympia Branch Right-of-Way lying adjacent to the Tacoma to Tenino Line will be used as Right-of-Way for that line.

EXHIBIT F
List of Licenses

Contract Type	Contract No.	Contractor	Location	Contract Date	Term Date	Description/Line Segment Milepost
PRPW	BF-14115	CABLE TV PUGET SOUND INC	WA-TILLCUM	04/13/2000		UGD FIBER OPTIC COMMUNICATIONS WIRE LINE; LS 401, MP 3.04
PRPW	BF-35129	US WEST COMMUNICATIONS INC	WA-TILLCUM			
PRPW	BF-3882	US WEST COMMUNICATIONS INC	WA-CAMP MURRAY	1998-04-24		2 UGD TELEPHONE CABLES, LS 401, MP 4.13
PRPW	BF-9234	WESTERN PCS III CORP	WA-FORT LEWIS	1998-10-15		6 UGD TELEPHONE WIRES, LS 401, MP 6.45
PRPL	NP-74553	UNITED STATES	WA-FORT LEWIS	1952-03-31		
PRPW	NBF-4105	WASHINGTON DOT	WA-DUPONT	1997-10-24		3 OHD ELECTRIC SUPPLY LINE; LS. 401, MP 9.05

EXHIBIT G

\$6,000,000

September _____, 2005

PROMISSORY NOTE
(Lakeview South Line Sale)

FOR VALUE RECEIVED, the undersigned CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a regional transit authority under the laws of the State of Washington ("**Sound Transit**"), hereby promises to pay to the order of THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("**BNSF**") the principal amount of SIX MILLION DOLLARS (\$6,000,000) (the "**Principal Amount**");

TOGETHER WITH interest on any and all principal amounts remaining unpaid hereunder from the Maturity Date (defined below) until payment in full (after as well as before judgment, and whether before or after the commencement of any bankruptcy proceeding in respect of Sound Transit), to be calculated and paid as set forth below.

On the Maturity Date the remaining principal balance, all other sums then remaining unpaid hereunder, and under any other document executed in connection herewith, whether interest, expenses or other amounts, shall be due and payable in full.

1. As used in this Note, the following terms shall have the following meanings:

"**Default Rate**" shall be an annual rate equal to the greater of (a) for the period January 1 through June 30 of any year, the prime rate last published in *The Wall Street Journal* on the preceding December 31 plus four and one-half percent (4 1/2%), and for the period July 1 through December 31 of any year, the prime rate last published in *The Wall Street Journal* on the preceding June 30 plus four and one-half percent (4 1/2%), or (b) twelve percent (12%), subject to the provisions of Section 8 of this Note. If either December 31 or June 30 fall on a weekend or a date in which *The Wall Street Journal* is not published, the rate will be set on the next date of publication of *The Wall Street Journal*.

"**Event of Default**" means any breach of Sound Transit's obligations under this Note.

"**Loan**" shall mean the loan made to Sound Transit by BNSF evidenced by this Note.

"**Maturity Date**" shall mean September 28, 2007.

"**Note**" means this Note, as amended, supplemented or otherwise modified from time to time.

"**Principal Amount**" means the amount of Six Million Dollars as set forth in the preamble of this Note.

2. Time is of the essence hereof. Upon the Maturity Date then this Note and/or any note(s) or other instrument(s) that may be taken in renewal or extension of all or any part of the indebtedness evidenced hereby shall be due and payable without any further presentment, demand, protest or notice of any kind, and thereafter interest determined as provided herein shall accrue. Furthermore, upon the occurrence of any Event of Default, BNSF shall have all of the rights and remedies available to BNSF at law, in equity or otherwise.

3. Any principal or interest or other amount payable hereunder that is not paid as and when due shall bear interest from the date on which such amount is due until such amount is paid in full, payable on

demand, at a rate per annum equal the Default Rate. Sound Transit acknowledges that during the time that any such amount shall be in default, BNSF will incur losses which are impracticable, costly, and inconvenient to ascertain. Such losses include without limitation the ability to invest amounts then due at the current rate of return, unavailability of liquid funds, and delay in using such funds in the making of new loans. Sound Transit agrees that interest paid at the Default Rate represents a reasonable sum considering all the circumstances existing on the date of the execution of this Note and represents a reasonable estimate of the losses that BNSF will incur by reason of late payment. Sound Transit further agrees that proof of such actual losses would be costly, inconvenient, impracticable, and extremely difficult to fix. Acceptance of such interest shall not constitute a waiver of the default with respect to the overdue payment and shall not prevent BNSF from exercising any of the other rights and remedies available hereunder. Neither the failure of BNSF to exercise any power given BNSF hereunder or to insist upon strict compliance by Sound Transit with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of BNSF's right to demand exact compliance with the terms hereof.

4. Both principal and interest are payable in lawful money of the United States of America at such place as BNSF or the legal holder(s) of this Note may from time to time in writing appoint, and in the absence of such appointment, then to The Burlington Northern and Santa Fe Railway Company, 2500 Lou Menk Drive, Fort Worth, TX, 76131, Attn: _____ . This Note shall constitute a general obligation bond as that term is used in RCW 81.112.130, and shall be payable from the general revenues received by Sound Transit from its operations, Local Option Taxes and any proceeds from dispositions of assets owned by Sound Transit. This Note may not be accelerated for default, and following the occurrence of any default by Sound Transit under this Note, Local Option Taxes may not be used to pay the principal of or interest on the Note unless all required principal and interest payments have been made on Sound Transit's Sales Tax and Motor Vehicle Excise Tax Bonds, Series 1999 and any other bonds issued on a parity of lien therewith. As used in the previous sentence, "Local Option Taxes" means the special motor vehicle excise tax and rental care sales and use tax authorized by RCW 81.104.160 and the sales and use tax authorized by RCW 81.104.170.

5. BNSF may transfer this Note and deliver to the transferee(s) all or any part of the property then held by it as security hereunder, and the transferee(s) shall thereupon become vested with all the powers and rights herein given to BNSF with respect thereto; and BNSF shall thereafter be forever relieved and fully discharged from any liability or responsibility in the matter, but BNSF shall retain all rights and powers hereby given with respect to property not so transferred.

6. At the option of Sound Transit, the entire outstanding amount of the Loan may be prepaid in whole or in part without penalty or premium.

7. Sound Transit hereby waives presentment for payment, demand, notice of dishonor, and protest of this Note and further agrees that this Note shall be deemed to have been made under and shall be governed by the laws of the State of Washington in all respects, including matters of construction, validity and performance, and that none of its terms or provisions may be waived, altered, modified or amended except as BNSF may consent thereto in writing duly signed by BNSF. The parties agree that this Note is the result of negotiation by the parties, each of whom was represented by counsel, and thus, this Note shall not be construed against BNSF.

8. This Note is limited so that in no contingency or event whatsoever shall the amount paid or agreed to be paid to BNSF for the use, forbearance, or detention of the Principal Amount exceed the maximum permissible under applicable law. If, from any circumstance whatsoever, fulfillment of any provision hereof, at the time performance of such provision shall be due, shall be prohibited by law, the obligation to be fulfilled shall be reduced to the maximum not so prohibited, and if from any circumstance BNSF should ever receive as interest hereunder an amount that would exceed the highest lawful rate, such amount as would be excessive interest shall be applied to the reduction of the principal of this Note and not to the payment of interest. This provision shall control every other provision of all agreements between Sound Transit and BNSF.

9. Sound Transit agrees to pay all costs, including, without limitation, reasonable attorneys' fees and expert witness fees, incurred by the holder hereof in enforcing payment or other obligations of Sound Transit under this Note, whether or not suit is filed, including without limitation, all costs, attorneys' fees and expenses and experts witnesses' fees and expenses incurred by the holder hereof in connection with any court action, insolvency, bankruptcy, reorganization, arrangement (including any appeals thereof) or other similar proceedings, involving Sound Transit that in any way affect the exercise by the holder hereof of its rights and remedies hereunder. Any and all costs incurred by the holder hereof in any action undertaken to obtain relief from the stay of bankruptcy statutes are specifically included in those costs and expenses to be paid by Sound Transit pursuant hereto. Sound Transit hereby waives to the full extent permitted by law all right to plead any statute of limitations as a defense to any action hereunder.

10. All requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Note 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 by telephone, with an original deposited postage prepaid in the first class mails of the United States, addressed to Sound Transit at:

Sound Transit
401 S. Jackson St
Seattle, WA 98104-2826
ATTN: CEO

With an additional copy to:

Sound Transit
401 S. Jackson St
Seattle, WA 98104-2826
ATTN: Commuter Rail Director

or to BNSF at:

The Burlington Northern and
Santa Fe Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76131
ATTN: Rick Weicher

With additional copy to:

The Burlington Northern and
Santa Fe Railway Company
401 S. Jackson St
Seattle, WA 98104-2826
ATTN: Superintendent of Commuter Operations

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.

11. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BNSF AND SOUND TRANSIT 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 NOTE.

12. NOTICE: ORAL AGREEMENTS, PROMISES, OR COMMITMENTS TO: (1) LOAN MONEY, (2) EXTEND CREDIT, (3) MODIFY OR AMEND ANY TERMS OF THE LOAN DOCUMENTS, (4) RELEASE ANY GUARANTOR, (5) FORBEAR FROM ENFORCING REPAYMENT OF THE LOAN OR THE EXERCISE OF ANY REMEDY UNDER THE LOAN DOCUMENTS, OR (6) MAKE ANY OTHER FINANCIAL ACCOMMODATION PERTAINING TO THE LOAN ARE ALL UNENFORCEABLE UNDER WASHINGTON LAW.

IN WITNESS WHEREOF, the undersigned have caused this Note to be executed as of the day and year first above written.

CENTRAL PUGET SOUND REGIONAL TRANSIT
AUTHORITY

By: _____

Name:

Title:

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.

11. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BNSF AND SOUND TRANSIT 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 NOTE.

12. NOTICE: ORAL AGREEMENTS, PROMISES, OR COMMITMENTS TO: (1) LOAN MONEY, (2) EXTEND CREDIT, (3) MODIFY OR AMEND ANY TERMS OF THE LOAN DOCUMENTS, (4) RELEASE ANY GUARANTOR, (5) FORBEAR FROM ENFORCING REPAYMENT OF THE LOAN OR THE EXERCISE OF ANY REMEDY UNDER THE LOAN DOCUMENTS, OR (6) MAKE ANY OTHER FINANCIAL ACCOMMODATION PERTAINING TO THE LOAN ARE ALL UNENFORCEABLE UNDER WASHINGTON LAW.

IN WITNESS WHEREOF, the undersigned have caused this Note to be executed as of the day and year first above written.

CENTRAL PUGET SOUND REGIONAL TRANSIT
AUTHORITY

By: _____
Name:
Title:

**FIRST AMENDMENT
TO
PURCHASE AND SALE AGREEMENT
(Lakeview South Rail Line Property)**

This First Amendment to Purchase and Sale Agreement (“**Amendment**”) is entered into as of the 23rd day of November, 2004 between THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (“**BNSF**”) and CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY (“**Sound Transit**”).

A. BNSF and Sound Transit entered into that certain Purchase and Sale Agreement (Lakeview South Rail Line Property) dated December 17, 2003, and recorded in the Pierce County Recorder’s Office as Instrument No. 200312190087 (the “**Lakeview South PSA**”).

B. BNSF and Sound Transit entered into that certain Purchase and Sale Agreement (Lakeview North Rail Line Property) dated December 17, 2003 and recorded in the Pierce County Recorder’s Office as Instrument No. 200312180726 as amended by a First Amendment dated September 28, 2004 (the “**Lakeview North PSA**”).

C. BNSF and Sound Transit wish to (i) modify the terms of the promissory notes contemplated to be delivered by Sound Transit at the respective closings under the Lakeview South PSA and Lakeview North PSA as described in this Amendment, and (ii) correct scrivener’s errors in the deed delivered at closing under the Lakeview North PSA.

D. BNSF and Sound Transit intend to concurrently execute a Second Amendment to the Lakeview North PSA (the “**Lakeview North Second Amendment**”).

NOW, THEREFOR, for and in consideration of the foregoing recitals, which are incorporated herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follow:

1. Exhibit G to the Lakeview South PSA is deleted in its entirety and substituted with the Exhibit G attached hereto. All references in the Lakeview South PSA to Exhibit G shall be deemed references to the Exhibit G attached to this Amendment.

2. Section 2 of the Lakeview South PSA is deleted in its entirety and substituted with the following:

BNSF agrees to sell to Sound Transit, and Sound Transit agrees to purchase from BNSF, the South Rail Line Property. Sound Transit shall pay BNSF the purchase price of \$15,000,000 (“**Purchase Price**”) for the Property as follows:

1. On the Contract Date Sound Transit shall pay the sum of \$3,000,000 (the “**Earnest Money**”).
2. On the Closing Date Sound Transit shall pay the sum of \$3,000,000 and shall execute and deliver the South Rail Line Property Note in the amount of \$9,000,000.
3. Sound Transit shall pay amounts due under the South Rail Line Property Note as and when stated therein.

The Purchase Price shall be paid to BNSF in United States dollars, by Federal Reserve System wire transfer (in accordance with written wire transfer instructions provided by BNSF to Sound Transit) or other immediately available funds acceptable to BNSF. The Purchase Price shall be subject to prorations and adjustments as set forth in this Agreement. Sound Transit acknowledges that, except as stated in Section 4.1 and Section 10.2 of this Agreement, the Earnest Money is non-refundable and represents a portion of the consideration for BNSF's Seller's holding the Property available for purchase during the Review Period but shall be applied to the Purchase Price at Closing as stated above.

3. Simultaneously with the execution and delivery of this Amendment Sound Transit shall execute the Lakeview North Replacement Note and BNSF shall execute the corrected deed all as contemplated in the Lakeview North Second Amendment.

4. Except as expressly modified by this Amendment, the Lakeview South PSA remains unmodified and in full force and effect. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute the same instrument.

[Remainder of Page Intentionally Left Blank]

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

THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

By: Richard E. Weicher
Name: Richard E Weicher
Title: Vice President

CENTRAL PUGET SOUND REGIONAL TRANSIT
AUTHORITY

By: _____
Name:
Title:

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

THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

By: _____
Name:
Title:

CENTRAL PUGET SOUND REGIONAL TRANSIT
AUTHORITY

By: Joan M. Eal
Name:
Title:

Office of Legal Counsel
Approved as to Form:

By: [Signature]

EXHIBIT G

\$9,000,000

September _____, 2005

PROMISSORY NOTE
(Lakeview South Line Sale)

FOR VALUE RECEIVED, the undersigned CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a regional transit authority under the laws of the State of Washington ("**Sound Transit**"), hereby promises to pay to the order of THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("**BNSF**") the principal amount of NINE MILLION DOLLARS (\$9,000,000) (the "**Principal Amount**");

TOGETHER WITH interest on any and all principal amounts remaining unpaid hereunder from the due date until such amount due is paid in full (after as well as before judgment, and whether before or after the commencement of any bankruptcy proceeding in respect of Sound Transit), to be calculated and paid as set forth below.

The Principal Amount shall be due and payable in two installments as follows:

- (a) On September 28, 2006 Sound Transit shall pay the sum of Three Million Dollars (\$3,000,000).
 - (b) On the Maturity Date Sound Transit shall pay the sum of Six Million Dollars (\$6,000,000) and all other sums then remaining unpaid hereunder, and under any other document executed in connection herewith, whether interest, expenses or other amounts, shall be due and payable in full.
1. As used in this Note, the following terms shall have the following meanings:

"**Default Rate**" shall be an annual rate equal to the greater of (a) for the period January 1 through June 30 of any year, the prime rate last published in *The Wall Street Journal* on the preceding December 31 plus four and one-half percent (4 1/2%), and for the period July 1 through December 31 of any year, the prime rate last published in *The Wall Street Journal* on the preceding June 30 plus four and one-half percent (4 1/2%), or (b) twelve percent (12%), subject to the provisions of Section 8 of this Note. If either December 31 or June 30 fall on a weekend or a date in which *The Wall Street Journal* is not published, the rate will be set on the next date of publication of *The Wall Street Journal*.

"**Event of Default**" means any breach of Sound Transit's obligations under this Note.

"**Loan**" shall mean the loan made to Sound Transit by BNSF evidenced by this Note.

"**Maturity Date**" shall mean September 28, 2007.

"**Note**" means this Note, as amended, supplemented or otherwise modified from time to time.

"**Principal Amount**" means the amount of Six Million Dollars as set forth in the preamble of this Note.

2. Time is of the essence hereof. Upon the Maturity Date then this Note and/or any note(s) or other instrument(s) that may be taken in renewal or extension of all or any part of the indebtedness evidenced hereby shall be due and payable without any further presentment, demand, protest or notice of any kind, and thereafter interest determined as provided herein shall accrue. Furthermore, upon the occurrence of any Event of Default, BNSF shall have all of the rights and remedies available to BNSF at law, in equity or otherwise.

3. Any principal or interest or other amount payable hereunder that is not paid as and when due shall bear interest from the date on which such amount is due until such amount is paid in full, payable on demand, at a rate per annum equal the Default Rate. Sound Transit acknowledges that during the time that any such amount shall be in default, BNSF will incur losses which are impracticable, costly, and inconvenient to ascertain. Such losses include without limitation the ability to invest amounts then due at the current rate of return, unavailability of liquid funds, and delay in using such funds in the making of new loans. Sound Transit agrees that interest paid at the Default Rate represents a reasonable sum considering all the circumstances existing on the date of the execution of this Note and represents a reasonable estimate of the losses that BNSF will incur by reason of late payment. Sound Transit further agrees that proof of such actual losses would be costly, inconvenient, impracticable, and extremely difficult to fix. Acceptance of such interest shall not constitute a waiver of the default with respect to the overdue payment and shall not prevent BNSF from exercising any of the other rights and remedies available hereunder. Neither the failure of BNSF to exercise any power given BNSF hereunder or to insist upon strict compliance by Sound Transit with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of BNSF's right to demand exact compliance with the terms hereof.

4. Both principal and interest are payable in lawful money of the United States of America at such place as BNSF or the legal holder(s) of this Note may from time to time in writing appoint, and in the absence of such appointment, then to The Burlington Northern and Santa Fe Railway Company, 2500 Lou Menk Drive, Fort Worth, TX, 76131, Attn: Capital Investment Accounting. This Note shall constitute a general obligation bond as that term is used in RCW 81.112.130, and shall be payable from the general revenues received by Sound Transit from its operations, Local Option Taxes and any proceeds from dispositions of assets owned by Sound Transit. This Note may not be accelerated for default, and following the occurrence of any default by Sound Transit under this Note, Local Option Taxes may not be used to pay the principal of or interest on the Note unless all required principal and interest payments have been made on Sound Transit's Sales Tax and Motor Vehicle Excise Tax Bonds, Series 1999 and any other bonds issued on a parity of lien therewith. As used in the previous sentence, "Local Option Taxes" means the special motor vehicle excise tax and rental care sales and use tax authorized by RCW 81.104.160 and the sales and use tax authorized by RCW 81.104.170.

5. BNSF may transfer this Note and deliver to the transferee(s) all or any part of the property then held by it as security hereunder, and the transferee(s) shall thereupon become vested with all the powers and rights herein given to BNSF with respect thereto; and BNSF shall thereafter be forever relieved and fully discharged from any liability or responsibility in the matter, but BNSF shall retain all rights and powers hereby given with respect to property not so transferred.

6. At the option of Sound Transit, the entire outstanding amount of the Loan may be prepaid in whole or in part without penalty or premium.

7. Sound Transit hereby waives presentment for payment, demand, notice of dishonor, and protest of this Note and further agrees that this Note shall be deemed to have been made under and shall be governed by the laws of the State of Washington in all respects, including matters of construction, validity and performance, and that none of its terms or provisions may be waived, altered, modified or

amended except as BNSF may consent thereto in writing duly signed by BNSF. The parties agree that this Note is the result of negotiation by the parties, each of whom was represented by counsel, and thus, this Note shall not be construed against BNSF.

8. This Note is limited so that in no contingency or event whatsoever shall the amount paid or agreed to be paid to BNSF for the use, forbearance, or detention of the Principal Amount exceed the maximum permissible under applicable law. If, from any circumstance whatsoever, fulfillment of any provision hereof, at the time performance of such provision shall be due, shall be prohibited by law, the obligation to be fulfilled shall be reduced to the maximum not so prohibited, and if from any circumstance BNSF should ever receive as interest hereunder an amount that would exceed the highest lawful rate, such amount as would be excessive interest shall be applied to the reduction of the principal of this Note and not to the payment of interest. This provision shall control every other provision of all agreements between Sound Transit and BNSF.

9. Sound Transit agrees to pay all costs, including, without limitation, reasonable attorneys' fees and expert witness fees, incurred by the holder hereof in enforcing payment or other obligations of Sound Transit under this Note, whether or not suit is filed, including without limitation, all costs, attorneys' fees and expenses and experts witnesses' fees and expenses incurred by the holder hereof in connection with any court action, insolvency, bankruptcy, reorganization, arrangement (including any appeals thereof) or other similar proceedings, involving Sound Transit that in any way affect the exercise by the holder hereof of its rights and remedies hereunder. Any and all costs incurred by the holder hereof in any action undertaken to obtain relief from the stay of bankruptcy statutes are specifically included in those costs and expenses to be paid by Sound Transit pursuant hereto. Sound Transit hereby waives to the full extent permitted by law all right to plead any statute of limitations as a defense to any action hereunder.

10. All requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Note 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 by telephone, with an original deposited postage prepaid in the first class mails of the United States, addressed to Sound Transit at:

Sound Transit
401 S. Jackson St
Seattle, WA 98104-2826
ATTN: CEO

With an additional copy to:

Sound Transit
401 S. Jackson St
Seattle, WA 98104-2826
ATTN: Commuter Rail Director

or to BNSF at:

The Burlington Northern and
Santa Fe Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76131
ATTN: Rick Weicher

With additional copy to:

The Burlington Northern and
Santa Fe Railway Company
401 S. Jackson St
Seattle, WA 98104-2826
ATTN: Superintendent of Commuter Operations

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.

11. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BNSF AND SOUND TRANSIT 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 NOTE.

12. NOTICE: ORAL AGREEMENTS, PROMISES, OR COMMITMENTS TO: (1) LOAN MONEY, (2) EXTEND CREDIT, (3) MODIFY OR AMEND ANY TERMS OF THE LOAN DOCUMENTS, (4) RELEASE ANY GUARANTOR, (5) FORBEAR FROM ENFORCING REPAYMENT OF THE LOAN OR THE EXERCISE OF ANY REMEDY UNDER THE LOAN DOCUMENTS, OR (6) MAKE ANY OTHER FINANCIAL ACCOMMODATION PERTAINING TO THE LOAN ARE ALL UNENFORCEABLE UNDER WASHINGTON LAW.

IN WITNESS WHEREOF, the undersigned have caused this Note to be executed as of the day and year first above written.

CENTRAL PUGET SOUND REGIONAL TRANSIT
AUTHORITY

By: _____
Name:
Title:

C

**JOINT USE AGREEMENT
BETWEEN
CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY
AND
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

This agreement (the "Joint Use Agreement") is hereby made, as of this 17th day of December, 2003, by and between the Central Puget Sound Regional Transit Authority, established by King, Pierce, and Snohomish counties of Washington State ("Sound Transit"), with its office at 401 South Jackson Street, Seattle, Washington 98104-2826, and The Burlington Northern and Santa Fe Railway Company ("BNSF"), a Delaware corporation, with its principal office at 2600 Lou Menk Drive, P.O. Box 961034, Fort Worth, Texas 76161-0034 (together, "Parties").

WHEREAS, Sound Transit and BNSF are concurrently entering into three separate Purchase and Sale Agreements for the purchase and sale of BNSF's Lakeview Subdivision between Tacoma, Washington (BNSF mile post 2.15) and Nisqually, Washington (BNSF mile post 11.5) a distance of approximately 18 miles along with certain land parcels in South Tacoma and Lakewood ("Lakeview Line") by BNSF to Sound Transit with BNSF retaining an exclusive freight easement; and

WHEREAS, Sound Transit and BNSF wish to provide the terms of joint use of the Lakeview Line by BNSF and Sound Transit, whether BNSF's freight operations and common carrier obligations are conducted by BNSF or a third party freight operator.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

ARTICLE I - DEFINITIONS

Each definition in this Joint Use Agreement includes the singular and the plural. As used in this Joint Use Agreement, the following terms, when capitalized as in this Section, shall have the following meanings:

- a) "Amtrak" means the National Railroad Passenger Corporation
- b) "BNSF" means The Burlington Northern and Santa Fe Railway Company, a Delaware corporation, with its principal office at 2600 Lou Menk Drive, P.O. Box 961034, Fort Worth, Texas 76161-0034.
- c) "Commuter Rail Service" means the operation of commuter trains by, or for, Sound Transit (including, but not limited to, such operation conducted by BNSF for Sound Transit) and Sound Transit's activities and operations over any portion or all of the Lakeview Line.
- d) "Force Majeure Event" shall have the meaning set forth in Subsection 10.2.A.
- e) "Freight Easement" shall mean the easement retained by BNSF for BNSF and its successors and assigns in the deeds conveying the Lakeview Line to Sound Transit pursuant to the Purchase and Sale Agreements.
- f) "GTM" shall mean gross ton mile which is the weight in tons for Trains transported over one (1) mile of track.

- g) "Joint Use Agreement" means this Agreement titled "Joint Use Agreement Between Central Puget Sound Regional Transit Authority and The Burlington Northern and Santa Fe Railway Company," including all Appendices hereto, which are hereby incorporated by reference into this Joint Use Agreement and made a part hereof, and any amendments hereto.
- h) "Lakeview Line" means the property conveyed to Sound Transit pursuant to the Purchase and Sale Agreements (the North Rail Line Property, Parcels Property and South Rail Line Property), to the extent actually conveyed. The parties acknowledge that upon each closing and conveyance under the Purchase and Sale Agreements the definition of Lakeview Line shall automatically be updated to include the property conveyed at such closing without any need to amend or supplement this Joint Use Agreement. Such term shall include on such conveyed properties all rail facilities now or in the future located on said property, which rail facilities include, without limitation, signals and signal systems, interlocking devices and plants, communications facilities, the Centralized Traffic Control system and other controls, main line and passing tracks, rights-of-way, terminal facilities, yards, buildings, improvements, and other rail facilities necessary and useful for Commuter Rail Service.
- i) "Lakeview North Line Sale Agreement" means that certain Purchase and Sale Agreement (North Rail Line Property) entered into concurrently with this Joint Use Agreement for the sale of that portion of the Lakeview Line generally from South Tacoma, Washington to Bridgeport Way in Lakewood, Washington, as more particularly described therein.
- j) "Lakeview North Rail Line Property" means the portion of the Lakeview Line that is the subject of the Lakeview North Line Sale Agreement.
- k) "Lakeview Parcels Property" means the portion of the Lakeview Line that is the subject of the Lakeview Parcels Sale Agreement.
- l) "Lakeview Parcels Sale Agreement" means that certain Purchase and Sale Agreement (Stations Parcels Property) entered into concurrently with this Joint Use Agreement for the sale of the portion of the Lakeview Line generally located in South Tacoma, Washington and Lakewood, Washington and as more particularly described therein.
- m) "Lakeview South Line Sale Agreement" means that certain Purchase and Sale Agreement (South Rail Line Property) entered into concurrently with this Joint Use Agreement for the sale of that portion of the Lakeview Line generally from Bridgeport Way in Lakewood, Washington to Nisqually, Washington, as more particularly described therein.
- n) "Lakeview South Line Sale Agreement" means the portion of the Lakeview Line that is the subject of the Lakeview South Line Sale Agreement.
- o) "Maintenance Activities" shall mean ordinary maintenance, capital and catastrophic replacement for the full width of the corridor and shall include, but not be limited to: track; bridge and other structures; signals; grade crossing protection devices; and general right-of-way maintenance such as mowing, grubbing, and debris removal.
- p) "Permits and Approvals" means all environmental, land use, construction or other permits, licenses, certifications, authorizations, entitlements and approvals, including those related to environmental mitigation, permits or approvals that are required by law in connection with construction of capacity improvements for commuter operations on the Lakeview Line.

- q) "Purchase and Sale Agreements" means collectively, the "Lakeview North Line Sale Agreement, the Lakeview Parcels Sale Agreement and the Lakeview South Line Sale Agreement.
- r) "Rolling Stock" means the locomotives, cars, and cabooses required by BNSF to provide the freight service.
- s) "Seattle-Tacoma Service Agreement" means the Commuter Rail Service Agreement between Sound Transit and BNSF dated May 2, 2000, as amended, for the operation of Sound Transit's commuter rail service between Seattle and Tacoma.
- t) "System Safety Program Plan" shall have the meaning set forth in Subsection 2.3.D.4.
- u) "Sound Transit" means the Central Puget Sound Regional Transit Authority, established by King, Pierce, and Snohomish counties of Washington State, with its office at 401 South Jackson Street, Seattle, Washington 98104-2826.
- v) "TPO" shall mean third party freight operator.
- x) "Train" shall mean one or more locomotive or other self-propelled rail units with or without freight, commuter or passenger cars attached thereto; provided, however, that, for purposes of calculating Train Miles, work trains shall not be included when they perform work on the Lakeview Line, and hi-rail vehicles shall not be included.
- y) "Train Miles" shall mean the sum of the number of miles traveled on the Lakeview Line by a Train, whether or not revenue-generating, inclusive of all locomotives or self-propelled rail units and attached freight, commuter, or passenger cars and excluding locomotive-only moves, and yard moves which incidentally occupy the mainlines.
- z) "U.S. DOT Regulations" shall have the meaning set forth in Subsection 4.9.C.1.

ARTICLE II – NATURE OF JOINT USE BY SOUND TRANSIT and BNSF

SECTION 2.1 – USE OF LAKEVIEW LINE

A. General Delineation of Use.

1. Pursuant to the Purchase and Sale Agreements, BNSF has conveyed or will convey to Sound Transit the Lakeview Line, with BNSF retaining the exclusive right and obligation, with the ability to subcontract or otherwise assign or sell that right and obligation, to provide freight service to all existing customers and any new customers (the "Freight Easement").
2. BNSF shall dispatch the Lakeview Line, consistent with the First Amendment to the Seattle – Tacoma Service Agreement and BNSF shall receive compensation for such service through the train mile rate in that agreement.
3. Passenger trains shall be given dispatch priority over freight operations necessary to preserve and protect passenger train schedules.

SECTION 2.2 - SERVICE PLAN FOR COMMUTER RAIL AND FREIGHT SERVICE

- A. Sound Transit shall provide BNSF with passenger schedules and will advise BNSF or its third party operator by giving 30 days written notice of any changes to that schedule.
- B. BNSF shall provide Sound Transit with freight schedules for the Lakeview Line and will advise Sound Transit by giving 30 days written notice of any changes to that schedule.

SECTION 2.3 - OPERATING STANDARDS

- A. Both Parties shall operate on the Lakeview Line safely and efficiently, in accordance with applicable federal, state, and local laws, rules, regulations, and requirements, and the operating guidelines and standards embodied in the following:
 - (1) BNSF's General Code of Operating Rules as of the effective date of this Agreement, including any future written amendments thereto, written notice of which shall be provided to Sound Transit thirty (30) days prior to the effective date of such amendment or such other reasonable rules as Sound Transit shall adopt;
 - (2) Emergency Preparedness Plan;
 - (3) System Safety Program Plan;
 - (4) Applicable industry rules and standards, such as those of the Association of American Railroads, for Rolling Stock;
 - (5) Any additional standards or procedures as the Parties may agree upon from time to time; and
- B. If any employee of BNSF shall neglect, refuse, or fail to abide by Sound Transit's rules, instructions, and restrictions governing the operation on or along the Lakeview Line, such employee shall, upon written request of Sound Transit, be prohibited by BNSF from working on the Lakeview Line. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal, or failure on the part of any employee of BNSF, then upon such notice presented in writing, Sound Transit and BNSF shall promptly hold a joint investigation in which all parties concerned shall participate and bear the expense for its officers, counsel, witnesses, and employees. Notice of such investigations to employees of BNSF shall be given by BNSF's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between BNSF and its employees.

If, in the judgment of Sound Transit, the result of such investigation warrants, such employee shall, upon written request of Sound Transit, be withdrawn by BNSF from service on the Lakeview Line, and BNSF shall release and indemnify Sound Transit from and against any and all claims and expenses because of such withdrawal.

If the disciplinary action is appealed by an employee of BNSF to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Lakeview Line by reason of such occurrence.

SECTION 2.4 - MAINTENANCE OF WAY

- A. Sound Transit shall be responsible for all Maintenance Activities on all three areas acquired

under the Purchase and Sale Agreements (the Lakeview Parcels Property, Lakeview North Rail Line Property and Lakeview South Rail Line Property) after each respective closing.

- B. Notwithstanding Section 2.4.A, Sound Transit is contracting by this Agreement with BNSF for BNSF to perform the Maintenance Activities on the Lakeview North Rail Line Property and the Lakeview South Rail Line Property, but excluding the Lakeview Parcels Property for which Sound Transit shall perform all Maintenance Activities. However, Sound Transit may undertake all Maintenance Activities at any time (but shall undertake the Maintenance Activities on line segments on the Lakeview Line on which either (a) any Commuter Rail Service is provided at least prior to the start of such Commuter Rail Service, or (b) Sound Transit has commenced construction of any improvements for Commuter Rail Service) on all or part of the line, by providing BNSF at least 60 days written notice of its intent to do so. The notice shall indicate, by milepost designation, the area to be maintained by Sound Transit and the date Sound Transit maintenance is to begin. The first area to be maintained by Sound Transit shall be the northern most end of the line. Sound Transit may add to that area by providing the 60 days notice, and providing a new milepost designation for the southern limit of Sound Transit maintenance and the date that Sound Transit maintenance is to begin. Each subsequent notice, adding line segments to be maintained by Sound Transit, shall be contiguous to the previous line segment, leaving no "gaps" of BNSF maintenance between Sound Transit areas of maintenance. Prior to the start of Commuter Rail Service on any segment of the Lakeview Line, Sound Transit must provide notice and assume maintenance responsibilities for that segment of track and the entire width of the corridor where that track is located.
- C. Once Sound Transit assumes Maintenance Activities for a section of track and excluding a reasonable construction period, Sound Transit shall maintain that section of track at no less than the track standard at the time Sound Transit began performing such Maintenance Activity.

SECTION 2.5 - DISABLED EQUIPMENT AND CLEARING OF WRECKS

- A. If Equipment of BNSF or Sound Transit shall become derailed, wrecked, or otherwise disabled while upon the Lakeview Line, it shall be re-railed or cleared by the party that is then responsible for performing the Maintenance Activity where the incident occurred, except that either party may re-rail their derailed Equipment on the Lakeview Line whenever use of motorized on or off track equipment is not required and prior permission has been granted by the maintaining party. The costs and expenses of clearing such derailments and wrecks shall be as provided for in the allocation of liability in Article VII of this Agreement.

SECTION 2.6 - SAFETY

- A. **General.** Both parties shall comply with all applicable federal, state, local, and industry safety laws, standards, codes, rules and regulations.

SECTION 2.7 - HAZARDOUS MATERIALS

- A. Each party shall be responsible for any report required by federal, state or local authorities in connection with a release of hazardous materials, hazardous substances, or hazardous wastes, as defined under federal or state law ("Hazardous Materials"), from their respective

Train on any segment of the Lakeview Line. BNSF shall immediately notify Sound Transit in the event of such a release from a BNSF Train.

- B. The costs for the activities described in this Section 2.7 shall be borne in accordance with Article VII, Liability and Indemnification.

ARTICLE III - REIMBURSEMENT FOR JOINT USE EXPENSES

SECTION 3.1 - REIMBURSEMENT

- A. During the term of this Agreement while BNSF is performing all Maintenance Activities on the Lakeview Line and until Sound Transit assumes Maintenance Activity under Section 2.4(B) for the Lakeview Line excluding the Parcels Property, BNSF shall be responsible for all maintenance of way expenditures without reimbursement by Sound Transit.
- B. After Sound Transit begins performing Maintenance Activities over all or any portion of the Lakeview Line, BNSF shall reimburse Sound Transit at a rate of \$0.248 per car mile for that portion of the Lakeview Line for which Sound Transit is performing Maintenance Activities. That rate is intended to cover BNSF's portion of the ordinary and capital maintenance of the line. BNSF shall also be responsible for all of the maintenance of way expenditures where BNSF continues to perform Maintenance Activities per the terms of Section 2.4.
- C. The car mile rate in Section 3.1.B. will be adjusted effective annually commencing January 1, 2005 and thereafter based on 80% of the percentage change in the Labor Component of the Rail Cost Adjusted Factor and 20% on the percentage change in the Consumer Price Index for Seattle-Tacoma-Bremerton WA in accord with the methodology in Appendix A.
- D. Catastrophic replacement costs, i.e. replacement cost in excess of \$100,000 for each occurrence, such as but not limited to floods, earthquakes, mudslides or acts of God, shall be billed in addition to the car-mile rate and shall be apportioned between the parties on the basis of the parties' GTM's operated over that Maintenance Activity section of the Lakeview Line (i.e., if Sound Transit is performing the Maintenance Activity on the track on which the catastrophe occurs, cost will be proportioned based on GTMs on all track on which Sound Transit is performing Maintenance Activity, and if BNSF is performing the Maintenance Activity on the track on which the catastrophe occurs the cost will be apportioned based upon the GTMs on all track on which BNSF performs Maintenance Activity) for the twelve (12) month period ending immediately prior to the first day of the month of the occurrence.

SECTION 3.2 - OTHER REIMBURSEMENTS

In addition to the reimbursement base compensation provided for in Section 3.1., BNSF shall pay to Sound Transit the following:

The actual costs incurred by Sound Transit in providing services, if any, as specified in Subsection 2.5, subject to Article VII, Liability and Indemnification.

SECTION 3.3 - CAPACITY IMPROVEMENTS

- A. Sound Transit shall construct such capacity improvements it determines are necessary to implement Sound Transit Commuter Rail Service and maintain BNSF freight operations on

the Lakeview Line. These capacity improvements and any necessary Permits and Approvals shall be at the sole cost and expense of Sound Transit unless changes are specifically requested by BNSF to improve freight service and those requested changes increase the cost of the capacity improvements.

- B. The capacity improvements will be designed to provide freight access to existing BNSF freight customers that is no worse than the existing freight access from a safety and operational efficiency capability. The parties acknowledge that freight access will have some hours of service constraints, based on Sound Transit's commuter rail schedules. During design, Sound Transit will give BNSF the opportunity to review these capacity improvements plans, and prior to the start of construction submit the plans for formal review by BNSF. BNSF shall have 30 days to respond to Sound Transit's plans. If BNSF does not respond within 30 days, the plans will be deemed to be satisfactory to BNSF. If BNSF believes that the improvements will not allow freight access to existing BNSF customers that is no worse than the existing freight access from a safety and operational efficiency capability, the parties agree to discuss and use their best efforts to resolve the issue. If the parties cannot resolve the issue, BNSF may invoke the arbitration provisions of Article IX of the Agreement.
- C. The parties agree to work together to attempt to minimize the impact of construction of the capacity improvement on freight service. To the extent that Sound Transit disrupts freight service, or otherwise increases the costs to BNSF of providing freight service during construction of the capacity improvements, Sound Transit will reimburse BNSF for any incremental increase in actual documented costs or otherwise negotiated rate. If Sound Transit is in disagreement over the increase in costs, Sound Transit may invoke the arbitration provisions of Article IX of this Agreement.
- D. BNSF may request improvements to the rail infrastructure for freight service, including but not limited to sidings, connecting and access tracks and switches for new shipper facilities. BNSF will be responsible for the entire cost and expense of these improvements, including any necessary Permits and Approvals. BNSF shall submit plans for such improvements to Sound Transit and Sound Transit shall have 30 days to review and approve or reject such plans. If Sound Transit does not respond within 30 days, the plans will be deemed to be approved. If the plans are rejected, the parties agree to work together to find a mutually agreeable solution. If the parties cannot determine a mutually agreeable solution, BNSF may invoke the arbitration provisions of Article IX of this Agreement, provided however, Sound Transit agrees that it cannot prevent BNSF from making rail infrastructure improvements that are necessary to access a new shipper facility unless it materially affects commuter operations, except to the extent that BNSF is legally obligated to provide such access and service.

Construction of these improvements will be accomplished by the party that is performing the Maintenance Activities for that section of track where the improvements are to be made, except that BNSF shall not be required to construct any improvements that are required or requested for any passenger operations.

SECTION 3.4 - CAPITAL REPLACEMENT PROJECTS

BNSF shall compensate Sound Transit for BNSF's portion of the capital replacement as part of ongoing maintenance and that compensation is included in the car mile rate as shown in Section 3.1.

SECTION 3.5 – TAXES

- A. *Definition.* "Tax" (and, with correlative meaning, "Taxes") means any gross receipts, business and occupation, transfer or public utility taxes, or any other tax, governmental fee or other like assessment or charge (other than any U.S. federal, state, or local net income tax), together with any interest, penalty or addition thereto imposed by any governmental authority on BNSF, on any consolidated, combined or unitary group of which BNSF is a member for federal or state tax purposes, or on any member of such group.
- B. *Taxes.*
1. Tax Reimbursement. Sound Transit shall pay or reimburse BNSF for any Taxes which are attributable to the receipt by BNSF of any amounts under the Purchase and Sale Agreements and this Section 3.5.
 2. Determination of Amount of Taxes. In determining amounts payable to BNSF under Section 3.5.B.1, or amounts to which Sound Transit may be entitled under Section 3.5.B.4, proper adjustment shall be made to reflect Tax benefits to, and Tax detriments incurred by, BNSF in connection with payment of such amounts.
 3. Initial Payment of Taxes. To the extent not previously paid under other provisions of the Joint Use Agreement, amounts payable by Sound Transit under this Section 3.5.B shall be paid within 30 days of the sending of written notice by BNSF of an amount due including a written explanation supporting the computation of the amount due. However, in a case in which BNSF receives a written notice asserting that additional Taxes for which Sound Transit may be required to make a payment under Section 3.5.B.1 (and in which Sound Transit properly exercises its rights under the contest provisions of Section 3.5.B.4), amounts payable by Sound Transit under this Section 3.5.B.3 attributable to the contested Taxes shall be payable within 30 days from the earliest day on which (1) Sound Transit ceases to properly exercise its rights under the contest provisions of Section 3.5.B.4, (2) the underlying Taxes cannot be further contested without payment of such Taxes or posting of bond (unless Sound Transit pays to BNSF the amount of such Taxes or posts the bond), or (3) there is a final determination as to the underlying Taxes.
 4. Contest of Taxes. BNSF shall pay all Taxes attributable to amounts received under the Purchase and Sale Agreements and this Section 3.5.B at the time and in the amounts that such Taxes are due. BNSF shall promptly notify Sound Transit within 15 days of the receipt by BNSF's Vice President and General Tax Counsel of written notice that a taxing jurisdiction is asserting that additional Taxes for which Sound Transit may be required to make a payment under Section 3.5.B.1 are due for a given period, provided that failure to do so shall not prejudice BNSF's rights to payment under this Section 3.5.B except to the extent, and only to the extent, Sound Transit is actually harmed by such failure. Upon receipt of such notice, Sound Transit has the right to require that BNSF contest such additional Taxes by (i) acknowledging that such Taxes (and any related additional amounts due under this Section 3.5.B) are the liability of Sound Transit pursuant to Section 3.5.B.1, (ii) giving written notice to BNSF that Sound Transit accepts responsibility for the costs of such contest and the payment of any additional Taxes or other amounts resulting from such contest and (iii) presenting evidence (from time to time as BNSF may reasonably request) reasonably satisfactory to BNSF of Sound Transit's ability and commitment to promptly pay such Taxes and other amounts. Similarly, to the extent permitted by law, Sound Transit shall be entitled to require that BNSF seek in a

timely fashion refunds of those Taxes which BNSF paid in a timely fashion, and for which it was reimbursed by Sound Transit, by giving written notice to BNSF that Sound Transit accepts responsibility for (i) such Taxes (and any related additional amounts due under this Section 3.5.B), (ii) any additional Taxes (and any related additional amounts due under this Section 3.5.B) resulting from such refund claim and (iii) the costs of pursuing such refund claim. To the extent allowed by law and at the option of BNSF, BNSF shall assign such refund claim to Sound Transit and Sound Transit shall conduct such contest or prosecute such refund claim at no cost to BNSF. In no event shall BNSF settle or otherwise voluntarily resolve a contest or refund claim to the extent such contest or claim relates to any Tax for which Sound Transit may be responsible under this Section 3.5.B without the prior written consent of Sound Transit, which consent shall not be unreasonably withheld. In all events, BNSF shall cooperate with Sound Transit in any contest of Taxes or Tax refund claim. Sound Transit shall be given the opportunity, at Sound Transit's own expense, to associate with BNSF in the contest and settlement of any claim for which BNSF seeks reimbursement under this Section 3.5.B. In no event, however, absent BNSF's written consent, which consent shall not be unreasonably withheld, shall Sound Transit settle or otherwise voluntarily resolve a contest of Taxes or Tax refund claim if such settlement or resolution might adversely affect BNSF's interests with respect to past, current or future Taxes. If the Taxes must be paid (or placed in escrow) in connection with the adjudication of any such Tax contest or refund action, including appeals, Sound Transit shall advance (without interest) the funds needed for such payment (or escrow) and shall be entitled to any related refunds, including interest thereon. BNSF shall consult with Sound Transit in good faith in determining the nature of actions to be taken under this Section 3.5.B. Sound Transit shall reimburse the reasonable out-of-pocket costs, including attorney's fees, that BNSF incurs in connection with its cooperation under this Section 3.5.B. For purposes of this Section 3.5.B.4, costs of a contest, costs of pursuing a refund and reasonable out-of-pocket costs shall not include salaries, wages, overhead or benefit expenses of any officer or any other employee of BNSF or an affiliated entity.

5. Cooperation. BNSF shall (1) consult with Sound Transit in good faith in determining the nature of actions to be taken in connection with claims pertaining to Taxes for which Sound Transit may be required to make a payment under Section 3.5.B.1 and (2) provide Sound Transit with all information, assistance and co-operation that Sound Transit reasonably requests with respect to any notice that a taxing jurisdiction is asserting that additional Taxes for which Sound Transit may be required to make a payment under Section 3.5.B.1 are due for a given period.
6. Savings Clause. The failure of BNSF to take any action described in Section 3.5.B.4 and 3.5.B.5 shall not prejudice BNSF's rights to payment under Section 3.5.B except and only to the extent that Sound Transit is prejudiced by such failure.

SECTION 3.6 - REIMBURSEMENT FOR UNFORESEEN EVENTS

- A. In the event of an occurrence not reasonably foreseeable when this Joint Use Agreement was executed that has a material impact on the compensation for joint use of the Lakeview Line established under this Agreement, the Parties will negotiate in good faith and use their best efforts to agree upon an appropriate amendment to the applicable contract provision. If the Parties cannot agree upon such an amendment, or if other issues arise under this Section 3.8 upon which the Parties cannot agree, the Parties agree that any third-party resolution of such issues shall be through arbitration as provided in Section 9.2. Pending a

final decision in the arbitration proceeding, both Parties shall continue to perform under and be bound by the terms of this Agreement as it exists without any proposed amendment.

SECTION 3.7 - METHOD OF INVOICING AND PAYMENT

- A. Payments under this Agreement shall be made monthly after submission of an invoice, the format of such shall be mutually agreed upon. BNSF shall, within twenty-one (21) days of receipt of an invoice, review them for accuracy and completeness. A credit against contested items shall be made against the next invoice after the contested matter is fully and finally resolved.
- B. Late payments by BNSF shall be subject to interest at the Federal Funds rate as published in the Wall Street Journal or such other publication as the Parties shall agree upon in the event the Wall Street Journal ceases to publish this rate.

SECTION 3.8 - INSPECTION AND AUDIT

- A. BNSF may, at its own cost (i) inspect at any time the Lakeview Line; provided, however, that such inspection shall not hinder or delay Sound Transit's commuter operations, or Amtrak's passenger rail operations, and (ii) audit any aspect of Sound Transit's performance of its duties and obligations under this Agreement and such evaluation may encompass both financial and operational matters and may include an examination of Sound Transit's controls, practices, and procedures and their effect upon the efficiency and quality of freight service provided by BNSF. Any audit conducted by BNSF (or its designee) shall be conducted in accordance with Generally Accepted Auditing Standards.
- B. BNSF shall have three years from the end of each calendar year to initiate and complete an audit of a given year's books, records, accounts, and documents relating to Sound Transit's activities under this Agreement. If the audit is not undertaken within this period, BNSF shall be deemed by its inaction to have surrendered its right to audit the year in question. BNSF shall not have the right to audit any previously audited period.
- C. Upon reasonable notice, Sound Transit shall permit BNSF, its auditors, or any other duly authorized agent of BNSF to inspect and examine all books, records, accounts, and documents relating to Sound Transit's activities under this Agreement. Such books, records, accounts, and documents shall be maintained and shall remain accessible to BNSF for the specified period for retention of official records of the type in question in accordance with Sound Transit's Records Retention Schedule dated January 31, 2000, as may be modified from time to time and agreed upon by the Parties. All such books, records, accounts, and documents shall be made available upon request at the location at which they are maintained. Sound Transit shall credit BNSF for any amounts billed by Sound Transit, and reimburse BNSF for any amounts paid by BNSF that are not supported by the records maintained by Sound Transit or by the services actually performed by Sound Transit. Upon completion of the audit, any adjustment required to make any reconciliation required shall be made, paid, or credited, as the case may be, in the next monthly billing cycle in accordance with the provisions of Section 3.9.
- D. Upon request of BNSF, Sound Transit shall promptly furnish to BNSF, on forms approved by BNSF, reports of Sound Transit's efforts to implement the terms of Section 4.9 of this Agreement. Sound Transit shall, upon reasonable notice, provide BNSF's Director or his designee with access to Sound Transit's records of employment, employment

advertisements, application forms, and other pertinent data and records for the purpose of investigating compliance with this provision.

- E. For all costs and expenses that become payable by Sound Transit to BNSF under this Agreement, the provisions of this Article III shall apply with BNSF as the billing party and Sound Transit as the paying party.

ARTICLE IV – BNSF EMPLOYEES

SECTION 4.1 - BNSF TO BE INDEPENDENT CONTRACTOR

It is the intention of the Parties that BNSF and any subcontractors retained by BNSF, when performing Maintenance Activities under the terms of this Agreement shall be and remain independent contractors, and nothing herein shall be construed as inconsistent with that status.

SECTION 4.2 - PERSONNEL TO BE EMPLOYEES OF BNSF OR SUBCONTRACTORS

- A. The personnel performing Maintenance Activities provided by BNSF under this Agreement shall at all times be employees of BNSF, or its subcontractors as determined by BNSF, under BNSF's or said subcontractors exclusive direction and control and shall not be employees of Sound Transit. BNSF or its subcontractors shall have the sole authority to hire, fire, discipline, promote, demote, direct the work of and manage the personnel performing the Maintenance Activities. Sound Transit shall have no role or authority to hire, fire, discipline, promote, demote, direct the work of or manage anyone employed by BNSF or its subcontractors. BNSF shall pay the wages and salaries of its own officers, agents, and employees in strict accordance with federal laws and regulations and with the laws, regulations, and ordinances of the states and localities in which BNSF's duties hereunder are performed and shall be responsible for all reports and obligations with respect to them. BNSF shall indemnify, defend, and hold harmless Sound Transit against and from all damages, penalties, and expenses of any nature resulting from BNSF's failure to meet any obligation set forth in this paragraph.
- B. In performing Maintenance Activities, BNSF shall comply with all federal, state, and local laws, regulations, enactments, and ordinances that govern the employment relationship, including all laws relating to wages, working hours, overtime, and working conditions applicable to its employees, all laws prohibiting discrimination in employment and all other laws relating to employee compensation, benefits, leaves of absences and any other aspect of the employment relationship. In performing BNSF's duties hereunder, BNSF agrees to comply with all valid administrative regulations respecting assumption of liability for the taxes and contributions described in Section 4.12.C.2 and for supplying information related thereto to the proper authorities.

SECTION 4.3 - INTENTIONALLY LEFT BLANK

SECTION 4.4 - INTENTIONALLY LEFT BLANK

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SECTION 4.6 - DRUG AND ALCOHOL TESTING

BNSF shall comply with its drug and alcohol testing program and procedures as well as any statutes or regulations relating to drug and alcohol testing applicable to rail employees, including as such

programs and procedures may be changed from time to time and as may be required by any applicable law, rule, or regulation. BNSF shall provide notice to Sound Transit prior to any changes to such programs or procedures. Sound Transit shall require any Non-BNSF Operator to comply with such programs and procedures.

SECTION 4.7 - LABOR AGREEMENTS

- A. Existing Labor Agreements. In performing the Maintenance Activities, BNSF will comply with the terms and conditions of all applicable agreements with any labor organization representing BNSF's employees concerning wages, benefits and terms and conditions of employment. Except as provided in the next sentence, nothing contained in this Agreement shall be construed as requiring BNSF to perform any service or take any action that would violate any term or condition of any labor agreement between BNSF and any organization representing BNSF's employees or applicable to BNSF. Sound Transit does not accept, succeed to or assume, and this Agreement shall not be construed to impose or allow any acceptance of, succession to or assumption of, any obligations of BNSF under any of its collective bargaining agreements with its employees or their representatives. This Agreement shall not be construed to obligate BNSF to operate subject to any labor agreement not otherwise applicable to such operations.
- B. New or Changes to Labor Agreements. BNSF shall promptly advise Sound Transit, and provide Sound Transit with a copy, of any notice from the representatives of its employees which seeks a change in the wages, benefits, hours, or working conditions for its Employees performing services for Sound Transit, or which seeks any other change that could materially affect the costs or quality of the Maintenance Activities. BNSF shall also provide Sound Transit with a summary of any agreement following from the notice (and subsequent negotiations) referenced above, along with an analysis of the potential impact on the Maintenance Activities of the changes proposed by the labor organization and, if any, by BNSF.

SECTION 4.8 - LABOR PROTECTION

Sound Transit shall assume the cost of any labor protection obligations arising from: (1) the application of Section 13(c) of the Federal Transit Act, 49 U.S.C. Section 5333(b), to Commuter Rail Services; (2) any changes in applicable local, state or federal ordinance or legislation which affect Sound Transit operations and BNSF's or Sound Transit's obligations to BNSF employees who are providing Commuter Rail Services; or (3) any other affirmative act of Sound Transit. In the event of any changes described in clause (2) of the previous sentence, BNSF will diligently pursue efforts to negotiate an agreement with its employees or their representatives that minimizes the impact of such protection obligation on or the cost thereof to be borne by Sound Transit.

SECTION 4.9 - EQUAL EMPLOYMENT OPPORTUNITY

- A. To the extent not inconsistent with BNSF's Equal Employment Opportunity policy, BNSF shall adhere to the Equal Employment Opportunity Provisions set forth in Sound Transit's Guiding Principles and Implementation Policies for Employment and Contracting (Sound Transit Motion Nos. 17 & 29, as found under Appendix 11 of this Agreement), and agrees to use affirmative efforts to develop a work force that is reflective of the diversity in the Puget Sound region.
- B. BNSF and Sound Transit will not discriminate against any employee or applicant for employment because of race, religion, creed, sex, sexual orientation, age, marital status, national origin, or the presence of any sensory, mental, or physical disability, unless based

upon a bona fide occupational qualification or any other basis protected by applicable federal, state or local law. BNSF will make affirmative efforts to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, creed, sex, sexual orientation, age, marital status, national origin, or the presence of such disability, or any other basis protected by applicable federal, state or local law. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. BNSF agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- C. In addition to the foregoing provisions, BNSF and Sound Transit will require compliance by it and any subcontractors with all requirements imposed by Title VI of the Civil Rights Act of 1964 (49 U.S.C. § 2000d-1) and the regulations of the U. S. Department of Transportation issued thereunder (49 C.F.R. Part 21), by federal Executive Order No. 11246 and the regulations of the U. S. Department of Labor issued thereunder (41 C.F.R. Chapter 60) and the Americans with Disabilities Act (42 U.S.C. § 1211-1217) and regulations issued by the Equal Employment Opportunity Commission thereunder (29 C.F.R. § 1630.1 et seq.), with regard to equal employment opportunity, as well as any other applicable federal, state or local law, as these laws and regulations may be amended from time to time. Accordingly, during the performance of this Agreement, BNSF, for itself, its assignees, and successors in interest (hereinafter referred to in this Subsection as "BNSF") agrees as follows:
1. BNSF shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter "DOT") (49 C.F.R. Part 21), as they may be amended from time to time (hereinafter referred to as the "U.S. DOT Regulations"), which are herein incorporated by reference and made a part of this Agreement.
 2. BNSF, with regard to the work performed by it under this Agreement, shall not discriminate on the grounds of race, religion, creed, sex, disability, age, marital status, national origin or any other basis protected by federal, state or local law in the selection and retention of subcontractors, including procurements of materials and leases of equipment. BNSF shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the U.S. DOT Regulations.
 3. In all solicitations either by competitive bidding or negotiation made by BNSF for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by BNSF of BNSF's obligations under this Agreement and the U.S. DOT Regulations relative to nondiscrimination.
 4. BNSF shall provide all information and reports required by the U.S. DOT regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Sound Transit to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information is required of a subcontractor that is in the exclusive possession of another who fails or refuses to furnish this information, BNSF shall so certify to Sound Transit, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. BNSF's compliance with the nondiscrimination provisions of this Agreement shall be a condition to Sound Transit's duty of performance. In the event BNSF is determined by a court of competent jurisdiction or in final binding arbitration not to be in compliance with the nondiscrimination provisions of this Agreement, BNSF shall promptly take such reasonable remedial action as is necessary to bring itself into compliance. Failure by BNSF to take such remedial action within ninety (90) days shall constitute a material breach of this Agreement.
6. BNSF shall include the provisions of items 1 through 5 of this Paragraph C in every subcontract, including procurements of materials and leases of equipment, unless exempted by the regulations or directives issued pursuant thereto. BNSF shall take such action with respect to any subcontract or procurement as Sound Transit may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that, in the event BNSF becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, BNSF may request Sound Transit to enter into such litigation to protect the interests of Sound Transit and, in addition, BNSF may request the United States to enter into such litigation to protect the interest of the United States.

SECTION 4.10 - UTILIZATION OF MINORITY, WOMEN AND DISADVANTAGED BUSINESS

It is the policy of Sound Transit that minority, women and disadvantaged businesses (M/W/DBEs), as defined in Sound Transit's Disadvantaged Business Enterprise Program, Guiding Principles and Implementation Policies for Employment and Contracting (Sound Transit Motion Nos. 17 & 29, as set forth in Appendix 11), R.C.W. 39.19.120 and 49 C.F.R. Part 23, shall have the maximum opportunity to participate in the performance of contracts. The above-referenced federal regulations, as well as, to the extent not inconsistent with BNSF's Disadvantaged Business Enterprises policy, the M/W/DBE provisions of the above-referenced Sound Transit program and policies apply to this Agreement, as well as to any supplements or amendments, and are hereby incorporated herein by this reference. BNSF shall also require that these provisions be incorporated in its contracts and agreements with any subcontractors. During the term of this Agreement, and in accordance with BNSF's Records Retention Schedule dated January 31, 2000, as modified from time to time and agreed upon by the Parties, BNSF shall maintain sufficient records necessary for monitoring BNSF's compliance with the provisions of Sound Transit's Disadvantaged Business Enterprise Program, Guiding Principles and Implementation Policies for Employment and Contracting, and 49 C.F.R. Part 23.

SECTION 4.11 - SUBCONTRACTORS

- A. Other than as provided in Section 10.9, as determined by BNSF, any BNSF duties performed hereunder may be performed by one or more third-party subcontractors selected by BNSF. Approval of Sound Transit is not required for BNSF to have any such duties performed by one or more third-party subcontractors. Executed copies of any and all subcontracts for the provision of any portion of such duties shall be furnished by BNSF to Sound Transit upon request. No such contract shall release or relieve BNSF from any obligation hereunder, and BNSF shall be as fully responsible to Sound Transit for the acts and omissions of any and all subcontractors and of persons either directly or indirectly employed by them as if such acts and omissions were the acts and omissions of BNSF or of persons directly employed by BNSF. No contract entered into by Sound Transit with its subcontractor shall release or relieve Sound Transit from any obligation hereunder, and

Sound Transit shall be as fully responsible to BNSF for the acts and omissions of any and all subcontractors and of persons either directly or indirectly employed by them as if such acts and omissions were the acts and omissions of Sound Transit or of persons directly employed by Sound Transit.

- B. BNSF shall receive, review, and approve all invoices, charges for services, and notices from each subcontractor retained under this Section 4.12 and shall make such invoices, charges, and notices available to Sound Transit as may be requested under Section 3.9). Where an invoice, charge, or notice relates to a monthly BNSF invoice that is not subject to annual reconciliation under Subsection 3.7.B., then such documentation shall be submitted together with that monthly invoice.
- C. BNSF shall append a true copy of this Agreement to any contract it enters into with any subcontractor providing direct services to Sound Transit, and shall require that the subcontractor comply strictly with all requirements that BNSF is required by this Agreement to impose upon the subcontractor. In addition, BNSF shall require in any contract it enters into with such subcontractor, that in performing under this Agreement:
1. The subcontractor shall (i) comply with all applicable federal, state, and local laws, regulations, enactments, and ordinances affecting or applicable to such duties; (ii) use only such methods as are consistent with the safety of BNSF's own officers, agents, and employees, Sound Transit's officers, agents, employees, and property, and the public in general; (iii) comply with all applicable state and federal occupational safety and health acts and regulations; and (iv) promptly provide written notification to Sound Transit and BNSF if the subcontractor (a) knows or believes there may have been a failure to comply with any laws, regulations, or enactments described in this Subsection 4.12.D., or (b) receives notice of an action seeking to impose a fine, penalty, cost, or charge against BNSF or Sound Transit for an alleged violation of any laws, regulations, or enactments described in this Subsection 4.12.D.
 2. The subcontractor shall (i) comply with all federal, state, and local laws, regulations, enactments, and ordinances relating to wages, working hours, overtime, and working conditions applicable to its employees; (ii) comply with all valid administrative regulations respecting assumption of liability to its employees for payment of all applicable payroll taxes and all contributions for unemployment insurance and old age pensions or annuities that are measured by the wages, salaries, or other compensation paid to the subcontractor's employees; and (iii) supply information related to the taxes and contributions described in this paragraph to the proper authorities.
 3. The subcontractor shall warrant, certify, and represent that it has the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise and financial resources to provide the services within the scope of its contract in an efficient, professional and timely manner in accordance with the terms and conditions of this Agreement.
- D. In order to help ensure that both BNSF and subcontractors receive timely notice of Sound Transit's requirements, BNSF shall be the primary conduit through which such requirements are communicated to subcontractors.

SECTION 4.12 – NOTICE OF CLAIMS

- A. In the event that BNSF, or its subcontractors, receives any complaint or allegation from any of its employees related to the conduct of Sound Transit or any of Sound Transit's employees or agents, BNSF shall promptly notify Sound Transit of such allegation and cooperate with Sound Transit with respect to any investigation of any such complaint.
- B. In the event that BNSF or any of its subcontractors is named in any lawsuit or administrative charge or allegation by any employee who is or has performed services under this Agreement, BNSF shall provide Sound Transit with notice and a copy of a lawsuit, action or charge. In the event that Sound Transit or any of its Board members, officers, employees or agents is also named in such action or charge, BNSF shall defend and indemnify Sound Transit and its Board members, officers, employees and agents in such action, except where the acts or omissions of Sound Transit or its Board members, officers, employees or agents have caused the liability.

ARTICLE V – BNSF's RIGHTS AND OBLIGATIONS

SECTION 5.1 - ROLLING STOCK SAFETY

Rolling Stock used by BNSF shall comply with all applicable federal, state, and local laws, regulations, and enactments. If any failure of the Rolling Stock to comply with such laws, regulations, or enactments results in the imposition of any fine, penalty, cost, or charge against Sound Transit, then BNSF shall reimburse, indemnify, and hold harmless Sound Transit for any such fine, penalty, cost, or charge. BNSF shall promptly notify Sound Transit of any notice it receives seeking to impose any such fine, penalty, cost, or charge. BNSF agrees, upon receiving notice of any action seeking to impose any such fine, penalty, cost, or charge against Sound Transit, to defend such action at BNSF's own expense.

SECTION 5.2 - ROLLING STOCK MAINTENANCE

Maintenance, repair, and fueling of Rolling Stock shall be provided by BNSF. BNSF shall be responsible for providing the facilities, equipment, and machinery necessary for Rolling Stock maintenance in accord with FRA or other applicable governmental standards, and for providing the fuel necessary for operation of Rolling Stock.

SECTION 5.3 - REGULATORY APPROVALS

In the event that the Parties determine that any state, federal, or local regulatory prior approval or exemption is required with respect to the operation of freight service in accordance with this Agreement, securing such approval or exemption shall be the responsibility of BNSF.

ARTICLE VI - INSURANCE

SECTION 6.1 - DEFINITIONS FOR ARTICLES VI AND VII

Each definition in Articles VI and VII includes the singular and the plural. For purposes of Articles VI and VII, the following terms, when capitalized as in this Section 6.1, shall have the following meanings:

- (a) "BNSF Party" means one or more of (i) BNSF's officers, directors, employees, agents, or contractors while using or on the Lakeview Line, in connection with performing duties of any kind for BNSF, including, among others, performing duties related to the Lakeview Line under this Agreement and excluding any such person

who is a fare paying passenger on board a passenger train operating in Commuter Rail Service, (ii) persons (other than a Sound Transit Party) receiving services of BNSF involving use of the Lakeview Line or on or using the Lakeview Line themselves under authority of or by agreement with BNSF, or (iii) any "BNSF Party" at or proximate to a commuter rail station used by Sound Transit who is struck by improperly secured equipment or cargo of a BNSF train on tracks at or adjacent to a commuter rail station used by Sound Transit.

- (b) "Environmental Loss or Damage" means all fines, penalties, liability, cost, damages, injuries, deaths, losses, expenses, fees, charges, cleanups, removals, remediations, or any other cost, requirement, or liability whatsoever and all expenses and attorneys' fees, arising from, resulting from, related to, or incurred in connection with actions, judgments, suits, claims, (formal or informal), or contentions of any kind or nature whatsoever, raised by any person or entity of any kind at any time with respect to contamination, waste (hazardous and non-hazardous), pollution, garbage, trash, hazardous materials, or environmental hazards or conditions of any kind or nature whatsoever, and including without limitation damages or injuries to a person or private or public property (real or personal, and including without limitation natural resources) but shall not include damages related to diminution in value of either parties' interest in the Lakeview Line.
- (c) "Loss or Damage" means all fines, penalties, claims, liability, cost, and expense of every character (including amounts paid under any State or Federal compensation law, and including costs and attorney's fees incurred in the investigation, defense or settlement of any actual or threatened legal proceeding), incident or related to loss or destruction of or damage to property (including real property and improvements thereon, and personal property, including injury or death to animals, and including property of the Parties and of third parties) and injury to and death of persons (including officers, directors, agents, employees, contractors, invitees, customers, or patrons of the Parties, and third parties); provided, however, that it shall not include (i) damages related to diminution in value in either parties' interest in the Lakeview Line, or (ii) Environmental Loss or Damage as defined in Section 6.1(c), except that it shall include Environmental Loss or Damage for purposes of Sections 7.3 and 7.5, and Subsections 7.1.A., 7.1.B., 7.1.E, 7.1.G., 7.1.H.
- (d) "Sound Transit Party" means one or more of (i) Sound Transit's officers, directors, employees, agents or contractors including any operator of Commuter Rail Service (other than a BNSF Party) while on or using the Lakeview Line or performing duties related to the Lakeview Line, or performing duties related to the provision of Commuter Rail South Service, (ii) any passenger of a Sound Transit train (other than a BNSF Party) while such passenger is on the Lakeview Line, or (iii) any other person (other than a BNSF Party) at or proximate to a commuter rail station used by Sound Transit who is there for the purpose of (A) boarding or detraining from a Sound Transit train, meeting or accompanying a ticketed passenger or a person intending to become a ticketed passenger on a Sound Transit train, purchasing a Sound Transit commuter rail ticket, making a reservation for a Sound Transit train, attending a special event sponsored by or held on behalf of Sound Transit, or obtaining information about Sound Transit Commuter Rail South Service or conducting business with Sound Transit, or (B) for the purpose of providing local transportation to or accompanying a person described in Subsection 6.1(d)(iii)(A), above.

- (e) "Third Party" means a person or entity that is not a BNSF Party or a Sound Transit Party.

SECTION 6.2 - INSURANCE

- A. Sound Transit shall maintain General Liability insurance in an amount at least equal to \$200,000,000. When Sound Transit is required to perform Maintenance Activities pursuant to Section 2.4, such insurance shall cover all of BNSF's liability arising out of BNSF's performance of this Agreement with respect to the segment of the Lakeview Line for which Sound Transit is so required to perform Maintenance Activities and the use of the Lakeview Line by any operator for Sound Transit, including without limitation negligence, gross negligence and willful and wanton misconduct of BNSF. Such insurance may include a reasonable deductible or self-insured retention not to exceed \$10,000,000; provided, however, (i) that Sound Transit shall be permitted to increase the amount of the deductible or self-insurance retention if it demonstrates that it has established safeguards to ensure that BNSF's risk exposure is not greater than it would be with the \$10,000,000 deductible or self-insured retention, and (ii) if Sound Transit elects to include any deductible or self-insured retention, Sound Transit shall itself directly cover, in lieu of insurance, any and all BNSF liabilities that would otherwise in accordance with the provisions of this Agreement be covered by Sound Transit insurance if Sound Transit elected not to include a deductible or self-insured retention, and such direct coverage by Sound Transit shall be in an amount equal to the amount of Sound Transit's actual deductible or self-insured retention. For purposes of this paragraph: (i) references to BNSF shall include BNSF's officers, directors, employees, agents, and contractors, to the extent they are performing duties for BNSF related to this Agreement; and (ii) no Loss or Damage that is not either to a Sound Transit Party or involving a Sound Transit commuter train shall be deemed a BNSF liability arising out of the performance of this Agreement, other than Loss or Damage suffered by: 1) a BNSF Party that is a member of the crew of a Sound Transit rail train while performing any services under this Agreement aboard such train; 2) by a BNSF Party that is a ticketed passenger aboard a commuter rail train; or 3) a third party on or near the Lakeview Line and the liability for which is not paid for by Sound Transit or a Sound Transit lessee under an applicable lease.
- B. Subject to Subsection 6.2.C., the General Liability insurance required hereunder shall be written on an occurrence basis and shall provide coverage for personal injury, bodily injury and death (including coverage under the Federal Employers Liability Act), and property damage. Such insurance shall include blanket contractual coverage, including coverage for this Agreement and specific coverage for the indemnity provisions set forth in this Agreement.
- C. If General Liability insurance written on an occurrence basis as required by Subsections 6.2.A. and 6.2.B. is not commercially available or the annual cost of such insurance exceeds by 25% or more the cost of such insurance on a claims made basis, then Sound Transit may, at its sole option, obtain such insurance written on a claims made basis; provided, however, that (i) other requirements of this Article shall continue to apply; (ii) the parties shall confer in good faith to assure that there is a mutually acceptable program to protect against the risk of Loss or Damage, consistent with other provisions of Articles VI and VII; and (iii) if and when the required insurance on an occurrence basis is again commercially available at an annual cost that does not exceed by 25% or more the cost of such insurance on a claims made basis then, upon written request by BNSF, Sound Transit shall promptly obtain such insurance once again on an occurrence basis. In the event Sound Transit claims that it should be permitted pursuant to this paragraph to purchase General Liability insurance on a claims made basis, BNSF shall be entitled (x) upon reasonable notice, to inspect Sound

Transit's insurance records in order to assess the commercial availability and cost of insurance, and (y) to identify any insurance written on an occurrence basis and otherwise meeting the requirements of this Agreement that is commercially available to Sound Transit and does not exceed by 25% the cost of such insurance on a claims made basis.

- D. In the event the \$200 million per occurrence limitation under the Amtrak Reform and Accountability Act of 1997 (28 U.S.C. § 28103) (or a successor provision) is increased, decreased, eliminated, or held by a court of competent jurisdiction, to be inapplicable to commuter rail service of the nature to be provided under this Agreement, then the Parties agree to reopen and renegotiate a new level of Sound Transit insurance intended to reflect any resulting change in either party's exposure to uninsured liability, giving due consideration to the additional costs or savings of such a change.
- E. Insurance obtained pursuant to this section shall be primary as respects any coverage maintained by BNSF. Any other coverage maintained by BNSF shall be excess of this coverage herein defined as primary and shall not contribute with it.
- F. Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled, or amended except after 30 days prior written notice has been given to BNSF.
- G. Each insurance policy shall be issued by financially sound insurers who may lawfully do business in the State of Washington.
- H. Sound Transit will provide certificates of insurance evidencing the coverage set forth above prior to the commencement of the performance of any part of this Agreement and annually thereafter prior to expiration of the coverage. Upon reasonable advance written notice to Sound Transit by BNSF, Sound Transit shall permit BNSF to inspect and copy the policies.

SECTION 6.3 - MAINTENANCE OF LIABILITY PROTECTION

In the event that Sound Transit cannot or does not obtain the insurance coverage it is required to secure, as set forth above, then Sound Transit either shall make other arrangements to provide equivalent liability protection for BNSF, or BNSF shall have the right, but not the duty, to purchase the insurance coverage and Sound Transit agrees to reimburse BNSF for the actual cost of such insurance should BNSF purchase such insurance. In the event that BNSF has the right to purchase such insurance, but does not do so, then Sound Transit agrees to indemnify BNSF to the same extent as if such insurance were purchased.

SECTION 6.4 - SUBROGATION RIGHTS

The Parties hereby waive subrogation rights against each other, and agree to require their respective insurers to waive subrogation rights against the other party and such other party's insurers, to the extent any liability for property damage, bodily injury (including death), or other loss may be covered by the proceeds of insurance.

ARTICLE VII - LIABILITY, REIMBURSEMENT AND INDEMNIFICATION

SECTION 7.1 - ALLOCATION OF LIABILITIES

- A. Subject to Subsection 7.1.E., Sound Transit shall, as between the Parties, bear all Loss or Damage to a Sound Transit Party.
- B. Subject to Subsection 7.1.E., BNSF shall, as between the Parties, bear all Loss or Damage to a BNSF Party.
- C. (1) Subject to Subsection 7.1.E., when Loss or Damage to a Third Party involves a Sound Transit commuter rail train, and does not result from and is not contributed to by an accident, collision, or derailment of a train on the Lakeview Line other than a Sound Transit commuter rail train, such Loss or Damage shall, as between the Parties, be borne exclusively by Sound Transit.

(2) Subject to Subsection 7.1.E., when Loss or Damage to a Third Party involves a BNSF rail train, and does not result from and is not contributed to by an accident, collision, or derailment of a train on the Lakeview Line other than a BNSF rail train, such Loss or Damage shall, as between the Parties, be borne exclusively by BNSF.
- D. Subject to Subsection 7.1.E., (i) when Loss or Damage to a Third Party involves a Sound Transit commuter rail train, and involves a BNSF rail train on the Lakeview Line, then such Loss or Damage shall be allocated, as between the parties, in proportion to the Train Miles operated over the Lakeview Line during the calendar month prior to the date the Loss or Damage was first discovered, with Sound Transit required to bear the Loss or Damage in the proportion its Train Miles bears to the total of all Train Miles of Sound Transit and BNSF on the Lakeview Line, and with BNSF required to bear the Loss or Damage in the proportion its Train Miles bears to the total of all Train Miles of BNSF and Sound Transit on the Lakeview Line.
- E. Provisions of this Agreement other than Section 6.2 notwithstanding, as between the Parties, to the extent Loss or Damage is caused by or arises from the gross negligence or willful or wanton misconduct of a party to this Agreement (including that party's officers, directors, agents, employees, and contractors), such Loss or Damage shall be borne exclusively by that party.
- F. Loss or Damage occurring on the Lakeview Line and not involving any rail train on the Lakeview Line shall, as between the Parties, be borne by the party then required to perform the Maintenance Activities under Section 2.4.B. of this Joint Use Agreement on the segment of track where the Loss or Damage occurred. The Parties acknowledge that Sound Transit shall always be responsible under Section 2.4.B for performance of such Maintenance Activities on the Lakeview Parcels Property.
- G. Except as may be provided by applicable rules of collateral estoppel or res judicata, the allocation of Loss or Damage provided in this Article VII shall not be affected by any allocation of Loss or Damage as between a party hereto and a third person.
- H. The Parties agree that in any litigation between the Parties, or between a party or the Parties and any third person in which Loss or Damage is sought to be imposed under applicable law without regard to the provisions of this Agreement, neither party will introduce Subsections 7.1.A., B., C., D., E., F., G., or H., or Subsection 7.2. into evidence.

- I. For purposes of Article VII, neither BNSF nor its employees, agents, contractors, licensees, lessees, invitees, customers, or patrons shall be considered employees, agents, or contractors of Sound Transit.

SECTION 7.2 - ENVIRONMENTAL LOSS OR DAMAGE

A. Subject to Subsections 7.1.E and 7.2.C., as between the Parties, Sound Transit shall bear all Environmental Loss or Damage, other than to a BNSF Party, caused by the operation of Commuter Rail Service.

B. Subject to Subsections 7.1.E and 7.2.C., as between the Parties, BNSF shall bear all Environmental Loss or Damage, other than to a Sound Transit Party, caused by or arising or resulting from BNSF's or a BNSF Party's past, present, or future use of the Lakeview Line other than operation of Commuter Rail Service.

C. Subject to Subsection 7.1.E., if any Environmental Loss or Damage is caused by or arises or results from both (i) the operation of Commuter Rail Service or Sound Transit's or a Sound Transit Party's use of the Lakeview Line from and after the date Sound Transit closes on the purchase and sale of the applicable portion of the Lakeview Line, and (ii) BNSF's or a BNSF Party's past, present, or future use of the Lakeview Line other than operation of Commuter Rail Service, then, as between the Parties, Sound Transit shall bear so much of such Environmental Loss or Damage as was contributed by the operation of Commuter Rail Service or Sound Transit's or a Sound Transit Party's use of the Lakeview Line from and after the date Sound Transit closes on the purchase and sale of the applicable portion of the Lakeview Line, and BNSF shall bear so much of such Environmental Loss or Damage as was contributed by BNSF's or a BNSF Party's past, present, or future use of the Lakeview Line other than operation of Commuter Rail Service.

SECTION 7.3 - RELEASES AND INDEMNIFICATION

A. Sound Transit agrees to release BNSF (including for all purposes of this paragraph, BNSF's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns) from any claims it could otherwise assert against BNSF for Loss or Damage for which Sound Transit shall be liable under the provisions of this Article VII, whether or not such Loss or Damage is the result of the negligence of BNSF (other than gross negligence or willful or wanton misconduct or negligence), including without limitation any Loss or Damage awarded in any court action.

B. BNSF agrees to release Sound Transit (including Sound Transit's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns, the State of Washington, and King, Pierce, and Snohomish counties in the State of Washington), from any claims it could otherwise assert against Sound Transit (or any claims it could otherwise assert against Sound Transit's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns, the State of Washington, and King, Pierce, and Snohomish counties in the State of Washington arising from or related to the actions or inaction of Sound Transit) for Loss or Damage for which BNSF shall be liable under the provisions of this Article VII, whether or not such Loss or Damage is the result of the negligence (other than gross negligence or willful or wanton misconduct or negligence) of Sound Transit, including without limitation any Loss or Damage awarded in any court action.

- C. To the extent permitted by law, each party shall pay all Loss or Damage for which such party shall be liable under the provisions of this Article VII, and shall defend, indemnify and hold harmless the other party (including without limitation the other party's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns, and including in the case of Loss or Damage for which BNSF is liable under this Article VII the State of Washington, and King, Pierce, and Snohomish counties in the State of Washington), against such Loss or Damage.
- D. The indemnification obligations assumed by the Parties hereunder shall include without limitation any liability, suits, claims, damages, judgments, lawsuits, demands, causes of action, losses and expenses under the Federal Employer's Liability Act, the Safety Appliance Act, or the Boiler Inspection Act, including claims for strict liability.
- E. For purposes of this section, BNSF and Sound Transit, by mutual negotiation, hereby waive, with respect to the other only, any immunity against claims for which they have assumed and indemnification obligation hereunder that would otherwise be available under the industrial insurance provisions of Title 51 Revised Code of Washington or other applicable disability benefits or employee benefits acts.
- F. Other provisions of this Agreement notwithstanding, nothing in this Agreement is intended to be construed as a requirement for an indemnification against gross negligence or willful or wanton misconduct or negligence.
- G. In the event BNSF or Sound Transit incurs attorney's fees, costs or other legal expenses to enforce the provisions of this section against the other, it shall have the right to recover all such reasonable fees, costs and expenses from the other.
- H. If any provision of this Agreement purports to indemnify a party against Loss or Damage and such indemnification would be prohibited by or unenforceable under the binding laws of the State of Washington (including a determination that indemnification under the circumstances involved is against public policy of the State of Washington), the indemnity provided by such provision shall be deemed to be limited to and operative only to the maximum extent permitted by law.

SECTION 7.4 - SURVIVAL

It is mutually understood and agreed that the allocations of liability, releases, and indemnifications under this Agreement shall survive any termination of this Agreement.

SECTION 7.5 - CLAIMS

- A. Each party to this Agreement shall have the right to settle, or cause to be settled for it, all claims for Loss or Damage for which such party is liable under the provisions of this Article VII and to defend or cause to be defended all suits for the recovery of any such Loss or Damage.
- B. In the event a suit is commenced against any party hereto or a claim is asserted for or on account of a Loss or Damage for which another party hereto may be solely or jointly liable under the provisions of this Article VII, the party so sued or against whom the claim is asserted shall promptly notify the other party in writing of the pendency of the suit or claim, and thereupon such other party shall assume or join in the defense of such suit or claim.

- C. In the event that both of the Parties may be liable for any Loss or Damage and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the Parties who may be jointly liable therefor, a release from liability shall be taken for and in the name of all of the Parties who may be so liable. Prior to settling any claim or suit for an amount in excess of one hundred thousand dollars (\$100,000), the settling party shall obtain the written consent of the other party, which consent shall not be unreasonably withheld. The party being requested to give consent shall provide the same within 30 days of the request being made. In the event that a response is not received within said 30 days it shall be conclusively presumed that such consent has been given. Giving of such consent, impliedly or expressly, shall not be deemed an admission that such claim involves joint liability.
- D. Neither party hereto shall be conclusively bound by any judgment against the other party, unless the party shall have had reasonable notice requiring it to defend and reasonable opportunity to make such defense. As between the Parties only, when such notice and opportunity shall have been given, the party so notified shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit.
- E. If Sound Transit provides claim services under the circumstances set forth in Section 7.5.A., then BNSF shall reimburse Sound Transit's costs as direct expenses as more fully set out on section 3.2. Such expenses shall include, but not be limited to: a) a reasonable hourly rate for the claim agent assigned to handle such investigation (including associated supervisory and payroll associated expenses); and, b) reasonable costs of defense counsel, experts and related litigation costs. Sound Transit shall develop and maintain a list of qualified defense counsel that may be reviewed and approved by BNSF (such approval shall not be unreasonably withheld). Sound Transit shall in its sole discretion select and assign counsel to the defense of any claim from said list. In the event that attorneys fees are expected to exceed \$50,000, counsel will be required to submit to Sound Transit and BNSF a written litigation management report including expected fees and expenses for the particular matter. Said management report will be due to Sound Transit and BNSF within 60 days of it becoming clear that said expenses will exceed \$50,000.

ARTICLE VII EFFECTIVE DATE, TERM, AND TERMINATION

SECTION 8.1 - EFFECTIVE DATE AND TERM

This Agreement shall become effective as of the date first above written and shall remain in effect so long as the Freight Easement on the Lakeview Line is in effect.

SECTION 8.2 - RIGHTS UPON TERMINATION

- A. No termination or cancellation of this Agreement shall release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of such termination or cancellation.

ARTICLE IX - DISPUTE RESOLUTION

SECTION 9.1 - PREVENTING AND RESOLVING CONFLICTS THROUGH COMMUNICATION AND NEGOTIATION

- A. **Preventing Conflicts.** The Parties agree to use their best efforts to prevent and resolve potential sources of conflict before they escalate into disputes, claims, or legal actions.
- B. **Resolving Disputes Through Negotiation.** The Parties agree to use their best efforts to resolve disputes arising out of or related to this Agreement using good faith negotiations by engaging in the following dispute escalation process should any such disputes arise:
- (1) Level One – Sound Transit's Transportation Services Manager, or equivalent designee at the time of dispute, and BNSF's Terminal Superintendent shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fifteen (15) business days after referral of that dispute to Level One, either party may refer the dispute to Level Two.
 - (2) Level Two – Sound Transit's Director of Commuter Rail, or equivalent designee at the time of the dispute, and BNSF's General Manager shall meet to discuss and attempt to resolve the dispute, in a timely manner. If they cannot resolve the dispute within fifteen (15) business days after referral of that dispute to Level Two, either party may refer the dispute to Level Three.
 - (1) Level Three – Sound Transit's Chief Executive Officer, or equivalent designee at the time of the dispute, and BNSF's President or Chief Operating Officer shall meet to discuss and attempt to resolve the dispute, in a timely manner.
- C. **Failure to Resolve a Dispute Through Best Efforts.** Except as otherwise specified in this Agreement, in the event the dispute is not resolved at Level Three within fifteen (15) business days after referral of that dispute to Level Three, the dispute may be referred to arbitration as described herein or either party may commence a civil action in a federal court of competent jurisdiction, provided that any such lawsuit except as provided in Subsection 9.2.G, may not be commenced after a dispute has been submitted for arbitration under Section 9. At all times prior to resolution of the dispute, the Parties shall continue to perform and make any required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute.

SECTION 9.2 – ARBITRATION

- A. If at any time a question or controversy shall arise between the Parties hereto in connection with this Agreement, or concerning the business or manner of transacting the business to be carried on under its provisions, or concerning the observance or performance of any of its covenants, or otherwise relating to this Agreement, upon which question or controversy the Parties cannot agree despite their best efforts pursuant to Section 9.1, such question or controversy shall in the case of disputes under Subsection 3.3, and may upon agreement of the Parties regarding other disputes, be submitted to and settled by arbitration. For disputes arising under Subsection 3.3, arbitration shall be mandatory and binding pursuant to the terms of this Section, unless otherwise agreed to in writing by the Parties. For all other disputes, neither party shall be compelled to arbitrate a question or controversy by reason of this Section 9.2, and both Parties shall have the unilateral right to condition their agreement to arbitrate a dispute pursuant to this Section 9.2 on changes to the arbitration rules and procedures set forth below. Unless other procedures are agreed to by the Parties,

arbitration between the Parties pursuant to this Section 9.2 shall be governed by the rules and procedures set forth in this Section 9.2.

- B. If the Parties to the dispute are able to agree upon a single arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the demanding party) may notify the other party (the noticed party) in writing of its demand for arbitration, stating the question or questions to be submitted for decision and nominating one arbitrator. Within twenty (20) days after receipt of such notice, the noticed party shall appoint an arbitrator and notify the demanding party in writing of such appointment. Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, the arbitrator for the demanding party shall select an arbitrator for the noticed party so failing, and if the arbitrator for the demanding party and the noticed party cannot agree on that selection, said arbitrator shall be appointed by the American Arbitration Association ("AAA") in compliance with the Rule of Appointment of Neutral Arbitrator upon written notice to all other parties. The arbitrators so chosen shall select one additional arbitrator to complete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be appointed by the AAA rules pursuant to the Rule for Appointment of Neutral Arbitrator. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) who chose that arbitrator, or the AAA, as appropriate, shall appoint another to act in such arbitrator's place. Any arbitrator appointed by AAA under this Subsection 9.2.B. shall possess knowledge or experience of the railroad industry or of commuter rail or of the particular matters at issue in the arbitration.
- C. Upon selection of the arbitrator(s), said arbitrator(s) shall determine the questions raised in said notice of demand for arbitration within twenty (20) days, unless a different period of time is otherwise agreed upon by the Parties. Said arbitrator(s) shall then give all parties reasonable notice of the time (which time shall be within thirty (30) days of the Arbitrator(s)' determination of the questions raised, unless a different period of time is otherwise agreed upon by the Parties), and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument; take such evidence as is admissible under the Federal Rules of Evidence 103 through 1103 with witnesses required to be sworn; and hear arguments of counsel or others.
- D. After considering all evidence, testimony and arguments, said single arbitrator or said board of arbitrators or a majority thereof shall, within thirty (30) days of completion of the hearing provided for in Subsection 9.2.C., promptly state such decision or award in writing. Said decision or award shall be final, binding, and conclusive on all parties to the arbitration when delivered to them, except as provided in Subsection 9.2.G. A judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for the arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.
- E. Each party to the arbitration shall pay the compensation, costs and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, costs and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by both parties to the arbitration.
- F. The books and papers of all parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the arbitrator(s). The arbitration shall be

governed by the U.S. Arbitration Act, 9 U.S.C. §§ 1-16, to the exclusion of any provisions of the state law inconsistent therewith or which would produce a different result, and by Federal Rules of Civil Procedure 26 through 37 and Federal Rules of Evidence 103 through 1103. The arbitrator(s) shall have the authority to enter awards of equitable remedies consistent with the obligations of BNSF and Sound Transit under this Agreement, other than with regard to the allocation of costs and fees as provided for under Subsection 9.2.E. of this Agreement, except as provided in Subsection 9.2.G.

- G. The arbitrator(s) shall not have the authority to enter any award, the satisfaction of which by the party to be bound, would be impermissible under any law, regulation, or funding agreement to which the bound party is subject. The determination of any such impermissibility shall be made by a court of competent jurisdiction within the State of Washington and under the laws of the State of Washington. Any such determination shall be appealable.

ARTICLE X - MISCELLANEOUS

SECTION 10.1 - EMERGENCIES

- A. **Force Majeure**. Each party will be excused from performance of any of its obligations to the other hereunder, where such non-performance is caused by any event beyond the non-performing party's reasonable control, which may include, without limitation, an order, rule, or regulation of any federal, state, or local government body, agency, or instrumentality, work stoppage by BNSF employees or a labor dispute resulting in a strike by BNSF employees, extraordinary unavailability of essential materials from third-party suppliers, accident, natural disaster, or civil disorder ("Force Majeure Event"); provided that the party excused hereunder shall use all reasonable efforts to minimize its non-performance and to overcome, remedy, or remove such Force Majeure Event in the shortest practical time.

SECTION 10.2 - ENTIRE AGREEMENT

This Agreement and the Appendices attached hereto and made a part hereof, and the three (3) Purchase and Sale Agreements, embody the entire agreement and understanding between Sound Transit and BNSF relating to the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants or undertakings, oral or otherwise than those expressly set forth or referred to herein.

SECTION 10.3 - AMENDMENTS

Except as otherwise expressly provided in this Agreement, no waiver, modification, addition, or amendment to this Agreement shall be of any force or effect unless reduced to writing executed by the authorized officers or agents of each party.

SECTION 10.4 - SEVERABILITY

In the event that any term, covenant, condition, or provision of this Agreement, or the application thereof to any person or circumstance, is found to be invalid or unenforceable in any respect, the remainder of this Agreement, and the application of such term or provision to other persons or circumstances nevertheless shall be binding with the same effect as if the invalid or unenforceable provision were originally deleted. The parties hereto agree to bargain in good faith to reform this Agreement or replace any invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the invalid or unenforceable provision.

SECTION 10.5 - 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 by telephone, with an original deposited postage prepaid in the first class mails of the United States, addressed to Sound Transit at:

Sound Transit
401 S. Jackson St
Seattle, WA 98104-2826
ATTN: Commuter Rail Director

or to BNSF at:

The Burlington Northern and
Santa Fe Railway Company
2600 Lou Menk Drive
P.O. Box 961034
Fort Worth, Texas 76161-0034
ATTN: Assistant Vice President Contracts and Joint Facilities

With additional copy to:

The Burlington Northern and
Santa Fe Railway Company
401 S. Jackson St
Seattle, WA 98104-2826
ATTN: Superintendent of Commuter Operations

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

SECTION 10.6 - RIGHTS AND REMEDIES

The duties and obligations imposed by this Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of or waiver regarding any duties, obligations, rights and remedies otherwise available by law. No waiver by either party of any default shall affect or impair any right arising from any subsequent default. The failure of either party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy provided for in this Agreement shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof.

SECTION 10.7 - APPLICABLE LAW; CHOICE OF FORUM

The laws of the State of Washington shall govern the interpretation of this Agreement, the relationship of the Parties under this Agreement and all disputes relating to the matters stated in this Agreement, without regard to the choice of law principles of that State. Litigation arising out of or in connection with this Agreement may be instituted and maintained only in the Federal courts located in the State of Washington, and the Parties consent to the exercise by those courts of jurisdiction over their person, and consent to service of process issued by such courts. The venue for any action relating to this Agreement shall be in the State of Washington.

SECTION 10.8 - SUCCESSORS

This Agreement shall bind and inure to the benefit of the respective successors of BNSF and Sound Transit. Any successor will be required to accede, in writing, to all of the terms, conditions, and requirements of this Agreement.

SECTION 10.9 - TRANSFER OR ASSIGNMENT

- A. BNSF may transfer or assign its rights to conduct freight operations on the Lakeview Line to a TPO subject to the provisions of this Section. Any transfer to a TPO must include all BNSF obligations under the Purchase and Sale Agreements and this Joint Use Agreement.
- B. BNSF must provide Sound Transit two months notice of its intent to transfer or assign its freight rights to a TPO pursuant to the approval requirements contained in Section 10.9.C. The notice must contain the name of the proposed TPO and a contact person with the TPO.
- C. Sound Transit may research the TPO, including interviewing the TPO and others, to help determine the safety record of the TPO, the financial viability of the TPO, and the suitability of the TPO for conducting freight operations on the Lakeview subdivision. If Sound Transit believes, in its reasonable judgment, that the proposed TPO does not have an acceptable safety performance history, or, in the case of a TPO that has not previously conducted rail operations, does not demonstrate a commitment and capability of performing safe rail operations in the future on the Lakeview Line, Sound Transit may notify BNSF within two (2) months of receipt of the notice of Sound Transit's safety concerns. If Sound Transit believes, in its reasonable judgment, that the proposed TPO does not have the financial resources including insurance to fulfill all the obligations of BNSF transferred to the TPO, Sound Transit may notify BNSF within two months of receipt of the notice, of Sound Transit's financial concerns. If Sound Transit provides BNSF notice of any safety or financial concerns including insurability, BNSF and Sound Transit shall meet to address such concerns. If, after such meetings, Sound Transit still believes, in its reasonable judgment, that the proposed TPO does not have an adequate safety record or the financial resources to conduct freight operations on the Lakeview Line, Sound Transit may notify BNSF in

writing of its rejection of the proposed TPO. To the extent that BNSF is not in agreement with Sound Transit's rejection, BNSF may invoke the arbitration provisions of Article IX. If BNSF has received no written notification from Sound Transit rejecting the proposed TPO within two (2) months from the initial BNSF notice, BNSF may proceed with the transfer or assignment of freight rights.

SECTION 10.10 - BENEFITS

This Agreement is intended for the sole benefit of the Parties hereto. Nothing in this Agreement is intended or may be construed to give any person or entity, other than the Parties hereto, their permitted successors, and permitted assigns, any legal or equitable right, remedy, or claim under this Agreement.

SECTION 10.11 - PREPARATION

The Parties and their legal counsel have cooperated in the drafting of this Agreement. Accordingly, this Agreement shall be deemed the joint work product of the Parties and not be construed against either party by reason of such preparation.

SECTION 10.12 - HEADINGS

The section headings of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of the section or this Agreement.

SECTION 10.13 - COUNTERPARTS

This Agreement shall be simultaneously executed in duplicate counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have set their hands.

Central Puget Sound Regional
Transit Authority

The Burlington Northern and Santa Fe
Railway Company

By: Joan M Earl
Title: CEO

By: M. A. Roe
Title: CEO

Date: 12-17-03

Date: 12/12/03

Approved as to form.

Approved as to form.

[Signature]
Legal Counsel

Richard E. Weicha
Legal Counsel

Adjustment of Car Mile Rate

Commencing effective January 1, 2005, the Car Mile Rate set forth in this Agreement shall be adjusted annually, upward or downward by the amounts specified above.

For example, the \$0.248 per Car Mile Rate will be adjusted annually with the first adjustment in February, 2005, retroactive to January 1, 2005. The adjustment will be based on 80% of the annual percentage change in the Labor Component of the Rail Cost Adjusted Factor and 20% of the annual percentage change in the Consumer Price Index for Seattle-Tacoma-Bremerton WA.

The Labor Component of the RCAF (LRCAF) is available from Table D, Line 1 of the Quarterly publication of the Association of American Railroads titled "AAR Railroad Cost Indexes." The Consumer Price Index for Seattle-Tacoma-Bremerton WA is available from the Bureau of Labor Statistics, U.S. Department of Labor. (See link to web site below).

To calculate the Labor Component, the average of the labor index for the four quarters of the most recent year will be compared to the average of the labor index for the four quarters of the previous year and the result is multiplied by 80.0%. To calculate the Consumer Price Index, the annual price index of the most recent year is compared to the annual price index of the previous year and the result is multiplied by 20.0%. The rate of change (i.e., escalator) for the contract is the sum of the Labor and CPI results described above.

For example, the February, 2003 rate adjustment would have been as follows:

	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
2001 LRCAF	254.4	254.5	256.3	253.0
2002 LRCAF	260.3	257.3	257.1	267.6

$$CLRCAF = (260.3 + 257.3 + 257.1 + 267.6) / 4 = 260.575$$

$$PLRCAF = (254.4 + 254.5 + 256.3 + 253.0) / 4 = 254.55$$

$$CCPI = \text{Then current CPI—Seattle for 2002} = 189.3$$

$$PCPI = \text{Then prior CPI—Seattle for 2001} = 185.7$$

$$AER = [1 + (((260.575 - 254.550) / 254.550) * .80) + (((189.3 - 185.7) / 185.7) * .20)] * BR$$

$$= (1 + 0.022813) * BR$$

In other words, the escalation from the prior rate is 2.2813 %.

Thus, the adjusted rate effective January 1, 2005 for an original rate established and effective January 1, 2004 shall be determined as follows:

Annual Rate Adjustment Formula:

$$AER = \frac{(((CLRCAF - PLRCAF) / PLRCAF) * 0.80) + (((CCPI - PCPI) / PCPI) * 0.20)}{1} * BR$$

Where:

AER = the Annual Effective Rate as of March 1, 2005

CLRCAF = (LRCAF 1st Qtr 2004 + LRCAF 2nd Qtr 2004 + LRCAF 3rd Qtr 2004 + LRCAF 4th Qtr 2004) / 4

PLRCAF = (LRCAF 1st Qtr 2003 + LRCAF 2nd Qtr 2003 + LRCAF 3rd Qtr 2003 + LRCAF 4th Qtr 2003) / 4

CCPI = the Current CPI—Seattle published for the full year, 2004

PCPI = the Previous CPI—Seattle published for the full year, 2003

BR = the Base Rate; where, for example, the Base Rate equals \$0.248 per car mile through 2004 and escalated according to the cumulative impact of the 80/20 adjustment for subsequent years.

The adjustment process described above shall be repeated by the end of February, 2006 and by the end of February thereafter during the Term of this Agreement, with the new Annual Effective Rates for the twelve (12) month period retroactive to January 1 prior to each such adjustment being determined by application of the formula described above for that Adjustment Date to the Annual Effective Rates and charges in effect during the preceding twelve (12) month period, provided in no event shall any of the

rates or payments be adjusted below its original level at the time of execution of the agreement. Adjustment billings shall be made to reflect the adjustment retroactive to January 1.

If the AAR or a successor ceases to publish the Labor Component of the RCAF, or materially alters the methodology by which the RCAF is derived, the parties shall meet to determine the most appropriate substitute index to be used for adjustments for the remainder of the Term of this Agreement. If, within sixty (60) days after the discontinuance or material alteration of the RCAF, the parties are unable to reach agreement on a suitable substitute index either Sound Transit or BNSF may submit the matter for resolution by arbitration in accordance with Article IX of this Agreement.

If the AAR or the STB, or Department of Commerce (or successor) rebases the LRCAF or CPI respectively during the Term of this Agreement, a linking factor shall be developed and applied in order to calculate the first adjustment to the Effective Rates occurring on or after the date the rebasing takes effect. The linking factor shall be equal to the ratio of the respective index for the year prior to rebasing divided by the index for the same year as rebased. The current year's index value as adjusted by the linking factor will then be on a similar basis as used for the year prior to rebasing. The linking factor shall only be used to rebase the index as described herein for the annual adjustment immediately following the rebasing. Commencing with the next ensuing Adjustment Date, the rebased index value as published for the prior and current years shall be used for purposes of adjustments hereunder.

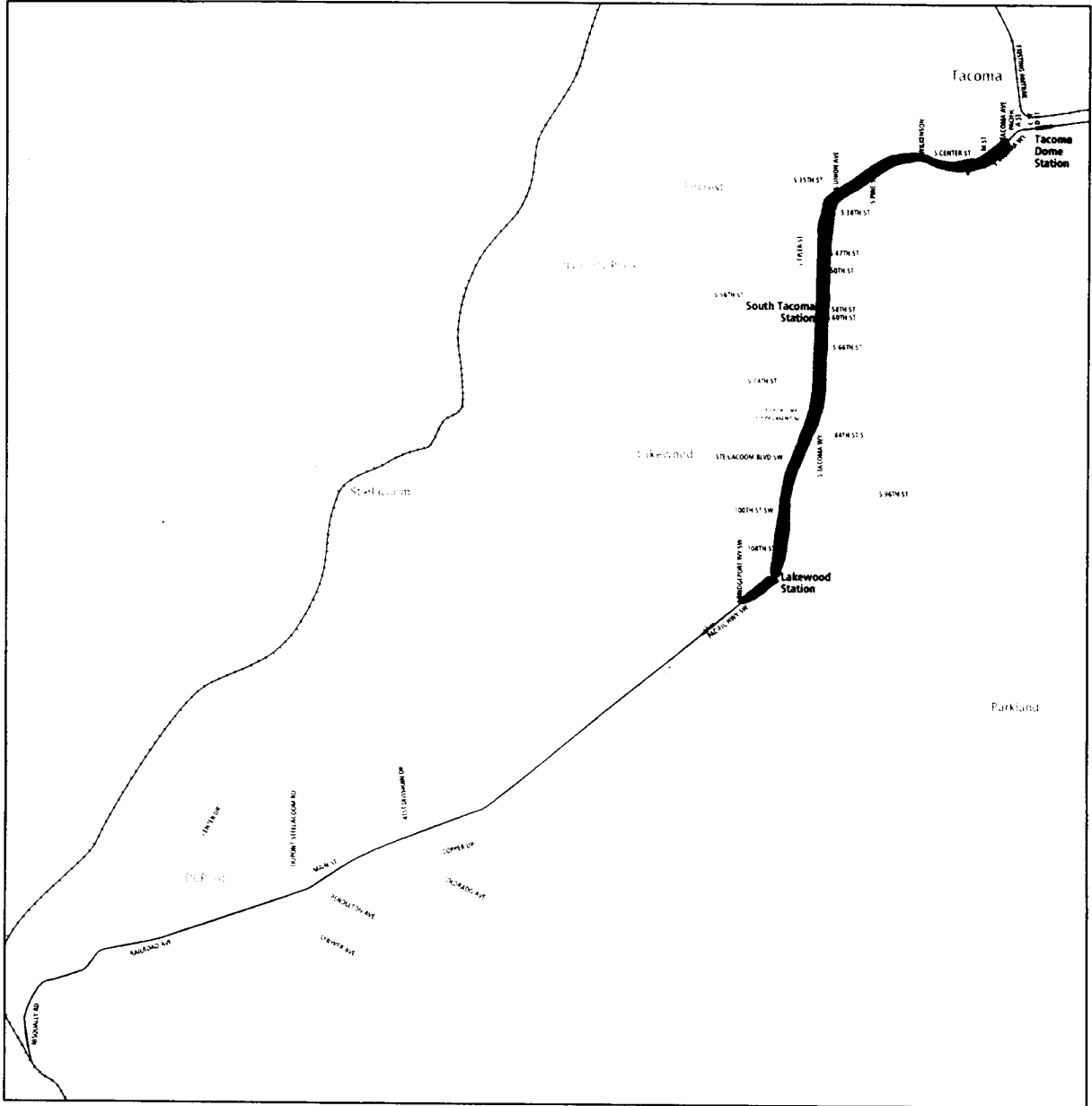
In computing the annual adjustment described herein, all published indices shall be rounded to the nearest thousandth of an index point, all calculated indices shall be rounded to the nearest tenth of an index point, and all rates and charges shall be rounded to the nearest half cent. If there is no nearest thousandth of an index point, tenth of an index point, or half cent, as the case may be, the indices, rates, and charges shall be rounded to the nearest even thousandth of an index point, tenth of an index point, or half cent. For example, \$0.2835 and \$0.2845 would be rounded to \$0.284.


Link to Bureau of Labor Statistics:


http://data.bls.gov/servlet/SurveyOutputServlet?data_tool=dropmap&series_id=CUURA423SA0,CUUSA423SA0

D

Lakeview Subdivision Rail Corridor



 Lakeview North Segment, MP 2.15 in Tacoma, WA to MP 8.9 in Lakeview, WA

 Lakeview South Segment, MP 8.9 in Lakeview, WA to MP 24.5 in Nisqually, WA

E

SURFACE TRANSPORTATION BOARD
Notice of Exemption

Finance Docket No. 34747

**CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY - -
ACQUISITION EXEMPTION - -
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
IN PIERCE COUNTY, WASHINGTON**

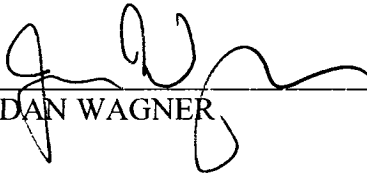
The Central Puget Sound Regional Transit Authority (“Sound Transit”) has filed a notice of exemption to acquire the following two line segments from The Burlington Northern and Santa Fe Railway Company (“BNSF”): a) a line of railroad between Milepost 2.15 in Tacoma and Milepost 8.9 in Lakeview, on the Lakeview Subdivision located in Pierce County, Washington (the “Lakeview North Segment”), and (b) a second line from the BNSF between Milepost 8.9 in Lakeview and Milepost 24.5 in Nisqually, also on the Lakeview Subdivision (the “Lakeview South Segment”) also located in Pierce County, Washington. Comments must be filed with the Board and served on Charles A. Spitulnik and Alex Menendez, McLeod, Watkinson & Miller, One Massachusetts Avenue, N.W., Suite 800, Washington, DC 20001.

The notice is filed under § 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

VERIFICATION AND CERTIFICATION

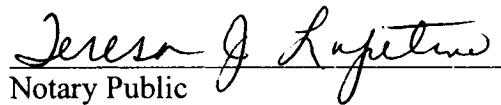
I, Jordan Wagner, Legal Counsel of Central Puget Sound Regional Transportation Authority, verify under penalty of perjury that the facts recited in the foregoing NOTICE OF EXEMPTION are true and correct. Further, I certify that I have personal knowledge of the facts stated therein and that I am authorized to verify these facts stated in this Verified Notice of Exemption.

In addition, this is to certify, as required by 49 C.F.R. §1150.43(g) that because the Central Puget Sound Regional Transportation Authority will conduct no freight operations on the line segments being acquired, its revenues from such freight operations will not result in the creation of a Class I or Class II carrier.

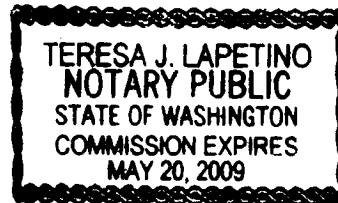


JORDAN WAGNER

SUBSCRIBED AND SWORN TO
BEFORE ME THIS 24th DAY OF
AUGUST, 2005.



Notary Public



My Commission Expires: 5-20-09