



CITY OF KIRKLAND

City Attorney's Office

123 Fifth Avenue, Kirkland, WA 98033 425.587.3030

www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Oskar Rey, Assistant City Attorney

Date: December 2, 2011

Subject: Proposed Purchase of Real Property—Eastside Rail Corridor, Kirkland Segment

RECOMMENDATION:

City staff recommends that the Council authorize the City Manager to enter into a Purchase and Sale Agreement for acquisition of the Kirkland Segment (described below) of the Eastside Rail Corridor.

BACKGROUND:

The Port of Seattle ("Port") acquired the Eastside Rail Corridor ("Corridor") from BNSF Railways Corporation ("BNSF") in 2009. The portion of the Corridor extending south from Woodinville to Renton has been railbanked pursuant to federal law, which makes it available for trail and transportation uses. A more detailed description of the Corridor and issues relating to acquisition of the Kirkland Segment by the City is contained in the staff memo for the December 12, 2011 Council Study Session.

The attached Purchase and Sale Agreement covers the "Kirkland Segment" of the Corridor, which extends from 108th Avenue NE (which is in Bellevue, just south of the Kirkland City limits) north to 132nd Place NE in Totem Lake. The City entered into a non-binding Term Sheet with the Port for the purchase of the Kirkland Segment on November 1, 2011. The attached Purchase and Sale Agreement represents the next step in the acquisition process. The Kirkland Segment is approximately 5.5 miles long and the purchase price for the Kirkland Segment is \$5,000,000.

Upon signing of the Purchase and Sale Agreement, a 60 day inspection period will begin. The purpose of the feasibility period is to allow the City to conduct "due diligence" with respect to the property and the structures on the property. After the expiration of the inspection period, the parties would have until March 15, 2012 to close the transaction.

In the event no major problems are discovered during the inspection period, City staff anticipates that the City would proceed with closing. No further Council action is required to close but City staff will provide an informational update to Council prior to closing. In the event City staff discovers significant issues during the inspection period, staff would report back to Council before proceeding further with the transaction.

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (“Agreement”) is made and entered into as of the ____ day of _____ (“Effective Date”) by and between the Port of Seattle, a municipal corporation of the State of Washington (“Port”) and the City of Kirkland, a municipal corporation of the State of Washington (“City”). The Port and the City are hereinafter sometimes referred to collectively as the “Parties”.

RECITALS

A. The Port is the owner of real property developed as a rail corridor approximately 100 feet wide commonly known as the Woodinville Subdivision, portions of which are located between the City of Woodinville and the City of Renton (“South Segment”), and the City of Woodinville and the City of Redmond (“Redmond Spur”), in King County, Washington (collectively, the South Segment and the Redmond Spur are referred to as the “Woodinville Subdivision Rail Corridor”). The City desires to acquire a portion of the Port’s interest in the South Segment approximately 5.5 miles in length, located within the City of Kirkland and a small portion of which is located in the City of Bellevue (“the Kirkland Segment”), which is legally described in Exhibit A attached hereto and incorporated herein by this reference.

B. On November 5, 2009, the Port entered into a Memorandum of Understanding (the “MOU”) with King County, Central Puget Sound Regional Transit Authority (“Sound Transit”), Cascade Water Alliance, Puget Sound Energy and the City of Redmond (collectively, the “Regional Partners”) setting forth the mutual understanding of the parties for the completion of future transactions where the Regional Partners would purchase from the Port interests in the Woodinville Subdivision and thus share in the cost of acquiring it.

C. Consistent with the MOU, on June 30, 2010, the City of Redmond purchased from the Port the portions of the Redmond Spur located within the city limits of Redmond (the “City Segment”) and the City of Redmond agreed to convey to Sound Transit an easement for transportation purposes in the City Segment at the time Sound Transit closes on a purchase of interests in the remaining portions of the Woodinville Subdivision Rail Corridor owned by the Port.

D. Consistent with the MOU, Sound Transit and the Port entered into a Real Estate Purchase and Sale Agreement dated August 18, 2011 to purchase a portion of the corridor located in Bellevue (the “Bellevue Property”) along with a transportation easement for potential future development of high capacity transportation facilities as a protective acquisition throughout the South Segment (less the Bellevue Property) and the portions of the Redmond Spur owned by the Port.

E. The City and the Port are entering into this Agreement pursuant to the authority granted in Chapter 39.33 Revised Code of Washington (Intergovernmental Disposition of Property Act), which permits a political subdivision of the State of Washington to sell real property to the state or any municipality or any political subdivision thereof on such terms and

conditions as may be mutually agreed upon by the proper authority of the state and/or the subdivisions concerned.

F. The City and the Port have agreed upon the terms and conditions under which the Port will sell the Kirkland Segment to the City, all as set forth herein.

G. This Agreement was approved by Kirkland City Council on December 12, 2011 and by the Port Commission of the Port of Seattle on _____, 2011.

NOW, THEREFORE, in consideration of the agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. The Kirkland Segment. The Port agrees to sell to the City, and the City agrees to purchase from the Port, the Kirkland Segment. The Kirkland Segment includes the land described in Exhibit A attached hereto ("the Land"), together with all of the Port's right, title and interest in and to the buildings (if any) located on the Land ("the Buildings"), all of the Port's right, title, and interest in any tangible personal property and fixtures of any kind owned by the Port and attached to or used exclusively in connection with the ownership, maintenance or operation of the Land or the Buildings, if any ("the Personalty"); and all of the Port's right, title and interest in and to all Third Party Leases, Licenses and Contracts (defined in Paragraph 4.1 below) associated with the Kirkland Segment as of the Date of Closing.

The Land, the Buildings and the Personalty are referred to collectively herein as the "Kirkland Segment." The Woodinville Subdivision Rail Corridor less (a) the City Segment purchased in fee by the City of Redmond; (b) the Bellevue Property purchased in fee by Sound Transit; and (c) the Kirkland Segment purchased by the City pursuant to this Agreement is referred to herein as the "Port Property."

2. Purchase Price. The City shall pay to the Port a total purchase price of Five Million Dollars (\$5,000,000) for the Kirkland Segment ("Purchase Price") at the Closing described in Paragraph 10 below.

3. Inspection Contingency.

3.1 Inspection. The City may, at its sole cost and expense, conduct an acquisition due diligence investigation of the Kirkland Segment (the "Inspection"), including a physical inspection, to determine the condition of the Kirkland Segment, including the existence of any environmental hazards or conditions, during the period commencing on the Effective Date and ending at 5:00 p.m., Pacific Standard time sixty (60) calendar days thereafter (the "Inspection Period"). During the Inspection Period and subject to the limits set forth in this paragraph, the City and its employees, representatives, consultants and agents shall have the right and permission to enter upon the Kirkland Segment or any part thereof at all reasonable times and after reasonable prior notice, and from time to time, at the City's own risk, for purposes of analysis or other tests and inspections deemed necessary by the City for the Inspection. The Port

may have a representative present at any inspection or testing made by the City on the Kirkland Segment. The City shall not alter the physical condition of the Kirkland Segment without first providing the Port with detailed information of the City's intended activities on the Kirkland Segment and obtaining the prior written consent of Port to any physical alteration of the Kirkland Segment. The City shall provide the Port with a copy of any reports or data regarding the Kirkland Segment that the City possesses or obtains before, during or after the Inspection Period, including without limitation any environmental reviews of the Kirkland Segment or data regarding soil or groundwater quality at, on or under the Kirkland Segment. The City shall defend, indemnify and hold harmless the Port from and against all liability, cost, damage and expense (including, but not limited to, attorneys' fees) in connection with all claims, suits and actions of any kind made or brought against the Port, its officers, agents or employees by any person or entity as a result of or on account of actual or alleged injuries or damages to persons, entities or property received or sustained, in any way arising out of, in connection with, or as a result of the acts or omissions of the City, its officers, agents or employees, in exercising its rights under the right of entry granted herein. The City's obligations under this Paragraph 3.1 shall survive the termination of this Agreement.

3.2 Termination. If the City determines, in its sole judgment, that the Kirkland Segment is not suitable for any reason for the City's intended use or purpose, then City may terminate this Agreement by written notice to the Port before the expiration of the Inspection Period, in which case neither party shall have any further right or obligation under this Agreement except for those rights or obligations that expressly survive termination. In the event this Agreement is terminated pursuant to this Paragraph 3.2 and the City altered the physical condition of the Kirkland Segment in connection with its Inspection, the City shall return the Kirkland Segment to its pre-Inspection condition unless otherwise agreed to in writing by the Port. If this Agreement is not terminated on or before the expiration of the Inspection Period, the Inspection condition shall be deemed to have been waived by the City for all purposes.

4. Title; Railbanking Obligations.

4.1 Nature of Title. Subject to the City's satisfaction with or waiver of the Inspection Contingency under Paragraph 3 above, the Kirkland Segment shall be conveyed with no warranties of title (except that Port warrants it has the legal power and authority to execute and deliver the documents described in Paragraph 10.2 below) and shall be subject to all matters affecting the Kirkland Segment as of the Effective Date, whether of record or not, including but not limited to (i) matters which would be disclosed by a current, accurate survey of the Kirkland Segment; and (ii) the rights granted to third parties pursuant to any third party lease, license, permit, occupancy agreement or other agreement demising space in or providing for the use or occupancy of the Kirkland Segment ("Third Party Leases, Licenses and Contracts"). The Port represents and warrants that Schedule 1 attached to this Agreement and incorporated herein by this reference, contains a complete list of Third Party Leases, Licenses and Contracts of which the Port has knowledge. The City acknowledges and affirms that the Port may not hold fee simple title to the Kirkland Segment, that the Port's interest in all or part of the Kirkland Segment, if any, may rise only to the level of an easement for railroad purposes. The City is willing to accept the Kirkland Segment on this basis.

4.2 Railbanking Obligations. The Port and the City acknowledge that the Woodinville Subdivision Rail Corridor is railbanked pursuant to 16 U.S.C. 1247(d). The Port and

King County, a political subdivision of the State of Washington (“King County”) entered into that certain Public Multipurpose Easement recorded under King County Recording No. 20091218001538 (the “Multipurpose Easement”) which, among other things, grants King County certain rights to acquire develop, maintain and operate a public trail for public pedestrian, bicycle and other non-motorized uses (“Trail”) over portions of the Woodinville Subdivision Rail Corridor in its capacity as the Interim Trail User subject to the terms and conditions of the Multipurpose Easement so long as such Trail does not interfere with the use of the Woodinville Subdivision Rail Corridor for other Transportation Use as defined in the Multipurpose Easement.

5. Condition of the Kirkland Segment.

5.1 The City acknowledges that the Kirkland Segment may contain Hazardous Substances, and that Hazardous Substances released onto the Kirkland Segment may have migrated onto neighboring properties at times prior to the Effective Date. The City waives, releases and discharges forever the Port from any and all present or future claims or demands and any and all damages, losses, injuries, liabilities, causes of action (including without limitation, causes of action in tort), costs and expenses (including without limitation fines, penalties and judgments and attorneys fees) of any and every kind or character, known or unknown (collectively "Losses") that the City might have asserted against the Port arising from or in any way related to environmental conditions in, at, on, under or originating from the Kirkland Segment or the alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Kirkland Segment. Losses shall include without limitation (a) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law (defined below), that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) Losses for injury or death of any person, and (c) Losses arising under any Environmental Law enacted after the Effective Date. The City further agrees to indemnify and defend the Port against any and all Losses that the Port sustains as a result of claims by third parties, including but not limited to BNSF Railway Company (“BNSF”) and federal, state and local regulatory agencies for damages or remediation costs related to environmental conditions in, at, on under or originating from the Kirkland Segment. Nothing in this Agreement shall be construed to waive or discharge any rights or claims the City may hold under the Environmental Laws, agreements or deeds to seek indemnity or contribution from BNSF or other parties other than the Port for Losses arising from or in any way related to environmental conditions on the Kirkland Segment. The term “Environmental Law” means any federal, state or local statute, regulation, code, rule ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Model Toxics Control Act, the Water Pollution Control Act, laws concerning above ground or underground storage tanks, and any similar or comparable state or local law. The term “Hazardous Substance” means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

5.2 Subject to the Port’s express representations, warranties and obligations under this Agreement, **THE CITY IS NOT RELYING ON, AND HEREBY WAIVES**

WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM THE PORT WITH RESPECT TO ANY MATTERS CONCERNING THE KIRKLAND SEGMENT including, but not limited to the physical condition of the Kirkland Segment; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Kirkland Segment with Environmental Laws (defined above) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Kirkland Segment; the presence of any Hazardous Substances (defined above), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, or under the Kirkland Segment; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Kirkland Segment; the condition of title to the Kirkland Segment, and the Third Party Leases, Licenses, Contracts, permits, orders, or other agreements, affecting the Kirkland Segment (collectively, the “Condition of the Kirkland Segment”).

5.3 The City represents and warrants to the Port that except for the Port’s express representations, warranties and obligations under this Agreement, the City has not relied and will not rely on, and the Port is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Kirkland Segment or relating thereto made or furnished by the Port, any agent or contractor of the Port, or any real estate broker or agent representing or purporting to represent the Port, to whomever made or given, directly or indirectly, orally or in writing.

5.4 Notwithstanding any provision of this Agreement to the contrary, the provisions of this Paragraph 5 shall survive the Closing (defined in Paragraph 10 of this Agreement) of the transaction contemplated herein and the delivery of the Deed (defined in Paragraph 10 of this Agreement) to the City. The City and the Port acknowledge that their willingness to enter into this Agreement reflects that the Kirkland Segment is being conveyed subject to the provisions of this Paragraph 5.

6. Closing Conditions.

6.1 The City’s obligation to purchase the Kirkland Segment shall be subject to the following conditions that must be satisfied as of Closing or such earlier date as specified below:

6.1.1 All representations and warranties of the Port contained herein shall be true, accurate and complete in all material respects at the time of Closing as if made again at such time; and

6.1.2 The Port shall have performed all obligations to be performed by the Port under this Agreement on or before Closing (or, if earlier, on or before the date set forth in this Agreement for such performance);

6.1.3 The City's satisfaction with or waiver of the Inspection Contingency under Paragraph 3 of this Agreement.

6.1.4 The Port shall have provided the City with an updated Schedule 1 reflecting any Third Party Leases, Licenses and Contracts of which the Port has become aware or has entered into since the date of this Agreement.

If the conditions set forth in this Paragraph 6.1 are not satisfied as of Closing and the City does not waive the same, the City may terminate this Agreement by giving written notice to the Port and thereafter neither party shall have any further liability to the other under this Agreement.

6.2 The Port's obligation to sell the Kirkland Segment shall be subject to the following conditions that must be satisfied as of Closing:

6.2.1 All representations and warranties of the City contained herein shall be true, accurate and complete in all material respects at the time of Closing as if made again at such time; and

6.2.2 The City shall have performed all obligations to be performed by it hereunder on or before Closing (or, if earlier, on or before the date set forth in this Agreement for such performance).

If the conditions set forth in this Paragraph 6.2 are not satisfied as of Closing and the Port does not waive the same, the Port may terminate this Agreement by giving written notice to the City, and thereafter neither party shall have any further liability to the other under this Agreement.

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

7.1 From the date of this Agreement to the Date of Closing, the Port will notify the City of each event of which the Port becomes aware is affecting the Kirkland Segment or any part thereof, promptly upon learning of the occurrence of such event.

7.2 The Port is a municipal corporation of the State of Washington, duly organized, validly existing and in good standing under the laws of the State of Washington, has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations under this Agreement and the transactions contemplated hereby.

7.3 The Port is not a foreign person and is a "United States Person" as such term is defined in Section 7701(a) (30) of the Internal Revenue Code of 1986, as amended ("Code") and shall deliver to the City on the Date of Closing an affidavit evidencing such fact and such other documents as may be required under the Code.

7.4 There is no litigation pending against the Port that pertains to the Port Property or the Port's ownership thereof, other than as disclosed in Paragraph 11.2.

7.5 The Port has not received any written notice of, and the Port has no knowledge of, any written notice from any governmental authority alleging any uncured existing violation of any applicable governmental laws, statutes, ordinances, rules, codes, regulations or orders, including Environmental Laws, affecting the Kirkland Segment.

7.6 From the date of this Agreement to the Date of Closing, the Port will not grant or create any easement, right-of-way, encumbrance, restriction, covenant, lease, license, option to purchase or other right which would affect the Kirkland Segment after Closing without the City's written consent first having been obtained.

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

8.1 From the date of this Agreement to the Date of Closing, the City will timely perform all of its monetary and non-monetary obligations required by the terms of this Agreement to be performed by the City.

8.2 The City is a municipal corporation of the State of Washington, duly organized, validly existing and in good standing under the laws of the State of Washington, has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations under this Agreement and the transactions contemplated hereby.

8.3 There is no litigation pending against the City which could prevent or impair the City's obligations hereunder.

9. Hazardous Substances. The Port acquired the Woodinville Subdivision Rail Corridor from BNSF Railway Company ("BNSF") pursuant to a Purchase and Sale Agreement and Donation Agreement both dated May 12, 2008 (collectively, referred to as "PSA"). The PSA obligates BNSF, in specified situations, to investigate, remediate, respond to or otherwise cure (collectively, "Remediate" or "Remediation") certain environmental conditions related to releases of Hazardous Substances or the violation of any Environmental Law. As between the City and the Port, the City will be responsible for all costs of Remediation of Hazardous Substances released on or from the Kirkland Segment or violations of any Environmental Law relating to the Kirkland Segment except to the extent caused by or resulting from the acts of Port or its officers, employees, agents or contractors. The Port and the City agree that in the event the City is required to Remediate Hazardous Substances released on or from the Kirkland Segment, the Port shall cooperate with the City to obtain reimbursement of costs of Remediation from BNSF as provided in the deed from BNSF to the Port.

9.1 Survival. Notwithstanding any provision of this Agreement or the Easement to the contrary, the provisions of this Paragraph 9 shall survive the Closing of the transaction contemplated herein and the delivery of the Deed to the City.

10. Closing.

10.1 Time and Place. The closing of this sale (“Closing”) shall take place at the offices of Escrow Agent, located at Pacific Northwest Title, 215 Columbia Street, Seattle, Washington, escrow agent for the closing of this transaction (“Escrow Agent”), on March 15, 2012 (“Date of Closing”); provided, however that either party may extend the Date of Closing for up to thirty (30) days by giving written notice of such extension to the other party at least fifteen (15) days in advance of the Date of Closing.

10.2 Port Obligations. At or before Closing, the Port shall deliver to Escrow Agent, for delivery to the City, the following:

10.2.1 Quit Claim Deed. A fully executed Quit Claim Deed in substantially the form attached hereto as Exhibit B (“Deed”);

10.2.2 Excise Tax Affidavit. An appropriate excise tax affidavit, signed by the responsible and authorized officials of the Port;

10.2.3 Third Party Leases. A fully executed assignment to the City, in the form attached hereto as Exhibit C, of all of the Port’s right, title and interest in and to the Third Party Leases, Licenses or Contracts listed in Schedule 1 hereto that affect the Kirkland Segment, and of any other Third Party Leases, Licenses or Contracts that pertain to the Kirkland Segment and of which the Port acquires knowledge prior to Closing (collectively, the “Kirkland Leases”); and

10.2.4 Bill of Sale. A Bill of Sale in substantially the form attached hereto as Exhibit D; and

10.2.5 Other Documents. Such other documents and funds as may be required to close this transaction, including a Foreign Investment in Real Property Tax Act (“FIRPTA”) certificate.

10.3 The City’s Obligations. At or before Closing, the City shall deliver to Escrow Agent, for delivery to the Port, the following:

10.3.1. Purchase Price. The Purchase Price;

10.3.2 Excise Tax Affidavit. An appropriate excise tax affidavit, signed by the responsible and authorized officials of the City; and

10.3.3 Other Documents. Such other documents and funds as may be required to close this transaction.

10.4 Proration. All taxes, assessments, interest and other income and expenses associated with the Kirkland Segment, shall be prorated as of Closing.

10.5 Closing Costs. The Port and the City shall share equally the escrow fees with respect to the sale of the Kirkland Segment. To the extent the City is able to obtain title insurance for the Kirkland Segment, the City shall be solely responsible for the cost of title insurance premiums, title endorsements, extended coverage or other title coverage requested by the City.

10.6 Kirkland Lease Payments. No later than ten (10) days before Closing, the Port and the City shall jointly review the list of Kirkland Leases and agree in writing as to which Kirkland Leases will require proration under Paragraph 10.4. The Port shall be entitled to all sums due from any Kirkland Leases (collectively “Kirkland Rents”) owing for the month in which the Closing occurs (regardless of when the Kirkland Rents are paid) for the portion of the Kirkland Segment to which such Kirkland Leases relate prorated to the Date of Closing. The Port shall not receive a credit for any such Kirkland Rents that are due but unpaid as of the Date of Closing but the City shall remit to the Port the Port’s prorated portion of any such Kirkland Rents received by it after such Closing. The City shall be entitled to any Kirkland Rents owing for time periods after the month in which the Closing occurs (regardless of when the Kirkland Rents are paid) for the portion of the Kirkland Segment to which such Kirkland Leases relate prorated to the Date of Closing and the Port shall pay to the City the City’s prorated portion of any such Kirkland Rents received by the Port, if any, after the Date of Closing. On the day after the Date of Closing (or the next business day, if it should fall on a weekend or holiday), the Port and the City shall deliver to the tenants and other obligated persons under the Third Party Leases, Licenses or Contracts, a letter in a form mutually acceptable to the Port and the City advising of the sale of the Kirkland Segment and instructing such tenants or obligated persons to make all future payments due under the Third Party Leases, Licenses or Contracts to the City or the City’s designated agents (“New Owner Letter”). The New Owner Letter shall also advise such tenants or obligated persons that may be in arrears as of the Date of Closing that all Kirkland Rents due for the month in which the Closing occurred shall be remitted to the Port. All Kirkland Rents received by the City after the Date of Closing shall be applied first to current rents and then to rents in arrears. In the event the City receives any rents in arrears due to the Port, the City shall remit them to the Port within thirty (30) days of receipt. The City shall have no obligation to collect any sums in arrears owed to the Port. Within ninety (90) days after Closing, the Port shall pay to the City the amount, if any, of all prepaid Kirkland Rents owed to the City and all security or other deposits held by the Port under the Kirkland Leases. The City shall not be entitled to receive any sums due or security deposits held by the Port related to Third Party Leases, Licenses or Contracts that do not affect the Kirkland Segment. This Paragraph 10.6 shall survive the Closing of the transaction contemplated under this Agreement and delivery of the Deed and Easement to the City.

11. Possession; Post Closing Obligations.

11.1 The City shall be entitled to possession of the Kirkland Segment immediately following Closing.

11.2 The Parties acknowledge that a lawsuit has been filed in King County Superior Court under Cause No. 10-2-25591-5 SEA challenging the authority of the Port to purchase portions of the Woodinville Subdivision and seeking various remedies including

rescission of the purchase of the Redmond Spur by the Port in that certain case captioned Lane, et al v. the Port of Seattle et. al. If, at any time subsequent to Closing, a final judicial decree nullifies, changes, or alters all or any portion of the City's or Port's acquisition of the Kirkland Segment (1) such action shall not be a breach of the Covenants, Representations and Warranties of either the Port or the City, and (2) upon thirty (30) days written notice from the City, the Port shall deliver to the City the full amount of the Purchase Price (the "Full Reimbursement"); provided, however, if such action nullifies only a portion of the Port's or the City's acquisition of the Kirkland Segment, the City shall cause its appraiser to value the portion of the property rights affected by such action as of the Date of Closing (the "Appraised Value") and the City shall reduce the Full Reimbursement by an amount equal to the Appraised Value (the "Adjusted Reimbursement"). The Port and the City shall share equally in the cost of the appraisal to determine the Appraised Value. This paragraph 11.2 shall survive the Closing.

12. Indemnification.

12.1 By Port. Subject to and without in any way limiting the provisions of Paragraphs 5 and 9 of this Agreement, the Port shall pay, protect, pay the defense costs of, indemnify and hold the City and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of (a) the breach of any representation, warranty or agreement of the Port set forth in this Agreement; (b) the failure of the Port to perform any obligation required by this Agreement to be performed by the Port; (c) liabilities arising out of the ownership, maintenance and/or operation of the Kirkland Segment by the Port prior to Closing; or (d) any injuries to persons or property from any cause occasioned in whole or in part by any acts or omissions of the Port, its agents or employees, that occurred prior to Closing. The Port upon notice from the City shall defend any such claim at its expense and with counsel reasonably satisfactory to the City. This indemnification shall survive the Closing of the transaction contemplated by this Agreement and the delivery of the Deed to the City. This indemnification is intended for the sole benefit of the City and shall not inure to the benefit of any third party.

12.2 By the City. Subject to and without in any way limiting the provisions of Paragraphs 5 and 9 of this Agreement, the City shall pay, protect, pay the defense costs of, indemnify and hold the Port and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of (a) the breach of any representation, warranty or agreement of the City set forth in this Agreement; (b) failure of the City to perform any obligation required by this Agreement to be performed by the City; (c) liabilities arising out of the ownership, maintenance and/or operation of the Kirkland Segment by the City after Closing; or (d) any injuries to persons or property from any cause occasioned in whole or in part by any acts or omissions of the City, its agents or employees, that occurred after Closing. The City upon notice from the Port shall defend any such claim at its expense and with counsel reasonably satisfactory to the Port. This indemnification shall survive the Closing of the transaction contemplated by this Agreement and the delivery of the Deed to the City. This indemnification is intended for the sole benefit of the Port and shall not inure to the benefit of any third party.

12.3 Additional Indemnification Provisions. Solely to give full force and effect to the indemnification provisions contained herein and not for the benefit of any person, each party specifically and expressly waives any immunity it may have under the Washington State Industrial Act, RCW Title 51 or any other industrial insurance, workers' compensation or similar laws of the State of Washington and acknowledge that this waiver was mutually negotiated by the parties hereto as part of the consideration for this Agreement. This provision shall not be interpreted or construed as a waiver of any party's right to assert such immunity, defense or protection directly against any of its own employees. In no event shall either party's indemnification obligations under this Agreement be limited to the extent of any insurance available to or provided by the obligated party.

13. Default.

13.1 By Port. If there is an event of default under this Agreement by the Port, the City will be entitled (a) to seek specific performance of the Port's obligations under this Agreement or (b) to terminate this Agreement by written notice to the Port and Escrow Agent. If the City terminates this Agreement, all documents will be immediately returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement, other than that the Port shall pay any costs of terminating the escrow.

13.2 By the City. If there is an event of default under this Agreement by the City, the Port will be entitled (a) to seek specific performance of the City's obligations under this Agreement or (b) to terminate this Agreement by written notice to the City and Escrow Agent. If the Port terminates this Agreement, all documents will be immediately returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, other than that the City shall pay any costs of terminating the escrow.

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

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

With a copy to:	Port of Seattle Legal Department P.O. Box 1209
-----------------	--

Seattle, WA 98111
Attn: General Counsel
Facsimile: (206) 787-3205

If to City: City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033
Attn: Public Works Director
Facsimile: (425) 587-3807

With a copy to: City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033
Attn: City Attorney
Facsimile: (425) 587-3025

15. Miscellaneous:

15.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

15.2 Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the sale of the real property interests in the Kirkland Segment and any and all prior agreements, understandings or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force or effect. The parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the parties.

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

15.4 Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

15.5 Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of the parties. The City or the Port shall not assign this Agreement, or any part thereof, without the other party's prior written consent, which consent may be withheld in the other party's sole and absolute discretion.

15.6 Event Date. If any event date falls on a Saturday, Sunday or legal holiday, then the time for performance shall be extended until the next business day.

15.7 Non-Waiver. No term or condition of this Agreement will be deemed to have been waived or amended unless expressed in writing, and the waiver of any condition or the

breach of any term will not be a waiver of any subsequent breach of the same or any other term or condition.

15.8 Exhibits and Schedules. This Agreement contains the following Exhibits and Schedules which are attached and made a part of this Agreement: Exhibits A, B, C, D and Schedule 1.

15.9 Brokers. Neither party has had any contact or dealings regarding the Kirkland Segment, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who can claim a right to a commission or finder's fee based on the purchase and sale contemplated by this Agreement.

15.10 Time. Time is of the essence of this Agreement.

15.11 Attorneys Fees/Litigation Expenses. Each party shall pay their respective attorneys fees with respect to this Agreement and Closing. In any controversy, claim or dispute arising out of, or relating to, this Agreement, the prevailing party shall be entitled to recover its costs and expenses of suit, including reasonable attorneys' fees.

15.12 Recitals; Construction; Definitions. Each of the recitals set forth above is incorporated into this Agreement as though fully set forth herein. Captions are solely for the convenience of the parties and are not a part of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it. Except as otherwise expressly provided herein, all references in this Agreement to the Port, King County or the City shall mean the Port, King County or the City, each solely in its capacity as owners of fee or easement interests in the Port Property and with reference to King County, its status as the Interim Trail User.

15.13 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

15.14 Survival. The covenants and indemnifications made in this Agreement shall survive the Closing unimpaired and shall not merge into the Deed and the recordation thereof. The representations and warranties made in this Agreement shall not merge into the Deed but shall survive the Closing.

Signatures appear on following page

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first set forth above.

CITY OF KIRKLAND:

By: _____

Its: _____

PORT OF SEATTLE:

By: _____

Its: _____

EXHIBIT A—LEGAL DESCRIPTION

City Of Kirkland
Legal Description – Railroad Corridor

Triad Job Number 11-128
November 22, 2011
Revised December 06, 2011

That portion of Sections 5, 8, 17 and 20, Township 25 North, Range 5 East, W.M. and Sections 28, 32 and 33, Township 26 North, Range 5 East, W.M., in King County, Washington, lying within the eight (8) tracts of land described as follows:

Tract 1

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed upon, over and across the S½,NE¼ and the NW¼,SE¼ and the SW¼ of Section 28, the W½,NW¼ and the NW¼,SW¼ of Section 33, the SE¼ of Section 32, all in Township 26 North, Range 5 East, W.M., bounded on the East by a line that is parallel with and 42.00 feet west of, when measured at right angles to, the centerline of 132nd Avenue NE (aka Slater Avenue NE or 132nd Place NE) as surveyed under King County Survey No. 28-26-5-19 and bounded on the South by South line of said SE¼ of Section 32, **EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805260805, records of King County, Washington; **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 30, 1998 as Document No. 9807301468, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805260791, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Quitclaim Deed dated January 6, 2000 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded February 11, 2000 as Document No. 20000211000454, records of King County, Washington;

Tract 2

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



12112 115th Avenue NE Kirkland, Washington 98034-9623
425.821.8448 · 800.488.0756 · Fax 425.821.3481
www.triadassociates.net

Land Development Consultants

Tract 3

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

Tract 4

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

Tract 5

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

Tract 6

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

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

Tract 7

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

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

Tract 8

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Government Lot 4 of Section 8, Government Lots 1, 2, and 3 and the E½,SW¼ of Section 17, and the NE¼,NW¼ and the NE¼ of Section 20, all in Township 25 North, Range 5 East, W.M., bounded on the North by the South line of that certain herein above described 0.23 acre tract of land described in deed dated July 15, 1903 from Samuel F. French to Northern Pacific Railway Company recorded August 8, 1903 in Book 361 of Deeds, Page 249, records of King County, Washington and the East line of said Government Lot 4 of Section 8, and bounded on the South by the westerly margin of 108th Avenue NE as described in the Quit Claim Deed from State of Washington to the City of Bellevue recorded under Recording Number 9303190367, records of said King County, together with such additional widths as may be necessary to catch the slope of the fill in N½ of said Government Lot 2, Section 17 as delineated in the 7th described parcel in deed dated June 20, 1903 from Kirkland Land and Improvement Company to Northern Pacific Railway Company recorded June 26, 1903 in Book 352, Page 582, records of King County, Washington. **EXCEPTING THEREFROM**, that portion of said 100.0 foot wide right of way lying within said hereinabove described parcel of land designated as Tract "B" in deed from the Kirkland Land and Improvement Company to H.A. Noble dated July 13, 1899 of record in the Auditor's office of King County, Washington in Volume 245 of Deeds, at page 41.

(Tracts 1 – 8 being a portion of the parcel of land conveyed by BNSF Railroad Company to the Port of Seattle by Quit Claim Deed recorded under Recording Number 20091218001535, records of said King County.)

EXHIBIT B

RETURN ADDRESS:

Kirkland City Attorney's Office
City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033

QUIT CLAIM DEED

GRANTOR: PORT OF SEATTLE
a municipal corporation of the State of Washington

GRANTEE: CITY OF KIRKLAND
a municipal corporation of the State of Washington

ABBREVIATED LEGAL DESCRIPTION: N/A
Full legal description on Exhibit A

ASSESSOR'S TAX PARCEL NOS.: Ptn. of _____

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration received, the Port of Seattle, a municipal corporation of the State of Washington ("Grantor"), hereby conveys and quit claims to the City of Kirkland, a municipal corporation of the State of Washington ("Grantee"), the real property described in Exhibit A attached hereto and incorporated herein by this reference, situated in the County of King, State of Washington, subject to all matters of record.

IN WITNESS WHEREOF, Grantor has executed this Deed as of the ____ day of _____, 2011.

PORT OF SEATTLE

By _____
Its _____

Exhibit A to Deed

Legal Description

City Of Kirkland
Legal Description – Railroad Corridor

Triad Job Number 11-128
November 22, 2011
Revised December 06, 2011

That portion of Sections 5, 8, 17 and 20, Township 25 North, Range 5 East, W.M. and Sections 28, 32 and 33, Township 26 North, Range 5 East, W.M., in King County, Washington, lying within the eight (8) tracts of land described as follows:

Tract 1

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed upon, over and across the S½,NE¼ and the NW¼,SE¼ and the SW¼ of Section 28, the W½,NW¼ and the NW¼,SW¼ of Section 33, the SE¼ of Section 32, all in Township 26 North, Range 5 East, W.M., bounded on the East by a line that is parallel with and 42.00 feet west of, when measured at right angles to, the centerline of 132nd Avenue NE (aka Slater Avenue NE or 132nd Place NE) as surveyed under King County Survey No. 28-26-5-19 and bounded on the South by South line of said SE¼ of Section 32, **EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805260805, records of King County, Washington; **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 30, 1998 as Document No. 9807301468, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805260791, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Quitclaim Deed dated January 6, 2000 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded February 11, 2000 as Document No. 20000211000454, records of King County, Washington;

Tract 2

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

Tract 3

That portion of that certain 100.0 foot wide Branch Line right of way in the City of Kirkland, Washington, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Blocks 220, 223, 224, 232, 233, 238, and 241 as said Blocks are shown on the Supplementary Plat to Kirkland as filed in Volume 8 of Plats at Page 5, records of said King County, together with any right title and interest, if any to those portions

of Massachusetts Avenue, Madison Avenue, Michigan Avenue, Olympia Avenue, Piccadilly Avenue, Cascade Avenue, Clarkson Avenue, Fir Street, and alleys within said Blocks which lie within said 100.0 foot wide Branch Line right of way;

Tract 4

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

Tract 5

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

Tract 6

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

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

Tract 7

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

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

the same is now constructed and located across said Tract "B", which said Tract "B" is located in Section 17, Township 25 North, Range 5 East, Willamette Meridian";

Tract 8

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Government Lot 4 of Section 8, Government Lots 1, 2, and 3 and the E½,SW¼ of Section 17, and the NE¼,NW¼ and the NE¼ of Section 20, all in Township 25 North, Range 5 East, W.M., bounded on the North by the South line of that certain herein above described 0.23 acre tract of land described in deed dated July 15, 1903 from Samuel F. French to Northern Pacific Railway Company recorded August 8, 1903 in Book 361 of Deeds, Page 249, records of King County, Washington and the East line of said Government Lot 4 of Section 8, and bounded on the South by the westerly margin of 108th Avenue NE as described in the Quit Claim Deed from State of Washington to the City of Bellevue recorded under Recording Number 9303190367, records of said King County, together with such additional widths as may be necessary to catch the slope of the fill in N½ of said Government Lot 2, Section 17 as delineated in the 7th described parcel in deed dated June 20, 1903 from Kirkland Land and Improvement Company to Northern Pacific Railway Company recorded June 26, 1903 in Book 352, Page 582, records of King County, Washington. **EXCEPTING THEREFROM**, that portion of said 100.0 foot wide right of way lying within said hereinabove described parcel of land designated as Tract "B" in deed from the Kirkland Land and Improvement Company to H.A. Noble dated July 13, 1899 of record in the Auditor's office of King County, Washington in Volume 245 of Deeds, at page 41.

(Tracts 1 – 8 being a portion of the parcel of land conveyed by BNSF Railroad Company to the Port of Seattle by Quit Claim Deed recorded under Recording Number 20091218001535, records of said King County.)

EXHIBIT C

ASSIGNMENT OF THIRD PARTY LEASES, LICENSES AND CONTRACTS

THIS ASSIGNMENT AND ASSUMPTION OF THIRD PARTY LEASES, LICENSES AND CONTRACTS (this "Assignment") is entered into as of _____ by and between the PORT OF SEATTLE, a municipal corporation of the State of Washington ("Assignor") and the CITY OF KIRKLAND, a municipal corporation of the State of Washington ("Assignee").

RECITALS

A. Assignor and Assignee are parties to that certain Purchase and Sale Agreement dated as of _____ (the "Agreement"), pursuant to which Assignee has agreed to purchase and Assignor has agreed to sell certain real property (the "Kirkland Segment").

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

C. Assignor wishes to assign, and Assignee wishes to assume, all of Assignor's right, title and interest in and to the Third Party Leases, Licenses and Contracts (collectively, the "Assigned Agreements").

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

1. Assignment. To the extent assignable, Assignor hereby assigns, transfers, and sets over unto Assignee all of Assignor's right, title and interest in and under the Assigned Agreements listed in Schedule 1, attached and incorporated hereto by this reference, subject to the following sentences of this Section. To the extent any Assigned Agreement relates to other property owned by Assignor ("Other Property"), then the foregoing assignment shall only apply as to the Kirkland Segment and not apply as to Other Property. For Assigned Agreements that relate to more than just the Kirkland Segment, Assignee shall not be entitled to any rent or proration of rent thereunder.

2. Assumption; Succession. To the extent assigned as set forth above, Assignee hereby assumes all of Assignor's duties and obligations under the Assigned Agreements arising and accruing from and after the date of this Assignment and Assignee succeeds to the interests of Assignor under the Assigned Agreements. Assignee hereby agrees to indemnify, defend and hold Assignor harmless from and against any and all claims of any kind or nature arising from or related to such Assigned Agreements on or after the date hereof. Assignor hereby agrees to indemnify, defend and hold Assignee harmless from and against any and all claims of any kind or nature arising from or related to such Assigned Agreements prior to the date hereof.

3. Binding Effect. This Assignment shall be binding upon and shall inure to the benefit of the parties thereto and their respective successors and assigns.

4. Governing Law. This Assignment shall be governed by and interpreted in accordance with the laws of the State of Washington.

5. Execution in Counterparts. This Assignment may be executed in counterparts, each

of which shall constitute an original and all of which together shall be deemed a single document.

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

PORT OF SEATTLE

By: _____

Name: _____

Its: _____

CITY OF KIRKLAND

By: _____

Name: _____

Its: _____

EXHIBIT D

BILL OF SALE

This Bill of Sale is entered into by and between the Port of Seattle, a municipal corporation of the State of Washington ("Grantor") and the City of Kirkland, a municipal corporation of the State of Washington ("Grantee").

WHEREAS Grantor and Grantee have entered into that certain Real Estate Purchase and Sale Agreement dated as of _____ (the "Real Estate Agreement"), pursuant to which Grantor has agreed to convey and Grantee has agreed to accept certain real property in King County, Washington.

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

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

NOW, THEREFORE, FOR AND IN CONSIDERATION of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Grantor has quitclaimed and by these presents does hereby quitclaim unto the Grantee, without any covenants of warranty whatsoever and without recourse to the Grantor, all its right, title and interest, if any, in and to any personal property located on the Kirkland Segment (the "Personal Property").

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

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

IN WITNESS WHEREOF, the Grantor and Grantee have caused this Bill of Sale to be signed by its duly authorized officers this ____th day of _____, 2011.

GRANTOR
PORT OF SEATTLE

By: _____
Name: _____
Title: _____

GRANTEE
CITY OF KIRKLAND

By: _____
Name: _____
Title: _____