

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

H. The Port Commission authorized execution of this Agreement on December 13, 2011, and will surplus the Kirkland Segment prior to closing.

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 Country 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
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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: _____