

**EXHIBIT B
TO
RESOLUTION NO. 3652**

After Recording Return To:
Central Puget Sound Regional Transit Authority
Union Station
401 South Jackson Street
Seattle, Washington 98104-2826
Attn: Legal Department

HIGH CAPACITY TRANSPORTATION EASEMENT AGREEMENT
(WOODINVILLE SUBDIVISION RAIL CORRIDOR)

GRANTOR: PORT OF SEATTLE
GRANTEE: CENTRAL PUGET SOUND REGIONAL TRANSIT
AUTHORITY

Legal Description:
Abbreviated form:
Additional legal on page Exhibit A of document

Assessor's Property Tax Parcel Account Number(s):

Reference number(s) of Related Document(s):

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**HIGH CAPACITY TRANSPORTATION EASEMENT AGREEMENT
(WOODINVILLE SUBDIVISION RAIL CORRIDOR)**

THIS HIGH CAPACITY TRANSPORTATION EASEMENT AGREEMENT (WOODINVILLE SUBDIVISION RAIL CORRIDOR) (the “Easement Agreement”) is entered into as of the _____ day of _____, 2011 (“Effective Date”) by the PORT OF SEATTLE, a Washington municipal corporation (“Port”) in favor of CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a regional transit authority of the State of Washington and its successors and assigns as owners or operators of High Capacity Transit Facilities as hereinafter defined (“Sound Transit”) with reference to the following facts:

RECITALS

A. Pursuant to Purchase and Sale Agreement and Donation Agreement, each dated as of May 12, 2008, by and among BNSF Railway Company, a Delaware corporation (“BNSF”), King County, a political subdivision of the State of Washington (“King County”) and the Port (collectively, the “Acquisition Agreements”), the Port acquired an approximately one hundred (100) foot wide railroad corridor with rails in place, commonly known as the Woodville Subdivision, portions of which are more particularly described on Exhibit A attached hereto and depicted on the map attached hereto as Exhibit B and by this reference incorporated herein (the “Property”) from BNSF.

B. The Property is “railbanked” in accordance with 16 U.S.C. 1247(d) to protect this rail transportation corridor and preserve it for future reactivation of rail service, and to allow interim regional recreational trail and other public uses and transportation uses while the Property is railbanked, including, but not limited to, rail or other transportation purposes other than interstate freight rail service (“Transportation Use”). King County was approved as an Interim Trail User for the Property by the Surface Transportation Board (“STB”) for the purpose of “railbanking” the Property. King County, as the Interim Trail User, is subject to certain legal obligations related to the Property referred to herein as the “Railbanking Obligations”.

C. The Port and King County entered into that certain Public Multipurpose Easement dated as of December 18, 2009 (the “Multipurpose Easement”), which among other things, sets forth King County’s Railbanking Obligations with respect to the Property and grants King County certain rights to acquire, develop, maintain and operate a public hard or soft-surface regional trail for public pedestrian, bicycle or other non-motorized uses (“Trail”) over portions of the Property in its capacity as the Interim Trail User for the Property, subject to the terms and conditions set forth in the Multipurpose Easement so long as such Trail will not prevent the use of the Property for Transportation Use outside of the Trail Area, and will be designed and developed to accommodate such Transportation Use. It is the express intention of the Parties to this Easement Agreement that the Property be used for regional recreational trail and other public uses and Transportation Uses and

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that the development of the Trail as authorized under the Multipurpose Easement not prevent simultaneous Transportation Uses on the Property, but rather be designed and developed to accommodate such Transportation Uses.

D. On November 5, 2009, the Port entered into a Memorandum of Understanding (the “MOU”) with King County, Sound Transit, Cascade Water Alliance, Puget Sound Energy and the City of Redmond (collectively, the “Regional Partners”) setting forth the mutual understanding of the Regional Partners for the negotiation of future transactions whereby the Regional Partners would purchase interests in the Property from the Port for regional trail, Transportation Use, utility and other municipal purposes subject to the Railbanking Obligations.

E. Consistent with the MOU, the City of Redmond and the Port entered into a Real Estate Purchase and Sale Agreement dated June 22, 2010, whereby Redmond agreed to purchase a portion of the Property commonly referred to the Redmond Spur located within the city limits of Redmond (the “City Segment”) and 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 Property owned by the Port.

F. Consistent with the MOU, King County is expected to acquire the Port’s underlying interest in the Property contemporaneously or soon after Sound Transit’s acquisition of this Easement Agreement. At the time King County acquires the underlying interest, the Multipurpose Easement will terminate through the doctrine of merger. The Port, Sound Transit and King County intend for the purposes of the Multipurpose Easement to be carried forward in the Easement Agreement, including without limitation through the provisions in Exhibit C hereto.

G. Sound Transit is a regional transit authority of the State of Washington created pursuant to chapters 81.104 and 81.112 RCW, with all powers necessary to implement a High Capacity Transit System within its boundaries in King, Pierce and Snohomish Counties, which High Capacity Transit System is integrated and coordinated with public transportation services currently provided by other public agencies. Sound Transit proposes to construct certain light rail facilities within the Bellevue Property (as defined in the Purchase and Sale Agreement between the Port and Sound Transit). Future regional transportation planning may result in recommendations for the development of additional high capacity transportation projects on the Property. Sound Transit desires to acquire a perpetual non-exclusive easement in, on, under, over, across and through the Property for the purpose of installation, construction, use, operation, maintenance and repair of one or more High Capacity Transit Facilities to be operated as part of Sound Transit’s High Capacity Transit System. Use of the Property for construction and operation of one or more High Capacity Transit Facilities is a Transportation Use as defined under the Multipurpose Easement and this Easement Agreement, and the Port is willing to grant such an easement on the terms and conditions hereinafter set forth.

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H. The Federal Transit Administration of the United States Department of Transportation has approved Sound Transit's acquisition of the easement rights set forth in this Easement Agreement as a protective acquisition of easement rights for potential future development of one or more High Capacity Transit Facilities.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1) Recitals Incorporated; Definitions. Each of the recitals set forth above is incorporated into this Easement Agreement as though fully set forth. All capitalized terms not otherwise defined herein shall have the same meaning as set forth in Schedule 1 attached hereto and by this reference incorporated herein. Except as otherwise expressly provided herein, all references in this Easement Agreement to the Port, King County or Sound Transit shall mean the Port, King County or Sound Transit, each solely in its capacity as owners of fee or easement interests in the Property.

2) Grant of High Capacity Transportation Easement.

A. The Port hereby grants to Sound Transit for the benefit of Sound Transit, its successors and assigns who have the right to own or operate a High Capacity Transit System and their respective officials, officers, employees, agents, contractors, subcontractors, licensees, invitees and Passengers, a perpetual non-exclusive easement (the "High Capacity Transportation Easement") appurtenant to Sound Transit's High Capacity Transit System, in, on, under, over, along, across and through the Property for high capacity transportation purposes, including the installation, construction, use, operation, inspection, maintenance, repair, replacement, enhancement, expansion, improvement or removal of one or more High Capacity Transit Facilities together with reasonable rights of access throughout the Property and for all purposes necessary, desirable or reasonably related to the development, construction or operation of a High Capacity Transit System, including placement of utilities and vaults, ingress and egress, construction, construction staging, Temporary Construction Easements and other temporary rights to use adjoining portions of the Property as may be necessary in order to use areas of the Property recorded in the real property records of King County as Easement Areas pursuant to this Easement Agreement, all according to and as more specifically allowed for under the terms of this Easement Agreement. The Easement Areas may be of varying widths; provided, however, that except where limited by topographical or physical features of the Property, the Parties intend that each Easement Area be not less than a minimum width of forty (40) feet and may exceed that width as may be necessary to accommodate stations and terminals and parking for Sound Transit, maintenance and operation-related uses associated with a High Capacity Transit Facility. Sound Transit's rights under this Easement Agreement include the further right to temporarily stage equipment and material on the Property in and around

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each Easement Area as reasonably necessary to construct, operate, inspect, maintain, repair, replace, expand, improve or remove a High Capacity Transit Facility (each a “Temporary Construction Easement Area”) according to and as more specifically allowed for under the terms of this Easement Agreement. Subject to Existing Third Party Rights (as defined in Section 3 below), this High Capacity Transportation Easement includes the right to invade or otherwise interfere with the Property with dust, noise, vibration, and other similar disturbances resulting from the normal operation, use, maintenance and repair of High Capacity Transit Facilities as part of Sound Transit’s High Capacity Transit System, except for activities which result in damage to improvements, if any, located on the Property outside an Easement Area. The Parties agree that this High Capacity Transportation Easement is a Transportation Use as defined in the Multipurpose Easement.

B. This High Capacity Transportation Easement is intended to be perpetual and Sound Transit shall have the right to determine the precise location of the Easement Areas and the Temporary Construction Easement Areas on the Property from time to time in the manner specifically described in this Easement Agreement. Subject to Existing Third Party Rights, Sound Transit may locate its High Capacity Transit Facilities anywhere on the Property, including the portion of the Property where the railbed is presently located or any portion of the Property which has been developed by King County with a Trail subject to certain rights, duties and obligations to relocate such public trail improvements or provide an area for future construction of Trail improvements as set forth in the Multipurpose Easement or this Easement Agreement.

C. Section 7 of this Easement Agreement governs Sound Transit’s right to designate an Easement Area and Temporary Construction Easement Areas on the Property. Prior to Sound Transit beginning construction of a High Capacity Transit Facility, the Parties shall amend this Easement Agreement in the manner described in Section 7 to set forth the precise location and legal description of each Temporary Construction Easement Area and each Easement Area on which the High Capacity Transit Facility, as constructed, is to be located. The Easement Area associated with each High Capacity Transit Facility will include that portion of the Property occupied by each High Capacity Transit Facility, together with such additional portions of the Property as may be reasonably necessary for its appurtenances, operations and continued utility and access requirements. Sound Transit may locate multiple High Capacity Transit Facilities on the Property, which need not be contiguous to one another, and consequently, the Easement Areas and Temporary Construction Easement Areas may include more than one location on the Property if Sound Transit elects to develop more than one High Capacity Transit Facility.

3) Title to Property.

A. The Port makes no warranty of the title as to the Property or the Easement Agreement. Port has advised Sound Transit that the Port may not hold fee simple title to the Property and that the Port’s interest in all or part of the Property, if any,

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may rise only to the level of an easement for railroad purposes. The Port and Sound Transit acknowledge and agree that the Property is railbanked pursuant to 16 U.S.C. 1247(d). Sound Transit's rights under this Easement Agreement are subject to the terms of the Multipurpose Easement, and preexisting recorded or unrecorded interests in the Property, including those fully executed easements, leases, permits, franchises, occupancy agreements, licenses or other agreements demising space in, or providing for the use or occupancy of the Property set forth on attached Schedule 2 (collectively, the "Existing Third Party Rights").

B. Any amendments or modifications of the Existing Third Party Rights, including any extensions that require approval of both the Port and a third party, shall be subject to the terms of this Easement Agreement and Sound Transit's rights hereunder and thereafter such Existing Third Party Rights shall constitute Subsequent Third Party Uses pursuant to the terms of this Easement Agreement.

C. The Port and Sound Transit acknowledge and agree that the Property may contain currently existing facilities that are not authorized by Existing Third Party Rights, that the Property may have encroachments on it, and that additional facilities or encroachments may in the future be located on the Property without permission from the Port (together, the "Unauthorized Uses"). Port shall have no duty to bring legal action to enforce the terms of this Easement Agreement against such Unauthorized Uses, but will reasonably cooperate with Sound Transit to address such Unauthorized Uses.

4) Consideration. The Port acknowledges receipt of full and complete consideration from Sound Transit for the High Capacity Transportation Easement granted pursuant to this Easement Agreement. Sound Transit shall not be required to pay for future use of any Temporary Construction Easement Area or any Easement Area, nor shall Sound Transit be required to contribute toward the cost of operation and maintenance of the Property (including, but not limited to Custodial Activities, as defined in the Multipurpose Easement, and the cost of taxes and insurance) except for any Temporary Construction Easement Area or any Easement Area.

5) Railbanking; Multipurpose Easement, and Interim Trail Use.

A. Sound Transit acknowledges that the Property has been "rail banked" in accordance with 16 U.S.C. 1247(d) to protect this rail transportation corridor and preserve it for future reactivation of freight rail service. King County was approved as an Interim Trail User for the Property by the Surface Transportation Board ("STB") for the purpose of "railbanking" the Property. King County, as the Interim Trail User, is subject to certain "Railbanking Obligations".

B. Simultaneous with the closing of the purchase of the Property by the Port from BNSF, the Port and King County entered into the Multipurpose Easement, which among other things, granted King County certain rights to acquire, develop, maintain and

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operate the Trail over a portion of the Property in its capacity as the Interim Trail User for the Property, subject to the terms and conditions set forth in the Multipurpose Easement so long as such Trail will not prevent the use of the Property for Transportation Use outside of the Trail Area. Sound Transit has been provided with a copy of the Multipurpose Easement, and would not have entered into this Easement Agreement with the Port, but for its reliance on (a) the express intent set forth in the Multipurpose Easement that any development of a public trail authorized by the Multipurpose Easement will not prevent Transportation Uses on the Property, but rather will be designed and developed to accommodate Transportation Uses, and (b) the terms, covenants, conditions and limitations set forth in Section 2 and 3 of the Multipurpose Easement and the express intent of the parties thereto that the Multipurpose Easement creates covenants running with the land binding upon all present and future owners of the Property, and all persons who may thereafter develop, construct, operate, maintain, repair and/or improve a Trail on the Property. Subject to the reactivation of the Railbanked Segments for freight rail service, the Port shall take all action, and shall exercise all its rights under the Multipurpose Easement to require King County or other Interim Trail User to develop, construct, operate, maintain, repair and/or improve a Trail on the Property in accordance with the terms, covenants, conditions and limitations set forth in Sections 2 and 3 of the Multipurpose Easement and this Easement Agreement.

C. Subject to the reactivation of the Railbanked Segments for freight rail service, the Port shall take, and shall exercise its rights under the Multipurpose Easement to require King County to take, all action necessary to preserve the federal railbanked status of the Railbanked Segments. Sound Transit acknowledges that King County or other Authorized User of the Property may have the right to remove the existing rail tracks and related railroad improvements from the Property.

D. The Port shall not amend, modify or terminate the Multipurpose Easement or consent to a transfer or termination of King County's Interim Trail User Status and Railbanking Obligations without the prior written consent of Sound Transit, which consent shall not be unreasonably withheld, conditioned or delayed. In the event King County elects not to proceed with Trail Development and takes action to terminate the Trail Use Agreement pursuant to the Multipurpose Easement, the Port shall, as provided in the Multipurpose Easement, (i) engage a substitute Interim Trail User consistent with all current and future STB requirements, and (ii) take all actions necessary to satisfy any and all Railbanking Obligations and Custodial Activities with respect to the Property consistent with the terms and conditions of this Easement Agreement.

E. The Parties acknowledge that the following petitions have been filed with the STB, with regard to a portion of the Property:

- (1) Petition to Vacate Notice of Interim Trail Use or Abandonment in STB Docket Nos. AB-6 (Sub.-No. 463X) and AB-6 (Sub.-No. 465X).

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(2) Verified Petition for Exemption Pursuant to 49 U.S.C. 10502 in STB Docket No. FD-35407.

F. Reactivation of Interstate Rail Service

(1) Port agrees to promptly notify Sound Transit if it becomes aware that the STB has received any other request to reactivate freight rail service other than listed above, on all or any portion of the Property under the Railbanking Legislation or if King County notifies the Port that it intends to terminate its Interim Trail User status.

(2) The Port and Sound Transit understand, acknowledge and agree that if the STB receives a request to reactivate or use of all or any portion of the Property for federally regulated interstate freight rail service, such as by means of a petition for reactivation and/or vacation of NITU, then the Port and Sound Transit will cooperate in order to respond appropriately to the request to the STB, any other applicable regulatory agency, governmental or quasi governmental body having jurisdiction or any court, and subject to Section 5F (3) each may be required to, and will if so required, make available some or all of their respective interests in the Property to accommodate reactivated freight rail service. The Port shall also require King County under the Public Multipurpose Easement dated December 18, 2009 to perform in accordance with its reactivation responsibilities in the Public Multipurpose Easement.

(3) The Port and Sound Transit agree that if the STB receives a request for approval to use the Property for reactivated freight rail service, then the Port and Sound Transit in responding appropriately to the request to the STB, any other applicable regulatory agency, governmental or quasi governmental body having jurisdiction, or any court, will if reactivation is required, cooperate in order to cause the party making such request, including the Port or Sound Transit if either makes the request, (a) to bear all costs to restore or improve the Property for reactivated freight rail service; (b) bear responsibility to take all steps necessary to cause the relevant NITU to be vacated; and (c) to compensate the Port and Sound Transit for the fair market value of any and all of their respective rights or interests in the Property, or in improvements thereon that may be destroyed, lost, compromised, or otherwise reduced in value or function when the Property or any portion of it is put to use for reactivated freight rail service. However, the Parties acknowledge and agree that in the event portions of the Property may be destroyed, lost, compromised or otherwise reduced in value or function as a result of reactivated freight service, the Parties will protect, to the extent possible, Property subject to a Planned Easement Area, Notice of Selected Alignment, Temporary Construction Easement Area, and Easement Area, while first offering undeveloped areas of the Property or areas developed as a Trail for reactivated freight purposes to the extent feasible.

6) Reserved Rights; Non-Exclusive Use.

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A. The easement rights granted Sound Transit under this Easement Agreement are non-exclusive. The Port reserves the right to use the Property for (i) those uses set forth in the TUA, (ii) those uses relating to “Railbanking” the Property which uses are specifically set forth in the Multipurpose Easement, (iii) the development, construction, operation, maintenance, repair and/or improvement of a Trail on the Property, (whether in its capacity as the owner of the Property, as the Interim Trail User of the Property, or as the grantee or successor in interest to the grantee under the Multipurpose Easement), expressly subject to the terms, covenants, conditions and limitations set forth in Sections 2 and 3 of the Multipurpose Easement, and (iv) any purpose not inconsistent with the easement rights granted Sound Transit under this Easement Agreement. The Parties further agree that the terms, covenants, conditions and limitations set forth in Sections 2 and 3 of the Multipurpose Easement are incorporated into this Easement Agreement as though fully set forth herein and except as otherwise expressly provided herein, each of the Parties’ rights, duties and obligations under this Easement Agreement and their respective rights to use the Property or grant others the rights to use the Property are expressly subject to the terms, covenants, conditions and limitations set forth in Sections 2 and 3 of the Multipurpose Easement as though fully set forth herein and shall continue to be fully enforceable by the Parties hereto in accordance with the terms set forth in the Multipurpose Easement on the Effective Date even if the Multipurpose Easement is hereafter amended, modified or terminated in whole or in part, voluntarily, involuntarily or by operation of law, except in the event of a merger resulting from King County’s acquisition of all or a portion of the Property, in which case Exhibit C shall apply. The Parties agree that in determining their respective rights, duties and obligations under the Multipurpose Easement and this Easement Agreement: (a) the construction and operation of a High Capacity Transit Facility granted Sound Transit under this Easement Agreement is a Transportation Use, (b) Sound Transit is a Third Party Operator (“TPO”), and (c) Sound Transit shall have all of the rights of a TPO under the Multipurpose Easement with respect to its Transportation Use of the Property. The Port shall have the right to grant third parties (“Subsequent Third Party User(s)”) other non-exclusive uses or occupancies of the Property after the Effective Date (“Subsequent Third Party Uses”) so long as such Subsequent Third Party Uses do not unreasonably interfere with Sound Transit’s rights under this Easement Agreement and are subject to this Easement Agreement.

7) Sound Transit Use of Property.

A. Use of Property Prior to Development of High Capacity Transit Facility:

(1) Sound Transit and its agents, employees, consultants, contractors, subcontractors and each of their respective agents and employees (collectively, the “Sound Transit Parties”) and their equipment and vehicles shall have the right to enter upon the Property during reasonable hours agreed to by Port and Sound Transit for the purposes of preparing and conducting land surveys, economic and land use feasibility studies, structural inspections, soil, engineering, geotechnical and environmental and

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Hazardous Substances sampling, audits, inspections, studies and tests and any sampling, audits, inspections, studies or tests required by Sound Transit to determine the physical condition of the Property and the feasibility of the Property for the possible development, use and operation of a High Capacity Transit Facility with reasonable prior notice and coordination with King County and any other Authorized User. Such coordination shall include, but not be limited to, review by the Port of testing and/or sampling plans, sharing sampling data if requested by the Port and allowing the Port to take split samples all at the Port's sole cost. Sound Transit shall use reasonable efforts to schedule and conduct such due diligence investigations and activities to minimize interference with other then authorized uses of the Property.

(2) Sound Transit and the Sound Transit Parties may also enter onto the Property at any time and from time to time for purposes of planning and design of one or more High Capacity Transit Facilities with reasonable prior notice and coordination with the Port, King County and any other Authorized User who has a right to use that portion of the Property designated by Sound Transit in its right of entry notice. Upon receipt of such right of entry notice, the Port, King County, the Authorized Users and Sound Transit shall negotiate the specific terms of a Right of Entry Agreement that shall apply to Sound Transit's use of the Property for such purpose and shall be consistent with the terms of this Easement Agreement.

(3) Sound Transit shall repair any damage to the Property or any improvements located on the Property which is caused by the acts or omissions of Sound Transit or any of the Sound Transit Parties during any such inspections, studies, sampling or tests. Sound Transit shall remove or cause the removal of all of its trash, debris, equipment and vehicles from the Property and shall cause the Remediation of any Releases or other environmental damage caused by Sound Transit or any of the Sound Transit Parties following completion of its due diligence and pre-development activities (including proper disposal of any ground water or soil sampling and capping of any monitoring wells installed on the Property)(provided that Sound Transit will not be required to cap monitoring wells if it intends to promptly commence construction of a High Capacity Transit Facility) and shall restore the Property to substantially the same condition as existed prior to any such inspection, study, sampling or test. Notwithstanding the foregoing, these obligations shall not extend to, and in no event shall Sound Transit or any of the Sound Transit Parties, be liable to the Port, any Authorized User or any third party for: (i) any diminution in the market value of the Property resulting from the information disclosed by any such investigation, study, sampling or test; or (ii) any negligence or misconduct of the Port, King County, any Authorized User or any agent, contractor, subcontractor, tenant, employee or consultant of the Port, King County or any Authorized User.

(4) This Section 7.A. shall apply to any entry on the Property by Sound Transit outside the area of a Temporary Construction Easement Area or Easement Area.

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B. Sound Transit Use of Property to Develop a High Capacity Transit Facility on the Property:

(1) To initiate development of High Capacity Transit Facilities, Sound Transit shall notify the Port in writing (“Notice of Planned Easement Area”) that it is evaluating or planning the placement of one or more High Capacity Transit Facilities within a Planned Easement Area. The designation of a Planned Easement Area will remain in effect until the earlier of the following: (a) Sound Transit provides the Port with a Notice of Selected Alignment for all or a portion of a Planned Easement Area pursuant to Section 7 B (2), or (b) a date five (5) years from the date of Sound Transit’s initial Notice of Planned Easement Area, in which case the Planned Easement Area will be terminated.

(2) Sound Transit may provide the Port written Notice of Selected Alignment. Subject to the provisions in Section 7B(3) below, the provisions in this Easement Agreement related to the Notice of Selected Alignment shall remain in effect until Sound Transit has recorded an Easement Area and/or Temporary Construction Easement Area within the area covered by the Notice of Selected Alignment, except that the Notice of Selected Alignment will terminate if Sound Transit abandons its plans to build High Capacity Transit Facilities within the area subject to the Notice of Selected Alignment.

(3) Sound Transit shall provide written notice to Port of its intention to develop a High Capacity Transit Facility on the Property (“Notice of Intent to Develop”), which notice shall identify the proposed timetable for development and construction of such High Capacity Transit Facility, including preliminary design plans, topographical details and a development layout, describe the portions of a previously identified Planned Easement Area that are to comprise the Temporary Construction Easement Area(s) and proposed Easement Area(s) and shall identify any utilities or other improvements, if any, known by Sound Transit to be located within the Temporary Construction Easement Area and Easement Area that will need to be relocated. Such notice shall be provided as far in advance as reasonably possible and at a minimum no less than 180 days prior to the anticipated construction start date.

(4) Sound Transit and the Port shall cooperatively develop a plan for Sound Transit’s use of the Temporary Construction Easement Area and Easement Area and other areas of the Property that may be impacted by the development and construction of the High Capacity Transit Facility (“Development Plan”). The Development Plan shall comply with the terms of this Easement Agreement, and shall specifically address the impact of the proposed High Capacity Transit Facility on the Property and any existing facilities, coordination between Sound Transit’s construction uses of the Property in the vicinity of the Temporary Construction Easement Area and Easement Area, procedures for providing notification as to the commencement and status of construction and start up of operations, Trail uses by the Port, King County or any other Authorized User, any proposed relocation of a Trail Area or Trail, and features such as

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routes of access, location for construction staging, temporary Trail rerouting, construction schedules, areas of Sound Transit exclusive uses, and measures to ensure the safety of other users of the Property in the vicinity of the Temporary Construction Easement Area and Easement Area. Sound Transit and the Port shall contemporaneously negotiate the terms of the Temporary Construction Easement, which shall include the terms of the Development Plan. If the Port and Sound Transit are unable to agree on a Development Plan and Temporary Construction Easement within sixty (60) days of the Notice of Intent to Develop, either Party may initiate Dispute Resolution under Section 18A (3) of this Easement Agreement.

(5) After completion of the Development Plan and Temporary Construction Easement, and upon request by Sound Transit, Sound Transit and the Port shall execute and record in the King County real property records an amendment to this Easement Agreement to set forth the location of the Temporary Construction Easement Area and Easement Area, and shall execute and record the Temporary Construction Easement. These steps shall be accomplished prior to the date Sound Transit begins construction of the associated High Capacity Transit Facilities.

(6) Where consistent with the Port's rights under Existing Third Party Rights agreements, the Port will direct all utilities (including utility improvements owned by King County) to relocate their facilities to the extent necessary to accommodate the construction, operation and maintenance of a High Capacity Transit Facility. Such relocation shall, where permitted under Existing Third Party Rights agreements, be at the sole cost and expense of the affected utility except for utility improvements owned by King County and installed on the Property as of the Effective Date, in which case Sound Transit shall reimburse King County for its reasonable costs and expenses associated with relocation of such King County-owned utility improvements.

(7) When construction of the High Capacity Transit Facility is completed Sound Transit shall provide written notice of completion to Port and shall record a notice of termination of Temporary Construction Easement, and the Port and Sound Transit shall execute and record an amendment to this Easement Agreement to delete the applicable Temporary Construction Easement Area.

(8) To the extent necessary or desirable to design, develop, construct, operate, inspect, maintain or repair High Capacity Transit Facilities, Sound Transit may, at its sole cost and expense, remove and dispose of railroad infrastructure including ties and rails existing on the Property. If Port is the owner of the Property at the time such railroad improvements are removed by Sound Transit from the Property, Sound Transit shall pay the Port the salvage value of such railroad rails net of all costs and expenses associated with such removal or disposal (but excluding the costs of Remediation of any Hazardous Substances on the Property discovered during such removal) promptly following receipt thereof.

(9) From the time that Sound Transit records an Easement Area or Temporary Construction Easement Area, Sound Transit shall be permitted to fence or

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otherwise restrict access to the Temporary Construction Easement Area and Easement Area as required for safety and control of the construction site; *provided*, that Sound Transit shall provide reasonable access to the Port, any holders of Existing Third Party Rights and Subsequent Third Party Users in the Temporary Construction Easement Area and Easement Area.

(10) When operations of the High Capacity Transit Facility begins, Sound Transit shall have the right to control the access to the Easement Area, establish rules and requirements for access to the trackway and associated stations, terminals and passenger boarding areas, *provided* Sound Transit shall provide reasonable access to facilities that remain in the Easement Area that belong to the Port, holders of Existing Third Party Rights and Subsequent Third Party Users.

(11) From the time that Sound Transit gives Notice of Selected Alignment or records an Easement Area or Temporary Construction Easement Area, neither the Port, its contractors, subcontractors, employees, tenants, subtenants or invitees, nor any Subsequent Third Party Users nor any of their respective successors and assigns, shall engage in any excavation, tunneling, construction, alteration, remodeling, expansion or other development in the vicinity of an area in which Sound Transit has provided a Notice of Selected Alignment, an Easement Area or Temporary Construction Area that would unreasonably interfere with, disturb, or endanger the construction of, or operation, use and maintenance of any High Capacity Transit Facilities under construction or already constructed, would create a public safety risk, or otherwise hinder or restrict Sound Transit's rights under this Easement Agreement.

(12) There shall be no construction or installation of Other Improvements (as defined in Section 8A) within any area in which Sound Transit has given a Notice of Selected Alignment, an Easement Area or Temporary Construction Easement Area without the prior written consent of Sound Transit, which consent shall not be unreasonably withheld if the conditions set forth in Sections 9B (2) and 9B (3) are met to the satisfaction of Sound Transit in the good faith exercise of its business judgment.

(13) Port acknowledges and understands that any construction of a High Capacity Transit Facility on the Property may be subject to a financial assistance contract between Sound Transit and the United States Department of Transportation and/or the Federal Transit Administration ("FTA"). Both Parties agree that the FTA or another funding agency may request amendments to this Easement Agreement to comply with its funding requirements. Port agrees to execute commercially reasonable amendments to this Easement Agreement requested by the FTA or other funding agency so long as such amendments do not increase the Port's risks or costs or otherwise cause economic detriment to the Port. In determining what is commercially reasonable, the Parties shall take into consideration the nature of the Property and its substantial benefit to the region as a regional recreation trail and use for other energy efficient Transportation Uses.

8) Review Process.

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A. The Port, Subsequent Third Party Users and Sound Transit shall use the following process (“Review Process”) wherever a review process is required for new facilities or expansions of existing facilities proposed within the Property by the Port or a Subsequent Third Party User (individually and collectively “Other Improvements”). Sound Transit may impose its standard review fee upon the proponent of an Other Improvement to cover the costs of its review, except that Sound Transit shall waive such fee as to Other Improvements proposed by the Port or King County.

(1) Prior to the Port, or a Subsequent Third Party installing any facilities on the Property (such party referred to as the “Proposing Party”) that are required to be reviewed under this Easement Agreement, the Proposing Party shall send notice to Sound Transit (“Reviewing Party”) containing a description of the activities including at a minimum preliminary design plans, topographical details, a development layout and any other information required by this Easement Agreement. Unless a different timeframe for review is specified elsewhere in this Easement Agreement, the Reviewing Party shall have thirty (30) days from receipt of the notice to review and respond in writing. If the Reviewing Party fails to timely respond, the plans are deemed approved.

(2) If the Reviewing Party determines that the proposed facilities do not satisfy the requirements of this Easement Agreement, the Reviewing Party may disapprove or approve with conditions the proposed facilities by providing the Proposing Party with a notice (the “Dispute Notice”) within the timeframe specified in Section 8A(1) above or other applicable timeframe, specifying with particularity the basis for the claim that the proposed facilities do not satisfy the requirements of this Easement Agreement. If the Reviewing Party determines that the propose facilities do satisfy the requirements of this Easement Agreement, it may approve the facilities by not responding or by timely responding with an affirmative statement of approval.

(3) If the Proposing Party and the Reviewing Party are unable to resolve the dispute within thirty (30) days, they shall follow the dispute resolution process set forth in Section 16 of this Easement Agreement, provided that any Subsequent Third Party User shall immediately identify a Designated Representative. If the Proposing Party and the Reviewing Party are unable to timely resolve the dispute through the dispute resolution process in Section 16 or within such additional time as the Parties mutually agree, then in addition to the requirements stated therein, the Parties shall endeavor to resolve the dispute by mediation with a mediator agreed to by the Parties. A Party shall submit a request for mediation in writing to the other Party, and mediation shall be conducted within thirty (30) days of such notice. The Parties agree that they shall have no right to seek relief as to the dispute in a court of law until and unless each of these procedural steps is exhausted. If any applicable statute of limitations will or may run during the time that may be required to exhaust the procedural steps set forth above, the Parties agree to seek an order to suspend any proceeding filed in a court of law while the procedural steps set forth above are satisfied.

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9) Review of Proposed Other Improvements

A. As to any portion of the Property that is not designated as a Planned Easement Area or subject to a Notice of Selected Alignment, Temporary Construction Easement Area or Easement Area, neither the Port nor any Subsequent Third Party User may install Other Improvements if the facilities are of such a magnitude that such facilities would impair the ability of Sound Transit to design, construct, use, operate, inspect, maintain or repair High Capacity Transit Facilities in a reasonably practicable manner on the Property. “Reasonably practicable” as used in this Section 9A means capable of being implemented in a reliable and effective manner at a cost, including any expenses associated with relocation of facilities, that is not substantially higher than would typically be expected for similar projects taking into account the physical characteristics of and degree of development in the area. Under this standard, it generally would be reasonably practicable for Sound Transit to be obligated to share space with or relocate “Minor Improvements” such as driveways, domestic or distribution utilities, fiber optic cables, drainage improvements, bank stabilization structures, or landscaping improvements (“Minor Improvements”) but might not be reasonably practicable for Sound Transit to share space with or be obligated to relocate “Major Improvements” such as a Trail and associated improvements, transmission utilities, highways, parking facilities or parking structures or improvements for which relocation could result in substantial severance damages or severance damages that amount to a full taking of a parcel outside the Property.

B. The following terms and conditions shall apply to a Party’s review of proposed Other Improvements.

(1) As to any portion of the Property that is not designated as a Planned Easement Area or subject to a Notice of Selected Alignment, Temporary Construction Easement Area or Easement Area:

(i) Only proposed Major Improvements shall be required to be submitted to Sound Transit for review and comment and the only basis for a comment by Sound Transit is that such proposed facility would impair the ability of Sound Transit to design, construct, use, operate, inspect, maintain or repair High Capacity Transit Facilities in a reasonably practicable manner on the Property. An Other Improvement that is a Minor Improvement may also, in the discretion of the Proposing Party and the Port, be submitted to Sound Transit for review and comment. The Port and the Proposing Party shall reasonably consider adopting and imposing any reasonable conditions that Sound Transit may request related to the installation of any Other Improvements.

(ii) If a proposed Other Improvement is submitted to Sound Transit for review and comment, the review process in Section 8.A shall apply, except that under Section 8.A(2) Sound Transit may not disapprove or approve with conditions, but instead may comment that it would disapprove or approve with conditions.

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(iii) If such Other Improvement is approved either through a lack of comment or affirmative statement by Sound Transit, is conditioned as requested by Sound Transit in a comment, or is otherwise authorized under Section 9A of this Easement Agreement, the Port shall require in any license, permit, easement or other authorization for such Other Improvement that the Other Improvements shall be required to be promptly relocated at Sound Transit's request and at Sound Transit's expense. If an Other Improvement is installed in the Property that is not approved either through a lack of comment or affirmative statement by Sound Transit or is not conditioned as requested by Sound Transit in a comment, and is not otherwise authorized under Section 9.A, such Other Improvement shall be relocated at Sound Transit's request and at the expense of the Proposing Party to the extent necessary to bring the Other Improvement into compliance with Section 9.A.

(2) As to any portion of the Property that is designated as a Planned Easement Area, proposed Other Improvements shall be submitted to Sound Transit for review and approval. With regard to such proposed Other Improvements, Sound Transit may disapprove of or condition the proposal if it would unreasonably interfere with the ability of Sound Transit to design, construct, use, operate, inspect, maintain or repair High Capacity Transit Facilities that are under evaluation or proposed in a Planned Easement Area. Sound Transit may also disapprove of or condition the proposal in order to (i) ensure reasonable integration of the proposed Other Improvements with proposed High Capacity Transit Facilities that are under evaluation or proposed in a Planned Easement Area and avoid likely relocation of proposed Other Improvements as a result of the construction of such High Capacity Transit Facilities; (ii) prevent any health or safety risk; or (iii) ensure restoration of the Property to a condition substantially similar to that existing prior to the alterations. The Port shall require in any license, permit, easement or other authorization of Other Improvements that Other Improvements installed with Sound Transit's consent in a Planned Easement Area shall be required to be promptly relocated at Sound Transit's request, and at Sound Transit's expense.

(3) As to any portion of the Property that is subject to a Notice of Selected Alignment, Temporary Construction Easement Area or Easement Area, all proposed Other Improvements shall be submitted to Sound Transit for review and approval. With regard to such proposed Other Improvements, Sound Transit may disapprove of or condition the proposal on the bases set forth in Section 9B(2) above and in addition on the bases of failing to meet the requirements of Sections 7B(11) and (12). The Port shall require any Other Improvements installed in an area subject to a Notice of Selected Alignment, Temporary Construction Easement Area or Easement Area with Sound Transit's approval to be promptly relocated at Sound Transit's request, and at Sound Transit's expense.

C. The Port may grant temporary use or occupancy rights to use the Property without Sound Transit's prior review, provided such agreements expire or may be terminated by the Port or Sound Transit, at no cost or expense to Sound Transit before Sound Transit records a Temporary Construction Easement Area or an Easement Area.

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10) Easement Improvements. Sound Transit shall own any improvements it constructs within any Easement Area (collectively, the “Sound Transit Improvements”). Sound Transit shall be solely responsible for the costs of the development, operation, and maintenance of all Sound Transit Improvements. Neither the Port, King County nor any other Authorized User shall have any right, title or interest in any Sound Transit Improvements. Sound Transit shall have the right to install, improve, renovate, repair, remove or enhance the Sound Transit Improvements within a Temporary Construction Easement Area or Easement Area without the prior written consent of the Port, King County or any other Authorized User or participation in the Review Process.

11) Insurance. Each Party shall carry the following policies of insurance with respect to their activities undertaken on the Property or the Easement Area or a Temporary Construction Easement Area:

A. Liability Insurance. The Port and Sound Transit each agree to maintain reasonable and customary liability insurance (or self insurance) for personal injury, death and property damage arising out of or having to do with such Party’s use, occupancy and possession of, or acts or omissions on or about, the Temporary Construction Easement Areas, Easement Areas and/or areas of the Property subject to Sound Transit’s rights and obligations under Section 7 of this Easement Agreement, as applicable, and will provide the other Party with satisfactory evidence of such insurance (or self insurance) upon request.

B. Other Insurance. The Port shall require any entity utilizing the Property for Trail or Transportation Uses to name Sound Transit as an additional insured on any insurance policy maintained by such entity or required under the applicable TPO Agreement, provided that if the entity is self-insured this requirement will be waived so long as the Port has the right to obtain proof of self insurance.

C. Waiver. To the extent of any applicable commercial insurance policies, the Parties waive their respective rights of recovery, claims, actions or causes of action against the other Party for any loss or damage to their respective real property interests or any personal property of such Party. Each party shall cause each commercial insurance policy obtained by it to provide that the insurance company waives all right to recover by way of subrogation against the other Party.

12) Property Condition Waivers/General Indemnification.

A. Waiver of Warranties. Subject to the Port’s express representations, warranties and obligations under this Easement Agreement, **SOUND TRANSIT 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 PROPERTY** including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating

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history or projections or valuation; compliance by the Property with Environmental Laws or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances, wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, or under the Property; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Property; the condition of title to the Property, and the Existing Third Party Agreements affecting the Property.

B. Indemnification by Sound Transit. Subject to the provisions of Sections 7, 12(C) and Section 14 of this Easement Agreement, Sound Transit shall, to the extent permitted by law, indemnify and defend the Port against any claim, action, loss, damage, injury or expense (including attorney's fees with or without trial and on appeal) or proceeding brought, incurred or claimed by any person against the Port with respect to the use by Sound Transit of the Property pursuant to Section 7 of this Easement Agreement or the use by Sound Transit of the Property, any Temporary Construction Easement Area or any Easement Area, the use by Sound Transit of the Sound Transit Improvements in the operation of the High Capacity Transit System, the exercise by Sound Transit of its rights, or the failure of Sound Transit to perform its obligations, under this Easement Agreement or arising from the negligence of Sound Transit or its employees acting within the scope of their employment (including, but not limited to liability imposed by law or for breach of any statutory duty or administrative rule or regulation, or resulting in death or injury to any person or destruction of or damage to property); provided, however, that the Port shall not be entitled to such indemnification for any such claim, action, loss, damage, injury or expense to the extent caused by the negligence or concurrent negligence of the Port, its agents or employees. Sound Transit upon notice from the Port shall defend any such claim at its expense and with counsel reasonably satisfactory to the Port. This indemnification is for the sole benefit of the Port and shall not inure to the benefit of any third party.

C. Indemnification by the Port. Subject to the provisions of Sections 7, 12(B) and Section 14 of this Easement Agreement, the Port shall, to the extent permitted by law, indemnify and defend Sound Transit against any claim, action, loss, damage, injury or expense (including attorney's fees with or without trial and on appeal) or proceeding brought, incurred or claimed by any person against Sound Transit with respect to the Property (other than any Temporary Construction Easement Area or any Easement Area) or the exercise by the Port of its rights, or the failure of the Port to perform its obligations, under this Easement Agreement or arising from the negligence of the Port or its agents or employees acting within the scope of their agency or employment (including, but not limited to liability imposed by law or for breach of any statutory duty or administrative rule or regulation or resulting in death or injury to any person or destruction of or damage to property); provided, however, that Sound Transit shall not be entitled to such indemnification for any such claim, action, loss, damage, injury or expense to the extent caused by the negligence or concurrent negligence of Sound Transit, its agents or employees. The Port upon notice from Sound Transit shall defend any such claim at its

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expense and with counsel reasonably satisfactory to Sound Transit. This indemnification is for the sole benefit of Sound Transit and shall not inure to the benefit of any third party.

D. Additional Indemnification Provisions. Solely to give full force and effect to the indemnification provisions contained herein and not for the benefit of any other 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, worker's compensation or similar laws of the State of Washington and acknowledges that this waiver was mutually negotiated by the Parties hereto as part of the consideration for this Easement 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 Easement Agreement or the Purchase Agreement be limited to the extent of any insurance available to or provided by the obligated Party.

E. Survival. The indemnification provisions of this Section 12 shall survive the expiration or other termination of this Easement Agreement.

13) Condemnation. If all or any portion of any Easement Area or the Sound Transit Improvements are damaged or taken under power of eminent domain or sold to a condemning authority in lieu thereof, the rights and obligations of the Port and Sound Transit and shall be determined as follows:

A. Condemnation of All or Substantially All of any Easement Area or the Sound Transit Improvements. If there is a taking or damaging of all or any portion of any Easement Area or the Sound Transit Improvements located thereon by the exercise of any governmental power, whether by legal proceedings or otherwise by a governmental agency with jurisdiction, or a transfer by Port under threat of condemnation, or while legal proceedings for condemnation are pending (each, a "Condemnation") such that there can be no reasonable use of such Easement Area or the Sound Transit Improvements located thereon in the reasonable judgment of Sound Transit, then this Easement Agreement shall automatically terminate as to the affected Easement Area, on the date the condemning authority has the right to possession of the property being condemned. The condemnation award shall be allocated between the Port and Sound Transit as provided in Section 13D below.

B. Partial Condemnation. If only a portion of any Easement Area or the Sound Transit Improvements located thereon shall be taken in connection with a Condemnation and the remainder of the Easement Area and the Sound Transit Improvements located thereon not so taken can be made useable in the reasonable judgment of Sound Transit, then this Easement Agreement shall continue in full force and effect as to the remainder of the Easement Area or the Sound Transit Improvements, as applicable, and all of the terms and conditions of this Easement Agreement, shall continue in full force and effect.

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C. Reactivation of Rail Service. Where the STB grants a railroad's request to reactivate rail service on all or any portion of the Property under applicable federal law, and the Port enters into an agreement with said railroad for the use of the affected Property subject to a reactivation order such that there can be no reasonable use of an Easement Area or the Sound Transit Improvements located thereon in the reasonable judgment of Sound Transit, then Sound Transit may give the Port fifteen (15) days written notice of its intent to terminate this Easement Agreement as to the affected Easement Area, effective on the date the railroad has the right to possession of the Property or portions thereof subject to a reactivation order. Any compensation payments paid by the railroad for the use of the Property subject to the reactivation order shall be allocated between the Port and Sound Transit as provided in Section 13.D below.

D. Condemnation Award. The Port is entitled to receive and keep all damages, awards or payment resulting from or paid on account of a Condemnation of all or any portion of the Property, except as provided in the following sentence. Sound Transit is entitled to receive and keep all damages, awards or payments resulting from any loss or damage to the rights of Sound Transit under this Easement Agreement, including the loss of or damage to any Easement Area and/or the Sound Transit Improvements located therein, and any moving and relocation expenses to which Sound Transit may be entitled. In the event the condemning authority does not allocate the award between the taking of the fee title to the Property and any Easement Area on the one hand and the taking of Sound Transit's rights under this Easement Agreement, including the loss of or damage to any Easement Area and/or the Sound Transit Improvements on the other hand, either Party shall have the right to request the court for an allocation of the award. Sound Transit shall also be entitled, solely by a separate award that does not diminish any award to which Port would otherwise be entitled, to the cost of moving and relocating the Sound Transit Improvements (including any personal property used in connection therewith and located on the affected Easement Area) and any other award paid separately to Sound Transit.

14) Hazardous Substances.

A. Sound Transit acknowledges that the Property may contain Hazardous Substances and that Hazardous Substances Released onto the Property may have migrated onto neighboring properties or Hazardous Substances Released on neighboring properties may have migrated onto the Property prior to the Effective Date. Port acknowledges that Sound Transit has acquired the High Capacity Transportation Easement granted under this Easement Agreement as a protective acquisition of easement rights for potential future development of one or more High Capacity Transit Facilities, but has no present intention to develop a High Capacity Transit Facility on the Property and is otherwise not in possession or control of the Property as of the Effective Date.

B. Except to the extent the Port or its officers, employees, agents or contractors have caused new Releases of Hazardous Substances following the Effective Date, Sound Transit 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,

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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 Sound Transit might have asserted against the Port arising from or in any way related to environmental conditions in, at, on, under or originating from the Property 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 Property. Losses shall include without limitation (i) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (ii) Losses for injury or death of any person, and (iii) Losses arising under any Environmental Law enacted after the Effective Date.

C. Subject to the provisions of Section 7, and except to the extent Sound Transit or its officers, employees, agents or contractors cause new Releases of Hazardous Substances following the Effective Date, the Port waives, releases and discharges forever Sound Transit from any and all Losses that the Port might have asserted against Sound Transit arising from or in any way related to environmental conditions in, at, on, under or originating from the Property other than Easement Areas and Temporary Construction Easement Areas, including Losses related to any alleged presence, use, storage, generation, manufacture, transport, Release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Property. Losses shall include without limitation (i) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (ii) Losses for injury or death of any person, and (iii) Losses arising under any Environmental Law enacted after the Effective Date. The Port’s waiver, release and discharge of Sound Transit pursuant to the provisions of this Section 14.C shall not apply with respect to Losses incurred by the Port for portions of the Property that are Easement Areas and Temporary Construction Easement Areas, *provided* the Releases or other environmental conditions that caused or contributed to such Losses occur following the date Sound Transit records in the real property records of King County such Easement Areas and Temporary Construction Easement Areas.

D. Nothing in this Easement Agreement shall be construed to waive or discharge any rights or claims Sound Transit 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 any Easement Area or Temporary Construction Easement Area. All waivers, releases and discharges of either Party to the extent provided in this Section 14 shall survive the expiration or other termination of this Easement Agreement.

E. The Port shall require any entity utilizing the Property from and after the Effective Date to assume responsibility for Remediation of any Releases of

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Hazardous Substances caused by that user of the Property on all or any portion of the Property.

F. In the event Hazardous Substances are discovered on the Property, the Port or Sound Transit, as the case may be, shall promptly give notice to the other Party of such discovery and shall cooperate in good faith to carry out the terms of this Easement Agreement. Except to the extent set forth in Section 14(A) through 14 (D) above, nothing contained in this Easement Agreement is intended to waive or release any right either Party may have under Environmental Laws, agreements or deeds to seek indemnity, contribution or other forms of recovery or relief from any person, including, but not limited to BNSF, for Losses arising from or in any way relating to the environmental condition of the Property or the Release of Hazardous Substances on the Property.

15) Breach.

A. Remedies. In the event of any breach or threatened breach of this Easement Agreement, the non-defaulting party shall have the right to sue for damages and/or seek equitable remedies, including specific performance or injunctive relief.

B. No Termination of Easement Agreement for Breach. No breach of this Easement Agreement shall entitle either Party to cancel or otherwise rescind this Easement Agreement or the easement granted herein; provided, however, that this limitation shall not affect any other right or remedy that the non-defaulting Party may have by reason of any such breach or default by the other Party to this Easement Agreement.

16) Dispute Resolution. The Parties will work collaboratively in accordance with the following steps to resolve disagreements arising under this Easement Agreement. Disagreements will be resolved promptly and at the lowest level of authority. The Port and Sound Transit shall each designate a representative to resolve disputes under this Easement Agreement (each, a "Designated Representative") within thirty (30) days following execution of this Easement Agreement. The Designated Representatives shall use their best efforts to resolve disputes and issues arising out of or related to this Easement Agreement. Each Designated Representative shall notify the other in writing of any problem or dispute the Designated Representative believes needs formal resolution. This written notice shall include: (a) a description of the issue to be resolved; (b) a description of the difference between the Parties on the issue; and (c) a summary of steps taken by Designated Representatives to resolve the issue. The Designated Representatives shall meet within three (3) Business Days of receiving written notice of a dispute and attempt to resolve the dispute. In the event the Designated Representatives cannot resolve the dispute (and that dispute is not subject to some other formal appeal process), the Sound Transit Executive Director or his/her designee and the Chief Executive Officer of the Port or his/her designee shall meet within seven (7) Business Days of receiving notice from a Designated Representative and engage in good faith negotiations to resolve the dispute.

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The Parties agree that they shall have no right to seek relief under this Easement Agreement in a court of law until and unless each of these procedural steps is exhausted. If any applicable statute of limitations will or may run during the time that that may be required to exhaust the procedural steps set forth above, the Parties agree to seek an order to suspend any proceeding filed in a court of law while the procedural steps set forth above are satisfied.

17) Priority of Easement; Assignment.

A. Priority of High Capacity Transportation Easement. The High Capacity Transportation Easement granted hereby shall have priority over any and all liens, encumbrances, easements, leases, subleases or other interests in the Property granted or acquired after the Effective Date and shall survive transfer of the fee ownership of, or the creation of any leasehold estate or easement affecting the Property.

B. Binding Effect; Assignment. The High Capacity Transportation Easement granted under this Easement Agreement and the rights duties, covenants, restrictions, agreements, limitations and obligations herein created shall constitute covenants running with the land, shall burden the Property, and such covenants shall be binding upon, and inure to the benefit of the Parties hereto and their respective successors, assigns, mortgagees, lessees, sublessees, and each and every person who shall at any time have a fee, leasehold, easement, license, permit, mortgage or other interest in the Property and, with respect to Sound Transit, any other successor owner or operator of all or any portion of the High Capacity Transit Facilities and/or the High Capacity Transit System. Either Party hereto may freely assign, apportion or otherwise transfer any or all of its rights, benefits, privileges and interests arising in and under this Easement Agreement so long as such transferee agrees in a recordable instrument to be bound by the terms of this Easement Agreement.

C. No Abandonment by Non-Use. Port acknowledges that Sound Transit's intent in entering into this Easement Agreement is to obtain protective easement rights for potential future development of one or more High Capacity Transit Facilities on the Property. Nothing contained in this Easement Agreement requires that Sound Transit develop a High Capacity Transit Facility on the Property at any particular time, or if a High Capacity Transit Facility is developed, to maintain any minimum level of transit service. No failure by Sound Transit to either develop or operate High Capacity Transit Facilities on the Property shall constitute an abandonment of its rights under this Easement Agreement or give the Port the right to terminate this Easement Agreement. Notwithstanding the foregoing, Sound Transit's duties and obligations under any Temporary Construction Easement Agreement, except for those that survive termination pursuant to Sections 7, 12, and 14, shall terminate upon the expiration of the term of any Temporary Construction Easement and the Parties shall record a mutually acceptable termination of such Temporary Construction Easement in the King County real property records.

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18) Miscellaneous Provisions.

A. Captions. The captions and paragraph headings contained in this Easement Agreement are for convenience of reference only and in no way limit, describe, extend or define the scope or intent of this Easement Agreement nor the intent of any of the provisions hereof. As used in this Easement Agreement, the masculine shall include the feminine and neuter, the feminine shall include the masculine and neuter, the neuter shall include the masculine and feminine, the singular shall include the plural and the plural shall include the singular, as the context may require.

B. Entire Agreement. The Purchase Agreement, this Easement Agreement and the exhibits hereto and thereto, constitute the entire agreement between the Parties with respect to the High Capacity Transportation Easement granted under this Easement Agreement and supersede all prior and contemporaneous agreements and understanding between the Parties hereto relating to the subject matter hereof. In the event there is any conflict between the terms and conditions of the Purchase Agreement and this Easement Agreement, this Easement Agreement shall control with respect to the easement rights intended to be granted Sound Transit under this Easement Agreement and the Purchase Agreement shall control with respect to the Bellevue Property (as defined in the Purchase Agreement).

C. Amendments; Waivers. No modification or amendment of this Easement Agreement may be made except by written agreement or as otherwise may be provided in this Easement Agreement. No failure by the Port or Sound Transit to insist upon the strict performance of any covenant, duty, agreement or condition of this Easement Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach of any other covenant, agreement, term or condition. Any Party hereto, by notice and only by notice as provided in Section 18 of this Easement Agreement may, but shall be under no obligation to, waive any of its rights or a condition to its obligations hereunder, or any duty, obligation or covenant of the other Party hereto. No waiver shall otherwise affect or alter this Easement Agreement and each and every covenant, agreement, term and condition of this Easement Agreement shall continue in full force and effect with respect to any other than existing or subsequent breach thereof.

D. Fair Construction. The provisions of this Easement Agreement shall be construed as a whole according to their common meaning, not strictly for or against any Party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Easement Agreement. Each Party hereto and its counsel has reviewed and revised this Easement Agreement and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be construed in the interpretation of this Easement Agreement.

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E. No Partnership or Joint Venture. It is not intended by this Easement Agreement to, and nothing contained in this Easement Agreement shall create any partnership, joint venture or other arrangement between the Port and Sound Transit except that of parties to an easement. No term or provision of this Easement Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.

F. Severability. In case any one or more of the provisions contained in this Easement Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Easement Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

G. Estoppel Certificates. Each Party shall, within fifteen (15) days of a request from the other Party, execute and deliver to the requesting Party, a written statement confirming to the knowledge of the responding party the status of matters under this Easement Agreement, whether all payments are current, whether any Party is in default in its obligations under this Easement Agreement and such other matters as the requesting Party may reasonably request.

H. Force Majeure. Notwithstanding anything contained in this Easement Agreement to the contrary, any delay in the performance of any obligation under this Easement Agreement shall be excused, if and so long as the performance of the obligation is prevented, delayed or otherwise hindered by acts of God, fire, earthquake, flood, explosion, actions of the elements, war, riots, mob violence, inability to procure labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, court orders, operation of laws, orders of governmental or military authorities or any other causes, whether similar or dissimilar to the foregoing, not within the control of such Party (other than lack or inability to procure money to fulfill its commitments and obligations under this Easement Agreement).

I. Notices. All notices, demands, requests, consents and approvals which may, or are required to be given by either Party to the other Party hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, sent by nationally recognized overnight delivery service or by facsimile transmission, or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid as follows:

**EXHIBIT B
TO
RESOLUTION NO. 3652**

If to Port: Port of Seattle
Managing Director
Real Estate Division
P. O. Box 1209
Seattle, WA 98111
Facsimile: _____

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 Sound Transit: Central Puget Sound Regional Transit
Authority
Union Station
401 South Jackson Street
Seattle, WA 98104-2826
Attn: Real Estate Division, Property
Management
Facsimile: (206) 398-5228 _____

With a copy to: Central Puget Sound Regional Transit
Authority
Union Station
401 South Jackson Street
Seattle, WA 98104-2826
Attn: Legal Department
Facsimile: (206) 398-5222

or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner. All notices shall be deemed given three (3) Business Days following the date when mailed or one (1) Business Day following the date when delivered or faxed (provided the fax machine has issued a printed confirmation of receipt).

J. Consents and Approvals. Except where a different standard is expressly set forth in this Easement Agreement, in any case where the consent or approval of either Party is required by the terms of this Easement Agreement, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

K. No Liens. Neither the Port nor Sound Transit shall create or cause to be created any lien or encumbrance of any kind whatsoever upon the Property, the

**EXHIBIT B
TO
RESOLUTION NO. 3652**

Temporary Construction Easement Areas or Easement Areas, the Sound Transit Improvements or Sound Transit's rights under this Easement Agreement. In the event any such lien or encumbrance is filed, the Port or Sound Transit, as applicable, agrees to promptly discharge or cause to be discharged, every such attachment, judgment, lien, charge or encumbrance of any nature which may be filed against the Property, the Easement Areas, the Sound Transit Improvements or which may unreasonably interfere with the exercise of Sound Transit's right to Temporary Construction Easement Areas or Easement Areas pursuant to this Easement Agreement, provided such party may reasonably and diligently contest such attachment, judgment, lien, charge or encumbrance.

L. Recordation. This Easement Agreement, and any and all amendments or modifications thereof shall be recorded in the real property records of King County, Washington, including any amendments required to set forth the location of any High Capacity Transit Facilities and the precise location of the Easement Area and Temporary Construction Area for each such High Capacity Transit Facility before commencement of construction thereof.

M. No Waiver of Eminent Domain Power. Nothing contained in this Easement Agreement shall constitute or be construed as constituting any limitation upon either Party's right to exercise the power of eminent domain.

N. No Brokers. The Port and Sound Transit each represent to the other that neither is represented by any broker, agent or finder with respect to this Easement Agreement in any manner. Each Party agrees to indemnify and hold the other Party harmless from and against any and all liability costs, damages, causes of action or other proceedings instituted by any broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of the indemnifying party in any manner whatsoever in connection with this Easement Agreement, which indemnification shall survive the execution of this Easement Agreement or any termination of this Easement Agreement in whole or in part.

O. Attorney's Fees. In any suit arising out of this Easement Agreement, the prevailing party, or the party which substantially prevails, as determined by the court shall be awarded a reasonable amount for its attorney's fees and expenses of suit.

P. Counterparts. This Easement Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall together constitute but one original.

Q. Governing Law. This Easement Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington. In the event of any litigation to enforce or interpret the right, duties and obligations of the Parties

**EXHIBIT B
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set forth in this Easement Agreement, venue of any such legal action shall be in King County Washington.

R. No Merger of Estates. The easement granted herein shall not extinguish or terminate by operation of the doctrine of merger or otherwise due to the existence of future common ownership by Sound Transit of more than one real property interest in all or any portion of the Property.

S. Authority. The Parties signing below represent and warrant that they have the requisite authority to bind the entities on whose behalf they are signing.

IN WITNESS WHEREOF, this Easement Agreement has been executed as of the date and year first hereinabove set forth.

“Port”

Approved as to Form:

PORT OF SEATTLE,
a Washington municipal corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

“Sound Transit”

Approved as to Form:

**CENTRAL PUGET SOUND REGIONAL
TRANSIT AUTHORITY,** a regional transit
authority of the State of Washington

By: _____
Name: _____
Title: _____

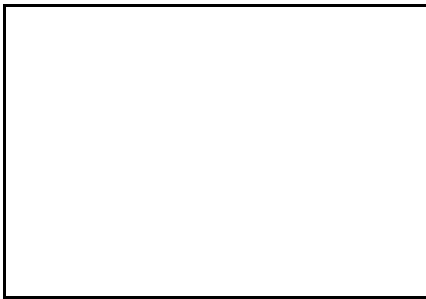
By: _____
Name: _____
Title: _____

**EXHIBIT B
TO
RESOLUTION NO. 3652**

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

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

Dated: _____

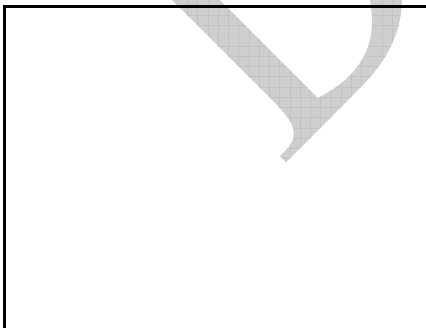


Notary Public
Print Name _____
My commission expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

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

Dated: _____



Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)

SCHEDULE 1
TO EXHIBIT B

DEFINITIONS

“Authorized User(s)” means holders of an easement or other right to use a portion of the Property, including holders of Existing Third Party Rights and Subsequent Third Party Users.

“Business Day” means any day except a Saturday, Sunday, legal holiday or a day on which commercial banks in Seattle, Washington are required or authorized to be closed.

"Crossing Structures" means bridges, trestles or other similar crossing structures located in or serving the Property.

“Easement Area” means all portions of the Property that Sound Transit records in the real property records of King County for development, operation, maintenance or repair of a High Capacity Transit Facility.

“Environmental Law or Laws” 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 or underground storage tanks and any similar or comparable state or federal law.

“Hazardous Substances” means any hazardous, toxic, radioactive or infectious substances, material or waste as defined, listed or regulated under any Environmental Law and includes, without limitation, petroleum oil and any of its fractions.

“High Capacity Transit Facilities” means surface, underground or overhead railways, including light railways, tramways, busways, buses, bus sets, entrained and lined buses or other means of local transportation, including escalators, moving sidewalks, personal rapid transit systems or other people-moving systems, transit station and related passenger amenities, inter-modal and other passenger transfer facilities and terminals, properties and such other facilities as may be necessary for passenger and vehicular access to and from such people-moving systems, stations, transfer facilities, terminals, parking for Sound Transit maintenance and operation-related uses and properties together with all related facilities, structures, fixtures, property, equipment and accessories necessary for a High Capacity Transit System, including rail track, equipment, maintenance facilities, customer assistance office, ticket dispensers, and Sound Transit information displays, bus layover facilities, utility lines, lighting, signage, ventilation structures, traction power substations, vaults and rights of access across the Property as may be necessary for construction,

operation, inspection, maintenance, repair and enhancement of such High Capacity Transit Facilities. High Capacity Transit Facilities do not include public parking garages or public roads intended for use primarily by single-passenger automobile vehicles. A High Capacity Transit Facility is a Transportation Use as defined in the Multipurpose Easement and this Easement Agreement.

“High Capacity Transit System” means a system of public transportation services within an urbanized region operating principally on exclusive rights of way and the supporting services and facilities necessary to implement such as system as further defined in RCW 81.104 RCW.

“Interim Trail User” means King County and any of its successors and assigns in its capacity as the holder of a Notice of Interim Trail Use issued by the Surface Transportation Board.

“King County Wastewater Facilities” means those wastewater facilities owned and operated by King County and located in the Property in the locations depicted on Exhibit C-1 and listed in Exhibit C-2, attached to this Easement Agreement.

“Notice of Selected Alignment” means a written notice from Sound Transit to the Port describing all or a portion of a previously designated Planned Easement Area that reflects Sound Transit's selection of its final alignment for the location of the High Capacity Transit Facilities.

“Party” means either the Port or Sound Transit, the parties to this Easement Agreement.

“Parties” means the Port and Sound Transit, collectively.

“Passenger” means any person who is not an employee of Sound Transit and who is on any Sound Transit High Capacity Transit Facility.

“Planned Easement Area” means a location on the Property under active consideration by Sound Transit or that is part of an environmental review process for evaluation as a possible location for High Capacity Transit Facilities.

“Railbanked Segments” has the same meaning as defined in the Trail Use Agreement and includes the Wilburton Segment.

"Railbanking Obligations" consist of those obligations imposed through Section 8(d) of the National Trails System Act, also known as the Rails-to-Trails Act, 16 U.S.C. 1247(d), and 49 C.F.R. 1152.29 (collectively, and as any of the foregoing may hereafter be amended or interpreted by binding judicial or administrative authority, the “Railbanking Legislation”), the Notice of Interim Trail Use ("NITU") for the Property issued by the STB; the Trail Use Agreement (“TUA”) entered into between BNSF and Grantee for the Property under which Grantee agrees to accept, exercise, and fulfill all of the legal rights, duties, and obligations

of an Interim Trail User, and the Statement of Willingness to Accept Financial Responsibility ("SWAFR").

"Regional Trail Guidelines" means the King County Regional Trails System Draft Development Guidelines dated February 2009 along with the Addendum's thereto dated March 24, 2009, March 25, 2009 and April 1, 2009, copies of which are available in the offices of the King County Parks Division and the offices of the Parties.

"Release" or "Released" shall mean any releasing, spilling, leaking, pumping, pouring, flooding, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of Hazardous Substances in or into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Substance, pollutant or contaminant).

"Remediation" means all activities performed in connection with or in anticipation of the assessment, cleanup, removal, mitigation, monitoring or containment of any Hazardous Substances to meet the requirements of applicable laws relating to the cleanup or remediation of Hazardous Substances in light of the reasonably intended use of the portion of the Property, or Easement Area, as applicable, at the time the Remediation commences. The term "Remediation" also includes the defense or prosecution of any proceedings before a court, administrative judge or tribunal or governmental agency and all negotiations with any governmental agency or its employees or consultants relating to the performance of Remediation, the reasonable fees and expenses (including reasonable attorneys' fees) of the Party performing the Remediation and its attorneys and consultants.

"Sound Transit Improvements" means improvements Sound Transit constructs within an Easement Area, including, without limitation, tracks and other High Capacity Transit Facilities.

"Sound Transit Transportation Use" means a use by Sound Transit within an Easement Area or Temporary Construction Easement Area pursuant to the provisions of the Easement Agreement.

"Temporary Construction Easement" means a temporary construction easement agreement entered into between Port and Sound Transit with respect to development or construction of High Capacity Transit Facilities on a portion of the Property.

"Trail Area" means that portion of the Property which may hereafter be designated for development, use, operation, maintenance, repair and improvement of a Trail in accordance with the terms, covenants, conditions and limitations set forth in Sections 2 and 3 of the Multipurpose Easement and Exhibit C to this Easement Agreement.

"Trail Development" means the initial construction or any substantial reconstruction of a Trail

“TPO” means a person other than the Port or King County who has an agreement to use the Property for Transportation Use.

“TPO Agreement” means an agreement with a person other than the Port or King County to use the Property for Transportation Use.

“TUA” means that certain Trail Use Agreement dated December 18, 2009, by and between King County and BNSF.

DRAFT

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

DRAFT

EXHIBIT B

MAP OF PROPERTY

DRAFT

EXHIBIT C

The following additional terms, covenants, conditions and limitations shall be permanently incorporated into the Easement Agreement as to any portion of the Property in which King County acquires the underlying interest in the Property from the Port and shall apply to the development of a Trail by any successor in interest to King County. In such case, in any conflict between the body of the Easement Agreement and this Exhibit C to the Easement Agreement, this Exhibit C to the Easement Agreement shall control; references in the Easement Agreement to the Port enforcing or carrying out the terms of the Multipurpose Easement shall have no effect.

The terms of this Exhibit C are intended to govern the relationship between King County and Sound Transit with regard to dual use of the Property for Trail and Transportation purposes, and with regard to certain County utilities within the Property. It does not otherwise affect the County's reserved rights in the Property or Sound Transit's rights under the Easement Agreement. As to any portion of the Property in which King County does not acquire the underlying interest in the Property, this Exhibit C shall have no effect.

I. Scope of Trail Use

A. King County in its discretion may establish a Trail Area of sufficient size to meet the County's Regional Trail Guidelines in any location on the Property. The Trail Area may include Crossing Structures. King County and Sound Transit acknowledge that all or substantial portions of the Trail Area may be thirty (30) feet wide and be located on the rail bed. The Trail Area may be used for public access and an interim or permanent public hard and/or soft-surface regional trail for public pedestrian, bicycle, or other non-motorized uses ("Trail"). The Parties acknowledge that the Trail Area could be wider where additional width is needed to accommodate all necessary slopes for cuts and fills for the Trail; to install abutments, pilings, or other structural elements of trail bridges or tunnels; to allow grade or other physical separation of the Trail and any active rail lines or other uses on the Property; or to install storm water drainage or detention facilities or other facilities required by a permitting agency in support of or as mitigation for the Trail. King County may establish, amend or add to a Trail Area for the purposes of this Easement, subject to the Review Process established for the review of Other Improvements.

B. King County may use the Trail Area for all purposes necessary or incidental to public access and King County's installation, construction, ownership, use, operation, maintenance, inspection, repair, replacement, renovation, improvement, removal and enhancement of a Trail, including, but not limited to, the ability to install, construct, operate, maintain, modify, repair, replace, improve, remove and use the Trail Area for public access and any Trail-related purposes as King County may now or hereafter deem appropriate, including the addition, removal or replacement of Trail improvements at King

County's election, either in whole or in part with either like or different improvements. All Trail-related improvements of any kind that are now or hereafter acquired, constructed or installed by King County at King County's sole cost and expense within the Trail Area, or constructed by Sound Transit for King County pursuant to this Exhibit C shall be and shall at all times remain the property of King County. King County may also use areas outside the Trail Area on the Property, including within a Temporary Construction Easement Area or an Easement Area, for any ingress and egress associated with public access and all other uses associated with a Trail, *provided*, such use within an Easement Area or Temporary Construction Easement Area shall only be with Sound Transit's consent, which consent shall not be unreasonably withheld, conditioned, or delayed if the use would not unreasonably interfere with the construction or operation of a High Capacity Transit Facility.

C. King County may temporarily stage equipment and material on the Property in and around the Trail Area (including within an Easement Area or Temporary Construction Easement Area, with Sound Transit's prior consent, which consent shall not be unreasonably withheld, conditioned, or delayed if the use would not unreasonably interfere with the construction or operation of a High Capacity Transit Facility), as reasonably necessary to construct, operate, maintain, improve or remove the Trail. King County may construct, operate and maintain Trail crossings over, under, or across any railroad tracks or other transportation facilities associated with a Sound Transit Transportation Use on the Property, *provided* that such crossings shall be consistent with applicable law, trail or crossing design standards and shall not unreasonably interfere with any Sound Transit Transportation Uses on the Property, and *provided further* that the King County shall be responsible for performing and paying for Custodial Activities as defined in this Easement Agreement as to any of the crossing improvements, including any railroad tracks or other transportation facilities in the area of the crossing that are not located within Temporary Construction Easement Areas or Easement Areas.

D. Prior to King County establishing, amending or adding to a Trail Area, King County shall provide Sound Transit with (a) a description of the location of the Trail Area and (2) a copy of all plans and specifications for a proposed Trail if any have been prepared. Sound Transit shall review King County's proposed Trail Area as a proposed Other Improvement according to the Review Process except that Sound Transit shall have sixty (60) days to respond. As to any portion of the Property that is not designated as a Planned Easement Area or subject to a Notice of Selected Alignment, Temporary Construction Easement Area or Easement Area and is thus subject to the standards of Section 9B(1) of the Easement Agreement, the proposed Trail Area may not be deemed to impair the ability of Sound Transit to design, construct, use, operate, inspect, maintain or repair High Capacity Transit Facilities in a reasonably practicable manner as that term is used in Section 9 of the Easement Agreement. However, Sound Transit may suggest reasonable changes to the County's proposal that would result in the future ability of Sound Transit and King County to carry out the Transportation and Trail uses in a manner that would reduce the need for Sound Transit to incur costs to relocate a Trail or Trail

Area. King County will reasonably and in good faith consider implementing any such reasonable suggestions.

E. Prior to the commencement of any Trail Development or any other activity related to Trail Development, King County shall provide Sound Transit with (i) a description of the location of the Trail Area, (b) a copy of all plans and specifications for such proposed Trail Development, and (ii) a plan for coordinating the proposed Trail Development with any High Capacity Transit Facility that is existing or under evaluation or proposed within a Planned Easement Area, or area subject to a Notice of Selected Alignment, Temporary Construction Easement Area, or Easement Area. Sound Transit shall review King County's proposal as a proposed Other Improvement according to the Review Process. As to any portion of the Property that is not designated a Planned Easement Area, or subject to a Notice of Selected Alignment, Temporary Construction Easement Area or Easement Area, and is thus subject to the standards of Section 9B (1), the proposed Trail may not be deemed to impair the ability of Sound Transit to design, construct, use, operate, inspect, maintain or repair High Capacity Transit Facilities in a reasonably practicable manner as that term is used in Section 9 of the Easement Agreement. However, Sound Transit may suggest reasonable changes to the County's proposal that would result in the future ability of Sound Transit and King County to carry out the Transportation and Trail uses in a manner that would reduce the need for Sound Transit to incur costs to relocate a Trail or Trail Area. King County will reasonably and in good faith consider implementing any such reasonable suggestions.

F. If King County proposes a Trail Development within a Planned Easement Area the Parties shall, in addition to the requirements set forth in Sections D and E above, cooperate in good faith to mutually agree on the location of the Trail Area and Trail within the Planned Easement Area and consistent with the terms of the Easement Agreement in order to avoid delaying the County's Trail Development until such time as Sound Transit determines to record the Temporary Construction Easement Area and Easement Area.

G. The Parties encourage one another to informally consult and cooperate with one another in developing plans for Transportation Use and Trail facilities as early and often as reasonably possible in order to achieve the dual Transportation Use and Trail uses that are intended under the Easement Agreement at a reasonable cost. In light of the environmental review processes that public entities follow, the Parties may request comment from one another on alternatives under development for or consideration pursuant to such processes. In such case, the responding Party shall reasonably respond as appropriate under the circumstances considering the level of information available at the time. Any such response shall not be considered consent or approval under the terms of the Easement Agreement.

H. In the event Sound Transit provides a Notice of Selected Alignment in an area where Trail Development has not commenced and Sound Transit does not provide

King County with a Notice of Intent to Develop within one year after providing the Notice of Selected Alignment, Sound Transit and King County shall at King County's request consult to determine as precisely as possible the location of the Trail Area consistent with the Easement Agreement and the time at which King County can construct the Trail. To make this determination, Sound Transit and King County shall use currently available plans and information and will make a joint determination within sixty (60) days of King County initiating the process. If King County and Sound Transit are unable to make this joint determination within this sixty (60) day period, either party may initiate Dispute Resolution under Section 8A(3) of the Easement Agreement. In this joint determination process, Sound Transit and King County will consider the probable timeframe in which Sound Transit construction will occur, the likely impacts of Sound Transit construction on development of the Trail in any existing or relocated Trail Area, and whether it is reasonable to construct a temporary Trail within any existing Trail Area for future relocation during Sound Transit construction. If the development of Sound Transit's High Capacity Transit Facility within the area subject to a Notice of Selected Alignment will require Trail Area relocation outside the Property, Sound Transit shall provide the relocated Trail Area for use by King County no later than three (3) years after the Notice of Selected Alignment. The provisions in this Section H are in addition to the provisions of Sections I.D and E, and do not limit the ability of King County to also elect to proceed under Sections I.D and E.

I. King County shall, at its sole cost and expense, comply with all stormwater requirements for Trail Development to the extent any such requirements are applicable to King County's Trail Development

II. Trail Use and Transportation Use of Property.

King County understands, acknowledges, and agrees that Sound Transit may undertake Transportation Use of the Property consistent with the terms of this Easement Agreement

A. Trail Area Relocation.

(i) In the event Sound Transit provides a Notice of Intent to Develop a portion of the Property for a Sound Transit Transportation Use in a manner that would unreasonably interfere with King County's then existing Trail or Trail for which Trail Development has commenced on a portion of the Property, then Sound Transit shall relocate the Trail and Trail Area, at Sound Transit's sole cost and expense, in a condition and to another location consistent with King County's Regional Trail Guidelines in effect on the Effective Date, the development standards and conditions of other regional trails within King County, and the Railbanking Obligations, which other location may, to the extent consistent with the Railbanking Obligations be outside of the Property, *provided*, Sound Transit makes a good faith effort to designate a location that is reasonably close to the Property, and *provided further*, that the width and condition of the relocated Trail need not exceed the width and condition of the existing Trail regardless of the Regional Trail

Guidelines or development standards and condition of other regional trails within King County. Such relocation shall include reasonable operational, safety, and/or aesthetic improvements and structures such as bridges, trestles, Crossing Structures, Trail crossings, ingress and egress areas, berms, grade separation, fencing and/or landscaping. If no Trail Development has commenced when Sound Transit provides a Notice of Intent to Develop, then Sound Transit shall establish at its sole cost and expense a Trail Area in another location consistent with King County's Regional Trail Guidelines in effect on the Effective Date, the development standards and conditions of other regional trails within King County, and the Railbanking Obligations, which other location may, to the extent consistent with the Railbanking Obligations be outside of the Property, *provided*, Sound Transit makes a good faith effort to designate a location that is reasonably close to the Property. In addition, the Trail Area location shall be of sufficient width and grade within which King County may develop or construct a trail that is consistent with King County's Regional Trail Guidelines in effect on the Effective Date, the development standards and conditions of other regional trails within King County, and the Railbanking Obligations, and within which may be located reasonable operational, safety, and/or aesthetic improvements and structures such as bridges, trestles, Crossing Structures, Trail crossings, ingress and egress areas, berms, grade separation, fencing and/or landscaping.

(ii) Notwithstanding the provisions of paragraph IIB (i), there may be rare circumstances requiring Sound Transit to relocate a Trail and/or Trail Area, where there is no reasonably practicable alternative for such relocation within the Property or outside the Property consistent with Section IIB(i) of this Exhibit C. In such an unusual case, the relocation may be to standards less than required by Section IIB(i) of this Exhibit C, so long as the Trail results in, and the Trail Area is sufficient for, a minimum ten feet of paved surface with at least one-foot wide shoulders on either side. "Reasonably practicable" as used in this Section IIB(ii) shall mean capable of being implemented in a reliable and effective manner at a cost, including any expenses associated with property acquisition, that is not substantially higher than would typically be expected for similar trail projects in areas of King County or other jurisdictions that have physical characteristics of and a degree of development similar to the area where Trail and/or Trail Area relocation is required.

(iii) In any Notice of Intent to Develop, Sound Transit shall propose the manner in which it will accomplish any relocation of a Trail Area and/or Trail. Sound Transit shall take reasonable steps to avoid disruption of Trail use during construction or other activities on an established Trail, and where disruption is not reasonably avoidable, it shall mitigate such disruption through the provision of detours or other means of bypassing the construction or other activity areas.

(iv) Notwithstanding provisions of this Paragraph B to the contrary, in no event shall Sound Transit be required to provide a relocated Trail Area or Trail in a width that exceeds the width of the Property from which the King County Trail Area or Trail is being displaced.

(v) Notwithstanding provisions of this Paragraph B to the contrary, Sound Transit shall not be responsible for relocating, or the cost of relocating, a Trail or Trail Area that is displaced, closed, removed or destroyed as a result of a reactivation order.

B. If a portion of the Property is subject to a Sound Transit Transportation Use when King County commences Trail Development, then King County shall be responsible for installing barriers to separate such portion of the Property from the Trail Area. If Sound Transit has commenced Transportation Use of a portion of the Property that is adjacent to a portion of Trail Area where Trail Development has commenced, then Sound Transit shall be responsible for installing barriers separating such portion of the Property from the Trail Area. King County and Sound Transit shall jointly determine the type and scope of barriers (e.g. jersey barriers, fencing, or grade separation) or other measures reasonably needed to separate the Trail Area from the Transportation Use, which barriers shall at a minimum meet any applicable regulatory standards; *provided*, that after initial barrier installation is completed, King County shall be responsible, at King County's sole cost and expense, to inspect, maintain and replace any barriers or other measures that will separate the Trail Area from the Sound Transit Transportation Use unless such barriers are within an Easement Area, in which case Sound Transit shall be responsible, at Sound Transit's sole cost and expense, to inspect, maintain and replace any barriers or other measures that will separate the Trail Area from the Sound Transit Transportation Use. Before either Sound Transit or King County may take any action that would require a joint determination under this Section II.B, it shall initiate negotiation of such joint determination through written notice to the other party accompanied by a detailed description of the proposed barriers. Thereafter Sound Transit and King County shall negotiate in a good faith and reasonable manner to reach agreement. The joint determination shall be made within sixty (60) days after the initiation of negotiation. If the joint determination is not made within that time, either Sound Transit or King County may start dispute resolution using the process set forth in Section 18A(3) of the Easement Agreement or other mutually acceptable dispute resolution process.

III. Custodial Activities.

A. Custodial Activities and Transportation Use.

(i) "Custodial Activities" are those activities that a Property owner would reasonably take to manage the Property in order to keep the Property in a physical condition suitable for its use, to maintain the physical integrity of the Property, to prevent health and safety hazards, and to manage public access in a manner appropriate for the Property's use, which may range from allowing public access to prohibiting such access, depending on circumstances. Custodial Activities include both "Routine Maintenance" and "Capital Improvements." "Routine Maintenance" includes, but is not limited to, inspecting the property, litter and garbage pick up, brush and hazardous tree trimming or removal, drainage maintenance or repair, and fencing or signage maintenance: "Capital

Improvements” includes capital investments in the Property that go beyond Routine Maintenance, including, but not limited to, the installation of fences, barriers, or signs, or the repair of a washout on the Property. Custodial Activities do not include any activities related to granting or managing easements, leases, permits, franchises, occupancy agreements, licenses or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting or relating to the Property, which activities shall be the sole responsibility of the County or the then fee owner of the Property .

(ii) A Sound Transit Transportation Use is undertaken when Sound Transit records an Easement Area or Temporary Construction Easement Area pursuant to the provisions of the Easement Agreement; and a Transportation Use is terminated when such use ceases and (a) Sound Transit records a termination of Easement Area or Temporary Construction Easement Area.

B. Performance of Custodial Activities.

Custodial Activities will be performed and paid for in the following manner depending on the uses present on the Property. The Party obligated to carry out Custodial Activities will conduct the Custodial Activities in a manner that complies with Railbanking Obligations, that complies with this Easement Agreement, and that meets that Party's needs for the use of the Property. Unless otherwise imposed by the terms of this Easement Agreement, as between the County and Sound Transit, the Party with the obligation to carry out Custodial Activities in this Section III.B is not responsible for ensuring that the Property is maintained in a condition that is suitable for the needs of the other Party.

(i) In any segment of the Property where there is no Sound Transit Transportation Use, King County shall be responsible for performing and paying for all Custodial Activities.

(ii) In any segment of the Property where there is Sound Transit Transportation Use, King County shall be responsible for performing and paying for all Custodial Activities on the Property except within a Temporary Construction Easement Area or Easement Area. Sound Transit shall be responsible for performing and paying for all Custodial Activities within a Easement Area or Temporary Construction Easement Area.

C. Custodial Activities Following Termination of Transportation Use.

If and when Sound Transit Transportation Use is terminated on a segment of the Property, then King County shall resume performing Custodial Activities for such segment.

D. Railbanking Obligations.

(i) The Property shall be subject to the Railbanking Obligations so long as it remains in Railbanked status. King County shall comply with and Sound Transit shall not violate the Railbanking Obligations for so long as the Property remains in Railbanked status.

(ii) In the event King County determines that it is no longer reasonably practicable to carry out Railbanking Obligations because of actions taken by Sound Transit or any other entity using or claiming ownership of the Property, due to abandonment outside the Property of a segment of rail line connecting the Property to the national rail system, or due to catastrophic physical damage to the Property that would require exorbitant costs to address, then King County may notify Sound Transit in writing no less than 180 days before the date that it intends to notify the STB that King County will no longer serve as the Interim Trail User for all or a portion of the Property and to request that King County's Railbanking Obligations be extinguished as to the identified portion of the Property pursuant to the Railbanking Legislation. King County shall, if requested by Sound Transit, cooperate to transfer, as to the identified portion of the Property, its Interim Trail User status and the property rights necessary for an Interim Trail User to carry out the Railbanking Obligations to a replacement Interim Trail User. King County will transfer such property rights at no cost to the replacement Interim Trail User so long as the property rights would revert to King County if Railbanking ever terminates and the Property is abandoned.

(iii) If King County conveys the Property or an interest in the Property to another party for the purpose of that party developing and operating a Trail, King County may also transfer its Interim Trail User status to such transferee, *provided*, that such transferee agrees in a recordable instrument to be bound by the terms of this Easement Agreement, including specifically the terms of this Exhibit C.

(iv) The Parties recognize and agree that a portion of the Property between milepost 10.6 and 11.25 ("Wilburton Segment") has not been subject to Interim Trail Use and the Railbanking Obligations, but rather was abandoned with the approval of the STB prior to the Port's acquisition of the Property. The Wilburton Segment is a critical link in the maintenance of the remainder of the Property in compliance with the Railbanking Obligations. Therefore, the Wilburton Segment is subject to the terms of this Easement Agreement as if it was subject to Interim Trail Use and the Railbanking Obligations.

E. Insurance and Indemnification.

(i) Sound Transit shall name King County as an additional insured on any insurance policy maintained by Sound Transit related to any Sound Transit Transportation Use.

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

F. County Utility Rights.

(i) There are currently King County Wastewater Facilities located in the Property in the locations set forth on Exhibit C-1, attached hereto and incorporated herein. Those facilities are authorized by a variety of instruments and agreements listed on Exhibit C-2, attached hereto and incorporated herein. King County will continue to have the rights and obligations set forth in such instruments and agreements vis-à-vis Sound Transit even if such rights would otherwise be terminated through the doctrine of merger. In addition, King County shall have the right, and Sound Transit shall not unreasonably interfere with the right to operate, maintain, repair, and replace the existing King County Wastewater Facilities on the Property. This section does not limit the ability of King County to exercise its reserved rights more generally to install new or expanded Wastewater facilities, subject to the Review Process.

(ii) In the event Sound Transit provides a Notice of Selected Alignment and Sound Transit does not provide King County with a Notice of Intent to Develop within one year after providing the Notice of Selected Alignment, then King County shall have the right to submit for review under the Review Process new or expanded Wastewater facilities that will be subject to the standards applicable to any portion of the Property that is designated as a Planned Easement Area under Section 9.B (2).