

**AMENDED AND RESTATED  
REAL ESTATE PURCHASE AND SALE AGREEMENT**

**Woodinville North Subdivision Rail Line**

**(Within Woodinville Corporate Limits and Bothell Corporate Limits)**

THIS AMENDED AND RESTATED REAL ESTATE PURCHASE AND SALE AGREEMENT (this “Agreement”) is entered into as of this \_\_\_ day of May, 2015, and amends and restates in its entirety that Real Estate Purchase and Sale Agreement dated the 24th day of July, 2014 (the “Effective Date”), by and between the Port of Seattle, a municipal corporation of the State of Washington (“Port”) and the City of Woodinville, a municipal corporation of the State of Washington (“City”), acting in its governmental capacity. The Port and the City are hereinafter sometimes referred to jointly as the “Parties”.

**RECITALS**

A. On or about December 18, 2009, the Port acquired from BNSF Railway Company (“BNSF”) pursuant to a Quit Claim Deed (the “BNSF Deed”) recorded under King County Auditor’s File No. 20091218001536, real property developed as a rail corridor and commonly known as the Woodinville Subdivision.

B. Sections of the Woodinville Subdivision are improved with rail tracts and certain commercial and industrial structures and fixtures associated with rail operations (the “Improvements”). The Improvements were acquired by the Port from BNSF pursuant to a Bill of Sale (the “BNSF Bill of Sale”) executed on or about December 18, 2009.

C. The BNSF Deed, among other things, obligates BNSF to pay the Port and/or King County the costs to investigate, remediate, respond to or otherwise cure any hazardous substance releases or violations of environmental law to the extent such hazardous substance releases or violations of environmental law (i) occurred as a result of the operations of BNSF, its agents, employees, invitees or contractors, or its corporate predecessors and their agents, employees, invitees or contractors, and (ii) have been ordered to be cured by an applicable regulatory agency; provided, however, that BNSF need only pay for such costs as are necessary to bring the Woodinville Subdivision up to the standards for a freight railway or the standards that the regulatory agency would apply for other affected properties (the “BNSF Remediation Obligation”).

D. In the BNSF Deed, BNSF reserved for itself an exclusive easement for freight rail purposes over a portion of the Woodinville Subdivision (the “Freight Easement”). BNSF thereafter conveyed the Freight Easement to GNP Rly, Inc., a Washington corporation (“GNP”), by Quit Claim Deed executed on or about December 18, 2009, and recorded under Snohomish County Auditor’s File No. 200912210439.

E. On or about December 18, 2009, the Port entered into an Operations and Maintenance Agreement between Port of Seattle and GNP Rly, Inc. (the “O&M Agreement”). The O&M Agreement sets forth the rights, obligations, terms and conditions as between the Port and GNP with respect to GNP’s use of the Woodinville Subdivision for freight rail operations.

F. On or about December 8, 2012, through an involuntary bankruptcy proceeding, the assets of GNP, including the right to operate under the Freight Easement and the O&M Agreement, were conveyed to Eastside Community Rail, LLC, a Washington limited liability company (“Eastside Community Rail”). Eastside Community Rail assumed all rights and obligations of GNP under the O&M Agreement with the Port.

G. The City desires to acquire from the Port, and the Port desires to sell to the City, pursuant to Chapter 39.33 of the Revised Code of Washington (Intergovernmental Property Disposition Act) and the terms and conditions described below, all that portion of the Woodinville Subdivision located within the City or the City of Bothell and any of the Improvements located within and along that portion of the Woodinville Subdivision lying within the City or the City of Bothell (collectively referred to hereafter as the “Property”). The Property is legally described on Exhibit A to this Agreement. A diagram map showing the approximate location of the Property is attached to this Agreement as Exhibit B.

H. The Property is subject to an easement recorded on December 21, 2010, under King County Auditor’s File No. 201012211000998 in favor of Puget Sound Energy (the “PSE Easement”), as amended by amendment recorded on February 12, 2013, under King County Auditor’s File No. 20130212002422.

I. By Real Estate Purchase and Sale Agreement dated February 8, 2013, King County, a political subdivision of the State of Washington, contracted to purchase from the Port (i) a fee interest over a portion of the Woodinville Subdivision located in King County that does not include the Property, and (ii) a trail easement over a portion of the Woodinville Subdivision, including all or a portion of the Property, which easement was recorded on February 13, 2013, under King County Auditor’s No. 2013021300164 (the “King County Easement”).

J. The Property is further subject to other rights and interests granted to third parties pursuant to unrecorded third party leases, licenses, contracts, permits or other agreements for the use and/or occupancy of portions of the Woodinville Subdivision as further defined in Section 9.1 (“Third Party Leases, Licenses and Contracts”).

K. The City had previously identified certain ancillary portions of the Property (the “Ancillary Property”) that it intended to purchase separately pursuant to an Ancillary Property Purchase and Sale Agreement between the parties dated July 24, 2014 (the “Ancillary Agreement”). The parties wish to terminate that Ancillary Agreement. The Ancillary Property will instead be purchased pursuant to this Agreement and is included in the definition of “Property” herein. Exhibit A to this Agreement has been revised to reflect a corrected description of the Property to include the Ancillary Property.

## AGREEMENT

NOW, THEREFORE, in consideration of the respective agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. Purchase and Sale of the Property.** The Port shall sell and convey to the City, and the City shall purchase from the Port, subject to the terms and conditions set forth below: (i) all of the Port's right, title and interest in and to the Property, as defined in Recital G above and including the real property, all Improvements, and all other rights, privileges and easements appurtenant to the Property; and (ii) all of the Port's right, title and interest in and to all Third Party Leases, Licenses and Contracts, as defined in Section 9.1 below, associated with the Property as of the date of closing.

**2. Purchase Price.** The purchase price for the Property (the "Purchase Price") shall be paid in cash at closing, by wire transfer or other immediate available funds. The Purchase Price is One Million One Hundred Thousand Dollars (\$1,100,000.00).

**3. Earnest Money.** No earnest money deposit shall be made or required.

**4. Title Insurance.**

**4.1 Preliminary Commitment.** The Port, at its sole cost, provided the City with a preliminary commitment for an ALTA owner's standard coverage policy of title insurance covering the Property (the "Preliminary Commitment"), issued by the Chicago Title Insurance Company (the "Title Company"), together with complete legible copies of all documents referenced in the Preliminary Commitment. The initial Preliminary Commitment issued included the Ancillary Property.

**4.2 Permitted Exceptions.** At the closing of the transaction contemplated by this Agreement, title to the Property is to be free of encumbrances or defects, except for the following (each, a "Permitted Exception," and, collectively, the "Permitted Exceptions"): (i) the general exceptions contained in the title policy; (ii) the Freight Easement; (iii) the King County Easement; (iv) the PSE Easement; (v) any special exceptions shown on the Preliminary Commitment that are accepted by the City pursuant to Section 4.3 below; and (vi) any Third Party Leases, Licenses and Contracts, as defined in Section 9.1 below, which are accepted by the City pursuant to Section 4.3 below. Should any new or additional encumbrances on title to the Property be discovered prior to closing, the City shall have the right to object to the same, using the procedures specified in Section 4.3 below. The Port acknowledges that the City may seek to negotiate modifications to some or all of the above Permitted Exceptions during the Due Diligence Period described in Section 5 below.

**4.3 Title Review.** The City has completed its review of the Property's title and did not deliver to the Port within thirty (30) days after receiving the Preliminary Commitment, written notice of any objections the City may have relating to matters shown on or referenced in the Preliminary Commitment or identified in Exhibit C relating to Third Party Leases, Licenses and Contracts, as defined in Section 9.1 below (the "Title Objection Notice"). Any exception, encumbrance or other matter to which the City did not timely object shall be a

“Permitted Exception.” In the event any supplement to the Preliminary Commitment results in additional exceptions to title, the following process shall apply: The City shall within ten (10) days after receiving the supplement to the Preliminary Commitment deliver written notice to the Port regarding any objections relating to matters shown on or referenced in the supplement to the Preliminary Commitment. The Port shall have ten (10) days from the date on which the Port receives the City’s Title Objection Notice to deliver written notice of the City stating whether or not the Port will, prior to closing, remove or otherwise cure some or all of the matters described in the City’s Title Objection Notice. Should the Port fail to timely respond to the City’s Title Objection Notice, the Port shall be deemed to have refused to remove or cure all of the matters described in the City’s Title Objection Notice. Should the Port refuse to remove or cure any of the matters objected to in the City’s Title Objection Notice, the City must elect one of the following: (i) to accept the defects or encumbrances on title that the Port refuses to remove or cure, in which case such defects or encumbrances shall become Permitted Exceptions, and proceed with the transaction contemplated by this Agreement; or (ii) to terminate this Agreement. The City shall provide the Port with written notice of its decision within thirty (30) days of receiving the Port’s response to the City’s Title Objection Notice. Should the City fail to deliver written notice of the City’s decision to the Port within the time period specified above, the City shall be deemed to have elected to terminate this Agreement. In the event the City elects to terminate this Agreement pursuant to this Section 4.3, all rights and obligations of the Port and the City under this Agreement shall terminate and be of no further force or effect.

**4.4 Title Insurance Policy.** At Closing, the Port shall deliver to the City the Title Company’s irrevocable commitments to issue the Title Policy (as defined below). The Port shall deliver to the City, as soon as reasonably possible after the Closing Date, at the Port’s sole cost and expense, an ALTA owner’s standard coverage form title insurance policy in favor of the City, insuring the City’s title in and to the Property in the amount of the full Purchase Price, subject only to the standard form printed exceptions and the Permitted Exceptions (the “Title Policy”). The City may, at its own expense, obtain endorsements to the Title Policy.

## **5. Due Diligence.**

**5.1 City’s Due Diligence.** The City has completed its Due Diligence.

**5.2 Reports, Studies and Other Materials.** The Port has delivered to the City copies of all material information in the Port’s possession concerning the physical condition of the Property, including: soil, air or groundwater tests; engineering inspections, studies or reports; environmental studies, records, audits or reports; notices from and/or correspondence with government entities; court orders and/or consent decrees; maps; plans; permits; as-builts operating agreements and records; leases; contract; surveys; and any other documents or materials relevant to the City’s proposed acquisition of the Property (collectively, the “Reports”). The Port makes no representations or warranties with respect to the accuracy or completeness, methodology of preparation or otherwise concerning the contents of such reports. The Port has delivered to the City copies of all Third Party Leases, Licenses and Contracts (as defined in Section 9.1) and such other agreements as may impact the Property, including all outdoor advertising agreements for the Property, if any.

6. **Conveyance of Title.** Upon the closing of the transaction contemplated by this Agreement, the Port shall deliver to the City a Quit Claim Deed for the Property, in the form attached to this Agreement as Exhibit D (the “Deed”), subject only to the Permitted Exceptions. In addition, upon the closing of the transaction contemplated by this Agreement, the Port shall deliver to the City a Bill of Sale for the Improvements, in the form attached to this Agreement as Exhibit E.

7. **Condition of the Property.**

7.1 **Disclaimer of Warranties.** Subject to the Port’s express representations, warranties, covenants and obligations under this Agreement, **THE CITY IS NOT RELYING ON, AND HEREBY WAIVES WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM THE PORT WITH RESPECT TO ANY MATTERS CONCERNING THE PROPERTY** including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Property with Environmental Laws, as defined in Section 13 below, or other laws, statutes, ordinances, or decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances, as defined in Section 13 below, wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials, in, on, or under the Property; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Property; the condition of title to the Property, and the Third Party Leases, Licenses, Contracts, permits, orders, or other agreements, affecting the Property.

7.2 **No Reliance by City.** The City represents and warrants to the Port that except for the Port’s express representations, warranties, covenants and obligations under this Agreement, the exhibits hereto and the BNSF Remediation Obligation, the City has not relied and will not rely on, and the Port is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto made or furnished by the Port, any agent or contractor of the Port, or any real estate broker or agent representing or purporting to represent the Port, to whomever made or give, directly or indirectly, orally or in writing.

7.3 **Survival.** Notwithstanding any provision of this Agreement to the contrary, the provisions of this Section 7 shall survive the closing of the transaction contemplated herein and the delivery of the Deed to the City. The City and the Port acknowledge that their willingness to enter into this Agreement reflects that the Property is being conveyed subject to the provisions of this Section 7.

8. **Partial Assignment and Assumption of O&M Agreement.**

8.1 **Active Rail Service.** The City acknowledges that as of the Effective Date of this Agreement, the Property is not “railbanked” (as defined and described in Section 8(d) of the National Trails Systems Act, also known as the “Rails to Trails Act,” 16 USC §1247(d) and 49 CFR §1152.29) and is presently subject to active freight rail operations pursuant to the O&M

Agreement as described in Recital E. As of the Effective Date of this Agreement, Excursion Rail Service (as defined in the O & M Agreement) on the Property is not an active use and was not commenced in a timely manner by GNP Rly., Inc., the original “TPO” under the O&M Agreement.

**8.2 Partial Assignment of O&M Agreement.** Upon the closing of the transaction contemplated by this Agreement, the Port shall assign to the City, by means of an assignment agreement substantially in the form attached to this Agreement as Exhibit F (the “Partial Assignment and Assumption of Operations and Maintenance Agreement”), the Port’s right, title and interest in the O&M Agreement to the extent the O&M Agreement affects the Property. This partial assignment of the O&M Agreement includes the right to enforce any breaches by the “TPO” under the O & M Agreement that may have accrued with regard to the Property prior to Closing. The Port, its assigns, transferees, or other successors in interest, shall retain all its right, title and interest in the O&M Agreement to the extent the O&M Agreement affects other areas of the Woodinville Subdivision that do not include the Property.

**9. Assignment and Assumption of Third Party Leases, Licenses and Contracts.**

**9.1 Existence of Third Party Leases, Licenses and Contracts.** The Property is currently encumbered by multiple unrecorded third party leases, licenses, contracts, permits or other agreements as more specifically identified in Exhibit C (the “Third Party Leases, Licenses and Contracts”). The parties agree to amend Exhibit C as needed once the legal description of the Property is amended in accordance with Section 4.4.

**9.2 Assignment of Third Party Leases, Licenses and Contracts.** Upon the closing of the transaction contemplated by this Agreement, the Port shall assign all of its right, title and interest in the Third Party Leases, Licenses and Contracts affecting the Property to the City by means of an assignment agreement substantially in the form attached to this Agreement as Exhibit G (the “Assignment and Assumption of Third Party Leases, Licenses and Contracts”).

**10. Surface Transportation Board.** The City shall apply for an exemption or seek a ruling of non-jurisdiction from the Surface Transportation Board as may be necessary to complete the transaction contemplated by this Agreement. In addition, the City will file with the Surface Transportation Board seeking a determination that the City will not become a common carrier as a result of its acquisition of the Property subject to the freight easement. The Port shall reasonably cooperate with the City in connection with any hearings or filings necessary to obtain the determination exemption or jurisdictional ruling. In the event that the Surface Transportation Board does not approve of the determination, exemption or issue a ruling of non-jurisdiction prior to the Closing Date, which has been extended by agreement of the parties to July 31, 2015, may be extended beyond July 31, 2015 by written agreement of the parties’ Chief Executives or their designees to a further extension. The City shall also have the option of terminating this Agreement if the Surface Transportation Board does not provide approval by the Closing Date or any extension thereof. Upon termination of this Agreement pursuant to this Section 10, this Agreement shall immediately terminate without penalty to the City and be of no further force and effect.

**11. Covenants, Representations and Warranties of the Port.** The Port hereby makes the following covenants, representations and warranties to the City, which covenants,

representations and warranties shall be deemed made by the Port to the City as of the Effective Date and again as of the Closing Date:

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

(ii) From the Effective Date to the Closing Date, the Port will notify the City of each event of which the Port becomes aware is affecting the Property or any part thereof, promptly upon learning of the occurrence of such event;

(iii) There is no litigation, action, proceeding or investigation pending or threatened which pertains to the Property or the Port's ownership thereof, other than the letter dated February 18, 2014, from Eastside Community Rail to Joe McWilliams, Managing Director Real Estate Division, previously provided to the City by the Port.

(iv) To the best of the Port's knowledge, neither the whole nor any portion of the Property is subject to temporary requisition or use by any governmental authority or has been condemned or taken in any proceeding similar to a condemnation proceeding, nor is any such proceeding contemplated;

(v) To the best of the Port's knowledge, there is no claim of adverse possession being made to any portion of the Property by any third party nor does the Port have knowledge of existing facts which would enable any third party to successfully assert such a claim;

(vi) The Port has not received any written notice of, and the Port has no knowledge of, any written notice from any governmental authority alleging any uncured existing violation of any applicable governmental laws, statutes, ordinances, rules, codes, regulations or orders, including Environmental Laws, affecting the Property;

(vii) The Port has no knowledge, nor has the Port received written notice, of any default or breach by the Port under any covenants, conditions, restrictions, rights of way, easements, leases, licenses or contracts affecting the Property or any portion thereof;

(viii) From the Effective Date to the Closing Date, the Port will not grant or create any easement, right-of-way, encumbrance, lien, restriction, covenant, lease, license, option to purchase or other right which would affect the Property prior to or after closing without the City's written consent first having been obtained;

In the event any of the covenants, representations or warranties contained in this Section 11 become untrue prior to the date of closing as a result of occurrences or information received by the Port subsequent to the Effective Date of this Agreement, the Port shall promptly notify the City, in writing, and, within ten (10) days after receiving such notice, the City may elect to (i) proceed with Closing, or (ii) terminate this Agreement by delivering written notice of termination to the Port. The covenants and representations made by the Port in this Section 11 shall survive the closing of the transaction contemplated by this Agreement and shall not merge into the Deed.

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

(i) The City is a political subdivision of the State of Washington, duly organized, validly existing and in good standing under the laws of the State of Washington, has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations under this Agreement and the transactions contemplated hereby;

(ii) From the Effective Date to the Closing Date, the City will timely perform all of its monetary and non-monetary obligations required by the terms of this Agreement to be performed by the City; and

(iii) There is no litigation, action, proceeding or investigation pending or threatened against the City that could prevent or impair the City's obligations hereunder.

In the event any of the covenants, representations or warranties contained in Section 12 become untrue prior to the date of closing as a result of occurrences or information received by the City subsequent to the Effective Date of this Agreement, the City shall promptly notify the Port, in writing, and, within ten (10) days after receiving such notice, the Port may elect to (i) waive any objections and proceed with Closing, or (ii) terminate this Agreement by delivering written notice of termination to the City. The covenants and representations made by the City in this Section 12 shall survive the closing of the transaction contemplated by this Agreement and shall not merge into the Deed.

**13. Hazardous Substances.**

**13.1 Definition of Environmental Law.** The term "Environmental Law" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Model Toxics Control Act, the Water Pollution Control Act, laws concerning above ground or underground storage tanks, and any similar or comparable state or local law.

**13.2 Definition of Hazardous Substance.** The term "Hazardous Substance" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

**13.3 Release from Liability.** The City acknowledges that the Property may contain Hazardous Substances, and that Hazardous Substances released onto the Property may have migrated onto neighboring properties at times prior to the Effective Date. The Port acknowledges that the City is not in possession or control of the Property as of the Effective Date. Except as otherwise provided in this Section 13 and Section 7, the City waives, releases and discharges forever the Port from any and all present or future claims or demands and any

and all damages, losses, injuries, liabilities, causes of action (including without limitation, causes of action in tort), costs and expenses (including without limitation fines, penalties and judgments and attorney's fees) of any and every kind or character, known or unknown (collectively "Losses") that the City might have asserted against the Port arising from or in any way related to environmental conditions in, at, on, under or originating from the 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 (a) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) Losses for injury or death of any person, and (c) Losses arising under any Environmental Law enacted after the Effective Date. Nothing in this Agreement shall be construed to waive or discharge any rights or claims the City may hold under the Environmental Laws, agreements or deeds, including the BNSF Remediation Obligation, to seek indemnity or contribution from BNSF or other parties other than the Port for Losses arising from or in any way related to environmental conditions on the Property. Nothing herein shall be deemed to be an assumption by the City of any existing liability of the Port under the Environmental Laws caused by resulting from or materially exacerbated by the acts of the Port or its officers, employees, agents, or contractors.

**13.4 Indemnification by the City.** The BNSF Remediation Obligation obligates BNSF, in specified situations, to investigate, remediate, respond to or otherwise cure (collectively, "Remediate" or "Remediation") certain environmental conditions related to releases of Hazardous Substances or the violation of any Environmental Law. Effective upon the closing of the transaction contemplated by this Agreement, and pursuant to the BNSF Deed and the Clarification to Assignment of BNSF Remediation Obligation described in Section 13.5 below, the Port assigns to the City all rights and obligations it holds to the BNSF Remediation Obligation in so far as those rights and obligations pertain to the Property. Thereafter, as between the City and the Port, the City will be responsible for all costs of Remediation of Hazardous Substances released on or from the Property or violations of any Environmental Law relating to the Property except to the extent (i) caused by or resulting from the acts of the Port or its officers, employees, agents or contractors, or (ii) materially exacerbated by the acts of the Port or its officers, employees, agents or contractors so as to release BNSF from or reduce its liability under the BNSF Remediation Obligation. The City shall have no duty to indemnify or defend the Port for Losses sustained as a result of claims (A) attributable to the operations of GNP and/or Eastside Community Rail, and (B) that arose during any period of time in which there was a lapse in the insurance required of GNP, Eastside Community Rail and/or Ballard Terminal Railroad Company LLC (subcontractor to Eastside Community Rail) by the O&M Agreement. The Port agrees that in the event the City is required to Remediate Hazardous Substances released on or from the Property, the Port shall cooperate with the City to obtain reimbursement of costs of Remediation from BNSF as provided in the BNSF Remediation Obligation found in the BNSF Deed. The City's obligations under this Section 13 do not include any losses for which the Port is required to provide indemnification under Section 14.

**13.5 Clarification to Assignment of BNSF Remediation Obligation.** Upon the closing of the transaction contemplated by this Agreement, the Port shall deliver to the City a copy of a letter executed by the Port and King County clarifying the intent of the Port and King County regarding the allocation of rights and obligations as to BNSF Remediation Obligation

(the “Clarification to Assignment Agreement”), in a form negotiated between the Port, the City, and King County. The Clarification to Assignment Agreement shall clarify that the BNSF Remediation Obligation was allocated to King County only insofar as such obligations and rights apply to the section of the Woodinville Subdivision purchased by King County in fee, as described in Recital I, and not to the King County Easement.

**13.6 Survival.** The provisions of this Section 13 shall survive the closing of the transaction contemplated by this Agreement and shall not merge into the Deed. The City and the Port acknowledge that their willingness to enter into this Agreement reflects that the Property is being conveyed subject to the provisions of this Section 13.

#### **14. Indemnification.**

**14.1 Immunity Under Applicable Law.** Nothing in this Section 14 shall limit the ability of the Port, the City or both of them to avail themselves of the protection offered by any applicable law affording immunity to the Port or the City, including, to the extent applicable, RCW 4.24.210, or any successor statute.

**14.2 Indemnification by Port.** Subject to and without in any way limiting the provisions of Section 7 and Section 13 of this Agreement, the Port shall indemnify, defend and hold the City, its successors and assigns, harmless from and against all liabilities, suits, losses, costs, damages, claims, expenses, penalties and/or charges, including, without limitation, reasonable attorneys’ fees and disbursements, suffered or incurred by reason of (i) the breach of any representation, warranty or agreement of the Port set forth in this Agreement; (ii) the failure of the Port to perform any obligation required to be performed by it under this Agreement; (iii) any liabilities arising out of the ownership, maintenance and/or operation of the Property by the Port prior to closing; or (iv) any accidents, damages or injuries to persons or property from any cause occasioned in whole or in part by any acts or omissions of the Port, its agents and employees, that occur prior to closing. The Port upon notice from the City shall defend any such claim at its expense and with counsel reasonably satisfactory to the City. This indemnification is intended for the sole benefit of the City and shall not inure to the benefit of any third party.

**14.3 Indemnification by City.** Subject to and without in any way limiting the provisions of Section 7 and Section 13 of this Agreement, the City shall indemnify, defend and hold the Port, its successors and assigns, harmless from and against all liabilities, suits, losses, costs, damages, claims, expenses, penalties and/or charges, including, without limitation, reasonable attorneys’ fees and disbursements, suffered or incurred by reason of (i) the breach of any representation, warranty or agreement of the City set forth in this Agreement; (ii) the failure of the City to perform any obligation required to be performed by it under this Agreement; (iii) any liabilities arising out of the ownership, maintenance and/or operation of the Property by the City after closing; or (iv) any injuries to persons or property from any cause occasioned in whole or in part by any acts or omissions of the City, its agents and employees, that occur after closing. The City upon notice from the Port shall defend any such claim at its expense and with counsel reasonably satisfactory to the Port. This indemnification is intended for the sole benefit of the Port and shall not inure to the benefit of any third party.

**14.4 Waiver of Immunity.** Solely to give full force and effect to the indemnities contained herein and not for the benefit of any third party, each Party specifically and expressly waives any immunity it may have under Washington State Industrial Act, RCW Title 51, and acknowledges that this waiver was mutually negotiated by the parties herein. This provision shall not be interpreted or construed as a waiver of any party's right to assert such immunity, defense or protection directly against any of its own employees. In no event shall either party's indemnification obligations under this Agreement be limited to the extent of any insurance available to or provided by the obligated party.

**14.5 Survival.** The provisions of this Section 14 shall survive the closing of the transaction contemplated by this Agreement and shall not merge into the Deed.

**15. Conditions Precedent; Closing.**

**15.1 City's Conditions Precedent to Closing.** The City's obligation to close the transaction hereunder shall be subject to the City's right of termination pursuant to Section 10, and the satisfaction by the Port or waiver in writing by the City of the following conditions precedent to the City's obligation to close:

- (i) Each of the representations and warranties of the Port hereunder shall be true and true and correct and the Port will not be in breach of such representations and warranties as of Closing.
- (ii) The Port shall not be in breach of any covenant made hereunder,
- (iii) The Port shall have delivered to escrow each of the deliveries described in Section 15.4 below.
- (iv) Neither the City nor the Port have been made the subject of, or threatened with, litigation by any third party in connection with the Property or the City's intended use of the Property.

**15.2 Port's Conditions Precedent to Closing.** The Port's obligation to close the transaction hereunder shall be subject to the satisfaction by the City or waiver in writing by the Port of the following conditions precedent to the Port's obligation to close:

- (i) Each of the representations and warranties of the City hereunder shall be true and true and correct and the City will not be in breach of such representations and warranties as of Closing.
- (ii) The City shall not be in breach of any covenant made hereunder,
- (iii) The City shall have delivered to escrow each of the deliveries described in Section 15.5 below.
- (iv) Neither the City nor the Port have been made the subject of, or threatened with, litigation by any third party in connection with the Property or the City's intended use of the Property.

**15.3 Closing Date.** The closing of the transaction contemplated by this Agreement (the “Closing”) shall occur through the escrow department of the Title Company (the “Escrow Agent”) on or about July 31, 2015 (the “Closing Date”) unless the parties mutually agree to the an earlier closing date;. Except as provided in Section 10, if the transaction fails to close by the Closing Date, either party may terminate this Agreement by delivering written notice of termination to the other party. Alternatively, the Parties may further extend the Closing Date by amending this Agreement as provided in Section 21.7 below.

**15.4 Escrow Deposits by Port.** On or before the Closing Date, the Port shall deliver the following to the Escrow Agent:

(i) The duly executed and acknowledged Deed, in the form attached to this Agreement as Exhibit D;

(ii) An executed Real Estate Excise Tax Affidavit for the Property, in the form required by Washington law;

(iii) The duly executed and acknowledged Bill of Sale, in the form attached to this Agreement as Exhibit E;

(iv) Two (2) executed and acknowledged counterpart originals of a Partial Assignment and Assumption of Operations and Maintenance Agreement, in the form attached to this Agreement as Exhibit F;

(v) Two (2) executed and acknowledged counterpart originals of an Assignment and Assumption of Third Party Leases, Licenses and Contracts Agreement, in the form attached to this Agreement as Exhibit G and including an updated schedule of any Third Party Leases, Licenses and Contracts of which the Port has become aware or has entered into since the Effective Date pursuant to Section 16 below;

(vi) An original affidavit pursuant to Section 1445(b)(2) of the Federal Internal Revenue Code (the “Federal Code”), certifying that the Port is not a foreign person under the meaning of the Federal Code, in the form attached to this Agreement as Exhibit H;

(vii) A copy of a duly executed and acknowledged Clarification to Assignment of Rights and Obligations as to BNSF Remediation Obligation as described in Section 13.5 above;

(viii) The Port’s approved estimated settlement statement;

(ix) An irrevocable commitment by the Title Company to issue the Title Policy in form satisfactory to the City; and

(x) Any other documents, instruments, records or correspondence reasonably required by the Escrow Agent to consummate the purchase of the Property in accordance with the terms of this Agreement.

**15.5 Escrow Deposits by City.** On or before the Closing Date, the City shall deliver the following to the Escrow Agent:

- (i) The Purchase Price, in cash (United States funds);
- (ii) One duly executed and acknowledged counterpart original of the Deed, in the form attached to this Agreement as Exhibit D;
- (iii) An executed Real Estate Excise Tax Affidavit for the Property, in the form required by Washington law;
- (iv) One duly executed and acknowledged counterpart original of the Bill of Sale, in the form attached to this Agreement as Exhibit E;
- (v) Two (2) executed and acknowledged counterpart originals of a Partial Assignment and Assumption of Operations and Maintenance Agreement, in the form attached to this Agreement as Exhibit F;
- (vi) Two (2) executed and acknowledged counterpart originals of an Assignment and Assumption of Third Party Leases, Licenses and Contracts Agreement, in the form attached to this Agreement as Exhibit G;
- (vii) The City's approved estimated settlement statement;
- (viii) Any other documents, instruments, records or correspondence reasonably required by the Escrow Agent to consummate the purchase of the Property in accordance with the terms of this Agreement.

**15.6 Closing Costs.** Through escrow at Closing, the Port shall pay (i) the premium for the Title Policy described in Section 4 of this Agreement and (ii) one half of the Escrow Agent's escrow fee. Through escrow at Closing, the City shall pay (a) the cost of recording the Deed, (b) one half of the Escrow Agent's escrow fee, (c) the cost of any endorsements to the Title Policy requested by the City. Each party shall bear its own legal fees. Property taxes for the current year, if any, will be pro-rated as of Closing. Water and other utilities shall be pro-rated as of Closing. Rents under any Third Party Leases, Licenses or Contracts burdening the Property shall be pro-rated as of Closing, provided, that the requirement for pro-ration of rents shall apply only to Third Party Leases, Licenses or Contracts with cumulative annual payments exceeding Five Hundred Dollars (\$500.00). All other costs of Closing, if any, shall be borne by the Port and the City in a manner consistent with local practice for the county in which the Property is located. Upon the request of either party, adjustments shall be made between the parties after the date of closing for the actual amount of any prorations made on the basis of estimates as of the date of closing.

**16. Leases, Licenses and Contracts Affecting the Property.** During the period of time between the Effective Date of this Agreement and the date of closing, the Port shall not enter into any leases, sub-leases, licenses or other contracts affecting all or any portion of the Property without the prior approval of the City. The City shall give written notice to the Port of

its approval or disapproval of any such proposed contract within thirty (30) days of receiving same from the Port. Should the City fail to respond to a request for approval of a proposed contract within the specified time period, the City's approval of such contract shall be deemed given.

**17. Risk of Loss.** In the event of material loss of or damage to the Property prior to the closing, the City may terminate this Agreement by giving written notice of termination to the Port.

**18. Eminent Domain.** If prior to the date for closing, title to all or any part of the Property is taken by eminent domain, the City may, by written notice to the Port, elect to cancel this Agreement prior to the date set for closing by delivering written notice of its election to the Port. In the event the City elects to terminate this Agreement pursuant to this Section 18, all rights or obligations of the Port and the City under this Agreement shall immediately terminate and be of no further force and effect. Unless this Agreement is so canceled, it shall remain in full force and effect and the Port shall assign, transfer and set over to the City all the Port's right, title and interest in and to any awards that may be made for such taking.

**19. Default and Remedies.** If there is an event of default under this Agreement by either Party, the non-defaulting Party will be entitled (i) to seek specific performance of the defaulting Party's obligations under this Agreement or (ii) to terminate this Agreement by written notice to the defaulting Party and Escrow Agent. If the non-defaulting Party elects to terminate this Agreement, all documents will be immediately returned to the Party who deposited them, and neither Party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement, other than that the defaulting Party shall pay any costs of terminating the escrow and any cancellation fee for the Preliminary Commitment.

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

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

With a copy to:                      Port of Seattle Legal Department  
PO Box 1209  
Seattle, WA 98111  
Attn: General Counsel

Facsimile: (206) 787-3205

If to the City: City of Woodinville  
17301 133rd AVE NE  
Woodinville, WA 98072  
Attn: Richard Leahy  
Facsimile: (206) 489-2705

With a copy to: Greg A. Rubstello, Esq.  
Ogden Murphy Wallace, PLLC  
901 5th Avenue, Suite 3500  
Seattle, WA 98164-2008  
Facsimile: (206) 447-0215

## **21. Miscellaneous.**

**21.1 Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and any and all prior agreements, understandings or representations, including the Ancillary Agreement (see section 21.14 below), with respect to its subject matter are hereby canceled in their entirety and are of no further force or effect.

**21.2 Governing Law.** This Agreement shall be governed by and enforced in accordance with the laws of the State of Washington. The venue of any action arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for King County.

**21.3 Interpretation.** This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the parties hereto. The captions and headings in this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

**21.4 Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

**21.5 Legislative Approval.** The parties' performances under this Agreement are contingent on approval of this Agreement by each party's respective legislative body and in accordance with applicable law.

**21.6 Warranty of Authority.** Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the Party for whom he or she purports to sign the Agreement. Each person signing this

Agreement also represents and warrants that no other person's signature is needed in order (i) for this Agreement to be binding on such Party; or (ii) to release the claims, demands, actions and causes of action that such Party is purporting to release.

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

**21.8 No Waiver.** No term or condition of this Agreement will be deemed to have been waived or amended unless expressed in writing, and the waiver of any condition or the breach of any term will not be a waiver of any subsequent breach of the same or any other term or condition.

**21.9 No Third Party Beneficiaries.** This Agreement is made for the exclusive benefit of the Parties hereto. There are not third party beneficiaries to this Agreement.

**21.10 No Joint Venture.** Nothing contained in this Agreement shall be construed as creating any type or manner of partnership, joint venture or other joint enterprise between the parties.

**21.11 No Brokers.** The Port and the City hereby represent to and agrees with the other that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who can claim a right to a commission or finder's fee as a procuring cause of the purchase and sale contemplated by this Agreement. If any broker or finder perfects a claim for a commission or finder's fee based on any other contract, dealings or communication, the party through whom the broker or finder makes his or her claim will be responsible for that commission or fee and shall indemnify, defend, and hold harmless the other party from and against any liability, cost or damages (including attorneys' fees and costs) arising out of that claim. The provisions of this Section 21.11 shall survive the Closing or earlier termination of this Agreement.

**21.12 No Merger.** The terms and provisions of this Agreement shall not merge into, but shall survive, the Closing of the transaction contemplated by this Agreement and the Deed to be delivered pursuant hereto.

**21.13 Time of the Essence.** Time is of the essence of each and every provision of this Agreement. The Parties agree that strict compliance by both of them is required with respect to any date set forth in this Agreement.

**21.14 Termination of Ancillary Property Agreement.** The signing by the parties of this Amended and Restated Agreement will be the parties' agreement to and will hereby terminate the Ancillary Agreement without further cost or liability to either party. The Ancillary Property is now included in the Property as described in Exhibit A to this Agreement.

**21.15 Exhibits.** The following Exhibits, which are attached to this Agreement, are incorporated herein and by this reference made a part of this Agreement:

EXHIBIT A - Legal Description of the Property

{GAR1309945.DOCX;2/00046.170015/ }

REAL ESTATE PURCHASE AND SALE AGREEMENT

- EXHIBIT B - Diagram Map Showing the Property
- EXHIBIT C - Schedule of Third Party Leases, Licenses and Contracts
- EXHIBIT D - Form of Quit Claim Deed
- EXHIBIT E - Form of Bill of Sale
- EXHIBIT F - Form of Partial Assignment and Assumption of Operations and Maintenance Agreement
- EXHIBIT G - Form of Assignment and Assumption of Third Party Leases, Licenses and Contracts
- EXHIBIT H - Non-Foreign Person Affidavit

**21.16 Computation of Time.** Except where expressly provided to the contrary, as used in this Agreement, the word “day” shall mean “calendar day,” and the computation of time shall include all Saturdays, Sundays and holidays for the purposes of determining time periods specified in this Agreement. If the final date of any period of time set out in any provision of this Agreement falls on a Saturday or a Sunday or a legal holiday, then in such event, the time of such period shall be extended to the next day that is not a Saturday, Sunday or legal holiday. As used in this Agreement, the term “Business Day” shall mean a day that is not a Saturday, Sunday or a legal holiday.

**21.17 Execution in Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

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

**PORT:**

Port of Seattle, a municipal corporation of the State of Washington

**CITY:**

City of Woodinville, a municipal corporation of the State of Washington

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Approved as to Form:**

**Approved as to Form:**

\_\_\_\_\_  
Deputy General Counsel

\_\_\_\_\_  
City Attorney

*[The remainder of this page is intentionally left blank.]*