

**Declaration of John Rasmussen  
April 9, 2001**

**Exhibit 5**

**Draft BNSF-TLC Sale Agreement**

Notes on Exhibit 5:

I received this document from a neighbor who obtained it through the Freedom of Act. The document is significant in three respects.

First, it is a DRAFT copy of the BNSF to TLC sale agreement. However, when I compared the draft to the final versions of this sale agreement, I found that every change made to the draft copy was incorporated in the final version. So, this document may indicate the thought process that went into the changes and allows the possibility of asking the parties to explain why the changes were made.

Second, it shows that TLC was aware of the Arthur Andersen appraisal of \$41.7 million based on BNSF claiming it owned all the land, fee simple.

Third, this document shows distortion on the bottom of page 6, while the rest of the document is readable. This became very suspicious when I got a copy of the final sale agreement provided to the City of Issaquah and all of page 6 was missing from that document. I was able to get a copy of page 6 from TLC<sup>1</sup> on August 22, 2000. I called TLC and asked for the missing page. The director and second-in-command were out of town, and a Ms. Carol Koppelman faxed the page to me.

The information that was missing on page 6 of the draft and final copies of this sale agreement is the acknowledgment by TLC of a donation; TLC's acknowledgment that their payment did not represent the fair market value; and TLC's obligation to provide documentation to the IRS so that BNSF could write-off a charitable donation.

If BNSF did not hold fee simple title, this information may show criminal activity.

I declare the above to be true under penalty of perjury. John O. Rasmussen April 9, 2001

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<sup>1</sup> TLC's latest name change is Cascade Land Conservancy apparently.

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4/4/97 DRAFT  
REDMOND-ISSAQUAH, WA TRANSFER DRAFT

**AGREEMENT FOR THE TRANSFER OF  
CERTAIN ASSETS, RIGHTS AND OBLIGATIONS**

**OF**

**THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**  
(Formerly Known as Burlington Northern Railroad Company)

**BY AND TO**

**THE LAND CONSERVANCY OF SEATTLE AND KING COUNTY**

**4/4/97 DRAFT**

**AGREEMENT FOR THE TRANSFER OF  
CERTAIN ASSETS, RIGHTS AND OBLIGATIONS  
OF**

**THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY  
(Formerly Known as Burlington Northern Railroad Company)**

**BY AND TO**

**THE LAND CONSERVANCY OF SEATTLE AND KING COUNTY**

This Agreement is entered into between THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (formerly known as Burlington Northern Railroad Company), a Delaware corporation with its principal place of business at 2650 Lou Menk Drive, Fort Worth, TX 76131-2830 (hereinafter referenced as "BNSF"), and THE LAND CONSERVANCY OF SEATTLE AND KING COUNTY, a non-profit tax-exempt corporation ~~entity~~ organized and existing under the laws of the State of Washington, with its principal place of business at 1150 19th Street, Seattle, WA 98112 (hereinafter referenced as "TLCSKC")

WHEREAS, TLCSKC desires to obtain and BNSF desires to transfer in a transaction that is part sale and part charitable donation (a "Bargain Sale"), on the terms and conditions set forth in this Agreement, BNSF's rail line and rail line corridor between Redmond (MP 7.30) to Issaquah, WA (MP 19 ~~3500~~) and certain other rights, right-of-way and assets as specified in this Agreement, and

NOW THEREFORE, in consideration of the mutual covenants of the parties set forth herein, TLCSKC and BNSF agree as follows

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1. Description of Assets and Business Transferred.

(a) BNSF shall convey by quit-claim deed to TLCSKC on the date of Closing, subject to the terms and conditions set forth in this Agreement and the terms, conditions, reservations and exceptions set forth in the approved form of deed (or multiple deeds, as needed to effect and record the conveyance) attached hereto as Exhibit "A", all of BNSF's right, title and interest, if any, in the real property, improvements thereon, and right-of-way of BNSF's rail line and rail line corridor between Milepost 7.30 near Redmond, Washington and MP 19.7~~500~~ near Issaquah, Washington, as shown in schematic Exhibit "B" attached hereto, (hereinafter "Rail Line"), and to be more particularly described in the final legal description to be provided thirty (30) days prior to Closing.

(b) BNSF reserves non-exclusive rights for underground utilities or pipelines (including without limitation rights for telecommunications easements) subject to the following provisions: (a) any person (which reference shall include any entity) exercising a right under this reservation shall indemnify and hold harmless (including from court costs and attorney's fees) TLCSKC and its assigns for personal injury or damage to property, related to such exercise and cause by such user(s) sole negligence, and (b) any right exercised under this reservation shall be compatible with, and not unduly burden, the use of the right-of-way for its intended purposes (including rail, trail, railbanking, and open space or park).

(c) BNSF shall convey to TLCSKC, on the date of Closing, the rail freight transportation business which BNSF conducts on the Rail Line, subject to the terms and

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conditions set forth in this Agreement, in the Quitclaim Deed, or in any agreement assigned by BNSF to TLCSKC in accordance with the terms of this Agreement

(d) BNSF shall convey to TLCSKC, on the date of Closing, by a Bill(s) of Sale in the form of Exhibit "C" attached hereto, all of BNSF's right, title and interest, if any, in structures and equipment currently present or routinely used in the ownership and operation of the Rail Line, including without limitation, all rail, ties, spikes, tie plates, rail anchors, bridges, culverts, signaling equipment, crossings, roundhouses, depots, and other supporting structures, ballast, track materials and supplies (excluding any vehicles, maintenance equipment on wheels, radios, computer equipment, or any crossing signals owned in whole or in part or purchased by a municipality or other such entity) From the Effective Date of this Agreement to the date of Closing, BNSF shall not remove any structures or equipment from the Rail Line, except in the performance of routine maintenance and repair of the line. This conveyance shall be subject to the terms and conditions set forth in this Agreement, including those set forth in Exhibit C, Bill of Sale, and the terms and conditions set forth in any agreement assigned by BNSF to TLCSKC in accordance with the terms of this Agreement

(e) BNSF shall assign to TLCSKC, on the date of Closing, subject to all terms and conditions set forth in this Agreement, or in any agreement assigned by BNSF to TLCSKC in accordance with the terms of this Agreement, all assignable rights, interest, authorizations and agreements pertaining to said Rail Line, and all obligations of BNSF to the extent that they are related to the Rail Line and are set forth in any agreement identified in Exhibit "D". Agreements to be Assigned to TLCSKC in Whole or in Part ("Assigned Agreements"), which is attached hereto. TLCSKC hereby accepts the assignment of all such rights and obligations, effective on

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the date of Closing, in accordance with their terms and the terms of this Agreement BNSF, and not TLCSKC, shall be responsible for performing all of BNSF's duties in assigned agreements which are required to be performed on or before the date of Closing. TLCSKC, and not BNSF, shall be responsible for performing all assigned duties in assigned agreements which are required to be performed after the date of Closing. BNSF reserves all rights set forth in any agreement identified in Exhibit D to the extent those rights are related to (i) BNSF's retained interests pursuant to this Agreement; or (ii) one or more other rail lines or property of BNSF not included in this transaction. If any contract is related to the Properties and inadvertently is not identified in Exhibit D, it is the intent of BNSF and TLCSKC that such contract be deemed to have been assigned by BNSF to TLCSKC, in whole or in part as appropriate, effective the date of Closing. BNSF promptly shall provide to TLCSKC a copy of such contract immediately upon locating it. Buyer shall make no claim against BNSF arising out of any failure to obtain a consent to assignment from any party to an agreement assigned by BNSF to TLCSKC, in whole or in part. It is the intent of both BNSF and TLCSKC that all assignments of rights and obligations related to the Properties shall be effective on the date of Closing.

(f) Inspection Promptly after the date of execution of this Agreement and up to Closing, BNSF shall upon reasonable notice (i) subject to TLCSKC signing BNSF's standard Right of Entry Agreement (the form of which has been approved by TLCSKC as of the Effective Date hereof and is attached hereto as Exhibit "E"), provide access to and cooperate with TLCSKC and its agents in the inspection of the premises, (ii) provide to TLCSKC copies of the current track profiles and valuation maps which may be in TLCSKC's possession and (iii) at BNSF's request, and TLCSKC's convenience, provide access to the Rail Line to TLCSKC and its

agents for the performance of a land survey or environmental investigations (at TLCSKC's sole cost) subject to TLCSKC and its contractor's signing BNSF's standard Right of Entry Agreement

(g) Title Insurance. At TLCSKC's option and expense, TLCSKC may seek to obtain a binding commitment for title insurance for the Rail Line. BNSF shall provide reasonable and necessary cooperation and administrative assistance (but not monetary or otherwise) to TLCSKC in any such efforts or in TLCSKC's attempts to cure title defects, where possible; provided, however, TLCSKC acknowledges that BNSF provides no guarantees of success in either obtaining title insurance or curing title defects

## 2. Terms of Transfer

(a) TLCSKC agrees to all of the following:

- (1) To accept all transferred real and personal property "AS IS, WHERE IS" and "with all faults".
- (2) To assume or arrange for the assumption of all common carrier obligations pertaining to said Rail Line as may be required by law.
- (3) To pay on or before the date of Closing the total sum of One Million Five Hundred Thousand Dollars (\$1,500,000) by wire transfer to either: (i) BNSF, or (ii) Apex Property & Burlington Exchange, Inc. ("APEX"), BNSF's intended assignee of BNSF's right to receive payment hereunder. The wire transfer by TLCSKC shall be made in accordance with written wire transfer instructions provided to TLCSKC by BNSF at least thirty (30) days prior to Closing. BNSF represents that APEX is a qualified intermediary within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and Treasury Regulation

e1.1031(k)-1(g). BNSF intends to assign to APEX BNSF's right to receive payment of the purchase price for the Rail Line, for the purpose of BNSF completing a tax-deferred exchange. A initial deposit on the total amount of \$10,000.00 (Ten Thousand Dollars) shall be wired within two working days of final execution of this Agreement by both parties

- (4) To cooperate with BNSF, with respect to any tax-deferred exchange or any other tax-related transaction (including, without limitation, any donation tax deductions resulting from this transfer) pertaining to the transfer of the Rail Line and to execute such documents as may be required to effect any tax-deferred exchange or other tax-related transaction
- (5) TLCSKC acknowledges that the fair market value of the Rail Line is \$41.7 million pursuant to an independent appraisal of the Rail Line is represented to be substantially higher than the consideration paid hereunder, and TLCSKC agrees to (a) provide to BNSF all documents and information necessary to allow BNSF to determine the value of the Rail Line as stated in the independent appraisal of the Rail Line set forth above, which TLCSKC acknowledges is not representative of the fair market value of the Rail Line. TLCSKC agrees to take all actions and execute all documents including, but not limited to, the Donee Acknowledgment section of Internal Revenue Service Form 8763, which are necessary to allow BNSF to take a tax deduction with regard to the donation (B Ugain Sale) described herein
- (6) To pay in addition to the sum of \$1,500,000.00 costs of Closing (except BNSF's costs of preparation of documents to be delivered at Closing). This includes but is



not limited to, any transaction fees, escrow and service fees, wire service fees, real estate transfer taxes, recording fees and sales taxes associated with this Agreement or any of the conveyances governed by this Agreement.

(b) This transaction and the consideration paid by TLCSKC is not divisible.

3. Governmental Approval.

(a) Promptly following execution of this Agreement, TLCSKC, at its sole expense, shall prepare and file such documents as may be required to secure approval, or exemption from approval, of this transaction by the Surface Transportation Board of the United States Department of Transportation ("STB"), and other governmental agencies, as appropriate. BNSF shall cooperate reasonably with TLCSKC to secure approval of this transaction by the STB and any other governmental agencies. TLCSKC shall make all reasonable efforts to obtain this approval or exemption in time for this transaction to close on or before May 1, 1997. TLCSKC shall permit BNSF to review and comment on prior to filing all documents proposed by TLCSKC to be filed with the STB, or any court, to secure legal approval or exemption of this transaction. In the event the STB refuses to grant or revoke authority for the transfer of the Rail Line, this transaction shall be rescinded, and any deposits paid by TLCSKC shall be refunded within a reasonable period of time after an administratively final decision denying or revoking authority for the transfer.

< Representations and Warranties.

(a) BNSF hereby represents and warrants to TLCSKC, and TLCSKC's successors and assignees, the following facts, as of the date of this Agreement and as of the date of Closing:

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- (1) BNSF is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware, and is qualified to do business as a foreign corporation in the State of Washington;
- (2) BNSF has the corporate power and authority to enter into this Agreement, to make the donation (Bargain Sale) described herein, and carry out its obligations under this Agreement;
- (3) The execution, delivery and performance of this Agreement have been duly authorized and approved by all necessary corporate actions of BNSF, and no further corporate proceedings of BNSF are required to complete the transactions covered by this Agreement;
- (4) There is no provision in the Certificate of Incorporation or By-Laws of BNSF which prohibits the execution of this Agreement or consummation of the transactions covered by this Agreement;
- (5) The negotiations related to this Agreement have been handled by BNSF on its own behalf without intervention of any agent or other person, so that no party has a valid claim on this basis for any finder's fee, brokerage commission, or other similar payment in connection with any of the transactions included in this Agreement;
- (6) TLCSKC has been provided with a copy of the complaints in Pickering v. Burlington Northern Railroad Company, Cause no. 97-2-03708-5SEA, and Patterson v. Burlington Northern Railroad Company, Cause No 96-2-31629-6SEA. Both cases were filed in the Superior Court of the

State of Washington in and for King County. Both are quiet title actions filed by landowners along the properties covered by this Agreement. Therein, it is claimed that BNSF has no right, title or interest in and to portions of the properties covered by this Agreement. In the Pickering case, operation of the line may not be possible if all relief sought is granted. The properties covered by this Agreement ~~may~~ have been attacked repeatedly by persons encroaching upon, or seeking to encroach upon, the right-of-way, and some recent sales have been progressed, and at least one ~~quiet~~ <sup>quiet</sup> title order has recently been entered, ~~it is anticipated that there may~~ <sup>without any intent to admit actual liability.</sup> be many other such cases filed, and that other, ~~such as tenants,~~ <sup>including</sup> may take the position that BNSF and/or TLCSKC do/does not own or control portions of the properties covered by this Agreementline.

Without any intent to suggest that such litigation has merit, the parties hereto acknowledge that

TLCSKC agrees that it will, promptly after execution of this Agreement, petition to intervene as a necessary party in the foregoing Superior Court cases, and in any other ~~such~~ actions that may affect the title to the properties covered by this Agreementline, and that it will cooperate with BNSF at TLCSKC's cost and expense, in the defense of title to the properties covered by this Agreement, with a view toward settling the claims through good faith negotiation of reasonable arrangements with plaintiffs or, if those efforts fail, litigating the cases and joining and supporting any motion by BNSF ultimately allowing BNSF to withdraw

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from the actions at or shortly after Closing BNSF shall provide reasonable assistance to TLCSKC (e.g. voluntary production of necessary witnesses and unprivileged documents) in the defense and/or joint defense of such actions.

TLCSKC agrees to and does hereby release BNSF from, and shall indemnify and hold BNSF harmless against and from, any claims for damages, costs, attorneys fees, or other claims made by adjoining or underlying landowners to the properties covered by this Agreement, provided, however, that 1) BNSF shall be solely responsible for any costs BNSF has already incurred in the defense of the referenced actions and for any future costs BNSF may incur for continued representation of BNSF in the referenced actions until such time as BNSF may be dismissed therefrom, 2) BNSF shall be responsible for any money damages awarded plaintiffs in the above or similar actions arising from facts occurring before the date of this Agreement, though BNSF denies that it is liable for any money damages, and 3) BNSF shall not be liable to TLCSKC or its successors for any defects in or deficiencies of title or the right to quiet enjoyment and possession of the properties herein, there being no warranty thereof by BNSF. ~~BNSF shall provide reasonable assistance to TLCSKC (e.g., voluntary production of necessary witnesses and unprivileged documents) in the defense and/or joint defense of such actions.~~

(b) TLCSKC hereby represents and warrants to BNSF, and BNSF's successors and assigns, the following facts as of the date of this Agreement and as of the date of Closing, except where specifically noted to be as of the date of Closing only:

- (1) TLCSKC is a non-profit organization, validly existing and in good standing under the laws of the State of Washington.
- (2) TLCSKC is a qualified donee pursuant to Section 501(c)(3) of the U.S Tax Code and any rules and regulations thereunder.
- (3) TLCSKC has all requisite authority to acquire BNSF's rights and properties which are conveyed to TLCSKC by this Agreement, to enter into this Agreement; to conduct or make arrangements to have conducted, rail freight transportation business on the Rail Line (as of the date of Closing only), and to perform all of TLCSKC's obligations under this Agreement,
- (4) The execution of this Agreement and consummation of the transactions which are a part of this Agreement have been duly authorized and approved by all necessary actions by TLCSKC.
- (5) There is no provision in the TLCSKC's corporate charter, by-laws (or other similar documents of incorporation), or laws of the State of Washington, which prohibits the execution of this Agreement or consummation of the transactions covered by this Agreement,
- (6) As of the date of Closing only, TLCSKC will have obtained all legal authority which is necessary to enable TLCSKC to conduct or make arrangements to have conducted rail freight transportation operations over

the Rail Line (as of the date of Closing only) and assumption (or arrangement of assumption by a third party) of all common carrier liability therefor,

- (7) The negotiations related to this Agreement have been handled by TLCSKC on its own behalf, without intervention of any agent or party, and in such manner as not to give rise to any valid claim by any party for any finder's fee, brokerage commission, or other similar payment in connection with any of the transactions included in this Agreement;
- (8) To the best of TLCSKC's knowledge, neither TLCSKC nor any of TLCSKC's financing sources, nor any of their partners, is a Class I railroad or affiliated with a Class I railroad

5 Inspection and Condition of Rail Line

(a) TLCSKC acknowledges that TLCSKC has inspected the Rail Line, including improvements and structures on the Rail Line. TLCSKC further acknowledges that no representation has been made by BNSF to TLCSKC concerning the state, condition or quality of title of the Rail Line, or the age of any improvements on the Rail Line.

(b) BNSF HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF THE RAIL LINE, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE RAIL LINE, THE CONFORMITY OF THE RAIL LINE TO ITS INTENDED USES, OR THE QUALITY OF TITLE TO THE RAIL LINE. BNSF SHALL NOT BE LIABLE TO TLCSKC FOR ANY

INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT) WITH RESPECT TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OF THE RAIL LINE, OR THE CONFORMITY OF THE RAIL LINE TO ITS INTENDED USES. TLCSKC ACCEPTS THE RAIL LINE IN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON BNSF'S RIGHTS, INTEREST, AND TITLE TO THE PROPERTY COMPRISING THE RAIL LINE.

6 Management, Operation and Maintenance of the Premises

TLCSKC assumes full and complete responsibility -- whether financial or otherwise -- for the management, operation and maintenance of the conveyed premises, and under no circumstances shall BNSF be required to manage, operate or maintain the conveyed premises after Closing. In no event shall this agreement be construed to create a joint enterprise for the use or operation of premises.

7. Indemnity of TLCSKC

TLCSKC will indemnify and hold BNSF harmless from any and all liability (including without limitation, strict liability regardless of BNSF's negligence), cost or expense, including attorneys' fees, arising from the actions or inactions of TLCSKC, its agents and invitees and any third party trespasser(s) after the date of Closing or as a result of this sale, including injuries, death, or property loss or damage. TLCSKC shall protect, hold harmless and indemnify BNSF against any claim or liability arising from or based on the violation of any law, ordinance, regulation, injunction, or final order or decree of bodies or tribunals having any jurisdiction or authority, which in any way affect the performance of this Agreement, whether by TLCSKC or its

employee, agents or subcontractors. Except as otherwise provided in Paragraph 9 below, TLCSKC assumes the risk that hazardous substances and contaminants may be present on the premises, and indemnifies, holds harmless, and hereby waives, releases and discharges BNSF from any and all present or future claims or demands, and any and all damages, loss, injury, claims or costs, including fines, penalties and judgments arising from or in any way related to the condition of the premises or the presence of any hazardous substances or contaminants in, or under the premises. TLCSKC shall be responsible for defense of any litigation contesting the right of the parties hereto to enter into or effectuate this Agreement.

TLCSKC agrees to reimburse pay BNSF for its reasonable and necessary out-of-pocket expenses, including reasonable attorneys' fees ~~in the event TLCSKC does not assume the defense~~ incurred by BNSF in connection with litigation arising out of the transfer or use of the premises covered by this Agreement, ~~and~~ <sup>In the event that</sup>

~~TLCSKC does not~~ actively defend against such claims on its own behalf and/or in joint defense with BNSF, TLCSKC warrants to BNSF that TLCSKC (or its operator, contractor,

agent, or assignee or other party in possession, custody, or control of the Rail Line in lieu of TLCSKC) shall, at its own expense, obtain and maintain in force during rail operations and/or interim trail use Commercial General Liability Insurance for all claims arising out of bodily injury, illness and death and from damages to or destruction of property of others, including loss or use thereof and including liability of BNSF (excepting any liability of BNSF resulting from use of its retained interests pursuant to paragraph 1(b) herein) with minimum limits for bodily injury and property damage of \$1,000,000 per occurrence, with an aggregate of \$5,000,000. In the event TLCSKC assigns this Agreement to a political subdivision, a Certificate of Self Insurance up to



said amounts for the same or similar coverage shall be sufficient for said assignee. Evidence of insurance (or self insurance, as the case may be) shall be provided to BNSF prior to Closing.

8 BNSF's Indemnity

Subject to the provisions of Section 9 pertaining expressly to environmental liability, BNSF will indemnify and hold TLCSKC harmless from any and all liability, cost or expense, including attorneys' fees, incurred by or assessed against TLCSKC arising before the date of closing on account of injuries, death, or property loss or damage resulting from BNSF's willful or negligent acts or omissions in connection with BNSF's use, operation or maintenance of the premises.

9 Environmental Liability

TLCSKC shall have a continuing right of entry to inspect the premises prior to Closing, pursuant to Section 1-(f) hereof, including the right to take soil tests and surveys. TLCSKC shall provide BNSF with copies of all environmental surveys, tests, or reports undertaken by or on behalf of TLCSKC or on which TLCSKC relies. Prior to Closing should TLCSKC, upon inspection ascertain the presence of any Hazardous Substance in violation of any Environmental Law, TLCSKC or BNSF in their respective discretion may decline to go to Closing. In that case, BNSF shall return any deposits made up to that date. Should TLCSKC (or its assignee) proceed with Closing, TLCSKC -(or its assignee) shall be responsible for all post-Closing environmental conditions and any pre-existing conditions that are made known to TLCSKC or that should be discoverable upon conducting a competent Phase I survey. BNSF shall be responsible for latent pre-existing conditions that (i) could not have reasonably been discovered upon conducting a

competent Phase I survey prior to Closing, or (ii) were the result of intentional releases known to BNSF and not disclosed to TLCSKC prior to Closing.

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 Substance Control Act, and any similar or comparable state or local law.

The term "Hazardous Substance" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated.

10. Salvage Conditions

In the event salvage is conducted upon approval of governmental authorities, TLCSKC or its contractor shall ensure the following conditions are satisfied:

- (a) TLCSKC (or its agent) shall, at its own expense, obtain all necessary permits and licenses and shall comply in all respects with any and all federal, state, and local ordinances, laws, or regulations applicable to salvage or track materials obtained pursuant to this Agreement.
- (b) TLCSKC shall keep open and in safe condition all public or private highways, highway crossings, and highway approaches that may be affected by its operations hereunder, unless permission to the contrary is given by proper public or private authority, as the case may be.
- (c) Whenever, upon proper authority having been obtained, highways, highway crossings, or highway approaches are temporarily closed, disturbed, or detours established, TLCSKC, at its own expense, shall erect and maintain suitable barriers, warning signs, and lights for the protection of the public and interested owners of private property affected.
- (d) At the completion of work, public and private highways, highway crossings, and highway approaches that have been disturbed by TLCSKC's operations shall be restored by and at the expense of TLCSKC to a condition satisfactory to any interested public authority.

- (e) TLCSKC IS PLACED ON NOTICE THAT FIBER OPTIC, COMMUNICATIONS, CONTROL SYSTEMS, AND OTHER TYPES OF CABLES MAY BE BURIED ON THE PROPERTIES. Before beginning work, TLCSKC shall telephone BNSF's Communications Network Control Center 1-800-533-2891 (a 24 hour number) to determine if cable systems are buried on the property. The Communication Network Control Center will contact the appropriate personnel to have cables located and make arrangements with TLCSKC for protective measures that must be adhered to prior to the commencement of any work on the property. In addition to the liability terms elsewhere in this Agreement, TLCSKC shall indemnify and hold BNSF harmless against and from all costs, liability and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of TLCSKC, its subcontractors, agents and/or employees, that cause or in any way or decree contribute to (1) any damage to or destruction of any telecommunications system by TLCSKC, and/or its subcontractors, agents and/or employees, on the property (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on the properties, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of, such telecommunication company(ies)

11 Maintenance Through the Closing Date, BNSF agrees to be responsible for the operation maintenance and repair of the Rail Line (and associated structures and equipment)

12 Obligations are Continuing

The representations, warranties and obligations of TLCSKC and BNSF in this Agreement are continuing and survive the Closing. Terms of continuing obligations in this Agreement are subject to amendment only by a written contract signed by both TLCSKC and BNSF, or their respective successors or assigns

13 Closing

At Closing, BNSF shall deliver to TLCSKC the following documents

- (a) A sufficient number of original counterparts of an executed Quitclaim Deed to the Rail Line, in exact form as the Quitclaim Deed attached hereto as

Exhibit A, to enable TLCSKC to file an original Quitclaim Deed in each county in which the real property comprising the Rail Line is located;

- (2) An executed Bill of Sale in exact form as the Bill of Sale attached hereto as Exhibit B;
- (3) All other documents and agreements required from BNSF under this Agreement.

(b) At Closing, TLCSKC shall deliver to BNSF or APEX (if so directed by BNSF) the balance of any sums due hereunder pursuant to Paragraph 2 of this Agreement.

14. Proration

Real estate taxes, prepaid rentals, utilities, and other income or fees attributable to the Rail Line interests transferred to TLCSKC under the terms of this Agreement, shall be prorated between BNSF and TLCSKC in such manner as to allocate to BNSF all income, taxes and expenses attributable on or prior to the date of Closing, and to allocate to TLCSKC all income, taxes and expenses attributable after the date of Closing. The sum paid by TLCSKC to BNSF or Apex at Closing shall not be adjusted based on this proration, but payment settling in full all prorated items shall be made no later than 60 days following the date of Closing.

15. Interchange

TLCSKC and BNSF shall designate a location at which they may interchange rail freight cars and equipment upon transfer of operations and shall reach mutual agreement upon the essential terms and conditions of such potential interchange.

16 Transfer of Operations

All rail operations on the Rail Line shall be transferred from BNSF to TLCSKC (or its contractor or agent as the case may be) at 12:01 a.m. on the day following the date of Closing subject to the terms of this Agreement.

17 Rail Line Operations

From the effective date hereof through and including the Closing Date, BNSF shall be responsible for: (a) all common carrier rail operations, including car supply, on the Rail Line; (b) any freight loss and damage claims attributable to rail operations over the Rail Line; and (c) all car hire and car mileage allowance payments relating to rail operations over the Rail Line.

18 Governing Law and Dispute Resolution

This agreement shall be governed by the laws of the State of Washington. In the event any dispute between TLCSKC (or its assigns) and BNSF (or its assigns) arises out of or relates to the construction of and/or performance under this Agreement, the dispute shall be resolved by binding arbitration pursuant to the Commercial Rules of Arbitration, as amended from time to time, of the American Arbitration Association

19 Effect of Waiver

Any waiver by either TLCSKC or BNSF or failure of either TLCSKC or BNSF to insist upon full and complete performance by BNSF or TLCSKC of its obligations set forth in this Agreement shall not constitute a waiver or release of such party's right to insist upon full and complete performance of any other obligations in this Agreement, or a waiver or release of such party's right to insist upon full and complete performance of the obligations that were waived or not enforced for periods prior to, or following, the waiver or failure to insist upon full and



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the subject matter hereof are merged herein. The headings and titles to provisions in this Agreement are for convenience only, and shall not be deemed to modify or affect the rights or duties of TLCSKC or BNSF. All rights and obligations of TLCSKC and BNSF set forth in this Agreement, or in any Exhibit attached hereto, are integral parts of this Agreement.

22. Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns and successors in interest of the respective parties hereto.

23. Recording. The parties agree to execute all documents necessary for the recording of the entry by the parties into this Agreement or for the Closing of this transaction.

24. Cooperation. BNSF and TLCSKC shall cooperate to complete the requirements and Closing of this Agreement. Each party shall bear its respective costs for staff, consultants and attorneys utilized to enter into and complete the requirements of this Agreement.

25. Liens of Seller's Mortgages

BNSF shall deliver to TLCSKC who shall place of record, good and sufficient releases of the liens of BNSF's mortgages, where required under the terms of any mortgage on the premises, within a reasonable period of time after Closing. In the event the BNSF shall be unable to obtain said releases for any reason within two (2) years from the date of the Closing, the BNSF shall have the right to terminate this agreement upon serving written notice of termination upon TLCSKC within thirty (30) days thereafter, and both parties shall thereupon be released and discharged from all liabilities and obligations hereunder, except that BNSF shall repay to TLCSKC any sums paid hereunder upon a reconveyance of title to the premises to BNSF free and clear of defects or obligations to the same extent as if no conveyance had been made to TLCSKC hereunder.

26. Effective Date. The effective date of this Agreement shall be the \_\_\_\_\_ day of \_\_\_\_\_, 1997 ("Effective Date").

IN WITNESS WHEREOF, authorized representatives of the parties have executed this agreement as of the Effective Date.

THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY

By \_\_\_\_\_

Title: Senior Vice President and Chief of Staff

THE LAND CONSERVANCY OF SEATTLE  
AND KING COUNTY

By \_\_\_\_\_

Title: President