



**AM No. 10-139**

MEMO TO: City Council  
FROM: John Marchione, Mayor  
DATE: June 15, 2010  
SUBJECT: **AUTHORIZE PURCHASE OF BNSF RAIL CORRIDOR**

**I. RECOMMENDED ACTION:**

Authorize the Mayor to sign a Purchase and Sale Agreement, substantially like the one provided in Attachment A, with the Port of Seattle for the BNSF Corridor.

**II. DEPARTMENT CONTACTS:**

Craig Larsen, Park and Recreation Director	425-556-2310
Carolyn Hope, Senior Park Planner	425-556-2313

**III. DESCRIPTION:**

Background

In November 2009, the City signed a Memorandum of Understanding (MOU) regarding the City's intent to purchase the section of the BNSF Corridor that runs through Redmond from the Port of Seattle. The MOU also commits the City to providing easement agreements to other partners within the Corridor including Sound Transit, Puget Sound Energy, King County, and Cascade Water Alliance.

Summary of Purchase and Sale Agreement

The purchase and sale agreement outlines the legal description of the property, the price, and the terms of the sale. Per the April 27, 2010, study session, staff is working with the other BNSF Eastside Corridor Partners on easement agreements, which we plan to sign after the sale. Staff can update Council on those agreements as they further develop.

The City of Redmond is planning to acquire a portion of the former BNSF Railroad corridor referred to as the "City Portion of the Redmond Spur". This section of the corridor is 3.89 miles long and runs from milepost (MP) 7.3, at the end of King County's East Lake Sammamish Trail, just west SR 520 and Bear Creek, to NE 124<sup>th</sup> Street, just north of the City boundary.

The City has agreed to pay \$10M plus half of the escrow costs. This funding is set aside in the Parks and Recreation Department approved Capital Improvement Budget for 2010.

Rationale for Purchase

The City has been planning for this acquisition for over 10 years. This property will allow the City to meet many Comprehensive Plan goals from implementation to capital project to spurring economic development in Downtown.

This purchase will allow the City to control the uses within this corridor more effectively, beginning with the 161<sup>st</sup> Street NE Extension project, which is underway, and the Downtown Stormwater Trunk Line that will be constructed in 2011. The City is currently seeking funding to implement other projects in the vicinity such as the 164<sup>th</sup> Street Extension, the development of a regional trail through downtown, and returning Cleveland Street and Redmond Way to two-way operation. The City is also planning to seek transportation enhancement funding for the Downtown trail development, which requires the City to own the property by July 15, 2010, the submittal date for the grant application.

**IV. IMPACT:**

The financial impact of approving the contract is \$10,000,000 and half of escrow costs. This funding is including in the current Park and Recreation Department CIP.

**V. ALTERNATIVES:**

City Council could choose not to approve the contract, which would delay or disregard the MOU signed last November with our partners. This would also potentially limit our future planned uses of the corridor and potential grant funding for those projects.

**VI. TIME CONSTRAINTS:**

The following schedule shows important milestones that are planned in the next two months that relate directly to the closing of this transaction.

<b>Task/Event</b>	<b>Date</b>	<b>Lead Party</b>
First Reading & Public Hearing on Intent of Port to Surplus Redmond BNSF property	6/8/2010	Port of Seattle Commission
Council Action Requested to Authorize Mayor to Sign Sale Agreement	6/15/2010	City of Redmond
Second Reading & Public Hearing on Intent of Port to Surplus Redmond BNSF property	6/22/2010	Port of Seattle Commission
Port Commission Authorizes CEO to Sign Sale Agreement	6/22/2010	Port of Seattle Commission
Sign Sale Agreement	6/22/2010	Redmond and Port
Submit Transportation Enhancement Grant Application	7/15/2010	City of Redmond
Work on Easement Agreements with Partners	July – Sept 2010	City of Redmond

**VII. LIST OF ATTACHMENTS:**

A. Purchase and Sale Agreement

/s/  
\_\_\_\_\_  
Craig Larsen, Director of Parks and Recreation

06/03/2010  
Date

Approved for Council Agenda /s/  
\_\_\_\_\_  
John Marchione, Mayor

06/04/2010  
Date

ATTACHMENT A

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (“Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ (“Effective Date”) by and between the Port of Seattle, a municipal corporation of the State of Washington (“Port”) and the City of Redmond, a municipal corporation of the State of Washington (“Redmond”).

RECITALS

A. The Port is the owner of real property located at \_\_\_\_\_, King County, Washington, commonly known as the City Segment of the Woodinville Subdivision (“the Property”), and legally described on Exhibit A attached hereto and incorporated herein by this reference.

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

C. Consistent with the MOU, Redmond desires to acquire the Property from the Port for future trail, utility and transportation uses.

D. Consistent with the MOU, Sound Transit desires to acquire a property interest in the Property.

E. Subsequent to the closing of the transaction contemplated in this Agreement, Sound Transit, King County, Cascade Water District, and Puget Sound Energy intend to complete the purchase from the Port of other property interests in the Woodinville Subdivision (the “Regional Transaction”).

F. Redmond and the Port are entering into this Agreement pursuant to the authority granted in Chapter 39.33 Revised Code of Washington, (Intergovernmental Disposition of Property Act) which permits a political subdivision of the State of Washington to sell real property to the state or any municipality or any political subdivision thereof on such terms and conditions as may be mutually agreed upon by the proper authority of the state and/or the subdivisions concerned.

G. Redmond and the Port have agreed upon the terms and conditions under which the Port will sell the Property to Redmond, all as set forth herein.

H. This Agreement was approved by the Redmond City Council on \_\_\_\_\_, 20\_\_\_\_ and by the Port Commission of the Port of Seattle on \_\_\_\_\_, 20\_\_\_\_.

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

### **AGREEMENT**

1. The Property. The Port agrees to sell to Redmond, and Redmond agrees to purchase from the Port, the Property. The Property includes the tracts or parcels of land situated in the City of Redmond, County of King, State of Washington, described in Exhibit A attached hereto ("the Land") that make up the segment of the Redmond Spur of the Woodinville Subdivision that lies between mileposts 3.2 and 7.3, together with all of the Port's right, title and interest in and to the buildings (if any) located on the Land ("the Buildings"), all of the Port's right, title, and interest in any tangible personal property and fixtures of any kind owned by the Port and attached to or used exclusively in connection with the ownership, maintenance or operation of the Land or the Buildings, if any ("the Personalty"); and all of the Port's right, title and interest in and to all third party leases, licenses and contracts associated with the Property as of the date of Closing.

2. Purchase Price. Redmond shall pay to the Port a total purchase price of Ten Million Dollars (\$10,000,000.00) for the Property ("Purchase Price").

3. Title.  
The Property shall be conveyed with no warranties of title and shall be subject to all matters affecting the Property, whether of record or not, including but not limited to (i) matters which would be disclosed by a current, accurate survey of the Property; and (ii) the rights granted to third parties pursuant to any third party lease, license, permit, occupancy agreement or other agreement demising space in or providing for the use or occupancy of the Property ("Third Party Leases, Licenses and Contracts"). Redmond acknowledges and affirms that the Port may not hold fee simple title to the Property, that the Port's interest in all or part of the Property, if any, may rise only to the level of an easement for railroad purposes. Redmond is willing to accept the Property on this basis. The Port does represent and warrant that the Property is railbanked pursuant to 16 U.S.C. 1247(d), and that this status permits the Port to convey the Property as contemplated in this Agreement.

4. Condition of the Property and Environmental Release/Indemnification.

4.1 Redmond 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 Closing Date. Redmond waives, releases and discharges forever the Port from any and all present or future claims or demands and any and all damages, losses, injuries, liabilities, causes of action (including without limitation, causes of action in tort), costs and expenses (including without limitation fines, penalties and judgments and attorneys fees) of any and every kind or character, known or unknown (collectively "Losses") that Redmond 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 transfer. Redmond further agrees to indemnify and defend the Port against any and all Losses that the Port sustains as a result of claims by third parties, including but not limited to BNSF and federal, state and local regulatory agencies, for damages or remediation costs related to environmental conditions in, at, on, under or originating from the Property. Nothing in this Agreement shall be construed to waive or discharge any rights or claims Redmond may hold under the Environmental Laws, agreements or deeds to seek indemnity or contribution from BNSF or other parties other than the Port for Losses arising from or in any way related to environmental conditions on the Property. The term "Environmental Law" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Model Toxics Control Act, the Water Pollution Control Act, laws concerning above ground or underground storage tanks, and any similar or comparable state or local law. The term "Hazardous Substance" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

Survival. The provisions of this Paragraph 4.1 shall survive the Closing of the transaction contemplated herein and the delivery of the Deed.

4.2 Except as provided in Paragraphs 3 and 7, **REDMOND IS NOT RELYING ON, AND HEREBY WAIVES ANY 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; wetlands; the condition or existence of any of the above ground or underground structures or improvements, including 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.

4.3 Redmond represents and warrants to the Port that except for the Port's express representations, warranties and obligations under this Agreement, Redmond 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 given, directly or indirectly, orally or in writing.

4.4 Redmond and the Port acknowledge that the Port's willingness to convey the Property reflects that the Property is being conveyed subject to the provisions of this Paragraph 4.

5. Closing Conditions.

5.1 Redmond's obligation to purchase the Property shall be subject to the following conditions that must be satisfied as of Closing or such earlier date as specified below:

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

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

If the conditions set forth in this Paragraph 5.1 are not satisfied as of Closing and Redmond does not waive the same, Redmond may terminate this Agreement by giving written notice to the Port and thereafter neither party shall have any further liability to the other under this Agreement.

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

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

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

If the conditions set forth in this Paragraph 5.2 are not satisfied as of Closing and the Port does not waive the same, the Port may terminate this Agreement by giving written notice to Redmond, and thereafter neither party shall have any further liability to the other under this Agreement.

6. Post – Closing Obligations.

6.1 No later than three (3) days before the closing date of the Regional Transaction described in Recital E above, or any other transaction in which Sound Transit shall pay consideration for the acquisition of real property interests in the Woodinville Subdivision, Redmond shall deliver to the escrow agent a fully executed non-exclusive permanent easement over the Property (“the Transportation Easement”), in favor of Sound Transit, for public transportation uses including the construction and operation of a high capacity transit system in and through downtown Redmond. The easement shall enable Sound Transit to occupy portions of the Property as needed to construct, maintain and operate transit facilities throughout the City Segment, consistent with preservation of the corridor for future railroad use as required by 16 U.S.C. 1247(d), and consistent with other authorized uses of the Property by Redmond, King County, Puget Sound Energy and other interest holders. The Port shall provide Redmond with sixty (60) days notice, unless otherwise agreed to by the Port and Redmond, of the date by which Redmond is to provide the executed Transportation Easement to the escrow agent for the Regional Transaction or other applicable transaction. Sound Transit is an intended third-party beneficiary of the requirements of this Paragraph 6.1 and may independently enforce the provisions of this paragraph to require the conveyance contemplated herein.

6.2 Exhibit B to this Agreement describes a June 7, 2010 letter received by the Port and Redmond, in which a Seattle attorney announces the possibility that he may bring legal proceedings on behalf of unnamed clients to seek rescission of the Port’s acquisition of the Eastside Rail Corridor, including the Property. If, at any time subsequent to Closing, a final judicial decree nullifies Redmond’s acquisition of the Property, (1) such action shall not be a breach of the Covenants, Representations and Warranties of either the Port or Redmond, and (2) upon ten days’ written notice from Redmond, which notice may be served on the Port only after the Port receives the purchase price paid to BNSF for the Eastside Corridor, the Port shall deliver to Redmond the full amount of the Purchase Price.

6.3 The provisions of this Paragraph 6 shall survive Closing.

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

7.1 From the date of this Agreement to the Date of Closing, the Port will notify Redmond of each event of which the Port becomes aware that affects the Property or any part thereof, promptly upon learning of the occurrence of such event.

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

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

7.4 Except as provided in Exhibit B, there is no litigation pending against the Port that pertains to the Property or the Port's ownership thereof.

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

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

8. Covenants, Representations and Warranties of Redmond. Redmond covenants and agrees as follows:

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

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

8.3 Except as provided in Exhibit B, there is no litigation pending against Redmond which could prevent or impair Redmond's obligations hereunder.

9. Closing.

9.1 Time and Place. The closing of this sale (“Closing”) shall take place at the offices of Chicago Title, located at 705 5<sup>th</sup> Avenue, Suite 2300, Seattle, Washington, escrow agent for the closing of this transaction (“Escrow Agent”), on June 30, 2010 (“Date of Closing”).<sup>1</sup>

9.2 Port Obligations. At or before Closing, the Port shall deliver to Escrow Agent, for delivery to Redmond, the following documents, all of which shall be duly executed and witnessed and/or notarized as necessary:

9.2.1 Quit Claim Deed. A Quit Claim Deed in substantially the form attached hereto as Exhibit C (“Deed”);

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

9.2.3 Assignment of Third Party Leases. An assignment to Redmond, in the form attached hereto as Exhibit D, of all of the Port’s right, title and interest in and to the Third Party Leases, Licenses or Contracts that pertain to the Property and that are listed in Schedule 1 hereto, and any other Third Party Leases, Licenses or Contracts that pertain to the Property;

9.2.4 Bill of Sale. A Bill of Sale in substantially the form attached hereto as Exhibit E and

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

9.3 Redmond’s Obligations. At or before Closing, Redmond shall deliver to Escrow Agent, for delivery to the Port, the following, and all required documents shall be duly executed and witnessed and/or notarized as necessary:

9.3.1 Purchase Price. The Purchase Price;

9.3.2 Excise Tax Affidavit. An appropriate excise tax affidavit, signed and notarized by the responsible and authorized officials of Redmond; and

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

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<sup>1</sup> Closing before July 15 is a material element of the transaction for Redmond. Given that there are no contingencies and no title insurance involved, extensions of the Closing Date are not necessary.

9.4 Proration. All taxes, assessments, interest and other expenses associated with the Property, shall be prorated as of Closing.

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

9.6 Third Party Lease Payments. The Port shall be entitled to all sums due from any Third Party Leases, Licenses or Contracts (collectively "Third Party Rents") owing for the month in which the Closing occurs (regardless of when the Third Party Rents are paid) for the portion of the Property to which such Third Party Leases, Licenses or Contracts relate. The Port shall not receive a credit for any such Third Party Rents that are due but unpaid as of the Closing Date but Redmond shall remit to the Port any such Third Party Rents received by it after such Closing. Redmond shall be entitled to any Third Party Rents owing for time periods after the month in which the Closing occurs (regardless of when the Third Party Rents are paid) for the portion of the Property to which such Third Party Leases, Licenses or Contracts relate and the Port shall pay to Redmond any such Third Party Rents received by the Port, if any. Within 90 days after Closing the Port shall pay to Redmond the amount, if any, of all rents under the Leases and all security deposits held by the Port under the Leases.

10. Possession. Redmond shall be entitled to possession of the Property immediately following Closing.

11. Indemnification.

11.1 By Port. Subject to and without in any way limiting the provisions of Paragraph 4 of this Agreement, the Port shall pay, protect, pay the defense costs of, indemnify and hold Redmond and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of (a) the breach of any representation, warranty or agreement of the Port set forth in this Agreement; (b) the failure of the Port to perform any obligation required by this Agreement to be performed by the Port; (c) liabilities arising out of the ownership, maintenance and/or operation of the Property by the Port prior to Closing; or (d) any injuries to persons or property from any cause occasioned in whole or in part by any acts or omissions of the Port, its agents or employees, that occurred prior to Closing.

11.2 By Redmond. Subject to and without in any way limiting the provisions of Paragraph 4 of this Agreement, Redmond shall pay, protect, pay the defense costs of, indemnify and hold the Port and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of (a) the breach of any representation, warranty or agreement of Redmond set forth in this Agreement; (b) failure of Redmond to perform any obligation required by this Agreement to be performed by Redmond; (c) liabilities arising out of the ownership, maintenance and/or operation of the Property by

Redmond after Closing; or (d) any injuries to persons or property from any cause occasioned in whole or in part by any acts or omissions of Redmond, its agents or employees, that occurred after Closing.

12. Default.

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

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

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

To the Port:

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

To Redmond:

Property Manager  
City of Redmond  
MS-4NPW  
Public Works Department  
P.O. Box 97010  
Redmond, WA 97010  
425 556-2715

14. Miscellaneous:

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

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

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

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

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

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

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

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

14.9 Brokers. Neither party has 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 based on the purchase and sale contemplated by this Agreement.

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

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

14.12 Construction. Captions are solely for the convenience of the parties and are not a part of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it.

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

14.14 Survival. The covenants and indemnifications made in this Agreement shall survive the Closing unimpaired and shall not merge into the Deed and the recordation thereof. The representations and warranties made in this Agreement shall not merge into the Deed but shall survive the Closing unimpaired for a period one (1) year after the Closing.

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

**CITY OF REDMOND:**

**PORT OF SEATTLE:**

By \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE LAND**

**That portion of a strip of land, varying in width on each side of the centerline of the originally located and constructed Main Track centerline of the Redmond Spur, BNSF Railway Company's (formerly Northern Pacific Railway Company) Woodinville to Kenndale, Washington Branch Line, according to Quit Claim Deed recorded under King County Recording Number 20091218001537, more particularly described as follows:**

**COMMENCING** at the Northeast corner of the Southwest Quarter of Section 27, Township 26 North, Range 5 East, W.M., thence Westerly along the North line of said Southwest Quarter to its intersection with the centerline of the originally located and constructed Main Track centerline of the Redmond Spur, BNSF Railway Company's (formerly Northern Pacific Railway Company) Woodinville to Kenndale, Washington Branch Line;

Thence Southerly along said centerline to its intersection with the South margin of Northeast 124<sup>th</sup> Street, extended Westerly, and the **POINT OF BEGINNING**;

A strip of land, 100.0 feet in width, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the South 1/2 of Section 27, Township 26 North, Range 5 East, W.M., bounded on the North by the South margin of Northeast 124<sup>th</sup> Street extended and on the South by the South line of said South 1/2, the sidelines thereof to be lengthened or shortened as necessary to commence at the South margin of Northeast 124<sup>th</sup> Street extended and terminate on the South line of the Southwest Quarter of said Section 27;

Together with a strip of land, 50.0 feet in width, being 25.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the West 1/2 of the Northeast Quarter of Section 34, Township 26 North, Range 5 East, W.M., bounded on the North by the North line of said West 1/2, and on the South by the South line of said West 1/2, the sidelines thereof to be lengthened or shortened as necessary to commence and terminate on the North and South lines of said West 1/2, Northeast Quarter, Section 34;

Together with a strip of land, 50.0 feet in width, being immediately adjacent to and Westerly of said Main Track 50.0 foot right-of-way in the West 1/2 of the Northeast Quarter of Section 34, Township 26 North, Range 5 East, W.M., bounded on the North by the North line of said West 1/2, and on the South by a line perpendicular to said Main Track centerline at a point 1400 feet Southerly of the North line of said West 1/2, Northeast Quarter, Section 34;

Together with a strip of land, 100.0 feet in width, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the West 1/2 of the Southeast Quarter of Section 34, Township 26 North, Range 5 East, W.M., the Northeast Quarter of Section 3, the Southwest Quarter of the Southwest Quarter of the Northwest Quarter, the Southwest Quarter, and the Southwest Quarter of the Southwest Quarter of the Southeast Quarter, Section 2, all in Township 25 North, Range 5 East, W.M., bounded on the North by the North line of said West 1/2, Southeast Quarter, Section 34 and on the South by the South line of said Section 2, **Excepting Therefrom**, the Easterly 25.0 feet of said 100.0 foot wide Redmond Spur right-of-way, upon, over and across the West 1/2, Southeast Quarter, Section 34, Township 26 North, Range 5 East, W.M., and the North 1/2, Northeast Quarter, Section 3, Township 25 North, Range 5

East, W.M., lying between two lines drawn parallel and concentric with and distant, respectively, 25.0 and 50.0 feet Easterly, as measured at right angles and radially from said Main Track centerline, bounded on the North by the North line of said West 1/2, Southeast Quarter, Section 34, Township 26 North, Range 5 East, W.M., and bounded on the Southeast by a line drawn parallel with and 40.0 feet Northwesterly, as measured at right angles from the centerline of Northeast 98th Court, as located and constructed upon, over and across said North 1/2, Northeast Quarter, Section 3, Township 25 North, Range 5 East, W.M.;

Together with a strip of land, 100.0 feet in width, being 75.0 feet Northerly of and 25.0 feet Southerly of said Main Track centerline, as originally located and constructed, upon, over and across the North 1/2, Northeast Quarter and the Northeast Quarter of the Northwest Quarter, Section 11, and the West 1/2, Northwest Quarter of Section 12, all in Township 25 North, Range 5 East, W.M., bounded on the North by the North line of said Section 11 and on the East by the East line of said West 1/2, Northwest Quarter, Section 12, Excepting Therefrom, that portion of said 100.0 foot wide Redmond Spur right-of-way in the Northeast Quarter of the Northeast Quarter of said Section 11, lying between two lines parallel with and distant, respectively 25.0 feet and 75.0 feet Northerly, as measured at right angles from said Main Track centerline, as located and constructed, bounded on the East by the Southerly extension of the Westerly line of Leary Street, according to the Plat of Redmond recorded in Volume 7 of Plats at Page 74, records of King County, Washington, and bounded on the West by a line parallel with and distant 110.0 feet Westerly, as measured at right angles from said Southerly extension of the Westerly line of Leary Street, Also Excepting Therefrom, that portion of said 100.0 foot wide Redmond Spur right-of-way in the Northeast Quarter of the Northeast Quarter of said Section 11, lying between two lines parallel with and distant, respectively 25.0 feet and 75.0 feet Northeasterly, as measured at right angles from said Main Track centerline, as located and constructed, the most Northerly parallel line being also the Southwesterly lines of Block 1 and 2 of said Plat of Redmond, bounded on the Northwest by the Southwesterly extension of the Easterly line of Leary Street, according to said Plat, and bounded on the Southeast by a line perpendicular to said Main Track centerline that extends Northeasterly to the intersection of a line parallel with and distant 75.0 feet Northeasterly, as measured at right angles from said Main Track centerline with the East line of the Northeast Quarter of the Northeast Quarter of said Section 11;

Together with a 25.0 foot strip of land lying immediately adjacent to and Southerly of said Redmond Spur 100.0 foot wide right-of-way in the Northwest Quarter of the Northeast Quarter of Section 11, Township 25 North, Range 5 East, W.M., lying Northwesterly of a line perpendicular to said Main Track centerline at a point 855 feet Southeasterly of the North line of said Section 11, as measured along said Main Track centerline, as originally located and constructed;

Together with a strip of land, 100.0 feet in width, being each side of said Main Track centerline as originally located and constructed, upon, over and across the Southeast Quarter of the Northwest Quarter of Section 12, Township 25 North, Range 5 East, W.M., bounded on the West and East by the West and East lines of said Southeast Quarter, Northwest Quarter, Section 12, terminating on the East line thereof at Milepost 7.3, **Excepting Therefrom** that portion of said 100.0 foot wide Redmond Spur right-of-way in the Southeast Quarter, of the Northwest Quarter of said Section 12, described as follows: Beginning at the intersection of the West line of said Southeast Quarter, Northwest Quarter, Section 12 with the Southerly line of said 100.0 foot wide right-of-way; Thence North  $01^{\circ}10'44''$  East, along said West line, 26.55 feet to a point 25 feet Southwesterly of, as measured at right angles from said Main Track centerline; Thence South  $69^{\circ}07'30''$  East, parallel with said Main Track centerline, 639.91 feet to the Southerly extension of the Westerly right-of-way line of 170th Avenue Northeast, said right-of-way being 70 feet in width; Thence South  $23^{\circ}37'30''$  West, along the Southerly extension of the Westerly right-of-way line of 170th Avenue Northeast, 25.03 feet to the Southerly right-of-way line of said 100.0 foot wide right-of-way; Thence North  $69^{\circ}07'30''$  West, along the Southerly right-of-way line of said 100.0 foot wide right-of-way, 692.76 feet to the Point of Beginning.

**6/9/10 Port rev.  
DRAFT**

**ATTACHMENT A**

**EXHIBIT B**

**PENDING AND THREATENED LITIGATION**

By letter of June 7, 2010, attorney David F. Jurca of the law firm Helsell Fetterman advised the Port and the City of his intent to bring legal proceedings on behalf of unnamed clients against the Port and the City, “challenging the legality of the Port’s purchase of the Eastside Rail Corridor and possibly seeking rescission of the purchase transaction and recovery of the amounts paid by the Port.” Neither the Port nor the City was served with notice of the filing of any such litigation prior to the Date of Closing.

**EXHIBIT C**  
**FORM OF DEED**

**RETURN ADDRESS:**

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**GRANTOR:** **QUIT CLAIM DEED**  
**PORT OF SEATTLE**  
a municipal corporation of the State of Washington

**GRANTEE:** **CITY OF REDMOND**  
a municipal corporation of the State of Washington

**ABBREVIATED LEGAL DESCRIPTION:**  
Full legal description on Exhibit A

**ASSESSOR'S TAX PARCEL NO.:**

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

IN WITNESS WHEREOF, Grantor and Grantee have executed this Deed as of the \_\_\_\_ day of \_\_\_\_\_, 2010

CITY OF REDMOND

By \_\_\_\_\_  
Its \_\_\_\_\_

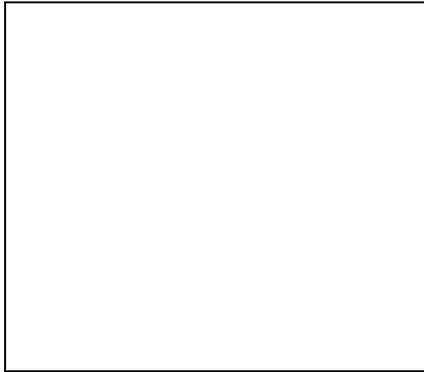
PORT OF SEATTLE

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

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 \_\_\_\_\_ 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)

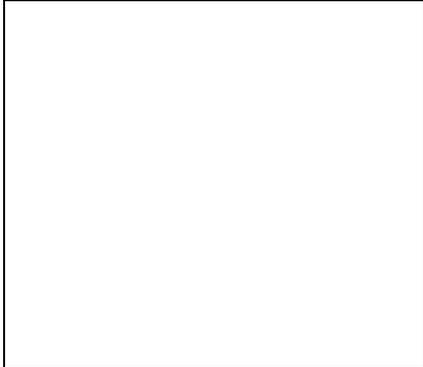
STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

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 \_\_\_\_\_ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

**6/9/10 Port rev.  
DRAFT**

**ATTACHMENT A**



\_\_\_\_\_  
Notary Public

Print Name \_\_\_\_\_

My commission expires \_\_\_\_\_

(Use this space for notarial stamp/seal)

**Exhibit A to Deed  
Legal Description**

**That portion of a strip of land, varying in width on each side of the centerline of the originally located and constructed Main Track centerline of the Redmond Spur, BNSF Railway Company's (formerly Northern Pacific Railway Company) Woodinville to Kenndale, Washington Branch Line, according to Quit Claim Deed recorded under King County Recording Number 20091218001537, more particularly described as follows:**

**COMMENCING** at the Northeast corner of the Southwest Quarter of Section 27, Township 26 North, Range 5 East, W.M., thence Westerly along the North line of said Southwest Quarter to its intersection with the centerline of the originally located and constructed Main Track centerline of the Redmond Spur, BNSF Railway Company's (formerly Northern Pacific Railway Company) Woodinville to Kenndale, Washington Branch Line;

Thence Southerly along said centerline to its intersection with the South margin of Northeast 124<sup>th</sup> Street, extended Westerly, and the **POINT OF BEGINNING**;

A strip of land, 100.0 feet in width, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the South 1/2 of Section 27, Township 26 North, Range 5 East, W.M., bounded on the North by the South margin of Northeast 124th Street extended and on the South by the South line of said South 1/2, the sidelines thereof to be lengthened or shortened as necessary to commence at the South margin of Northeast 124th Street extended and terminate on the South line of the Southwest Quarter of said Section 27;

Together with a strip of land, 50.0 feet in width, being 25.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the West 1/2 of the Northeast Quarter of Section 34, Township 26 North, Range 5 East, W.M., bounded on the North by the North line of said West 1/2, and on the South by the South line of said West 1/2, the sidelines thereof to be lengthened or shortened as necessary to commence and terminate on the North and South lines of said West 1/2, Northeast Quarter, Section 34;

Together with a strip of land, 50.0 feet in width, being immediately adjacent to and Westerly of said Main Track 50.0 foot right-of-way in the West 1/2 of the Northeast Quarter of Section 34, Township 26 North, Range 5 East, W.M., bounded on the North by the North line of said West 1/2, and on the South by a line perpendicular to said Main Track centerline at a point 1400 feet Southerly of the North line of said West 1/2, Northeast Quarter, Section 34;

Together with a strip of land, 100.0 feet in width, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the West 1/2 of the Southeast Quarter of Section 34, Township 26 North, Range 5 East, W.M., the Northeast Quarter of Section 3, the Southwest Quarter of the Southwest Quarter of the Northwest Quarter, the Southwest Quarter, and the Southwest Quarter of the Southwest Quarter of the Southeast Quarter, Section 2, all in Township 25 North, Range 5 East, W.M., bounded on the North by the North line of said West 1/2, Southeast Quarter, Section 34 and on the South by the South line of said Section 2, **Excepting Therefrom**, the Easterly 25.0 feet of said 100.0 foot wide Redmond Spur right-of-way, upon, over and across the West 1/2, Southeast Quarter, Section 34, Township 26 North, Range 5 East, W.M., and the North 1/2, Northeast Quarter, Section 3, Township 25 North, Range 5 East, W.M., lying between two lines drawn parallel and concentric with and distant, respectively, 25.0 and 50.0 feet Easterly, as measured at right angles and radially from said Main Track centerline, bounded on the North by the North line of said West 1/2, Southeast Quarter, Section 34, Township 26 North, Range 5 East,

W.M., and bounded on the Southeast by a line drawn parallel with and 40.0 feet Northwesterly, as measured at right angles from the centerline of Northeast 98th Court, as located and constructed upon, over and across said North 1/2, Northeast Quarter, Section 3, Township 25 North, Range 5 East, W.M.;

Together with a strip of land, 100.0 feet in width, being 75.0 feet Northerly of and 25.0 feet Southerly of said Main Track centerline, as originally located and constructed, upon, over and across the North 1/2, Northeast Quarter and the Northeast Quarter of the Northwest Quarter, Section 11, and the West 1/2, Northwest Quarter of Section 12, all in Township 25 North, Range 5 East, W.M., bounded on the North by the North line of said Section 11 and on the East by the East line of said West 1/2, Northwest Quarter, Section 12, Excepting Therefrom, that portion of said 100.0 foot wide Redmond Spur right-of-way in the Northeast Quarter of the Northeast Quarter of said Section 11, lying between two lines parallel with and distant, respectively 25.0 feet and 75.0 feet Northerly, as measured at right angles from said Main Track centerline, as located and constructed, bounded on the East by the Southerly extension of the Westerly line of Leary Street, according to the Plat of Redmond recorded in Volume 7 of Plats at Page 74, records of King County, Washington, and bounded on the West by a line parallel with and distant 110.0 feet Westerly, as measured at right angles from said Southerly extension of the Westerly line of Leary Street, Also Excepting Therefrom, that portion of said 100.0 foot wide Redmond Spur right-of-way in the Northeast Quarter of the Northeast Quarter of said Section 11, lying between two lines parallel with and distant, respectively 25.0 feet and 75.0 feet Northeasterly, as measured at right angles from said Main Track centerline, as located and constructed, the most Northerly parallel line being also the Southwesterly lines of Block 1 and 2 of said Plat of Redmond, bounded on the Northwest by the Southwesterly extension of the Easterly line of Leary Street, according to said Plat, and bounded on the Southeast by a line perpendicular to said Main Track centerline that extends Northeasterly to the intersection of a line parallel with and distant 75.0 feet Northeasterly, as measured at right angles from said Main Track centerline with the East line of the Northeast Quarter of the Northeast Quarter of said Section 11;

Together with a 25.0 foot strip of land lying immediately adjacent to and Southerly of said Redmond Spur 100.0 foot wide right-of-way in the Northwest Quarter of the Northeast Quarter of Section 11, Township 25 North, Range 5 East, W.M., lying Northwesterly of a line perpendicular to said Main Track centerline at a point 855 feet Southeasterly of the North line of said Section 11, as measured along said Main Track centerline, as originally located and constructed;

Together with a strip of land, 100.0 feet in width, being each side of said Main Track centerline as originally located and constructed, upon, over and across the Southeast Quarter of the Northwest Quarter of Section 12, Township 25 North, Range 5 East, W.M., bounded on the West and East by the West and East lines of said Southeast Quarter, Northwest Quarter, Section 12, terminating on the East line thereof at Milepost 7.3, **Excepting Therefrom** that portion of said 100.0 foot wide Redmond Spur right-of-way in the Southeast Quarter, of the Northwest Quarter of said Section 12, described as follows: Beginning at the intersection of the West line of said Southeast Quarter, Northwest Quarter, Section 12 with the Southerly line of said 100.0 foot wide right-of-way; Thence North 01°10'44" East, along said West line, 26.55 feet to a point 25 feet Southwesterly of, as measured at right angles from said Main Track centerline; Thence South 69°07'30" East, parallel with said Main Track centerline, 639.91 feet to the Southerly extension of the Westerly right-of-way line of 170th Avenue Northeast, said right-of-way being 70 feet in width; Thence South 23°37'30" West, along the Southerly extension of the Westerly right-of-way line of 170th Avenue Northeast, 25.03 feet to the Southerly right-of-way line of said 100.0 foot wide right-of-way; Thence North 69°07'30" West, along the Southerly right-of-way line of said 100.0 foot wide right-of-way, 692.76 feet to the Point of Beginning.

## EXHIBIT D

### FORM OF ASSIGNMENT OF THIRD PARTY LEASES, LICENSES AND CONTRACTS

THIS ASSIGNMENT AND ASSUMPTION OF THIRD PARTY LEASES, LICENSES AND CONTRACTS (this "**Assignment**") is entered into as of \_\_\_\_\_, 2010 by and between the PORT OF SEATTLE ("**Assignor**") and THE CITY OF REDMOND ("**Assignee**").

#### RECITALS

A. Assignor and Assignee are parties to that certain Purchase and Sale Agreement dated as of \_\_\_\_\_, 2010 (the "**Agreement**"), pursuant to which Assignee has agreed to purchase and Assignor has agreed to sell certain real property (the "**Property**").

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

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

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

1. **Assignment.** To the extent assignable, Assignor hereby assigns, transfers, and sets over unto Assignee all of Assignor's right, title and interest in and under the Assigned Agreements subject to the following sentences of this Section. To the extent any Assigned Agreement relates to other property owned by Assignor ("**Other Property**") then the foregoing assignment shall only apply as to the Property and not apply as to Other Property. For Assigned Agreements that relate to more than just the Property, Assignee shall not be entitled to any rent or proration of rent thereunder.
2. **Assumption; Succession.** To the extent assigned as set forth above, Assignee hereby assumes all of Assignor's duties and obligations under the Assigned Agreements arising and accruing from and after the date of this Assignment and Assignee succeeds to the interests of Assignor under the Assigned Agreements. Assignee hereby agrees to indemnify, defend and hold Assignor harmless from and against any and all claims of any kind or nature arising from or related to such Assigned Agreements on or after the date hereof. Assignor hereby agrees to indemnify, defend and hold Assignee harmless from and against any and all claims of any kind or nature arising from or related to such Assigned Agreements prior to the date hereof.
3. **Binding Effect.** This Assignment shall be binding upon and shall inure to the benefit of the parties thereto and their respective successors and assigns.
4. **Governing Law.** This Assignment shall be governed by and interpreted in accordance with the laws of the State of Washington.
5. **Execution in Counterparts.** This Assignment may be executed in counterparts, each of which shall constitute an original and all of which together shall be deemed a single document.

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

PORT OF SEATTLE

By: \_\_\_\_\_  
Name:  
Title:

CITY OF REDMOND

By: \_\_\_\_\_  
Name:  
Title:

## **EXHIBIT E**

### **BILL OF SALE**

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

WHEREAS Grantor and Grantee have entered into that certain Real Estate Purchase and Sale Agreement dated as of \_\_\_\_\_, 2010 (the "Real Estate Agreement"), pursuant to which Grantor has agreed to convey and Grantee has agreed to accept certain real property in King County, Washington.

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

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

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

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

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

IN WITNESS WHEREOF, the Grantor and Grantee have caused this Bill of Sale to be signed by its duly authorized officers this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

GRANTOR  
PORT OF SEATTLE

By: \_\_\_\_\_  
Name:  
Title:

GRANTEE  
CITY OF REDMOND

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE 1**

**THIRD PARTY LEASES/LICENSES/CONTRACTS**


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