

ORDINANCE No.

118734

COUNCIL BILL No.

111841

AN ORDINANCE granting to the Ballard Terminal Railroad Company a railway franchise and the right, privilege and authority to locate, lay down, construct, maintain, own, and operate standard gauge railway tracks in, upon, along and across that portion of the Burlington Northern and Santa Fe Railway Company's former Fremont to Ballard, Washington Branch Line right-of-way between Sixth Avenue North West and North West 67th Street, for a term of thirty years, specifying terms and conditions under which this franchise is granted, and providing for acceptance of the franchise, its terms and conditions.

OK

COMPTROLLER FILE No.

Introduced:	AUG 18 1997	By:	McIVER
Referred:	AUG 18 1997	To:	TRANSPORTATION
Referred:		To:	
Referred:		To:	
Reported:		Second Reading:	
Third Reading:	9-29-97	Signed:	9-29-97
Presented to Mayor:	9-29-97	Approved:	OCT - 6 1997
Returned to City Clerk:	OCT - 6 1997	Publisher:	Full 8PR
Vetoed by Mayor:		Veto Published:	
Passed over Veto:		Veto Sustained:	

US5947

Law Department

The City of Seattle

REF

Honorable President:

Your Committee on

to which was referred the within Council Bill No. report that we have considered the same and re

PASS 2-0 - 9/16/97

9-29-97 Full Council Action

NO DISK

*Law Department*

The City of Seattle--Legislative Department

Date Reported  
and Adopted

REPORT OF COMMITTEE

Honorable President:

Your Committee on \_\_\_\_\_

to which was referred the within Council Bill No. \_\_\_\_\_  
report that we have considered the same and respectfully recommend that the same:

*PASS 2-0 - 9/16/97*

*9-29-97 Full Council Action Passed 9-0*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*NO DISK*

\_\_\_\_\_  
Committee Chair

ORDINANCE 118734

AN ORDINANCE granting to the Ballard Terminal Railroad Company a railway franchise and the right, privilege and authority to locate, lay down, construct, maintain, own, and operate standard gauge railway tracks in, upon, along and across that portion of the Burlington Northern and Santa Fe Railway Company's former Fremont to Ballard, Washington Branch Line right-of-way between 6th Avenue Northwest and Northwest 67th Street for a term of thirty years, specifying terms and conditions under which this franchise is granted, and providing for acceptance of the franchise, its terms and conditions.

WHEREAS, the Burlington Northern and Santa Fe Railway Company (BNSF) has expressed its intention to abandon that part of its line between BNSF Milepost 0.09 and BNSF Milepost 02.70 in the Ballard area of the city; and

WHEREAS, in 1988 the Burlington Northern Railroad Company and The City of Seattle set forth their joint objective to maintain a permanent linear corridor along selected railroad rights-of-way for trail purposes, including the right-of-way designated as the "North Ship Canal," being the Section from Third Avenue NW to the connection with the north/south rail line at NW 68th Street, which Section includes the above Mileposts; and

WHEREAS, the City's long-held policy is also to support rail-served businesses along the selected railroad rights-of-way; and

WHEREAS, Resolution 29474, passed November 12, 1996, reiterated the City's commitment to railbanking the North Ship Canal right-of-way for trail purposes and specified a preferred location for the trail's extension; and

WHEREAS, the Ballard Terminal Railroad Company (BTRC) recently has been formed to provide rail service to businesses located in the Ballard industrial area; and

WHEREAS, BNSF intends to enter into agreements that will result in the right-of-way being railbanked and owned by the City, and the rails, ties and other track materials being owned and used for rail service by BTRC pursuant to a modified certificate of public convenience and necessity issued by the Surface Transportation Board as authorized by 49 C.F.R. 1150.21 *et seq.*; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

**Section 1. Conditions of Grant.**

(a) That The City of Seattle ("the City") does hereby grant to Ballard Terminal Railroad Company ("Grantee"), a railway franchise and the right, privilege and authority to locate, lay down, construct, maintain, own and operate standard gauge railroad tracks in, upon, along and across Burlington Northern and Santa Fe Railway Company's current Milepost designations M.P. 0.09 to M.P. 02.70 of the existing rail line previously owned by the Burlington Northern and Santa Fe Railway Company in Ballard, for a term of thirty (30) years, expiring at 11:59 p.m. on September 29<sup>th</sup>, 2027.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

(b) That this ordinance shall be effective only when the following conditions are first satisfied: (i) that an interchange agreement with Burlington Northern and Santa Fe Railway Company exists to which Grantee is a party; (ii) that the rail line has been authorized for preservation under 16 U.S.C. § 1247(d) as administered by the Surface Transportation Board; (iii) that the City has acquired the rail line pursuant to 16 U.S.C. § 1247(d); (iv) that Grantee has entered into an Operating Agreement with The City of Seattle in conformity to this ordinance and specifying a program of joint use permitting for interim trail use alongside rail use at least in those locations where the rail is not in street right-of-way; (v) that Grantee has obtained a modified certificate of public convenience and necessity as provided for in 49 C.F.R. § 1150.21-.23 for operation of the rail line; (vi) the City's Risk Manager has approved liability insurance policies in accordance with Section 14 herein; and (vii) that the City shall not acquire any freight railroad common carrier obligations by reason of this ordinance and the Operating Agreement entered pursuant thereto.

(c) The Operating Agreement shall provide that Grantee shall not be required to pay a fee for use of City property under this ordinance, provided (i) Grantee agrees to be fully responsible for all costs of maintenance, operation, and rehabilitation of the railroad, including but not limited to maintenance of crossings, acquisition of liability insurance, maintenance of way, and all liability for accidents occurring on the property used by the railroad or arising out of railroad operations, and provided further (ii) Grantee shall provide a minimum level of freight rail service equal to 30 carloads picked up or delivered to freight rail customers on the line, per year, averaged over any three-year period, as more particularly specified in the Operating Agreement. In the event the minimum level of service is not met, or the conditions stated at Section 1 (c) (ii) are not met, the Operating Agreement shall provide that, in addition to such other remedies as may be available to the City, the City in its discretion may require Grantee to take appropriate action in conformity to instructions from the City within no less than ninety days to terminate freight rail service, including appropriate filings with any agencies with rail regulatory jurisdiction.

(d) The Director is authorized to enter into an Operating Agreement consistent with this ordinance. The Director is further authorized to allow passenger use on terms and conditions as provided in said Operating Agreement.

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1 (e) The City may, from time to time, cooperate with Grantee in seeking grants  
2 in aid from State sources for rehabilitation of the line, provided, however, that the City shall not be liable  
3 for repayment of the grant except to the extent funds are available to the City from salvaged materials  
4 attributable to the grant in the event rail service is discontinued and provided further that the City at its  
5 option may impose a fee sufficient to recover its costs for administering the grant.

6  
7 **Section 2.** The tracks of standard gauge railway shall be located, laid down, constructed and  
8 maintained within the portions of right-of-way described on Attachment A hereto.

9  
10 **Section 3.** The City shall retain the same control of the streets, avenues, multi-use trails, and  
11 other rights-of-way in and across which said railway tracks shall be laid down as over other streets,  
12 avenues, multi-use trails and other rights-of-way within the City, and shall have the right at all times by  
13 general ordinance, to regulate the speed of the locomotives, cars and trains within the limits of the  
14 franchise right-of-way herein granted, and the maximum period of time for which such locomotives, cars  
15 and trains shall be allowed to blockade travel along and across the streets, avenues, multi-use trails and  
16 intersecting streets embraced in this grant, and shall have such further control and police power over  
17 such franchise rights-of-way and tracks, and the use thereof, as the City Charter and the Federal and  
18 State Constitutions and laws may now or hereafter permit. Grantee shall comply with SMC Chapter  
19 11.66, Railroad Operation and shall erect and maintain all such safety devices, warning signs and  
20 signals, lights and appliances as may be necessary to protect and facilitate public travel across each and  
21 every track herein authorized.  
22

23 **Section 4.** The City hereby reserves to itself and its Grantee the right to construct all public  
24 improvements (including trails) and to install and carry all public utility facilities across, underneath or  
25 above the tracks hereby authorized, and the City reserves to itself full and complete right of access to  
26 any space occupied by such tracks and to all of said franchise right-of-way, together with the right to  
27 open and excavate the ground beneath said tracks, or within said franchise right-of-way, for all purposes  
28 of construction, maintenance, repair, operation and inspection of any public utilities and public  
29 improvements which rights shall, however, be exercised in such manner as not to interfere with the safe  
30 operation of locomotives, cars and trains on said tracks. In all cases involving a possibility of such  
31 interference, or removal of lateral support or excavation beneath the tracks of Grantee, sixty (60) days'  
32  
33

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1 written notice shall be given Grantee, and Grantee shall, at its own cost and expense, remove, relocate,  
2 support, reinforce said tracks as necessary, provide flagging, and shall also furnish an authorized agent  
3 or representative at Grantee's own cost and expense, who shall supervise such removal, relocation,  
4 support, reinforcement or excavation or other work; provided that, in case of emergency repairs, the  
5 length of such notice may be less than sixty (60) days, but not less than twelve (12) hours. Grantee shall  
6 have the option of requiring that any such construction, repair, renewal, maintenance or inspection of  
7 municipally owned utility be done by tunneling or jacking beneath said tracks, if such utility determines  
8 that tunneling or jacking is practicable, and upon Grantee's providing assurances, satisfactory to such  
9 municipally owned utility, that Grantee will pay the extra cost of tunneling or jacking, over the cost of  
10 open cutting. If it is necessary that such tracks should be removed, relocated, supported, or reinforced  
11 during the progress of the construction, repair, renewal, maintenance, or inspection of any municipally  
12 operated utility, or for any public improvement, Grantee shall remove or relocate said tracks and shall  
13 construct and place such support and provide a flagman as necessary, and shall attend to the replacement  
14 and readjustment of its tracks, all at its own cost and expense. Grantor may agree to assume a share of  
15 the costs for removal or replacement of track due to any such public improvement or public utility that  
16 generally parallels said tracks and requires the removal of more than 100 feet of track.  
17

18  
19 **Section 5.** Grantee shall be solely responsible for the maintenance and safety of the right-of-  
20 way granted herein, including all tracks and all grade crossings, and shall cooperate and coordinate with  
21 the City of Seattle Director of Transportation to assure adequate rehabilitation, repair and maintenance  
22 of all tracks and grade crossings herein authorized, all at Grantee's sole cost and expense. Grantor shall  
23 issue permits to Grantee which shall set forth the terms and conditions for railroad track work within the  
24 limits of The City of Seattle, pursuant to applicable law, including State and Federal Law.  
25

26 **Section 6.** Grantee shall construct and maintain the tracks herein authorized so that the top of  
27 the rail thereof shall at all times conform to the street grade (except where change is made in separation  
28 of grades), and the City hereby reserves the right to change the grade of any streets, avenues or public  
29 places at any time, and when the City shall change such grade the Grantee, by acceptance of this  
30 ordinance, hereby covenants and agrees with the City, to waive any and all damages that it may sustain  
31 on account of having to readjust its tracks by reason of such change of grade. Such waiver is made upon  
32  
33

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1 condition that any change of grade hereafter made by the City to the streets and avenues upon which the  
2 franchise is hereby granted, shall not be unreasonable, or such as to interfere with the proper and  
3 practical operation of said track when the same shall have been adjusted to said new grade.

4  
5 **Section 7.** Grantee shall, upon permit issued by the Director or such other body as may in the  
6 future be by law authorized to act, allow each owner or occupant of a warehouse or industry contiguous  
7 or adjacent to said track herein authorized, or to any street, avenue or other public place along or across  
8 which said tracks shall be constructed, a spur track or tracks connecting said track with such warehouse  
9 or industry; provided, however, that Grantee may require that such spur track or tracks and all street  
10 grading, surfacing or paving appertaining to the right-of-way of such spur track or tracks, be constructed  
11 and maintained at the expense of such owner or occupant of such warehouse or industry; and provided  
12 further that any such spur track shall start from such point on said track as Grantee shall determine upon  
13 as the most proper therefor; and shall be subject to such rules and regulations as to the opening and  
14 closing of switches controlling access to and as to the use of said track as Grantee may from time-to-  
15 time establish. All of the obligations and duties of Grantee expressed in this franchise shall apply with  
16 full force and effect to each and every spur track laid down, constructed, maintained or operated by  
17 Grantee connecting with the tracks or right-of-way granted in Section 1 of this franchise.  
18

19 **Section 8.** Nothing contained in this ordinance shall be construed as granting an exclusive  
20 franchise or privilege for the use of the right-of-way described in Section 2, or any portion thereof, and  
21 the rights granted by this ordinance shall be subject to the right of the City Council to at any time  
22 hereafter, to repeal, amend or modify this ordinance and grant, with due regard to the rights of Grantee  
23 and of the interests of the public, and to cancel, forfeit and abrogate any right or privilege granted by this  
24 ordinance if the franchise hereby granted is not operated in full accordance with the provisions hereof, or  
25 at all, and at any time during the grant to acquire by purchase or condemnation, for use of the City itself,  
26 all the property of the Grantee within the limits of said streets and right-of-way at a fair and just value,  
27 which shall not include any valuation of the franchise itself, which franchise shall thereupon terminate.  
28  
29

30 **Section 9.** Except as herein provided, this franchise and the rights herein granted, or any  
31 interest in them, shall not be sold, assigned or mortgaged without the consent of the City by ordinance.  
32 Nor shall the same in such event accrue to the benefit of the purchaser, assignee or mortgagee unless  
33

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1 within sixty (60) days after such consent it or they shall file with the City's Finance Department and  
2 City Clerk an acceptance of all the rights, privileges and authorities hereby granted, subject to all the  
3 conditions, restrictions, specifications and requirements herein expressed.

4           **Section 10.** (a) Grantee and any permitted successors or assigns, shall defend (with  
5 counsel approved by the City), and shall fully indemnify and hold the City and its officers, employees,  
6 and agents harmless from any and all losses, claims, actions, judgments, property damages, death,  
7 personal injuries, or damages suffered by any person or entity arising out of or resulting from (1) any  
8 occurrence of property damage, death or injury in or on the franchise right-of-way, including common  
9 carrier liability; (2) the Grantee's operations on or off the franchise right-of-way; (3) the violation of  
10 any law or breach of this Franchise Agreement or Operating Agreement by the Grantee or any of its  
11 officers and directors, employees, agents or contractors; and (4) any release of hazardous material arising  
12 out of Grantee's operations, actions or inactions. It is intended that the foregoing indemnity shall be  
13 broad and comprehensive. In the event any suit, claim or action is brought against the City, Grantee,  
14 upon notice of the commencement thereof, shall defend the same, at no cost and expense to the City,  
15 and promptly satisfy any final judgment adverse to the City or to the City and Grantee jointly; Provided,  
16 that in the event the City determines that one or more principles of governmental or public law are  
17 involved, the City retains the right to participate in such action at its own expense.

18           (b) The above liability shall not be diminished by the fact, if it be a fact, that  
19 any such death, injury, damage, loss, cost, or expense may have been, or may be alleged to have been,  
20 contributed to by the negligence of the City or its officers, employees, or agents, unless such negligence  
21 is solely and entirely the fault of the City.

22           (c) The indemnification provided by this section shall survive the termination  
23 of the Grantee's franchise, the Grantee's surrender of use and occupancy of the franchise right-of-way,  
24 and expiration of this Franchise Agreement. This indemnity is for the sole benefit of the City and shall  
25 not inure to the benefit of any third party. The Grantee waives, with respect to the City only, its  
26 immunity under RCW Title 51, Industrial Insurance, and to any other industrial insurance, workers  
27 compensation, disability, or employee benefit legislation of any jurisdiction which would otherwise be  
28 applicable.  
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(d) The Operating Agreement may provide additional conditions consistent with this section.

**Section 11.** Grantee, by its acceptance of this ordinance, does covenant and agree with The City of Seattle, that whenever the City separates the grades of existing or future streets and multi-use trails by the construction, reconstruction, renewal, maintenance, and/or widening of any overhead structure across the franchise right-of-way herein granted, Grantee will bear its proportionate share of all costs incident to the span crossing said right-of-way and the piers or abutments supporting such span. Such proportionate share shall be determined on the ratio the length of the portion of the span crossing said right-of-way bears to the total length of said span, and Grantee shall pay its aforesaid share upon proper billing therefore by the Director; provided, however, that this section shall not apply to future changes or additions to the existing 15th Avenue North West bridge structure (Ballard Bridge).

**Section 12. Insurance.**

(a) The Grantee shall, at all times during the term of this Agreement, obtain and maintain continuously, at its own expense, and file with the City's Risk Manager, evidence of a policy or policies of insurance satisfactory to the City's Risk Manager, as further specified in the Operating Agreement, including a policy of Comprehensive Railroad Liability Insurance for operations in an amount no less than \$5,000,000 for bodily injury and property damage; provided, however, the Risk Manager may consider reducing said coverage to no less than \$3,000,000 based on at least three years of experience with actual operations.

(b) The Operating Agreement shall provide such additional terms and provisions relating to insurance for rail operations (including operating by Grantee's contractors or subcontractors) as shall reasonably protect the City from liability arising out of Grantee's actions or actions.

**Section 13.** The Operating Agreement may provide that rail operation and rail equipment shall be inspected by the Federal Railroad Administration (FRA), Washington State Department of Transportation (WSDOT), Washington Utilities and Transportation Commission (WUTC) or successor agencies, or equivalent inspectors and that Grantee should be responsible to remedy, at Grantee's

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1 expense, all deficiencies identified in any inspection. Grantee shall be responsible to comply with all  
2 laws and regulations relating to railroad operations. Nothing herein shall reduce the City's police  
3 powers of enforcement and inspection.

4  
5 **Section 14.** In order to claim the benefits of this ordinance and to acquire the rights, privileges  
6 and authorities hereby granted, Grantee must, within two (2) months after this ordinance becomes  
7 effective file in the office of the City's Finance Department and City Clerk a copy of a resolution duly  
8 adopted by its Board of Directors, or by the Executive Committee of said Board, which copy shall be  
9 duly certified and attested by its proper officer, under its corporate seal, or comparable documentation of  
10 acceptance approved by the Seattle City Attorney's Office, accepting the benefits of this ordinance, and  
11 the rights, privileges and authorities hereby granted, subject to all the conditions, restrictions,  
12 specifications and requirements expressed.

13  
14 **Section 15.** Any act consistent with the authority and prior to the effective date of this  
15 ordinance is hereby ratified and confirmed.

16  
17 **Section 16.** This ordinance shall take effect and be in force thirty (30) days from and after its  
18 approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after  
19 presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

20 Passed by the City Council the 29<sup>th</sup> day of September 1997, and signed by me in open  
21 session in authentication of its passage this 29<sup>th</sup> day of September, 1997.

22  
23 John Deery  
24 President \_\_\_\_\_ of the City Council

25 Approved by me this 6<sup>th</sup> day of October, 1997.

26  
27 Mourant B. Lee  
28 Mayor

29 Filed by me this 6 day of October, 1997.

30  
31 Janice E. Papp  
32 City Clerk

33 (Seal)

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COPY

# BALLARD TERMINAL RAILROAD COMPANY, LLC

4725 Ballard Avenue N. W., Seattle WA 98107

Phone: 206 937-4192 Fax: 206 937-2120

March 2, 1998

Mr. Barry Reiss, Project Manager  
Seattle Public Utilities  
710 Second Avenue  
Seattle, WA 98104

FILED  
CITY OF SEATTLE  
98 MAR -3 AM 10:09  
CITY CLERK

Reference: Your letter of January 16, 1998 requesting additional documentation for acceptance of franchise Ordinance No. 118734.


Dear Barry,

Attached are three items:

- 1) A newly accomplished "Acceptance of Railway Franchise" document, with the notarized signature of both of the Ballard Terminal Railroad Company's current managing members.
- 2) A copy of Ballard Terminal Railroad Company's formation documents.
- 3) A copy of Ballard Terminal Railroad Company's original acceptance submittal made to the City on January 6, 1998.

Please acknowledge receipt of these documents and advise as to their suitability for fulfilling the ordinance acceptance requirements.

Thanks,



Byron Cole  
Managing Member  
Operations Manager

BC/jmm  
Attachments

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ACCEPTANCE OF RAILWAY FRANCHISE

Ballard Terminal Railroad Company LLC, by and through its managing members. Paul Nerdrum and Byron Cole, hereby accepts the benefits of the City of Seattle Ordinance No. 118734, granting to the Ballard Terminal Railroad Company a railway franchise and the right, privilege and authority to locate, lay down, construct, maintain, own, and operate standard gauge railway tracks in, upon, along and across that portion of the Burlington Northern and Santa Fe Railway Company's former Fremont to Ballard, Washington Branch Line right of way between 7th Ave. N.W. and N.W. 67th St. for a term of thirty years, specifying terms and conditions upon which this franchise is granted, and providing for the acceptance of the franchise, its terms and conditions.

BALLARD TERMINAL RAILROAD COMPANY, LLC

By Paul Nerdrum  
Paul Nerdrum, Managing Member

By Byron Cole  
Byron Cole, Managing Member

STATE OF WASHINGTON       )  
                                  ) ss.  
COUNTY OF KING         )

On this 2<sup>ND</sup> day of MARCH, 1998, before me personally appeared Paul Nerdrum and Byron Cole, to me known to be Managing Members of Ballard Terminal Railroad Company, LLC, the limited liability company that executed the within and foregoing instrument and acknowledged the signing of said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and

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ACCEPTANCE OF RAILWAY FRANCHISE

Ballard Terminal Railroad Company LLC, by and through its managing members, Paul Nerdrum and Byron Cole, hereby accepts the benefits of the City of Seattle Ordinance No. 118734, granting to the Ballard Terminal Railroad Company a railway franchise and the right, privilege and authority to locate, lay down, construct, maintain, own, and operate standard gauge railway tracks in, upon, along and across that portion of the Burlington Northern and Santa Fe Railway Company's former Fremont to Ballard, Washington Branch Line right of way between 7th Ave. N.W. and N.W. 67th St. for a term of thirty years, specifying terms and conditions upon which this franchise is granted, and providing for the acceptance of the franchise, its terms and conditions.

BALLARD TERMINAL RAILROAD COMPANY, LLC

By Paul Nerdrum  
Paul Nerdrum, Managing Member

By Byron Cole  
Byron Cole, Managing Member

STATE OF WASHINGTON       )  
                                  )       SS.  
COUNTY OF KING         )

On this 2<sup>ND</sup> day of MARCH, 1998, before me personally appeared Paul Nerdrum and Byron Cole, to me known to be Managing Members of Ballard Terminal Railroad Company, LLC, the limited liability company that executed the within and foregoing instrument and acknowledged the signing of said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and

that the seal affixed thereto (if any) is the company seal of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and Official Seal the day and year first above written.

Ronald B. Canniff  
Notary Public in and for the State  
of Washington  
Printed Name: RONALD B. CANNIFF  
My appointment expires: 02/29/00

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# STATE of WASHINGTON



## SECRETARY of STATE

I, **RALPH MUNRO**, Secretary of State of the State of Washington and custodian of its seal,  
hereby issue this

### CERTIFICATE OF FORMATION

to

**BALLARD TERMINAL RAILROAD COMPANY,  
L.L.C.**

a Washington Limited Liability Company filed for record in this office on the date indicated  
below.

UBI Number: 601 744 485

Date: October 10, 1996



Given under my hand and the Seal of the State  
of Washington at Olympia, the State Capital

*RALPH MUNRO*

Ralph Munro, Secretary of State

2-542890-5

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601744 485

FILED  
STATE OF WASHINGTON

OCT 10 1996

CERTIFICATE OF FORMATION  
OF  
BALLARD TERMINAL RAILROAD COMPANY, L.L.C.

RALPH MONRO  
SECRETARY OF STATE

The undersigned, for the purpose of forming a limited liability company pursuant to the provisions of the Washington Limited Liability Company Act, RCW Chapter 25.15, hereby adopts the following Certificate of Formation.

ARTICLE I

The name of this Limited Liability Company (herein the "Company") is BALLARD TERMINAL RAILROAD COMPANY, L.L.C.

ARTICLE II

The address of the initial registered office of the Company is 800 Financial Center, 1215 - 4th Avenue, Seattle, Washington 98161-1090 and the name of the initial registered agent at such address is John P. Braislin.

ARTICLE III

The address of the principal place of business of the Company is 4051 - 56th Ave. S.W., Seattle, Washington 98116.

ARTICLE IV

The business of the Company shall be to carry on any lawful business or activity which may be conducted by a limited liability company organized under RCW 25.15 et. seq.

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ARTICLE V

The date on which the Company is to dissolve is the 1st day of October, 2026.

ARTICLE VI

Management of the Company shall be vested in one or more managers elected by the Members of the Company. The following Members shall serve as the initial managing members of the Company and shall have co-equal management authority:

<u>Name</u>	<u>Address</u>
Byron Cole	4051 - 56th Ave. S.W. Seattle, WA 98116
Paul Nerdrum	5228 Shilshole Ave. S.W. Seattle, WA 98107

The initial managing members shall have management authority unless and until one or more successor managers are elected and qualified at a duly called meeting of the Members of the Company.

ARTICLE VII

The debts, obligations, and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligation, and liabilities of the Company; and no Member or Manager of the Company shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member or Manager of the Company.

ARTICLE VIII

The name and address of the individual executing this Certificate of Formation as attorney for the Company is:

Name

John P. Braislin

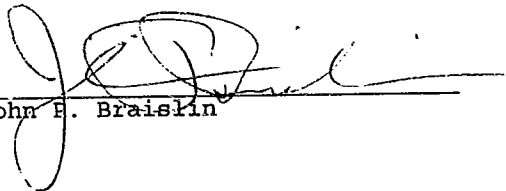
Address

800 Financial Center  
1215 - 4th Avenue  
Seattle, WA 98161-1090

ARTICLE IX

The Company reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Formation, in the manner now or hereafter prescribed by law, and all rights and powers conferred herein on Members and Managers are subject to this reserved power.

DATED this 10<sup>th</sup> day of October, 1996.

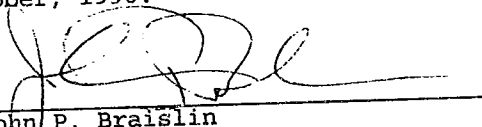
  
John P. Braislin

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CONSENT TO APPOINTMENT AS REGISTERED AGENT

I, John P. Braislin, hereby consent to serve as registered agent, in the State of Washington, for the Company herein named. I understand that as agent for the Company, it will be my responsibility to receive service of process in the name of the Company; to forward all mail to the Company; and to immediately notify the office of the Secretary of State in the event of my resignation, or of any change in the registered office address of the Company for which I am agent.

DATED this 10<sup>th</sup> day of October, 1996.

  
\_\_\_\_\_  
John P. Braislin  
Registered Agent  
800 Financial Center  
1215 - 4th Avenue  
Seattle, WA 98161-1090

# BALLARD TERMINAL RAILROAD COMPANY

4725 BALLARD AVENUE NW  
SEATTLE, WA 98107  
Off: (206) 937-4192  
Fax: (206) 937-2120

December 20, 1997

Seattle City Clerk  
Seattle Municipal Building  
600 Fourth Avenue  
Seattle, WA 98104

Attached is a copy of a resolution duly adopted by the Managing Members of the Ballard Terminal Railroad Company, LLC, accepting the benefits of Seattle Ordinance 118734, per the requirement set forth in Section 14 of that Ordinance.

We request that the City acknowledge in writing that this filing is acceptable to the City, and that it satisfies the requirement set forth in Section 14.

*Byron Cole*

Byron Cole  
Managing Member,  
Operations Manager

<b>CITY OF SEATTLE</b>		<b>999-77050</b>
<b>MISC. RECEIPT</b>		
684-8300		Date <u>1/16/98</u>
Received From <u>Byron Cole</u>		
Address _____		
For <u>Resolution of Ballard Terminal RRC</u>		Dollars \$ <u>0.</u>
How Paid		
Cash	<input checked="" type="checkbox"/>	
Check	<input type="checkbox"/>	
TOTAL	<input checked="" type="checkbox"/>	
BY <u>C. Vaughan</u>		CHARLA

FILED  
CITY OF SEATTLE  
58 JAN -6 PM 4:56  
CITY CLERK

FILED  
CITY OF SEATTLE

98 JAN -8 PM 1:28

98 JAN -5 PM 12:00

**BALLARD TERMINAL  
RAILROAD COMPANY**

4725 BALLARD AVENUE NW  
SEATTLE, WA 98107  
Off: (206) 937-4192  
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Operations Manager

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# BALLARD TERMINAL RAILROAD COMPANY, LLC

4725 BALLARD AVENUE NW  
SEATTLE, WA 98107

December 20, 1997

SUBJECT: Meeting of Managing Members of BALLARD TERMINAL RAILROAD COMPANY, LLC.  
this day at 1000 hours, at 5228 Shilshole Ave NW, SEattle, WA 98107.

The Managing Members, Paul Nerdrum and Byron Cole, hereby resolve to accept the benefits of the City of Seattle Ordinance #118734, granting to the Ballard Terminal Railroad Company a railway franchise and the right, privilege and authority to locate, laydown, construct, maintain, own, and operate standard gauge railway tracks in, upon, along and across that portion of the Burlington Northern and Santa Fe Railway Company's former Fremont to Ballard, Washington Branch Line right of way between 7th ave NW and NW 67th St for a term of thirty years, specifying terms and conditions under which this franchise is granted, and providing for the acceptance of the franchise, its terms and conditions.



Byron Cole  
Managing Member,  
Operations Manager

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# City of Seattle

Norman B. Rice, Mayor

Executive Department - Office of Management and Planning

Judy Bunnell, Director

## MEMORANDUM

September 9, 1997

**TO:** Jan Drago, Council President

**FROM:** Judy Bunnell, OMP Director  
Daryl Grigsby, SEATRAN Director  
Mary Jean Ryan, OED Director

**SUBJECT:** Franchise Ordinance for Ballard Terminal Railroad Company

The Office of Management and Planning, SEATRAN, and the Office of Economic Development have reviewed the legislation granting a railroad franchise to the Ballard Terminal Railroad Company for the purpose of maintaining rail service along the Ballard rail corridor. All of these departments find that this franchise, in concert with requirements of its associated agreements, will provide significant economic, recreational, and mobility benefits to Seattle's citizens, businesses, the City as a purveyor of utilities and transportation infrastructure, and the region.

Entering into this franchise agreement is consistent with implementing City policy regarding support for industrial uses located in industrially-zoned land, as well as for providing a city-wide urban trails system, both being integral elements in achieving the vision of the Comprehensive Plan. To put it concisely, the terms of this franchise will yield more than was anticipated when the City began its study of how to extend the Burke-Gilman Trail. Not only will the city retain ownership of a valuable public use corridor, it will be able to complete a significant section of the trail, while preserving rail service when and where it is still needed.

Introduction of this legislation represents a significant milestone in the effort to preserve rail service for businesses in the Ballard industrial area, while securing for future generations a corridor for trail and other public uses. This is being accomplished through the cooperation of many parties, yet has not come easy. Getting to this point has required

Seattle Municipal Building, 600 Fourth Avenue, Seattle, WA 98104-1826

Tel: (206) 684-8080, TDD (206) 684-8118, FAX: (206) 233-0085

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Council President Lidg  
September 9, 1997  
Page 2

the involvement of staff from SEATRAN, SPU, Law, the OED, the Neighborhood Planning Office, Risk Management, DON, several councilmembers (most recently Councilmember McIver) and the Mayor's Office, as well as representatives of business, local residents, the bicycling community, and the state. It has taken much time, investigation, review, and negotiation on all sides to craft an agreement that both meets the City's interests without the loss of amenity, the burden of liability, and undue expense to the City, and also assures that the franchised rail operator has the flexibility to service the needs of Ballard shippers, operate a safe and successful business, and sustain its obligations as a common carrier within the city.

To satisfy the numerous and, at many points, conflicting interests of the stakeholders in this endeavor, both the City and the rail proponents have had to work hard at finding solutions that are mutually acceptable. Complicated, arduous and lengthy negotiations over the last year have produced this franchise agreement. Obviously, it contains compromise on both sides, yet it represents the best of efforts and intentions to have rail service and a public trail system co-exist in a successful manner. Further, while this franchise contains some elements unique to the context of the agreement and essential to its implementation, it has been constructed to be as consistent as possible with other recent franchises granted by the City, and with an eye toward avoiding setting any new precedents for the City in this regard.

Staff will be briefing the Transportation Committee at its next meeting about this legislation and the steps involved in fully realizing its implementation subsequent to its passage. We anticipate that all councilmembers will have many specific questions concerning the complexities of implementing this agreement, and look forward to addressing these through your review. Barry Reiss of SPU is the project manager for the Burke-Gilman Trail Extension; he can provide historical and technical information regarding the trail's routing, design and construction. Peter Lagerwey of SEATRANS' Bicycle and Pedestrian Program and Judy Barbour of Law can elucidate the policy and legal aspects of corridor acquisition. The engineering expertise of Mark Clemmens and trail designers Amy Yamabe and Leanora Rines of SEATRANS has been invaluable in creating a viable plan for the integration of trail, rail and roadway. City Risk Manager Pamela Hughes and Peter Hapke of Law were diligent in assuring that all agreements adequately protected the City from operational and environmental liability. Ben Wolters of OED and Eric Chipps of OMP have been directly involved in the rail service facet of this project; they can discuss the economic implications for the Ballard area concerning the rail's operation. All will be happy to provide information and briefings at your convenience.

In summary, we are all proud to have been involved in the creation of this legislation, and we endorse its passage.

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# COPY

1 14 September 1997

## Operating Agreement

2  
3  
4  
5 This is an operating agreement between Adventure Trail (a  
6 Washington State IRC 501(c)(3) non-profit corporation ("Owner") and  
7 Ballard Terminal Railroad Company, LLC ("Operator") for operation  
8 of a line of railroad, owned by Adventure Trail, described as  
9 follows:

10 All that portion of the Ballard Branch acquired by Adventure  
11 Trail from Burlington Northern and Santa Fe Railroad Company  
12 ("BNSF") being more particularly described as BNSF MP .09  
13 (that being approximately 1000 feet south of the clearpoint to  
14 the mainline) to end of line at BNSF MP 2.7 (that being  
15 approximately the south edge of Northwest 40th Street) in  
16 Ballard, all in Seattle in King County, Washington, including  
17 the "Olympic Stain" Spur, but excluding the "Bardahl" Spur.  
18 The aforementioned line of railroad is hereinafter referred to as  
19 "the line" or "the premises." The purpose of this Agreement is to  
20 preserve the line intact for rail use, trail use, and other  
21 compatible public purposes, provided, however, that Owner shall not  
22 be obligated to subsidize, directly or indirectly, rail use on the  
23 line other than as specifically provided herein. Adventure Trail  
24 shall do business as "Sea Lion Railroad Project" for purposes of  
25 this transaction and attendant regulatory proceedings, and shall be  
26 referred to as SLR herein.

27  
28 1. Use. (a) As of the effective date of this agreement, it  
29 is the intent of the parties that while SLR is Owner, SLR shall  
30 have all common carrier obligations relating to the premises.  
31 Operator shall bear all responsibility to provide all freight rail  
32 services during the period of SLR ownership on an as needed basis  
33 pursuant to this contract. SLR agrees to furnish Operator (a) ten  
34 thousand dollars (\$10,000) to repair and to rehabilitate the track  
35 and ties, such amount payable upon tendering of receipts by  
36 Operator for actual expenditures for repair and rehabilitation,  
37 along with certification that the work has been completed in a  
38 satisfactory manner, and (b) up to eighteen thousand five hundred  
39 dollars (\$ 18,500) to pay for the first year of freight railroad  
40 liability insurance in a form satisfactory to SLR, in an amount no  
41 less than \$5,000,000 per incident, \$5,000,000 aggregate. Operator  
42 assumes responsibility to pay all costs of repair, rehabilitation  
43 and insurance above these specific amounts, and further agrees to  
44 provide all other railroad services (including but not limited to  
45 maintenance, rehabilitation, operation, interchange, and billing)  
46 reasonable or necessary to ensure safe and prudent operation  
47 without any further compensation from Owner, and to hold Owner  
48 harmless from all liability or claims (including claims for  
49 penalties and attorneys' fees) in the event Operator fails to  
50 discharge any or all of its obligations to provide such services.

51  
52 (b) The parties acknowledge that SLR intends to seek  
53 authorization to railbank the premises pursuant to 16 U.S.C.  
54 1247(d) and to transfer the underlying real estate to City of

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1 Seattle free of any current common carrier obligation as quickly as  
2 reasonably possible, consistent with the other terms of this  
3 Operating Agreement, after the date upon which the railbanking  
4 authorization becomes effective. It is the intent of the parties  
5 that Operator obtain a modified certificate of public convenience  
6 and necessity ("modified PCN") (49 C.F.R. 1150.21, et seq.) upon  
7 the City's ownership of the premises, and for this operating  
8 agreement to be assigned by SLR to the City to serve as the  
9 operating agreement underlying the modified PCN. Once the modified  
10 PCN is issued, it is the intent of the parties that, from that  
11 point forward, Operator shall have the only extant current common  
12 carrier obligations with respect to the premises. It is the intent  
13 of the parties to cooperate in taking prudent and efficient actions  
14 to accomplish these intents. This Operating Agreement is intended  
15 to serve as a contract to provide services as needed during the  
16 period of SLR ownership of the premises, and as an Operating  
17 Agreement upon assignment to the City of Seattle, including for  
18 purposes of a notice for modified PCN.

19 (c) During the period of SLR ownership, and after SLR  
20 transfers ownership to the City of Seattle, Owner hereby grants to  
21 Operator permission to use any and all of the Owner's rights and  
22 licenses in the line and between the line and the point of  
23 interconnection with BNSF as may be necessary for the purpose of  
24 providing rail freight service. The rights granted to Operator  
25 relate solely to the provision of rail service on the line, and  
26 Operator may not use the line for any other purposes without the  
27 prior written authorization of Owner. During the period when SLR  
28 is Owner, SLR shall have the right to control dispatch.

29 (d) In the event operation of a railroad on the premises  
30 conflicts with any current trail use on that portion of the  
31 premises east of Eighth Avenue, Operator shall undertake one of the  
32 following three courses of action: (i) cease operation over any  
33 such portion of the premises; (ii) move (at Operator's expense) the  
34 tracks and ties, or reconfigure the tracks and ties, such that  
35 there is no conflict; or (iii) seek a waiver of any regulation  
36 resulting in such a conflict (provided, however, that Owner will  
37 cooperate in seeking such a waiver). When the City becomes Owner,  
38 Owner at the request of Operator will consider approval of a plan  
39 by Operator permitting Operator to close the trail during brief  
40 intervals when rail equipment is actually moving adjacent to the  
41 trail. Owner will cooperate with Operator in seeking  
42 rehabilitation grant money to move track and ties if necessary,  
43 provided however there is no liability upon Owner.

44  
45 2. Inspection. Owner or its duly authorized representative,  
46 upon reasonable notice to Operator, shall have the right to inspect  
47 any and all rail facilities for the purpose of verifying Operator's  
48 compliance with the terms and conditions of this agreement.  
49 Further, the parties hereto agree that a Federal Railroad  
50 Administration (FRA), Washington Department Transportation (DOT),  
51 or Washington Utilities and Transportation Commission (WUTC) rail  
52 inspector shall perform a total inspection of the trackage prior to

1 commencement of rail service, said inspection to serve as a base  
2 inspection for all future maintenance and/or rehabilitation efforts  
3 on the trackage. The trackage shall be subject to FRA, DOT, and  
4 WUTC (as used herein, FRA, DOT and WUTC shall include successor  
5 agencies) inspection until termination of this agreement. Operator  
6 agrees to abide by such inspections and to address any and all  
7 concerns raised in these various rail inspections, consistent with  
8 the remainder of this agreement. Nothing herein shall limit the  
9 City's lawful police powers of inspection under its Charter and any  
10 applicable franchise.

11  
12 3. Ownership of Track and Ties. Upon (i) transfer of all  
13 Owner's real estate interests in the line to the City of Seattle,  
14 (ii) effectiveness of a modified PCN for BTRC, and (iii) payment by  
15 Operator of ten dollars in compensation, Owner shall execute, and  
16 Operator shall accept, a bill of sale transferring by quitclaim to  
17 Operator all Owner's right, title and interest in the track, ties  
18 and other track material in the property. Such transfer shall be  
19 AS IS, WHERE IS, without any warranties, including warranties of  
20 title, merchantability, or suitability for any purpose or use.  
21 Operator shall employ such material for purposes of providing  
22 railroad services in Ballard. Upon acquisition of said material  
23 from Owner, Operator shall own and have the right to remove any of  
24 said material; provided, however, that in the event (i) this  
25 agreement is terminated, (ii) Owner enters into an agreement with  
26 a subsequent operator to provide rail services, and (iii) Owner  
27 notifies Operator that it wishes to re-acquire sufficient track for  
28 through operation, then Operator shall not cause any track or tie  
29 to be removed which shall cause the rail facilities to be less  
30 serviceable than as of the date Owner acquired the rail facilities,  
31 and Operator shall sell said track to Owner or Owner's designee for  
32 the price paid by Operator to Owner for same. In the event Owner  
33 or Owner's designee wish to acquire Additions constructed by  
34 Operator at Operator's expense, Owner or Owner's designee shall  
35 have the right to acquire said Additions at net liquidation value  
36 (NLV) using the methodology for calculation of NLV employed by the  
37 Surface Transportation Board; provided, however, that if the  
38 acquisition is for freight or excursion passenger rail purposes and  
39 within five years of the effective date of this Agreement, Owner's  
40 designee shall acquire the property at a price mutually agreed upon  
41 between Owner's designee and Operator.

42  
43 4. Additions. Owner hereby grants to Operator the right to  
44 make such Additions to the rail facilities as Operator may require  
45 to permit rail freight or passenger (consistent with paragraph 25)  
46 service, at Operator's sole expense, consistent with the remainder  
47 of this agreement. The term "Additions" shall mean capital  
48 improvements which are in addition to the rail facilities provided  
49 by Owner. Operator shall own and have the right to remove any of  
50 said Additions which can be removed without causing the rail  
51 facilities to be less serviceable than before said Addition was  
52 made.

1        5. Conditions on service. (a) During operations under this  
2 Agreement pursuant to a modified PCN, Operator shall have no  
3 obligation to provide freight rail services unless shippers meet  
4 the following term and condition as a condition to receiving  
5 service:

6        Shippers or prospective shippers must ship at least 30  
7 carloads/year, averaged over a rolling three year period.

8        (b) During operation, Operator shall be responsible for the  
9 normal and regular work required to keep the rail facilities in a  
10 condition necessary to enable safe operations. Owner shall not be  
11 responsible for track, tie, or roadbed maintenance, repair,  
12 rehabilitation, or operation. No owner subsidy shall be provided  
13 for the line, other than as specifically provided herein.

14        (c) No interest in land, or title to real estate, shall  
15 transfer to Operator under this agreement, with the exception of  
16 the parcel referenced in paragraph 6 in the event Operator  
17 exercises the option therein set forth, and with the exception of  
18 the lease of the parcel provided in paragraph 9.

19        (d) Operator shall not interrupt any business access except as  
20 necessary to provide rail services or to comply with applicable  
21 regulations.

22  
23        6. Locomotive facility. Operator may acquire by purchase the  
24 property identified in Exhibit A from SLR, pursuant to the terms  
25 and conditions set forth below. (i) Operator must inform SLR in  
26 writing that it wishes to proceed within thirty (30) days of the  
27 effective date of this agreement, (ii) Operator must assume all  
28 environmental liability for said parcel and hold SLR harmless from  
29 same, (iii) the parties must agree on a property description, and  
30 on the square footage to be leased or conveyed (said description  
31 shall presumptively be that set forth in Exhibit A, provided that  
32 either party may request corrections for forty five days after the  
33 effective date of this Operating Agreement), (iv) the transfer  
34 shall be made prior to the date of transfer of all other real  
35 estate interests in the corridor to the City, (v) SLR shall have no  
36 obligation to convey the property unless STB authorizes railbanking  
37 of the premises, and said authorization becomes effective, (vi)  
38 Operator shall bear all costs of closing, including recording fees,  
39 excise and property taxes, and so forth, (vii) the transfer shall  
40 be by quitclaim deed by SLR to Operator of all interests it  
41 receives from BNSF, subject to whatever restrictions BNSF places  
42 upon SLR, without any warranty of title, or propriety for any  
43 particular use, (viii) Operator shall pay in cash to SLR \$14.50 per  
44 square foot times the total amount in square feet of property to be  
45 conveyed, in cash, at closing, and (ix) should rail service cease  
46 on the line, Operator agrees to offer the property to City for  
47 acquisition for 120 days at a price to be mutually agreed upon.

48  
49        7. Modified PCN. Upon transfer of the real estate underlying  
50 this line to the City of Seattle, Operator shall secure a modified  
51 certificate of public convenience and necessity (modified PCN)  
52 pursuant to 49 C.F.R. § 1150.21, et seq., or equivalent order for

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1 operators of state or local government owned railroads previously  
2 authorized for abandonment from the Surface Transportation Board.  
3 Operator shall be responsible for all costs associated with  
4 obtaining such order, but shall have the right to recover those  
5 costs (and any other regulatory costs or expenses) from any  
6 shippers or prospective shippers. A form of application for the  
7 modified PCN is attached as Exhibit B.

8  
9 8. Liability for operations, disclaimer and insurance. (a)

10 Upon commencement of rail operations (including any repair or  
11 rehabilitation) on the premises by or under the authority of this  
12 agreement, Operator shall be responsible for all legal liability  
13 arising from said operations, shall hold Owner harmless from same  
14 (including claims for attorneys' fees, court costs, or penalties),  
15 and shall obtain insurance, satisfactory to Owner, for such  
16 operations.

17 (b) Owner makes no representations or warranties with respect  
18 to the condition of the property, including the right of way, for  
19 any purpose, or with respect to compliance with any environmental  
20 laws, or with respect to the existence of, or compliance with, any  
21 required permits of any governmental agency. Operator acknowledges  
22 to Owner that Operator has fully inspected the premises and is not  
23 relying on any statements made by Owner or Owner's agents with  
24 respect to the condition of the premises, including any rail, track  
25 or other track material, or crossings, and that Operator assumes  
26 the responsibility and risks of all conditions, including such  
27 defects and conditions, if any, that cannot be observed by casual  
28 inspection.

29 (c) (i) Operator shall, at all times during the term of this  
30 Agreement, obtain and maintain continuously, at its own expense,  
31 and promptly supply to such representative of Owner as Owner may  
32 from time to time designate in writing, evidence of a policy or  
33 policies of insurance for railroad purposes, in a form and in  
34 amounts acceptable to Owner prior to the initiation of rail  
35 service. Owner shall not be obligated to approve Operator's  
36 insurance coverage unless it includes all the conditions and  
37 specifications enumerated below:

38 (A) A policy of Comprehensive Railroad Liability Insurance,  
39 including coverages known as

- 40 (1) premises/operations liability
- 41 (2) products/completed operations
- 42 (3) personal/advertising injury
- 43 (4) contractual liability
- 44 (5) bill of lading
- 45 (6) foreign rolling stock
- 46 (7) fire suppression expenses
- 47 (8) pollution clean-up expenses
- 48 (9) stop gap or employers contingent liability

49 (B) Such policy or policies shall provide the following  
50 minimum limits:

- 51 (1) bodily injury and property damage:  
52 \$5,000,000 each occurrence, \$5,000,000 aggregate. Property

1 damage coverage shall include coverage for clean-up of spills of  
2 hazardous material on the rail corridor or from the rail corridor  
3 to adjacent property.  
4 (2) stop gap employers liability:  
5 \$1,000,000 each accident, \$1,000,000 disease-policy limit,  
6 \$1,000,000 disease-each employee.  
7 (3) Owner will consider reducing the insurance coverage  
8 specified in item (1) above to \$3,000,000 per occurrence and  
9 aggregate after three years experience with actual operations.  
10 (C) In the event rail passenger service is instituted, any  
11 such service shall be insured in an amount not less than  
12 \$10,000,000 per occurrence/aggregate.  
13 (D) The maximum deductible or self-insured retention shall be  
14 \$25,000, and shall be subject to approval by Owner to ensure  
15 conformity to this provision.  
16 (E) Operator shall include any subcontractors or agents as  
17 insureds under its policies or require such subcontractors or  
18 agents to maintain insurance acceptable to Owner, which insurance  
19 shall be specified in writing prior to commencement of work by the  
20 subcontractor or agent after consultation with Owner, but shall not  
21 be less than general commercial liability insurance in an amount no  
22 less than \$1,000,000 per incident, \$2,000,000 aggregate.  
23 (F) Operator shall maintain a policy (or policies) of General  
24 Commercial Liability in an amount no less than \$1,000,000, and  
25 Business Automobile Liability, including coverage for owned, non-  
26 owned, leased or hired vehicles written on an insurance industry  
27 standard form (CA 00 01) or equivalent. Such policy (or policies)  
28 shall provide a minimum limit of \$1,000,000 for bodily injury and  
29 property damage per accident.  
30 (G) All insurance provided under this agreement shall be  
31 endorsed to include the Owner (including any successor Owner), its  
32 officers (including elected officials if a successor is a political  
33 subdivision or the City), employees, agents and volunteers as  
34 additional insured. In addition, Operator's insurance shall be  
35 primary as respects Owner (including any successor Owner), and any  
36 insurance maintained by Owner shall be excess and not contributing  
37 insurance with the Operator's insurance.  
38 (H) The following clause shall be made part of all said  
39 policies of insurance: "It is agreed that in the event of material  
40 change or cancellation, this company shall give forty-five (45)  
41 days prior written notice to the Owner of the property, addressed  
42 to: Property Manager, SLR, P.O. Box 17883, Seattle, WA 98107, or,  
43 if the Owner is the City of Seattle, to Seattle City Risk Manager,  
44 Room 103, Municipal Building, 600 Fourth Avenue, Seattle, WA  
45 98104-1891."  
46 (ii) (A) If any policy is written on a claims made form, the  
47 retroactive date shall be prior to or coincident with the effective  
48 date of this agreement. The policy shall state that coverage is  
49 claims made, and state the retroactive date. Claims made form  
50 coverage shall be maintained by the Operator for a minimum of six  
51 years following expiration or earlier termination of this  
52 agreement, and Operator shall annually provide Owner with proof of

1 renewal. If renewal of the claims made form of coverage becomes  
2 unavailable, or economically prohibitive, Operator shall purchase  
3 an extended reporting period ("tail") or execute another form of  
4 guarantee acceptable to Owner to assure financial responsibility  
5 for liability for actions, inactions, and services.  
6 (B) Owner shall have discretion to require Operator to  
7 provide reasonable security (e.g., interest bearing escrow account,  
8 irrevocable letter of credit, bond, or third party guarantee),  
9 acceptable to Owner, that Operator will have sufficient assets to  
10 discharge, and will discharge, its obligation under subparagraph  
11 (ii) (A) above with respect to claims made coverage. In addition,  
12 Owner shall have discretion to require Operator to provide similar  
13 reasonable security, acceptable to Owner, to ensure that Operator  
14 will have sufficient assets to cover the entire amount of any self-  
15 insured retention provided in the insurance coverage herein.  
16 Unless otherwise agreed, acceptable security shall constitute a  
17 fully-funded interest bearing escrow account at a federally-insured  
18 institution containing funds at all times equal to no less than the  
19 self-insured retention amount, or \$25,000, whichever is greater.  
20 (iii) As evidence of insurance coverage, the following  
21 documents must be provided to Owner prior to occupancy of the  
22 premises by Operator:  
23 (A) a certified copy of the policy or policies  
24 (B) copies of all relevant endorsements naming Owner as an  
25 Additional Insured, showing the policy number, and signed by an  
26 authorized representative of the insurance company on Form CG2026  
27 (ISO) or equivalent  
28 (C) copies of all relevant "Endorsements Form Lists" to the  
29 policy or policies showing endorsements issued on the policy, and  
30 including any company specific or manuscript endorsements  
31 (D) evidence of compliance with subparagraph (H) above  
32 (E) for commercial general liability and business automobile  
33 liability insurance, a copy of a "separation of insureds" or  
34 "severability of interests" clause, indicating in substance that,  
35 except with respect to the limits of insurance, and any rights or  
36 duties specifically assigned to the first named insured, the  
37 insurance applies as if each named insured were the only named  
38 insured, and separately to each insured against whom claim is made  
39 or suit is brought.  
40 (iv) All policies shall be subject to approval by Owner as to  
41 form, coverage, and being primary to all other insurance. Owner  
42 also shall require each company to be rated A-:VII or higher in the  
43 current A.M. Best's Key Rating Guide, and to be licensed to do  
44 business in the State or Washington, or a surplus Lines carrier  
45 authorized to do business in the State of Washington.  
46 (v) Operator and its insurer(s) shall waive their rights of  
47 subrogation against Owner for damages arising from any risk covered  
48 by the required insurance policies or any other coverage maintained  
49 by Operator. Operator's insurance shall be primary with respect to  
50 any insurance carried by Owner.  
51 (vi) At the request of Owner (which request may be made no  
52 more frequently than five year intervals), the minimum levels of

1 coverage herein shall be adjusted in proportion to changes in the  
2 consumer price index (or successor index) from its base in January  
3 1997.

4 (vii) Failure to comply with insurance coverage requirements  
5 or failure to comply with indemnity requirements shall constitute  
6 material breach of this agreement.

7  
8 9. Surface Transportation Board. (a) Owner and Operator will  
9 cooperate in any required filings before the Surface Transportation  
10 Board, or its successor. Operator acknowledges that Owner  
11 contemplates filing a petition for exemption, requesting  
12 expeditious treatment and an exemption from "offer of financial  
13 assistance" provisions, to permit railbanking of the premises under  
14 16 U.S.C. § 1247(d); and that Owner intends to transfer the  
15 premises to City of Seattle upon the effectiveness of a railbanking  
16 order. Owner acknowledges that Operator intends to file for a  
17 modified PCN in order to serve as Operator for the City of Seattle  
18 when the City obtains ownership of the railbanked corridor.  
19 Operator will supply to Owner letters from each shipper on the line  
20 for the two years preceding suspension of service by BNSF in the  
21 form attached in Exhibit C-2 evincing support for the transactions  
22 and relationships contemplated pursuant to this Operating  
23 Agreement. Such letters may be employed before the STB and in  
24 other relevant public forums. Upon request, Operator will support  
25 Owner's position in any STB railbanking proceeding in writing.  
26 Upon request, Operator will also obtain letters of support  
27 specifically for filing with STB the aforementioned shippers in the  
28 form attached in Exhibit C-1. If Operator has become a common  
29 carrier on the line by the time of said railbanking petition of  
30 Owner, Operator will participate in the filing of the railbanking  
31 petition requesting identical relief (abandonment or  
32 discontinuance, as the case may be, coupled with railbanking) to  
33 that sought by Owner. Upon request, Owner will support Operator's  
34 filing for a modified PCN subsequent to a railbanking  
35 authorization.

36 (b) This agreement is subject to whatever conditions are  
37 imposed by the Surface Transportation Board, or its successor.

38  
39 10. Rail and Trail facilities. (a) Owner and Operator agree  
40 that the trail (which, for this paragraph, may include pedestrian-  
41 only trail or path facilities, bicycle-only trail or path  
42 facilities, or some combination thereof) and railroad shall be  
43 constructed within the areas indicated in Exhibit D in all portions  
44 of the premises which are not in street right of way. Owner and  
45 Operator agree to design their respective facilities such that  
46 crossings of tracks are as safe as reasonably possible, by use of  
47 approaches close to right angle, or appropriate rubberized crossing  
48 materials, or similar measures. Operator agrees to design  
49 Additions and configurations so as to minimize crossing of trail  
50 facilities. Owner and Operator shall avoid damage to each other's  
51 facilities.

52 (b) Owner and Operator agree that new trail facilities (other



1 than crossings)<sup>1</sup> may be constructed only in accordance with  
2 applicable regulations of DOT or WUTC relating to separation from  
3 centerline of rail.<sup>2</sup> At the request of Operator, Owner will  
4 consider installing dividers between the rail and trail at limited  
5 locations consistent with applicable guidelines for bicycle  
6 facilities or, in the case of purely pedestrian facilities,  
7 guidelines issued by the City for same,<sup>3</sup> provided that separation  
8 of such dividers from the centerline of the rail is consistent with  
9 applicable regulations of DOT or WUTC. The desired width for the  
10 trail corridor between Eighth and Eleventh Avenue shall be twenty  
11 (20) feet in width, but may be reduced to no less than eighteen and  
12 one half (18-1/2) feet in order to accommodate an additional line  
13 of track installed by Operator. Owner shall be responsible to  
14 install appropriate informational and safety signage relating to  
15 any new trail construction in accordance with applicable City of  
16 Seattle guidelines.<sup>4</sup>

17 (c) Owner and Operator acknowledge that there are certain  
18 portions of the rail corridor where the available width for new  
19 trail development purposes, taking into account Washington State  
20 regulations for minimum trail clearances, unless the rail line is  
21 moved, is less than ten feet, and where trail facilities have not  
22 yet been constructed. In all such instances, Owner reserves the  
23 right to develop a trail, but in the event of trail development,  
24 will limit trail use to pedestrians, employing appropriate City of  
25 Seattle guidelines for pedestrian facilities, and will develop a  
26 bicycle trail at suitable alternative locations. Nothing herein  
27 shall prohibit use of sidewalks or existing streets by motorized or  
28 non-motorized users, or pedestrians.

29 (d) In the event trail maintenance or construction damages  
30 rail facilities owned by Operator, Owner shall be responsible for  
31 the costs of repair. In the event railroad maintenance or  
32 construction damages trail facilities, Operator shall be

<sup>1</sup> For purposes of this subparagraph, new trail facilities means any trail facility within the premises constructed from Eighth Avenue west.

<sup>2</sup> The parties concur that the applicable regulations include WAC 480-60-050. As a matter of convenience, Owner intends to provide a ten foot separation where practical.

<sup>3</sup> The applicable guidelines for bicycle paths and trails are currently set forth by the American Association of State Highway and Transportation Officials in "Guide for the Development of Bicycle Facilities" (August 1991), particularly at p. 24. The applicable City of Seattle guidelines for purely pedestrian facilities are (a) Seattle Street Improvement Manual and (b) City of Seattle Standard Plans and Specifications.

<sup>4</sup> See footnote 3 and Manual for Uniform Traffic Control Devices.

1 responsible for the costs of repair.

2 (e) Owner shall have the right to require Operator to  
3 relocate its track in order to accommodate trail construction in  
4 accordance with this Agreement; provided, however, that a  
5 continuous track on the premises shall be provided unless Operator  
6 consents otherwise. Unless otherwise agreed, Operator shall  
7 promptly move its track at Owner's written request to accommodate  
8 the construction of trail facilities. Owner shall be responsible  
9 for the direct labor costs of such movement, plus five (5) per cent  
10 overhead based on those costs with respect to the entire premises,  
11 except that, with respect to that part of the premises north of  
12 Seaview Avenue, N.W., owner shall be responsible for the costs of  
13 retaining structures, grading, drainage, and engineering associated  
14 with trail installation north of Seaview Avenue N.W., and shall not  
15 otherwise be responsible for the costs of any new ballast, track,  
16 ties, or other material used in such move. Owner and operator  
17 shall enter into a written agreement regarding any construction  
18 project to be undertaken associated with movement of rail to  
19 accommodate trail development on the premises north of Seaview  
20 Avenue, N.W. The construction agreement referred to herein will  
21 ensure that owner is only responsible for reimbursing operator for  
22 those costs specified above caused by owner's plan to develop a  
23 trail on the premises, and the parties will endeavor to minimize  
24 owners' cost to the extent possible. Consent to an agreement  
25 shall not be unreasonably withheld. Owner shall reimburse Operator  
26 for such direct labor costs upon receipt of an itemized bill from  
27 Operator. Operator shall use reasonable care in the construction  
28 of all new or moved rail facilities. Owner shall use reasonable  
29 care in the construction of all new or moved trail facilities. The  
30 provisions of paragraph 1(d) shall govern the portion of rail with  
31 trail east of Eighth Avenue. Owner shall be responsible for design  
32 and installation of a safe crossing for the trail north of Seaview  
33 Avenue in the event of trail development.

34 (f) Operator shall not engage in construction of rail or  
35 rail-related facilities which interfere with the trail to be  
36 constructed on the premises. Owner shall not be responsible for  
37 the costs of moving any new rail or rail-related facilities which  
38 interfere with the trail. Operator may tender Owner proposed  
39 construction drawings for all new facilities, to such person as  
40 Owner identifies in writing. If Owner within thirty days of  
41 receipt of said drawings does not state a determination that  
42 interference will or may occur, Owner shall be deemed to have made  
43 a determination of no interference and shall be responsible for  
44 costs for moving said facilities in accordance with this paragraph  
45 in the event the facilities are constructed and later found to  
46 interfere.

47 (g) Operator and City both covenant and agree to keep their  
48 respective portions of the premises free and clear of debris and  
49 equipment not in actual use for rail or trail construction,  
50 maintenance or operations.

51 (h) Notwithstanding any other provision of this agreement,  
52 Operator shall have access to, and full responsibility for, all

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE  
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

1 signals, including grade crossing signals, used or installed for  
2 operation of this railroad line.

3 (i) Effective when City becomes Owner under this Operating  
4 Agreement, City undertakes to provide Operator with 120 days  
5 notice, and a subsequent opportunity to consult, prior to City's  
6 presentation of a request for initial authorization or financing  
7 for an extension of the Burke-Gilman Trail in the area between 11th  
8 Avenue and the Locks within the premises. Nothing herein shall  
9 require advance notice to Operator of, or otherwise abridge any  
10 right of the City to engage in, site-specific and ordinary bicycle  
11 or pedestrian improvements, site-specific safety improvements, or  
12 sidewalk installation, replacement, or repair in the referenced  
13 area.

14  
15 11. Transload. (a) Taking note that this Operating  
16 Agreement is in accordance with the Burke-Gilman Agreements between  
17 the City and BNSF, and that said Agreements provide for certain  
18 lease cancellations by BNSF in the event of transfer pursuant to  
19 the Agreements, SLR agrees to request BNSF to terminate all leases  
20 for the property described in Exhibit E prior to transfer to SLR.  
21 Provided said leases are terminated, Owner and Operator agree that,  
22 for the duration of this operating agreement, Operator shall have  
23 a lease providing for exclusive use to the property described in  
24 Exhibit E for transload purposes. The lease with Operator shall  
25 provide that any fixture remaining upon the premises shall become  
26 the property of Owner at the termination of this operating  
27 agreement. Operator shall leave the premises free and clear of any  
28 contamination or debris at the termination of this operating  
29 agreement.

30 (b) Operator shall be solely responsible for all losses,  
31 claims of damage, or liability (including liability for attorneys  
32 fees, court costs, penalties, or environmental contamination)  
33 arising from its use of the area set forth in Exhibit E, and shall  
34 hold Owner harmless from same.

35  
36 12. Indemnities. (a) Operator shall defend Owner (with  
37 counsel approved by Owner) and shall fully indemnify Owner, and  
38 hold Owner and its officers, employees, and agents harmless from  
39 any and all losses, claims, actions, judgments, property damages,  
40 death, personal injuries, or damage suffered by any person or  
41 entity arising out of resulting from any occurrence of property  
42 damage, death or injury (i) in or on the premises occupied or used  
43 by Operator, including common carrier liability, (ii) arising from  
44 Operator's operations on or off the premises, and (iii) arising  
45 from the violation of any law or breach of any franchise or  
46 operating agreement, including this agreement by Operator, or any  
47 of its officers, directors, employees, agents, or contractors. In  
48 the event Operator fails to defend (or to defend adequately in the  
49 opinion of Owner) the suit, Owner shall have the right to assume  
50 the defense and to be held harmless from all costs arising from  
51 same, including costs for legal counsel and all fees and charges  
52 related thereto; provided, however, that Owner may always

1 participate in a proceeding at its own expense. Under this  
2 indemnity, Operator shall be responsible promptly to satisfy any  
3 final judgment adverse to the Owner or Owner and Operator jointly.

4 (b) The indemnity provided in this paragraph is intended to  
5 be broad and comprehensive. It shall not be diminished by the  
6 fact, if it is a fact, that the liability in question may have been  
7 contributed to by the negligence of the Owner, its officers,  
8 employees, or agents, provided, however, that Owner shall be liable  
9 if the liability arises solely and entirely from the fault of the  
10 Owner.

11 (c) The indemnification provided by this paragraph has been  
12 mutually negotiated by the parties and shall survive the  
13 termination of the Operator's franchise, the Operator's surrender  
14 of use and occupancy, and expiration or termination of this  
15 agreement. This indemnity is for the sole benefit of Owner, and  
16 shall not inure to the benefit of any third party other than Owner,  
17 its successors, and Owner's (or successor's) officers, employees,  
18 or agents. Operator waives, with respect to the Owner (and its  
19 successors) only, its immunity under RCW Title 51, Industrial  
20 Insurance, and to any other industrial insurance, workers'  
21 compensation, disability, or employee benefit legislation of any  
22 jurisdiction which would otherwise be applicable.

23  
24 13. Environmental. (a) Operator (i) shall cause the  
25 premises under its control or use, and all Operator's operations  
26 thereon, to be conducted in accordance with all environmental laws  
27 and orders of any governmental authorities having jurisdiction,  
28 (ii) shall obtain, keep in effect, and comply with all governmental  
29 permits and authorizations required by environmental laws with  
30 respect to the premises under Operator's control or use, and with  
31 respect to Operator's operations, and (iii) shall furnish Owner  
32 with copies of all such permits and authorizations, including any  
33 amendments or renewals thereof, upon request, and notify Owner  
34 promptly in the event of expiration or revocation of such permits  
35 or authorizations.

36 (b) Operator's indemnity in paragraph 12(a) shall also apply  
37 to hold Owner harmless from any claims<sup>5</sup> (including claims for  
38 attorneys' fees, court costs, or penalties) relating to any  
39 hazardous, dangerous or toxic material, waste, substance, or other  
40 pollutant or contaminant (hereinafter collectively referred to as  
41 "hazardous material"<sup>5</sup>) arising out of, or resulting from (i)  
42 Operator's operations, (ii) the violation of any law or breach of  
43 this agreement by Operator or any of its officers, directors,  
44 employees, agents or contractors, (iii) the release by Operator of  
45 any hazardous material on the premises controlled or used by  
46 Operator or involving Operator's operations outside the premises

<sup>5</sup> It is the intent of the parties that hazardous material shall include such substances, materials and wastes as are currently or as become regulated or subject to clean-up authority under any local, state or federal law.

1 under its control or use. In the event Owner must take action to  
2 respond to such claims, Operator shall indemnify Owner for all  
3 costs which Owner incurs, including all clean-up and remediation  
4 costs, including attorneys', consultants' and contractor's fees to  
5 achieve compliance with applicable laws, regulations, and orders.

6 (c) Owner shall have the option, at Owner's expense, to  
7 require an environmental audit of the premises used by the Operator  
8 at any time, and shall have a right of entry for same. If Owner  
9 at any time has reasonable grounds to believe that Operator is not  
10 complying with the terms of this paragraph or that a release of a  
11 hazardous substance has occurred or is about to occur, Owner may  
12 require Operator to furnish Owner with an environmental audit or  
13 site assessment, at Operator's expense, conducted by a qualified  
14 consultant acceptable to Owner. If such environmental audit does  
15 not disclose noncompliance or a release by Operator, Owner shall  
16 promptly reimburse Operator for all costs incurred in connection  
17 with such environmental audit.

18 (d) Nothing in this agreement shall be construed to abridge  
19 the rights of Owner or Operator to pursue the liability of  
20 responsible third parties for contamination of the premises, and  
21 the parties agree to undertake reasonable measures to assist each  
22 other in any such endeavor.

23 (e) Unless Owner specifically agrees otherwise in a writing  
24 signed by Owner, Operator shall not store, treat, recycle,  
25 manufacture, refine or generate hazardous material on the premises,  
26 except as may reasonably be necessary for its own operations, or as  
27 incidental to a shipment. Operator shall not dispose or release  
28 hazardous material on the premises. Operator in all events shall  
29 conduct its operations so as to comply with all applicable  
30 environmental laws and to minimize the likelihood of any releases  
31 on, in, above, under or from the premises.

32 (f) Operator shall undertake all investigatory, preventive,  
33 and remedial actions reasonably necessary to comply with applicable  
34 environmental laws, regulations, and requirements, or to prevent or  
35 minimize property damage, personal injury, or damage to the  
36 environment, or threat of same, by releases or exposure to  
37 hazardous materials in connection with the premises or Operator's  
38 operations. Operator shall promptly notify Owner of any spill or  
39 release of a hazardous material, any violation of law relating to  
40 same, any lawsuit filed or threatened regarding same, any notice,  
41 fine or penalty regarding same, and any investigation or proceeding  
42 regarding same, arising in connection with the premises or  
43 Operator's operations.

44 (g) Sixty (60) days prior to the expiration of this  
45 agreement, or upon receiving notice of termination, Owner shall  
46 have the right (including a right of entry) to conduct an  
47 environmental assessment designed to establish the environmental  
48 condition of the premises. Upon completion of the assessment,  
49 Owner shall provide Operator with a copy of an environmental report  
50 that describes the results. The parties agree that there shall be  
51 a presumption (which shall be rebuttable) that the assessment shall  
52 establish the environmental condition of the premises as of the

1 date this agreement terminates. Nothing in this agreement shall be  
2 construed as (I) a presumption or determination that any  
3 contamination or hazardous substance disclosed in such assessment  
4 was caused by Operator or during Operator's occupancy of the  
5 premises, or (II) an undertaking by Operator to cure or address any  
6 such contamination or hazardous substance, or (III) a waiver by  
7 Operator of any claim of responsibility by either party against the  
8 other, or any other person or entity, relating in any manner to any  
9 such contamination or hazardous substance.

10 (h) Notwithstanding any other provision in this agreement, in  
11 the event of a breach of this paragraph by Operator, Owner upon  
12 reasonable notice and opportunity to cure (which notice and  
13 opportunity to cure may be as short as twenty four hours in the  
14 event of an emergency involving a release or threatened release of  
15 a hazardous substance) may suspend all or a portion of this  
16 agreement, or, if the release involves an imminent danger to the  
17 public, may terminate this agreement. Owner may also exercise any  
18 remedies otherwise available in law. Nothing in this subparagraph  
19 shall be construed as a waiver by Operator of any claim against  
20 Owner for wrongful termination or suspension of this agreement.

21 (i) Nothing herein shall be construed to constitute a waiver  
22 of, or release of, or a limitation upon, the rights or  
23 responsibilities of the Owner or Operator in any future action  
24 pursuant to the Washington Model Toxics Control Act, RCW Chapter  
25 70.105D, or the Comprehensive Environmental Response, Compensation  
26 and Recovery Act, 42 U.S.C. 9601, et seq., as either statute is  
27 amended or supplemented, or pursuant to any successor statute.

28  
29 14. Laws to be observed. Operator shall keep fully informed  
30 of all Federal and State laws, all local laws, ordinances,  
31 regulations, injunctions and all final orders and decrees of bodies  
32 of tribunals having any jurisdiction or authority, which in any way  
33 affect the performance of this agreement, including without  
34 limitation any laws, ordinances, regulations, orders, or decrees,  
35 identified herein. Operator shall at all times observe and comply  
36 with all such laws, ordinances, regulations, and all final orders  
37 and decrees (to the extent not preempted by federal law) and shall  
38 protect, hold harmless and indemnify the Owner against any claim or  
39 liability arising from or based on the violation of any such law,  
40 ordinance, regulation, injunction, or final order or decree.

41  
42 15. Assignment. Operator shall not assign its right or  
43 delegate its duties under this agreement, or any part hereof,  
44 without the prior written consent of Owner. The parties  
45 contemplate that SLR shall assign all its interests in this  
46 Operating Agreement to City of Seattle pursuant to the form of  
47 assignment attached as Exhibit F. Upon such assignment, SLR shall  
48 be deemed relieved of all obligations to Operator.

49  
50 16. Term. The term of this agreement shall be thirty years,  
51 subject to cessation of operations or termination of the agreement  
52 as provided herein.

1 17. Breach. In case of breach of this agreement by Operator,  
2 Owner shall give Operator no less than thirty (30) days notice to  
3 cure, in writing, stating the breach that has occurred, the basis  
4 for viewing the occurrence (or non-occurrence) as a breach, and a  
5 request or demand that the breach be cured. Upon request, Owner  
6 will reasonably cooperate in effecting cure (so long as consistent  
7 with applicable law, and so long as costs of cure are borne by  
8 Operator). If cure is not substantially affected within the time  
9 specified in the notice (no less than thirty (30) days calculated  
10 from delivery of said notice), Owner may declare this agreement  
11 terminated if the breach is material, or, alternatively, and also  
12 in the case of non-material breaches, shall have a right to require  
13 suspension of rail operations until the breach is remedied, or  
14 shall have a right of entry to make such repairs or modifications  
15 (or to perform such work) as is necessary to remedy the breach,  
16 charging all costs and expenses to the Operator, which shall pay  
17 the amount within thirty (30) days. For purposes of this  
18 Agreement, material breach shall include, but not necessarily be  
19 limited to, failure to maintain required insurance coverage, use  
20 of the premises by the Operator for purposes other than rail or  
21 rail-related purposes, failure to comply with final FRA, DOT or  
22 WUTC orders, failure to remedy environmental conditions caused by  
23 the Operator, failure to discharge common carrier (freight  
24 railroad) obligations, failure to comply with paragraph 25  
25 (relating to passenger uses), and/or failure to comply with any  
26 portion of paragraph 9 (cooperation before STB).

27 18. Other termination and termination generally. (a) Owner  
28 may terminate this agreement if the level of freight rail usage  
29 decreases below an average of 30 carloads per year averaged over  
30 any 36 month period.

31 (b) During the period SLR owns the premises, Operator may not  
32 terminate this agreement without the prior written consent of SLR.  
33 Upon assignment of this agreement to the City of Seattle, Operator  
34 may terminate this agreement upon sixty (60) days prior written  
35 notice to the City of Seattle, compliance with all the terms of  
36 this Agreement, and satisfaction of any applicable regulations or  
37 requirements of the Surface Transportation Board, or its successor.

38 (c) In the event of termination, Operator upon request of  
39 Owner shall cooperate in any required filings before the Surface  
40 Transportation Board, or its successor, to secure a prompt  
41 termination of any applicable operating authority and in a fashion  
42 so as to secure preservation of the premises under 16 U.S.C.  
43 1247(d).

44 (d) Nothing herein shall be construed to limit or to abridge  
45 the City's rights of termination provided in the City's Charter  
46 applicable to franchise agreements generally.  
47

48 19. Notices. All notices under this agreement shall be  
49 deemed delivered if posted by U.S. Mail, postage pre-paid, first  
50 class, or sent by express delivery (one or two day service), or by  
51  
52

1 fax transmission, to the addressees or (if appropriate) fax numbers  
2 provided below:

3  
4 If to Owner, to: Property Manager  
5 SLR  
6 P.O. Box 17883  
7 Seattle, WA 98107  
8 Fax number: (206) 706-1991  
9

10 If to Operator, to: Byron Cole, Managing Member  
11 Ballard Terminal Railroad Company, LLC  
12 5228 Shilshole Ave. N.W.  
13 Seattle, WA 98107  
14 Fax number: (206) 781-0984  
15

16 These addresses may be changed provided notice is given in  
17 writing.  
18

19 20. Severability. In the event any section, paragraph,  
20 sentence, clause or phrase contained herein shall be determined,  
21 declared, or adjudged invalid, illegal, unconstitutional, or  
22 otherwise unenforceable, such determination, declaration, or  
23 adjudication shall in no manner affect the other sections,  
24 paragraphs, sentences, clauses, or phrases of this agreement, which  
25 shall remain in full force and effect as if the section, paragraph,  
26 sentence, clause or phrase declared, determined, or adjudged  
27 invalid, illegal, unconstitutional or otherwise unenforceable were  
28 not originally a part thereof.  
29

30 21. Governing law. This agreement shall be governed by the  
31 laws of Washington.  
32

33 22. Amendment. This agreement may be modified or amended  
34 only in a writing referring to this agreement and executed by both  
35 parties. In the event of a conflict between this agreement and the  
36 applicable franchise ordinance, the franchise ordinance shall  
37 control.  
38

39 23. Subsidies. Except for financial contributions which  
40 SLR has committed to make in paragraph 1, in no event shall Owner  
41 be responsible for repair, rehabilitation, maintenance, or  
42 operation of rail facilities, or property in the corridor used or  
43 occupied by Operator. Notwithstanding the above, Owner will  
44 cooperate with Operator in seeking to facilitate grants or loans  
45 for rehabilitation, provided, however, that Owner on no account  
46 will be liable for repayment of said grants or loans except to the  
47 extent of salvage value in the event Owner owns the salvage. SLR  
48 agrees to send a form of letter in support of a rehabilitation  
49 grant request substantially in accordance with Exhibit H.  
50

51 24. Survival. All indemnities and allocations of liability,  
52 including associated insurance provisions, shall survive expiration



1 or earlier termination of this agreement.

2  
3 25. Passenger use. Owner shall permit passenger use on the  
4 following conditions: (a) insurance requirements for said use as  
5 set forth in this agreement are met, (b) FRA or DOT inspectors  
6 certify that the line meets at least FRA Class I standards (or  
7 higher standards if applicable for passenger service), (c) the  
8 engineer for any passenger operation is FRA-certified, (d) all  
9 equipment employed meets FRA, DOT, WUTC and other applicable  
10 standards, and (e) Operator receives prior written approval from  
11 Owner (if the City, through its Director of Transportation) of an  
12 operating plan (i) covering hours of operation and  
13 boarding/deboarding locations consistent with maintaining safe  
14 traffic flow, egress and ingress to abutting businesses, and the  
15 provision of adequate parking, (ii) demonstrating consistency with  
16 trail use, compatibility with freight service, and showing that the  
17 primary purpose of the line remains freight rail service, (iii)  
18 identifying safety measures to be implemented during passenger  
19 operations at crossings, and (iv) consistent with the construction  
20 and operation of passenger facilities in connection with commuter  
21 rail use of the BNSF mainline.

22  
23 26. Conformity to acquisition contract. In the event the  
24 contract for acquisition of the premises by SLR from Burlington  
25 Northern Santa Fe Railway imposes terms or conditions more  
26 stringent than this agreement, the acquisition contract terms or  
27 conditions shall control. A copy of the most recent form of  
28 acquisition contract is attached as Exhibit I. The parties agree  
29 that the acquisition contract, when executed and delivered by both  
30 parties, shall be automatically substituted for the form of  
31 contract attached as Exhibit I upon delivery (by hand, express, or  
32 U.S. Mail, postage pre-paid, first class) by Owner to Operator.

33  
34 27. Effective date. This agreement shall become effective at  
35 such time as SLR obtains authority from the Surface Transportation  
36 Board, or its successor, to acquire and in fact acquires the  
37 premises from The Burlington Northern and Santa Fe Railway Company.  
38 (A draft form of notice of exemption for that purpose is attached  
39 as Exhibit G.) Until such time as SLR obtains the property  
40 pursuant to an effective notice of exemption (or other appropriate  
41 authorization from the Surface Transportation Board, or its  
42 successor), the parties shall not be obligated to each other, other  
43 than to cooperate in efforts to achieve the conditions precedent to  
44 the effectiveness of this agreement.

45  
46 28. Miscellaneous. (a) All parties to this Agreement attest  
47 that they have freely and willingly entered into this Agreement,  
48 with advise of counsel, and that neither this Agreement nor any  
49 provision within it is the result of superior bargaining power or  
50 duress. Furthermore, all parties to this agreement represent to  
51 each other that they neither can nor will take the position that  
52 this Agreement, or any portion of this Agreement, is a contract of

1 adhesion.

2 (b) Notwithstanding any other provision of this Agreement,  
3 Operator shall conform to the provisions set forth in Exhibit I  
4 relating to salvage activities and utilities.

5 (c) The parties jointly undertake to support the provision of a  
6 letter in the form set forth in Exhibit J to BNSF.

7 (d) The parties acknowledge that SLR and Seattle intend to enter  
8 into a memorandum of understanding substantially in the form set forth  
9 in Exhibit K.

10  
11 29. Separate counterparts. BTRC and SLR agree that this  
12 Operating Agreement may be executed in separate counterparts and shall  
13 be deemed accepted when the counterparts are delivered by each to the  
14 other. Delivery may be evinced by transmission by fax of executed  
15 signature pages to (in the case of BTRC) Stephen L. Day, Esq. at 206-  
16 292-9988, and (in the case of SLR) Fred Wert at 202-706-1991. City's  
17 approval as to form may be evinced by appropriate signature on either  
18 counterpart. The parties will cooperate in achieving fully executed  
19 originals should the separate counterpart method be initially  
20 employed.

21 Ballard Terminal Railroad Company, LLC

22  
23 by: *Paul J. Anderson*

24  
25 Sea Lion Railroad Project

26  
27 by: *Fred Wert*

28  
29  
30  
31 The form of this agreement is acceptable for purposes of future  
32 assignment to the City of Seattle.

33  
34 Seattle Department of Transportation

35  
36 by: *Dayl Hely*

37  
38  
39 Exhibit A: parcel for locomotive facility  
40 Exhibit B: form of application for modified PCN  
41 Exhibit C-1: form of support letter for STB  
42 Exhibit C-2: form of general support letter  
43 Exhibit D: rail and trail maps  
44 Exhibit E: parcel for transload  
45 Exhibit F: form of assignment to City of Seattle  
46 Exhibit G: form of "notice of exemption for acquisition and  
47 operation"  
48 Exhibit H: form of letter supporting grant application  
49 Exhibit I: form of BNSF-SLR purchase agreement, including  
50 conditions relating to salvage and utilities  
51 Exhibit J: form of City letter to BNSF regarding compliance  
52 with Burke-Gilman agreements  
53 Exhibit K: form of MOU SLR/Seattle

## FRANCHISE DESCRIPTION

### Portions in Former BNSF Right of Way

Those portions of The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway Company) former Ballard Line right of way, varying in width on each side of the Railway Company's Main Track centerline, as located and constructed upon, over and across Section 13, Township 25 North, Range 3 East of the Willamette Meridian, King County, Washington, more particularly described as follows, to-wit:

That portion of Lots 1 and 28-30, Block 4 of Ross Addition to the City of Seattle, as recorded in Volume 2 of Plats, page 96, Records of King County, Washington, lying 7.5 feet on each side of the Main Track centerline, as measured at right angles; also,

That portion of Lots 3 and 4, Block 3 of Ross Addition to the City of Seattle, as recorded in Volume 2 of Plats, page 96, Records of King County, Washington, lying 7.5 feet on each side of the Main Track centerline, as measured at right angles; also,

Those portions of Lots 8-11 in Block 1 of Ross Home Addition, as recorded in Vol. 11 of Plats, page 25, Records of King County, Washington, lying 7.5 feet on each side of the Main Track centerline, as measured at right angles; also,

Those portions of Lots 1 and 6-8, Block 2 of Ross Addition, as recorded in Vol. 2 of Plats, page 96 Records of King County, Washington, lying 7.5 feet on each side of the Main Track centerline, as measured at right angles; also,

Those portions of Lots 1 and 2, Block 4 of Fern Addition to the City of Seattle, as recorded in Volume 7 of Plats, page 52, Records of King County, Washington, lying 7.5 feet on each side of the Main Track centerline, as measured at right angles; also,

Those portions of Lots 5-8, Block 1 of Fern Addition to the City of Seattle, as recorded in Volume 7 of Plats, page 52, Records of King County, Washington, lying 7.5 feet on each side of the Main Track centerline, as measured at right angles; also,

That portion of Lot 1, Block 2 of Fern Addition to the City of Seattle, as recorded in Volume 7 of Plats, page 52, Records of King County, Washington, lying Southwesterly of a line drawn parallel with and distant 7.5 feet Northeasterly, as measured at right angles from the Main Track centerline; also,

Those portions of Lots 10-14, Block 18 of Denny's Addition to Ballard and Seattle, as recorded in Volume 14 of Plats, page 16, Records of King County, Washington, lying Northeasterly of a line drawn parallel with and distant 23.5 feet Southwesterly, as measured at right angles from the Main Track centerline; also,

Those portions of Lots 5-8 and 15-18, Block 17 of Denny's Addition to Ballard and Seattle, as recorded in Volume 14 of Plats, page 16, Records of King County, Washington, together with the 12.0 foot wide alley in said Block 17, lying Northeasterly of a line drawn parallel with and distant 23.5 feet Southwesterly, as measured at right angles from the Main Track centerline, and lying Southwesterly of a line drawn parallel with and distant 15.0 feet Northeasterly, as measured at right angles from the Main Track centerline; also,

That portion of 60.0 foot wide vacated Northwest 44<sup>th</sup> Street (formerly Salmon Street) as vacated by Ordinance 79548, lying Northeasterly of a line drawn parallel with and distant 23.5 feet Southwesterly, as measured at right angles from the Main Track centerline, and Southwesterly of a line drawn parallel with and distant 15.0 feet Northeasterly, as measured at right angles from the Main Track centerline; also,

Those portions of Lots 1- 4 and 19 - 22, Block 16 of Denny's Addition to Ballard and Seattle, as recorded in Volume 14 of Plats, page 16, Records of King County, Washington, together with the 12.0 foot wide alley in said Block 16, lying Northeasterly of a line drawn parallel with and distant 23.5 feet Southwesterly, as measured at right angles and radially from the Main Track centerline, and Southwesterly of a line drawn parallel with and distant 15.0 feet Northeasterly, as measured at right angles and radially from the Main Track centerline; also,

Those portions of The Burlington Northern and Santa Fe Railway Company's (formerly jointly owned by the Northern Pacific Railway Company and Great Northern Railway Company) former Ballard Line right of way, varying in width on each side of said Railway Company's Main Track centerline, as located and constructed upon, over and across Sections 11 and 12, all in Township 25 North, Range 3 East of the Willamette Meridian, King County, Washington, more particularly described as follows, to-wit:

That portion of Lots 5, 6, 19, 20, 21 and 22, Block 174 of Gilman Park, as recorded in Volume 3 of Plats, page 40, Records of King County, Washington, being 10.0 feet wide on each side of said Lead Track centerline as now located and constructed; also,

That portion of Lots 6 and 19, Block 171 of Gilman Park, as recorded in Volume 3 of Plats, page 40, Records of King County, Washington, being 10.0 feet wide on each side of said Lead Track centerline as now located and constructed; also,

That portion of Lots 6 and 19, Block 168 of Gilman Park, as recorded in Volume 3 of Plats, page 40, Records of King County, Washington, being 10.0 feet wide on each side of said Lead Track centerline as now located and constructed; also,

That portion of Government Lot 2 of said Section 11, Township 25 North, Range 3 East lying contiguous to and Southwesterly of Shilshole Avenue Northwest, and Northeastly of a line drawn parallel with and distant 8.5 feet Southwesterly, as measured at right angles from said Railway Company's relocated siding track centerline, bounded on the Northwest by the Northeastly extension of the Northwesterly line of Lot 5, Block 8 of Ballard Tide Lands, and bounded on the Southeast by the Southeasterly line of vacated 22nd Avenue Northwest (formerly 3rd Avenue West); also,

**Those portions of The Burlington Northern and Santa Fe Railway Company's (formerly Great Northern Railway Company) former Ballard Line right of way, varying in width on each side of said Railway Company's Main Track centerline, as located and constructed upon, over and across Sections 10 and 11, all in Township 25 North, Range 3 East of the Willamette Meridian, King County, Washington, more particularly described as follows, to-wit:**

That 17.0 foot wide portion of said Railway Company's right of way, being 8.5 feet wide, as measured at right angles, on each side of the Main Track centerline as located and constructed upon, over and across Government Lot 2 all in said Section 11, Township 25 North Range 3 East, bounded on the East by the Southwesterly line of Shilshole Avenue and bounded on the West by the Easterly line of 24th Avenue Northwest; also,

That 17.0 foot wide portion of said Railway Company's right of way, being 8.5 feet wide, as measured at right angles, on each side of the Main Track centerline as located and constructed upon, over and across Government Lot 3 and the East 520.0 feet of Government Lot 4, all in said Section 11, Township 25 North, Range 3 East, bounded on the East by the West line of 24th Avenue Northwest, and bounded on the West by the West line of the East

520.0 feet of said Government Lot 4, **EXCEPTING THEREFROM**, the right of way for 28th Avenue Northwest; also,

That 20.0 foot wide portion of said Railway Company's right of way, being 10.0 feet wide, as measured at right angles, on each side of the Main Track centerline upon, over and across Government Lot 4, of said Section 11 and Government Lots 3, 2 and 1 of Section 10, all in Township 25 North, Range 3 East, bounded on the East by the West line of the East 520 feet of said Government Lot 4 of Section 11, and bounded on the North by the easterly extension of the north line of Lot 10 of Block 15 of Ballard Tide Lands according to the recorded plat thereof, **EXCEPTING THEREFROM**, the rights of way for 40 foot wide 30th Avenue Northwest, 80 foot wide 32nd Avenue Northwest, 66.0 foot wide West 57th Street, 80.0 foot wide Market Street, and for Seaview Avenue Northwest at Northwest 60th Street, **ALSO EXCEPTING THEREFROM** that portion of said Railway Company's right of way, lying within an area between two lines drawn parallel and concentric with and distant 150.0 feet wide on each side of a line lying directly below the centerline of said Railway Company's Bridge No. 4 over said Ballard Line right of way, and over and across Salmon Bay Waterway; also,

That 35.0 foot wide portion of said Railway Company's right of way, being 10.0 feet wide, as measured at right angles, on the Westerly side, and 25.0 feet wide, as measured at right angles, on the Easterly side of the Main Track centerline upon, over and across Government Lot 1 of Section 10, Township 25 North, Range 3 East, bounded on the South by the Easterly extension of the North line of Lot 10 of Block 15 of Ballard Tide Lands according to the recorded plat thereof, and bounded on the North by the Easterly extension of the South line of Lot 3 of said Block 15 of Ballard Tide Lands; also,

That 20.0 foot wide portion of said Railway Company's right of way, being 10.0 feet wide, as measured at right angles, on each side of the Main Track centerline upon, over and across Government Lot 1 of Section 10, Township 25 North, Range 3 East, bounded on the South by the Easterly extension of the South line of Lot 3 of Block 15 of Ballard Tide Lands according to the recorded plat thereof, and bounded on the North by the North line of said Section 10; also,

That 20.0 foot wide portion of said Railway Company's right of way in Government Lot 4 of Section 3, Township 25 North, Range 3 East, lying East of Block 16 of Ballard Tide Lands, being 10.0 feet wide, as measured at right angles, on each side of the Main Track centerline, bounded on the South by the South line of said Section 3 and bounded on the North by the South margin of Northwest 67th Street; and

**Portions in City Street Right of Way**

Those portions of City Streets, all in Sections 3, 10, 11, 12 and 13, Township 25 North, Range 3 East, Willamette Meridian, King County, Washington, more particularly described as follows, to-wit:

That portion of 80.0 foot wide Northwest 40<sup>th</sup> Street (formerly Ross Place) lying 7.5 feet on each side of the Main track centerline, as measured at right angles; also,

Those portions of 66.0 foot wide 6<sup>th</sup> Avenue Northwest and 80.0 foot wide Northwest 41<sup>st</sup> Street lying 7.5 feet on each side of the Main Track centerline, as measured at right angles; also,

Those portions of 60.0 foot wide Northwest 42<sup>nd</sup> Street and 60.0 foot wide 7<sup>th</sup> Avenue Northwest, lying 7.5 feet on each side of the Main Track centerline, as measured at right angles; also,

Those portions of 60.0 foot wide Northwest 43<sup>rd</sup> Street and 66.0 foot wide 8<sup>th</sup> Avenue Northwest, lying 7.5 feet on each side of the Main Track centerline; also,

That portion of 60.0 foot wide Bright Street (formerly West 44<sup>th</sup> Street) lying Northeasterly of a line drawn parallel with and distant 23.5 feet Southwesterly, as measured at right angles from the centerline of said Mainline Track, and Southwesterly of a line drawn parallel with and distant 30.0 feet Northeasterly, as measured at right angles from said Main Track centerline; also,

That portion of the East 33.0 feet of 9th Avenue Northwest (formerly 2nd Avenue East and Eastern Avenue), lying Northeasterly of a line drawn concentric with and distant 7.5 feet Southwesterly, as measured radially from the Main Track centerline; also,

That portion of Northwest 45<sup>th</sup> Street (formerly "A" Street) East of the Northerly extension of the East line of 9<sup>th</sup> Avenue Northwest (formerly 2<sup>nd</sup> Avenue East and Eastern Avenue), lying Southwesterly of a line drawn concentric with and distant 15.0 feet Northeasterly, as measured radially from the Main Track centerline; also,

That 15.0 wide portion of Northwest 45<sup>th</sup> Street (formerly "A" Street) and the East 33 feet of 9<sup>th</sup> Avenue Northwest (formerly 2<sup>nd</sup> Avenue East and Eastern Avenue), as provided by Ordinance No. 972, from the City of

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Ballard, bounded on the East by the East line of 9<sup>th</sup> Avenue Northwest, and the Northerly extension thereof, and bounded on the West by a line drawn parallel with and distant 45.0 feet Northeasterly, as measured at right angles from the Southwesterly line of 100.0 foot wide Shilshole Avenue Northwest, according to the plat of Gilman Park, as recorded in Volume 3 of Plats, page 40, Records of King County, Washington; also,

Those 15.0 foot wide portions of Northwest 45<sup>th</sup> Street (formerly "A" Street), Northwest 46<sup>th</sup> Street (formerly "B" Street), Northwest Ballard Way (formerly West 47<sup>th</sup> Street or "C" Street) and Northwest Leary Way (formerly West 48<sup>th</sup> Street or "D" Street), being 7.5 feet wide on each side of said Railway Company's Lead Track centerline, as now located and constructed, as provided by Ordinance No. 1114 from the City of Ballard; also,

The Southwesterly 45.0 feet of 100.0 foot wide Shilshole Avenue, bounded on the Southeast by the Easterly margin of 15th Avenue Northwest according to the plat of Gilman Park, as recorded in Volume 3 of Plats, page 40, Records of King County, Washington, and bounded on the Northwest by the Southwesterly extension of the North line of Lot 21, Block 72 of said plat of Gilman Park; also,

That 17.0 foot wide portion of 24th Avenue Northwest, being 8.5 feet wide as measured at right angles on each side of the Main Track centerline; also,

That 17.0 foot wide portion of 28th Avenue Northwest, being 8.5 feet wide, as measured at right angles, on each side of the Main Track centerline; also,

That 20.0 foot wide portion of 40 foot wide 30th Avenue Northwest, being 10.0 feet wide, as measured at right angles, on each side of the Main Track centerline; also,

That 20.0 foot wide portion of 80 foot wide 32nd Avenue Northwest, being 10.0 feet wide, as measured at right angles, on each side of the Main Track centerline; also,

That 20.0 foot wide portion of 80 foot wide Northwest Market Street, being 10.0 feet wide, as measured at right angles, on each side of the Main Track centerline; also,

That 20.0 foot wide portion of Seaview Avenue Northwest at Northwest 60th Street (also known as the Seaview Crossing), being 10.0 feet wide, as measured at right angles, on each side of the Main Track centerline; also,



**Portions in Easement from BNSE**

That 20.0 foot wide portion of an easement area across the right of way of the Burlington Northern Santa Fe Railway Company's Seattle to Everett Main Line granted to the City by said Railway Company being 10.0 feet wide, as measured at right angles, on each side of the Ballard Line Main Track centerline, as located and constructed upon, over and across Government Lot 1 of Section 10, Township 25 North, Range 3 East, W.M., King County, Washington, bounded between two lines drawn parallel and concentric with and distant 150.0 feet, as measured at right angles and radially on each side of a line lying directly below the centerline of said Railway Company's Bridge No. 4 over the Main Track, and over and across Salmon Bay Waterway;

**AND THE END OF THIS DESCRIPTION.**



# City of Seattle

Norman B. Rice, Mayor

Executive Department - Office of Management and Planning

Judy Bunnell, Director

September 3, 1997

The Honorable Mark Sidran

City Attorney

City of Seattle

Dear Mr. Sidran:

The Mayor is proposing to the City Council that the enclosed legislation be adopted.

REQUESTING  
DEPARTMENT:

Management and Planning

SUBJECT:

AN ORDINANCE granting to the Ballard Terminal Railroad Company a railway franchise and the right, privilege and authority to locate, lay down, construct, maintain, own, and operate standard gauge railway tracks in, upon, along and across that portion of the Burlington Northern and Santa Fe Railway Company's former Fremont to Ballard, Washington Branch Line right-of-way between Sixth Avenue North West and North West 67th Street, for a term of thirty years, specifying terms and conditions under which this franchise is granted, and providing for acceptance of the franchise, its terms and conditions.

Pursuant to the City Council's S.O.P. 100-014, the Executive Department is forwarding this request for legislation to your office for review and drafting.

After reviewing this request and any necessary redrafting of the enclosed legislation, return the legislation to OMP. Any specific questions regarding the legislation can be directed to Eric Chipps at 4-8365.

Sincerely,

Norman B. Rice  
Mayor

by

*E. Chipps for*  
JUDY BUNNELL  
Director

h:\admin\legis\law\trst\chipps1

Seattle Municipal Building, 600 Fourth Avenue Seattle, WA 98104-1826

Enclosure

Tel: (206) 684-8080, TDD (206) 684-8118, FAX: (206) 233-0085

An equal employment opportunity, affirmative action employer. Accommodations for people with disabilities provided on request.

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O/C to enact  
JB  
9-12-97

City Clerk: Please note that the  
expiration date on page 1, line  
30, needs to be filled in after  
the Mayor approves the ordinance  
JB

TIME AND DATE STAMP

**SPONSORSHIP**

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY  
THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

*Richard M. Mc*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**FOR CITY COUNCIL PRESIDENT USE ONLY**

COMMITTEE(S) REFERRED TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
PRESIDENT'S SIGNATURE

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE  
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

**STATE OF WASHINGTON - KING COUNTY**

85627  
City of Seattle, City Clerk

—ss.

No. ORDINANCE IN

**Affidavit of Publication**

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:ORD 118734

was published on

10/13/97

The amount of the fee charged for the foregoing publication is the sum of \$ , which amount has been paid in full.

Subscribed and sworn to before me on

10/13/97

Notary Public for the State of Washington,  
residing in Seattle

Affidavit of Publication

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

## STATE OF WASHINGTON - KING COUNTY

84989  
City of Seattle: FINANCIAL CNTR.

—SS.

No. FRANCHISE PR

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CT:CB111841:BALLARD

was published on

Ord. 118734  
09/18/97 09/19/97 09/20/97 09/22/97  
09/23/97 09/24/97 09/25/97 09/26/97  
09/27/97 09/29/97

The amount of the fee charged for the foregoing publication is the sum of \$ , which amount has been paid in full.

Subscribed and sworn to before me on

09/29/97

Notary Public for the State of Washington,  
residing in Seattle

Affidavit of Publication

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