

**COPY**

14 September 1997

## Operating Agreement

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

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

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

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

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

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

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

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

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

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  
facilities to be less serviceable than before said Addition was  
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

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

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:

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

3 damage coverage shall include coverage for clean-up of spills of  
4 hazardous material on the rail corridor or from the rail corridor  
5 to adjacent property.

6 (2) stop gap employers liability:

7 \$1,000,000 each accident, \$1,000,000 disease-policy limit,  
8 \$1,000,000 disease-each employee.

9 (3) Owner will consider reducing the insurance coverage  
10 specified in item (1) above to \$3,000,000 per occurrence and  
11 aggregate after three years experience with actual operations.

12 (C) In the event rail passenger service is instituted, any  
13 such service shall be insured in an amount not less than  
14 \$10,000,000 per occurrence/aggregate.

15 (D) The maximum deductible or self-insured retention shall be  
16 \$25,000, and shall be subject to approval by Owner to ensure  
17 conformity to this provision.

18 (E) Operator shall include any subcontractors or agents as  
19 insureds under its policies or require such subcontractors or  
20 agents to maintain insurance acceptable to Owner, which insurance  
21 shall be specified in writing prior to commencement of work by the  
22 subcontractor or agent after consultation with Owner, but shall not  
23 be less than general commercial liability insurance in an amount no  
24 less than \$1,000,000 per incident, \$2,000,000 aggregate.

25 (F) Operator shall maintain a policy (or policies) of General  
26 Commercial Liability in an amount no less than \$1,000,000, and  
27 Business Automobile Liability, including coverage for owned, non-  
28 owned, leased or hired vehicles written on an insurance industry  
29 standard form (CA 00 01) or equivalent. Such policy (or policies)  
30 shall provide a minimum limit of \$1,000,000 for bodily injury and  
31 property damage per accident.

32 (G) All insurance provided under this agreement shall be  
33 endorsed to include the Owner (including any successor Owner), its  
34 officers (including elected officials if a successor is a political  
35 subdivision or the City), employees, agents and volunteers as  
36 additional insured. In addition, Operator's insurance shall be  
37 primary as respects Owner (including any successor Owner), and any  
38 insurance maintained by Owner shall be excess and not contributing  
39 insurance with the Operator's insurance.

40 (H) The following clause shall be made part of all said  
41 policies of insurance: "It is agreed that in the event of material  
42 change or cancellation, this company shall give forty-five (45)  
43 days prior written notice to the Owner of the property, addressed  
44 to: Property Manager, SLR, P.O. Box 17883, Seattle, WA 98107, or,  
45 if the Owner is the City of Seattle, to Seattle City Risk Manager,  
46 Room 103, Municipal Building, 600 Fourth Avenue, Seattle, WA  
47 98104-1891."

48 (ii) (A) If any policy is written on a claims made form, the  
49 retroactive date shall be prior to or coincident with the effective  
50 date of this agreement. The policy shall state that coverage is  
51 claims made, and state the retroactive date. Claims made form  
52 coverage shall be maintained by the Operator for a minimum of six  
53 years following expiration or earlier termination of this  
54 agreement, and Operator shall annually provide Owner with proof of

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  
authorized representative of the insurance company on Form CG2026  
(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.

(vi) At the request of Owner (which request may be made no  
more frequently than five year intervals), the minimum levels of

2 coverage herein shall be adjusted in proportion to changes in the  
3 consumer price index (or successor index) from its base in January  
4 1997.

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

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.

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



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

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

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

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<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.

responsible for the costs of repair.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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  
each other that they neither can nor will take the position that  
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

22 Ballard Terminal Railroad Company, LLC

23  
24 by: Paul Anderson

25  
26  
27 Sea Lion Railroad Project

28  
29 by: Fred Wert

30

31

32 The form of this agreement is acceptable for purposes of future  
33 assignment to the City of Seattle.

34

35

36 Seattle Department of Transportation

37

38 by: Dayl Kelly

39

40

41 Exhibit A: parcel for locomotive facility

42

43 Exhibit B: form of application for modified PCN

44

45 Exhibit C-1: form of support letter for STB

46

47 Exhibit C-2: form of general support letter

48

49 Exhibit D: rail and trail maps

50

51 Exhibit E: parcel for transload

52

53 Exhibit F: form of assignment to City of Seattle

54

55 Exhibit G: form of "notice of exemption for acquisition and  
56 operation"

57

58 Exhibit H: form of letter supporting grant application

59

60 Exhibit I: form of BNSF-SLR purchase agreement, including  
61 conditions relating to salvage and utilities

62

63 Exhibit J: form of City letter to BNSF regarding compliance  
64 with Burke-Gilman agreements

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67 Exhibit K: form of MOU SLR/Seattle

Exhibit A -- Engine Facility

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**DESCRIPTION OF PARCEL FOR LOCOMOTIVE FACILITY**

Those portions of Lots 15, 16 and 17, Block 17 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 15.0 feet Northeasterly, as measured at right angles from a line drawn parallel with and distant 224.80 feet Southwesterly, as measured at right angles from the centerline of Leary Way Northwest, as established by the monuments at Northwest 36th Street and Northwest 45th Street, all in Section 13, Township 25 North, Range 3 East, Willamette Meridian, King County, Washington.

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Exhibit A -- Engine Facility

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COPY RECEIVED  
98 NOV 19 PM 1:00  
SEATTLE CITY ATTORNEY

## Exhibit A

### DESCRIPTION OF PARCEL FOR LOCOMOTIVE FACILITY

Those portions of Lots 15, 16 and 17, Block 17 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 15.0 feet Northeasterly, as measured at right angles from a line drawn parallel with and distant 224.80 feet Southwesterly, as measured at right angles from the centerline of Leary Way Northwest, as established by the monuments at Northwest 36th Street and Northwest 45th Street, all in Section 13, Township 25 North, Range 3 East, Willamette Meridian, King County, Washington.

Exhibit B

BEFORE THE SURFACE TRANSPORTATION BOARD

3  
4  
5 Ballard Terminal Railroad Co. -- )  
6 exemption -- operator per §1150.21, ) F.Dkt. \_\_\_\_\_  
7 et seq. )

8  
9 Notice for Modified Certificate  
10 of Public Convenience and Necessity  
11

12 This is a notice for modified certificate of public  
13 convenience and necessity pursuant to 49 C.F.R. § 1150.23. In  
14 accordance with the requirements of § 1150.23(b), operator Ballard  
15 Terminal Railroad Company ("BTR" or "Operator"), states as follows:  
16 BTR by assignment has entered into a contract with the City of  
17 Seattle to become an operator for the line described as MP 0.09 to  
18 MP 2.7 in Ballard in the City of Seattle, King County, Washington.  
19 The line in question is formerly a portion of Sea Lion Railroad.  
20 The line was authorized for abandonment in Adventure Trail d/b/a  
21 Sea Lion Railroad, AB \_\_, served \_\_\_\_\_. Subsequent to the  
22 abandonment authorization, the line was acquired by City of  
23 Seattle. All track and tie remains largely in place but the line  
24 will require some rehabilitation. Operator has entered into an  
operating agreement by assignment with the Seattle Department of  
Transportation ("SeaTrans") allowing Operator to provide freight  
services.

28  
29 1. Name and address of the operator. Ballard Terminal Railroad  
30 Company, \_\_\_\_\_, Seattle, WA \_\_\_\_\_. The  
31 articles of incorporation are attached as Appendix A. The names  
32 and addresses of all officers and directors are attached as  
33 Appendix B. Information sufficient to show financial  
34 responsibility of the operator is attached as Appendix C.  
35

36 2. Information about prior abandonment. The line which is the  
37 subject of this notice was formerly owned by Adventure Trail d/b/a  
38 Sea Lion Railroad. The line was authorized for abandonment in  
39 Adventure Trail d/b/a Sea Lion Railroad, AB \_\_, served \_\_\_\_\_.  
40 A copy is attached as Appendix D.  
41

42 3. Period of operation; agreement with State. The period provided  
43 for operation is 30 years. A copy of the agreement with the City  
44 of Seattle is attached as Appendix E.  
45

46 4. Service to be provided. Operator will provide freight rail  
47 service over the line from MP 0.09 (1000 feet from clearpoint with  
48 mainline) to MP 2.7 (approx. Northwest 40th St.) in Ballard in the  
49 City of Seattle. The agreement with the City provides for  
liability insurance coverage satisfactory to the City to be in  
place upon commencement of rehabilitation or operations. Further  
insurance information is set forth in Appendix F. Continuation of

operations is contingent upon shippers meeting the following precondition:

3  
4 Minimum of 30 carloads per year averaged over a rolling 36 month  
5 period.  
6

7  
8 5. Name and address of any subsidizers. At this time, no entity  
9 has committed to subsidize operations on the line, or Operator.

10  
11 6. Financial responsibility of subsidizers. Not applicable.  
12

13 Respectfully submitted,  
14

15  
16 for Ballard Terminal Railroad Company  
17

18 Appendix A: Articles of Incorporation  
19 Appendix B: Officers and Directors  
20 Appendix C: Financial Responsibility  
21 Appendix D: Orders authorizing abandonment  
22 Appendix E: Agreement with City of Seattle  
23 Appendix F: Insurance  
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Exhibit C-1 -- Form of Support Letter

Secretary  
Surface Transportation Board  
1975 K Street, N.W.  
Washington, D.C. 20423

Re: Adventure Trail d/b/a Sea Lion Railroad --  
exemption -- Ballard Branch in King County, WA, AB- \_\_\_\_ (Sub-  
no. \_\_\_\_)

Dear Sirs:

This letter is in support of the petition for exempt  
abandonment filed in the above captioned proceeding and is made on  
behalf of [Shipper]. [Shipper] supports expeditious treatment of  
the pending petition, supports the issuance of an immediately  
effective "NITU", in this proceeding, and supports an exemption  
from the provisions of 49 U.S.C. 10904 ("offers of financial  
assistance") and 49 U.S.C. 10905 (public use conditions).

[Shipper] understands that, upon the effectiveness of a NITU,  
the City of Seattle intends to acquire the entire line, and is  
making arrangements for permanent preservation of the entire  
corridor for transportation and related public purposes, including  
rail operation by a City Operator under a Modified certificate of  
Public Convenience and Necessity, should the Board grant the  
application to be filed by said operator, Ballard Terminal Railroad  
Company, LLC, under the Board's regulations.

Expeditious and favorable treatment of the pending petition is  
in the public interest.

Very truly,

\_\_\_\_\_  
for: [Shipper]

cc. Charles H. Montange  
426 NW 162d St.  
Seattle, WA 98177

Exhibit C-2 -- form of letter to SLR

28 August 1997

President  
Sea Lion Railroad Project  
P.O. Box 17883  
Seattle, WA 98107

Re: Ballard Branch of BNSF

Dear Sirs:

It is our understanding that Sea Lion Railroad Project (SLR) intends (a) to acquire the Ballard Branch from Burlington Northern and Santa Fe Railway (BNSF), (b) to enter into an Operating Agreement with Ballard Terminal Railroad Company (BTRC) under which BTRC will operate the line on behalf of SLR, (c) to seek railbanking authorization (application of section 8(d) of the Trails Act) from the Surface Transportation Board (STB), and (d) subsequently to transfer the rail corridor to the City and the track and ties to BTRC for continued rail operation under a modified certificate of public convenience and necessity (modified PCN).

This letter is to assure SLR that \_\_\_\_\_ will support SLR's acquisition of the Ballard Branch, as outlined above, and, subsequent to SLR acquisition, will not assert (directly or indirectly) against SLR any claims (including claims for damages) for failure to provide (or relating to failure to provide) common carrier services, provided only that SLR enters into an Operating Agreement with BTRC as contemplated in item (b) above and acts, insofar as in SLR's discretion, consistent with said Agreement. This letter is also to assure SLR that \_\_\_\_\_ will support (1) railbanking of the line and (2) subsequent transfer of the rail corridor to the City, transfer of track and ties to BTRC, and issuance of a modified PCN to BTRC. We understand that these representations will be relied upon by the parties in entering into contractual relationships, and in regulatory proceedings.

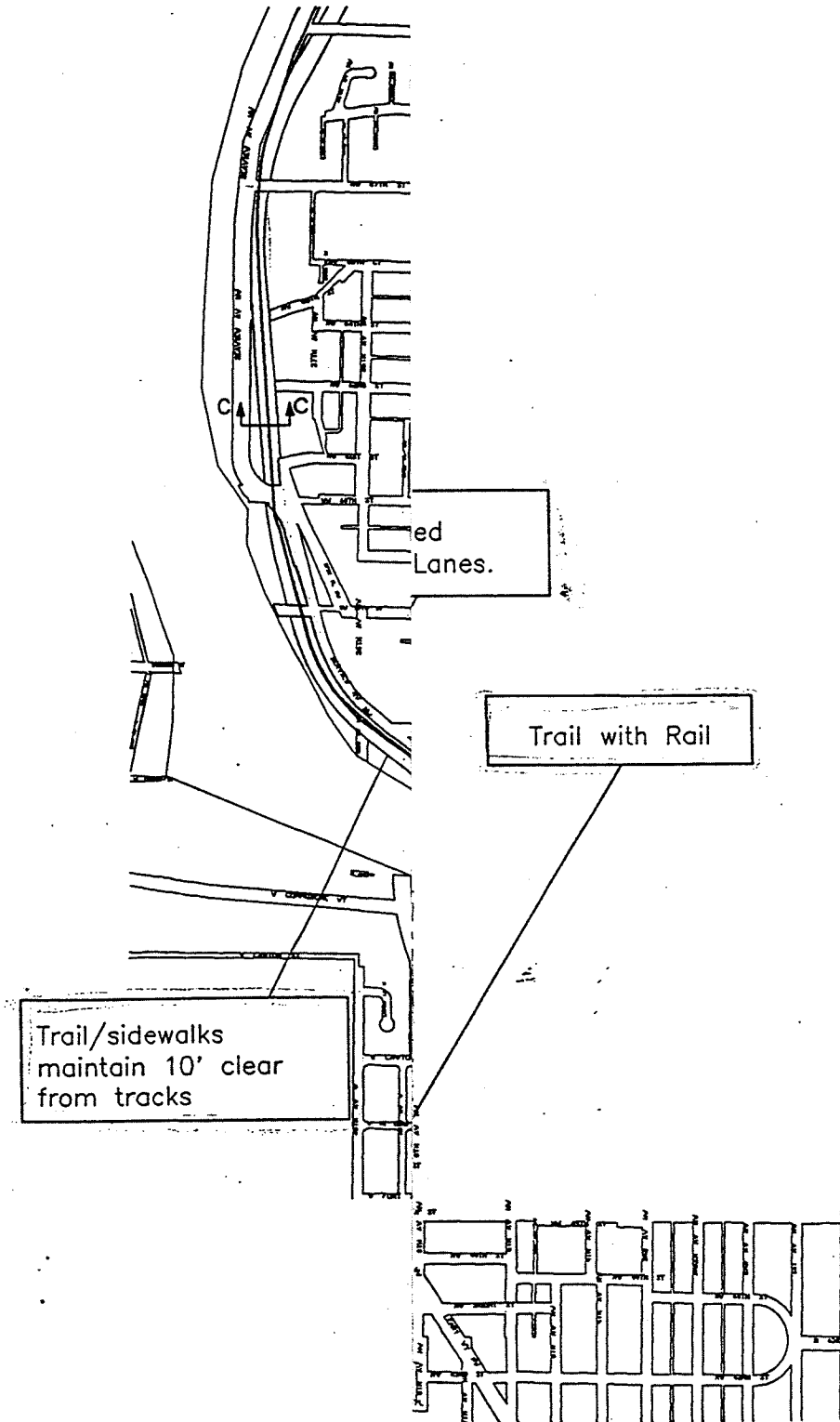
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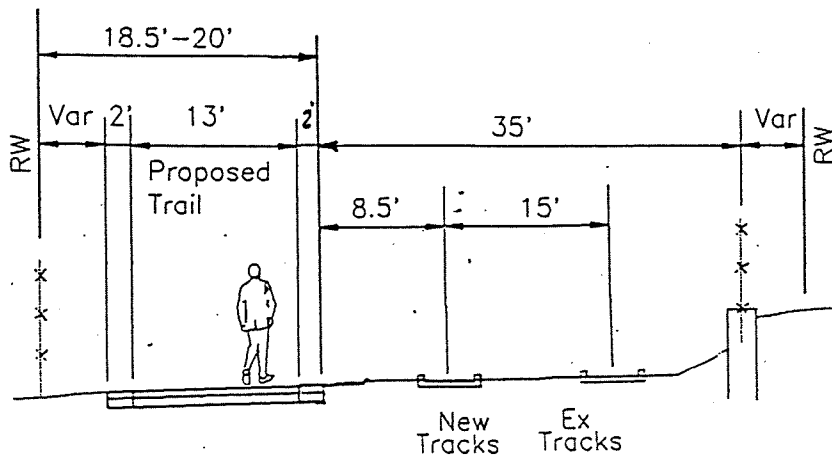
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Exhibit D -- Rail and Trail Maps

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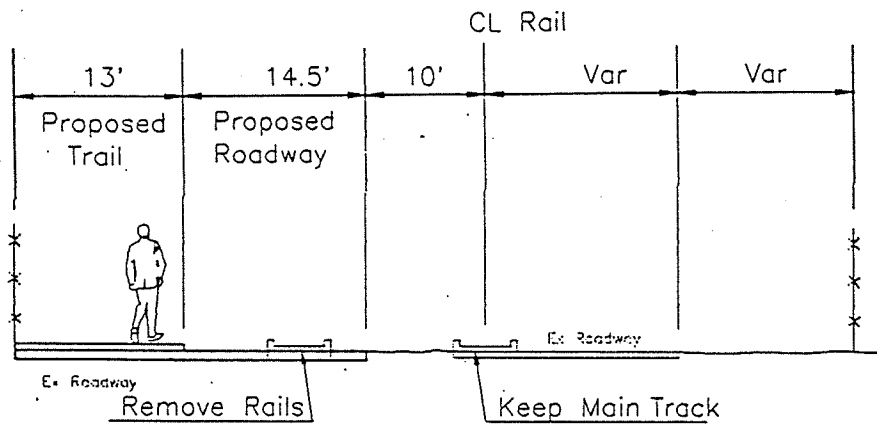
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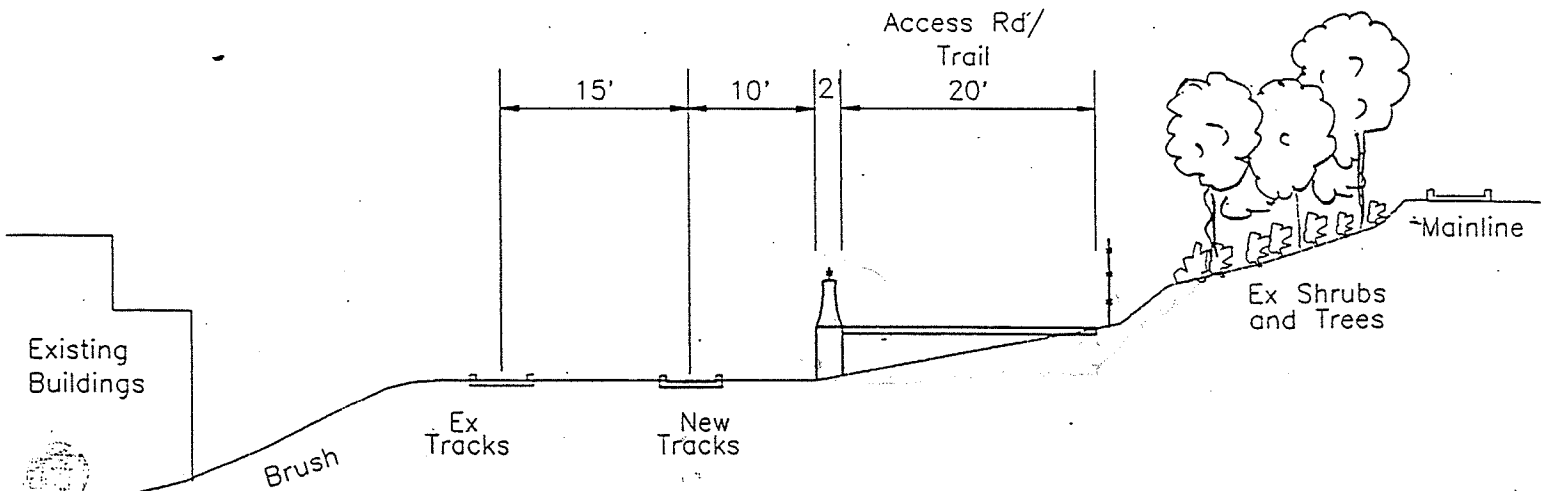
Section A-A

Typical Section  
Between 8th & 45th  
Looking Northwest



Section B-B

Typical Section  
on 45th between  
BNRR & 11th



Section C-C

Typical Section  
North of Seaview  
Looking North

Exhibit E -- transload facility

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## Exhibit E

### DESCRIPTION OF PARCEL FOR TRANSLOAD

Those portions of Lots 11, 12 and 13, 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 15.0 feet Northeasterly, as measured at right angles from a line drawn parallel with and distant 224.80 feet Southwesterly, as measured at right angles from the centerline of Leary Way Northwest, as established by the monuments at Northwest 36th Street and Northwest 45th Street, all in Section 13, Township 25 North, Range 3 East, Willamette Meridian, King County, Washington.

1 Exhibit F -- Form of Assignment to City of Seattle

2  
3  
4 Assignment of Contract and Operating Agreement

5  
6 This assignment is made by and between Adventure Trail d/b/a  
7 Sea Lion Railroad Project ("SLR") and City of Seattle, Department  
8 of Transportation ("SeaTrans").  
9

10 Whereas SLR is Owner of that certain property known as the  
11 Ballard Branch ("the premises") pursuant to a contract entitled  
12 \_\_\_\_\_, dated \_\_\_\_\_, with The Burlington  
13 Northern and Santa Fe Railway Company ("BNSF"), (hereinafter  
14 "Contract"); and  
15

16 Whereas SLR desires to assign, transfer and set over to  
17 SeaTrans all of SLR's right, title and interest in and to the  
18 Contract (except as to the track, track material and ties, and  
19 except as to one parcel of land, to the extent SLR has committed to  
20 sell and to transfer same to Ballard Terminal Railroad Company LLC  
21 (BTRC)), as well as obligations therein with respect to the  
22 premises;  
23

24 Whereas SLR also desires to assign, transfer and set over to  
25 SeaTrans all of SLR's right, title and interest in and to the  
26 Operating Agreement between SLR and BTRC dated \_\_\_\_\_  
27 (hereinafter "Operating Agreement"), as well as all obligations  
28 therein with respect to the premises;  
29

30 Now, therefore, for valuable consideration, receipt whereof is  
31 hereby acknowledged by SLR, and upon condition that City of Seattle  
32 hold SLR harmless from all claims and liabilities (including claims  
33 for attorneys' fees) arising out of said Contract, Operating  
34 Agreement, this assignment, or actions and inactions pursuant  
35 thereto, SLR does hereby assign, transfer and set over to SeaTrans  
36 all of SLR's said right, title and interest in and to the Contract  
37 (with the exception noted) and Operating Agreement with respect to  
38 all property on or in the premises.  
39

40 Dated:

SLR, Assignor:

41  
42 by: \_\_\_\_\_

43  
44 Title: \_\_\_\_\_  
45  
46  
47  
48



1 City of Seattle, Department of Transportation hereby accepts  
2 assignment of said Contract and Operating Agreement on the  
3 condition stated, and agrees to assume, be bound by and fulfill all  
4 of the terms, provisions, conditions and obligations in said  
5 Contract to be performed by SLR as Buyer with respect to the  
6 referenced property, and in said Operating Agreement to be  
7 performed by SLR as Owner with respect to the premises, except that  
8 City on no event shall be obligated to assume, nor be treated as  
9 assuming, any active common carrier obligations with respect to  
10 said premises.

11  
12 Dated: City of Seattle, Department of  
13 Transportation, Assignee:

14  
15  
16 By: \_\_\_\_\_

17  
18 Title: \_\_\_\_\_

19  
20 Ballard Terminal Railroad Company, LLC, which has provided  
21 railroad services for SLR, pursuant to the Operating Agreement,  
22 acknowledges this assignment, to which it has consented in advance,  
23 and has further consented to serve as operator pursuant to a  
24 modified PCN under 49 C.F.R. 1150.21, et seq., for which it has or  
25 will make application, under the terms of the Operating Agreement  
26 upon ownership of the premises by City of Seattle, and so assume  
27 all attendant common carrier obligations.

28  
29 Dated: Ballard Terminal Railroad Co.

30  
31 By: \_\_\_\_\_

32  
33 Title: \_\_\_\_\_

1 Exhibit G -- form of notice of exemption for acquisition

2  
3  
4 BEFORE THE SURFACE TRANSPORTATION BOARD

5  
6  
7 FINANCE DOCKET NO. \_\_\_\_\_  
8  
9

10  
11 ADVENTURE TRAIL d/b/a SEA LION RAILROAD  
12 -- ACQUISITION AND OPERATION --  
13 THE BURLINGTON NORTHERN SANTA FE RAILWAY  
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17 NOTICE OF EXEMPTION  
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1 Dated: 8 July 1997  
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BEFORE THE SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. \_\_\_\_\_

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ADVENTURE TRAIL d/b/a SEA LION RAILROAD  
-- ACQUISITION AND OPERATION --  
THE BURLINGTON NORTHERN SANTA FE RAILWAY

---

NOTICE OF EXEMPTION

---

20 Adventure Trail, a Washington State non-profit corporation,  
21 d/b/a Sea Lion Railroad (hereinafter referred to as "SLR"), submits  
22 this Notice of Exemption pursuant to 49 C.F.R. § 1150.31, et seq.,  
23 for the acquisition and operation of a line owned by The Burlington  
24 Northern Santa Fe Railway ("BNSF") known as the Ballard Branch,  
25 from MP 0.09 (1000 feet from clearpoint to mainline) to terminus at  
26 MP 2.7 (near Northwest 40th St.) in the Ballard region of the City  
27 of Seattle in King County, WA.

28 Per 49 C.F.R. § 1150.34, a caption summary is set forth in  
29 Exhibit A.

30 SLR submits the following information in compliance with 49  
31 C.F.R. § 1150.33:

32 (a). Name and address of applicant: Adventure Trail d/b/a Sea  
33 Lion Railroad, Manager, P.O. Box 17883, Seattle, WA 98107.

(b). Name, address and telephone number of representative of  
applicant who should receive correspondence: Charles H. Montange,  
426 NW 162d St., Seattle, WA 98177.

(c). Statement concerning agreement: An agreement between applicant SLR and BNSF was executed by the parties on or about \_\_\_\_\_, 1997, with a closing contingent upon meeting certain contingencies, including compliance with the procedures of the Surface Transportation Board (STB).

(d). Operator: Applicant Adventure Trail d/b/a Sea Lion Railroad will provide rail service through a contract with Ballard Terminal Railroad Company.

(e). Brief summary of proposed transaction: SLR will acquire the Ballard Branch from approximately MP 0.09 (that being a point approximately 1000 feet from clearpoint to mainline) to end of line at MP 2.7 (approximately Northwest 40th St. in Ballard).

1. Name and address of transferor: The Burlington Northern and Santa Fe Railway Company, 3017 Lou Men Drive, Fort Worth, TX 76131-2830.

2. Proposed time schedule. The closing will occur on or after the later of (a) \_\_\_\_\_, or (b) seven days from date of filing of this notice with the STB.

3. Mileposts. Approximately MP 0.09 (approximately 1000 feet from clearpoint to mainline) to MP 2.7 (end of line at approximately Northwest 40th St.).

4. Total route miles. Approximately 2.7 miles.

(f) Map. A map indicating the area to be served, origins, termini, stations, cities, counties and state, is attached.

(g) Certificate of revenue. The required Certificate is attached.

1 Applicant acknowledges that it must preserve intact all sites  
2 and structures more than 50 years old until compliance with the  
3 requirements of section 106 of the National Historic Preservation  
4 Act, 16 U.S.C. § 470f, is achieved.

5 Respectfully submitted,  
6

7 Charles H. Montange  
8 426 NW 162d St.  
9 Seattle, WA 98177  
10 (206) 546-1936  
11 Counsel for Applicant  
12 Adventure Trail  
13 d/b/a Sea Lion Railroad  
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40 Atts.  
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2 Applicant SLR hereby submits the following caption summary  
3 prepared in accordance with 49 C.F.R. § 1150.34:

4 Surface Transportation Board

5  
6 Notice of Exemption

7  
8 STB Finance Docket No. \_\_\_\_\_  
9

10 Adventure Trail d/b/a Sea Lion Railroad -- Acquisition and  
11 Operation Exemption -- The Burlington Northern and Santa Fe  
12 Railway Company  
13

14 Adventure Trail d/b/a Sea Lion Railroad, a non-carrier, has  
15 filed a notice of exemption to acquire and to operate The  
16 Burlington Northern and Santa Fe Railway Company's line between  
17 approximately MP 0.09 (1000 feet from clearpoint to mainline) and  
18 approximately MP 2.7 (approximately Northwest 40th Street at end of  
19 line in Ballard) in the City of Seattle, King County, Washington.  
20 Comments must be filed with the Board and served on Charles H.  
21 Montange, 426 NW 162d St., Seattle, WA 98177, telephone (206) 546-  
22 1936.  
23

24 The notice is filed under 49 CFR 1150.31. If the notice  
25 contains false or misleading information, the exemption is void ab  
26 initio. Petitions to revoke the exemption under 49 U.S.C. §  
27 10502(d) may be filed at any time. The filing of a petition to  
28 revoke will not automatically stay the transaction.  
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Certificate in Accordance  
with 49 C.F.R. § 1150.33(g)

I, \_\_\_\_\_, \_\_\_\_\_ of Adventure Trail d/b/a Sea Lion  
Railroad Project (SLR), hereby certify that applicant SLR's  
projected revenues as a result of the transaction covered by this  
notice of exemption will not exceed those that would qualify it as  
a Class III carrier.

---

2 Verification

3  
4 City of Seattle )  
5 ) ss.  
6 State of Washington )  
7

8 I, \_\_\_\_\_, being duly sworn, depose and state that I am  
9 \_\_\_\_\_ of Sea Lion Railroad Project (SLR), that I am  
10 authorized to make this verification, and that I have read the  
11 foregoing Notice of Exemption, and know the facts asserted therein  
12 are true and accurate as stated to the best of my knowledge,  
13 information and belief.  
14

15 \_\_\_\_\_  
16  
17 Subscribed and sworn to before me this \_\_\_th day of \_\_\_\_\_, 1997.  
18

19 \_\_\_\_\_  
20 Notary public  
21

22 My commission expires: \_\_\_\_\_  
23  
24



2 Exhibit H -- letter to support grant application  
3  
4

5 draft: 3 September 1997  
6

7 Mr. Ray Allred  
8 Rail Office  
9 Washington State Department of Transportation  
10 310 Maple Park Ave. SE  
11 P.O. Box 47387  
12 Olympia, WA 98504  
13

14 Re: Application for Grant from WSDOT Freight  
15 Rail Assistance Program for "The Ballard  
16 Line" in Seattle, WA  
17

18 Dear Sirs:  
19

20 This letter is on behalf of Sea Lion Railroad Project (SLR) in  
21 connection with the Ballard branch of The Burlington Northern and  
22 Santa Fe Railway Company (BNSF) railroad. SLR is the business name  
23 for Adventure Trail, which in turn is an IRC 501(c)(3) Washington  
24 State non-profit corporation dedicated, among other things, to  
preserving otherwise to-be-abandoned railroad corridors.

25 SLR, Seattle, BNSF, and Ballard Terminal Railroad Company  
26 (BTRC) have negotiated a transaction designed to preserve the  
27 Ballard Branch for rail and trail purposes. A key purpose of the  
28 transaction is to permit the continuation of rail service through  
29 a new shortline railroad (BTRC), while at the same time allowing  
30 extension of the Burke-Gilman Trail from Eighth Avenue to Eleventh  
31 Avenue and north of the Government Locks. In order to accomplish  
32 this purpose, SLR and Seattle currently plan to make the bulk of  
33 the rail corridor (including track) available to BTRC for rail  
34 operations for free. SLR will supply up to \$28,500 in the first  
35 year for insurance and track repair. Seattle will not be  
36 responsible for any subsidy for rail operations, other than  
37 continuing the provision of free use of the real estate once  
38 Seattle becomes owner. We see this as the only means to preserve  
39 rail service to Ballard shippers consonant with recognizing the  
40 underlying real estate values in the rail line. The transaction  
41 is summarized in more detail below:  
42  
43

44  
45 1. SLR will acquire, under an acquisition and operation  
46 exemption from the Surface Transportation Board, all BNSF's  
47 interests in the Ballard Branch (BNSF MP 0.09 to BNSF MP 2.7) in  
48 Seattle. SLR will assume all common carrier obligations. The  
49 current acquisition contract draft calls for a bargain sale  
substantially below BNSF's appraised value for the entire line.  
BTRC will serve as operator for SLR under an Operating Agreement.  
SLR will enter into a memorandum of understanding with Seattle to

2 transfer all real estate interests to Seattle upon or shortly after  
3 the effective date of an STB authorization for railbanking of the  
4 Ballard Branch.

5 2. As soon as SLR acquires the line (expected approximately  
6 October 1, 1997), SLR will authorize BTRC to commence  
7 rehabilitation activities, with an eye toward commencing service as  
8 quickly as possible. SLR intends to pay \$10,000 toward  
9 rehabilitation, and pick up the first year's insurance (up to  
10 \$18,500). SLR will not charge any sum to BTRC for use of real  
11 estate or track.

12  
13 3. SLR will petition STB for an authorization for  
14 abandonment. Seattle will file a "statement of willingness"  
15 invoking section 8(d) of the Trails Act ("railbanking"). SLR will  
16 consent to railbanking. BTRC and shippers will support  
17 railbanking. (STB authorization for railbanking will qualify the  
18 line for STB's "modified PCN" procedures, and allow transfer of the  
19 line by SLR to City without City assuming any common carrier  
20 obligations.) BTRC will file for a modified PCN, applicable when  
21 (a) STB authorizes railbanking, and (b) Seattle acquires the  
22 underlying rail corridor from SLR.

23  
24 4. STB authorizes railbanking as requested by SLR and  
Seattle. STB issues the modified PCN. At this time, SLR transfers  
all real estate in the line (save one parcel to be transferred to  
BTRC for an engine house) to City at a price adequate to cover  
SLR's reasonably expected costs, and assigns the Operating  
Agreement with BTRC to Seattle. SLR transfers track and ties to  
BTRC. BTRC commences operation under the modified PCN.

28  
29  
30  
31  
32 At the conclusion of all these steps, SLR will have no  
33 ownership interest in real estate, track or ties. BTRC will own  
34 the track, ties, and other track material. Seattle will own all  
35 the real estate, save for the engine house parcel.

36  
37 We currently estimate the elapsed time between SLR acquisition  
38 and ultimate transfer to the City of Seattle at approximately six  
39 months.

40  
41 SLR and Seattle are willing to cooperate with BTRC in seeking  
42 grants from the Washington State Department of Transportation for  
43 rehabilitation of the line. Both SLR and Seattle require assurance  
44 on the following point: neither SLR nor Seattle wish to be liable  
45 for repayment of the grant when (a) the ownership of the track and  
46 ties (including any rehabilitation grant improvement) is  
47 transferred to BTRC, (b) the ownership of the underlying real  
48 estate is transferred to Seattle, (c) rail operations cease on the  
49 Ballard Branch at some future time, and (d) BTRC or its successor  
in interest engages in salvage of the track and ties (including any  
rehabilitation grant improvement). Seattle and SLR have no  
opposition to grant conditions rendering BTRC responsible for

2 repayment of some or portions of rehabilitation grants, or for  
3 WSDOT having a contingent interest in the improvements, so long as  
4 there is no claim back to Seattle or SLR.  
5

6 In the event of rehabilitation financing from the State, SLR  
7 will work with BTRC to accomplish rehabilitation.  
8

9 The transaction with BNSF may close as early as the latter  
10 part of September. In order to permit service to resume as quickly  
11 as possible, we encourage the State to expedite consideration of  
12 this grant application.  
13

14 We are authorized to state that representatives of the City of  
15 Seattle have reviewed this letter and concur in the representations  
16 contained herein insofar as the representations bear upon the City.  
17

18  
19 Very truly,  
20

21  
22 \_\_\_\_\_  
23 for SLR  
24

25 Agreed:

26 \_\_\_\_\_  
27 for Ballard Terminal Railroad Company  
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Exhibit I -- form of BNSF-SLR acquisition agreement

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DRAFT 9/12/97

AGREEMENT FOR THE TRANSFER OF  
CERTAIN ASSETS, RIGHTS AND OBLIGATIONS

OF

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

BY AND TO

ADVENTURE TRAIL,  
DOING BUSINESS AS SEA LION RAILROAD

DRAFT 9/12/97

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

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

BY AND TO

ADVENTURE TRAIL,  
DOING BUSINESS AS SEA LION RAILROAD

This Agreement is entered into between THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (formerly known as Burlington Northern Railroad Company), a Delaware corporation with its principal place of business at 2650 Lou Menk Drive, Fort Worth, TX 76131-2830 (hereinafter referenced as "BNSF"), and ADVENTURE TRAIL, a non-profit tax-exempt corporation organized and existing under the laws of the State of Washington, with its principal place of business at \_\_\_\_\_ and doing business as Sea Lion Railroad (hereinafter referenced as "SLR").

WHEREAS, SLR desires to obtain and BNSF desires to transfer in a transaction that is part sale and part charitable donation (a "Bargain Sale"), on the terms and conditions set forth in this Agreement, BNSF's Ballard rail line and rail line corridor between MP 0.21 and MP 2.92 in Seattle, King County, Washington as more specifically identified in this Agreement; and

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

I. Description of Assets and Business Transferred.

(a) BNSF shall convey by quit-claim deed to SLR on the date of Closing, subject to the terms and conditions set forth in this Agreement and the terms, conditions, reservations and exceptions set forth in the approved form of deed (or multiple deeds, as needed to effect and record the conveyance) attached hereto as Exhibit "A", all of BNSF's right, title and interest, if any, in the real property, improvements thereon, and right-of-way of BNSF's Ballard rail line and rail line corridor in Seattle, King County, Washington, as shown in schematic Exhibit "B" attached hereto, (hereinafter "Rail Line"), and more particularly described in the attached legal description.

(b) BNSF shall convey to SLR, on the date of Closing, the rail freight transportation business which BNSF conducts on the Rail Line, subject to the terms and conditions set forth in this Agreement, in the Quitclaim Deed, or in any agreement assigned by BNSF to SLR in accordance with the terms of this Agreement.

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

performance of routine maintenance and repair of the line. This conveyance shall be subject to the terms and conditions set forth in this Agreement, including those set forth in Exhibit C, Bill of Sale, and the terms and conditions set forth in any agreement assigned by BNSF to SLR in accordance with the terms of this Agreement.

(d) BNSF shall assign to SLR, on the date of Closing, subject to all terms and conditions set forth in this Agreement, or in any agreement assigned by BNSF to SLR in accordance with the terms of this Agreement, all assignable rights, interest, authorizations and agreements pertaining to said Rail Line, and all obligations of BNSF to the extent that they are related to the Rail Line and are set forth in any agreement identified in Exhibit "D", Agreements to be Assigned to SLR in Whole or in Part ("Assigned Agreements"), which is attached hereto. SLR hereby accepts the assignment of all such rights and obligations, effective on the date of Closing, in accordance with their terms and the terms of this Agreement. BNSF, and not SLR, shall be responsible for performing all of BNSF's duties in assigned agreements which are required to be performed on or before the date of Closing. SLR, and not BNSF, shall be responsible for performing all assigned duties in assigned agreements which are required to be performed after the date of Closing. BNSF reserves all rights set forth in any agreement identified in Exhibit D to the extent those rights are related to (i) BNSF's retained interests pursuant to this Agreement; or (ii) one or more other rail lines or property of BNSF not included in this transaction. If any contract is related to the Properties and inadvertently is not identified in Exhibit D, it is the intent of BNSF and SLR that such contract be deemed to have been assigned by BNSF to SLR, in whole or in part as appropriate, effective the date of Closing. BNSF promptly shall provide to SLR a copy of such contract immediately upon locating it. Buyer shall make no claim against



BNSF arising out of any failure to obtain a consent to assignment from any party to an agreement assigned by BNSF to SLR, in whole or in part. It is the intent of both BNSF and SLR that all assignments of rights and obligations related to the Properties shall be effective on the date of Closing.

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

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

## 2. Terms of Transfer.

(a) SLR agrees to all of the following:

- (1) To accept all transferred real and personal property "AS IS, WHERE IS" and "with all faults".
- (2) To assume or arrange for the assumption of all common carrier obligations pertaining to said Rail Line as may be required by law.
- (3) To pay on or before the date of Closing the total sum of \$ 582,871.00 by wire transfer to either: (i) BNSF, or (ii) Apex Property & Burlington Exchange, Inc. ("APEX"), BNSF's intended assignee of BNSF's right to receive payment hereunder. The wire transfer by SLR shall be made in accordance with written wire transfer instructions provided to SLR by BNSF at least thirty (30) days prior to Closing. BNSF represents that APEX is a qualified intermediary within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and Treasury Regulation 1.1031(k)-1(g). BNSF intends to assign to APEX BNSF's right to receive payment of the purchase price for the Rail Line, for the purpose of BNSF completing a tax-deferred exchange. An initial deposit on the total amount of \$58,287.10 shall be wired within two working days of final execution of this Agreement by both parties.
- (4) To cooperate with BNSF, with respect to any tax-deferred exchange or any other tax-related transaction (including, without limitation, any donation tax deductions resulting from this transfer) pertaining to the transfer of the Rail Line and to execute such documents as may be required to effect any tax-deferred exchange or other tax-related transaction.

- (5) SLR acknowledges that the fair market value of the Rail Line pursuant to an independent appraisal of the Rail Line is represented to be substantially higher than the consideration paid hereunder, and SLR agrees to accept a donation (Bargain Sale) of the Rail Line to the extent that the fair market value of the Rail Line is in excess of the payment required by paragraph 2.(a)(3) above, which SLR acknowledges is not representative of the fair market value of the Rail Line. SLR agrees to take all actions and execute all documents, including, but not limited to, the Donee Acknowledgment section of Internal Revenue Service Form 8283, which are necessary to allow BNSF to take a tax deduction with regard to the donation (Bargain Sale) described herein.
- (6) To pay in addition to the sum of \$ 582,871.00, all costs of Closing (except BNSF's costs of preparation of documents to be delivered at Closing). This includes, but is not limited to, any transaction fees, escrow and service fees, wire service fees, real estate transfer taxes, recording fees and sales taxes associated with this Agreement or any of the conveyances governed by this Agreement.

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

3. Governmental Approval.

(a) Promptly following execution of this Agreement, SLR, at its sole expense, shall prepare and file such documents as may be required to secure approval, or exemption from approval, of this transaction by the Surface Transportation Board of the United States

Department of Transportation ("STB"), and other governmental agencies, as appropriate. BNSF shall cooperate reasonably with SLR to secure approval of this transaction by the STB and any other governmental agencies. SLR shall make all reasonable efforts to obtain this approval or exemption in time for this transaction to close on or before October 1, 1997. SLR shall permit BNSF to review and comment on prior to filing all documents proposed by SLR to be filed with the STB, or any court, to secure legal approval or exemption of this transaction. In the event the STB refuses to grant or revoke authority for the transfer of the Rail Line, this transaction shall be rescinded, and any deposits paid by SLR shall be refunded within a reasonable period of time after an administratively final decision denying or revoking authority for the transfer.

4. Representations and Warranties.

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

- (1) BNSF is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware, and is qualified to do business as a foreign corporation in the State of Washington;
- (2) BNSF has the corporate power and authority to enter into this Agreement, to make the donation (Bargain Sale) described herein, and carry out its obligations under this Agreement;
- (3) The execution, delivery and performance of this Agreement have been duly authorized and approved by all necessary corporate actions of BNSF, and no further corporate proceedings of BNSF are required to complete the transactions covered by this Agreement;

- (4) There is no provision in the Certificate of Incorporation or By-Laws of BNSF which prohibits the execution of this Agreement or consummation of the transactions covered by this Agreement;
- (5) The negotiations related to this Agreement have been handled by BNSF on its own behalf, without intervention of any agent or other person, so that no party has a valid claim on this basis for any finder's fee, brokerage commission, or other similar payment in connection with any of the transactions included in this Agreement;

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

- (1) SLR is a non-profit corporation, validly existing and in good standing under the laws of the District of Columbia;
- (2) SLR is a qualified donee pursuant to Section 501(c)(3) of the U.S. Tax Code and any rules and regulations thereunder;
- (3) SLR has all requisite authority to acquire BNSF's rights and properties which are conveyed to SLR by this Agreement; to enter into this Agreement; to conduct or make arrangements to have conducted, rail freight transportation business on the Rail Line (as of the date of Closing only); and to perform all of SLR's obligations under this Agreement;

- (4) The execution of this Agreement and consummation of the transactions which are a part of this Agreement have been duly authorized and approved by all necessary actions by SLR;
- (5) There is no provision in the SLR's corporate charter, by-laws (or other similar documents of incorporation), or laws of the State of Washington, which prohibits the execution of this Agreement or consummation of the transactions covered by this Agreement;
- (6) As of the date of Closing only, SLR will have obtained all legal authority which is necessary to enable SLR to conduct or make arrangements to have conducted rail freight transportation operations over the Rail Line (as of the date of Closing only) and assumption (or arrangement of assumption by a third party) of all common carrier liability therefor;
- (7) The negotiations related to this Agreement have been handled by SLR on its own behalf, without intervention of any agent or party, and in such manner as not to give rise to any valid claim by any party for any finder's fee, brokerage commission, or other similar payment in connection with any of the transactions included in this Agreement;
- (8) To the best of SLR's knowledge, neither SLR nor any of SLR's financing sources, nor any of their partners, is a Class I railroad or affiliated with a Class I railroad.

5. Inspection and Condition of Rail Line.

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

(b) BNSF HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF THE RAIL LINE, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE RAIL LINE, THE CONFORMITY OF THE RAIL LINE TO ITS INTENDED USES, OR THE QUALITY OF TITLE TO THE RAIL LINE. BNSF SHALL NOT BE LIABLE TO SLR FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT) WITH RESPECT TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE, OF THE RAIL LINE, OR THE CONFORMITY OF THE RAIL LINE TO ITS INTENDED USES. SLR ACCEPTS, THE RAIL LINE IN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON BNSF'S RIGHTS, INTEREST, AND TITLE TO THE PROPERTY COMPRISING THE RAIL LINE.

6. Management Operation and Maintenance of the Premises.

SLR assumes full and complete responsibility -- whether financial or otherwise -- for the management, operation and maintenance of the conveyed premises, and under no circumstances shall BNSF be required to manage, operate or maintain the conveyed premises after Closing. In

no event shall this agreement be construed to create a joint enterprise for the use or operation of premises.

7. Indemnity of SLR

SLR will indemnify and hold BNSF harmless from any and all liability (including without limitation, strict liability regardless of BNSF's negligence), cost or expense, including attorneys' fees, arising from the actions or inactions of SLR, its agents and invitees and any third party trespasser(s) after the date of Closing or arising as a result of this sale, including injuries, death, or property loss or damage. SLR shall protect, hold harmless and indemnify BNSF against any claim or liability arising from or based on the violation of any law, ordinance, regulation, injunction, or final order or decree of bodies or tribunals having any jurisdiction or authority, which in any way affect the performance of this Agreement, whether by SLR or its employee, agents or subcontractors. Except as otherwise provided in Paragraph 9 below, SLR assumes the risk that hazardous substances and contaminants may be present on the premises, and indemnifies, holds harmless, and hereby waives, releases and discharges BNSF from any and all present or future claims or demands, and any and all damages, loss, injury, claims or costs, including fines, penalties and judgments arising from or in any way related to the condition of the premises or the presence of any hazardous substances or contaminants in, or under the premises. SLR shall be responsible for defense of any litigation contesting the right of the parties hereto to enter into or effectuate this Agreement. In the event that SLR does not actively defend against such claims on its own behalf and/or in joint defense with BNSF, SLR agrees to reimburse BNSF for reasonable and necessary out-of-pocket expenses, including reasonable attorneys' fees incurred by BNSF in connection with litigation arising out of the transfer or use of



the premises covered by this Agreement SLR warrants to BNSF that SLR (or its operator, contractor, agent, or assignee or other party in possession, custody, or control of the Rail Line in lieu of SLR) shall, at its own expense, obtain and maintain in force during rail operations and/or interim trail use Commercial General Liability Insurance for all claims arising out of bodily injury, illness and death and from damages to or destruction of property of others, including loss or use thereof, and including liability of BNSF (excepting any liability of BNSF resulting from use of its retained interests pursuant to paragraph 1(b) herein,) with minimum limits for bodily injury and property damage of \$2,000,000 per occurrence, with an aggregate of \$5,000,000. In the event SLR assigns this Agreement to a political subdivision, a Certificate of Self Insurance up to said amounts for the same or similar coverage shall be sufficient for said assignee. Evidence of insurance (or self insurance, as the case may be) shall be provided to BNSF prior to Closing.

8. BNSF's Indemnity

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

9. Environmental Liability

(a) Seller shall indemnify, defend and hold Buyer harmless from all costs, losses, liabilities, obligations and claims that may arise from (i) Seller's failure to comply with any

applicable environmental laws before Closing or (ii) the release or disposal of any hazardous substance, solid waste or any other environmental contamination on, within or from the premises before Closing.

(b) Buyer shall indemnify, defend, and hold Seller harmless from all costs, losses, liabilities, obligations, and claims of any nature whatsoever that may arise from (i) Buyer's failure to comply with any applicable environmental laws with respect to the premises after Closing or (ii) the storage, disposal or release of any hazardous substance, solid waste or any other environmental contamination on, within or from the premises after Closing. For purposes of this Paragraph 9(b), the term "release" does not include any further or continuing release of any hazardous substances or other environmental contamination that was otherwise present on the premises as of Closing.

As used above, the term "applicable environmental laws" means all state, federal or local laws, statutes, ordinances, rules, regulations or orders pertaining to health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act ("SARA"), the Resource Conservation and Recovery Act of 1976 ("RCRA"), and the Washington State Model Toxics Control Act ("MTCA"), as each is amended from time to time. As used herein, the terms "hazardous substance" and "release" (except as provided above in Paragraph 9(b)) have the meanings specified in CERCLA and the terms "solid waste" and "disposal" (or "disposed") have the meanings specified in RCRA (except as provided above in Paragraph 9(b)(ii)). If either CERCLA or RCRA is amended to broaden the meaning of any term defined thereby, the broader meaning shall apply to this Agreement after the effective

date of the amendment. Moreover, to the extent that Washington law establishes a meaning for "hazardous substance", "release", "solid waste", or "disposal" that is broader than that specified in either CERCLA or RCRA, the broader meaning shall apply.

10. Salvage Conditions

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

(a) SLR (or its agent) shall, at its own expense, obtain all necessary permits and licenses and shall comply in all respects with any and all federal, state, and local ordinances, laws, or regulations applicable to salvage or track materials obtained pursuant to this Agreement.

(b) SLR shall keep open and in safe condition all public or private highways, highway crossings, and highway approaches that may be affected by its operations hereunder, unless permission to the contrary is given by proper public or private authority, as the case may be.

(c) Whenever, upon proper authority having been obtained, highways, highway crossings, or highway approaches are temporarily closed, disturbed, or detours established, SLR, at its own expense, shall erect and maintain suitable barriers, warning signs, and lights for the protection of the public and interested owners of private property affected.

(d) At the completion of work, public and private highways, highway crossings, and highway approaches that have been disturbed by SLR's operations shall be restored by and at the expense of SLR to a condition satisfactory to any interested public authority.

(e) SLR IS PLACED ON NOTICE THAT FIBER OPTIC, COMMUNICATIONS, CONTROL SYSTEMS, AND OTHER TYPES OF CABLES MAY BE BURIED ON THE PROPERTIES. Before beginning work, SLR shall telephone BNSF's Communications Network

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

11. Maintenance.

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

12. Obligations are Continuing.

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

13. Closing.

(a) At Closing, BNSF shall deliver to SLR the following documents:

- (1) A sufficient number of original counterparts of an executed Quitclaim Deed to the Rail Line, in exact form as the Quitclaim Deed attached hereto as Exhibit A, to enable SLR to file an original Quitclaim Deed in each county in which the real property comprising the Rail Line is located;
- (2) An executed Bill of Sale in exact form as the Bill of Sale attached hereto as Exhibit B;
- (3) All other documents and agreements required from BNSF under this Agreement.

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

14. Proration.

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

15. Interchange.

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

16. Transfer of Operations.

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

17. Rail Line Operations.

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

18. Governing Law and Dispute Resolution.

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

19. Effect of Waiver.

Any waiver by either SLR or BNSF or failure of either SLR or BNSF to insist upon full and complete performance by BNSF or SLR of obligations set forth in this Agreement shall not

constitute a waiver or release of such party's right to insist upon full and complete performance of any other obligations in this Agreement, or a waiver or release of such party's right to insist upon full and complete performance of the obligations that were waived or not enforced for periods prior to, or following, the waiver or failure to insist upon full and complete performance. This Agreement shall be amended or modified only by written agreement signed by the parties hereto.

20. Notices.

All notices and other communications under this Agreement shall be in writing and deemed properly served if delivered by hand to the party addressed or, if mailed, when received by the United States Postal Service in registered or certified mail, postage prepaid, or, if sent by a national overnight service, when received by the carrier service in a prepaid mailer, return receipt requested, addressed as follows:

BNSF: Mr. Jim O'Neil  
Vice President  
Property Management Department  
The Burlington Northern and Santa Fe Railway Company  
P. O. Box 961050  
Fort Worth, Texas 76161-0050

SLR: Mr. David Burwell  
Rails to Trails Conservancy  
1400 Sixteenth Street, N.W.  
Suite 300  
Washington, D.C. 20036

Mr. Charles Montange  
426 N.W. 162nd Street  
Seattle, Washington 98177

Either party hereto may change its address or addressee to which notices are to be given by providing written notice of the change to the other party.

21. Entire Agreement; Integration of Agreement.

This document, together with all Exhibits attached hereto, constitutes the entire agreement between SLR and BNSF relating to this transaction. Any other prior or contemporaneous agreements, understandings, representations or statements, whether oral or written, concerning the subject matter hereof are merged herein. The headings and titles to provisions in this Agreement are for convenience only, and shall not be deemed to modify or affect the rights or duties of SLR or BNSF. All rights and obligations of SLR and BNSF set forth in this Agreement, or in any Exhibit attached hereto, are integral parts of this Agreement.

22. Successors.

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

23. Recording.

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

24. Cooperation.

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



25. Liens of Seiler's Mortgages

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

26. Future Trail Development North of Seaview Avenue

In the event SLR elects to develop a trail north of Seaview Avenue, the following criteria shall be applicable:

(a) BNSF shall retain a non-exclusive easement to use the current access road north of Seaview Avenue extended northerly to the intersection of the Ballard right-of-way with the North line of West 65th Street extended southerly for access to BNSF's mainline, provided, however, that the parties recognize the access road may be shifted to the east to provide space for the interchange track, and may be used by SLR for trail purposes, and provided, further, that in no event will any design changes result in disruption of BNSF's ingress and egress to BNSF's mainline;

(b) SLR shall develop any jointly used access road and trail such that the facility will support SLR's vehicles and equipment;

(c) SLR shall install and maintain a six foot high chain link fence between the jointly used access road and trail and BNSF's mainline, provided, however, that said fence shall allow access to the 65th Street underpass and shall have gates precluding access by the general public to i) BNSF's mainline; ii) the remainder of the access road onto BNSF's property north of the 65th Street underpass; and iii) the Ballard Branch interchange;

(d) SLR will install a fence or divider three to three and one-half feet high on the west side of the jointly used access road and trail;

(e) SLR may provide a crossing of the Ballard Branch interchange tracks on the north side of the interchange area for access to Seaview Avenue, and SLR agrees that any such crossing will i) not unreasonably interfere with BNSF's interchange operations; ii) be designed with adequate crossing protection, which at a minimum provided for zig-zag barriers or other similar structures or devices intended to slow and/or stop trail traffic at the crossing;

(f) In order to accommodate SLR's trail development plans, SLR may, at SLR's expense, elevate the access road and trail, provided no such development will result in any degradation of the toe of the slope of the existing main line grade located east of the current track structure; and

(g) SLR shall be responsible for ensuring adequate drainage is provided, at SLR's expense, to the extent drainage work is required to accommodate future trail development. The parties agree that a conceptual design reasonably similar to that set forth in the attached Exhibit \_\_\_ is generally acceptable;

(h) All fence, gate, and divider clearances from trackage shall meet or exceed any clearances required by federal, state, regulatory, or municipal law as such laws and regulations may be amended from time to time.

(i) Notwithstanding any provision to the contrary, any design of a trail, interchange track, and/or design changes to BNSF's existing road access in the area shall be done with prior consultation and approval of BNSF's engineering personnel, which approval shall not be unreasonably withheld or delayed.

27. Effective Date.

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

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

THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY

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

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

ADVENTURE TRAIL,  
doing business as Sea Lion Railroad

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

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

STATE OF TEXAS §  
  §  
COUNTY OF TARRANT §

On this \_\_\_\_\_ day of \_\_\_\_\_, 1997, before me, a notary public in and for said county and state, personally appeared \_\_\_\_\_ and \_\_\_\_\_ of THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, known to me to be the identical persons and who acknowledged the execution thereof to be their voluntary act and deed for the purposes therein expressed.

WITNESS my hand and notarial seal the date above written.

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

STATE OF \_\_\_\_\_ §  
  §  
COUNTY OF \_\_\_\_\_ §

On this \_\_\_\_\_ day of \_\_\_\_\_, 1997, before me, a notary public in and for said county and state, personally appeared \_\_\_\_\_ and \_\_\_\_\_ of ADVENTURE TRAIL, doing business as Sea Lion Railroad, known to me to be the identical persons and who acknowledged the execution thereof to be their voluntary act and deed for the purposes therein expressed.

WITNESS my hand and notarial seal the date above written.

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

2  
3 Exhibit J -- form of letter from Seattle to BNSF  
4

5 draft: 28 August 1997  
6

7 Mr. Douglas Babb  
8 Senior Vice President  
9 The Burlington Northern and Santa Fe Railway Company  
10 3017 Lou Menck Drive  
11 Fort Worth, TX 76161  
12

13 Re: Burke-Gilman Agreements and  
14 BNSF-SLR Transaction

15 Dear Mr. Babb:  
16

17 This letter is to confirm to The Burlington Northern and  
18 Santa Fe Railway Company (BNSF), as successor to the Burlington  
19 Northern Railroad Company (BN), that the City of Seattle hereby  
20 waives its right of first refusal provided in paragraph 7 of the  
21 Burke-Gilman Agreement dated 24 January 1989 between the City and  
22 BN with respect to the Ballard Line defined as BNSF MP 0.09 (that  
23 being a point approximately 1000 feet south of the clearpoint to  
the mainline) to end of line at approximately BNSF MP 2.70  
(approximately 45th St.) in the Ballard district in Seattle,  
provided:

24 a) BNSF sells and otherwise transfers the entire Line to SLR  
25 in a fashion permitting Sea Lion Railroad (SLR) either to  
26 continue rail operations on the property or to railbank the  
27 property pursuant to 16 U.S.C. 1247(d);  
28

29 b) BNSF also enters into appropriate interchange arrangements  
30 acceptable to SLR or its nominee (Ballard Terminal Railroad  
31 Company) for continued rail operation.  
32

33 The intent of the 24 January 1989 agreement was to preserve,  
34 among other things, the Ballard Line for continued public purposes,  
35 including extension of the City trail system. Paragraph 13 of the  
36 24 January 1989 agreement anticipates that the parties may take  
37 additional acts to implement the intent of the agreement. The City  
38 regards transfer of the property in question from BNSF to SLR as an  
39 additional act "reasonably require[d] to consummate the  
40 transactions contemplated" under the 24 January 1989 agreement.  
41 The City further regards the transfer as consistent with the Trail  
42 Implementation Agreement between BN and the City dated 23 September  
43 1991.  
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49 The City supports acquisition of the Ballard Line by SLR,  
50 railbanking of the Ballard Line by SLR, operation of the Ballard  
51 Line for rail purposes under a "modified PCN" by Ballard Terminal  
52 Railroad Company upon transfer of the railbanked premises to the

2 City, and joint operation of the premises for public purposes  
3 (including trails) by the City compatible with rail operation under  
4 the modified PCN. The City on no account wishes to assume any  
5 common carrier obligations itself. The City does desire to ensure  
6 that the entire corridor is preserved intact, and the transaction  
7 between BNSF and SLR is part of an approach which is the most  
8 efficient, cost-effective, and reasonable method to accomplish the  
9 City's goals. We appreciate BNSF's cooperation in this effort.

10 Very truly,

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13 Bruce Brooks  
14 Deputy Mayor  
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Exhibit K -- Form of MOU SLR/Seattle

28 August 1997

Memorandum of Understanding

The City of Seattle ("City"), a municipal corporation of the State of Washington, and Adventure Trail d/b/a Sea Lion Railroad Project ("SLR"), a District of Columbia non-profit corporation, hereby enter into the following Memorandum of Understanding (MOU):

1. SLR will employ its best efforts to acquire all property interests from The Burlington Northern and Santa Fe Railway Company (BNSF) in the Ballard Branch from approximately BNSF MP 0.09 (1000 feet from mainline) to terminus of line at approximately BNSF MP 2.70 (45th St.) in Ballard. SLR intends to transfer, and City intends to accept, all real estate interests obtained by SLR pursuant to that contract, save only for the parcel specified in the Operating Agreement (see below) for use as a locomotive facility. SLR will submit the final form of the purchase agreement to City for approval as to form before SLR executes said contract. SLR intends to transfer, and City intends to assume, all obligations and responsibilities SLR acquires with respect to the real estate under the BNSF/SLR contract. If the agreement between BNSF and SLR is acceptable, City will expeditiously supply SLR with a letter stating "The agreement for purchase of the Ballard Branch between BNSF and SLR dated \_\_\_\_, 1997, is acceptable as to form."

2. SLR will employ its best efforts to enter into an Operating Agreement with Ballard Terminal Railroad Company in a form acceptable to the City. City shall acknowledge the acceptability of the form of an Operating Agreement by signing a statement to such effect on the Operating Agreement.

3. Subsequent to acknowledgment of the acceptability of the form of the Operating Agreement, the City shall employ its best efforts to adopt a franchise ordinance consistent with authorizing Ballard Terminal Railroad Company to operate on behalf of the City pursuant to a modified certificate of public convenience and necessity (modified PCN). Upon adoption of said franchise, SLR will employ its best efforts to petition the Surface Transportation Board (STB) for an expedited abandonment authorization, including exemptions from "offer of financial assistance" ("OFA") and public use provisions. City promptly will file a "statement of willingness" to assume financial responsibility, and otherwise coordinate and cooperate with SLR in obtaining authorization for railbanking the Ballard Branch. City will bear all reasonable legal fees incurred by SLR in obtaining railbanking authorization. SLR shall bear all filing fees for the petition.

2 4. When STB authorizes the line for railbanking, City agrees  
3 to employ its best efforts to obtain final City Council approval  
4 for acquisition of all real estate interests in the corridor  
5 (except for a parcel designated for the locomotive facility) from  
6 SLR. It is the intent of the parties that the City shall be in a  
7 position to accept assignment of the obligations, rights and  
8 responsibilities of SLR under the Operating Agreement with Ballard  
9 Terminal Railroad Company and the obligations, rights and  
10 responsibilities of SLR with respect to BNSF. The City understands  
11 and acknowledges that it will seek Council approval to accept the  
12 property in AS IS, WHERE IS condition, and that it will hold SLR  
13 harmless from liability for actions or inactions upon the corridor.  
14 SLR warrants and agrees that it will not authorize any additional  
15 uses on the corridor except as specifically provided in the  
16 Operating Agreement with Ballard Terminal Railroad Company, without  
17 thirty (30) days prior notice and consultation with the City.

18 5. Subject to completion of appraisals to demonstrate that  
19 the value of fee-owned parcels in the corridor meets or exceeds the  
20 sum of \$710,000, City offers and agrees to pay SLR that amount in  
21 cash for the transfer of real estate interests in the corridor, but  
22 not including track, ties, or other track material, by quitclaim  
23 deed. That sum shall be reduced by an amount equal to \$14.50 per  
24 square foot multiplied by the square footage of land owned in fee  
25 by SLR that is conveyed by SLR to BTRC for use as a locomotive  
26 storage area. The amount payable shall be paid in cash, as of  
27 closing. City agrees to assume all closing costs, excise taxes,  
28 and other fees, and to pay any property taxes incurred by SLR in  
29 the period of SLR ownership, as of closing. City and SLR agree to  
30 cooperate to achieve closing as soon as possible after the issuance  
31 of an effective railbanking order, but in a fashion consistent with  
32 continuity of rail service under a modified certificate of public  
33 convenience and necessity. City shall not withdraw this offer and  
34 agreement any earlier than twenty days following the effective date  
35 of an STB order authorizing railbanking of the premises. SLR may  
36 accept this offer and agreement at any time that it remains  
37 outstanding.

38 6. In the event (i) STB declines to issue an authorization  
39 for an exempt abandonment/railbanking within ten (10) months of  
40 SLR's application for such an exemption; or (ii) STB issues an  
41 effective Notice of Interim Trails Use, SLR notifies City of  
42 acceptance of the offer and agreement set forth in paragraph 5, and  
43 City fails to acquire the property within two months thereafter,  
44 SLR may dispose of the property or interests in the property as SLR  
45 sees fit without further obligation to City.  
46

47 7. During the period of SLR ownership, SLR shall not approve  
48 any construction plans tendered it for approval by Ballard Terminal  
Railroad Company which the City determines interfere with future  
trail plans. City acknowledges that SLR as Owner has only thirty  
days from receipt in which to review such plans. City acknowledges



that it must complete review within that period or it shall be deemed to have waived objections. SLR undertakes to employ its best efforts promptly to tender any plans received from BTRC to City.

8. City accepts Ballard Terminal Railroad Company as SLR's operator prior to City acquisition of the Ballard Branch.

9. Notices under this agreement shall be sent as follows:  
if to City, to Director of Seattle Transportation Department, City of Seattle, 600 -- 4th Ave., 4th Floor, Seattle, WA 98104; fax -- 206-684-5180.

if to SLR, to Manager, SLR, P.O. Box 17883, Seattle, WA 98107; fax -- 206-706-1991.

10. City agrees to hold SLR harmless from any claims for injury or property damage, including attorneys' fees, that arise by reason of operation of the Burke-Gilman Trail or extensions thereof in the corridor during the period of SLR ownership.

11. The parties agree to cooperate in the execution of such further agreements, or in the taking of such additional actions, as may be necessary to accomplish the intent of this MOU.

12. City represents that it has authority from City Council to acquire the property from SLR.

13. Upon SLR and BTRC executing an Operating Agreement, City and SLR will cooperate with BTRC in seeking rehabilitation grant financing from the State, provided, however, that neither City nor SLR incur any liability by reason of the grant when property is transferred as contemplated between the parties, or in the event rail service ceases and a party other than SLR or the City salvages track, ties, or other track material.

14. At any time after acquisition of the premises by SLR, City shall have a right of entry to perform such surveys and preliminary studies as are reasonable and appropriate to expedite construction of additions to the Burke-Gilman Trail west of the Government Locks and between 8th Avenue and 11th Avenue upon City acquisition, provided, however, that City agrees to hold SLR harmless from any claims, including claims for personal injury, property damage, attorneys fees, court costs, or penalties, arising due to any action or inaction of the City under this right of entry.

15. This Memorandum of Understanding is subject to whatever orders or conditions are placed upon the subject property by the Surface Transportation Board.

City of Seattle

by: Dale Gandy 9/16/97  
Director, Seafair

Adventure Trail d/b/a Sea Lion  
Railroad (SLR)

by: Fred West 9/16/97

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