

BEFORE THE SURFACE TRANSPORTATION BOARD

EASTSIDE COMMUNITY RAIL -)
 OPERATION AND ACQUISITION EXEMPTION -) F.D. 35692
 GNP RLY)

ENTERED
 Office of Proceedings
 August 29, 2018
 Part of
 Public Record

REPLY TO DOUGLAS ENGLE
 On behalf of SNOHOMISH COUNTY

This Board's regulations ordinarily bar replies to replies, but the Board's practice is to accept such filings on motion where appropriate to complete the record. Snohomish County hereby seeks leave to file this Reply to Douglas Engle, directed at his filing ostensibly on behalf of Eastside Community Rail (ECR) on August 14, 2018. Mr. Engle's Reply of that date contains a hodge-podge of materials, most of which are irrelevant to the issue before the Board (namely, whether ECR's operation and acquisition exemption should be voided because ECR misrepresented its title to the property in question). Mr. Engle's filing attached a number of documents which he seems to believe bear on title, and to which a response is appropriate to complete the record.

The first issue is whether Mr. Engle may lawfully file a pleading on behalf of ECR. ECR is a (dissolved) corporation. This Board does not recognize corporations as entities entitled to file pleadings on behalf of any one in an STB regulatory proceeding. 49 CFR 1103.1-.3. In addition, although Engle purports to represent ECR, he is neither a licensed attorney

(Engle Reply at p. 2) nor a licensed practitioner before this Board, and accordingly is not allowed to represent a railroad in proceedings here. See 49 CFR 1103.1-.3. Finally, as City of Woodinville demonstrated in its Reply in support of Snohomish County filed August 23 in this proceeding, ECR is dissolved and by law is disempowered from appearing in tribunals other than to wind down its affairs. Literally, Engle can only speak for himself. ECR is in default.

Turning to the merits of his contentions, Mr. Engle fails to demonstrate that ECR has any title in the freight rail easement at issue.¹ Indeed, his pleading appears to admit that ECR lacks title, in that Engle attaches a deed by which he and his father purport to convey a portion of the easement in King County to NW Signal in 2017. But the grantor in the deed was NOT ECR; instead, it was Douglas Engle and his father Earl Engle. In his pleading, he states that he and his father sold the freight easement to NW Signal. Engle Reply at p. 6.² Again, he

¹ Mr. Engle lacks standing in this proceeding. He owns no adjacent land, is not a shipper or prospective shipper, has no rail equipment, and does not show that he or the dissolved entity (ECR) which he purports to control owns any portion of the freight rail easement at issue here. Engle at best is merely a trespasser on the premises, issuing deeds and leases which impugn Snohomish County's unquestioned underlying title, breach applicable contracts, and interfere with providing rail service on the corridor.

² Engle claimed to have retained passenger rights, but he has no passenger rights. See Second Declaration of Thomas Stowe, filed herewith.

does not claim ECR owns anything; his implied claim is only on behalf of himself and his father. His pleading seems to imply that his father's claim arises from the pre-bankruptcy conveyance of the freight easement to Earl (the father) and Joanne (Douglas Engle's wife), with Douglas succeeding to Joanne's interest as part of a divorce settlement (no deeds presented). In all events, ECR is not in the chain of title. Engle has also purported to grant a parking lot easement in the property in 2017 under his own name, ignoring ECR.

As demonstrated in the attached Second Declaration of Thomas Stowe, Engle's "Reply" fails to show that ECR has any title in the relevant premises. Record title remains in Douglas and Joanne Engle. Douglas Engle supplies a number of defective deeds (the deeds he annexes are subject to one or more of the following flaws: insufficient property description, lack of acknowledged signatures by qualified recipients, breach of the contractual obligation to approve Port or Snohomish County pre-approval for the transfer in question). Engle's showings are thus wholly inadequate to cure the fundamental problem he faces: ECR lacks title.

Mr. Engle spends much of his time elaborating castles in the air about how he is going to run a railroad via either the dissolved ECR entity, or himself, or himself and his father, either on the Woodinville freight rail easement or on that plus

adjoining rail corridor to which neither he, his father, ECR or some combination thereof has any right. At other times, Engle states he has sold or is selling the line to NW Signal. As to freight rail service, Ballard Terminal's filing in this proceeding indicates that traffic is eroding and generating insufficient revenue to maintain the line. It also indicates that Engle owes Ballard Terminal substantial funds.³ As to passenger rail service, Engle has no rights whatsoever to engage in same, as shown in Mr. Stowe's Second Declaration. The point is that ECR has no title, and never did. Yet due to Engle's misrepresentation to this agency that ECR did have title, ECR obtained a regulatory right on the corridor. Ignoring ECR but hiding behind ECR's STB license, Engle - as his own pleading shows - is dealing out quitclaim deeds, often unrecorded and defective, under his own name or those of his relatives, more or less as if in an unlawful backroom poker game using a flawed deck of cards.

Engle appears to invite Snohomish County to take over maintenance of way costs on this rail line. Engle Reply at 8 and passim. But it would be embarrassing in the circumstances for the County to apply for federal or state assistance, much less provide County taxpayer funds, to support such an operator.

³ Engle acknowledges a "financial dispute with Ballard" at p. 15 of his Reply.

ECR does not own the property, and Engle suggests at various points in his Reply that he, his father, or NW Signal own the property. None of these entities has obtained contractually required Snohomish County approval for their alleged or purported ownerships, and none have applied for requisite STB licensing. The appropriate course is to void the ECR operation and acquisition exemption ab initio because ECR through Engle falsely claimed that ECR had title to the freight rail easement when ECR sought acquisition and authorization authority in this proceeding. ECR does not and never did hold such title, and nothing in Engle's reply demonstrates otherwise.

Failure to reply to other aspects of Mr. Engle's pleading should not be construed as admission to any argument which he makes. Most of his arguments, as indicated, are irrelevant, self-contradictory, or amount to admissions ECR lacks title.⁴

⁴ One of Engle's irrelevancies does merit a correction. Engle at p. 12 suggests that if the operating and maintenance agreement "expires" next year, he will be able to obtain financing. Indeed, at p. 17 of his Reply he professes with "great humility and sincerity" to ask the Board prematurely to terminate the ten-year O&M agreement [which he says on p. 12 he wanted for a term of 35 years]. Engle makes no showing that the O&M agreement burdens rail; instead, it makes the rail carrier responsible to maintain the property it is using and maintains insurance. But more profoundly, Mr. Engle misses the fact that he is using track and tie belonging to Snohomish County. The operating and maintenance agreement grants GNP and its lawful successors (neither Engle nor ECR is a lawful successor) a right to use the track on payment of \$10/carload. GNP or its lawful successor has a right to renew the agreement. If the agreement is not renewed, then Snohomish County is entitled to a market

Respectfully submitted,

s/Charles H. Montange

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c.montange@frontier.com
Attorney for Snohomish County

rate of return for use its tracks and ties. The market rate is almost certainly considerably greater than \$10/carload. In short, Mr. Engle's analysis of the O&M Agreement is internally inconsistent and misrepresents an agreement which is beneficial to GNP and its lawful successors. He states no basis for premature termination of the agreement, which for the most part he has unlawfully ignored anyway.

Certificate of Service

I certify that on August 30, 2018, I served by email the foregoing document on all parties in this proceeding and on Douglas Engle, and caused the foregoing to be served by USPS, first class, on the following as set forth in the service list:

Brower, Joshua
506 2Nd Ave Suite 1400
Seattle, WA 98104 (BTRC)

Cohen, Matthew
Stoel Rives LLP
600 University Street, Suite 3600
Seattle, WA 98101 (City of Woodinville)

Engle, Douglas
4117 S Lamonte St
Spokane, WA 99203

Fultz, Allison I.
Kaplan Kirsch Rockwell
1001 Connecticut Ave., N.W., Suite 800
Washington, DC 20036 (King County)

Tobin, Myles L
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 920
Chicago, IL 60606-2875 (ECR)

Charles H. Montange

1 BEFORE THE SURFACE TRANSPORTATION BOARD

COUNTY OF SNOHOMISH
STATE OF WASHINGTON

Eastside Community Rail, LLC -- Acquisition
and Operation Exemption -- GNP Rly, Inc.,
F.D.35692

2 SECOND DECLARATION OF THOMAS P. STOWE

3 THOMAS P. STOWE makes the following declaration upon personal knowledge:

- 4 1. I am over 18 years of age and otherwise competent to testify in this matter.
- 5 2. I am the Senior Review Appraiser for Snohomish County Public Works Department.
- 6 I have held this position since September 6, 2016.
- 7 3. In my capacity as Senior Review Appraiser, I am the County Parks and Recreation
- 8 Department's project lead for research and analytics regarding its ownership of the
- 9 former BNSF railroad corridor between the City of Woodinville in King County and
- 10 the City of Snohomish in Snohomish County, also known as the Centennial Trail
- 11 South, a rail with trail project. I am making this declaration for filing with the
- 12 Surface Transportation Board (STB or Board) to address the unrecorded documents
- 13 presented in the letter to the STB by Douglas Engle on August 14, 2018 (which I
- 14 refer to herein by the STB document number " 246219"), FD 35692, specifically
- 15 Exhibits 2 and 4, and other claims made. All documents attached to this Declaration
- 16 are true and correct copies in the regularly kept online records of Snohomish County
- 17 and King County, Washington State, are downloadable from the STB website e-
- 18 library, or PACER (Public Records to Court Electronic Records).
- 19 4. Neither the Engle's et al nor Eastside Community Rail (ECR) have "passenger rights
- 20 in the line" (Engle STB 246219 at p.4, ¶ 6). Snohomish County has the exclusive

1 right to enter into agreements with one or more third parties for certain non-freight,
2 passenger transportation uses on the Corridor (e.g. commuter rail service) during the
3 term of the Operations and Maintenance Agreement, Section 2.1 h) and 2.2 d),
4 acknowledged and agreed to by the Third Party Operator (TPO), formerly being
5 GNP Rly, Inc. (GNP).

6 In addition, under 2.1 f) in the 12/18/2009 dated O&M Agreement, the “TPO or its
7 designee shall commence Excursion Rail Service on the Corridor no later than six (6)
8 months after the Execution Date, unless TPO and the Port agree, in writing, to a later
9 date.” The TPO did not commence Excursion Rail Service within that six month
10 period and Snohomish County has no written agreement for extension from the Port
11 of Seattle, all of which occurred prior to the Bankruptcy Court’s 9/26/2012 transfer
12 of assets from GNP to ECR. Finally, the only right conveyed to GNP by BNSF was
13 a “reserved freight easement.” GNP never had any passenger rights other than as
14 provided in the O&M Agreement. For this reason alone, Engle’s claim of any right
15 to engage in passenger operations is invalid.

- 16 5. GNP quit claimed to Earl Engle and Joanne Engle the Woodinville Freight
17 Easement, recorded in King County, WA on 1/24/2011, AF #20110124000613. No
18 excise tax affidavit was available online. See Exhibit A attached. As indicated in
19 my first Declaration filed in this proceeding, GNP quit claimed to Earl Engle and
20 Joanne Engle the Woodinville Freight Easement, recorded in Snohomish County,
21 WA on 1/25/2011 with an excise tax affidavit, AF #201101250441. Both were
22 signed by Douglas Engle as CFO of GNP, and both were recorded less than ten days
23 prior to the GNP Chapter 11 Bankruptcy filing.

1 6. Engle STB 246219, Exhibit 2 is an unrecorded *Agreement to Purchase Real Estate*
2 *Easement*. It indicates that it was “confidential.” It is dated October 24, 2011, which
3 is eight months after initiation of the Bankruptcy on February 2, 2011¹ and two
4 weeks before appointment of the Chapter 11 Bankruptcy Trustee who took control of
5 GNP. Since Mr. Engle was fired by GNP shortly before that entity entered
6 bankruptcy proceedings, there is no basis to believe that Mr. Engle had authority to
7 sign an agreement on behalf of GNP, especially after it had entered bankruptcy. In
8 any event, the ‘agreement’ does not include a legal description, and as such could not
9 be recorded. In addition, this is an agreement to purchase, not a deed, and as such
10 does not convey any rights or interests. Therefore it does not support any of Engle’s
11 claims.

12 7. Engle STB 246219, Exhibit 2, is an unrecorded *Quit Claim Deed / Woodinville*
13 *Freight Easement*. It is also dated October 24, 2011, which is eight months after
14 initiation of the Bankruptcy on February 2, 2011, and two weeks before appointment
15 of the Chapter 11 Bankruptcy Trustee who took control of GNP. Again, I have no
16 evidence that Douglas Engle, who had been fired, had authority to sign an agreement
17 for GNP, let alone after GNP entered bankruptcy. This deed does not include a legal
18 description, legal description abbreviation, or tax parcel number on the first page (all
19 would be modifications to the existing document), and it does not include an excise
20 tax affidavit with a complete legal description signed by both parties or their agents
21 to the transaction, and therefore could not be recorded.

¹ 11-40829-BDL GNP Rly Inc. Bankruptcy. Perry Stacks Chapter 11 Trustee appointed November 11, 2011. Bankruptcy terminated April 5, 2013.

1 Under the O&M Agreement,² proper notification to the County must be made and
2 the County must approve a conveyance before a conveyance is made. No
3 notification or acceptance was made or given of this conveyance in either its
4 unrecorded or now its published form. Nor is this in accord with the later unsigned
5 bankruptcy Asset Purchase Agreement dated September 5, 2012, which was a part of
6 the Declaration of Perry Stacks, Trustee. Exhibit B.

- 7 8. Engle STB 246219, Exhibit 4 is an unrecorded *Quit Claim Deed / Portion of*
8 *Woodinville Freight Easement*. This unrecorded deed is dated December 18, 2017.
9 The deed is signed and countersigned, and all signatures are notarized. It has an
10 abbreviated legal description on the first page, but does not include an excise tax
11 affidavit, nor a full legal description for the portion of the easement conveyed.
12 The abbreviated legal description is only for a portion of the King County portion of
13 the easement, none of which is in Snohomish County.
14 Since there is consideration, \$10,010, an excise tax affidavit is required, which
15 includes a full legal description of what is being conveyed.
16 The deed states that the Grantor [being Doug Engle and Earl Engle, not ECR or
17 ESCR] convey and quit claim to NW [Signal Maintenance] all of ESCR's right, title
18 and interest in and to the reserved freight easement located in Section 9 [not Section
19 10 or 3, or any other portion of the King County easement]. It appears that Doug

² 12.5 Binding Successors: Assignment.

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective permitted successors and assigns, except that TPO may not assign its rights and obligations under this Agreement without the prior written consent of Port, which consent may not be unreasonably denied, delayed or conditioned. Any assignment, encumbrance or other transfer in violation of the foregoing shall be void. Port may assign its rights and obligations under this Agreement freely.

1 Engle and Earl Engle conveyed the rights of ECR to NW without any ownership of
2 such rights on the part of Doug Engle, and the only deed transferring ownership to
3 Earl Engle is that issued by GNP shortly before entering bankruptcy proceedings,
4 which Doug Engle in his filing 246219 casts into doubt, presenting an unrecorded
5 deed by Earl Engle back to GNP, although unaccepted by GNP.

6 In short, the Engle STB 246219 filing lacks any showing of conveyances of the
7 freight easement by ECR to Doug Engle and Earl Engle. In addition, there is no
8 Trustee's Deed from the bankruptcy court conveying ownership from GNP to ECR,
9 or to Doug Engle or Earl Engle, nor is there a deed in which the Trustee (or any
10 actual officer of GNP) accepts a conveyance back to GNP from any Engle.

11 9. After diligent search, including a title search by a title company recounted in my
12 First Declaration, and after careful review of Douglas Engle's filing, I remain
13 unaware of the trustee's signature on any deed from GNP to ECR or to any Engle.
14 There is no deed conveying the freight easement to ECR.

15 10. None of the defective transfers presented by Engle in his filing comply with the
16 requirement in the O&M agreement that the holder of the freight easement notify the
17 Port (now Snohomish County) in advance of the conveyance, and receive the prior
18 written acceptance of the Port (now County). Moreover, none of the defective
19 conveyances were predicated upon STB licensing requirements applicable for
20 changes of ownership or abandonment of operating rail lines. ECR in all events
21 lacks title in the corridor, as indicated in my initial Declaration in this proceeding.
22 Nothing in Douglas Engle's filing 246219 indicates otherwise.

1 Pursuant to 28 USC 1746, I certify under penalty of perjury under the laws of the United
2 States of America that the foregoing is true and correct to the best of my knowledge and
3 belief.

4 Signed this 29th day of August 2018 at Everett, Washington.

5 

6 _____
THOMAS P. STOWE

EXHIBIT A

Return Address:

JOANNE M. ENGLE
240 LOMBARD ST. -936
SAN FRANCISCO, CA 94111



EXCISE TAX NOT REQUIRED
King County Records Division
BY: [Signature], Deputy

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)

Document Title(s) (or transactions contained therein): (all areas applicable to your document must be filled in)

1. Quit Claim Deed 2. _____
3. _____ 4. _____

Reference Number(s) of Documents assigned or released:

Additional reference #'s on page _____ of document

Grantor(s) Exactly as name(s) appear on document

1. GNP Rly, Inc. _____
2. _____
Additional names on page _____ of document.

Grantee(s) Exactly as name(s) appear on document

1. Earl L. Engle _____
2. Joanne M. Engle _____
Additional names on page _____ of document.

Legal description (abbreviated: i.e. lot, block, plat or section, township, range)

Additional legal is on page _____ of document.

Assessor's Property Tax Parcel/Account Number

102605-1111

☐ Assessor Tax # not yet assigned

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

"I am signing below and paying an additional \$50 recording fee (as provided in RCW 36.18.010 and referred to as an emergency nonstandard document), because this document does not meet margin and formatting requirements. Furthermore, I hereby understand that the recording process may cover up or otherwise obscure some part of the text of the original document as a result of this request."

[Signature], CFO Signature of Requesting Party

Note to submitter: Do not sign above nor pay additional \$50 fee if the document meets margin/formatting requirements

After Recording Return To:

Joanne M. Engle
240 Lombard St
Suite 936
San Francisco, CA 94111

Earl L. Engle
4117 South Lamonte
Spokane, WA 99203

QUIT CLAIM DEED
Woodinville Freight Easement

Grantor: GNP Rly, Inc
Grantee: Earl L. Engle & Joanne M. Engle
Land Description: See Exhibit A attached hereto and incorporated herein (the "Property", AKA "Woodinville Freight Easement").

WHEREAS, GNP Rly Inc. ("GNP") has conveyed to Earl L. Engle (53.9%) and Joanne M. Engle (46.1%) ("Engle's") the Property pursuant a Settlement Agreement with each party; and

WHEREAS, GNP has entered into a Lease Agreement with Engle's for the Woodinville Freight Easement.

NOW, THEREFORE, GNP for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) conveys and quit claims to Engle's all of GNP's rights, title and interest in and to the Woodinville Freight Easement, together with all after acquired title of GNP therein.

GNP and Engle's are parties to certain confidential business loan Agreements, a Settlement Agreement, and Lease Agreement concerning the sale of all rights to the Property for themselves and their respective successors.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the 24th day of January 2011.

Approved by:

Earl L. Engle

By: Earl L. Engle
Earl L. Engle

Joanne M. Engle

By: Joanne M. Engle
Joanne M. Engle

GNP Rly Inc.

By: Douglas E. Engle, C.F.O.
Douglas E. Engle, C.F.O.

Unofficial Copy

STATE OF WASHINGTON
COUNTY OF Spokane

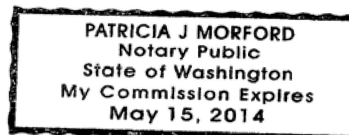
I certify that I know or have satisfactory evidence that Earl L. Engle is the person who appeared before me, and said person acknowledged that he/she signed this instrument to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 1/24/11

NOTARY PUBLIC: Patricia J. Morford

Print Name: Patricia J. Morford

My commission expires: 5/15/14



STATE OF WASHINGTON
COUNTY OF King

I certify that I know or have satisfactory evidence that Joanne M. Engle is the person who appeared before me, and said person acknowledged that he/she signed this instrument to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 1-24-2011

NOTARY PUBLIC: Violet R. Tate

Print Name: Violet R. Tate

My commission expires: 2-29-12



STATE OF WASHINGTON
COUNTY OF King

I certify that I know or have satisfactory evidence that Douglas E. Engle is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Chief Financial Officer and Treasurer of GNP Rly Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 1-24-2011

NOTARY PUBLIC: Andrew Jordan Amoranto

Print Name: Andrew Jordan Amoranto

My commission expires: 5-5-2014



That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the S½SE¼ and the SE¼SW¼ Section 34, Township 27 North, Range 5 East, W. M., bounded on the North by a line radial to said Railway Company's Main Track centerline, as originally located and constructed, at a point distant 600 feet Southwesterly of said North line of said SE¼SE¼ Section 34, as measured along said Main Track centerline, and bounded on the South by the South line of said Section 34, said line also being the South line of Snohomish County Washington.

KING COUNTY

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the Lots 2, 3, the S½N¼, and the E¼SW¼ Section 3, the NW¼ Section 10, all in Township 26 North, Range 5 East, W. M., bounded on the North by the North line of said Section 3, said line also being the North line of King County, Washington, and bounded on the West by the West line of said NW¼ Section 10, **EXCEPTING THEREFROM**, that portion lying Easterly of a line parallel with and distant 20 feet Easterly from, measured at right angles to said Railway Company's Main Track centerline as now located and constructed, bounded on the North by the South line of 8th Street, according to the recorded plat of Bear Creek Addition to Day City, Washington, and bounded on the South by a line perpendicular to said Railway Company's Main Track centerline distant 450.0 feet Southerly from the North line of said E¼SW¼ Section 3, as measured along said Main Track centerline; also,

A 100 foot wide strip of land being that portion of that certain 100.0 foot wide strip of land described in deed dated June 8, 1887 from Ira Woodin and Susan Woodin to Seattle and West Coast Railway, recorded June 14, 1887 in Book 42 of Deeds, Page 410, records of King County, Washington, that portion of that certain 100.0 foot wide strip of land described in deed dated July 26, 1890 from Ira Woodin and Susan Woodin to Seattle and West Coast Railway, recorded November 10, 1890 in Book 112 of Deeds, Page 556, records of King County, Washington, and that certain 100.0 foot wide strip of land described in deed dated June 14, 1887 from Mary B. Jaderholm to Seattle and West Coast Railway, recorded June 14, 1887 in Book 41 of Deeds, Page 385, records of King County, Washington, lying in Section 9, Township 26 North, Range 5 East, W. M., bounded on the East by the East line of said Section 9, and bounded on the West by a line drawn radially to said Railway Company's Main Track centerline, distant 1867.0 feet Easterly of the West line of said Section 9, also being the Easterly boundary of that certain Tract VIII described in deed dated December 19, 1985 from Burlington Northern Railroad Company to King County, recorded in the records of King County, Washington as Instrument No. 198512191094, **EXCEPTING THEREFROM**, that certain tract of land described in Deed dated June 29, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 2000 as Document No. 20000522001158, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in deed dated November 17, 1998 from The Burlington Northern and Santa Fe Railway Company to Tjossem Properties IV, LLC and Tjossem Properties V, LLC, recorded December 23, 1998 as Instrument No. 9812240021, which lies within said 100.0 foot strip of land; also,

That certain 0.32 acre tract of land described in deed dated July 24, 1903 from Frank A. Woodin and Anna Woodin to Northern Pacific Railway Company recorded July 30, 1903 in Book 370 of Deeds, Page 89, records of King County Washington, said 0.32 acre tract being described in said deed for reference as follows:

"All that portion of the Southeast quarter of the Northeast quarter (SE¼ of NE¼) of Section Nine (9),

located and constructed, bounded Northeasterly by the East line of said SW $\frac{1}{4}$ Section 24, and bounded Southwesterly by the Easterly edge of the travelway of the Street connecting 91st Avenue SE with Yew Way in the City of Maltby, Washington, as now located and constructed in a generally Southerly direction from 91st Avenue SE, and about 100 feet Southwesterly of the North-South quarter line of said Section 24, as measured along said Main Track centerline; also,

That portion of that certain 200.0 foot wide Maltby Station Ground property, being 100.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the NW $\frac{1}{4}$ Section 25, Township 27 North, Range 5 East, W. M., bounded Northerly and Southerly by the North and South lines of said NW $\frac{1}{4}$ Section 25; also

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, Township 27 North, Range 5 East, W. M., bounded Northerly and Westerly by the North and West lines of said NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25; also,

That portion of that certain 200.0 foot wide Branch Line right of way, being 100.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and the NE $\frac{1}{4}$ Section 26, all in Township 27 North, Range 5 East, W. M., bounded on the East by the East line of said NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, and bounded on the West by the West line of said NE $\frac{1}{4}$ Section 26; also

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 26, Township 27 North, Range 5 East, W. M., bounded Easterly by the East line of said SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 26, and bounded Westerly by the West line of said NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 26; also,

That portion of that certain 200.0 foot wide Branch Line right of way, being 100.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the W $\frac{1}{2}$ SW $\frac{1}{4}$ Section 26, and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 35, all in Township 27 North, Range 5 East, W. M., bounded on the East by the East line of said W $\frac{1}{2}$ SW $\frac{1}{4}$ Section 26, and bounded on the South by the South line of said NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 35, **EXCEPTING THEREFROM**, that portion lying Westerly of a line parallel and/or concentric with and distant 50.0 feet Westerly from, measured at right angles and/or radially to said Railway Company's Main Track centerline as originally located and constructed, bounded on the North by the North line of said Section 35, and bounded on the South by a line radial to said Main Track centerline at a point 530.0 feet South of the North line of said Section 35, as measured along said Main Track centerline; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 35, the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34, all in Township 27 North, Range 5 East, W. M., bounded on the North by the North line of said SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 35, and bounded on the South by the South line of said NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34; also,

That portion of that certain 50.0 foot wide Branch Line right of way, being 25.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34, Township 27 North, Range 5 East, W. M., bounded on the North by the North line of said SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34, and bounded on the South by a line radial to said Railway Company's Main Track centerline, as originally located and constructed, at a point distant 600 feet Southwesterly of said North line of said SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34, as measured along said Main Track centerline; also,

Township Twenty-six (26) North, Range Five (5) East, W.M., described by metes and bounds as follows: Beginning at the point where the southeasterly line of the present right of way of the Northern Pacific Railway intersects the south line of the said Southeast quarter of the Northeast quarter (SE/4 of NE/4) and running thence east along the south line of said Southeast quarter of the Northeast quarter (SE/4 of NE/4) a distance of 190 feet, more or less, to a point which is 50 feet distant from, when measured at right angles to, the center line of the proposed Seattle Belt Line Branch of the Northern Pacific Railway as the same is now located, staked out and to be constructed over and across said Government subdivision; thence running northeasterly and parallel with and 50 feet distant from said center line of the Seattle Belt Line Branch a distance of 400 feet, more or less, to a point in the southeasterly line of the present right of way of the Northern Pacific Railway, thence southwesterly along said right of way line to point of beginning; containing 0.32 acres, more or less."

A 100 foot wide strip of land lying in the N/2 of the SE/4 of Section 9, Township 26 North, Range 5 East, W. M., being that certain 1.91 acre tract of land described in deed dated May 19, 1903 from Mary B. Hansen and Anders Hansen to Northern Pacific Railway Company recorded May 28, 1903 in Volume 361 of Deeds, Page 48, records of King County, Washington and that certain 0.92 acre tract of land described in deed dated July 1, 1903 from A. J. Milton and Anna Milton to Northern Pacific Railway Company recorded July 10, 1903 in Volume 363 of Deeds, Page 211, records of records of King County, Washington, said 100 foot wide strip being described as follows:

That certain 0.03 acre triangular tract of land described in deed dated June 4, 1923 from Mary B. Hansen and A. Hansen to Northern Pacific Railway Company recorded June 8, 1923 in Volume 1192 of Deeds, Page 539, records of King County, Washington, said 0.03 acre tract being described in said deed for reference as follows:

"That certain triangular portion of the northeast quarter of southeast quarter (NE/4 of SE/4) of section nine (9) in township twenty-six (26) north of range five (5) east of the Willamette Meridian, lying easterly of and between the rights of way of the Northern Pacific Railway Company for its Snoqualmie Branch and its Lake Washington Belt Line and westerly of a line parallel with and distant twenty-five (25) feet easterly, measured at right angles from the center line of the proposed wye track connection between said branch lines as the same is now located, staked out and to be constructed over and across said premises, containing three hundredths (0.03) acres, more or less"; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across that portion of the N/4SE/4 of Section 9, Township 26 North, Range 5 East, W. M., King County, Washington lying Northerly of the Southwesterly boundary of that certain 100 foot wide tract of land described in deed dated June 14, 1887 from Mary B. Jaderholm to Seattle and West Coast Railway, recorded June 14, 1887 in Volume 41 of Deeds, Page 385, records of said County.

EXHIBIT B

Section 6. Condition of Property. (a) TPO has been, or by Closing will have been, allowed to make an inspection of the Freight Portion. Subject to BNSF's express representations, warranties and obligations under this Agreement, **TPO IS PURCHASING THE RESERVED FREIGHT EASEMENT IN THE FREIGHT PORTION IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, IS NOT RELYING ON, AND HEREBY WAIVES ANY WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM BNSF WITH RESPECT TO ANY MATTERS CONCERNING THE FREIGHT PORTION** including, but not limited to the physical condition of the Freight Portion; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Freight Portion with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Freight Portion; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, or under the Freight Portion; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Freight Portion; the condition of title to the Freight Portion, and the Third Party Leases/Licenses permits, orders, or other agreements, affecting the Freight Portion (collectively, the **"Condition of the Freight Portion"**).

(b) TPO represents and warrants to BNSF that except for BNSF's express representations, warranties and obligations under this Agreement, TPO has not relied and will not rely on, and BNSF is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Freight Portion or relating thereto made or furnished by BNSF, the manager of the Freight Portion, or any real estate broker or agent representing or purporting to represent BNSF, to whomever made or given, directly or indirectly, orally or in writing.

(c) Subject to BNSF's express representations, warranties and obligations under this Agreement TPO assumes the risk that Hazardous Substances or other adverse matters may affect the Property that were not revealed by TPO's inspection and except to the extent of BNSF's express representations, warranties and obligations under this Agreement, TPO waives, releases and discharges forever BNSF and BNSF's officers, directors, shareholders, employees and agents (collectively, **"BNSF Parties"**) from any and all present or future claims or demands, and any and all damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown, which TPO might have asserted or alleged against BNSF Parties arising from or in any way related to the Condition of the Freight Portion or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Freight Portion. Losses shall include without limitation (a) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) losses for injury or death of any person, and (c) losses arising under any Environmental Law enacted after transfer. The term **"Environmental Law"** means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Model Toxics Control Act, the Water Pollution Control Act, laws concerning above ground or underground storage tanks, and any similar or comparable state or local law. The term **"Hazardous Substance"** means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated

EXHIBIT B

1 Richard G. Birinyi, WSBA # 9212
 E-mail: rbirinyi@schwabe.com
 2 Lawrence R. Ream, WSBA #18159
 E-Mail: lream@schwabe.com
 3 Schwabe Williamson & Wyatt P.C.
 U.S. Bank Centre
 4 1420 5th Avenue, Suite 3400
 Seattle, WA 98101-4010

5 Attorneys for Debtor

Judge: Brian D. Lynch
 Chapter 11
 Hearing Location: Tacoma
 Hearing Date: September 26, 2012
 Hearing Time: 9:00 a.m.
 Response Date: September 19, 2012

8 UNITED STATES BANKRUPTCY COURT
 9 WESTERN DISTRICT OF WASHINGTON

11
 12 In Re

13 GNP RLY, INC.,

14 Debtor.

Case No. 11-40829-BDL

DECLARATION OF PERRY A. STACKS
 IN SUPPORT OF MOTION FOR
 APPROVAL OF SALE FREE AND
 CLEAR OF LIENS AND ASSUMPTION
 AND ASSIGNMENT OF EXECUTORY
 CONTRACTS

16
 17 I, Perry A. Stacks, hereby certify and declare as follows:

- 18 1. I am the duly appointed Chapter 11 Trustee ("Trustee") for this estate.
 19 2. I have personal facts set forth below and am competent to be a witness herein.
 20 3. An order for relief was entered against the Debtor under Chapter 11 of Title

21 11, United States Bankruptcy Code, on October 6, 2011.

- 22 4. On November 16, 2011, I was appointed the chapter 11 trustee.

23 5. The Debtor, as licensee from the Port of Seattle, owns and operates a short
 24 line freight railroad connecting Woodinville, Washington to other points in King and
 25 Snohomish County over property owned by the Port of Seattle pursuant to the terms of a
 26 Railroad Right of Way License.

DECLARATION OF PERRY A. STACKS IN SUPPORT OF
 MOTION - 1

SCHWABE, WILLIAMSON & WYATT, P.C.
 Attorneys at Law
 U.S. Bank Centre
 1420 5th Avenue, Suite 3400
 Seattle, WA 98101-4010
 Telephone 206.622.1711

PDX/124123/183599/RGB/10058582.2

1 6. I was appointed in this case to administer the Debtor's property and operate
2 the short line freight railroad.

3 7. During the pendency of the case, I have investigated the possibility of selling
4 the Debtor's assets and assuming and assigning the executory contracts necessary for the
5 operation of the short line railroad.

6 8. As a result of those efforts, I have entered into a contract for the transfer of
7 the assets and the assumption and assignment of all the necessary licenses and executory
8 contracts (the "Purchase and Sale Agreement").

9 9. The Purchase and Sale Agreement is attached as Exhibit A.

10 10. The Purchaser is an entity formed by one of the former equity owners in the
11 Debtor, but I have not been able to obtain any higher or better offers.

12 11. Time is of the essence in obtaining approval of the transaction because the
13 Estate will soon run out of cash to continue operations.

14 12. I have also been in discussions with another potential buyer of GNP's rights
15 and interests in the rail operations, a company named Iowa Pacific. Iowa Pacific has been
16 conducting its own due diligence with respect to the purchase and is aware that the Purchaser
17 has also expressed an interest in purchasing those same rights and interests. I have discussed
18 with Iowa Pacific the possibility of shutting down operations in the near future unless a
19 source of additional funding could be found. I have also approached the Port of Seattle, Iowa
20 Pacific, and the Purchaser as source of funding. The Port has declined to provide funding.
21 Iowa Pacific has indicated that it might provide funding subject to being repaid on a super
22 priority basis. Under the circumstances, however, because it is still in a due diligence phase,
23 Iowa Pacific has neither affirmed a decision to purchase nor indicated a price it would pay.
24 On balance, therefore, this is a situation where (absent a firm and better offer in the interim) I
25 believe that it is in the best interest of the Estate to opt for the bird in the hand and feel I
26 cannot afford to await future events.

DECLARATION OF PERRY A. STACKS IN SUPPORT OF
MOTION - 2

PDX/124123/183599/RGB/10058582.2

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
U.S. Bank Centre
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Seattle, WA 98101-4010
Telephone 206.622.1711

15. I believe that the provisions of the Purchase and Sale Agreement regarding competing bids is fair and reasonable and that the Court should require any competing bid be for an amount at least \$35,000.00 in excess of the price set forth in the Purchase and Sale Agreement.

I certify and declare under the penalty of perjury of the laws of the state of Washington that the foregoing is true and correct, at Seattle, Washington.

Dated this 5th day of September, 2012.

By: /s/ Perry A. Stacks
Perry A. Stacks

DECLARATION OF PERRY A. STACKS IN SUPPORT OF
MOTION - 3

SCHWABE, WILLIAMSON & WYATT, P.C.
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Telephone 206.622.1711

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is made as of this 5th day of September, 2012 between Eastside Community Rail LLC, and/ or assigns, (“Purchaser”) and Perry Stacks, (“Seller”) solely in his capacity as Chapter 11 Trustee for GNP Rly, Inc., (“GNP”) in the pending Chapter 11 bankruptcy, case 11-40829 (“the Bankruptcy”).

Seller desires to sell to Purchaser and Purchaser desires to acquire upon the terms and conditions set forth herein the tangible and intangible assets of the business of GNP described below.

Seller desires to assign to Purchaser and Purchaser desires to assume upon the terms and conditions set forth herein, the rights and obligations of GNP pursuant to its executory contracts and unexpired license agreements related to the operation of the business of GNP described below.

In consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the parties hereto agree:

1. **SALE AND PURCHASE OF ASSETS.** Subject to approval of the Bankruptcy Court, on the terms and subject to the conditions of this Agreement, at Closing, as defined below in ¶ 5.3, Seller shall sell, assign and convey to Purchaser and Purchaser shall purchase from Seller, all of Seller’s right, title and interest in and to the “assets,” as described below and in Exhibit “A” (“Assets”), free and clear of all liens, claims and encumbrances.

1.1 **Description of Assets.** The “Assets” are all assets in which GNP has an interest and which are used in connection with the operation of GNP Rly, Inc., including but not limited to:

1.1.1 All of GNP’s rights and interests under the Railroad Right of Way License between Port of Seattle and GNP Rly, Inc, dated on or about Dec. 18, 2009;

1.1.2 All of GNP’s rights and interests under the Operations and Maintenance Agreement between the Port of Seattle and GNP Rly, Inc, dated on or about Dec. 18, 2009;

1.1.3 All of GNP’s rights and interests under the Running Rights and Railway Operations Agreement dated May 23, 2008, between GNP and Snohomish County;

1.1.4 All of GNP’s rights and interests in all real property and easements described in those Quit Claim Deeds recorded under Snohomish County AF 20091218001535, 20091218001536, 20091218001537, 20091218001538, 20091218001539, 20091218001540 and King County AF 200912210438 and 20091220439.

1.1.5 All Intellectual Property controlled by GNP, know-how, goodwill, consultant works and any other property rights, relating to GNP's business, including but not limited to phone numbers and advertising; and

1.1.6 All furniture, equipment, inventory, maps and any other assets owned by GNP, as more particularly described in an attachment to this Agreement. The "Assets" shall not include any cash assets, accounts receivable or any other cash equivalent.

2. **ASSUMPTION AND ASSIGNMENT OF EXECUTORY**

CONTRACTS AND UNEXPIRED LICENSES. Subject to approval of the Bankruptcy Court, on the terms and subject to the conditions of this Agreement, at Closing, as defined below in ¶ 5.3, Seller shall sell assume and assign to Purchaser and Purchaser shall agree to perform all of Seller's obligations and duties under the executory contracts and unexpired licenses (the "Executory Contracts" necessary to the operation of Seller's business as described below.

2.1 **Description of Contracts.** The "Executory Contracts" are all executory contracts and licenses which GNP requires for the operation of its business and necessary for the operation of GNP, including but not limited to:

2.1.1 GNP's obligations and duties under the Railroad Right of Way License between Port of Seattle and GNP Rly, Inc., dated on or about Dec. 18, 2009

2.1.2 GNP's obligations and duties under the Operations and Maintenance Agreement between the Port of Seattle and GNP Rly, Inc., dated on or about Dec. 18, 2009.

3. **Liabilities and Obligations.** Purchaser assumes no liabilities, debts or obligations of GNP of any nature whatsoever, whether absolute, accrued, contingent or otherwise, or whether due or to become due, including any liability for taxes, other than the obligations under the Contracts, which include the following:

3.1 GNP's obligations and duties under the Railroad Right of Way License between Port of Seattle and GNP Rly, Inc., dated on or about Dec. 18, 2009

3.2 GNP's obligations and duties under the Operations and Maintenance Agreement between the Port of Seattle and GNP Rly, Inc., dated on or about Dec. 18, 2009.

4. **PURCHASE PRICE, EARNEST MONEY**

4.1 The purchase price ("Purchase Price") for the Assets shall be One hundred seventy-five thousand and no/100 dollars, (\$175,000.00) payable in cash at Closing together with the assumption of liabilities described herein.

4.2 Purchaser shall deposit \$10,000.00 (the "Earnest Money") with the Trustee as earnest money on execution of this Agreement. Earnest money shall be credited to the Purchase Price at closing. In the event of default, the Earnest Money shall be applied as described in the sections of this Agreement related to defaults.

4.3 Purchaser shall deposit an additional \$90,000.00 (the "Approval Payment") with the Trustee upon Bankruptcy Court approval of this Agreement. The Approval Payment shall be credited to the Purchase Price at closing. In the event of default, the Approval Payment shall be applied as described in the sections of this Agreement related to defaults.

5. COURT APPROVAL AND CLOSING.

5.1 **Court Approval.** The Seller shall promptly seek Court approval of this transaction.

5.2 **Operating Agreement after Court Approval and Prior to Closing.** Purchaser shall operate GNP's railroad line after Court approval of this Agreement until Closing and shall be fully liable for all costs and expenses of such operation during such time and shall be entitled to all revenue generated by the line during such time.

5.3 **Time and Location.** The Closing of the transaction contemplated by this Agreement (the "Closing") shall occur on or before 84 days after the entry of the Bankruptcy Court Order approving this Agreement, which shall in all events occur no later than December 19, 2012 ("Closing Date"). Conveyance, transfer, assignment and delivery of the Assets shall be by Trustee's bill of sale, certificates of transfer, endorsements, assignments and other instruments of transfer and conveyance in such form as Purchaser may request. Seller and Purchaser will from time to time after the Closing make such further conveyances, transfers, assignments and deliveries, and execute such further instruments and documents, as Purchaser deems reasonably necessary in order to effectuate and confirm the sale of the Assets and other transactions contemplated by this Agreement.

5.4 **Possession.** Purchaser shall take possession of the Assets described in paragraph 1.1 immediately upon Closing.

5.5 **Taxes and Fees.** Any transfer, sales, use or other tax payable pursuant to the sale of the Assets shall be paid by Purchaser, and Purchaser shall timely remit such tax to the applicable taxing authorities. Personal property taxes shall be pro-rated at Closing. The parties shall comply with RCW 82.32.140. If Purchaser is assessed any liability for Seller's taxes related to tax periods prior to the closing date which are not timely paid by Seller, Purchaser shall be entitled to either reduce the principal balance of the unpaid purchase price by the amount of such assessment(s) or to submit a claim for an administrative expense in the bankruptcy.

6. **REPRESENTATIONS AND WARRANTIES OF SELLER.** Seller makes no warranties to Purchaser other than those contained in an Order to be entered in the Bankruptcy approving the sale.

7. **REPRESENTATIONS AND WARRANTIES OF PURCHASER.** Purchaser represents and warrants to Seller that as of Closing:

7.1 **Organization, Good Standing, Power, Etc.** Purchaser, or assigns (a) will be a limited liability company or corporation duly organized, validly existing and in good standing under the laws of the State of Washington; and (b) has all requisite corporate power and authority to execute this Agreement and consummate the transactions contemplated herein.

7.2 **Authorization of Agreement and Enforceability.** Purchaser has taken all necessary and proper action, including approval by its managers or board of directors to authorize and approve this Agreement, its consummation and the performance by Purchaser of all terms and conditions hereof and this Agreement constitutes the valid and binding obligation of Purchaser fully enforceable in accordance with its terms.

7.3 **Effect of Agreement, Consents, Etc.** Other than approval by the Bankruptcy Court, Purchaser shall obtain any consent, authorization or approval or exemption by, or filing with, any governmental or public body or authority is required in connection with the execution, delivery and performance by Purchaser of this Agreement or the taking of any action hereby contemplated.

7.4 **Effect of Agreement.** The execution, delivery and performance of this Agreement by Purchaser and the consummation of the transactions contemplated hereby will not, with or without the giving of notice or the lapse of time, or both: (a) knowingly violate any provision of law, statute, rule or regulation to which Purchaser is subject; (b) knowingly violate any judgment, order, writ or decree of any court, arbitrator or governmental agency applicable to Purchaser; (c) have any effect on any of the permits, licenses, orders or approvals of Purchaser or the ability of Purchaser to make use of such permits, licenses, orders or approvals; or (d) result in the breach of or conflict with any term, covenant, condition or provision of, result in the modification or termination of, constitute a default under, or result in the creation or imposition of, any lien, security interest, charge or encumbrance upon any of the properties or assets of Purchaser pursuant to any charter, bylaw, commitment, contract or other agreement or instrument, to which Purchaser is a party or by which any of its assets or properties is or may be bound or affected or from which Purchaser derives benefit.

7.5 **Disclosure of Financial Information.** Purchaser is relying solely and completely on Purchaser's own investigation of the financial condition of the company. To the extent Seller has provided Purchaser with any financial information, Purchaser expressly disclaims that Purchaser is relying on such information.

8. **INDEMNIFICATION.**

8.1 **Seller Indemnification for Administrative Expenses of Purchaser and "break-up fee".** In the event that after the execution of this offer the Court approves a sale of the assets to anyone other than Purchaser at a higher and better price or orders an auction of the Assets and the Assets are sold to another party for a higher and better offer, or in the event that a plan is confirmed which does not include a sale of the Assets to the Purchaser, and recognizing that the efforts of the Purchaser are beneficial to the

administration of the Estate and are necessary to the preservation of the Estate, the Trustee shall support the application of the Purchaser to the Bankruptcy Court for reimbursement of the Purchaser's actual fees and costs and expenses incurred in the preparation and pursuit of this offer and, in addition to its actual fees and costs, the Purchaser shall be entitled, subject to Court approval, to a "break-up fee" of ten percent of the eventual purchase price paid by such third party, not to exceed \$28,000.00 and not less than \$18,000.00. In addition, Seller shall, in applying to the Court to approve his sale to Purchaser, seek Court approval of a minimum overbid of \$35,000 in excess of the price to be paid by Purchaser under this Agreement. Notwithstanding the foregoing, however, the Purchaser shall not be entitled to any reimbursement for its costs of operating the Debtor's line pursuant to the provisions of ¶ 5.2

9. COVENANTS OF SELLER AND PURCHASER.

9.1 **Access.** Seller shall give to Purchaser and its representatives, from and after the date of this Agreement, such access to the premises, employees, agents and consultants of Seller as is reasonable to enable Purchaser to inspect and evaluate the Seller's assets and the Seller will furnish all information reasonably requested by Purchaser.

10. GENERAL.

10.1 **Survival.** The representations, warranties, covenants and agreements set forth herein and the Disclosure Schedules shall survive Closing.

10.2 **Expenses, Etc.** Except as otherwise provided herein, whether or not the transactions contemplated by this agreement are consummated, each party hereto shall pay its own expenses and the fees and expenses of its counsel and accountants and other experts.

10.3 **Assignment.** Purchaser may not assign its rights under this Agreement without the prior written consent of the other parties hereto.

10.4 **Waivers.** No action taken pursuant to this Agreement, including any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any party hereto of breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

10.5 **Binding Effect; Benefits.** This Agreement shall inure to the benefit of the parties hereto and shall be binding upon the parties hereto and their respective permitted heirs, personal representatives, successors and assigns.

10.6 **Notices.** All notices, requests, demands and other communications which are required to be or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when delivered in person or transmitted by facsimile or on receipt after dispatch by certified or registered first class mail, postage prepaid, return receipt requested, to the party to whom the same is so given or made.

10.7 **Further Assurances.** Seller shall, from time to time, at the request of Purchaser, and without further consideration, execute and deliver such other instruments

and take such other actions as may be required to confer to Purchaser and its assignees the benefits contemplated by this Agreement.

10.8 Entire Agreement; Amendment. This Agreement (including the Exhibits and Disclosure Schedules hereto) and all other documents and agreements executed as of Closing constitute the entire agreement and supersede all prior agreements and understandings, oral and written, between the parties hereto with respect to the subject matter hereof and may not be amended, modified or terminated unless in a written instrument executed by the party or parties sought to be bound.

10.9 Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not be deemed to be a part of this Agreement or to affect the meaning or interpretation of this Agreement.

10.10 Severability. The invalidity of all or any part of any section of this Agreement shall not render invalid the remainder of this Agreement or the remainder of such section. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable.

10.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

10.12 Third Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies on any person other than the parties to this Agreement, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party, nor shall any provision give any third party any right of subrogation or action against any party to this Agreement.

10.13 Court Approval. This offer is subject to the approval of the Bankruptcy Court.

10.14 Time of the Essence/ Immediate approval required. Purchaser's offer is dependent on the ability to close within thirty days (30) and the preservation of the going concern value of the business of GNP Rly, Inc. The time required for the approval of a disclosure statement and Plan of reorganization could result in the failure of the current business of Seller, rendering the assets of little value to Purchaser. Accordingly, Seller shall exercise his best efforts to obtain approval of this Agreement by motion rather than through the plan process. If Seller is unable to obtain approval on Motion within thirty days (30) of execution, Purchaser may withdraw this offer.

11. DEFAULT AND ATTORNEY'S FEE.

11.1 Buyer's default. In the event Buyer fails, without legal excuse, to complete the purchase of the Property, Seller may terminate this Agreement and keep as liquidated damages the Earnest Money and the Approval Payment as the sole and exclusive remedy available to Seller for such failure.

11.2 Seller's default. In the event Seller fails, without legal excuse, to complete the sale of the Property, then Buyer may, at its option, (a) bring suit against Seller for Buyer's actual damages, (b) bring suit to specifically enforce this Agreement and recover

any incidental damages, or (c) pursue any other rights or remedies available at law or equity.

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

SELLER:

GNP RLY, INC.
a corporation

By_____

Perry Stacks, Chapter 11 Trustee

PURCHASER:

EASTSIDE COMMUNITY RAIL, LLC

By_____

Douglas Engle, Manager

ASSET LIST

THE ASSETS BEING ACQUIRED INCLUDE ALL OF THE NON-CASH ASSETS IN WHICH GNP RLY, INC. HAS AN INTEREST, EXCEPT ACCOUNTS, INCLUDING BUT NOT LIMITED TO:

CAR HIRE AGREEMENTS

INTERCHANGE AGREEMENT PER AAR RULES

OFFICE EQUIPMENT

RAILWAY SMALL TOOLS AND SAFETY SUPPLIES

OTHER TRACK MATERIAL

HYRAIL PICK-UP TRUCK

MAPS AND SOURCE CONTACT INFORMATION

COMMISSIONED AND OTHER DRAWINGS

CONSULTING WORKS, NOTES, RELATED CONTACTS AND ELECTRONIC FILES

ALL DOCUMENTS, NOTES, CORRESPONDENCE, REPORTS, FILES AND ANY OTHER FORM OF COMMUNICATIONS, INCLUDING ELECTRONIC MEDIA, PREPARED FOR, BY OR ON BEHALF OF OR RECEIVED BY THE DEBTOR

OPERATIONS MANUALS AND REFERENCE MATERIALS