

## CONVEYANCE AGREEMENT

THIS CONVEYANCE AGREEMENT (the "Agreement") is made and entered into as of the date of the last signature below ("Effective Date"), by and between the CITY OF SNOQUALMIE, a municipal corporation organized under the laws of the State of Washington (the "City") and the PACIFIC WEST RAIL FOUNDATION, a Washington nonprofit corporation ("PWRF").

WHEREAS, the City owns certain real property located in King County, further described on Exhibit A-1, attached hereto ("City Parcels");

WHEREAS, PWRF's affiliate, [REDACTED] ("Hambling LLC"), is the buyer under that certain Agreement of Purchase and Sale dated [REDACTED] ("PSA"), pursuant to which Hambling LLC will acquire from Seventy-Nine Forty, LLC ("City") certain real property located in King County, further described on Exhibit A-2, attached hereto ("Hambling LLC Parcels");

WHEREAS, the Pacific West Rail ("PWR") is a model railroad layout that depicts fourteen different locations across the western United States within the timeframe of the early 1900's to the late 1960s. Its layout was created by the country's preeminent model rail designer and reflects actual locations accurately modeled with the highest degree of realism, with sound and lighting for different times of day and night and topography finished with materials from each of the locations. The collection includes 100 engines, 125 passenger cars and 550 freight cars running on one half-mile of tracks though miniature dioramas set in these recognizable locations throughout the West. Some ten (10) major railroad lines are represented within the areas that they serve or served. The system is controlled by a command center using highly sophisticated software that runs the trains autonomously for hours with programming. Three full-time staff are employed to maintain and operate the model;

WHEREAS, PWR's founder and original owner, local resident and entrepreneur Peter Hambling ("Hambling"), always has intended to share the PWR with the public in a suitable venue in an appropriate location;

WHEREAS, Hambling has formed PWRF to which he intends to donate the PWR in its entirety pursuant to that certain Contingent Gift Agreement by and among PWRF, Hambling, Lorrie Hambling, and [REDACTED] ("LLC under PSA"), dated on or about the date hereof ("Hambling Gift Agreement");

WHEREAS, under the Hambling Gift Agreement, Hambling LLC intends to donate the Hambling LLC Parcels to PWRF;

WHEREAS, the City enjoys a rich railroad history and also is the home to the legacy Northwest Railway;

WHEREAS, PWRF is willing to (i) construct a railroad museum, to be known as the Pacific West Rail Museum ("Museum") pursuant to that certain Development Agreement by and among PWRF and City dated on or about the date hereof ("Development Agreement"), featuring the PWR and (ii) operate the Museum on the Land (defined in the Development Agreement) on the express condition that City convey the City Parcels to PWRF;

WHEREAS, City believes it serves an important public function and provides a substantial public benefit to have a vibrant and successful Museum on the Land and desires to transfer fee ownership of the City Parcels to PWRF, pursuant to the terms and conditions set forth below; and

WHEREAS, the City has determined that the public benefits represented by the corollary gift of the model railroad collection and the balance of site required for the development of the PWRF museum as well as PWRF's commitments to construct and operate the public museum pursuant to the Covenant (as defined below) represent more than adequate consideration for the transfer of the City Parcels to PWRF.

NOW, THEREFORE, in consideration of the foregoing, of mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereby agree as follows:

## AGREEMENT

1. **TOTAL MONETARY COMPENSATION:** There is no monetary compensation for the above-described transactions. The City Parcels are being granted in exchange for the PWRF's agreement to construct the Museum pursuant to the Development Agreement and operate the same pursuant to the Covenant.

2. **ESCROW.** Following the Effective Date, PWRF will establish an escrow (the "Escrow") with [REDACTED] ("Escrow Holder"). The provisions of this Agreement will constitute joint instructions to Escrow Agent; provided, however, that the parties will execute such additional instructions as requested by Escrow Agent not inconsistent with the provisions of this Agreement.

3. **TITLE:** PWRF shall accept the City Parcels with title to the underlying properties as-is, provided, however, City shall remove all monetary liens ("Liens") prior to transferring fee ownership of the City Parcels to PWRF. City shall not create or permit any liens, encumbrances, easements, restrictions, conditions, covenants, rights, rights-of-way or other matters affecting title to the City Parcels prior to such transfer, and any City created title exceptions shall be subject to PWRF acceptance, in its reasonable discretion. Delivery of title in accordance with the foregoing shall be evidenced by the willingness of the Escrow Agent to issue, at Closing, a standard form ALTA owner's policy of title insurance in assessed value of the City Parcels showing title to the City Parcels vested in PWRF, or its permitted assignee, in form and with such endorsements thereto as PWRF may reasonably request (the "Title Policy").

4. **USE OF THE CITY PARCELS:** As partial consideration for the City Parcels, PWRF shall operate the Museum on the Land pursuant to the terms of a Public Use Covenant ("Covenant") substantially in the form attached as Exhibit B.

City covenants and agrees that the City Parcels will, except as may be required in the Development Agreement, remain in its current condition (as of the Effective Date) until and through the Closing Date and that, until and through the Closing Date, City will refrain from and will not actively permit any intentional use of the City Parcels for any purpose or in any manner that would adversely affect the ability of PWRF to use the City Parcels as intended. City covenants and agrees that, on and after the Effective Date and until and through the Closing Date, City will not intentionally create any leases, licenses, easements, tenancies, possessions, rights of way, or other rights to use or occupy any portion of the City Parcels, whether of record, prescriptive, or otherwise not of record with respect to the City Parcels. In the event that (a) City fails to maintain the City Parcels in the condition required by this Section 4, (b) City fails to refrain from or actively permits use of the City Parcels for any purpose or in any manner that would adversely affect PWRF's intended use, or (c) loss or damage occurs to the City Parcels at any time prior to the Closing: (i) PWRF may, without liability, refuse to accept the City Parcels, in which event City will pay any escrow cancellation fees due to Escrow Agent; or (ii) alternatively, PWRF may elect to accept conveyance of the City Parcels.

5. **CLOSING DATE:** The closing of the property transfer ("Closing") shall take place on the Closing Date. As used herein, "Closing Date" means the date that is mutually agreed by the parties, but in no event shall the Closing Date occur prior to all of the conditions precedent described in Section 8 below being satisfied, it being in intent of the intent of the parties that the closings under the various agreements related to the development of the Museum and referenced herein occur simultaneously.

6. **REPRESENTATIONS AND WARRANTIES OF CITY:**

City hereby covenants, warrants and represents to PWRF that as of the Effective Date and as of the Closing Date:

(a) Status; Authority. City has all requisite power and authority to own and operate the City Parcels. City has full power and authority to execute and deliver this Agreement and all related documents executed by City in connection with the consummation of the transaction contemplated hereby (collectively with this Agreement, "City's Transaction Documents"), and to carry out the transactions contemplated herein and therein. This Agreement is, and each of City's Transaction Documents will on the Closing Date be, duly executed and delivered and each (when executed and delivered) will be valid, binding and enforceable against City in accordance with their terms, except as such enforceability may be limited by creditors rights laws, or general principals of equity.

(b) No Conflict; Consents and Approvals. The execution and delivery of this Agreement and the other City's Transaction Documents and the consummation of the transactions contemplated herein and therein do not result in a breach (either alone or with the giving of notice and/or the passage of time) of the terms and conditions of, nor constitute a default under, or violation of, or accelerate or permit the acceleration of the performance required by, any of the terms or provisions of: (a) any law, regulation, court order, statute, ruling, ordinance, rule, requirement, or decree of any Governmental Authority (as defined below), whether federal, state, or local, at law or in equity (collectively, "Laws"), applicable to City or any of its properties or assets; or (b) any mortgage, note, bond, indenture, agreement, license, contract, lease or other instrument or obligation to which City is a party or by which City or any of the assets of City may be bound or affected. No filing with or approval, consent or authorization of any federal, state, municipal or other governmental body, court, department, commission, board, bureau, agency or instrumentality ("Governmental Authority") or third party is required for City to enter into and to perform its obligations under City's Transaction Documents.

(c) Litigation. There is no action, suit, claim, proceeding or investigation (whether or not purportedly on behalf of or against City) pending or, to the best of City's knowledge, threatened against or affecting City or the City Parcels, nor, to City's knowledge, is there a basis for any such action, suit, claim, proceeding or investigation. Neither City nor the City Parcels are subject to any judgment, award, order, writ, injunction, arbitration decision or decree. The transaction contemplated herein has not been challenged by any Governmental Authority or any other person, nor does City know or have reasonable grounds to know of any basis for any such actions, suits or proceedings.

(d) Compliance with Law. City is in material compliance with all applicable Laws related to its ownership of the City Parcels.

(e) Title Conveyed. City is the sole and exclusive owner of the City Parcels and has good and valid title to the City Parcels, free and clear of liens, and no other third party has any claim to or interest in any of the City Parcels. City has complete and unrestricted power and the unqualified right to sell, assign, transfer and deliver the City Parcels to PWRP, and at the Closing PWRP will acquire good and valid title to the City Parcels, free and clear of all liens.

(f) Undisclosed Liabilities. To the best of City's knowledge, there is no claim or liability of any nature whatsoever, whether absolute, accrued, contingent or otherwise, that alone or combined with all claims or liabilities would reasonably be expected to have a material adverse effect upon the City Parcels.

(g) Environmental Matters. As used in this Agreement, "Hazardous Substance" shall mean all of those hazardous substances, pollutants, contaminants, chemicals, substances, materials, controlled substances, objects, conditions, wastes, living organisms or combinations thereof which are now or become in the future listed, defined or regulated in any manner by any federal, state or local Law based upon, directly or indirectly, such properties or effects, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, and the Washington Model Toxics Control Act, each as now or hereinafter amended, and any flammable or explosive material, radioactive material, dioxins, heavy metals, radon gas, asbestos, petroleum hydrocarbons or other petroleum products or by-products, medical or infectious waste or materials, lead, polychlorinated biphenyls (PCBs), mold or any other chemical, substance, material, controlled substance, object, condition, waste, living organisms or combination thereof which is or may be hazardous to human health or safety or to the environment due to its radioactivity, ignitability, corrosiveness, reactivity, explosivity, toxicity, carcinogenicity, mutagenicity, phytotoxicity, infectiousness or other harmful or potentially harmful properties or effects.

(i) City has not, and to the best of City's knowledge no predecessor in interest of City or any other person or entity has, generated, manufactured, stored, transported, treated, recycled, disposed of or otherwise handled in any way any Hazardous Substances on, beneath or about any of the City Parcels.

(ii) City has not received any notice, complaint, order or action from any Governmental Authority or private or public entity or person relating to Hazardous Substances or environmental, health or safety problems, impairments or liabilities with respect to operation of the City

Parcels or advising City that it is potentially responsible for response costs or remediation with respect to a release or threatened release of any Hazardous Substances.

(h) Taxes. All federal, state and other tax returns and reports required to be filed in connection with the City Parcels have been duly filed or will be timely filed in accordance with the requirements of applicable Law, and all taxes and other assessments and levies (including all interest and penalties), including, without limitation, income, franchise, real estate, sales, gross receipts, use, excise and service taxes and employee withholding taxes (“Taxes”), owed in connection with the ownership of the City Parcels have been paid or will be timely paid in accordance with the requirements of applicable Law. No statute of limitation has been waived with respect to any Tax applicable to City or the City Parcels and all such Taxes required by law to be withheld or collected have been duly withheld and collected and have been paid over to the proper Governmental Authorities or segregated and set aside for such payment and, if so segregated and set aside, shall be so paid by City as required by applicable Law. Neither the IRS nor any other taxing authority is now asserting or is threatening to assert against City any deficiency or claim for additional Taxes or interest thereon or penalties in connection therewith. None of the City Parcels is subject to any lien for payment of any Tax or assessment, other than Taxes and assessments not yet due and payable.

(i) Condition. City shall cause the City Parcels, as of the Closing Date, to be in the condition required by the Development Agreement.

## **7. REPRESENTATIONS AND WARRANTIES OF PWRF:**

PWRF hereby warrants and represents to City that as of the Closing Date and as of the Effective Date:

(a) Status; Authority. PWRF is duly organized and validly existing under the laws of the State of Washington, with all requisite power and authority to own and operate its property and to carry on its business as now conducted. PWRF has full power and authority to execute and to deliver this Agreement and all related documents (collectively, “PWRF’s Transaction Documents”), and to carry out the transactions contemplated herein. The execution, delivery and performance of PWRF’s Transaction Documents by PWRF have been duly and validly authorized by all necessary company action. This Agreement is and each of PWRF’s Transaction Documents will on the Closing Date be duly executed and delivered and each (when executed and delivered) will be valid, binding and enforceable as against PWRF in accordance with its terms except as such enforceability may be limited by applicable creditors rights laws and general principles of equity.

(b) No Conflict. The execution and delivery of PWRF’s Transaction Documents and the consummation of the transaction contemplated therein do not result in a breach (either alone or with the giving of notice and/or the passage of time) of the terms and conditions of nor constitute a default under, or violation of, or accelerate or permit the acceleration of the performance required by, any of the terms or provisions of: (a) PWRF’s Articles of Incorporation and Bylaws; (b) any Laws applicable to PWRF; or (c) any mortgage, note, bond, indenture, agreement, license, contract, lease, or other instrument or obligation to which PWRF is a party or by which PWRF or any of the assets of PWRF may be bound or affected.

**8. CONDITIONS PRECEDENT TO CLOSING:** The obligations of the parties to consummate the transfer contemplated herein is subject to the satisfaction as of the Closing of the following conditions:

(a) City and PWRF are each prepared to execute and deliver the Covenant.

(b) The City Council has approved the transactions contemplated herein and has enacted all necessary ordinances(s) permitting conveyance of the City Parcels and development and operation of the Museum.

(c) The City shall be prepared to vacate the (i) City street right of way separating the City Parcels and the Hambling LLC Parcels and (ii) City street right of way immediately to the east of the City Parcels and Hambling Parcels, each as depicted on Exhibit C attached hereto and further described in the Development Agreement (“Street Vacation”). The parties acknowledge and agree that the Street Vacation is intended to occur immediately after Hambling LLC acquires the Hambling LLC Parcels and that the City Parcels are intended to be conveyed to PWRF enlarged by the Street Vacation.

(d) PWRF has satisfied all conditions in the Development Agreement to issue the Notice to Proceed (as defined in the Development Agreement) and is committed to do the same.

(e) All conditions precedent under the PSA have been satisfied or waived by Hambling LLC and the parties to the PSA are ready to close.

**9. CLOSING DELIVERABLES:** The parties shall each deliver the following documents to the Escrow Agent no later than 5:00 P.M. (Pacific Time) on the date that is one (1) business day prior to the Closing Date:

(a) PWRF Deliverables.

- (i) the Covenant duly executed and notarized by PWRF.
- (ii) a memorandum of purchase right (the “Purchase Right Memo”) duly executed and notarized by PWRF in substantially the form of Exhibit D attached hereto<sup>1</sup>.
- (iii) a closing statement prepared by Escrow Agent and approved by PWRF and City, consistent with the terms of this Agreement (the “Closing Statement”) duly executed by PWRF.
- (iv) such other documents, certificates and other instruments as may be reasonably required to consummate the transaction contemplated hereby.

(b) City Deliverables.

- (i) a statutory warranty deed (the “Deed”) in substantially the form of Exhibit E attached hereto, duly executed and notarized by City.
- (ii) an original counterpart to the Covenant duly executed and notarized by City.
- (iii) an original counterpart to the Purchase Right Memo duly executed and notarized by City.
- (iv) such other documents, certificates and other instruments as may be reasonably required by the Escrow Company to consummate the transaction contemplated hereby.

**10. RIGHT TO ACCESS; CONDITION; DISCLOSURE STATEMENT.**

(a) Right to Access. Through the earlier of the Closing or the termination of this Agreement, PWRF and its agents, attorneys, licensed and insured engineers, architects advisors and consultants shall have the right, upon reasonable prior written notice to City (which shall in any event be at least 24 hours in advance) and at PWRF’s sole cost, risk and expense to access and inspect the City Parcels, provided that any such inspection shall not unreasonably impede the normal day-to-day business operation of the City Parcels, and provided further that City shall be entitled to accompany PWRF and its agents on such inspection.

(b) As-Is Condition. PWRF acknowledges, by its initials as set forth below, that the provisions of this Section 10(b) have been required by City as a material inducement to enter into the contemplated transactions, and the intent and effect of such provisions have been explained to PWRF by PWRF’s counsel and have been understood and agreed to by PWRF.

EXCEPT FOR THE EXPRESS REPRESENTATIONS, WARRANTIES AND COVENANTS OF CITY SET FORTH IN THIS AGREEMENT AND THE CLOSING DOCUMENTS (AS DEFINED

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<sup>1</sup> NTD: This is in reference to the City’s purchase rights in the Development Agreement.

BELOW), PWRP ACKNOWLEDGES AND AGREES THAT, UPON CLOSING, CITY SHALL TRANSFER AND CONVEY TO PWRP, AND PWRP SHALL ACCEPT, THE CITY PARCELS IN THEIR “AS IS, WHERE IS, WITH ALL FAULTS” CONDITION, EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT OR IN ANY AGREEMENT OR INSTRUMENT EXECUTED BY CITY AND DELIVERED TO PWRP AT CLOSING (“CLOSING DOCUMENTS”).

#### **PWRP Initials**

(c) Disclosure Statement. PWRP waives the requirement that City deliver to PWRP a Real Property Disclosure Statement as required by RCW 64.06.013 (the “Disclosure Statement”); provided, however, that if the answers to any of the questions in the section entitled “Environmental” would be “yes,” PWRP does not waive receipt of the “Environmental” section of the Disclosure Statement. By executing this Agreement, PWRP acknowledges that it has received the “Environmental” section of the Disclosure Statement attached hereto as Exhibit E and completed by City, and PWRP waives its right to receive the balance of the completed Disclosure Statement. The Disclosure Statement shall not constitute representations and warranties under this Agreement. All materials delivered by City hereunder, including the Disclosure Statement, shall be without warranty or representation as to accuracy or completeness, and nothing herein shall be interpreted as requiring City to obtain documents from any government agency or other third party.

### **11. TRANSACTION COSTS; RISK OF LOSS**

(a) Transaction Costs. City shall pay (i) one-half (1/2) of any escrow or closing charge of the Escrow Agent; (ii) the cost of curing, and to record any instruments necessary to cure, any title objections that City elects or is obligated to cure under this Agreement; (iii) all grantor transfer taxes, deed stamps, real estate excise taxes, conveyance taxes, mortgage recording taxes and documentary stamp taxes (“Transfer Taxes”) with respect to the City Parcels; and (iv) one-half (1/2) of the cost of recording the Deed.

PWRP shall pay (i) one-half (1/2) of any escrow or closing charge of the Escrow Agent; (ii) all expenses relating to its inspection of the City Parcels including, but not limited to, engineering, environmental and property surveys obtained by PWRP; (iii) any cost incurred in connection with any lender’s title insurance premiums, endorsements or additional coverage added thereto; (iv) the cost of the premium for the Title Policy and all premiums and costs associated with any endorsements, extended, comprehensive or additional coverage to the Title Policy; (v) all costs incurred by PWRP in connection with any financing PWRP obtains relating to its acquisition of the City Parcels (including, without limitation, payment of the mortgage registration tax); and (vi) one-half (1/2) of the cost of recording the Deed.

(b) Transfer Taxes. PWRP and City agree to comply with all real estate transfer tax laws applicable to the transfer of the City Parcels. City and PWRP shall pay their respective shares of prorations of taxes and other closing costs. Except as otherwise expressly provided in this Agreement, each party shall pay the fees of its own attorneys, accountants and other professionals. Each of PWRP, on the one hand, and City, on the other hand, shall indemnify the other and their respective successors and assigns from and against any and all loss, damage, cost, charge, liability or expense (including court costs and reasonable attorneys’ fees) which such other party may sustain or incur as a result of the failure of either such party to timely pay any of the aforementioned Transfer Taxes, fees or other charges for which it has assumed responsibility under this Section. The provisions of this Section 9(b) shall survive the Closing or the termination of this Agreement.

(c) Risk of Loss. All risk of loss relating to the City Parcels shall remain with City until Closing. In the event the City Parcels, or any material portion thereof, is substantially destroyed or substantially damaged prior to the Closing, or in the event of the taking of all or any material portion of the City Parcels by eminent domain proceedings, or the commencement of such proceedings prior to Closing, PWRP shall have the right, at PWRP’s option, to terminate this Agreement by delivering notice to City within ten (10) business days after PWRP’s discovery of such damage or condemnation action, in which case (and notwithstanding any other provision to the contrary in this Agreement) and except as otherwise provided herein, the parties shall have no further rights or obligations under this Agreement. If PWRP does not so terminate this Agreement, then PWRP shall proceed to close,

in which event upon the Closing, City shall pay to PWRF the amount of any insurance proceeds or condemnation awards collected by City as a result of any such damage or destruction or condemnation, plus the amount of any insurance deductible or co-insurance, less any sums expended by City toward the collection of such proceeds or awards and the restoration or repair of the City Parcels (the nature of which restoration or repairs, but not the right of City to effect such restoration or repairs, shall be subject to the approval of PWRF, which approval shall not be unreasonably withheld, conditioned or delayed). If the proceeds or awards have not been collected as of the Closing, then such proceeds or awards shall be assigned to PWRF (and the Closing shall be extended to the day which is one (1) business day following such assignment), except to the extent needed to reimburse City for sums expended to collect such proceeds or awards or to repair or restore the City Parcels, and City shall retain the rights to such proceeds and awards to such extent.

## 12. ADJUSTMENTS

(a) In General. All income and expenses, to the extent applicable, arising from the conduct of the business on the City Parcels, including all utilities, vendor charges, any assessments, and real estate taxes, shall be apportioned between PWRF and City as of 12:01 a.m. on the Closing Date, in accordance with the principle that City shall be entitled to and responsible for all revenue, expenses and obligations arising from the conduct of the business or ownership of the City Parcels before 12:01 a.m. on the Closing Date, and PWRF shall be entitled to and responsible for all revenue, expenses and obligations arising from the conduct of the business or ownership of the City Parcels on and after the Closing Date. The net amount thereof under this Article X shall be reflected on the Closing Statement.

(b) Other Adjustments. If applicable, Closing Statement shall reflect the adjustment of any other item which, under the explicit terms of this Agreement, is to be apportioned at Closing. Any other items of operating income or operating expense that are customarily apportioned between the parties in real estate closings of comparable commercial properties in the metropolitan area where the City Parcels is located shall be prorated as applicable, however, there will be no prorations for insurance premiums or payroll (because PWRF is not acquiring or assuming City's insurance or employees).

**13. NOTICES:** Any and all notices, consents, approvals and other communications required or permitted under this Agreement shall be deemed adequately given only if in writing delivered either in hand, by mail or by expedited commercial carrier which provides evidence of delivery or refusal, addressed to the recipient, postage prepaid and certified or registered with return receipt requested, if by mail, or with all freight charges prepaid, if by commercial carrier. All notices and other communications shall be deemed to have been given for all purposes of this Agreement upon the date of receipt or refusal. All such notices and other communications shall be addressed to the parties at their respective addresses set forth below or at such other addresses as any of them may designate by notice to the other party:

If to City: City of Snoqualmie  
c/o City Administrator  
P.O. Box 987  
Snoqualmie, WA 98065

If to PWRF: \_\_\_\_\_  
\_\_\_\_\_

With a copy to: Pacifica Law Group LLP  
1191 2<sup>nd</sup> Ave., Suite 2000  
Seattle, WA 98101  
Attn. B. Gerald Johnson

## 14. INDEMNIFICATION:

(a) Indemnification by City. Following the Closing, City shall indemnify and hold PWRF, and its Affiliates, members, partners, shareholders, officers and directors, representatives and agents of each of the

foregoing (collectively, “PWRF-Related Entities”) harmless from and against any and all costs, fees, expenses, damages, deficiencies, interest and penalties (including, without limitation, reasonable attorneys’ fees and disbursements) suffered or incurred by any such indemnified party in connection with any and all losses, liabilities, claims, damages and expenses (“Losses”) arising out of, or resulting from (a) any breach of any representation or warranty of City contained in this Agreement or in any Closing Document or (b) any breach of any covenant of City contained in this Agreement or in any Closing Document that expressly survives the Closing.

(b) Indemnification by PWRF. Following the Closing, PWRF shall indemnify and hold City and its Affiliates, members and partners, shareholders, officers, directors, representatives and agents of each of the foregoing (collectively, the “City-Related Entities”) harmless from any and all Losses arising out of, or in any way resulting from (a) any breach of any representation or warranty by PWRF contained in this Agreement or in any Closing Document or (b) any breach of any covenant of PWRF contained in this Agreement or in any Closing Document that expressly survives the Closing.

(c) Survival. Notwithstanding anything in this Agreement to the contrary, the representations, warranties and covenants of City contained in this Agreement and the Closing Documents that expressly survive the Closing shall survive for a period of nine (9) months after the Closing (the “Survival Period”) unless a longer or shorter period is expressly provided for in this Agreement; provided, however, the Survival Period shall not apply in the event of City fraud or intentional, bad faith material misrepresentation. No claim for indemnification under this Section 14 and no action or proceeding with respect to such claim shall be valid or enforceable, at law or in equity, unless (A) a Claim Notice is delivered prior to the expiration of the Survival Period and (B) a legal proceeding is commenced prior to the expiration of the Survival Period.

(d) Notification. In the event that any indemnified party (“Indemnified Party”) becomes aware of any claim or demand for which an indemnifying party (an “Indemnifying Party”) may have liability to such Indemnified Party hereunder (an “Indemnification Claim”), such Indemnified Party shall promptly, but in no event more than thirty (30) days following such Indemnified Party’s having become aware of such Indemnification Claim, notify the Indemnifying Party in writing of such Indemnification Claim, the amount or the estimated amount of damages sought thereunder to the extent then ascertainable (which estimate shall not be conclusive of the final amount of such Indemnification Claim), any other remedy sought thereunder, any relevant time constraints relating thereto and, to the extent practicable, any other material details pertaining thereto (a “Claim Notice”); provided, that no delay on the part of the Indemnified Party in giving any such notice of a Indemnification Claim shall relieve the Indemnifying Party of any indemnification obligations hereunder except to the extent that the Indemnifying Party is prejudiced by such delay.

## **15. DEFAULT.**

(a) PWRF’S Default. If PWRF is in material default or material breach of one or more of PWRF’s representations, warranties or obligations under this Agreement of which City has provided PWRF written notice of and PWRF has failed to cure within ten (10) days of such notice (but in all events such material breach or default is not cured prior to the Closing Date, if earlier), provided that PWRF shall not be entitled to such notice and opportunity to cure for failure to perform obligations to occur on the Closing Date (a “PWRF Default”), then City’s sole and exclusive remedy for such default shall be to terminate this Agreement by giving notice of such termination to PWRF (with a copy to Escrow Agent) and City and PWRF shall have no further obligations under this Agreement, except those which expressly survive such termination.

(b) City’s Default. If City is in material default or material breach of one or more of City’s representations, warranties or obligations under this Agreement of which PWRF has provided City written notice of and City has failed to cure within ten (10) days of such notice (but in all events such material breach or default is not cured prior to the Closing Date, if earlier), provided that City shall not be entitled to such notice and opportunity to cure for failure to cause the transfer of the City Parcels on the Closing Date (a “City Default”), then PWRF shall as its sole and exclusive remedy and at its election, be entitled to: (1) terminate this Agreement and City shall promptly reimburse Buyer for all of its reasonable costs incurred in connection with this Agreement (including, without limitation, all due diligence costs, consultant fees, reasonable attorney’s fees, and brokerage commissions) in an amount not to exceed \$100,000, (2) pursue an action for specific performance, within the thirty (30) day period



following the occurrence of such City Default, (3) pursue specific performance of Seller's obligations under this Agreement, or (4) waive such City Default and proceed to Closing as contemplated herein.

**16. MISCELLANEOUS.**

(a) No Partnership. Nothing contained in this Agreement shall create any partnership, joint venture or other relationship between PWRF and City.

(b) Construction. City and PWRF agree that all the provisions hereof are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate section thereof.

(c) No Waiver. Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by either party at any time, express or implied, of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision of this Agreement or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent or approval of the other party, the other party's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on any subsequent occasion.

(d) Headings. The headings used for the various articles and sections of this Agreement are used only as a matter of convenience for reference, and are not to be construed as part of this Agreement or to be used in determining the intent of the parties of this Agreement.

(e) Partial Invalidity. If any term, covenant, provision or condition of this Agreement or the application thereof to any person or circumstance shall be declared invalid or unenforceable by the final ruling of a court of competent jurisdiction having final review, the remaining terms, covenants, provisions and conditions of this Agreement and their application to persons or circumstances shall not be affected thereby and shall continue to be enforced and recognized as valid agreements of the parties, and in the place of such invalid or unenforceable provision there shall be substituted a like, but valid and enforceable, provision mutually agreeable to City and PWRF which comports to the findings of the aforesaid court and most nearly accomplishes the original intention of the parties.

(f) Time of Essence. Time is of the essence of this Agreement and of all provisions hereof.

(g) Entire Agreement. Together with the Development Agreement, this Agreement contains the entire integrated agreement between the parties as to the matters covered herein and supersedes any oral statements or representations or prior written matter not contained in this instrument as to the matters set forth herein. This Agreement may not be amended, changed, modified or altered, except by an instrument in writing duly executed by City and PWRF (or their successors in title) upon approval by the City Council.

(h) Successors. The terms of this Agreement shall be binding upon and inure to the benefit of and be enforceable by and against the heirs, successors and assigns of the parties hereto. No party shall be entitled to assign its rights or delegate its obligations hereunder without the other party's prior written consent.

(i) Consents and Approvals. In any instance when either party's consent or approval is required under this Agreement, such consent or approval shall not be unreasonably withheld, conditioned or delayed. No permission, consent, or approval of City contained herein or given pursuant to this Agreement is, or shall be construed as, a representation or assurance that the matter consented to or approved complies with applicable Laws, nor shall any such consent or approval be construed to authorize any failure to comply with such applicable Laws.

(j) Governing Law; Jurisdiction and Venue. This Agreement, and the rights and obligations of the parties hereunder, shall be governed by and construed in accordance with the laws of the State of Washington. City and PWRF each hereby consent to personal jurisdiction in the state and federal courts located in the State of Washington. Except as otherwise required by applicable Law, any action arising under this Agreement shall be brought and maintained in the Superior Court of the State of Washington in and for King County, City and PWRF each consent and agree that venue is proper in such court, and City and PWRF each waive any defense or right to seek dismissal or transfer on grounds of improper or inconvenient venue.

(k) Dispute Resolution. In the event of a dispute arising out of this Agreement, the parties agree to follow the procedures in this Section prior to filing or initiating a lawsuit. The parties shall make their best

efforts to resolve disputes as expeditiously as possible through negotiations at the lowest possible decision-making level, and in the event such negotiations are unsuccessful, the matter shall be referred to the City Manager of City and the executive director or board chair of PWRP. If those officials are unable to resolve the dispute within a period of fifteen (15) days after the matter has been formally referred to them for resolution, they shall meet during the immediately succeeding seven (7) days to select a mediator to assist in the resolution of such dispute. City and PWRP agree to participate in mediation with the agreed upon mediator for a reasonable amount of time and in good faith. The cost of the mediation shall be shared equally by City and PWRP.

(l) Attorney's Fees. In the event of litigation or other proceedings involving the parties to this Agreement to enforce any provision of this Agreement, to enforce any remedy available upon default under this Agreement, or seeking a declaration of the rights of either party under this Agreement, the substantially prevailing party shall be entitled to recover from the other such reasonable attorneys' fees and costs as may be actually incurred, including its costs and fees on appeal.

(m) Limitation on Third Party Rights. Nothing in this Agreement expressed or implied is intended or shall be construed to give to any person other than City or PWRP any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or provision herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of City and PWRP.

(n) Counterparts. This Agreement may be executed in counterparts for the convenience of the parties, and such counterparts shall together constitute one Agreement.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties have hereunto set their signatures to this Agreement, effective as of the later of the dates shown below.

**CITY:**

CITY OF SNOQUALMIE,  
a Washington municipal corporation

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

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

**PWRF:**

PACIFIC WEST RAIL FOUNDATION,  
a Washington nonprofit corporation

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

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

**Exhibit A-1**

City Parcels

[to be attached]

**Exhibit A-2**

Hambling LLC Parcels

[to be attached]

**Exhibit B**

Form of Public Use Covenant

[to be attached]

**Exhibit C**

Street Vacation

[to be attached]

**Exhibit D**

Purchase Right Memo

[to be attached]



**Exhibit E**

Form of Deed

After recording, return to:

Pacifica Law Group LLP  
1191 Second Avenue, Suite 2000  
Seattle, WA 98101  
Attn: Erik Jennings

**STATUTORY WARRANTY DEED**

**Recording number of documents modified, assigned or released by this document:** None.

**Grantor:** City of Snoqualmie, a Washington municipal corporation

**Grantee:** [\_\_\_\_\_]

**Abbreviated legal description:** [\_\_\_\_\_]

**Assessor's Property**

**Tax Parcel/Account Number(s):** [\_\_\_\_\_]

City of Snoqualmie, a Washington municipal corporation ("**Grantor**"), for good and valuable consideration, receipt of which is hereby acknowledged, conveys and warrants to [\_\_\_\_\_] ("**Grantee**"), the following described real estate, situated in King County, Washington:

See Exhibit A attached hereto and incorporated herein by this reference;

SUBJECT TO the exceptions set forth on Exhibit B attached hereto.

DATED this \_\_\_\_ day of \_\_\_\_\_, 202\_.

GRANTOR:

City of Snoqualmie,  
a Washington municipal corporation

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

STATE OF WASHINGTON    )  
  ) ss.  
COUNTY OF KING        )

On this day personally appeared before me \_\_\_\_\_, a \_\_\_\_\_ of \_\_\_\_\_, who executed the within and foregoing instrument on behalf of said company, and acknowledged the said instrument to be the free and voluntary act and deed of said individuals, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said limited liability company and done for the purposes and uses therein mentioned.

GIVEN under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 202\_.

\_\_\_\_\_  
(Print name of notary)  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

**EXHIBIT A TO DEED**  
**Legal Description**

PACIFICA 2024-09-03 DRAFT  
CITY 2024-09-10 REDLINE

**EXHIBIT B TO DEED**  
**Permitted Exceptions**

**Exhibit F**

**Disclosure Statement**

**Form 17 – Environmental Section**

**6. ENVIRONMENTAL**

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	A. Has there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property? Storm drain blocked by tree root; has been repaired.
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	B. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	C. Are there any shorelines, wetlands, floodplains, or critical areas on the property? Wetlands
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	D. Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	E. Is there any soil or groundwater contamination?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	F. Has the property been used as a legal or illegal dumping site?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	G. Has the property been used as an illegal drug manufacturing site?