



ORIGINAL

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims ("Agreement") is entered into by BNSF Railway Company ("BNSF") and Henry Sladek dba Cascadia / Electronic Sales & Service Inc. ("Owner").

Recitals

WHEREAS, the Former Maintenance and Fueling Facility (the "Site") is an approximately 40-acre area located in Skykomish, Washington. BNSF owns property at the Site. The boundaries of the Site are shown in Exhibit A;

WHEREAS, Owner owns real property at the Site ("Property"). The boundaries of the Property are shown in Exhibit B;

WHEREAS, Owner has alleged that BNSF is liable for damage to the Property and lost business profits associated with the release and threatened release of hazardous substances at the Site;

WHEREAS, BNSF prepared a Feasibility Study and Environmental Impact Statement ("FS/EIS") pursuant to Agreed Order No. DE91TC-N213 with the Washington State Department of Ecology ("Ecology"), and BNSF intends to enter into a consent decree or order with Ecology to complete the cleanup actions consistent with the FS/EIS and with a Cleanup Action Plan ("CAP") being developed by Ecology and/or BNSF's Preferred Cleanup Plan (May 25, 2004) (the consent decree or order and required work are collectively referred to as the "Cleanup");

WHEREAS, BNSF and Owner wish to resolve the dispute existing between them regarding the Site and the Property, with no admission of fact, responsibility or liability;

NOW, THEREFORE, in reliance on these recitals and in consideration of the mutual agreements contained herein, it is agreed by and between BNSF and Owner that:

Agreement

1. Payments. The payments required by this section, together with the other promises and covenants by BNSF in this Agreement, constitute full compensation for all claims related to the Property and related to the Site.
 - A. Reimbursement of Agreement Costs. BNSF will reimburse Owner up to \$3,000.00 for costs associated with this Agreement, such as legal fees, consulting fees, appraisal fees and the value of Owner's time. Owner may submit its first request for reimbursement upon executing this Agreement and may submit

subsequent requests every six (6) months. Each request for reimbursement will include documentation of costs and/or Owner's time incurred in connection with negotiating or implementing this Agreement.

- B. Damages. At the Owner(s) request, BNSF will commission an appraisal of the Property, at BNSF's sole cost. The appraisal will calculate the diminution in the value of the Property, if any, associated with the release of hazardous substances described in the FS/EIS.

At the sole election of the Owner(s) BNSF will pay the Owner one of the following:

<p>_____ <u>HS</u> Accept Decline</p>	<p>15 % of the Property's 2002 assessed value as designated on the King County Records</p>	<p>\$ _____</p>
<p>_____ <u>HS</u> Accept Decline</p>	<p>If Property is assessed by King County at \$10,000 or less Owner(s) agree to sell the property to the BNSF at the full appraised value</p>	<p>\$ _____</p>
<p><u>HS</u> Accept _____ Decline</p>	<p>Full diminution in value, including consideration of potential loss of profit from commercial activities, per the result of the appraisal, not less than 15% of the Property's 2002 assessed value as designated on the King County Records, or dispute resolution as designated in Exhibit C</p>	<p>\$ <u>40,620.00</u></p>

C. Cost and Inconvenience Associated with Cleanup.

- i. BNSF will within five (5) days pay Owner \$10,000.00 for costs and inconvenience associated with BNSF's activities related to the Site through the effective date of this Agreement, including loss of income at Owner's business.
- ii. BNSF's activities related to the Site after the effective date of this Agreement, including implementation of the Cleanup, may cause additional disruption of access, utilities and streets, may cause noise, dust and odors, and may require relocation of Owner or Owner's tenants primarily during construction activities. BNSF will be directly responsible for all costs of the Cleanup consistent with an order or consent decree with Ecology, including costs of mitigation such as repairing streets, sidewalks, yards and driveways, temporary relocation of occupants, utility relocation and repair, controlling dust, noise and odors and minimizing restrictions on access. BNSF will notify Owner of the date construction of the Cleanup is complete. To the extent Owner suffers loss of income at Owner's business as a result of BNSF's activities related to the Site after the effective date of this Agreement, Owner must notify BNSF in writing with documentation of such loss within 60 days of receiving notice from BNSF that construction of the Cleanup is complete. Thereafter, BNSF and Owner agree

to negotiate in good faith to resolve Owner's claim of loss of income after the effective date of this Agreement.

2. Ecology Letter. Owner shall execute and submit to Ecology a letter substantially in the form provided in Exhibit D. Owner shall submit the letter within 10 days of executing this Agreement. The letter indicates Owner's agreement in writing to a conditional point of compliance for groundwater consistent with Ecology's regulations.
3. Restrictive Covenant. At the time this Agreement is executed by both parties, Owner shall execute and abide by a Restrictive Covenant regarding the Property in the form provided in Exhibit E. The Restrictive Covenant limits certain uses of the Property. BNSF shall record the Covenant with the King County Assessor within 30 days after the effective date of an order or consent decree between Ecology and BNSF. BNSF shall provide Owner and Ecology with copies of the recorded document.
4. Authorized Excavation Activities. The Restrictive Covenant required by paragraph 3 will limit the use of the Property. Consistent with the Restrictive Covenant, Owner agrees not to conduct any significant excavation activities (greater than 1 cubic yard of soil) on the Property without first notifying BNSF. BNSF agrees to provide the technical and/or financial assistance needed to properly manage any contaminated soil or groundwater that may be generated during authorized excavation activities and to coordinate any review needed by Ecology.
5. No Opposition to Consent Decree. Owner agrees that it will not oppose the Cleanup. Owner may, but need not, send Ecology comments in support of the Cleanup.
6. Access to Property.
 - A. Owner hereby grants to BNSF, and to BNSF's authorized representatives, contractors and subcontractors, permission to enter upon the Property for the purpose of conducting cleanup actions consistent with the Cleanup. BNSF shall provide Owner prior notice of the actual date(s) on which BNSF will exercise its rights under this paragraph.
 - B. BNSF will ensure that all activities on the Property by BNSF and its authorized representatives, contractors and subcontractors are carried out in a reasonable manner and do not unreasonably interfere with Owners use and enjoyment of the Property consistent with the Cleanup.
 - C. All contractors and subcontractors entering the Property shall obtain and maintain, at their own cost and expense, property and personal injury insurance coverage in appropriate and adequate amounts as warranted by their activities. Certificates of insurance shall be provided to Owner upon request.
7. Indemnification. BNSF agrees to defend and indemnify Owner for injury to persons or damage to property in any way arising out of or caused by BNSF or its contractors or

subcontractors while exercising the rights granted in this Agreement; provided, however, BNSF shall not defend or indemnify Owner from any claims arising out of the acts or omissions of Owner or Owner's guests, invitees, licensees, tenants, agents or contractors.

8. Right of First Refusal. Owner hereby grants, sells and conveys to BNSF a Right of First Refusal to purchase the Property if it is ever sold by the Owner. In the event that Owner should receive an offer to purchase the Property from a third party, which offer is bona fide and acceptable to Owner, Owner shall prior to accepting such offer mail a copy thereof to BNSF at the addresses noted in paragraph 10 below; Provided, however, that Owner may gift or otherwise convey the Property to an immediate family member without notice to BNSF but that family member is then the "Owner" for purposes of this Agreement and is obligate to notify BNSF of any offer to purchase consistent with this Section 8.

BNSF shall have a period of ten (10) days after receipt of such offer to notify Owner of BNSF's election to exercise its right of first refusal to purchase the Property upon the same terms and conditions as contained in such offer. BNSF's notice to Grantor of such election must be in writing and sent to Owner at the address noted in paragraph 10 below.

In the event that BNSF does not elect to exercise its first right of refusal to purchase the Property as provided herein, Owner shall be free to accept such third party offer and shall have no further obligations under this paragraph to Grantee; provided however, that in the event, for whatever reason, the transaction described in the written offer accepted by Owner fails to be consummated or in the event that the terms of such offer change, then in such event Owner shall re-notify BNSF of such change in terms or of any new offer, which notification shall be in writing as provided above and BNSF shall have an additional five (5) business days in which to elect to exercise its right of first refusal hereunder in accordance with such new offer or changed terms.

This right of first refusal shall run with the title to the Property and remain effective until the Owner transfers the property. The parties will execute and record with the Assessor for King County a Memorandum of Right of First Refusal as provided in the attached Exhibit F. The other rights and obligations of the parties in this Agreement shall not be affected or impaired by BNSF's exercise or failure to exercise the right of first refusal conveyed herein.

9. Release of Claims and Covenant Not to Sue.
 - A. Except to enforce this Agreement, Owner hereby releases, acquits and forever discharges BNSF, and BNSF's predecessors, successors, assigns and any person having an interest through or under BNSF including directors, officers, employees, agents and representatives of any of the foregoing (collectively, "Affiliates"), from any and all Claims. For purposes of this Agreement, "Claims" means liabilities, claims, including claims for injuries, if any, whether known or unknown to either party at the present time, demands, actions, causes of action, obligations, expenses, administrative costs/fines, damages and/or attorneys' fees,

which Owner now has or may have in the future against BNSF or its Affiliates by reason of or arising out of the release or threatened release of hazardous substances at or from the Site.

B. Except to enforce this Agreement, Owner agrees not to commence, institute or prosecute (or allow any person to do so in the name of Owner) against BNSF or its Affiliates, any action, claim, demand, cause of action, suit or controversy based in whole or in part on any fact or event released herein. Without limiting the foregoing, Owner covenants: (i) not to bring an action against BNSF or its Affiliates to compel, directly or indirectly, any investigations, cleanup or other response, reclamation or compliance actions of any kind in any way related to the Site or the Property, or (ii) not to seek, directly or indirectly, response costs, damages or any other relief against BNSF or its Affiliates, in any way related to the Site or the Property.

10. Notices. All notices and other communications required by this Agreement shall be sent as follows:

If to BNSF:

Mr. Bruce A. Sheppard
The Burlington Northern and Santa Fe Railway Company
2454 Occidental Avenue South, #1-A
Seattle, WA 98134-1451
Fax: 206-625-6007

and to

Mr. Craig S. Trueblood
Preston Gates & Ellis, LLP
925 Fourth Ave., Suite 2900
Seattle, WA 98104-1158
Fax: 206-623-7022

If to Owner:

Henry Sladek
Electronic Sales & Service
2791 152nd Avenue NE
Redmond, WA 98052

11. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington, without reference to choice of law principles.

12. Admission of Agreement. This Agreement shall not be admitted as evidence of an admission or a declaration against interest by either of the parties in any proceeding, except in an action to enforce this Agreement.
13. Jurisdiction and Venue. Jurisdiction and venue for any action to interpret or enforce this Agreement, or relating to any dispute relating to or arising out of this Agreement, shall be in the Superior Court of the State of Washington in and for King County.
14. Attorneys' Fees. In the event of any action to interpret or enforce this Agreement or relating to any dispute or disagreement relating to or arising out of this Agreement, the substantially prevailing party therein shall be entitled to recover its reasonable attorneys' fees, expenses and costs (including expert witness fees, travel costs and photocopying costs), whether incurred in litigation, mediation, arbitration, at trial or on appeal.
15. Amendments and Waivers. This Agreement may be amended, modified or supplemented only by written agreement signed by both BNSF and Owner. No waiver will be effective hereunder unless it is in writing and signed by the party that is the holder of the applicable right, power or privilege hereunder.
16. Successors and Assigns. This Agreement shall inure solely to the benefit of, and shall be binding upon, the successors and assigns of the parties, and no other party or entity will be entitled to any of the benefits conferred by this Agreement. It is the express intention of Owner and BNSF that all the obligations in this Agreement shall run with the Property and all portions thereof, be binding upon Owner's successors, and shall forever bar Owner and any of Owner's successors from asserting any Claim barred by this Agreement.
17. No Admission of Liability. The parties acknowledge that this Agreement constitutes a settlement of disputed claims and that by entering into this Agreement and satisfying the obligations and conditions set forth in this Agreement, neither party admits (a) any fact, point of law or contention, (b) liability under, or violation of, any federal, state or local law, rule or regulation, or (c) liability or responsibility for the Site or the Property.
18. Counterparts. This Agreement may be executed in counterparts and each counterpart shall be deemed to be an original.
19. Assignment. This Agreement is intended to confer rights and benefits only on BNSF and Owner and is not intended to confer any right or benefit upon any other person or entity. The rights and obligations of this Agreement may not be assigned without the prior written consent of both parties.
20. Enforceability of the Agreement. In the event that any provision in or obligation under this Agreement shall be invalid, illegal, or unenforceable in any jurisdiction as to either of the parties, the validity, legality or enforceability of other provisions in or obligations under this Agreement shall not in any way be affected or impaired.

- 21. Jointly Drafted Agreement. This Agreement is the result of negotiations between the parties, each of which has participated in the drafting of this Agreement directly or through its attorneys.
- 22. Entire Agreement. This Agreement is an integrated agreement and contains the entire agreement regarding the matters addressed herein between BNSF and Owner. No representations, warranties or promises have been made or relied on by BNSF or Owner other than as set forth herein.
- 23. Confidentiality. This Agreement is confidential and the parties shall not disclose any of the terms of this Agreement, or its existence, to any other person or entity, except to the extent required by law or as necessary to enforce the terms of this Agreement.
- 24. Effective Date. This Agreement shall become effective and binding upon its execution by both parties.

OWNER

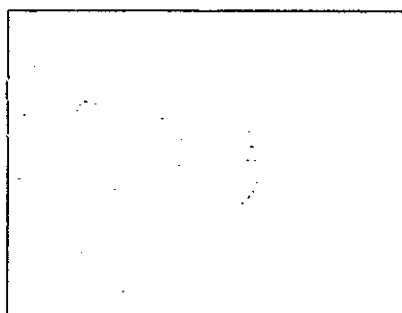
Henry Sladek
 Henry Sladek

Date: 7-27-05

STATE OF Washington)
 COUNTY OF King) ss.

I certify that I know or have satisfactory evidence that Henry Sladek is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: 7/27/05



(Use this space for notarial stamp/seal)

Laurie L. Briggs
 Notary Public
 Print Name Laurie Briggs
 My commission expires 3-27-07

Ms. Louise Bardy
Project Manager
Department of Ecology
Northwest Regional Office
3190 – 160th Avenue SE
Bellevue, WA 98008-5452

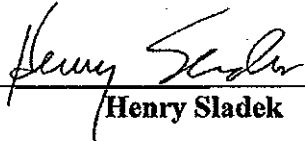
Re: BNSF Skykomish Site – Agreement to Conditional Point of Compliance
Parcel # 780780-0240, 780780-0251, 780780-430

Dear Ms. Bardy:

I am the owner or We are the owners of the real property commonly referred to as **210 Railroad Avenue** in Skykomish, Washington. This letter constitutes my [our] written agreement to the use of a conditional point of compliance for groundwater, consistent with WAC 173-340-720(8)(d)(ii).

This letter is not intended to indicate that I [we] favor or oppose any particular cleanup action, only that I [we] agree that Ecology can select a cleanup action that includes a conditional point of compliance for groundwater. This letter is also not intended to waive any of my [our] legal rights or claims I [we] may have regarding the Site.

Sincerely,



Henry Sladek

Date: 7-27-05

Date: _____