

BNSF RAILWAY COMPANY

REAL ESTATE PURCHASE AND SALE AGREEMENT

This Real Estate Purchase and Sale Agreement (“**Agreement**”) is entered into as of the Effective Date (defined below) between **CITY OF TACOMA** (“**Buyer**”) and **BNSF RAILWAY COMPANY** (“**Seller**”). This Agreement shall not be binding upon either party unless and until both parties have executed and delivered this Agreement. The submission of this document by Seller to Buyer shall not constitute an offer to sell by Seller.

In consideration of the mutual covenants set forth in this Agreement and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

GENERAL TERMS AND DEFINITIONS

1. The following terms shall have the meanings set forth below:

Closing. The consummation of the transaction contemplated by this Agreement, which shall be deemed to have occurred when both parties have delivered the items contemplated in Section 4 of this Agreement.

Closing Date Notwithstanding, anything herein, this sale shall close ten (10) days after expiration of the Review Period. Seller shall have the right to extend the closing up to sixty (60) days, at Seller’s sole judgment.

Earnest Money The cash sum of Fifteen Thousand Dollars (\$15,000.00) made payable to BNSF Railway Company.

Effective Date The date of Seller’s execution of this Agreement as indicated below Seller’s signature hereto.

Property That parcel of land situated in or near the City of Tacoma, County of Pierce and State of Washington, shown hatched black on map marked Exhibit A dated July 12, 2016 attached hereto and made a part hereof, subject to revision as set forth below in Section 3.

Purchase Price The sum of Two Hundred Fifty Thousand Dollars (\$250,000.00).

Review Period The period commencing on the Effective Date and expiring at 5:00 p.m. central time on the date that is Forty-Five (45) days after the Effective Date.

PURCHASE AND SALE

2. (a) Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase and accept from Seller, for the Purchase Price, all of Seller’s right, title and interest (if any), in and to the Property.

- (b) Seller may assign its rights (but not its obligations) under this Agreement to Goldfinch Exchange Company LLC, (Goldfinch) an exchange intermediary, in order for Seller to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Seller shall provide Buyer with a Notice

of Assignment, attached as Exhibit B, and Buyer shall execute an acknowledgement of receipt of such notice. Buyer may also assign its rights (but not its obligations) under this Agreement to an exchange intermediary in order for Buyer to effect an exchange under Section 1031 of the Internal of Revenue Code.

(c) Within five (5) days of Seller's acceptance of this Agreement as indicated by Seller's signature below, Buyer shall deposit the Earnest Money with Title Company (defined below) as escrow agent. Title Company shall hold the Earnest Money in escrow pursuant to the terms and conditions of this Agreement. Buyer shall not be entitled to any interest on the Earnest Money held by Title Company pursuant to this Agreement. Title Company shall deliver the Earnest Money to the party entitled thereto pursuant to this Agreement, provided, however if there is a dispute between Buyer and Seller as to who is so entitled, Title Company may deposit the Earnest Money with a court of competent jurisdiction pending resolution of such dispute.

(d) The balance of the Purchase Price shall be paid at Closing as provided below.

INSPECTION

3. (a) Seller will prepare a legal description of the Property and will forward such description to Buyer for Buyer's review. Buyer shall have ten (10) days following such delivery to notify Seller in writing if Buyer objects to such description. If Buyer does not so object then the description of the Property prepared by Seller shall be the definition of the Property for all purposes under this Agreement. If Buyer does so object then Buyer shall cause to be prepared a survey of the Property certified to Seller, Buyer and such other parties as Buyer may choose showing the boundaries of the Property and any improvements located thereon (the "**Survey**"). If Seller does not agree that the description of the Property contained on the Survey is the Property Seller wishes to sell or otherwise objects to the Survey then Seller may terminate this Agreement by written notice to Buyer in which case the Earnest Money shall be refunded to Buyer and neither party shall have any further obligation hereunder except those that expressly survive termination. If Seller agrees in writing that the Survey description is accurate then the description thereon shall be the definition of the Property for all purposes under this Agreement. In the event a city, county, or other governing authority where the Property is located (a "**Municipality**") requires a survey or plat to convey the Property (a "**Plat**"), the Buyer shall obtain, at Buyer's sole cost and expense, such Plat and the approval of such Municipality. Seller's obligations hereunder are conditioned upon Seller's approval of the Plat approved by the Municipality. Buyer shall provide the proposed Plat to Seller prior to submission to the Municipality and prior to the expiration of the Review Period.

(b) Buyer shall have until the end of the Review Period to examine title to the Property. If Buyer elects to obtain a title commitment for the Property Buyer may deliver to Seller no later than the expiration of the Review Period written notice of any objections to the status of title or matters reflected on the Survey that Buyer may have together with a copy of such title commitment, Survey and all matters referenced therein. Seller shall have no obligation to cure any such objection. If Seller notifies Buyer in writing that Seller will cure any such objection Seller (a) shall make good faith efforts to cure such matter by the Closing Date and if not cured by such date Buyer may terminate this Agreement in which case the Earnest Money shall be refunded to Buyer and neither party shall have any further obligation hereunder except those that expressly survive termination, and (b) may effect such cure by causing the title company issuing the title commitment to remove such matter as an exception from coverage by paying additional premium therefor or otherwise. If Seller at any time notifies Buyer in writing that Seller is not willing or able to cure any of the such objections (including those which Seller has previously endeavored to cure) then Buyer or Seller may terminate this Agreement by written notice to the other delivered within five (5) days after Seller so notifies Buyer that Seller is unwilling or unable to cure such objection. In the event of such termination, the Earnest

Money shall be refunded to Buyer and neither party shall have any further obligation hereunder except those that expressly survive termination. If this Agreement is not so terminated, the parties shall proceed to Closing according to the remaining provisions of this Agreement.

(c) Prior to any entry upon the Property by Buyer, the surveyor preparing the Survey or other individuals on behalf of Buyer, Buyer shall execute and deliver to Seller an Entry and Confidentiality Agreement in the form attached hereto as Exhibit C and incorporated herein (the "**Entry Agreement**"). The terms and provisions of the Entry Agreement are incorporated herein, shall survive the Closing, shall not be merged into the Deed or any document delivered at Closing and shall survive any termination of this Agreement. Any breach by Buyer of its obligations under the Entry Agreement shall be deemed a breach by Buyer under this Agreement. Notwithstanding anything in this Agreement to the contrary, including the provisions of Section 6(a), nothing in this Agreement or the exercise of any remedy by Seller under this Agreement shall limit or affect in any manner any remedy available to Seller under the Entry Agreement in the event of a breach of Buyer's obligations under the Entry Agreement.

(d) Buyer shall have until the end of the Review Period to determine if the Property is suitable for Buyer's purposes including, but not limited to, the status of zoning, physical characteristics and conditions of the Property, and compliance with applicable laws. If Buyer determines that the Property is not suitable for Buyer's purposes or if Buyer for any reason or no reason wishes to terminate this Agreement, Buyer may terminate this Agreement by written notice to Seller received no later than the expiration of the Review Period. If Buyer does so terminate this Agreement, the Earnest Money shall be refunded to Buyer, less \$100.00 which shall be retained by Seller as independent consideration for this termination option, and neither party shall have any further obligation hereunder except those that expressly survive termination. If Buyer does not so terminate this Agreement prior to the end of the Review Period, the parties shall proceed to Closing according to the remaining provisions of this Agreement. Promptly upon Seller's written request, Buyer shall deliver a copy of any written inspection report, survey or test result received by Buyer. If any of such items reveal any adverse conditions, Seller may terminate this Agreement by written notice to Buyer in which case the Earnest Money shall be refunded to Buyer and neither party shall have any further obligation hereunder except those that expressly survive termination.

(e) Notwithstanding the foregoing provisions of Section 3(b), Buyer shall not be entitled to object to any judgment against Seller which may appear of record as a lien against the Property. Seller shall pay such lien if and when it is judicially determined to be valid, and Seller hereby indemnifies the Buyer for all loss arising out of Seller's failure to have a judgment lien so settled and satisfied.

(f) Notwithstanding the foregoing provisions of Section 3(b), Buyer shall not be entitled to object to the lien of any of Seller's mortgages. Seller shall deliver to Buyer, who shall place of record, good and sufficient releases of the liens of any mortgages on the Property securing indebtedness to which Seller is obligated to pay within one hundred eighty (180) days after the first meeting of Seller's Board of Directors held after the Closing. In the event Seller shall be unable to obtain said releases for any reason, Seller shall have the right to repurchase the Property from Buyer for the Purchase Price and Buyer shall reconvey the Property to Seller free and clear of defects or objections arising after the Effective Date upon which this Agreement shall terminate and neither party shall have any further rights or obligations hereunder except those that expressly survive termination.

CLOSING

4. (a) Closing shall occur on the Closing Date at the Tacoma, Washington offices of Chicago Title ("**Title Company**"). It shall be a condition of each party's obligation to close hereunder that the other party shall have performed its obligations hereunder. The parties may close the transaction in escrow by

sending written escrow instructions prepared by their respective attorneys to the Title Company and provided the Title Company has agreed to comply with such escrow instructions and has provided each such party with an acceptable closing protection letter if the Title Company is an agent for the company underwriting the insurance policy.

(b) At Closing the parties shall deliver the following:

(i) Seller shall deliver:

- (1) A quitclaim deed subject to all matters of record and restating the exceptions and reservations set forth in **Section 8** (the “**Deed**”) quitclaiming to Buyer Seller’s interest, if any, in and to the Property.
- (2) A counterpart of a Closing Statement in form and substance mutually agreeable to the parties setting forth the financial details of the transaction including any prorations (the “**Closing Statement**”).
- (4) Such other affidavits and certificates that are customarily required to consummate this transaction, in form and substance acceptable to Seller.
- (5) Possession of the Property, together with any keys, combinations or other security devices in Seller’s possession.

(ii) Buyer shall deliver:

- (1) The Purchase Price subject to the prorations and credits expressly provided for in this Agreement and less the Earnest Money which Earnest Money shall thereafter become the property of Seller.
- (2) A counterpart of the Closing Statement.
- (3) Such other affidavits and certificates that are customarily required to consummate this transaction, in form and substance acceptable to Buyer.

(c) If any of the foregoing conditions are not satisfied on or before the applicable date set forth for such condition (each, the “**Condition Date**”), the party to which such condition benefits may either (a) terminate this Agreement by written notice to the other party delivered no later than the earlier of the Closing Date or five days after the applicable Condition Date, or (b) waive such condition by failing to so terminate and proceeding to Closing according to the remaining provisions of this Agreement. If the Agreement is terminated solely pursuant to **Section 4(a)** above, then the Earnest Money shall be returned to Buyer and neither party shall have any further obligation hereunder except those that expressly survive termination.

PRORATIONS AND CLOSING COSTS

5. (a) Real estate taxes and assessments payable or paid in the year of Closing shall be prorated by Seller and Buyer as of the Closing Date on the basis of the most recent ascertainable taxes assessed against the Property. If the Property is not separately assessed for tax purposes then there shall be no proration of taxes between Buyer and Seller, the parties shall cooperate post-Closing to cause the Property to be separately assessed and each party shall indemnify the other for any failure to pay real estate taxes and assessments due with respect to the properties constituting the tax parcel to which the Property is a

part. Notwithstanding the foregoing, there shall be no proration for taxes to the extent the payment of same has been assumed by a tenant under an existing lease to be assigned to Buyer. All outstanding assessments on the Property levied or due in the year of Closing and afterward shall be paid by Buyer.

(b) The parties shall cooperate so that utilities serving the Property that are not the responsibility of a tenant under a lease to be assigned to Buyer at Closing, to the extent feasible, shall be switched into the name of Buyer as of the Closing Date, so that a final statement can be issued to Seller for the billing period ending on the Closing Date, and so that the first day of the first billing cycle in Buyer's name can begin on the Closing Date. If, however, the final statement covering the final period of ownership by Seller also includes periods of ownership by Buyer, Buyer shall pay Seller at Closing the amount attributable to Buyer's period of ownership. Buyer shall be responsible to pay all utilities serving the Property due after Closing.

(c) Buyer shall pay all closing costs associated with Closing including, but not limited to, any escrow fees, documentary stamps and other recording costs associated with this transaction, excise taxes, the cost of any state, county or local transfer taxes, the cost of the Survey, and the costs associated with any title insurance obtained by Buyer.

(d) If any real estate broker or agent can establish a valid claim for commission or other compensation as a result of Buyer having used their services in connection with the purchase of the Property, all such commission or other compensation shall be paid by Buyer. Seller shall not be liable for any real estate commissions or finders fees to any party with respect to the sale of the Property, except amounts due to Jones Lang LaSalle Brokerage Inc. ("**Broker**") pursuant to a separate agreement. Buyer acknowledges that Broker has advised, and hereby advises, Buyer that the Broker is acting as on behalf of the Seller, with the duty to represent Seller's interest, and Broker is not the agent of the Buyer. If a policy of title insurance is to be obtained, Buyer should obtain a commitment for title insurance which should be examined prior to closing by an attorney of Buyer's choice. Prior to the execution of this Agreement, Broker has advised and hereby advises the principals of this transaction, that this Agreement is binding on them, and the principals hereby acknowledge that they have been so advised. Broker has no authority to execute any document on behalf of Seller, make representations on behalf of Seller or bind Seller in any manner.

(e) The obligations of the parties in this Section 5, to the extent incurred, shall survive any termination of this Agreement.

DEFAULT AND REMEDIES

6. (a) In the event of a default by Buyer under the terms of this Agreement, Seller's sole and exclusive remedies shall be: (a) terminate this Agreement whereupon the parties shall have no further obligations hereunder except those that expressly survive termination, or (b) waive such default and proceed Closing, or (c) obtain specific performance of this Agreement. If Seller terminates this Agreement as provided in the previous sentence Seller shall be entitled to retain the Earnest Money. Notwithstanding the foregoing, nothing contained herein shall waive or diminish any right or remedy Seller may have at law or in equity for Buyer's default or breach of any obligation hereunder to be performed by Buyer after Closing. It is hereby agreed that Seller's damages in the event of a default by Buyer hereunder are uncertain and difficult to ascertain, and that the Earnest Money constitutes a reasonable liquidation of such damages and is intended not as a penalty, but as liquidated damages.

(b) In the event of a default by Seller under the terms of this Agreement, Buyer's sole and exclusive remedies hereunder shall be to terminate this Agreement and receive a refund of the Earnest Money plus an additional amount from Seller not to exceed ten percent of the Purchase Price equal to the out-of-pocket expenses (including attorneys' fees) incurred by Buyer in connection with this Agreement as evidenced by copies of third party invoices delivered to Seller. Upon such termination and the payment of such sums by Seller the parties shall have no further obligations hereunder except those that expressly survive termination. Notwithstanding the foregoing, nothing contained herein shall waive or diminish any right or remedy Buyer may have at law or in equity for Seller's default or breach of any obligation hereunder to be performed by Seller after Closing.

NATURE OF SALE

7. Buyer has been allowed to make an inspection of the Property. **BUYER IS PURCHASING THE PROPERTY ON AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, INCLUDING THOSE RELATING TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY, AND IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM SELLER AS TO ANY MATTERS CONCERNING THE PROPERTY,** including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Property with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; 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, under, or in proximity to the Property; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Property; the condition of title to the Property, and the leases, easements, permits, orders, licenses, or other agreements, affecting the Property (collectively, the "**Condition of the Property**"). Buyer represents and warrants to Seller that Buyer has not relied and will not rely on, and Seller is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto (including specifically, without limitation, Property information packages distributed with respect to the Property) made or furnished by Seller, the manager of the Property, or any real estate broker or agent representing or purporting to represent Seller, to whomever made or given, directly or indirectly, orally or in writing. Buyer assumes the risk that Hazardous Substances or other adverse matters may affect the Property that were not revealed by Buyer's inspection and indemnifies, holds harmless and hereby waives, releases and discharges forever Seller and Seller's officers, directors, shareholders, employees and agents (collectively, "**Indemnitees**") 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 or asserting a constitutional claim) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown, arising from or in any way related to the Condition of the Property or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Property. Losses shall include without limitation (a) the cost of any investigation, removal, remedial, restoration 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) capital expenditures necessary to cause the Seller remaining property or the operations or business of the Seller on its remaining property to be in compliance with the requirements of any Environmental Law, (c) Losses for or related to injury or death of any person, (d) Losses for or related to injury or damage to animal or plant life, natural resources or the environment, and (e) Losses arising under any Environmental Law enacted after transfer. The rights of Seller under this section shall be in addition to and not in lieu of any other rights or remedies to which it may be entitled under this document or otherwise. This indemnity

specifically includes the obligation of Buyer to remove, close, remediate, reimburse or take other actions requested or required by any governmental agency concerning any Hazardous Substances on the Property. The term "**Environmental Law**" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law relating in any way to human health, occupational safety, natural resources, plant or animal life or the environment, including without limitation, principles of common law and equity, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, 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 under any Environmental Law, and includes without limitation petroleum oil and any of its fractions. The provisions of this Section 7 shall be binding on Buyer, and its heirs, successors and assigns, shall be included in the Deed and shall be covenants running with the land.

RESERVATIONS

8. The obligations in this Section 8 shall be binding upon Buyer and its heirs, successors and assigns, shall be included in the Deed and shall be covenants running with the land benefiting Seller and Seller's successors and assigns. For purposes of this Section 8, Grantor shall mean Seller and Grantee shall mean Buyer. Buyer may object to the reservations set forth in Section 8(a) below in accordance with the provision of Section 3 and if Seller is unwilling or unable to cure such objection either party may terminate this Agreement as set forth in Section 3.

(a) Grantee's interest shall be subject to the rights and interests of Grantor, Grantor's licensees, permittees and other third parties in and to all existing driveways, roads, utilities, fiber optic lines, tracks, wires and easements of any kind whatsoever on the Property whether owned, operated, used or maintained by the Grantor, Grantor's licensees, permittees or other third parties and whether or not of public record. Grantor shall have a perpetual easement on the Property for the use of such existing driveways, roads, utilities, fiber optic lines, tracks, wires and easements by Grantor and Grantor's licensees, permittees and customers. Grantor shall have a non-exclusive easement for the construction, maintenance and operation of one or more pipelines or fiber optic lines and any and all communications facilities as may be located in the future on the Property within 60 feet of the center line of any Main Track on or adjacent to the Property and as may be presently located on the Property.

(b) Grantee's interest shall be subject to a reservation to Grantor of all coal, oil, gas, casing-head gas and all ores and minerals of every kind and nature including sand and gravel underlying the surface of the Property, together with the full right, privilege and license at any and all times to explore, or drill for and to protect, conserve, mine, take, remove and market any and all such products in any manner which will not damage structures on the surface of the Property, together with the right of access at all times to exercise said rights.

(c) Any improvements constructed or altered on the Property after the date Grantor quitclaims its interest to Grantee shall be constructed or altered in such a manner to provide adequate drainage of water away from any of Grantor's railroad tracks on nearby property.

(d) For 99 years after the Closing Date, Grantee covenants and agrees that the Property shall be used solely for non-residential purposes and that the groundwater will not be used for drinking water or irrigation purposes.

(e) Grantee acknowledges and affirms that Grantor may not hold fee simple title to the Property, that Grantor's interest in all or part of the Property, if any, may rise only to the level of an easement for

railroad purposes. Grantee is willing to accept Grantor's interest in the Property, if any, on this basis and expressly releases Grantor, its successors and assigns from any claims that Grantee or its successors may have as a result of an abandonment of the line of rail running over or adjacent to any portion of the Property. In light of Grantor's disclosure that it may not hold a fee interest in all or part of the Property, Grantee agrees to indemnify, defend and hold Grantor harmless from any suit or claim for damages, punitive or otherwise, expenses, attorneys' fees, or civil penalties that may be imposed on Grantor as the result of any person or entity claiming an interest in any portion of the Property or claiming that Grantor did not have the right to transfer all or part of the Property to Grantee.

REPRESENTATIONS

9. Buyer represents and warrants to Seller that if Buyer is other than a natural person or persons that it is a validly formed municipal corporation under the laws of the State of Washington; that it is in good standing in the state of its organization and in the state in which the Property is located; that it has all requisite authorizations to enter into this Agreement; and that the parties executing this Agreement on behalf of Buyer are duly authorized to so do. Buyer represents and warrants to Seller that it is not subject to any bankruptcy proceeding. Seller represents and warrants to Buyer that it is a validly formed corporation under the laws of the State of Delaware; that it is in good standing in the state of its organization and in the state in which the Property is located; that it is not subject to any bankruptcy proceeding; that it has all requisite corporate authorizations to enter into this Agreement; and that the parties executing this Agreement on behalf of Seller are duly authorized to so do. It shall be a condition of each party's obligations to Close this transaction that the representations and warranties of the other party contained herein are true and accurate as of Closing, provided, however that if one party waives such condition by proceeding to Close with knowledge that any of the second party's representations or warranties are inaccurate, the second party shall have no liability with respect to such inaccuracy known by the first party.

MISCELLANEOUS

10. (a) Any notice under this Agreement must be written. Notices must be either (i) hand-delivered; (ii) placed in the United States certified mail, return receipt requested, addressed to the recipient; (iii) deposited with a nationally recognized overnight delivery service, addressed to the recipient as specified below; or (iv) telecopied by facsimile transmission to the party at the telecopy number listed below, provided that such transmission is followed with a copy sent by overnight delivery or regular mail to the address specified below. Any notice is effective upon deposit with the U.S. Postal Service or with the overnight delivery service, as applicable; all other notices are effective when received. All notices shall be addressed to the address of the recipient indicated below the signature of such party below. Either party may change its address for notice by proper notice to the other party.

(b) If the approval of any governmental agency is required for the sale of Seller's interest (if any) in the Property, it is understood and agreed that Seller's obligations under this Agreement are conditioned upon obtaining such approval and that both parties shall use good faith efforts to obtain such approval. If such approval cannot be obtained by the Closing Date, Seller may elect to extend the Closing Date to a date no later than ninety (90) days after the original Closing Date. In the event said approval cannot be obtained by such extended date, either party may terminate this Agreement without liability to the other, except that the Earnest Money shall be refunded to Buyer and thereafter neither party shall have any obligation hereunder except those that expressly survive termination.

(c) Nothing in this Agreement shall prevent Seller from discontinuing service over any railroad line or lines by which rail service may be provided to the Property.

(d) If, prior to Closing, the Property or any portion thereof is destroyed or damaged, or becomes subject to a taking by virtue of eminent domain to any extent whatsoever then either party may terminate this Agreement by written notice to the other within thirty (30) days after notice of such fact (but in any event prior to Closing). If so terminated, the Earnest Money shall be refunded to Buyer and neither party shall have any further obligations hereunder except those that expressly survive termination. If not so terminated the parties shall proceed with the Closing.

(e) Time is of the essence of each of the party's respective obligations under this Agreement. Whenever a date specified in this Agreement falls on a Saturday, Sunday, or federal holiday, the date will be extended to the next business day.

(f) This Agreement and, to the extent executed, the Entry Agreement, contains the entire Agreement between Seller and Buyer with respect to the Property. Oral statements or prior written matters not specifically incorporated into this Agreement are superceded hereby. No variation, modification, or change to this Agreement or the Entry Agreement shall bind either party unless set forth in a document signed by both parties. No failure or delay of either party in exercising any right, power or privilege hereunder shall operate as a waiver of such party's right to require strict compliance with any term of this Agreement. The captions above the section numbers of this Agreement are for reference only and do not modify or affect this Agreement. Each party has had the opportunity to have counsel review this Agreement and the Entry Agreement and, therefore, no rule of construction that any ambiguities are to be resolved against the drafting party must not be employed to interpret this Agreement, the Entry Agreement or any closing document. This Agreement and the Entry Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute the same Agreement. This Agreement and the Entry Agreement are intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any term or provision of this Agreement or the Entry Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be held to be invalid or unenforceable, then such term or provision shall be ignored, and to the maximum extent possible, this Agreement and the Entry Agreement (to the extent executed) shall continue in full force and effect, but without giving effect to such term or provision.

(g) Buyer may not assign its interest in this Agreement or the Entry Agreement without Seller's prior written consent. The provisions of this Agreement and, to the extent executed, the Entry Agreement, shall bind Seller, the Buyer, and their heirs, executors, administrators, successors and assigns and shall inure to the benefit of the Seller, the Buyer and their heirs, executors, administrators, permitted successors and assigns. If Buyer is more than one person or entity, Buyer's obligations under this Agreement and, to the extent executed, the Entry Agreement, shall be joint and several.

(h) This Agreement relates only to land. Unless otherwise herein provided, any conveyance shall exclude Seller's railroad tracks and appurtenances thereto, Seller's buildings and any other improvements on the Property, all of which may be removed by Seller within 90 days following conveyance of the Property, and if not removed, shall be deemed abandoned by the Seller without obligation on the Seller's part and shall thereafter be and become the Property of the Buyer in place. Notwithstanding the foregoing, Seller shall not have to remove any improvements or fixtures for which an easement has been reserved hereunder or in the deed.

(i) Seller is not a foreign person as the term is used and defined in Section 1445 of the Internal Revenue Code of 1986, as amended and the regulations promulgated thereunder. Seller shall, upon request of Buyer, complete an affidavit to this effect and deliver it to Buyer on or before closing of said sale.

(j) The provisions of Sections 5-8 and Section 10 of this Agreement shall survive Closing and shall not be merged into the Deed or any other document delivered at Closing. The provisions of Section 9 of this Agreement shall survive Closing for a period of one year and shall not be merged into the Deed or any other document delivered at Closing. Nothing in this section shall alter any requirement in any other Section of this Agreement for the provisions of such section to be incorporated into the Deed, such as Sections 7 and 8.

(k) If any action at law or in equity is necessary to enforce or interpret this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, costs, and discovery or investigation expenses in addition to any other relief to which that party may be entitled.

(l) SELLER AND BUYER IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUITE OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO, THIS AGREEMENT.

ADMINISTRATIVE FEE


11. Buyer acknowledges that a material consideration for this agreement, without which it would not be made, is the agreement between Buyer and Seller, that the Buyer shall pay upon return of this Agreement signed by Buyer to Seller's Broker a processing fee in the amount of **\$2,000.00** over and above the agreed upon Purchase Price. Said fee shall be made payable to BNSF Railway Company by a separate check.

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IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement to be effective as of the Effective Date.

BUYER:

CITY OF TACOMA

By: 
Print Name: T.C. Broadnax
Title: City Manager

Buyer's Address:

747 Market Street
Tacoma, WA
Attn: _____
Fax: _____
Phone: _____

Buyer's SSN or EIN: _____

SELLER:

BNSF RAILWAY COMPANY

By: 
Print Name: Kurt Geringer
Title: General Director Real Estate

Seller's Address:

c/o Jones Lang LaSalle Brokerage, Inc.
4300 Amon Carter Blvd. Suite 100
Fort Worth, Texas 76155
Attn: Title and Escrow
Fax: 817-306-8129
Phone: 817-230-2600

1/12/2017
Date of Seller's Execution (Effective Date)

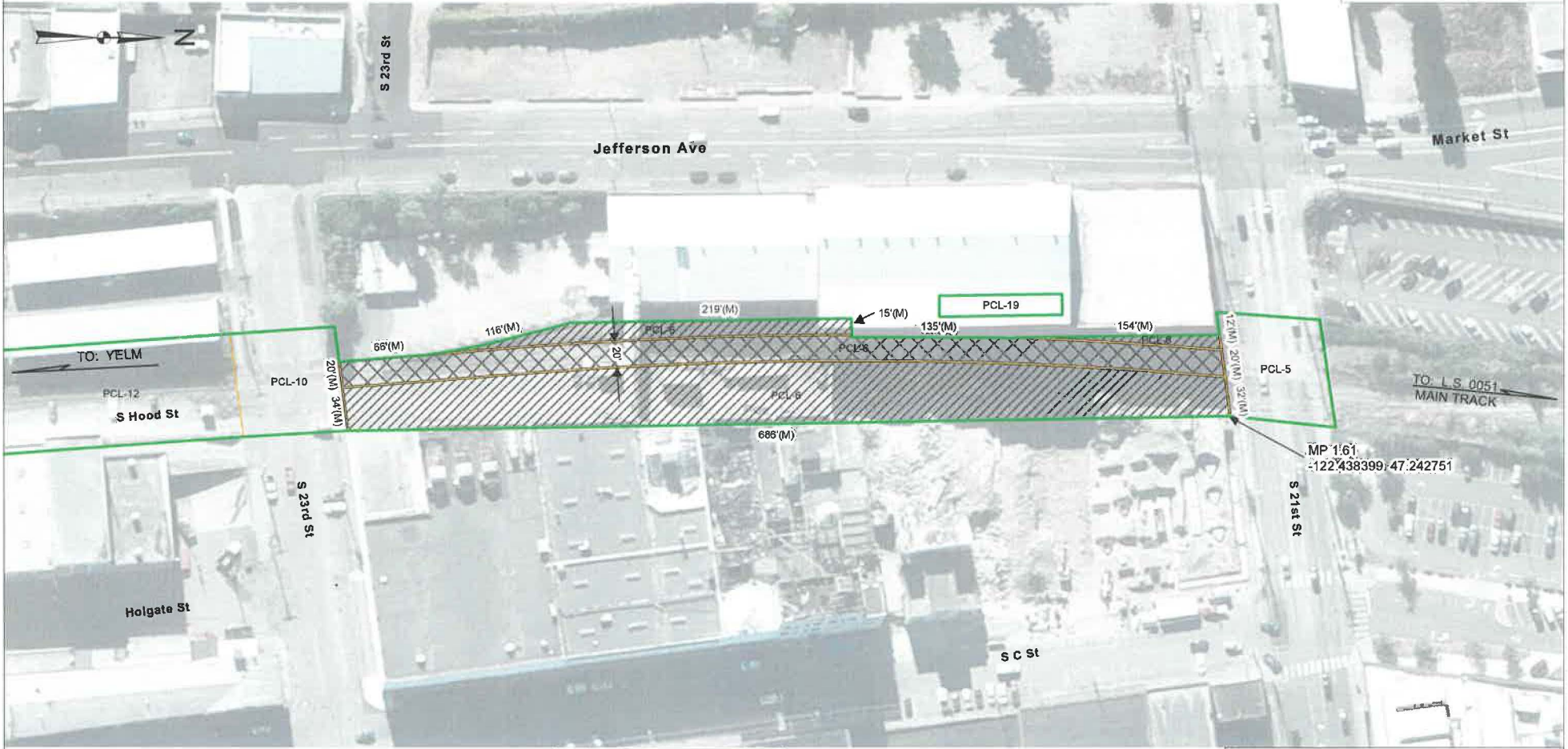
COORDINATE SYSTEM: WA_S

EXHIBIT "A"

SCALE: 1"= 75'+/-

JLL T1 #: -
BW Proj. No.: 12196.003
MAP REFERENCE:
STA. = 662213
RAW = N/A

This map used by BNSF RAILWAY COMPANY in the ordinary course of business, but it is subject to audit and should be used only with the expressed understanding of the BNSF. It makes no representations whatsoever about the quality, accuracy, errors or omissions relating to this map.



TO: CITY OF TACOMA
AT: TACOMA
PIERCE COUNTY,
WA

LEGEND:

- SALE AREA
- 20' BIKE PATH DONATION
- RIGHT OF WAY LINE
- PARCEL LINES
- TRACK



MEASUREMENTS BASED ON PROVIDED SURVEYS
(S) MEASUREMENTS TAKEN OFF SURVEY
(M) MEASUREMENT

NORTHWEST DIVISION
LAKEVIEW SUBDIVISION - L.S. 0400-1
VAL. SEC. 51037
NP RY WA-04, MAP S-03A
SEC. 37, T20N, R3E WILLM
JULY 12, 2016
MP 1.61

REVISION 3

DRAWN BY: JNC DRAWING NO. 58832

EXHIBIT "B"

NOTICE OF ASSIGNMENT

Goldfinch Exchange Company LLC

A Delaware limited liability company

40 Lake Bellevue Drive, Suite 275

Bellevue, WA 98005

425-646-4020

425-637-2873 fax

NOTICE OF ASSIGNMENT

TO: CITY OF TACOMA (“Buyer”)
and any assignees or exchange intermediaries of Buyer

You and BNSF Railway Company (“BNSF”) have entered into the Real Estate Purchase and Sale Agreement, dated _____, 2016 for the sale of the real property described therein. You are hereby notified that BNSF has assigned its rights as Seller, but not its obligations, to Goldfinch Exchange Company LLC for the purpose of effecting a tax deferred exchange under Internal Revenue Code Section 1031. This is an assignment of rights only and BNSF will deed the property directly to you.

ACKNOWLEDGED:

CITY OF TACOMA

Buyers name as it is to appear on deed

(PRINTED/TYPED)

By: _____

Print Name: _____

Title: _____

ENTRY AND CONFIDENTIALITY AGREEMENT

THIS ENTRY AND CONFIDENTIALITY AGREEMENT (“**Agreement**”) is made as of the Effective Date (defined below) by **BNSF RAILWAY COMPANY**, a Delaware corporation (“**Railroad**”) and _____ (“**Permittee**”).

WHEREAS, Permittee as Buyer and Railroad as Seller have entered into that certain Real Estate Purchase and Sale Agreement (the “**Sale Contract**”) dated as of _____ [Insert Effective Date of Purchase and Sale Agreement] concerning the property(ies) set forth therein (the “**Property**”). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Sale Contract.

WHEREAS, in order to evaluate the acquisition of the Property, Permittee has requested access to the Property to inspect the condition of the Property.

WHEREAS, Railroad is willing to permit such access only on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following:

1. RIGHT OF ENTRY. In accordance with the provisions of this Agreement, Railroad hereby grants Permittee a non-exclusive, revocable license, subject to all rights, interests, and estates of third parties including, without limitation, any leases, licenses, easements, liens, or other encumbrances, to enter the Property for the purpose of inspecting the Property for said potential acquisition and for no other purpose or use.

2. RESTRICTIONS CONCERNING ENTRY.

(a) Permittee shall enter the Property only during normal business hours and may inspect the condition thereof and conduct such surveys and to make such engineering and other inspections, tests and studies as Permittee shall determine to be reasonably necessary, all at Permittee's sole cost and expense. Notwithstanding the foregoing, Permittee shall not conduct or allow any physically intrusive testing of, on or under the Property and under no circumstances shall Permittee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Property unless Permittee has obtained prior written approval from Railroad, which approval may be withheld in Railroad's sole discretion.

(b) Permittee agrees to give Railroad notice at least five (5) business days prior to any such entry, examinations or surveys and Railroad has the right to be present during any such entry, examination or survey. Such notice shall be made to Railroad's Roadmaster at _____ [fill in address and phone # of Roadmaster]. Permittee agrees to conduct all examinations and surveys of the Property in a manner that will not interfere with the operations or improvements of Railroad or other lessees, Permittees or license holders and in such a manner and not at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Railroad, or the safe operation and activities of Railroad.

(c) Permittee shall comply with, and cause its agents to comply with, any and all laws, statutes, regulations, ordinances, rules, orders, common law, covenants or restrictions (“**Legal Requirements**”) applicable to the Property and their activities thereon and any and all safety requirements of Railroad and if ordered to cease any activities upon the Property by Railroad’s personnel Permittee shall immediately do so. Notwithstanding the foregoing right of Railroad, the parties agree that Railroad has no duty or obligation to monitor Permittee’s activities on the Property to determine the safe nature thereof, it being solely the Permittee’s responsibility to ensure that Permittee’s activities on the Property are safe. Neither the exercise nor failure by Railroad to exercise any rights granted in this Section will alter the liability allocation provided by this Agreement.

(d) Permittee shall not harm or damage the Property or cause any claim adverse to Railroad.

(e) Permittee shall promptly reimburse Railroad for any additional costs/expenses incurred by Railroad in connection with such safety requirements (including, but not limited to, furnishing a flagman if Railroad determines that furnishing a flagman is necessary during any such examinations or surveys).

(f) Permittee shall not contact any governmental or quasi governmental authorities concerning the Property without Railroad’s prior written consent and Railroad shall have the right to be present during any such contacts.

(g) Permittee will not have more than 5 persons present on any individual Property at a one time. Any officer, employee, agent, contractor, consultant, lender, surveyor or attorney entering the Property on behalf of or at the direction of Permittee, shall be deemed agents of Permittee for purposes of this Agreement.

3. TERM. This Agreement shall commence on the date Railroad executes this Agreement as indicated below its signature (the “**Effective Date**”) and shall be in effect until the earlier of the date the Sale Contract is terminated pursuant to its terms, or the Closing Date. No expiration or termination of this Agreement shall release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events occurring prior to the date of termination or expiration.

4. INSURANCE. Permittee shall obtain and maintain the insurance required below:

A. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$1,000,000 each occurrence and an aggregate limit of at least \$ 2,000,000. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
 - ◆ Any and all vehicles owned, used or hired
- C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:
- ◆ Permittee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
 - ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

Other Requirements:

Permittee agrees to waive its right of recovery against Railroad and Indemnitees (defined below) for all Liabilities (defined below) that could be insured against by the insurance required to be maintained hereby. In addition, its insurers, through the terms of the policy or policy endorsement, must waive their right of subrogation against Railroad for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Permittee further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under Permittee's care, custody or control.

All policy(ies) required above (excluding Workers Compensation) shall include a severability of interest endorsement and Railroad [*and Jones Lang LaSalle Global Services, Inc.*] shall be named as an additional insured with respect to work performed under this agreement. Severability of interest and naming Railroad [*and Jones Lang LaSalle Global Services, Inc.*] as additional insured shall be indicated on the certificate of insurance.

Prior to commencing the Work or entering the property, Permittee shall furnish to Railroad an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. In the event of a claim or lawsuit involving Railroad arising out of this agreement, Permittee will make available any required policy covering such claim or lawsuit.

Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Permittee's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Permittee shall not be deemed to release or diminish the liability of Permittee including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.

For purposes of this section, **Railroad** shall mean "Burlington Northern Santa Fe Corporation", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

5. COMPLETION OF INSPECTION. Upon completion of any inspection by Permittee or its agents on the Property or upon the expiration or termination of this Agreement, whichever shall occur first, Permittee shall, at its sole cost and expense:

- (a) remove all of its equipment from the Property;
- (b) report any damage to the Property arising from, growing out of, or connected with Permittee's entry upon the Property and restore the Property to their condition immediately prior to such entry by Permittee or its agents;
- (c) remedy any unsafe conditions on the Property created by Permittee or its agents; and

6. INDEMNITY. TO THE FULLEST EXTENT PERMITTED BY LAW, PERMITTEE SHALL INDEMNIFY, RELEASE, DEFEND AND HOLD HARMLESS RAILROAD AND RAILROAD'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

- (a) ANY BREACH OF THIS AGREEMENT BY PERMITTEE INCLUDING, BUT NOT LIMITED TO, PERMITTEE'S OBLIGATION TO COMPLY AND CAUSE ITS AGENTS TO COMPLY WITH LEGAL REQUIREMENTS INCLUDING, BUT NOT LIMITED TO, WORKERS' COMPENSATION AND CERCLA,
- (b) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS AGREEMENT,
- (c) PERMITTEE'S OR ITS AGENTS ACTIVITIES UPON OR USE OF ANY OF THE PROPERTY, OR
- (d) ANY ACT OR OMISSION OF PERMITTEE OR PERMITTEE'S AGENTS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH PERMITTEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.

7. CONFIDENTIALITY. Except to the extent otherwise required by Legal Requirements, Permittee shall not disclose to any third parties any information Permittee discovers or obtains concerning the Property as a result of any inspections, surveys, tests or other activities conducted with respect to the Property ("**Confidential Information**") including, but not limited to, any oral, electronic or written information provided by Railroad or on Railroad's behalf. Notwithstanding the foregoing, Buyer may disclose Confidential Information to those of Buyer's agents directly involved with Permittee with respect

to the acquisition of the Property, provided such individuals and firms have agreed to maintain the confidentiality of Confidential Information pursuant to this Agreement and provided further that Permittee shall be liable hereunder for any breach by such parties of such obligation. Confidential Information shall not include information that is or becomes in the public domain other than as a result of a breach by Permittee or its agents. If Permittee or any of its agents receive a request to disclose any part of the Confidential Information, Permittee shall (a) notify Railroad immediately of the existence, terms and circumstances of such request, (b) consult with Railroad on the advisability of taking legally available steps to resist or narrow such requests, and (c) if disclosure of such Confidential Information is required to prevent Permittee being held in contempt or subject to other penalty, shall (i) furnish only such information as is legally required to be so disclosed, and (ii) use its best efforts to obtain an order or other reliable assurance that confidential treatment will be afforded to the disclosed Confidential Information. If the transaction contemplated in the Sale Contract does not close for any reason then Permittee shall, promptly upon Railroad's request, forward to Railroad all Confidential Information without keeping any copies thereof.

8. DEFAULT. Permittee acknowledges and agrees that in the event of a breach of this Agreement, Railroad would be irreparably harmed and could not be made whole by monetary damages. Accordingly, in addition to any other remedy to which it may be entitled at law, in equity or under this Agreement, Railroad shall be entitled to injunctive relief (without the posting of any bond and without proof of actual damages) to prevent such breach and/or to compel specific performance. Permittee and its agents shall not oppose the granting of such relief. In the event of any breach by Permittee or its agents under this Agreement, Railroad may terminate this Agreement and shall be entitled to any other remedy available at law, in equity or under this Agreement. No failure or delay of either party in exercising any right, power or privilege hereunder shall operate as a waiver of such party's right to require strict compliance with any term of this Agreement.

9. GOVERNING LAW. JURY WAIVER. All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the laws of the State of Texas without regard to principles of conflicts of law. Any action relating to this Agreement may be brought in the courts of Tarrant County, Texas, Permittee hereby consenting to the jurisdiction and venue of such courts. PERMITTEE AND RAILROAD IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUITE OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO, THIS AGREEMENT.

10. SALE CONTRACT. The provisions of this Agreement shall be deemed incorporated into the Sale Contract, shall survive the closing thereunder and shall not be merged into the deed conveying the Property or any other closing document, provided, however that nothing in the Sale Contract shall limit or modify any remedy available to Railroad under this Agreement for a breach by Permittee of its obligations under this Agreement. All notices hereunder shall be delivered in the manner set forth in the Sale Contract.

IN WITNESS WHEREOF, this Agreement has been duly executed as of the Effective Date.

PERMITTEE:

By: _____
Print Name: _____
Title: _____

RAILROAD:

BNSF RAILWAY COMPANY

By: _____
Print Name: _____
Title: _____

Date of Execution by Railroad (Effective Date)