

**CITY OF TACOMA  
DEPARTMENT OF PUBLIC UTILITIES  
LIGHT DIVISION  
REAL ESTATE PURCHASE AND SALE AGREEMENT  
AGREEMENT NO. A3244**

**Reference No.: P2019-183**

**Seller: City of Tacoma, Department of Public Utilities, Light Division, (d.b.a. Tacoma Power)**

**Buyer: BNSF Railway Company  
Abbreviated**

**Legal Description: Portion of Govt Lot 2 in S16, T10N, R2W, W.M., Cowlitz Co., WA**

**County: Cowlitz**

**Tax Parcel No.: WK1601006**

This REAL ESTATE PURCHASE AND SALE AGREEMENT (the “**Agreement**”) is entered into as of September 17, 2021 (the “**Agreement Date**”) between the **CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION (d.b.a. Tacoma Power)**, a first class municipal corporation (“**Seller**”), and **BNSF RAILWAY COMPANY**, a Delaware Corporation, (“**Buyer**”).

RECITALS

WHEREAS, Seller is the owner of certain real property identified herein as the Property as more particularly described in Section 1 below.

WHEREAS, Buyer is developing real property that abuts the Property and desires to purchase from Seller, and Seller desires to sell to Buyer, the Property on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

AGREEMENT

1. Real Property. Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller, subject to the terms and conditions set forth in this Agreement, the real property located in the County of Cowlitz and State of Washington, more particularly described as follows:

{See attached legal description **Exhibit “A”**}

Also known as Cowlitz County Assessor Tax Parcel No. WK1601006 (the “**Property**”).

2. Deposit. Within ten (10) business days of the Agreement Date, Buyer shall deliver to ~~Chicago Title Company of Washington at 1111 Main Street, Suite 200, Vancouver, Washington 98660~~ <sup>\*</sup> (the “**Title Company**”), as escrow agent (the “**Escrow Agent**”) for the Closing of this transaction, an earnest money deposit in the amount of **FOUR THOUSAND SIXTY AND NO/100 DOLLARS (\$4,060.00) (the “Deposit”)** as part payment of the purchase price of the Property. The Deposit will be held by the Title Company for the benefit of the parties in an interest-bearing account pursuant to the terms of this Agreement. Any interest that accrues on the Deposit will be for the benefit of Buyer; provided, however, that if Buyer forfeits the Deposit to Seller pursuant to the terms of this Agreement, then all interest accrued on the Deposit will be paid to Seller. Unless otherwise provided in this Agreement, the Deposit and any accrued interest shall be applied to the Purchase Price. If either party becomes entitled to the Deposit upon termination of this Agreement, the parties shall deliver an instruction letter (the “**Deposit Disbursement Letter**”) to the Escrow

\* - Fidelity National Title 09/30/2021 10/04/2021

Agent directing disbursement of the Deposit to the entitled party; however, the Deposit Disbursement Letter shall not be required if Buyer terminates this Agreement on or before the end of the Feasibility Study Period. If either party fails or refuses to sign or deliver the Deposit Disbursement Letter, the entitled party may pursue a court action for specific performance and shall be entitled to recover all reasonable attorney fees and court costs incurred should it be deemed the prevailing party in such action.

3. Purchase Price. The total purchase price for the Property (**the "Purchase Price"**) will be **EIGHTY-ONE THOUSAND TWO HUNDRED and No/100 U.S. Dollars (\$81,200.00)**, to which the Deposit shall be a fully applicable part. The Purchase Price, including the Deposit, will be disbursed by the Escrow Agent to Seller by check or wire transfer, at Seller's option, at Closing.

4. Title to Property.

4.1 Conveyance. At Closing, Seller shall convey to Buyer fee simple title to the Property by a duly executed and acknowledged quit claim deed (**the "Deed"**) substantially in the form of **Exhibit "B"** attached hereto and by this reference incorporated herein.

4.2 Preliminary Commitment. Upon execution of this Agreement, Seller authorizes Buyer to order a preliminary commitment, at Buyer's expense, and at Buyer's option, for either a standard coverage owner's policy or an ALTA form of extended owner's coverage policy of title insurance in the full amount of the Purchase Price to be issued by the Title Company and accompanied by copies of all documents referred to in the commitment (**the "Preliminary Commitment"**).

4.3 Condition of Title. If Buyer receives a Preliminary Commitment pursuant to Section 4.2, and as may be amended by the Title Company prior to Closing, Buyer shall advise Seller by written notice (**the "Buyer's Title Notice"**) which encumbrances to title, if any, are disapproved by Buyer (**the "Disapproved Encumbrances"**) within ten (10) business days of receipt of the Preliminary Commitment or Title Company amendment thereto. All monetary encumbrances other than non-delinquent ad valorem property taxes will be deemed to be disapproved. Seller will have ten (10) business days after receipt of the Buyer's Title Notice to give Buyer notice that (i) Seller will remove Disapproved Encumbrances, or (ii) Seller elects not to remove Disapproved Encumbrances (**the "Seller's Title Notice"**). If Seller fails to give Buyer the Seller's Title Notice before the expiration of the ten (10) day period, Seller will be deemed to have elected not to remove the Disapproved Encumbrances. Notwithstanding anything to the contrary in this Agreement, Seller shall remove from title on or before the Closing Date all monetary encumbrances other than those approved by Buyer. If Seller elects not to remove any Disapproved Encumbrances, Buyer will have ten (10) business days to notify Seller of Buyer's election either to proceed with the purchase and take the Property subject to those encumbrances, or to terminate this Agreement (**the "Buyer's Election Notice"**). If Buyer elects to terminate this Agreement pursuant to this section, the escrow will be terminated, the Deposit will be returned immediately to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided for in this Agreement. Buyer shall be responsible for any costs of terminating the escrow and any cancellation fee for the Preliminary Commitment.

4.4 Title Policy. At Closing and at Buyer's expense, Buyer shall cause the Title Company to issue to Buyer, at Buyer's option, either a standard coverage owner's policy or an ALTA form of extended owner's coverage policy insuring Buyer's title to the Property in the full amount of the Purchase Price, subject only to the Permitted Encumbrances (**the "Title Policy"**). The Title Policy must be dated as of the Closing Date. Buyer shall be responsible for all costs, including any additional survey work needed, for extended

coverage that exceeds the cost of the standard coverage owner's policy and for any endorsements requested by Buyer.

5. Conditions to Closing. The satisfaction of each of the following at or before Closing shall be a condition of Closing:

5.1 Tacoma Public Utility Board and Tacoma City Council Approval. This Agreement, and the transaction contemplated hereby, must be duly approved by the Tacoma Public Utility Board and the Tacoma City Council prior to Closing (**the Seller Approvals**). If the Seller Approvals are not obtained, this Agreement will terminate, and the Deposit, less any costs advanced or committed for Buyer as authorized herein, or other costs subsequently agreed to in writing, will be returned to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided for in this Agreement. Nothing in this Paragraph 5.1 will obligate Seller to obtain Tacoma Public Utility Board or City Council approval beyond the ordinary course of City of Tacoma and Department of Public Utilities procedures.

5.2 Buyer's Indemnification. Buyer agrees to assume all liability for and to defend, indemnify and save Seller harmless from all liability and expenses (including reasonable costs and attorney fees) in connection with all claims, suits and actions of every name, kind and description brought against Seller or its agents or employees by any person or entity as a result of or on account of injuries or damages to persons, entities and/or property received or sustained, arising out of, in connection with, or as a result of the acts or omissions of Buyer, or its agents or employees in exercising its rights under this Agreement as occurring prior to Closing, except for claims caused by Seller's sole negligence.

5.3 Buyer Feasibility Study. Buyer will have until one hundred twenty (120) business days from the Agreement Date (**the "Feasibility Study Period"**) to conduct a review of the Property and satisfy itself with respect to the condition of and other matters related to the Property and its suitability for Buyer's intended use (**the "Feasibility Study"**). The Feasibility Study may include all inspections and studies Buyer deems reasonably necessary or desirable. Buyer and Buyer's agents, representatives, consultants, architects and engineers will have the right, from time to time, from and after the Agreement Date to enter onto the Property and make borings, drive test piles and conduct any other reasonable tests and studies that may be necessary or desirable to ascertain the condition and suitability of the Property for Buyer's intended use. Such tests and inspections are to be performed in a manner not disruptive to the operation of the Property. Buyer shall protect, defend and indemnify Seller from and against any construction or other liens or encumbrances arising out of or in connection with its exercise of this right of entry and shall cause any such liens or encumbrances to be promptly released. In the event Buyer does not complete the purchase for any reason whatsoever, Buyer shall promptly provide to Seller, and at no cost to Seller, complete copies of all third-party reports obtained by Buyer pursuant to this Section 5.3, which reports shall be provided to Seller AS-IS, without representation or warranty whatsoever. During the Feasibility Study Period, Buyer may apply with the appropriate governmental authorities to obtain necessary governmental approvals, variances, or permits for Buyer's contemplated use of the Property, and Seller will cooperate with Buyer's reasonable efforts to obtain such approvals, variances, or permits.

5.4 Non-Suitability. During the Feasibility Study Period, Buyer will have the right to terminate this Agreement if, in Buyer's good faith judgment, the Property is not suitable for Buyer's intended use or for no stated reason. Buyer's right to terminate

must be exercised by delivering written notice of its election (**the “Termination Notice”**) to Seller on or before the expiration of the Feasibility Study Period. In the event Buyer does not complete the purchase, Buyer shall return the Property as near as is practicable to its original condition. If Buyer terminates this Agreement pursuant to this section, the Deposit, less any costs advanced or committed for Buyer, will be returned to Buyer, this Agreement will terminate, and Seller and Buyer will be released from all further obligation or liability hereunder, except as otherwise specified by this Agreement and except for Buyer’s obligations to indemnify Seller under this section. Failure by Buyer to deliver to Seller the Termination Notice on or before the expiration of the Feasibility Study Period, whether or not an inspection has been carried out, shall deem Buyer to have waived this contingency, in which case the Deposit shall be non-refundable to Buyer except in the event of Seller’s default or as otherwise expressly set forth herein (for example, Section 9), but applicable to the Purchase Price at Closing.

6. Condition of the Property.

6.1 “As-Is”. Buyer acknowledges that Buyer is purchasing and shall acquire the Property under this Agreement in its physical condition existing at the date of Closing, “AS-IS, “WHERE IS” AND WITH ALL FAULTS, INCLUDING, WITHOUT LIMITATIONS, THE CONDITION OR STABILITY OF THE SOILS OR GROUND WATERS, THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON OR UNDER THE PROPERTY, THE SUITABILITY FOR ANY CONSTRUCTION OR DEVELOPMENT, ZONING AND SIMILAR MATTERS, AND SOLELY IN RELIANCE ON BUYER’S OWN INVESTIGATION, EXAMINATION, INSPECTION, ANALYSIS, AND EVALUATION OF THE PROPERTY. As of the Agreement Date, Seller has made no representations or warranties, express or implied, regarding the Property, excluding those representations and warranties expressly provided in this Agreement. Seller shall surrender the Property in as good condition, except for normal wear and tear, as exists on the Agreement Date. Seller agrees that, between the Agreement Date and the Closing Date, it will not damage nor commit waste on the Property nor, without the written consent of Buyer, enter into any lease or other agreement that would bind Buyer or the Property after Closing.

6.2 Release. Except with respect to Seller’s representations and warranties expressly provided in this Agreement, Buyer releases Seller and its directors, officers, employees, and agents from any and all statutory, common law, and other claims, obligations, causes of action, losses, damages, liabilities, costs and expenses (including without limitation attorney fees), unknown to Seller, that Buyer may have against Seller arising from, in whole or in part, or related in any way to the physical condition of the Property (including conditions not readily apparent and the presence of any material classified under state or federal law or regulations as hazardous). Except for undisclosed releases of hazardous materials or conditions, or Seller misrepresentation, Buyer assumes all liability and responsibility for any hazardous materials on or under the property and all costs for remediation of same, and shall not seek reimbursement from Seller therefore.

6.3 Inspections. Buyer agrees that it will rely on its own inspections and evaluations of the Property, with the exception of written documentation, including, but not limited to any disclosures required by law, provided to it by Seller, to determine the suitability of the Property for Buyer’s intended use.

7. Closing. This transaction will be closed in escrow by the Title Company acting as escrow agent (**the “Escrow Agent”**). The Closing will be held at the office of the Title Company on that date that is thirty (30) business days after Seller confirms in writing to Buyer (**the “Seller Approval Notice”**) that Seller has received the Seller Approvals (**the “Closing Date”**). Provided the Seller

Approvals have been obtained, Buyer may select any earlier Closing Date by providing Seller with at least fifteen (15) business days' prior written notice (**the "Early Closing Notice"**). If Closing does not occur on or before the Closing Date, or any later date mutually agreed to in writing by Seller and Buyer, the Escrow Agent will immediately terminate the escrow, forward the Deposit to the party entitled to receive it as provided in this Agreement and return all documents to the party that deposited them. When notified by the Escrow Agent, Buyer and Seller will deposit with the Escrow Agent without delay all instruments and monies required to complete the transaction in accordance with this Agreement. "**Closing**" is defined as the occurrence of all of the following events: 1) all documents required to close the transaction are executed; 2) the Title Company has irrevocably committed to issue the Title Policy (including all endorsements required by Buyer); 3) the sale proceeds are disbursed to the Seller; and 4) legal title passes to the Buyer.

8. Closing Costs and Prorations. Buyer shall pay the premium for the Title Policy, state of Washington real estate excise taxes applicable to the sale, if any, the document recording fees, and the Escrow Agent's escrow fee. Property taxes and assessments for the current year, and water and other utility charges, if any, shall be prorated as of the Closing Date unless otherwise agreed. Seller is a property tax exempt organization pursuant to R.C.W. 84.36.010, and therefore property taxes will only be due from Buyer for its ownership from and after the Closing Date.

9. Casualty Loss. Seller shall promptly notify Buyer of any event prior to the Closing Date which causes damage to or destruction of any portion of the Property. If Buyer and Seller cannot come to an agreement regarding any such damage to or destruction of the Property, including the settlement of any insurance claims, then Buyer and Seller will each have the right to terminate this Agreement by giving written notice of termination to the other party within twenty (20) business days after receipt of actual notice of such casualty loss (**the "Casualty Termination Notice"**). Upon exercise of such termination election by either party and delivery of the Casualty Termination Notice, this Agreement will terminate, and the Deposit will be returned to Buyer.

10. Possession. Seller shall deliver possession of the Property to Buyer on the Closing Date. Seller shall remove any and all personal property belonging to Seller from the Property on or before the Closing Date, unless any items are specifically authorized to remain in writing by Buyer.

11. Events of Default. In the event Buyer fails, without legal excuse to complete the purchase of the Property, then the Deposit shall be forfeited to Seller as the sole and exclusive remedy available to Seller for such failure. In the event Seller fails, without legal excuse, to complete the sale of the Property, Buyer shall be entitled to immediate return of the Deposit, and may pursue any remedies available to it in law or equity, including specific performance.

12. Notices. Any notice under this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service, given by mail or e-mail, with electronic delivery receipt requested (provided that a duplicate copy of any notices delivered by e-mail shall also be delivered via a recognized overnight courier service). Any notice delivered via facsimile (fax) transmission shall not be effective. All notices must be addressed to the parties at the following addresses, or at such other addresses as the parties may from time to time direct in writing:

Seller: Tacoma Public Utilities – Real Property Services  
ABS – 2<sup>nd</sup> Floor  
3628 S. 35<sup>th</sup> Street  
Tacoma, WA 98409  
Attention: Greg Muller, Real Estate Officer  
e-mail: [gmuller@cityoftacoma.org](mailto:gmuller@cityoftacoma.org)  
Telephone: 253.606.4688

Buyer: BNSF Railway Company  
2650 Lou Menk Dr, MOB-2  
Fort Worth, Texas 76131

Attention: Charlie Keltner  
e-mail: [Charles.Keltner@BNSF.com](mailto:Charles.Keltner@BNSF.com)  
Telephone: 817.352.6464

Any notice sent on a business day will be deemed to have been given, when personally delivered on a business day, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit in the U.S. mail, and if delivered by e-mail, the same day as verified by the electronic delivery receipt. If notice is sent on a non-business day, the preceding periods commence as of the first business day thereafter.

13. Counterparts; Electronic Signatures. This Agreement may be executed in any number of counterparts and by different parties hereto, each of which counterpart when so executed shall have the same force and effect as if that party had signed all other counterparts. DocuSign electronic signatures shall be fully binding and effective for all purposes.

14. Brokers and Finders. In the event any broker or other person makes a claim for a commission or finder's fee based upon the transaction contemplated by this Agreement, the party through whom said broker or other person makes its claim shall indemnify and hold harmless the other party from said claim and all liabilities, costs and expenses related thereto, including reasonable attorney fees, which may be incurred by such other party in connection with such claim. This indemnity shall survive the Closing of this transaction.

15. Professional Advice. Seller and Buyer hereby acknowledge that it may be advisable for either or both parties to obtain independent legal, tax or other professional advice in connection with this transaction, as the terms and conditions of this Agreement affect the parties' rights and obligations. The parties agree that they have satisfied themselves that they understand the terms and conditions of this sale and have accepted full responsibility to seek such professional advice as they deem necessary.

16. Amendments. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

17. Continuation and Survival of Representations and Warranties. All representations and warranties by the respective parties contained in this Agreement or made in writing pursuant to this Agreement are intended to and will remain true and correct as of Closing, will be deemed to be material, and will survive the Closing Date for a period of six (6) months whereupon they shall terminate. Such representations and warranties, however, are not assignable and do not run with the land, except as may be expressly provided herein or contained in a written instrument signed by the party to be charged.

18. Governing Law. This Agreement will be governed and construed in accordance with the laws of the state of Washington without recourse to any principles of conflict of laws.

19. Attorney Fees. If either party fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in the dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights under this Agreement, including without limitation, court costs and reasonable attorney fees incurred in connection with any federal, state or bankruptcy proceeding.

20. Time of the Essence. Time is of the essence of this Agreement and of all acts required to be done and performed by the parties hereto.

21. FIRPTA. The Escrow Agent is instructed to prepare a certification or equivalent that Seller is not a "foreign person" within the meaning of the Foreign Investment in Real Property Tax Act ("FIRPTA"), and Seller agrees to sign this certification. If Seller is a "foreign person" as the same

is defined by FIRPTA, and this transaction is not otherwise exempt from FIRPTA, the Escrow Agent is instructed to withhold and pay the required amount to the Internal Revenue Service.

22. Waiver. Neither Seller's nor Buyer's waiver of the breach of any covenant under this Agreement will be construed as a waiver of the breach of any other covenants or as a waiver of a subsequent breach of the same covenant.

23. Nonmerger. The terms and provisions of this Agreement, including without limitation, all indemnification obligations, will not merge in, but will survive the Closing of the transaction contemplated under this Agreement.

24. Assignment. Except as outlined below in Section 25, Buyer shall not otherwise assign this Agreement without Seller's prior written consent, which consent may not be unreasonably withheld or delayed.

25. Tax-Deferred Exchange Under I.R.C. § 1031. Buyer may assign its rights (but not its obligations) under this Agreement to Goldfinch Exchange Company LLC, an exchange intermediary, in order for Buyer to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Buyer shall provide Seller with a **"Notice of Assignment,"** attached hereto as **Exhibit "C"**, and Seller shall execute an acknowledgement of receipt of such notice. Seller agrees to fully cooperate with Buyer to permit Buyer to accomplish a tax-deferred exchange, but at no additional expense or liability to Seller for such tax-deferred exchange, and with no delay in the Closing. Seller's cooperation will include, without limitation, executing such supplemental documents as Buyer may reasonably request. Seller agrees that Buyer may use its standard form of "Assignment of Rights," attached hereto as **Exhibit "C-1"**, in connection with any tax-deferred exchange. Seller's cooperation as specified herein shall not be interpreted as a representation or guaranty that the Property or assignment of rights will satisfy the requirements of the contemplated tax-deferred exchange. Further, Buyer acknowledges that Seller Approvals and the timing of said Seller Approvals are entirely discretionary with the Tacoma Public Utility Board and Tacoma City Council, and Seller therefore makes no representations or guaranties that the Seller Approvals shall meet any timing requirements of the contemplated tax-deferred exchange.

26. Negotiation and Construction. This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.

27. Additional Acts. Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by any party hereto, the parties agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered, any and all such further acts, deeds and assurances, which may reasonably be required to give effect to the Agreement contemplated herein.

28. Survival. Any terms, conditions, or provisions of this Agreement which by their nature should survive shall survive the Closing of the sale.

29. Waiver of RCW 64.06 Disclosure. Buyer and Seller acknowledge that the Property may constitute "Commercial Real Estate" or "Residential Real Property" as defined in RCW 64.06.005. Buyer waives receipt of the seller disclosure statement required under RCW 64.06 for transactions involving the sale of such real property, except for the section entitled "Environmental." The Environmental section of the seller disclosure statement (**the "Seller Disclosure Statement"**) shall be provided to Buyer within five business days after the Agreement Date. Buyer shall within three business days thereafter either deliver written notice to Seller to rescind the Agreement (**the "Buyer Notice to Rescind"**), else the Seller Disclosure Statement will be deemed approved and accepted by Buyer. If Buyer rescinds this Agreement under this Section 28, the Deposit, but less any costs advanced or committed for Buyer as authorized herein, or other costs subsequently

agreed to in writing, will be returned immediately to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided for in this Agreement.

30. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the purchase and sale of the Property, and supersedes all prior agreements and understandings, oral or written, between the parties relating to the subject matter of this Agreement.


**{Remainder of Page Intentionally Left Blank}**




IN WITNESS WHEREOF, the parties have executed this Agreement as of the Agreement Date set forth above.

SELLER:

TACOMA POWER

 08/04/2021  
Date  
Jackie Flowers,  
Director of Utilities

 08/04/2021  
Date  
Chris Robinson,  
Power Superintendent

Approved as to form:


Michael W. Smith 07/30/2021  
Date  
Michael W. Smith,  
Deputy City Attorney


City of Tacoma Review

Christopher Mattson  
Chris Mattson,  
Power Section Manager

Matt Bleich  
Matt Bleich,  
Power Section Assistant Manager


Travis Nelson  
Travis Nelson,  
Power Relicensing Coordinator

  
Ron Ayers,  
Tacoma Power Chief Surveyor

  
Andrew Cherullo,  
Director of Finance

BUYER:

BNSF RAILWAY COMPANY

By:  9/10/21  
Date

Charles Keltner, Senior Manager Real Estate  
Name and Title

**EXHIBIT "A"**  
**Property Legal Description**

THAT PORTION OF GOVERNMENT LOT 2 OF SECTION 16, TOWNSHIP 10 NORTH, RANGE 2 WEST, W.M., IN COWLITZ COUNTY, WASHINGTON, LYING WESTERLY OF THE WESTERLY RIGHT OF WAY LINE OF THE NORTHERN PACIFIC RAILROAD.

TOGETHER WITH AND SUBJECT TO EASEMENTS, COVENANTS, CONDITIONS, AND RESTRICTIONS OF RECORD.

**EXHIBIT "B"**

**After Recording Mail To:**

TACOMA PUBLIC UTILITIES  
ABS 2<sup>nd</sup> Floor  
3628 S. 35<sup>th</sup> Street  
Tacoma, WA 98409  
Attn: Real Property Services

**CITY OF TACOMA  
DEPARTMENT OF PUBLIC UTILITES  
QUIT CLAIM DEED NO. D6775**

Reference No. P2019-183  
Grantor: City of Tacoma, Department of Public Utilities, Light  
Division (d.b.a. Tacoma Power)  
Grantee: BNSF Railway Company  
Abbr. Legal Description: Portion of Govt Lot 2 in S16, T10N, R2W, W.M., Cowlitz  
Co., WA.  
Tax Parcel No: WK1601006

The Grantor, CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION (d.b.a Tacoma Power), a Washington first class municipal corporation, for and in consideration of Eighty One Thousand Two Hundred and No/100 U.S. Dollars (\$81,200.00), hereby conveys and quit claims to BNSF Railway Company, a Delaware corporation, as Grantee, all its interest in the following described real property situate in Cowlitz County, State of Washington, to-wit:

THAT PORTION OF GOVERNMENT LOT 2 OF SECTION 16, TOWNSHIP 10 NORTH, RANGE 2 WEST, W.M., IN COWLITZ COUNTY, WASHINGTON, LYING WESTERLY OF THE WESTERLY RIGHT OF WAY LINE OF THE NORTHERN PACIFIC RAILROAD.

TOGETHER WITH AND SUBJECT TO EASEMENTS, COVENANTS, CONDITIONS, AND RESTRICTIONS OF RECORD.

Also known as Cowlitz County Assessor Tax Parcel WK1601006.  
P2019-183/D6775

P2019-183/D6775

Authorized by City Council Resolution No. \_\_\_\_\_ adopted \_\_\_\_\_, at  
the request of Public Utility Board Resolution No. U- \_\_\_\_\_ adopted  
\_\_\_\_\_.

IN WITNESS WHEREOF, said corporation has caused this instrument to be executed by  
its proper officers on \_\_\_\_\_.

CITY OF TACOMA

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

Attest:

\_\_\_\_\_  
City Clerk

**Accepted by Grantee**

**BNSF RAILWAY COMPANY, a Delaware  
Corporation**

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

\_\_\_\_\_  
Name and Title

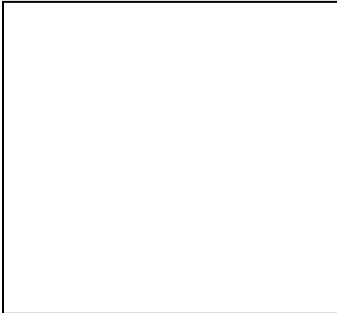
P2019-183/D6775

STATE OF WASHINGTON   )  
  )  
COUNTY OF PIERCE         )

On \_\_\_\_\_, before me personally appeared Victoria Woodards, to me known to be the Mayor of the City of Tacoma, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of the City of Tacoma, for the uses and purposes herein mentioned, and on oath stated that she was authorized to execute said instrument and that the seal affixed is the corporate seal of the City of Tacoma.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Place Notary Seal in Box



\_\_\_\_\_  
Notary Public in and for the State  
of Washington  
Residing in \_\_\_\_\_

P2019-183/D6775

**CITY OF TACOMA, DEPT. OF PUBLIC UTILITIES**

APPROVED:

\_\_\_\_\_  
Jackie Flowers, Date  
Director of Utilities

AUTHORIZED:

\_\_\_\_\_  
Chris Robinson, Date  
Power Superintendent

REVIEWED:

\_\_\_\_\_  
Chris Mattson, Date  
Power Section Manager

\_\_\_\_\_  
Matt Bleich, Date  
Power Section Assistant Manager

\_\_\_\_\_  
Travis Nelson, Date  
Power Relicensing Coordinator

\_\_\_\_\_  
Ron Ayers, Date  
Tacoma Power Chief Surveyor

\_\_\_\_\_  
Andrew Cherullo, Date  
Director of Finance

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael W. Smith, Date  
Deputy City Attorney

**EXHIBIT "C"**

***Goldfinch Exchange Company LLC***

*A Delaware limited liability company*

*40 Lake Bellevue Drive, Suite 101*

*Bellevue, WA 98005*

*425-646-4020*

*425-637-2873 fax*

**NOTICE OF ASSIGNMENT**

**TO: CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION** and any assignees or exchange intermediaries of Seller.

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

**ACKNOWLEDGED:**

**CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION**

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

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

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

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

**EXHIBIT "C-1"**

**ASSIGNMENT OF RIGHTS UNDER PURCHASE AND SALE CONTRACT**

THIS ASSIGNMENT OF RIGHTS UNDER PURCHASE AND SALE CONTRACT (this "Assignment") is entered into between BNSF Railway Company ("Exchangor") and Goldfinch Exchange Company LLC, a Delaware limited liability company ("Intermediary") on \_\_\_\_\_.

Exchangor, as Buyer, entered into that certain Real Estate Purchase and Sale Agreement (the Agreement), dated \_\_\_\_\_, with **CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION** ("Seller"). The Agreement, together with any and all amendments thereof is incorporated herein by this reference. Exchangor and Intermediary have executed a Master Exchange Agreement dated December 10, 2009, under which Intermediary will acquire the subject property of the Agreement (the "Replacement Property"), described on Exhibit A of the Agreement, and transfer it to Exchangor. This Assignment is part of and supplements the Master Exchange Agreement, and as required thereunder, Exchangor shall assign its rights under the Agreement to Intermediary to effect the exchange.

NOW, THEREFORE, the parties agree:

Exchangor hereby assigns its rights, but not its obligations, in the Agreement to Intermediary and this assignment shall be effective immediately prior to the acquisition of the Replacement Property from Seller. All representations and warranties in the Agreement shall survive this Assignment to Intermediary. Intermediary hereby accepts this assignment. As allowed by Treasury Regulation §1.1031(k)-1(g)(4)(v), Seller shall deed the Replacement Property directly to Exchangor.

This Assignment is binding upon and shall inure to the benefit of the respective heirs, successors, and assigns of Exchangor and Intermediary.

IN WITNESS WHEREOF, the parties have executed this Assignment as their free and voluntary act and deed, on the date indicated above. Signatures may be in counterpart.

EXCHANGOR:

INTERMEDIARY:

BNSF Railway Company

Goldfinch Exchange Company LLC, a Delaware limited liability company

By: 1031 Services, Inc., a Washington corporation,  
Manager

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

\_\_\_\_\_  
By: Christine E. Towey  
Exchange Coordinator



## ASSIGNMENT OF RIGHTS UNDER PURCHASE AND SALE CONTRACT

THIS ASSIGNMENT OF RIGHTS UNDER PURCHASE AND SALE CONTRACT (this "Assignment") is entered into between BNSF Railway Company ("Exchangor") and Goldfinch Exchange Company LLC, a Delaware limited liability company ("Intermediary") on August 24, 2021.

Exchangor, as Purchaser, entered into that certain Purchase and Sale Contract, dated \_\_\_\_\_, with CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION (d.b.a TACOMA POWER), ("Seller"). The agreement, together with any and all amendments thereof (collectively the "Agreement"), is incorporated herein by this reference. Exchangor and Intermediary have executed a Master Exchange Agreement dated December 10, 2009, under which Intermediary will acquire the subject property of the Agreement (the "Replacement Property"), described on Exhibit A, and transfer it to Exchangor. This Assignment is part of and supplements the Master Exchange Agreement, and as required thereunder, Exchangor shall assign its rights under the Agreement to Intermediary to effect the exchange.

NOW, THEREFORE, the parties agree:

Exchangor hereby assigns its rights, but not its obligations, in the Agreement to Intermediary and this assignment shall be effective immediately prior to the acquisition of the Replacement Property from Seller. All representations and warranties in the Agreement shall survive this Assignment to Intermediary. Intermediary hereby accepts this assignment. As allowed by Treasury Regulation §1.1031(k)-1(g)(4)(v), Seller shall deed the Replacement Property directly to Exchangor.

This Assignment is binding upon and shall inure to the benefit of the respective heirs, successors, and assigns of Exchangor and Intermediary.

IN WITNESS WHEREOF, the parties have executed this Assignment as their free and voluntary act and deed, on the date indicated above. Signatures may be in counterpart.

EXCHANGOR:

BNSF Railway Company



By: Charles Keltner

Its: Senior Manager Real Estate

INTERMEDIARY:

Goldfinch Exchange Company LLC, a Delaware limited liability company

By: 1031 Services, Inc., a Washington corporation, Manager

\_\_\_\_\_  
By: Christine Towey  
Exchange Coordinator

**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF THE LAND**

That portion of Government Lot 2 of Section 16, Township 10 North, Range 2 West, Willamette Meridian, Cowlitz County, Washington, lying Westerly of the Westerly right of way line of the Northern Pacific Railroad.