

**ATTACHMENT A:**

**PURCHASE AND SALE AGREEMENT**

**PURCHASE AND SALE CONTRACT**  
**UNIMPROVED PROPERTY**

THIS PURCHASE AND SALE CONTRACT ("Contract") is entered into as of the Effective Date (defined below) by and between King County, a political subdivision of the State of Washington ("Seller"), and **BNSF RAILWAY COMPANY**, a Delaware corporation ("Purchaser").

In consideration of the mutual covenants set forth in this Contract and for other valuable consideration, which the parties acknowledge receiving, Seller and Purchaser agree as follows:

**Section 1. Sale and Purchase.**

(a) Subject to the terms and conditions set forth in this Contract, Seller agrees to sell and convey to Purchaser (or its designee), and Purchaser (or its designee) agrees to purchase and accept from Seller, for the Purchase Price (defined below):

(1) That certain tract of land consisting of approximately 2 acres in King County, Washington more particularly described in the attached Exhibit "A" (the "Land"), which is a portion of a larger parcel that Seller has acquired through condemnation in the action King County v. Ira and Kathy Gibson, King County Superior Court, No. 14-2-22029-4 KNT (the "Condemnation Action"), together with all strips and gores, easements, rights-of-way, licenses, interests, rights, and appurtenances appertaining to the Land, if any.

(2) Any and all other rights, titles, interests, privileges, and appurtenances owned by Seller and in any way related to, or used in connection with, the ownership of the Land; provided that Purchaser desires to receive assignment of the same.

(b) The above listed items are collectively called the "Property." The Property must be conveyed, assigned, and transferred to Purchaser (or its designee) at the Closing (defined below) free and clear of all liens, claims, easements, covenants, conditions, rights-of-way, reservations, restrictions, encroachments, tenancies, mineral interests, royalty interests, oil, gas or mineral leases, and any other type of encumbrance (collectively, the "Encumbrances"), except the "Permitted Encumbrances," allowed in accordance with Section 3.

**Section 2. Purchase Price.**

(a) The purchase price ("Purchase Price") for the Property is Two Hundred Forty Thousand and 00/100 Dollars (\$240,000.00).

(b) The Purchase Price is payable in cash at the Closing (defined below).

(c) Within five (5) business days after the Effective Date, Purchaser shall deliver the Purchase Price to Title Company (defined below), either by wire transfer or by a certified or cashier's check payable to the order of Title Company. The Purchase Price will be held in escrow by Title Company in an interest-bearing account with interest accruing and to be credited towards payment of the following in the following order: escrow costs, recording fees, other closing costs

and title insurance fees. If the transaction is not consummated, the Purchase Price (and all accrued interest) will be held and delivered by the Title Company as provided below.

**Section 3. Title Commitment and Survey.**

(a) As soon as practicable, but no later than thirty (30) days after the Effective Date, Seller, at its expense, will deliver or cause to be delivered to Purchaser the following:

(1) An ALTA Owner's Commitment for Title Insurance ("Title Commitment") from Fidelity National Title Insurance Company ("Title Company"). The Title Commitment will set forth the status of title to the Property and will show all Encumbrances and other matters, if any, relating to the Property.

(2) Legible copies of all documents referred to in the Title Commitment, including but not limited to lien instruments, plats, reservations, restrictions, and easements.

(3) Copies of the most recent tax statements covering the Property.

(b) Purchaser has, at its expense, delivered to Seller a survey ("Survey") consisting of a plat and field notes describing the Property.

(c) Purchaser must give Seller written notice of any objections ("Objections") to the Title Commitment and the Survey within fifteen (15) business days after receiving the Title Commitment and all documents referred to in the Title Commitment. Objections shall not include those matters identified as Exceptions Nos. 3 through 6, 8 and 9 in the Fidelity National Title Insurance Company 2<sup>nd</sup> Commitment for Title Insurance, Escrow No. 20369815-410-KA6 dated November 25, 2014. At the Closing, Seller will provide releases for any deed-of-trust liens, judgment liens, mechanic's liens, delinquent taxes, or any other monetary liens encumbering the Property; provided, however, that if any such liens also encumber other property owned by Seller, Seller will not be required to obtain releases as to such other property, so long as Seller appropriately subdivides such other property from the Property.

(d) If Purchaser gives timely notice of the Objections, then Seller shall notify Purchaser within five (5) business days after Seller receives the Objections of any exceptions to title which Seller will not remove or otherwise resolve ("Cure Period"), and Purchaser shall be entitled either:

(1) To terminate this Contract by written notice to Seller and Title Company at any time within ten (10) business days after receipt of written notice from Seller stating that Seller will not or cannot cure some or all of the Objections. Upon termination, Purchaser will be entitled to the return of the Purchase Price, and neither party will have any further rights or obligations under this Contract; or

(2) To waive the Objections that Seller will not or cannot cure and consummate the purchase of the Property subject to those Objections, which will be deemed to be Permitted Encumbrances.

(e) Any exceptions or other items that are set forth in the Title Commitment or Survey and to which Purchaser does not timely object shall be deemed to be Permitted Encumbrances. Permitted Encumbrances shall also include the lien of current real property taxes, fees and/or charges not yet due and payable, rights reserved in federal patents or state deeds, building or use restrictions general to the governing jurisdiction, and the matters excluded from coverage by the printed exceptions and exclusions contained in the Owner Policy (defined below).

(f) In the event the Title Commitment and/or Survey are revised after Purchaser's initial receipt of the same so as to include any additional exemptions or Encumbrances not shown on the initial Title Commitment and Survey ("New Encumbrances"), the provisions above shall be applicable to any such New Encumbrance and Purchaser shall have the right to deliver Objections with respect thereto in the same manner as Objections to the initial Title Commitment and Survey except that (i) the Objection Period with respect to any such New Encumbrance shall terminate ten (10) days after Purchaser's receipt of the revised Title Commitment or Survey which first refers to or discloses such New Encumbrance and (ii) the Cure Period with respect to such New Encumbrance shall terminate five (5) days after Seller's receipt of Purchaser's Objections with respect thereto.

#### **Section 4. Feasibility Period.**

(a) As used in this Contract, "Feasibility Period" means the period beginning on the Effective Date and ending at 6:00 p.m. Central Time, on January 30, 2015.

(b) Purchaser may terminate its obligation to purchase the Property at any time during the Feasibility Period if, in Purchaser's sole discretion, it determines that the Property is contaminated or otherwise not suited for Purchaser's use. Purchaser must exercise its termination rights under this Section 4(b) by delivering written notice to Seller at any time during the Feasibility Period. Upon termination of this Contract during the Feasibility Period, the Purchase Price shall be returned to Purchaser and the Parties shall have no further obligations hereunder. If Purchaser fails to give such notice to terminate within the Feasibility Period or affirmatively gives notice that this Feasibility Period contingency is satisfied or waived within the Feasibility Period, Purchaser shall be obligated to proceed hereunder with the Feasibility contingency having been met.

(c) During the Feasibility Period, Purchaser may apply with the appropriate governmental authorities to obtain necessary governmental approvals, variances, or permits for Purchaser's contemplated use. Seller will cooperate with Purchaser's efforts to obtain these approvals.

(d) During the Feasibility Period, Purchaser, its designated representatives or agents shall have the right at its own expense, subject to the limitations set forth in Section 4(e) and (f) below, to (1) perform any and all tests, inspections, studies, surveys or appraisals of the Property deemed necessary, on any subject, by the Purchaser; (2) obtain a Phase I or Phase II Environmental Assessment on the Property and perform any and all tests, inspections and studies deemed necessary therewith; (3) examine all due diligence materials related to the Property that Purchaser may reasonably request from Seller that are in Seller's possession and about which Seller has knowledge, and that are not protected as attorney work product, by the attorney-client privilege or

by other similar confidential protections; (4) determine to its satisfaction whether approvals, permits and variances can be obtained under applicable land use and zoning codes for Purchaser's proposed development of the property; and (5) determine whether Purchaser's proposed development of the Property is economically feasible.

(e) During the Feasibility Period, Seller will permit Purchaser and its contractors and agents to enter the Property upon three days advance written notice to inspect and test the Property (including systems and structural inspections, soil borings, and environmental tests) as Purchaser deems necessary or desirable. Seller will cooperate with Purchaser in arranging the inspections and tests. If invasive tests are performed by Purchaser, Seller may elect to obtain split samples of such sampling and reimburse the Purchaser for the costs thereof. Purchaser must repair any damages to the Property resulting from any inspection or testing conducted by it or at its direction. In connection with any such inspections and tests, Purchaser agrees to hold harmless, indemnify and defend Seller, its officers, agents and employees, from and against all claims, losses, or liability for injuries, sickness or death of persons, including employees of Purchaser ("Claims") caused by or arising out of any act, error or omission of Purchaser, its officers, agents, contractors, subcontractors or employees in entering the Property for the above purposes, except to the extent the Claims are caused by or arise out of any act, error or omission of Seller, its officers, agents and employees.

(f) Prior to the entry of Purchaser or its contractors for invasive testing of the Property such as drilling or excavation, the entering party(ies) shall submit evidence of (1) Commercial General Liability coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (2) Automobile liability insurance in the amount of \$1,000,000; (3) Contractor's Pollution insurance in the amount of \$1,000,000 per claim and in the aggregate; and (4) Stop Gap/Employers Liability coverage in the amount of \$1,000,000. King County, its officers, officials, agents and employees shall be named as additional insureds. Seller acknowledges that Purchaser is insured under Burlington Northern Santa Fe, LLC's Excess Property and Liability Policies. Purchaser's self-insured retention is in keeping with its net worth and cash flows and is consistent with that of other corporations of similar operations and size. Adequate reserves are maintained for claims within its retention.

#### **Section 5. Termination, Default and Remedies.**

(a) Purchaser will be in default under this Contract if (i) it fails or refuses to purchase the Property at the Closing, or (ii) it fails to perform any of its other obligations either before or at the Closing, and such failure is not cured within five (5) business days after written notice of default from Seller. Purchaser will not be in default, however, if it terminates this Contract when it has an express right to terminate or when Seller fails to perform its obligations under this Contract. If Purchaser is in default, then Seller, as its exclusive remedy, is entitled to terminate this Contract by giving written notice to Purchaser before or at the Closing. Following the termination notice, neither party will have any further rights or obligations under this Contract. Title Company will then deliver the Purchase Price to Seller as liquidated damages, free of any claims by any person, including Purchaser. The Purchase Price to which Seller may be entitled is the parties' reasonable forecast of just compensation for the harm that Purchaser's breach would cause, which is otherwise impossible or very difficult to estimate accurately.

(b) Seller will be in default under this Contract if (i) it fails or refuses to sell the Property at the Closing, or (ii) it fails to perform any of its other obligations either before or at the Closing and such failure is not cured within five (5) business days after written notice from Purchaser. Seller will not be in default, however, if it terminates this Contract when it has an express right to terminate or when Purchaser fails to perform its obligations under this Contract, and such failure is not cured within the cure period described above. If Seller is in default, then Purchaser is entitled either (i) to enforce specific performance of Seller's obligations under this Contract with respect to the Property; or (ii) to terminate this Contract by giving written notice to Seller before or at the Closing, whereupon neither party will have any further rights or obligations under this Contract and Title Company will then deliver the Purchase Price to Purchaser, free of any claims of any person, including Seller. Nothing herein shall limit any remedy at law, in equity or otherwise that Purchaser may have against Seller in the event of a breach by Seller of (a) any warranty of Seller set forth herein that is first discovered by Purchaser after the Closing, or (b) an obligation to be performed by Seller after Closing.

(c) If either Seller or Purchaser becomes entitled to the Purchase Price upon termination of this Contract, Purchaser and Seller shall deliver an instruction letter to the Title Company directing disbursement of the Purchase Price to the entitled party, but this joint instruction will not be necessary if Purchaser terminates this Contract in accordance with Section 4 (Feasibility Period) before the end of the Feasibility Period. If either party fails or refuses to sign or deliver such an instruction letter, the refusing party shall pay all reasonable attorneys' fees and court costs incurred by the party so entitled to the Purchase Price.

**Section 6. Closing.**

(a) The closing ("Closing") of the sale of the Property by Seller to Purchaser will occur in the Title Company's office on or before May 1, 2015 or such other date as may be mutually agreed upon by the Parties ("Closing Date"). In addition, Purchaser or Seller may, at their sole discretion, extend the Closing Date for up to 30 days by providing the other Party written notification on or before the then-scheduled Closing Date.

(b) At the Closing, all of the following must occur, all of which are concurrent conditions:

(1) Seller, at its expense, shall deliver or cause to be delivered to Purchaser the following:

(i) A Recordable Bargain and Sale Deed ("Deed") in substantially the form attached hereto as Exhibit "B" and incorporated herein by reference.

(ii) An ALTA Owner's Extended Coverage Policy of Title Insurance with all endorsements required by Purchaser ("Owner Policy") issued by Title Company to Purchaser for the Purchase Price insuring that, upon Closing, Purchaser is the owner of good and marketable fee simple title to the Property subject only to the Permitted Encumbrances, and to the lien of current, non-delinquent real property taxes and assessments for the year in which the Closing occurs. Subject to any credit pursuant to Paragraph 2(c), Seller agrees to pay for the

full cost of an ALTA Owner's Standard Coverage Policy; Purchaser agrees to pay for any additional fees associated with an Extended Coverage Policy and for any additional endorsements or amendments.

(iii) Evidence satisfactory to Purchaser and the Title Company that the person executing the Closing documents on behalf of Seller has full right, power, and authority to do so.

(iv) Seller's affidavit setting forth its U.S. Taxpayer Identification Number, its office address, and its statement that it is not a "foreign person" as defined in Internal Revenue Code §1445, as amended.

(v) Any other document or instrument that may be necessary or reasonably required by Purchaser or the Title Company to consummate the transaction.

(2) Purchaser, at its expense, shall deliver or cause to be delivered to Seller the following:

(i) Evidence reasonably satisfactory to Seller and the Title Company that the person executing the Closing documents on behalf of Purchaser has full right, power, and authority to do so.

(ii) Any other document or instrument that may be necessary or reasonably required by Seller or the Title Company to consummate the transaction.

(3) Seller and Purchaser shall each pay their respective attorneys' fees, and all escrow and recording fees not paid pursuant to Paragraph 2(c) must be paid one half by Seller and one half by Purchaser.

(c) Ad valorem and similar taxes and assessments relating to the Property will be prorated between Seller and Purchaser as of the Closing Date, based on estimates of the amount of taxes and assessments that will be due and payable for the Property during the year in which the Closing Date occurs. As soon as the amount of taxes and assessments on the Property for such year is known, Seller and Purchaser will readjust the amount of taxes and assessments due from each party with the result that Seller is responsible for those taxes and assessments applicable to the Property before the Closing Date and Purchaser is responsible for those taxes and assessments applicable to the Property on and after the Closing Date. All prior years' taxes and assessments will be Seller's obligations.

(d) Upon completion of the Closing, Seller shall deliver to Purchaser possession of the Property free and clear of all tenancies and parties in possession.

(e) The provisions of Sections 6(c) above shall survive Closing.

**Section 7. Seller's and Purchaser's Covenants, Representations and Warranties.**

(a) Seller covenants and agrees with Purchaser that:

(1) At all times before Closing, Seller shall maintain the Property in as good a condition and repair as exists on the Effective Date, except for normal wear and tear. Seller shall advise Purchaser of any significant repair or improvement it makes to keep the Property in such condition.

(2) Before Closing, Seller may not create -- or voluntarily permit to be created -- any liens, easements or other conditions affecting all or part of the Property without Purchaser's prior written consent, which Purchaser may withhold in its sole discretion.

(b) Seller represents and warrants to Purchaser that:

(1) Seller is a political subdivision of the State of Washington duly organized, validly existing, and in good standing under Washington law.

(2) Seller has all requisite power and authority to own the Property, enter into this Contract, and consummate the transaction contemplated in this Contract. Seller has duly authorized the execution and delivery of this Contract such that all documents to be executed by Seller are its valid, legally binding obligations, subject to the Council Approval Contingency, as defined in Section 8(a) below, and are enforceable against it in accordance with their terms.

(3) Subject to the Council Approval Contingency, as defined in Section 8(a) below, the persons executing this Contract and any and all documents on behalf of Seller have the legal power, right, and actual authority to bind Seller.

(4) Subject to the Council Approval Contingency, as defined in Section 8(a) below, prior to Closing, Seller will have the full right to sell the Property in accordance with this Contract.

(5) To the best of Seller's knowledge, there are no actions, suits, or proceedings pending, threatened or asserted against the Property, before or by any federal, state, municipal, or other governmental department, court, commission, board, bureau, agency, or instrumentality.

(6) To the best of Seller's knowledge, there are no pending or threatened special assessments with respect to the Property.

(7) To the best of Seller's knowledge, there are no ordinances, regulations, laws, or statutes of any governmental agency pertaining to the Property which the Property violates.



(8) At Closing, there will be no unpaid bills or claims in connection with any work performed or material purchased by or on behalf of the Seller in connection with the Property.

(9) At Closing and except to the extent of any Permitted Encumbrances, no person, firm, corporation or other entity shall have (i) any right or option to acquire the Property, or any part thereof, from Seller, or (ii) have any leasehold, tenancy, or other possessory rights or interests in the Property, or any part thereof.

(10) Seller's execution of this Contract and its consummation of the transaction do not, and at the Closing Date will not, breach any agreement or constitute a default or a condition that would ripen into a default under any agreement to which Seller is a party or by which all or part of the Property is bound. Furthermore, Seller's execution of this Contract and its consummation of the transaction do not, and at the Closing will not, violate any order, rule, or regulation applicable to Seller or the Property of any court or any federal, state, or municipal regulatory body or administrative agency or other governmental body.

(c) Seller's representations, warranties, and covenants in this Contract are subject to the following terms and conditions:

(1) Seller's representations, warranties, and covenants are (i) material and being relied upon, and (ii) continuing, made both as of the Effective Date and as of the Closing Date. If Purchaser discovers after the Closing that any representation or warranty was not true when made then Purchaser shall be entitled to any remedy available at law or in equity.

(2) Seller's representations, warranties, and covenants will survive the Closing for a period of two (2) years.

(3) Any and all representations or warranties or other provisions in this Contract that are conditioned on terms such as "to Seller's knowledge" or "to the best of Seller's knowledge" are made to and limited by the present, actual knowledge of Gary Blanchard, who is an employee of King County, and is an Acquisition Project Manager of the Water and Land Resources Division of the King County Department of Natural Resources and Parks. Gary Blanchard has made no inquiries or investigations with respect to Seller's representations or warranties or other provisions prior to the making thereof and has no duty to undertake the same.

(d) Purchaser represents and warrants to Seller that:

(1) Purchaser is a Delaware corporation, duly organized, validly existing and in good standing under the laws of the States of Delaware and Washington.

(2) Purchaser has all requisite power and authority to acquire the Property, enter into this Contract, and consummate the transaction contemplated in this Contract. Purchaser has duly authorized the execution and delivery of this Contract such that all

documents to be executed by Purchaser are its valid, legally binding obligations and are enforceable against it in accordance with their terms.

(3) The persons executing this Contract and any and all documents on behalf of Purchaser have the legal power, right, and actual authority to bind Seller.

(4) Purchaser's execution of this Contract and its consummation of the transaction do not, and at the Closing Date will not, breach any Contract or constitute a default or a condition that would ripen into a default under any Contract to which Purchaser is a party. Furthermore, Purchaser's execution of this Contract and its consummation of the transaction do not, and at the Closing will not, violate any order, rule, or regulation applicable to Purchaser of any court or any federal, state, or municipal regulatory body or administrative agency or other governmental body.

(e) Purchaser's representations, warranties, and covenants in this Contract are subject to the following terms and conditions:

(1) Purchaser's representations, warranties, and covenants are (i) material and being relied upon, and (ii) continuing, made both as of the Effective Date and as of the Closing Date. If Seller discovers after the Closing that any representation or warranty was not true when made then Seller shall be entitled to any remedy available at law or in equity.

(2) Purchaser's representations, warranties, and covenants will survive the Closing for a period of two (2) years.

**Section 8. Contingencies and Conditions to Closing.**

(a) Seller's performance under this Contract is contingent on approval by ordinance of the conveyance of the Property by the Metropolitan King County Council ("Council Approval Contingency"). The Council Approval Contingency will be satisfied if an ordinance passed by the Metropolitan King County Council approving the conveyance of the Property becomes effective within one hundred twenty (120) days of the Effective Date ("Council Approval Period"). If the Council Approval Contingency is not satisfied within the Council Approval Period, the Parties may agree to extend the Council Approval Period for one (1) additional sixty (60) day period. If the Council Approval Contingency is not satisfied within the Council Approval Period, Purchaser will be entitled to the return of the Purchase Price, and neither party will have any further rights or obligations under this Contract.

(b) The sale of the Property is contingent on legal subdivision, as defined in RCW 58.17, tax parcel segregation, or boundary line adjustment (collectively, "Subdivision"), separating the Property, for purpose of sale, from the larger parcel that Seller has acquired through the Condemnation Action. Prior to conveyance of the Property, the Seller shall obtain Subdivision approval to create the parcel described in Exhibit A. Seller shall be responsible for completing any actions required to secure approval of such Subdivision, at its sole risk and expense. If the Subdivision approval that Seller obtains departs in any way from the legal description provided in Exhibit A, Seller and Purchaser may agree to adjust the legal description set forth in Exhibit A as necessary to account for any changes resulting from such Subdivision of the Property. If such

changes are unacceptable to Purchaser and the Parties cannot agree on an adjustment to Exhibit A, either Party may terminate this Contract. In such case, Purchaser will be entitled to return of the Purchase Price, and neither Party will have any further rights or obligations under this Contract. This contingency will be satisfied if Subdivision approval satisfactory to both Parties has been obtained within one hundred twenty (120) days of the Effective Date ("Subdivision Approval Period"). The Parties may agree to extend the Subdivision Approval Period. If Subdivision Approval is not obtained within the Subdivision Approval Period, either Party may terminate this Contract. In such case, Purchaser will be entitled to the return of the Purchase Price, and neither Party will have any further rights or obligations under this Contract.

(c) Notwithstanding anything to the contrary in this Contract, until Closing the following matters are conditions precedent to Purchaser's obligations under this Contract.

(1) Seller must deliver, perform, observe, and comply with all of the items, instruments, documents, covenants, agreements, and conditions required of it by this Contract.

(2) Seller must not be in receivership or dissolution, nor have made any assignment for the benefit of creditors, nor admitted in writing its inability to pay its debts as they mature, nor have been adjudicated a bankrupt, nor have filed a petition in voluntary bankruptcy, or a petition or answer seeking reorganization or an arrangement with creditors under state or federal bankruptcy law or any other similar law or statute, nor may any such petition have been filed against it.

(d) Purchaser may waive any of the conditions set forth in Section 8(c) in its sole discretion, at or before Closing. If any of the conditions are not satisfied or waived, Purchaser may terminate this Contract by giving written notice to Seller at or before Closing, and neither party will have any further rights or obligations under this Contract, and Title Company will deliver the Purchase Price to Purchaser.

**Section 9. Brokers.** Each Party represents and warrants to the other that it has not engaged, or become liable to, any agent, broker, or other similar party in connection with this transaction. **EACH PARTY AGREES TO INDEMNIFY AND HOLD THE OTHER HARMLESS FROM AND AGAINST THE CLAIMS, DEMANDS, CAUSES OF ACTION, OR OTHER LIABILITY OF ANY AGENT, BROKER, OR OTHER SIMILAR PARTY ARISING FROM OR RELATED TO ANY BREACH OF SUCH PARTY'S REPRESENTATIONS IN THIS SECTION 9.** The provisions of this Section 9 shall survive Closing and any termination of this Contract.

**Section 10. Notices.**

(a) Any notice under this Contract must be written. Notices must be either (i) hand-delivered to the address set forth below for the recipient; or (ii) placed in the United States certified mail, return receipt requested, addressed to the recipient as specified below; (iii) deposited with an 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 the transmission is followed with a copy sent by overnight delivery or regular mail to the address

specified below. Any notice is effective upon two (2) business days after deposit with the U.S. Postal Service or one (1) business day after deposit with the overnight delivery service, as applicable; all other notices are effective when received.

(b) Seller's address for all purposes under this Contract is:

King County Department of Executive Services  
Facilities Management Division  
Real Estate Services Manager  
830 King County Administration Building  
500 Fourth Avenue  
Seattle, Washington, 98104-2337

Attention: Gail Houser  
Telephone: (206) 477-9373  
Telecopy: (206) 205-5070

with a copy to:

Joseph B. Rochelle  
Senior Deputy Prosecuting Attorney  
900 King County Administration Building  
500 Fourth Avenue  
Seattle, Washington 98104-2337

Telephone: (206) 477-1096  
Telecopy: (206) 296-0415

(c) Purchaser's address for all purposes under this Contract is:

BNSF RAILWAY COMPANY  
2500 Lou Menk Drive AOB-3  
Fort Worth, Texas 76131-2830  
Attention: Manager Real Estate  
Telephone: (817) 352-6464  
Telecopy: (817) 352-7101

with a copy to:

Matthew D. Wells  
Tupper Mack Wells PLLC  
2025 First Avenue, Suite 1100  
Seattle, WA 98121

Telephone: (206) 407-0502  
Telecopy: (206) 493-2310

(d) Either party may designate another address for this Contract by giving the other party at least five (5) business days' advance notice of its address change. A party's attorney may send notices on behalf of that party, but a notice is not effective against a party if sent only to that party's attorney.

**Section 11. Entire Agreement.** This Contract (including its exhibits) contains the entire agreement between Seller and Purchaser regarding the purchase and sale of the Land. Oral statements or prior written matter not specifically incorporated into this Contract has no force or effect. No variation, modification, or change to this Contract binds either party unless set forth in a document signed by the parties or their duly authorized agents, officers, or representatives.

**Section 12. Assigns.** This Contract inures to the benefit of and binds the parties and their respective legal representatives, successors, and permitted assigns. Purchaser may assign its rights or obligations under this Contract without Seller's consent, but with notice to Seller. Purchaser may assign its rights or obligations under this Contract to its 1031 Tax Exchange Entity without the consent of Seller.

**Section 13. Effective Date.** The date on which the last of Seller and Purchaser signs this Contract is the "Effective Date" of this Contract.

**Section 14. Time of the Essence.** Time is of the essence in this Contract. Whenever a date specified in this Contract falls on a Saturday, Sunday, or federal holiday, the date will be extended to the next business day.

**Section 15. Tax-Deferred Exchange Under I.R.C. § 1031.** Purchaser may assign its rights (but not its obligations) under this Contract to Goldfinch Exchange Company LLC, an exchange intermediary, in order for Purchaser to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Purchaser 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 may also assign its rights (but not its obligations) under this Contract to an exchange intermediary in order for Seller to effect an exchange under Section 1031 of the Internal of Revenue Code. Seller agrees to fully cooperate with Purchaser to permit Purchaser 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 Purchaser may reasonably request. Seller agrees that Purchaser may use its standard form of "Assignment of Rights," attached hereto as Exhibit "D", in connection with any tax deferred exchange.

**Section 16. Terminology.** The captions beside the section numbers of this Contract are for reference only and do not modify or affect this Contract. Whenever required by the context, any gender includes any other gender, the singular includes the plural, and the plural includes the singular.

**Section 17. Governing Law and Venue.** This Contract is governed by and must be construed in accordance with Washington law. In the event that either Party shall bring a lawsuit

related to or arising out of this Contract, either the Superior Court of King County, Washington or the United States District Court, Western District of Washington at Seattle, shall have exclusive jurisdiction and venue.

**Section 18. Severability.** If any provision in this Contract is found to be invalid, illegal, or unenforceable, its invalidity, illegality, or unenforceability will not affect any other provision, and this Contract must be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

**Section 19. Rule of Construction.** Each party and its counsel have reviewed and revised this Contract. The parties agree that the rule of construction that any ambiguities are to be resolved against the drafting party must not be employed to interpret this Contract or its amendments or exhibits.

**Section 20. Attorneys' Fees.** If any action at law or in equity is necessary to enforce or interpret this Contract, the prevailing party will be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief to which that party may be entitled.

**Section 21. Counterparts.** To facilitate execution, this Contract may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgement of, or on behalf of, each part, or that the signature of all persons required to bind any party or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Contract to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.

**Section 22. "As-Is".**

(a) **Seller Disclosure Statement.** To the maximum extent permitted by RCW ch. 64.06, Purchaser expressly waives its right to receive from Seller a seller disclosure statement ("Seller Disclosure Statement") and to rescind this Contract, both as provided for in RCW ch. 64.06. Seller and Purchaser acknowledge and agree that Purchaser cannot waive its right to receive the section of the Seller Disclosure Statement entitled "Environmental" (which is contained in Section 6 of the form) if the answer to any of the questions in that section would be "yes." Nothing in any Seller Disclosure Statement delivered by Seller creates a representation or warranty by the Seller, nor does it create any rights or obligations in the Parties except as set forth in RCW ch. 64.06. Purchaser is advised to use its due diligence to inspect the Property as allowed for by this Contract, and that Seller may not have knowledge of defects that careful inspection might reveal. Purchaser specifically acknowledges and agrees that any Seller Disclosure Statement delivered by Seller is not part of this Contract, and Seller has no duties to Purchaser other than those set forth in this Contract.

(b) **Seller Disclaimer of Condition of the Property.**

Except to the extent of Seller's representations and warranties in Sections 7(b) and (c) of this Contract, Seller has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, contracts or guarantees of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning, or with respect to the value, nature, quality, or condition of the Property (collectively "Condition of the Property"), including, without limitation:

- (1) The water, soil and geology;
- (2) The income to be derived from the Property;
- (3) The suitability of the Property for any and all activities and uses that Purchaser or anyone else may conduct thereon;
- (4) The compliance or noncompliance of or by the Property or its operation with any laws, rules, ordinances, regulations or decrees of any applicable governmental authority or body or the zoning or land use designation for the Property;
- (5) The habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property;
- (6) The manner or quality of the construction or materials, if any, incorporated into the Property and the existence, nonexistence or condition of utilities serving the Property;
- (7) The actual, threatened or alleged existence, release, use, storage, generation, manufacture, transport, deposit, leak, seepage, spill, migration, escape, disposal or other handling of any Hazardous Substances in, on, under or emanating from or into the Property, and the compliance or noncompliance of or by the Property or its operation with applicable federal, state, county and local laws and regulations, including, without limitation, Environmental Laws and regulations and seismic/building codes, laws and regulations. For purposes of this Contract, the term "Environmental Law" shall mean: any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health, safety, or the environment, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9602 et. seq. ("CERCLA"); the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq. ("RCRA"); the Washington State Model Toxics Control Act, RCW ch. 70.105D ("MTCA"); the Washington Hazardous Waste Management Act, RCW ch. 70.105; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Washington Water Pollution Control Act, RCW ch. 90.48, and any laws concerning above ground or underground storage tanks. For the purposes of this Contract, the term "Hazardous Substance" shall mean: any waste, pollutant, contaminant, or other material that now or in the future becomes regulated or defined under any Environmental Law; or
- (8) Any other matter with respect to the Property.

(c) **Purchaser Acceptance of Condition of Property.**

(1) Purchaser acknowledges and accepts Seller's disclaimer of the condition of the Property in Section 22(b) of this Contract.

(2) Purchaser acknowledges and agrees that, within the Feasibility Period as defined in Section 4(a) of this Contract, Purchaser has made all investigations that Purchaser deems necessary in connection with its purchase of the Property. Purchaser acknowledges that it has been given an opportunity to conduct a physical inspection of the Property and to make all investigations that Purchaser deems necessary in connection with its purchase of the Property. Purchaser further acknowledges and agrees that, having been given the opportunity to inspect the Property, Purchaser is relying solely on its own investigation of the Property and is not relying on any information provided or to be provided by Seller. Purchaser further acknowledges and agrees that any information provided or to be provided with respect to the Property was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information and no employee or agent of Seller is authorized otherwise. Purchaser further acknowledges and agrees that Seller is not liable or bound in any manner by any verbal or written statements, representations, or information pertaining to the Property, or the operation thereof, furnished by any agent, employee, or contractor of Seller, any real estate broker, or any other person.

(3) Purchaser acknowledges and agrees that it approves and accepts the Condition of the Property and agrees to purchase the Property and accept the Condition of the Property "AS IS, WHERE IS" with all faults and patent or latent defects, including, without limitation, the actual, threatened or alleged existence, release, use, storage, generation, manufacture, transport, deposit, leak, seepage, spill, migration, escape, disposal or other handling of any Hazardous Substances in, on, under or emanating from or into the Property, and the compliance or noncompliance of or by the Property or its operation with applicable federal, state, county and local laws and regulations including, without limitation, Environmental Laws and regulations and seismic/building codes, laws and regulations. Purchaser acknowledges and agrees that, except to the extent of Seller's representations and warranties in Sections 7(b) and (c) of this Contract, Purchaser shall have no recourse against the Seller for, and waives, releases and discharges forever the Seller from any and all past, present or future claims or demands, and any and all past, present or future damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown (collectively, "Losses"), which the Purchaser might have asserted or alleged against the Seller arising from or in any way related to the Condition of the Property, including, without limitation, the actual, threatened or alleged existence, release, use, storage, generation, manufacture, transport, deposit, leak, seepage, spill, migration, escape, disposal or other handling of any Hazardous Substances in, on, under or emanating from or into the Property. Losses shall include without limitation (a) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law, that is required by judicial order or decree or by order of or Contract with any governmental authority, or that is conducted voluntarily, (b) losses for injury or death of any person, and (c) losses arising under any Environmental Law, whether or not enacted after transfer of the Property.



EXECUTED as of the Effective Date.

**SELLER**

KING COUNTY,  
a political subdivision of the State of Washington

Approved as to Form:

By: Joseph B. Corbelle  
Title: Senior Deputy Prosecuting Attorney

By: [Signature]  
Name: ANTHONY O. WRIGHT  
Title: DIRECTOR, FACILITIES MANAGEMENT

Date: 1/20/2015

**PURCHASER**

BNSF RAILWAY COMPANY,  
a Delaware corporation

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

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

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

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

\_\_\_\_\_ (Title Company) acknowledges receipt of this Contract on \_\_\_\_\_, 201\_\_\_. Upon receipt of the Purchase Price provided for in the Contract, the Title Company agrees to notify Seller and Purchaser, to hold the Purchase Price in accordance with the Contract, and to abide by and perform in accordance with the escrow provisions contained in this Contract.

WA-Thea Foss Waterway Property Acquisition, King County  
Parcel: 362104-9011

\_\_\_\_\_

a(n) \_\_\_\_\_

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

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

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

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

EXHIBIT "A"

Legal Description of Property

PARCEL A

ALL THE PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 21 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, LYING BETWEEN THE WEST LINE OF THE NORTHERN PACIFIC RAILWAY COMPANY'S RIGHT OF WAY AND A LINE 16.5 FEET WEST OF AND PARALLEL TO THE WEST LINE OF SAID RIGHT OF WAY.

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TOGETHER WITH:

PARCEL B

THE EAST 50.00 FEET OF ALL THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 21 NORTH, RANGE 4 EAST OF THE WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, LYING WEST OF THE BNSF RAILWAY COMPANY'S RIGHT OF WAY;

EXCEPT THOSE PORTIONS DEEDED TO KING COUNTY BY INSTRUMENTS RECORDED UNDER RECORDING NUMBERS 981358 AND 1517213, RECORDS OF KING COUNTY, WASHINGTON.

**EXHIBIT "B"**  
**FORM OF DEED**

**BARGAIN AND SALE DEED**

**AFTER RECORDING RETURN TO:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

**BARGAIN AND SALE DEED**

Grantor -- King County, Washington  
Grantee -- BNSF Railway Company \_\_\_\_\_  
Legal ---- \_\_\_\_\_  
Tax Acct. - \_\_\_\_\_

The Grantor, KING COUNTY, a political subdivision of the State of Washington, for and in consideration of mutual benefits, pursuant to King County Ordinance No. \_\_\_\_\_, does hereby bargain, sell and convey unto the Grantee, BNSF RAILWAY COMPANY, a Delaware corporation, the following the real property situate in King County, Washington and described in EXHIBIT A, attached hereto and incorporated herein by this reference, subject to the permitted exceptions set forth in EXHIBIT A.

**GRANTOR**  
**KING COUNTY**

**GRANTEE**  
**BNSF RAILWAY COMPANY**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: Manager, Real Estate Services Section

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Approved as to Form:

By \_\_\_\_\_  
Senior Deputy Prosecuting Attorney

**NOTARY BLOCKS APPEAR ON NEXT PAGE**

**NOTARY BLOCK FOR KING COUNTY**

STATE OF WASHINGTON )  
 ) SS  
COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared GAIL HOUSER, to me known to be the Manager of the Real Estate Services Section in the Facilities Management Division of the King County Department of Executive Services, and who executed the foregoing instrument and acknowledged to me that SHE was authorized to execute said instrument on behalf of KING COUNTY for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Notary Public in and for the  
State of Washington, residing

at \_\_\_\_\_

City and State

My appointment expires \_\_\_\_\_

**NOTARY BLOCK FOR BNSF RAILWAY COMPANY**

STATE OF TEXAS )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, before me, the undersigned, a Notary Public in and for the State of Texas, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_, who executed the foregoing instrument and acknowledged to me that SHE or HE was authorized to execute said instrument on behalf of the BNSF Railway Company for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Notary Public in and for the  
State of Texas, residing

at \_\_\_\_\_

City and State

My appointment expires \_\_\_\_\_

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: King County, a political subdivision of the State of Washington, and any assignees or exchange intermediaries of Seller

You and BNSF Railway Company ("BNSF") have entered into a Purchase and Sale Contract, dated \_\_\_\_\_ for the sale of the real property described therein. You are hereby notified that BNSF has assigned its rights as Purchaser, 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:**

\_\_\_\_\_  
<Property – Seller>

**EXHIBIT "D"**

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

(Please see attached)

**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 Purchase and Sale Contract, dated \_\_\_\_\_, with King County, a political subdivision of the State of Washington ("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: \_\_\_\_\_  
Its: \_\_\_\_\_

INTERMEDIARY:

Goldfinch Exchange Company LLC, a Delaware limited liability company  
By: 1031 Services, Inc., a Washington corporation,  
Manager

\_\_\_\_\_  
By: Karen S. King  
Exchange Coordinator



EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

PARCEL A

ALL THE PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 21 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, LYING BETWEEN THE WEST LINE OF THE NORTHERN PACIFIC RAILWAY COMPANY'S RIGHT OF WAY AND A LINE 16.5 FEET WEST OF AND PARALLEL TO THE WEST LINE OF SAID RIGHT OF WAY.

TOGETHER WITH:

PARCEL B

THE EAST 50.00 FEET OF ALL THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 21 NORTH, RANGE 4 EAST OF THE WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, LYING WEST OF THE BNSF RAILWAY COMPANY'S RIGHT OF WAY;

EXCEPT THOSE PORTIONS DEEDED TO KING COUNTY BY INSTRUMENTS RECORDED UNDER RECORDING NUMBERS 981358 AND 1517213, RECORDS OF KING COUNTY, WASHINGTON.