

## **PREMISES LEASE AGREEMENT**

THIS PREMISES LEASE AGREEMENT (the "**Lease**") is made to be effective as of the \_\_\_\_ day of \_\_\_\_\_, 2010 (the "**Effective Date**") by and between the **CITY OF LAWRENCE, KANSAS**, a municipality formed under the laws of the State of Kansas ("**Landlord**"), with a street address of \_\_\_\_\_, and **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Tenant**"), with an address of 2500 Lou Menk Drive, Fort Worth, Texas 76131.

### **RECITALS**

A. Prior to the Effective Date, Tenant owned or controlled (i) certain land situated at or near the railway station of Lawrence, County of Douglas, State of Kansas, Line Segment 7101-1, Mile Post 26.50 as shown on the attached Drawing No. 3-46848R2, dated June 26, 2009, as revised February 23, 2010, attached hereto as **Exhibit "A"** and incorporated herein by this reference ("**Land**"), and (ii) certain improvements located on the Land consisting of that certain depot building (the "**Building**") consisting of one story and containing approximately 4,324 square feet, the footprint of which is located on the portion of the Land as shown on the attached Drawing No. 3-46848R1, dated June 26, 2009, as revised February 23, 2010, attached hereto as **Exhibit "A-1"** and incorporated herein by this reference.

B. As of the Effective Date, Tenant has quitclaimed the Building to Landlord and Landlord has become the owner of the Building pursuant to that certain Conveyance Contract (Improvements Only) ("**Contract**") dated effective \_\_\_\_\_, 2010, between the parties.

C. Simultaneous with the quitclaim of the Building, Tenant, as lessor, has leased the Land to Landlord, as lessee, for a term of thirty (30) years ("**Land Lease**").

D. Tenant now wishes to lease back a portion of the Building from Landlord pursuant to this Lease.

### **AGREEMENTS**

For the consideration and upon the terms and conditions hereinafter set forth, Landlord and Tenant agree as follows:

#### **Section 1 Leased Premises.**

**1.1** Landlord hereby leases and demises to Tenant, and Tenant hereby leases from Landlord, a portion of the Building as further depicted or described on **Exhibit "B"** attached hereto and incorporated herein by this reference ("**Leased Premises**").

**1.2** Landlord represents and warrants to Tenant that it has the authority to enter into and fully perform the provisions of this Lease.

**Section 2 Term.** This Lease shall be for a term of thirty (30) years (the "**Term**") commencing on the Effective Date and, subject to the terms and conditions of this Lease, terminating on the 30<sup>th</sup> anniversary of the Effective Date ("**Expiration Date**"), unless sooner terminated as provided herein.

**Section 3 Rent.** As of the Effective Date, Tenant is paying to Landlord a one time fee of \$100.00 as rent (the "**Rent**") for the Leased Premises for the entire Term. Landlord hereby acknowledges its receipt of the Rent and that no further rental payments will be due from Tenant during the Term.

## **Section 4     Building Renovations.**

**4.1** Pursuant to Section 8 of the Contract, Landlord, at its sole cost and expense, shall renovate the Building, including the Leased Premises ("**Building Renovations**"), with the Building Renovations described and contemplated in the plans and specifications ("**Plans and Specifications**") attached as an exhibit to the Contract.

**4.2** Landlord shall perform all work for the Building Renovations in a good and workmanlike manner in conformance with terms of the Contract, the Plans and Specifications, and all applicable federal, state, municipal, or other laws, statutes, ordinances, rules, regulations, orders, requirements, codes and restrictions.

**4.3** Should the Building Renovations require that Tenant temporarily vacate the Leased Premises, then Landlord shall, at Landlord's sole cost and expense, provide Tenant with alternate facilities for temporary use by Tenant, suitable for the permitted uses hereunder. Tenant agrees that it will temporarily relocate to such alternate facilities so long as they are comparable to the Leased Premises, are located in the same vicinity as the Building, and are approved in advance by Tenant, such approval not to be unreasonably withheld.

## **Section 5     Utilities and Services.**

**5.1** Landlord will pay when due all charges for gas, water, sewer, and electricity used by Tenant on the Leased Premises during the Term hereof. Tenant shall arrange and pay for its telephone services and janitorial service to the Leased Premises. In the event of any interruption of utility service, Landlord, at Landlord's sole cost and expense and upon Tenant's request, shall diligently pursue the resumption of service.

**5.2** If any of Tenant's utility services are interrupted, and Landlord fails to correct such interruption such that the interruption (a) continues for more than thirty (30) days, and (b) interferes with Tenant's ability to use the Leased Premises for its intended purposes as further described herein, Tenant may elect to pursue the resumption of service itself at Landlord's sole cost and expense. Landlord shall reimburse Tenant for all costs incurred by Tenant to resume such utility services within thirty (30) days after demand.

## **Section 6     Insurance.**

**6.1** During the Term of this Lease, Tenant shall maintain insurance in the amount and to the extent Tenant deems necessary to cover its activities on the Leased Premises, which coverage Tenant may provide through its program of self-insurance. Landlord agrees that BNSF Railway Company is insured under Burlington Northern Santa Fe Corporation's Excess Property and Liability Policies. Tenant'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.

**6.2** Without limitation to the insurance requirements under the Contract and the Land Lease, during the Term of this Lease, Landlord shall maintain "All Risk", extended coverage fire and casualty insurance for the Building in an amount equal to 100% of the actual replacement value of the Building (including the Building Renovations) from insurers reasonably acceptable to Tenant.

**Section 7     Waiver.** Landlord and Tenant each hereby waive all claims, rights of recovery and causes of action against the other party or against any of the other party's council members, officers, directors, shareholders, partners or employees for any loss or damage that may occur to the Building or the Leased Premises, any improvements thereto or any personal property therein by reason of fire

or other casualty, or by reason of any other cause (including the negligence of a party hereto or its officers, directors, shareholders, partners or employees) that could have been insured against under the terms of an "All Risk" fire and extended coverage insurance policy or policies or for which Landlord or Tenant may be reimbursed as a result of insurance coverage affecting any loss suffered by either party hereto, regardless of cause or origin. Landlord and Tenant hereby agree to cause an endorsement to be issued to their respective insurance policies (including any contents, fire and casualty insurance) recognizing this waiver of subrogation; provided, however, Tenant may satisfy this requirement through providing to Landlord proof of its program of self-insurance.

## **Section 8     Use and Occupancy, Compliance with Applicable Laws.**

### **8.1 Use and Occupancy.**

**8.1.1** Tenant may use the Leased Premises for general office, telecommunications, railroad operations and related purposes. However, Tenant has no obligation to use the Leased Premises for any purpose, and no vacancy of the Leased Premises will result in a default or termination hereunder, or otherwise be deemed an abandonment.

**8.1.2** Landlord represents and warrants that physical access permitting Tenant, and Tenant's affiliates, employees, agents and representatives, ingress and egress to and from the Leased Premises exists as of the Effective Date and will continue to exist throughout the Term.

**8.1.3** Tenant and Tenant's affiliates, agents, representatives, invitees, licensees, employees and contractors shall have access to all Common Areas (as hereinafter defined) within the Building or on the Land associated with the Building. "**Common Areas**" shall mean those areas of the Building and Land provided for the common use or benefit of Landlord, tenants and/or the public including public restrooms in the Building, the entrance to the Building, elevator(s) and/or stairway(s) inside and outside the Building, parking areas, driveways on the Land, and all similar common use facilities. Landlord agrees to provide at all times sufficient Common Areas as may be reasonable and desirable in connection with Tenant's use and enjoyment of the Premises

**8.2 Compliance with Laws.** Tenant represents and warrants that it shall use and occupy the Leased Premises in compliance with all applicable laws, statutes, ordinances, rules, regulations, orders, requirements, codes and restrictions in effect during the Term, which regulate the use by Tenant of the Leased Premises (except with respect to compliance with Environmental Laws, as such term is hereinafter defined, which compliance shall be in accordance with **Section 8.3** below). Landlord represents and warrants that upon completion of the Building Renovations, the Building (including the Leased Premises) and Common Areas, shall be and will remain throughout the Term in compliance with all laws, statutes, ordinances, rules, regulations, orders, requirements, codes and restrictions. It shall be Landlord's sole duty to ensure that the Building remains in compliance with all laws, statutes, ordinances, rules, regulations, orders, requirements, codes and restrictions during the Term.

### **8.3 Environmental Compliance.**

**8.3.1 "Environmental Laws"** shall mean and include any and all local, state or federal laws, rules, orders or regulations in effect during the Term, or any part of the Term hereof, pertaining to environmental regulation, or the use, processing, storage, housing, disposal, generation or transportation of Hazardous Substances, as defined below. Environmental Laws include, but are not limited to, the following federal statutes, amendments thereto, and any enactments by state or local jurisdictions which address similar subjects: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation Recovery Act, the Hazardous and Solid Waste Amendments 1984,

the Toxic Substance Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Federal Water Pollution Control Act, the Federal Clean Air Act, the Federal Clean Water Act, the National Environmental Policy Act, the Hazardous Materials Transportation Act, spill prevention and control legislation, and any regulations promulgated with respect to any such statutes.

**8.3.2 "Hazardous Substances"** shall mean and include any hazardous, toxic, radioactive or infectious substance, material, contaminant or waste as defined, listed or regulated under any Environmental Law, and includes without limitation, petroleum oil and any of its fractions, asbestos and materials that contain asbestos, lead-based paint, or any other substances which are defined in, included under, or regulated by any Environmental Law.

**8.3.3** Tenant represents and warrants that it shall use the Leased Premises in compliance with all applicable Environmental Laws. Tenant agrees to indemnify, protect, defend and hold harmless Landlord from and against all environmental claims to the extent such environmental claims are directly caused by Tenant's gross negligence or willful misconduct in its use or occupancy of the Leased Premises.

**8.3.4** Landlord represents and warrants that the Building Renovations will be in compliance with applicable Environmental Laws. Landlord agrees to indemnify, protect, defend and hold harmless Tenant from and against all environmental claims to the extent such environmental claims are caused by Landlord's breach of this representation and warranty.

## **Section 9     Repairs and Alterations.**

**9.1** Landlord agrees, at its sole cost and expense, to keep and maintain in good order, condition and repair throughout the Term the Building, the Building Renovations, the HVAC system and all structural components of the Building, including without limitation the roof, foundation, underground or below-the-foundation sewer and utility pipes, lines, mains and conduits, exterior walls, gutters, water spouts, load-bearing walls and other structural components of the Building, the Leased Premises and all Common Areas (whether located within the Building or on other parts of the Land); provided, however, any repairs under this **Section 9.1** to the extent directly caused by the gross negligence or willful misconduct of Tenant, its agents, employees, invitees, licensees or contractors shall be at Tenant's sole cost and expense. Upon written notice from Tenant that any repair encompassed by this **Section 9.1** to the Leased Premises is necessary, Landlord shall promptly respond and effect such requested repair.

**9.2** Subject to (i) Landlord's obligations to keep and maintain in good order, condition and repair the Building, the Building Renovations, HVAC system and structural components of the Building, Leased Premises and Common Areas under **Section 9.1** above, and (ii) Landlord's obligation to complete the Building Renovations pursuant to the terms of the Contract, Tenant agrees, at its sole cost and expense, to keep and maintain in good order, condition and repair throughout the Term the interior of Leased Premises, including without limitation interior and exterior doors, door checks, sprinklers, lighting facilities, electrical facilities, interior walls and interior surfaces of exterior walls, ceilings, floor, floor coverings, windows and all plumbing and sewage facilities within the Leased Premises. Tenant shall be allowed to make reasonable alterations to the Leased Premises upon prior notice to Landlord.

**Section 10     Entry.** Landlord and its contractors, agents and other designated third parties may at all reasonable times after reasonable notice to Tenant (of not less than 24 hours) and at any time in case of emergency, enter the Leased Premises to make alterations, repair and/or maintain the Leased Premises, provided such entry does not unreasonably interfere with Tenant's use of the Leased Premises as allowed hereunder.

**Section 11    Repurchase Rights.** Tenant has the right to purchase the Building upon expiration of the term of the Land Lease as set forth in the Contract. In addition, even prior to the expiration of the scheduled term of the Land Lease, Tenant has the right to purchase the Building upon the occurrence of certain Early Repurchase Events (as defined in the Contract). The above-described repurchase rights are collectively referred to herein as the "**Repurchase Rights.**" Notwithstanding anything herein to the contrary, in the event of a repurchase of the Building under the Repurchase Rights, this Lease shall terminate and/or Landlord shall assign all of its rights under this Lease (as lessor) to Tenant or any party designated by Tenant, as directed by Tenant in its sole discretion.

**Section 12    Default and Remedies.**

**12.1    Default by Tenant.** A "**Tenant Default**" shall be deemed to exist if Tenant fails to perform, comply with or observe any agreement, obligation or undertaking of Tenant in this Lease, and such failure continues for a period of ninety (90) days after Tenant receives written notice from Landlord specifying the failure; provided, however, that if such failure cannot not be reasonably cured within such ninety (90) day period, Tenant shall not be deemed to be in default hereunder if Tenant commences such cure within said ninety (90) day period and thereafter diligently pursues such cure to completion.

**12.2    Remedies of Landlord.** Upon any Tenant Default, Landlord may, at Landlord's option and as its sole remedies, elect to (a) waive such Tenant Default, and this Lease shall continue in full force and effect, or (b) seek specific performance of the item causing the Tenant Default in a court of competent jurisdiction, and/or (c) seek damages. Landlord shall not have the right to terminate this Lease for a Tenant Default in any event.

**12.3    Default by Landlord.** A "**Landlord Default**" shall be deemed to exist if Landlord fails to perform, comply with or observe any agreement, obligation or undertaking of Landlord in this Lease, and such failure continues for a period of ninety (90) days after Landlord receives written notice from Tenant specifying the failure; provided, however, that if such failure cannot reasonably be cured within such ninety (90) day period, Landlord shall not be deemed to be in default hereunder if Landlord commences such cure within said ninety (90) day period and thereafter diligently pursues such cure to completion.

**12.4    Remedies of Tenant.** Upon any Landlord Default, Tenant may, at Tenant's option and in addition to all other rights, remedies and recourses afforded Tenant hereunder or at law or in equity, elect to (a) waive such Landlord Default, and this Lease shall continue in full force and effect, or (b) undertake self help to correct the Landlord Default with the right to take all actions necessary to correct the Landlord Default, and Landlord shall, within 30 days after demand, reimburse Tenant for all reasonable costs incurred by Tenant in connection therewith together with interest thereon from the date incurred until paid at an annual rate of 8%.

**Section 13    Condemnation and Casualty.**

**13.1        Condemnation.**

**13.1.1** If the Leased Premises, Common Areas and/or the Building shall be subject to a taking by any public authority (other than Landlord) under the power of condemnation or eminent domain or by purchase in lieu thereof ("**Taking**") to such an extent that the Building (together with the Common Area and Leased Premises) cannot to reasonably be restored to a functional and complete unit of substantially similar quality and character as existed prior to the Taking (a "**Full Taking**"), then this Lease shall terminate and all awards, proceeds, compensation or other payments from or with respect to any Taking ("**Condemnation Proceeds**") shall be split between Landlord and Tenant as follows: Tenant shall receive a

portion of all Condemnation Proceeds for the Taking of the Building equal to the Applicable Amount (as hereinafter defined) and Landlord shall retain the balance. As used herein, the Tenant's "**Applicable Amount**" shall mean the greater of: (i) a fraction, the numerator of which is the number of months which have elapsed in the Term and the denominator of which is the total number of months in the Term, multiplied by the amount of Condemnation Proceeds, or (ii) the total available Condemnation Proceeds, less an amount equal to the Early Repurchase Price that Tenant would have paid under the Contract if it had exercised an Early Repurchase Right thereunder with an Early Repurchase Closing on the date of the Taking. In addition to the above, in such event Tenant shall have the right to repurchase whatever portion of the Building that remains pursuant to Tenant's End of Term Repurchase Right as defined and described in the Contract.

**13.1.2** In the event of a Taking which is not a Full Taking, Landlord shall immediately undertake to restore the Building, the Leased Premises and/or Common Areas to a functional and complete unit of substantially similar quality and character as existed prior to such Taking to the extent practical.

**13.1.3** In addition to Tenant's right to participate in Condemnation Proceeds as provided above, Tenant shall have the right to assert a separate claim against the condemning authority for all moving and relocation expenses and loss to Tenant's trade fixtures, and Tenant shall also be exclusively entitled to all proceeds attributable to a Taking of portions of the Land itself whether under the Building footprint or not, pursuant to the terms of the Land Lease.

**13.2** **Casualty.** If the whole or any part of the Leased Premises or the Building, shall be destroyed or damaged, then Landlord shall, at Landlord's sole cost and expense, promptly restore, rebuild and repair the Leased Premises, Building (and all associated improvements) and all Common Areas to the same condition as existed prior to such casualty, using all diligent efforts to complete same as soon as possible.

**Section 14** **Assignment and Subleasing.** Tenant shall have the right to assign, sublease, or transfer this Lease without Landlord's consent to (i) any entity owned or controlled by Tenant or any parent or affiliate of Tenant or (ii) any entity succeeding to Tenant's interest in Tenant's railroad tracks on Tenant's land adjacent to or near the Building ("**Permitted Assignee**"). Except for a Permitted Assignee, Tenant shall not assign, sublease or transfer this Lease or any part thereof, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

## **Section 15** **Miscellaneous Provisions.**

**15.1** **Quiet Enjoyment.** During the Term of this Lease, Tenant is entitled to the quiet enjoyment of the Leased Premises so long as Tenant is not in default under this Lease beyond any applicable grace or cure period.

**15.2** **Authority.** Each individual executing this Lease on behalf of a corporation, trust, or partnership represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of such entity.

**15.3** **Counterparts.** This Lease may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Lease may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to

be an original signature for all purposes; provided, however, that any signature pages transmitted by facsimile shall nevertheless be followed by the exchange of hard copy originals.

**15.4 Severability.** If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the Term of this Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

**15.5 Entire Agreement; Amendments.** This Lease constitutes the entire agreement between Landlord and Tenant, and no other prior or contemporaneous agreement or understanding shall be effective. Except as otherwise provided in this Lease, Landlord and Tenant represent and warrant that each has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other party of this Lease and as to the nature, quality and character of the Leased Premises. No subsequent alterations, amendments, changes or modifications to this Lease shall be binding unless reduced to writing and signed by each party.

**15.6 Binding Effect.** The covenants, conditions and agreements made and entered into by the parties hereto shall inure to the benefit of and shall be binding upon their respective heirs, successors, representatives and permitted assigns.

**15.7 Cost of Suit.** If suit shall be successfully brought for breach of any covenant or agreement herein contained, the prevailing party shall be entitled to recover all costs and expenses of suit, including, but not limited to, reasonable attorneys' fees.

**15.8 Notices.** All notices, demands, consents, and reports provided for in this Lease shall be in writing and shall be given to Landlord or Tenant at that address set forth below or at such other address as they individually may specify thereafter in writing:

Landlord:                      City of Lawrence  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Fax: \_\_\_\_\_

Tenant:                        BNSF Railway Company  
2500 Lou Menk Drive  
Fort Worth, Texas 76131  
Attn: General Counsel  
Fax: \_\_\_\_\_

With a copy to:              Jones Lang LaSalle  
3017 Lou Menk Drive, Suite 100  
Fort Worth, Texas 76131  
Attn: Transaction Manager  
Fax: \_\_\_\_\_

All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or messenger or courier service) or may be sent by certified or registered mail or overnight express mail, with postage prepaid, or may be sent by telecopy transmission (if a machine generated confirmation is generated with the transmission) and shall be deemed sufficiently given and served in

a manner specified in this **Section 15.8**. Either party may, by written notice to the other, specify a different or additional address for notice purposes. A copy of all notices required or permitted to be given by either party hereunder shall be concurrently transmitted to such party or parties at such addresses as either may from time to time hereafter designate by written notice to the other party.

**15.9 Caption Headings.** Captions to various paragraphs, sections and subsections of this Lease are inserted for convenience only and are not to be construed as part of this Lease or as in any way affecting it.

**15.10 Number and Gender.** Wherever in this Lease the context requires, the singular shall be deemed to include the plural, and the plural, the singular, and the masculine, feminine or neutral genders shall include all other genders. Wherever in this Lease the context requires, the word "**person**" shall be deemed to include any corporation, partnership, trust, firm, entity, governmental agency, or association.

**15.11 Controlling Law.** This Lease and the obligations hereunder shall be interpreted, construed, and enforced in accordance with the laws of the State of Texas.

**15.12 Venue.** Except as may be elsewhere specifically provided in this Lease, all obligations of Landlord and Tenant (including, without limitation, all monetary obligations of Tenant) are to be performed exclusively in the County and jurisdiction where the Building is located.

**15.13 Force Majeure.** Except as may be elsewhere specifically provided in this Lease, if either party is delayed or hindered in, or prevented from the performance required under this Lease (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God or other reason of the like nature not the fault of the party delayed in performance of its obligation, such party is excused from such performance for the period of delay. The period for the performance of any such act will then be extended for the period of such delay.

**15.14 Memorandum.** Tenant and Landlord shall execute a memorandum ("**Memorandum**") suitable for recording in the public records where the Leased Premises are located, in form sufficient to constitute constructive notice to all third parties of Tenant's rights hereunder in and to the Premises and otherwise in form reasonably satisfactory to both parties. The Memorandum shall be recorded on the Closing Date in the public records where the Leased Premises are located.

**15.15 Contract.** All of the provisions of this Lease are subject to the terms of the Contract. In the event of any conflict between the terms hereof and the Contract, the Contract will control.

*[Signature Page and Exhibits Follow – The Balance of This Page Has Been Intentionally Left Blank]*



**IN WITNESS WHEREOF**, the parties hereto have executed this Lease to be effective as of the Effective Date set forth above.

**LANDLORD:**

**CITY OF LAWRENCE**, a municipality formed under the laws of the State of Kansas

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

**TENANT:**

**BNSF RAILWAY COMPANY**, a Delaware corporation

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

**EXHIBIT "A" and "A-1"**

**Description of the Land and Building Footprint**

*[to be attached prior to execution]*

**EXHIBIT "B"**

**Description of Leased Premises**

*[to be attached prior to execution]*

**CONVEYANCE CONTRACT  
(Improvements Only)**

THIS CONVEYANCE CONTRACT (IMPROVEMENTS ONLY) (this "**Contract**") is made to be effective the \_\_\_\_ day of \_\_\_\_\_, 2010 (the "**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**BNSF**"), and the **CITY OF LAWRENCE**, a municipality formed under the laws of the State of Kansas (hereafter, "**City**").

**RECITALS**

A. BNSF owns or controls (i) certain land situated at or near the railway station of Lawrence, County of Douglas, State of Kansas, Line Segment 7101-1, Mile Post 26.50 as shown on the attached Drawing No. 3-46848R2, dated June 26, 2009, as revised February 23, 2010, attached hereto as **Exhibit "A"** and incorporated herein by this reference ("**Land**"), and (ii) certain improvements located on the Land consisting of that certain depot building (the "**Building**") consisting of one story and containing approximately 4,324 square feet, the footprint of which is located on the portion of the Land as shown on the attached Drawing No. 3-46848R1, dated June 26, 2009, as revised February 23, 2010, attached hereto as **Exhibit "A-1"** and incorporated herein by this reference.

B. BNSF is willing to convey to City the Building upon the terms and conditions contained herein (excluding, however, the Land itself).

C. BNSF is willing to lease the Land to City for an initial term of thirty (30) years upon the terms and conditions contained herein.

D. In consideration of BNSF's conveyance of the Building and lease of the Land, City has agreed (i) that it shall undertake and complete substantial renovations to both the exterior and interior of the Building in accordance with the Plans and Specifications (as hereinafter defined), (ii) to lease back to BNSF that portion of the Building currently occupied by BNSF (the "**BNSF Premises**"), and (iii) to lease back to Amtrak (as hereinafter defined) that portion of the Building currently occupied by Amtrak (the "**Amtrak Premises**") under the Operating Agreement (as hereinafter defined), with the BNSF Premises and the Amtrak Premises both depicted on **Exhibit "B"** attached hereto and incorporated herein by this reference.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions set forth herein, the parties hereby agree as follows:

1. **Property to be Conveyed.**

(a) **Building Conveyed.** Subject to and in accordance with the provisions of this Contract, at Closing (as hereinafter defined):

- (i) BNSF will convey the Building to City by BNSF's execution and delivery of that certain Bill of Sale (Improvements Only) in the form attached hereto as **Exhibit "C"** (the "**Bill of Sale**") for the Building;
- (ii) No monetary consideration shall be paid by City to BNSF for the Building;

- (iii) Without limitation to the provisions of Section 5(a) below, the conveyance of the Building shall be expressly subject to the following title matters: (i) the terms and conditions of the Land Lease (as hereinafter defined), (ii) the terms and conditions of the BNSF Premises Lease (as hereinafter defined), (iii) the terms and conditions of the Station Lease (as hereinafter defined) and (iv) any and all other restrictions, reservations, covenants, conditions, rights-of-way, easements, and encumbrances, whether of record or not, all municipal or other governmental zoning laws, regulations and ordinances, if any, affecting the Building and/or Land, and any other matters affecting the Building and/or Land which would be disclosed by a physical inspection of the Building and/or the Land on which it is located or an accurate survey of the Building and/or the Land on which it is located ("**Permitted Exceptions**") (which Permitted Exceptions shall be listed on Exhibit "B" to the Bill of Sale).
- (iv) City shall accept title to the Building and shall assume all responsibilities, duties and obligations for, of and relating to the Building from and after the Closing Date (as hereinafter defined).

(b) Exclusions. Notwithstanding anything to the contrary, the following items are excluded from the conveyance hereunder:

- (i) The conveyance hereunder does not include any personal property, and any such personal property of BNSF located in, on, or in the vicinity of the Building at Closing shall remain the property of BNSF, and City shall have no rights thereto.
- (ii) BNSF's Tower (as hereinafter defined) located on the Land is not included in the conveyance, shall not be considered a part of the Building, and shall remain the property of BNSF, and City shall have no rights thereto.
- (iii) City acknowledges and affirms that City's assumption of ownership of the Building in no way entitles City to any right, title, interest or use in, to and of any BNSF trademark, service mark or other intellectual property, regardless of whether any of the foregoing have been used in connection with the Building or the name under which it has been operated.

2. Lease of Land to City. Simultaneous with the Closing of the conveyance of the Building to City, BNSF shall lease the Land to City for a term of thirty (30) years pursuant to the terms of that certain lease agreement attached hereto as **Exhibit "D"** and incorporated herein for all purposes by this reference (the "**Land Lease**"). The Land Lease will be made in consideration of City's agreement to renovate the Building and, as such, City will only be required to pay One Dollar (\$1.00) per year to BNSF as rent for the Land. The parties shall execute the Land Lease at the Closing of the Building conveyance.

3. Prorations and Costs.

(a) Taxes. Ad valorem and similar taxes and assessments (the "**Taxes**") relating to the Building as well as the Land (it being acknowledged that under the Land Lease City is responsible for all Taxes on the Land from and after Closing) for the year in which the Closing

occurs shall be prorated between BNSF and City as of the Closing Date based on the latest rate applied to the latest assessed valuation for the Building and Land, with BNSF to bear the economic burden of all such Taxes for the Building and Land for the period prior to and including the Closing Date and with City to bear the economic burden of all such Taxes for the Building and Land for all periods after the Closing Date. If the Building and the Land are not separately assessed, the parties shall cooperate to attempt to cause the Building and the Land to be separately assessed as soon as possible after Closing, but in the event separate assessment is not possible, the parties will equitably apportion the Taxes attributable to the Building and the Land based on the relative improvement value and land value assessed against the Land and the Building. If Taxes for the Land and Building have already been paid by BNSF as of Closing for the tax year in which Closing occurs, then at Closing City shall reimburse BNSF for its pro rata share of such Taxes (for both the Land and Building) for such tax year. If Taxes have not already been paid for such year at the time of Closing, then BNSF hereby agrees that it shall reimburse City for BNSF's pro rata share of such Taxes for the time period prior to Closing as soon as statements for Taxes are issued by the applicable taxing authority. Thereafter City shall pay all Taxes for all subsequent tax years

(b) Utilities. The parties shall cooperate so that all utilities serving the Building shall be switched into the name of City as of the Closing Date, so that a final statement can be issued to BNSF for the billing period ending on the Closing Date, and so that the first day of the first billing cycle in City's name can begin on the Closing Date.

(c) Closing Costs. City shall pay all closing costs and expenses associated with the conveyance transaction contemplated hereunder, including without limitation any survey costs, recording fees, transfer taxes, excise taxes, and any brokerage fees.

4. Microwave Tower. City acknowledges and agrees that BNSF is the owner of that certain microwave transmission tower (the "**Tower**") located on the Land as shown on Exhibit "A". City acknowledges and agrees that it will not be acquiring any rights to the Tower in connection with its acquisition of the Building and that City shall not perform any Building Renovations (as hereinafter defined) on the Tower. Further, City acknowledges and agrees that it will not be acquiring any rights to the Tower in connection with the Land Lease. The Tower shall remain in place as BNSF's exclusive property and City shall not in any way attempt to restrict BNSF's access to and use of the Tower at any time, nor shall City have any right to use the Tower. To the extent the Tower is located on the Land leased to City and/or the Building conveyed to City, City hereby grants back to BNSF an irrevocable license to maintain and operate the Tower on the Land and to relocate, modify, reconstruct, and/or expand the Tower as BNSF may reasonably deem necessary or desirable, and to otherwise deal with all aspects of the Tower.

5. Condition of Properties Involved.

(a) Title. BNSF makes no representations or warranties as to the status of title to the Building or the Land. The conveyance of the Building and the lease of the Land is subject to all validly existing and enforceable rights, interests and estates, if any do in fact exist, of third parties in connection with all easements, rights-of-way, liens, royalties, mortgages, deeds of trust and other encumbrances, and to any renewals and extensions thereof, if any, relating to the Land and Building, as well as all zoning and other governmental requirements applicable thereto. City acknowledges and affirms that BNSF may not hold fee simple title to the Land and that BNSF's interest in the Land, if any, may rise only to the level of an easement for railroad purposes. As a result, the status of title to the Building is subject to the status of title to the

Land, and City acknowledges and affirms that BNSF may not hold all right, title and interest in and to the Building. City is willing to accept BNSF's title to the Building (and leasehold rights in the Land), if any, on this basis and expressly releases BNSF, its successors and assigns from any claims that City or its successors may have as a result of BNSF not holding fee simple title to the Land and/or full ownership of the Building. **IN LIGHT OF BNSF'S DISCLOSURE THAT IT MAY NOT HOLD FEE SIMPLE TITLE TO THE LAND AND/OR ALL RIGHT, TITLE AND INTEREST IN AND TO THE BUILDING, CITY AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY, DEFEND AND HOLD BNSF HARMLESS FROM ANY SUIT OR CLAIM FOR DAMAGES, PUNITIVE OR OTHERWISE, EXPENSES, ATTORNEYS' FEES, OR CIVIL PENALTIES THAT MAY BE IMPOSED ON BNSF AS THE RESULT OF ANY PERSON OR ENTITY CLAIMING AN INTEREST IN THE LAND AND/OR BUILDING OR CLAIMING THAT BNSF DID NOT HAVE THE RIGHT TO TRANSFER THE BUILDING TO CITY.**

(b) Condition. The parties hereto acknowledge the possible existence of asbestos material in the Building. The parties further acknowledge the possibility that asbestos material may exist in other portions or locations in the building structures located on the Land. City specifically covenants and agrees that BNSF shall not be responsible or liable for the existence of any asbestos material or removal of such material from the Building or Land to be covered herein. City specifically acknowledges and agrees that it shall not make any claim or assert any cause of action against BNSF as a result of the existence or presence of asbestos material. City does hereby release BNSF from and against any claim, liability, cause of action or otherwise arising out of or in any manner connected with the presence or existence of asbestos material located anywhere within the Building to be conveyed herein including, but not limited to, any costs incurred by City, in the removal of such asbestos material. Without limitation to the foregoing or anything else contained in this Contract, City has been allowed to make an inspection of the Building and has knowledge as to the past use of the Building. Based upon this inspection and knowledge, and acknowledging that the Building is in need of substantial repair, City accepts the Building on an **"AS-IS, WHERE-IS AND WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, INCLUDING THOSE RELATING TO THE POSSIBLE EXISTENCE OR PRESENCE OF ASBESTOS MATERIAL, THE CONSTRUCTION OR THE STRUCTURAL SOUNDNESS OF THE BUILDING. CITY AGREES NOT TO SEEK RECOVERY FOR OR COLLECTION OF, NOR INSTITUTE ANY LITIGATION RELATED TO ANY RIGHTS, CAUSES OF ACTION, OR CLAIMS CITY MAY HAVE AGAINST BNSF WHICH ARE IN ANY WAY RELATED TO OR ARISE OUT OF THE BUILDING.** As a material consideration of BNSF's willingness to enter into this transaction, City represents and warrants that **CITY IS AWARE THAT CITY IS ACQUIRING THE BUILDING ON AN "AS-IS, WHERE-IS AND WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, INCLUDING THOSE RELATING TO THE CONSTRUCTION OR STRUCTURAL SOUNDNESS OF THE BUILDING AND THE ENVIRONMENTAL CONDITION OF THE BUILDING AND/OR THE LAND, AND THAT CITY IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM BNSF AS TO ANY MATTERS CONCERNING THE BUILDING AND/OR THE LAND,** including (i) the physical condition of the Building and any defects thereof, (ii) the presence of any Hazardous Substances (as hereinafter defined) in, on or under the Building and/or the Land, (iii) the condition or existence of any of the above ground or underground structures or improvements in, on or under the Building and/or the Land, (iv) the condition of title to the Building and/or the Land, (v) the existence of any leases, easements or other agreements affecting the Building and/or the Land, (vi) the status of zoning, (vii) the tax consequences of this transaction, (viii) the compliance of the Building and/or the Land with any law, ordinance, regulation, decree or private restriction, or (ix) the availability of utilities to the

Building and/or the Land. **BNSF EXPRESSLY DISCLAIMS ANY WARRANTIES FOR THE BUILDING AND/OR THE LAND, INCLUDING, WITHOUT LIMITATION, WARRANTIES AS TO TITLE, MERCHANTABILITY, HABITABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR CONFORMITY OF THE BUILDING AND/OR THE LAND TO ITS INTENDED USE. CITY AGREES NOT TO SEEK RECOVERY FOR OR COLLECTION OF, NOR INSTITUTE ANY LITIGATION RELATED TO ANY RIGHTS, CAUSES OF ACTION, OR CLAIMS CITY MAY HAVE AGAINST BNSF WHICH ARE IN ANY WAY RELATED TO OR ARISE OUT OF THE BUILDING AND/OR THE LAND. FURTHER, CITY WAIVES, RELEASES AND DISCHARGES FOREVER BNSF AND BNSF'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, LICENSEES AND INVITEES (COLLECTIVELY, THE "BNSF PARTIES") FROM ANY AND ALL PRESENT OR FUTURE, KNOWN OR UNKNOWN, CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING, BUT NOT LIMITED TO, THOSE IN CONTRACT, TORT AND STRICT LIABILITY), DAMAGES (INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL AND PUNITIVE), LOSSES, INJURIES, LIABILITIES, COSTS (INCLUDING, BUT NOT LIMITED TO, FINES, PENALTIES, COURT COSTS AND ATTORNEYS' FEES) ARISING FROM OR IN ANY WAY RELATED TO THE BUILDING, THE LAND, OR THE OPERATIONS OF BNSF, INCLUDING WITHOUT LIMITATION DERAILMENTS OR OTHER ACCIDENTS OF A SIMILAR CATASTROPHIC NATURE, FROM VIBRATION OR OTHER ACTIVITIES OF THE BNSF IN THE ORDINARY COURSE OF ITS OPERATIONS (INCLUDING RAILROAD OPERATIONS), EVEN IF SUCH LOSS, DAMAGE OR CLAIM IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF BNSF OR ANY OF THE BNSF PARTIES.**

(c) Proximity to Railroad Tracks. City understands that the Building and Land are in dangerous proximity to railroad tracks and that persons and property, whether real or personal, in the Building and/or on the Land will be in danger of injury, death or destruction incident to the operation of the railroad, including, without limitation, the risk of derailment, fire, or inadequate clearance (including, without limitation, sight clearance or vision obstruction problems at grade crossings on or adjacent to the Land), and City accepts the Building and the lease of the Land subject to such dangers. Accordingly, City covenants and agrees that City shall not enact any ordinance, rule or other regulation requiring BNSF to change or otherwise modify its railroad operations or maintenance procedures from those in effect at the Closing Date. **FURTHERMORE, NOTWITHSTANDING ANY OTHER LANGUAGE IN THIS CONTRACT TO THE CONTRARY, TO THE FULLEST EXTENT PERMITTED BY LAW, CITY INDEMNIFIES, HOLDS HARMLESS AND HEREBY WAIVES, RELEASES AND DISCHARGES FOREVER BNSF AND THE BNSF PARTIES FROM ANY AND ALL PRESENT OR FUTURE, KNOWN OR UNKNOWN, CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING, BUT NOT LIMITED TO, THOSE IN CONTRACT, TORT AND STRICT LIABILITY), DAMAGES (INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL AND PUNITIVE), LOSSES, INJURIES, LIABILITIES, COSTS (INCLUDING, BUT NOT LIMITED TO, FINES, PENALTIES, COURT COSTS AND ATTORNEYS' FEES) ARISING FROM OR IN ANY WAY RELATED TO THE BUILDING, THE LEASE OF THE LAND OR CITY'S OPERATIONS, EVEN IF SUCH LOSS, DAMAGE OR CLAIM IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF BNSF OR ANY OF THE BNSF PARTIES.**

(d) Hazardous Conditions. City represents to BNSF that City is aware of the risk that Hazardous Substances may be present on, under, in or about the Building and/or the Land and that City has conducted such investigations of the Building and/or the Land, including but not limited to, the physical and environmental conditions thereof, as City deemed necessary to satisfy itself as to the condition of the Building and the Land and is relying solely upon same and not upon any information provided by or on behalf of BNSF or its agents or employees with



respect thereto. **TO THE FULLEST EXTENT PERMITTED BY LAW, CITY SHALL ASSUME THE RISK THAT ADVERSE MATTERS MAY NOT HAVE BEEN REVEALED BY CITY'S INVESTIGATIONS, AND CITY HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS BNSF AND THE BNSF PARTIES FROM ANY AND ALL PRESENT OR FUTURE, KNOWN OR UNKNOWN, CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING, BUT NOT LIMITED TO, THOSE IN CONTRACT, TORT AND STRICT LIABILITY), DAMAGES (INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL AND PUNITIVE), LOSSES, INJURIES, LIABILITIES, COSTS (INCLUDING, BUT NOT LIMITED TO, FINES, PENALTIES, COURT COSTS AND ATTORNEYS' FEES) ARISING FROM OR IN ANY WAY RELATED TO (i) ANY BODILY INJURY OR DEATH OF ANY PERSON OR PERSONS WHOMEVER, INCLUDING THE PARTIES HERETO, OR LOSS OR DAMAGE TO THE BUILDING AND/OR THE LAND IN ANY MANNER ARISING FROM OR GROWING OUT OF THE ACTS OR OMISSIONS, NEGLIGENT OR OTHERWISE, OF CITY OR ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, LICENSEES AND INVITEES IN CONNECTION WITH THE ENTRY UPON, OCCUPATION OR USE OF THE BUILDING AND/OR THE LAND, AND/OR (ii) ANY ALLEGED OR ACTUAL PRESENCE, USE, STORAGE, GENERATION, MANUFACTURE, TRANSPORT, RELEASE, LEAK, SPILL, DISPOSAL OR OTHER HANDLING OF ANY HAZARDOUS SUBSTANCES BY CITY OR ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, LICENSEES AND INVITEES IN, ON OR UNDER THE BUILDING AND/OR THE LAND.** As used in this Section, the term "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 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 Land or the operations or business of the BNSF on the Land to be in compliance with the requirements of any Environmental Law, and (c) costs imposed under any Environmental Law enacted after Closing. As used in this Contract, the term "**Environmental Law**" means 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 or the environment, including without limitation, 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. As used in this Contract, the term "**Hazardous Substance**" means any hazardous, toxic, radioactive or infectious substance, material, contaminant or waste as defined, listed or regulated under any Environmental Law, and includes without limitation, petroleum oil and any of its fractions, asbestos and materials that contain asbestos, lead-based paint, and any other substances which are defined in, included under, or regulated by any Environmental Law. The rights of BNSF 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 City to remove, close, remediate, reimburse or take other actions requested or required by any governmental agency concerning any Hazardous Substances or contaminants in the Building or on the Land.

6. Lease of Portions of Building to BNSF and Amtrak.

(a) Lease of BNSF Premises. Simultaneously with the Closing of the conveyance of the Building and the lease of the Land under the Land Lease, City shall lease the BNSF Premises to BNSF for a term of thirty (30) years for a one time rental payment of One Hundred Dollars (\$100.00). BNSF's use and occupation of the BNSF Premises shall be pursuant to the terms of that certain lease agreement (the "**BNSF Premises Lease**") attached hereto as **Exhibit "E"** and incorporated herein for all purposes by this reference. City hereby agrees to pay all utilities

for the BNSF Premises during the term of the BNSF Premises Lease. The parties shall execute the BNSF Premises Lease at the Closing of the Building conveyance and the lease term thereunder shall commence on the Closing Date.

(b) Lease of Amtrak Premises. City acknowledges that the National Rail Passenger Service Corporation ("**Amtrak**") currently occupies space within the Building pursuant to that certain agreement between Amtrak and Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company, dated September 1, 1996, as amended ("**Operating Agreement**"). City also acknowledges that BNSF is obligated to provide property in the City of Lawrence for intercity rail passenger use under the terms of the federal Rail Passenger Service Act (Title 49 United States Code Section 24308(a)). Effective as of the Closing Date, City shall enter into a new station lease ("**Station Lease**") with Amtrak, on terms and conditions mutually acceptable to City and Amtrak (and approved by BNSF) and substantially the same as those in effect under the existing Operating Agreement pertaining to Amtrak's use and occupancy of the Amtrak Premises in the Building. The Station Lease will enable Amtrak to provide an intercity railroad passenger station facility for Lawrence, Kansas, at the Building (or with other equitable replacement property if approved by Amtrak) for so long as such obligations are required by law. The Station Lease shall be binding upon and inure to the benefit of City and Amtrak, and their respective successors and assigns. As more particularly described on **Exhibit "F"**, entry into the Station Lease by City and Amtrak shall be a condition precedent to BNSF closing on its conveyance of the Building to City, and City agrees to cooperate reasonably with BNSF and Amtrak in order to arrive at a mutually satisfactory form of Station Lease.

7. Closing. The consummation of the conveyance and lease transactions contemplated hereunder (the "**Closing**") shall occur promptly upon satisfaction of the conditions to Closing set forth in **Exhibit "F"** attached hereto and incorporated herein by this reference as if set forth in full. If the conditions are not fully satisfied by the dates set forth therein, then this Contract shall terminate as provided therein. Upon the timely satisfaction of the conditions to Closing set forth in **Exhibit "F"**, the Closing shall occur as follows:

(a) BNSF's Deliveries. BNSF will forward two unexecuted originals each of (i) the Bill of Sale, (ii) the Land Lease, (iii) the BNSF Premises Lease and (iv) the Memorandum (as hereinafter defined) to City for execution. BNSF will also send City a check in the amount of \$100.00 for the rent under the BNSF Premises Lease.

(b) City's Deliveries. City shall fully execute each of the originals of (i) the Bill of Sale, (ii) the Land Lease, (iii) the BNSF Premises Lease and (iv) the Memorandum, and shall return same to BNSF via overnight mail. If not previously provided by City to BNSF, City shall also send a fully executed copy of the Station Lease with Amtrak to BNSF. Pursuant to Section 3(a) above, if Taxes on the Building and Land for the year have already been paid by BNSF, then City shall also send a check to BNSF for City's prorated share of said Taxes.

(c) Final Execution. Upon BNSF's receipt of all executed originals of the Bill of Sale, the Land Lease, the BNSF Premises Lease and the Memorandum (as well as the fully executed copy of the Station Lease), BNSF shall execute all originals of the documents. The Closing shall occur via mail or overnight delivery and BNSF shall forward one executed original of each of the Bill of Sale, the Land Lease, the BNSF Premises Lease and the Memorandum to City at the address indicated below City's signature. The "**Closing Date**" shall be deemed to be the date BNSF executes the Bill of Sale, the Land Lease, the BNSF Premises Lease and the Memorandum.

(d) Further Assurances. Following the Closing, City, at its expense, shall (i) execute and deliver to BNSF such documents, instruments, certificates, assignments, and other writings--and do such other acts necessary or desirable--to evidence the conveyance of the Building from BNSF to City as BNSF or its successors or assigns may reasonably require from time to time; and (ii) do and execute all such further lawful and reasonable acts, conveyances, and assurances for the better and more effective carrying out of the intents and purposes of the Contract, as BNSF or its successors or assigns may reasonably require from time to time.

8. City's Post-Closing Obligations.

(a) Building Renovations. The parties hereto acknowledge and agree that City is accepting the conveyance and conveyance of the Building from BNSF with the requirement that City will perform, or otherwise cause to be performed, at City's sole cost and expense, substantial renovations to both the interior and exterior of the Building (the "**Building Renovations**"). City covenants and agrees that the Building Renovations shall be carried out pursuant to those certain plans and specifications attached hereto as Exhibit "G" ("**Plans and Specifications**"). City covenants and agrees that within \_\_\_\_ (\_\_) days after the Closing Date all Building Renovations shall be fully completed in accordance with the requirements of this Contract and otherwise to BNSF's satisfaction, with this deadline referred to as the "**Building Renovation Deadline**." City further covenants and agrees that it shall complete the renovations to the BNSF Premises before completing the renovations to the other areas of the Building, and shall conduct the Building Renovations in a manner so as to minimize interference with BNSF's operations in the Building. City shall carry out the Building Renovations (i) in a good and workmanlike manner in conformance with the Plans and Specifications and sound and acceptable building practices, (ii) in accordance with the highest safety standards for building and renovation work, (iii) in compliance with all applicable federal, state, municipal, or other laws, statutes, codes, restrictions, regulations, ordinances and orders promulgated by any governmental or judicial body or agency, and (iv) as expeditiously as possible. City shall use commercially reasonable means to ensure the Building Renovations are of the highest quality. City will permit no liens of any kind to be fixed upon or against the Land or the Building and City shall be solely responsible for the cost and expense of removing any such liens caused by City, its employees, contractors, representatives, or agents. City shall promptly pay, discharge and release of record any and all liens, charges and orders.

(b) Minimal Interference. City further covenants and agrees that, during the Building Renovations, City shall cooperate with BNSF and Amtrak to minimize interference with BNSF's use of the BNSF Premises and Amtrak's use of the Amtrak Premises. If the Building Renovations reasonably require BNSF to vacate the BNSF Premises or Amtrak to vacate the Amtrak Premises, then City shall, at City's sole cost and expense, provide temporary facilities for BNSF's temporary use and Amtrak's temporary use, as applicable, during the Building Renovations. Any such temporary facilities must be located in the general vicinity of the Building and must be approved in advance as adequate by BNSF as to the BNSF Premises and Amtrak as to the Amtrak Premises. In no event, however, shall the Building Renovations include any work on or about the Tower, or otherwise interfere with BNSF's access and use of the Tower. The Tower must remain fully operational during the Building Renovations.

(c) Insurance. Without limitation to the insurance requirements under the Land Lease and the BNSF Premises Lease, during the Building Renovations City shall maintain the insurance coverages described on Exhibit "H" attached hereto.

(d) Parking. As part of the Building Renovations and City's general responsibility for the upkeep of the Land under the terms of the Land Lease, City shall upgrade, maintain and repair the parking lot located on the Land and shall provide for its ongoing use to provide parking in connection with the Building. As may be described further in the Land Lease, BNSF and Amtrak shall have rights to use the parking lot and City agrees that it shall not unreasonably limit or condition use of the parking lot by BNSF or Amtrak or any of their employees or business invitees.

(e) Construction Information. Upon completion of the Building Renovations, City shall deliver to BNSF written notice containing the following (i) a summary and breakdown of the Total Renovation Costs (as hereinafter defined) together with copies of applications for payment, invoices and similar documents from third-party contractors, materialmen and service providers evidencing such costs, (ii) copies of all construction and/or manufacturers warranties or any other warranties or guarantees obtained from any contractors, suppliers or other parties with respect to the Building Renovation (the "**Warranties**") and (iii) two (2) full sets of the Plans and Specifications for the Building Renovations, marked up by the general contractor conducting the Building Renovations to show any differences between the work called for in such Plans and Specifications and the final Building Renovations as actually constructed (although nothing herein shall imply any right of City to construct the Building Renovations in a manner which varies from the Plans and Specification unless previously approved in writing by BNSF, with such approval to be in BNSF's sole discretion).

(f) Survival. Without limitation to the provisions of Section 13 below, all of the provisions of this Section 8 shall survive the Closing.

#### 9. Repurchase Rights.

(a) Repurchase Event Prior to Expiration of Scheduled Lease Term. In the event of an Early Repurchase Event (as defined below), BNSF shall have the right to repurchase the Building from City at any time during the term under the Land Lease (the "**Early Repurchase Right**").

(b) An "**Early Repurchase Event**" as used herein shall mean any of the following:

- (i) City's receipt of a bona fide third party offer to purchase, lease or acquire any interest in the Building or any portion thereof on terms which City desires to accept and/or City's offering to sell, lease or transfer any interest in the Building or any portion thereof to a third party on terms which such third party desires to accept (any of the above as may be contemplated being referred to herein as a "**Contemplated Transfer**") (i.e., there shall be no sale, lease or other transfer of any interest in the Building or any portion thereof without BNSF having the right to exercise its Early Repurchase Right);
- (ii) City's failure to timely complete the Building Renovations by the Building Renovations Deadline in accordance with the requirements of Section 8 above (but BNSF's Early Repurchase Right in such event shall be without limitation to all other rights and remedies BNSF may have as a result of City's breach of its obligation to so complete such Building Renovations) ("**Renovation Failure**"); or

- (iii) If BNSF shall require that ownership of the Building be transferred to BNSF for railroad purposes or activities in order to comply with any law or regulation or if BNSF otherwise determines such ownership is necessary or desirable for railroad purposes as determined by BNSF in its sole discretion ("**Railroad Need**").

(c) Occurrence of Early Repurchase Event and Notice. Upon an Early Repurchase Event under Section 9(b)(i) above, City must immediately provide written notice to BNSF of the details of the Contemplated Transfer, including without limitation the name, address and background of the third party involved with the Contemplated Transfer, and a true and complete copy of any proposed purchase and sale agreement, letter of intent or other document evidencing the proposed terms under which the Contemplated Conveyance would occur (the "**Contemplated Transfer Notice**") (and following the Contemplated Transfer Notice, City shall provide such other details regarding the Contemplated Transfer as BNSF may reasonably request). BNSF will have until thirty (30) days after the Trigger Date (as hereinafter defined) to decide whether or not to exercise its Early Repurchase Right to purchase the Building and to provide City with written notice of its decision (the "**Exercise Notice**"). As used herein the "**Trigger Date**" shall mean, as applicable: (1) the date on which BNSF has received a Contemplated Transfer Notice with respect to an Early Repurchase Event under Section 9(b)(i) above or (2) such date as BNSF determines that a Renovation Failure has occurred or a Railroad Need exists with respect to an Early Repurchase Event under Section 9(b)(ii) or (iii) above. In no event shall City have the right to complete any Contemplated Transfer unless a Contemplated Transfer Notice has been given to BNSF and BNSF elects not deliver an Exercise Notice as provided above.

(d) Subsequent Early Repurchase Events. If BNSF decides not to purchase the Building upon a given Early Repurchase Event, BNSF's Early Repurchase Right shall continue and BNSF shall still have the option to repurchase the Building upon a subsequent Early Repurchase Event.

(e) Early Repurchase Price. If BNSF decides to exercise its Early Repurchase Right to purchase the Building, then the purchase price for the Building (the "**Early Repurchase Price**") shall be calculated as:

- (i) the Total Renovation Costs (as hereinafter defined), less
- (ii) the accumulated amortization from the date of the completion of the Building Renovations to the date of the Repurchase Closing, with the annual amortization to be calculated in accordance with generally accepted accounting principles consistently applied using the straight-line method of amortization (with the amortization period being the period from completion of the Building Renovations through the Term of the Lease) with no salvage value assigned to the Building Renovations.
- (iii) For purposes of this Lease, the "**Total Renovation Costs**" shall be deemed to be the amount that is the lesser of:
  - (a) the total actual cost paid to third parties of constructing the Building Renovations, as evidenced by applications for payment, invoices and similar documents from third party contractors,

materialmen and service providers or other documentation satisfactory to BNSF, in BNSF's sole discretion, or

(b) the amount of federal funds received by City specifically designated for the Building Renovations (the "**Federal Renovation Grant**") from the \_\_\_\_\_ (the "**Granting Authority**"), but only to the extent and the amount that such Federal Renovation Grant must be repaid by City to the Granting Authority upon BNSF's repurchase of the Building. City agrees to provide sufficient documentation satisfactory to BNSF, in BNSF's sole discretion, supporting the amount of the Federal Renovation Grant and City's repayment obligations thereof to the Granting Authority.

(c) Notwithstanding the foregoing or anything contained in this Agreement to the contrary, in no event shall BNSF have any obligation whatsoever to the Granting Authority for repayment of all or any part of the Federal Renovation Grant. The payment obligations of BNSF resulting from its exercise of its Early Repurchase Right shall run only to the City. City expressly acknowledges and agrees that it retains sole responsibility for any repayment of Federal Renovation Grant to the Granting Authority, and that BNSF shall have no obligation whatsoever therefor. BNSF's payment of the Early Repurchase Price to City shall satisfy BNSF's payment obligations hereunder in connection with BNSF's repurchase of the Building. **CITY HEREBY AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY, DEFEND AND HOLD BNSF HARMLESS FROM ANY SUIT OR CLAIM FOR DAMAGES, EXPENSES, ATTORNEYS' FEES, OR CIVIL PENALTIES THAT MAY BE IMPOSED ON BNSF AS THE RESULT OF THE FAILURE OF CITY TO REPAY THE FEDERAL RENOVATION GRANT AND/OR ANY CLAIM THAT CITY DID NOT HAVE THE RIGHT TO TRANSFER THE BUILDING TO BNSF PURSUANT TO BNSF'S EXERCISE OF ITS EARLY REPURCHASE RIGHT.**

(iv) BNSF's calculation of the Early Repurchase Price shall be included in the Exercise Notice. If City disputes the Early Repurchase Price as set forth in the Exercise Notice, then City and BNSF agree to work together reasonably, in good faith and as expeditiously as possible, to arrive at the Early Repurchase Price for the Building. If there is a disagreement as to the Early Repurchase Price and the parties have not worked out their differences and agreed as to the Early Repurchase Price within thirty (30) days after BNSF has given an Exercise Notice, then City and BNSF agree to share the cost of an independent third-party mediator selected by BNSF and reasonably approved by City who shall determine the Early Repurchase Price in accordance with the definitions and provisions contained herein and whose decision shall be final absent manifest error.

(f) End of Term Repurchase Right. In addition to BNSF's Early Repurchase Right, BNSF shall have the right and option ("**End of Term Repurchase Right**") to repurchase the

Building from City upon expiration of the term of the Land Lease (whether as a result of the expiration of the scheduled term thereunder or an early termination as provided therein, including an early termination as a result of the BNSF Premises Lease being terminated as a result of a Taking as defined and described in the BNSF Premises Lease) ("**Land Lease Expiration**"). The purchase price to be paid by BNSF for the Building if BNSF exercises its End of Term Repurchase Right shall be One Dollar (\$1.00) ("**End-of-Term Purchase Price**"). BNSF shall be deemed to have exercised its End of Term Repurchase Right unless BNSF has, on or before the expiration of the Land Lease Expiration, delivered written notice to City that BNSF does not desire to exercise its End of Term Repurchase Right.

(g) Closing. If BNSF exercises its Early Repurchase Right or its End of Term Repurchase Right as provided above, then the closing ("**Repurchase Closing**") of such repurchase will occur (i) sixty (60) days after the date the Exercise Notice was given by BNSF or such earlier date as may be specified by BNSF in the Exercise Notice, in the event of an exercise of the Early Repurchase Right, or (ii) on the date that the Land Lease Term expires in the event of an exercise of the End of Term Repurchase Right ("**Repurchase Closing Date**"). At the Repurchase Closing:

- (i) BNSF shall tender the Early Repurchase Price or the End of Term Repurchase Price, as applicable, to City;
- (ii) City shall deliver to BNSF a bill of sale, in form substantially the same as the Bill of Sale under which BNSF conveyed title to the Building to City, but with no Restrictions (as referenced in the Bill of Sale attached hereto as **Exhibit "C"**) and provided that no encumbrance or other matter affecting title which was not an encumbrance on title when BNSF conveyed the Building to City shall be considered a Permitted Exception in the conveyance to BNSF. In addition to and not in limitation of the foregoing, the "As-Is" language contained in the second to last paragraph of the form of Bill of Sale attached hereto as **Exhibit "C"** shall be excluded and instead the City shall be bound to deliver the Building in the condition described immediately below;
- (iii) The Building shall be conveyed with all Building Renovations fully complete and in good repair and condition, subject to normal wear and tear;
- (iv) City shall assign and transfer all of its rights under any Warranties to BNSF; and
- (v) Taxes, utilities and other costs of operating the Building shall be prorated between the parties in the same general manner as such items were prorated or addressed in connection with the conveyance of the Building from BNSF to City under the terms hereunder.

(h) Without limitation to the provisions of Section 15 below, all rights of BNSF hereunder with respect to the Early Repurchase Right and the End of Term Repurchase Right (collectively, the "**Repurchase Rights**") shall be subject to be binding upon any successor or assign of City, and shall inure to the benefit of all successors and assigns of BNSF. At Closing the parties shall execute and record a memorandum ("**Memorandum**") suitable for recording in the public records where the Building is located and sufficient to constitute constructive notice to

all third parties of BNSF's rights hereunder with respect to the Repurchase Rights and otherwise in form reasonably satisfactory to both parties.

10. BNSF's Retained Rights. City hereby acknowledges that BNSF operates its railroad tracks directly adjacent to the Land and the Building. Without limitation to its rights under the BNSF Premises Lease or its retained rights under the Land Lease, BNSF reserves access rights across and to the Land and Building for emergency purposes as deemed necessary or advisable by BNSF, without charge and without notification to City.

11. Default/Remedies. Without limitation to the express remedies available under the Land Lease and the BNSF Premises Lease, in the event either party breaches any of its obligations under this Contract, and such breach is not cured within thirty (30) days after written notice from the non-breaching party, the non-breaching party shall have all rights and remedies at law or in equity, including the right to seek specific performance; provided, however, in no event shall City have the right to terminate BNSF's right of possession under the BNSF Premises Lease.

12. Authority. City represents and warrants to BNSF that it has the necessary capacity, right, power, and authority to enter into this Contract and that all of the obligations hereunder are enforceable and legally binding on the City and its successors. The person executing this Contract on behalf of the City represents and warrants that he or she is fully authorized to do so for and on behalf of the City. Likewise, BNSF represents and warrants to City that it has the necessary capacity, right, power, and authority to enter into this Contract and that all of the obligations hereunder are enforceable and legally binding on BNSF and its successors. The person executing this Contract on behalf of BNSF represents and warrants that he or she is fully authorized to do so for and on behalf of BNSF.

13. Survival. This Contract and the rights and obligations hereunder shall survive Closing, shall not be merged into the Bill of Sale, Land Lease, or BNSF Premises Lease and shall be continuing in nature.

14. Notices. All notices, demands, consents, and reports provided for in this Contract shall be in writing and shall be given to City or BNSF at that address set forth below or at such other address as they individually may specify thereafter in writing:

City: City of Lawrence

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

BNSF: BNSF Railway Company  
2500 Lou Menk Drive  
Fort Worth, Texas 76131  
Attn: General Counsel  
Fax: \_\_\_\_\_



With a copy to: Jones Lang LaSalle  
3017 Lou Menk Drive, Suite 100  
Fort Worth, Texas 76131  
Attn: Transaction Manager  
Fax: \_\_\_\_\_

All notices required or permitted by this Contract shall be in writing and may be delivered in person (by hand or messenger or courier service) or may be sent by certified or registered mail or overnight express mail, with postage prepaid, or by telecopy transmission (if machine generated confirmation is generated with the transmission) and shall be deemed sufficiently given and served in a manner specified in this Section. Either party may, by written notice to the other, specify a different or additional address for notice purposes. A copy of all notices required or permitted to be given by either party hereunder shall be concurrently transmitted to such party or parties at such addresses as either may from time to time hereafter designate by written notice to the other party.

15. Miscellaneous. The provisions of this Contract shall be binding upon, and inure to the benefit of, BNSF and City and their respective successors and assigns. This Contract shall be governed by and construed in accordance with the internal laws of the State in which the Land is located, without reference to the conflicts of laws or choice of law provisions thereof. The titles of sections and subsections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein. No amendment to, or waiver of any provision of, this Contract (together with its exhibits) shall be binding on any of the parties hereto unless such amendment or waiver is in writing and is executed by the party against whom enforcement of such amendment is sought. This Contract contains the entire agreement of the parties hereto with respect to the Building and Land and any other prior understandings or agreements are merged herein and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein or incorporated herein by reference shall be of any force or effect.

*[Signature Page and Exhibits Follow – The Balance of This Page Has Been Intentionally Left Blank]*

Executed as of the Effective Date stated above.

**BNSF:**

**BNSF RAILWAY COMPANY,**  
a Delaware corporation

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

**CITY:**

**CITY OF LAWRENCE,**  
a municipality formed under the laws of the  
State of Kansas

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

Amtrak executes the Contract below to acknowledge the matters described in Section 6(b) and items (d) and (e) on **Exhibit "F"**, and Amtrak agrees to fully cooperate and act reasonably and in good faith with both BNSF and City to achieve the objectives contemplated under said Section 6(b) and items (d) and (e) on **Exhibit "F"**.

**AMTRAK**

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

Address: \_\_\_\_\_  
\_\_\_\_\_

Facsimile: \_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT "A"**

**Description of the Land and Building Footprint**

*[see attached]*

**EXHIBIT "B"**

**BNSF Premises and Amtrak Premises**

*[see attached]*

## **EXHIBIT "C"**

### **Bill of Sale (Improvements Only)**

**BNSF RAILWAY COMPANY**, a Delaware corporation (formerly known as The Burlington Northern and Santa Fe Railway Company and successor by merger to The Atchison, Topeka and Santa Fe Railway Company), whose mailing address is 2500 Lou Menk Drive, Fort Worth, Texas 76131-2830, hereinafter called "**Grantor**", in consideration of good and valuable consideration to it paid by the **CITY OF LAWRENCE**, a municipality formed under the laws of the State of Kansas, whose mailing address is \_\_\_\_\_, hereinafter called "**Grantee**", receipt of which is hereby acknowledged, has sold, assigned, transferred and delivered and by these presents does hereby sell, assign, transfer and deliver unto the Grantee, without any covenants of warranty whatsoever and without recourse to the Grantor, all its right, title and interest, if any, in and to the following described depot building consisting of one story and containing approximately 4,324 square feet (the "**Building**") located on that certain tract of land owned by Grantor ("**Land**"), with the Building more particularly described in **Exhibit "A"** hereto and the Building's footprint on the Land shown in **Exhibit "A"** hereto.

Grantor hereby expressly reserves fee simple title and all other right, title and interest and all appurtenant rights it has or may have in and to the Land, and the Land is not included in the conveyance hereunder, but pursuant to that certain land lease of even date herewith ("**Land Lease**"), Grantor is granting to Grantee a thirty (30) year lease over the Land for the purposes stated therein.

Grantor's conveyance of the Building to Grantee is governed by that certain Conveyance Contract (Improvements Only) dated effective \_\_\_\_\_, 2010 (the "**Contract**").

Grantor's conveyance of the Building to Grantee is further subject to all existing interests, including but not limited to all reservations, rights-of-way and easements of record or otherwise, and the following restrictive covenants and covenants ("**Restrictions**") which shall perpetually apply to the Building:

- (a) The Building may only be used for railroad use including administrative offices in connection with the operation of adjoining railroad tracks (the "**Permitted Use**").
- (b) Grantor has certain rights to repurchase the Building as set forth in Section 9 of the Contract, including the right to repurchase the Building in the event Grantee desires to sell or transfer any interest therein, and any purported transfer by Grantee of any interest in the Building or any portion thereof shall be void and of no effect unless the provisions of said Section 9 have been complied with and Grantor has elected not to repurchase the Building pursuant to the provisions thereof.
- (c) Grantee has certain duties under the Contract to renovate the Building as more particularly described in the Contract.

The Restrictions shall touch, concern and run with and burden the Building and shall inure to the benefit of and be enforceable by Grantor and Grantor's successors and assigns. In the event Grantee or its successors or assigns violate or attempt to violate any of the provisions of the Restrictions, Grantor and its successors and assigns or other benefited parties may do any one or all of the following: (i) institute and prosecute any proceeding at law or in equity to abate, prevent, or enjoin any such violation or attempted violation, (ii) institute and prosecute

any proceeding at law or in equity to recover monetary damages caused by such violation or attempted violation, and/or (iii) reenter the Building for condition broken and declare that title to the Building has irrevocably reverted to Grantor and Grantee acknowledges and agrees that in such event Grantee and its successors and assigns shall have forfeited all rights to the Building as a result of such violation. If requested by Grantor, Grantee shall execute a Bill of Sale to further evidence that the Building has reverted back to Grantor. The Restrictions shall apply in perpetuity, regardless of when or if the Building ceases to be used for the Permitted Use. No delay in enforcing the provisions of the Restrictions with respect to any breach or violation thereof shall impair, damage, or waive the right of any party entitled to enforce the same to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times. Each contract for sale, deed, deed of trust, or other instrument which may hereafter be executed with respect to the Building and/or any property situated within the Building shall be deemed to have been executed, delivered, and accepted subject to all of the provisions contained herein and all such provisions shall, without further action, be incorporated by reference therein, regardless of whether any such instrument specifically refers to or recites all or any part of the Restrictions. These Restrictions are for the sole benefit of Grantor and may be waived or terminated by Grantor as Grantor may desire in its sole discretion, but any such waiver or termination must be in writing and recorded in the public records to be effective.

This instrument is executed by Grantor and accepted by Grantee subject to validly existing and enforceable rights, interests, and estates, if any do in fact exist, but only to the extent that the same do in fact exist, of third parties in connection with those items set out and listed in **Exhibit "B"** hereto (herein called the "**Permitted Exceptions**").

The parties hereto acknowledge the possible existence of asbestos material in the Building. The parties further acknowledge the possibility that asbestos material may exist in other portions or locations in the building structures located on the Land. Grantee specifically covenants and agrees that Grantor shall not be responsible or liable for the existence of any asbestos material or removal of such material from the Building or Land to be covered herein. Grantee specifically acknowledges and agrees that it shall not make any claim or assert any cause of action against Grantor as a result of the existence or presence of asbestos material. Grantee does hereby release Grantor from and against any claim, liability, cause of action or otherwise arising out of or in any manner connected with the presence or existence of asbestos material located anywhere within the Building to be conveyed herein including, but not limited to, any costs incurred by Grantee, in the removal of such asbestos material. Without limitation to the disclaimer and other provisions contained in the Contract, Grantee has been allowed to make an inspection of the Building and has knowledge as to the past use of the Building. Based upon this inspection and knowledge, and acknowledging that the Building is in need of substantial repair, Grantee accepts the Building on an **"AS-IS, WHERE-IS AND WITH ALL FAULTS"** BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, INCLUDING THOSE RELATING TO THE POSSIBLE EXISTENCE OR PRESENCE OF ASBESTOS MATERIAL, THE CONSTRUCTION OR THE STRUCTURAL SOUNDNESS OF THE BUILDING. GRANTEE AGREES NOT TO SEEK RECOVERY FOR OR COLLECTION OF, NOR INSTITUTE ANY LITIGATION RELATED TO ANY RIGHTS, CAUSES OF ACTION, OR CLAIMS GRANTEE MAY HAVE AGAINST GRANTOR WHICH ARE IN ANY WAY RELATED TO OR ARISE OUT OF THE BUILDING.

**TO HAVE AND TO HOLD** the same unto the said Grantee, its successors and assigns, subject to the Restrictions and Permitted Exceptions.

IN WITNESS WHEREOF, Grantor and Grantee have hereby executed this Bill of Sale as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**GRANTOR:**

**BNSF RAILWAY COMPANY,**  
a Delaware corporation

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

Address: 2500 Lou Menk Drive  
Fort Worth, Texas 76131  
Attn: General Counsel

**GRANTEE:**

**CITY OF LAWRENCE**  
a municipality formed under the laws of the  
State of Kansas

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

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF TEXAS                   §  
   §  
COUNTY OF TARRANT       §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_, \_\_\_\_\_ of BNSF Railway Company, a Delaware corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

\_\_\_\_\_  
Notary's Typed or Printed Name

My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_           §  
   §  
COUNTY OF \_\_\_\_\_       §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, on behalf of said \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

\_\_\_\_\_  
Notary's Typed or Printed Name

My Commission Expires: \_\_\_\_\_

EXHIBIT "A" TO  
Bill of Sale (Improvements Only)

*[to be attached prior to execution]*



EXHIBIT "B" TO  
Bill of Sale (Improvements Only)

**Permitted Exceptions**

1. Lease for space in the Building by Grantee, as landlord, and Grantor, as lessee, with such lease dated effective as of \_\_\_\_\_, 2010.
2. Lease for space in the Building by Grantee, as landlord, and Amtrak, as lessee, with such lease dated effective as of \_\_\_\_\_, 2010.
3. Land Lease.
4. Any and all other restrictions, reservations, covenants, conditions, rights-of-way, easements, and encumbrances, whether of record or not, all municipal or other governmental zoning laws, regulations and ordinances, if any, affecting the Building and/or Land, and any other matters affecting the Building and/or Land which would be disclosed by a physical inspection of the Building and/or the Land on which it is located or an accurate survey of the Building and/or the Land on which it is located.

**EXHIBIT "D"**

**Land Lease**

*[see attached]*

**EXHIBIT "E"**

**BNSF Premises Lease**

*[see attached]*

## **EXHIBIT "F"**

### **Conditions to Closing**

The following obligations of City shall be conditions to BNSF's obligation to consummate the transaction to convey the Building to City. In the event any of these conditions are not satisfied by the applicable date indicated below (or if no date is indicated below then by the date that is 45 days after the Effective Date), BNSF may in its sole discretion elect (i) to extend such date or (ii) to treat such failure to meet the condition by the required date as a breach of this Contract by City and terminate this Contract by written notice to City, whereupon neither party shall have any further rights or obligations.

(a) If the approval of any governmental agency is required for the conveyance of the Building, it is understood and agreed that the consummation of this Contract is conditioned upon obtaining such approval and that both parties shall use their best efforts to obtain such approval.

(b) City shall obtain and deliver to BNSF by the date that is 30 days after the Effective Date, at City's sole cost and expense, any survey or plat required, if any, by the applicable city, county or other governmental authority for the conveyance of the Building from BNSF to City. Such survey or plat shall be subject to BNSF's approval in its sole discretion.

(c) City shall provide BNSF no later than the date that is 30 days after the Effective Date, at City's sole cost and expense, an MAI appraisal report that provides a market value estimate of the Building proposed for conveyance unto the City.

(d) No later than 30 days after the Effective Date, City shall enter into the Station Lease with Amtrak, with the Station Lease subject to BNSF's reasonable approval.

(e) Upon entry into the Station Lease, but in any event at least ten (10) days prior to the Closing, Amtrak shall execute a written release for BNSF from all continuing obligations under the Operating Agreement.

(f) City shall have performed each of City's obligations under this Contract.

**EXHIBIT "G"**

**Plans and Specifications**

*[to be attached prior to execution]*

## EXHIBIT "H"

### Insurance

**A.** Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$ 4,000,000, but in no event less than the amount otherwise carried by Lessee. Coverage must be purchased on a post 2004 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

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to Railroad.
- ◆ Additional insured endorsement in favor of and acceptable to Railroad and Jones Lang LaSalle Global Services - RR, Inc.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to **Railroad** employees.

No other endorsements limiting coverage may be included on the policy.

**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

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to **Railroad**.
- ◆ Additional insured endorsement in favor of and acceptable to **Railroad**.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by **Railroad**.

**C.** Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ City'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.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to **Railroad**.

**D.** If construction is to be performed on the Land or Building by City, City or City's contractor shall procure Railroad Protective Liability insurance naming only Railroad as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to include Evacuation Expense Coverage Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the Railroad prior to performing any work or services

**E.** Contractor's Pollution Legal Liability (CPL) Insurance. This insurance shall be in an amount of at least FIVE MILLION DOLLARS (\$5,000,000) per claim including but not limited to coverage for the following:

- ◆ bodily injury, sickness, disease, mental anguish, or shock sustained by any person, including death;
- ◆ property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed;
- ◆ defense costs including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.
- ◆ Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in BODILY INJURY, PROPERTY DAMAGE, or Remediation Expense.
- ◆ If coverage is purchased on a "claims made" basis, lessee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation, or termination of this contract. Annually contractor agrees to provide evidence of such coverage as required hereunder.
- ◆ Delete any bodily injury exclusions resulting from lead or asbestos.
- ◆ Amend the Contractual Liability exclusions and employers liability exclusion to provide coverage for liability assumed under contract.
- ◆ Amend the definition of Property Damage to provide coverage for natural resource damage.

Other Requirements:

All policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

City agrees to waive its right of recovery against **Railroad** for all claims and suits against **Railroad**. In addition, its insurers, through the terms of the policy or through policy endorsement, waive their right of subrogation against **Railroad** for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. City 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 City's care, custody or control.

City is not allowed to self-insure without the prior written consent of **Railroad**. If granted by **Railroad**, any self-insured retention or other financial responsibility for claims shall be covered directly by City in lieu of insurance. Any and all **Railroad** liabilities that would otherwise, in accordance with the provisions of this Contract, be covered by City's insurance will be covered as if City elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to accessing the Land and/or Building, City shall furnish to **Railroad** an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage and endorsements. 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, renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from **Railroad**, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to **Railroad** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the Land is located.

City represents that this Lease has been thoroughly reviewed by City's insurance agent(s)/broker(s), who have been instructed by City to procure the insurance coverage required by this Contract. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, **Railroad** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be contracted by City, City shall require that the contractor shall provide and maintain insurance coverages as set forth herein, naming **Railroad** as an additional insured, and shall require that the contractor shall release, defend and indemnify **Railroad** to the same extent and under the same terms and conditions as City is required to release, defend and indemnify **Railroad** herein.

Failure to provide evidence as required by this section shall entitle, but not require, **Railroad** to terminate this Contract immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of City's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by City shall not be deemed to release or diminish the liability of City including, without limitation, liability under the indemnity provisions of this Contract. 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, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.



## DEFINITE TERM LEASE LAND

THIS DEFINITE TERM LEASE FOR LAND ("**Lease**") is made to be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2010 (the "**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Lessor**") and the **CITY OF LAWRENCE**, a municipality formed under the laws of the State of Kansas ("**Lessee**").

### RECITALS

A. Lessor owns or controls (i) certain land situated at or near the railway station of Lawrence, County of Douglas, State of Kansas, Line Segment 7101-1, Mile Post 26.50 as shown on the attached Drawing No. 3-46848R2, dated June 26, 2009, as revised February 23, 2010, attached hereto as **Exhibit "A"** and incorporated herein by this reference ("**Land**"), and (ii) certain improvements located on the Land consisting of that certain depot building (the "**Building**") consisting of one story and containing approximately 4,324 square feet, the footprint of which is located on the portion of the Land as shown on the attached Drawing No. 3-46848R1, dated June 26, 2009, as revised February 23, 2010, attached hereto as **Exhibit "A-1"** and incorporated herein by this reference.

B. As of the Effective Date, Lessor is conveying the Building to Landlord and Landlord is becoming the owner of the Building pursuant to that certain conveyance contract ("**Contract**") dated effective \_\_\_\_\_, 2010, between the parties.

C. Simultaneous with the conveyance of the Building, Lessee is leasing a portion of the Building back to Lessor pursuant to that certain lease agreement as of even date herewith (the "**BNSF Premises Lease**").

D. Lessee now wishes to lease the Land from Lessor pursuant to this Lease.

### AGREEMENTS

In consideration of the mutual covenants herein, Lessor and Lessee hereby agree as follows:

#### **Section 1. Lease and Term.**

A. Lessor leases to Lessee and Lessee rents the Land from Lessor, subject to the covenants, agreements, terms, provisions and conditions of this Lease, for the Term (as defined below).

B. Unless earlier terminated as hereinafter provided, this Lease shall be in force for the term of thirty (30) years ("**Initial Term**") beginning on the Effective Date and shall then automatically continue on a month-to-month basis thereafter until terminated by BNSF giving to City thirty (30) days' written notice of its desire to terminate the same. Upon the expiration of the time specified in such notice, this Lease and all rights of Lessee shall absolutely cease. The Initial Term, together with any month-to-month continuation after the conclusion of the Initial Term, is sometimes referred to hereinafter collectively as the "**Term**".

C. Each consecutive twelve-month period during the Term, beginning with the Effective Date of this Lease, is herein called a "**Lease Year**".

#### **Section 2. Early Termination/Requirements on Termination.**

A. Notwithstanding the Term described above, this Lease shall terminate at such time as any of the following may occur ("**Termination Events**"):

- i. Lessor closes the repurchase of the Building pursuant to an Early Repurchase Right under the Contract (as set forth and defined therein), in which case this Lease shall terminate as of the closing of the repurchase transaction;
- ii. The BNSF Premises Lease terminates before the expiration of the scheduled Term thereunder as a result of a Taking (as defined in the BNSF Premises Lease), in which case this Lease shall terminate as of the date the BNSF Premises Lease terminates; and/or
- iii. Lessor shall require the Land (or any portion thereof) for railroad purposes or activities and delivers written notice thereof ("**Termination Notice**") to Lessee, in which case this Lease shall terminate effective as to the Land (or such portion thereof as is described in the Termination Notice) as of the date which is 180 days after the Termination Notice has been sent.

**B.** In any case, upon expiration of the Term hereunder, Lessee shall have no right to remove any portion of the Building, the Building Renovations (as hereinafter defined) or any other improvements on the Land, but instead shall relinquish possession of the Land to Lessor, including possession of the Building, with all Building Renovations completed and in good condition and repair. In the event of any alteration or other condition caused to the Land by Lessee and not contemplated under the Building Renovations or otherwise pursuant to the express terms of this Lease, Lessee shall restore the Land to substantially the state and environmental condition in which it was prior to the creation of such other alterations or conditions. Lessee may remove its own equipment or moveable fixtures which are capable of being removed without damage to the Building or Building Renovations (the "**Removables**"), all of which Removables shall be removed by Lessee upon such termination at Lessee's expense without further compensation from Lessor.

**C.** If Lessor has exercised any Repurchase Right under the Contract (as defined therein) which causes or is a result of a Termination Event (or is triggered by the expiration of the Term as scheduled), then both parties shall fully perform their respective obligations under the Contract in connection with such repurchase.

### **Section 3. Use and Compliance.**

**A.** Lessee may use the Land for the sole and exclusive purpose of operating and maintaining the Building. Pursuant to the terms of the Contract, Lessee will be carrying out a complete renovation of the Building and associated improvements as more fully set forth in the Contract (and referred to in the Contract and herein as the "**Building Renovations**"). Lessee shall not use the Land for any other purposes without the prior written consent of Lessor. As set forth in the Contract, Lessee shall have no rights to use Lessor's microwave tower (the "**Tower**") situated on the Land and/or Building. This Lease shall not grant Lessee any right to cross any of Lessor's railroad tracks located directly adjacent to the Land.

**B.** Lessee shall comply with all Laws applicable to Lessee, the Land, this Lease and Lessee's activities and obligations hereunder, and shall have the sole responsibility for costs, fees, or expenses associated with such compliance. As used herein, the term "**Laws**" shall mean any and all statutes, laws, ordinances, codes, rules or regulations or any order, decision, injunction, judgment, award or decree of any public body or authority having jurisdiction over Lessee, the Land, this Lease, and/or Lessee's obligations under this Lease, and shall include all Environmental Laws (as defined in **Section 5(A)**).

**C.** If any governmental license or permit is required or desirable for the proper and lawful conduct of Lessee's business or other activity in or on the Land, or if the failure to secure such a license or permit might in any way affect Lessor, then Lessee, at Lessee's expense, shall procure and thereafter maintain such license

or permit and submit the same to inspection by Lessor. Lessee, at Lessee's expense, shall at all times comply with the requirements of each such license or permit.

#### **Section 4. Rent.**

As of the Effective Date, Lessee is paying to Lessor a one time fee of \$100.00 as rent (the "**Base Rent**") for the Land for the entire Term. Lessor hereby acknowledges its receipt of the Base Rent and that no further rental payments will be due from Lessee during the Term.

#### **Section 5. Environmental.**

**A.** Lessee shall strictly comply with all federal, state and local environmental laws and regulations in its occupation and use of the Land, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Clean Air Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and CERCLA (collectively referred to as the "**Environmental Laws**"). Lessee shall not maintain any treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws, on the Land. Lessee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws, on or about the Land.

**B.** Lessee shall give Lessor immediate notice to Lessor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Land and to Lessor's Manager Environmental Leases at (785) 435-2386 for any violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Lessee's use of the Land. Lessee shall use its best efforts to promptly respond to any release on or from the Land. Lessee also shall give Lessor's Manager Environmental Leases immediate notice of all measures undertaken on behalf of Lessee to investigate, remediate, respond to or otherwise cure such release or violation and shall provide to Lessor's Manager Environmental Leases copies of all reports and/or data regarding any investigations or remediations of the Land.

**C.** In the event that Lessor has notice from Lessee or otherwise of a release or violation of Environmental Laws on the Land which occurred or may occur during the Term, Lessor may require Lessee, at Lessee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Land or Lessor's right-of-way.

**D.** Lessee shall promptly report to Lessor in writing any conditions or activities upon the Land which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Lessee's reporting to Lessor shall not relieve Lessee of any obligation whatsoever imposed on it by this Lease. Lessee shall promptly respond to Lessor's request for information regarding said conditions or activities.

**E.** Hazardous Materials are not permitted on the Land except as otherwise described herein. Lessee expects to use on the Land the following Hazardous Materials: NONE, and to store on the Land the following Hazardous Materials (as defined in **Section 5(F)** below): \_\_\_\_\_; provided, however, that Lessee may only use and store the listed Hazardous Materials in such amounts as are necessary and customary in Lessee's industry for the permitted uses hereunder ("**Permitted Substances**"). All such Permitted Substances shall be placed, used, and stored in strict accordance with all Environmental Laws. Use or storage on the Land of any Hazardous Materials not disclosed in this **Section 5(E)** is a breach of this Lease.

**F.** For purposes of this Section, “**Hazardous Materials**” means all materials, chemicals, compounds, or substances (including without limitation asbestos, petroleum products, and lead-based paint) identified as hazardous or toxic under Environmental Laws.

**G.** Lessor may, at its option prior to termination of this Lease, require Lessee to conduct an environmental audit of the Land through an environmental consulting engineer acceptable to Lessor, at Lessee's sole cost and expense, to determine if any noncompliance or environmental damage to the Land has occurred during Lessee's occupancy thereof. The audit shall be conducted to Lessor's satisfaction and a copy of the audit report shall promptly be provided to Lessor for its review. Lessee shall pay all expenses for any remedial action that may be required as a result of said audit to correct any noncompliance or environmental damage, and all necessary work shall be performed by Lessee prior to termination of this Lease.

**Section 6.** Intentionally deleted.

**Section 7. Access to Land by Lessor; Amtrak.**

**A.** Without limitation to Lessor's leasehold and other rights under the BNSF Premises Lease, Lessor and its contractors, agents and other designated third parties may at all reasonable times and at any time in case of emergency, in such manner as to not unreasonably interfere with Lessee's use of the Land as allowed hereunder, (i) enter the Land for inspection of the Land or to protect the Lessor's interest in the Land or to protect from damage any property adjoining the Land (which includes, without limitation, Lessor's railroad tracks which run adjacent to the Land) (ii) enter the Land to construct, maintain, and operate trackage, fences, pipelines, communication facilities, fiber optic lines, wireless towers, telephone, power or other transmission lines, or appurtenances or facilities of like character, upon, over, across, or beneath the Land, without payment of any sum for any damage, including damage to growing crops, (iii) take all required materials and equipment onto the Land, and perform all required work therein, for the purpose of making alterations, repairs, or additions to the Land as Lessor may elect if Lessee defaults in its obligation to do so, (iv) enter the Land to show the Land to holders of encumbrances on the interest of Lessor in the Land, or to prospective purchasers or mortgagees of the Land, (v) during the twelve (12) months prior to expiration of the Term, exhibit the Land to prospective lessees, and Lessor or its broker may place signage on the Land to advertise that the same is available for lease or sale, and all such entries and activities shall be without any rebate of rent to Lessee for any loss of occupancy of the Land, or damage, injury or inconvenience thereby caused.

**B.** Lessee hereby specifically acknowledges and agrees that Lessor shall have the right at all times to come onto the Land for purposes of accessing the Tower located on the Land and/or Building. Lessee shall in no way interfere with Lessor's use of the Tower.

**C.** For purposes stated in this **Section 7**, without limitation to all of Lessor's rights under the BNSF Premises Lease, Lessor will at all times have keys with which to unlock all of the doors and gates on the Land, and Lessee will not change or alter any lock thereon without Lessor's permission.

**D.** In an emergency, Lessor will be entitled to use any and all means that Lessor may deem proper to open doors, gates, and other entrances to obtain entry to the Land. Any entry to the Land by Lessor as described in this **Section 7** shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Land, or any eviction of Lessee from the Land, and any damages caused on account thereof will be paid by Lessee.

**E.** National Railroad Passenger Corporation (Amtrak), its employees and invitees shall also have the right to enter the Land for purposes of accessing the Building and the Platform pursuant to the terms of the Amtrak Station Lease (as defined in the Contract).

## **Section 8. Warranties.**

Without limitation to the provisions in the Contract, **LESSOR DOES NOT WARRANT ITS TITLE TO THE LAND NOR UNDERTAKE TO DEFEND LESSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.** This Lease is made subject to all outstanding rights or interests of others. If the Land is subsequently found to be subject to prior claim, this Lease shall terminate immediately on notice to that effect from Lessor. Lessee accepts this Lease subject to that possibility and its effect on Lessee's rights and ownership of the Lessee Improvements. In case of eviction of Lessee by anyone other than Lessor, or anyone owning or claiming title to or any interest in the Land, Lessor shall not be liable to Lessee for damage of any kind (including any loss of ownership right to Lessee's Improvements) or to refund any rent paid hereunder, except to return the unearned portion of any rent paid in advance.

## **Section 9. Land Condition; Lessee Improvements.**

**A.** Without limitation to the provisions in the Contract, Lessee represents that the Land, the title thereto, any subsurface conditions thereof, and the present uses thereof have been examined by the Lessee. Lessee accepts the same in the condition in which they now are, without representation or warranty, expressed or implied, in fact or by law, by the Lessor, and without recourse to the Lessor as to the title thereto, the nature, condition or usability thereof, or the uses to which the Land may be put. By taking possession or commencing use of the Land, Lessee (i) acknowledges that it is relying on its own inspections of the Land and not on any representations from Lessor regarding the Land; (ii) establishes conclusively that the Land are at such time in satisfactory condition and in conformity with this Lease and all zoning or other governmental requirements in all respects; and (iii) accepts the Land in its condition as of the Effective Date on an "**AS IS,**" "**WHERE IS,**" and "**WITH ALL FAULTS**" basis, subject to all faults and infirmities, whether now or hereafter existing. Nothing contained in this **Section 9** affects the commencement of the Term or the obligation of Lessee to pay rent as provided above. Lessee represents and warrants to Lessor as follows: (i) Lessee does not intend to, and will not, use the Land for any purpose other than as set forth in **Section 3**; (ii) Lessee has previously disclosed in writing to Lessor all special requirements (but Lessor shall have no responsibility relative to any such special requirement), if any, which Lessee may have in connection with this intended use; and (iii) Lessee has undertaken and has reasonably and diligently completed all appropriate investigations regarding the suitability of the Land for Lessee's intended use. Lessee shall comply with any covenants, conditions or restrictions now or hereafter affecting the Land, and acknowledges that Lessor may place any covenants, conditions or restrictions of record affecting the Land prior to or during the Term. In such event, this Lease will be subject and subordinate to all of the same without further action by either party, including, without limitation, the execution of any further instruments. Lessee acknowledges that Lessor has given material concessions for the acknowledgements and provisions contained in this **Section 9**, and that Lessor is relying on these acknowledgements and agreements and would not have entered into this Lease without such acknowledgements and agreements by Lessee.

**B.** Lessee covenants and agrees to complete the Building Renovations to the Building in accordance with the provisions of the Contract as referenced in Section 3 above. However, no other new improvements are permitted unless approved by Lessor in its sole discretion, and Lessee represents that no other improvements are necessary for Lessee's use of the Land. Lessee hereby represents and warrants that it shall not construct or install any other improvements on the Land during the Term without the advance written approval of Lessor, which approval may be withheld in Lessor's sole discretion. Lessee shall have no right to demolish or remove any existing improvements (including the Building) on the Property during the Term or upon expiration thereof.

## **Section 10. Taxes and Utilities.**

**A.** In addition to Base Rent, Lessee shall pay all taxes, utilities, and other charges of every kind and character, whether foreseen or unforeseen, ordinary or extraordinary, which are attributable to the Term of this Lease and may become due or levied against the Land, against Lessee, against the business conducted on the Land or against the Lessee Improvements placed thereon during the Term hereof, even though such taxes, utilities or other charges may not become due and payable until after termination of this Lease. Payment of taxes for any tax year which includes periods before the Term shall be handled as set forth in the Contract. Lessee agrees that Lessor shall not be required to furnish to Lessee any utility or other services.

**B.** Without limitation to Lessee's obligation to pay taxes as required, should the Land be subject to special assessment for public improvements, Lessee shall be responsible for such special assessments in the same manner as other taxes above.

## **Section 11. Track Clearance.**

**A.** There currently exists a platform ("**Platform**") extending from the Building to the edge of Lessor's railroad tracks adjacent to the Land and this Platform has been approved by Lessor. Aside from maintaining the Platform as a part of the Building as it is currently situated, Lessee shall not place, permit to be placed, or allow to remain, any permanent or temporary material, structure, pole, or other obstruction within (i) 8½ feet laterally from the centerline of any of Lessor's Tracks on or about the Land (nine and one-half (9-1/2) feet on either side of the centerline of any of Lessor's Tracks which are curved) or (ii) 24 feet vertically from the top of the rail of any of Lessor's Tracks on or about the Land ("**Minimal Clearances**"); provided that if any law, statute, regulation, ordinance, order, covenant or restriction ("**Legal Requirement**") requires greater clearances than those provided for in this **Section 11**, then Lessee shall strictly comply with such Legal Requirement. However, vertical or lateral clearances which are less than the Minimal Clearances but are in compliance with Legal Requirements will not be a violation of this **Section 11**, so long as Lessee strictly complies with the terms of any such Legal Requirement and posts a sign on the Land clearly noting the existence of such reduced clearance. Any such sign shall be painted with black and white reflective paint.

**B.** Lessor's operation over any Lessor's Track on or about the Land with knowledge of an unauthorized reduced clearance will not be a waiver of the covenants of Lessee contained in this **Section 11** or of Lessor's right to recover for and be indemnified and defended against such damages to property, and injury to or death of persons, that may result therefrom.

## **Section 12. Repairs; Maintenance.**

**A.** Lessee shall, at its sole expense, take good care of the Land and shall not do or suffer any waste with respect thereto and Lessee shall promptly make all necessary or desirable Repairs to the Land. The term "**Repairs**" means all reasonable repair and maintenance necessary to keep the Land in good condition and includes, without limitation, replacements, restoration and renewals when necessary. Lessee shall keep and maintain any paved areas, sidewalks, curbs, parking lots, landscaping and lawn areas in a clean and orderly condition, and free of accumulation of dirt and rubbish.

**B.** Lessor shall not have any liability or obligation to furnish or pay for any services or facilities of whatsoever nature or to make any Repairs or alterations of whatsoever nature in or to the Land, including but not limited to structural repairs, or to maintain the Land in any manner. Lessee acknowledges that Lessor shall have no responsibility for management of the Land.

### **Section 13. Safety; Dangerous and Hazardous Conditions.**

It is understood by Lessee that the Land may be in dangerous proximity to railroad tracks, including Lessor's Tracks, and that persons and property, whether real or personal, on the Land will be in danger of injury, death or destruction incident to the operation of the railroad, including, without limitation, the risk of derailment, fire, or inadequate clearance (including sight clearance or vision obstruction problems at grade crossings on or adjacent to the Land), and Lessee accepts this Lease subject to such dangers, and acknowledges that its indemnification obligations hereunder extend to and include all such risks.

### **Section 14. Indemnity.**

**A. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LESSOR AND LESSOR'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, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (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):**

- (i) THIS LEASE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS;**
- (ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LEASE;**
- (iii) LESSEE'S OCCUPATION AND USE OF THE LAND;**
- (iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE LAND CAUSED BY, AGGRAVATED BY, OR CONTRIBUTED IN WHOLE OR IN PART, BY LESSEE; OR**
- (v) ANY ACT OR OMISSION OF LESSEE OR LESSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, 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 LESSEE'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.**

**B. FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 14A, LESSEE SHALL NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT RAILROAD IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE LAND FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LESSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LESSEE FURTHER AGREES THAT THE USE OF THE LAND AS CONTEMPLATED BY THIS LEASE SHALL NOT IN ANY WAY SUBJECT LESSOR TO CLAIMS THAT LESSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND,**

AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL LESSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE LAND.

C. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE FURTHER AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LESSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

D. Upon written notice from Lessor, Lessee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this Lease for which Lessee has an obligation to assume liability for and/or save and hold harmless any Indemnatee. Lessee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

#### **Section 15. Equal Protection.**

It is agreed that the provisions of **Sections 11, 13, and 14** are for the equal protection of other railroad companies, including, without limitation, the National Railroad Passenger Corporation (Amtrak), permitted to use Lessor's property, and such railroad companies shall be deemed to be included as Indemnitees under **Sections 11, 13, and 14**.

#### **Section 16. Assignment and Sublease.**

A. Lessee shall not (i) assign or otherwise transfer this Lease or any interest herein, or (ii) sublet the Land or any part thereof, without, in each instance, obtaining the prior written consent of Lessor, which consent may be withheld in Lessor's sole and absolute discretion. Any person or legal representative of Lessee, to whom Lessee's interest under this Lease passes by operation of law, or otherwise, will be bound by the provisions of this Lease.

B. Any assignment, lease, sublease or transfer made pursuant to **Section 16(A)** may be made only if, and shall not be effective until, the assignee cures all outstanding defaults of Lessee hereunder and executes, acknowledges and delivers to Lessor an agreement, in form and substance satisfactory to Lessor, whereby the assignee assumes the obligations and performance of this Lease and agrees to be personally bound by and upon all of the covenants, agreements, terms, provisions and conditions hereof on the part of Lessee to be performed or observed. Lessee covenants that, notwithstanding any assignment or transfer, whether or not in violation of the provisions of this Lease, and notwithstanding the acceptance of rent by Lessor from an assignee or transferee or any other party, Lessee will remain fully and primarily liable along with the assignee for the payment of the rent due and to become due under this Lease and for the performance of all of the covenants, agreements, terms, provisions, and conditions of this Lease on the part of Lessee to be performed or observed.



## Section 17. Liens.

Lessee shall promptly pay, discharge and release of record any and all liens, charges and orders arising out of any construction, alterations or repairs, suffered or permitted to be done by Lessee on the Land. Lessor is hereby authorized to post any notices or take any other action upon or with respect to the Land that is or may be permitted by law to prevent the attachment of any such liens to the Land; provided, however, that failure of Lessor to take any such action shall not relieve Lessee of any obligation or liability under this Section or any other Section of this Lease.

## Section 18. Insurance.

Lessee shall, at its sole cost and expense, procure and maintain during the life of this Lease the following insurance coverage:

**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, but in no event less than the amount otherwise carried by Lessee. Coverage must be purchased on a post 2004 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

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to Railroad.
- ◆ Additional insured endorsement in favor of and acceptable to Railroad and Jones Lang LaSalle Global Services - RR, Inc.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to **Railroad** employees.

No other endorsements limiting coverage may be included on the policy.

**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

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to **Railroad**.
- ◆ Additional insured endorsement in favor of and acceptable to **Railroad**.
- ◆ Separation of insureds.

- ♦ The policy shall be primary and non-contributing with respect to any insurance carried by **Railroad**.

**C.** Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ♦ Lessee'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.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ♦ Waiver of subrogation in favor of and acceptable to **Railroad**.

**D.** If construction is to be performed on the Land by Lessee, Lessee or Lessee's contractor shall procure Railroad Protective Liability insurance naming only the Lessor as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ♦ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ♦ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ♦ Endorsed to include Evacuation Expense Coverage Endorsement.
- ♦ Endorsed to remove any exclusion for punitive damages.
- ♦ No other endorsements restricting coverage may be added.
- ♦ The original policy must be provided to the Lessor prior to performing any work or services under this Lease

**E.** Contractor's Pollution Legal Liability (CPL) Insurance. This insurance shall be in an amount of at least FIVE MILLION DOLLARS (\$5,000,000) per occurrence and TEN MILLION DOLLARS (\$10,000,000) in the aggregate including but not limited to coverage for the following:

- ♦ bodily injury, sickness, disease, mental anguish, or shock sustained by any person, including death;
- ♦ property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed;
- ♦ defense costs including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.
- ♦ Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in BODILY INJURY, PROPERTY DAMAGE, or Remediation Expense.
- ♦ If coverage is purchased on a "claims made" basis, lessee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation, or termination of this contract. Annually contractor agrees to provide evidence of such coverage as required hereunder.
- ♦ Delete any bodily injury exclusions resulting from lead or asbestos.
- ♦ Amend the Contractual Liability exclusions and employers liability exclusion to provide coverage for liability assumed under contract.
- ♦ Amend the definition of Property Damage to provide coverage for natural resource damage.

Other Requirements:

All policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

Lessee agrees to waive its right of recovery against **Railroad** for all claims and suits against **Railroad**. In addition, its insurers, through the terms of the policy or through policy endorsement, waive their right of subrogation against **Railroad** for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Lessee 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 Lessee's care, custody or control.

Lessee is not allowed to self-insure without the prior written consent of **Railroad**. If granted by **Railroad**, any self-insured retention or other financial responsibility for claims shall be covered directly by Lessee in lieu of insurance. Any and all **Railroad** liabilities that would otherwise, in accordance with the provisions of this Lease, be covered by Lessee's insurance will be covered as if Lessee elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to accessing the Land, Lessee shall furnish to **Railroad** an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage and endorsements. 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, renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from **Railroad**, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to **Railroad** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the Land is located.

Lessee represents that this Lease has been thoroughly reviewed by Lessee's insurance agent(s)/broker(s), who have been instructed by Lessee to procure the insurance coverage required by this Lease. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, **Railroad** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be contracted by Lessee, Lessee shall require that the contractor shall provide and maintain insurance coverages as set forth herein, naming **Railroad** as an additional insured, and shall require that the contractor shall release, defend and indemnify **Railroad** to the same extent and under the same terms and conditions as Lessee is required to release, defend and indemnify **Railroad** herein.

Failure to provide evidence as required by this section shall entitle, but not require, **Railroad** to terminate this Lease immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Lessee's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Lessee shall not be deemed to release or diminish the liability of Lessee including, without limitation, liability under the indemnity provisions of this Lease. 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, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

## **Section 19. Water Rights and Use of Wells.**

This Lease does not grant, convey or transfer any right to the use of water under any water right owned or claimed by the Lessor which may be appurtenant to the Land. All right, title, and interest in and to such water is expressly reserved unto Lessor, and the right to use same or any part thereof may be obtained only by the prior written consent of the Lessor. Lessee shall not use, install or permit to be installed or used any wells on the Land without the prior written consent of Lessor.

## **Section 20. Default.**

A. An "Event of Default" shall have occurred hereunder during the Term if any of the following shall occur:

- (i) if Lessee violates any safety provision contained in this Lease;
- (ii) if Lessee fails to pay rent or any other monetary payment hereunder when due or fails to perform any other obligations under this Lease and such failure continues thirty (30) days after written notice from Lessor to Lessee of Lessee's failure to make such payment or perform such obligations;
- (iii) if a decree or order of a court having jurisdiction over the Land for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Lessee or over all or a substantial part of the property of Lessee shall be entered; or if Lessee becomes insolvent or makes a transfer in fraud of creditors; or an interim receiver, trustee or other custodian of Lessee or of all or a substantial part of the property of Lessee shall be appointed or a warrant of attachment, execution, or similar process against any substantial part of the property of Lessee shall be issued and any such event shall not be stayed, dismissed, bonded or discharged within thirty (30) days after entry, appointment or issuance;
- (iv) if the Land is abandoned or vacated by Lessee; or
- (v) if there is an event of default by Lessor (after applicable cure periods) under the Contract.

B. If an Event of Default occurs as provided above, Lessor may, at its option, (i) terminate this Lease by serving five (5) days notice in writing upon Lessee, in which event Lessee shall immediately surrender possession of the Land to Lessor (together with the Building thereon with all Building Renovations and without any obligation of Lessor to pay Lessee any amount with respect thereto), without prejudice to any claim for arrears of rent or breach of covenant, or (ii) proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by Lessee of the applicable provisions of this Lease or to recover damages for a breach thereof. The foregoing rights and remedies given to Lessor are and shall be deemed to be cumulative and the exercise of any of them shall not be deemed to be an election excluding the exercise by Lessor at any time of a different or inconsistent remedy. If, on account of breach or default by Lessee of any of Lessee's obligations hereunder, it shall become necessary for the Lessor to employ an attorney to enforce or defend any of Lessor's rights or remedies hereunder, then, in any such event, any reasonable amount incurred by Lessor for attorneys' fees shall be paid by Lessee. Any waiver by Lessor of any default or defaults of this Lease or any delay of Lessor in enforcing any remedy set forth herein shall not constitute a waiver of the right to pursue any remedy at a later date or terminate this Lease for any subsequent default or defaults, nor shall any such waiver in any way affect Lessor's ability to enforce any Section of this Lease. The remedies set forth in this Section shall be in addition to, and not in limitation of, any other remedies that Lessor may have at law or in equity, and the applicable statutory period for the enforcement of a remedy will not commence until Lessor has actual knowledge of a breach or default.

**Section 21. Survival of Obligations.**

Notwithstanding any expiration or other termination of this Lease, all of Lessee's indemnification obligations and any other obligations that have accrued but have not been satisfied under this Lease prior to the termination date shall survive such termination.

**Section 22. Holding Over.**

If Lessee fails to surrender the Land to Lessor upon the expiration of the Term or upon any other termination of this Lease, and Lessor does not consent in writing to Lessee's holding over, then such holding over will be deemed a month-to-month tenancy. Lessee's holdover will be subject to all provisions of this Lease.

**Section 23. Multiple Party Lessee.**

In the event that Lessee consists of two or more parties, all the covenants and agreements of Lessee herein contained shall be the joint and several covenants and agreements of such parties.

**Section 24. Damage or Destruction.**

If at any time during the Term, the Building on the Land is damaged or destroyed by fire or other casualty, then the provisions of the BNSF Premises Lease shall control with respect thereto, which require that the Lessee hereunder, at its sole cost and expense, restore, rebuild, and repair the Building and associated improvements as more particularly described in the BNSF Premises Lease.

**Section 25. Eminent Domain.**

The parties acknowledge that any taking of the Building by a public authority (other than Lessee) under the power of condemnation or eminent domain or by purchase in lieu thereof (a "**Taking**"), shall be governed and controlled by the provisions of the BNSF Premises Lease. If the BNSF Premises Lease terminates as a result of a Taking of the Building pursuant to the provisions thereof, then this Lease shall also terminate as of the same termination date. If the Taking extends to any portion or interest in the Land, then so long as the BNSF Premises Lease does not terminate as a result of a Taking, this Lease shall remain in effect for all portions of the Land not affected by the Taking. In any event, however, all awards, proceeds, compensation or other payments ("**Condemnation Proceeds**") awarded or agreed upon by the condemning authority for the taking of any interest in the Land, whether as damages or as compensation, will be the sole property of Lessor and shall be retained solely by Lessor, in addition to such portion of Condemnation Proceeds which Lessor is entitled to obtain relative to any Taking of the Building under the BNSF Premises Lease.

**Section 26. Representations.**

Neither Lessor nor Lessor's agents have made any representations or promises with respect to the Land except as herein expressly set forth.

**Section 27. Signs.**

No signs are to be placed on the Land without the prior written approval of Lessor of the size, design, and content thereof.

**Section 28. Consents and Approvals.**

Whenever in this Lease Lessor's consent or approval is required, such consent or approval shall be in Lessor's sole and absolute discretion. If Lessor delays or refuses such consent or approval, such consent or approval shall be deemed denied, and Lessee in no event will be entitled to make, nor will Lessee make, any claim, and Lessee hereby waives any claim, for money damages (nor will Lessee claim any money damages by way of set-off counterclaim or defense) based upon any claim or assertion by Lessee that Lessor unreasonably withheld or unreasonably delayed its consent or approval.

**Section 29. Captions.**

The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Lease or the intent of any provision thereof.

**Section 30. Public Record.**

It is understood and agreed that this Lease shall not be placed of public record.

**Section 31. Governing Law.**

All questions concerning the interpretation or application of provisions of this Lease shall be decided according to the substantive laws of the state in which the Land are located.

**Section 32. No Waiver.**

One or more waivers of any covenant, term, or condition of this Lease by Lessor shall not be construed as a waiver of a subsequent breach of the same covenant, term, or condition. The consent or approval by Lessor to or of any act by Lessee requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

**Section 33. Binding Effect.**

All provisions contained in this Lease shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Lessor and Lessee to the same extent as if each such successor and assign was named a party to this Lease.

**Section 34. Force Majeure.**

Except as may be elsewhere specifically provided in this Lease, if either party is delayed or hindered in, or prevented from the performance required under this Lease (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God or other reason of the like nature not the fault of the party delayed in performance of its obligation, such party is excused from such performance for the period of delay. The period for the performance of any such act will then be extended for the period of such delay.

**Section 35. Entire Agreement/Modification.**

This Lease is the full and complete agreement between Lessor and Lessee with respect to all matters relating to lease of the Land and supersedes any and all other agreements between the parties hereto relating to lease of the Land. If this Lease is a reissue of an existing agreement held by Lessee, it shall supersede and cancel the previous lease or leases, without prejudice to any liability accrued prior to cancellation. This Lease may be modified only by a written agreement signed by Lessor and Lessee.

**Section 36. Notices.**

Any notice or documents required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given or shall be deemed to have been served and given if (i) delivered in person to the address hereinafter set forth for the party to whom the notice is given, (ii) placed in the United States mail, certified - return receipt requested, addressed to such party at the address hereinafter set forth, (iii) deposited into the custody of any reputable overnight carrier for next day delivery, addressed to such party at the address hereinafter set forth, or (iv) sent by telecopy transmission (if a machine generated confirmation is generated with the transmission). Any notice mailed as above shall be effective upon its deposit into the custody of the U. S. Postal Service or such reputable overnight carrier, as applicable; all other notices shall be effective upon receipt. All rent and other payments due to Lessor hereunder shall also be made as provided in **Section 4(A)** above, and delivery of such rental and other payments shall only be effective upon actual receipt by Lessor. From time to time either party may designate another address or telecopy number within the 48 contiguous states of the United States of America for all purposes of this Lease by giving the other party not less than fifteen (15) days' advance written notice of such change of address in accordance with the provisions hereof.

**If to Lessee:**

City of Lawrence, Kansas

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Fax: \_\_\_\_\_

**If to Lessor:**

BNSF Railway Company  
2500 Lou Menk Drive, AOB-3  
Fort Worth, Texas 76131-2828

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

Fax: \_\_\_\_\_

With a copy to:

Jones Lang LaSalle Global Services - RR, Inc.  
3017 Lou Menk Drive, Suite 100  
Fort Worth, Texas 76131-2800

Attn: Transaction Manager

Fax: \_\_\_\_\_

**Section 37. Counterparts.**

This Lease may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Lease may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

**Section 38. Relationship.**

Notwithstanding anything else herein to the contrary, neither party hereto shall be construed or held, by virtue of this Lease, to be the agent, partner, joint venturer, or associate of the other party hereto, it being expressly understood and agreed that the relationship between the parties hereto is and at all times during the Term of this Lease, shall remain that of Lessor and Lessee.

**Section 39. Severability.**

If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the Term, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

**Section 40. Transferability; Release of Lessor.**

Lessor shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this Lease and in the Land, and upon such transfer, Lessor shall be released from any further obligations hereunder, and Lessee agrees to look solely to the successor in interest of Lessor for the performance of such obligations.

**Section 41. Tax Waiver.**

Lessee waives all rights pursuant to all Laws to protest appraised values or receive notice of reappraisal regarding the Land (including Lessor's personalty), irrespective of whether Lessor contests the same.

**Section 42. Attorneys' Fees.**

If any action at law or in equity is necessary to enforce or interpret the terms of this Lease, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any relief to which it may be entitled.

**Section 43. Contract.**

This Lease is subject to the terms of the Contract. In the event of any conflict between the provisions of this Lease and the provisions of the Contract, the Contract shall control.

*[Signature Page and Exhibits Follow – The Balance of This Page Has Been Intentionally Left Blank]*



Executed by the parties to be effective as of the Effective Date set forth above.

**LESSOR**

**BNSF RAILWAY COMPANY**, a Delaware corporation

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

**LESSEE**

**CITY OF LAWRENCE**, a municipality formed under the laws of the State  
of Kansas

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

**EXHIBIT "A" and "A-1"**

**DESCRIPTION OF LAND AND BUILDING FOOTPRINT**

*[see attached]*