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Filed: 03-15-16

Sponsored by: Hosmer

First Reading: _____

Second Reading: _____

COUNCIL BILL NO. 2016- 068

SPECIAL ORDINANCE NO. _____

AN ORDINANCE

1 AUTHORIZING the City Manager, or designee, to enter into a Real Estate Transfer
2 Agreement with BNSF Railway Company (BNSF), to transfer certain
3 property underlying the West Wye Connector project (the "Project") to
4 BNSF, and finding that the Project supports the public purposes of
5 improving public safety, providing a more efficient rail system, and
6 promoting economic development in central Springfield.
7
8

9 WHEREAS, the City commissioned the *Railroad Reconfiguration and Grade*
10 *Separation Study* to determine how best to reconfigure, relocate, and replace the
11 capacity of rail operations for the purpose of developing the West Meadows area and to
12 provide alternate rail routes for coal delivery for the purpose of reducing at-grade
13 railroad crossings within Springfield; and
14

15 WHEREAS, the 2006 *Railroad Reconfiguration and Grade Separation Study*
16 identified and recommended the Project as a way to improve traffic safety, provide
17 additional public open space, and allow for more economic development in and around
18 the West Meadows area; and
19

20 WHEREAS, on August 24, 2015, City Council approved the Construction and
21 Maintenance Agreement for the project by Special Ordinance No. 26611.
22

23 NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
24 SPRINGFIELD, MISSOURI, as follows, that:
25

26 Section 1 – City Council finds that the Project supports the public purposes of
27 providing an expanded open space system in the West Meadows area, provides safer
28 pedestrian and vehicular traffic environments, reduces noise and fuel pollution, diverts
29 coal trains which use the Ft. Scott and Cherokee Subdivisions from entering central
30 Springfield and improves coal delivery to the Southwest Power Plant, and provides an
31 enhanced environment of economic development within the center city.
32

Recommended by:



Mary Lilly Smith,
Director of Planning and Development

Approved by:



Greg Burris, City Manager

EXPLANATION TO COUNCIL BILL NO: 2016- 068

FILED: 03-15-16

ORIGINATING DEPARTMENT: Planning and Development

PURPOSE: Authorizing the City Manager, or his designee, to enter into a Real Estate Transfer Agreement with BNSF Railway Company (BNSF) for the public purposes of improving safety, efficiency, and promoting economic development in central Springfield by transferring the property underlying the West Wye Connector project, which is a relocated BNSF railroad line connecting the Fort Scott and Cherokee Subdivisions.

BACKGROUND INFORMATION: The transfer of the West Wye property authorized by this ordinance is an important step in a program to create a more efficient and safe rail system through the City and will support the redevelopment of Central Springfield. Ultimately, when the overall program goal identified in the *2006 Rail Reconfiguration and Grade Separation Study* is reached, there will be an expanded open space system; safer pedestrian and vehicular environments; improved railcar interchange between BNSF and the Missouri & Northern Arkansas (M&NA) railroad; improved coal delivery to the Southwest Power Plant; and enhanced economic development opportunities for residential, business, and recreational facilities within the Center City due to these transportation safety enhancements.

The West Wye project enables the removal of track within the western portion of the West Meadows area, by diverting coal train activity from the Ft. Scott and Cherokee subdivisions out of BNSF's Main Yard, thus freeing up space in the Main Yard for tracks that are currently located in West Meadows.

REMARKS: The Real Estate Transfer Agreement will transfer from the City to BNSF a 2.614 acre, curved strip of land, where the West Wye Connector facility is scheduled to be constructed in April 2016. City Council approved the construction agreement for the West Wye facility by Special Ordinance No. 26611 on August 24, 2015. In exchange for transferring the property to BNSF, the City will receive credit towards future land purchases from BNSF or construction work to be performed by BNSF. This is valuable consideration, as the City acquires property and construction services from BNSF on a regular basis.

The exact amount of credit the City will receive in exchange for this property will be based on actual City expenditures to acquire the property and construct the West Wye facility. This amount is estimated to be \$752,079.20, but it could vary slightly based on construction costs. The total budget for the project looks like this:

West Wye Project Total Budget

	Federal Funds	State Funds	Local Funds	Total
Acquisition	\$ 500,000.00		\$110,523.20	\$ 610,523.20
Construction	\$ 1,898,444.00	\$150,000.00	\$641,556.00	\$ 2,690,000.00
Total	<u>\$2,398,444.00</u>	<u>\$150,000.00</u>	<u>\$752,079.20</u>	<u>\$3,300,523.20</u>

The West Wye portion of the project accomplishes the public purposes of traffic safety, added public open space, and economic development, as identified in Railroad Reconfiguration and Grade Separation Study. Specific public benefits include reduction of train, pedestrian, and vehicular encounters and reduction of noise and fuel pollution, because train traffic will be able to deliver coal directly to the site of the power plant without entering central Springfield to reach the North Yard of the railway and reconfiguring the train, thus providing for an efficient and cost effective method of delivering coal and reducing rail congestion on the main line. Further, the project provides economic development benefits by making center Springfield a more attractive place to develop residential, business, and recreational facilities due to reduced train traffic and reduced pollution. This project and the consideration being provided to the City by BNSF in exchange for the property serve a legitimate public purpose, overriding any incidental private benefit which accrues to BNSF in relation to the project.

The City commissioned the Railroad Reconfiguration and Grade Separation Study in 2005. The two identified goals of the Study, which was published in 2006, were to determine a track arrangement that would provide for the continued expansion of the Jordan Valley Park initiative named West Meadows, and to determine alternative routes for coal-delivery to eliminate at-grade railroad crossings within Springfield. The West Wye Connector was one recommendation from that study. In 2008, the City and BNSF entered into a Cooperative Non-Binding Memorandum of Understanding to address development issues in West Meadows, and have worked cooperatively to achieve the goals of the study since then.

This project supports the following Field Guide 2030 goal(s): Chapter 6, Growth Management and Land Use; Major Goal 4, Develop the community in a sustainable manner.

Submitted by:


 Sarah Kerner,
 Interim Economic Development Director

Recommended by:

Mary Lilly Smith

MARY LILLY SMITH,
Director of Planning and Development

Approved by:

Greg Burris

Greg Burris, City Manager

PURCHASE AND SALE CONTRACT

THIS PURCHASE AND SALE CONTRACT ("Contract") is entered into as of the Effective Date (defined below) by and between **THE CITY OF SPRINGFIELD MISSOURI** ("Seller"), and **BNSF RAILWAY COMPANY**, a Delaware corporation ("Purchaser").

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

Section 1. Sale and Purchase.

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

(1) That certain tract of land (the "Land") in Greene County, Missouri commonly known as a tract of land located in the Northeast Quarter of the Southeast Quarter of Section 18 Township 29 North Range 22 West consisting of approximately 2.614 acres in Greene County, Missouri more particularly described in the attached **Exhibit "A"** and to be more particularly described as provided in Section 3 of this Contract, together with all strips and gores, easements, rights-of-way, licenses, interests, rights, and appurtenances appertaining to the Land, if any, except for Permitted Encumbrances (as hereinafter defined).

(2) All rights, titles, and interests of Seller in and to any easements, rights-of-way, or other interests in, on, or to any alley, highway, or street in, on, across or adjoining the Land, except for Permitted Encumbrances.

(3) All site plans, surveys, soil and substrata studies, environmental assessments, plans and specifications, engineering plans and studies, landscape plans, and other plans, studies or reports of any kind in Seller's or its contractors' or agents' possession that relate to the Property ("Plans and Studies").

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

(b) The above listed items are collectively called the "Property." The Property must be conveyed, assigned, and transferred to Purchaser (or its designee) at the Closing (defined below) free and clear of all liens, claims, easements, covenants, conditions, rights-of-way, reservations, restrictions, encroachments, tenancies, mineral interests, royalty interests, oil, gas or mineral leases, and any other type of encumbrance (collectively, the "Encumbrances"), except the Encumbrances appearing in the Title Commitment (defined below) that either are not objected to, or, if objected to, are not cured and that are subsequently waived in accordance with Section 3 ("Permitted Encumbrances"). Without limiting the generality of the foregoing, the parties acknowledge and agree that the Permitted Encumbrances shall include any recorded

easements affecting the Property which exist as of the Effective Date of this Agreement and were previously granted to Seller in connection with Seller's operations of electric, gas, water, sewer and other utilities.

(c) At the Closing hereunder, Seller will reserve a non-exclusive easement over that portion of the Property which intersects with the existing Farm to Junction Road (the "Crossing Easement Area"), solely for Seller's use of a public roadway crossing and related improvements (collectively, the "Crossing"). The Crossing will be built and maintained after the Closing by Seller under the terms set forth in the Construction and Maintenance Agreement previously entered into by the Seller and Purchaser. Seller's use of the Crossing Easement Area and the Crossing shall be subject to Purchaser's right to use the Property in any manner as the Purchaser in its sole discretion deems appropriate; provided that Purchaser uses all commercially reasonable efforts to avoid material interference with the use of the Crossing Easement Area by Seller for its use of the Crossing. The reservation of the above-referenced easement by Seller shall be contained in the Deed (as hereinafter defined) in the form attached hereto as Exhibit B.

(d) At the Closing hereunder, Purchaser will grant to Seller certain easement rights to use and maintain certain existing utility facilities, electrical, water and sewer of Seller located on the Property, pursuant to that certain Utility Easement Agreement ("Utility Easement") in form attached hereto as Exhibit E. The Utility Easement shall not be in recordable form and shall not be placed on public record; provided that the parties shall execute and record a Memorandum of Easement pursuant to the terms of the Utility Easement, in the form attached as approved by the parties.

Section 2. Purchase Price.

(a) The purchase price ("Purchase Price") for the Property is approximately **Ten Dollars (\$10.00)**, and other good and valuable consideration, including but not limited to the following:

(i) At the conclusion of the project, the City will have spent approximately Seven Hundred Fifty Two Thousand Seventy Nine Dollars and Twenty Cents (\$752,079.20) in acquisition of and construction on the Property. BNSF agrees that it will credit the City's actual costs on this project toward future land purchases from BNSF or construction work (including rail relocation work) from BNSF.

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

Section 3. Title Commitment and Survey.

(a) As soon as practicable, but no later than twenty-five (25) days after the Effective Date, Purchaser, at its expense, will obtain the following:

(1) An ALTA Owner's Commitment for Title Insurance (or other comparable form if the Land is located in a jurisdiction which does not employ ALTA or TLTA standards) ("Title Commitment") from Nebraska Title Company, 5601 South 59th Street,

Suite C, Lincoln, NE 68516, 402-476-8818 ("Title Company"). The Title Commitment will set forth the status of title to the Property and will show all Encumbrances and other matters, if any, relating to the Property.

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

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

(b) Within twenty-five (25) days after the Effective Date, Purchaser, at its expense, will obtain a survey ("Survey") consisting of a plat and to the extent available, field notes describing the Property. The Survey must be a current, on-the-ground, staked survey performed by a registered public surveyor or engineer satisfactory to Purchaser and Title Company. The Survey must comply with the standards of an ALTA survey and must (i) reflect the actual dimensions of the Land and the number of gross square feet and net square feet contained in it; (ii) identify any rights-of-way, easements, or other Encumbrances by applicable recording reference; and (iii) include the surveyor's registered number and seal, the date of the Survey, and a narrative certificate acceptable to Purchaser in favor of Purchaser, Title Company and if Purchaser requests, Purchaser's lender. Subject to the provisions of Sections 3(c) and 3(d), the description of the Land shown on the Survey shall be used in all transaction documents requiring a legal description of the Land and Purchaser and Seller shall execute a supplement to this Contract inserting the legal description in Exhibit A.

(c) Purchaser must give Seller written notice of any objections ("Objections") to the Title Commitment or the Survey (including, but not limited, to the legal description) within fifteen (15) business days after receiving the Title Commitment, the Survey, and all documents referred to in the Title Commitment and the Survey. At the Closing, Seller will provide releases for any deed-of-trust liens, judgment liens, mechanic's liens, delinquent taxes, or any other monetary liens encumbering the Property; provided, however, that if any such liens also encumber other property owned by Seller, Seller will not be required to obtain releases as to such other property, so long as Seller appropriately subdivides such other property from the Property.

(d) If Purchaser gives notice of the Objections, then Seller may (i) cure the Objections; (ii) cause the Title Commitment and the Survey to be amended to reflect cured matters; and (iii) give Purchaser a written response concerning the Objections within five (5) business days after receiving the notice from Purchaser. If Seller does not respond as described, then Purchaser is entitled either:

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

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

(3) Notwithstanding the foregoing Sections, if Seller has commenced curing the Objections and is diligently prosecuting the same, as determined by Purchaser in Purchaser's sole discretion, then Purchaser in Purchaser's sole discretion may extend the Feasibility Period for an amount of time Purchaser deems necessary for Seller to cure the Objections.

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

Section 4. Feasibility Period.

(a) As used in this Contract, "Feasibility Period" means the period beginning on the Effective Date and ending at 6:00 p.m. Central Time, on April 15th, 2016. Purchaser may, at Purchaser's sole discretion, extend the Feasibility Period up to 3 time(s) for 30 days each by providing Seller written notification on or before the expiration date of the Feasibility Period, as it may be extended.

(b) At the commencement of the Feasibility Period, Seller will deliver to Purchaser copies of all Plans and Studies.

(c) Purchaser may terminate its obligation to purchase the Property at any time during the Feasibility Period in its sole discretion. Purchaser must exercise its termination rights under this Section 4(c) by delivering written notice to Seller at any time during the Feasibility Period. Upon termination of this Contract during the Feasibility Period, neither party will have any further rights or obligations under this Contract. If Purchaser does not send such a notice during the Feasibility Period, it will be deemed to have elected to proceed with purchasing the Property.

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

(e) During the Feasibility Period, Seller will permit Purchaser and its contractors and agents to enter the Property to inspect and test the Property (including systems and structural inspections, soil borings, and environmental tests) as Purchaser deems necessary or desirable. Seller will cooperate with Purchaser in arranging the inspections and tests. Purchaser must repair any damages to the Property resulting from any inspection or testing conducted by it or at its direction, and will hold Seller harmless from any and all activities of Purchaser, its agents or contractors for such inspections or testing.

Section 5. Termination, Default and Remedies.

(a) Purchaser will be in default under this Contract if (i) it fails or refuses to purchase the Property at the Closing, or (ii) it fails to perform any of its other obligations either before or at the Closing, and such failure is not cured within five (5) business days after written notice of default from Seller. Purchaser will not be in default, however, if it terminates this Contract when it has an express right to terminate or when Seller fails to perform its obligations under this Contract. If Purchaser is in default, then Seller, as its exclusive remedy, is entitled to terminate this Contract by giving written notice to Purchaser before or at the Closing. Following the termination notice, neither party will have any further rights or obligations under this Contract.

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

Section 6. Closing.

(a) The closing ("Closing") of the sale of the Property by Seller to Purchaser will occur in the Title Company's office on or before April 30th, 2016 ("Closing Date"). Purchaser may, at Purchaser's sole discretion, extend the Closing Date up to 3 time(s) for 30 days each by providing Seller written notification on or before the then-scheduled Closing Date.

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

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

(i) A Quit Claim Deed ("Deed") in the form attached hereto as Exhibit "B" and incorporated herein by reference.

(ii) All other documents required to be given to secure and convey any electrical, water or sewer easements as set forth in Section 1 (b) of this contract.

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

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

(v) The original of each statement for current real estate and personal property taxes that Seller possesses, together with proof of payment of taxes.

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

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

(i) Immediately available funds via wire transfer in an amount equal to the Purchase Price.

(ii) All other documents required to be given to secure and convey any electrical, water or sewer easements as set forth in Section 1 (b) of this contract.

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

(3) Seller and Purchaser shall each pay their respective attorneys' fees. Purchaser shall pay all closing costs, including all escrow and recording fees.

(4) Purchaser, at its sole cost, will obtain an **ALTA** Owner's Extended Coverage Policy of Title Insurance with all endorsements required by Purchaser ("Owner Policy") issued by Title Company to Purchaser for the Purchase Price insuring that, upon Closing, Purchaser is the owner of good and marketable fee simple title to the Property

subject only to the Permitted Encumbrances, and to the lien of current, non-delinquent real property taxes and assessments for the year in which the Closing occurs.

(c) Ad valorem and similar taxes and assessments relating to the Property will be prorated between Seller and Purchaser as of the Closing Date, based on estimates of the amount of taxes and assessments that will be due and payable for the Property during the year in which the Closing Date occurs. As soon as the amount of taxes and assessments on the Property for such year is known, Seller and Purchaser will readjust the amount of taxes and assessments due from each party with the result that Seller is responsible for those taxes and assessments applicable to the Property before the Closing Date and Purchaser is responsible for those taxes and assessments applicable to the Property on and after the Closing Date. All prior years' taxes and assessments will be Seller's obligations. This Section 6(c) will survive the Closing.

(d) Any taxes levied as a result of a change in land usage or ownership by virtue of the Property having received any agricultural, open-space or other special use valuation (such taxes being referred to herein as "Roll-Back Taxes") shall be the sole responsibility of Seller and Seller shall indemnify and hold Purchaser harmless from and against any Roll-Back Taxes, to the extent allowed by law. Purchaser may change the use of the Property at any time and shall have no obligation to continue any existing special use valuation for any period of time. At the Closing, if Purchaser so requests, Seller shall execute written requests to the appropriate taxing authorities notifying such authorities that a change in use and ownership has occurred as of the Closing Date and requesting that such Roll-Back Taxes be calculated and a statement delivered therefor. The parties shall reasonably estimate the amount of Roll-Back Taxes which will become due and payable as a result of a change in use and ownership of the Property on the Closing Date ("Estimated Amount").

(e) All utility charges and the charges under any service contracts or insurance premiums that Purchaser elects to assume will be prorated between the parties as of the Closing Date.

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

(g) The provisions of Sections 6(d) and (e) above shall survive Closing.

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

(a) Seller covenants and agrees with Purchaser that:

(1) At all times before Closing, Seller shall maintain in force property and liability insurance with respect to damage or injury to person or property occurring on the Property.

(2) At all times before Closing, Seller shall maintain the Property in as good a condition and repair as exists on the Effective Date, except for normal wear and tear.

Seller shall advise Purchaser of any significant repair or improvement it makes to keep the Property in such condition.

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

(b) Seller represents and warrants to Purchaser that:

(1) Seller is a Missouri Municipal Corporation duly organized, validly existing, and in good standing under Missouri law.

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

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

(4) Seller has the full right to sell the Property in accordance with this Contract.

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

(6) Seller has no notice and to the best of Seller's knowledge, there are no pending or threatened condemnation actions, special assessments, or increases in assessed valuation with respect to the Property.

(7) Seller has not received any notice that, and to the best of its knowledge there are no, ordinances, regulations, laws, or statutes of any governmental agency pertaining to the Property which the Property violates.

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

(9) No person, firm, corporation or other entity has or at the Closing shall have (i) any right or option to acquire the Property, or any part thereof, from Seller, or (ii) have any leasehold, tenancy, or other possessory rights or interests in the Property, or any part thereof.

(10) Seller has not, and at the Closing will not have, entered into any agreement affecting the Property, other than this Contract.

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

(12) No permission, approval, or consent by third parties or governmental authorities is required for Seller to consummate this transaction.

(13) No representation, warranty, or statement of Seller in this Contract or in any document or Information to be furnished to Purchaser misstates or omits any material fact necessary to make the statements or facts contained therein not materially misleading. Seller knows of no situation on or about the Property not disclosed to Purchaser in writing which Seller reasonably should know would affect Purchaser's consideration of the Property.

(14) (A) Seller has no notice and to the best of Seller's knowledge, no material amount of Hazardous Substances has been disposed of, released, or identified on, under, in the vicinity of, or at the Property.

(B) Seller has no notice and to the best of Seller's knowledge, neither the Property nor any occupant using it is in violation of any Environmental Laws relating to the Property, including, but not limited to, soil and surface and ground water conditions or the manufacture, generation, or storage of Hazardous Substances on the Property.

(C) Seller has no notice and to the best of Seller's knowledge, there are no asbestos-containing materials, underground storage tanks, above-ground storage tanks, or other containers of Hazardous Substances located on the Property. The Property is not now--and has not been--used as a landfill.

(D) Seller has no notice and to the best of Seller's knowledge, no actions, suits, proceedings, orders, inquiries, or investigations are pending or are threatened against, involving, or affecting the Property, at law or in equity, or before or by any federal, state, municipal, or other governmental department, court commission, board, bureau, agency, or instrumentality, alleging the violation of any federal, state, or local law, statute, ordinance, rule, regulation, decree, order, and/or permit relating to Environmental Matters or the release of any Hazardous Substances.

(E) (i) "Environmental Laws" means all applicable laws (including regulations, by-laws, codes, international treaties, and agreements) with respect to the Property, now or hereafter in existence, relating to the environment, health and safety matters, Hazardous Substances, pollution, or protection of the environment.

(ii) "Environmental Matters" means matters relating to the generation, manufacture, use, storage, handling, transportation, and/or disposal of Hazardous Substances, or conditions with respect to the atmosphere, soil, surface and ground waters, wetlands, stream sediments, vegetation, endangered species, and stormwater runoff or discharge.

(iii) "Hazardous Substances" means any substance that is -- or is deemed under Environmental Laws to be, alone or in any combination -- hazardous, hazardous waste, toxic, radioactive, a pollutant, a deleterious substance, a contaminant, a dangerous good, or a source of pollution or contamination, or which, when released into the environment, is likely to cause, at some immediate or future time, material harm or degradation to the environment or material risk to human health, whether or not such substance is defined as "hazardous" under Environmental Laws.

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

(1) Seller's representations, warranties, and covenants are (i) material and being relied upon, and (ii) continuing, made both as of the Effective Date and as of the Closing Date, except to the extent that Seller otherwise notifies Purchaser in writing at or before Closing. If Seller so notifies Purchaser in writing at or prior to Closing -- or if Purchaser independently discovers on or prior to the Closing -- that any material representation, warranty, or covenant is no longer true, Purchaser may either (i) terminate this Contract by written notice to Seller, and neither party will have any further rights or obligations under it; or (ii) waive the representation, warranty, or covenant and close the purchase of the Property. If Purchaser discovers after the Closing that any representation or warranty was not true when made then Purchaser shall be entitled to any remedy available at law or in equity.

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

Section 8. Conditions to Closing.

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

(1) All of Seller's representations and warranties must be true and correct as of Closing in all material respects.

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

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

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

Section 9. Brokers. Each Party represents and warrants to the other that it has not engaged, or become liable to, any agent, broker, or other similar party in connection with this transaction.

Section 10. Notices.

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

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

CITY OF SPRINGFIELD
840 Boonville Ave.
Springfield, MO 65801
Attention: City Manager's Office
Telephone: 417-864-1006
Telecopy: 417-864-1912

with a copy to:

CITY OF SPRINGFIELD
840 Boonville Ave.
Springfield, MO 65801
Attention: City Attorney's Office
Telephone: 417-864-1645
Telecopy: 417-864-1551

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

BNSF RAILWAY COMPANY
301 Lou Menk Drive, GOB-3W
Fort Worth, Texas 76131-2830
Attention: Charles Keltner
Telephone: (817) 352-6464
Email: Charles.Keltner@bnsf.com

with a copy to:

BNSF RAILWAY COMPANY
2500 Lou Menk Drive, AOB-3
Fort Worth, TX 76131
Attention: Shanna Cargill
Telephone: (817) 352-3304
Email: Shanna.Cargill@bnsf.com

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

Section 11. Entire Agreement. This Contract (including its exhibits) contains the entire agreement between Seller and Purchaser. Oral statements or prior written matter not specifically incorporated into this Contract has no force or effect. No variation, modification, or

change to this Contract binds either party unless set forth in a document signed by the parties or their duly authorized agents, officers, or representatives.

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

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

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

Section 15. Destruction, Damage, or Taking Before Closing. If, before the Closing, the Property or any substantial portion of it is damaged or destroyed or becomes subject to a taking by eminent domain, Purchaser may either (i) terminate this Contract, and neither party will have any further rights or obligations under this Contract; or (ii) proceed with the Closing of the Property, and Seller will assign to Purchaser all condemnation or insurance proceeds available as a result of such damage, destruction, or taking.

Section 16. Tax-Deferred Exchange Under I.R.C. § 1031. Purchaser may assign its rights (but not its obligations) under this Agreement to Goldfinch Exchange Company LLC, an exchange intermediary, in order for Purchaser to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Purchaser shall provide Seller with a "Notice of Assignment," attached hereto as Exhibit "C", and Seller shall execute an acknowledgement of receipt of such notice. Seller may also assign its rights (but not its obligations) under this Agreement to an exchange intermediary in order for Seller to effect an exchange under Section 1031 of the Internal of Revenue Code. Seller agrees to fully cooperate with Purchaser to permit Purchaser to accomplish a tax-deferred exchange, but at no additional expense or liability to Seller for such tax-deferred exchange, and with no delay in the Closing. Seller's cooperation will include, without limitation, executing such supplemental documents as Purchaser may reasonably request. Seller agrees that Purchaser may use its standard form of "Assignment of Rights," attached hereto as Exhibit "D", in connection with any tax deferred exchange.

Section 17. Terminology. The captions beside the section numbers of this Contract are for reference only and do not modify or affect this Contract. Whenever required by the context, any gender includes any other gender, the singular includes the plural, and the plural includes the singular.

Section 18. Governing Law. This Contract is governed by and must be construed in accordance with Missouri law.

Section 19. Severability. If any provision in this Contract is found to be invalid, illegal, or unenforceable, its invalidity, illegality, or unenforceability will not affect any other provision, and this Contract must be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

Section 20. Rule of Construction. Each party and its counsel have reviewed and revised this Contract. The parties agree that the rule of construction that any ambiguities are to be resolved against the drafting party must not be employed to interpret this Contract or its amendments or exhibits.

Section 21. Attorneys' Fees. If any action at law or in equity is necessary to enforce or interpret this Contract, Seller and Purchaser shall each be responsible for their own attorneys' fees, costs, and necessary disbursements.

Section 22. Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgement of, or on behalf of, each part, or that the signature of all persons required to bind any party or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.

Section 23. “As-Is”. Purchaser is purchasing the Property solely in reliance on Purchaser’s own investigation, inspection and testing of the property and except for the express representations and warranties contained in this Agreement, no representations, claims or warranties of any kind whatsoever, express or implied, concerning the Property or its fitness, condition or suitability for any use or purpose, including without limitation the environmental condition of the Property, have been made by Seller or any party acting on behalf of Seller. Except as specifically provided in the agreement, Purchaser is acquiring the Property “as is” and “where is” with any and all damage, faults and defects.

EXECUTED as of the Effective Date.

SELLER

City of Springfield, Missouri

By: _____

Name: _____

Title: _____

Date: _____

Approved as to form:

Assistant City Attorney

PURCHASER

BNSF RAILWAY COMPANY,
a Delaware corporation

By: _____

Name: _____

Title: _____

Date: _____

_____ (Title Company) acknowledges
receipt of this Contract on _____, 201__.

_____,

a(n) _____

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A

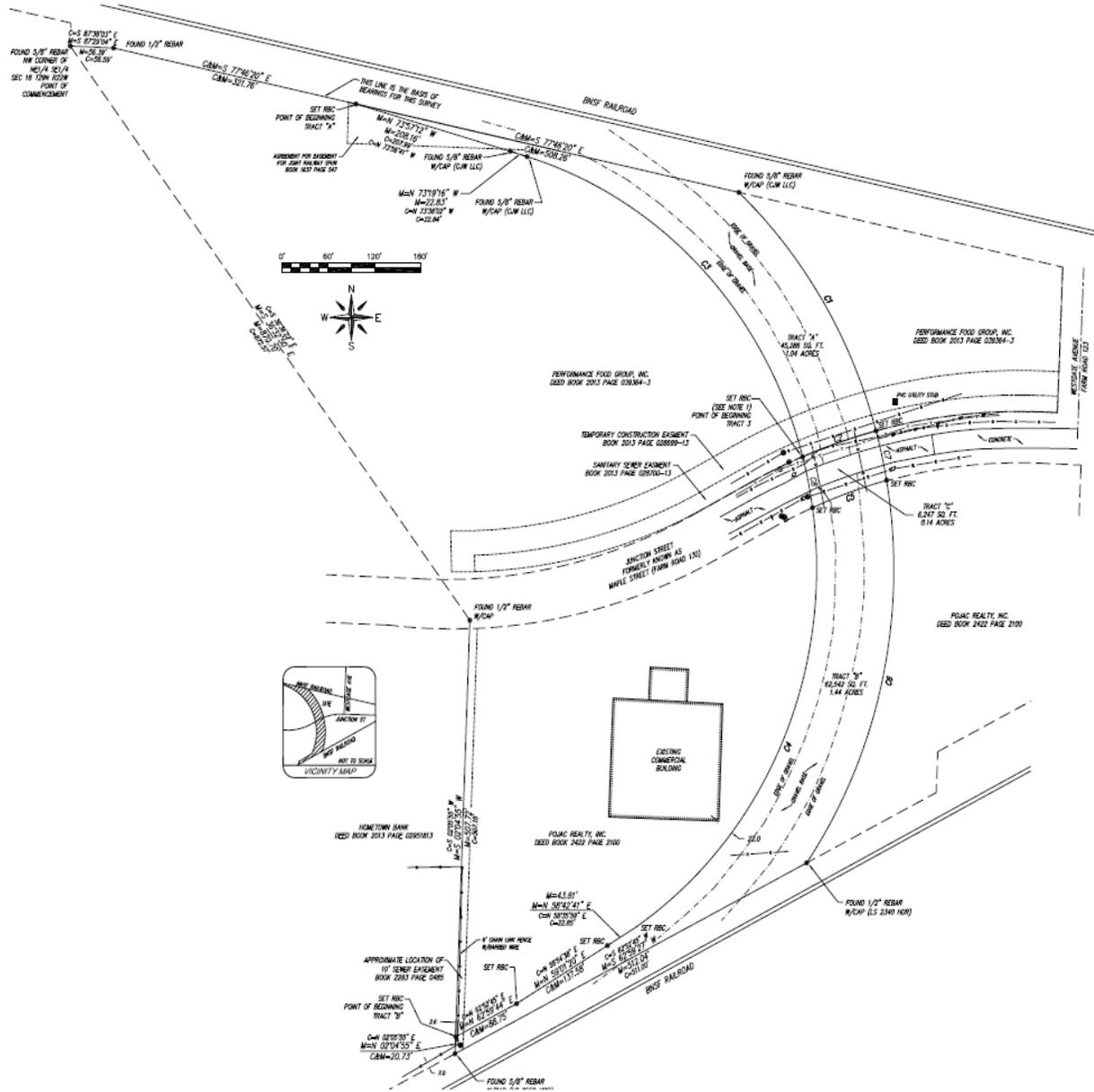


Exhibit B

QUITCLAIM DEED WITH RESERVATION OF EASEMENTS AND RIGHT OF WAY INTERESTS

THIS INDENTURE, made on the ___ day of _____, 20___, A.D., by and between the City of Springfield, Missouri, a municipal corporation, of the County of Greene in the State of Missouri, Grantor, and BNSF RAILWAY COMPANY, a Delaware corporation, whose mailing address is: _____, Grantee.

WITNESSETH; that the said Grantor, in consideration of the sum of Ten Dollars(s) (\$10.00) and other valuable considerations paid by the Grantee, the receipt of which is hereby acknowledged, does by these presents remise, release and forever quit claim unto the said Grantee the following described lots, tracts or parcels of land, lying, being and situate in the County of Greene and State of Missouri, and subject to reservations as set forth herein, to wit:

Tract A, consisting of the north portion of the arc of land to be conveyed to the Grantee, and more particularly described in Exhibit A, attached hereto and incorporated by reference as though fully set forth; and

Tract B, consisting of the south portion of the arc of land to be conveyed to the Grantee, and more particularly described in Exhibit B, attached hereto and incorporated by reference as though fully set forth; and

Tract C, consisting of the center of said arc and containing a road, as more particularly described in Exhibit C, attached hereto and incorporated herein by reference as though fully set forth.

TO HAVE AND TO HOLD the same with all rights, immunities, privileges and appurtenances thereto belonging, unto the said Grantee, and its successors, and assigns forever,

so that neither the Grantor, nor its successors and assigns, nor any other person or persons for it or in its name or on its behalf, shall or will hereafter claim or demand any right, except as herein reserved, or title to the aforesaid premises or any part thereof, but they, and every one of them shall by these presents be excluded and forever barred.

GRANTOR RESERVES herein to itself, its successors, assigns, four interests in said land described and attached hereto as Exhibits 1 - 4; said Exhibits being respectively, Utility Easement, Sewer Easement running parallel to and contiguous to Junction Street, South Sewer Easement and Right-of-Way Deed.

IN WITNESS WHEREOF, the said Grantor has caused these presents to be executed on the date first above written.

(Signatures Appear on the Next Page)

