

CONVEYANCE CONTRACT

THIS CONVEYANCE CONTRACT (this "**Contract**") is made to be effective the _____ day of _____, 2015 (the "**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**BNSF**"), and the **CITY OF RATON**, a municipality formed under the laws of the State of New Mexico (hereafter, the "**CITY**").

RECITALS

A. BNSF owns or controls (i) certain land, together with parking and parking related improvements located thereon, situated at or near the City of Raton, County of Colfax, State of New Mexico, as shown on the attached Drawing No. _____, dated _____, attached hereto as **Exhibit "A"** and incorporated herein by this reference ("**Land**"), and (ii) certain other improvements located on the Land consisting of that certain depot building (the "**Building**") consisting of one (1) story and containing approximately _____ square feet. The Land and the Building are sometimes collectively referred to herein as the "**Property**".

B. BNSF and CITY acknowledge that portions of the Land and Building are used by the National Railroad Passenger Corporation d/b/a Amtrak, a District of Columbia corporation (together with its successors and assigns, collectively referred to hereinafter as "**AMTRAK**") for passenger rail operations (such portions of the Land and Building, together with other areas used exclusively by AMTRAK located on or adjacent to the Land [e.g., passenger boarding platforms, connecting walkways, parking areas] being collectively referred to hereinafter as the "**AMTRAK Premises**", which AMTRAK Premises are as more particularly described in the BNSF/AMTRAK Lease defined below) pursuant to that certain: (i) agreement between AMTRAK and Burlington Northern Railroad Company ("**BNR**") and The Atchison, Topeka and Santa Fe Railway Company ("**ATSF**") (collectively, BNR and ATSF are predecessors-in-interest to BNSF), dated September 1, 1996, as amended ("**Operating Agreement**") and (ii) Lease Agreement between AMTRAK and BNSF, dated _____ (the "**BNSF/AMTRAK Lease**"). The Operating Agreement and the BNSF/AMTRAK Lease are referred to hereinafter collectively as the "**BNSF/AMTRAK Agreements**".

C. In connection with certain economic development objectives, the CITY desires to acquire the Property from BNSF, and BNSF is agreeable to conveying the Property to the CITY, subject to the terms and conditions set forth in this Contract.

AGREEMENTS

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

- (i) BNSF will convey the Property to CITY by BNSF's execution and delivery of that certain Quitclaim Deed in the form attached hereto as **Exhibit "C"** (the "**Deed**") for the Property;

- (ii) No monetary consideration shall be paid by CITY to BNSF for the Property;
- (iii) Without limitation to the provisions of **Section 3(a)** below, the conveyance of the Property shall be expressly subject to the following title matters: (a) the terms and conditions of the BNSF/AMTRAK Agreements, (b) the provisions of applicable federal law, including but not limited to the Rail Passenger Service Act, 49 U.S.C. §§ 24101 *et seq.*, to continue to use the AMTRAK Premises for passenger rail operations ("**AMTRAK Rights**"), (c) the terms and conditions of the BNSF Premises Lease (as hereinafter defined), (d) the terms and conditions of the Station Lease (as hereinafter defined), and (e) 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 Property, and any other matters affecting the Property which would be disclosed by a physical inspection of the Property or an accurate survey of the Property ("**Permitted Exceptions**") (which Permitted Exceptions shall be listed on Exhibit "B" to the Deed).
- (iv) Except as otherwise expressly set forth in this Contract, the Deed, the BNSF Premises Lease and the Station Lease or other documents delivered at Closing, CITY shall accept title to the Property and shall assume all responsibilities, duties and obligations for, of and relating to the Property 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 and/or AMTRAK located in, on, or in the vicinity of the Property at Closing shall remain the property of BNSF or AMTRAK, as applicable, and CITY shall have no rights thereto.
- (ii) CITY acknowledges and affirms that CITY's assumption of ownership of the Property 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 Property or the name under which it has been operated.

2. Prorations and Costs.

(a) Taxes. BNSF shall pay in full all ad valorem, business personal property and similar taxes and special assessments (collectively, the "**Taxes**") on the Land, Building and personal property located therein up to and including the Closing Date. All Taxes shall be prorated as of the Closing Date, based on a three hundred sixty-five (365) day year and on the most recently available tax rate and valuation. It is understood and agreed that Taxes will be prorated as of the Closing Date on an estimated basis. When the Taxes are actually determined, if the prorated Taxes as of the Closing Date are different than the actual prorated Taxes as of the Closing Date, then BNSF agrees to pay to CITY any deficiency on an actual proration, and likewise, CITY agrees to pay to BNSF any amount overpaid by BNSF. After the

Closing Date the CITY, at its sole discretion, may seek to have the Property removed from the tax rolls to reflect the tax exempt status of CITY-owned facilities; provided, however, that in any event BNSF shall have no further responsibility or obligation for payment of any Taxes associated with the Land, Building or personal property located therein and not belonging to BNSF for periods beginning after the Closing Date.

(b) Utilities. The parties shall cooperate so that all utilities serving the Property 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. BNSF shall have no further responsibility or obligation for payment of any utilities associated with the Property for periods beginning after 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 and recording fees.

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

(e) The obligations of the parties in this **Section 2**, to the extent incurred, shall survive any termination of this Contract.

3. Nature of Conveyance.

(a) Title. BNSF makes no representations or warranties as to the status of title to the Building or the Land. The conveyance of the Property is subject to the BNSF/AMTRAK Agreements, the AMTRAK Rights and all other 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 Property, 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.

(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 on the Property (including, without limitation, 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 Property and has knowledge as to the past use of the Property. Based upon this inspection and knowledge, and acknowledging that the Property (including, without limitation, the Building) may be in need of substantial repair, and as a material consideration of BNSF's willingness to enter into this transaction, CITY accepts the Property 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 AND THE ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, THE BUILDING) AND CITY REPRESENTS AND WARRANTS 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 PROPERTY, INCLUDING, WITHOUT LIMITATION, WARRANTIES AS TO TITLE, MERCHANTABILITY, HABITABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR CONFORMITY OF THE PROPERTY TO ITS INTENDED USE,** and further including, without limitation, any representations or warranties insofar as (i) the physical condition of the Property and any defects thereof, (ii) the presence of any Hazardous Substances (as hereinafter defined) located on the Property (including within the Building), (iii) the condition or existence of any of the above ground or underground structures or improvements in, on or under the Property (iv) the condition of title to the Property, (v) the existence of any leases, easements or other agreements affecting the Property, (vi) the status of zoning, (vii) the tax consequences of this transaction, (viii) the compliance of the Property with any law, ordinance, regulation, decree or private restriction, or (ix) the availability of utilities to the Property. **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 PROPERTY, INCLUDING WITHOUT LIMITATION ANY CLAIMS CITY MAY HAVE AGAINST BNSF WHICH ARE IN ANY WAY RELATED TO OR ARISE OUT OF THE POSSIBLE EXISTENCE OF ASBESTOS MATERIAL IN THE BUILDING. 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 PROPERTY, OR THE OPERATIONS OF BNSF, INCLUDING WITHOUT LIMITATION DERAILEMENTS 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 BY THE NEGLIGENCE OF BNSF OR ANY OF THE BNSF PARTIES; PROVIDED, HOWEVER, THAT SUCH RELEASE SHALL NOT APPLY TO ANY LOSS, DAMAGE OR CLAIM: (1) TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF BNSF OR A BNSF PARTY OR (2) WHOLLY CAUSED BY THE SOLE NEGLIGENCE OF BNSF OR A BNSF PARTY.

(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 Property subject to such dangers. Accordingly, CITY covenants and agrees that CITY shall not enact any ordinance, rule or other regulation that interferes with BNSF's railroad operations, in BNSF's sole discretion. **FURTHERMORE, NOTWITHSTANDING ANY OTHER LANGUAGE IN THIS CONTRACT TO THE CONTRARY, TO THE 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 CITY'S OWNERSHIP, USE AND OCCUPANCY OF THE PROPERTY, EVEN IF SUCH LOSS, DAMAGE OR CLAIM IS CAUSED BY THE NEGLIGENCE OF BNSF OR ANY OF THE BNSF PARTIES; PROVIDED, HOWEVER, THAT SUCH RELEASE SHALL NOT APPLY TO ANY LOSS, DAMAGE OR CLAIM: (1) TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF BNSF OR A BNSF PARTY OR (2) WHOLLY CAUSED BY THE SOLE NEGLIGENCE OF BNSF OR A BNSF PARTY.**

(d) Hazardous Conditions. CITY represents to BNSF that CITY is aware of the risk that Hazardous Substances may be present on the Property (including, without limitation, in or on the Building) and that CITY has conducted such investigations of the Property, including but not limited to, the physical and environmental conditions thereof, as CITY deemed necessary to satisfy itself as to the condition of the Property and CITY 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 REASONABLE 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 PROPERTY 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 PROPERTY, 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 (COLLECTIVELY, "CITY PARTIES") ON THE PROPERTY (INCLUDING, WITHOUT LIMITATION, IN OR ON THE BUILDING). As used in this Section, the term "losses" shall include without limitation the cost of any investigation, removal, remedial or other response action on or to the Property that is required by any Environmental Law (including but not limited to any Environmental Law enacted after Closing), or judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances. The rights of BNSF under this **Section 3(d)** 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 on the Property, excluding, however, the portion of the Building occupied by BNSF under the BNSF Premises Lease.

(e) 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.

(f) The provisions of this **Section 3** shall be binding on the CITY, its successors and assigns, inure to the benefit of BNSF and its successors and assigns, and shall survive the Closing and not merge into the Deed or any other document delivered at Closing.

4. Lease of Portions of Building to BNSF and AMTRAK.

(a) Lease of BNSF Premises. Simultaneously with the Closing of the conveyance of the Property, CITY shall lease back to BNSF that certain portion of the Building consisting of approximately 1,372 rentable square feet that is currently occupied by BNSF (the "**BNSF Premises**") 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. The parties shall execute the BNSF Premises Lease at the Closing of the Property conveyance and the lease term thereunder shall commence on the Closing Date.

(b) Station Lease: BNSF/AMTRAK Lease Amendment. CITY acknowledges that AMTRAK leases the AMTRAK Premises for passenger rail operations from BNSF pursuant to the BNSF/AMTRAK Agreements, and that the CITY's proposed uses of the Building and Land are subject and subordinate to the terms and conditions of the BNSF/AMTRAK Agreements. CITY also acknowledges that BNSF is obligated to provide property in the City of Raton 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: (i) 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 BNSF/AMTRAK Agreements pertaining to AMTRAK's use and occupancy of the AMTRAK Premises in the Building, (ii) AMTRAK and BNSF shall amend the BNSF/AMTRAK Lease to exclude the Property from the AMTRAK Premises under the BNSF/AMTRAK Lease (the "**BNSF/AMTRAK Lease Amendment**") and (iii) CITY and BNSF shall execute and record a memorandum ("**AMTRAK Rights Memorandum**"), in form and substance reasonably satisfactory to CITY, BNSF and AMTRAK, suitable for recording in the public records where the Property is located and sufficient to constitute constructive notice to all third parties of the AMTRAK Rights and AMTRAK's rights under the BNSF/AMTRAK Agreements. The Station Lease will enable AMTRAK to provide an intercity railroad passenger station facility for Raton, New Mexico, 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: (i) Station Lease by CITY and AMTRAK, (ii) BNSF/AMTRAK Lease Amendment by BNSF and AMTRAK, (iii) AMTRAK Rights Memorandum by CITY and BNSF and (iv) Repurchase Rights Memorandum (as defined below) shall all be conditions precedent to BNSF closing on its conveyance of the Property to CITY. CITY agrees to cooperate reasonably with BNSF and AMTRAK in order to arrive at a mutually satisfactory form of Station Lease and AMTRAK Rights Memorandum.

(c) **Depiction of BNSF Premises.** The BNSF Premises at the Effective Date (which may be modified by the Building Renovations [if such Building Renovations are undertaken]) are as generally shown on **Exhibit A-1**, attached hereto and incorporated herein by this reference. If Building Renovations are ever performed, all Building Renovations, if any, must be compliant with the Americans with Disabilities Act of 1990 ("**ADA**") and performed in accordance with the provisions of **Section 6** of this Contract.

5. **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 Deed, (ii) the BNSF Premises Lease, (iii) the AMTRAK Rights Memorandum and (iv) the Repurchase Rights 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 Deed, (ii) the BNSF Premises Lease, (iii) the AMTRAK Rights Memorandum and (iv) the Repurchase Rights 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 2(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 for periods commencing after the Closing Date.

(c) Final Execution. Upon BNSF's receipt of all executed originals of the Deed, the BNSF Premises Lease, the AMTRAK Rights Memorandum and the Repurchase Rights 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 fully-executed original of each of the Deed, the BNSF Premises Lease, the AMTRAK Rights Memorandum and the Repurchase Rights Memorandum to CITY at the address indicated below CITY's signature. If not previously provided by BNSF to CITY, BNSF will also deliver a fully executed copy of the BNSF/AMTRAK Lease Amendment to CITY. The "Closing Date" shall be deemed to be the date BNSF executes the Deed, the BNSF Premises Lease, the AMTRAK Rights Memorandum and the Repurchase Rights Memorandum.

(d) Recording; Further Assurances. Following the Closing, CITY, at its expense, shall record one fully-executed original of the Deed, the AMTRAK Rights Memorandum and the Repurchase Rights Memorandum in the public records of the county in which the Property is located; provided further that CITY will promptly forward copies of such recorded memoranda to BNSF and AMTRAK with proof of recording. In addition to and not in limitation of the foregoing, 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 Property 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.

6. CITY's Post-Closing Obligations.

(a) Building Renovations. The parties hereto acknowledge and agree that after Closing CITY may 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, including without limitation installation of a geothermal heating/cooling system for the Building (collectively, the "Building Renovations"). If the CITY undertakes Building Renovations, CITY covenants and agrees that it shall conduct the Building Renovations in a manner so as to minimize interference with BNSF's and AMTRAK's operations in the Building in accordance with **Section 6(b)** below. In addition to and not in limitation of the foregoing, CITY shall carry out the Building Renovations: (i) in a good and workmanlike manner, (ii) in conformance with plans and specifications reviewed and approved in advance in writing by BNSF (the "Plans and Specifications") and AMTRAK, as applicable, (iii) in accordance with accepted industry standards of care, skill and diligence for building and renovation work, and (iv) 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 (together with Environmental Laws and the ADA, referred to herein collectively as "Legal Requirements"). Upon approval of the Plans and Specifications by BNSF and AMTRAK, as applicable, the parties agree to amend this Contract to attach the approved Plans and Specifications as Exhibit "I". CITY shall use commercially reasonable means to ensure the Building Renovations are of high 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, if the CITY elects to undertake them, the 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, locate and arrange for temporary ADA-compliant facilities for BNSF's temporary use and AMTRAK's temporary use, as applicable, during the Building Renovations. BNSF agrees to reasonably cooperate with CITY, at no cost to BNSF, to locate and arrange for such temporary facilities. CITY agrees to use its best efforts to locate and arrange for any such ADA-compliant temporary facilities in the general vicinity of the Building, which ADA-compliant temporary facilities must be approved in advance as adequate by BNSF as to the BNSF Premises and AMTRAK as to the AMTRAK Premises. All costs associated with the relocation to and occupancy of ADA-compliant temporary facilities shall be at the CITY's sole cost and expense.

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

(d) Parking. CITY is responsible for maintaining the parking lot at CITY's sole cost and expense. CITY acknowledges and agrees that BNSF and AMTRAK shall have rights to use the parking lot without charge, and that CITY 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, if said Building Renovations are undertaken, CITY shall deliver to each of BNSF and AMTRAK written notices 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 labeled "As Built" reflecting all deviations from the original Plans and Specifications that occurred during performance of the Building Renovations.

(f) Without limitation to the provisions of **Section 11** below, the provisions of this **Section 6** shall survive the Closing.

7. 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 Property from CITY at any time during the term under the BNSF Premises 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 Property 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 Property 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 Property or any portion thereof without BNSF having the right to exercise its Early Repurchase Right);

- (ii) If BNSF shall require that ownership of the Property 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**"); or
- (iii) The BNSF Premises Lease is terminated by BNSF for the CITY's uncured default beyond applicable grace or cure periods under such agreements ("**City Default**").

(c) Occurrence of Early Repurchase Event and Notice. Upon an Early Repurchase Event under **Section 7(b)(i)** above, CITY must immediately provide written notice to BNSF and AMTRAK 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 Property 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 7(b)(i)** above, (2) such date as BNSF determines a Railroad Need exists with respect to an Early Repurchase Event under **Section 7(b)(ii)** above or (3) the date the BNSF Premises Lease is terminated by BNSF for City's uncured default under **Section 7(b)(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 to deliver an Exercise Notice as provided above.

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

(e) Early Repurchase Price. If BNSF decides to exercise its Early Repurchase Right to purchase the Property, then the purchase price for the Property for a Contemplated Transfer or Railroad Need (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 date of the Repurchase Closing) with no salvage value assigned to the Building Renovations.

- (iii) For purposes of this Contract, the **"Total Renovation Costs"** shall be deemed to be the amount that is the greater 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 or state funds received by CITY specifically designated for the Building Renovations ("**Renovation Grant(s)**") from any federal or state agency or body (each, a "**Granting Authority**"), but only to the extent and the amount that such Renovation Grant must be repaid by CITY to the Granting Authority upon BNSF's repurchase of the Building, plus the amount of CITY funds designated for the Building Renovations. CITY agrees to provide sufficient documentation satisfactory to BNSF, in BNSF's sole discretion, supporting the amount of the Renovation Grant and CITY's repayment obligations thereof to the Granting Authority, and also the designation of CITY funds for the Building Renovations.
 - (c) Notwithstanding the foregoing or anything contained in this Contract 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 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 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 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.

- (v) If BNSF exercises its Early Repurchase Right for a City Default, the Early Repurchase Price computed above shall be reduced by all costs and expenses incurred by BNSF in connection with such City Default and BNSF Premises Lease termination, including but not limited to all costs and expenses incurred in terminating the BNSF Premises Lease (including reasonable attorneys' fees), curing such City Default if BNSF elects to cure same (although BNSF has no obligation to cure same), reentering and repossessing the Land and/or Building, and the cost of any alterations and repairs deemed necessary by BNSF to restore the Building and/or Land to substantially the same condition as in existence at the Closing Date.

(f) Termination Repurchase Right. In addition to BNSF's Early Repurchase Right, BNSF shall have the right and option ("**Termination Repurchase Right**") to repurchase the Property from CITY upon termination of the term of the BNSF Premises Lease (including an early termination as a result of a Taking as defined and described in the BNSF Premises Lease) ("**BNSF Premises Lease Termination**"). The purchase price to be paid by BNSF for the Property if BNSF exercises its Termination Repurchase Right shall be One Dollar (\$1.00) ("**Termination Repurchase Price**"). BNSF shall be deemed to have exercised its Termination Repurchase Right unless BNSF has, on or before the BNSF Premises Lease Termination, delivered written notice to CITY that BNSF does not desire to exercise its Termination Repurchase Right.

(g) Closing. If BNSF exercises its Early Repurchase Right or its Termination 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 of the BNSF Premises Lease Termination in the event of an exercise of the Termination Repurchase Right ("**Repurchase Closing Date**"). At the Repurchase Closing:

- (i) BNSF shall tender the Early Repurchase Price or the Termination Repurchase Price, as applicable, to CITY; ____
- (ii) CITY shall deliver to BNSF a deed, in form substantially the same as the Deed under which BNSF conveyed title to the Property to CITY, but with no Restrictions (as defined in the Deed 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 Property 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 Deed attached hereto as Exhibit "C" shall be excluded and instead the CITY shall be bound to deliver the Property in the condition described immediately below;

- (iii) The Property shall be conveyed with all Building Renovations, if any, 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;
- (v) CITY and BNSF shall execute such documents as are reasonably required by AMTRAK to confirm the AMTRAK Rights in the Property and the Land,
- (vi) BNSF and AMTRAK shall execute an amendment to the BNSF/AMTRAK Lease whereby the Property will be included as part of the property leased by BNSF to AMTRAK under the BNSF/AMTRAK Lease, and
- (vii) Taxes, utilities and other costs of operating the Property 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 Property from BNSF to CITY under the terms hereunder.

(h) Without limitation to the provisions of **Section 13** below, all rights of BNSF hereunder with respect to the Early Repurchase Right and the Termination Repurchase Right (collectively, the "**Repurchase Rights**") shall 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 ("**Repurchase Rights Memorandum**") suitable for recording in the public records where the Property 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.

8. 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, 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.

9. Default/Remedies. Without limitation to the express remedies available under 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.

10. 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.

11. Survival. This Contract and the rights and obligations hereunder shall survive Closing, shall not be merged into the Deed or BNSF Premises Lease and shall be continuing in nature.

12. 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 Raton

Attn: _____

Fax: _____

BNSF: BNSF Railway Company
2301 Lou Menk Drive, GOB 3-W
Fort Worth, Texas 76131

Attn: _____

Fax: _____

With a copy to: Jones Lang LaSalle Brokerage, Inc.
4300 Amon Carter Blvd., Suite 100
Fort Worth, Texas 76155-2670
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 12**. 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.

13. 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 Property 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 Property 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.

14. Third Party Beneficiary. BNSF and CITY acknowledge and agree that AMTRAK is a third party beneficiary of **Sections 1(a)(iii);** the second sentence of **3(a); 4(b);** the first sentence of **5(d); 6(a); 6(b); 6(d); 6(e); 7(b)(i); 7(c);** and **7(g)(iii)** of this Contract.

15. Operation Prior to Closing. Until Closing, BNSF agrees to maintain and operate the Property in substantially the same manner and with the same degree of care in its maintenance and operation as BNSF has previously exercised. If the Property, or any part thereof, shall be damaged or destroyed by casualty, BNSF shall promptly give notice of the same to the CITY. Upon the occurrence of any casualty that results in damages to the Property, either party shall have the right, at its option, to terminate the Contract by giving written notice thereof to the other party. If this Contract is not so terminated by either party, then this Contract shall continue in full force and 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 RATON,
a municipality formed under the laws of the
State of New Mexico

By: _____
Name: _____
Title: _____

AMTRAK:

AMTRAK executes the Contract below to acknowledge the matters described in **Section 4(b)** and items **(d), (e) and (f)** 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 4(b)** and items **(d), (e) and (f)** on **Exhibit "F"**.

NATIONAL RAILROAD PASSENGER CORPORATION d/b/a AMTRAK,
a District of Columbia corporation

By: _____
Name: _____
Title: _____

Address: _____

Facsimile: _____

EXHIBIT "A"

Description of the Land and Building

[see attached]

EXHIBIT A-1

Depiction of BNSF Premises

[see attached]

EXHIBIT "B"

[Intentionally Deleted]

EXHIBIT "C"

WHEN RECORDED MAIL TO:

RECORDED AT THE REQUEST OF:

QUITCLAIM DEED

THIS DEED, made this ____ day of _____, 2015, between **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 RATON**, a municipality formed under the laws of the State of New Mexico, whose mailing address is _____, hereinafter called "**Grantee**".

WITNESSETH: That the said Grantor, for Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, to the said Grantor in hand paid by the said Grantee, the receipt of which is hereby confessed and acknowledged, hath remised, released, sold, conveyed and quitclaimed, and by these presents doth remise, release, sell, convey and quitclaim, without any covenants of warranty whatsoever and without recourse to the Grantor, its successor and assigns, unto the said Grantee, its successors and assigns, forever, all the right, title, interest, claim and demand, if any, which the said Grantor hath in and to the following described property: (i) that certain land situated at or near the City of Raton, County of Colfax, State of New Mexico, being more particularly described on **Exhibit "A"** attached hereto and by this reference made a party hereof ("**Land**"), and (ii) certain other improvements located on the Land consisting of that certain depot building (the "**Building**") consisting of one (1) story and containing approximately ____ square feet, subject, however, to all existing interests, including but not limited to all reservations, rights-of-way and existing interests, including but not limited to all reservations, rights-of-way and easements of record or otherwise, located in Colfax County, New Mexico. The Land and the Building are collectively referred to herein as the "**Property**".

Grantor's conveyance of the Property to Grantee is governed by that certain Conveyance Contract dated effective _____, 2015 (the "**Contract**").

Grantor's conveyance of the Property 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 Property:

(a) Grantee may use the Property for the purpose of operating and maintaining the Property and for any other lawful purpose deemed appropriate by the Grantee provided such use does not interfere with Grantor's operations, the determination of what constitutes interference to be in Grantor's sole discretion (the "**Permitted Use**").

(b) Grantor has certain rights to repurchase the Property as set forth in Section 7 of the Contract, including the right to repurchase the Property in the event Grantee desires to sell or transfer any interest therein, and any purported transfer by Grantee of any interest in the Property or any portion thereof shall be void and of no effect unless the provisions of said Section 7 have been complied with and Grantor has elected not to repurchase the Property pursuant to the provisions thereof.

(c) If Grantee proceeds to renovate the Building, Grantee shall comply with the terms and conditions of the Contract in connection with such renovations, all as more particularly described in the Contract.

The Restrictions shall touch, concern and run with and burden the Property 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 Property for condition broken and declare that title to the Property 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 Property as a result of such violation. If requested by Grantor, Grantee shall execute a deed to further evidence that the Property has reverted back to Grantor. The Restrictions shall apply in perpetuity, regardless of when or if the Property 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 Property and/or any property situated within the Property 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.

Grantor and Grantee acknowledge that portions of the Land and Building are used by the National Railroad Passenger Corporation d/b/a Amtrak, a District of Columbia corporation ("**Amtrak**") for passenger rail operations (such portions of the Land and Building, together with other areas used exclusively by Amtrak located on or adjacent to the Land [e.g., passenger boarding platforms, connecting walkways, parking areas] being collectively referred to hereinafter as the "**Amtrak Premises**", which Amtrak Premises are as more particularly described in the BNSF/Amtrak Lease defined below) pursuant to that certain: (i) agreement between Amtrak and Burlington Northern Railroad Company ("**BNR**") and The Atchison, Topeka and Santa Fe Railway Company ("**ATSF**") (collectively, BNR and ATSF are predecessors-in-interest to Grantor), dated September 1, 1996, as amended ("**Operating Agreement**") and (ii)

Lease Agreement between Amtrak and Grantor, dated _____ (the "**BNSF/Amtrak Lease**"). The Operating Agreement and the BNSF/Amtrak Lease are referred to collectively as the "**BNSF/Amtrak Agreements**". The conveyance of the Property shall be subject to the rights of Amtrak and its successors and assigns under: (i) the BNSF/Amtrak Agreements and (ii) applicable federal law, including but not limited to the Rail Passenger Service Act, 49 U.S.C. §§ 24101 *et seq.*, to continue to use the Amtrak Premises for passenger rail operations ("**Amtrak Rights**"). Grantor and Grantee acknowledge and agree that Amtrak is a third party beneficiary of this paragraph and may enforce it.

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 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. CITY 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. CITY 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 on the Property (including, without limitation, 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 Property and has knowledge as to the past use of the Property. Based upon this inspection and knowledge, and acknowledging that the Property (including, without limitation, the Building) may be in need of substantial repair, and as a material consideration of Grantor's willingness to enter into this transaction, CITY accepts the Property 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 AND THE ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, THE BUILDING) AND CITY REPRESENTS AND WARRANTS THAT CITY IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM GRANTOR AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING, WITHOUT LIMITATION, WARRANTIES AS TO TITLE, MERCHANTABILITY, HABITABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR CONFORMITY OF THE PROPERTY TO ITS INTENDED USE, and further including, without limitation, any representations or warranties insofar as (i) the physical condition of the Property and any defects thereof, (ii) the presence of any Hazardous Substances (as hereinafter defined) located on the Property (including within the Building), (iii) the condition or existence of any of the above ground or underground structures or improvements in, on or under the Property (iv) the condition of title to the Property, (v) the existence of any leases, easements or other agreements affecting the Property, (vi) the status of zoning, (vii) the tax consequences of this transaction, (viii) the compliance of the Property with any law, ordinance, regulation, decree or private restriction, or (ix) the availability of utilities to the Property. **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 GRANTOR WHICH ARE IN ANY WAY RELATED TO OR ARISE OUT OF THE PROPERTY, INCLUDING WITHOUT LIMITATION ANY CLAIMS CITY MAY HAVE AGAINST GRANTOR WHICH ARE IN ANY WAY RELATED TO OR ARISE OUT OF THE POSSIBLE EXISTENCE OF ASBESTOS MATERIAL IN THE BUILDING. FURTHER, CITY WAIVES, RELEASES AND DISCHARGES FOREVER GRANTOR AND GRANTOR'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, LICENSEES AND INVITEES (COLLECTIVELY,**

THE "GRANTOR 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 PROPERTY, OR THE OPERATIONS OF GRANTOR, INCLUDING WITHOUT LIMITATION DERAILMENTS OR OTHER ACCIDENTS OF A SIMILAR CATASTROPHIC NATURE, FROM VIBRATION OR OTHER ACTIVITIES OF THE GRANTOR IN THE ORDINARY COURSE OF ITS OPERATIONS (INCLUDING RAILROAD OPERATIONS), EVEN IF SUCH LOSS, DAMAGE OR CLAIM IS CAUSED BY THE NEGLIGENCE OF GRANTOR OR ANY OF THE GRANTOR PARTIES; PROVIDED, HOWEVER, THAT SUCH RELEASE SHALL NOT APPLY TO ANY LOSS, DAMAGE OR CLAIM: (1) TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF GRANTOR OR A GRANTOR PARTY OR (2) WHOLLY CAUSED BY THE SOLE NEGLIGENCE OF GRANTOR OR A GRANTOR PARTY.

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").

[Signature page follows]

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 _____, 2015.

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 RATON
a municipality formed under the laws of the
State of New Mexico

By: _____
Name: _____
Title: _____

Address: _____

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

This instrument was acknowledged before me on the _____ day of _____, 2015, 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 _____, 2015, by _____ of _____, on behalf of said _____.

Notary Public, State of _____

Notary's Typed or Printed Name

My Commission Expires: _____

EXHIBIT "A" to
Quitclaim Deed

[to be attached prior to execution]

EXHIBIT "B" TO
Quitclaim Deed

Permitted Exceptions

1. Agreement between Amtrak and Burlington Northern Railroad Company ("**BNR**") and The Atchison, Topeka and Santa Fe Railway Company ("**ATSF**") (collectively, BNR and ATSF are predecessors-in-interest to Grantor), dated September 1, 1996, as may be amended from time to time.
2. Lease Agreement between Amtrak and Grantor, dated _____, as may be amended from time to time.
3. The provisions of applicable federal law, including but not limited to the Rail Passenger Service Act, 49 U.S.C. §§ 24101 *et seq.*, to continue to use the AMTRAK Premises for passenger rail operations.
4. BNSF Premises Lease for space in the Building by the CITY of Raton, New Mexico, as lessor, and BNSF Railway Company, as lessee, with such lease dated effective as of _____, 20__.
5. Lease Agreement (City of Raton, New Mexico Station) by the CITY of Raton, New Mexico, as lessor, and Amtrak, as lessee, with such lease dated effective as of _____, 20__.
6. 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 Property, and any other matters affecting the Property which would be disclosed by a physical inspection of the Property or an accurate survey of the Property.

EXHIBIT "D"

Intentionally Deleted

EXHIBIT "E"

BNSF Premises Lease

[see attached]

EXHIBIT "F"

Conditions to Closing

The following obligations shall be conditions to the parties' obligation to consummate the transaction to convey the Property 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 forty-five (45) days after the Effective Date), then the affected party may in its sole discretion elect (i) to extend such date or (ii) to terminate this Contract by written notice to the other party, 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 thirty (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 Property 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 thirty (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 Property proposed for conveyance unto the CITY.

(d) At or prior to Closing, CITY shall enter into the Station Lease with AMTRAK, with the Station Lease subject to BNSF's reasonable approval. Notwithstanding anything contained in the Contract to the contrary, the parties acknowledge that Closing of the conveyance of the Property from BNSF to the CITY cannot occur unless and until AMTRAK and the CITY execute the Station Lease.

(e) At or prior to Closing, BNSF shall enter into the BNSF/AMTRAK Lease Amendment. Notwithstanding anything contained in the Contract to the contrary, the parties acknowledge that Closing of the conveyance of the Property from BNSF to the CITY cannot occur unless and until AMTRAK and BNSF execute the BNSF/AMTRAK Lease Amendment.

(f) At or prior to Closing, CITY and BNSF shall execute the AMTRAK Rights Memorandum, in form and substance reasonably satisfactory to CITY, BNSF and AMTRAK, suitable for recording in the public records where the Property is located and sufficient to constitute constructive notice to all third parties of the AMTRAK Rights and AMTRAK's rights under the BNSF/AMTRAK Agreements. Notwithstanding anything contained in the Contract to the contrary, the parties acknowledge that Closing of the conveyance of the Property from BNSF to the CITY cannot occur unless and until CITY and BNSF execute the AMTRAK Rights Memorandum.

(g) CITY shall have performed each of CITY's obligations under this Contract.

(h) BNSF shall have performed each of BNSF's obligations under this Contract.

EXHIBIT "G"

Intentionally Deleted

EXHIBIT "H"

Insurance

CITY shall, at its sole cost and expense, procure and maintain during the performance of the Building Renovations 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 \$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 Contractor. 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 Brokerage, 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 under this Contract.
- ◆ Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."

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 permitted 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 self-insurance.

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.

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.

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.

EXHIBIT "I"

Plans and Specifications

[Contract to be amended to attach BNSF and AMTRAK approved Plans and Specifications]