PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

14-0176R

RESOLUTION AUTHORIZING THE EXECUTION OF A REAL ESTATE PURCHASE AND SALE AGREEMENT PROVIDING FOR THE ACQUISITION OF CERTAIN PROPERTY FROM THE BNSF RAILWAY COMPANY FOR THE AMOUNT OF $109,800.

CITY PROPOSAL:

WHEREAS, the city is creating a cross city trail system ("Cross-City Trail") as a combination pedestrian and bicycle trail from the Lakewalk on the east side of the city to the Munger trail on the west side of the city to promote an active lifestyle for the citizens and visitors of the city; and

WHEREAS, the property to be acquired from BNSF Railway Company ("BNSF") is a critical acquisition for implementation of Phase II of the Cross-City Trail as outlined in the Munger Trail to Lakewalk connector plan developed by the Metropolitan Interstate Council and shown in the city's parks and recreation trail and bikeway master plan adopted by Council Resolution 11-0552 as well as in the city's bikeway system plan adopted by council Resolution 13-0613.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are authorized to execute and implement a real estate purchase and sale agreement with BNSF, in substantially in the form of that on file in the office of the clerk as Public Document No. _____, pursuant to which the city will acquire by quitclaim deed certain property legally described therein (the "property") for the amount of $109,800 ($107,800 for the property and $2,000 administrative fee) payable from Fund 450-030-5510-CP2013-0595TR (capital improvement fund, finance department, land, Cross City Trail).

FURTHER RESOLVED, that the proper city officials are authorized to execute

all documents necessary to effectuate the acquisition of the Property from BNSF.

Approved:

Department Director

Approved for presentation to council:

Chief Administrative Officer

Approved as to form:

Attorney

Approved:

Auditor

PLNG KH/SLW:bel 04/03/2014

STATEMENT OF PURPOSE: This resolution authorizes the city to enter into a real estate purchase and sale agreement with BNSF for the purchase of property to be used for the city's cross-city trail system. The purchase of the BNSF property is critical to providing the cross-city trail portion in west Duluth near Wade Stadium. The development of the trail would require a thirty foot easement; however, BNSF would not grant a long-term easement, but is willing to sell the entire corridor. The purchase of the entire corridor benefits the city since it eliminates the need for a long-term property lease the city had with BNSF for the Wade Stadium Ball fields, and provides the city an opportunity to provide a trail connection to Wade Stadium.

The Cross City Trail will provide a 10 foot wide bituminous trail which will be designed for and used by pedestrians, bikers, and inline skaters. This paved multimodal path will separate the trail users from vehicular traffic, and provide a safe connection between the existing Munger Trail and Lakewalk Trail systems. It also provides connections to neighborhoods, business districts, and tourism destinations near and along the new trail system. The Cross City Trail itself will be over 7 miles long, but once connected to the existing Munger and Lakewalk Trails, the Cross City Trail will become part of over 80 miles of continuous trail. Other existing and planned connector trails will connect the Cross City Trail to communities and facilities throughout the City.

Phase II of the trail construction is funded as follows: eighty percent by Federal Highway Administration, fifteen percent by the department of Natural Resources, and five percent by the city (local funds, capital).

BNSF RAILWAY COMPANY

REAL ESTATE PURCHASE AND SALE AGREEMENT

This Real Estate Purchase and Sale Agreement ("**Agreement**") is entered into as of the Effective Date (defined below) between **CITY OF DULUTH** ("**Buyer**") and **BNSF RAILWAY COMPANY** ("**Seller**"). This Agreement shall not be binding upon either party unless and until both parties have executed and delivered this Agreement. The submission of this document by Seller to Buyer shall not constitute an offer to sell by Seller.

In consideration of the mutual covenants set forth in this Agreement and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

GENERAL TERMS AND DEFINITIONS

1. The following terms shall have the meanings set forth below:

Closing. The consummation of the transaction contemplated by this Agreement, which shall be deemed to have occurred when both parties have delivered the items contemplated in Section 4 of this Agreement.

Closing Date Notwithstanding, anything herein, this sale shall close on or before May 19, 2014. Seller shall have the right to extend the closing up to ninety (90) days, at Seller's sole judgment.

Earnest Money The cash sum Ten Thousand and no/100 dollars ($10,000.00) made payable to BNSF Railway Company.

Effective Date The date of Seller's execution of this Agreement as indicated below Seller's signature hereto.

Property That parcel of land situated in or near the City of Duluth, County of St. Louis and State of Minnesota, shown shaded on map marked Exhibit A dated October 3, 2013, revised March 3, 2014, attached hereto and made a part hereof, subject to revision as set forth below in Section 3.

Purchase Price The sum of One Hundred Seven Thousand Eight Hundred and no/100 dollars ($107,800.00). (Property, $103,000.00, track $4,800.00)

Review Period The period commencing on the Effective Date and expiring at 5:00 p.m. central time on the date that is 15 days after the Effective Date.

PURCHASE AND SALE

2. (a) Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase and accept from Seller, for the Purchase Price, all of Seller's right, title and interest (if any), in and to the Property. Such Purchase Price ($107,800) and Administrative Fee identified in paragraph 11 herein in the amount of $2,000 shall be payable from Fund 450-

030-5510-CP2013-0568TR (Capital Improvement Fund, Finance Department, Land, Cross City Trail).

(b) Seller may assign its rights (but not its obligations) under this Agreement to Goldfinch Exchange Company LLC, (Goldfinch) an exchange intermediary, in order for Seller to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Seller shall provide Buyer with a Notice of Assignment, attached as Exhibit B, and Buyer shall execute an acknowledgement of receipt of such notice. Buyer may also assign its rights (but not its obligations) under this Agreement to an exchange intermediary in order for Buyer to effect an exchange under Section 1031 of the Internal of Revenue Code.

(c) Upon submission by Buyer to Seller of this Agreement signed by Buyer, Buyer shall deposit the Earnest Money with Goldfinch as escrow agent. Goldfinch shall hold the Earnest Money in escrow pursuant to the terms and conditions of this Agreement. The Earnest Money shall be refunded to Buyer if this Agreement is not executed and delivered by Seller within forty five (45) days after the date Buyer delivers this agreement fully executed by Buyer and deposits the Earnest Money. Buyer shall not be entitled to any interest on the Earnest Money held by Goldfinch pursuant to this Agreement. Buyer acknowledges that receipt by Goldfinch of the Earnest Money shall not constitute acceptance of this Agreement or Buyer's offer provided, however, that Goldfinch shall return the Earnest Money to Buyer if Seller does not execute and deliver this Agreement within forty-five (45) days after Buyer deposits the Earnest Money. Goldfinch shall deliver the Earnest Money to the party entitled thereto pursuant to this Agreement, provided, however if there is a dispute between Buyer and Seller as to who is so entitled, Goldfinch may deposit the Earnest Money with a court of competent jurisdiction pending resolution of such dispute.

(d) The balance of the Purchase Price shall be paid at Closing as provided below.

INSPECTION

3. (a) Seller will prepare a legal description of the Property and will forward such description to Buyer for Buyer's review. Buyer shall have ten (10) days following such delivery to notify Seller in writing if Buyer objects to such description. If Buyer does not so object then the description of the Property prepared by Seller shall be the definition of the Property for all purposes under this Agreement. If Buyer does so object then Buyer shall cause to be prepared, at Buyer's sole cost and expense, a survey of the Property certified to Seller, Buyer and such other parties as Buyer may choose showing the boundaries of the Property and any improvements located thereon (the "**Survey**"). If Seller does not agree that the description of the Property contained on the Survey is the Property Seller wishes to sell or otherwise objects to the Survey then Seller may terminate this Agreement by written notice to Buyer in which case the Earnest Money shall be refunded to Buyer and neither party shall have any further obligation hereunder except those that expressly survive termination. If Seller agrees in writing that the Survey description is accurate then the description thereon shall be the definition of the Property for all purposes under this Agreement. In the event a city, county, or other governing authority where the Property is located (a "**Municipality**") requires a survey or plat to convey the Property (a "**Plat**"), the Buyer shall obtain, at Buyer's sole cost and expense, such Plat and the approval of such Municipality. Seller's obligations hereunder are conditioned upon Seller's approval of the Plat approved by the Municipality. Buyer shall provide the proposed Plat to Seller prior to submission to the Municipality and prior to the expiration of the Review Period.

(b) Buyer shall have until the end of the Review Period to examine title to the Property. If Buyer elects to obtain a title commitment for the Property Buyer may deliver to Seller no later than the expiration of the Review Period written notice of any objections to the status of title or matters reflected on the Survey that Buyer may have together with a copy of such title commitment, Survey and all matters referenced therein. Seller shall have no obligation to cure any such objection. If Seller notifies Buyer in writing that Seller will cure any such objection Seller (a) shall make good faith efforts to cure such matter by the Closing Date and if not cured by such date Buyer may terminate this Agreement in which case the Earnest Money shall be refunded to Buyer and neither party shall have any further obligation hereunder except those that expressly survive termination, and (b) may effect such cure by causing the title company issuing the title commitment to remove such matter as an exception from coverage by paying additional premium therefor or otherwise. If Seller at any time notifies Buyer in writing that Seller is not willing or able to cure any of the such objections (including those which Seller has previously endeavored to cure) then Buyer or Seller may terminate this Agreement by written notice to the other delivered within five (5) days after Seller so notifies Buyer that Seller is unwilling or unable to cure such objection. In the event of such termination, the Earnest Money shall be refunded to Buyer and neither party shall have any further obligation hereunder except those that expressly survive termination. If this Agreement is not so terminated, the parties shall proceed to Closing according to the remaining provisions of this Agreement.

(c) Notwithstanding the foregoing provisions of Section 3(b), Buyer shall not be entitled to object to any judgment against Seller which may appear of record as a lien against the Property. Seller shall pay such lien if and when it is judicially determined to be valid, and Seller hereby indemnifies the Buyer for all loss arising out of Seller's failure to have a judgment lien so settled and satisfied.

(d) Notwithstanding the foregoing provisions of Section 3(b), Buyer shall not be entitled to object to the lien of any of Seller's mortgages. Seller shall deliver to Buyer, who shall place of record, good and sufficient releases of the liens of any mortgages on the Property securing indebtedness to which Seller is obligated to pay within one hundred eighty (180) days after the first meeting of Seller's Board of Directors held after the Closing. In the event Seller shall be unable to obtain said releases for any reason, Seller shall have the right to repurchase the Property from Buyer for the Purchase Price and Buyer shall reconvey the Property to Seller free and clear of defects or objections arising after the Effective Date upon which this Agreement shall terminate and neither party shall have any further rights or obligations hereunder except those that expressly survive termination.

CLOSING

4. (a) Subject to the terms of this Agreement, the Closing shall occur on the Closing Date. On or before the Closing Date Buyer shall (1) pay the Purchase Price, less the Earnest Money to Seller in cash, by certified check made payable to BNSF Railway Company or by wire transfer to Seller's account as designated by Seller and the Earnest Money shall become the property of Seller and no longer subject to the terms of this Agreement and (2) such other affidavits or certificates as is reasonably necessary or customary to consummate the transaction. After Buyer has delivered the foregoing items, Seller shall deliver to Buyer (1) a Quitclaim Deed in recordable form, subject to all matters of record and restating the exceptions and reservations set forth in Section 8 (the "**Deed**") conveying to Buyer Seller's interest, if any, in and to the Property, (2) counterparts of the Exchange Assignment, and (3) such other affidavits and certificates as is reasonably necessary or customary to consummate the transaction in form and substance acceptable to Seller.

(b) Buyer agrees to keep rentals, taxes and other charges payable to Seller under the terms of leases numbered 40375202 dated September 29, 1986 fully prepaid. Buyer shall receive a refund Post-Closing equal to the amount of rents in excess of $500.00 per lease received by Seller prior to the Closing Date that are attributable to periods after Closing. Rents received by Seller attributable to periods after Closing but less than $500.00 per lease, or attributable to periods prior to Closing shall be retained by Seller. If a lease includes a site only partially located within the Property being purchased, the refund, if applicable, shall be apportioned for that part of said lease site within the Property. Cancellation of said lease shall be of the date of conveyance of Property.

PRORATIONS AND CLOSING COSTS

5. (a) Real estate taxes and assessments payable or paid in the year of Closing shall be prorated by Seller and Buyer as of the Closing Date on the basis of the most recent ascertainable taxes assessed against the Property. If the Property is not separately assessed for tax purposes then there shall be no proration of taxes between Buyer and Seller, the parties shall cooperate post-Closing to cause the Property to be separately assessed and each party shall indemnify the other for any failure to pay real estate taxes and assessments due with respect to the properties constituting the tax parcel to which the Property is a part. Notwithstanding the foregoing, there shall be no proration for taxes to the extent the payment of same has been assumed by a tenant under an existing lease to be assigned to Buyer. All outstanding assessments on the Property levied or due in the year of Closing and afterward shall be paid by Buyer.

(b) The parties shall cooperate so that utilities serving the Property that are not the responsibility of a tenant under a lease to be assigned to Buyer at Closing, to the extent feasible, shall be switched into the name of Buyer as of the Closing Date, so that a final statement can be issued to Seller for the billing period ending on the Closing Date, and so that the first day of the first billing cycle in Buyer's name can begin on the Closing Date. If, however, the final statement covering the final period of ownership by Seller also includes periods of ownership by Buyer, Buyer shall pay Seller at Closing the amount attributable to Buyer's period of ownership. Buyer shall be responsible to pay all utilities serving the Property due after Closing.

(c) Buyer shall pay all closing costs associated with Closing including, but not limited to, any escrow fees, documentary stamps and other recording costs associated with this transaction, excise taxes, the cost of any state, county or local transfer taxes, the cost of the Survey, and the costs associated with any title insurance obtained by Buyer.

(d) If any real estate broker or agent can establish a valid claim for commission or other compensation as a result of Buyer having used their services in connection with the purchase of the Property, all such commission or other compensation shall be paid by Buyer. Seller 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. Buyer acknowledges that Broker has advised, and hereby advises, Buyer that the Broker is acting as on behalf of the Seller, with the duty to represent Seller's interest, and Broker is not the agent of the Buyer. If a policy of title insurance is to be obtained, Buyer should obtain a commitment for title insurance which should be examined prior to closing by an attorney of Buyer's choice. Prior to the execution of this Agreement, Broker has advised and hereby advises the principals of this transaction, that this Agreement 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 Seller, make representations on behalf of Seller or bind Seller in any manner.

(e) The obligations of the parties in this Section 5, to the extent incurred, shall survive any termination of this Agreement.

DEFAULT AND REMEDIES

6. (a) In the event of a default by Buyer under the terms of this Agreement, Seller's sole and exclusive remedies shall be: (a) terminate this Agreement whereupon the parties shall have no further obligations hereunder except those that expressly survive termination, or (b) waive such default and proceed Closing, or (c) obtain specific performance of this Agreement. If Seller terminates this Agreement as provided in the previous sentence Seller shall be entitled to retain the Earnest Money. Notwithstanding the foregoing, nothing contained herein shall waive or diminish any right or remedy Seller may have at law or in equity for Buyer's default or breach of any obligation hereunder to be performed by Buyer after Closing. It is hereby agreed that Seller's damages in the event of a default by Buyer hereunder are uncertain and difficult to ascertain, and that the Earnest Money constitutes a reasonable liquidation of such damages and is intended not as a penalty, but as liquidated damages.

(b) In the event of a default by Seller under the terms of this Agreement, Buyer's sole and exclusive remedies hereunder shall be to terminate this Agreement and receive a refund of the Earnest Money plus an additional amount from Seller not to exceed ten percent of the Purchase Price equal to the out-of-pocket expenses (including attorneys' fees) incurred by Buyer in connection with this Agreement as evidenced by copies of third party invoices delivered to Seller. Upon such termination and the payment of such sums by Seller the parties shall have no further obligations hereunder except those that expressly survive termination. Notwithstanding the foregoing, nothing contained herein shall waive or diminish any right or remedy Buyer may have at law or in equity for Seller's default or breach of any obligation hereunder to be performed by Seller after Closing.

NATURE OF SALE

7. Buyer has been allowed to make an inspection of the Property. **BUYER IS PURCHASING THE PROPERTY ON AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, INCLUDING THOSE RELATING TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY, AND IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM SELLER AS TO ANY MATTERS CONCERNING THE PROPERTY,** including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Property with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, under, or in proximity to the Property; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Property; the condition of title to the Property, and the leases, easements, permits, orders, licenses, or other agreements, affecting the Property (collectively, the "**Condition of the Property**"). Buyer represents and warrants to Seller that Buyer has not relied and will not rely on, and Seller is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto (including specifically, without limitation, Property information packages distributed with respect to the Property) made or furnished by Seller, the manager of the Property, or any real estate broker or agent representing or purporting to represent Seller, to whomever made or given, directly or indirectly,

orally or in writing. Buyer assumes the risk that Hazardous Substances or other adverse matters may affect the Property that were not revealed by Buyer's inspection and indemnifies, holds harmless and hereby waives, releases and discharges forever Seller and Seller's officers, directors, shareholders, employees and agents (collectively, "**Indemnitees**") from any and all present or future claims or demands, and any and all damages, Losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort or asserting a constitutional claim) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown, arising from or in any way related to the Condition of the Property or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Property. Losses shall include without limitation (a) the cost of any investigation, removal, remedial, restoration or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) capital expenditures necessary to cause the Seller remaining property or the operations or business of the Seller on its remaining property to be in compliance with the requirements of any Environmental Law, (c) Losses for or related to injury or death of any person, (d) Losses for or related to injury or damage to animal or plant life, natural resources or the environment, and (e) Losses arising under any Environmental Law enacted after transfer. The rights of Seller under this section shall be in addition to and not in lieu of any other rights or remedies to which it may be entitled under this document or otherwise. This indemnity specifically includes the obligation of Buyer to remove, close, remediate, reimburse or take other actions requested or required by any governmental agency concerning any Hazardous Substances on the Property. The term "**Environmental Law**" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law relating in any way to human health, occupational safety, natural resources, plant or animal life or the environment, including without limitation, principles of common law and equity, 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. The term "**Hazardous Substance**" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions. The provisions of this Section 7 shall be binding on Buyer, and its heirs, successors and assigns, shall be included in the Deed and shall be covenants running with the land.

RESERVATIONS

8. The obligations in this Section 8 shall be binding upon Buyer and its heirs, successors and assigns, shall be included in the Deed and shall be covenants running with the land benefiting Seller and Seller's successors and assigns. For purposes of this Section 8, Grantor shall mean Seller and Grantee shall mean Buyer. Buyer may object to the reservations set forth in Section 8(a) below in accordance with the provision of Section 3 and if Seller is unwilling or unable to cure such objection either party may terminate this Agreement as set forth in Section 3.

(a) Grantee's interest shall be subject to the rights and interests of Grantor, Grantor's licensees, permittees and other third parties in and to all existing driveways, roads, utilities, fiber optic lines, tracks, wires and easements of any kind whatsoever on the Property whether owned, operated, used or maintained by the Grantor, Grantor's licensees, permittees or other third parties and whether or not of public record. Grantor shall have a perpetual easement on the Property for the use of such existing driveways, roads, utilities, fiber optic lines, tracks, wires and easements by Grantor and Grantor's licensees, permittees and customers. Grantor shall have a non-exclusive easement for the construction, maintenance and operation of one or more pipelines or fiber optic lines and any and all communications facilities as may be located in the future on the Property within 60 feet of the center line of any Main Track on or adjacent to the Property and as may be presently located on the Property.

(b) Grantee's interest shall be subject to a reservation to Grantor of all coal, oil, gas, casing-head gas and all ores and minerals of every kind and nature including sand and gravel underlying the surface of the Property, together with the full right, privilege and license at any and all times to explore, or drill for and to protect, conserve, mine, take, remove and market any and all such products in any manner which will not damage structures on the surface of the Property, together with the right of access at all times to exercise said rights.

(c) Any improvements constructed or altered on the Property after the date Grantor quitclaims its interest to Grantee shall be constructed or altered in such a manner to provide adequate drainage of water away from any of Grantor's railroad tracks on nearby property.

(d) Grantee acknowledges and affirms that Grantor may not hold fee simple title to the Property, that Grantor's interest in all or part of the Property, if any, may rise only to the level of an easement for railroad purposes. Grantee is willing to accept Grantor's interest in the Property, if any, on this basis and expressly releases Grantor, its successors and assigns from any claims that Grantee or its successors may have as a result of an abandonment of the line of rail running over or adjacent to any portion of the Property. In light of Grantor's disclosure that it may not hold a fee interest in all or part of the Property, Grantee agrees to indemnify, defend and hold Grantor harmless from any suit or claim for damages, punitive or otherwise, expenses, attorneys' fees, or civil penalties that may be imposed on Grantor as the result of any person or entity claiming an interest in any portion of the Property or claiming that Grantor did not have the right to transfer all or part of the Property to Grantee.

(e) Seller agrees to provide a Bill of Sale for approximately 1,020 lineal feet of trackage, together with all materials and appurtenances, including rails, ties, wires, signals and other track materials associated therewith (collectively, the "Personal Property"), as shown red on Exhibit "A" of this offer to Purchase Agreement. All of Seller's rights, title and interests, if any, in and to said Personal Property thereon shall be conveyed in an "as-is" condition without any covenants of warranty whatsoever and without recourse to the Seller, and the Buyer agrees to assume all obligations thereto, including dismantling costs if the Buyer decides to remove said Personal Property.

(f) Within 90 days after closing, Grantee shall, at its sole cost and expense, construct a protective chain link fence a minimum of six (6) feet in height upon, over and across the Property as shown colored red on the attached Exhibit "A" and by this reference made a part hereof. Grantee shall thereafter repair, maintain and renew said fence, so as to keep same in good repair at the sole cost of the Grantee. If fence is not constructed within this time frame, Grantor may construct said fence at the sole cost of Grantee and Grantee shall pay Grantor all associated costs within 10 days of receipt of bills.

REPRESENTATIONS

9. Buyer represents and warrants to Seller that if Buyer is other than a natural person or persons that it is a validly formed municipal corporation of the State of Minnesota; that it is in good standing in the state of its organization and in the state in which the Property is located; that it has all requisite authorizations to enter into this Agreement; and that the parties executing this Agreement on behalf of Buyer are duly authorized to so do. Buyer represents and warrants to Seller that it is not subject to any bankruptcy proceeding. Seller

represents and warrants to Buyer that it is a validly formed corporation under the laws of the State of Delaware; that it is in good standing in the state of its organization and in the state in which the Property is located; that it is not subject to any bankruptcy proceeding; that it has all requisite corporate authorizations to enter into this Agreement; and that the parties executing this Agreement on behalf of Seller are duly authorized to so do. It shall be a condition of each party's obligations to Close this transaction that the representations and warranties of the other party contained herein are true and accurate as of Closing, provided, however that if one party waives such condition by proceeding to Close with knowledge that any of the second party's representations or warranties are inaccurate, the second party shall have no liability with respect to such inaccuracy known by the first party.

MISCELLANEOUS

10. (a) Any notice under this Agreement must be written. Notices must be either (i) hand-delivered; (ii) placed in the United States certified mail, return receipt requested, addressed to the recipient; (iii) deposited with a nationally recognized 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 such 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. All notices shall be addressed to the address of the recipient indicated below the signature of such party below. Either party may change its address for notice by proper notice to the other party.

(b) If the approval of any governmental agency is required for the sale of Seller's interest (if any) in the Property, it is understood and agreed that Seller's obligations under this Agreement are conditioned upon obtaining such approval and that both parties shall use good faith efforts to obtain such approval. If such approval cannot be obtained by the Closing Date, Seller may elect to extend the Closing Date to a date no later than ninety (90) days after the original Closing Date. In the event said approval cannot be obtained by such extended date, either party may terminate this Agreement without liability to the other, except that the Earnest Money shall be refunded to Buyer and thereafter neither party shall have any obligation hereunder except those that expressly survive termination.

(c) Nothing in this Agreement shall prevent Seller from discontinuing service over any railroad line or lines by which rail service may be provided to the Property.

(d) If, prior to Closing, the Property or any portion thereof is destroyed or damaged, or becomes subject to a taking by virtue of eminent domain to any extent whatsoever then either party may terminate this Agreement by written notice to the other within thirty (30) days after notice of such fact (but in any event prior to Closing). If so terminated, the Earnest Money shall be refunded to Buyer and neither party shall have any further obligations hereunder except those that expressly survive termination. If not so terminated the parties shall proceed with the Closing.

(e) Time is of the essence of each of the party's respective obligations under this Agreement. Whenever a date specified in this Agreement falls on a Saturday, Sunday, or federal holiday, the date will be extended to the next business day.

(f) This Agreement contains the entire Agreement between Seller and Buyer with respect to the Property. Oral statements or prior written matters not specifically incorporated into this Agreement are superceded hereby. No variation, modification, or change to this Agreement shall bind either party unless set forth in a document signed by both parties. No failure or delay of either party in exercising any right, power or privilege hereunder shall operate as a waiver of such party's right to require strict compliance with any term of this Agreement. The captions above the section numbers of this Agreement are for

reference only and do not modify or affect this Agreement. Each party has had the opportunity to have counsel review this Agreement and, therefore, no rule of construction that any ambiguities are to be resolved against the drafting party must not be employed to interpret this Agreement or any closing document. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute the same Agreement. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any term or provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be held to be invalid or unenforceable, then such term or provision shall be ignored, and to the maximum extent possible, this Agreement shall continue in full force and effect, but without giving effect to such term or provision.

(g) Buyer may not assign its interest in this Agreement without Seller's prior written consent. The provisions of this Agreement shall bind Seller, the Buyer, and their heirs, executors, administrators, successors and assigns and shall and inure to the benefit of the Seller, the Buyer and their heirs, executors, administrators, permitted successors and assigns. If Buyer is more than one person or entity, Buyer's obligations under this Agreement shall be joint and several.

(h) **Intentionally stricken.**

(i) Seller is not a foreign person as the term is used and defined in Section 1445 of the Internal Revenue Code of 1986, as amended and the regulations promulgated thereunder. Seller shall, upon request of Buyer, complete an affidavit to this effect and deliver it to Buyer on or before closing of said sale.

(j) The provisions of Sections 5-8 and Section 10 of this Agreement shall survive Closing and shall not be merged into the Deed or any other document delivered at Closing. The provisions of Section 9 of this Agreement shall survive Closing for a period of one year and shall not be merged into the Deed or any other document delivered at Closing. Nothing in this section shall alter any requirement in any other Section of this Agreement for the provisions of such section to be incorporated into the Deed, such as Sections 7 and 8.

(k) If any action at law or in equity is necessary to enforce or interpret this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, costs, and discovery or investigation expenses in addition to any other relief to which that party may be entitled.

(l) SELLER AND BUYER IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO, THIS AGREEMENT.

ADMINISTRATIVE FEE

11. Buyer acknowledges that a material consideration for this agreement, without which it would not be made, is the agreement between Buyer and Seller, that the Buyer shall pay upon return of this Agreement signed by Buyer to Seller's Broker a processing fee in the amount of $2,000.00 over and above the agreed upon Purchase Price. Said fee shall be made payable to BNSF Railway Company by a separate check.

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement to be effective as of the Effective Date.

BUYER:

CITY OF DULUTH
a Minnesota municipal corporation
Buyer's name as it is to appear on deed
(PRINTED/TYPED)

By:_____
Print Name:_____
Title:_____

Buyer's Address:

_____
_____
_____
Attn:_____
Fax:_____
Phone:_____

Buyer's SSN or EIN:_____

SELLER:

BNSF RAILWAY COMPANY

By:_____
Print Name:_____
Title:_____

Seller's Address:

c/o Jones Lang LaSalle Brokerage Inc.
4105 Lexington Avenue North, Suite 200
Arden Hills, MN 55126
Attn: Roger Schwinghammer
Fax: 651-481-9361
Phone:651-415-2710

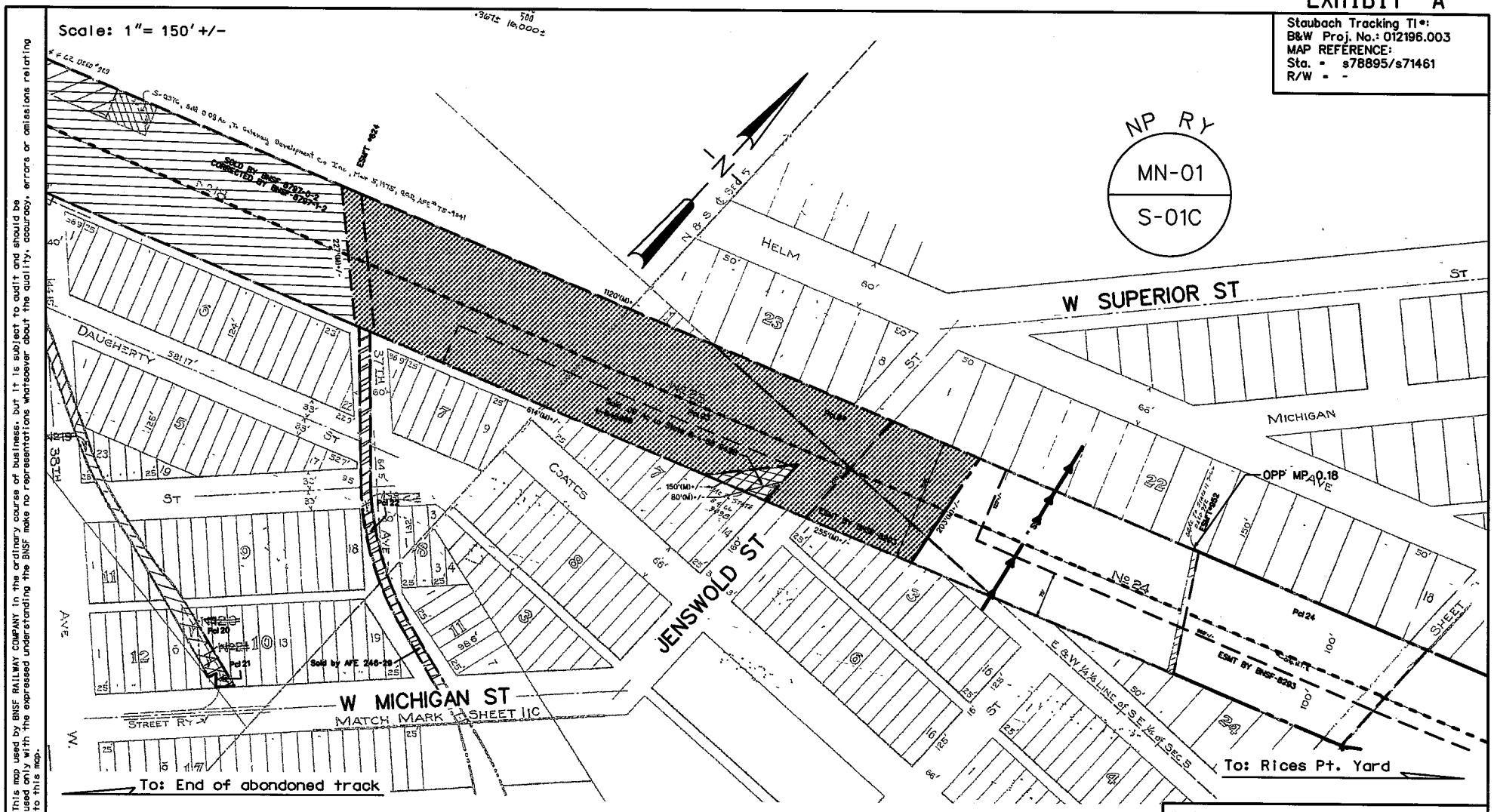
_____
Date of Seller's Execution (Effective Date)

EXHIBIT A

Attach Map showing Property cross-hatched in black

EXHIBIT "A"

Staubach Tracking TI#:
B&W Proj. No.: 012196.003
MAP REFERENCE:
Sta. - s78895/s71461
R/W - -



This map used by BNSF RAILWAY COMPANY in the ordinary course of business, but it is subject to audit and should be used only with the expressed understanding the BNSF make no representations whatsoever about the quality, accuracy, errors or omissions relating to this map.

To: City of Duluth

At: Duluth
St Louis
Minnesota

Legend:
Sale Area

MEASUREMENTS BASED ON PROVIDED SURVEYS
(S) MEASUREMENTS TAKEN OFF SURVEY
(M) MEASUREMENT

Twin Citites Division
Lakes Subdivision - L.S. 0214-7
Val. Sec. 69054
NPRY MN-01, Map S-01C
Sec. 05, T49N, R14W 4PM
October 03, 2013 Rev. 03/03/2014
OPP. M.P. 0.18 JNC

DRAWING NO. 3-59120r3

EXHIBIT "B"

NOTICE OF ASSIGNMENT

Goldfinch Exchange Company LLC
A Delaware limited liability company
40 Lake Bellevue Drive, Suite 275
Bellevue, WA 98005
425-646-4020
425-637-2873 fax

NOTICE OF ASSIGNMENT

TO: CITY OF DULUTH
and any assignees or exchange intermediaries of Buyer

You and BNSF Railway Company ("BNSF") have entered into the Real Estate Purchase and Sale Agreement, dated _____, 2014 for the sale of the real property described therein. You are hereby notified that BNSF has assigned its rights as Seller, but not its obligations, to Goldfinch Exchange Company LLC for the purpose of effecting a tax deferred exchange under Internal Revenue Code Section 1031. This is an assignment of rights only and BNSF will deed the property directly to you.

ACKNOWLEDGED:

By:_____
Print:_____
Title:_____