

OPTION AGREEMENT

THIS OPTION AGREEMENT (this “**Agreement**”) is made and entered into by and between **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, (“**Owner**”) and **NORFOLK SOUTHERN RAILWAY COMPANY** (“**Railroad**”).

GRANT OF OPTION

In consideration of the sum of ONE AND NO/100 DOLLARS (\$1.00) and other good and valuable consideration, Owner hereby grants unto Railroad an exclusive option (the “**Option**”) for one (1) year from the date hereof (the “**Option Period**”) to purchase for EIGHTEEN THOUSAND AND NO/100 DOLLARS (\$18,000.00) (the “**Purchase Price**”), the land and improvements of Owner (“**Premises**”) situated at or near Louisville, Jefferson County, Kentucky, as shown on print of Drawing No. RB-2016-15, dated August 16, 2016, attached hereto and hereby made a part of this Agreement.

The Option is given and granted by the Owner to Railroad, subject to the following terms and conditions:

- (1) **Option Extension.** Intentionally Omitted.
- (2) **Election to Purchase.** Railroad, if it elects to purchase the Premises within the Option Period, shall notify Owner in writing, at the address shown herein, of such election.
- (3) **Sales Contract.** Upon the giving of such notice of exercise as set out above, the Option shall ripen into a binding sales contract, and the terms of this Agreement shall automatically become the terms of said contract without the execution of any further instruments.
- (4) **Entry Upon Premises.** In addition to the rights granted in Paragraph (8) below, Railroad, its representatives and other persons retained by it, may enter upon and commence construction of Railroad’s railroad facilities on the Premises before title shall have passed at any time after notifying Owner of Railroad’s election to exercise this Option. Railroad shall indemnify Owner against any loss, liability, costs, claims, demands damages, actions causes of action and suits arising out or in any manner related to such construction. If Railroad, its representatives and other persons retained by it, enters upon the Premises and commences construction of Railroad’s railroad facilities prior to closing and thereafter fails to acquire the Premises as set forth herein, Railroad shall restore the Premises to its condition prior to the commencement of said construction.
- (5) **Closing.** The closing shall be held at a mutually agreed upon location and time within one hundred eighty (180) days of the date specified thereon, pursuant to Paragraph (2) above, of such notice of election to purchase (the “**Closing Date**”). At closing:

- (a) Owner shall deliver to Railroad a duly executed and acknowledged general warranty deed (together with any ancillary documents or forms required for proper recordation of the same) conveying the Premises free and clear of all liens or encumbrances and a deed or deeds of release to release the lien of any mortgage or trust that may apply to the Premises.
- (b) Railroad shall pay to Owner the Purchase Price specified above for the purchase of said Premises, said payment to be made at closing in cash or by certified or cashier's check or by wire transfer. All funds previously paid to Owner by Railroad shall apply to the Purchase Price at closing.
- (c) General real estate taxes for the then current year relating to said Premises and rents, if any, shall be prorated as of the closing date and shall be so adjusted at closing. If the closing shall occur before the tax rate is fixed for the then current year, the apportionment of taxes shall be upon the basis of the tax rate for the next preceding year applied to the latest assessed valuations.
- (d) Railroad will obtain any title abstract, guarantee or insurance it may require.
- (e) Railroad shall pay for all closing costs, filing fees and Railroad's attorney's fees on the Premises. Owner shall pay for all transfer or grantor's or seller's taxes and Owner's attorneys' fees.
- (f) Possession of the Premises shall pass at closing.

(6) **Title Examination.**

- (a) Owner covenants to convey to Railroad at Closing "good and marketable fee simple title" in and to the Premises. For the purposes of this Agreement, "good and marketable fee simple title" shall mean fee simple ownership which is: (a) free of all claims, liens and encumbrances of any kind or nature whatsoever other than (i) current city, state and county ad valorem taxes not yet due and payable, and (ii) easements for the installation or maintenance of public utilities serving only the Premises; and (b) insurable by a title insurance company reasonably acceptable to Railroad, at standard rates, under the then standard form of ALTA owner's policy of title insurance, with the standard printed exceptions therein deleted.

- (b) Railroad shall have until the ninetieth (90th) day after its exercise of the Option in which to examine title to the Premises and in which to give Owner written notice of objections which render Owner's title less than good and marketable fee simple title. Thereafter, Railroad shall have the right to re-examine title to the Premises and in which to give Owner written notice of any additional objections disclosed by such reexamination. Owner shall have until ten (10) days prior to the Closing Date in which to satisfy all valid objections specified in Railroad's initial notice of title objections, and until the Closing Date in which to satisfy all valid objections specified in any subsequent notice by Railroad of title objections. If Owner fails so to satisfy any such valid objections, then, at the option of Railroad, Railroad may: (i) terminate this Agreement, in which event all sums previously paid by Railroad to the Owner under this Agreement shall be refunded to Railroad immediately upon request, all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void; or (ii) satisfy the objections, after deducting from the cash portion of the Purchase Price the cost of satisfying objections which can be satisfied by the payment of money; or (iii) waive such satisfaction and performance and consummate the purchase and sale of the Premises; or (iv) extend the Closing Date for a period of up to ninety (90) days, during which time Owner shall cure such title objections; or (v) exercise such rights and remedies as may be provided for or allowed by law or in equity. In the event of an extension of the Closing Date by Railroad under clause (iv), above, and a subsequent failure of Owner to cure any valid title objection, Railroad may then elect between the alternatives specified in clauses (i), (ii), (iii) and (v) above.
- (C) Notwithstanding anything set forth herein to the contrary, any liability of the Owner to the Railroad shall not exceed the amount paid by the Railroad to the Owner pursuant to the terms of this Agreement. However, this limitation of liability shall not extend to any willful misrepresentations or other willful misconduct on the part of Owner.

(7) **Real Estate Brokers.** The parties each warrant and represent to the other that such party has not employed or dealt with a real estate broker or agent in connection with the transaction contemplated hereby. The parties covenant and agree, each to the other, to indemnify the other against any loss, liability, costs, claims, demands, damages, actions, causes of action, and suits arising out of or in any manner related to the alleged employment or use by the indemnifying party of any real estate broker or agent.

(8) **Inspection Period.**

- (a) Throughout the Option Period provided for herein, the Railroad shall have the right to come upon the Premises and to have its representatives and other persons retained by it to come upon the said Premises for the purpose of study, examination, the making of surveys and topographical surveys, soil tests, borings and other examinations which may be useful in determining the conditions affecting the making of improvements on the Premises. All costs and expenses involved in the making of such studies, examinations and tests shall be borne by the Railroad.
- (b) Owner warrants and represents to Railroad that (i) neither Owner, nor, to Owner's actual knowledge, any other person, has ever caused or permitted any hazardous material to be placed, held, located, or disposed of on, under, or at the Premises, or any part thereof, in a manner that would constitute a violation of any environmental law; (ii) the Premises have never been used (whether by Owner or, to Owner's actual knowledge, any other person or entity) as a landfill (whether permanent or temporary) for any Hazardous Material; and (iii) neither the Premises nor the use, maintenance, or operation thereof is in violation of any environmental law as of the date hereof.
- (c) Owner agrees to provide Railroad notice of any pending, threatened, past (within the last five (5) years) or current administrative action or proceeding or litigation of which it has knowledge pertaining to any contamination of the Premises or any alleged violation of any federal, state or local law, rule or regulation affecting the Premises.
- (d) If Railroad discovers or becomes aware of any material environmental issues during the Option Period, then Railroad, at Railroad's sole discretion, may terminate this Agreement, in which event all sums previously paid by Railroad to the Owner shall be refunded to Railroad immediately upon request, all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void.

(9) **Assignment.** It is understood and agreed by the Owner and the Railroad that the Railroad may assign Railroad's interest herein to any individual or individuals, or corporation, before or after the exercise of the Option. Seller expressly reserves the right to assign or delegate all or any part of Seller's rights and duties hereunder with respect to all or any portion of the Premises to one or more third parties, including a qualified intermediary as defined by Treasury Regulation Section 1.1031 (K)-1(g) (4).

(10) **Survey.** If required by Railroad or by the appropriate local authorities, the exact area of the Premises will be determined by a survey made by a registered land surveyor licensed in the State of Kentucky. The survey, which is subject to approval of Owner and Railroad, shall be obtained by and at the sole cost of Railroad. Railroad shall arrange for the survey of the Premises and, within not more than ninety (90) days from the date of exercise of the Option, shall furnish Owner with a copy of the metes and bounds description describing the exact area to be conveyed, and a copy of a survey plat, acceptable to Owner and Railroad and to the officials responsible for recordation of deeds in the County or City in which the Premises lie, for use in preparation of the deed and other papers.

(11) **Cooperation.** Owner agrees to cooperate fully with Railroad, including, but not limited to, executing petitions and other documents, providing historical information about the use of the Premises, and providing for interviews with knowledgeable persons, in procuring any rezoning of the Premises or in conducting environmental audits or site assessments. Owner further agrees to work with Railroad in the obtaining of any other relevant certificates and permits related to this Agreement and Railroad's proposed use of the Premises. All fees for obtaining such zoning, licenses, assessments, audits, certificate and permits, and all other costs and expenses in connection therewith shall be borne solely by Railroad.

(12) **W-8 or W-9 Requirement.** Notwithstanding anything to the contrary contained elsewhere in this Agreement, as a condition precedent to any amounts owed by Railway under this Agreement to Owner, Owner must first provide Railway with a current Form W-8 or Form W-9, as applicable, or such successor form as may be prescribed by the U.S. Internal Revenue Service. Within ten (10) business days of the receipt by Railway of a current Form W-8 or W-9 as applicable, or such successor as may be prescribed by the U.S. Internal Revenue Service, Railway shall pay any amounts owed to Owner under this Agreement. If at any time during the term of this Agreement such Form W-8 or Form W-9 shall expire or otherwise become invalid, Railway shall have no obligation to make any further payment for any amounts due under this Agreement until such time as the Owner provides Railway with a current Form W-8 or Form W-9, as applicable, or such successor form as may be prescribed by the U.S. Internal Revenue Service.

(13) **Contingencies.** Closing of the purchase and sale of the Premises contemplated in this Agreement shall be contingent upon (a) satisfactory results from any soil tests, environmental assessments or environmental audits Railroad chooses to have performed and (b) successful rezoning to accommodate Railroad's proposed use. Railroad shall be the sole arbiter of whether these contingencies are met, and if Railroad elects not to close because they are not met, Owner's remedies shall be as set forth in Paragraph (13) hereof.

(14) **Default Remedies.** If after exercise of the Option, the purchase and sale of the Premises contemplated in this Agreement is not closed within the time herein provided due to Railroad's failure to perform, Owner's sole remedy shall be a declaration upon five (5) days' written notice to Railroad that all rights and interests of the Railroad in the Premises are terminated, and neither party shall have any further claim upon or obligation to the other. If after exercise of the Option, the purchase and sale of the Premises contemplated in this Agreement is not closed within the time herein provided due to Owner's failure to perform, then Railroad shall have the right to pursue any remedies available to it at law or in equity.

(15) **Entire Agreement.** This Agreement contains the entire agreement of the parties hereto with respect to the Premises, and the subject matter hereof, 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.

(16) **Amendments.** No amendment to this Agreement shall be binding on any of the parties hereto unless such amendment is in writing and is executed by both parties to this Agreement.

(17) **Notices.** All notices provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail or overnight delivery service, or be hand delivering the same to such person. For purposes of notice, the addresses of the parties shall be as follows:

If to Railroad: Malcolm Roop
 Director – Real Estate
 Norfolk Southern Corporation
 1200 Peachtree Street, NE – 12th Floor
 Atlanta, GA 30309

With a copy to: Howard McFadden
 Senior General Attorney – Real Estate
 Norfolk Southern Corporation
 1200 Peachtree Street, NE – 12th Floor
 Atlanta, GA 30309

If to Owner: Louisville/Jefferson County Metro Government
Metro Parks and Recreation
Attn: John P. Hamilton
1297 Trevilian Way
2nd Floor
Louisville, KY 40213

With a copy to: John A. Wilmes
Assistant Jefferson County Attorney
531 Court Place
Suite 900
Louisville, KY 40202

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and their seals affixed, effective as of the 17th day of April, 2017.

OWNER:

Louisville/

Allen M Hesen
Printed Name: Allen M Hesen
Title: Chief of Staff

RAILROAD:

NORFOLK SOUTHERN RAILWAY COMPANY

Tristan Lynn
Printed Name: Tristan Lynn
Title: Real Estate Agent

Approval as to Form:

John A. Wilmes ACA
John A. Wilmes
Assistant Jefferson County Attorney