

# NORTHAMPTON COUNTY COUNCIL - EASTON, PA

**Ordinance No.** 674                      **SESSION** 2019                      **Bill No.** 764

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**Introduced by** Tara M. Zrinski and Robert F. Werner on July 18, 2019

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**Enacted** August 2, 2019                      **Effective** September 1, 2019

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**Title:** AN ORDINANCE AUTHORIZING THE PURCHASE OF APPROXIMATELY 1.4 ACRES, MORE OR LESS, AS DETERMINED BY SURVEY OF REAL PROPERTY BY THE COUNTY OF NORTHAMPTON IN PLAINFIELD TOWNSHIP, PENNSYLVANIA, FROM NORFOLK SOUTHERN RAILWAY COMPANY

**WHEREAS**, Northampton County Home Rule Charter Section 602(a)(6) provides that the Northampton County Council shall enact an ordinance for any act which conveys, leases, purchases or authorizes the conveyance, lease or purchase of any real estate property of the County; and

**WHEREAS**, on July 9, 2019, the Parks, Recreation and Open Space Advisory Board provided a recommendation for Northampton County to purchase (fee simple acquisition) the Norfolk Southern property in Stockertown, located in Plainfield Township, part of Two Rivers Area Trail Gap 9A, of approximately 1.4 acres, more or less, as determined by survey, to be approved by the Northampton County Council.

**WHEREAS**, on July 15 2019, Northampton County Council was requested to authorize the County Executive to enter into an Agreement of Sale with Norfolk Southern Railway Company to purchase approximately 1.4 acres, more or less, as determined by survey, of real property located in Plainfield Township, County of Northampton, Commonwealth of Pennsylvania, as more fully described in a Deed recorded in the Office of the Recorder of Deeds of Northampton County, Pennsylvania (Deed Book Volume 2003-1 Page 434,659) also known as Northampton County Parcel Number H8 17 1 in consideration of One Hundred and Fifty Thousand and 00/100 dollars (\$150,000) per acre based on number of acres determined by the survey. Earnest Money is required to bind the Agreement of Sale in the amount of Twenty-Five Thousand and 00/100 dollars (\$25,000), which shall be credited toward the total price at closing. The Total Purchase Price shall not exceed Two Hundred and Twenty-Five Thousand and 00/100 dollars (\$225,000).

**NOW THEREFORE, BE IT HEREBY ORDAINED AND ENACTED** by the Northampton County Council that it does hereby authorize the County Executive to enter into an Agreement of Sale to purchase approximately 1.4 acres, more or less, as determined by the survey, located in Plainfield Township, as not to exceed \$225,000, from Norfolk Southern Railway Company in accordance with the Agreement of Sale which is attached hereto and made a part hereof as Exhibit "A".

Effective Date - This ordinance shall become effective thirty days after the date of enactment.

This ordinance was advertised on the 21<sup>st</sup> day of July 2019 and was adopted by the Northampton County Council on the 1<sup>st</sup> day of August 2019.

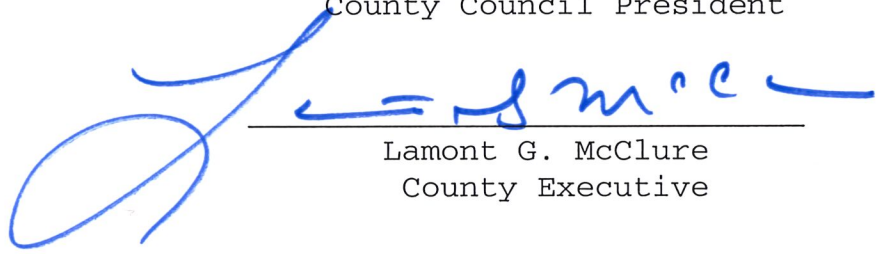
Attest:



Linda M. Zembo  
Clerk to Council

Ronald R. Heckman

Ronald R. Heckman  
County Council President



Lamont G. McClure  
County Executive

86m

**CONTRACT OF PURCHASE AND SALE**

This Contract of Purchase and Sale (hereinafter "**Agreement**"), dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019 (the "**Effective Date**"), between NORFOLK SOUTHERN RAILWAY COMPANY a Virginia corporation, hereinafter called "**Seller**"; and COUNTY OF NORTHAMPTON, a Pennsylvania governmental entity, hereinafter called "**Purchaser**";

WITNESSETH:

1. **Premises.** Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller, subject to the terms and conditions hereinafter set forth, the land and improvements of Seller in Stockertown, Northampton County, Pennsylvania consisting of 1.4 acres, more or less, together with (i) all servitudes, easements, appurtenances and hereditaments appertaining thereto, and (ii) all improvements, structures, landscaping, and appurtenances situated thereon (hereinafter collectively referred to as "**Premises**"), being located substantially as shown on print of Drawing No. 1255960, dated March 29, 2019, attached hereto and made a part hereof.

2. **Purchase Price.** The purchase price for said Premises is ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000.00) per acre, based upon the total number of acres of land being sold ("**Purchase Price**"). The Purchase Price is to be computed by multiplying the price per acre by the total number of acres determined by the survey specified in paragraph 3.

3. **Survey.** The exact area of land to be purchased is to be determined by a survey made by a registered land surveyor licensed in the Commonwealth of Pennsylvania (the "**Survey**"). The Survey, which is subject to approval of Seller, shall be obtained by and at the sole cost of Purchaser. Purchaser shall arrange for the Survey of the Premises and, within not more than sixty (60) days from the Effective Date, shall furnish Seller three (3) copies of the metes and bounds description describing the exact area to be conveyed, and three (3) prints of a survey plat, acceptable to Seller and to the officials responsible for recordation of deeds in the County or City in which the Premises lie, for use by Seller in preparation of the deed and other papers. The Survey shall show the location of all improvements, buildings, highways, streets, roads, railroads, rivers, lakes, creeks or other water courses, fences, encroachments, easements and rights of way on or adjacent to the land to be purchased and shall set forth the total number of square feet or acres contained within the Premises together with a metes and bounds description of the Premises.

4. **Earnest Money.** The earnest money to bind this Agreement, receipt of which is hereby acknowledged, is TWENTY FIVE THOUSAND DOLLARS (\$25,000) (the "**Earnest Money**"), which amount shall be credited toward the total price at closing.

The Earnest Money may be retained by Seller if Purchaser, through no fault of Seller, shall fail to close in accordance with the terms of this Agreement. The parties acknowledge that it is impossible to estimate more precisely the damages which might be suffered by Seller upon Purchaser's default. Seller's retention of said Earnest Money together with all interest thereon is not intended as a penalty, but as full liquidated damages. (pursuant to O.C.G.A. § 13-6-7)

5. **Type of Conveyance.** At closing, the Seller shall convey the Premises to Purchaser by Quit Claim deed subject to the following:

- (a) General real estate taxes for the year of closing and subsequent years not yet due and payable;
- (b) Applicable zoning laws and regulations; and
- (c) All easements, conditions, reservations, leases, licenses and restrictions as may appear of record or be apparent by an inspection of the Premises.

6. **Title.** The Purchaser shall have sixty (60) days after the Effective Date to examine title to the Premises and to furnish Seller with a written statement of objections affecting the marketability of said title. Seller shall have thirty (30) days after receipt of such objections to satisfy them. If Seller does not satisfy such objections within the prescribed time, then, at Purchaser's option evidenced by written notice to Seller, Purchaser may either (i) terminate the Agreement or (ii) waive any or all objections not cured by Seller and proceed to close hereunder without diminution in price. In the event this Agreement is terminated, Purchaser shall be entitled to a refund of the Earnest Money, without interest, and neither party shall be liable to the other for damages on account of the termination. Marketable title as used herein shall mean title which a title insurance company licensed to do business in the Commonwealth of Pennsylvania will insure at its regular rates subject only to standard exceptions and those stated in paragraph 5 of this Agreement.

7. **Closing.** The closing shall be held at a mutually agreed upon location and time within ONE HUNDRED EIGHTY (180) days of the Effective Date. At closing:

- (a) Seller shall deliver to Purchaser the duly executed and acknowledged deed conveying the Premises to Purchaser as provided in paragraph 5 hereof and a deed or deeds of release to release the lien of any mortgage or trust that may apply to the Premises.
- (b) Purchaser shall pay to Seller the Purchase Price specified in paragraph 2 herein 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.

- (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. All special taxes or assessments due subsequent to the closing date shall be paid by Purchaser.
- (d) Possession shall be delivered at closing.
- (e) Seller shall pay for the deed preparation, transfer taxes and Seller's attorney's fees.
- (f) Purchaser shall pay for all other closing costs, taxes, filing fees and Purchaser's attorney's fees.

8. **Due Diligence Inspections.** (a) Purchaser and its employees and agents shall, until the sale contemplated herein has been completed or this Agreement has been terminated or has expired by limitation, have the right and permission, after the Effective Date, to enter upon said Premises or on any part thereof at all reasonable times for the purpose of inspecting, examining, surveying, making soil tests, borings, percolation tests and other necessary tests for engineering and planning for development and determination of surface, sub-surface and topographic conditions; PROVIDED, HOWEVER, Purchaser shall not have the right to perform any invasive environmental testing unless Seller shall have first consented in writing to any such testing proposed in writing by Purchaser, which consent Seller may withhold in its sole discretion; PROVIDED FURTHER, HOWEVER, and notwithstanding any other provision of this Agreement, Purchaser agrees to indemnify and hold Seller (which word, for the purposes of this paragraph 8.(a), shall be deemed to include any corporation controlling, controlled by or under common control with Seller, together with the officers, employees, agents and servants of any of them) harmless from and against any claims or liability for injuries to (including death of) persons or damage to or loss of property, real or personal, or expense in any manner connected with said undertakings hereunder and at Seller's option to defend any lawsuit brought against said Seller on account of any such claims and to pay any judgment against Seller resulting from any suit, whether or not any such claim, demand or suit purports to arise from the negligence of Seller or otherwise, and Purchaser shall also indemnify and hold harmless Seller from and against loss or damage occasioned by such entry, including, without limitation, any mechanic's liens or claims that may be filed or asserted against said property of Seller by contractors, sub-contractors or materialmen performing such work for the Purchaser. Purchaser shall provide copies of all tests performed on the Premises to Seller at no cost to Seller.

(b) If, as a result of Purchaser's inspection as provided above or any other determination or analysis of the Premises by Purchaser, Purchaser discovers any

geotechnical conditions concerning the Premises which render it unsuitable for purposes of a trail or reveal the existence of toxic/hazardous chemicals and waste substances, or the presence of asbestos, in such quantities as to give rise to possible liability under federal, state or local environmental laws and regulations, Purchaser shall have thirty (30) days after the Effective Date to furnish Seller with a written statement of said geotechnical conditions affecting the suitability of the Premises for Purchaser's purposes or which give rise to possible liability under federal, state or local environmental laws and regulations. Seller shall have thirty (30) days, after receipt of such notice, to remedy such conditions, but shall be under no obligation so to do, and if Seller declines to or fails to remedy such conditions within the prescribed time, or if Seller declines to give Purchaser permission to perform any environmental testing as provided in Section 8(a) above, then, at Purchaser's option evidenced by written notice to Seller, Purchaser may either (i) terminate this Agreement or (ii) waive any or all objections not cured by Seller and proceed to close hereunder without diminution in price. In the event this Agreement is terminated, Purchaser shall be entitled to a refund of the Earnest Money, without interest, and neither party shall be liable to the other for damages on account of the termination.

9. **Real Estate Commissions.** Purchaser and Seller each represent that no real estate commissions are due and owing to any party with respect to this transaction. Both parties hereby agree to indemnify and save harmless the other from and against any and all claims or liability for real estate commissions arising out of this transaction attributable to the indemnifying party.

10. **Subdivision.** In the event the conveyance contemplated hereunder shall constitute a subdivision, and if as a prerequisite to the recording of such conveyance it shall become necessary to comply with applicable subdivision ordinances and regulations, Purchaser agrees that it will, with reasonable diligence, arrange and pay for the filing of any necessary plat with the appropriate authorities. Purchaser will assume the entire cost of whatever streets, sewers, and utilities are required in connection with such subdivision, and will do all other acts and file such other papers as may be necessary to obtain any and all required approvals thereof. Seller agrees to execute such documents and plats as are reasonably necessary to accomplish such subdivision. All costs, expenses and attorney's fees incurred in complying with any such subdivision ordinances and regulations, including, without limitation, dedication and installation of streets, sewers, and utilities, shall be borne solely by Purchaser and Purchaser agrees that Purchaser will indemnify and save Seller harmless from any and all claims, demands, suits, costs or expenses arising or in any way growing out of any failure by Purchaser to fully comply with such subdivision ordinances and regulations.

11. **Assignment.** This Agreement may not be assigned by Purchaser to any other party without the written consent of Seller, which consent may be withheld for any reason, except in the case of an assignment to an entity of which Purchaser has a controlling interest or is the general partner, such consent shall not be unreasonably withheld. 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).

12. **Disclaimer.** (a) Purchaser agrees to purchase the Premises "as is" and acknowledges that Seller has not made any express or implied representation or warranty with respect to the condition or suitability of the Premises, including, but not limited to, the condition of the soil, the presence of hazardous materials, substances, wastes or other environmentally regulated substances, or other contaminants in the soil or improvements -- whether known or unknown (referred to herein as "contamination of the Premises") and other physical characteristics. Purchaser shall perform at its own expense and rely solely upon its own independent investigation concerning the physical condition of the Premises (including, but not limited to, an environmental assessment) and compliance of the Premises with any applicable law and regulations.

(b) Seller has not and does not hereby make any express or implied representation or warranty or give any indemnification of any kind to Purchaser concerning the Premises, its condition or suitability or its compliance with any statute, ordinance or regulation, including, but not limited to, those relating to the environment. Purchaser acknowledges that neither Seller nor any of its agents or representatives have made, and Seller is not liable for, or bound in any manner by, any express or implied warranties, guarantees, promises, statements, inducements, representations or information pertaining to the Premises or any part thereof, the physical condition, size, zoning, income potential, expenses or operation thereof, the uses that can be made of the same or in any manner or thing with respect thereof, including, without limitation, any existing or prospective leasing or occupancy of all or any part thereof.

(c) Purchaser hereby agrees that, following its purchase of the Premises, Purchaser will protect, indemnify and hold harmless Seller from and against any and all damages, penalties, fines, claims, demands, causes of action, liens, suits, liabilities, costs (including, without limitation, cleanup and remedial action costs), judgments, and expenses (including, without limitation, attorney's and experts' fees and expenses) of every kind and nature suffered by, incurred by (whether voluntarily or by court or administrative order or direction) or asserted against Seller or Purchaser as a direct or indirect result of any hazardous materials, substances, wastes or other environmentally regulated substances located on, in or under the Premises.

(d) Following Purchaser's purchase of the Premises, Purchaser hereby expressly agrees to assume any and all liability arising from any contamination of the Premises and expressly releases Seller from such liability. Purchaser further expressly renounces and waives any claim or cause of action it may have against Seller under any existing or future theory of law (federal, state or local, or by common law) for any cleanup, response or remedial action costs incurred (whether voluntarily or otherwise) by Purchaser which arises directly or indirectly out of any contamination of the Premises, including, but not limited to, costs incurred under Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act.

13. **Eminent Domain.** If, at any time prior to the closing hereunder, any action or proceeding is filed under which the Premises, or a substantial portion thereof, may be taken pursuant to any law, ordinance or regulation or by condemnation or the right of eminent domain, then, at the option of either Seller or Purchaser, (a) this Agreement shall be terminated and the Earnest Money, without interest, shall be returned to Purchaser or (b) this Agreement shall remain in full force and effect and Seller, at the time of closing hereunder, shall transfer and assign to Purchaser all of Seller's right, title and interest in any proceeds received or which may be received by the taking, or a sale in lieu thereof, said option to be exercisable by either party by delivering to the other written notice of such exercise on or before the thirtieth day following the day on which the respective party receives notice that such suit has been filed.

14. **Signs and Advertising.** Before closing, Purchaser will not place any advertising or promotional signs on said Premises or on any of Seller's other property without the written consent of Seller.

15. **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, addressed to Seller or Purchaser, as the case may be, at the address set forth below.

Seller:

Solomon Jackson, Director  
Norfolk Southern Corporation  
1200 Peachtree St NE  
12<sup>th</sup> Floor – Real Estate  
Atlanta, GA 30309

Purchaser:

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

With copy to:

Howard McFadden, Esq.  
General Attorney - Real Estate  
Norfolk Southern Corporation  
1200 Peachtree St., NE - 12th Floor  
Atlanta, GA 30309-3579

16. **Miscellaneous Provisions.**

(a) This Agreement embodies the entire agreement between the parties and cannot be varied except by the written agreement of the parties. No representation, promise, or inducement not included in this Agreement shall be binding upon the parties hereto.



(b) Time is of the essence of this Agreement.

(c) All the terms and conditions of this Agreement are hereby made binding on the successors and permitted assigns of both parties hereto.

(d) This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

(e) This Agreement shall not be effective or binding until fully executed by the parties hereto.

(f) This Agreement will survive closing.

(g) If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

(h) Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

EXECUTED in duplicate, each part being an original, as of the day and year set forth above.

\_\_\_\_\_  
By

\_\_\_\_\_  
Real Estate Manager, for Seller

\_\_\_\_\_  
By

\_\_\_\_\_  
Title: \_\_\_\_\_, for Purchaser

JLC:  
NSSALEK4  
09-30-08