

**MOTION:**

**SECOND:**

**RE:           AUTHORIZE THE VIRGINIA RAILWAY EXPRESS CHIEF OPERATING OFFICER TO EXECUTE AN AGREEMENT OF SALE WITH CROSSROADS ASSOCIATES, LLC**

**ACTION:**

**WHEREAS**, the Virginia Railway Express (VRE) has a need to expand the Crossroads Maintenance and Storage Facility to accommodate the addition of the Life Cycle Overhaul and Upgrade (LOU) facility, lengthening existing tracks to accommodate longer trains, and expanding employee parking and welfare facilities; and

**WHEREAS**, VRE staff has identified property adjacent to the existing Crossroads Maintenance and Storage Facility suitable to accommodate the expanded and additional facilities; and

**WHEREAS**, VRE staff has completed necessary due diligence on the property and been engaged in ongoing discussions with the adjacent property landowner, Crossroads Associates, LLC, to purchase approximately 19.5 acres adjacent to the Crossroads Maintenance and Storage Facility; and

**WHEREAS**, based on information presented by staff, the VRE Operations Board concludes that there is a need to acquire the property and complete the expanded and additional facilities at the earliest practicable time; and

**WHEREAS**, necessary funding has been incorporated into the Capital Reserve budget to allow VRE to purchase this property without detriment to planned and foreseeable capital projects; and

**WHEREAS**, the VRE Operations Board recommends that the Commission approve the following action.

**NOW, THEREFORE, BE IT RESOLVED** that the Potomac and Rappahannock Transportation Commission does hereby approve the purchase of approximately 19.514 acres adjacent to the current Crossroads Maintenance and Storage Facility for an amount not to exceed \$2,350,000 and authorizes the VRE Chief Executive Officer to execute an Agreement of Sale with Crossroads Associates, LLC on behalf of the Commissions, in a form approved by legal counsel, subject to such revisions, approved by the VRE Chief Executive Officer with the concurrence of legal counsel, as are necessary to remove ambiguity or inconsistency or which improve the Commissions' legal or financial position.

**ITEM 06D**  
**April 7, 2019**  
**PRTC Regular Meeting**  
**Page Two**

**Votes:**

**Ayes:**

**Nays:**

**Abstain:**

**Absent from Vote:**

**Alternate Present Not Voting:**

**Absent from Meeting:**

**Virginia Railway Express  
Operations Board**

**Resolution  
9C-03-2019**

**Recommend Authorization to Execute an Agreement of Sale with  
Crossroads Associates, LLC**

**WHEREAS**, VRE has a need to expand the Crossroads Maintenance and Storage Facility to accommodate the addition of the Life Cycle Overhaul and Upgrade (LOU) facility, lengthening existing tracks to accommodate longer trains and expanding employee parking and welfare facilities; and,

**WHEREAS**, VRE staff has identified property adjacent to the existing Crossroads Maintenance and Storage Facility suitable to accommodate the expanded and additional facilities; and,

**WHEREAS**, VRE staff has completed necessary due diligence on the property and been engaged in ongoing discussions with the adjacent property landowner, Crossroads Associates, LLC to purchase approximately 19.5 acres adjacent to the Crossroads Maintenance and Storage facility; and,

**WHEREAS**, based on information presented by staff, the Operations Board concludes that there is a need to acquire the property and complete the expanded and additional facilities at the earliest practicable time; and,

**WHEREAS**, necessary funding has been incorporated into the Capital Reserve budget to allow VRE to purchase this property without detriment to planned and foreseeable capital projects.

**NOW, THEREFORE, BE IT RESOLVED THAT**, the VRE Operations Board recommends that the Commissions approve the purchase of approximately 19.514 acres adjacent to the current Crossroads Maintenance and Storage Facility for an amount not to exceed \$2,350,000, and authorize the Chief Executive Officer to execute an Agreement of Sale with Crossroads Associates, LLC on behalf of the Commissions, in a form approved by legal counsel.

Approved this 15<sup>th</sup> day of March 2019



John Cooke  
Secretary



Katie Cristol  
Chair

## AGREEMENT OF SALE

This **AGREEMENT OF SALE** (the "Agreement") is made on April \_\_\_\_\_, 2019 among **CROSSROADS ASSOCIATES, LLC**, a Virginia limited liability company ("**Seller**"), and the **NORTHERN VIRGINIA TRANSPORTATION COMMISSION** and the **POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION**, both of which are transportation district commissions established pursuant to the Transportation District Act of 1964, §33.2-1900, et seq., as amended, which Commissions together are the owners and operators of the **VIRGINIA RAILWAY EXPRESS**, a commuter rail service, ("**Purchaser**"). The Seller and Purchaser are sometimes hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**".

### RECITALS:

**A.** The Seller is the fee simple owner of that certain parcel of real property with improvements located in Spotsylvania County, Virginia, and designated as Tax Parcel 37-A-41A; such property is also known as 9442 Crossroads Parkway, Fredericksburg, Spotsylvania County, Virginia ("**Parcel 37-A-41A**").

**B.** The Seller has offered to subdivide Parcel 37-A-41A, and to sell a portion of the subdivided Parcel 37-A-41A, containing 19.514 acres, more or less, to the Purchaser, and Purchaser agrees to purchase such portion of Parcel 37-A-41A from the Seller, upon the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of \$10.00 cash in hand paid, the Purchase Price as provided below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the mutual benefits to be received by the Parties, Seller agrees to sell, and Purchaser agrees to purchase, pursuant to the terms and conditions of this Agreement, in fee simple absolute, with all right, title and interest, to all that land, together with the improvements thereon, all situate, lying and being in Spotsylvania County, Virginia, and being more particularly described below:

**1. THE PROPERTY:** All those certain parcels, lots or tracts of land, together with improvements thereon, and development rights and other appurtenances thereto, situate, lying and being in Spotsylvania County, Virginia, known as 9442 Crossroads Parkway (Part of Tax Parcel 37-A-41A), and more particularly described in **Exhibit A** and incorporated by this reference (the "**Property**"). The legal description of the Property set forth in **Exhibit A** may be modified by written agreement of the Parties, if such modification is acceptable to the Purchaser in its sole discretion, and such modification is necessary to accommodate revisions required by Spotsylvania County, Virginia to obtain approval of the subdivision of Parcel 37-A-41A required by this Agreement (a "**Legal Description Modification**").

**2. PRICE:** The total purchase price for the Property is **Two Million Three Hundred Fifty Thousand and 00/100 Dollars (\$2,350,000.00)**, subject to adjustments as provided for in this Agreement, to be paid by Purchaser to Seller as set forth hereinafter (the "**Purchase Price**").

a. Not later than three (3) business days after the Effective Date, Purchaser shall deposit in escrow with Settlement Agent (as hereinafter defined) the sum of **One Thousand and 00/100 Dollars (\$1,000.00)** by federal wire transfer of immediately available funds (such amount, together with the monies to be deposited at the end of the Feasibility Period, and all interest earned on all such amounts, shall be defined herein as the “**Deposit**”). The Deposit shall be held by the Settlement Agent, acting as escrow agent, in an interest-bearing escrow account at a federally insured commercial bank, and all interest earned on the Deposit shall be accumulated, shall be part of the Deposit, and shall be paid to the Party entitled to receive the Deposit under this Agreement. In the event that Purchaser has not elected to terminate this Agreement on or before the expiration of the Feasibility Period (as hereinafter defined), Purchaser shall increase the Deposit by One Thousand and 00/100 Dollars (\$1,000.00) to a total sum of **Two Thousand and 00/100 Dollars (\$2,000.00)**. The Deposit shall be maintained and disbursed strictly in accordance with the terms of this Agreement.

b. Settlement Agent shall not be liable to either of Purchaser or Seller in connection with the performance of any duty imposed upon Settlement Agent hereunder for any action taken by Settlement Agent in good faith in conformity with the provisions of this Agreement in holding or dealing with the Deposit, except for Settlement Agent’s negligence or willful misconduct. Settlement Agent may act upon any instrument or other writing believed by Settlement Agent in good faith to be genuine and to be executed and presented by the proper person. Settlement Agent shall have no duties or responsibilities other than as expressly set forth herein. Settlement Agent shall not be bound by a modification of this Section 2 unless such modification is in writing and signed by Purchaser and Seller and, if Settlement Agent’s duties hereunder are affected, by Settlement Agent.

c. In the event that Settlement Agent (i) shall be uncertain as to Settlement Agent’s rights or duties hereunder, (ii) shall receive instructions from Purchaser or Seller that, in Settlement Agent’s reasonable opinion, are in conflict with any of the provisions hereof, or (iii) shall receive conflicting demands with respect to disposition of the Deposit, Settlement Agent may take affirmative steps in order to terminate Settlement Agent’s duties hereunder by depositing the Deposit with the clerk of the court for the jurisdiction in which the Property is located in an action for interpleader, naming the conflicting claimants as parties in such action. Settlement Agent’s reasonable costs and expenses in connection with filing such an interpleader action shall be divided equally between Purchaser and Seller.

d. The Deposit and all interest thereon shall, unless released earlier pursuant to the provisions of this Agreement, be refunded to Purchaser upon the completion of the Settlement, or, at Purchaser’s option, to be exercised by written instructions to the Settlement Agent, the Deposit shall be credited against and applied to the Purchase Price due and payable by Purchaser and Seller.

### **3. SETTLEMENT:**

a. The settlement of the sale of the Property in accordance with this Agreement (the “**Settlement**” or “**Settlement Date**”) shall take place on a date mutually agreed to by the parties, provided that the Settlement Date shall be no later than forty-five (45) days after the satisfaction of the conditions of paragraph 14 (Conditions Precedent to Purchaser’s Obligation), and the completion provisions of paragraph 11 (Hazardous Materials), unless extended to meet the conditions and requirements of paragraph 6 (Title), paragraph 12 (Survey), or as provided in paragraph 3b.

b. The Virginia Railway Express Chief Executive Officer is authorized to extend the Settlement Date on behalf of the Purchaser pursuant to any provision of this Agreement, or the Settlement Date may be extended upon written agreement of the Seller and Purchaser.

c. Settlement shall take place at the Law Office of Gordon B. Gay, 25 Butler Road, Fredericksburg, Virginia 22403, or such other place as the Purchaser may designate (the “**Settlement Agent**”).

d. Settlement Deliveries. On or before Settlement, Purchaser shall deliver good and sufficient funds to the Settlement Agent for the Purchase Price and settlement costs. The settlement proceeds due to Seller, after settlement costs pro-rations and adjustments made pursuant to this Agreement, will be disbursed to Seller by the Settlement Agent’s trust check or wired funds upon the satisfactory completion of the bring down of title and recording of the deed of conveyance. No less than thirty (30) days prior to Settlement, Seller shall provide the Settlement Agent with written authorization and documentation sufficient to permit the Settlement Agent to obtain accurate payoff amounts from the holder of any promissory note secured by the Property and/or other lien or encumbrances affecting the Property. At Settlement, Purchaser and Seller shall each deliver the documents and other deliverables set forth on **Exhibit B** attached hereto and incorporated herein by this reference. Purchaser shall be entitled to full possession of the Property, free from all tenancies and occupancies.

**4. SELLER’S REPRESENTATIONS AND WARRANTIES:** In order to induce the Purchaser to enter into this Agreement and to consummate the transactions contemplated hereby and notwithstanding any other terms or condition of this Agreement to the contrary, Seller covenants and represents and warrants to Purchaser that the following statements are true and accurate as of the Effective Date of this Agreement, and that such statements shall be true and accurate on the Settlement Date (“Seller’s Representations”).

a. Non-Foreign Status. Seller represents and warrants to Purchaser that Seller is not a "foreign person" as defined by §1445 of the Internal Revenue Code, and is a resident of Virginia. At the time of Settlement, Seller shall execute before a notary public, as may be required, all necessary forms and affidavits stating the foregoing under penalty of perjury. Seller shall provide its true and correct address and United States Taxpayer Identification Number for a proper 1099 Internal Revenue Service Form and such other forms, where such information is required, together with an “Owner’s Affidavit” prepared and provided by the Purchaser’s title insurance company, a form of which set forth on **Exhibit C** attached hereto and incorporated herein by reference. Seller and Purchaser shall also execute such other settlement documents as are reasonably required by the Settlement Agent.

b. Authority. Seller warrants and represents that it has the full legal right and authority to execute this Agreement and to execute any and all other documents necessary or desirable to effectuate Seller’s obligations pursuant to this Agreement of Sale. If additional signatures, authority or documentation is required by the title insurance company or the Settlement Agent, Seller shall promptly and at its own cost supply the same. If the Seller is a legal entity such as a corporation, partnership, limited liability company or are a fiduciary, such as a trustee, executor or administrator, then the Seller warrants and represents that it has the authority to execute this Agreement on behalf of Seller, and to bind Seller to the terms of this Agreement. Seller shall not, either by commission or omission, cause or permit the Property to be encumbered in any way after Seller’s execution of this Agreement.

c. Right to Sell/Convey. Seller has the right to sell and convey the Property to Purchaser and Seller will have the right to sell and convey the Property to Purchaser on the Settlement Date.

d. Bankruptcy. A petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or petition seeking reorganization or arrangement or other action under federal or state bankruptcy laws is: (i) threatened in writing by third parties against Seller; (ii) to Seller's knowledge, contemplated by Seller; or (iii) currently pending in any court against Seller.

e. Violations/Defaults. Seller has not received any written notice that Seller is in violation or default under any agreement with any third party, or under any judgment, order, decree, rule or regulation of any court or arbitrator to which Seller may be subject, which violation or default will, in any one case or in the aggregate, adversely affect the ownership or operation of the Property and Seller's ability to consummate the sale and conveyance contemplated by this Agreement.

f. Notices of Violation of Laws/Regulations. To Seller's knowledge, the Property is in compliance with all Federal, State, and local laws, ordinances, orders, rules and regulations, and any administrative interpretations thereof, applicable to the Property.

g. Conflicts/Breach of Other Agreements. Neither the execution nor the delivery of this Agreement, nor the consummation of the purchase and sale contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement conflict with, or will result in, the breach of any of the terms, conditions, or provisions of any agreement or instrument to which Seller is a party or by which Seller is bound which would prevent Seller from consummating the transaction in strict accordance with this Agreement.

h. No Right to Purchase in Other Parties. No person or entity, except Purchaser under this Agreement, has, or shall have on or before the Settlement Date, any right to purchase the Property or any portion thereof.

i. Bills and Payments. All bills and other payments received and due with respect to the ownership, operation, leasing, and maintenance of the Property have been or will be paid at Settlement, other than those bills and other payments specifically permitted to be prorated pursuant this Agreement.

j. Compliance with Executive Order 13224. Neither Seller, nor any shareholder, partner or member of Seller, is listed in Executive Order 13224-Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism, as amended ("**Executive Order 13224**"), and Seller has no knowledge that any other persons or entities holding any legal or beneficial interest whatsoever in Seller are included in, owned by, controlled by, knowingly acting for or on behalf of, knowingly providing assistance, support, sponsorship, or services of any kind to, or otherwise knowingly associated with any of the persons or entities referred to or described in Executive Order 13324, or other banned or blocked person, entity, nation or transaction pursuant to any Legal Requirement that is enforced or administered by the Office of Foreign Assets Control. Neither Seller, nor any holder of any direct or indirect equitable, legal or beneficial interest in the Seller, is the subject of any Federal, State, and local laws, ordinances, orders, rules and regulations, and any administrative interpretations thereof, blocking, or prohibiting, transactions with persons who commit, threaten to commit or support terrorism, including the USA Patriot Act. Without limiting the foregoing, Seller is not engaged in any dealings or transactions, or is otherwise associated with any such persons or entities in any dealings



or transactions, or is otherwise associated with any such persons or entities or any “forbidden entity,” including the governments of Cuba, Iran, North Korea, Myanmar, Syria and Sudan.

k. Ownership of Property. Seller has not received notice that Seller is in default in complying with the terms and provisions of any of the covenants, conditions, restrictions, rights-of-way or easements affecting the Property which are to be performed or complied with by the owner of the Property.

l. Condemnation. Seller has not received from any Federal, State, or local governmental authority any notice of, and Seller has no knowledge of, pending, threatened, or contemplated condemnation proceedings affecting the Property, or any part thereof.

m. Mechanics’ Liens. All bills and claims for labor performed and materials furnished to, or for the benefit of, the Property as of the Effective Date, and for all periods prior to the Settlement Date, have been (or prior to the Settlement Date will be) paid in full, and on the Settlement Date there will be no mechanics’ liens or materialmen’s liens (whether or not perfected) on or affecting the Property.

n. Litigation. Seller has not received notice of any legal investigations, actions, suits, proceedings or claims pending or threatened against or affecting Seller, or the Property, at law or in equity or before or by any federal, state, municipal or other governmental department, commission, board agency or instrumentality, domestic or foreign. Seller is not operating under, or subject to, and is not in default with respect to, any order, writ, injunction or decree of any court or federal, state, municipal or other governmental agency or department, commission, board, agency or instrumentality, domestic or foreign.

o. Property Access. Seller has no knowledge of any federal, state, county, municipal or other governmental plans to change the highway or road system in the vicinity of the Property or to restrict or change access from any such highway or road to the Property.

p. Disclosure of Environmental Matters. Except as disclosed in reports which have been delivered by Seller to Purchaser (if any), and except as disclosed in reports which have been delivered by Purchaser to Seller (collectively, “Environmental Reports”), to Seller’s Knowledge, the Property (including land, surface and subsurface soil, surface water, ground water, and improvements) does not contain any Hazardous Material in amounts which would constitute a violation of any Environmental Laws.

q. Utilities. All water, sewer, gas, electricity, telephone and other utilities required for the use, occupancy, operation and maintenance of any improvements to be located on the Property are available to be connected thereto, are adequate to service the normal operation of the Property, and are supplied directly to the Property by facilities of public utilities. To Seller’s knowledge, all public utilities required for Purchaser’s intended use of the Property enter the Property through lands as to which valid public or private easements exist that will inure to the benefit of Purchaser.

r. Underground Storage Tanks. To Seller’s knowledge, there are no underground storage tanks located on the Property.

## **5. PURCHASER INSPECTIONS; FEASIBILITY PERIOD:**

a. Purchaser Inspection Rights. On or after the Effective Date of this Agreement, Purchaser shall have the right, upon reasonable notice to Seller, at Purchaser’s own risk, cost and expense, and at any date or dates prior to Settlement, to enter, or cause its agents, representatives or contractors to enter, upon the Property for the purpose of undertaking surveys, tests, test borings,

inspections, investigations and/or studies of the Property. In addition, Purchaser may conduct such architectural, environmental, economic and other studies of the Property as Purchaser may reasonably deem desirable. Purchaser, or its agents, employees or contractors may enter upon the Property during normal working hours, provided that Purchaser provides reasonable notice to Seller. Purchaser shall conduct such entry and any inspections in connection therewith so as to minimize, to the greatest extent reasonably possible, interference with the business of any tenant. In the event that Purchaser proposes to perform any destructive or invasive testing, Seller's prior written consent shall be required, which consent shall not be unreasonably withheld, conditioned or delayed. If Purchaser or its agents, employees or contractors, take any sample from the Property in connection with any such approved testing, at Seller's request, Purchaser shall provide to Seller a portion of such sample being tested to allow Seller, if it so chooses, to perform its own testing. Purchaser shall maintain or cause to be maintained (by insurance policy or through self-insurance), and shall ensure that its contractors maintain, public liability insurance in amounts and in form and substance reasonably intended to insure against the insurable liabilities of Purchaser and its agents, employees or contractors, arising out of any entry on or inspections of the Property pursuant to the provisions hereof.

b. Seller Surveys, Reports and Studies. Seller shall furnish to Purchaser, within seven (7) days after the Effective Date, all such environmental, engineering, geotechnical and other surveys, studies or reports as Seller has in Seller's possession or control relating to the Property. Additionally, during the Feasibility Period (as hereinafter defined) Seller shall reasonably cooperate with Purchaser to assist Purchaser in determining whether any utility easements may be required over adjoining parcels to service the Property.

c. Feasibility Period. Notwithstanding the Purchaser's right to inspect set forth in Section 4a above, if, during the period between the Effective Date of this Agreement and the date which is ninety (90) days thereafter (the "**Feasibility Period**"), Purchaser elects not to consummate the purchase contemplated by this Agreement, then Purchaser shall have the absolute right, in its sole discretion, upon written notice to Seller, to terminate this Agreement, in which event neither Purchaser, nor Seller, except as otherwise expressly provided herein, shall have any other or further obligation or liability hereunder. If Purchaser elects to terminate this Agreement in accordance with this Section 5c, the Deposit shall be immediately returned to Purchaser, and Purchaser shall promptly furnish to Seller, without cost or expense to Seller, copies of all non-proprietary, non-privileged and non-confidential tests, surveys, reports, and studies performed by and for Purchaser relating to the Property, as well as all materials provided by Seller to Purchaser.

**6. TITLE:** Seller agrees to execute and deliver to Purchaser at Settlement a Special Warranty Deed in the form attached hereto as **Exhibit D** and incorporated by reference, for conveyance of the Property to Purchaser.

a. Purchaser has obtained, from a title insurance company selected by Purchaser, Title Commitment No. 17-1344 issued by Fidelity National Title Insurance Company ("**Title Insurer**") with an effective date of November 29, 2017, at 8:00 a.m. ("**Effective Date of Title Commitment**"), committing Title Insurer to issue an ALTA title policy insuring the Property in accordance with the terms and conditions of such commitment ("**Title Commitment**"). A true and accurate copy of the Title Commitment is attached as **Exhibit E** to this Agreement and incorporated herein by this reference. In the event of a Legal Description Modification, the Title Commitment may need to be modified to accurately address the status of the Property's title. In

such event, the Title Commitment as modified to address the Legal Description Modification shall be deemed to be the Title Commitment for all purposes under this Agreement.

b. At Settlement, title to the Property shall be marketable, good of record and in fact, and subject only to the Permitted Exceptions (as hereafter defined) and shall be free and clear of all mortgages, liens, encumbrances, easements, conditions and other matters affecting title, recorded or unrecorded, other than the Permitted Exceptions, and title shall be consistent with the Title Commitment and this Agreement. Purchaser shall accept title to the Property provided that:

i. Seller executes and delivers such agreements, affidavits, and documents, in addition to those otherwise required by this Agreement, as may be reasonably necessary to satisfy the requirements applicable to Seller in Schedule B, Section 1 of the Title Commitment and permit the removal by the Title Company of Exceptions from Schedule B, Section 2 of the Title Commitment from the final title insurance policy; and

ii. Title is subject only to the Permitted Exceptions (i.e., matters concerning the Property, which Seller is not required to resolve, remove or remedy). The phrase “**Permitted Exceptions**” shall mean (1) the lien of real estate taxes not yet due and payable; (2) all matters that are of record and shown on the Title Commitment as of the Effective Date of Title Commitment (excluding: the requirements set forth in Schedule B, Section 1 of the Title Commitment; the Agreement and Easement recorded among the land records of Spotsylvania County, Virginia in Deed Book 970, Page 113; and mortgages, deeds of trust or other monetary liens encumbering the Property); (3) all matters that would be shown by an accurate survey of the Property as of the ALTA Survey Date (as defined in Section 11 below) or an inspection of the Property, including, but not limited to, easements encroachments, overlaps, and boundary disputes, if any, except as otherwise provided by the terms of Section 11 of this Agreement; (4) all building, zoning and other state, county or federal laws, codes and regulations (whether existing or proposed) affecting the Property; (5) any matters agreed to in writing, by Seller and Purchaser, after the Effective Date; and (6) any title exception created by Purchaser.

c. Seller shall, at its sole expense, remove any title exceptions as the same first appear after the Effective Date of Title Commitment, as revised (the “**Title Exceptions**”), unless such Title Exceptions are approved by Purchaser in writing at Purchaser’s reasonable discretion. Seller acknowledges that it shall be reasonable for Purchaser to withhold its consent to any proposed Title Exception if Purchaser determines in its sole discretion that such proposed Title Exception could impair Purchaser’s ability to re-develop and/or utilize the Property for Purchaser’s intended use, diminish the value of the Property or impair the ability to finance the Property, among other considerations. Purchaser shall not be obligated to settle under this Agreement if title to the property is encumbered by anything other than Permitted Exceptions or agreed to by Purchaser. If Seller, after making reasonable efforts is unable to remove any such exceptions by the Settlement Deadline Date, Purchaser shall have the right to terminate this Agreement upon written notice of termination to Seller and receive the return of the Deposit, and neither Purchaser nor Seller shall have any other or further rights, responsibilities, liabilities or obligations owed to the other under this Agreement except as otherwise specifically provided herein. Without limiting or abrogating the foregoing obligations of Seller, the Purchaser and Seller agree that this Section 5c may be satisfied in, for example, the following ways:

i. Mechanic’s Liens. Seller shall, in accordance with Virginia law, pay or cause to be paid and satisfied any mechanic’s lien filed and recorded against the interest of Seller prior to recordation of the Deed, so that the mechanic’s lien shall be released of record and not be

a lien against the Seller's Interest in the Property, so as to permit the Title Company to issue to the Purchaser a final title insurance policy without any Title Exceptions as to mechanic's liens.

ii. Monetary Judgements. Seller shall pay or cause to be paid and satisfied all monetary judgement and all other financial liens affecting the Property in full, and Seller shall have the same released as a lien on the Property at, or prior to, recordation of the Deed. Alternatively, and, in its sole discretion, Seller may authorize the Settlement Agent, prior to Settlement, to deduct such funds from Seller's proceeds of sale at Settlement, so that such judgment or lien shall be paid off, satisfied and removed by the Settlement Agent, and so as to permit the Title Company to issue to the Purchaser a final title insurance policy without any Title Exceptions for any monetary judgments or other financial liens.

c. Termination or Extinguishment of Easement and Encroachment Rights of Parcel 37-A-41A. All existing easement or encroachment rights (whether recorded or unrecorded), if any, in the Property that run to the benefit of Parcel 37-A-41A or others, other than Permitted Exceptions, shall be terminated or extinguished by Seller prior to Settlement in a manner satisfactory to Purchaser and the Title Company.

**7. CHARGES:** Examination of title, notary fees, State and local recording taxes (except the Virginia grantor's tax) if any such taxes are applicable to this transaction, and Purchaser's attorney's fees are to be the cost of Purchaser. Seller shall pay for its own attorney's fees and costs, the preparation of the deed, the Virginia grantor's tax, the regional congestion relief fee, a reasonable settlement fee, the release of any liens or encumbrances against the Property, and the costs and attorney's fees to cure or remove any Title Exceptions or objectionable Marketability matters. Real estate taxes, water, sewer, utility and all other charges are to be pro-rated to the Settlement Date.

**8. CONTRACTS:** Seller shall terminate all maintenance, service, equipment, vending or concession agreements, property management agreements, leases, or any other agreements ("Contracts") concerning the operation, use, maintenance or lease of the Property (if any) prior to Settlement. Purchaser shall have no liability or obligation with respect to such Contracts, and Seller hereby agrees to defend and indemnify and hold harmless the Purchaser, its elected and appointed officials, officers and employees, from and against all claims, demands, suits and liability, by or to any person or entity whatsoever, arising out of or relating to the Contracts. This indemnification shall survive the Settlement, delivery and recordation of the Deed and the termination of this Agreement.

**9. CASUALTY; EMINENT DOMAIN:**

a. Casualty. Seller shall maintain fire and casualty insurance on the Property in an amount not less than replacement value of the improvements to the Property until delivery of possession to Purchaser. If any portion of the Property is damaged by fire or casualty after the Effective Date of this Agreement, Purchaser shall remain obligated to purchase the Property in accordance with the terms of this Agreement and, at Settlement, Seller shall assign the Purchaser all of Seller's rights to insurance proceeds from Seller's insurance carrier as a result of such casualty, and Seller shall credit to Purchaser the amount of Seller's deductible under such insurance policy.

b. Eminent Domain. If any portion of the Property is taken, or a lawsuit is filed seeking to take any portion of the Property, or if any portion of the Property is threatened to be taken, by the power of eminent domain (or conveyed by deed in lieu of condemnation) after the Effective Date of this Agreement, then Seller, within five (5) days of receipt by Seller of the following documents, shall provide Purchaser with true copies of all written threats of condemnation, certificates of take and/or petitions or lawsuits of condemnation. If such documents provided by Seller to Purchaser include a certificate of take and/or petition or lawsuit of condemnation, as distinct from a mere threat of condemnation, then such notice shall constitute a **"Taking Notice,"** and Purchaser shall have fifteen (15) business days from its receipt of such Taking Notice to elect, at its sole option, to (i) terminate this Agreement by sending written notice to Seller, such termination to be immediately effective upon delivery of such notice (**"Option 1"**); or (ii) postpone Settlement (**"Option 2"**) until such time as the eminent domain proceedings are finally ended with all appeal periods having expired or settled (the **"Proceedings Completion"**). If Purchaser fails to elect Option 1 or Option 2 within such fifteen (15) business day period, then Purchaser shall be deemed to have elected Option 2. Notwithstanding the foregoing, if the size, area, location, type, nature and/or scope of the taking (the **"Taking Scope"**) as of the Proceedings Completion is materially different than the proposed or apparent Taking Scope at the time Purchaser receives the Taking Notice, and if Purchaser reasonably determines that such difference in the Taking Scope will have the effect of impairing Purchaser's ability to re-develop and/or utilize the Property for Purchaser's intended use, then Purchaser may elect, at Purchaser's sole option, to terminate this Agreement or proceed with Settlement. Upon the occurrence of the Proceedings Completion, Seller shall provide written notice to Purchaser, including documentation of the Proceedings Completion. Purchaser shall provide Seller with written notice of Purchaser's election to terminate this Agreement or proceed with Settlement within fifteen (15) business days after Purchaser's receipt of written notice of the Proceedings Completion. If Purchaser elects to proceed with Settlement, Seller shall credit to Purchaser the full proceeds of the condemnation award. If Purchaser elects to terminate this Agreement pursuant to this Section 9.b, then the Deposit shall be returned to Purchaser, and neither Purchaser nor Seller shall have any other or further rights, responsibilities, liabilities or obligations owed to the other under this Agreement except as otherwise specifically provided herein.

**10. POSSESSION AT SETTLEMENT:** Seller agrees to give possession of the Property to Purchaser at Settlement free of all leases, tenancies, or other occupancies. Purchaser is buying the Property "as is" as of the Date of this Agreement, and solely in reliance on the Purchaser's own investigation of the condition of the Property. On the Settlement Date, no person or entity, other than Purchaser, shall be in possession of, or have any right or permission to, use or occupy the Property. Seller hereby agrees to defend, indemnify and hold harmless the Purchaser, its elected and appointed officials, officers and employees, from and against all claims, demands, suits, and liability, by or to any person or entity whatsoever, arising out of or relating to any lease, license or other occupancy or use agreement relating to the Property, or any other claimed right to use or occupy the Property. This indemnification shall survive Settlement, delivery, and recordation of the Deed and termination of this Agreement.

## 11. HAZARDOUS MATERIALS:

a. For the purposes of this Agreement, the term “**Hazardous Material**” shall mean any flammable, explosive, radioactive or reactive materials, any asbestos (whether friable or non-friable), any pollutants, contaminants or other hazardous, dangerous or toxic chemicals, materials or substances, any petroleum products or substances or compounds containing petroleum products, including gasoline, diesel fuel and oil, any polychlorinated biphenyls or substances or compounds containing polychlorinated biphenyls, and any other material or substance defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic materials,” “contamination,” and/or “pollution” within the meaning of any Environmental Laws (as defined in Section 10.b below).

b. For the purposes of this Agreement, the term “**Environmental Laws**” shall mean any legal requirement which regulates the use, generation, handling, storage, treatment, transportation, decontamination, clean-up, removal, encapsulation, enclosure, abatement or disposal of any Hazardous Material, including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. §2601, *et seq.*, the Clean Water Act, 33 U.S.C. Sections 1251 *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. §1802, their state analogues, and any other Legal Requirement (as defined in Section 10.c below) regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Material.

c. For the purposes of this Agreement, the term “**Legal Requirements**” shall mean all federal, state, and local laws, ordinances, orders, rules and regulations, and any administrative interpretations thereof, applicable to the Property, including, without limitation, the Americans with Disabilities Act of 1992, as amended, and all Environmental Laws.

d. Purchaser has obtained a Phase I Environmental Site Assessment (“**Phase I Environmental Report**”), dated April 2016, and updated December 2017, regarding the Property from Johnson Mirmiran and Thompson. A true and accurate copy of the Phase I Environmental Report will be delivered to Seller as of the Effective Date.

e. Seller shall not, either by commission or omission, cause or permit the disposal, release, or deposit of any Hazardous Materials in amounts or forms in excess of the most stringent Environmental Laws on or within any part of the Property after the Effective Date of this Agreement.

f. Purchaser shall have the right, at any time prior to Settlement, to obtain additional environmental survey(s) or testing of the Property by Johnson Mirmiran and Thompson, or another independent qualified environmental engineering firm (“**Environmental Contractor**”) to verify that the environmental condition of the Property has not adversely changed since the Phase I Effective Date. If it is determined by any such subsequent surveys or testing that Hazardous Materials are present on the Property in amounts or forms in excess of applicable Environmental Laws, or in addition to, or exceeding, amounts reported in the Environmental Reports, then a copy of the subsequent survey or testing report, together with a detailed proposal for remediation and an estimate of removal or remediation costs from the Environmental Contractor (the “**Remediation Proposal**”), shall be delivered by Purchaser to Seller. Seller shall notify Purchaser, within fifteen (15) days of receipt of the Remediation Proposal, whether Seller will undertake the removal or remediation action set forth in the Remediation Proposal at its own expense. If no written notice is received by Purchaser within such fifteen (15) day period, then Seller shall be deemed to have elected not to undertake any removal or remediation action. All removal or

remediation activities performed by or on behalf of the Seller shall be completed within forty-five (45) days after the Seller's receipt of the Inspection Report, or such longer period as Purchaser, in its sole discretion shall allow, and shall be a condition precedent to Settlement. If Seller notifies Purchaser that Seller will not agree to remove or remediate such Hazardous Materials at Seller's cost and expense, then Purchaser shall have the right to terminate this Agreement, in writing, and declare this Agreement null and void, and thereafter the Deposit shall be returned to Purchaser, and neither Purchaser nor Seller shall have any other or further rights, responsibilities, liabilities or obligations owed to the other under this Agreement except as otherwise specifically provided herein.

## **12. SURVEY:**

a. Purchaser has obtained an ALTA Survey of the Property from Johnson Mirmiran & Thompson, Inc., Engineers, entitled "Boundary Survey of Parcel "A" Being a Portion of Parcel ID# 37-A-41A & Boundary Line Adjustment of Parcel 37-A-41E", Lee Hill Magisterial District, Spotsylvania County, Virginia" dated December 15, 2016 (the "**ALTA Survey Date**"), a copy of which is attached hereto as **Exhibit F** and incorporated herein by this referenced (the "**ALTA Survey**").

b. Notwithstanding any other term of this Agreement to the contrary, Purchaser shall have the right to object, in its sole and absolute discretion, to any matters or items shown on the ALTA Survey that Purchaser determines would adversely affect Purchaser's title to or use of the Property ("Survey Matter"), by giving written notice to Seller (an "Objection Notice") at least ten (10) days prior to the expiration of this Feasibility Period, stating the Survey Matters of which Purchaser disapproves and the reasons therefor. If Purchaser fails timely to provide such Objection Notice, then Purchaser shall conclusively be deemed to have approved all matters shown on the ALTA Survey as of the ALTA Survey Date. If Purchaser timely provides an Objection Notice, Seller shall have the right until 5:00 p.m. on the day that is five (5) business days after Seller's receipt of the Objection Notice, to elect in writing, in its sole and absolute discretion, to either (A) cure or remove such Survey Matters, or (b) inform Purchaser that Seller will not cure or remove such Survey Matters. Seller's failure to timely notify Purchaser of its election to cure such Survey Matters raised by Purchaser as aforesaid shall conclusively be deemed to be Seller's election to not cure or remove such Survey Matters. If Seller elects to cure such Survey matters, Seller shall have thirty (30) days from Seller's receipt of the Objection Notice to endeavor to cure or remove such Survey Matters. For purposes of this Section, the term "cure" shall mean one of the following actions taken by Seller, at Seller's sole cost and expense, which shall be reasonably acceptable to Purchaser and to the Title Company: (I) record a release or satisfaction, if applicable; (II) provide the Title Company with the documentation and/or assurances as required by the Title Company to remove the Survey Matters as an exception to Purchaser's title policy; or (III) obtain an appropriate endorsement to Purchaser's title policy in form and substance acceptable to Purchaser in its reasonable discretion. In the event that Seller timely elects or is deemed to have elected to not cure or remove, or endeavor to cure or remove but fails to timely cure or remove such Survey Matters, to Purchaser's satisfaction, Purchaser shall have the right, to either (1) terminate this Agreement and receive the Deposit from Seller, or (2) waive the relevant Survey Matters and close taking title to the Property with such Survey Matters.

c. Any survey matters occurring after the ALTA Survey Date that would adversely affect Purchaser's title to or use of the Property (other than items constituting Permitted

Exceptions) shall be removed or remedied promptly by Seller, at Seller's sole cost and expense, prior to Settlement. Purchaser shall not be obligated to settle under this Agreement if there are survey matters which would adversely affect Purchaser's title to or use of the Property (other than matters constituting Permitted Exceptions). In the event of a Legal Description Modification, the ALTA Survey may need to be modified to accurately delineate the boundaries of the Property and to address the status of the Property's title. In such event, the ALTA Survey as modified to address the Legal Description Modification shall be deemed to be the ALTA Survey for all purposes under this Agreement.

d. Further Encumbrances. Except as otherwise provided by this Agreement, after the Effective Date of the Title Commitment and after the ALTA Survey Date, Seller shall not cause, or permit the Property to be encumbered by, any additional deed of trust, judgment, lien, indebtedness, claims, leases, or encumbrances without the prior written consent of Purchaser, which consent may be withheld by Purchaser in its sole discretion. All new matters of title or survey arising after the Effective Date of the Title Commitment or the ALTA Survey Date, as applicable, including without limitation, any new matter of title or survey arising as a consequence of a Legal Description Modification, shall be deemed to be matters that are not Permitted Exceptions, unless such new matter is approved by Purchaser in writing, at Purchaser's sole discretion.

**13. INSPECTION OF PREMISES:** Seller will permit the agents, designees and employees of Purchaser access to the Property at all reasonable times for the purpose of making the inspections necessary in connection with paragraph 11 (Hazardous Materials) and the survey pursuant to paragraph 12 (Survey), and for any other purpose contemplated by this Agreement.

**14. CONDITIONS PRECEDENT TO PURCHASER'S OBLIGATIONS:** The obligation of Purchaser to purchase the Property from Seller and to perform the other covenants and obligations to be performed by it on the Settlement Date shall be subject to the following conditions (all or any of which may be waived in writing, in whole or in part, by Purchaser):

a. Seller's Representations and Warranties. Seller's Representations (as hereinafter defined) shall be true and correct on the Effective Date of this Agreement and shall be true and correct on and as of the Settlement Date, with the same force and effect as if such Seller's Representations had been made on and as of such date.

b. Seller's Performance. Seller shall have performed all covenants and obligations required by this Agreement to be performed by it on or before the Settlement Date.

c. Title to Real Property. Subject to the payment by Purchaser of the applicable premium, at Settlement, Purchaser shall receive from the Title Company, a current ALTA owner's policy of title insurance, or an unconditional binder to issue the same, in an amount equal to the Purchase Price, dated, or updated to, the Settlement Date, insuring, or committing to insure, at standard rates, Purchaser's marketable fee simple title to the Property subject only to the Permitted Exceptions.

d. Subdivision. No later than thirty (30) days after the Effective Date of this Agreement, Seller, at Seller's sole cost and expense, shall submit to Spotsylvania County for approval, and diligently pursue approval of, a deed and plat of subdivision of Parcel 37-A-41A, in form and substance acceptable to the Purchaser. Seller shall record such approved deed and plat of subdivision among the land records of Spotsylvania County, Virginia establishing the Property



as a separate parcel, in accordance with all applicable legal requirements. Approval of the subdivision by Spotsylvania County, and the recording of the approved deed and plat subdividing parcel 37-A-41A and establishing the Property as a separate legal parcel, shall be a condition precedent to the Purchaser's obligations under this Agreement. Seller shall also have terminated or extinguished, by recorded document, all existing easement or encroachment rights (recorded or unrecorded), if any, in the Property that run to the benefit of Parcel 37-A-41A or others, other than Permitted Exceptions. Notwithstanding the foregoing, the Purchaser agrees to accept as Permitted Exceptions any easement or agreement required by Spotsylvania County as a condition of subdivision approval, provided it does not render infeasible the construction and or operation of a railroad maintenance and storage facility, including any components thereof such as, but not limited to, storm water management systems, drainage systems, road improvements and rail facilities. Seller shall provide the Purchaser with copies of all written communications to and from Spotsylvania County regarding the subdivision within five (5) days of Seller's receipt of sending. A preliminary subdivision plat, based upon the legal description of the Property attached hereto as **Exhibit A** and prior to Spotsylvania County approval, is attached hereto as **Exhibit G** and incorporated herein by this reference (the "**Preliminary Subdivision Plat**").

e. **Land Use Approvals.** The Purchaser shall have received from Spotsylvania County all Land Use Approvals, including an amendment to the existing use permit.

i. Purchaser shall, at its sole cost and expense, on or before [REDACTED], file with Spotsylvania County, Virginia such zoning applications (including without limitation, special exception or special use permits or amendments to use permits) ("**Land Use Applications**") as may be required or otherwise permissible to obtain requisite zoning and other land use approvals from Spotsylvania County, including a favorable determination of an application under Virginia Code §15.2-2232 (if required), acceptable to Purchaser in its sole discretion necessary to permit the development of the Property, without the necessity of obtaining legal rights from other persons or entities, for the construction and or operation of a railroad maintenance and storage facility, including any components thereof such as, but not limited to, storm water management systems, drainage systems, road improvements and rail facilities (the "**Land Use Approvals**").

ii. Where it is necessary to the construction, maintenance and/or operation of the referenced facility, the Property may be used for the relocation, installation, improvement or maintenance of a utility service provided by a public utility provider, or for the relocation, installation, improvement or maintenance of railroad facilities.

iii. Seller, as owner of the Property, shall promptly consent to and execute, at the request of the Purchaser, any documents necessary for the filing and processing of such Land Use Application(s) affecting the Property, and Seller shall, if requested by Purchaser, promptly and fully cooperate as needed for the processing and approval of the Land Use Applications (including, without limitation, cooperation as necessary to satisfy the requests, requirements and conditions of Land Use Approvals of Spotsylvania County) at no out-of-pocket cost to Seller.

iv. Spotsylvania County's grant of the Land Use Approvals shall be, and is, a condition precedent to the Purchaser's obligations under this Agreement. If, despite Purchaser's good faith efforts to obtain such approvals, any of the Land Use Approvals are denied, or for any reason are not finally approved, by Spotsylvania County before [REDACTED] date (the "**Land Use Approval Deadline**"), either Party shall, upon written notice to the other Party, have the right to terminate this Agreement, in which event, the Deposit shall be returned to Purchaser and Seller and neither Purchaser nor Seller shall have any other or further rights, responsibilities, liabilities

or obligations owed to the other under this Agreement except as otherwise specifically provided herein.

f. Purchase Approval. Purchaser's obligation to purchase the Property from Seller is conditioned upon the approval of all terms herein, including the purchaser price, by the Virginia Railway Express Operations Board, the Northern Virginia Transportation Commission, and the Potomac and Rappahannock Transportation Commission.

g. Litigation. On the Settlement Date, no action or proceeding shall have been instituted or threatened before any court to restrain or prohibit, or to obtain substantial damages in respect of, or which is related to or arises out of the condition of the Property, this Agreement, or the consummation of the transactions contemplated herein, which action, proceeding or threat, in the reasonable option of Purchaser makes it inadvisable for the Purchaser to consummate such transactions.

**15. NOTICES:** All notices, demands, and requests which may be given, or are required to be given by either party to the other shall be in writing, and shall be either hand delivered by Federal Express or sent by United States certified mail, return receipt requested, with proper first- class postage prepaid, properly and fully addressed:

**If to Seller:**

Crossroads Associates, LLC  
c/o Lester Development Corporation  
PO Box 4991  
14 E Liberty Street  
Martinsville, Virginia 24115  
Attn: George Lester II, Managing Member  
Email: [REDACTED]

**With a Copy to:**

Leming & Healy, P.C.  
233 Garrisonville Road, Suite 204  
PO Box 445  
Garrisonville, Virginia 22463  
Attn: H. Clark Leming  
Email: lemingandhealy1@msn.com

**If to Purchaser:**

Virginia Railway Express  
1500 King Street  
Suite 202  
Alexandria, Virginia 22314  
Attn: Rich Dalton, Deputy CEO/Chief Operating Officer  
Email: rdalton@vre.org

**With a Copy to:**

Virginia Railway Express  
1500 King Street  
Suite 202  
Alexandria, Virginia 22314  
Attn: Stephen A. MacIsaac, General Counsel

Notice shall be deemed effective upon delivery. Any party may, by like notice given at least seven (7) days before such change becomes effective, designate a new address to which such notices shall be sent.

**16. COMMISSIONS:** Purchaser represents and warrants that it has not retained the services of any real estate broker, agent or finder with respect to the transaction contemplated by this Agreement. Seller represents that Seller has not retained the services of any real estate broker, agent or finder with respect to the transaction contemplated by this Agreement. Seller hereby agrees that Seller is solely responsible for, and will indemnify, defend and hold Purchaser, its elected and appointed officials, officers and employees, harmless of, from and against, any demand, suit, claim or liability, for any broker's, agent's or finder's fee asserted by any person or entity claiming to be engaged by or on behalf of Seller.

**17. DAMAGES:** In the event Seller fails or refuses to perform its obligations under this Agreement, including but not limited to their obligation to convey the Property, Purchaser shall be entitled to recover all of its costs and expenses incurred in connection with this Agreement, any breach of this Agreement, or the enforcement of this Agreement, including but not limited to its costs for the preparation of this Agreement, for all inspections, studies and surveys performed or contracted for in connection with this Agreement, and all of its attorney's fees and court costs incurred pursuant to this paragraph, unless such failure can be lawfully attributed to an act of God and not within the control of the Seller. In addition to the foregoing, Purchaser shall be entitled to all other damages it has suffered, in accordance with law. Without limiting or waiving the foregoing, Purchaser may also seek all remedies to which it is entitled in equity, including the right to an injunction or restraining order and the right to seek specific performance. If Purchaser fails or refuses to perform its obligations pursuant to this Agreement, then Seller shall have all rights and remedies available to the Seller at law.

**18. NO ASSIGNMENT:** Neither Party may assign all, or any portion of, such Party's rights or obligations under this Agreement, without the prior written consent of the other Party, which consent may be withheld in the sole discretion of the Party requested to provide the consent.

**19. EFFECT OF TERMINATION:** If this Agreement is terminated by either Party pursuant to an express right hereunder, the Parties shall have no further rights, obligations or liabilities under this Agreement except those rights, obligations or liabilities that, by the terms of this Agreement, expressly survive any termination of this Agreement. For avoidance of doubt, it is agreed that the obligations hereunder to return the Deposit to Purchaser shall survive the termination of this Agreement.

**20. COMPLIANCE WITH APPLICABLE LAW:** Notwithstanding Seller's and Purchaser's agreement that the Property will be delivered to Purchaser in the condition specified herein, this Agreement shall not abrogate or diminish, in any way, Seller's obligation to comply with all federal, state, and local laws, ordinances, orders, rules and regulations, and any administrative interpretations thereof, applicable to the Property.

**21. EXECUTION IN COUNTERPARTS:** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement.

**22. NO THIRD-PARTY BENEFICIARY:** The Parties hereto mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than those signing this Agreement as Parties hereto, rights as a third-party beneficiary hereunder, or authorize any person or entity, not a Party hereto, to maintain any action for personal injury, property damage, or breach of contract pursuant to the terms of this Agreement or otherwise.

**23. SURVIVAL:** Only the provisions of this Agreement that contemplate performance after any of the transactions and Settlement provided herein, such as the proration of taxes, or that otherwise survive the occurrence of such transactions and Settlement by their express terms, shall survive such transactions and Settlement.

**24. NO INVALIDATION OF WHOLE:** If any term, covenant or condition of this Agreement shall be unenforceable or invalid, then the remainder of this Agreement shall not be affected thereby, and each such term, covenant and condition shall be valid and enforceable to the fullest extent permitted by law.

**25. NO WAIVER:** No failure by the Seller or Purchaser to enforce any provision of this Agreement shall be deemed a waiver of Seller's or Purchaser's respective rights to enforce this Agreement thereafter.

**26. NO WAIVER OF SOVEREIGN IMMUNITY:** Notwithstanding any other provision of this Agreement to the contrary, nothing in this Agreement nor any action taken by Purchaser pursuant to this Agreement nor any document which arises out of this Agreement shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of Purchaser, or of its elected and appointed officials, officers and employees.

**27. CONSTRUCTION:** The Parties acknowledge that the Parties, and their respective counsel, have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any Exhibits or amendments hereto.

**28. BINDING AGREEMENT:** The parties to this Agreement mutually agree that it shall be binding upon them, and each of the respective heirs, executors, administrators, successors and assigns; that the provisions hereof shall survive the execution and delivery of the deed aforesaid and shall not be merged therein except as specifically provided herein; that this Agreement contains the final and entire agreement between the parties hereto; and that they shall not be bound by any terms conditions, statements, warranties or representations, oral or written, not contained herein. This Agreement may not be modified orally or in any other manner than by a written agreement signed by all the parties hereto or their respective successors in interest.

**29. APPLICABLE LAW:** This Agreement shall be construed, interpreted and applied according to the laws of the Commonwealth of Virginia. All legal actions brought by either Purchaser or Seller concerning this Agreement shall be brought in the City of Alexandria Circuit Court and in no other court.

**30. EFFECTIVE DATE:** This Agreement shall be effective upon the date executed and delivered by the Purchaser ("**Effective Date**"). The Seller shall execute and deliver this Agreement to Purchaser prior to consideration of this Agreement for approval by the Virginia Railway Express Operations Board, the Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGES]**

WITNESS the following signatures:

**SELLER:**

**CROSSROADS ASSOCIATES, LLC**  
a Virginia limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2019 \_\_\_\_\_, \_\_\_\_\_ of CROSSROADS  
ASSOCIATES, LLC, a Virginia limited liability company.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**PURCHASER:**

**NORTHERN VIRGINIA TRANSPORTATION  
COMMISSION and the POTOMAC AND  
RAPPAHANNOCK TRANSPORTATION  
COMMISSION**, which together own and operate the  
**VIRGINIA RAILWAY EXPRESS**

By: \_\_\_\_\_  
Name: Doug Allen  
Title: Chief Executive Officer, Virginia Railway Express  
Date: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Doug Allen, Chief Executive Officer of Virginia Railway Express, on behalf of Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission, which together own and operate the Virginia Railway Express.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**LIST OF EXHIBITS**

**EXHIBIT A: LEGAL DESCRIPTION OF THE PROPERTY**

**EXHIBIT B: SETTLEMENT DOCUMENT DELIVERABLES**

**EXHIBIT C: FORM OF OWNER'S AFFIDAVIT**

**EXHIBIT D: FORM OF SPECIAL WARRANTY DEED**

**EXHIBIT E: TITLE COMMITMENT**

**EXHIBIT F: ALTA SURVEY**

**EXHIBIT G: PRELIMINARY SUBDIVISION PLAT**



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**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

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All that certain lot, piece, tract, or parcel of land containing a total of 19.514 acres, more or less, with improvements thereon and all rights, privileges and appurtenances thereto lying and being in Lee Hill Magisterial District, Spotsylvania County, Virginia, as shown on Boundary Survey by JMT Engineering, dated \_\_\_\_\_.

The hereinabove referred to Boundary Survey hereto attached as part hereof is to be recorded simultaneously herewith on Plat Book \_\_\_\_, Page \_\_\_\_.

Together with and subject to the rights of others in and to the use of the Ingress/Egress Easement as contained in Agreement and Easement recorded in Deed Book 970, page 113.

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**EXHIBIT B**  
**SETTLEMENT DOCUMENT DELIVERABLES**

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**SETTLEMENT DOCUMENT DELIVERABLES**

**1. Seller's Settlement Documents.** At the Settlement, the Seller shall deliver to Purchaser the following documents:

- a) A Special Warranty Deed conveying good and marketable fee simple title in and to the Property, subject only to the Permitted Exceptions, in form attached to this Agreement of Sale as **Exhibit D**, signed by Seller in favor of Purchaser (the "**Deed**");
- b) A certification as to the non-foreign status of Seller which complies with the provisions of Section 1445(b)(2) of the Internal Revenue Code of 1986, as amended, signed by Seller;
- c) An Owner's Affidavit signed by Seller, addressed to the Title Company, in the form attached to the Agreement of Sale as **Exhibit C**, and sufficient induce the Title Company to issue a title policy in favor of Purchaser without the standard exceptions (the "**Owner's Affidavit**");
- d) A closing statement, signed by Seller (the "**Closing Statement**");
- e) A Certificate, signed by Seller, that all of Seller's Representations are true and correct on the Settlement Date with the same force and effect as if such representations and warranties had been made on and as of such date (the "**Reaffirmation of Seller's Representations**");
- f) All organizational documents of Seller and all resolutions, certifications or other agreements evidencing the requisite authorization of Seller to perform the transactions hereunder, as contemplated by the Seller's organizational documents;
- g) Such other reasonable and customary documents as are necessary to effect the Settlement;

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**EXHIBIT B**  
**SETTLEMENT DOCUMENT DELIVERABLES**

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- h) Satisfactory evidence of the recording of a deed and plat of subdivision approved by Spotsylvania County, and acceptable to the Purchaser, that: 1) establishes the Property as a separate legal parcel in accordance with all applicable Legal Requirements; and
- i) Satisfactory evidence of the recording of documents terminating or extinguishing all existing rights of others in and to the use of the dirt road and asphalt drive as shown on the Preliminary Plat prepared by Johnson, Mirmiran & Thompson, Inc., and other easement or encroachment rights (recorded or unrecorded), if any, in the Property that run to the benefit Parcel 37-A-41A or others, other than Permitted Exceptions.

2. **Purchaser's Settlement Documents.** At the Settlement, Purchaser shall deliver, or cause to be delivered, to Seller the following (collectively, the "**Purchaser's Settlement Documents**"):

- a) A Closing Statement, signed by Purchaser;
- b) Such other reasonable and customary documents as are necessary to effect the Settlement; and
- c) A Certificate, signed by Purchaser, that all of Purchaser's Representations are true and correct on the Settlement Date with the same force and effect as if such representations and warranties had been made on and as of such date (the "**Reaffirmation of Purchaser's Representations**").

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**EXHIBIT C**  
**FORM OF OWNER'S AFFIDAVIT**

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**OWNER'S AFFIDAVIT**

(to induce sale of and/or loan on premises and title insurance coverage)

STATE OF VIRGINIA

COUNTY OF \_\_\_\_\_

The undersigned, being first duly sworn on oath, depose(s) and say(s):

1. THAT Affiant(s) is/are the titleholder(s) of the property known and described as follows:

See Exhibit A attached hereto and made a part hereof.

2. **As to Mechanics' liens:** THAT at no time within 120 days of the date hereof has any work, services, or labor been done, or any fixtures, apparatus or material been furnished in connection with, or to, the said premises, except such material, fixtures, work, apparatus, labor or services as have been fully and completely paid for; and that there is no indebtedness to anyone for any labor, fixtures, apparatus, material, services, or work done to, upon, or in connection with, the said premises; that there is no claim or indebtedness; that there is no mechanics' lien claim against said premises, whether of record or otherwise;

3. **As to contracts & conveyances:** THAT no agreement or contract for conveyance, or deed, conveyance, written lease, or writing whatsoever, is in existence, adversely affecting title to said premises, except that in connection with which this affidavit is given;

4. **As to possession:** THAT there are no parties in possession of said premises;

5. **As to judgments:** THAT no judgment or decree has been entered in any court of this State of the United States against said Affiant(s) and which remains unsatisfied; THAT no proceedings in bankruptcy have ever been instituted by or against Affiant(s) in any court, or before any office of any state;

6. **As to taxes and assessments:** THAT there are no unpaid or delinquent real estate taxes or homeowners dues/assessments against said premises; further, that there are no unpaid or delinquent water or sewer service charges against said premises; Also, that the undersigned has not/have not received notice, nor know of any recent or future planned improvements (such as street paving, sidewalks, street lighting, surface drainage, etc.) that will or might result in a special assessment against this property;

7. THAT this Affidavit is made to induce the purchase of and/or a loan secured by the premises described herein and the issuance of a title insurance policy relating to same;

8. THAT Affiant(s) further state(s) that he/she/they is/are each familiar with the nature of any oath; and with the penalties as provided by the laws of the State aforesaid for falsely swearing to

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**EXHIBIT C**  
**FORM OF OWNER'S AFFIDAVIT**

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statements made in an instrument of this nature. Affiant(s) further certify that he/she/they has/have heard read to Affiant(s) the full facts of this Affidavit, and understand its contents.

**Owner Affidavit**

**Page 2**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

CITY/COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

Notary ID#: \_\_\_\_\_

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**EXHIBIT D**  
**FORM OF SPECIAL WARRANTY DEED**

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WHEN RECORDED RETURN TO:

Tax Map No.: 37-A-41A

**DEED**

THIS DEED DATED \_\_\_\_\_, 20\_\_\_\_, by and between CROSSROADS ASSOCIATES, LLC, a Virginia limited liability company, hereinafter referred to as "Grantor", and THE NORTHERN VIRGINIA TRANSPORTATION COMMISSION and THE POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION, who together own and operate VIRGINIA RAILWAY EXPRESS, a commuter rail service, hereinafter referred to as "Grantee" provides as follows:

**WITNESSETH:**

That for consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledge, the Grantor does hereby grant and convey, with general warranty and English Covenants of Title, unto the Grantee the following described real estate:

All that certain lot, piece, tract, or parcel of land containing a total of 19.514 acres, more or less, with improvements thereon and all rights, privileges and appurtenances thereto lying and being in Lee Hill Magisterial District, Spotsylvania County, Virginia, as shown on Boundary Survey by JMT Engineering, dated \_\_\_\_\_.

The hereinabove referred to Boundary Survey hereto attached as part hereof is to be recorded simultaneously herewith on Plat Book \_\_\_\_, Page \_\_\_\_.

Together with and subject to the rights of others in and to the use of the Ingress/Egress Easement as contained in Agreement and Easement recorded in Deed Book 970, page 113.

Being a portion of the same land conveyed to Grantor by deed from Commonwealth Atlantic Land Company, a Virginia Corporation dated December 28, 1999, and recorded in the Office of the Clerk of the Circuit Court, Spotsylvania County in Deed Book 1772, Page 613.

This conveyance is made subject to restrictions, easements and conditions of records, insofar as they may be lawfully applicable to the property hereby conveyed.

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**EXHIBIT D**  
**FORM OF SPECIAL WARRANTY DEED**

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WITNESS THE FOLLOWING SIGNATURE:

CROSSROADS ASSOCIATES, LLC  
a Virginia Limited Liability Company

By: \_\_\_\_\_ (SEAL)

Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
COUNTY/CITY OF \_\_\_\_\_:

I, \_\_\_\_\_, a Notary Public, in and for said County/City in said State, hereby certify that \_\_\_\_\_, whose name as manager of Crossroads Associates, LLC, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he or she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires \_\_\_\_\_  
Notary Registration No. \_\_\_\_\_

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**EXHIBIT E**  
**TITLE COMMITMENT**

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DRAFT



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**EXHIBIT F**  
**ALTA SURVEY**

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DRAFT

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**EXHIBIT G**  
**PRELIMINARY SUBDIVISION PLAT**

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