

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE DIRECTOR OF GENERAL SERVICES TO EXECUTE A BEAUTIFICATION LEASE AGREEMENT, MODIFICATION OF LEASE AGREEMENT, AND FIRST AMENDMENT TO LEASE AGREEMENT TO BE ENTERED INTO WITH NORFOLK SOUTHERN RAILWAY ADJACENT TO THE WELL ADVANTAGE CENTER.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Director of General Services to execute a Beautification Lease Agreement, Modification of Lease Agreement, and First Amendment to Lease Agreement to be entered into with Norfolk Southern Railway adjacent to the Well Advantage center.

The Lease Agreement is dated May 21, 2012, the Modification Agreement is dated June 6, 2012, and the First Amendment to the Lease Agreement is dated February 26, 2013.

ADOPTED: _____, 2014

/mms

City of Chattanooga



Resolution/Ordinance Request Form

Date Prepared: January 14, 2014

Preparer: Cary Bohannon

Department: General Services

Brief Description of Purpose for Resolution/Ordinance: Res./Ord. # _____ Council District # 8

A RESOLUTION AUTHORIZING A BEAUTIFICATION LEASE AGREEMENT, MODIFICATION OF LEASE AGREEMENT AND FIRST AMENDMENT TO LEASE AGREEMENT ENTERED INTO WITH NORFOLK SOUTHERN RAILWAY FOR 2.88 ACRES ADJACENT TO THE WELL ADVANTAGE CENTER WITH AGREEMENT DATES OF 05-21-12 FOR THE LEASE, 06-06-12 FOR THE MODIFICATION OF LEASE AGREEMENT AND 02-26-13 FOR FIRST AMENDMENT TO LEASE AGREEMENT.

Name of Vendor/Contractor/Grant, etc.	<u>Norfolk Southern</u>	New Contract/Project? (Yes or No)	<u>NO</u>
Total project cost \$	<u>\$300 annual, escal. clause</u>	Funds Budgeted? (YES or NO)	<u>YES</u>
Total City of Chattanooga Portion \$	<u>100%</u>	Provide Fund	<u>6525</u>
City Amount Funded \$	<u>100%</u>	Provide Cost Center	<u>EE10310</u>
New City Funding Required \$	<u>N/A</u>	Proposed Funding Source if not budgeted	<u>N/A</u>
City's Match Percentage %	<u>N/A</u>	Grant Period (if applicable)	<u>N/A</u>

List all other funding sources and amount for each contributor.

Amount(s)	Grantor(s)
\$ _____	_____
\$ _____	_____
\$ _____	_____

Agency Grant Number _____

CFDA Number if known _____

Other comments: (Include contingency amount, contractor, and other information useful in preparing resolution)

This beautification lease agreement, modification and amendment were executed by the prior Director of General Services; a Council Resolution has not been located. Current Director of General Services has no opposition to the lease; it may be terminated with 30 day notice.

Approved by: _____

Reviewed by: FINANCE OFFICE

DESIGNATED OFFICIAL/ADMINISTRATOR

Please submit completed form to @budget, City Attorney and City Finance Officer

Revised: 1/26/09

LEASE AGREEMENT

THIS LEASE is made as of the 21 day of May, 2012 by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation (the "Landlord") and **CITY OF CHATTANOOGA**, a Tennessee government entity (the "Tenant").

1. Premises; Use. For and in consideration of the agreements set forth herein, to be paid, kept and performed by Tenant, Landlord hereby leases and rents to Tenant, insofar as its right, title and interest in the Premises enables it to do so, that certain real property located at Milepost 337.40 in Chattanooga, Hamilton County, Tennessee, having an area of 2.88 acres, more or less, the location and dimensions of which are substantially shown on print of Drawing No. 1165546 dated April 2, 2012, hereunto annexed as **Exhibit "A"** attached hereto (the "Land"), together with all improvements thereon (the "Improvements"). The Land and the Improvements are collectively referred to herein as the "Premises". This Lease is subject to all encumbrances, easements, conditions, covenants and restrictions, whether or not of record.

The Premises shall be used for beautification purposes and no other purpose. The Premises shall not be used for any illegal purposes, for the storage of unlicensed vehicles, nor in any manner to create any nuisance or trespass. No smoking is permitted in or about the Premises. Landlord reserves unto itself and its permittees, the permanent right to construct, maintain or replace upon, under, or over the Premises, any pipe, electrical, telecommunications, and signal lines, or any other facilities of like character now installed or hereinafter to be installed. Landlord further reserves unto itself and its permittees the right to enter upon the Premises at any and all times for the purposes of operating, maintaining, constructing or relocating any trackage or railroad facilities located on, or in the vicinity of, the Premises.

The terms and conditions of the Rider, if any, attached hereto as **Exhibit "B"** are incorporated herein by this reference. In the event of an inconsistency between the terms hereof and the terms of the Rider, the terms of the Rider shall prevail.

2. Term. To have and to hold for a term beginning on the **1st day of May, 2012**, and continuing thereafter on a periodic basis. In addition to any termination rights that the parties may have hereunder, either party may terminate this Lease for any reason by giving the other party not less than thirty (30) days' notice of such termination. Any such termination pursuant to the preceding sentence shall not relieve Tenant from satisfying and performing all of its obligations hereunder (including, but not limited to, the payment of rental) through the date of such termination and shall not relieve either party from performing any obligation that, pursuant to the terms of the Lease, survives the termination of the Lease.

3. Base Rental. Commencing on the **1st day of May, 2012** (the "**Rental Commencement Date**") and thereafter on each anniversary thereof during the term of this Lease, Tenant shall pay to Landlord, without offset, abatement or demand, initial base rental of **THREE HUNDRED AND NO/100 DOLLARS (\$300.00)**. The amount of the base rental shall be increased (and not decreased) on an annual basis by the percentage of increase, if any, in the United States, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U)(1982-1984 = 100) U.S. City Average, All Items (the "**Index**") as set forth below. If the Index has changed so that the base year differs from that used in this Paragraph, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics, to the 1982-84 base. If the Index is discontinued or revised during the term of this Lease, such other government index or computation with which it is

replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

The "**Adjustment Date**" shall mean the first anniversary of the Rental Commencement Date and each anniversary thereof during the term of this Lease. The Index published nearest to the Rental Commencement Date shall be the "**Base Index**". The Index published nearest to the date three (3) months prior to the then current Adjustment Date shall be the "**Adjustment Index**". On each Adjustment Date, the base rental shall be adjusted by multiplying the base rental payable under this Lease at the Rental Commencement Date by a fraction, the numerator of which fraction is the applicable Adjustment Index and the denominator of which fraction is the Base Index. The amount so determined shall be the base rental payable under the Lease beginning on the applicable Adjustment Date and until the next Adjustment Date (if any).

Base rental shall be due in advance. Except in the event of default, base rental for any partial rental periods shall be prorated. The acceptance by Landlord of base rental shall not constitute a waiver of any of Landlord's rights or remedies under this Lease. All payments of base rental, and any additional rental payable hereunder, shall be sent to the Treasurer of Landlord at P.O. Box 116944, Atlanta, Georgia 30368-6944, or such other address as Landlord may designate in any invoice delivered to Tenant. Prior to or simultaneously with Tenant's execution of this Lease, Tenant has paid to Landlord (a) a non-refundable, application fee in the amount of \$500.00, and (b) the first installment of base rental due hereunder. In the event Tenant fails to pay base rental or any other payment called for under this Lease on or before the due date, Tenant shall pay a late charge equal to five percent (5%) of the unpaid amount. In addition, any sum not paid within thirty (30) days of its due date shall accrue interest thereafter until paid at the rate per annum equal to the lesser of (a) the highest interest rate permitted by applicable law; or (b) eighteen percent (18%).

4. Utilities. Landlord shall have no obligation to provide light, water, heat, air conditioning or any other utilities or services to the Premises. Tenant shall place any and all utility and service related bills in its name and shall timely pay the same, along with all assessments or other governmental fees or charges pertaining to the Premises. If Tenant does not pay same, Landlord may (but shall not be obligated to) pay the same, including any and all late fees and penalties, and such payment shall be added to and treated as additional rental of the Premises.

5. Maintenance and Repairs. Tenant, at its sole cost, shall keep and maintain all of the Premises (including, but not limited to, all structural and non-structural components thereof and all systems) in good order and repair (including replacements) and shall keep the Premises free of pests and rodents. Tenant hereby waives (a) any rights at law or in equity to require Landlord to perform any repair, replacement or maintenance to the Premises, and (b) any right to abate rental or terminate this Lease due to the failure by Landlord to perform any repairs, replacements or maintenance. Tenant shall not create any lien, charge or encumbrance upon the Premises, and Tenant shall promptly remove or bond over any such lien, charge or encumbrance.

6. Modifications and Alterations to the Premises. Tenant shall make no modifications, alterations or improvements to the Premises without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion. Any modifications or alterations consented to by Landlord shall be completed in a good, workmanlike and lien-free manner, in accordance with all applicable laws, codes, regulations and ordinances and by contractors approved by Landlord. Unless otherwise agreed by the parties hereto, any alterations or improvements to the Premises made by Tenant shall become the property of Landlord; provided, however, Landlord, at its option, may require Tenant to remove any improvements or repair any alterations in order to restore the Premises to the condition

existing at the time Tenant took possession. Notwithstanding the foregoing, Tenant may remove any moveable equipment or trade fixtures owned by Tenant during the term of this Lease, provided that any damage caused by such removal shall be repaired by Tenant in a manner acceptable to Landlord.

7. Return of Premises. Tenant agrees to return the Premises to Landlord at the expiration or prior termination of this Lease in the same condition and repair as when first received, normal wear and tear excepted. Tenant agrees to remove its moveable equipment and trade fixtures from the Premises at the expiration or prior termination of this Lease. Tenant shall immediately repair any damage arising out of any such removal in a manner acceptable to Landlord. Failure to comply with this Paragraph 7 will constitute holding over by Tenant.

8. Destruction of or Damage to Premises. If all or substantially all of the Premises are destroyed by storm, fire, lightning, earthquake or other casualty, this Lease shall terminate as of the date of such destruction, and rental shall be accounted for as between Landlord and Tenant as of that date. In the event of such termination, rental shall be prorated and paid up to the date of such casualty. In no event shall Tenant have any right to terminate this Lease if the casualty in question was caused or contributed to by Tenant, its agents, employees, contractors or invitees.

9. Indemnity. Except for damage caused solely by Landlord's negligence, Tenant agrees to indemnify, defend and save harmless Landlord, Landlord's parent companies, subsidiaries, affiliates, lessors, licensors, and subsidiaries of parent companies (collectively the "**Landlord Related Entities**") and Landlord's and Landlord's Related Entities' officers, directors, members, shareholders, lenders, agents and employees (collectively the "**Landlord Entities**") against all claims (including but not limited to claims for bodily injury, death or property damage), economic losses, liabilities, costs, injuries, damages, actions, mechanic's liens, losses and expenses (including but not limited to reasonable attorney's fees and costs) to whomsoever, including, but not limited to, Tenant's agents, workmen, servants or employees, or whatsoever occurring (collectively, "**Claims**") arising out of or relating to Tenant's use or occupancy of the Premises. To the fullest extent permitted by applicable laws, Tenant hereby waives and releases the Landlord Entities from any Claims (including but not limited to Claims relating to interruptions in services) arising out of or relating in any way to the Tenant's use or occupancy of the Premises.

10. Governmental Orders. Tenant agrees, at its own expense, to comply with all laws, orders, regulations, ordinances or restrictions applicable by reason of Tenant's use or occupancy of the Premises or operation of its business.

11. Condemnation. If the Premises or such portion thereof as will make the Premises unusable for the purpose herein leased shall be condemned by any legally constituted authority for any public use or purpose, or sold under threat of condemnation, then this Lease shall terminate as of the date of such condemnation or sale, and rental shall be accounted for between Landlord and Tenant as of such date. All condemnation awards shall belong to Landlord; provided, however, and to the extent permitted under applicable law, Tenant shall be entitled to file a separate claim against the condemning authority for loss of its personal property and moving expenses so long as the filing of such claim does not affect or reduce Landlord's claim as to such awards or proceeds.

12. Assignment. Tenant may not assign this Lease or any interest thereunder or sublet the Premises in whole or in part or allow all or a portion of the Premises to be used by a third party without the prior written consent of Landlord. If Tenant is a corporation, partnership, limited liability company or other entity, the transfer of more than fifty percent (50%) of the ownership interests of Tenant or the transfer of a lesser percentage which results in a transfer of control of Tenant (WHICH INCLUDES, WITHOUT LIMITATION, TRANSACTIONS IN WHICH TENANT SELLS ITS BUSINESS, SELLS

ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF ITS BUSINESS OR MERGES OR CONSOLIDATES WITH ANOTHER ENTITY), whether in one transaction or a series of related transactions, shall constitute an assignment for purposes of this Lease. All requests for an assignment or sublease shall be accompanied by a copy of the proposed assignment or sublease agreement and an administrative fee in the amount of \$750.00. Any assignee shall become liable directly to Landlord for all obligations of Tenant hereunder. No such assignment or sublease nor any subsequent amendment of the Lease shall release Tenant or any guarantor of Tenant's obligations hereunder. If any such subtenant or assignee pays rental in excess of the rental due hereunder or if Tenant receives any other consideration on account of any such assignment or sublease, Tenant shall pay to Landlord, as additional rent, one-half of such excess rental or other consideration upon the receipt thereof. Any assignment or sublease made in violation of this Paragraph 12 shall be void and shall constitute a default hereunder.

13. Environmental. Tenant covenants that neither Tenant, nor any of its agents, employees, contractors or invitees shall cause or permit any aboveground or underground storage tanks or associated piping (collectively "**Tanks**") to be located on or under the Premises or any Hazardous Materials (as hereinafter defined) to be stored, handled, treated, released or brought upon or disposed of on the Premises. Tenant shall comply, at its own expense, with any and all applicable laws, ordinances, rules, regulations and requirements respecting solid waste, hazardous waste, air, water, pollution or otherwise relating to the environment or health and safety (collectively "**Environmental Laws**"). Tenant shall not under any circumstance dispose of trash, debris or wastes on the Premises and will not conduct any activities on the Premises which require a hazardous waste treatment, storage or disposal permit. As used herein, the term "**Hazardous Materials**" means asbestos, polychlorinated biphenyls, oil, gasoline or other petroleum based liquids, and any and all other materials or substances deemed hazardous or toxic or regulated by applicable laws, including but not limited to substances defined as hazardous under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 6901 *et seq.* (or any state counterpart to the foregoing statutes) or determined to present the unreasonable risk of injury to health or the environment under the Toxic Substances Control Act, as amended, 15 U.S.C. 2601 *et seq.* Tenant shall indemnify, defend and hold the Landlord Entities harmless from and against any and all claims, judgments, damages, penalties, fines, costs (including without limitation, consultant's fees, experts' fees, attorney's fees, investigation and cleanup costs and courts costs), liabilities or losses resulting from (1) the storage, handling, treatment, release, disposal, presence or use of Hazardous Materials in, on or about the Premises from and after the date of this Lease or (2) the violation by Tenant of any provision of any Environmental Laws. Without limiting the generality of the foregoing indemnity, in the event Landlord has reason to believe that the covenants set forth in this Paragraph 13 have been violated by Tenant, Landlord shall be entitled, at Tenant's sole expense, to take such actions as Landlord deems necessary in order to assess, contain, delineate and/or remediate any condition created by such violation. Any sums expended by Landlord shall be reimbursed by Tenant, as additional rental, within thirty (30) days after demand therefor by Landlord. Landlord has the right to enter the Premises at all reasonable times for purposes of inspecting the Premises in order to evaluate Tenant's compliance with the covenants of this Paragraph 13. In the event Tenant delivers or receives any notices or materials from any governmental or quasi-governmental entity and such notices or materials relate to Tanks or Hazardous Materials in, on or about the Premises, Tenant shall immediately send to Landlord a copy of such notices or materials. Tenant shall also provide Landlord with a detailed report relating to any release of a Hazardous Material in, on or about the Premises whenever such release is required to be reported to governmental authorities pursuant to the Environmental Laws. Upon the expiration or earlier termination of this Lease, Landlord shall have the right to cause to be performed such environmental studies of the Premises by an environmental consultant as are necessary to determine whether any Hazardous Materials have been stored, handled, treated, released, brought upon or disposed of on the Premises during the term of this Lease in violation of the terms hereof. If any such study reveals any violation of this Lease, Tenant shall promptly reimburse Landlord for the costs of such studies and Tenant shall immediately

undertake a further investigation, if necessary, and remediation of such contamination. Landlord may undertake such investigation and remediation if Tenant fails to do so within a reasonable time frame, in which case Tenant shall promptly reimburse Landlord for the cost of same within thirty (30) days after demand therefore by Landlord. The obligations of this Paragraph 13 shall survive the expiration or earlier termination of this Lease.

14. Default; Remedies. In the event (i) any payment of rental or other sum due hereunder is not paid within ten (10) days after the due date thereof; (ii) the Premises shall be deserted or vacated; (iii) Tenant shall fail to comply with any term, provision, condition or covenant of this Lease, other than an obligation requiring the payment of rental or other sums hereunder, and shall not cure such failure within twenty (20) days after notice to the Tenant of such failure to comply; (iv) Tenant shall attempt to violate or violate Paragraph 12 above; or (v) Tenant or any guarantor shall file a petition under any applicable federal or state bankruptcy or insolvency law or have any involuntary petition filed thereunder against it, then Landlord, in addition to any remedy available at law or in equity, shall have the option to do any one or more of the following:

(a) Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord. Tenant agrees to indemnify the Landlord Entities for all loss, damage and expense which Landlord may suffer by reason of such termination.

(b) Without terminating this Lease, terminate Tenant's right of possession, whereupon rental shall continue to accrue and be owed by Tenant hereunder. Thereafter, at Landlord's option, Landlord may enter upon and relet all or a portion of the Premises (or relet the Premises together with any additional space) for a term longer or shorter than the remaining term hereunder and otherwise on terms satisfactory to Landlord. Tenant shall be liable to Landlord for the deficiency, if any, between Tenant's rental hereunder and all net sums received by Landlord on account of such reletting (after deducting all costs incurred by Landlord in connection with any such reletting, including without limitation, tenant improvement costs, brokerage commissions and attorney's fees).

(c) Pursue a dispossessory, eviction or other similar action against Tenant, in which event Tenant shall remain liable for all amounts owed hereunder, including amounts accruing hereunder from and after the date that a writ of possession is issued.

(d) Perform any unperformed obligation of Tenant, including, but not limited to, cleaning up any trash, debris or property remaining in or about the Premises upon the expiration or earlier termination of this Lease. Any sums expended by Landlord shall be repaid by Tenant, as additional rent, within ten (10) days after demand therefor by Landlord.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedies available at law or in equity. Tenant agrees to pay all costs and expenses, including, but not limited to, reasonable attorney's fees and consultant's fees, incurred by Landlord in connection with enforcing the performance of any of the provisions of this Lease, whether suit is actually filed or not. Acceptance of rental or any other sums paid by Tenant shall not constitute the waiver by Landlord of any of the terms of this Lease or any default by Tenant hereunder. Landlord shall not be required to mitigate damages, and the parties intend to waive any burden that applicable law may impose on Landlord to mitigate damages; provided, however, if applicable law nevertheless requires Landlord to mitigate damages then (i) Landlord shall have no obligation to treat preferentially the Premises compared to other premises Landlord has available for leasing; (ii) Landlord shall not be obligated to expend any efforts or any monies beyond those Landlord would expend in the ordinary course of leasing space; and (iii) in

evaluating a prospective reletting of the Premises, the term, rental, use and the reputation, experience and financial standing of prospective tenants are factors which Landlord may properly consider.

15. Signs; Entry by Landlord. Landlord may place "For Lease" signs upon the Premises one hundred twenty (120) days before the termination of this Lease and may place "For Sale" signs upon the Premises at any time. Landlord may enter the Premises with prior notice to Tenant at reasonable hours during the term of this Lease (a) to show the same to prospective purchasers or tenants, (b) to make repairs to Landlord's adjoining property, if any, (c) to inspect the Premises in order to evaluate Tenant's compliance with the covenants set forth in this Lease, or (d) to perform activities otherwise permitted or contemplated hereby.

16. No Estate in Land. This Lease shall create the relationship of landlord and tenant between Landlord and Tenant; Tenant's interest is not assignable by Tenant except as provided in Paragraph 12, above.

17. Holding Over. If Tenant remains in possession of the Premises after expiration of the term hereof with Landlord's written consent, Tenant shall be a month-to-month tenant upon all the same terms and conditions as contained in this Lease, except that the base rental shall become two times the then current base rental, and there shall be no renewal of this Lease by operation of law. Such month-to-month tenancy shall be terminable upon thirty (30) days written notice by either party to the other. Tenant waives any right that it may have to additional notice pursuant to applicable law. If Tenant remains in possession of the Premises after the expiration of the term hereof without Landlord's written consent, Tenant shall be a tenant at sufferance subject to immediate eviction. In such event, in addition to paying Landlord any damages resulting from such holdover, Tenant shall pay base rental at the rate of three times the then current base rental. In such circumstance, acceptance of base rental by Landlord shall not constitute consent or agreement by Landlord to Tenant's holding over and shall not waive Landlord's right to evict Tenant immediately.

18. Notices. Any notice given pursuant to this Lease shall be in writing and sent by certified mail, return receipt requested, by hand delivery or by reputable overnight courier to:

(a) Landlord: c/o Director Real Estate, Norfolk Southern Corporation, 1200 Peachtree Street, NE - 12th Floor, Atlanta, Georgia 30309-3579, or at such other address as Landlord may designate in writing to Tenant.

(b) Tenant: Mr. Thornton, 100 East 11th Street Suite 101, Chattanooga, Tennessee 37402, or at such other address as Tenant may designate in writing to Landlord.

Any notice sent in the manner set forth above shall be deemed delivered three (3) days after said notice is deposited in the mail if sent by certified mail (return receipt requested), or upon receipt if sent by hand delivery or reputable overnight courier. Any change of notice address by either party shall be delivered to the other party by the manner of notice required hereby.

19. Track Clearance. Notwithstanding anything contained in this Lease, and irrespective of the sole, joint, or concurring negligence of Landlord, Tenant shall assume sole responsibility for and shall indemnify, save harmless and defend the Landlord Entities from and against all claims, actions or legal proceedings arising, in whole or in part, from the conduct of Tenant's operations, or the placement of Tenant's fixtures, equipment or other property, within twenty-five feet (25') of Landlord's tracks, if any, located on or adjacent to the Premises. In this connection it is specifically understood that knowledge on the part of Landlord of a violation of the foregoing clearance requirement, whether such knowledge is

actual or implied, shall not constitute a waiver and shall not relieve Tenant of its obligations to indemnify the Landlord Entities for losses and claims resulting from any such violation.

20. Brokerage. Landlord and Tenant hereby covenant and agree to indemnify and hold the other harmless from and against any and all loss, liability, damage, claim, judgment, cost and expense (including without limitation attorney's fees and litigation costs) that may be incurred or suffered by the other because of any claim for any fee, commission or similar compensation with respect to this Lease, made by any broker, agent or finder claiming by, through or under the indemnifying party, whether or not such claim is valid.

21. Tenant's Insurance. Tenant shall procure and maintain, at all times and at its expense, in a form and with an insurance company acceptable to Landlord, Commercial General Liability Insurance for the Premises. Such coverage shall (a) have a single limit of not less than \$2,000,000.00 for each occurrence (or such greater amount over time so as to be commercially reasonable) and shall provide for a deductible of not more than \$5,000.00, (b) cover Tenant's contractual liability hereunder, (c) cover Tenant and Landlord for liability arising out of work performed by any third parties for Tenant in or about the Premises, (d) name the Landlord Entities as additional insureds, and (e) be considered primary and noncontributory, regardless of any insurance carried by Landlord. Any property insurance maintained by Tenant on its furniture, fixtures, equipment and personal property shall include a waiver of subrogation in favor of Landlord. Tenant shall deliver certificates of insurance evidencing the insurance required hereinabove to Landlord simultaneously with the execution of this Lease by Tenant, which certificates shall reflect that the policies shall not be canceled without at least thirty (30) days prior notice to Landlord. If Tenant fails to obtain the necessary coverages, Landlord may do so at Tenant's expense and the same shall constitute additional rental. All insurance certificates should be delivered to Landlord's Risk Management Department, Three Commercial Place, Norfolk, Virginia 23510, simultaneously with the execution of this Lease by Tenant. The minimum limits of insurance provided for hereunder are not intended to be a limitation on the liability of Tenant hereunder and shall not waive Landlord's right to seek a full recovery from Tenant.

22. Taxes. Tenant agrees to reimburse Landlord, as additional rental, for all real estate taxes and assessments (regular or special) pertaining to the Premises ("**Taxes**") paid by Landlord with respect to the Premises. Landlord may, but shall not be obligated to, invoice Tenant for the estimated Taxes for each calendar year (but no more frequently than monthly), which amount shall be adjusted each year based upon anticipated Taxes. If the Premises are part of a larger tract, the Taxes for which Tenant is responsible for reimbursing Landlord pursuant to the terms hereof shall be the share of such total Taxes that Landlord reasonably determines are applicable to the Premises, giving due consideration to the relative value of the Premises and the value of the land and improvements reflected in the applicable tax valuation. Upon request from Tenant, Landlord shall provide Tenant with copies of tax bills for the Taxes. If Landlord has been invoicing Tenant for Taxes and the tax bills indicate that the total of the payments made by Tenant exceeds the amount of Taxes applicable to the Premises, Landlord shall credit any such amount against the Tax reimbursement payment next coming due. In the event the accounting shows that the total of the Tax payments made by Tenant is less than the amount of Tax payment due from Tenant under this Paragraph, the accounting shall be accompanied by an invoice for the additional payment. During the year in which the Lease terminates, Landlord shall have the option to invoice Tenant for Taxes based upon the previous year's Taxes. If this Lease commences on a day other than the first day of a tax year or ends on a day other than the last day of a tax year, the amount of any Taxes payable by Tenant applicable to the year in which the term commences or ends shall be prorated. Tenant agrees to pay any sum due under this Paragraph within ten (10) days following receipt of the invoice showing the amount due.

23. Joint and Several. If Tenant comprises more than one person, corporation, partnership or other entity, the liability hereunder of all such persons, corporations, partnerships or other entities shall be joint and several.

24. No Warranties; Entire Agreement. TENANT ACCEPTS THE PREMISES "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF QUIET ENJOYMENT, THE IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER IMPLIED WARRANTIES. LANDLORD SHALL NOT BE LIABLE FOR, AND TENANT HEREBY RELEASES LANDLORD FROM ALL CLAIMS FOR ECONOMIC LOSSES AND ALL OTHER DAMAGE OF ANY NATURE WHATSOEVER ACCRUING TO TENANT, INCLUDING, BUT NOT LIMITED TO THE VALUE OF ANY BUILDINGS, STRUCTURES OR IMPROVEMENTS OF TENANT UPON THE PREMISES, RESULTING FROM OR ARISING BY REASON OF ANY DEFICIENCY, INSUFFICIENCY OR FAILURE OF TITLE OF LANDLORD. THIS LEASE CONTAINS THE ENTIRE AGREEMENT OF THE PARTIES HERETO AS TO THE PREMISES, AND NO REPRESENTATIONS, INDUCEMENTS, PROMISES OR AGREEMENTS, ORAL OR OTHERWISE, BETWEEN THE PARTIES, NOT EMBODIED HEREIN, SHALL BE OF ANY FORCE OR EFFECT.

25. Survival. The provisions of Paragraphs 6, 7, 9, 13, 17, 20 and 22 shall survive the expiration or earlier termination of this Lease.

26. Miscellaneous. Knowledge on the part of Landlord or any employee, agent or representative of Landlord of any violation of any of the terms of this Lease by Tenant shall constitute neither negligence nor consent on the part of Landlord, and shall in no event relieve Tenant of any of the responsibilities and obligations assumed by Tenant in this Lease. All rights, powers and privileges conferred hereunder upon the parties hereto shall be cumulative but not restrictive to those given by law. No failure of Landlord to exercise any power given Landlord hereunder, or to insist upon strict compliance by Tenant with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms hereof. Subject to the terms of Paragraph 12 above, this Lease shall be binding upon and shall inure to the benefit of the respective successors and permitted assigns of Landlord and Tenant. If any term, covenant or condition of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons, entities or circumstances other than those which or to which used may be held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Lease shall be valid and enforceable to the fullest extent permitted by law. Time is of the essence in this Lease. Neither party shall be bound hereunder until such time as both parties have signed this Lease. This Lease shall be governed by the laws of the State or Commonwealth in which the Premises are located.

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IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, effective the day and year first above written.

Witness:

Signature: Katie Monkus
Name: Katie Monkus

Witness:

Signature: Kelly F. Harris
Name: Kelly F. Harris

Witness:

Signature: Gail Hart
Name: GAIL HART

Witness:

Signature: Sandra Kyle
Name: Sandra Kyle

LANDLORD:

NORFOLK SOUTHERN RAILWAY COMPANY
a Virginia corporation

By: Tristan Lynn
Name: Tristan Lynn
Title: Property Agent

Date of Landlord Signature: 5/21/2012

[SEAL]

TENANT:

CITY OF CHATTANOOGA
a Tennessee government entity

By: Dan Thornton
Name: DAN THORNTON
Title: DIRECTOR OF GENERAL SERVICES

Date of Tenant Signature: 4/24/2012

[SEAL]



**NORFOLK SOUTHERN RAILWAY COMPANY
Real Estate Department**

Landlord:	NORFOLK SOUTHERN RAILWAY COMPANY	
Location:	Chattanooga, Hamilton County, Tennessee	
Tenant:	CITY OF CHATTANOOGA	
Area:	2.88 acres, more or less	
Maps:	Val Sec 64D, Map No 4, Par 5	Milepost: 337.4
Activity No:	1165546	Exhibit A
Date:	April 2, 2012	Not To Scale



ORIGINAL

MODIFICATION OF LEASE AGREEMENT

THIS MODIFICATION is made as of the 6th day of June, 2012 by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation (the "Landlord") and **CITY OF CHATTANOOGA**, a Tennessee government entity (the "Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into the Lease Agreement dated May 21, 2012 (the "Lease"), covering the lease of 2.88 acres, more or less, of real property at Milepost 337.40 in **Chattanooga, Hamilton County, Tennessee**, for beautification; and

WHEREAS, Landlord and Tenant desire to modify the Tenant Insurance requirement, Paragraph 21, to include self-insurance language.

NOW, THEREFORE, Landlord and Tenant hereby agree that the Lease shall be modified to add the below sentence as the last paragraph in Paragraph 21:

Subject to Landlord's approval, Tenant may self-insure its obligations as required by this Paragraph 21.

This agreement is supplemental to the Lease and modifies the same as herein set out but not otherwise.

(Remainder of this page left blank intentionally.)

IN WITNESS WHEREOF, the parties hereto have executed this Modification of Lease Agreement in duplicate, each part being an original, as of the 6th day of June, 2012.

Witness:

Katie Monkus

Signature

Name: Katie Monkus

Witness:

Andrew M. Vollmer

Signature

Name: Andrew M. Vollmer

Witness:

Gail Hartz

Signature

Name: Gail Hartz

Witness:

Sandra Kyle

Signature

Name: Sandra Kyle

LANDLORD:

**NORFOLK SOUTHERN RAILWAY
COMPANY**

a Virginia corporation

By: Tristan Lynn

Name: Tristan Lynn

Title: Property Agent

Date of Landlord Signature: 6/6/2012

[SEAL]

TENANT:

CITY OF CHATTANOOGA

a Tennessee government entity

By: Dan L. Thornton

Name: DAN L. THORNTON

Title: Director General Services

Date of Tenant Signature: 5-30-2012

[SEAL]

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this "Amendment") is made as of the 26 day of February, 2013 by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a **Virginia** corporation (the "Landlord") and **CITY OF CHATTANOOGA**, a **Tennessee** government entity (the "Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into that certain Lease Agreement dated May 21, 2012, as modified by Agreement dated June 6, 2012 (as amended, the "Lease"), for real property located at Milepost 337.4 in Chattanooga, Hamilton County, Tennessee, having an area of 2.88 acres, more or less (the "Premises");

WHEREAS, Landlord and Tenant desire to modify the Lease to include the addition of Tenant-owned walking track and to make certain other changes to the Lease as hereinafter stated.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lease is hereby amended, and the parties hereto do agree as follows:

1. Purpose. Tenant shall have the right to construct and maintain Tenant-owned walking track thereon in which the dimensions of which are substantially shown on print of Exhibit "C" attached hereto. Such Tenant-owned Improvements shall not become fixtures upon the realty, but shall remain the property of Tenant and shall be removed from the Premises upon termination or expiration of this Lease.

2. Notice. Any notice given pursuant to the Lease shall be in writing and sent by certified mail, return receipt requested, by hand delivery or by reputable overnight courier to:

(a) Landlord: c/o Director Real Estate, Norfolk Southern Corporation, 1200 Peachtree Street, NE – 12th Floor, Atlanta, Georgia 30309-3579 or at such other address as Landlord may designate in writing to Tenant.

(b) Tenant: Mr. Thorton, 100 East 11th Street, Suite 101, Chattanooga, Tennessee 37402, or at such other address as Tenant may designate in writing to Landlord.

Any notice sent in the manner set forth above shall be deemed delivered three (3) days after said notice is deposited in the mail if sent by certified mail (return receipt requested), or upon receipt if sent by hand delivery or reputable overnight courier. Any change of notice address by either party shall be delivered to the other party by the manner of notice required hereby.

3. Ratification; Successors and Assigns. Landlord and Tenant acknowledge and agree that the Lease, as amended by this Amendment, is hereby ratified and confirmed and in full force and effect. This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment in duplicate, each part being an original, as of the 26 day of February, 2013.

Witness:

S. Billingsley
Signature
Name: S. Billingsley

Witness:

Katie Monkus
Signature
Name: Katie Monkus

Witness:

Mark Folsom
Signature
Name: MARK FOLSOM

Witness:

Gail Hart
Signature
Name: GAIL HART

LANDLORD:

NORFOLK SOUTHERN RAILWAY COMPANY
a Virginia corporation

By: [Signature]
Name: Tristan Lyon
Title: Real Estate Property Manager

Date of Landlord Signature: 2/26/13

[SEAL]

TENANT:

CITY OF CHATTANOOGA
a Tennessee government entity

By: [Signature]
Name: DAN L. THORNTON
Title: DIRECTOR OF GENERAL SERVICES

Date of Tenant Signature: _____

[SEAL]

T L Wednesday, February 13, 2013 1174278\1012211v1