

AGREEMENT OF PURCHASE AND SALE

BETWEEN:

CANADIAN NATIONAL RAILWAY COMPANY
(the "**Owner**")

- and -

THE CORPORATION OF HALDIMAND COUNTY
(the "**County**")

WHEREAS the Owner is the registered owner of the lands legally described on the attached Schedule "A" and collectively referred to as the "**Lands**";

AND WHEREAS the County proposes to construct a walking trail for public use (the "**Works**");

AND WHEREAS the County requires the Owner's Lands to facilitate construction of the Works;

NOW THEREFORE in consideration of payment of the sum of ONE (\$1.00) DOLLAR paid by each of the parties hereto to the other, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The recitals herein are true and accurate.
2. The Owner hereby agrees to sell and the County agrees to purchase the Lands for a purchase price of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) (the "**Purchase Price**").
3. The County has prepared and registered at its own expense a reference plan for the Lands.
4.
 - (a) The parties hereto agree that any and all improvements, trees or shrubs within the Lands are included in the Purchase Price.
 - (b) The County agrees that it is purchasing with the Lands a bridge over the Grand River together with all foundations, footings, abutments and other support structures (collectively, the "**Bridge**"). The County acknowledges that the Owner is not conveying with the Bridge any interest, right or title to the lands upon which the Bridge is supported and/or the area over which the Bridge extends. The County agrees that it will satisfy itself as to the right, if any, to maintain and use the Bridge. The County agrees that it will accept the Bridge on and subject to the terms and conditions contained in the Bill of Sale attached as Schedule "B", which the County will execute and deliver on completion.
5. The Owner acknowledges and agrees that the Purchase Price represents full and final compensation and includes, without limitation, compensation for market value of the Lands, injurious affection, disturbance damages, reduction in market value of the remainder of the Owner's Lands and any and all claims that the Owner may make pursuant to the Expropriations Act, R.S.O. 1990, c. E.26 for the County's purchase of the Lands.
6.
 - (a) This offer shall be irrevocable by the County until 4:30 p.m. on October 12, 2017.
 - (b) This Agreement is subject to ratification by Council of THE CORPORATION OF HALDIMAND COUNTY ("**County Council**") on or before August 30, 2017. In the event that the County has not delivered written confirmation to

the Owner that this Agreement has been ratified by County Council on or prior to August 30, 2017, this Agreement shall be null and void.

- (c) This Agreement is conditional until Closing on approval by the management of the Owner. If this condition is not satisfied or waived by closing, this Agreement shall be at an end and the Owner shall return the deposit to the County without interest or deduction and neither party shall have any further obligation to the other respecting this Agreement. In the absence of delivery of a notice of termination, the Owner shall be conclusively deemed to have waived this condition.
- 7. The County agrees to provide the Owner with a deposit in the amount of EIGHT THOUSAND DOLLARS (\$8,000.00) by negotiable cheque payable to the Owner's solicitor in trust. The deposit shall be held in trust by the Owner's solicitor without interest pending completion or other termination of this Agreement and shall be credited toward the Purchase Price on completion.
- 8. The balance of the Purchase Price shall be paid by negotiable cheque, bank draft or wire transfer on the Closing Date, subject to adjustments, if any, provided the title is good and free from all registered restrictions charges, liens and encumbrances, including but not limited to leases, agreements, and notices.
- 9. Except as otherwise provided in this Agreement, if this transaction is subject to Harmonized Sales Tax imposed by Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended (the "**HST**"), then such HST shall be in addition to and not included in the Purchase Price, and the County hereby covenants to self-assess and remit applicable HST in addition to the Purchase Price in accordance with the provisions of the *Excise Tax Act*. If this transaction is not subject to HST, the Owner agrees to provide to the County, on or before the Closing Date, a certificate in a form reasonably satisfactory to the County certifying that the transaction is not subject to HST.
- 10. The closing date of this transaction shall be November 19, 2017, or prior thereto if mutually agreed in writing (the "**Closing Date**"). Vacant possession of the Lands shall be given to the County on the Closing Date, unless otherwise provided for in this Agreement.
- 11. (a) The County shall be allowed until October 14, 2017, to investigate the title to the Lands at its own expense.
(b) Provided that the title to the Lands is good and free from all encumbrances except as aforesaid. If within the time allowed for examining the title any valid objection to title is made in writing to the Owner and which the Owner is unable or unwilling to remove, remedy or satisfy and which the County will not waive, this Agreement, notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies theretofore paid shall be returned without interest or deduction and the Owner shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, the County shall be conclusively deemed to have accepted the Owner's title to the Lands.
(c) Notwithstanding any other provision of this Agreement, the County agrees to accept title subject to:
 - (i) all registered or unregistered agreements with municipalities and publicly or privately regulated utilities;
 - (ii) all registered or unregistered easements, rights, covenants and/or restrictions in favour of municipalities, publicly or privately regulated utilities or adjoining owners, or that otherwise run with the land;
 - (iii) any encroachments as may be revealed by an up-to-date survey; and

(iv) the encumbrances registered upon title to the Lands

(collectively, the “**Permitted Encumbrances**”). The County agrees to satisfy itself with respect to compliance with all such Permitted Encumbrances and agrees that the Owner shall not be required to provide any evidence of compliance with same. In the event that the Lands comprises former corridor lands for the movement of trains, the County agrees, after closing, to grant a registered easement to any utility, if requested by such utility, to give effect to any unregistered rights already enjoyed by such utility, if applicable, on terms to be arranged between the County and the utility.

12. The County shall not call for the production of any title deed, abstract, survey or other evidence of title to the Lands, except as are in the possession or control of the Owner.
13. This transaction will be completed by electronic registration pursuant to Part III of the *Land Registration Reform Act*, R.S.O. 1990, c. L.4, as amended. The Owner and the County agree to be bound by the Document Registration Agreement which is recommended from time to time by the Law Society of Upper Canada. The Owner and the County acknowledge and agree that the delivery of documents and the release thereof will: (a) not occur at the same time as the registration of the transfer/deed (and other documents intended to be registered in connection with the completion of this transaction); and (b) be subject to conditions whereby the solicitor(s) receiving documents and/or money will be required to hold them in escrow and not release them except in accordance with the terms of the Document Registration Agreement.
14. The Owner covenants and agrees to deliver to the County, or to whom it may direct, a transfer for the Lands suitable for registration and drawn in the name of “THE CORPORATION OF HALDIMAND COUNTY” to provide it with good title, free and clear from all restrictions, charges, liens and encumbrances including but not limited to leases, agreements, notices.
15. The Owner covenants that it will deliver to the County on or before the Closing Date, each of the following:
 - (a) vacant possession of the Lands, subject to the Permitted Encumbrances;
 - (b) an executed Transfer/Deed of Land in registerable form duly executed by the Owner in favour of the County (save for any Land Transfer Tax Affidavit);
 - (c) a Bill of Sale for the Bridge in the form attached as Schedule “B”;
 - (d) a Seller’s Closing Certificate, including an undertaking to re-adjust the statement of adjustments, if necessary, upon written demand;
 - (e) a Declaration of Possession;
 - (f) a current tax certificate;
 - (g) a direction regarding the payment of funds;
 - (h) statement of adjustments, which shall be delivered at least two (2) business days prior to the Closing Date; and
 - (i) such other deeds, conveyances and other documents as the County or its solicitors may reasonably require in order to implement the intent of this Agreement.
16. The County covenants that it will deliver to the Owner on or before the Closing Date:

- (a) a cheque or wire transfer for the balance of the purchase price due on the Closing Date;
 - (b) a direction as to title, if necessary;
 - (c) an undertaking to re-adjust the statement of adjustments, if necessary, upon written demand; and
 - (d) H.S.T. Declaration, if applicable.
17. The Owner warrants that spousal consent is not necessary to this transaction under the provisions of the *Family Law Act*, R.S.O. 1990, c. F.3, as amended, unless the Owner's spouse has executed the consent hereinafter provided.
18. The Owner shall provide on closing any certificates, affidavits, declarations or any other documents required for compliance with the *Family Law Act*, the *Income Tax Act*, R.S.C. 1985, as amended, and any other statutes, where such certificates, affidavits, declarations or documents are required to permit the conveyance of the Lands to the County free of any claim, lien or interest of any person or government.
19. The County shall be credited towards the Purchase Price with the amount, if any, necessary for the County to pay to the Minister of National Revenue to satisfy the County's liability in respect of tax payable by the Owner under the non-residency provisions of the Income Tax Act by reason of this sale. The County shall not claim such credit if the Owner delivers to the County, prior to the Closing Date, the prescribed certificate or a statutory declaration that the Owner is not then a non-resident of Canada.
20. Any tender of documents or money hereunder may be made upon either party or their respective solicitors on the Closing Date. Money may be tendered by negotiable cheque or bank draft.
21. (a) The Owner makes no representations or warranties of any kind, either expressed or implied, as to the condition of the soil, the subsoil, the ground and surface water or any other environmental matters, the condition of the Lands or the condition of any structures (including the Bridge), or any other matters respecting the site whatsoever, including the use to which it may be put and its zoning. The County shall accept the Lands and any improvements thereon in an "as is" condition.
- (b) The County shall be allowed until June 19, 2017 (the "**Conditional Period**") to satisfy itself with respect to all matters respecting the condition of the soil, the subsoil, the ground and surface water or any other environmental matters, the condition of the Lands or the condition of structures thereon, if any, all encumbrances and all regulations and by-laws governing the Lands and the use thereof and the Owner grants to the County the right to enter upon the Lands and to conduct such inspections, surveys and tests as the County deems necessary in this regard, provided the County takes all reasonable care in the conduct of such inspections, surveys and tests.
- (c) If for any reason the County is not satisfied with respect to such matters within the Conditional Period, it may deliver a notice ("**Notice of Termination**") to the Owner indicating that he is not satisfied with respect to such matters and desires to terminate this Agreement and release the Owner from any further obligations. Upon delivery by the County of a Notice of Termination to the Owner, this Agreement shall be at an end and the Owner shall return the deposit to the County without interest or deduction and neither party shall have any further obligation to the other respecting the Agreement.
- (d) The Owner agrees to deliver to the County within ten (10) days of acceptance of this Agreement all environmental reports relating to the Lands in its possession. The County covenants and agrees that any and all environmental reports provided by the Owner or obtained by the County and

the information contained therein are strictly confidential and the County represents and warrants that neither the County nor its employees, or agents will release the reports or any of the information contained therein to any other individual, or corporation or to any federal, provincial, or municipal agency or institution or to any other government body, domestic or foreign, without the express written consent of the Owner, and the County shall refuse all requests for such reports or information in the absence of the Owner's express written consent, unless compelled to do so by competent judicial or administrative authority.

- (e) In the absence of delivering a Notice of Termination within the Conditional Period, the County shall be conclusively deemed to have waived all requisitions concerning any matters relating to the Lands, save for matters going to title and the County accepts full responsibility for all conditions related to the Lands.
 - (f) The information comprising the information package provided by the Owner, if any, any comments made by the Owner's staff and any plans or drawings that may have been provided by the Owner, are for the assistance of the County in allowing it to make its own inquiries. The Owner makes no representations or warranties about and takes no responsibility for the accuracy or completeness of information it has provided.
 - (g) This section 22 of this Agreement shall not merge but shall survive the closing of this transaction and shall be a continuing obligation of the County.
22. The Owner shall provide the County with all consents or authorizations (written or otherwise) necessary or desirable to enable the County to obtain information as the County may consider necessary or advisable in determining the environmental condition of the Lands within three (3) business days after the request therefor. The Owner shall further provide the County with all documents and reports in its control or possession relating to the environmental condition of the Lands within three (3) business days after the request therefor.
23. In the event that the County is not satisfied, in its absolute discretion, with results of any inspection, environmental test, survey, or response to inquiries or if any environmental contaminants are released prior to closing, the County may, without limiting any other right that the County may have at its sole option, rescind this Agreement by delivering a notice of termination to the Owner and in such event the County shall be released from all obligations hereunder.
24. All notices or other communications hereunder shall be in writing and shall be delivered by personal delivery, overnight mail or delivery service, facsimile, or registered mail, return receipt requested, postage prepaid, addressed as follows:

On the Owner to: Canadian National Railway Company
1 Administration Road
1st Floor
Concord, Ontario
L4K 1B9

Telephone: (905) 760-5001
Facsimile: (905) 760-5010

On the County to: THE CORPORATION OF HALDIMAND COUNTY
1-117 Forest Street East
Dunnville, Ontario
N1A 1B9

Attention: Property Coordinator
Facsimile: (905) 774-4294

25. The Owner and the County acknowledge that this Agreement constitutes the entire Agreement between the Owner and the County and there are no representations, warranties, collateral agreements or conditions affecting this Agreement or the Lands other than as expressed herein in writing.
26. Execution of this Agreement by the County shall be deemed to grant to the County, its agents and contractors the right to enter into possession of the Lands and the County to exercise any and all rights of the Owner as of the date of acceptance and without prejudice to its rights herein or acknowledgement of title.
27. Time shall be in all respects of the essence hereof provided that the time for doing or completing any matter herein may be extended or abridged by an agreement in writing signed by the Owner and the County or by their respective solicitors who are hereby expressly appointed in this regard.
28. This Agreement shall be binding upon and shall enure to the benefit of the parties hereto, and each of their respective representatives, successors, heirs and assigns.
29. Any party may deliver an executed copy of this Agreement by facsimile transmission or by electronic mail, in a "pdf" format, so that a signed electronic copy or facsimile copy of the signatures of the authorized signing officers of the parties is as binding as a signed copy of this Agreement with original signatures of the authorized signing officers of the parties.
30. All covenants, representations and warranties contained in this Agreement on the part of both the Owner and the County shall not merge upon the closing of this transaction.
31. Schedule "A" – The Lands
Schedule "A-2" – Sketch
Schedule "B" – Bill of Sale and General Conveyance
attached hereto form an integral part of this Agreement.

[Remainder of page intentionally left blank]

32. This Agreement, when approved by County Council and executed by its authorized signing officer(s), shall constitute a binding agreement.

IN WITNESS WHEREOF the Owner has on the _____ day of _____, 2017 affixed its corporate seal attested by the hands of the duly authorized officer(s).

**CANADIAN NATIONAL RAILWAY
COMPANY**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the
Corporation.

IN WITNESS WHEREOF The Corporation of Haldimand County has on the _____ day of _____, 2017 affixed its name under the hands of its duly authorized signing officer(s).

**THE CORPORATION OF HALDIMAND
COUNTY**

Per: _____
Name: Ken Hewitt
Title: Mayor

Per: _____
Name: Evelyn Eichenbaum
Title: Clerk

We have the authority to bind the
Corporation.

SCHEDULE “A” – THE LANDS

PIN # 38224-0119(R) PT BLK H S/S INDIAN ST VILLAGE OF CAYUGA E OF GRAND RIVER; PT BLK 1 N/S VICTORIA ST VILLAGE OF CAYUGA E OF GRAND RIVER, HALDIMAND COUNTY, DESIGNATED AS PART 2 ON 18R-7521

PIN # 38224-0281(LT) PT OTTAWA ST VILLAGE OF CAYUGA E OF GRAND RIVER CLOSED BY C83 EXCEPT HC61316 S OF INDIAN ST; HALDIMAND COUNTY, DESIGNATED AS PART 1 ON 18R-7521

PIN # 38224-0282(R) PT BLK F S/S INDIAN ST AND E/S OTTAWA ST VILLAGE OF CAYUGA E OF GRAND RIVER; HALDIMAND COUNTY, DESIGNATED AS PART 3 ON 18R-7521

PIN # 38224-0243(LT) OTTAWA ST VILLAGE OF CAYUGA E OF GRAND RIVER CLOSED BY C83 AS IN C87 BTN INDIAN ST & LATHAM ST; HALDIMAND COUNTY

SCHEDULE "A-2"



The Lands are shown in cross hatching.

SCHEDULE “B” – BILL OF SALE AND GENERAL CONVEYANCE

This Bill of Sale is made as of the day of June, 2017.

B E T W E E N :

THE CORPORATION OF HALDIMAND COUNTY

(the “Purchaser”)
Of the First Part

– and –

CANADIAN NATIONAL RAILWAY COMPANY

(the “Vendor”)
Of the Second Part

Whereas the Vendor is in possession of a bridge located in the Haldimand County, which bridge spans the Grand River (the “**River**”), which bridge is comprised solely of the existing structure over the River as of this date, including all foundations, abutments, footings and other support structures, but does not include the River (the “**Bridge**”).

And Whereas the Vendor has agreed to release and quit claim to and in favour of the Purchaser of all its right, title and interest in the Bridge;

And Whereas the Purchaser has agreed to acquire from the Vendor all of its right, title and interest in the Bridge;

Therefore, in consideration of the sum of One Dollar (\$1.00) the receipt of which is hereby acknowledged by the Vendor, and the other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the Vendor and the Purchaser covenant and agrees as follows:

1. As of, from and after the date of the execution of this Bill of Sale by both the Vendor and the Purchaser, the Vendor hereby quit claims and releases all of the right, title and interest of the Vendor to and in the Bridge to the Purchaser. The Purchaser hereby covenants and agrees to accept and assume such right, title and interest of the Vendor in the Bridge. Furthermore, the Purchaser hereby expressly assumes and accepts all liabilities, responsibilities and other obligations in connection with this Bridge, including, without limitation, the repair, maintenance, replacement and/or removal of the Bridge.
2. The Vendor and the Purchaser covenant, acknowledge and agree that the conveyance of the Bridge does not include any right, title or interest in the River. The Purchaser acknowledges and warrants to the Vendor that the Purchaser has satisfied itself with regard to whether the Purchaser shall be permitted to maintain the Bridge upon the River.
3.
 - a) The Purchaser hereby accepts the Bridge on an “as is, where is” basis without any representation or warranty whatsoever. Without limiting the generality of the foregoing, the Vendor makes no representations or warranties of any kind, either express or implied, as to the condition of the Bridge or any environmental matters, or any other matters respecting the Bridge whatsoever, including the use to which it may be put and its zoning. The Purchaser shall accept the Bridge in existing “as is” condition. In particular, the Purchaser agrees that the Vendor has made no representation as to whether the Bridge may continue in its current location over the River.

- b) The Purchaser accepts full responsibility for all conditions related to the Bridge.
4. The obligations of the Purchaser under this Bill of Sale shall survive and shall not merge upon the execution and delivery of this Bill of Sale, in full force and effect and binding upon the Purchaser as continuing obligations of the Purchaser.
5. This Bill of Sale shall be construed in accordance with the laws of the Province of Ontario.
6. All of the terms of this Bill of Sale shall extend to and shall be binding upon the Purchaser and the Vendor, together with their respective successors and assigns;
7. This Bill of Sale may be executed in counterparts by the parties, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Furthermore, this Bill of Sale may be delivered by telecopier transmission or electronic transmission, in a "PDF" format, so that a signed facsimile copy or electronic copy in a "PDF" format of the signatures of the authorized signing officers of the parties is as binding as a signed copy of this Bill of Sale with original signatures of the authorized signing officers of the parties.

In Witness Whereof, the Vendor and the Purchaser have executed this Bill of Sale.

**THE CORPORATION OF HALDIMAND
COUNTY**

By: _____
Name:Ken Hewitt
Title: Mayor

By: _____
Name:Evelyn Eichenbaum
Title: Clerk

I/We have authority to bind the Corporation.

**CANADIAN NATIONAL RAILWAY
COMPANY**

Per: _____
Name:
Title: Manager, Business
Development & Real Estate

I have authority to bind the Corporation.