

THIS AGREEMENT made as of the \_\_\_\_\_ day of April, 2012.

BETWEEN

**CANADIAN NATIONAL RAILWAY COMPANY**  
a company incorporated under the laws of Canada  
(Hereinafter referred to as the "Railway")  
**OF THE FIRST PART**

- and -

**THE CORPORATION OF THE  
TOWN OF GREATER NAPANEE**  
(Hereinafter referred to as the "Municipality")  
**OF THE SECOND PART**

**WHEREAS** the Municipality has expressed its desire to acquire the lands (the "Lands") briefly described in Schedule "A" annexed hereto, together with all bridges, ballast, abutments and other improvements on or attached to the Lands (collectively the "Improvements") (which Lands and Improvements are collectively the "Property");

**AND WHEREAS** the Railway has offered to donate and convey the Property to the Municipality and the Municipality has agreed to accept the Property as a gift as of the 20<sup>th</sup> day of June, 2012, (the "Gift Date") subject to any extension of the Gift Date in accordance with section 8 of this Agreement, on and subject to all of the terms of this Agreement;

**AND WHEREAS** the exact boundaries and dimensions of the Property will need to be confirmed at the cost of the Municipality by title searches and surveys, where applicable, and such description must be approved of by the Railway prior to the Gift Date;

**AND WHEREAS** the Municipality shall obtain an appraisal in accordance with this Agreement (the "Appraisal") of the fair market value of the Property as of the Gift Date in order to confirm the fair market value of the Property to the Municipality, which Appraisal shall be subject to the approval in writing of the Railway and once approved of, in writing, by the Railway, such fair market value shall be the "Appraised Value" for the purposes of this Agreement;

**AND WHEREAS** the Municipality has agreed to accept the Property as a gift on the basis that it shall issue an official receipt for this gift [as defined in the *Income Tax Act (Canada)*] to the Railway equal to the Appraised Value;

**THEREFORE, THIS AGREEMENT WITNESSETH** as follows:

1. **DONATION BY WAY OF GIFT**

(a) The Railway agrees that it shall convey the Property as a donation by way of gift of the Property and the Municipality shall accept such conveyance of the Property by way of gift, on the Gift Date, subject to any extension of the Gift Date in accordance with section 8 of this Agreement.

(b) The Municipality shall obtain the Appraisal, which Appraisal shall be prepared by an appraiser who is a member in good standing designated as an Accredited Appraiser of the Canadian Institute. The Railway shall commission such Appraisal and shall provide directions to the appraiser preparing the Appraisal. The Appraisal shall be an appraisal of the fair market value of the Property (based upon the proposed use of the Property by the Municipality as of the Gift Date) in accordance with the *Income Tax Act* and the recognized professional standards of the Appraisal Institute. The Municipality shall be responsible for all appraisal costs whether incurred by the Municipality or the Railway, to the extent that the Railway elects to incur such costs (the "Appraisal Costs"), subject to section 8(c) of this Agreement.

(c) The Railway has or shall pay all realty taxes and local improvement rates with respect to the Property to the Gift Date with such amount to be adjusted as of the Gift Date, (with the day itself to be appointed to this Municipality), and the Municipality shall be responsible for an amount equal to any adjustment for taxes and local improvement rates paid or to be paid by the Railway for the period from and after the Gift Date (the "Tax Adjustment").

(d) The Railway shall, at the expense of the Municipality using its usual consulting services, carry out title searches and obtain such legal surveys as are necessary so as to enable the transfer of the legal right, title and interest in the Property to the Municipality. In the transfer(s) to the Municipality of the Property or any part thereof, any statutory implied covenants, representations or warranties on the part of the "transferor" as to title or otherwise shall be expressly excluded or deleted. However, in the event that the Property is within the Land Titles System, so that a transfer(s) excluding the covenants prescribed under relevant law may not be registered, the Municipality agrees to accept a transfer(s) with such covenants from the Transferor named in such transfer(s) (the "Transferor") and:

- (i) shall register immediately after such transfer(s) is registered, a restriction prohibiting any transfer, encumbrance, conveyance or disposition of the Property (a "Disposition") without the prior written consent of the Transferor; and
- (ii) shall enter into an agreement with the Railway and the Transferor indemnifying the Railway and the Transferor for any liability for giving a transfer(s) containing such statutory implied covenants, representation or warranties and confirming the undertaking of the Railway to consent and to cause the Transferor to consent to a Disposition of the Property, provided that the party accepting such a Disposition first enters into an agreement in the same form with the Railway and the Transferor.

For greater certainty, the Municipality agrees that the Railway shall not be obliged to obtain or deliver any survey with regard to any portion of the Property unless such a survey is necessary in order to register a transfer for such portion of the Property.

(e) The Municipality shall pay for all legal fees incurred by the Municipality, together with all consulting fees and survey costs associated with this transfer and gift. The Municipality shall also pay for all legal costs, survey costs and consulting costs incurred by the Railway (collectively, the "Rail Costs") in respect of this conveyance and all matters pertaining to this conveyance, subject to section 8(c).

## 2. ISSUANCE OF OFFICIAL RECEIPT

In exchange for the conveyance of the Property, the Municipality shall issue to the Railway an official receipt as defined in Part XXXV of the Income Tax Regulations pursuant to subsection 110.1(2) of the *Income Tax Act (Canada)* for the tax year in which the Gift Date occurs in the amount of the Appraised Value, on the Gift Date, as it may be extended in accordance with section 8 of this Agreement.

## 3. TITLE AND CONDITIONS

This Agreement is subject to and conditional upon the senior management of the Railway approving the conveyance as a gift of the Property herein provided and all other terms and conditions herein on or before the Gift Date. If such approval is not granted, the Railway may terminate this Agreement at any time on or before the Gift Date, by the delivery of written notice of termination from the Railway or its solicitors to the Municipality or its solicitors. This condition is inserted for the sole benefit of the Railway and may be waived at any time prior to the Gift Date.

## 4. CONDITION OF PROPERTY

(a) The Municipality covenants, acknowledges and agrees with the Railway that:

- (i) the Municipality has had the opportunity to inspect and test the Property;
- (ii) the Municipality is aware that the Property has been used by the Railway for railway operations and/or industrial purposes and may be environmentally contaminated;
- (iii) the Railway has made no agreement, representation or warranty of any kind as to the condition, environmental or otherwise, of the Property, or as to the fitness or suitability of the Property for the uses intended by the Municipality, or as to existing or potential environmental liabilities in relation to the Property latent (whether known or not) or otherwise, except as may be specifically provided for in this Agreement;
- (iv) the Municipality will execute an environmental indemnity in favour of the Transferor and the Railway in a form acceptable to the Railway, acting reasonably (the "Indemnity");
- (v) the Property is conveyed by the Railway to and accepted by the Municipality on an "as is where is" basis; and
- (vi) the Railway may, in its sole discretion, elect to remove from the Property on, prior to the Gift Date or within six (6) months after the Gift Date any or all rails, tracks, ties, signals, cables, and/or other rail related material and/or improvements (collectively the "Rail Material").

The Municipality acknowledges and agrees that, notwithstanding any other provision of this Agreement, to the extent that any Rail Material is not removed by the Railway, such unremoved Rail Material forms part of the Improvements and is part of the Property. The Municipality further agrees and acknowledges that to the extent that any of the Improvements (including without limitation the bridge) which form part of the Property extends over, along, across or under a road, highway, navigable body of water or other property not owned by the Railway, (the "Unowned Lands"), that the Municipality shall nevertheless accept title to the Lands and any such Improvements without any right, title or interest in such Unowned Lands.

(b) The Municipality warrants and covenants in favour of the Railway that the Municipality shall 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 Property or the condition of structures thereon, if any, all encumbrances and all regulations and by-laws governing the Property and the use thereof, on or before May 10, 2012 (the "Conditional Period"), failing which the Municipality may terminate this Agreement during the Conditional Period by the delivery of written notice of termination (a "Termination Notice") from the Municipality or its solicitors to the Railway or its solicitors during the Conditional Period. In that event, the Railway shall be relieved from all obligations under this Agreement. This condition exists in favour of the Municipality and may be waived by the Municipality. In the event that no such Termination Notice is delivered within this Conditional Period, this condition shall be conclusively deemed to have been waived. The Municipality may conduct such inspections, surveys and tests as the Municipality deems necessary in this regard during the Conditional Period. The Railway assumes no responsibility for and the Municipality shall indemnify and save harmless the Railway and the Transferor from and against all claims, demands, costs, damages, expenses and liabilities whatsoever arising out of its presence on the Property or of its activities on or in connection with the Property prior to completion. Without limiting the generality of the foregoing, the Municipality and its consultant shall be permitted to attend at the offices of the Railway located at the MacMillan Rail Yard in order to review that portion of the report maintained by the Railway relevant to the Property (the "Relevant Excerpt"). Although the Municipality and its consultant shall be entitled to review the Relevant Excerpt at the office of the Railway during the Conditional Period, the Municipality shall not be entitled to a copy of such report and shall not be entitled to a copy of the Relevant Excerpt.

(c) The Municipality covenants and agrees that any and all environmental reports, records, materials and information available from the Railway or obtained by the Municipality and the information contained therein are strictly confidential and the Municipality represents and warrants that neither the Municipality 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 Railway, and the Municipality shall refuse all requests for such reports or information in the absence of the Railway's express written consent, except as expressly required under the *Municipal Freedom of Information and Protection of Privacy Act* R.S.O., 1990 Chapter M56, unless compelled to do so by competent judicial or administrative authority.

(d) The Municipality accepts full responsibility for all conditions related to the Property, and the Municipality shall comply with all orders relating to the condition of the Property issued by any competent government authority, court or administrative tribunal, including any order issued against the Railway or the Transferor.

(e) The Municipality shall be responsible for and hereby indemnifies and saves harmless the Railway and the Transferor from any costs, including legal and witness costs, claims, demands, civil actions, prosecutions, or administrative hearings, fines, judgements, awards, including awards of costs, that may arise as a result of the condition of the Property, any order issued in connection with the condition of the Property, or any loss, damage, or injury caused either directly or indirectly as a result of the condition of the Property. In addition to the Indemnity, the Municipality shall, on or subsequent to completion, promptly execute such further indemnity and provide such further assurances as the Railway may request, in a form and on terms acceptable to the Railway, acting reasonably.

(f) This section 4 shall not merge but shall survive the completion of this conveyance and shall be a continuing obligation of the Municipality.

## 5. **PURCHASER'S REPRESENTATIONS AND WARRANTIES**

The Municipality covenants, represents and warrants that it is a municipality in Canada, as defined by subparagraph 110.1 (1)(a)(iv) of the *Income Tax Act*, and has the full power and capacity to execute and deliver this Agreement and perform its obligations hereunder and to obtain and cause the issuance of official receipts as defined in Part XXXV of the *Income Tax Act Regulation* pursuant to subsection 110.1(2) of the *Income Tax Act (Canada)*.

## 6. **RISK**

The Property will be at the risk of Railway until the Gift Date, and thereafter at the risk of the Municipality.

## 7. **HARMONIZED SALES TAX**

The Municipality warrants that there shall be no Goods and Services Tax or Harmonized Sales Tax ("HST") upon the Appraised Value. The Municipality shall pay such HST unless it satisfies the Railway that there is no obligation to collect such HST. The Municipality covenants with the Railway that it will file with the Minister of Finance all returns (if any) prescribed to be filed under the *Income Tax Act (Canada)* and *Excise Tax Act (Canada)* in respect of this conveyance. Furthermore, the Municipality agrees to indemnify and hold harmless the Railway from any liability of the Railway under this section 7 if such transaction is characterized by the Minister of Finance as subject to the payment of HST or if such HST is payable but not collected, together with all costs and expenses incurred by the Railway as a result of such characterization.

## 8. **COMPLETION**

(a) The Municipality acknowledges and agrees that on the Gift Date a conveyance of title to the Property shall be provided by the Railway as Transferor. The Railway shall, where the Railway considers it appropriate to do so, deliver a

conveyance of the bridge or any similar part of the Improvements which extend over Unowned Lands, with no warranty or covenant from the Railway that the Municipality is entitled to maintain or otherwise to continue to permit such Improvements.

(b) The Railway agrees that it shall deliver to the Municipality on or before the Gift Date a Certificate executed by the Manager for Business Development and Real Estate with the Railway responsible for the Property (the "Land Manager") and a person responsible for environmental matters within the Railway (the "Environmental Employee") certifying that:

- (i) as of the date of acceptance of this Agreement by the Railway and the Municipality, the Relevant Excerpt is the only environmental report relevant to the Property in the possession of the Railway which the Land Manager and/or the Environmental Employee have knowledge of;
- (ii) as of the date of acceptance of this Agreement by the Railway and the Municipality, the Land Manager and the Environmental Employee have no knowledge of any material error in the Relevant Excerpt; and
- (iii) the Municipality has received notice of any order, judgment, action or proceeding concerning the environmental state of the Property which has been issued or commenced prior to the Gift Date, which the Land Manager and/or the Environmental Employee have knowledge of,

(the "Certificate"). The Railway agrees without limiting the liability of the Municipality under the other provisions of this Agreement, the Railway shall be responsible, if the statements made in the Certificate are not true, for any damages sustained by the Municipality which flow from such statements in the Certificate not being true. This section 8(b) shall not merge but shall survive completion of this transaction as a continuing obligation of the Railway.

(c) The Municipality shall pay to the Railway an amount equal to the Appraisal Costs, the Tax Adjustment and the Rail Costs, as specified by the solicitors for the Railway, by cheque or bank draft, provided that notwithstanding any other provision of this Agreement to the contrary the total aggregate amount of the Appraisal Costs and the Rail Costs may not exceed Fifty Thousand Dollars (\$50,000.00), not including HST. The Municipality shall make such payment on the Gift Date.

(d) The Municipality acknowledges and agrees with the Railway that the Property is donated and gifted by the Railway to the Municipality, subject to and with the benefit of all registered and unregistered encumbrances of any nature or kind and subject to the Permitted Encumbrances set out in Schedule "B", and the Municipality accepts the Property, along with all interests, tenancies, limitations, exceptions, provision, conditions and reservations found in the original grant from the Crown or on the certificates of title for the Property or imposed or implied by statute or local improvement assessments or any other covenants, easements, provisions, restrictions, agreements, municipal by-laws or governmental enactments affecting the Property, either by express provision or by implication, whether registered or not, existing at any time on the Property.

(e) The Municipality acknowledges that a consent to a severance may be required under section 50 of the Planning Act, R.S.O. 1990, in order to permit the Railway to complete its obligations under this Agreement, prior to the completion of the transaction contemplated by the Railway and the Municipality. The Railway shall proceed with diligence to obtain such consent. If so requested by the Railway, the Municipality shall cooperate with the Railway in the application by revealing its proposed plans for the Property; attending at any hearings and making submissions; and/or executing any documents required as a condition of approval. Notwithstanding the foregoing, if, after preliminary discussions with the planning department of the municipality, or with the Ministry of Municipal Affairs and Housing, the Railway is of the

opinion that the severance would not be granted, the Railway shall be entitled to terminate this Agreement and neither party shall have any further obligation to the other respecting the Agreement.

(f) If approval by the appropriate body is not given or, if approval is given but conditions are attached which the Railway in its absolute discretion is not prepared to satisfy, or if approval is given, but is appealed and the Railway is not prepared to defend such appeal, then the Railway may by notice in writing to the Municipality terminate this Agreement and neither party shall have any further obligation to the other respecting the Agreement. In absence of delivery of such a notice, the Railway shall from time to time, be entitled to extend the Gift Date, by the delivery of written notice from the Railway or its solicitors to the Municipality or its solicitors stating the date to which the Gift Date has been extended, to obtain the consent in final and binding form, or to satisfy any conditions imposed, as the case may be, provided that the total period of such extension or extensions of the Gift Date do not extend beyond April 15, 2013 (the "Extended Period"). If the consent is not final or binding, or if all conditions have not been satisfied by the expiration of the Extended Period, this Agreement shall automatically be terminated and neither party shall have any further obligation to the other respecting the Agreement.

(g) The parties acknowledge that the Railway shall not be obligated to appeal any refusal or any conditions imposed, to grant the consent to the severance, to the Ontario Municipal Board, or defend any appeal of an approval but may, in its sole and unfettered discretion, be entitled to do so.

## 9. GENERAL

(a) This Agreement forms the entire agreement between the Railway and the Municipality and all verbal or previous written undertakings and agreements, if any, are hereby cancelled and rendered null and void. The Municipality agrees that there are no agreements, representations, warranties or conditions relating to or affecting the Property except as expressed in this Agreement.

(b) This Agreement may not be modified or amended except in writing signed by the parties.

(c) This Agreement and the interest of the Municipality in the Property hereby created by it may not be assigned by the Municipality without the prior written consent of Railway, which may be arbitrarily withheld.

(d) Any tender of documents may be made upon the Railway or the Municipality or upon their respective solicitors.

(e) The Railway represents and warrants that it is not a non-resident person as defined for the purpose of Section 116 of the Income Tax Act of Canada.

(f) Time is of the essence in all respects and provisions of this Agreement.

(g) Both before and after the Gift Date, the parties hereto will execute and do all such further deeds, acts, things and assurances as may be reasonably required to carry out the intent of this Agreement including, without limitation, making any additions or deletions to Schedule "A" that are required to be made due to misdescriptions, prior sales, errors, omissions or engineering requirements (which arise when operations are discontinued on the relevant subdivision but prior to the transfer of legal title to the Municipality).

(h) This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective and permitted assigns.

(i) None of the provisions of this Agreement will merge with the conveyance of the Property.

(j) This Agreement shall be governed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada as applicable therein.

(k) Provided that this Agreement shall be effective to create an interest in the Property only if the subdivision control provisions of the Planning Act Ontario are complied with on or before the Gift Date.

(l) The following schedules form part of this Agreement;

Schedule "A"      Lands

Schedule "B"      Permitted Encumbrances.

(m) This Agreement may be executed by facsimile copy of a party's original signature and in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall be but one and the same instrument.

## 10. NOTICES

Any demand, notice or other communication to be given or which may be given in connection with this Agreement shall be in writing and shall be delivered personally, by regular mail, by telecopy or other electronic means of communication and addressed to the recipient as follows:

To:      Town of Greater Napanee  
 P.O. Box 97  
 124 John Street  
 Napanee, Ontario  
 K7R 3L4

Attention:      Ms. Rebecca Murphy,  
 Director of Corporate & Legal  
 Services/Clerk  
 Fax No.:      (613) 354-6545

And to:

The Municipality's solicitors

Cunningham Swan Carty Little & Bonham  
 City Place II, Suite 201  
 1473 John Counter Boulevard  
 Kingston, Ontario  
 K7M 8Z6

Attention:      Mr. David Munday  
 Fax No.:      (613) 542-9814

To:      Canadian National Railway Company  
 1 Administration Road  
 Vaughan, Ontario  
 L4K 1B9

Attention:      Mr. Ernie Longo  
 Fax No.:      (905) 760-5010

And To:

The Railway's solicitors

Fraser Milner Casgrain LLP  
 Barristers & Solicitors  
 77 King Street West  
 Suite 400  
 Toronto, Ontario  
 M5K 0A1

Attention: Mr. Joseph Debono  
Fax No.: (416) 863-4592

**11. NO REGISTRATION**

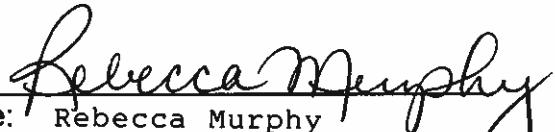
The Municipality covenants and agrees that under no circumstances may it permit or cause any notice of this Agreement or arrangement to be registered on title to the Property. In the event of any such registration, the Municipality shall immediately discharge such registration and shall indemnify and save harmless the Railway from all liability, costs and charges resulting from or contributed to by such registration.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement.

**THE CORPORATION OF THE TOWN OF  
GREATER NAPANEE**

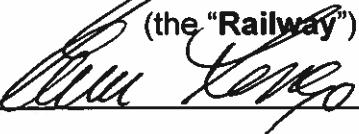
(the "Municipality")

By:   
Name: Gordon Schermerhorn  
Title: Mayor

By:   
Name: Rebecca Murphy  
Title: Dir. of Corporate & Legal Services/  
Clerk  
I/We have authority to bind the Corporation.

**CANADIAN NATIONAL RAILWAY  
COMPANY**

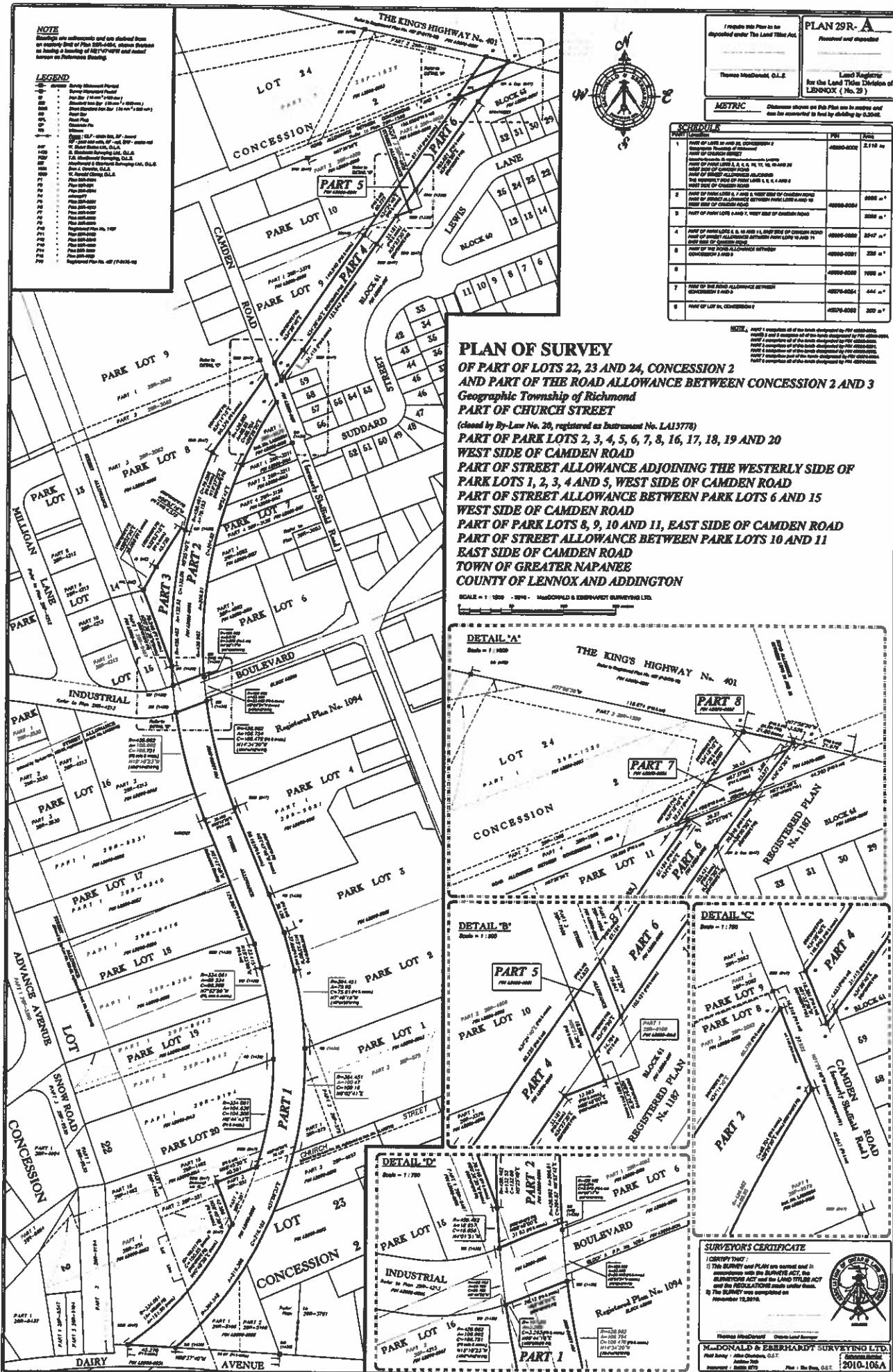
(the "Railway")

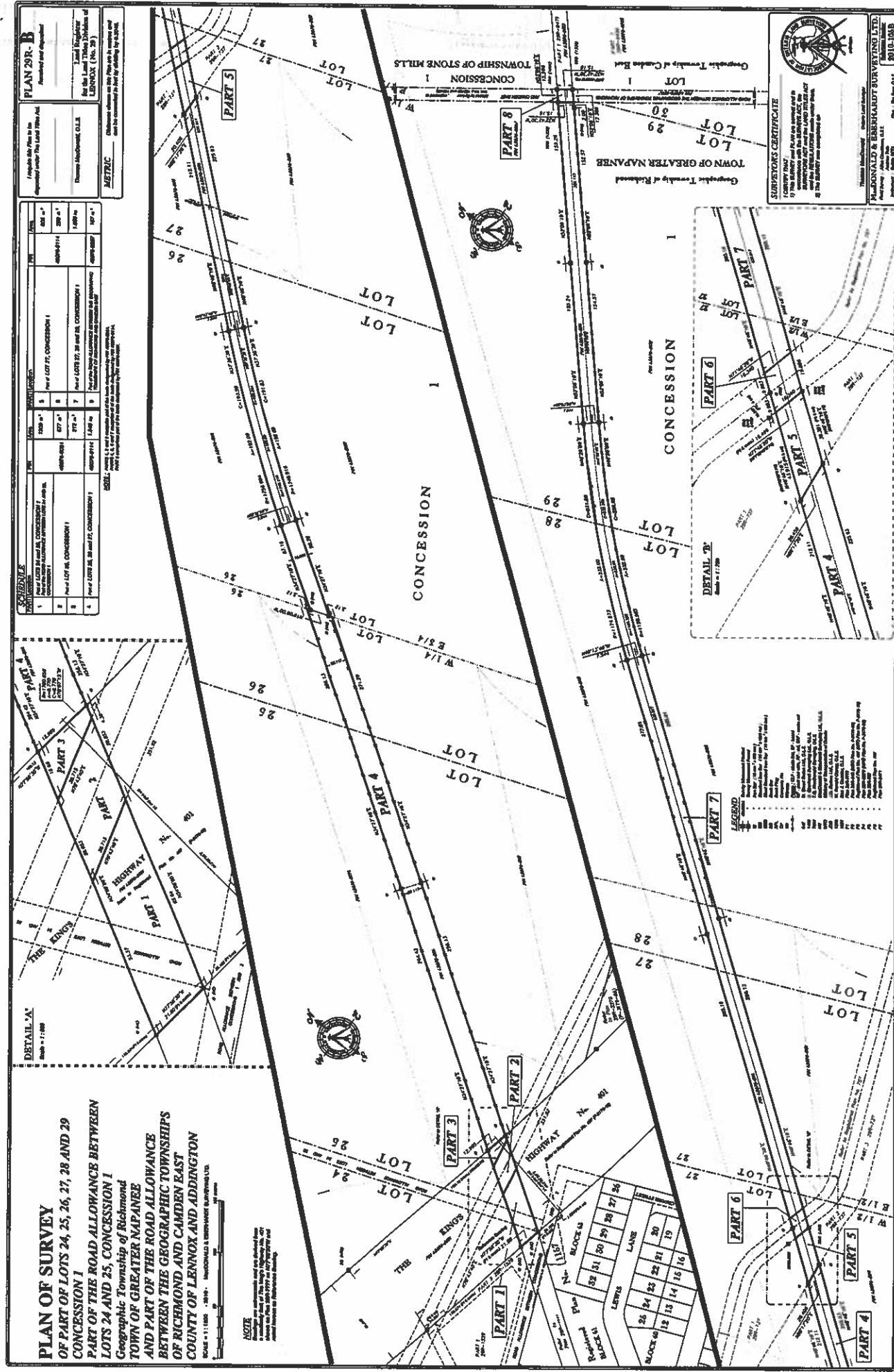
By:   
Name:  
Title: Ernie Longo  
Manager,  
Business Development  
& Real Estate  
By: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the Corporation.

## **SCHEDULE "A"**

The Property is in the Municipality of Greater Napanee, known as the Strathcona Industrial Spur, between mileage 0.31 and mileage 2.38, being Parts 1 – 8 on a draft plan of survey dated November 12, 2010 and labelled Plan 29R-A prepared by Thomas MacDonald, O.L.S. of MacDonald & Eberhardt Surveying Ltd and being Parts 1 – 8 on an undated draft plan of survey labelled Plan 29R-B prepared by Thomas MacDonald O.L.S. of MacDonald & Eberhardt Surveying Ltd.





## SCHEDULE "B"

### Permitted Encumbrances

1. Doc# 357165 (SAP# 3005221) between CN and Transcanada Pipelines Ltd dated May 8, 1985 for the purpose of a gas pipe crossing.
2. Doc# 472631 (SAP# 3017353 ) between CN and Hydro One Network dated September 1, 1989 for the purpose of an overhead wire crossing.
3. Doc# 478725 (SAP# 3019357 ) between CN and Town of Napanee dated May 1, 1991 for the purpose of sewage drainage occupation.
4. Doc# 487074 Unit 5000147 (SAP# 3022722 ) between CN and Ontario Power Generation dated October 1, 1976 for the purpose of wire crossing. (Copy not available)
5. Doc# 479445 (SAP# 3019614 ) between CN and Greater Napanee Water Supply dated May 1, 1991 for the purpose of a water pipe crossing.
6. Doc# 318967 (SAP# 3027264 ) between CN and Hydro One Network dated May 26, 1960 for the purpose of an overhead wire crossing.
7. Doc# 329261 (SAP# 3029062 ) between CN and Hydro One Network dated November 29, 1950 for the purpose of an overhead wire crossing.
8. Doc# 1025171 RR086003 (SAP# 303384227 ) between CN and Union Gas Ltd dated December 18, 1967 for the purpose of a gas pipe crossing.
9. Doc# 640631 Unit 10002838 (SAP# 3048127) between CN and Bell for the purpose of a gas pipe crossing.
10. Doc# 640631 Unit 10002708 (SAP# 3048127 ) between CN and Bell for the purpose of a gas pipe crossing.
11. Doc# 640631 Unit 10000039 (SAP# 3048127 ) between CN and Bell for the purpose of a gas pipe crossing.
12. Doc# 640631 Unit 10000625 (SAP# 3048127 ) between CN and Bell for the purpose of a gas pipe crossing.
13. SAP# 3063281 between CN and Utilities Kingston for the purpose of an underground fibre optic cable crossing.
14. All registered and unregistered easements, agreements or other encumbrances, save and except for any charge or mortgage securing a financing arrangement involving the Railway.