

STANDARD CROSSING AGREEMENT

THIS AGREEMENT effective as of the _____ day of _____, TWO THOUSAND AND SIX.

BETWEEN:

GREATER TORONTO TRANSIT AUTHORITY
(hereinafter called the "Owner")

- and -

CANADIAN NATIONAL RAILWAY COMPANY
(hereinafter called the "Railway")

-and-

THE CORPORATION OF THE TOWN OF MARKHAM
in the Region of York
and Province of Ontario
(hereinafter called the "Road Authority")

-and-

GREENSBOROUGH PHASE 1 LIMITED
(hereinafter called the "Developer")

WHEREAS the Owner is the owner of the railway corridor property at the location described below;

AND WHEREAS the Railway is the Federally Regulated Railway Company operating the Railway owned by the Owner at the location described below;

AND WHEREAS the Owner and the Railway have been duly notified of the Road Authority's and Developer's intent described below;

WHEREAS it is the Road Authority's and Developer's intent to construct a "highway", namely Castlemore Avenue, at grade across the right-of-way and track of the Owner at mileage 45.47, on the Uxbridge Subdivision (hereinafter the "crossing") in the Town of Markham, in the Province of Ontario, as shown on Plan No. 101, Project No. 606 20089, dated _____, (hereinafter the Plan - Appendix IV);

AND WHEREAS the Owner, is the senior party at this location;

AND WHEREAS the Town has forecasted the traffic levels to be minor;

AND WHEREAS the Owner has projected all day, two way train service of 40 trains per day in the corridor and double tracking of the corridor;

AND WHEREAS section 6.2 of the Region of York's Official Plan promotes the implementation of a Regional rapid transit network including all-day two-way service on this corridor;

AND WHEREAS the Road Authority and Developer supported the need for an at-grade crossing of the right of way and track of the Owner because they believed that a grade separation was not warranted;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the mutual covenants and agreements herein and subject to the terms and conditions set out in this Agreement, the parties agree as follows:

1. The Developer will carry out the work as shown on the Plan, and in accordance with the Owner and Railway's requirements respecting safe railway operations. Prior to the commencement of construction, the Developer or any agent acting on its behalf will sign the Owner's standard indemnity form as it pertains to the construction (Appendix III).
2. The parties are required to fulfill their respective obligations under the *Railway Safety Act*. For the purposes of the *Railway Safety Act*, the Developer is considered to be the "proposing party".
3. The physical work associated with the construction of the highway approaches to the crossing shall be the responsibility of the Developer at its sole cost. The physical work associated with the

maintenance of the highway approaches to the crossing shall be the responsibility of the Road Authority at its sole cost.

4. The physical work associated with the construction and maintenance of the crossing surface as defined in Appendix I shall be the responsibility of the Owner. The cost of constructing the crossing surface, including all rails, crossing ties and fittings shall be paid by the Developer. The cost of maintaining the crossing surface, including all rails, crossing ties and fittings shall be paid by the Road Authority. The Road Authority shall provide full road closures for the purpose of maintaining the crossing surface including the rails, crossing ties and fittings as and when required, upon receipt of reasonable notice from the Owner. All related costs shall be at the expense of the Road Authority.
5. All initial and on-going sight line clearing is to be in accordance with Transport Canada Crossing Regulations and RTD 10 (or any subsequent amendment thereof). Each party will be responsible for the physical work associated with the sight line clearing of their own property. The physical work associated with the sight line clearing of private property shall be the responsibility of the Road Authority. All costs associated with sight line clearing shall be paid by the Road Authority.
6. The requirement for a crossing warning system shall be as agreed to by the parties and in the manner as shown in Appendix II attached hereto and forms part hereof.
7. The Owner shall prepare all accounts using rates as stipulated in the latest "Guide to Railway Charges for Crossing Maintenance and Construction" issued by the Canadian Transportation Agency. In the event that the Canadian Transportation Agency should discontinue publishing same, the accounts shall be prepared in accordance with standard rates adopted by the railway industry in Canada, or in their absence, in accordance with standard rates adopted by the Owner. If there should be no standard rates in effect for work done by the Owner, the accounts shall be based on actual costs plus allowances for the Owner's overhead.
8. If at any time during the continuance of this Agreement any party wishes to widen, relocate, make more narrow or otherwise upgrade (the "reconstruction") the crossing, the terms associated with the reconstruction will be agreed to by the parties by means of a written agreement between them.
9. The parties agree that there is no benefit to the Owner and the Railway in the creation of this crossing. If at any time during the term of this agreement the Road Authority request to construct a future grade separation of this new public road crossing, the Road Authority shall pay 100% of any costs related to the construction and maintenance of this grade separation.
10. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, and all applicable Federal laws and regulations.
11. This Agreement is not assignable without the prior written consent of all parties which consent will not be unreasonably withheld. Notwithstanding the above, in the event of the transfer of its line for continued operations, the Owner will have the right to assign this Agreement to any subsequent owner.
12. Any notice or other communication with respect to this Agreement shall be effectively given if delivered or sent by registered letter, or facsimile addressed to:

Canadian National Railway
4 Welding Way
off 1 Administration Road
P.O. box 1000
Concord, Ontario L4K 1B9
Attn: John F. MacTaggart
Sr. Public Works Officer
Phone: 905-669-3155
Fax: 905-760-3406

Greater Toronto Transit Authority
20 Bay Street
Suite 600
Toronto, Ontario
M5J 2W3
Attn: Mr. Terry Cattani
Manager, Railway Corridors
Phone: 416-869-3600
Fax: 416-869-1469

The Town of Markham
Anthony Roman Centre
101 Town Centre Boulevard
Markham, Ontario
L3R 9W3
Attn: Mr. Alan Brown, C.E.T.
Director of Engineering
Phone: 905-477-7000 ext. 7507
Fax: 905-479-7773

13. This Agreement shall become effective on the date appearing on page 1 of this Agreement and shall continue until either the Owner discontinues its operations, or the Road Authority closes the Highway, at this location, or upon the written consent of all parties.
14. Upon termination of this Agreement, unless terminated by a crossing relocation or reconstruction, the terms of which are to be set out in a subsequent agreement, the Road Authority, shall be responsible for all future costs associated with the existence of the crossing, including the cost of

maintaining the crossing or dismantling the crossing and restoring the Owner and Road Authority property to its original or mutually agreed upon condition.

15. Notwithstanding the termination of this Agreement, unless terminated by a crossing relocation or reconstruction, the obligations of the Road Authority as to clause 14 set forth in this Agreement shall survive any such termination and shall remain in force until discharged.

16. Upon execution, the Railway may file this Agreement with the Canadian Transportation Agency.

17. The Owner shall have no responsibility or liability whatsoever for the design or adequacy of the work done pursuant to this agreement by the Developer notwithstanding that any plans or specifications may have been reviewed or approved by the Owner pursuant to this agreement. No such review or approval by the Owner of plans or specifications shall be deemed to limit the Developer's full responsibility for the design and adequacy of the works required to be done by the Developer by this Agreement.

18. Subject to clause 16, this Agreement is confidential and the Agreement or any of its terms and conditions shall not be disclosed to any other party, person or association except and to the extent as may be required by law or upon the prior written consent of all parties hereto.

19. If any party fails at any time to fulfill its obligations provided in the present Agreement, the other parties, at their option, may upon reasonable notice, undertake the necessary measures to ensure safety, at the risk and expense of the defaulting party.

20. Any dispute relating to the wording and interpretation of the clauses in this Agreement will be resolved in accordance with the Canadian Transportation Agency Dispute Resolution Process..

21. The preamble to this Agreement forms an integral part of the Agreement.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed by their respective representatives hereunto duly authorized, as they declare, as of the date first above written.

GREATER TORONTO TRANSIT AUTHORITY

G. McNeil, Managing Director & Chief Executive Officer

J.M. Norman, Secretary

(Date)

CANADIAN NATIONAL RAILWAY

General Manager – Eastern Canada

(Witness)

(Date)

THE CORPORATION OF THE TOWN OF MARKHAM

(Title)

(Witness)

(Date)

GREENSBOROUGH PHASE 1 LIMITED

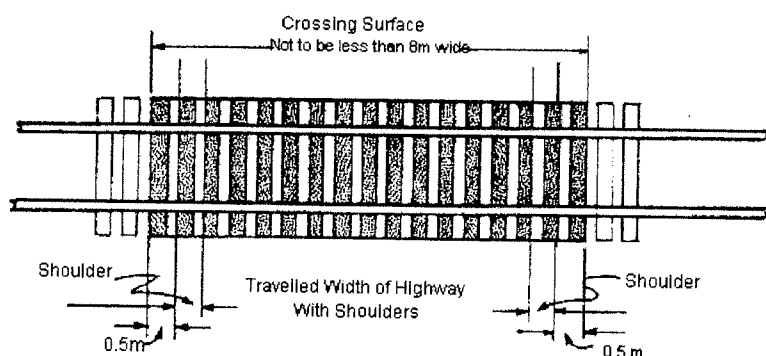
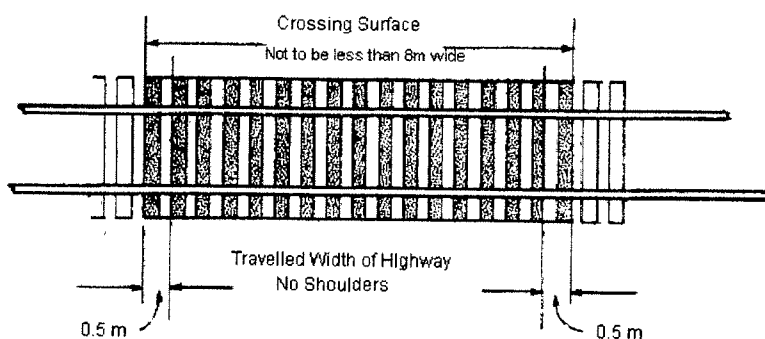
(Title)

(Witness)

(Date)

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Appendix I



"crossing" means any railway crossing of a highway at grade or any highway crossing of a railway at grade, but does not include highway or railway approaches to a crossing surface;

"crossing surface" means the planking, pavement or other suitable material placed between the rails and to the ends of the ties for the full width as illustrated above and specified below. Also included are the rails, crossing ties and fittings associated with the crossing;

Crossing surface requirements:

When a crossing other than a pedestrian crossing is constructed, the crossing surface shall be in accordance with the diagrams set out in Schedule 1 and shall have a width of:

- (a) 8.0 m
- or
- (b) the width of the highway and shoulders plus 0.5 m on each side of the highway and shoulders as measured at the approaches to the crossing, whichever is the greater.

Note: These distances shall be measured at right angles to the centre line of the highway.

APPENDIX II

STANDARD UNFUNDED NEW CROSSING WARNING SYSTEM AGREEMENT

THIS AGREEMENT effective as of the _____ day of _____, TWO THOUSAND AND SIX.

BETWEEN:

GREATER TORONTO TRANSIT AUTHORITY
(hereinafter called the "Owner")

- and -

CANADIAN NATIONAL RAILWAY COMPANY
(hereinafter called the "Railway")

-and-

THE CORPORATION OF THE TOWN OF MARKHAM
in the Region of York
and Province of Ontario
(hereinafter called the "Road Authority")

-and-

GREENSBOROUGH PHASE 1 LIMITED
(hereinafter called the "Developer")

WHEREAS the parties have agreed on the requirement for the installation of a crossing warning system, consisting of flashing lights, gates and bell (hereinafter the "crossing warning system"), at the grade crossing of Castlemore Avenue, at mileage 45.47 on the Uxbridge Subdivision, in the Town of Markham, in the Province of Ontario;

AND WHEREAS pursuant to section 12(1) of the *Railway Safety Act, R.S.C. 1985, c.32, 4th supplement*, the proposed railway work is not eligible for funding;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the mutual covenants and agreements herein and subject to the terms and conditions set out in this Agreement, the parties agree as follows:

1. The Owner will carry out the proposed railway work.
2. The total actual cost of the crossing warning system installation, based on detailed estimate No.UMA-TOR-E073-033-01, and attached hereto, shall be paid by the Developer.
3. The cost of maintaining the crossing warning system shall be paid 100% by the Road Authority.
4. The Owner shall prepare all accounts using rates as stipulated in the latest "Guide to Railway Charges for Crossing Maintenance and Construction" issued by the Canadian Transportation Agency. In the event that the Canadian Transportation Agency should discontinue publishing same, the accounts shall be prepared in accordance with standard rates adopted by the railway industry in Canada, or in their absence, in accordance with standard rates adopted by the Owner. If there should be no standard rates in effect for work done by the Owner, the accounts shall be based on actual costs plus allowances for the Owner's overhead.
5. If at any time during the continuance of this Agreement the parties agree on the requirement for modification to the crossing warning system, the terms associated with the modifications will be agreed to by the parties by means of a written agreement between them.
6. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and all applicable Federal laws and regulations.
7. This Agreement is not assignable without the prior written consent of all parties which consent will not be unreasonably withheld. Notwithstanding the above, in the event of the transfer of its line for continued operations, the Owner will have the right to assign this Agreement to any subsequent owner.

8. This Agreement shall become effective on the date appearing on page 1 of this Agreement and shall continue until either the Owner discontinues its operations, or the Road Authority closes the Highway, at this location, or upon the written consent of all parties.
9. Upon termination of the Agreement the Owner shall be responsible for dismantling the crossing warning system at the Road Authority's cost.
10. Any dispute relating to the wording and interpretation of the clauses in this Agreement will be resolved in accordance with the arbitration act of the Province of Ontario.
11. The preamble to this Agreement forms an integral part of the Agreement.

GREATER TORONTO TRANSIT AUTHORITY

G. McNeil, Managing Director & Chief Executive Officer

J.M. Norman, Secretary

(Date)

CANADIAN NATIONAL RAILWAY

General Manager – Eastern Canada

(Witness)

(Date)

THE CORPORATION OF THE TOWN OF MARKHAM

(Title)

(Witness)

(Date)

GREENSBOROUGH PHASE 1 LIMITED

(Title)

(Witness)

(Date)