

AGREEMENT OF SALE

THIS AGREEMENT OF SALE (the "AGREEMENT") made this \_\_\_\_\_ day of September, 2017, by CECIL COUNTY, MARYLAND, a body corporate and politic ("SELLER" or the "COUNTY"), and THE TOWN OF RISING SUN, body corporate and politic of the State of Maryland ("BUYER" or the "TOWN").

WITNESSETH in consideration of the mutual promises herein, it is mutually agreed by the parties hereto, who intend to be legally bound hereby, as follows:

Sale of Premises. SELLER agrees to sell and convey to BUYER, and BUYER agrees to purchase from SELLER all that tract or parcel of unimproved land in the Sixth Election District of Cecil County, State of Maryland, and more particularly described by the metes and bounds narrative as set forth on the attached Exhibit 1 and shown on that Soil Erosion and Sediment Control Plan dated May 8, 2006 which is attached as Exhibit 2, both of which documents are incorporated by reference as if more fully set forth herein.

TOGETHER WITH all the improvements thereon and all of the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging or in any way appertaining, and all the estate of the said party of the first part of, in, to or out of the said land and Property (all of which land, improvements and appurtenances are hereinafter referred to collectively as the "PREMISES").

Subject to easements, restrictions, and covenants of record, if any, and RESTRICTED solely to use by the Town of Rising Sun as part of the Town's Rails to Trails Program.

1. Purchase Price. The total consideration of purchase price for the PREMISES is One Dollar (\$1.00).

2. Conditions. The purchase is subject to:

2.1. Examination of Title: Upon execution of this AGREEMENT, a period of twenty (20) days shall be allowed the BUYER within which to ascertain the validity and marketability of the title of SELLER, and to report to SELLER in writing any valid objections thereto. Any exceptions to the title which would be disclosed by examination of the records shall be deemed to have been accepted by BUYER unless reported to the SELLER, in writing, within the aforementioned twenty (20) day period. If BUYER objects to any exceptions to the title or to any defects identified by the PREMISES inspections, SELLER may use all due diligence to remove such exceptions or to repair such property defects at their own expense within twenty (20) days thereafter or, if SELLER elects not to cure such exceptions and/or defects, or such exceptions and/or defects cannot be removed within the twenty (20) days allowed, all rights and obligations hereunder may, at the election of the BUYER terminate and end, unless it elects to purchase the PREMISES subject to such exceptions.

2.2. Condition of Title. Title to the PREMISES shall be good, marketable, fee simple, record title, free and clear of all liens, restrictions, easements, encumbrances, leases, tenancies, crop agreements and other title exceptions or objections, and shall be insurable as such at ordinary rates by any reputable title insurance company selected by BUYER. The PREMISES shall be in compliance with all county, state and federal laws and regulations that may be applicable thereto, and any liens, judgments, mortgages or claims against the PREMISES, shall be removed at or before the time of settlement and shall be satisfied from the SELLER'S settlement proceeds. All notices of violations and orders of requirements noted or issued by any governmental authority or any action in any court affecting the PREMISES at the date of closing shall be addressed in accordance with paragraph 2.1 of this AGREEMENT.

2.3. Approval by the Cecil County Council.

2.4. In accordance with 16 U.S.C. §1247(d)(Interim use of railroad rights-of-way), the Secretary of Transportation, the Chairman of the Surface Transportation Board, and the Secretary of the Interior, in administering the Railroad Revitalization and Regulatory Reform Act of 1976 [45 U.S.C. 801 et seq.], encourages State and local agencies and private interests to establish appropriate trails using the provisions of such programs; consistent with the purposes of that Act, and in furtherance of the national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use, in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with the aforementioned chapter, where, as here, such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes, and neither this Agreement or the underlying conveyance shall be deemed an abandonment or discontinuance inconsistent or disruptive of such future use as a railway. This clause will specifically survive this Agreement, and may not be deemed waived or relinquished by either party.

3. Time and Place of Settlement. Settlement hereunder shall take place at the office of BUYER'S attorney, on or before the 30<sup>th</sup> day of November, 2017, unless SELLER and BUYER mutually otherwise agree, in writing, and in case of such written agreement, otherwise at a date mutually agreed upon by SELLER and BUYER.

4. Settlement Costs. The BUYER will select title insurance, settlement, or escrow company, or employ its own title attorney. BUYER is to order the examination of title and preparation of all necessary conveyancing papers, and agrees to pay all costs on account thereof including settlement charges subject to any statutory restrictions, conveyancing, notary fees, tax certificate, survey where required, lender's fees and recording charges except those incident to clearing existing encumbrances.

5. Possession. The PREMISES will remain held at the risk of SELLER as to any cause or occurrence until settlement. The SELLER shall immediately have all of the insurance

policies on the PREMISES endorsed to protect all parties hereto, as their interests may appear, and shall continue the insurance in force until Settlement. BUYER may enter onto the PREMISES for the purpose of soil tests, engineering, surveying work and other related activities necessary to obtain the approvals required; however, prior to entering the PREMISES, BUYER shall produce evidence of liability insurance coverage acceptable to SELLER, and BUYER shall return the PREMISES to its original condition in the event this purchase is not completed. Possession of the PREMISES shall be given to BUYER at the time of settlement, by delivery of SELLER'S special warranty deed, in proper recordable form, duly executed and acknowledged by SELLER, together with all applicable affidavits and all evidence, satisfactory to BUYER, of the power and authority of SELLER to convey the PREMISES. The description in the deed shall, at BUYER'S option, be based upon that survey or plan obtained by BUYER, subject to review and approval thereof by SELLER, which approval shall not be unreasonably withheld, conditioned, or delayed.

6. Taxes - Apportionments.

6.1. Real estate taxes, if any, shall be the responsibility of the BUYER, on a per diem basis as of the date of settlement.

6.2. Agricultural Transfer Taxes, all documentary stamps, recordation taxes, and Maryland State transfer taxes imposed on or in connection with this transaction (if any) shall be the responsibility of the BUYER.

7. Representations and Warranties. The parties represent and warrant as follows:

7.1. SELLER is not a "foreign person" as defined in the Internal Revenue Code, as amended, Section 1445 (f) (3) and the regulation issued thereunder. SELLER shall deliver an affidavit to this effect at the settlement.

7.2. BUYER and SELLER have the power and authority to enter into this AGREEMENT and perform all obligations hereunder.

8. Property Included. The sale of the PREMISES includes all right, title, and interest, if any, of SELLER in and to any land lying in the bed of any street, road, highway, avenue or alley (opened or unopened, existing or proposed, now vacated or hereafter to be vacated) in front of or adjoining the PREMISES, to the center line thereof, and all right, title, and interest of SELLER in and to any award made or to be made in lieu thereof and in and to any unpaid award for damage to the PREMISES by reason of change of grade of any street, road, highway, avenue, or alley; and SELLER agrees to execute and deliver to BUYER, at settlement, or thereafter, on demand, all proper instruments for the conveyance of such title and the assignment and collection of any such award.

9. The PREMISES will be conveyed "AS-IS, WHERE-IS."

10. Miscellaneous

10.1. This instrument contains the entire AGREEMENT among the parties and supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein, and no modification shall be binding upon the party affected unless set forth in writing.

10.2. This AGREEMENT shall be binding upon and inure to the benefit of the parties herein, their respective heirs, spouses, guardians, personal representatives, successors and assigns.

10.3. This AGREEMENT shall be governed by the laws of the State of Maryland without regard to the principles of conflict of law. The parties irrevocably consent to the non-exclusive jurisdictions of the Courts of the State of Maryland.

10.4. In the event that one or more of the provisions of this AGREEMENT shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

10.5. *Waiver of Jury Trial.* The parties hereto waive their right to elect a jury trial in any dispute involving their rights under this AGREEMENT.

10.6. *Attorneys' Fees.* In the event of litigation by any of the parties to enforce the terms of this AGREEMENT, the prevailing party in the action shall be entitled to attorneys' fees, court costs witness fees and all expenses of suit.

10.7. *Obligation to Mitigate Damages.* Both parties to this AGREEMENT shall have the obligation to take reasonable steps to mitigate their damages caused by any default under this AGREEMENT.

10.8. Unless the context otherwise requires, whenever used in this AGREEMENT, the singular shall include the plural, the plural shall include the singular, and the masculine gender shall include the neuter and feminine gender, and vice-versa.

10.9. This AGREEMENT may be executed in counterparts, each of which shall be an original, but all of which shall together constitute one document.

10.10. Time shall be considered of the essence in this AGREEMENT.

10.11. Any notices required by this AGREEMENT shall be in writing and shall be deemed delivered if hand delivered or delivered by certified mail, postage prepaid, return receipt requested, first class mail, or by facsimile (immediately followed by hard copy by first class mail) as follows, unless such address is changed by written notice as provided hereunder:

If to SELLER: Alfred C. Wein, Jr.  
Director of Administration  
Cecil County, Maryland

200 Chesapeake Blvd., Suite 2100  
Elkton, Maryland 21921

With Copy To: Jason L. Allison, Esquire  
County Attorney  
Cecil County, Maryland  
200 Chesapeake Blvd., Suite 2100  
Elkton, Maryland 21921

If to BUYER: Calvin A. Bonenberger, Jr.  
Town Administrator  
Town of Rising Sun  
1 East Main Street  
Rising Sun, Maryland 21911

With Copy To: Jack A. Gullo, Jr., Esquire  
Town Attorney  
Town of Rising Sun  
105 Green Valley Road  
P.O. Box 299  
New Windsor, Maryland 21776

IN WITNESS WHEREOF, the parties hereto have duly executed this AGREEMENT the day and year first above written.

WITNESS:

SELLER: CECIL COUNTY, MARYLAND  
a body corporate and politic

\_\_\_\_\_

\_\_\_\_\_(SEAL)  
By: Alan J. McCarthy  
Title: County Executive

WITNESS:

BUYER: TOWN OF RISING SUN  
a body corporate and politic of  
the State of Maryland

\_\_\_\_\_

\_\_\_\_\_(SEAL)  
By: Travis Marion  
Title: Mayor

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, to wit:

I HEREBY CERTIFY, that on this \_\_\_\_ day of \_\_\_\_\_, 2017, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Alan J. McCarthy, County Executive, and duly authorized representative of Cecil County, Maryland, a body corporate and politic, the SELLER to the foregoing AGREEMENT, and acknowledged the same to be Cecil County, Maryland's act.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

STATE OF MARYLAND, COUNTY OF CECIL, to wit:

I HEREBY CERTIFY, that on this \_\_\_\_ day of \_\_\_\_\_, 2017, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Travis Marion, Mayor, and duly authorized representative of the Town of Rising Sun, a body corporate and politic of the State of Maryland, and acknowledged the same to be the Town of Rising Sun's act.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: