

**DONATION AGREEMENT OF PURCHASE AND SALE**

**BETWEEN:**

**ALBERT MARSHALL**

(the "Owner")

-and-

**THE CORPORATION OF HALDIMAND COUNTY**

(the "County")

**WHEREAS** the Owner is the registered owner of the lands legally described as:

PIN # 38224-0101(LT) PT IRONSIDE ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT QUEEN ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT GIVENS ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT MORAVIAN ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT CLAUS ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT BRITANNIA ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT DELAWARE ST TWP OF NORTH CAYUGA W OF GRAND RIVER CLOSED BY C123; PT BLK 1 N/S KING ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT BLK 2 N/S KING ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT BLK 3 N/S KING ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT BLK 2 N/S QUEEN ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT BLK 3 N/S QUEEN ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT BLK 4 N/S QUEEN ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT BLK 3 N/S MORAVIAN ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT BLK 4 N/S MORAVIAN ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT LT 2 E/S DELAWARE ST AND N/S TALBOT ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT LT 3 E/S DELAWARE ST AND N/S TALBOT ST TWP OF NORTH CAYUGA W OF GRAND RIVER PT 3 I8R5640; HALDIMAND COUNTY;

PIN # 38224-0103(LT) PT KING ST TWP OF NORTH CAYUGA W OF GRAND RIVER PT 2 I8R5640, S/T INTEREST OF THE MUNICIPALITY; HALDIMAND COUNTY

PIN # 38224-0105(LT) PT LT 2 E/S DELAWARE ST AND N/S TALBOT ST TWP OF NORTH CAYUGA W OF GRAND RIVER PT 5 I8R5640; S/T HC40122; HALDIMAND COUNTY;

PIN # 38224-0104(LT) PT RIVER ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT ONONDAGA ST TWP OF NORTH CAYUGA W OF GRAND RIVER PT 4 I8R5640, S/T INTEREST OF THE MUNICIPALITY; HALDIMAND COUNTY

and collectively referred to as (the "Owner's Lands");

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

**AND WHEREAS** the Owner wishes to donate a portion of the Lands to the County for the use of a public trail;

**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 and the County hereby agrees to the purchase and sale of those lands of the Owner's Lands as set out in

Schedule "A" (the "Lands");

- for a purchase price of **ONE DOLLAR (\$1.00)** (the “Purchase Price”).
3. The County will prepare and register at its own expense a reference plan for the Lands.  
  
Areas and calculations shown are approximate and the County shall prepare and register at its own expense a reference plan that accords substantially to the sketch attached hereto as Schedule “A”, which reference plan shall include area calculations of each part to be acquired. Area calculations shall be binding on the Owner and the County and the Purchase Price shall not increase or abate based upon any variation between the estimated area on Schedule A (if any) and as determined by the reference plan. The R-plan to be done by the County to define that part of part 3 on 18R5640 that they will be accepting/purchasing will also show, as a separate part, the remaining portion of part 3.
  4. The parties hereto agree that any and all improvements, trees or shrubs within the Lands are included in the Purchase Price.
  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. This offer shall be irrevocable by the County until 4:30 p.m. on October 12, 2017. This Agreement is subject to ratification by Council of Haldimand County (“County Council”). In the event that this Agreement is not ratified by County Council, this Agreement shall be null and void.
  7. The County agrees to provide the Owner with a charitable donation receipt for the land that incorporates the value of the Phase 1 and Phase 2 Environmental Studies into the “fair market value” of the gifting of the Lands to the County. The Lands will be valued at \$5,000 per acre and the value of the Phase 1 and Phase 2 Environmental Studies will be prorated at \$1,502.56 per acre.
  8. The County agrees to provide the Owner with a deposit in the amount of **ONE DOLLAR (\$1.00)**. 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.
  9. 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.
  10. 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.
  11. **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. The Owner may extend the closing of this transaction by giving

written notice to the County. The closing date shall not be extended beyond January 31, 2018 without the written consent of both parties.

12. **The County shall be allowed until the Closing Date to investigate the title to the Lands at its own expense.** If within that time any valid objection to title is made in writing to the Owner and which the Owner is unable to remove and which is not waived by the County, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be null and void and the deposit paid herein shall be returned to the County without interest or deduction.
13. 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.
14. 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.
15. 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, subject to all registered and unregistered utility easements.
16. 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;
  - (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 Seller's Closing, including an undertaking to re-adjust the statement of adjustments, if necessary, upon written demand;
  - (d) a Declaration of Possession;
  - (e) a Certificate of Incumbency, if the Owner is a corporation;
  - (f) a direction regarding the payment of funds;
  - (g) statement of adjustments, which shall be delivered at least two (2) business days prior to the Closing Date; and
  - (h) 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.
17. 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) Official Tax Receipt for Income Tax purposes, calculated in accordance with Section 7;
  - (d) an undertaking to re-adjust the statement of adjustments, if necessary, upon written demand; and
  - (e) H.S.T. Declaration, if applicable.

18. 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.
19. 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.
20. 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.
21. 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.
22. The County will reimburse the Owner for its reasonable legal costs incurred in connection with the County's acquisition of the Lands, to a maximum amount of Three Thousand Dollars (\$3,000), upon receipt of an itemized statement of account. Payment of the Owner's legal fees shall not be a condition of completing this transaction.
23. 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) 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) days after the request therefor. The Owner provided to the County a Phase 1 and a Phase 2 environmental study for the lands. The County accepts the Lands "as is" with regard to any environmental condition.
24. 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.
25. 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: Albert Marshall  
970 Hwy 54  
Cayuga ON  
N0A 1E0

Attention: albertmarshall100@yahoo.ca

On the County to: The Corporation of Haldimand County  
1-117 Forest Street East  
Dunnville, Ontario  
N1A 1B9

Attention: Manager, Support Services  
Facsimile: (905) 774-4294

26. 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.
27. 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.
28. 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.
29. 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.
30. This Agreement may be executed and delivered in any number of separate counterparts, each of which when executed and delivered is an original but all of which taken together constitutes one and the same instrument. Any party may deliver an executed copy of this Agreement by facsimile transmission.
31. 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.
32. Schedules "A" – "The Lands" attached hereto form an integral part of this Agreement. Schedule "B" shall form part of this Agreement.

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 signed this Agreement.

**(Witness Signature)**

**Name: Albert Marshall**

The undersigned spouse of the Owner hereby consents to the disposition evidenced herein pursuant to the provisions of the *Family Law Act*, R.S.O. 1990, c. F.3, as amended, and hereby agrees with the County that he/she will execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

**(Witness Signature)**

**Name:**Justyna Marshall  
(Spouse of Albert Marshall)

(Date)

**IN WITNESS WHEREOF** 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 authority to bind the Corporation.**

## **SCHEDULE “A” – THE LANDS**

Part of PIN # 38224-0101(LT) PT IRONSIDE ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT QUEEN ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT GIVENS ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT MORAVIAN ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT CLAUS ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT BRITANNIA ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT DELAWARE ST TWP OF NORTH CAYUGA W OF GRAND RIVER CLOSED BY C123; PT BLK 1 N/S KING ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT BLK 2 N/S KING ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT BLK 3 N/S KING ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT BLK 2 N/S QUEEN ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT BLK 3 N/S QUEEN ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT BLK 4 N/S QUEEN ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT BLK 3 N/S MORAVIAN ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT BLK 4 N/S MORAVIAN ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT LT 2 E/S DELAWARE ST AND N/S TALBOT ST TWP OF NORTH CAYUGA W OF GRAND RIVER; PT LT 3 E/S DELAWARE ST AND N/S TALBOT ST TWP OF NORTH CAYUGA W OF GRAND RIVER PT 3 18R5640; HALDIMAND COUNTY;

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### **Detail**

Part 5 to be transferred to the County

Parts 3 – Part of this part will be retained by the Owner leaving him with approximately 1.5 acres of part 3 as shown on the sketch below. The remainder of Part 3 is to be transferred to the County.

Part 2 –The Owner is the registered title holder for this part, however it is subject to the interests of the County. In order to clear this up and to provide the County with access from Part 3 to King George Street for the trail, part of part 2 as shown on the sketch will be transferred to the County. The remainder of Part 2 will be transferred to the Owner to provide adequate lot road access to that part of Part 3 Owner is retaining, as Owner has lost his road access to part 3 by making this donation.

Part 4 – To be transferred to the County. Owner has forgone his request for an easement over Part 4 on the representation of the County, such representation to survive closing, that Part 4 will remain as unopened road allowance or open road allowance in the future and shall not be closed by bylaw.

As shown on the sketch

**SCHEDULE “A” cont’d**



## **SCHEDULE “B”**

### **Background**

In 2010 Albert Marshall first contacted CN rail with the goal of having the bridge and rails lands at the Cayuga Court House converted to public use for a trail. CN would not agree to donate the lands and bridge to Haldimand County . As such, Albert Marshall agreed to buy the bridge from CN. Mr. Marshall held it under contract for the purpose of ensuring that it was not purchased by a scrap metal company and demolished. In 2016 the County agreed to take the bridge on for a trail. Albert Marshall worked with CN and the County releasing his contract to allow the bridge and lands east of the river to be purchased by the County, from CN, for a trail. Albert Marshall purchased the lands west of the river in 2016 in order to ensure that the trail over the rail bridge would have public access on both sides of the Grand River. Albert Marshall and his wife Justyna are donating these lands on the west side of the river for trail purposes.