

Donald Standard Chemical Building
Agreement and Memorandum of Understanding

Between the parties:

Jim O'Connor, 882025 Ontario Inc.
5088 County Road 21, Haliburton, ON, K0M 1S0

And

The Land Between
National Charity # 805849916RR0001
Box 1368, Haliburton, ON, K0M 1S0

Agreement and Understanding

This agreement and memorandum of understanding is made between the parties in order to:

- a. Continue the efforts to restore and repurpose a heritage building for the public's benefit and for its conservation value. Moreover this agreement is made in order to
- b. Renew the expired Memorandum of Understanding between the parties, and which will
- c. facilitate public trust in order to access government and foundation funding, grants and donations, and moreover to,
- d. Duly honor the promises and agreements made to the public sector and to duly honor the monetary investments and donations towards the building from the public purse, private entities, and parties herein, and which promises, agreements, donations and investments includes:
 - I. Memorandum of Understanding Sept 2010 to the municipality of Dysart et al to secure the building within 2 years, to gut the interior, to repurpose the building for public benefit, or have the building demolished if not secured and/or restored within 10 years. Noted in municipal meeting minutes.
 - II. Promise to the residents of the village of Donald during rounds and in public meetings to repurpose the building for public benefit with low level and quiet. Documented in municipal public meeting minutes and newspaper archives.
 - III. Letters of support from Canadian Industrial Heritage Centre, Architectural Conservancy of Ontario, Haliburton Highlands Outdoors Association, Dysart et al, and The Land Between
 - IV. Agreement with the municipality of Dysart et al, embodied in bylaw for restricted use for storage units only and marketing centre only, under commercial exception zoning.
 - V. Donation and agreement with Architectural Conservancy of Ontario for historical and architectural evaluations, communications, and administration of project. Recorded in newsletters and email and by Ontario Government.

- VI. Investment and Legal Agreement for market study and business plan, restoration and repurposing to benefit the public sector with the Ontario Trillium Foundation of the Ontario Government.
- VII. Investment and Legal Agreement with the Haliburton County Development Corporation for the repurposing and restoration of the building to support economic development and specifically the construction sector. Agreement based on business plan for GreenStep/Eco-Innovation Centre.
- VIII. Donation by Highlands East
- IX. Donated investment by local groups of Haliburton Secondary School, Ontario Stewardship Rangers, local contractors and including Mr. O'Connor towards securing and preparing the site for restoration. Investment is recorded in reporting to Ontario Government.
- X. Investment and donation by Mr. O'Connor in repurchasing the site, in purchasing chattels and trees for the property, in payment for historical evaluation consulting fees, and in donation of services to secure, improve and prepare property.
- XI. Investment and Agreement in minutes by The Land Between collaborative and then in 2015 by The Land Between charity in rezoning the site, in conducting outreach and business planning, in providing grant writing, and project supervision and oversight; in providing annual payments to Mr. O'Connor to offset taxes; and in promising that Mr. O'Connor would be assigned the role as project manager where appropriate within awarded grants and be compensated appropriately for that role.
- XII. Donation by Construction Control Inc. of site assessments valued at over \$10,000.00
- XIII. Donation by York University and Sir Sandford Fleming College in conducting research and creating a toolkit of resources for the project related to alternative and better building. Donation is recorded by Ontario Government.

Site History

- a. The Donald Standard Chemical Distribution building is the only intact remaining footprint of the Chemical Plant, built in 1908 and commissioned by Richard A. Donald to produce wood coke. The building was sold to the Standard Chemical company, proponent A. Peuchen, a titanic survivor, in 1913 for a sum of \$1.00 when the Wood Chemical Company went bankrupt due to a thriving iron industry. The Standard Chemical Company used the factory to produce wood alcohol.
- b. In its heyday the Chemical plant was the largest iron coke producer in North America. The factory and distribution building are unique in their construction using post and beam frameworks, reinforced rebar with concrete and without welding. The factory is known as an engineering marvel and was the first structure in North America to have a concrete water tower and first to use chain roof reinforcements.
- c. The Chemical Distribution building is one of only 4 reinforced industrial buildings from its era in central Ontario. The cultural and economic impact of the building, its structural design, and architecture contribute to its remarkable heritage and significance in North America.
- d. The Standard Chemical company ceased production and sold the building in the late 1940s when petroleum based products took over the market. Since that time the distribution building and

factory was divided, and the distribution building was owned by YMCA camp wanikita, and then sold to a tire factory, which was then sold to Mr. Jim O'Connor in 198_

Preamble

- a. Mr. O'Connor bought the building and the grounds of 4 acres for approximately \$55,0000 with the intention of using the property for commercial purposes, however there were significant questions that were brought to light after his purchase regarding the site's environmental quality which held up any use of the building. Mr. O'Connor spent valuable time and money to rectify this situation finally clearing the environmental issues and concerns and providing an OMOECC bill of health. At this time Dysart et al rezoned the property from industrial to residential preventing once again any active use of the building. Mr. O'Connor attempted to have the property rezoned back to industrial and/or commercial uses, however, without success. From which point on Mr. O'Connor stopped paying taxes on the property.
- b. The property was taken by the municipality for tax sale in 2009, with an outstanding sum of more than \$7000 owing.
- c. The property at this point had deteriorated to such a degree to have portions of the roof open to the elements and generally unsealed, and which resulted in significant spalling and deterioration to the building superstructure. The building was generally considered as a liability by the municipality given the likelihood of its demolishing under new ownership, and which detracted from the value of the overall property.
- d. In 2009 Leora Berman, Manager of The Land Between collaborative, now the Land between charity, and members of the Dysart et al Municipal Council approached Mr. O'Connor to re-purchase the property for only the outstanding tax. Ms. Berman forwarded a proposal to repurpose the building for public good and public use, where Mr. O'Connor would buy back the property and Ms. Berman would move to rezone the property. Mr. O'Connor agreed. It was agreed that Mr. O'Connor would re-purchase the property and building, and would donate the building itself to a nonprofit collaborative and failing that to the Architectural Conservancy of Ontario, and that Mr. O'Connor would receive due benefit from the repurchase of the site by personally keeping and using the grounds for a private business of storage units which he would rent and retain earnings from. An MOU outlining these purposes was drafted and signed (Schedule A).

List and Appraisal of Documented Testified Contributions

Since the original purchase of the grounds and building under this effort in 2010 the following actions and contributions have been provided to be accrued according to each party of The Land Between charity/public good or Mr. O'Connor, and which benefits have been documented in testimonies and which duly affect respective valuations in favour of each party accordingly:

For Mr. Jim O'Connor

Action	Value	Date/Timeline	Notes
Purchase of property	\$8000.00 cash	2010	Negotiated price below taxes owing by Ms. Berman

Planting and purchase of tree screening	\$7000.00 cash and cash equivalent	2011	Support by stewardship rangers
Support for historical evaluation	\$4000.00 cash		
Installation of sunroof area	\$15000.00 cash equivalent	2011	Donation of services and goods
Partial levelling of lot	\$2000.00 cash equivalent	2012 and 2016	Complementary donated support to this end by local contractors
Interior cleaning and maintenance (beams, pest removal, window screenings and window maintenance)	\$4000.00 cash equivalent	2013-16	Students from local high school, local contractors, and Jim O'Connor team
Securing walls and installing doors	\$4,000.00 cash equivalent	2012-2016	Donated by Jim O'Connor
Restoring beams and installation of garage doors	\$4000.00 cash equivalent	2016-17	Donated by Jim O'Connor
Ground maintenance/cutting lawn and clean up	Annual at \$600.00 in-kind donation		

For the public trust/The Land Between charity (noted on public records)

Municipal negotiations and successful rezoning of the property	\$18000.00 cash equivalent	2010-11	
MOU set up and funding securement	\$4000.00 in-kind donation	2011	Securement of \$62,000.00 in year 1 and 2
Historical evaluations	\$4000.00 in-kind donation		Lead by Architectural Conservancy of Ontario
Administration of grants	\$5000.00 cash	2010-2013	Haliburton Highlands Outdoors Association and ACO
Market study for appropriate re-use, outreach, partnership development	\$20000.00 in-kind donation	2011-2013	Market study and business plan attached; municipal and public presentations attached; report to Ontario Trillium Foundation

Engineering evaluation	\$10000.00 cash \$20000.00 donated services		Secured by Ms. Berman, donation by Construction Control
Gutting and cleaning interior	\$16000.00 cash equivalent		Students of HHSS
Planting buffer/screen	\$2000.00 in-kind donation		Stewardship rangers
Roof prep and purging	\$2800.00 cash		Bruce Harris led and concrete mix from local donations (realty, Emmerson lumber etc.)
Restoring roof and covering	\$52000.00 cash		OTF grant
Signage and website design	\$4000.00 in-kind donation		HCDC grant and TLB donation
Site render	\$5,000 in kind		Robert VanNood
Site Clean up	\$5000 50% cash and 50% in-kind		Don Koppin Contracting
Online resource guide and promotions	\$6000.00 in-kind donation		York and SSFC students and HCDC grant
Leveling of grounds	\$4000.00 cash equivalent		Local landscaping
Pre-purchase of concrete mix	\$5000.00 cash		HCDC grant
Tax payments	\$2000.00 cash annually sum to date of \$10,000 cash		Paid for by TLB to Mr. O'Connor

Agreement

Now therefore the parties wish to honor all agreements, contributions and the public trust and to continue with the restoration of the building.

- 1. Accrued benefits:**
 - a. Now therefore, it is agreed that Mr. O'Connor retains the rights to use the grounds and build storage units which will value and benefits will accrue in his interest.
 - b. Now therefore it is agreed that Mr. O'Connor will retain the right to use the building for storage and any other non-industrial non-commercial use that adheres to the zoning and which use will accrue in his interest, until such time as the public interest use is actively employing the building or until the building is restored (and whereby it will be donated to or easement placed on it for the public trust, unless it is sold as in section 4.).
- 2. Carrying costs**

- a. Now therefore it is agreed that at no time will Mr. O'Connor be legally allowed to apply any rental or occupancy fees for the building payable by the public trust/charity
- b. Now therefore, it is agreed that The Land Between charity will provide annual payments to Mr. O'Connor to offset costs for taxes until such time as the building ownership is transferred.

3. Pursuance of resources and goals

- a. Now therefore it is agreed that The Land Between charity is leading the project development and will continue to pursue public funding towards the building's restoration, preservation, and repurpose.

Now therefore, it is understood that the following scenarios are probable and likely in pursuing the restoration and public use of the building, and which will entail provisions for each party in the following limits and manners:

4. Scenario A. IN the event that funding is secured and/or steps are taken to improve the building

a. Building donation or sale:

- i. The building will be donated to the Architectural Conservancy of Ontario (ACO) or another viable registered Canadian charity and the charitable receipt will reflect the value of the building at the time of the donation minus the investment of the public trust;
- ii. The building will be sold to The Land Between and/or the ACO or another registered Canadian charity, and the purchase price will reflect the value of the building at the time of the sale minus the accrued public investment, and therefore for the sum of the noted difference between Mr. O'Connor's investment and that of the public trust.
- iii. Should Mr. O'Connor wish to sell or donate the lot and including any provisions such as storage units to the charity, fair market value aside from the building will be applied.

b. Building retention: If the building is kept by Mr. O'Connor this agreement will be extended indefinitely, and,

- i. Mr. O'Connor will continue to be paid by the charity/public trust for any applicable taxes for the building parcel only
- ii. Mr. O'Connor will retain necessary insurance for the building parcel and grounds and the charity/public trust will continue to pay for insurance related to the building parcel and use only and in addition to the taxes applied to the building only;
- iii. Mr. O'Connor may apply a rental fee for the parking area at a reasonable market rate respective of the county and which will not exceed the value of basic taxes annually.
- iv. Mr. O'Connor will donate the use of the building outright to the public trust and will not apply any rental fees or dues other than as specified in s. iii.
- v. Mr. O'Connor and the public trust will be mutually responsible for securing the site and maintaining access to the building and lot
- vi. The public trust will be responsible for upkeep of the building entirely

vii. A private/public partnership with both interests represented in an agreed upon and continual operation

5. In either case, in the case of funding securement and restoration, it is agreed that:

- a. Mr. O'Connor will be retained and paid for his services as project manager and for any construction services or supervisor of labour at a fair rate and according to allowable limits within grantors' provisions, or,
- b. Mr. O'Connor will donate the services and receiving fair market value receipts for those services
- c. It is agreed that Mr. O'Connor and his businesses will be promoted and recognized in outreach materials and communications for his generosity and contributions as a project sponsor.

6. Scenario B. Unsuccessful restoration.

- a. In the event of an unsuccessful restoration by which the building cannot be secured and repurposed due to lack of funding or lack of stability (deterioration) and which feasibility is only deemed as unsuccessful after 5 years without improvements or noted milestones towards improvements and which is further only applicable before the complete restoration of the building, and which scenario is not viable after such restoration has occurred:
- b. The investment of the public trust will begin to diminish annually from that date and at a rate of 10% of the total value annually
- c. The property value will accrue overall in favour of Mr. O'Connor at the same rate

7. In either case, building sale:

- a. In the event of the building being retained by Mr. O'Connor and not donated, and the consequent sale of the building and property by Mr. O'Connor, Mr. O'Connor will
 - i. Provide to the Land Between/the public trust, the value of any cash and cash equivalent (donated labour and materials) and including the value of the rezoning of the property to accommodate storage units, through the sale of the property.
 - ii. IN the event that the building is not restored, as specified in section A. the value of the cash and cash equivalents will be reduced at an annual rate of 10% of the total contribution, and if sold in the interim will honor the public purse.

8. Nuisance/Deliberate interference and tampering

- a. At no time can either party intentionally or unintentionally jeopardize the operations, momentum and success of each other, to restrict any movement forward, to dishonor legal agreements and timelines of activities or the successful achievement of milestones as outlined in funding agreements, or to inhibit successful business operations of the storage units.
- b. At no time can either party intentionally or unintentionally stall or forgo a fair offer of sale to reduce the compensation of investments by the public purse.

9. Inability to pay

- a. In the event that either party is unable to and/or ceases to pay carrying costs that are in effect of taxes, insurance and/or parking rental fees, the party will notify the other immediately and will arrange for a meeting of parties to decipher next steps and options
- b. IN the even that either party is unable to pay carrying costs that are in effect of taxes, insurance, and/or parking rental fees, the absence of any fees in effect, will be immediately subtracted from the total accrual of benefits by each party.

10. Property value and appraisals

- a. In the event of a sale of the property (land and building) the sale value will be used as the appraisal of the property's value
- b. In the event of a donation of property (building), the value of the building alone will be appraised by an real property heritage expert assigned by the receiving body of the Architectural Conservancy of Ontario and the public trust value as specified in s. will be subtracted from the sum
- c. In the event of a donation of land and building, the entire parcel value will be fairly appraised by both the ACO and a second market/business appraiser and the public trust value as specified in s. will be subtracted from the sum

11. Indemnity

- a. Each party at all times indemnifies and save harmless the other party from and against all actions, damages, claims, demand and loss, including legal expenses incurred as a result of any claim, demand or action, by whomsoever made, brought or instituted, arising out of or in any way related to this Agreement or the Products and Services or any act or omission negligent or otherwise of either party, its agents, employees, representatives or subcontractors. The parties agree at all times with respect to the performance of the work and services under this Agreement to comply with all applicable laws, bylaws and regulations whether municipal, provincial, federal or otherwise.
- b. Each party hereby agrees to indemnify the other against all claims, charges, taxes, penalties or demands, which may be made by the Minister of National Revenue or any other governmental authority with respect to income tax, Canada Pension Plan contributions, employment insurance levy, employee or employer Health Tax, or any other statutory remittances that may be found otherwise payable by either party or withheld on the account of either party.
- c. Each party shall have knowledge of, and abide by, the provisions of all legislative enactments, by-laws and regulations in regard to health and safety in the province of Ontario. Without limiting the generality of the foregoing, each party shall specifically ensure that she is knowledgeable of and performs all obligations imposed by the Occupational Health and Safety Act of Ontario.

12. Assignment and Endurement

This Agreement may be assigned in whole and by providing notice, to another party, in which event all covenants and obligations of each party shall endure and so as to ensure to the benefit of each party.

13. Liability

- a. Each party shall not be liable to the other for any loss or damage occasioned by either party to others in respect of any other contracts or actions in which the party is engaged.
- b. Either party shall not be responsible or otherwise liable to the other for any injury, loss, direct or indirect, general, special, consequential, punitive or exemplary damages resulting from, arising out of and/or in connection with restoration or construction or occupancy at the site and/or damage to neighbouring properties. Each party employs activities as desired upon his/her own volition and assumes the related responsibility and liability.

14. Nature of Relationship

The parties acknowledge and agree as follows:

- (a) the relationship of the one to the other is that of independent agent;
- (b) neither party is an employee of the other; and
- (c) nothing herein shall be construed so as:
 - (i) to make either party an employee of the other; or
 - (ii) to impose any liability as employer or employee as the case may be.

15. Severability

- viii. If in any legal proceedings it is determined that any section or subsection of this Agreement is invalid or unenforceable, it will be deemed to be severed from the remainder of this Agreement for the purpose only of the particular proceeding. This Agreement will, in every other respect, continue in full force and effect.
- ix. The invalidity or unenforceability of any provision or part of any provision of this Agreement shall not affect the validity or enforceability of any other provision or part of any provision hereof.

16. Entire Agreement and Amendment

- a. Subject to Subsection 10.1, this Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and there are no other agreements, understandings, representations or warranties, either collateral, oral or otherwise.
- b. This Agreement may not be amended except by a memorandum in writing signed by all the parties.

17. Time of Essence

Time shall be deemed to be material and of the essence of the Agreement.

18. Headings

The parties hereto agree that the headings in this Agreement form no part of this Agreement but shall be deemed to be inserted for the convenience of reference only.

19. Waiver of Terms

No provision of this Agreement shall be deemed waived, amended or modified by either party unless such waiver, amendment or modification is in writing and is signed

by the party against whom it is sought to enforce the waiver, amendment or modification. The failure of either party to insist in one or more instances upon the performance by the other party of any provisions of this Agreement shall not be construed as a waiver of the further performance of any such provision and the obligations of the other party with respect to such future performance shall continue in full force and effect.

20. Force Majeure

- a. Should a sale of the property occur without notification of the public trust, the public trust will pursue ends to have the public investment returned
- b. Should the public trust detract from the value of any unrecognized, unpaid or un-receipted contributions by Jim O'Connor, Jim O'Connor will retain the right to pursue compensation for these investments.
- c. This agreement in all provisions will remain in force from this day until such time as the building parcel changes ownership by way of easement or title.

21. Notice

Any notice given pursuant to this Agreement shall be in writing and shall be forwarded in the manner prescribed herein to the respective party at the address designated as follows or at such revised address as such party may, from time to time, designate by notice in writing by writing to the party's address as noted within the agreement.