

## DONATION AGREEMENT

This Donation Agreement is entered into this \_\_\_ day of \_\_\_\_\_, 2023 between **17 HALL WOODS ROAD, LLC**, a New York limited liability company with an address of 17 Hall Woods Road, Dryden, NY 13053 (the “Donor”), and **Town of Dryden**, a New York municipality with offices located at 93 East Main Street, Dryden, New York 13053 (the “Donee”).

### RECITALS

This Donation Agreement is made and entered into on the basis of the following facts and understandings of the parties hereto.

Donor is the owner of real property located at and known by the address of 17 Hall Woods Road, Town of Dryden, County of Tompkins, State of New York, Tax Map No. 52.00-01-4.32 (the “Property”).

Donee is presently engaged in the planning and design, and Donee intends to undertake the construction, of a rail trail, including a bridge over New York State Route 13 (the “Trail & Bridge Construction Project”). Donor, as a community minded organization, has collaboratively worked with Donee in identifying portions of the Property potentially suitable for incorporation into the Trail & Bridge Construction Project.

Donee has applied to receive federal funding for the Trail & Bridge Construction Project that requires compliance with eminent domain acquisition procedures.

Donor desires to donate a portion of the Property, as described in **Exhibit A** (the "Donation Parcel"), to Donee, to facilitate and incorporate into the Trail & Bridge Construction Project. Donor is doing so with full knowledge of Donor's rights to receive just compensation for the Donation Parcel, along with Donor's receipt of an appraisal of the Donation Parcel's value, and Donor has by signing this Donation Agreement affirmatively waived its rights to the receive such just compensation.

Donee agrees to accept the donation of the Donation Parcel in accordance with the terms of this Donation Agreement to benefit the project known as the Dryden Rail Trail.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties intending to be legally bound by the terms of this Donation Agreement, and for the purposes herein set forth, do hereby declare and agree as follows:

### SECTION 1: Donation

- A. The Donor's donation of the Donation Parcel shall include all of Donor's right, title and interest in and to the Donation Parcel, and Donee's acceptance of the Donation Parcel shall include Donee's acceptance of all responsibility for ongoing maintenance and repair of the Donation Parcel and all existing and future improvements located thereon, therein and

thereunder, including, but not limited to, all existing and future trail surfaces, recreational facilities, and water and sewer lines.

- B. Donor makes no representations and warranties whatsoever regarding the Donation Parcel, and Donee shall accept the Donation Parcel and any improvements located thereon, therein and thereunder, including, but not limited to, all water and sewer lines, without any representations or warranties whatsoever, “as is, where is” and “with any and all faults.”
- C. Donor and Donee have each been given a full and complete opportunity to conduct their own investigation as to any matter, fact or issue that might influence the respective parties’ decisions regarding Donor's donation of the Donation Parcel.
- D. Donor acknowledges that Donor could have obtained an appraisal of, and could have required compensation for the Donation Parcel, and Donor has determined not to obtain an appraisal and not to require compensation because Donor desires to donate the Donation Parcel to Donee with no receipt of compensation of any kind.
- E. Either Donor or Donee may unilaterally terminate this Donation Agreement at any time prior to closing (closing defined as the time when and place in which Donor will transfer the Donation Parcel via deed to the Donee). Neither party is obligated to provide a reason for the unilateral termination. In the event of termination of this Donation Agreement, neither party shall have any further obligation under this Donation Agreement. Once the donation is completed at said closing, this Agreement and all terms, conditions and provisions hereof shall be deemed to have been satisfied in full, and neither party hereto shall have any further obligations to the other under this Agreement.
- F. Intentionally omitted.
- G. Donor shall grant access to the Donation Parcel for any inspections Donee deems it necessary to undertake upon signature of this Donation Agreement. Donee shall restore the Donation Parcel to its condition existing immediately prior to Donee's inspection. Donee shall be liable for any damage or injury to any person or property resulting from, relating to or arising out of any such access, inspection or investigation, and Donee shall indemnify, defend and hold harmless Donor and its agents, employees, representatives, officers, directors, partners and members from any and all liability, loss, expense (including without limitation, reasonable attorneys’ fees), claim or damage resulting from, relating to or arising out of any such access, inspection or investigation.
- H. Donor agrees to provide all information and documentation as may be reasonably requested by the Donee and/or Donee’s attorney, including but not limited to a title abstract and Town and County tax search, along with paid invoices for current real property taxes.

## **SECTION 1A: Obligations**

- A. Closing Costs. Donee shall pay all costs associated with the transfer of the Donation Parcel, including but not limited to attorney fees to review and edit this Donation Agreement, to draft the quit-claim deed and transfer documents, abstracting fees, agents' fees (if any) and recording costs (the "Closing Costs").
- B. Post Closing Requirements. Donee, at Donee's expense, will as part of the Trail & Bridge Construction Project, DOT PIN 3950.71, include in the design and construction the installation of shut-off valves and related infrastructure for water and sewer lines on the remainder of the Property retained by Donor, as reasonably agreed to by Donee. Such work shall be done in coordination with Donor's representative to minimize disruption to Donor's operations to the extent reasonably possible.
- C. Transfer. Donor agrees to donate the Donation Parcel to Donee, and Donee agrees to accept the Donation Parcel from Donor on the terms and conditions set forth herein. In consideration of Donor's transfer of the Donation Parcel to Donee, Donee shall perform all of Donee's obligations hereunder including but not limited to the release and indemnity set forth in Sections 3 and 4 of this Donation Agreement.
- D. Title. Title shall transfer on the Closing Date, as defined in Section 2 of this Donation Agreement, via Quit Claim Deed and ancillary transfer documents to be prepared by Donor's attorneys. Risk of loss shall remain with the Donor until the Closing.
- E. Further Assurances. Donee and Donor agree to execute all instruments and documents and to take all actions reasonably necessary and appropriate to consummate the transfer and donation of the Donation Parcel and shall use their best efforts to close in a timely manner.

## **SECTION 2: Closing**

- A. This transaction shall be closed and the deed delivered on or about the later of July 21, 2023 or the date upon which final project approval is received from all applicable federal and state authorities with jurisdiction over the Trail & Bridge Construction Project (the "Closing Date") or such other date as agreed by the mutual consent of both parties.

## **SECTION 3: Acknowledgments, Release and Indemnity.**

Donee acknowledges that it is accepting the Donation Parcel solely in reliance on Donee's own investigation, and the Donation Parcel is in "as is, where is" condition with all faults and defects, latent or otherwise. Donee expressly acknowledges that, in consideration of the agreement of Donor herein, and except as otherwise specified herein, Donor makes and has made no representations or warranties, express or implied, or arising by operation of law, including, but not limited to, any warranty as to condition, merchantability or fitness for a particular use or purpose, with respect to the Donation Parcel or any matter related thereto, or (without limitation) to any of the following matters:

- A. Soils, etc. Soils, seismic, hydrological, geological and topographical conditions and configurations.
- B. Artifacts. Archeological, prehistoric and historic artifacts, remains and relics.
- C. Endangered Species. Endangered plant, animal and insect species.
- D. Hazardous Materials. Hazardous or toxic materials and other environmental conditions, including without limitation, volatile organic compounds, petroleum products of any form or nature, lead-based paint, asbestos and mold.
- E. Physical Defects. Physical and mechanical defects in or on the Donation Parcel, including without limitation, the plumbing, heating, air conditioning and electrical systems and the roof, floor, ceilings, walls and other internal structural components of any buildings or improvements.
- F. Land and Floor Area. The area of the land and the square footage contained in any buildings or improvements.
- G. Utilities, Schools, Etc. Availability of adequate utilities, water, schools, public access, and fire and police protection.
- H. Assessment Districts. The status and nature of any assessment districts.
- I. Planning, Zoning and Compliance with Law. Present, past or future conformity of the Donation Parcel with planning, building, zoning, subdivision, development and any other statutes, ordinances, regulations and permits, or any general plan or specific plan of any governmental authority having jurisdiction.
- J. Development Fees. The character and amount of any fee, charge or other consideration which must be paid by Donee to develop the Donation Parcel.
- K. Title. The condition of title to the Donation Parcel, including but not limited to the existence of any easement, license, lease, encumbrance or encroachment whether or not a matter of public record, and whether or not visible upon inspection of such Donation Parcel.
- L. Owner's Association. The financial condition of any owner's association, including, without limitation, the adequacy of any reserves held by any owner's association.
- M. Other Matters. Any other matter relating to the Donation Parcel or to the acquisition, ownership, use, management, conveyance, encumbrance, development or operation of the Donation Parcel, including, but not limited to, value, feasibility, cost, governmental permissions or entitlements, marketability and investment return.

#### **SECTION 4: Release and Indemnity**

- A. Release. Donee fully releases and discharges Donor from and relinquishes all rights, claims and actions that Donee may have or acquire against Donor which arise out of or are in any way connected with the terms of this Donation Agreement or the condition of the Donation Parcel, including without limitation (A) any matter set forth in Section 3 above, (B) the presence of hazardous materials on, under or about the Donation Parcel (including but not limited to any undiscovered hazardous materials located beneath the surface of the Donation Parcel), and (C) violations of any hazardous materials laws pertaining to the Donation Parcel or the activities thereon. This release applies to all described rights, claims and actions, whether known or unknown, foreseen or unforeseen, present or future.
- B. Effectiveness. The provisions of this section shall be effective as of the Closing Date and shall survive the Closing Date or termination of this Donation Agreement.

## **SECTION 5: General Provisions**

- A. The “Effective Date” shall be the date that the last of the parties to this Donation Agreement executes below.
- B. Successors and Assigns. This Donation Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties. Notwithstanding the foregoing, Donee may not transfer, assign, or encumber Donee’s right under this Donation Agreement without Donor’s prior written approval.
- C. Entire Agreement. This Donation Agreement contains the entire agreement between the parties concerning the Donation and conveyance of the Donation Parcel, and supersedes all prior written or oral agreements concerning the subject matter hereof between the parties to this Donation Agreement. No addition to or modification of any term or provision shall be effective unless in writing, signed by both Donor and Donee.
- D. Partial Invalidity. If any portion of this Donation Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from this Donation Agreement and the remaining parts shall remain in full force as fully as though the invalid, illegal or unenforceable portion had never been part of this Donation Agreement.
- E. Governing Law. The parties intend and agree that this Donation Agreement shall be governed by and construed in accordance with the laws of the State of New York.
- F. No Third Party Benefits. No person other than Donor and Donee, and their permitted successors and assigns, shall have any right of action under this Donation Agreement. Beneficiaries specifically shall have no claims or rights of action against either Donor or Donee in connection with this gift.
- G. Waivers. No waiver by either party of any provision shall be deemed a waiver of any other provision or of any subsequent breach by either party of the same or any other provision.
- H. Captions. The captions and Section numbers of this Donation Agreement are for convenience and in no way define or limit the scope or intent of the Sections of this Donation Agreement.
- I. Counterparts. To facilitate execution, this Donation Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.
- J. No Presumption. All the parties hereto and their attorneys have had full opportunity to review and participate in the drafting of the final form of this Donation Agreement and all documents attached as exhibits. Accordingly, such documents shall be construed without regard to any presumption or other rule of construction whereby any ambiguities within this Donation Agreement would be construed or interpreted against the party causing the document to be drafted.

- K. Notices. Any notices or other communication required or permitted under this Donation Agreement shall be in writing and shall be (a) personally delivered, or (b) sent by certified or registered United States mail, postage prepaid, return receipt requested, or (c) by overnight delivery by a reputable courier to the address of the party set forth in this Section. Such notice or communication shall be deemed given (i) if sent by personal delivery or overnight courier, when delivered in person, or (ii) in the case of mailed notice, forty-eight (48) hours following deposit in the United States mail. Notice of change of address shall be given by written notice in the manner detailed in this Section.

If to the Donee:

Town of Dryden  
Attn: Ray Burger  
93 E. Main Street  
Dryden, NY 13053

With a copy to:  
Nathan VanWhy, Esq.  
Coughlin & Gerhart, LLP  
99 Corporate Drive  
Binghamton, NY 13904  
Email: [NVanWhy@cglawoffices.com](mailto:NVanWhy@cglawoffices.com)

If to the Donor:

17 Hall Woods Road, LLC  
Attn: Richard Polevoy, Knickerbocker Bed Company  
17 Hall Woods Road, Dryden, NY 13053

With a copy to:  
Randall B. Marcus, Esq.  
Bousquet Holstein PLLC  
200 East Buffalo Street, Suite 402  
Ithaca, New York 14850  
Email: [rmarcus@bhlawpllc.com](mailto:rmarcus@bhlawpllc.com)

**IN WITNESS WHEREOF**, the parties hereto agree to the terms and have caused this Contract to be executed in their names by their duly authorized officers.

**DONEE:**  
TOWN OF DRYDEN

**DONOR:**  
17 HALL WOODS ROAD, LLC

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By: Jason Leifer, Supervisor

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By: Richard S. Polevoy, Manager

State of New York     )  
County of Tompkins   ) ss.:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2023 before me, the undersigned, personally appeared Richard S. Polevoy, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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Notary Public

State of New York     )  
County of Tompkins   ) ss.:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2023 before me, the undersigned, personally appeared Jason Leifer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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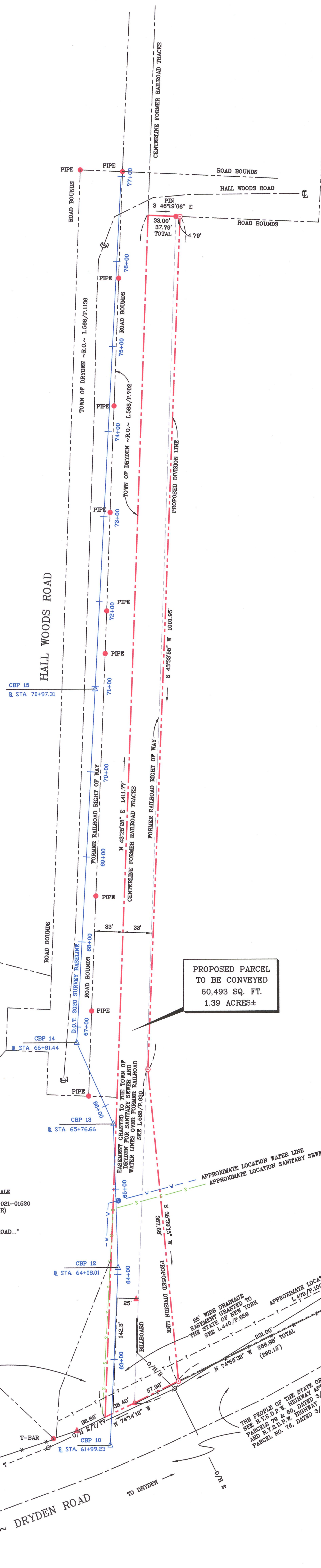
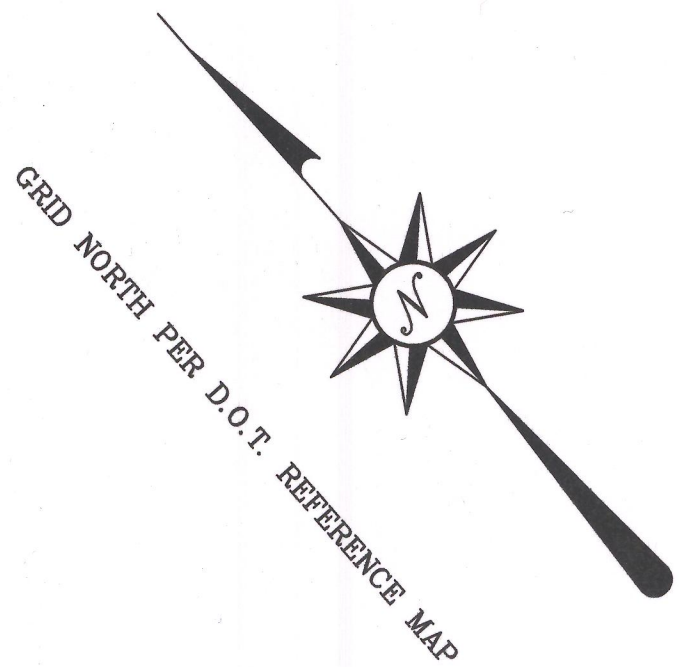
Notary Public



## **EXHIBIT A**



SURVEY MAP  
SHOWING PROPOSED PARCEL  
TO BE CONVEYED BY  
17 HALL WOODS ROAD, LLC  
TO THE TOWN OF DRYDEN  
TOWN OF DRYDEN ~ COUNTY OF TOMPKINS  
STATE OF NEW YORK  
P/O TAX MAP NO. 52-1-4.32  
P/O REFERENCE DEED: INSTRUMENT NO. 2021-14134



17 HALL WOODS ROAD, LLC  
~R.O.~  
INSTRUMENT NO. 2021-14134

REFERENCE MAPS:  
- "SURVEY MAP LANDS OF WILCOX PRESS INC..."  
MADE BY T.G. MILLER P.C.  
DATED JUNE 22, 1990.  
- "ALTA/ASCM SURVEY MAP SHOWING LANDS OF  
TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY..."  
MADE BY T.G. MILLER P.C.  
DATED OCT. 27, 2004.

PROPOSED PARCEL  
TO BE CONVEYED  
60,493 SQ. FT.  
1.39 ACRES±

SHERRY TACKILL REVOCABLE LIVING TRUST  
INSTRUMENT NO. 2021-08357

REFERENCE MAP:  
"SURVEY MAP NO. 4 HALL WOODS ROAD..."  
MADE BY T.G. MILLER P.C.  
DATED JULY 12, 2002.

ELLEN M. HALE  
~R.O.~  
INSTRUMENT NO. 2021-01580  
(REMAINDER)  
REFERENCE MAP:  
"SURVEY MAP NO. 42 HALL WOODS ROAD..."  
MADE BY T.G. MILLER P.C.  
DATED NOV. 22, 2005

PARCEL APPROPRIATED BY THE PEOPLE OF THE  
STATE OF NEW YORK SEE INSTRUMENT  
NO. 3-023-0235 & 3-023-0236  
AND N.Y.S.D.O.T. APPROPRIATION MAP NO. R-1,  
PARCEL NO. 1, DATED 1/31/2023

NOTES:  
- ABSTRACT OF TITLE NOT REVIEWED. PREMISES SURVEYED ARE  
SUBJECT TO ANY EASEMENTS, RIGHTS AND/OR RESTRICTIONS OF  
RECORD THAT AN UP TO DATE SEARCH MAY REVEAL.  
- UNDERGROUND UTILITIES SHOWN BY THIS SURVEY ARE APPROXIMATE  
ONLY AND DRAWN BASED ON OBSERVABLE EVIDENCE.  
- UNDERGROUND UTILITIES MUST BE FIELD MARKED BY OTHERS TO  
DETERMINE THEIR EXISTENCE AND/OR EXACT LOCATION.

REFERENCE MAP:  
TOMPKINS COUNTY D.O.T. "PERMANENT MAP"  
MAP NO. 2, PARCEL NO. 1  
RICHARD POLYVOI, KNICKERBOCKER BED COMPANY  
(REPUTED OWNER)  
MAP PROVIDED BY THE TOWN OF DRYDEN

LEGEND:

- EXISTING IRON MONUMENT AS SHOWN
- ▲ EXISTING TRIANGULAR CONCRETE HIGHWAY MONUMENT
- SET 3/4" REBAR AND SURVEY CAP
- △ D.O.T. SURVEY BASELINE
- ⊥ UTILITY POLE
- R.O. REPUTED OWNER
- (---) RECORD DISTANCE
- (RM) RECORD DISTANCE
- MEASURED DISTANCE
- O/H OVERHEAD UTILITIES
- U/G UNDERGROUND UTILITIES
- PRESENT CENTERLINE OF PAVEMENT
- FENCE
- STONES

REAGAN LAND SURVEYING P.O. Box 1124 Dryden, New York 13823 Phone/Fax (607) 844-8837 EMAIL: office@reagansurveying.com		NOTE: Any revisions to this map must comply with section 7206, Subdivision 2 of the New York State Education Law. All certifications hereon are valid for this map and copies thereof only if said map or copies bear the embossed seal of the licensed land surveyor whose signature appears hereon. This map is not valid when used in conjunction with a "Survey Affidavit" or "Certificate of No-Change".	
Date Surveyed: 5/2023	Drawn By: A. PUZO	Scale: 1"=60'	Job No: 23-102
I hereby certify to: 17 HALL WOODS ROAD, LLC; COUGHLIN & GERHART, LLP; THE TOWN OF DRYDEN;			
that I am a licensed land surveyor, New York State License No. 049892 and that this map correctly delineates an actual survey on the ground made by me or under my direct supervision, that it was prepared in accordance with the current code of practice for land title surveys adopted by the New York State Association of Professional Land Surveyors, and that I found no visible encroachments other than across property lines except as shown hereon.			
Signed: <i>Michael J. Reagan</i>		Dated: MAY 18, 2023	
Copyright 2023. All Rights Reserved, Reagan Land Surveying			

