

SAMPLE DOCUMENT - FOR DISCUSSION PURPOSES ONLY

MANAGED FOREST CONSERVATION EASEMENT AGREEMENT

THIS AGREEMENT dated as of the _____ day of _____, 20__.

BETWEEN:

**[FULL NAME OF OWNER/S
as shown on transfer/deed]**
(hereinafter called the "Owner")

– and –

ONTARIO HERITAGE TRUST
a body corporate continued by the *Ontario
Heritage Act*, R.S.O. 1990, c.O.18, as
amended

(hereinafter called the "Trust")

In consideration of the sum of two (\$2.00) dollars now paid by the Trust to the Owner and in consideration of the covenants, easements, terms, conditions and restrictions contained herein, and pursuant to section 22 of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as amended, the Owner and the Trust hereby agree to the covenants, restrictions and easements as set out in this Agreement which shall run with the Lands in perpetuity.

ARTICLE 1

DEFINITIONS

1.1 For the purposes of this Agreement, the following words and phrases shall have the following meanings:

- a) "Act" means the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as amended and any statute that may be enacted to modify or replace the Act;
- b) "Agreement" or "this Agreement" means this managed forest conservation easement agreement and the schedules attached hereto as at the date hereof and as amended from time to time.
- c) "Approved Managed Forest Program" means: 1. the Ministry of Natural Resources' Managed Forest Tax Incentive Program, 2. the Forest Stewardship Council (Canada) Forest Certification Program, or 3. any other equivalent managed forest program that has as its objectives the protection, enhancement, or restoration of the native biodiversity of privately-owned forests in the context of sustainable forest harvesting in accordance with Good Forestry Practices, approved by the Trust from time to time.
- d) "Covenants" mean the covenants set out in Article 4 which may be waived, varied or released by the Trust in accordance with this Agreement.
- e) "Easement" means the rights and easement in respect of the Lands granted by the Owner to the Trust in Article 5 of this Agreement.
- f) "Managed Forest Plan" means a managed forest plan for the Lands prepared and approved in accordance with an Approved Managed Forest Program or, if no Approved Managed Forest Program is then in existence in Ontario, a managed forest plan for the Lands prepared in accordance with Good Forestry Practices and such other requirements as the Trust may specify in writing from time to time and which has been approved by a Qualified Person;
- g) "Good Forestry Practices" means the proper implementation of harvest, renewal and maintenance activities known to be appropriate for the forest and environmental conditions under which they are being applied and that minimize detriments to forest values including

significant ecosystems, important fish and wildlife habitat, soil and water quality and quantity, forest productivity and health and the aesthetics and recreational opportunities of the landscape (*Forestry Act*, R.S.O. 1990, c.F-26. s.s. 1(1)).

h) "Lands" means the lands and premises of the Owner (known as the Munn property) situate in the Province of Ontario and more particularly described in Schedule "A" attached hereto and includes any buildings, structures and improvements now existing or constructed after the making of this Agreement.

i) "Owner" means the above named party of the First Part and any person who at any time after registration of this Agreement becomes the registered owner of the Lands or any part thereof or any ownership interest therein, including being a trustee for any beneficial owner of the Lands.

j) "Qualified Person" means a person certified or authorized by the Ontario Ministry of Natural Resources (MNR) under an Approved Managed Forest Program to approve a Managed Forest Plan or, in the absence of an Approved Managed Forest Program, this means a person authorized by the Trust as qualified to approve a Managed Forest Plan.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

2.1 The Owner covenants and warrants that the Owner is the legal, beneficial and registered owner of the Lands with good title thereto subject only to the encumbrances listed in Schedule "A".

2.2 The Owner further represents that it has had prepared a Managed Forest Plan for the Lands which was approved on [insert date], by a Qualified Person in accordance with the requirements of an Approved Managed Forest Program, and which has been further approved by the Trust for purposes of this Agreement (hereafter called the "**Approved Managed Forest Plan**").

2.3 The Owner represents that the Lands are being forested in accordance with the Approved Forest Management Plan.

2.4 The Owner and the Trust agree that the summary of the Approved Managed Forest Plan contained in Schedule "B" accurately describes the native biodiversity and natural heritage values of the Lands and reflects Good Forestry Practices including sustainable timber harvesting consistent with the conservation and enhancement of the native biodiversity and natural heritage value of the Lands.

2.5 The Trust pursuant to section 10(1)(c) of the Act is entitled to enter into agreements, covenants and easements with owners of real property, or interests therein, for the conservation, protection and preservation of the heritage of Ontario.

ARTICLE 3

INTENTION

3.1 It is the objective of the Owner and the Trust that the Lands be managed and conserved in perpetuity in accordance with a Managed Forest Plan that incorporates Good Forestry Practices to protect and enhance its native biodiversity and its natural heritage value.

3.2 It is the intention of the parties that the purpose of this Agreement is to:

(a) protect, enhance, or restore native biodiversity of the Lands in the context of sustainable forest harvesting in accordance with Good Forestry Practices;

(b) prevent any use of the Lands not authorised in the Approved Managed Forest Plan that will damage or destroy the native biodiversity of the Lands or prevent its restoration and enhancement; and

- (c) ensure that the Lands are stewarded in accordance with the Approved Managed Forest Plan that incorporates Good Forestry Practices so as to protect and enhance its natural heritage value and native biodiversity whether or not the Owner or the Owner's successors in title participate in any Approved Managed Forest Program.

3.3 The Approved Managed Forest Plan, as summarized described in Schedule "B", shall be reviewed and revised or replaced by the Owner within ten (10) years from the date of its approval by a Qualified Person and thereafter not less than every ten years (or less if needed) following the preceding review and revision or replacement, as the case may be. Any revisions to the Approved Managed Forest Plan and any new Managed Forest Plan intended to replace an existing Managed Forest Plan must be prepared in accordance with the requirements of an Approved Managed Forest Program, and must be approved by a Qualified Person in writing, and must be approved by the Trust in writing.

3.4 If no Approved Managed Forest Program is then in existence in Ontario, any revisions to the Approved Managed Forest Plan and any new Managed Forest Plan intended to replace an existing Managed Forest Plan shall be prepared in accordance with Good Forestry Practices and such other requirements as the Trust may specify in writing from time to time, and must be approved by a Qualified Person in writing, and must be approved by the Trust in writing.

ARTICLE 4

COVENANTS

4.1 The Owner shall not use the Lands or permit any use of the Lands, which will damage or destroy the native biodiversity of the Lands or prevent the regeneration and enhancement of the native biodiversity of the Lands. Without limiting the generality of the foregoing, the Owner expressly covenants and agrees that it shall not:

(a) Other Easements

grant any easement in, over, on, under or through the Lands ;

(b) Subdivision

sever or subdivide the Lands;

(c) Buildings and Structures

construct, erect, maintain or allow the construction, erection or maintenance of any building or structure, including without limitation transmission tower or lines, fences and signs, on the Lands;

(d) Roads, Parking Areas

construct, improve or allow the construction or improvement of any road, parking lot, dock, aircraft landing strip or other such facility, except for the maintenance of existing foot trails, fire lanes or other accesses;

(e) Motorized Vehicles and Mountain Bicycles

use or operate or allow the use or operation of any mountain bicycles or motorized vehicles on the Lands including without limitation snowmobiles, all-terrain vehicles, motorcycles, motorboats or personal watercraft;

(f) Mobile Homes

use or allow the Lands to be used as a trailer or mobile home park, parking or storage area;

(g) Dumping

dump or allow the dumping of soil, rubbish, ashes, garbage, waste or other unsightly or offensive materials of any type or description;

(h) Pesticides

use or allow the use of pesticides, insecticides, herbicides, chemicals or other toxic materials of any type or description;

(i) Grading, Topography

change or allow any changes in the general appearance or topography of the Lands, including and without limiting the generality of the foregoing, the construction of drainage ditches, tile drains, retaining walls, dams or ponds or any similar undertakings, as well as the dumping, excavation, dredging or removal of loam, gravel, soil, rock, sand or other materials;

(j) Vegetation

remove, destroy or cut or allow the removal, destruction or cutting of trees, shrubs or other vegetation;

(k) Plants and Animals

plant or allow the planting or other introduction of non-native plant or animal species within the Lands;

(l) Hunting, Fishing and Trapping

use or allow the Lands to be used for commercial or sport hunting, fishing or trapping;

(m) Firearms

use or allow the use of firearms on the Lands;

(n) Conservation

undertake or allow others to undertake any activities, actions or uses detrimental or adverse to water conservation erosion control, soil conservation or the preservation of native plant and animal species in the Lands; and

(o) Livestock

permit agricultural livestock to enter or to use the Lands.

4.2 Notwithstanding the provisions of paragraph 4.1, the Owner may undertake any forest stewardship activity permitted by and described in the Approved Managed Forest Plan.

4.3 Any request for approvals for activities not described in the Approved Managed Forest Plan that are not permitted by paragraph 4.1 shall be delivered to the Trust in accordance with the provisions of paragraph 8.1. Approval by the Trust shall be deemed to have been given by the failure of the Trust to reply in writing within ninety (90) days of the receipt of such request.

4.4 For greater certainty, it is understood and agreed that an Approved Managed Forest Plan for the purposes of paragraph 4.2 means a Managed Forest Plan as revised or replaced from time that has been approved by the Trust pursuant to Article 3. Where the Owner has not undertaken a periodic review of the Approved Managed Forest Plan and has not obtained the approval of the Trust for the revised Managed Forest Plan or a replacement Managed Forest Plan in accordance with the requirements of paragraphs 3.3. and 3.4, then the provisions of paragraph 4.2 shall not apply and the Owner shall obtain the prior written approval of the Trust pursuant to paragraph 4.3 for any activity prohibited by paragraph 4.1.

4.5 In the event that archaeological resources are discovered during the course of any activities on the Lands which are permitted under this Agreement or otherwise by the Owner, the Owner shall immediately cease all activities at the discovery site. In addition, the Owner shall immediately notify the Trust in writing and, in consultation with the Trust, determine the appropriate next steps, consistent with the Act and any regulations or technical standards associated with it concerning the identification, protection and preservation of archaeological resources.

4.6 Where artifacts and other archaeological resources are recovered by a consultant archaeologist during any permitted archaeological investigation of the Lands, the Owner shall

ensure that the consultant archaeologist notifies the Trust of the person or institution given custody of the recovered artifacts and other archaeological resources and the location where they are or will be stored consistent with the Act and any regulations or technical standards associated with it concerning the identification, protection and preservation of archaeological resources.

4.7 In the event that human remains are encountered during any permitted excavations or ground disturbances, in addition to any other parties or authorities that the Owner is legally required to contact, the Owner shall also notify the Trust immediately and, consistent with provincial laws and regulations concerning human remains, cease all activities at the specific location(s) where human remains have been discovered.

ARTICLE 5

EASEMENT

5.1 The Owner hereby grants to the Trust an easement to permit the Trust's employees, agents, workers and contractors together with their supplies, equipment, materials, machinery and vehicles to enter on and have access to the Lands at reasonable times and subject to the notice requirements specified below and for the following purposes:

- (a) inspection, in order to determine compliance with this Agreement;
- (b) to carry out any construction, demolition, maintenance, alteration, repair, improvements, installation, work or restoration of the natural features reasonably required in the opinion of the Trust pursuant to Article 7 of this Agreement; and
- (c) for all purposes reasonably necessary or incidental to the exercise of the rights hereby created or related to any of the foregoing purposes.

5.2 Prior to entry or access to the Lands for the purposes identified in paragraph 5.1, the Trust shall provide written notice to the Owner as follows, unless in the opinion of the Trust there is an emergency or other circumstance which does not make it feasible to give notice of the intent of the Trust to enter on the Lands:

- (a) for the purposes specified in paragraphs 5.1(a) at least twenty-four (24) hours written notice; and
- (b) for the purposes specified in paragraph 5.1(b) and (c) at least 10 (ten) days' written notice. The notice under this paragraph 5.1(b) shall describe the nature, scope, design, location, timetable and any other material aspect of the activity proposed.

5.3 No right of access by the general public to any portion of the Lands is granted by this Agreement.

ARTICLE 6

OWNER'S OBLIGATIONS AND INDEMNITY

6.1 The Owner shall, at the expense of the Owner, continue to care for and maintain the Lands as would a careful and prudent owner. In particular, and without limiting the generality of the foregoing, the Owner shall:

- (1) at all times carry and maintain adequate comprehensive general liability coverage of an inclusive initial limit of not less than Five Million (\$5,000,000.00) Dollars per occurrence or in such greater amounts as the Trust may from time to time by notice in writing to the Owner reasonably require to reflect changes in risk and inflation for Property Damage, Bodily Injury and Personal Injury with the Trust being a named insured and including the following policy endorsements:
 - (a) Cross-Liability;
 - (b) Waiver of Subrogation; and
 - (c) 30-day notice of cancellation

and provide the Trust with evidence of such coverage not less than annually; and

- (2) pay as they become due municipal and provincial taxes, rates and fees charged or levied against the Lands including any that may be charged or levied against the Trust

by reason of this Agreement and the rights transferred hereunder and all charges for utilities and provide the Trust with evidence of such payments on its reasonable request.

6.2 The Owner shall and does hereby indemnify and save harmless the Trust its directors, officers, employees, agents and contractors from and against any and all actions, causes of action, suits, claims, demands by or on behalf of any person arising out of or occasioned by any act or omission, negligence or otherwise, in the use and maintenance of the Lands by the Owner, any licensee or lessee thereof or anyone for whom the owner is in law responsible, including any penalty or tax imposed under the *Income Tax Act* (Canada) arising from any change in the use of the Lands or any part of the Lands certified as ecologically sensitive land under the *Income Tax Act* (Canada).

ARTICLE 7

DEFAULT

7.1 In the event of breach of or default in the obligations and covenants of the Owner under this Agreement, the Trust may take any action available to it at law, in equity, by statute or under this Agreement provided that the Trust shall first give to the Owner written notice of the default which notice shall specify the nature of the non-compliance and the measures necessary to secure compliance with the terms of this Agreement. If notice of default is given, the Owner shall have sixty (60) days following receipt of the notice of default to complete the required measures and to rectify the non-compliance or default.

7.2 If the Trust in its sole discretion determines that circumstances require immediate action to prevent or mitigate damage to the Lands, the Trust may pursue its remedies under this Article 7 without prior notice to the Owner and without waiting for the expiry of the sixty (60) day notice period as otherwise required under paragraph 8.1.

7.3 In the event that the Owner has failed to provide compliance within the sixty day period allowed, then the Trust shall be entitled to enter on to the Lands and to complete those works and measures necessary to provide compliance and to remedy the default at the expense of the Owner. Until paid to the Trust by the Owner, such costs of remedy incurred by the Trust shall be a debt owed by the Owner to the Trust and shall be a charge upon the Lands enforceable in the same manner as a mortgage and recoverable by the Trust in a court of law.

7.4 The parties recognize that damages based upon market value may not be adequate or effective to compensate for destruction of or restoration of the Lands as they existed prior to default or breach of the Agreement. Accordingly, the parties agree that:

- (a) compensation to the Trust in the event of default or breach of the Agreement may be based upon market value, restoration or replacement costs whichever, in the opinion of the court shall better compensate the Trust; and
- (b) in addition and without limiting the scope of the other enforcement rights available to the Trust under this Agreement, the Trust may bring an action or an application for injunctive relief to prohibit or prevent default or the continuance of default under this Agreement.

ARTICLE 8

NOTICE

8.1 Any notice to be given or required under this Agreement (which term in this paragraph includes any request or waiver) shall be in writing and sent by personal delivery, facsimile transmission ("Fax"), or by registered prepaid mail to the following addresses:

THE OWNER

[Name]
[Address]

Contact Name (if corporate)
Fax # (if available)

THE TRUST

Ontario Heritage Trust
10 Adelaide Street East
Toronto ON M5C 1J3

Attention: Easements Program
Fax: 416-325-5071

8.2 The parties may designate in writing to each other a change of address at any time. Notice by mail shall be deemed to have been received on the fourth (4th) business day after the date of mailing, and notice by personal delivery or Fax shall be deemed to have been received at the time of the delivery or transmission. In the event of an interruption in postal service, notice shall be given by personal delivery or Fax.

ARTICLE 9

GENERAL PROVISIONS

9.1 Rights Reserved by Owner. The Owner reserves to itself, and to its successors and assigns, and any transferee therefrom, all rights accruing from its ownership of the Lands (including the Lands), including the right to engage in, or permit or invite others to engage in, all uses of the Lands that are not expressly prohibited in this Agreement and are not inconsistent with the purpose and terms of this Agreement.

9.2 Notice of Easement. The Trust may, at its expense and in a tasteful manner, erect a plaque on the Lands indicating that the Trust holds a conservation easement on the Lands. The Owner consents to the Trust publicizing the existence of the Agreement and the natural features of the Lands in its publications, educational materials and research databases.

9.3 Owner Not Liable. No person who is an Owner shall be liable to the Trust for any breach of or default in the obligations owed to the Trust under this Agreement committed after the registration of a transfer by such person of that person's interest in the Lands, provided that the Owner has delivered to the Trust notice of such transfer and an acknowledgement and assumption executed by the new registered Owner, acknowledging the priority of this Agreement and the interest of the Trust and assuming the obligations of an Owner under this Agreement.

9.4 Assignment. The Trust may assign all of its interest in this Agreement to any person in accordance with section 22(3) of the Act. The Trust shall not be liable to the Owner for any breach or default in the obligations owed to the Owner under this Agreement committed after notice of the assignment of this Agreement has been given to the Owner.

9.5 Registration. The Trust may register this Agreement against title to the Lands and the Owner shall execute any document that may be required to allow such registration.

9.6 Failure to Exercise or Enforce Rights. No failure by the Trust to require performance by the Owner of any provision of this Agreement shall affect the right of the Trust thereafter to enforce such obligation and no failure by the Owner to perform any of its rights or obligations hereunder shall be taken as a waiver of such performance or the performance of any other obligation in the future.

9.7 Time of the Essence. Time shall be of the essence of this Agreement and shall be deemed to remain so notwithstanding any extension of any time limit.

9.8 Severability. All provisions of this Agreement including each of the Covenants shall be severable and should any be declared invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected thereby.

9.9 Costs. Save as provided herein or ordered by any court or tribunal, each party shall be responsible for its own legal fees and related expenses arising from the negotiation and implementation of this Agreement.

9.10 Joint and Several. Whenever the Owner comprises more than one person, the Owner's obligations in this Agreement shall be joint and several.

9.11 Entire Agreement. This Agreement is the entire agreement between the parties with respect to the matters dealt with herein, and no understandings or agreements, verbal, collateral or otherwise, exist between the parties except as herein expressly set out.

9.12 Enurement. This Agreement including the Easement and the Covenants shall run with the Lands in perpetuity or until such time as the Trust, or its successor or assign, authorizes their release and shall enure to the benefit of and be binding upon the parties hereto and their respective successors, assigns, heirs, executors and personal representatives as the case may be.

9.13 Acts Beyond Party's Control. Neither party shall be liable to the other for any damage to or change in the Lands resulting from causes beyond the control of such party, including, without limitation, accidental fire, flood, storm, earth quake, subsidence, trespass, insect infestation or disease.

IN WITNESS WHEREOF the parties hereto have executed this Agreement effective as of the date first written above.

ONTARIO HERITAGE TRUST

Per: _____
Beth Hanna – Chief Executive Officer

Per: _____
Sean Fraser – Director, Heritage Programs
and Operations

We have authority to bind the Trust.

[If Owner is a corporation]
[LEGAL CORPORATE NAME]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the Corporation.

SIGNED, SEALED AND DELIVERED
in the presence of:

[if Owner an individual/s]

Witness: *[Please sign on line and print name here]*

Witness: *[Please sign on line and print name here]*

Spousal Consent
(pursuant to the *Family Law Act (Ontario)*)

I, _____, the spouse of the Owner,
hereby consent to this Agreement and the easements and covenants provided for herein.

SIGNED, SEALED AND DELIVERED
in the presence of:

Witness: *[Please sign on line and print name here]*

Spouse of Owner

SAMPLE DOCUMENT - FOR DISCUSSION PURPOSES ONLY

SCHEDULE "A"

DESCRIPTION OF LANDS AND EXISTING ENCUMBRANCES

[Complete legal description (include PIN, if available)]

SAMPLE DOCUMENT - FOR DISCUSSION PURPOSES ONLY

SCHEDULE "B"

APPROVED MANAGED FOREST PLAN FOR THE LANDS

In the event of a conflict between the information in this Schedule and the Approved Managed Forest Plan for the Lands, the Managed Forest Plan shall prevail.

SUMMARY OF APPROVED MANAGED FOREST PLAN FOR THE LANDS

- 1. Approved Managed Forest Plan prepared for:**
- 2. Approved Managed Forest Plan prepared by:**
- 3. Approved Managed Forest Plan Legal Description:**
- 4. Approved Managed Forest Plan approved by:**
- 5. Approved Managed Forest Plan certified by:**
- 6. Approved Managed Forest Plan date of approval:**
- 7. Approved Managed Forest Plan date of renewal / expiration:**
- 8. Natural heritage values on the Lands:**
- 9. 10-Year Activity Summary of the Approved Managed Forest Plan: see next page**

SCHEDULE "B" continued

10-YEAR ACTIVITY SUMMARY IN APPROVED MANAGED FOREST PLAN: 20XX – 20XX

NOTE: Areas referenced in the above activity chart are shown graphically on the detailed property map contained in section 6 of the Approved Managed Forest Plan