



## ANNOTATED SAMPLE CONSERVATION AGREEMENT

### Introduction

Several Ontario statutes provide specific legislative authority for conservation agreements. The Ontario *Conservation Land Act* allows government organizations, conservation authorities, charitable corporations and certain other specified bodies to hold and enforce conservation agreements for land conservation and related purposes. Since this statute allows a wide variety of government and non-government organizations to hold conservation agreements, this sample agreement was prepared within the context of the *Conservation Land Act*, and all references in the sample agreement to the “Act” are references to this statute.

The *Ontario Heritage Act* also provides authority for conservation agreements for a variety of purposes, including the protection of property of “historical, architectural, archaeological, recreational, aesthetic and scenic interest.” Conservation agreements created in favour of the Ontario Heritage Foundation or a municipality under this statute can be assigned to other conservation organizations. This process of creation and assignment may be helpful where the purpose of the conservation agreement is the protection of the kind of resources specifically recognized by the *Ontario Heritage Act*.

This sample agreement, which is annotated, is intended as an example only to provide readers with an introduction to the provisions that might typically be included in a conservation agreement. Many of the provisions are recommended as good practice; however some may be discretionary, depending on the context and negotiations. Annotations in the boxes are for explanation purposes only and should not be part of the actual agreement document. Several Schedules or appendices are included in the sample; these are formatted as Schedules to allow for ease of revision during the drafting process and for eventual registration. Conservation agreements should be individually prepared, paying particular regard to the parties, the property, the purposes, legal authority and other circumstances, in consultation with lawyers, accountants, land surveyors and others whose professional advice may be relevant to the particular situation. Consistency in the use of terms throughout the document is important. This sample Agreement is intended to be compatible with the *Canadian Land Trust Standards and Practices* and will help land trusts to meet the requirements of Standard 9E - Conservation Agreement Drafting.

## Contributors

On behalf of the Ontario Land Trust Alliance, this document was prepared by Ian Attridge, Barrister and Solicitor in Peterborough, and Michelle Albanese of OrLand Conservation in Mississauga. It is based on an earlier version by Paul Peterson, Barrister and Solicitor in Midland, and samples from the Nature Conservancy of Canada and Ontario Heritage Trust.

The annotated sample agreement has also benefitted greatly from the review and comments by the following individuals:

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October 2008

# ANNOTATED SAMPLE CONSERVATION AGREEMENT

DATED this        day of                    , 20XX.

B E T W E E N:

**[Insert name of Owner]  
(the "Owner")**

OF THE FIRST PART

– and –

**[Insert name of agreement holder]  
(the "Conservation Body")**

OF THE SECOND PART

The "Owner" may be referred to instead as the "Grantor," or by name. Section 3 of the Act provides that (only) the owner of land may grant an easement or enter into a covenant with a conservation body. The owner is defined in the Act as the "person registered on title in the proper land registry office as the owner of the land." Using "Grantor" distinguishes this person from the wider sense of "Owner", defined later on, which includes both the original owner entering the Agreement as well as subsequent owners. Note that there may be more than one "Owner".

Reference in this sample Agreement to "Conservation Body" could be replaced with "Holder," "Land Trust," "Municipality," "Grantee" or a short-form version of the name of the Conservation Body involved, whichever best describes the agreement holder. "Conservation Body" is the term used in section 3 of the Conservation Land Act. See the annotation that follows article 1.1(c) of this sample Agreement for the types of organizations that are qualified to hold and enforce conservation agreements.

In consideration of the sum of two dollars (\$2.00) now paid by the Conservation Body to the Owner and in consideration of the covenants, terms, conditions and restrictions contained herein, the sufficiency of which is hereby acknowledged, and pursuant to the *Conservation Land Act*, R.S.O. 1990, c. C.28, as amended, the Owner and the Conservation Body hereby agree to the Covenants, restrictions and Easements as set out in this Agreement, which shall run with the Lands for the Term.

This references the consideration or exchange made for the Agreement and helps qualify it as a contract. If the Agreement is a gift, it can still reference a nominal exchange of funds and qualify as a gift for income tax purposes. Especially if it is a gift for charitable purposes, the Agreement alternatively could simply state: "In consideration of the covenants, terms, conditions and restrictions contained herein and pursuant to the Conservation Land Act, R.S.O. 1990, c. C.28, as amended, the Owner and the Conservation Body hereby agree to the covenants, restrictions and Easements as set out in this Agreement, which shall run with the Lands for the Term."

Recitals can also be added before this phrase to set some context, such as the Owner's intentions or past practices. Note, however, that core concepts and provisions intended to be legally binding should be included in the body of the agreement.

## 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 *Conservation Land Act*, RSO 1990, c. C.28, as amended, and any statute that may be enacted to modify or replace this Act.

As noted in the introduction to this appendix, this sample conservation agreement is pursuant to Ontario’s Conservation Land Act, which authorizes a wide range of government and non-government organizations to hold such agreements for diverse purposes. However, conservation agreements and related agreements on title are also authorized by other Ontario statutes, including the Ontario Heritage Act.

- (b) “Agreement” or “this Agreement” means this Agreement and the schedules attached hereto as at the date hereof and as amended from time to time.

- (c) “Conservation Body” means a conservation body as defined in the Act.

Under the Conservation Land Act, only a qualified conservation body is capable of holding and enforcing a conservation agreement. “Conservation body” is defined in section 3(1) of the Act to include various government organizations, Indian bands, municipal councils, conservation authorities, non-government corporations that are “a charity registered under the Income Tax Act (Canada)” and “any person or body prescribed by the regulations.”

- (d) “Conservation Values” means the features and/or functions to be conserved through this Agreement, which are more specifically set out in the Baseline Report

The Covenants are the obligations and restrictions on the parties that are intended to run with the Lands and bind future owners. The other principal operative part of the conservation agreement is the right of access under article 5, “Easement.”

- (e) “Covenants” mean the covenants set out in Article 4 and Schedule B attached to and forming part of this Agreement, as the same may be waived, varied or released by the Conservation Body in accordance with this Agreement.

- (f) “Easement” means the easement set out in Article 5 and Schedule C attached to and forming part of this Agreement, as the same may be waived, varied or released by the Conservation Body in accordance with this Agreement.

Note that the Easement component of the Agreement refers to the rights of access to the property. This component can be included in the main body of the Agreement or in an attached Schedule.

- (g) “Lands” means the lands and premises of the Owner situate in the Province of Ontario and more particularly described in Schedule A attached to and forming part of this Agreement, and includes any buildings, structures and improvements now existing or constructed during the Term.

The legal description of the Lands will normally refer to all of the contiguous lands owned by the Owner. The precise description of the land affected by the Agreement can be inserted here if it is short, but typically it can involve a longer and more complicated legal description and thus may be better placed in a separate Schedule. The separate Schedule may also allow for easier use for complementary registration documents.

Where only part of the Lands are affected by the conservation agreement or where the Owner owns abutting lands, the Conservation Body should seek professional advice on compliance with the severance provisions of Ontario's Planning Act. Note that conservation agreements are exempted from the usual restrictions under certain circumstances.

- (h) "Management Plan" means a Management Plan which may be developed for the Lands, including all of the restrictions, obligations and rights included therein where they do not conflict with the Covenants and rights in this Agreement.

The parties may establish a plan for management of the property dealing, for example, with habitat enhancement or timber harvesting. However, the provision of a management plan is completely optional. A valid conservation agreement may also be executed by the parties and registered simply with restrictions on future use, and without any detailed prescription for management. The management plan is different than a Baseline Documentation Report.

- (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) "Protected Area" means that part of the Lands that is identified as Part [insert number] on Reference Plan [insert number] and/or on map X in Schedule X.

This definition anticipates that some parts, or "zones", of the Lands may be subject to a greater level of protection and to greater restrictions on use than others. All zones should be defined separately. Zones could include agricultural areas, building areas, forest areas and the like. It is very common in conservation agreements applied to rural properties, for example, to allow the maintenance and replacement of existing buildings on the part of the property where they currently exist, within certain parameters, while restricting or prohibiting the erection of new buildings on the protected part of the property. It is essential to the future enforceability of the Agreement that the Protected Area be very clearly defined and described in writing and identifiable on the ground.

Where a clearly defined boundary is not easily identified, a reference plan prepared by an Ontario land surveyor may provide the necessary clarity and precision. In some circumstances, it could also be described and/or shown on a map in another Schedule or by way of accurate Global Positioning System points in a table.

- (k) "Report" means the Baseline Documentation Report describing the Lands and documenting the values and features and current uses of the Lands, attached or referred to in Schedule D of this Agreement.

A Baseline Documentation Report that documents the existing condition of the Lands and the heritage resource is a recommended practice and invaluable for enforcing the conservation agreement in the future. Restrictions on tree cutting, for example, may be valid, but they are likely to be much more effective and enforceable if the prior composition and condition of the forest is documented. (See also: Jason Thorne, *Baseline Reporting for Natural Heritage Easements in Ontario*, Toronto: Ontario Heritage Foundation, 1997; and Elizabeth Byers and Karin Marchetti Ponte, *The Conservation Easement Handbook*, 2d. ed., San Francisco, Land Trust Alliance and The Trust for Public Lands, 2005.)

- (l) “Term” means the term of this Agreement, being from and including the date of this Agreement, to the nine hundred and ninety-ninth anniversary of the date of this Agreement, or the date the Covenants and Easement cease to have effect in accordance with this Agreement, whichever date shall first occur.

A defined Term may alleviate potential difficulties at the land registry and land titles offices that could affect the enforcement of Covenants without a defined term. Here, the term is set as 999 years, but some use the expression “in perpetuity”. The actual definition of the time-limited Term is discretionary. In rare cases, a short term of 10 or 20 years may be considered. However, caution is advised in applying a short term to a conservation agreement that is being valued and treated as a gift, particularly since it will not qualify as an “Ecological Gift” under the Income Tax Act (Canada). Problems could arise both with respect to the eligibility and the valuation for purposes of the charitable receipt and with Income Tax Act provisions intended to secure the long-term and irreversible public benefits of gifts. The Restrictions and Easement could cease to have effect if there was a court ruling or an approval under the Conservation Land Act.

## 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 following encumbrances:

*[Insert brief descriptions of each encumbrance, such as a mortgage or an existing utility easement, with its date and instrument registration number.]*

This clause helps document ownership and thus demonstrates that the Agreement qualifies under the Conservation Land Act's definition of "Owner". It is critical that the Conservation Body conducts a title search and obtains property surveys as soon as possible in the process of preparing the agreement. Ownership and title issues may need to be dealt with before the agreement can be finalized. For example, if there are mortgages on title, the Conservation Body will want to have the interests of the mortgagee "postponed" to the conservation agreement (or, the agreement has priority). Without such a postponement, a pre-existing mortgagee could come into possession and control of the property as the result of a mortgage default and may not be bound by the conservation agreement.

- 2.2. The parties represent and warrant to each other that the Report accurately describes the Lands, including the current use and the significant Conservation Values of the Lands, and is intended to serve as an objective information base for monitoring compliance with this Agreement.

The wording supports reliance on the Report as an accurate baseline many years in the future, perhaps long after its authors are gone, when it might be needed. If the Report is not available at the time the Agreement is signed and registered, the clause could read: "The parties represent and warrant that the Report, to be completed within six (6) months of the registration of this Agreement, will accurately describe the Property and the current use of and natural values and features of the Property and is intended to serve as an objective information base for monitoring compliance with this Agreement." See also the definition of "Report" in article 1.1(i) of this sample Agreement.

- 2.3. The Lands include significant Conservation Values which are described in the Report *[and/or in a Schedule]* and which the Owner and the Conservation Body have agreed to protect and enhance.

- 2.4. The Conservation Body covenants and warrants that it is a corporation incorporated under [Part III of the Ontario *Corporations Act*, or Part II of the *Canada Corporations Act*, or other legal reference that establishes a qualified Conservation Body], that it is a charity registered under the *Income Tax Act* (Canada) and that it is a Conservation Body within the meaning of the Act.

- 2.5. The Owner covenants and warrants that spousal consent is not necessary to this Agreement under the provisions of the Family Law Act, R.S.O. 1990 c.F.3, unless the Owner's spouse has executed this Agreement.

This section helps ensure that there is compliance with the Family Law Act and thus the Agreement will have full effect.

## Article 3 Intention

- 3.1 It is the purpose and intention of the parties that this Agreement will ensure the [*reference the operative words of the purposes in subsection 3(2) of the Conservation Land Act*] of the Lands and will prevent any use of the Lands that will damage or destroy its Conservation Values or prevent their restoration and enhancement. More specifically, it is intended that the use of the Lands will be restricted to [*agricultural/forestry/wildlife management/other*] uses that are consistent with the primary intention of the parties.

Article 3.1, which sets out the purpose and intention of the parties in broad terms, will be a useful reference in interpreting the detailed Covenants and rights under the Agreement in the future. It may also provide guidance for those situations and disputes that were not or could not be anticipated when the Agreement was prepared.

The wording here follows closely the wording in the Act for the purposes for which an Agreement may be entered. Other purposes are also found in the Act and, if the Agreement is intended to achieve those purposes, they should be clearly referenced here.

- 3.2 There is public interest and benefit in the conservation, maintenance, restoration and enhancement of the Conservation Values and features of the Property and the wildlife thereon.
- 3.3 This Agreement is to be construed, interpreted, performed and applied so as to give effect to the purpose and intent of this Agreement and to enforce the Covenants and Easement.

## Article 4 Covenants

- 4.1 The Owner reserves to [his/her/it] self, and to its successors and assigns and any transferee therefrom, all rights accruing from ownership of 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 herein and that are not inconsistent with the purpose and terms of this Agreement.

It is normal to interpret the Agreement as conveying only those rights and restrictions specifically described in the terms of the Agreement and to assume that the Owner reserves all rights not conveyed. This provision is included to provide the Owner/Grantor with the comfort of having that assumption made explicit.

- 4.2 The parties covenant and agree that the Covenants shall be deemed to be covenants governed by and having the benefit of the Act, that from the registration of this Agreement the burden of such Covenants shall run with and bind the Lands and every part thereof to which they apply, and the benefit thereof shall enure to the Conservation Body for the Term.
- 4.3 No waiver, release or variance of the Covenants or Easements of this Agreement may be effected without the consent of the Minister of Natural Resources for Ontario or, if this Agreement is in furtherance of an Ecological Gift under the *Income Tax Act* of Canada, the authorization of the Minister of the Environment for Canada or any replacement entity responsible for enforcing the provisions relating to Ecological Gifts, if such consent or authorization is necessary.

This section makes it clear that approvals for changes or releases are required for conservation agreements, particularly those donated as Ecological Gifts.

- 4.4 The Owner shall not use the Lands nor permit any use of the Lands that will damage or destroy the Conservation Values of the Lands or prevent their restoration and enhancement. Without limiting the generality of the foregoing, the Owner expressly covenants and agrees that, except with the prior written approval of the Conservation Body, the Owner shall abide by the Covenants.

## Article 5 Easement

5.1 The parties covenant and agree each with the other that the Easement set out in Schedule C shall be deemed to be an easement governed by and having the benefit of the Act, that the burden of the Easement shall run with and bind the Property and every part thereof from the registration of this Agreement so long as the Covenants are in effect, and the benefit of the Easement shall enure to the Conservation Body.

Section 3(2) (b) of the Act provides in effect that an owner may grant an easement for access to the land for the purposes listed in the Act in section 3(2). In this sample Agreement, an access Easement is provided to allow compliance inspections, monitoring, and enforcement, and possibly management and enhancement activities that may be identified in the Agreement or to remedy a default by the Owner. The Easement component is set out in a separate Schedule in order to allow it to be registered separately, as necessary.

In establishing and setting out the extent of the Easement, it is important to ensure that the subdivision control provisions of section 50 of Ontario's Planning Act are complied with. In simple terms, that section of the Planning Act prohibits any agreement granting the use of land or right in land unless it affects the entire parcel of land and all abutting lands owned by the same landowner. Exceptions to the prohibition are made in the Planning Act for conveyances of conservation agreements under certain circumstances, by governments, for land described by a plan of subdivision, or where the consent of the municipality is obtained.

5.2 The rights described in Article 5.1 and Schedule C are collectively referred to as the "Easement."

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

In many cases, public access to the natural features located on the Lands may not be necessary or desirable. In addition, landowners may be more willing to grant a conservation agreement knowing that rights of public access are not attached. In cases where the parties agree that rights of public access are to be included, the Conservation Body should seek professional advice on the mechanisms for ensuring that rights of recreational access will be enforceable.

## Article 6 Owner's Obligations and Indemnity

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

- (a) maintain the Lands and keep the improvements thereon in a good and sound state of repair, and keep the Lands free of construction liens;

carry and maintain at all times adequate comprehensive general liability insurance with an inclusive limit of not less than two million dollars (\$2,000,000.00) per occurrence for property damage, bodily damage and personal injury, with the Conservation Body being identified as an additional insured thereunder, and provide the Conservation Body with evidence of such coverage not less than annually; and

The requirement for the Owner to maintain insurance recognizes that the Owner still has control and management of the Lands. This provision insures only their activities, not those of the Conservation Body. With the assistance of an insurance agent, other more detailed policy endorsements could be included, such as:

- (i) cross-liability;
- (ii) waiver of subrogation; and
- (iii) 30-day notice of cancellation.

- (b) 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 Conservation Body by reason of this Agreement and the rights transferred hereunder, and all charges for utilities, public or otherwise, and provide the Conservation Body with evidence of such payments on its reasonable request.

The Owner of the Lands remains responsible for activities and taxes on the Lands. This ensures that the standard of these responsibilities is clear among the parties. Some of the insurance provisions could be modified, depending on the nature of the Lands and the current insurance policies.

6.2 The Owner shall and does hereby indemnify and save harmless the Conservation Body, 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, negligent 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. The Owner shall and does hereby further indemnify the Conservation Body from and against 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), which penalty or tax shall be paid by the Owner to the Conservation Body or as the Conservation Body shall direct.

With respect to the second sentence above, section 207.31 of the Income Tax Act (Canada) imposes a tax on charities, public bodies performing a function of government and/or municipalities that dispose of or change the use of an ecological gift property without the authorization of the Minister of the Environment. The tax can amount to 50% of the fair market value of the property at the time of the unauthorized change in use or disposition.

Such a tax may be appropriate against a charity or municipality where the charity or municipality is the owner in control of the property. However, in the case of conservation agreements, Conservation Bodies that are the holders of the agreement but not the owners in control of the property may wish to negotiate for the type of indemnity outlined in the second sentence of article 6.2 of this sample Agreement. This sentence may be deleted if the Lands are not certified as "ecologically sensitive" under the Income Tax Act.

[6.3 *Below - Optional and by Agreement of the Landowner*]

6.3 No less than ten (10) days in advance of a transfer of the fee simple title to or a possessory interest in the whole or any part of the Property, the Owner shall pay to the Conservation Body two (2) percent of the sale price or make alternative arrangements for such payment to the satisfaction of the Conservation Body. A lease of less than five (5) years total duration and all transfers by bequest, by right of survivorship, or for no or nominal consideration up to a value of fifty (50) dollars are exempt from this provision. Any failure to make such payment shall be a debt with interest at the rate of five (5) percentage points above the prime rate of interest from time to time charged by the Bank of Canada and shall be a charge upon the whole Lands enforceable in the same manner as a mortgage, and shall be recoverable by the Conservation Body in a court of law.

"Transfer fees", also known as "stewardship fees", as currently applied in the US and Canada have been in the magnitude of 2% to 10% of the sale price. They are optional. The latter (10%) has been used on public land that is being transferred to the private sector. If agreed to by the owner, the usefulness of the "transfer fee" provision is manifold:

- (a) It helps the conservation body to assume agreements on properties where an endowment is not possible, thus assisting them to meet their mission and commitment to protecting the property while providing some assistance regarding long term stewardship costs;
- (b) It provides a degree of comfort to landowners who may question how the recipient organisation is going to have the funds for stewardship in perpetuity;
- (c) It ensures that the conservation agreement holder is made aware of property ownership transfers and provides immediate funds for a landowner contact meeting to discuss the terms of the easement and to prepare and have signed off a new monitoring report.
- (d) Transfer fees act as an automatic inflation hedge since they are tied to the underlying real estate value. They may burden people to a nominal degree, but the people they burden are those that benefit from the resource that is protected and stewarded. Ultimately the fees can generate major dollars with very little pain that has the potential to build up a considerable endowment for each property or at least significant operating revenues for stewardship.

- 6.4 The Owner shall give prompt notice to the Conservation Body of any proposals or processes involving activities that could potentially affect the Lands or within five hundred (500) metres of the Lands of which the Owner becomes aware which may have any impact on the Lands in order to give the Conservation Body the opportunity to participate in relevant processes. Except as required by law, the Owner shall not permit any access to the Lands under the *Aggregate Resources Act*, R.S.O. 1990, c. A.8, the *Mining Act*, R.S.O. 1990, c.M.14, either as amended or replaced, or any other legislation for the purposes of extracting aggregates, minerals, water or any other resources, without obtaining the prior written consent of the Conservation Body.

This provision will enable the Conservation Body to become informed and participate in any processes affecting the Lands, and obtain compensation for any impact on its interests in the Lands that it cannot control.

- 6.5 The Owner shall give notice to the Conservation Body of any change in the ownership of or any interest in the Lands and the Conservation Body shall give notice to the Owner of any assignment of the interest of the Conservation Body under article 9.5 of this Agreement. Any such notice shall include the name and address of the new party and shall be given at least ten (10) days prior to the change of interest.
- 6.6 The Owner shall not transfer or permit any mortgagee to transfer any ownership interest in the Lands without requiring the transferee to acknowledge in writing (by acknowledgement addressed and delivered to the Conservation Body) the priority of this Agreement and the interest of the Conservation Body thereunder, and will not lease or licence the Lands or any part thereof without such lease or licence being made expressly subject to this Agreement. The failure of the Owner to perform any act required by this Article 6.6 or the preceding Article 6.5 shall not impair the validity of this Agreement or limit its enforceability in any way.

## Article 7 Default

- 7.1 In the event of breach or default in the obligations and Covenants of the Owner under this Agreement, the Conservation Body may take any action available to it at law, in equity, by statute or under this Agreement provided that the Conservation Body 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.

Article 7

- 7.2 In the event that the Owner has failed to provide compliance within the sixty-day period allowed, the Conservation Body shall be entitled to enter onto the Lands and to complete those works and measures necessary to provide compliance and to remedy the default at the expense of the Owner.
- 7.3 If the Conservation Body in its sole discretion determines that circumstances require immediate action to prevent or mitigate damage to the Conservation Values of the Lands, the Conservation Body may pursue its remedies under this article 7 without prior notice to the Owner or without waiting for the expiry of the sixty-day notice period as otherwise required under article 7.1.
- 7.4 The parties recognize that damages based on market value may not be adequate or effective to compensate for destruction of or restoration of the Conservation Values of the Lands as they existed prior to default or breach of the Agreement. Accordingly, the parties agree that:
- (a) compensation to the Conservation Body in the event of default or breach of the Agreement may be based on market value or restoration or replacement costs, whichever, in the opinion of the court, shall better compensate the Conservation Body; and
  - (b) in addition and without limiting the scope of the other enforcement rights available to the Conservation Body under this Agreement, the Conservation Body may bring an action or an application for injunctive relief to prohibit or prevent default or the continuance of default under this Agreement.

Traditionally, a court would look to the market value of a property before and after breach of an agreement to determine the appropriate amount of compensation. However, market value may not be an adequate basis for determining damages when the ecological integrity of a natural feature is at issue. For example, the destruction and drainage of a wetland could actually enhance the development potential and market value of the Lands. Article 7 is specifically drafted to provide compensation that would allow restoration or replacement of the damaged natural feature.

In addition, since restoration or replacement of a mature natural feature or ecosystem may not be possible, the agreement should specifically provide for injunctive relief, as in article 7.4 (b) above, to prevent damage to the natural features in the first place.

- 7.5 All reasonable costs incurred by the Conservation Body in enforcing the terms of this Agreement, including without limitation legal costs and expenses, and any costs of restoration required to remedy any violation of the terms of this Agreement by the Owner shall be paid by the Owner to the Conservation Body. Until paid by the Owner to the Conservation Body, such costs of remedy incurred by the Conservation Body shall be a debt owed by the Owner to the Conservation Body and shall be a charge upon the Lands enforceable in the same manner as a mortgage and recoverable by the Conservation Body in a court of law.

## Article 8 Notice

- 8.1 Any notice (which term in this article includes any request or waiver) provided or given hereunder shall be sufficiently given by either party if in writing and delivered by hand, sent by facsimile or other means of electronic communication or mailed by prepaid registered post, if to the Conservation Body as follows: *[insert details]*

Address:

Fax and other contact numbers:

and if to the Owner as follows:

Address:

Fax and other contact numbers:

Any notice so delivered or any notice so forwarded by facsimile or other means of communication shall be deemed to have been given on the next business day following the day of delivery or forwarding and any notice so mailed shall be deemed to have been given on the fourth business day following the day of mailing. Either party may in any manner aforesaid give notice to the other party of any change in the address or fax number thereof and thereafter the new address or fax number shall be the address of such party for the purpose of giving notice hereunder.

## Article 9 General Provisions

- 9.1 *[Optional: See annotation below.]* No person who is an Owner shall be liable to the Conservation Body for any breach of or default in the obligations owed to the Conservation Body under this Agreement committed after the registration of a transfer by such person of all of the interest thereof in the Lands, provided that the Owner has delivered to the Conservation Body an acknowledgement and assumption executed by the new registered Owner, acknowledging the priority of this Agreement and the interest of the Conservation Body and assuming the obligations of an Owner under this Agreement.

This optional article is intended to supply the Owner with an incentive to ensure that any purchaser of the Lands provides explicit written acknowledgement and acceptance of the obligations of the Owner under the conservation agreement. Such an acknowledgement would give the Conservation Body notice of the change in ownership and an opportunity to begin a co-operative relationship with the new Owner. The Conservation Body may prefer, however, to simply rely on the legal operation of the agreement registered on title, which is intended to "run with the land" and to bind all future landowners.

Article 9

- 9.2 The Conservation Body may assign all of its interest in this Agreement to any qualified Conservation Body, including the local municipality or the conservation authority, provided that the Conservation Body shall provide the Owner with written notice of such assignment. The Conservation Body 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.

Assignment of the Agreement to another Conservation Body is specifically contemplated by section 3(3) of the Act.  
 This provision in the Agreement is directed at relieving the original Conservation Body from any obligations or liability to the Owner after the assignment and notice of assignment.  
 Note that the Act also provides for mandatory assignment of the Agreement to the Minister of Natural Resources in the event that the original "conservation body ceases to be a conservation body." Such a mandatory assignment may occur if a not-for-profit corporation lost its charitable status under the Income Tax Act (Canada) and could also no longer satisfy the definition of a "conservation body" in the Conservation Land Act.  
 If the agreement is made to further an Ecological Gift under the Income Tax Act (Canada), then the Conservation Body will need to seek the approval of Environment Canada for any assignment and the assignee needs to be an eligible recipient.

- 9.3 The Conservation Body shall register this Agreement and any part of it against title to the Lands and the Owner shall execute any document that may be required to allow such registration.

Registration on title is, of course, essential to provide notice -- to any subsequent purchaser, mortgagee or any other person taking an interest in the land -- of the prior interest of the Conservation Body and of the existence of the conservation agreement and the restrictions and obligations attached to the land. Further, sections 3(5) and 3(6) of the Act provide that the conservation agreement will only run with the land and be enforceable against subsequent owners if it is registered on title to the land.  
 Article 9.3 assigns the costs of registration to the Conservation Body. Of course, other arrangements could be made and the agreement amended to specify that these costs will be the responsibility of the Owner. Alternatively, the Conservation Body could accept a donation from the Owner that would cover the cost of preparing and registering the Agreement.

- 9.4 No failure by the Conservation Body to require performance by the Owner of any provision of this Agreement shall affect the right of the Conservation Body 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.
- 9.5 Neither the Owner nor the Conservation Body shall be liable to the other hereunder 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 movement, trespass, insect plague or disease. The burden of proving that a particular breach or default was due to a cause beyond the control of the party shall be upon the party claiming immunity from such liability.
- 9.6 Time shall be of the essence to this Agreement and shall be deemed to remain so notwithstanding any extension of any time limit.

- 9.7 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.
- 9.8 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.
- 9.9 Whenever the Owner should comprise more than one person, the obligations thereof hereunder shall be joint and several.
- 9.10 This Agreement, including all of the Easement and the Covenants, shall run with the Lands for the Term or until such time as the Conservation Body, or its successor or assign, authorizes a release or partial release of the terms of this Agreement in accordance with the law.
- 9.11 The Conservation Body may erect signage on the Property setting out the existence of this Agreement and may otherwise publicize the existence of this Agreement.
- 9.12 Any amount paid by a party hereunder by reason of the default of the other party shall bear interest from the date the amount was paid until the date of repayment at a rate which is the lesser of (i) five (5) percentage points over the prime rate of interest from time to time charged by the Bank of Canada or (ii) the maximum rate allowed by law.
- 9.13 This Agreement embodies the entire Agreement of the parties with regard 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.
- 9.14 The headings in the body of this Agreement form no part of the Agreement but shall be deemed to be inserted for convenience of reference only.
- 9.15 This Agreement shall be read with such changes of gender and number as the context requires. Any reference to a person shall be deemed to include a corporation, partnership or trust.
- 9.16 This Agreement shall be construed and enforced in accordance with, and the laws of Ontario and the laws of Canada applicable shall govern the right of the parties thereto.
- 9.17 Each party at the request of the other party shall execute and deliver such assurances and do such other acts as may be reasonably required or desirable to give full effect to the provisions and intent of this Agreement.
- 9.18 The Parties hereby acknowledge and confirm the following:
- a. The Owner has been advised by the Conservation Body to obtain independent legal, financial and tax advice prior to entering into this Agreement and has obtained that advice [or: “has elected not to obtain that advice”].;

The option of electing not to get independent legal advice should be discouraged. The best practice is to use a lawyer representing the Owner and another lawyer representing the Conservation Body. However, ultimately it is the Owner's choice as to whether she or he obtains or heeds legal advice.

b. Pursuant to the Act, releasing or amending the Easement or Covenants contained in this Agreement requires the consent of the Minister of Natural Resources for Ontario;

c. [use only if the Agreement is donated through the Ecological Gifts Program] Pursuant to section 207.31 of the Income Tax Act, (Canada), the authorization of the Minister of the Environment for Canada or his/her delegate, is required prior to implementing a disposition of this Agreement or a change of use of the Property not in compliance with this Agreement.

9.19 This Agreement, or notice of this Agreement, in addition to being registered on title to the Property, may in future be required to be deposited, filed or registered in a registry of Conservation Agreements under the Act managed by the Ministry of Natural Resources for Ontario or its delegate ("the Conservation Agreement registry"). The Parties undertake and agree to execute any document required to effect the deposit, filing or registration of this Agreement in the Conservation Agreement registry when the Conservation Agreement registry is established.

9.20 This Agreement remains enforceable regardless of any change in land use planning, change in planning classification, or use of the Lands or use of adjacent or nearby properties.

IN WITNESS WHEREOF the Owner and the Conservation Body have executed this Agreement as at the date first above written.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Spouse

[*Conservation Body name*]  
We have authority to bind the corporation

Per: \_\_\_\_\_  
Name:  
Title

Per: \_\_\_\_\_  
Name:  
Title:

## Schedule “A” - Legal Description of Lands

Attached to and forming part of the Conservation Agreement between [Owner], of the First Part, and the [Conservation Body], of the Second Part, dated as of the        day of        , 20XX.

*[insert legal description]*

## Schedule “B” - Covenants

Attached to and forming part of the Conservation Agreement between [Owner], of the First Part, and the [Conservation Body], of the Second Part, dated as of the        day of        , 20XX.

*[This section of the Conservation Agreement will list the Covenants or restrictions on activities or land uses. Covenants are often referenced as “Restrictions” in Conservation Agreements and are listed in a separate schedule for ease of registration within Ontario. The purpose of including Covenants to restrict activities and land uses is to protect the natural features on the property by eliminating threats to those natural features. Covenants must therefore be tailored individually for each property.]*

*Drafting and tailoring Covenants for a particular property will involve many discussions between the land trust and the landowner. It is recommended that legal counsel review the Covenants to ensure that they are drafted clearly in legally enforceable language. Property “stewards” should also be involved in the review and discussion as they will ultimately be responsible for future monitoring and enforcement of the Covenants.*

*To assist with the process of drafting Covenants here are some points of consideration:*

- ✓ *Recent changes in legislation, now allow land trusts to have the Conservation Agreement (therefore the Covenants) apply to only a portion of the property;*
- ✓ *The Conservation Agreement can be drafted in such a way that the agreement applies to the entire property but the Covenants apply only to certain zones or areas within the property boundaries (i.e. residential area versus protected area);*
- ✓ *Try to avoid restricting activities in the residential area otherwise you will spend considerable time and resources monitoring and enforcing an area of the property where there are few natural values to protect;*
- ✓ *Minimize the use of undefined terms or ensure that all terminology is clearly defined and consistent in the Covenants section and throughout the entire agreement;*
- ✓ *Covenants must be consistent throughout. Reserved rights should not conflict with Covenants;*
- ✓ *When drafting multiple exceptions in a Covenant, use lists rather than long narratives; and*
- ✓ *Minimize referrals to other paragraphs by keeping all provisions related to the same topic within the same section.*

Listed below are some examples of each of the various types of RESTRICTIVE COVENANTS classified by THEME. These examples are included for ILLUSTRATIVE PURPOSES AND DISCUSSION ONLY. Not all or every restriction may be necessary for a particular property. Only include restrictions that address a particular threat that may negatively impact the Conservation Values and purpose and intent of the Conservation Agreement. These examples are included to show some of the variation of wording and intent that can be found within the various Covenant themes. Some clauses are more general and more likely to apply to the entire property, while others reference specific zones of the property such as 'protected area', 'natural area', 'lane area', 'residential area', 'building area' or 'agricultural area'. If a Conservation Agreement references specific zones to a property, they need to be clearly defined and delineation of these zones with a legal survey is highly recommended.]

## 1. Severance and Subdivision

### EXAMPLE A

No part of the Property shall be sold, conveyed, mortgaged, charged, leased or otherwise disposed of separately from the remainder of the Property, and no plan of subdivision shall be registered against title to the Property, without prior written consent of the Land Trust.

The purpose of this clause is to prevent future severance and subdivision. It would be prudent for the land trust to notify the local municipal planning department of the Conservation Agreement so they are aware of the "no subdivision" restriction should an application for consent under Section 53 of the Planning Act ever be submitted for approval.

### EXAMPLE B

The Owners expressly covenant and agree that the Owners shall not:

Sell, convey, mortgage, charge, lease or otherwise dispose of any part of the Lands separate from any other part of the Lands, or apply for or make any application for plans of subdivision or consents for severance of the Lands under Part VI of the *Planning Act*, R.S.O. 1990, c. P.13, as amended or replaced from time to time, or otherwise apply for, make or register any severance or subdivision of any part of the Lands save and except for conservation purposes with prior written consent of the Land Trust;

This clause is similar to the clause above however it makes specific reference to the *Planning Act*. This save and except allows for the provision of severance for conservation purposes under the *Planning Act*. This is important if the land trust thinks there is a possibility that they will want to have part of the property in the future.

## 2. Easements and Rights of Ways

### EXAMPLE A

No easement, right of way or right in the nature of an easement, in, on, over, under or through the Protected Area shall be granted to any person, without the prior written consent of the Land Trust.

This clause prevents other easements from being registered on the property that affect the Protected Area without consent from the Land Trust. Other easements could conflict and threaten the natural features of the property depending on the type of easement (e.g. hydro easement, trail easement on sensitive areas) and location of the easement (e.g. residential area versus protected area).

### EXAMPLE B

The Owners expressly covenant and agree that the Owners shall not:

Grant any lease, easement or right of way in, over, on, under or through the Lands, including the grant or renewal of a lease for the exploration or development of petroleum or gas;

This clause is similar to the one above however it also specifically restricts activities related to petroleum or gas.

## 3. Development Rights and Construction of New Improvements

### EXAMPLE A

No building, structure, fixture, sign or other improvement of any kind shall be erected, placed or maintained or be permitted or suffered to be erected, placed or maintained, on, in, under or over the Protected Area, provided that benches for viewing wildlife or scenery may be placed and maintained in the Protected Area and fences and "no trespassing" and "no hunting" signs may be placed and maintained on the boundaries thereof.

Many Conservation Agreements restrict new buildings or new structures. Structures are usually defined as permanent structures. This specific Covenant is restricting any development or placement of structures in the Protected Area with an exception for benches, fences and signs.

### EXAMPLE B

The Owners expressly covenant and agree that the Owners shall not:

construct, erect, maintain or allow the construction, erection or maintenance of any building or structure or transmission tower or lines on the Lands, except that within the Building Area existing buildings may be maintained, replaced or expanded in compliance with section X.X of this Agreement; The Owners shall be entitled to maintain, expand or replace the buildings within the Building Area, provided that:

- a) there may not be more than two residential dwellings within the Building Area and the total combined floor area of the residential dwellings may not exceed 800 square meters; and
- b) the total combined floor area of the barns, storage or other accessory buildings may not exceed 1000 square meters.

Total combined floor area shall mean the combined total floor area for all floors measured from the outside walls of the building or structure.

Any modification, alteration, construction, or reconstruction of any sewage waste disposal system on the Lands shall also be located within the Building Area. The Owners shall provide notice to the Land Trust of any construction or improvement to the buildings or to the sewage or waste disposal system.

There may be a reserved right to have additional home or barn structures, or the replacement or conversion of existing structures. If so, provisions should be clear and specific around allowable size, square footage, height, location and use. However, having this level of detail in a restriction can lead to difficult monitoring and enforcement decisions and raise questions such as; Do decks and patios count? Can you have a duplex and one other residential building? An alternative to this approach is to set-up this Covenant so it only restricts new development within the 'protected area' and does not restrict any development or maintenance of existing structures within the 'building area'. Also, it is important to note that by having some provisions in one restriction and others related to the same topic in another restriction (i.e. reference to section X.X) may be unavoidable in some cases but should be minimized or eliminated as much as possible for ease of reference and clarity.

## 4. Construction of Roads and Trails

### EXAMPLE A

No road, driveway, walkway, bicycle or other path, parking area, dock or ramp shall be erected, placed or maintained on, in, under or over the Protected Area provided the Owner may maintain the Existing Trail(s) in the condition described in Schedule "X" (the Report).

This restriction allows an exception in that existing roads, trails etc can be maintained. Careful documentation of the existing size, condition, location and use of these roads and trails is necessary if there is a restriction against future changes to them. The clause here refers to 'the Report' which is the same as the Baseline Documentation Report. To ensure clarity the Conservation Agreement (and the Baseline Documentation Report) needs to define 'trail' and the location of existing trails as well as their physical attributes (i.e. width, substrate) and current condition.

### EXAMPLE B

The Owners expressly covenant and agree that the Owners shall not:

Construct, improve or allow the construction or improvement of any road, driveway, laneway, trail, parking lot, aircraft landing strip, or other such facility, on the Property, except that the existing trails and laneways identified in the Report may be maintained at a maximum width of 2 meters by mowing and the removal of fallen trees and the construction of bridges at creek crossings, but the trails and laneways shall be surfaced with the natural soil and shall not be graveled, filled or paved. In addition, a private driveway may be constructed within the Agricultural Area to service the buildings and uses permitted within the Agricultural Area.

This clause allows for several exceptions to the basic restriction and provides specific direction on how trails and laneways are to be maintained. In addition to the comments above, to ensure clarity the Conservation Agreement (and the Baseline Documentation Report) needs to define 'Agricultural Area' and its location as well as whether there are any restrictions for the construction (e.g. maximum length/width and type of substrate) of the private driveway for the Agricultural Area.

## 5. Grading/Alteration of Topography

### EXAMPLE A

No alteration shall be made or permitted or suffered to be made in the general topography of the Property or any part thereof, which, in the opinion of the Land Trust, is or may reasonably be expected to be detrimental or adverse to the Purposes. Without limiting the foregoing, tilling of the soil, grazing of livestock, construction of drainage ditches, retaining walls, dams, ponds, transmission towers and lines, and any other similar undertaking, as well as the dumping, excavation, dredging, mining or removal of loam, gravel, soil, rock, sand or other material or minerals, shall all be deemed to be detrimental or adverse to the Purposes and shall not be undertaken or permitted or suffered to be undertaken without the prior written consent of the Land Trust.

This clause lists many examples of how topography can be altered. The clause is essentially a 'no disturbance' clause.

### EXAMPLE B

The Owners expressly covenant and agree that the Owners shall not:

Undertake or allow the dumping, filling, excavation, mining, drilling, dredging or removal of topsoil, loam, gravel, soil, rock, sand, minerals gas or petroleum products or any other materials of any type or description anywhere on the Lands, except that ploughing, tilling, grading and the removal of stones may be undertaken as ancillary to permitted agricultural activity in the Agricultural Area;

This clause is similar to the one above but allows for exception in the Agricultural Area.

## 6. Dumping

### EXAMPLE A

No soil, rubbish, ashes, garbage, sewage, waste, or other unsightly or offensive materials of any type or description shall be dumped or stored or permitted or suffered to be dumped or stored on, in, under or about the Protected Area.

This clause restricts pollution; the release or dumping of certain substances as well as the placement of underground storage tanks (e.g. for petroleum, sewage, water). This clause affects only the Protected Area of the property.

### EXAMPLE B

The Owners expressly covenant and agree that the Owners shall not:

Dump or fill or allow the dumping or filling of soil, fill, rubbish, ashes, garbage, waste or any unsightly, hazardous or offensive materials of any type or description anywhere on the Property.

This clause restricts dumping anywhere on the Property and is highly restrictive. If there are landowners residing on the property take note that this clause will not even allow compost or fireplace ashes to be dumped anywhere on the property (e.g. in the garden).

## 7. Removal of Trees and Vegetation

### EXAMPLE A

No tree, shrub, or any other native or natural vegetation within the Protected Area shall be removed, destroyed or cut.

This restriction explicitly states that no cutting of native vegetation is allowed in the Protected Area, not even for forest management purposes. Some land trusts have attempted to allow exceptions for wood cut for personal use and have put limits on the quantity of wood (e.g. 2 cords of wood permitted each year) but this is very difficult to monitor and enforce. If a land trust decides to monitor wood harvesting for personal use, "cord" should be defined and a prohibition against selling wood and removing wood from the property should be included.

### EXAMPLE B

No tree, shrub, or any other native vegetation within the Protected Area shall be removed, destroyed or cut, save and except those that may be removed: (i) as part of a mutually agreed Forest Management Plan written or approved by a Professional Forester to achieve compliance with the purpose and intent of the Conservation Agreement; (ii) to control non-native or exotic intrusion; (iii) for restoration purposes; (iv) to maintain the existing hydro line as indicated on Map X or (v) to remove a danger or hazard and is conducted in a manner not injurious to the remaining trees, flora, fauna and soils, and maintains soil stability, water quality and quantity and the other conservation features of the Property.

This restriction is very complicated and it allows for several exceptions. The Forest Management Plan adds another significant component to the Conservation Agreement and must be carefully reviewed and agreed upon to ensure that the terms in the Management Plan are consistent with the terms of the Conservation Agreement. Several questions can be raised about this particular Covenant which may warrant more clarification. Questions such as; Who will agree on the Forest Management Plan? How will this be agreed upon? Is "Professional Forester" defined? Is the Forest Management Plan supposed to be written to achieve compliance with the purpose and intent of the Conservation Agreement or is the removal of vegetation supposed to achieve that purpose or both? What is the definition of a danger or hazard?

## 8. Water Features

### EXAMPLE A

No interference with, or alteration of any lake, pond, wetland, watercourse or any other body of water in the Protected Area shall be undertaken or permitted or suffered to be undertaken, nor shall any use thereof be made or permitted to be made which, in the opinion of the Land Trust, will or may reasonably be expected to be detrimental or adverse to the Purposes.

This clause is aimed to prevent interference and alteration of all water resources on the property.

### EXAMPLE B

The Owners expressly covenant and agree that the Owners shall not:

Drain or allow the drainage of any wetlands of the Lands except by natural processes, except that existing drains may be maintained in the locations shown in the Report;

This clause is specific to protecting wetlands on the property. To ensure clarity the Conservation Agreement (and the Baseline Documentation Report) needs to define 'wetland' and the location of existing drains on the property and their purpose or function.

## 9. Water Quality/Quantity

### EXAMPLE A

No activity or action on the Property shall be performed or permitted or suffered to be performed, nor shall any use of the Property be made or permitted or suffered to be made, which in the opinion of the Land Trust, is or may reasonably be expected to be detrimental or adverse to water conservation (in quantity or quality) on, in or about the Property.

This is a difficult clause to monitor and enforce because there must be a baseline of water quality (e.g. pH, heavy metal concentrations) and water quantity (e.g. level of water table, surface water) data to compare by.

### EXAMPLE B

The Owners expressly covenant and agree that the Owners shall not:

Produce, pump or in any way provide for the export or removal of surface water or groundwater for sale or for use other than use within the Lands, except that the maintenance of drains, as noted in paragraph X, is permitted;

This clause is to prevent water pumping from the Property.

## 10. Pesticides and Herbicides

### EXAMPLE A

There shall be no use or application of pesticide, insecticide, herbicide, chemical or other toxic material of any type or description within the Protected Area without the prior written consent of the Land Trust.

This restriction can be useful but is difficult to monitor and enforce. This clause should be included on a case-by-case basis. It is important to note if there is a residence on the property, this restriction should only apply to the 'protected area' and not apply to the 'residential area' of a property for it would exclude the residents from using any household chemicals around the home. This Covenant can be written to allow for exceptions (i.e. to treat invasive species, etc. that threaten the natural features) with the written consent of the Land Trust. Another note of caution is the use of pesticides/herbicides on Agricultural or 'non-natural' parts of the property which could drift or migrate to sensitive parts of the property by means of air, surface or ground water.

## 11. Collection of Plants and Animals

### EXAMPLE A

No native or naturally occurring plant or animal species shall be gathered or removed from the Protected Area, but this provision shall not prohibit removal in the course of exercise of the Land Trust's rights under the terms of the Easement.

This clause is intended to prevent the removal of plants and animals as this could cause extirpation from the property. Some landowners may request an exception for gathering or harvesting of small quantities of plants (e.g. fiddleheads). This clause does not appear to restrict the removal of plant 'parts' or fruit for personal consumption therefore it could allow for collection of nuts and berries. This clause is generally difficult to monitor and enforce.

## 12. Camping

### EXAMPLE A

No mobile home, trailer or boat used or intended for use as a residence or for overnight or short-term accommodation shall be placed, kept or permitted or suffered to be placed or kept in the Protected Area.

This clause is intended to prevent overuse of the Protected Area by camping activities. Some landowners may want an exception granted for overnight camping for family or friends as well as the temporary use of fire pits. Note that the term 'boats' used in this clause infers the exclusion of any type of boat (including non-motorized boats such as canoes and kayaks).

## 13. Vehicles

### EXAMPLE A

Operate or allow the operation on the Lands of dune buggies, motorcycles, ATV's or any other type of motorized vehicles, except that the use of motorized vehicles ancillary to permitted conservation and property management activities by the Owners is permitted. Equipment required to carry out permitted agricultural activity in the Agricultural Area is also permitted. In carrying out the permitted activities the Owners will make reasonable efforts to minimize the disruption to wildlife and damage to the natural features.

The use of a "No Motorized Vehicle" clause has always been popular in Conservation Agreements however landowners discovered that they were limited and could not use vehicles that may be necessary for forestry management or other personal uses on their property. This clause is mainly used to prevent damage to the property by misuse and over use of vehicles. This clause allows an exception for motorized vehicle use for property management purposes and also puts the onus on the landowner to minimize disruption to wildlife and damage to natural features. Some land trusts are opting to not even include this Covenant because of the extreme difficulty in monitoring and enforcing it. There is a lot of variation within these clauses for what is listed as a 'motorized vehicle'. Some land trusts are including snowmobiles, boats, personal watercraft, air borne vehicles etc depending on the property and the threats that are involved.

### EXAMPLE B

No snowmobile, all terrain vehicle, motorcycle, or similar motor-driven land, water or air borne vehicle shall be operated or permitted or suffered to be operated on or through the Property outside of the Residential Area unless for purposes of carrying out activities required by the forestry management agreement;

This clause shows the variation with the type of vehicles that are prohibited. This clause only restricts their use in areas outside of the Residential Area but provides an exception for activities related to the forestry management agreement. The difficulty with this clause is again the monitoring and enforcement of it. Another approach to managing the potential damage that a motorized vehicle can cause is to approach it by controlling the damage through a "soil stability" clause which is listed below.

## 14. Soil Stability

### EXAMPLE A

No activities shall take place within the Protected Area that may cause extensive soil compaction, rutting or soil erosion, other than those required to maintain the Existing Trail(s) in the condition described in Schedule "X" (the Report) and indicated on Map X.

The purpose of this clause is to prevent any damage to soil that could be caused by continuous activities such as the use of motorized vehicles, cycling, horseback riding and other potentially damaging activities. This clause still allows for these activities and the use of motorized vehicles for property purposes (e.g. forest management) but puts the onus on the landowner to protect soil stability by limiting repetitive activities and the timing of those activities (e.g. not using motorized vehicles on a day when soil is wet).

## 15. Hunting, Trapping and Fishing

### EXAMPLE A

No commercial or sport hunting, fishing or trapping shall occur or be permitted or suffered to occur in the Protected Area.

This restriction is very difficult to monitor and enforce. The land trust needs to carefully consider whether this clause is necessary. It should only be considered in specific situations where the natural features and the threats warrant the inclusion. Hunting may be necessary on the property at times for wildlife management purposes to protect the natural features on the property (e.g. over browsing by deer of the forest under storey).

### EXAMPLE B

Hunting, trapping and fishing, whether for commercial or recreational purposes, are prohibited, except that the removal of agricultural livestock and the removal of diseased wildlife or non-native wildlife is permitted and hunting by those persons normally residing full time on the Lands, is permitted;

This clause is similar to the one above however it allows for hunting for agricultural and wildlife management purposes.

## 16. Horses, Horseback Riding and Bicycles

### **EXAMPLE A**

No horses or horse-back riding or bicycle riding shall be permitted or shall occur or be permitted or suffered to occur in the Protected Area.

This restriction is very difficult to monitor and enforce. The land trust needs to carefully consider whether this clause is necessary. It should only be considered in specific situations where the natural features and the threats warrant the inclusion.

## **17. Discharge of Firearms**

### **EXAMPLE A**

No firearms or explosive devices of any kind shall be discharged or permitted or suffered to be discharged in the Protected Area.

This restriction is very difficult to monitor and enforce. The land trust needs to carefully consider whether this clause is necessary. It should only be considered in specific situations where the natural features and the threats warrant the inclusion. Firearms may be necessary on the property for wildlife management purposes to protect the natural features on the property (e.g. over browsing by deer of the forest under storey).

## **18. Livestock and Agriculture**

### **EXAMPLE A**

The Owners expressly covenant and agree that the Owners shall not:  
Conduct or allow agricultural activity in the Natural Area including the grazing of livestock, the tilling or ploughing of the soil or the harvest of agricultural crops. Agricultural use and agricultural activity is permitted in the Agricultural Area;

This clause restricts agricultural activities in the Natural Area to protect the natural features but allows for activities in the Agricultural Area.

### **EXAMPLE B**

The Owners shall not permit agricultural livestock to enter or to use the Lands and shall maintain the fencing along the boundaries of the Lands in a condition that will prevent agricultural livestock from entering onto the Lands.

This clause particularly prevents livestock from occupying the Lands and is especially important when other parts of the property or neighbouring properties have livestock.

## 19. Business

### EXAMPLE A

No trade, business or calling whatsoever shall be carried on from or within the Protected Area.

This clause prevents business activities from occurring within the Protected Area and doesn't restrict landowners from having businesses within the Residential Area (i.e. home based business). This clause may however restrict bed and breakfast businesses if part of the business involves the patrons' use of the Protected Area.

## 20. Wildlife Movement

### EXAMPLE A

The Owner shall not construct, pursue, permit or suffer the construction of fencing or other obstacles, which would exclude or in the opinion of the Land Trust, unduly restrict wildlife movement in or through the Protected Area.

This clause aims to restrict any type of fencing (e.g. electric) or other obstruction that will restrict wildlife movement through or onto the Protected Area. In terms of fencing, this clause encourages the use of wildlife friendly fencing which allows wildlife to pass under, through or over it without adversely affecting the animals.

## Schedule “C” – Easement

Attached to and forming part of the Conservation Agreement between [Owner], of the First Part, and the [Conservation Body], of the Second Part, dated as of the        day of        , 20XX.

1. The Owner hereby grants to the Conservation Body an easement, and enters into a covenant to permit the Conservation Body to enter the Lands and to not interfere with such entry by the Conservation Body, in order to permit the Conservation Body and the employees, agents, servants, workers, contractors, officers and directors of the Conservation Body and their supplies, equipment, materials, machinery and vehicles to enter onto and have access to the Lands at reasonable times, subject to the notice requirements specified below in section 2, and for the following purposes:

to conduct an inspection in order to determine compliance with this Agreement and to determine those measures necessary to ensure compliance with this Agreement;

- (a) to carry out any construction, demolition, maintenance, alteration, repair, improvements, installation or work or any restoration of the natural features reasonably required in the opinion of the Conservation Body, pursuant to the Management Plan or to remedy any default of the Owner as described in Article 7 of this Agreement; and

These access provisions may be necessary where the Conservation Body has significant management responsibilities or where major restoration or enhancement of Conservation Values is proposed. In addition, access rights will normally be required to allow enforcement of the Agreement and to remedy any “default” (breach of obligations) on the part of the Owner.

- (b) for all purposes reasonably necessary or incidental to the exercise of the rights hereby created or related to any of the foregoing purposes.

2. Prior to entry or access to the lands for the purposes identified in article 5.1, the Conservation Body shall provide notice to the Owner as follows, unless in the opinion of the Conservation Body there is an emergency or other circumstance that does not make it feasible to give notice of the intent of the Conservation Organization to enter onto the Lands:

- (a) for the purposes specified in section 1(a), at least twenty-four (24) hours’ oral or written notice; and

Although not required by the Act, these provisions requiring the Conservation Body to provide notice before entering onto the Lands are suggested as a courtesy to the existing and future landowners. Notice can be shorter where the purpose of access is for compliance inspection, and longer where more intrusive and expensive works are proposed.

- (b) for the purposes specified in sections 1(b) and 1(c), at least 10 days’ written notice. The notice under this section 2(b) shall describe the nature, scope, design, location, timetable and any other material aspect of the activity proposed.

## **Schedule “D” – Baseline Documentation Report**

Attached to and forming part of the Conservation Agreement between [Owner], of the First Part, and the [Conservation Body], of the Second Part, dated as of the        day of        , 20XX.

## **Schedule “E” – Management Plan**

Attached to and forming part of the Conservation Agreement between [Owner], of the First Part, and the [Conservation Body], of the Second Part, dated as of the        day of        , 20XX.