

CONSERVATION EASEMENT AGREEMENT

DATED this day of....., 2015

B E T W E E N :

ENTER PROPERTY OWNER NAME
(hereinafter called the “**Grantor**” or “**Owner**”)

OF THE FIRST PART

- and -

ONTARIO FARMLAND TRUST
(hereinafter called the “**Trust**” or “**OFT**”)

OF THE SECOND PART

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 the *Conservation Land Act of Ontario*, 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:

“**Act**” means the *Conservation Land Act*, as amended and any statute that may be enacted to modify or replace the Act.

“**Agreement**” or “**this Agreement**” means this conservation easement agreement and the schedules attached hereto as at the date hereof and as amended from time to time.

“**Agriculture**” means the production, harvesting, storage, and incidental packaging, processing, wholesale and retail marketing of crops, plants, fibre, animals and related commodities produced on the Lands, including, without limitation, the raising, breeding, grazing and husbandry of livestock (such as cattle, sheep, goats, horses, poultry and fowl) and bees, dairying, equestrian operations, the planting, tending and harvesting of forage, grain or other crops (such as beans, cereal grains, oil seeds, tobacco, vegetables, and fruits), horticulture, viticulture, nursery, forestry, biomass, pasturage and any other activities customarily carried on in the field of agriculture.

“**Agricultural Area**” is that part of the Lands described as Part _____ on Plan _____.

“**Authority**” means any governmental authority, quasi-governmental authority, agency, body or department whether federal, provincial or municipal, having jurisdiction over the Lands or the use thereof.

“**Covenants and Restrictions**” means the Covenants and Restrictions referred to in Article 4 and as set out in Schedule “D” as the same may be waived, varied or released by the Trust in accordance with this Agreement.

“**Easement**” means the rights and easements in respect of the Lands granted by the Owner to the Trust in **Article 5** of this Agreement.

“**Forested and Natural Area**” is that part of the Lands described as Part _____ on Plan _____.

“**Lands**” or “**Property**” means the lands and premises of the Owner described in **Schedule “A”** attached hereto.

“**Minister**” means the Minister of Natural Resources for the Province of Ontario.

“**Natural Features**” means those natural features of or on the Lands and described under the heading General Description of Natural Features in **Schedule “B”** hereto.

“**Ontario Farmland Trust**” means the above-named party of the Second Part, being a non-share capital corporation established by the laws of Canada.

“**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.

“**Protected Area**” is that part of the Lands that are the Agricultural Area and the Forested and Natural Area.

“**Report**” means the Baseline Documentation Report referred to in **Schedule “B”** to be completed by the Trust at its expense describing the Lands and documenting the natural values and features and current uses of the Lands.

“**Residential Area**” is that part of the Lands described as Part ___ on 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 Lands include the significant Natural Features summarized in **Schedule “B”** that the Owner and the Trust have agreed to protect and enhance as provided herein and that will be comprehensively documented in the Report when completed.

2.3 It is agreed that the Report, when completed, will accurately describe the Lands including the current use and the significant Natural Features of the Lands and is intended to serve as an objective information base for monitoring compliance with this Agreement.

2.4 The Grantor 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 Grantor’s spouse has executed this Agreement.

2.5 The Trust covenants and warrants that it is a corporation incorporated under Part II of the *Canada Corporations Act*, and continued under the *Canada Not-for-Profit Corporations Act*, is a charity registered under the *Income Tax Act* (Canada), is a conservation body within the meaning of the Act and has the right to enter into this Agreement.

ARTICLE 3 - INTENTION

3.1 The purpose and intent of this Agreement is to ensure:

- (i) the conservation, maintenance, restoration and enhancement of the Natural Features of the Forested and Natural Area;
- (ii) the continuation of Agriculture as provided in the Report on the Agricultural Area;
- (iii) the continuation of wildlife on the Forested and Natural Area; and
- (iv) any use of the Lands will not interfere with or prevent the conservation, maintenance, restoration or enhancement of, or damage or destroy the Forested and Natural Area, or prevent continuation of Agriculture on the Agricultural Area and wildlife habitat on the Forested and Natural Area, all as more particularly set out in this Agreement.

3.2 There is public interest and benefit in the conservation, maintenance, restoration and enhancement of the natural values and Natural Features of the Lands and the wildlife thereon, and the continuation of Agriculture on the Agricultural Area.

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 Restrictions and Easement.

3.4 The Owner acknowledges the Trust may, in accordance with the provisions of the Act and this Agreement, assign this Agreement to a conservation body as the term is defined in the Act. The Trust shall assign this Agreement to the _____ (*IF A CONSERVATION AUTHORITY: or its successor under the Conservation Authorities Act, R.S.O. 1990, C. 27*) (hereinafter “_____”), as amended or replaced, in any situation where the Trust is at direct risk of losing its status as a Conservation Body under the Act, except that, if the _____ is not at such time qualified or willing to hold this Agreement, the Trust shall assign this Agreement to another qualified conservation body as defined by the Act. Should

the Minister or the Minister's successor become the assignee of this Agreement and seek to further assign this Agreement, it is the intention of the parties that the Trust or the _____ be the preferred assignees. _____ shall be required, upon any assignment of this agreement to it, to assume, observe and perform all the rights and obligations of the Trust herein, and shall be entitled to enforce the terms hereof, to the same extent as the Trust may enforce the terms hereof.

3.5 The parties acknowledge for the purpose of registering this Agreement against the title to the Lands, the Trust may at its cost survey the Lands and the parties shall co-operate to facilitate same and the registration of any plans as required to properly record and describe the terms hereof and the location of the Lands.

ARTICLE 4 - COVENANTS AND RESTRICTIONS

4.1 The parties covenant and agree that the Covenants and Restrictions and Easement shall be deemed to be covenants and easements governed by and having the benefit of the Act, that from the execution of this Agreement the burden of such Covenants and Restrictions and Easement shall run with and bind the Residential Area and Protected Area as set out herein and every part thereof and the benefit thereof shall enure to the Trust, and this Agreement shall be in full force and effect and in particular whether or not the Report has been completed or any acknowledgement signed by the parties in regard thereto.

4.2 The Owner covenants that the Owner and any licensee or lessee of the Lands and anyone for whom the Owner is in law responsible or for whom the Owner holds the Lands will observe and perform the Covenants and Restrictions as described in **Schedule "D"**. In addition, the Owner will not knowingly permit any breach of the Covenants and Restrictions as described in **Schedule "D"** by any person whatsoever, and, if the Owner learns of any breach or the likelihood of a breach occurring, the Owner will notify the Trust of such breach or anticipated breach as soon as possible and, in addition, where reasonable in the circumstances, will take such steps as are reasonably necessary and legally available to the Owner to prevent the breach from occurring or continuing.

4.3 Where the covenants and agreements in this Agreement are in furtherance of an ecological gift under the *Income Tax Act* of Canada, no waiver, release or variance of Covenants and Restrictions as described in Schedule "D" or other terms of this Agreement may be effected without the authorization of Environment Canada or any replacement entity responsible for enforcing the provisions relating to ecological gifts, if such authorization is necessary.

4.4 No amendment, waiver or release of the Covenants and Restrictions shall be made, given or entered into except with the consent of or notice to the Minister, if required, from time to time and this Agreement is subject to all applicable laws and regulations in effect from time to time.

4.5 Any notice or request for authorization or consent referred to in **Section 4.3 and 4.4** shall be delivered to the Trust in accordance with the provisions of **Section 8.1**.

ARTICLE 5 - EASEMENTS

5.1 The Grantor hereby grants to the Trust, pursuant to the authority of the Act, an easement and right of entry over the Lands: (i) for access to the Protected Area for the purposes of conservation, maintenance, restoration or enhancement of all or any portion of the Protected Area and the wildlife on the Protected Area; (ii) for the purpose of determining through inspection, testing or otherwise whether in its opinion the Covenants and Restrictions and the obligations of the Owner hereunder are being complied with and the purpose of this Agreement is being achieved; (iii) to carry out any remediation, restoration, removal or rehabilitation of the Natural Features of the Protected Area, and with respect to Section 2.1 of Schedule "D" on the Residential Area, as in the opinion of the Trust, acting reasonably, are necessary or desirable to carry out the purpose and intent expressed in **Article 3** of this Agreement and to carry out any work and cure any default contemplated by, or referred to herein (collectively the "**Easement**"). The Owner acknowledges that where any improvements, buildings or structures have been erected on the Lands after the date of execution and delivery of this Agreement by both parties in contravention of the Covenants and Restrictions, the Trust will be entitled to enter the Lands, other than the existing residence and other buildings currently on the Lands, for the purpose of removing such improvements, buildings and structures.

5.2 The parties covenant and agree that the burden of the Easement shall run with and bind the Lands and every part thereof, in accordance with the terms of this Agreement, from the registration of this Agreement, in perpetuity, so long as the Covenants and Restrictions are in effect and the benefit of the Easement shall enure to the Trust.

5.3 The exercise of the Easement shall be subject to the following:

- (a) Entry to the Lands for inspection of the Protected Area and Natural Features, and not of buildings and residences, may be made by the directors, officers, employees, agents and contractors of the Trust with vehicles, provided that the Trust shall take reasonable measures to interfere as little as reasonably possible with the use and enjoyment of the Lands by the Owner, and subject to notice being given as provided in **Section 5.3(b)** or waived by Owner. The easement and right of entry over the Residential Area will not unreasonably interfere with the existing or new buildings and improvements thereon and the use and enjoyment of the Residential Area.
- (b) The Trust shall give the Owner prior notice of at least seventy-two (72) hours of its intended entry to the Lands unless in the opinion of the Trust, acting reasonably, there is an emergency or other circumstance which precludes the giving of such notice.
- (c) Nothing herein shall be considered to permit public entry onto the Lands without the express consent of the Owner, and entry by the public is prohibited except with the prior consent of the Owner which may be refused by Owner, in Owner's absolute discretion.

5.4 Upon the request of the Trust, the Owner shall promptly provide the Trust with any written consent or authorization that the Trust may require in order for it to obtain permission, when necessary, from any Authority for carrying out any activity permitted by the Easement.

ARTICLE 6 - INSURANCE AND INDEMNITY

6.1 The Trust hereby agrees to indemnify and hold harmless the Owner and those for whom it is in law responsible from and against any and all claims, demands, expenses, actions, causes of action, and for any and all liability for damages to the Lands and injury to persons (including death) howsoever caused, arising out of or in any way related to the exercise of the rights and Easement granted by the Owner in **Article 5** of this Agreement, except those arising from any intentional or negligent act or omission of the Owner or those for whom it is in law responsible or invitees of the Owner.

6.2 The Trust shall at all times carry and maintain adequate comprehensive general liability insurance coverage of an inclusive limit of not less than the amount that a prudent owner of lands used for the purposes of the Easement would carry for property damage, bodily injury and personal injury. The initial amount of such insurance shall be Two Million (\$2,000,000.00) Dollars.

ARTICLE 7 - DEFAULT

7.1 In the event of breach of or default in the obligations and covenants of either party under this Agreement, the aggrieved party (the "**Claimant**") may take any action available to it at law, in equity, by statute or under this Agreement provided that the Claimant shall first give to the other party 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 other party 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 Natural Features of the Lands or for the purpose of public safety, 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 **Section 7.1**.

7.3 In the event that the other party has failed to provide compliance within the sixty (60) day period allowed, then the Claimant shall be entitled to complete those works and measures necessary to provide compliance and to remedy the default at the expense of the other party. Until paid to the Claimant by the other party, such costs of remedy incurred by the Claimant shall be a debt owed by the other party to the Claimant and shall be a charge upon the Lands enforceable in the same manner as a mortgage and recoverable by the Claimant 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 Natural Features 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 Section includes any request or waiver) shall be in writing and sent by personal delivery, facsimile transmission (“**Fax**”), ordinary prepaid mail or email to the following addresses:

if to the Trust as follows:

Address: Ontario Farmland Trust, c/o University of Guelph
 School of Environmental Design & Rural Development
 Guelph, Ontario N1G 2W1

Attention: Chair

Fax: 519-767-1686

Telephone: 519-824-4120 ext.52654

Email: farmland@uoguelph.ca

and if to the Owner as follows:

Address: _____

Fax: _____

Telephone: _____

Email: _____

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, Fax or email 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 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, with agreement of the Owner and 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 this Agreement.

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 or, where this Agreement has been assigned by the Trust, and the Trust has given notice to Owner of such assignment, to the said assignee, notice of such transfer and an acknowledgement and assumption executed by the new registered Owner in the form attached as **Schedule “C”**, acknowledging the priority of this Agreement and the interest of the Trust or the assignee, as the case may be, and assuming the obligations of an Owner under this Agreement. Unless and until such an acknowledgement and assumption agreement is delivered by Owner, Owner shall continue to be responsible for all obligations under this Agreement notwithstanding any transfer of the Lands.

9.4 Assignment. Subject to receipt of any consent, approval or authorization required by **Section 4.3 and 4.4** and subject to **Section 3.4** hereof, the Trust may assign all of its interest in this Agreement, the Covenants and Restrictions and the Easement to any conservation body as defined by 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. It is a condition of any such assignment that the Trust shall have obtained from any assignee an acknowledgement or covenant of such assignee in favour of the Owner and Trust to assume and to be bound by all of the Trust's covenants and obligations herein contained, including, without limitation, the indemnity in favour of Owner as set out in **Section 6.1** and evidence of insurance to the extent required by and in compliance with **Section 6.2**, provided if the assignee is the Crown in right of Canada or Ontario or any agency, board or commission of the Crown in right of Canada or Ontario the insurance referred to in **Section 6.2** shall not be required.

9.5 Registration. The Trust may register this Agreement, or any portions or notice thereof, and in particular, may register as separate instruments the Easement and Covenants and Restrictions herein, or otherwise in such form and manner as may be permitted by the applicable laws and requirements of the appropriate Land Registry Office, and the Owner shall assist the Trust in all such registrations by executing any and all documents as reasonably required to effect such registrations.

9.6 Failure to Exercise or Enforce Rights. No failure by either party to require performance by the other party of any provision of this Agreement shall affect the right of such first party thereafter to enforce such obligation and no failure by the other party to perform any of its rights or obligations hereunder shall be taken as a waiver of such performance or the performance of such rights or obligations or 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 and Restrictions 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 Covenants and Restrictions shall run with the Lands in perpetuity or until such time as the Trust, or its successor or assign, authorizes their release in accordance with this Agreement and the Act 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, earthquake, subsidence, trespass, insect infestation or disease.

9.14 Planning Act. This Agreement is subject to compliance with the *Planning Act* of Ontario, if applicable. If a consent under the *Planning Act* is required, same shall be obtained by and at the cost of the Trust and Owner shall co-operate with the Trust and do and execute all things as and when reasonably necessary or requested for the Trust to make application for the said consent.

9.15 Perpetuity. The Easement and Covenants and Restrictions shall continue in perpetuity, provided that if any of the easements contained herein contravene the provisions of the *Planning Act*, such easement shall be of no force and effect from and after the day prior to the 21st anniversary of the date of registration of this Agreement, unless in the meantime such easement is no longer in contravention of the *Planning Act* or the Trust has obtained a consent as contemplated in **Section 9.14**.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

ENTER OWNER NAME

Witness

Grantor

ONTARIO FARMLAND TRUST

Per: _____

Name:

Position:

Per: _____

Name:

Position:

We have authority to bind the Corporation.

SCHEDULE "A"

DESCRIPTION OF LANDS

Attached to and forming part of the Conservation Easement Agreement between the Grantor and Ontario Farmland Trust, dated as of the day of 2014.

Legal Description

Lot

Concession

Township

PIN

Assessment Roll

SCHEDULE “B”

BASELINE DOCUMENTATION REPORT

Attached to and forming part of the Conservation Easement Agreement between Grantor and Ontario Farmland Trust, dated as of the day of 2014.

The Trust shall complete a Report at its expense within a reasonable time of the date of the Agreement. When the Report has been completed, the Owner agrees to sign an acknowledgement in the Report to confirm the photographs, maps and written information are accurate depictions and descriptions of the Lands and its natural values and features, wildlife, agriculture and other uses. A signed copy of the Report will be provided to the Owner and an originally signed copy of the Report will be filed at the offices of the Trust.

Summary of Natural Features

Property Location:

General Description of Natural Features:

Significance of the Lands:

Description of Conservation Zones within the Lands: Residential Area, Forested and Natural Areas and Agricultural Areas (Exhibit A, Map 1 in the Report).

List of Improvements:

Damaged or Disturbed Areas:

Site Plan or Map: See Exhibit A, Map 1 in the Report as well as **Schedule “B”**, Map 1 in the Conservation Easement Agreement.

Schedule “B” Map 1: Satellite photograph of the Lands

Capitalized terms used in this **Schedule “B”** have the same meaning as in the Conservation Easement Agreement, unless otherwise indicated.

SCHEDULE "C"

ACKNOWLEDGEMENT AND ASSUMPTION AGREEMENT

THIS AGREEMENT made this _____ day of _____, 20_____.

BETWEEN:

[INSERT LEGAL NAME]

(hereinafter called the "New Owner")

OF THE FIRST PART

- and -

ONTARIO FARMLAND TRUST

a corporation incorporated under the
Canada Not-for-Profit Corporations Act
(hereinafter called the "Trust")

OF THE SECOND PART

WHEREAS:

A. By agreement dated _____, 20____ and registered in the Land Registry Office for the Registry/Land Titles Division of _____ (No.____) on _____, 20____, as Instrument No. _____, a copy of which is attached hereto as **Schedule "A"** (the "**Agreement**"), **[ORIGINAL OWNER]** granted to the Trust the rights and easements respecting the use of the lands (the "**Lands**") described in the Agreement as set forth in the Agreement.

B. The New Owner is now the registered owner of the Lands.

C. The Agreement contains a provision (Section 9.3) stipulating that, on the sale or transfer of the Lands, an acknowledgement and assumption agreement executed by the new registered owner of the Lands acknowledging the priority of the Agreement and the interest of the Trust and assuming the obligations of the owner under the Agreement shall be delivered to the Trust.

IN CONSIDERATION OF the mutual covenants and agreements between the parties to this Agreement and the sum of One Dollar (\$1.00) that has been paid by each of the parties to each of the others, the receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

1. The New Owner acknowledges and agrees that:

- (a) the Agreement shall rank first in priority to all other agreements, easements, encumbrances and liens affecting the Lands except those that have priority under any statute;
- (b) the Trust continues to have and enjoy all the rights, easements and remedies granted to it in the Agreement; and
- (c) the New Owner will, at all times observe and perform the terms, covenants and conditions contained in the Agreement respectively reserved and contained on the part of the Owner therein to be observed and performed.

2. The address for service of the New Owner, for purposes of service of any notice, request, waiver or other document pursuant to the provisions of **Section 8.1** of the Agreement, is as follows:

New Owner: _____

Address: _____

Telephone/Email: _____

3. The parties in all other respects hereby confirm that the Agreement is in full force and effect, unchanged and unmodified except in accordance with this Agreement. It is understood and agreed that unless defined to the contrary herein, all defined terms and expressions when used in

this Acknowledgement and Assumption Agreement have the same meaning as they have in the Agreement.

- 4. This Agreement shall enure to the benefit of and be binding upon the Trust and the New Owner and each of their heirs, executors, administrators, personal representatives and permitted successors and assigns, respectively.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement by affixing their respective corporate seals under the hands of their proper signing officers duly authorized in that behalf.

If corporate owner:

[LEGAL NAME OF CORPORATION]

Date:

Per: _____
Name:
Title:

Date:

Per: _____
Name:
Title:

We have authority to bind the Corporation.

- O R -

If individual owner(s):

SIGNED, SEALED AND DELIVERED

in the presence of:

Date:

Witness: *Please sign above and print name here*

Name: *Please sign above and print name here*

Spousal statement pursuant to the *Family Law Act* (Ontario): I, _____ am/am not a spouse.
The person consenting below is my spouse.

SIGNED, SEALED AND DELIVERED

in the presence of:

Date:

Witness: *Please sign above and print name here*

Name: *Please sign above and print name here*

ONTARIO FARMLAND TRUST

Date: _____

Per.: _____

Date: _____

Per: _____

We have authority to bind the Trust.

SCHEDULE "D"

COVENANTS AND RESTRICTIONS

Owner covenants and agrees pursuant to the *Conservation Land Act* with Trust that the following Covenants and Restrictions shall apply to the Lands in accordance with their terms in perpetuity.

1.0 **Definitions and Interpretation**

1.1 **In these Covenants and Restrictions:**

"Protected Area" means the Forested and Natural Area and the Agricultural Area.

"Agricultural Area" means Part _____ on Plan _____.

"Forested and Natural Area" means Part _____ on Plan _____.

"Residential Area" means Part _____ on Plan _____.

Other capitalized terms used in these Covenants and Restrictions that are defined elsewhere in the Agreement of which this Schedule "D" is a part shall have the respective meanings ascribed to them in the Agreement.

Wherever the term "Lands" or "Property" is used in these Covenants and Restrictions, such term shall be construed to apply to any and all parts of the Lands and to any water thereon.

2.0 **Covenants and Restrictions applicable to all parts of the Property**

2.1 **Water Quality/Quantity**

No activity or action on the Lands shall be performed or permitted or suffered to be performed, nor shall any use of the Lands be made or permitted or suffered to be made, which in the opinion of the Trust, acting reasonably, is or may reasonably be expected to be detrimental or adverse to water conservation (in quantity or quality) on, in or about the Lands, including the groundwater and any ponds in the Residential Area. Nothing herein restricts the taking and using of water for: (a) usual household or residential activities located and carried out on the Residential Area; (b) Agriculture on the Agricultural Area.

2.2 **Severance/Subdivision**

No part of the Lands shall be severed, sold, conveyed, mortgaged, charged, leased or otherwise disposed of separately from the remainder of the Lands, and no plan of subdivision shall be registered against title to the Lands, save and except for conservation purposes, without the prior written consent of the Trust. Owner shall cover the Trust's costs associated with consent requests and the Trust's approval process.

3.0 **Covenants and Restrictions applicable only to the Protected Area**

3.1 **Alteration of Topography**

Except for tilling, ploughing and cultivation of the soil on the Agricultural Area for Agriculture, and except as provided in the following paragraph, no alteration shall be made or permitted or suffered to be made in the general topography of the Protected Area which, in the opinion of the Trust, acting reasonably, is or may reasonably be expected to be detrimental or adverse to the purposes and intent of this Agreement as set out in this Agreement. Without limiting the foregoing, alteration of the surface or topography of the Protected Area, including, without limitation, the construction of retaining walls, dams, ponds, transmission or generating towers and lines, and any other similar undertaking, as well as the dumping, excavation, dredging, grading, ditching, exploration or drilling for, mining or removal of loam, gravel, soil, rock, sand, aggregates, oil, natural gas, other hydrocarbons, peat or water or other material or minerals, shall all be deemed to be detrimental or adverse to such purposes and shall not be undertaken or permitted or suffered to be undertaken without prior written consent of the Trust. Owner shall cover the Trust's costs associated with consent requests and the Trust's approval process.

Upon ten (10) days prior written notice to the Trust and where all reasonable measures are taken to minimize and mitigate any adverse impacts, minor alteration of the surface or topography of the Protected Area may occur for Agriculture or for archaeological purposes, including installation, construction and maintenance of tile drains and drainage ditches, capping or

deepening existing wells, and creating new wells and septic systems in or on the Agricultural Area.

3.2 Soil Stability

No use or activity that causes or is likely to cause, in the reasonable opinion of the Trust, significant soil degradation or erosion, deposit of waste, fill or toxic material, or significant depletion, pollution, or alteration of the Protected Area or any surface or subsurface waters shall occur or be permitted or suffered to occur on the Protected Area, except that:

- (a) activities are permitted which do not obstruct watercourses and are necessary to mitigate damage or flooding caused by beaver dams or other such natural occurrences which, in the reasonable opinion of the Trust, are detrimental to the purposes in the Act;
- (b) nonhazardous and non-toxic materials generated by the activities permitted in this Agreement may be managed, stored and removed in a manner which, in the reasonable opinion of the Trust, is timely and environmentally sound, and that gravel, sand or rock materials from beyond and outside of the Protected Area may be used for the repair or maintenance of permitted roads or buildings;

3.3 Camping

No mobile home, trailer, tent 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.

3.4 Dumping

No rubbish, 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.

3.5 Hunting/Fishing/Trapping

No commercial or sport hunting, fishing or trapping (other than of nuisance wildlife), shall occur or be permitted or suffered to occur in the Protected Area.

3.6 Collection

No native or naturally occurring plant or plant part or animal shall be gathered or removed from the Protected Area save and except to collect plants or plant parts for uses of personal consumption, protection or restoration of native species on the Lands and is conducted in a manner that is not detrimental to the viability of the existing plant population from where the collection is occurring, but this provision shall not prohibit removal in the course of exercise of the Trust's rights under the terms of the Easement, or as permitted under a mutually agreeable Forest Management Plan, and shall not prohibit the use and enjoyment of the Agricultural Area for the purposes of Agriculture.

3.7 Lakes/Ponds/Wetlands

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 Trust, acting reasonably, will or may reasonably be expected to be detrimental or adverse to the purpose, intent or terms of the Agreement, or the exercise, compliance with or enforcement of the Covenants and Restrictions or Easement. It is understood and agreed that periodic maintenance of existing ponds and shorelines may be carried out. Any further alteration shall require prior written consent of the Trust, and Owner shall cover the Trust's costs associated with consent requests and the Trust's approval process.

3.8 Easements/Rights-of-Way

No easement, right of way or right in the nature of an easement, in, on, over, under or through the Protected Area which is inconsistent with these Covenants and Restrictions and the rights of the Trust hereunder shall be granted to any person, without the prior written consent of the Trust. Owner shall cover the Trust's costs associated with consent requests and the Trust's approval process.

3.9 Non-native Species

No non-native plant or animal species shall be planted or introduced or be permitted or suffered to be planted or introduced in or to the Protected Area. Notwithstanding the foregoing, current and existing plants and animals and natural seeding or offspring arising therefrom as well as plantings and seeding arising from natural causes such as wind or rain or animal wildlife if not brought onto the Lands by Owner shall not be considered to be in contravention of the provisions hereof, and plantings and reforestation carried out by Owner pursuant to a reforestation plan approved by Owner and Trust and prepared by a professional forester shall be permitted.

3.10 Buildings/Development/Improvements

Forested and Natural Area – No building, structure, fixture, 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 Forested and Natural Area, after the date of registration of these Covenants and Restrictions against the title to the Lands, subject to fences being placed and maintained, so long as same are otherwise in accordance with the provisions of the Agreement.

Agricultural Area – Except with prior written consent of the Trust, no replacement and enlargement of existing agricultural buildings or structures, improvements to these buildings and structures and construction of additional agriculture-related buildings and structures in the Agricultural Area are permitted, unless same are directly associated with Agriculture occurring on the Lands and there is a demonstrated need, as determined by the Trust acting reasonably. Owner will make every effort to minimize impact of improvements or new buildings on the Agricultural Area and prevent the reduction of total farmable area by directing such uses first to the Residential Area, adjacent to the Residential Area or along existing road frontage. Maximum impervious surface coverage, including, without limitation, farm buildings, roads, driveways and parking areas and other built structures that prohibit percolation of stormwater or permanently remove agricultural soils from production, shall not, in the aggregate, exceed three percent of the total Agricultural Area as at the date of registration of these Covenants and Restrictions. Owner will consult with the Trust prior to seeking required municipal building permits and approvals, and shall cover the Trust's costs associated with considering Owner's consent requests and the Trust's approval process.

Residential Area – Replacement and enlargement of existing buildings, additional buildings and residences and minor additional improvements (such as a pool, tennis court, small outbuilding and the like) in the Residential Area may be constructed, only if same are for the personal use as part of the residential uses and enjoyment of the Owners, their family and guests, and ten (10) days prior written notice is given to the Trust.

3.11 Roads/Driveways/Trails

No road, driveway, walkway, bicycle or other path or trail, parking area, dock or ramp shall be erected, placed or maintained or be permitted or suffered to be used, erected, placed or maintained on, in, under or over the Protected Area, except for any currently existing or in use at the date of this Agreement, and as described in the Report; or except for any hereafter created for use by Owner but not the public, for walking, hiking and skiing with prior written consent of the Trust. Owner shall cover the Trust's costs associated with consent requests and the Trust's approval process.

3.12 Pesticides/Toxic Materials

No pesticide, insecticide, herbicide, chemical, bio-solids or other toxic material of any type or description shall be used or be permitted or suffered to be used within the Forested and Natural Area, except to the extent reasonably required to control invasive species outbreaks.

3.13 Trees/Vegetation

No tree, shrub, or any other native vegetation within the Forested and Natural Areas 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 Agreement; (ii) to control non-native or exotic intrusion; (iii) 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 Lands.

3.14 **Business**

No Commercial Uses shall be permitted or suffered to occur on the Lands, except for Agriculture or home occupations as permitted under the Agreement or with the prior written consent of the Trust. For the purposes of this section, "Commercial Uses" includes all commercial, industrial or institutional activities and private or public golf courses or driving ranges.

3.15 **Hydro/Public Utilities**

No use of electrical power or any other form of public utility shall be permitted on or about the Protected Area, save and except for any existing hydro line or without prior written consent of the Trust. Owner shall cover the Trust's costs associated with consent requests and the Trust's approval process.

3.16 **Wildlife Movement**

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 Trust, acting reasonably, unduly restrict wildlife movement in or through the Protected Area, except as required for Agriculture on the Agricultural Area.

3.17 **Agricultural Uses**

Agriculture shall be carried out within the Agricultural Area in a manner that supports sustainable soil and water use and improvement and conserves soil and water resources according to Best Management Practices identified and promoted by the Ontario Ministry of Agriculture. The Owner may lease any portion of the Agriculture Area for the purposes of Agriculture.

If Owner and Trust agree Agriculture on the Agricultural Area, or some portion thereof, is no longer economically viable or for any other reason not possible, the Agricultural Area, or such portion thereof, as mutually agreed, may be forested or allowed to naturally regenerate, and in any event in accordance with a mutually agreed upon plan. Except as provided in such plan, the Covenants and Restrictions herein applying to the Forested and Natural Area shall apply to the Agricultural Area described in such plan.