

Appendix 2G

SAMPLE ANNOTATED CONSERVATION EASEMENT

Dated November 1, 1999

Prepared by Paul Peterson

Introduction

The Nature Conservancy of Canada and the Federation of Ontario Naturalists have sponsored the preparation of this *Sample Annotated Conservation Easement Agreement* as a resource for land conservation organizations, landowners and their professional advisers as they work toward developing the use of conservation easement agreements in Ontario.

This sample agreement is not simply to be copied. It is intended as an example only, to provide the reader with an introduction to the types of provisions that might typically be included in a conservation easement agreement. The actual terms and text of any individual conservation easement should be tailor made to the particular parties, the property and the circumstances and should be prepared in consultation with professional advice from lawyers, accountants, land surveyors or others as appropriate.

This sample agreement has been prepared specifically within the context of the Ontario *Conservation Land Act* which is referred to in this document simply as the “Act”.

Sample Conservation Easement Agreement

DATED this day of , .

B E T W E E N:

Insert name
(hereinafter called the “Owner”)

OF THE FIRST PART

- and -

Insert name
(hereinafter called the “Conservation Organization”)

OF THE SECOND PART

Commentary

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. Owner is defined in the Act as the “person registered on title in the proper land registry office as the owner of the land”. In the agreement itself it would be acceptable to refer to the owner by name, or as the “Grantor” or as the “Owner” as was done in this sample agreement.

The “conservation organization” may be referred to instead as the “Land Trust”, the “Municipality”, the “Grantee” etc. to best suit the circumstances. Only a qualified “conservation body” will be capable of holding a conservation easement under the Act. Conservation bodies are defined in sub-section 3(1) of the Act to include various government organizations and non-government corporations which are “a charity registered under the Income Tax Act (Canada)”. An individual or an unincorporated organization will not qualify as a “conservation body”. See section 3 of the Act, attached as an Appendix.

In consideration of the sum of two (\$2.00) dollars now paid by the Conservation Organization to the Owner and 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 Organization hereby agree as follows:

ARTICLE 1

DEFINITIONS

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

1.2 “Act” means the *Conservation Land Act*, R.S.O. 1990 c.C.28 as amended and any statute that may be enacted to modify or replace the same.

This sample conservation easement is pursuant to the Ontario Conservation Land Act which authorizes a wide range of government and non-government organizations to hold such easement agreements. Note however, that conservation easements are also authorized by other legislation including the Ontario Heritage Act which may be applicable where, for example, the objective is preservation of historical or cultural resources .

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

1.4 “Conservation Body” means a conservation body as defined in the Act.

See note under “Conservation Organization”, on page 1.

1.5 “Covenants” mean the covenants set out in Article 4 as the same may be waived, varied or released by the Conservation Organization in accordance with this Agreement.

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 easement agreement is the right of access under the “Easement” heading of Article 5.

1.6 “Lands” means the lands and premises of the Owner situate in the Province of Ontario and more particularly described in Schedule “A” attached hereto and includes any buildings, structures and improvements now existing or constructed during the Term.

This will normally refer to all of the contiguous Lands owned by the Owner. Where only part of the Lands are to be affected by the conservation easement or where the Owner owns abutting lands, the conservation body should seek professional advice on compliance with the severance provisions of the Ontario Planning Act.

1.7 “Management Plan” means the Management Plan for the Lands attached hereto as Schedule “C” and including all of the restrictions, obligations and rights included therein.

If appropriate the parties may establish a plan for management of the property in advance dealing for example with habitat enhancement or with timber harvesting. However, the easement agreement may also be executed by the parties and registered on title without a detailed prescription for management.

1.8 “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.

1.9 “Protected Area” means that part of the Lands including ***(insert feature name or description, such as the estuary and wetland)*** that are identified as Part ***(insert number)*** on Reference Plan ***(insert number)***.

This definition anticipates that some parts of the Lands may be subject to a greater level of protection and to greater restrictions on use. It will be essential to future enforceability that the “Protected Area” be very clearly defined or described. 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.

1.10 “Report” means the Baseline Documentation Report describing the Lands and documenting the natural values and features and current uses of the Lands, attached as, or referenced to in, Schedule “B” attached hereto.

A baseline report, intended to document the existing condition of the Lands and the heritage resource may be invaluable in future enforcement of the conservation easement. Restrictions, for example on tree cutting may be valid on their own, but may be much more effective and enforceable if the composition and condition of the forest is documented. While a separate baseline report will be helpful in many situations and is recommended, it is not essential and the agreement may be completed without such a report, if the parties are satisfied that the covenants, restrictions and condition of the property are defined clearly enough for enforcement purposes.

1.11 “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 on which all of the Covenants and the Easement cease to have effect in accordance with this Agreement, whichever date shall first occur.

If the easement is to be granted in perpetuity, then this definition will not be required and the grant of conservation covenants and easement (sections 4 and 5) may be drafted accordingly.

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 with its date and instrument registration number)

Readers may be familiar with the traditional form of agreement in which background facts and the purpose of the agreement are set out in recitals or “whereas” clauses. Although that traditional form is acceptable, the recitals may not be considered an operational or enforceable part of the agreement. Critical facts, such as ownership of the property, should be incorporated into the operative part of the agreement whether or not the traditional form of recitals are used. So, for example if parties use the traditional recital format, the agreement text should provide that “The statements contained in the recitals are true and correct”.

In this sample agreement the traditional recitals have been replaced by operative sections setting out the “Representations and Warranties” and the “Intention” of the Parties.

Section 2.1 addresses the ownership of the Lands and is intended to identify the charges or encumbrances affecting the land title. It is critical that the Conservation Body obtain a title search and existing surveys as soon as possible in the process of preparing the easement agreement. There may be ownership and title issues to deal with before an easement can be finalized. For example if there are mortgages on title, the Conservation Body will want to have the interest of the mortgagee postponed to the conservation easement. Without that protective measure a pre-existing mortgagee could come into possession of the property on a mortgage default and might not be bound by the conservation easement.

2.2 The parties represent and warrant to each other that the Report accurately describes the Lands and the current use of and natural values and features of the Lands and is intended to serve as an objective information base for monitoring compliance with this Agreement.

See definition of “Report” above.

2.3 The Lands include significant natural features (***including ..insert name or description of feature***) which are further described in the Report and which the Owner and the Conservation Organization have agreed to protect and enhance.

ARTICLE 3

INTENTION

3.1 It is the intention of the parties that this Agreement will ensure the protection, maintenance, restoration and enhancement of the natural features on the Lands and will prevent any use of the Lands which will damage or destroy those natural features or prevent their restoration and enhancement.

This section setting out in broad terms the intention of the parties, will be a useful reference in interpreting the detailed covenants and rights under the agreement in the future, and may also provide guidance for those situations and disputes which were not or could not be anticipated when the agreement was prepared. Set out below is an alternate statement of intention for preservation of forest and agricultural land use.

Alternate 3.1 It is the intention of the parties that this Agreement will ensure that the Lands will be retained in open space, forest and agricultural use and that this Agreement will prevent any use of the Lands which will damage or destroy the existing open space, forest and agricultural character of the Lands.

ARTICLE 4

COVENANTS

4.1 In order to provide for the protection, maintenance, restoration and enhancement of the Lands and the natural features located on the Lands, the Owner covenants and agrees that it shall not commit or permit any act or activity, make any use of the Lands or undertake or allow to be undertaken any activity, use, development or construction on the Lands inconsistent with the Intention of the parties as set out in section 3.1 or inconsistent with the prohibitions set out in this section. Without limiting the generality of the foregoing, the Owner expressly covenants and agrees that, except with the prior written approval of the Conservation Organization, it shall not:

Other Easements

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

Subdivision

Sever or subdivide the Lands;

The covenants are a key operational part of the agreement. Careful consideration and negotiation will be required to determine the exact nature of the restrictions and obligations to be imposed on any particular property. The covenants should be consistent with the nature and proposed management of the resource to be protected, and the intention of the parties as set out in article 3.

Examples of both restrictions (negative covenants) and obligations (positive covenants) are provided in this sample agreement. However, these must be viewed as examples only. Timber harvesting, agricultural activities, hunting and limited recreational or residential development are all examples of activities that may be prohibited completely, restricted or permitted depending upon the objectives of the parties and the requirements of sound resource management. The opportunity to tailor each set of restrictions and

obligations to the nature of the land resource may be viewed as one of the major advantages of the conservation easement as a tool for land protection.

Finally, resist the temptation to include all sorts of protective restrictions simply because there is the opportunity to do so. Focus on those covenants and land use restrictions that are most important to achieving the parties objectives and on those covenants and restrictions that the conservation body is actually able and willing to monitor and enforce.

Several approaches to the structure of this part of the agreement are possible. For example, an easement agreement could remove all of the potential development rights and uses from a property subject only to specific exceptions identifying those uses and activities which would still be permitted. While that might be a strong legal position, it might also make it more difficult to negotiate an agreement with a donor. This sample agreement reflects the more common in practice of listing or identifying the specific restrictions and obligations (in section 4.1). Other rights are reserved to the Owner (see section 8.1). In determining which approach may be appropriate and effective in different circumstances, consideration might be given to whether the easement is being donated or purchased and whether a very high level of protection is required.

Buildings and Structures

Construct, erect, maintain or allow the construction, erection or maintenance of any building or structure on the Lands;

Roads, Parking Areas, Foot Paths

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

Motorized Vehicles

Operate or allow the operation of dunebuggies, snowmobiles, all-terrain vehicles, automobiles, motorcycles, motorboats, personal watercraft or any other types of motorized vehicles on the Lands;

Mobile Homes

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

Dumping

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

Pesticides

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

Grading, Topography

Change or allow any changes in the general appearance or topography of the Lands,

including and without limiting the generality of the foregoing, tilling of the soil, the construction of drainage ditches, retaining walls, dams, ponds, transmission towers and lines, and any similar undertakings, as well as the dumping, excavation, dredging or removal of loam, gravel, soil, rock, sand or other materials;

Vegetation

Remove, destroy or cut or allow the removal, destruction or cutting of trees, shrubs or other vegetation except as may be necessary for (i) the maintenance of existing foot trails, fire lanes or other accesses, (ii) the prevention or treatment of disease, or (iii) other good husbandry practices;

Planting

Plant or allow the planting or other introduction of non-native plant or animal species.

Hunting, Fishing, Trapping

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

Firearms

Use or discharge or allow the use or discharge of firearms on the Lands;

Livestock and Fences

The Owner further covenants and agrees that the Owner will not permit agricultural livestock to enter on or graze upon the Lands. The Owner will maintain the existing fencing along the boundaries of the Lands in a condition that will prevent livestock from entering into the Lands.

This is an example of a negative covenant combined with a positive obligation to maintain livestock fences. Positive obligations to maintain fences, culverts, trails etc. could be imposed upon either the Owner or the Conservation Organization according to the requirements of the particular circumstances.

ARTICLE 5

EASEMENT

5.1 The Owner hereby grants to the Conservation Organization a free, uninterrupted, unobstructed and non-exclusive right and easement in, over, upon and through the Lands to permit the Conservation Organization employees, agents, servants, workers, contractors, officers and directors, and their supplies, equipment, materials, machinery and vehicles to enter on and have access to the Lands at reasonable times and subject to the notice requirements specified below and for the following purposes:

- (1) inspection, in order to determine compliance with this Agreement and to determine those measures necessary to ensure compliance with the Management Plan;

Paragraph 3(2) (b) of the Act provides that an owner may grant an easement for access to the lands for the purposes of conservation, maintenance, restoration or enhancement of all or a portion of the land or the wildlife on the land. In this sample agreement, an access easement is provided to allow compliance inspections and to allow work by the conservation body on the land either to carry out any management and enhancement activities that may be identified in the agreement or to remedy a default by the owner.

Caution: In establishing and setting out the extent of the easement, it will be important to ensure that the subdivision control provisions of section 50 of the Ontario Planning Act are also complied with. With some exceptions, that section of the Planning Act prohibits any agreement granting the use of or right in land unless it is affecting the entire parcel of land.

- (2) to carry out any construction, demolition, maintenance, alteration, repair, improvements, installation, work or restoration of the natural features reasonably required in the opinion of the Conservation Organization pursuant to the Management Plan or pursuant to Article 6 of this Agreement; and

These “self-help” provisions of the Agreement may be necessary where the conservation body has significant management responsibilities or where major restoration or enhancement of natural features is proposed. However, where the conservation easement is merely to protect open space and natural evolution of the landscape such additional access rights may not be necessary or desirable.

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

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

- (1) for the purposes specified in paragraphs 5.1 (a) at least twenty-four (24) hours written notice; and

Although not required by the Act, these provisions requiring that notice be provided by the Conservation Organization prior to access on the Lands are suggested as a courtesy to the existing and future land owners. Notice is shorter where the purpose of access is for compliance inspection and longer where more intrusive and expensive works are proposed.

- (2) for the purposes specified in paragraph 5.1 (b) and (c) at least 10 days written notice. The notice under this paragraph (b) shall describe the nature, scope, design, location, timetable and any other material aspect of the activity proposed.

5.3 The rights described in Sections 5.1 and 5.2 are collectively referred to as the “Easement”.

5.4 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, land owners may be more willing to grant a conservation easement 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 the enforceability of such rights.

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:

- (1) maintain the Lands and keep and repair the improvements thereon and keep the Lands free of construction liens;
- (2) carry and maintain adequate comprehensive general liability coverage with the Conservation Organization being a name insured thereunder and provide the Conservation Organization with evidence of such coverage on a continuing basis;
- (3) pay as they become due municipal and provincial taxes, rates and fees including any that may be charged or levied against the Conservation Organization by reason of this Agreement and the rights transferred hereunder and all charges for utilities, public or otherwise, and provide the Conservation Organization with evidence of such payments on its reasonable request.

6.2 The Owner shall and does hereby indemnify and save harmless the Conservation Organization, 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 occasion by any act or omission, negligence or otherwise, in the use and maintenance of the Lands by the Owner, any licensee or

lessee thereof or anyone for whom the owner is in law responsible, including, if the Lands or any part thereof is certified to be ecologically sensitive land under the *Income Tax Act* (Canada) and the use of the property so certified is changed without the permission required under such statute, any penalty in tax imposed thereunder.

ARTICLE 7

DEFAULT

7.1 Breach or Default In the event of breach of or default in the obligations and covenants of the Owner under this Agreement, the Conservation Organization may take any action available to it at law, in equity, by statute or under this Agreement provided that the Conservation Organization 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 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 Conservation Organization in its sole discretion determines that circumstances require immediate action to prevent or mitigate damage to the conservation features of the Lands, the Conservation Organization may pursue its remedies under this Article 7 without prior notice to the Owners or without waiting the expiry of the sixty day notice period as otherwise required under paragraph 7.1.

7.3 In the event that the Owner has failed to provide compliance within the sixty day period allowed, then the Conservation Organization shall be entitled to enter on to the Lands and to complete those works and measures necessary to provide compliance and to remedy the default at the expense of the Owner. Until paid to the Conservation Organization by the Owner, such costs of remedy incurred by the Conservation Organization shall be a debt owed by the Owner to the Conservation Organization and shall be a charge upon the Lands enforceable in the same manner as a mortgage registered against the whole of the Lands and recoverable by the Conservation Organization 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 conservation features of the Lands as they existed prior to default or breach of the Agreement. Accordingly, the parties agree that:

- (1) compensation to the Conservation Organization 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 Conservation Organization,
- (2) In addition and without limiting the scope of the other enforcement rights

available to the Conservation Organization under this Agreement, the Conservation Organization 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, when considering the ecological integrity of natural features such as wetlands, it is possible that destruction and drainage of the wetland could actually enhance the development potential and market value of the Lands. In these circumstances the Agreement is specifically drafted to provide compensation which would allow restoration or replacement of the damaged natural feature.

In addition, it should be recognized that since restoration or replacement of a mature natural feature or ecosystem may not be possible, the agreement should specifically provide for injunctive relief to prevent damage to the natural features in the first place.

ARTICLE 8

NOTICE

8.1 Any notice (which term in this paragraph 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 Organization as follows:

Address: •

Fax Number: •

and to the Owner as follows:

Address: •

Fax Number •

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 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 herein and are not inconsistent with the purpose and terms of this Agreement.

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

9.2 Neither the Owner or the Conservation Organization shall be in breach of this Agreement or liable to the other for any damage to or change in the Lands, resulting from causes beyond the control of such party, including, without limitation, accidental fire, flood, storm, earth movement, insect damage, disease or trespass.

This provision would relieve the land owner or conservation organization for responsibility or liability for “acts of God” lying outside of the control of the parties.

9.3 No person who is an Owner shall be liable to the Conservation Organization for any breach of or default in the obligations owed to the Conservation Organization under this Agreement committed after:

- (1) the registration of a transfer by such person of all of the interest thereof in the Lands; and
- (2) delivery to the Conservation Organization of the acknowledgement and assumption required under section 9.4.

This provision provides an incentive for the owner to ensure that any purchaser of the lands will provide explicit written acknowledgement and acceptance of the obligations under the agreement.

9.4 Notice of Transfer and Acknowledgement of Priority. The Owner shall not transfer or permit any mortgagee to transfer any ownership interest in the Lands without requiring the transferee to provide a written acknowledgement and assumption to the Conservation Organization acknowledging the priority of this Agreement and the interest of the Conservation Organization and assuming the obligations of an Owner under this Agreement and the Owner will not lease or license the Lands or any part thereof without such lease or license being made expressly subject to this Agreement.

9.5 Assignment. The Conservation Organization 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 Organization shall provide the Owner(s) with written notice of such assignment. The Conservation Organization 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 sub-section 3.(3) of the Act.

This provision in the agreement is directed to relieving the original conservation body from any obligations or liability to 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”. That might occur if a non-profit corporation lost its charitable status under the Income Tax Act (Canada) and could no longer satisfy the definition of a “conservation body” in the Act.

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

Registration on title will be essential to provide notice of the conservation easement to any subsequent purchaser, mortgagee or any other person taking an interest in the land.

Read in combination with section 9.10 the costs of registration would fall upon the conservation body. Of course the agreement can be amended to specify that this will be to the account of the Owner. Alternately, the conservation organization might negotiate to accept a donation from the Owner to cover the cost of agreement preparation and registration.

9.7 Failure to Exercise or Enforce Rights. No failure by the Conservation Organization to require performance by the Owner of any provision of this Agreement shall affect the right of the Conservation Organization 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.

9.8 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.

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

9.10 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.

9.11 Joint and Several. Whenever the Owner should be comprised of more than one person, the obligations thereof hereunder shall be joint and several.

9.12 Enurement. This Agreement, including the Covenants and the Easement shall run with the Lands and enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns for the Term.

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

SIGNED, SEALED AND DELIVERED in the presence of:

Witness Per: _____
Name: Owner

Witness Per: _____
Name: Owner

Conservation Organization

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation.

APPENDIX TO SAMPLE CONSERVATION EASEMENT AGREEMENT

ONTARIO CONSERVATION LAND ACT

(R.S.O. 1990 Chapter c.28, as amended
by S.O. 1994, c.27, s.128(1) and (2))

3. (1) In this section,

“conservation body” means,

- (a) the Crown in right of Canada or in right of Ontario,
- (b) an agency, board or commission of the Crown in right of Canada or in right of Ontario that has the power to hold an interest in land,
- (c) a band as defined in the *Indian Act* (Canada),
- (d) the council of a municipality,
- (e) a conservation authority,
- (f) a corporation incorporated under Part III of the *Corporations Act* or Part II of the *Canada Corporations Act* that is a charity registered under the *Income Tax Act* (Canada),
- (g) a trustee of a charitable foundation that is a charity registered under the *Income Tax Act* (Canada); (“organisme de protection de la nature”)

“owner” means the person registered on title in the proper land registry office as the owner of land. (“propriétaire”)

(2) An owner of land may grant an easement to or enter into a covenant with a conservation body,

- (a) for the conservation, maintenance, restoration or enhancement of all or a portion of the land or the wildlife on the land; or
- (b) for access to the land for these purposes.

(3) The easement or covenant may be assigned by a conservation body to another conservation body.

(4) The easement or covenant is valid whether or not the conservation body or assignee owns appurtenant land or land capable of being accommodated or benefited by the easement or covenant and regardless of whether or easement or covenant is positive or negative in nature.

(5) The easement or covenant may be registered against the land affected in the proper land registry office and, once registered, it runs with the land against which it is registered.

(6) The conservation body or assignee may enforce the easement or covenant against the owner of the land and, if it is registered, against any subsequent owner of the land against which it is registered.

(7) If a conservation body ceases to be a conservation body, it shall be deemed to have assigned every easement and covenant to which it is a party to the Minister.

(8) The Minister may register notice of the deemed assignment against the land affected in the proper land registry office and may assign the easements and covenants, or any of them, or hold them as if he or she were a conservation body.

(9) Nothing in this section limits a right or remedy that a person may have under any other Act, at common law or in equity in respect of an easement or covenant, if the right or remedy is not inconsistent with this section.

(10) A covenant under this section, whether positive or negative in nature, shall be deemed to be a restrictive covenant.

(11) The Lieutenant Governor in Council may make regulations respecting records, information, reports and returns that a conservation body must keep, must open for inspection or must submit to the Minister or other person designated in the regulations.