



NOVA SCOTIA NATURE TRUST

Cross-Border Conservation Easement Template

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Note: This template easement was created as a resource for Canadian land trusts working with

U.S. residents on conservation easements in Canada. This template is for background information purposes only. Land trusts and their U.S. donors must seek professional advice for their easement. Further, the Internal Revenue Service requires that the easement must be enforceable under state, local or provincial laws in order to be deductible for U.S. tax purposes, but those local law factors are not highlighted. The boilerplate recitations do not guarantee qualification. The substance of the restrictions must protect important conservation values, and the owner may not reserve any rights that would permit destruction of significant conservation interests.

YELLOW - REQUIRED CLAUSES (BOILERPLATE) TO COMPLY SPECIFICALLY WITH U.S. IRS QUALIFICATIONS FOR INCOME TAX DEDUCTION (SEE SECTION 170(H) OF THE INTERNAL REVENUE SERVICE TAX CODE AND REGULATIONS 1.170A-14)

BLUE - FACTS AND RECITATIONS RECOMMENDED TO SUPPORT CLAIM FOR U.S. IRS INCOME TAX DEDUCTIBILITY BASED ON THE CONSERVATION PURPOSES TESTS AND DONOR AND DONEE QUALIFICATIONS

ADDITIONAL INSTRUCTIONS IN GREEN

THIS CONSERVATION EASEMENT made in duplicate
this _____ day of _____, A.D., 200__ .

BETWEEN:

_____ of the City of _____,
Province of _____ (or having a mailing address of
_____, State of _____, zip: _____) (the
"GRANTOR")

OF THE FIRST PART

- and -

_____, a body incorporated under the
Societies Act of _____, with its head office at
_____, _____, Canada (the "HOLDER")

Or

_____, a non-profit corporation organized
under the laws of the State of _____, and authorized to hold
conservation easements in _____ under the
_____ Act _____, and to do
business in Canada under the _____ Act of
_____; and having a mailing address of
_____ (the "HOLDER")

OF THE SECOND PART

RECITALS:

1. The GRANTOR is the sole OWNER of lands (hereafter called “the Property”) located in the County of _____, Province of _____, Canada, which [[is all of the premises// a portion of the premises]] the GRANTOR received by way of a Deed dated _____, recorded at the Registry of Deeds for the County of _____, in the Province of _____ in Book _____ at Pages _____ as Document Number _____; as described more particularly in Schedule A, and as depicted generally in Schedule B, both attached hereto and made a part hereof by this reference.

2. It is the GRANTOR’S intent to protect forever the natural ecosystems, native species, habitats, landforms, and other natural features and phenomena of the Property, and to allow natural processes to occur on the Property, specifically for the **[[US IRS Conservation Purposes...choose as appropriate: (1) preservation of land areas for outdoor recreation by, or for the education of, the general public; (2) protection of a relatively natural habitat of fish, wildlife, or plants, or a similar ecosystem; (3) preservation of open space, including farmland and forest land, providing a significant public benefit, pursuant to a clearly delineated state and local governmental policy; OR (4) preservation of open space for the scenic enjoyment of the general public, providing a significant public benefit.]]**

Add additional recitals about the natural values and conservation features of the land (acreage, endangered species, ecological context, public benefit, scenic value etc.)

3. The GRANTOR and HOLDER have agreed to enter into this Conservation Easement respecting the specific conservation values and features of the Property which are particularly described in the Baseline Document Report (as defined herein at Article 5.3 and 14.6).

3. It is the GRANTOR’S intent that the HOLDER ensure that all future OWNERS of the Property uphold the GRANTOR’S and HOLDER’S intents and wishes for the Property as specifically set forth in this Conservation Easement;

The intent of this Conservation Easement is to ensure the protection in perpetuity of certain lands located in _____ [province], Canada, while ensuring the GRANTOR complies with and obtains the full benefit of Canadian and United States income tax laws when making a bona fide grant of certain property rights to a duly authorized HOLDER.

IN CONSIDERATION of the sum of one dollar (\$1.00) of lawful money of Canada and other good and valuable consideration, now paid by the _____ to the GRANTOR, the receipt and sufficiency of which is acknowledged, the GRANTOR hereby grants to _____ as HOLDER, a Conservation Easement on the Property, consisting of the foregoing recitals and the following purposes, restrictions, affirmative rights and Conservation Easements and subject to the reserved rights of GRANTORS set forth herein, as follows:

ARTICLE 1 – DEFINITIONS

1.1 In this Conservation Easement:

- a) "**Act**" means the _____ as amended from time to time, and any statute that may be enacted to modify or replace the same;
- b) "**Agreed Uses**" means the permitted, restricted and prohibited practices on the Property as set out in Schedule "C" attached to this Conservation Easement and described in Article 6;
- c) "**Conservation Easement**" means this Conservation Easement and the schedules attached which form part of this Conservation Easement, as of the date of its registration on the Property and as amended from time to time;
- d) "**Baseline Documentation Report**" means the report as set out in Article 5.3 and 14.6;
- e) "**Conservation Easement**" means this Conservation Easement, including its recitals, purposes, terms, provisions, covenants, affirmative rights granted to HOLDER, and the Agreed Uses, made pursuant to the Act, as of the date of registration on the Property, and any permitted amendments and modifications hereto;
- f) Add definitions required under the relevant easement legislation (i.e. "**Eligible Body**" means an Eligible Body pursuant to the *Conservation Easements Act*, S.N.S., 2001, c. 28 , as amended); ALSO ADD INFO FROM ARTICLE 14.2 FOR US DONORS AND IRS Deductible Easements.
- g) _____ and "**HOLDER**" means the _____ and any successor or assign of the NSNT, and any assignee of the rights granted hereunder to _____ permitted or contemplated by the Act;
- h) "**OWNER**" includes the original GRANTOR of this Conservation Easement, and any future OWNER of the Property as defined in the Act, and use of the singular herein shall be deemed to include the plural in the case of multiple OWNERS of the Property or multiple GRANTORS of this Conservation Easement, who shall be responsible hereunder as OWNERS/GRANTORS jointly and severally;
- i) "**Property**" means the [[describe land]], owned by the GRANTOR/OWNER and situate in the County of _____, Province of _____, more particularly described in Schedule "A" and indicated on the Property Map shown in Schedule "B" attached to this Conservation Easement, and includes any buildings, erections and improvements now existing or constructed pursuant to this Conservation Easement;
- j) "**Qualified Organization**" means an organization that satisfies the requirements

described in section 170(h)(3) of the Internal Revenue Service Tax Code Section (or successor provisions thereof) as an eligible recipient of a qualified conservation contribution. It must be a publicly funded, non-profit 501(c)(3) organization with purposes and powers that include the ownership of land or interests in land for the protection of natural resources and conservation values of land, and having a commitment to protect the conservation purposes of the donation, and the resources to enforce the restrictions hereof.

ARTICLE 2 - GRANT OF EASEMENT

- 2.1 The GRANTOR hereby grants in perpetuity to the HOLDER, this Conservation Easement on, over and across the Property, consisting of the recitals, purposes, terms, covenants, restrictions, and reserved rights of GRANTOR(S) and future OWNERS of the Property, and affirmative rights granted to the HOLDER. Both parties agree to abide by the Conservation Easement.

ARTICLE 3 – CONSERVATION PURPOSES OF THE EASEMENT

- 3.1 The purpose of this Easement, consistent with the GRANTOR’S and HOLDER’S intentions, is to protect in perpetuity the “conservation values” of the Property, including, but not limited to, the natural ecosystems, naturally occurring indigenous species and species assemblages, habitats, landforms, and other natural features and phenomena of the Property, and to allow natural ecological and evolutionary processes to occur on the Property. This Easement is intended to confine the use of the Property to such activities as are consistent with the purpose of this Easement and to prevent any use of the Property that will impair or interfere with, damage or destroy the conservation values of the Property.
- 3.2 In particular, this Conservation Easement is designed to assure the [[CHOOSE AS APPROPRIATE: (1) preservation of land areas for outdoor recreation by, or for the education of, the general public; (2) protection of a relatively natural habitat of fish, wildlife, or plants, or a similar ecosystem; (3) preservation of open space, including farmland and forest land, providing a significant public benefit, pursuant to a clearly delineated state and local governmental policy; (4) preservation of open space for the scenic enjoyment of the general public, providing a significant public benefit.]] ADD MORE HERE

ARTICLE 4 - RIGHTS RESERVED BY THE OWNER

- 4.1 Except as otherwise limited in this Conservation Easement, the OWNER retains all rights accruing from ownership of the Property. These rights include the right to access and engage in or permit or invite others to access and engage in all uses of the Property that are in accordance with this Conservation Easement and are consistent with the conservation

purposes of this Conservation Easement and are permitted under the Agreed Uses set out in Schedule “C”, attached hereto and made a part hereof by reference.

- 4.2 Nothing contained in this Conservation Easement should be construed as affording or permitting physical access to the general public to any portion of the Property without the OWNER’S consent, [[except as set forth in Schedule C, Section _____, providing for a grant of public access for low impact outdoor recreation / outdoor education by the general public, consistent with the protection of the conservation values intended to be protected hereby]].

ARTICLE 5 - GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS

Representations and Warranties made by the HOLDER

- 5.1 The HOLDER represents and warrants that it is a registered society under the *Societies Act* (_____), and that it has the right to enter into this Conservation Easement under _____ Act. **[[ADD PROPER U.S. INFO FROM ARTICLE 14.2 FOR U.S. DONEES]]**

Representations and Warranties made by the OWNER

- 5.2 **The GRANTOR represents and warrants that the GRANTOR is the sole legal, beneficial and registered OWNER** of the Property as of the date of this grant, with good title to the Property, free and clear from all encumbrances, claims, liens and liabilities.

Covenants of the Parties

- 5.3 **The parties confirm that they have each received and reviewed a copy of the Baseline Documentation Report for the Property, dated _____, 200__ (the original of which is kept at the offices of the HOLDER). The parties agree that the Baseline Documentation Report accurately describes the present condition, current uses and features of the Property and its natural and scenic resources as at the date of this Conservation Easement.** The parties agree that the Baseline Documentation Report is intended to serve as an objective information base for monitoring compliance with this Conservation Easement and future uses of the Property. **[[THIS IS ALSO COVERED IN ARTICLE 14.5]]**
- 5.4 The parties agree that as of the date of registration of this Conservation Easement, the burden of this Conservation Easement shall run with and **bind the Property in perpetuity** and shall operate for the benefit of the general public, and shall be binding upon all parties to this Conservation Easement, and their respective heirs, executors, administrators, successors and assigns, and any person who becomes the OWNER or occupier of the Property after the Conservation Easement is created.

ARTICLE 6 - AGREED USES OF THE PROPERTY

- 6.1 The Property shall be used only in accordance with the Agreed Uses as set out in Schedule “C”, which shall be deemed to be easements, restrictions and covenants, governed by and having the benefit of the Act.
- 6.2** The HOLDER may from time to time, in consultation with the OWNER, waive, vary or release any of the Agreed Uses by an instrument in writing, duly executed by HOLDER and all of the OWNERS of the Property, and registered against the Property, provided that modification to the Agreed Uses must be consistent with the conservation purposes of this Conservation Easement [[as specified under Article 14.7]], and the GRANTOR’S intent for Agreed Uses on the Property, and further provided that termination of this grant may only be accomplished by Court order as stated in Article 10.5 and 14.6. [see Article 10.5 & 14.6 for IRS standards for termination, and Article 14.7 for amendment clause with adequate limitations to satisfy IRS]

ARTICLE 7 - HOLDER’S RESPONSIBILITIES

- 7.1 The HOLDER shall:
- a) retain the Baseline Documentation Report described in Article 5.3 and 14.6, on file at its offices, including all maps, photographs and records on the condition of the Property at the time of the granting of this Conservation Easement;
 - b) as provided in this Conservation Easement, carry out monitoring, enforcement and remediation on the Property that, in the opinion of the HOLDER, is required to uphold the purposes, terms and conditions of this Conservation Easement; and
 - c) communicate with the OWNER the results of monitoring, enforcement and remediation conducted on the Property.

ARTICLE 8 - OWNER’S RESPONSIBILITIES

- 8.1 The OWNER shall continue to care for and operate the Property as would a careful and prudent OWNER including but not limited to:
- a) maintaining the Property in a manner consistent with this Conservation Easement and keeping the Property free of any claims or liens that may be adverse to the HOLDER’S rights hereunder;
 - b) retaining all occupier's liabilities and other liabilities and responsibilities related to the ownership, operation and maintenance of the Property;
 - c) carrying and maintaining standard property insurance coverage including third party

liability, naming NSNT, or its successor or assign, as a named insured and, upon request, providing the HOLDER proof of the same;

- d) paying municipal and provincial taxes and fees, the non-payment of which may give rise to a lien or charge on the Property; and
- e) advising the HOLDER, as soon as is reasonably possible, of any damage to the Property or of any breach of this Conservation Easement or of any use inconsistent with this Conservation Easement by any person, whether or not a party to this Conservation Easement.

8.2 The OWNER represents that as of the date of this grant there are no liens or mortgages outstanding against the Property, except for any such liens disclosed in Exhibit A, all of which have been subordinated to the rights of HOLDER to enforce the restrictions of this Conservation Easement. The OWNER has the right to use the Property as collateral to secure the repayment of debt, provided that the rights of the HOLDER to enforce the terms, restrictions and covenants created under this Conservation Easement shall not be extinguished by any public or privately placed lien or foreclosure of any mortgage, regardless of date. **[[IRS REQUIRES THAT EXISTING LIENS AND MORTGAGES BE SUBORDINATED TO THE RIGHT OF THE HOLDER TO ENFORCE THE EASEMENT, AND THIS IS COVERED HERE UNDER ARTICLE 8.2, BUT NOT ADDITIONALLY IN ARTICLE 14]]**

ARTICLE 9 – AFFIRMATIVE RIGHTS GRANTED TO THE HOLDER

General Rights of Protection and Preservation:

9.1 The OWNER grants the following affirmative rights to the HOLDER:

- a) to enforce the terms of this Conservation Easement by actions at law and in equity, including the right to require OWNER to restore the Property to its condition prior to any breach hereof, and to preserve and protect the conservation values of the Property in accordance with this Conservation Easement;
- b) to enter the Property for monitoring and enforcement purposes in accordance with Article 9.2;
- c) to place signage for the purpose of displaying the Easement on the lands, subject to the restrictions listed in Section 3(g) of Schedule “C”;
- d) to conduct a professional boundary survey of the Property (or the Dwelling Area) which survey will be at OWNERS' cost only if and to the extent necessary to determine the location of a prohibited land use;

- e) to remediate any damage to natural resources on the Property resulting from a breach of this Conservation Easement, or from natural causes; OR to require OWNER to remediate any breach;
- f) to construct an unpaved recreational footpath or trail over the Property, which may be contiguous with other recreational footpaths and trails on land that abuts the Property;
- g) to conduct a reasonable number of supervised group visits to the Property, for conservation education and nature observation and study, subject to the notice requirements of 9.4 herein below;

Limited Right of HOLDER Access to the Property

- 9.2 The OWNER grants to the HOLDER access to the Property for the purpose of determining, through inspection, testing or otherwise, whether in its opinion the terms of this Conservation Easement are being complied with and the purpose of this Conservation Easement is being achieved. **[[NOTE, IRS REQUIRES RIGHT TO ENTER FOR MONITORING AND ENFORCEMENT AND RIGHT TO ENFORCE AND REQUIRE REMEDIATION OF DAMAGE. THESE ARE COVERED UNDER ARTICLES 9.2 AND 10.1, BUT ARE NOT ADDITIONALLY ADDRESSED IN ARTICLE 14.]]**
- 9.3 The OWNER grants to the HOLDER access to the Property to carry out any remediation, restoration and rehabilitation of the natural values of the Property, as in the opinion of the NSNT are necessary or desirable and permitted under this Conservation Easement.
- 9.4 The exercise by the HOLDER of its rights under this Article shall be subject to the following:
- a) entry may be made by the directors, officers, employees, agents, servants and contractors of the HOLDER with such vehicles, equipment and materials as is reasonably necessary to fulfill the HOLDER'S obligations under this Conservation Easement; and
 - b) the HOLDER shall take all reasonable measures to interfere as little as possible with the reasonable use and enjoyment of the Property by the OWNER. The HOLDER shall give prior written notice of at least 24 hours to the OWNER unless, in the opinion of the HOLDER, there is an emergency or other circumstance that precludes the giving of such notice.

ARTICLE 10 – DEFAULT

Breach of Conservation Easement

- 10.1 In the event of a breach of this Conservation Easement or a default in the obligations of the OWNER under this Conservation Easement, the HOLDER may take any action available to it at law, in equity, by statute or under this Conservation Easement, and may seek injunctive and mandatory relief, and may recover damages from OWNER, and shall have the right to require the OWNER to restore the Property to a condition in compliance with this Conservation Easement, and shall have the right reimbursement of its costs of enforcement, including reasonable legal fees on a solicitor/client basis, and of any costs of restoration undertaken by HOLDER.
- 10.2 If such breach is caused by a trespasser, vandal, or other person present on or about the Property without the knowledge, authorization or consent of the OWNER, the OWNER and the HOLDER will work together in finding a mutually agreeable manner in which to address the breach and assure remediation and restoration of the Property, subject to the following:
- a) the OWNER will apply any proceeds of insurance which may be available as a result of the damage, to the remediation of the natural features and conditions on the Property; and
 - b) the OWNER, at its option and in consultation with the HOLDER, may pursue the third party for injunctive relief and for recovery of damages or join in any legal action with the HOLDER for injunctive relief and recovery of damages. Any such damages shall, to the extent that the same have not already been paid through insurance or otherwise, be applied to the costs of the legal action and to remediation and restoration of the natural features and conditions on the Property.

Notice of Default to the OWNER

- 10.3 The HOLDER shall provide notice of default to the OWNER unless, in the opinion of the HOLDER, it is not feasible to delay for the 24 hour advance notice period, as set out in Article 9.4(b), because of the nature of the default or other reasonable circumstances, such as the need to prevent an imminent breach or stop an ongoing breach that will cause irreversible harm to the conservation values of the Property, by emergency injunctive relief, ex parte as necessary. After a notice of default, if given, the OWNER shall have sixty (60) days after receipt of the notice to remedy the default or make arrangements satisfactory to the HOLDER to commence and complete the same within a reasonable time. If the OWNER has failed to comply within the sixty (60) day period or other allowed period, the HOLDER, by its directors, officers, employees, agents, servants or contractors, may enter the Property and cure the default, and may commence legal or equitable action without further notice.

HOLDER Reimbursement for Costs and Expenses

10.4 The OWNER shall reimburse the HOLDER for the cost of remedying the default as outlined in the notice in Article 10.3, as well as any reasonable costs and expenses of enforcement, including court costs, reasonable legal fees on a solicitor-client basis and disbursements, tax and any other payments ordered by a Court or other decision-maker chosen by mutual consent of the parties, except to the extent otherwise agreed by OWNER and HOLDER under Article 10.2.

Compensation to HOLDER for Extinguishment of Perpetual Easement

10.5 In the event that the conservation values or features of the Property are irreparably and permanently damaged, and that the conservation purposes of this Conservation Easement can no longer be accomplished, the parties agree that this Conservation Easement may be terminated only by a court order, and HOLDER is entitled to a share of the proceeds of any sale, exchange or involuntary conversion of the thereafter-unrestricted property, according to HOLDER'S proportional interest in the Property as required by and calculated according to the Internal Revenue Code Treasury Regulations 1.170A-14(g)(6)(ii). HOLDER'S proportional interest is determined as of the date of this grant, but will not include value attributable to improvements to the Property made after the date of this grant. HOLDER will use such proceeds for its conservation purposes.

Debts to HOLDER a Charge Upon the Property

10.6. Such costs, expenses, damages, reimbursement, compensation or other debt owed to HOLDER pursuant to Article 10, until paid to the HOLDER by the OWNER, shall be a debt owed by the OWNER to the HOLDER with interest as provided in Article 13.12. The debt with such interest shall be a charge and lien upon the Property, as of the date of the breach giving rise to such debt.

ARTICLE 11 – NOTICES

11.1 Any notice required or contemplated under this Conservation Easement shall be sufficiently given by either party if in writing and delivered by hand, or sent by facsimile or other means of electronic communication with a hard copy mailed by prepaid registered post or other commercial courier providing proof of delivery, as follows:

if to the _____, the _____ at:

Fax: _____

Attention: _____

and, if to the OWNER _____, at:

- 11.2 Any notice delivered by hand or forwarded by facsimile or other means of electronic communication shall be deemed to have been given on the next business day following the day of delivery or forwarding. Any notice mailed shall be deemed to have been given on the seventh business day following the day of mailing.
- 11.3 Either party shall give notice to the other party of any change in the address or fax number of that party. Thereafter the new address or fax number shall be used for providing notice under this Conservation Easement.

ARTICLE 12 - LIABILITY LIMITATIONS, FORCE MAJEURE, INDEMNITY

OWNER Not Liable after Transfer of the Property

- 12.1 After the registration of a transfer of the Property to a new OWNER, the previous OWNER shall not be liable to the HOLDER for any breach of or default in the obligations owed to the HOLDER under this Conservation Easement committed after the registration of such transfer. Responsibility of an OWNER for breaches of this Conservation Easement committed prior to such transfer will survive transfer, unless the HOLDER has provided the previous OWNER with a certificate of compliance as of the date of the transfer.

“Force Majeure” and other Causes beyond the Control of OWNER

- 12.2 The OWNER shall not be liable for any damage to or change in the Property resulting from natural and environmental causes beyond its control including, but not limited to wild fire, flood, storm, earth movement, insect plague or disease, exotic intrusion, environmental contamination originating off-site, or from any prudent action taken by the OWNER under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

Indemnity of HOLDER for Certain Losses

- 12.3 In recognition that HOLDER has no possessory rights or interests in the Property, and that the OWNER is solely responsible for the condition of the Property, the OWNER hereby agrees, on behalf of itself and its successors and assigns, to indemnify and save harmless the HOLDER, its directors, officers, employees, contractors, servants and agents from and against all claims, costs, damages or other proceedings of any kind by or on behalf of any person, firm or corporation arising out of any injury to person or property that occurs on the

Property, except for such injuries directly caused by HOLDER, its directors, officers, employees, contractors, servants and agents in the exercise of its rights hereunder while on the Property.

ARTICLE 13 - MISCELLANEOUS PROVISIONS

Transfer of an Interest in the Property

- 13.1 The HOLDER may assign this Conservation Easement, but only to an entity which is both an _____ (i.e. Eligible Body) under the _____ Act (i.e. the Conservation Easements Act, S.N.S., 2001, c. 28) and a QUALIFIED ORGANIZATION with purposes and powers that include the ownership of land or interests in land for the protection of natural resources and conservation values of land, or other objectives similar to those of the _____, and that as a condition of transfer, agrees to uphold the conservation purposes of this grant.

The HOLDER shall give notice to the OWNER of any assignment of the interest of the HOLDER under this Conservation Easement.

- 13.2 The OWNER shall give notice to the HOLDER of any change in the ownership of or any interest in the Property or any part thereof, including but not limited to a mortgage, option to purchase, future or partial ownership interest, or long term lease. The OWNER shall insert notice of this Conservation Easement in any subsequent deed, lease or other legal instrument by which it transfers any such interest.
- 13.3 Any notice of change in interest by either party shall include the name and address of the new party and shall be given at least thirty (30) days prior to the change of interest.
- 13.4 **Registration of this Conservation Easement at the Registry of Deeds.** The HOLDER shall register this Conservation Easement at the Registry of Deeds for the County of _____, Province of _____.
- 13.5 **No Waiver.** No failure or delay by the HOLDER to enforce the terms of this Conservation Easement, or to require performance by the OWNER of any obligation of OWNER under this Conservation Easement shall affect the right of the HOLDER to enforce the same or to require performance of such obligation at any time in the future.
- 13.6 **Time of the Essence.** Time requirements, and any extension of time limits, shall be met by the parties. An extension shall not be seen as a waiver of any time limits.
- 13.7 **Severability.** All provisions of this Conservation Easement shall be severable. Should any provisions of this Conservation Easement be declared invalid or unenforceable, the remaining provisions shall remain valid and enforceable.

- 13.8 **Costs.** Except as otherwise provided in this Conservation Easement 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 Conservation Easement or from any act in pursuance of this Conservation Easement.
- 13.9 **Law and Forum.** This Conservation Easement shall be interpreted according to the laws of the Province of _____ and the laws of Canada and any disputes shall be resolved exclusively in the courts of the Province of _____.
- 13.10 **Further Assurances.** 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 Conservation Easement.
- 13.11 **Joint and Several.** Whenever the OWNER should be comprised of more than one person, the obligations of the OWNER under this Conservation Easement shall be joint and several.
- 13.12 **Interest.** Interest is payable from the date the amount is owed until the date of repayment. The rate of interest shall be the lesser of five (5) percentage points over the prime rate of interest from time to time charged by the Bank of Canada or the maximum rate allowed by law, calculated semi-annually and not in advance.
- 13.13 **Entire Agreement.** This Conservation Easement embodies the entire agreement of the parties with regard to the matters dealt with in this Conservation Easement. No understandings or agreements, verbal, collateral or otherwise, exist between the parties except as expressly set out in this Conservation Easement. This Conservation Easement may only be amended, modified or released by means of a written memorandum signed by both parties and registered to the Property, and in the case of termination, pursuant to a court order upon payment of compensation to HOLDER as aforesaid at Article 10.5. proceeds clause).
- 13.14 **Headings.** The headings in the body of this Conservation Easement form no part of the Conservation Easement but shall be deemed to be inserted for convenience of reference only.
- 13.15 **Gender.** This Conservation Easement 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.

ARTICLE 14. CONSERVATION EASEMENT REQUIREMENTS UNDER U.S. TREASURY REGULATIONS

- 14.1. This Conservation Easement is established exclusively for conservation purposes pursuant to the United States Internal Revenue Code of 1986, as amended (hereinafter referred to as the "Code") at Title 26, U.S.C.A., Section 170(h)(1)-(6) and Sections 2031(c), 2055 and 2522, (or successor provisions thereof), and under Treasury Regulations at Title 26 C.F.R. §1.170A-14 *et*

seq., as amended.

- 14.2 The HOLDER is a QUALIFIED ORGANIZATION under Code Section 170(h)(3), to wit: a publicly funded, non-profit 501(c)(3) organization with purposes and powers that include the ownership of land or interests in land for the protection of natural resources and conservation values of land, and having a commitment to protect the conservation purposes of the donation, and the resources to enforce the restrictions hereof.
- 14.3 This Conservation Easement is assignable, but only to an entity that satisfies the requirements of Section 170(h)(3) of the Code (or successor provisions thereof) and that as a condition of transfer, agrees to uphold the conservation purposes of this grant.
- 14.4 OWNER agrees to notify HOLDER prior to undertaking any activity or exercising any reserved right that may have a material adverse effect on the conservation purposes of this grant.
- 14.5 In order to establish the present condition of the Property and its natural and scenic resources so as to be able to monitor properly future uses of the Property and assure compliance with the terms hereof, HOLDER and GRANTORS have prepared an inventory of the Property's relevant features and conditions (the "Baseline Documentation Report" described in Article 5.3 hereinabove, and have certified the same as an accurate representation of the condition of the Property as of the date of this grant.
- 14.6 Notwithstanding that this Conservation Easement is an obligation of HOLDER, and not a financial asset, it is a vested property right and a partial interest in land owned by the HOLDER, and in the event it is extinguished, which may be accomplished only by court order as stated under Article 10.5 hereinabove, HOLDER is entitled to a share of the proceeds of any sale, exchange or involuntary conversion of the thereafter-unrestricted property, according to HOLDER'S proportional interest in the Property as required by and calculated according to Treasury Regulations 1.170A-14(g)(6)(ii). HOLDER'S proportional interest is determined as of the date of this grant, but will not include value attributable to improvements to the Property made after the date of this grant. HOLDER will use such proceeds for its conservation purposes.
- 14.7 Amendment and Discretionary Consent. This Conservation Easement grant is made by GRANTOR, with the understanding that the conservation purposes for which it is given may be protected or furthered under circumstances that may justify modification of certain specific terms of this easement. To this end, HOLDER may provide its written discretionary consent for activities and uses of the Protected Property that are conditional or not expressly reserved by GRANTOR, and GRANTOR and HOLDER may agree in writing to modify the terms of this Conservation Easement, but only to the extent that such discretionary approval or modification furthers the purposes of this Conservation Easement and does not have a material adverse effect on the conservation values to be protected by this grant, and does not permit [[INSERT SPECIFIC LIMITATIONS TO ASSURE CONTINUED QUALIFICATION UNDER CONSERVATION PURPOSES TEST, SUCH AS: (additional or any) building development,

residential development, surface mining of subsurface minerals, etc.]] In no event may HOLDER approve modifications to this Conservation Easement that would limit the term or terminate this Conservation Easement, result in private inurement or impermissible private benefit under IRS rules for tax exempt entities, or impair the qualification of this Conservation Easement under IRS Code Section 170(h), or the status of HOLDER as a qualified donee or as a tax exempt entity under any applicable laws, [[local non-profit law.]]

IN WITNESS WHEREOF the parties hereto have executed this Conservation Easement.

SIGNED, SEALED AND DELIVERED)
in the presence of:)

_____))
Witness)

_____))
OWNER)

_____))
Witness)

_____))
Per: _____)

_____))
Witness)

_____))
Per: _____)

CANADA)
PROVINCE OF _____,)
COUNTY OF _____)

ON THIS _____ day of _____, A.D., 200__, before me, the subscriber, personally came and appeared _____ (Witness), a subscribing witness to the foregoing Indenture, who having been by me duly sworn, made oath and said that the _____, one of the parties thereto, signed, sealed and delivered the same in h__ presence.

A Notary Public in and for the State of _____
Date Commission Expires _____
(or a Lawyer in and for the Province of _____)

SCHEDULE “A”

Attached to and forming part of the Conservation Easement between the OWNER, of the first part, and the _____, of the second part, dated as of the _____ day of _____, 200__.

LEGAL DESCRIPTION

SCHEDULE "B"

Attached to and forming part of the Conservation Easement between the OWNER, of the first part, and the _____, of the second part, dated as of the _____ day of _____, 200__.

PROPERTY MAP

SCHEDULE "C"

Attached to and forming part of the Conservation Easement between the OWNER, of the first part, and the NSNT, of the second part, dated as of the _____ of _____, 200.

AGREED USES

1. Definitions

In this Schedule:

- a) "Dwelling Area" consists of that area of the Property, in which permitted uses as set out in Section 3.0 of this Schedule may occur and which is delineated on the Property Map; and is more particularly described by metes and bounds in Schedule D, attached hereto and made a part hereof [*define the dimensions, location etc. here*].
- b) Other terms used in this Schedule that are defined elsewhere in the Conservation Easement shall have the respective meanings ascribed to them in the Conservation Easement.

2. Prohibited Uses

Any activity or use of the Property inconsistent with the purpose of this Conservation Easement is prohibited on the Property. The following activities and uses are expressly prohibited on the Property except as permitted in Section 3 of this Schedule "C":

(Samples activities which may be prohibited)

- a) Any commercial, industrial or quarrying activity, except that not more than a *de minimis* use of the Property for commercial outdoor recreation is permitted;
- b) Mineral exploration and extraction, and specifically prohibiting surface mining of subsurface minerals;
- c) Subdivision, division, or partition of the Property;
- d) Any construction including, but not limited to, the constructing or placing of any permanent building or road;
- e) Granting of an easement or right of way without the prior written consent of HOLDER, provided that through-roads to other land are specifically prohibited;

- f) The operation of motorized vehicles including, but not limited to, the operation of snowmobiles, dune buggies, motorcycles or all-terrain vehicles, except within the Dwelling Area and on recreational trails designated for their use;
- g) Storing, discharge, or dumping of toxic or dangerous materials of any kind;
- h) Alteration of the surface of the lands including, but not limited to, excavating, dredging or removing loam, gravel, soil, rock, sand, peat, sod or other materials;
- i) Alteration, removal, cutting or destruction of any trees, shrubs or other vegetation;
- j) Planting or introduction of non-indigenous plants;
- k) Introduction of non-indigenous animals;
- l) Any use or activity that causes, or is likely to cause, significant soil degradation or erosion or other adverse impact or destruction to important conservation values on the Property;
- m) Any use or activity that causes, or is likely to cause, significant pollution of any surface waters on or about the Property;
- n) Dyking, draining, filling, dredging or any alteration or manipulation of the ponds and watercourses; and
- o) Agriculture and farming, animal husbandry, grazing livestock, motocross and mud run course, ATV courses, equestrian facilities, (etc, *add common uses of agricultural land that damages resources*).

3. Permitted Uses

The following acts and uses are permitted on the Property, as long as they are consistent with the purpose of this Conservation Easement and they do not adversely affect the conservation values or the scenic and natural character of the Property:

(Sample activities which could be permitted)

- a) Low-impact, non-motorized and non-mechanized outdoor recreation activities including, but not limited to, nature appreciation, hiking, cross-country skiing, wildlife viewing, and berry-picking;
- b) Maintenance and use of existing unpaved recreational trails and footpaths;
- c) Construction and use of a reasonable number of new unpaved recreational trails

and footpaths designed to prevent erosion and to limit damage to fragile plant communities and wetlands;

- d) Carrying out of minor cutting or pruning of vegetation and alteration of the surface to the minimum extent necessary to maintain or upgrade existing unpaved footpaths and recreational trails or to construct new unpaved recreational trails or footpaths; and with the prior written consent of HOLDER, cutting of live vegetation to improve the health and wildlife habitat values of the Property, provided that any disturbed surrounding area be restored as soon as possible to a condition consistent with the purposes of this Conservation Easement;
- f) Removal of dead trees that pose a safety hazard or which fall across and impede use of the permitted recreational footpaths and trails or the driveway to the Dwelling Area, provided that any disturbed surrounding area be restored as soon as possible to a condition consistent with the conservation purposes of this Conservation Easement;
- g) Placement of a reasonable number of non-illuminated signs not exceeding 18 x 12 inches, for the following purposes:
 - (i) no-trespassing, safety or caution;
 - (ii) controlling unauthorized use or entry;
 - (iii) sale or rent of the Property; and
 - (iv) displaying the existence of the Conservation Easement registered on the Property and the identity of HOLDER.
- h) Cutting, pruning, destruction and removal of vegetation for domestic personal use of OWNER and occupants of the Dwelling Area, including firewood and such other uses that might be incidental to personal domestic use within the Property, including the Dwelling Area, and on other nearby land of OWNER.
- i) Clearing and maintenance of fields, and plowing, cultivating, and harvesting of field, forage, meadow, and row crops, provided that no such activity may be located within 100 feet of a perennial stream, wetland, or coastal shore, and provided that the creation of any new open area for agricultural use requires a clearing and field completion plan and timeline approved in advance and in writing by HOLDER.
- j) Creating man-made ponds with a pond construction plan and timeline approved in advance and in writing by HOLDER, upon a determination in the sole and exclusive determination of HOLDER that such activities are not inconsistent with the conservation purposes of this Easement and will not have a material adverse impact on the conservation values of the Property.

4. Additional Permitted Uses in the Dwelling Area

Within the Dwelling Area only, the following acts and uses are permitted, as long as they are consistent with the purpose of this Conservation Easement, and they do not adversely affect the conservation values or natural character and condition of the Property. All activities usually associated with residential use of land including, without limitation:

- a) Construction, maintenance and replacement of not more than _____ () residential dwellings;
- b) Facilities and structures to serve the residence(s) and home occupations conducted therein, including outbuildings, septic waste disposal, fresh water supply, and power and communication systems, structures incidental to the keeping of domestic animals; household gardening and landscaping; recreational courts and fields, paved or unpaved parking and turning areas and vehicular access over not more than one paved or unpaved driveway to and within the Dwelling Area, *[[if Dwelling Area is not on the public roadway: which driveway may traverse other areas of the Property only by the most convenient and reasonably direct route from the nearest public roadway to the Dwelling Area. [[if there is no room for septic: and which septic waste disposal system may be located outside of the Dwelling Area, with the prior written consent of HOLDER, upon a determination by HOLDER that it is not functionally possible or practicable to locate any part or all of such system within the Dwelling Area, and that such system is limited to serve the permitted uses within the Dwelling Area, and is located as near as possible to the Dwelling Area without detriment to important natural resources on the Property.]]*
- c) Surface alterations and vegetation clearing necessary to establish, maintain and improve driveways, parking and turning areas, and to cultivate household gardens and landscaping.
- d) No such structure within the Dwelling Area may exceed _____ () feet in height, measured from the original average grade of the building locus, and all structures and paved or otherwise impermeable surfaces located within the Dwelling Area, taken together may not exceed _____ () square feet in impermeable ground surface.

MATRIMONIAL AFFIDAVIT

I (We), _____, make oath and say as follows:

- 1. That we are the GRANTOR(s) in the foregoing Indenture and are of at least the full age of nineteen (19) years.
- 2. That for the purpose of this Affidavit, "spouse" means either of a man or woman, who:
 - (i) are married to each other;
 - (ii) are married to each other by a marriage that is voidable and has not been annulled by a declaration of nullity; or
 - (iii) have gone through a form of marriage with each other in good faith, that is void and are cohabiting or have cohabited within the preceding year.
- 3. That we are spouses of each other and have no other spouse as defined herein.

SWORN TO at _____)
 in the Province (State) of _____) _____
 this ____ day of _____)
 A.D. 200, before me:)
)
 _____)
 A NOTARY PUBLIC IN AND FOR THE) _____
 PROVINCE (STATE) OF _____)

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