

THIS AGREEMENT made this            day of            , 1999.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO  
as represented by the Chair of the Management Board of Cabinet, by its  
authorized agent, Ontario Realty Corporation  
(hereinafter called "ORC")

- and -

THE CORPORATION OF THE REGIONAL MUNICIPALITY OF DURHAM  
(hereinafter called the "Region")

- and -

THE CORPORATION OF THE TOWN OF PICKERING  
(hereinafter called the "Town")

1. SCOPE AND PURPOSE OF AGREEMENT

- A. ORC is the owner of certain lands in the Town of Pickering, which land is generally located in Lots 24 to 35, Concession 2, Lots 25 to 35, Concession 3, Lots 27 to 35, Concession 4, Lots 32 to 35, Concession 5, and Lots 34 and 35, Concession 6, hereafter described as the "Agricultural Assembly", and illustrated in Schedule "A" to this Agreement. ORC wishes to convey the lands within the Agricultural Assembly to private ownership for continued agricultural use.
- B. To achieve this, ORC requires an amendment to the Durham Regional Official Plan to permit certain land, which is within the Agricultural Assembly, to be divided into parcels of less than 40 hectares in size. In addition, the Region requires that ORC agree to certain conditions regarding conveyance of the land, as set out in this Agreement.
- C. The Region, as the delegated consent authority under the *Planning Act*, in full consultation and agreement with the Town, has agreed to allow ORC to proceed with the conveyance of lots within the Agricultural Assembly using the exemption afforded Her Majesty the Queen in Right of Ontario under Section 50(3)(c) of the *Planning Act* ("Crown Right"), pursuant to ORC's Class Environmental Assessment, subject to the terms of this Agreement.
- D. During the term of this Agreement, ORC shall proceed with the conveyance of lots within the Agricultural Assembly using Crown Right, and shall not proceed by consents pursuant to the *Planning Act*, except with the written agreement of the Region and the Town.

## 2. AMENDMENT TO THE DURHAM REGIONAL OFFICIAL PLAN

- A. The parties agree that the Region shall have carriage of seeking approval of Amendment 36 to the Durham Regional Official Plan, hereafter referred to as "Amendment 36", as set out in Schedule "B" to this Agreement, which is currently before the Ontario Municipal Board as a result of an appeal filed by ORC. The Amendment establishes a policy in the Regional Official Plan that explains why the creation of lots of less than 40 hectares in size is being permitted in the Agricultural Assembly.
- B. All parties will consent to the approval of Amendment 36, as well as to the consent application represented by OMB File No. C960307, which has been consolidated with the Amendment 36 matter. Should the Ontario Municipal Board refuse to approve Amendment 36, as set out in Schedule "B" to this Agreement, or fail to make a decision in respect of same by May 31, 1999, any party may choose to terminate this Agreement on written notice to all other parties, and thereupon, all rights and obligations of the parties pursuant to this agreement shall terminate. Without limiting the generality of the foregoing, ORC acknowledges that upon termination of this Agreement, in addition to losing rights to convey by way of Crown Right pursuant to this Agreement, it shall not retain any rights to convey by Crown Right pursuant to any request to do so made by the Region.

## 3. CONVEYANCES INTO PRIVATE OWNERSHIP

- A. All conveyances into private ownership shall generally conform with the Conceptual Lot Plan, contained in Schedule "A" to this Agreement.
- B. Any conveyance made without the execution and registration of an Agricultural Easement, if required, will be deemed to have been made without the request or consent of the Region or the Town and without *Planning Act* consent.
- C. Nothing in this Agreement shall prevent the conveyance of lands, at any time, to a public authority for any public use, including roads, rail lines, pipelines, hydro transmission corridors and substations, telecommunication facilities, and municipal buildings and facilities.

## 4. LAND DEDICATIONS

- A. ORC shall convey:
  - (i) to the Toronto and Region Conservation Authority ("TRCA"), that portion of the Agricultural Assembly comprising the West Duffins Creek and Petticoat Creek valleys, and the wetland complex located north of Taunton Road and west of Altona Road, as identified on Schedule "A" to this Agreement;

- (ii) to the Region, the Regional road widenings identified on Schedule "A" to this Agreement; and
  - (iii) to the Town, the local road widenings identified on Schedule "A".
- B.
- (i) All lands shall be conveyed, free and clear of all encumbrances, provided that if any road widening impinges upon a house, the widening shall exclude the house by surveying 0.3 metre from the outer perimeter of the house;
  - (ii) If land to be dedicated, other than a road widening, has been improved with a house or other structure, the transferee shall compensate ORC for the appraised value of the house or structure;
  - (iii) The land to be dedicated will be required at the time of sale of the abutting land; and
  - (iv) Paragraph (B)(iii) does not apply to a road widening where the Region or the Town has prepared a plan of survey.
- C.
- (i) ORC agrees to survey the land to be dedicated, at ORC's cost, and prepare and register the reference plans required to effect the conveyances; and
  - (ii) Surveying shall not be required prior to the sale of the land abutting the land to be dedicated.

## 5. CONSERVATION EASEMENTS

- A. To ensure the long term protection of natural heritage features within the Agricultural Assembly, ORC will convey Conservation Easements to the TRCA for all such features illustrated on Schedule "A" to this Agreement. The Conservation Easement shall be in the form contained in Schedule "C" to this Agreement. In the absence of a clearly defined creek channel, ORC shall provide a 15 metre setback from a drainage course.
- B. ORC shall not be required to convey the Conservation Easement until ORC has entered into an agreement of purchase and sale for the land subject to the Conservation Easement. The Conservation Easement will be conveyed and registered on title prior to conveyance of ownership to a third party.
- C. ORC shall be responsible for the costs associated with surveying and registering the Conservation Easement.

## 6. AGRICULTURAL EASEMENTS

- A. For each lot to be conveyed into private ownership, which is zoned agricultural, in whole or in part, and is greater than two (2) hectares in size, ORC shall require the purchaser, as a condition of sale, to execute and register on title an Agricultural Easement, in favour of the Town, in the form as set out in Schedule "D" to this Agreement. Notwithstanding the foregoing, Agricultural Easements will not be required for lots described on Schedule "F", in recognition of ORC's previously having entered into agreements of purchase and sale in respect of these lots.
- B. ORC shall require that a condition be included in any agreement of purchase and sale for any lot for which an Agricultural Easement is required, that:
- "The Purchaser agrees to execute and deliver to the Town of Pickering, on or before closing, the Agricultural Easement attached as Schedule "D" to this Agreement, which Agricultural Easement shall be binding upon all successors in title to the property, and shall be registered against title to the property as a reservation in the deed, or immediately following the deed, and in priority to all encumbrances."
- C. ORC shall insert a provision, into any agreement of purchase and sale for any lot for which an Agricultural Easement is required, that such agreements of purchase and sale may not be assigned, unless the assignee first executes and delivers the Agricultural Easement as required in Paragraphs 6A and 6B above.
- D. ORC shall be responsible for the costs associated with surveying and registering the Agricultural Easement.

## 7. FEES

The applicable fees for consent applications will be paid by ORC for each proposed lot when submitted to the Technical Staff Committee. No other fees will be payable by ORC, except as specified in this Agreement.

## 8. TECHNICAL STAFF COMMITTEE

- A. A Technical Staff Committee shall be established, comprised of one representative of each of the parties, to undertake the following process of lot creation:
- (i) ORC shall send a written description of each lot proposal, which may consist of one or more proposed lots, with a sketch plan, to the Committee, with a request for comments within three weeks. At that time, ORC shall submit the applicable consent application fee to the Region;

- (ii) The Committee shall review the lot proposal against the Conceptual Lot Plan, in Schedule "A" to this Agreement, and the Technical Checklist, in Schedule "E" to this Agreement;
- (iii) The Committee shall meet, or teleconference, within one month of receiving the lot proposal to confirm general conformity with the Conceptual Lot Plan, and compliance with the Technical Checklist; and
- (iv) Within one week of the teleconference referred to in subsection 8A(iii) above confirming compliance with the Technical Checklist, and upon receipt of evidence that, as necessary, either or both ORC has signed the Conservation Easement and the purchaser has signed the Agricultural Easement, then the Region shall provide ORC with a letter confirming the compliance of the lot, subject to registration of either or both the Conservation Easement and the Agricultural Easement on title, as necessary, and confirming the right of ORC to convey such lot pursuant to this Agreement.

- B. If the Committee cannot reach a consensus on a proposed lot, the matter may be referred to the Ontario Municipal Board for arbitration, pursuant to either Section 198 of the *Municipal Act* or Section 54(1)(i) of the *Ontario Municipal Board Act*.

## 9. TERM

- A. The parties acknowledge that ORC is concerned that the Agricultural Easement, as contemplated in Section 6 of this Agreement, may frustrate its attempts to divest itself of the land it owns in the Agricultural Assembly. Specifically, ORC is concerned that it may not be able to sell land subject to the Agricultural Easement at agricultural prices within a reasonable time frame. In the event that ORC, acting reasonably, believes that such is the case, ORC may so notify the Region and the Town any time after five (5) years from the date of this Agreement. For greater clarity, ORC's right to give notice under this paragraph shall not arise merely because of marketing delays caused by administrative decisions of ORC regarding phased sales, insufficient ORC resources to advertise, survey, negotiate and complete sales, by reassigning or restructuring staff, from failure to achieve prices based on development potential of land which would be precluded by the Agricultural Easement, or from site-specific limitations which are independent of Agricultural Easements, and without limiting the generality of the foregoing, such as waste or pesticide contamination, well water availability, soil characteristics or building conditions.
- B. If the Region and the Town are provided with the notice from ORC as described in paragraph 9A, they will arrange to meet with ORC as soon as possible to identify the ORC concerns in detail, and to identify and resolve any outstanding issues with respect to the implementation of the Agricultural Easements. The parties may also agree on a process for dispute resolution, which may include the appointment of a neutral fact finder, expert evaluator or mediator.

- C. If, four (4) months after the initial notice by ORC as described in paragraph 9A, the parties cannot agree on the measures necessary to address concerns regarding the implementation of the Agricultural Easements, then any party may request that the matters in dispute be referred to arbitration.
- D. Any party may commence arbitration proceedings by giving notice of arbitration to the other parties. The notice shall name a proposed arbitrator. Unless the parties to whom the notice of arbitration has been given object, the arbitrator so named shall be deemed to be accepted to arbitrate the dispute. In the event there is an objection to the proposed arbitrator, the objecting party may propose an alternative arbitrator. Within ten (10) days of receipt of such proposal, parties shall indicate whether they accept such alternative. In the event the alternative is not acceptable, any party may apply to the Superior Court of Justice for the appointment of an arbitrator, pursuant to the *Arbitrations Act, 1991, S.O. 1991, c.A.17*. Arbitrations shall be conducted in accordance with the provisions of the *Arbitrations Act*.
- E. The arbitrator shall thereupon proceed to hear the submissions of the parties and shall render a decision and written reasons therefore within thirty (30) days after the appointment of the arbitrator. The decision of the arbitrator shall be final and legally binding upon the parties and not subject to appeal. The arbitrator shall have regard to the intent of the parties in this Agreement. The arbitrator shall have the authority to amend the Agreement, or the terms of the generic Agricultural Easement or to terminate the Agreement, and shall have the authority to assess the costs of the arbitration panel against any or all of the parties, provided that each party shall bear its own witness and counsel fees.
- F. If, during the term of the Agreement, Agricultural Easements are not registered on title to lots in priority to encumbrances, as required pursuant to Section 6, then the Region or the Town has the right to notify ORC that the request and permission for the use of Crown Right will be terminated. Any party dissatisfied with a decision to terminate the use of Crown Right may refer the decision to arbitration pursuant to the provisions of paragraphs 9D and 9E.
- G. In the event of termination of this Agreement under paragraph 9E or 9F, all rights and obligations of the parties pursuant to this Agreement shall terminate. Without limiting the generality of the foregoing, ORC acknowledges that, upon termination of this Agreement, and in addition to losing rights to convey by way of Crown Right pursuant to this Agreement, it shall not retain any rights to convey by Crown Right pursuant to any request to do so made by the Region.
- H. Provided that this Agreement has not terminated pursuant to paragraphs 9E or 9F, this Agreement shall terminate on the date on which the last parcel of land owned by ORC in the Agricultural Assembly has been disposed of, and all of the required Agricultural Easements, Conservation Easements and Land Dedications have been registered on title.

10. INTERPRETATION

Except as otherwise noted herein, this Agreement applies to all lands owned by ORC within the Agricultural Assembly, and not just to those portions that are to be conveyed into private ownership. This Agreement does not apply to any lands outside the Agricultural Assembly.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by affixing their respective corporate seals attested to by the signatures of their proper officers duly authorized in that behalf.

ONTARIO REALTY CORPORATION

Per: Tony Miele Date: April 30/99  
Tony Miele, Chief Executive Officer  
I have the authority to bind the Corporation

THE CORPORATION OF THE REGIONAL MUNICIPALITY OF DURHAM

Per: Roger Anderson Date: May 3/99  
Roger Anderson, Regional Chair

Per: Pat M. Madill Date: May 3/99  
Pat M. Madill, Regional Clerk

THE CORPORATION OF THE TOWN OF PICKERING

Per: Wayne Arthurs Date: May 3/99  
Wayne Arthurs, Mayor

Per: Bruce Taylor Date: May 3/99  
Bruce Taylor, Clerk

## Schedules to this Agreement

- Schedule "A" - Conceptual Lot Plan
- Schedule "B" - Amendment 36 to the Durham Regional Official Plan
- Schedule "C" - Conservation Easement
- Schedule "D" - Agricultural Easement
- Schedule "E" - Technical Checklist
- Schedule "F" - Lands Exempt from Agricultural Easements





Schedule "B"

AMENDMENT NO. 36 TO THE DURHAM REGIONAL OFFICIAL PLAN

**Purpose:** The purpose of this amendment is to permit the Ontario Realty Corporation to dispose of approximately 2,000 hectares of land by permitting the creation of lots less than 40 hectares in size in the Permanent Agricultural Reserve designation, and to recognize existing legal non-conforming uses as of the date of approval of this Amendment, within the Town of Pickering.

**Location:** Lands affected by this Amendment are those lands owned by the Ontario Realty Corporation, in Lots 24 to 35, Concession 2, Lots 25 to 35, Concession 3, Lots 27 to 35, Concession 4, Lots 32 to 35, Concession 5, and Lots 34 & 35, Concession 6, located west of West Duffins Creek and north of CP Rail, in the Town of Pickering.

**Basis:** The proposed amendment will not change the Permanent Agricultural Reserve designation of the subject area. It will facilitate the sale of Provincially-owned lands to tenants, former owners and others, and encourage investment in existing buildings and stewardship of land for agricultural and farm-related activities.

**Actual Amendment:** The Durham Regional Official Plan is hereby amended as follows:

By adding new Policy 12.3.17:

12.3.17 Notwithstanding Section 12.3.10, the creation of lots less than 40 hectares in size for agriculture and farm-related uses, and rural residential and legal non-conforming commercial uses in existence at the time of this Amendment being approved, may be permitted, in those portions of Lots 24 to 35, Concession 2, Lots 25 to 35, Concession 3, Lots 27 to 35, Concession 4, Lots 32 to 35, Concession 5, and Lots 34 & 35, Concession 6, located west of West Duffins Creek and north of CP Rail, in the Town of Pickering, to facilitate the sale of Provincially-owned land, subject to satisfactory arrangements with the Town of Pickering, the Toronto and Region Conservation Authority and the Region. The creation of lots shall ensure the following:

- a) agricultural parcels are of a size which encourages continuation of agriculture and farm-related uses;
- b) lot boundaries follow the limits of environmental resources; and
- c) lots recognize the boundaries of existing occupied leaseholds, where possible.

**Implementation:** The provisions set forth in the Durham Regional Official Plan regarding the implementation of the Plan shall apply in regard to this amendment.

**Interpretation:** The provisions set forth in the Durham Regional Official Plan regarding the interpretation of the Plan shall apply in regard to this amendment.

SCHEDULE "C"  
CONSERVATION EASEMENT

THIS AGREEMENT MADE THE \_\_\_\_ day of \_\_\_\_\_, 199\_\_

BETWEEN:

ONTARIO REALTY CORPORATION ("ORC")

-and-

THE TORONTO AND REGION CONSERVATION AUTHORITY ("TRCA")

WITNESSES THAT WHEREAS:

- A. ORC is the registered owner in fee simple of the Lands; and
- B. ORC has agreed to grant to TRCA an Easement over the Lands and to enter into a Restrictive Covenant in respect of the Lands (collectively, the "Conservation Easement") in order to effect their conservation;

NOW THEREFORE in consideration of the sum of two dollars (\$2.00) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the Conservation Land Act, ORC does hereby grant to TRCA, its successors and assigns, a conservation easement over the Lands of the nature and character and to the extent hereinafter set forth:

- I. TRCA's employees, agents, servants, workers, contractors, officers and directors, and their supplies, equipment, materials, machinery and vehicles may enter on and have access to the Lands at reasonable times for the following purposes:

(a) inspection;

(b) to carry out any construction, maintenance, alteration, repair, improvement, installation or work reasonably required in the opinion of TRCA, and solely at the cost of TRCA, for the purpose of:

erosion control, flood control, maintenance of water courses, streams and water quality and bank stabilization and environmental integrity;

- (c) for all purposes reasonably necessary or incidental to the exercise of the rights hereby created or related to any of the foregoing purposes, (collectively the "Easement")

provided that all of the foregoing is done at the sole expense of TRCA and provided that in the exercise of such rights, TRCA, and its successors and assigns, as the case may be, shall:

- (i) forthwith repair any damage done or caused to the Lands or lands abutting thereto at their expense;
- (ii) assume all liability and obligation for any and all loss, damage, or injury (including death) to persons or property that would not have happened but for the exercise of such rights;
- (iii) indemnify ORC against any claims, actions or judgements in respect of such loss, damage or injury;
- (iv) obtain comprehensive general liability insurance in respect of such assumed liability and obligation in an amount of no less than three million dollars (\$3,000,000) per occurrence or in such other amount or terms as ORC, its successors or assigns, or any transferees therefrom may reasonably require from time to time, based on the amount or terms which a prudent owner would obtain to protect itself under similar circumstances;
- (v) provide reasonable notice in the case of access under clause 1(a), and 14 days' written notice in the case of access for any other purpose, including surveying;

and provided that the notice provided for herein shall describe the nature, scope, design, location, timetable, evidence that the insurance aforesaid is in place and still valid and any other material aspect of the activity proposed.

2. In order to protect and give effect to the Easement, and insofar as they shall not affect the continuation of existing cultivation of the Lands nor the maintenance or minor extension, enlargement or replacement of existing structures on the Lands (as otherwise permitted under TRCA's regulation), ORC also agrees to the following restrictive covenants in respect of the Lands:

- (a) No fill or soil shall be placed, dumped, brought onto, deposited on or under or removed from the Lands or any part thereof, and no excavations shall be made on or from the Lands or any part thereof;
- (b) No changes will be made to any existing grade or landscaping of the Lands or any part thereof;
- (c) No erection or construction of any buildings, structures or improvements shall be permitted on or under the Lands or any part thereof;
- (d) There shall be no:

- (i) straightening, changing, diverting, interfering with or altering any water courses;
- (ii) draining of any wetlands within the Lands in any manner;
- (iii) interfering with any drainage facilities servicing the Lands or any part thereof;
- (iv) obstructing of the natural flow of water over, under, from or to the Lands or any part thereof;
- (v) doing anything which would materially affect the quantity or quality of the water on or flowing over or under the Lands or any part thereof; or
- (vi) removal of trees;

without the prior written consent of TRCA, which consent shall not be unreasonably withheld (collectively the "Restrictive Covenant").

3. ORC 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 no right of access by the general public to any portion of the Lands is conveyed hereby.

4. Nothing contained herein shall be construed to entitle TRCA or its successors or assigns to bring any action against ORC, its successors or assigns, or any transferees therefrom, for any injury to or change in the Lands resulting from causes beyond the control of ORC or its successors or assigns, or transferees therefrom, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by ORC under emergency conditions to prevent, abate, or mitigate significant injury to the Lands or to lands abutting thereto resulting from such causes.

5. For the purposes of the Easement and Restrictive Covenant:

- (a) notwithstanding the Conservation Land Act, the successors and assigns of TRCA shall be restricted to the Town of Pickering and its municipal successors, and to any tax-exempt, non-profit body statutorily charged with the conservation or preservation of land;
- (b) "Lands" means the lands described in Box (5) of the Transfer/Deed of Land to which this Schedule is attached;
- (c) "existing" means existing at the time the Easement and Restrictive Covenant are executed.

6. The Easement and the Restrictive Covenant shall run with the Lands in perpetuity or until such time as TRCA, or its successor or assign, authorizes a release of such restrictions and the benefit thereof shall be annexed to and run with all other lands and interest in lands owned, occupied or used by TRCA and its successors and assigns.

IN WITNESS WHEREOF ORC and TRCA have executed this Conservation Easement as at the date first above written:

ONTARIO REALTY CORPORATION

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

I have authority to bind the Corporation

TORONTO AND REGION CONSERVATION  
AUTHORITY

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

I have the authority to bind the Toronto and Region  
Conservation Authority

SCHEDULE "D"

AGRICULTURAL EASEMENT

THIS AGREEMENT MADE THE \_\_\_\_ day of \_\_\_\_\_, 199\_\_

BETWEEN:

XXXXXXXXXX  
("Owner")

-and-

THE CORPORATION OF THE TOWN OF PICKERING  
(the "Town")

1. WHEREAS the Owner is the registered owner of certain lands and premises in the Town of Pickering in the Regional Municipality of Durham composed of approximately X hectares and more particularly described in Schedule "A" attached hereto (and hereinafter referred to as the "Property"); and
2. WHEREAS the Property is located in the area known as the Agricultural Assembly, which lands are located within the area west of the West Duffin Creek and north of the C.P. (Belleville) rail line; and
3. WHEREAS the Agricultural Assembly is designated "Permanent Agricultural Reserve" in the Region of Durham Official Plan, and "Agricultural Area" in the Town of Pickering Official Plan; and
4. WHEREAS it is the parties' intention to maintain the viability of the Property for agricultural and related uses; and
5. WHEREAS the Owner has agreed to enter into covenants and easements with the Town for the purposes of conservation, maintenance, restoration or enhancement of the Property and has agreed to grant a right to enter onto the Property in order to provide for the enforcement of the covenants and easements as described herein (collectively, the "Agricultural Easement"); and

6. WHEREAS the Agricultural Easement shall be used to conserve and maintain the use and capability of the Property for agricultural purposes, and shall be binding on all future owners of the Property.

NOW THEREFORE in consideration of the sum of two dollars (\$2.00) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the *Conservation Land Act*, the Owner does hereby agree to and does grant to the Town, its successors and assigns, the covenants and easements in respect of the Property as hereinafter set forth:

### DEFINITIONS

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

"Act" means the *Conservation Land Act*, R.S.O. 1990, c.C.28, as amended by S.O. 1994, c.27, s.28(1) and (2) and any statute that may be enacted to modify or replace same.

"Agreement" means this Agricultural Easement Agreement and the schedules attached hereto as at the date hereof and as amended from time to time.

"Owner" means the above-named ~~XXXXXXXX~~ and any person who at any time after registration of this Agreement becomes the registered owner of the Property or any part thereof or any ownership interest therein, including being a trustee for any beneficial owner of the Property.

"Permitted Use" means a use listed in Schedule "B" attached hereto.

"Property" 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 of this Agreement.

"Town" means the Corporation of the Town of Pickering and any successor municipal corporation or permitted assignee under this Agreement.

### PURPOSE

2. It is the purpose of this agricultural easement to conserve and maintain the Property for agricultural use and to enable the restoration and enhancement



of the Property for agricultural purposes by preserving and protecting the agricultural capability of the soil and the character, potential and actual use of the Property for agriculture, and to prevent any use of the Property that would significantly impair or interfere with that purpose. To the extent that the conservation of natural and open space values of the Property is consistent with the foregoing, it is within the purpose of this agricultural easement to protect those values of the land.

#### CURRENT USE

3. The current use(s) of the Property are as described in Schedule "C".

#### RESTRICTIONS

4. The Owner shall not use or permit the Property to be used for any use or activity except a Permitted Use.
5. Except with the prior written approval of the Town, the following uses and activities shall be specifically prohibited on the Property:
  - (a) severance or subdivision, except that a severance for conservation or farm-related purposes may be permitted;
  - (b) no building or other structures, nor any paving, road, parking lot or other similar facility shall be constructed or erected unless necessary or incidental to a Permitted Use;
  - (c) the mining or extraction of peat, aggregates or minerals for commercial purposes;
  - (d) commercial recreational uses, including golf courses and driving ranges;
  - (e) the removal of topsoil except as necessary or incidental to a Permitted Use; or
  - (f) the dumping or accumulation of soil, fill, waste, equipment, products and materials, unless necessary or incidental to a Permitted Use and in accordance with all applicable laws.
6. Nothing in paragraphs 4 or 5 shall prevent the use of the Property for any use that existed as a legal use, or as a legal non-conforming use (within the meaning of s.34(9) of the *Planning Act*, R.S.O. 1990, c.P.13) as at the date of this Agreement, and which has continued as such. The burden of proving the existence and continuance of such use shall rest with Owner. Any use

described in Schedule "C" is acknowledged by the parties to have existed as at the date of this Agreement.

### OWNER'S RIGHTS AND OBLIGATIONS

7. The Owner reserves to itself, and to the Owner's successors and assigns, and any transferee therefrom, all rights accruing from ownership of the Property that are not prohibited by this Agreement. No right of access to any portion of the Property is conveyed by this Agreement except in accordance with paragraphs 9 and 10.
8. The Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including the payment of any and all taxes, assessments, fees and charges levied by competent authority on the Property.

### ACCESS AND ENFORCEMENT

9. In order to provide access to the Property for the inspection and enforcement of all the restrictions in paragraphs 4 and 5, the Town's employees, agents, servants, workers, contractors, officers and directors shall be permitted at all reasonable times, and upon reasonable written notice, to enter upon and inspect the Property or any premises located on the Property, other than a dwelling.
10. If the Town determines that the Owners are in violation of the terms of this Agreement or that a violation is threatened, the Town may give written notice to the Owners of such violation and demand corrective action sufficient to cure the violation and to restore any portion of the Property injured through such violation. If the Owner fails to cure the violation and restore the Property within sixty (60) days after receipt of notice thereof from the Town, the Town may:
  - (a) upon written notice to the Owner, enter upon and restore the Property and any premises located on the Property, including the removal of such premises, in order to correct any violation of this Agreement. The Town shall be reimbursed by the Owner for all costs incurred by the Town to correct a violation of this Agreement; and
  - (b) bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Agreement and to restore the Property to the condition existing prior to the violation.
11. Notwithstanding the foregoing, the Town may seek injunctive relief where it believes that violation of this Agreement may take place during the 60-day

period following the notice, or where it believes that an immediate remedy is required in order to prevent damage to the Property.

- 12. Nothing in this Agreement shall entitle the Town to bring any action against the Owner for any change or damage to the Property resulting from causes outside the Owner's control, including, without limiting the generality of the foregoing, change or damage caused by fire, flood, storm, earth movement or from any prudent action taken by the Owner to prevent, abate, or mitigate injury to the Property resulting from such causes.
- 13. The Owner shall hold harmless, indemnify and defend the Town from and against all claims, demands, liabilities, costs, losses, damages, expenses, causes of action or judgements, including reasonable legal costs resulting from any act, omission, condition or other matter related to the Town's interest in the Property arising from this Agreement, except resulting from any act or omission of any Town employee, agent, subcontractor or other person for whom the Town is responsible in law.
- 14. In the event of a conflict between the provisions of this Agreement and any agreement, covenant or easement, registered on title in favour of the Toronto and Region Conservation Authority prior to the time of registration of this Agreement, the provision of such prior registered agreement shall govern.
- 15. No failure on the part of the Town to exercise, and no delay in exercising, any right under this Agreement shall operate to waive or extinguish such right, nor shall any partial exercise of any right under this Agreement preclude any other or further exercise thereof, or the exercise of any other right.

NOTICE

- 16. Any notices required under this Agreement shall be delivered by facsimile, in person or sent by prepaid registered mail addressed to the parties at the respective addresses set out below. In the event that notice is sent by prepaid registered mail, it shall be deemed to have been received on the fourth business day following the day on which the notice was sent.

the Owner:

XXXXXXXXXX

The Town:

Town of Pickering  
Pickering Civic Complex  
One The Esplanade

Pickering, Ontario  
L1V 6K7

Attention: Town Solicitor

#### REGISTRATION

17. This Agreement shall be registered on title to the Property as a reservation in the deed or immediately following the deed and in priority to all encumbrances. The Owner shall be responsible for all costs related to registration of the Agreement on title.
18. By executing and delivering this Agreement, each of the parties intends to create both a contract and a deed executed and delivered under seal. It is the intention of the parties that the covenants and easements herein shall run with the Property in perpetuity, and shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns, and all other parties subsequently acquiring any interest in the Property.

#### ASSIGNMENT

19. This Agreement may be assigned without consent to a successor municipal corporation of the Town. The Town may assign its rights and obligations to any other conservation body, as defined in the Act, with the express written permission of the Owner.

#### SEVERABILITY

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

IN WITNESS WHEREOF the parties have executed this Agreement as at the date first above written.

XXXXXXXX (Owner)

Date: \_\_\_\_\_

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

THE CORPORATION OF THE TOWN OF  
PICKERING

Date: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: Wayne Arthurs  
Title: Mayor

Date: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: Bruce Taylor  
Title: Clerk

SCHEDULE "A"

*Legal description of Property*

## SCHEDULE "B"

### Uses Permitted on the Property

1. Primary agricultural uses, such as:
  - (a) growing crops, including nursery and horticultural crops,
  - (b) raising livestock and other animals, including poultry and fish,
  - (c) aquaculture, agro-forestry, maple syrup production,
2. Complementary and supportive agricultural uses, such as:
  - (a) agricultural industries,
  - (b) home businesses,
  - (c) farm-related businesses producing agricultural products from farm operations, such as value-added processing and packing operations of agricultural products, roadside produce stands retailing products from farming operations, farm vacations as part of a farming operation, and cottage wineries processing produce from local farming operations,
  - (d) other farm-related businesses, such as horse shows and riding schools, and auctions of farm produce, livestock and equipment as a component of a farming operation.
3. Residential uses limited to:
  - (a) existing lawful residential dwellings,
  - (b) farm-related residential dwellings,
  - (c) one (1) new residential dwelling on a vacant lot,
  - (d) the repair, expansion or replacement of a residential dwelling permitted under subparagraph (a) or (b),
  - (e) home occupations.
4. Open space and public utilities, such as:
  - (a) conservation, environmental protection, restoration, education, passive recreation,

- (b) roads, rail lines, pipelines, hydro transmission corridors and substations, telecommunications facilities, municipal buildings and facilities.



SCHEDULE "C"

(Description of the current use(s) of the Property)

Schedule "E"

Technical Checklist for Technical Staff Committee

Location of Proposed Lot: Lot \_\_\_ Concession \_\_\_ Town of Pickering

Location sketch attached  Region's consent application fee submitted

Is the configuration of the proposed lot generally in conformity with the Conceptual Lot Plan? (refer to Schedule "A" of the MOU). Yes  No

Is the proposed lot to be conveyed into private ownership, and does it conform with the applicable zoning by-law, and exceed 5 acres in size? Yes  No

If yes, ORC is to convey to the Town an Agricultural Easement, in the form attached as Schedule "D" to the MOU

Does the proposed lot front onto a  Regional road or  local road? Yes  No

If yes, is a road allowance widening, deeded free and clear of all encumbrances, required by the Region or the Town across the frontage of the lot? (refer to Schedule "A" of the MOU)  
Yes  No

If yes, have all existing houses been excluded from the widening, and do the dimensions of the proposed lot exclude any such widening? Yes  No

Does the proposed lot meet all requirements for private water and sewage disposal services?

a) the Drilled Well Policy can be satisfied? Yes  No

b) the existing well is not shared by two dwellings? Yes  No

c) the existing septic system is wholly located within its limit? Yes  No

d) the existing septic system is functioning? Yes  No

Is part of the proposed lot is to be dedicated to the Toronto and Region Conservation Authority (refer to Schedule "A" to the MOU)? Yes  No  If yes, indicate what part:

West Duffins Creek valley

Petticoat Creek valley

the wetland complex (NW of Taunton & Altona Roads)

If yes, TRCA is to compensate ORC for the appraised value of any improvements (ie. house or structure).

Does the proposed lot contain a natural feature to be protected by a conservation easement in favour of the Toronto and Region Conservation Authority? (refer to Schedules "A" and "C" of the MOU) Yes  No  If yes, indicate what feature:

a tributary of West Duffins Creek

a tributary of Petticoat Creek

a woodlot

If tributary is not well-defined, a 15 m setback from the drainage course is required.

Schedule "E"

Technical Checklist for Technical Staff Committee

SITE SCREENING QUESTIONNAIRE  
FOR POTENTIAL SITE CONTAMINATION  
(One Per Proposed Lot)

1. Is the proposed lot located on lands or adjacent to lands that were used for the following:
  - a) industrial uses? Yes  No
  - b) commercial uses where there is a potential for site contamination, e.g., a gas station or a dry-cleaning plant? Yes  No
  - c) lands where filling has occurred? Yes  No
  - d) lands where there may have been underground storage tanks or buried waste on the property? Yes  No
  - e) lands that have been used as an orchard, and where cyanide products may have been used as pesticides? Yes  No
  - f) lands or adjacent to lands that have been used as a weapons firing range? Yes  No
2. Is the nearest boundary of the application within 500 metres of the fill area of an operating or former landfill or dump? Yes  No
3. If there are existing buildings, or were any buildings, on the proposed lot, are there any building materials remaining on the site which are potentially hazardous to public health (i.e. asbestos, PCB's, etc.)? Yes  No
4. Is there any other reason to believe that the lands may have been contaminated based on previous land use? Yes \_\_\_\_\_ No \_\_\_\_\_

If the answer to any of the above questions is Yes, a Phase 1 and 2 Environmental Site Assessment, conducted in accordance with the Ministry of the Environment's *Guideline for Use at Contaminated Sites in Ontario*, is required to be submitted with the lot proposal to the Technical Staff Committee.

Completed by ORC representative: \_\_\_\_\_ Date: \_\_\_\_\_  
(Print Name)

## Schedule "F"

### Lands Exempt from Agricultural Easements

The land identified as part of Lots 33 and 34, Concession 3, located south of Regional Road 4 (Taunton Road), west of Altona Road, and north of Third Concession Road, consisting of approximately 166 acres, in the Town of Pickering.

Any lands subject to an agreement of purchase and sale, found by a court of competent jurisdiction to have been in existence prior to March 1, 1999, provided that the court has also found that ORC's obligation under this Agreement to convey an Agricultural Easement is in breach of such agreement of purchase and sale and, further, provided that ORC has used its reasonable best efforts to defend against any claim seeking such findings.