

HAUL ROUTE RESTRICTION AGREEMENT

This Agreement is made this day of , 2016

BETWEEN:

ARBOUR FARMS LTD.

a company incorporated under the Laws of Ontario
(hereinafter referred to as “**Arbour Farms**”)

- and -

CONSERVE OUR RURAL ENVIRONMENT, INC.

a company incorporated under the Laws of Ontario
(hereinafter referred to as “**CORE**”)

- and -

AIRPORT ROAD GRAVEL GROUP

(as defined below and referred to hereinafter as “**ARGG**”)

WHEREAS Arbour Farms, CORE and ARGG are hereinafter collectively referred to as the “**Parties**”;

AND WHEREAS Arbour Farms is the registered owner of the lands located on Airport Road in the Township of Mulmur (the “**Township**”), more particularly described in Schedule “A” attached to this Agreement (the “**Arbour Farms Lands**”);

AND WHEREAS Arbour Farms intends to locate a pit on the Arbour Farms Lands (the “**Proposed Pit**”);

AND WHEREAS Arbour Farms made applications to the Township for an amendment to the Township Official Plan and an amendment to the Township Zoning By-law 05-02, as amended (collectively, the “**Arbour Farms Planning Applications**”);

AND WHEREAS due to the Township’s failure to make a decision regarding the Arbour Farms Planning Applications, Arbour Farms appealed the Arbour Farms Planning Applications to the Ontario Municipal Board (the “**Board**”), identified as Board Case No. PL150119 and Board File Nos. PL150119 and PL150120 (the “**Arbour Farms Planning Appeals**”);

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AND WHEREAS Arbour Farms made application to the Ministry of Natural Resources and Forestry for a licence under the *Aggregate Resources Act* to permit the Proposed Pit (the “**ARA Licence Application**”);

AND WHEREAS as a result of objections to the ARA Licence Application the Minister of Natural Resources and Forestry referred the Licence Application to the Board, identified as Board Case No. PL150119 and Board File No. MM150011 (the “**Arbour Farms ARA Referral**”);

AND WHEREAS the Board consolidated the hearing of the Arbour Farms Planning Appeals and the Arbour Farms ARA Referral (collectively the “**Consolidated Appeals**”); and has scheduled the hearing of the Consolidated Appeals scheduled to commence on March 27, 2017;

AND WHEREAS CORE is an incorporated ratepayers group which opposes the Proposed Pit and has been granted party status in the Board Hearing;

AND WHEREAS ARGG is comprised of individuals who oppose the Proposed Pit and who have been granted party status in the Board Hearing;

AND WHEREAS the Parties have, in good faith, attempted to resolve the concerns regarding the Proposed Pit;

AND WHEREAS Arbour Farms has agreed to relocate the entrance to the Proposed Pit from Airport Road/County Road 18 to a driveway on the Township’s unmaintained road allowance on the 7th Line (the “**CR 21 Entrance**”) and to restrict trucks travelling from the Proposed Pit or trucks travelling to the Proposed Pit pursuant to a contract with Arbour Farms from using Airport Road/County Road 18 south of County Road 21 and County Road 21 west of Airport Road/County Road 18, except for local deliveries, for site preparation in accordance with the Site Plans, and for access to a solar farm if one is established on the Arbour Farms Lands;

AND WHEREAS the Parties have reached an agreement regarding the amendment to the Township Official Plan, the amendment to Zoning By-law 05-02 and the ARA Licence Application which would permit the Proposed Pit under the conditions of the site plan notes, the planning instruments as set out in the Minutes of Settlement;

AND WHEREAS the understanding and commitments between the Parties with respect to the Proposed Pit are set forth hereunder and form the basis for the agreement of the CORE and ARGG not to oppose the Consolidated Appeals before the Board;

NOW THEREFORE in consideration of the aforesaid recitals, the sum of \$2.00, now paid by each to the other (the receipt and sufficiency whereof is hereby acknowledged) and other good and valuable consideration, the Parties agree as follows:

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General

1. The Parties confirm that the foregoing recitals are true and correct and form part of this Agreement.
2. The agreement by Arbour Farms contained herein is conditional on the execution of Minutes of Settlement between Arbour Farms, CORE and ARGG and the execution of Minutes of Settlement between Arbour Farms and the Township providing Arbour Farms with the right to use a driveway on the road allowance the 7th Line on terms acceptable to both Arbour Farms and the Township, and secured by a Development Agreement between Arbour Farms and the Township.

Definitions

3. The following terms, whenever used in this Agreement, shall have the meanings set out in this section:
 - (a) “**ARA Licence Application**” has the meaning set out in the recitals this Agreement;
 - (b) “**Arbour Farms**” means Arbour Farms Ltd.;
 - (c) “**Arbour Farms ARA Referral**” has the meaning set out in the recitals to this Agreement;
 - (d) “**Arbour Farms Lands**” means the lands described in Schedule “A” to this Agreement;
 - (e) “**Arbour Farms Planning Appeals**” has the meaning set out in the recitals to this Agreement;
 - (f) “**Arbour Farms Planning Applications**” has the meaning set out in the recitals to this Agreement;
 - (g) “**ARGG**” means the Airport Road Gravel Group which is comprised of the following individuals: Alistair Crawley, Barbara Crawley, Sher Arnfinson, Caroline Burnford, Graham Fraser, David Mcauley, Michael Monaghan, Sue-Ann Power, John Thomson;
 - (h) “**Assumption Agreement**” means an agreement in the form attached as Schedule “B” to this Agreement;
 - (i) “**Board**” has the meaning set out in the recitals to this Agreement;
 - (j) “**Board Hearing**” has the meaning set out in the recitals to this Agreement;

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- (k) “**Consolidated Appeals**” has the meaning set out in the recitals to this Agreement;
- (l) “**CORE**” means Conserve Our Rural Environment Inc., a company incorporated under the Laws of Ontario;
- (m) “**CR 21 Entrance**” has the meaning set out in the recitals to this Agreement;
- (n) “**Local Deliveries**” or “**Local Delivery**” means deliveries from the Proposed Pit to properties within the Township and to those properties in very close proximity to the Township boundary and only where Airport Road / County Road 18 is the most efficient or direct route. Any local delivery to Shelburne shall be permitted only if the route taken is Airport Road / County Road 18 between County Road 21 and Highway 89.
- (o) “**Minutes of Settlement**” means minutes of settlement entered into by Arbour Farms, CORE and ARGG which resolve the issues between them regarding the Proposed Pit.
- (p) “**Notice**” has the meaning ascribed to it in Section XX of this Agreement;
- (q) “**Parties**” means Arbour Farms, CORE and ARGG and their respective successors and assigns;
- (r) “**Proposed Pit**” has the meaning set out in the recitals to this Agreement;
- (s) “**Township**” means the Corporation of the Township of Mulmur;

Schedules

- 4. The following is a list of the schedules to this Agreement which shall form part of this Agreement for all purposes:
 - (a) Schedule “A” - Legal Description of the Arbour Farms Lands
 - (b) Schedule “B” - Form of Assumption Agreement

Haul Route Restriction Agreement

- 5. Arbour Farms agrees that it will make its best efforts to discourage trucks travelling from the Proposed Pit or trucks travelling to the Proposed Pit pursuant to a contract with Arbour Farms from using Airport Road/County Road 18 south of County Road 21, and County Road 21 west of Airport Road/County Road 18

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except for Local Deliveries. Notwithstanding the foregoing, Arbour Farms shall be entitled to use:

- (a) an entrance on Airport Road / County Road 18 to temporarily provide access to the Arbour Farms Lands for equipment used in site preparation and for the production of aggregate to be used in the construction of the CR21 Entrance; and
 - (b) to temporarily provide access for farming equipment; and
 - (c) an entrance to County Road 18/ Airport Road to provide access to a solar farm for vehicles required to construct and service any solar farm, should one be established on the Arbour Farms Lands.
6. The Parties agree that Arbour Farms shall be deemed to have made its best efforts if it takes the actions set out in sections 7 to 9 of this Agreement.
7. Arbour Farms agrees that the following wording will be included in all contracts for the sale of aggregate from the Proposed Pit or for delivery of material to the Proposed Pit and on all bills of lading
- (a) *Trucks are restricted from travelling on Airport Road/ County Road 18 south of County Road 21 and County Road 21 west of Airport Road/County Road 18 except for local deliveries to properties within Mulmur Township or to those properties in very close proximity to the Township boundary and only where Airport Road/ County Road 18 is the most efficient or direct route. If trucks are found to be using Airport Road/ County Road 18 south of County Road 21, or County Road 21 west of Airport Road/County Road 18 contrary to this requirement, the driver of the truck shall be warned. A truck and driver that receives three (3) warnings shall be prohibited from hauling to or from the Pit for a period of 12 months, and any associated contract shall be reviewed, and possibly revoked.*
8. Arbour Farms agrees that if it receives a complaint that a truck from the Proposed Pit is using Airport Road/County Road 18 south of County Road 21, or County Road 21 west of Airport Road/County Road 18 it shall investigate, take action and report on such complaint in accordance with the terms of this Agreement.
- (a) Arbour Farms shall record the details of the complaint, including the information regarding the truck, and truck driver if that information is available, the date and time of the incident, and the name and contact information of the complainant.

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- (b) Arbour Farms shall investigate the complaint to determine whether the truck was destined to, or originated from the Proposed Pit and was using Airport Road/County Road 18 south of County Road 21, or County Road 21 west of Airport Road/County Road 18 other than for a Local Delivery.
 - (c) If Arbour Farms determines that the truck was en route to, or originated from the Proposed Pit and was using Airport Road/County Road 18 south of County Road 21, or County Road 21 west of Airport Road/County Road 18 other than for a Local Delivery (the "Confirmed Incident") it shall advise the driver of the truck and any corporation by which the driver is employed or subcontracted, in writing:
 - (i) that it has used Airport Road/County Road 18 south of County Road 21 or County Road 21 west of Airport Road/County Road 18, contrary to the warning set out in the waybill;
 - (ii) the number of Confirmed Incidents in regard to that truck and/or its driver; and
 - (iii) if there have been three Confirmed Incidents, that the truck and/or its driver is prohibited from hauling to or from the Proposed Pit for a period of 12 months.
 - (d) If the truck was hauling to or from the Proposed Pit in relation to a contract with a company, Arbour Farms shall advise the company of the Confirmed Incident and the action taken by Arbour Farms, in writing within 15 days of the outcome of the investigation.
 - (e) Arbour Farms shall advise the complainant in writing of the outcome of its investigation and the action taken in regard to the complaint,
 - (f) Arbour Farms shall report to the Public Liaison Committee regarding the investigation and action taken in regard to complaints received. In accordance with the Complaint Protocol set out in the Site Plan Notes.
9. Arbour Farms shall keep a log of all complaints and, upon 5 days' written notice, a representative of CORE or ARGG may be permitted to inspect such log.
10. Arbour Farms agrees to erect a sign on the CR21 Entrance just south of County Road 21 which has the dimension of four (4) feet by eight (8) feet and has the following wording and colour;

IMPORTANT NOTE TO TRUCK DRIVERS [in Red]

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Truck traffic is restricted on Airport Road/County Road 18 south of County Road 21, and County Road 21 west of Airport Road/County Road 18 to local deliveries.

Failure to comply will result in trucks and drivers being banned from this pit.
[in Red]

General/Interpretation

11. This Agreement is governed by the laws of the Province of Ontario and the laws of Canada applicable therein.
12. The Parties agree that the covenants, restrictions, rights, duties, provisos, conditions and obligations herein contained shall enure to the benefit of and be binding upon each Party and its successors and assigns. Without limiting the generality of the foregoing, the Parties agree that the Parties and their successors and assigns shall be entitled to enforce the provisions of this Agreement against each other and their respective successors and assigns.
13. It is intended that the Parties shall be bound by and shall perform the obligations set out in this Agreement and the Parties covenant and agree, at each parties sole cost and upon written request of the other Party, to duly execute and deliver or cause to be duly executed and delivered to the other Party, documents, filings and instruments and do and cause to be done such further acts as may be necessary or proper in the reasonable opinion of the other Party to carry out more effectively the provisions of this Agreement.
14. Prior to any lease, transfer, conveyance or other grant of an interest in the Arbour Lands to a transferee, as applicable, Arbour Farms shall cause such transferee to enter into an Assumption Agreement in the form attached as Schedule "C" to this Agreement, wherein its respective successor or assign acknowledges, in writing, that it assumes the obligations of Arbour Farms relating to this Agreement. Within two (2) weeks of execution of such Assumption Agreement, Notice including a copy of such Assumption Agreement shall be provided to the other Parties and the Public Liaison Committee.
15. Prior to entering into an agreement with any person to transfer the licence, or otherwise to operate the Proposed Pit, Arbour Farms shall cause such operator to enter into an Assumption Agreement in the form attached as Schedule "C" to this Agreement, wherein the operator acknowledges, in writing, that it assumes the obligations of Arbour Farms relating to this Agreement. Within two (2) weeks of execution of such Assumption Agreement, Notice including a copy of such Assumption Agreement shall be provided to the other Parties and the Public Liaison Committee.

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16. The Parties agree to act reasonably and in good faith in carrying out the terms of this Agreement. The Parties acknowledge that in this Agreement words importing the singular include the plural and vice versa as may be required for the context.
17. The Parties acknowledge that in this Agreement, words importing gender include all genders as may be required for the context.
18. The Parties acknowledge that in this Agreement, the headings contained herein form no part of this Agreement but shall be deemed to be inserted for convenience of reference only.
19. This Agreement may only be amended, supplemented or otherwise modified by written agreement of the Parties.
20. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision and no waiver will be binding unless executed in writing by the Party to be bound by the waiver.
21. If any provision of this Agreement is deemed illegal, invalid or unenforceable, by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.
22. Any notice, direction or other communication (each a “**Notice**”) given regarding the matters contemplated by this Agreement must be in writing, sent by personal delivery, courier, facsimile, or electronic mail and addressed:
 - (a) to Arbour Farms at:
Arbour Farms Ltd.
245 Carlaw Avenue, Suite 107
Toronto, ON M4M 2S1
Attention: D. Eric Ferguson
 - (b) CORE at:
CORE
59 Hazelton Avenue
Toronto, ON M5R 2E3

Attention: Robert Green, President
 - (c) to ARGG:
c/o Crawley Mackewn Brush LLP

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1800 – 179 John Street
Toronto, ON M5T 1X4
Attention: Alistair Crowley (acrawley@cmbllaw.ca)

23. A Notice is deemed to be delivered and received:
- (a) if sent by personal delivery, on the date of delivery if it is sent on any day of the year other than a Saturday, a Sunday, or any day on which major banks are closed for business in Toronto (“**Business Day**”) and the delivery was made prior to 4:00 p.m. (local time in place of receipt), and otherwise on the next Business Day;
 - (b) if sent by same-day service courier, on the date of delivery if sent on a Business Day and delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day;
 - (c) if sent by overnight courier, on the next Business Day; or
 - (d) if sent by electronic mail (including e-mail and Internet or intranet websites), at such time as the Party sending the Notice receives confirmation of receipt via reply electronic mail or pursuant to such other procedure approved by the Parties, each acting reasonably.
24. Any Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address.
25. In the event of a breach of the terms of this Agreement by Arbour Farms and its successors or any transferee as defined herein, Arbour Farms acknowledges that CORE or any member of the ARGG may seek to enforce the terms of this Agreement by way of a Motion to enforce the terms of a settlement or Application in the Superior Court of Justice (Ontario). Arbour Farms agrees not to raise any objection to the jurisdiction of the Superior Court of Justice (Ontario) to hear and dispose of any action or application to enforce compliance with this Agreement.
26. This Agreement may be executed in several counterparts, each of which so executed will be deemed to be an original copy of this Agreement and such counterparts together will constitute one and the same instrument. Counterparts may be executed either in original or electronically transmitted form and the parties adopt any signatures received by facsimile machine or other means of electronic communication as original signatures of the Parties; provided, however, that the Party providing its signature in such manner shall promptly forward to the other Party an original of the signed copy of this Agreement which was so delivered.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement by the hands of their authorized signing officers.

DATED this day of, 2016

ARBOUR FARMS LTD.

Per: 

Name: _____

Title: PRESIDENT

I have authority to bind the company.

CONSERVE OUR RURAL ENVIRONMENT, INC.

Per: _____

Name: _____

Title: _____

I have authority to bind the company.

ALISTAIR CRAWLEY

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BARBARA CRAWLEY

SHER ARNFINSON

LYNDA BLOOM

CAROLINE BURNFORD

GRAHAM FRASER

DAVID MCAULEY

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MICHAEL MONAGHAN

SUE-ANN POWER

JOHN THOMSON

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SCHEDULE "A"

Lot 23, CON 7 EHS, EXCEPT MF20937; Township of Mulmur, being all of PIN 34115-0049 – LT

SCHEDULE "B"

FORM OF ASSUMPTION AGREEMENT

TO: [●]

AND TO: [●]

[Note to Draft: Addressees to be the current Parties to the Agreement]

The undersigned proposes to acquire an interest in the lands known municipally as xXXX, legally described as XXXXX (the "**Arbour Farms Lands**"). For good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the undersigned hereby covenants and agrees to be bound by the terms of the agreement dated [●] between Arbour Fams Limited, Conserve Our Rural Environment and the Airport Road Gravel Group, as amended, restated, modified, supplemented, assigned and/or assumed from time to time (the "**Agreement**") in like manner as [●] **[Note to Drafting, insert name of Transferor]** as a party to the Agreement and: (i) to be so bound to each party that is now bound by the Agreement; and (ii) effect at the time hereafter at which any other party becomes bound by the Agreement, to be so bound to such other party. The undersigned acknowledges that it has received a copy of the Agreement and has had an opportunity to review the same and to obtain such legal advice with respect thereto as the undersigned considers necessary or desirable..

IN WITNESS WHEREOF the undersigned has executed this Assumption Agreement as of this _____, day of _____, 20__.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

[I/We have the authority to bind the corporation]