

CONSERVATION AGREEMENT

This Agreement is made as of the • day of •, 2021,

BETWEEN:

THE MADAWASKA CLUB OF GO HOME BAY, a corporation
incorporated without share capital existing under the laws of
the Province of Ontario,

(the “**Property Owner**”)

- and –

THE GEORGIAN BAY TRUST FOUNDATION INC., a corporation
incorporated and existing under the laws of Canada,

(“**GBLT**”).

BACKGROUND:

A. The Property Owner is the registered owner in fee simple of the lands located in the Township of Georgian Bay, in the District Municipality of Muskoka which are legally described in Schedule “A” attached hereto (the “**Open Lands**”).

B. The Open Lands are currently undeveloped, are maintained by the Property Owner in their natural state and used by members of the Property Owner, and their guests, for recreational purposes.

C. The Property Owner wishes to enhance the protection afforded to the Open Lands in order to ensure that they are maintained in their natural state in order to protect the environmental and ecological attributes of the Open Lands.

D. Accordingly, the Property Owner wishes to enter into this Agreement with GBLT in accordance with the *Conservation Land Act* (Ontario) (the “**Act**”) in order to preserve and maintain the Open Lands in their natural state and protect the wildlife, vegetation and other natural features of the Open Lands.

E. GBLT is a corporation without share capital established under the laws of Canada for the purpose of acquiring and holding in trust interests in land for the purpose, inter alia, of conserving the eastern shore of Georgian Bay and is a “conservation body” for the purposes of the Act.

NOW THEREFORE this Agreement evidences that in consideration of the covenants and agreements contained in this Agreement, the payment by GBLT to the Property Owner of the consideration provided herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties to this Agreement, the parties covenant and agree as follows:

Article 1
Interpretation

1.1 **Definitions.** In this agreement and the schedules attached hereto, unless there is something in the subject matter or context inconsistent therewith, the following terms and expressions shall have the following meanings:

“Access Easement” means the access easement described in Article 5.

“Act” means the *Conservation Land Act* R.S.O. 1990, c. C.28, as amended from time to time and any statute that may be enacted in substitution or replacement thereof.

“Agreement” means this agreement and the schedules attached hereto, as the same may be amended from time to time and, for greater certainty, includes the Access Easement and the Restrictions.

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

“Authorized Person” means any person who:

- (i) is a director or officer of the Property Owner;
- (ii) is, in accordance with its by-laws, a member of the Property Owner, whether a siteholding member or a community member;
- (iii) is a person related to a member of the Property Owner;
- (iv) is a guest of a person described in clause (ii) or (iii) above including persons and members of their families who have rented a residence at Go Home Bay from a member of the Property Owner; and
- (v) is an invitee of the Property Owner, including any contractor engaged by the Property Owner to perform work on the Open Lands.

“Business Day” means any day other than a Saturday, Sunday, or public holiday in the Province of Ontario (as defined in the *Employment Standards Act, 2000* (Ontario)).

“Conservation Body” has the meaning ascribed to such term in the Act.

“Conservation Intent” means the intention of the Property Owner to conserve and maintain the Natural Values and Features of the Open Lands while continuing to provide access to the Open Lands to its members as expressed in Section 2.2 of this Agreement.

“Good Forestry Practices” means the proper maintenance of harvest, renewal and maintenance activities known to be appropriate for the forest and environmental conditions under which they are being applied and that minimize detriments to (i) significant ecosystems, (ii) wildlife habitat, and (iii) soil and water quality and quantity.

“Minister” means the Ontario Minister of Natural Resources, or his or her successor.

“Natural Values and Features” means with respect to the Open Lands, the natural community of stone, soil, water, plants and animals described in the Report and any amendments and updates thereto, as such community may evolve over time with minimal interference by human activity.

“Open Lands” means the lands described in Schedule “A” attached hereto and, for greater certainty, includes the wetlands, water-bodies, buildings, structures and improvements now existing or hereafter constructed on such lands during the Term.

“Permitted Activities” means activities of a recreational, research and social nature which are (i) permitted by the Property Owner from time to time, (ii) consistent and compatible with the Conservation Intent, and (iii) not destructive to the Natural Values and Features of the Open Lands and, for greater certainty, include those activities described in Article 5.0 of Schedule “C”.

“Person” means any individual, corporation, association, partnership, trust, Conservation Body, governmental authority or other group or entity of any kind whatsoever.

“Report” means the Baseline Documentation Report describing the Open Lands and documenting the Natural Values and Features and current uses of the Open Lands, attached as Schedule “B” attached hereto, and throughout the Term includes any amendments made to the Report pursuant to the reviews and updates contemplated by Section 7.1(e) of this Agreement.

“Restrictions” means the restrictions set out in Schedule “C” attached hereto.

“Term” means the term of this Agreement and the Restrictions being the period of • years, commencing on • , 2021 and ending on • , ••.

“Third Party” any Person who is not a party to this Agreement.

1.2 **Schedules.** The following schedules, which are attached to this Agreement, shall be considered to be part hereof:

| | | |
|--------------|---|---------------------------------------|
| Schedule “A” | - | Legal Description of the Open Lands |
| Schedule “B” | - | Baseline Report |
| Schedule “C” | - | Restrictions and Permitted Activities |
| Schedule “D” | - | Form of Access Easement |

1.3 Certain Rules of Interpretation. In this Agreement:

- (a) the division of this Agreement into Articles, Sections, Subsections and Schedules are for convenience of reference only. The insertion of headings is also for convenience of reference only and such headings shall not affect the construction or interpretation of this Agreement;
- (b) the expressions "**hereof**", "**herein**", "**hereto**", "**hereunder**", "**hereby**" and similar expressions refer to this Agreement as a whole and not to any particular portion of this Agreement; and
- (c) unless specified otherwise or the context otherwise requires:
 - (i) references in this Agreement to any Article, Section, Subsection or Schedule are references to the Article, Section or Subsection of, or Schedule to, this Agreement.
 - (ii) "**including**" or "**includes**" means "including (or includes) but is not limited to", and shall not be construed to limit any general statement preceding it to the specific or similar items or matters immediately following it;
 - (iii) "**the aggregate of**", "**the total of**", "**the sum of**", or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of";
 - (iv) references in this Agreement to any legislation, statutory instrument or regulation, or any section thereof shall, unless otherwise expressly stated, be deemed to be references to the legislation, statutory instrument, regulation or section as amended, restated, re-enacted or replaced and in effect from time to time; and
 - (v) words importing the singular include the plural and vice versa, and words importing one gender include all genders.

1.4 Computation of Time. In this Agreement, unless specified otherwise or the context otherwise requires:

- (a) a reference to a period of days is deemed to begin on the first day after the event that started the period and to end at 5:00 p.m. on the last day of the period, but if the last day of the period does not fall on a Business Day, the period ends at 5:00 p.m. on the next succeeding Business Day;
- (b) all references to specific dates mean 5:00 p.m. on the dates;
- (c) all references to specific times shall be references to Toronto time; and
- (d) with respect to the calculation of any period of time, references to "**from**" mean "from and excluding" and references to "**to**" or "**until**" mean "to and including".

1.5 Performance on Business Days. If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action is valid if made or taken on or by the next succeeding Business Day.

1.6 **Currency and Payment Obligations.** All dollar amounts or “\$” referred to in this Agreement are stated in Canadian Dollars and any payment contemplated by this Agreement shall be made by certified cheque, bank draft, wire transfer or any other method that provides immediately available funds.

Article 2
Acknowledgements and Statements of Intent and Purpose

2.1 **Acknowledgement of Open Lands History.** GBLT acknowledges that the Property Owner has been the owner of the Open Lands for more than 100 years and that during that time the Property Owner has stewarded the Open Lands in a manner that has allowed Authorized Persons to use the Open Lands for recreational, research and social activities while maintaining the Natural Values and Features of the Open Lands.

2.2 **Conservation Intent.** The Property Owner has advised GBLT that the Property Owner wishes to conserve and maintain the Natural Values and Features of the Open Lands while continuing to provide access to the Open Lands to Authorized Persons in a manner consistent with such conservation and maintenance goals. Accordingly, the purpose and intent of this Agreement is to ensure the conservation and maintenance of the Natural Values and Features of the Open Lands, with particular emphasis on those natural values, features and wildlife set out in the Report and to prevent any development or use of the Open Lands that would materially interfere with, damage or destroy those natural values, features and wildlife or alter natural processes.

2.3 **Property Owner’s Right to Choose Conservation Body.** The Property Owner has chosen to enter into this Agreement with GBLT, and GBLT acknowledges that it has been chosen by the Property Owner as the counterparty to this Agreement, because the mission, vision, values and activities of GBLT are consistent and compatible with the Property Owner’s Conservation Intent as described in Section 2.2. Accordingly, GBLT agrees that if for any reason during the Term GBLT is required or wishes to assign this Agreement and its rights and obligations under this Agreement to another Conservation Body, the Property Owner shall be entitled to approve the Conservation Body to whom this Agreement is assigned by GBLT, provided that the Property Owner shall not withhold its approval to an assignment to a Conservation Body whose mission, vision, values and activities are consistent and compatible with the Property Owner’s Conservation Intent.

2.4 **Open Lands to Remain as Private Property with Limited Access.** GBLT acknowledges that notwithstanding the grant of the Restrictions provided by this Agreement:

- (a) the Open Lands will remain private property owned by the Property Owner;
- (b) the provisions of this Agreement are not intended to provide any public access to the Open Lands; and

- (c) the Property Owner, as the sole owner of the Open Lands, shall be entitled to restrict access to the Open Lands to Authorized Persons.

2.5 No Third Party Beneficiaries. The Property Owner and GBLT acknowledge to each other and agree that this Agreement is not intended to confer, and shall not be construed as conferring:

- (a) any interest in the Open Lands upon any Person who is a Third Party;
- (b) any rights (including any third party beneficiary rights) upon any Person who is a Third Party; and

For greater certainty, no Third Party shall be entitled to enforce any of the Restrictions.

2.6 Interpretation of this Agreement. This Agreement is to be construed, interpreted, performed and applied so as to give effect to the acknowledgements, statements of intent and agreements set forth in this Article 2, including the Conservation Intent of the Property Owner.

Article 3 **Certain Representations and Warranties**

3.1 Representations of the Property Owner. The Property Owner represents and warrants to GBLT as follows:

- (a) The Property Owner is the legal, beneficial and registered owner of the Open Lands in fee simple with such title free and clear of any charges, encumbrances, liens, mortgages or restrictions of any kind whatsoever.
- (b) The Property Owner is not bound by any encumbrance or agreement that would prevent or impede its compliance with this Agreement.
- (c) The execution and delivery of this Agreement by the Property Owner has been duly authorized by all corporate and other proceedings required in order for the Property Owner to execute and deliver this Agreement.
- (d) This Agreement constitutes a legal, valid and binding obligation of the Property Owner.

3.2 Representations of GBLT. GBLT represents and warrants to the Property Owner as follows:

- (a) GBLT is a Conservation Body within the meaning of the Act.
- (b) GBLT is not bound by any encumbrance or agreement that would prevent or impede its compliance with this Agreement.
- (c) The execution and delivery of this Agreement by GBLT has been duly authorized by all corporate and other proceedings required in order for GBLT to execute and deliver this Agreement.

(d) This Agreement constitute a legal, valid and binding obligation of GBLT.

3.3 Representation of the Parties Regarding the Report. The Property Owner and GBLT represent and warrant to each other that the Report accurately describes:

- (a) the Natural Values and Features of the Open Lands; and
- (b) the activities and uses that have historically been conducted on the Open Lands by the Property Owner and Authorized Persons.

The Property Owner and GBLT agree that the Report is intended to serve as an objective information base for the current state of the Open Lands and for monitoring compliance with this Agreement.

Article 4 **Restrictions**

4.1 Effect of Restrictions. The Property Owner and GBLT covenant and agree with each other as follows:

- (a) the Restrictions shall be deemed to be restrictive covenants governed by and having the benefit of the Act;
- (b) this Agreement shall be registered on title against the Open Lands (and the Property Owner hereby consents to such registration); and
- (c) upon the registration of this Agreement on title to the Open Lands, the burden of the Restrictions shall run with and bind the Open Lands and every part thereof.

4.2 Use of Open Lands. GBLT acknowledges that the activities described in Section 5.0 of Schedule “C” are activities which historically the Property Owner has permitted on the Open Lands. GBLT further acknowledges that such activities have not materially adversely affected, and have not been destructive to, the Natural Values and Features of the Open Lands. Accordingly, GBLT does not object to such activities continuing to take place on or in relation to the Open Lands and agrees that such activities constitute Permitted Activities under the terms of this Agreement and that the continuation of such Permitted Activities shall not constitute a breach of the Restrictions. Furthermore, GBLT agrees that the Property Owner (which for this purpose includes all Authorized Persons) shall not be restricted or prohibited from:

- (a) carrying on any new or additional activities of a recreational, research or social nature that are not expressly listed in Section 5.0 of Schedule “C” so long as such activities are consistent and compatible with the Conservation Intent, and not destructive to the Natural Values and Features of the Open Lands; or
- (b) engaging in or authorizing any of the development activities which constitute exceptions to the Restrictions as outlined in Article 4.0 of Schedule “C” attached hereto.

- 4.3 **Property Owner’s Covenant of Compliance.** The Property Owner covenants that it will:
- (a) abide by the Restrictions for and during the Term;
 - (b) use all reasonable efforts to inform Authorized Persons of the Restrictions and require them to abide by the Restrictions; and
 - (c) not knowingly authorize any breach of the Restrictions.

If the Property Owner becomes aware of any breach, or any anticipated breach, of the Restrictions, the Property Owner will notify GBLT of such and by itself, or in cooperation with GBLT, undertake such reasonable steps or actions as are necessary or desirable in order to address the breach, or to prevent the anticipated breach from occurring.

- 4.4 **GBLT’s Covenant of Compliance.** GBLT covenants that it will:
- (a) abide by the Restrictions for and during the Term;
 - (b) not, nor will it permit any of its representatives to, undertake, authorize or permit any activities on the Open Lands that are not in compliance with the Restrictions and its rights and obligations under this Agreement;
 - (c) not access, nor will it grant any access to, the Open Lands for any purpose other than fulfilling its monitoring obligations under this Agreement; and
 - (d) not encourage in any way whatsoever, whether through its written or online publications and website or otherwise, any public access to the Open Lands.

If GBLT becomes aware of any breach, or any anticipated breach, of the Restrictions, GBLT will notify the Property Owner of such and in cooperation with the Property Owner, undertake such reasonable steps or actions as are necessary or desirable in order to address the breach, or to prevent the anticipated breach from occurring.

4.5 **Amendment.** The Property Owner acknowledges that in accordance with the applicable provisions of the Act this Agreement may not be amended without the written consent of the Minister. GBLT covenants to the Property Owner that should the Property Owner and GBLT agree to any amendment of this Agreement, GBLT will advise the Minister in writing of its support for such amendment.

Article 5
GBLT’s Access to the Open Land

5.1 **Grant of Access Easement.** The Property Owner hereby grants to GBLT, pursuant to the applicable provisions of the Act, an access easement over the Open Lands, which access easement shall be in the form attached as Schedule “D”. Such access easement shall grant access to the Open Lands to GBLT for the limited purpose of:

- (a) monitoring and enforcing compliance with this Agreement;

- (b) enabling GBLT to determine, through inspection, testing or otherwise, whether or not the Restrictions and the obligations of the Property Owner under this Agreement are being complied with and satisfied; and
- (c) updating the Report as contemplated by this Agreement.

In particular, the access easement granted by the Property Owner to GBLT hereunder shall entitle GBLT to carry out any remediation, restoration or rehabilitation activities which, in the opinion of GBLT, acting reasonably and in good faith, are required in order to remediate, restore or rehabilitate the Natural Values and Features of the Open Lands in order to rectify any breach of the Restrictions that has occurred in respect of the Restrictions. The Property Owner acknowledges and agrees that the cost of any such remediation, restoration or rehabilitation activities by or on behalf of GBLT shall be the responsibility of the Property Owner and the Property Owner hereby agrees to indemnify GBLT, on a full indemnity basis, for all such costs.

5.2 Exercise of Access Easement. The exercise by GBLT of its rights under this Agreement shall be subject to the following:

- (a) GBLT's right to access the Open Lands shall, in the absence of any breach of the Restrictions, be limited to its directors, officers, employees and authorized consultants. Such access shall be permitted for the purpose of monitoring compliance by the Property Owner with the Restrictions and for the purpose of updating the Report in accordance with this Agreement.
- (b) Entry on the Open Lands by GBLT following any breach of the Restrictions, shall be limited to its directors, officers, employees, authorized consultants and contractors solely for the purpose undertaking such remediation, restoration or rehabilitation activities as are necessary to correct the breach which has occurred. In exercising such access, GBLT shall take, or shall cause its directors, officers, employees, authorized consultants and contractors to take, all measures which in the circumstances are reasonably required to ensure that such entry complies with the Restrictions and that such entry interferes as little as reasonably possible with the use and enjoyment of the Property by the Property Owner and its Authorized Persons.
- (c) Prior written notice of at least two Business Days shall be given by GBLT to the Property Owner of GBLT's intention to enter the Open Lands, unless GBLT, acting reasonably, has cause to believe that an emergency or other circumstance exists which precludes the giving of such notice.

Article 6

Ownership Rights and Responsibilities

6.1 Ownership Responsibilities. The Property Owner shall, at its expense, continue to care for and maintain the Open Lands in a manner that is consistent with the stewardship practices which it has undertaken from the date on which it became the owner of the Open Lands. GBLT acknowledges that access to the Open Lands is not, and cannot be, fully restricted or controlled

by the Property Owner and due to the seasonal nature of the Go Home Bay community the Property Owner is not able to actively monitor access to or activities on the Open Lands throughout the entire calendar year. Subject to these constraints, the Property Owner shall:

- (a) establish and, to the extent reasonable having regard to the resources available to it, monitor and enforce, such rules and regulations for its members regarding the use of the Open Lands in order to comply with the Restrictions;
- (b) maintain in good repair, reasonable wear and tear excepted, any improvements which are erected, built or established on the Open Lands in compliance with the Restrictions;
- (c) remove, as soon as is reasonably possible in the circumstances and at its expense, any structures or other improvements erected, built or established on the Open Lands in contravention of the Restrictions;
- (d) keep the Open Lands free of construction or other liens or encumbrances of any kind whatsoever;
- (e) carry and maintain such general liability insurance, with GBLT being named as an additional insured, as is reasonable in the circumstances and provide GBLT with evidence of such coverage on a continuing basis;
- (f) pay, as the same become due, municipal and provincial taxes, rates and fees (including any that may be charged or levied against GBLT by reason of this Agreement and the rights granted hereunder) and all charges for utilities, public or otherwise, the non-payment of which may give rise to a lien or charge on the Open Lands and provide GBLT with evidence of such payments on its reasonable request therefor.

6.2 Reservation of Rights of Ownership. Subject to Articles 4 and 5 and Section 6.1 of this Agreement:

- (a) the Property Owner reserves all of its rights as owner of the Open Lands, including the right to occupy and use the Open Lands in any way that is not expressly restricted or prohibited by this Agreement and GBLT acknowledges and agrees with such reservation;
- (b) subject to the rights of access granted herein to GBLT, GBLT acknowledges and agrees that throughout the Term:
 - (i) the Open Lands shall remain private property owned by and under the exclusive control of the Property Owner;
 - (ii) the Property Owner shall have the sole and exclusive right to limit access to the Open Lands to Authorized Persons, provided that in granting such access the Property Owner uses all reasonable efforts, having regard to its resources, to ensure compliance with the Restrictions;
 - (iii) the Property Owner shall not be restricted from conducting or engaging in, or permitting Authorized Persons from conducting or engaging in, any activity on the Open Lands that is not expressly restricted or prohibited by the

- Restrictions; and
- (iv) the Permitted Activities are not restricted or prohibited by the Restrictions.

Article 7
GBLT Responsibilities

- 7.1 **GBLT Responsibilities.** GBLT shall, at its expense:
- (a) carry and maintain adequate comprehensive general liability insurance coverage to cover any damage to the Open Lands caused by its staff, directors, officers, agents, representatives and contractors while accessing the Open Lands;
 - (b) conduct yearly monitoring of the Open Lands for the purpose of monitoring the Property Owner's compliance with the Restrictions;
 - (c) prepare yearly monitoring reports and record any observed changes to the Open Lands as compared to the Report;
 - (d) to the extent that its monitoring identifies any negative impacts affecting the Natural Values and Features of the Open Lands, bring such negative impacts to the attention of the Property Owner and discuss with the Property Owner any actions that can be taken in order to reduce, eliminate or rectify such negative impacts; and
 - (e) prepare updates to the Report on a periodic basis but, in any event, no less frequently than once every 25 years.

Article 8
Default and Remedies

8.1 **Default by the Property Owner.** In the event that the Property Owner fails to abide by the Restrictions, GBLT shall, upon becoming aware of such default, give notice in writing of such default to the Property Owner. Such notice shall provide particulars of such default in reasonable detail. Upon receipt of such written notice, the Property Owner shall have 120 days, or where in the circumstances it is not reasonable for the Property Owner to rectify such default within 120 days, or such longer period of time as is reasonable in the circumstances so long as the Property Owner undertakes and continues such actions expeditiously, to rectify such default. If within such 120 days, or such longer period of time where applicable, the Property Owner has not remedied the breach or made arrangements satisfactory to GBLT, acting reasonably, for remedying such breach or restoring, remediating or rehabilitating the Open Lands to repair any damage caused by such breach, GBLT may enter on the Open Lands and may carry out such activities as are necessary or desirable in the circumstances in order to remedy the breach or to restore, remediate or rehabilitate the Open lands to repair any damage caused by such breach. The Property Owner shall reimburse GBLT for all costs and expenses reasonably incurred by GBLT in carrying out such activities. Until such costs and

expenses have been reimbursed, such costs and expenses shall be a debt owed by the Property Owner to GBLT and shall be a charge upon the Open Lands, which charge may be enforced in the same manner as a mortgage and shall in any event be recoverable by GBLT in a court of law.

8.2 Damages Inadequate. The Property Owner acknowledges that damages may not be an adequate remedy in the circumstances of any default by it of its obligations under this Agreement. Accordingly, the Property Owner agrees that GBLT may be entitled to prohibitory or mandatory injunctive relief to prohibit or prevent the default or continuance of default under this Agreement or to restore, remediate or rehabilitate the Open Lands to the condition that existed prior to the breach. In the event that GBLT is required to obtain such prohibitory or mandatory injunctive relief, the Property Owner shall indemnify GBLT, on a full indemnity basis, of all of its legal and other expenses incurred by GBLT on a full indemnity basis

8.3 Default by GBLT. For the purposes of this Agreement, the following events shall constitute an event of default in respect of GBLT:

- (a) GBLT is in default of its obligations under this Agreement and such default continues for, or has not been rectified within, a period of 120 days, or such longer period of time as is reasonable in the circumstances so long as GBLT undertakes and continues such actions expeditiously, following written notice of such default from the Property Owner; or
- (b) GBLT becomes insolvent, is unable to pay its obligations as they become due, is declared bankrupt or makes an assignment in bankruptcy or institutes or becomes the subject of any proceedings under the *Bankruptcy and Insolvency Act* (Canada) or any other analogous bankruptcy or insolvency legislation.

Upon the occurrence of an event of default in respect of GBLT, the Property Owner shall be entitled to require GBLT to assign its rights and obligations, and its role as the Conservation Body which is party to this Agreement, to a Conservation Body whose mission, vision and values are consistent and compatible with the Property Owner's Conservation Intent. Until such assignment is completed, GBLT shall not exercise any remedies available to it under this Agreement.

8.4 Costs of Enforcement. Any costs incurred by GBLT or the Property Owner in enforcing, judicially or otherwise, any terms of this Agreement against the other including, without limitation, litigation costs, lawyers' fees and disbursements, shall be borne by the party against whom such enforcement proceedings are commenced.

Article 9

General

9.1 Notice. Any notice (which term in this section includes any request or waiver) provided or given hereunder shall be sufficiently given by either party if in writing and delivered by hand or electronic mail:

if to GBLT as follows:

The Georgian Bay Trust Foundation, Inc.
120 Eglinton Ave E
Toronto, ON M4P 1E2
Attention: Executive Director
Fax: (416) 440-1519

and if to the Property Owner as follows:

The Madawaska Club at Go Home Bay
c/o Jan Wishart, Secretary
[Address]

Secretary's Email Address: janojlw@gmail.com

Any notice so delivered or any notice so forwarded by electronic mail shall be deemed to have been given on the next business day following the day on which such e-mail is sent. Either party may in any manner aforesaid give notice to the other party of any change in the address or fax number thereof and thereafter the new address or fax number shall be the address of such party for the purpose of giving notice hereunder.

9.2 No Continuing Liability after Transfer. No person who is or becomes an owner of the Open Lands shall be liable to GBLT for any breach of or default in the obligations owed to GBLT under this Agreement committed after (i) the transfer or conveyance by such person of all of the interest of such person in the Open Lands and (ii) notice of such transfer or conveyance under Section 9.6 and the acknowledgement required under Section 9.6 has been given to GBLT. GBLT shall not be liable to the Property Owner, or any subsequent owner of the Open Lands, for any breach of or default in the obligations owed to the Property Owner, or such subsequent owner, under this Agreement committed after (i) the transfer or conveyance of the interest of GBLT in this Agreement as permitted under the Act and this Agreement and (ii) notice of such transfer has been given to the Property Owner or such subsequent owner, as the case may be.

9.3 No Liability for Events beyond Control. Neither the Property Owner nor GBLT shall be liable to the other under this Agreement for any damage to or change in the Open Lands resulting from causes beyond the control of such party including, without limitation, accidental fire, flood, storm, earthquake, trespass, insect plague or disease.

9.4 Indemnity in favour of GBLT. The Property Owner shall indemnify and save harmless GBLT, its directors, officers, employees, agents and contractors from and against any and all actions, causes of actions, suits, claims, demands by or on behalf of any person, firm or corporation arising out of or occasioned by any act or omission, negligent or otherwise in the

operation and maintenance of the Property by the Property Owner, its Authorized Persons or anyone for whom the Property Owner is in law responsible.

9.5 Indemnity in favour of the Property Owner. GBLT shall indemnify and save harmless the Property Owner, its directors, officers, employees, agents and contractors from and against any and all actions, causes of action, suits, claims, demands by or on behalf of any person, firm or corporation arising out of or occasioned by any act or omission, negligent or otherwise, committed by GBLT, its staff, directors, officers, employees, representatives or contractors in conducting any monitoring or remediation activities on the Open Lands.

9.6 Notice of change of interest. The Property Owner shall give notice to GBLT of any change in the ownership of the Open Lands or of any interest in the Open Lands. GBLT agrees that it shall not transfer or assign its interest in this Agreement without the prior written consent of the Property Owner. Any such transfer or assignment of this Agreement by GBLT without the prior written consent of the Property Owner shall be null and void. GBLT agrees that it shall transfer its interest in this Agreement only to a Conservation Body which is acceptable to the Property Owner, acting reasonably, it being understood and agreed that the Property Owner shall have the right to ensure that the mission, vision, values and activities of any Conservation Body to whom the Agreement is transferred shall be consistent and compatible with the Conservation Intent. The Property Owner covenants to GBLT and the Minister that it will not unreasonably withhold its consent to the transfer and assignment of this Agreement to a Conservation Body so long as the mission, vision, values and activities of such Conservation Body are consistent and compatible with the Conservation Intent.

9.7 Priority of interest of GBLT. The Property Owner shall not transfer or convey any, or permit any mortgagee to transfer or convey any interest in the Open Lands without requiring the transferee to acknowledge in writing (by acknowledgement addressed and delivered to GBLT) the existence and first ranking priority of this Agreement and the interest of GBLT thereunder and will not lease or licence the Open Lands or any part thereof without such lease or licence being made expressly subject and subordinate to this Agreement.

9.8 Notice of the Agreement. The Property Owner and GBLT will erect such signage on the Open Lands to give notice of this Agreement as they from time to time consider necessary or desirable. The content, form and location of such signage will be determined by the Property Owner and GBLT together, acting reasonably.

9.9 Registration. GBLT shall register this Agreement, or notice of this Agreement, and the Access Easement against the title to the Open Lands and the Property Owners shall execute any document that may be required to allow such registration.

9.10 Failure to enforce or exercise rights. No failure by GBLT to require performance by the Property Owner of any provision of this Agreement shall affect the right of GBLT thereafter to enforce such obligation, and no failure by the Property Owner to perform any of its rights or

obligations hereunder shall be taken as a waiver of such performance or the performance of any other obligation in the future.

9.11 **Time of essence.** Time shall be of the essence of this Agreement and shall be deemed to remain so notwithstanding any extension of any time limit.

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

9.13 **Costs.** Save as provided herein or ordered by any court or tribunal, each party shall be responsible for its own legal fees and related expenses arising from the negotiation and implementation of this Agreement or from any act in pursuance thereof.

9.14 **Entire Agreement.** This Agreement embodies the entire Agreement of the parties with regard to the matters dealt with herein, and no understandings or agreements, verbal, collateral or otherwise, exist between the parties except as herein expressly set out.

9.15 **Applicable law.** This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of Ontario and the laws of Canada applicable therein.

9.16 **Independent legal advice.** The Property Owner acknowledges that it has obtained independent legal and tax advice in connection with this Agreement.

9.17 **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 Agreement and to allow for the registration on title of this Agreement and the Access Easement.

9.18 **Enurement.** This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. For greater certainty, the term “successors” as used herein shall be limited to entities that succeed either of the parties hereto by way of merger, amalgamation, change of corporate name or other similar corporate proceeding and shall not include, except as provided in Section 5.2.

9.19 **Government Consents.** The parties acknowledge that in accordance with the Act this Agreement may not be released in whole or in part or amended in any material respect without the prior written approval of the Minister.

(Signature Page Follows)

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

THE MADAWASKA CLUB OF GO HOME BAY

By: _____

Name:

Title:

**THE GEORGIAN BAY TRUST FOUNDATION,
INC.**

By: _____

Name:

Title:

By: _____

Name:

Title:

DRAFT

Schedule “A”

Legal Description of the Open Lands

[To Come]

DRAFT

Schedule “B”

Baseline Report

[To be provided by GBLT]

DRAFT

Schedule “C”

Restrictions

Pursuant to the Conservation Agreement dated • , 2021, the Owner hereby grants to the Land Trust the following covenants, easements and restrictions and the Owner hereby covenants and agrees with the Land Trust to abide by and comply with the said covenants, easements and restrictions, referred to herein collectively as the “Restrictions”. The parties covenant and agree that the Restrictions shall be annexed to and run with the Property pursuant to the Act and the Land Trust shall have the benefit of the Restrictions for the Term.

1.0 In these Restrictions the following words and phrases shall have the following meanings:

- 1.1 **“Act”** means the *Conservation Land Act*, R.S.O. 1990 c C.28 as amended from time to time and any statute that may be enacted to modify or replace the same.
- 1.2 **“Agreement”** or **“Conservation Agreement”** means the agreement between the Owner and the Land Trust dated • , 2021.
- 1.3 **“Authorized Person”** means any person who is:
 - (i) a director or officer of the Owner;
 - (ii) a member of the Owner, whether a Site Member or a Community Member;
 - (iii) a person related to a member of the Owner;
 - (iv) a guest of a person described in clause (ii) or (iii) above including persons and members of their families who have rented a residence at Go Home Bay from a member of the Owner; and
 - (v) any invitee of the Owner, including any contractor engaged by the Owner to perform work on the Property.
- 1.4 **“Conservation Body”** means the conservation body as defined in the Act.
- 1.5 **“Easement”** means the easement described in Article 5 and Schedule D of the Agreement as the same may be registered on title to the Property.
- 1.6 **“Good Forestry Practices”** means the proper maintenance of harvest, renewal and maintenance activities known to be appropriate for the forest and environmental conditions under which they are being applied and that minimize detriments to (i) significant ecosystems, (ii) wildlife habitat, and (iii) soil and water quality and quantity.
- 1.7 **“Land Trust”** means The Georgian Bay Land Trust Foundation, Inc. and any successor or assign thereof permitted or contemplated by the Act.
- 1.8 **“Madclub”** means The Madawaska Club at Go Home Bay.

- 1.9 **“Natural Values and Features”** means the natural community of stone, soil, water, plants and animals described in the Report as that community may evolve over time with minimal interference by human activity or land use.
- 1.10 **“Owner”** means the owner of the Property, being as of the date hereof, the Madclub and, for greater certainty includes any person who at any time after registration of these Restrictions becomes the owners of any ownership interest in the Property or any part thereof and including any beneficial interest therein.
- 1.11 **“Property”** means the lands, wetlands, water-bodies and premises on the Property legally described in Schedule “A” attached hereto. For greater certainty, the Property shall include all buildings, structures, erections and improvements now existing or constructed on the Property during the Term.
- 1.12 **“Report”** means the Baseline Documentation Report describing the Property and documenting the Natural Values and Features and current uses of the Property, attached as, or referenced in, Schedule “B” to the Agreement.
- 1.13 **“Restrictions”** means these covenants, easements and restrictions set out herein.
- 1.14 **“Term”** means the term of the Agreement and these Restrictions being from and including the date of the Agreement to the • anniversary of the date of the Agreement.

Other capitalized terms used in these Restrictions that are defined in the Agreement shall have the respective meanings ascribed to them in the Agreement.

2.0 Headings:

The headings in this Schedule of Restrictions and Exceptions form no part of the Agreement, the Restrictions or the Exceptions, but shall be deemed to be inserted for convenience of reference only.

3.0 Restrictions

Subject to the qualifications and exceptions set forth in Section 4.0 of this Schedule and the activities expressly permitted in Section 5.0 of this Schedule, the Owner shall, and the Owner shall use reasonable efforts to require its Authorized Persons to, comply with the following Restrictions:

- 3.1 **Building and Development:** Subject to the exceptions set forth in Section 3 hereof, no building, trailer, structure, wind turbines or energy generation facility or shall be constructed, placed, erected or maintained in or on the Property.
- 3.2 **Camping:** The Property shall not be used as a commercial camping area, a trailer or mobile home park or for the parking, storage or use of any camper trailers, vehicles, boats, trailers or storage containers. In addition, no mobile home or trailer or other form of shelter shall be placed, kept, parked, stored or permitted or suffered to be

placed, kept, parked or stored on the Property or used as a residence or for overnight or short-term accommodation on the Protected Area.

- 3.3 **Dumping:** No contaminated soil, rubbish, garbage, waste, or other unsightly, harmful, deleterious or offensive materials of any type or description shall be dumped or stored or permitted or suffered to be dumped or stored on, in, under or about the Property.
- 3.4 **Hunting:** The Owner shall not use or allow the Property to be used for commercial hunting purposes.
- 3.5 **Alteration of Site and Topography:** No alteration shall be made or permitted or suffered to be made in the general topography or grade of the Property. No fill of any kind shall be deposited upon the Property.
- 3.6 **Conservation/Lakes/Ponds/Wetlands:** No interference with, or alteration of, any lake, pond, wetland, watercourse or any other body of water on the Property shall be undertaken by the Owner, or permitted by the Owner, without the prior written consent of the Land Trust, which consent may be withheld by the Land Trust if in its opinion, acting reasonably, such interference or alteration would be inconsistent with the purpose of these Restrictions, that being to maintain the Natural Values and Features of the Property.
- 3.7 **Non-native Species:** No plant or animal or other species that is not native to Ontario shall be planted or introduced in or to the Property. Invasive and non-native species may be removed by the Owner.
- 3.8 **Pesticides/Herbicides:** No pesticide, insecticide, herbicide, chemical or other toxic hazardous or regulated material of any type or description shall be used or permitted or suffered to be used or permitted on the Property, save and except for use as approved and applied in accordance with a Ministry of Natural Resources and Forestry approved management plan.
- 3.9 **Roads/Parking Areas:** No roads or parking areas shall be constructed or maintained on or over the Property.
- 3.10 **Trees/Vegetation & Forest Management:** The Owner shall not permit the logging or commercial harvesting of trees or other vegetation located on the Property. This restriction shall not prohibit the removal of any trees or other vegetation (i) in accordance with Good Forestry Practices, (ii) in order to remove hazards to human safety, or (iii) as necessary for the construction or maintenance of paths or trails which the Owner is permitted to construct and maintain on the Property.
- 3.11 **Collection:** No native or naturally occurring plant or animal species shall be gathered or removed from the Property except as permitted in 3.10, 4.2 and 5.4 of this Schedule "C".
- 3.12 **Sale:** The Owner shall not sell, convey, mortgage, charge, lease or otherwise dispose of the Property, or any part thereof, without first providing the Land Trust with not less than 30 days' written notice of its intention to do so.

- 3.13 **Easements/Rights of Way:** No easement, right of way or right in the nature of an easement, lease, license or similar agreement in, on, over, under or through the Property shall be granted to any person, without the prior written consent of the Land Trust and without the easement holder, lessee, licensee or transferee acknowledging in writing the priority of the Conservation Agreement and agreeing to be bound by its terms.

4.0 **Qualifications and Exceptions to Restrictions.** Notwithstanding the generality of the restrictions set forth in Section 3.0 of this Schedule, the following qualifications and exceptions shall apply to limit such restrictions:

- 4.1 **Building and Development.** The Owner shall be entitled, in its discretion, to construct a one-storey hut or building on the Property, provided that such hut or building does not exceed 200 square feet gross floor area and provided that the use of such hut or building is limited to furthering scientific or research studies or educational activities related to, or being conducted on, the Property. The Owner shall also be entitled to permit the erection and use of temporary structures required for the conduct of scientific studies or research being conducted on the Property, or for educational activities related to the Property, so long as the such temporary structures are removed upon completion of such studies or research and so long as the use of such structures will not be destructive to the Natural Values and Features of the Property.
- 4.2 **Trails.** The Owner shall be entitled to construct and maintain paths, trails and boardwalks throughout the Property. Such paths and trails shall not exceed two metres in width and shall not include additional surface material other than gravel or mulch. In conjunction with paths, trails or boardwalks, the Owner may construct benches and resting stations that do not materially interfere with the Natural Values and Features of the Property. Such paths and trails shall be constructed and maintained to enable Authorized Persons to engage in recreational activities such as walking, hiking and snowmobiling. The constructed portion of any path or trail shall not exceed two metres in width without the prior written consent of the Land Trust, which consent may be withheld if in the opinion of the Land Trust, acting reasonably, the construction of a path or trail exceeding two metres in width would not be consistent with the Conservation Intent and purpose of the Restrictions.
- 4.3 **Utility Access.** The Owner may grant easements, rights of way, leases, licences or other similar agreements of any kind whatsoever on, over or affecting the Property to utilities or other entities for power and utility lines or towers or other similar structures providing phone, internet, hydro or other similar services to the Owner, its members and the Go Home Bay community, including to or for the benefit of any private properties adjacent or proximate to the Property.

5.0 **Permitted Activities.** The Madclub and its Authorized Persons shall be permitted to continue to use the Property for all recreational, research and social activities which are not inconsistent or incompatible with the Restrictions or Conservation Intent, and which are not

destructive to the Natural Values and Features of the Property. For greater certainty, the following recreational, research and social activities shall be permitted:

- 5.1 **Research Studies.** The Madclub and its Authorized Persons shall be entitled to conduct scientific studies or research which is related to the Natural Values and Features of the Property, including studies of tree and plant species located on the Property, studies of birds, reptiles or animals living on the Property or which use the Property as part of their natural corridor.
- 5.2 **Recreation.** The Madclub and its Authorized Persons shall be entitled to use the Property for any recreational activities that are not destructive to the Natural Values and Features of the Property, including walking, hiking, cross-country skiing, snowmobiling, frisbee golf, yoga and other exercise activities.
- 5.3 **Art.** The Madclub and its Authorized Persons shall be entitled to access the Property for photography, painting, sketching and other similar artistic activities.
- 5.4 **Sport Hunting and Fishing.** The Madclub and its Authorized Persons shall be entitled to engage in non-commercial sport hunting on the Property in compliance with applicable law and regulation and non-commercial sport fishing on the inland lakes located on the Property.
- 5.5 **Social Gatherings.** The Madclub and its Authorized Persons shall be entitled to organize and participate in social gatherings, including picnicking, on the Property so long as such gatherings are not destructive to the Natural Values and Features of the Property.