

## CONSERVATION AGREEMENT

THIS AGREEMENT IS MADE  
The 24 day of January 2013

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS  
REPRESENTED BY  
THE MINISTER OF NATURAL RESOURCES  
(Crown)  
-and-

ST. MARYS CEMENT INC. (CANADA)  
(Owner)

THIS AGREEMENT WITNESSES that pursuant to the *Conservation Land Act* R.S.O. 1990, chapter C.28 as amended and any statute that may be enacted to modify or replace the *Conservation Land Act*, and in consideration of the mutual covenants contained herein, the Parties covenant and agree as set out below.

### Article 1- Definitions

1.1 Unless the context requires otherwise, the following words and phrases shall have the following meanings:

"Act" means the *Conservation Land Act* R.S.O. 1990, chapter C.28 as amended and any statute that may be enacted to modify or replace the *Conservation Land Act*,

"Aggregates" has the same meaning as in the *Aggregate Resources Act* R.S.O. 1990 C.A.8 as amended and any statute that may be enacted to modify or replace the *Aggregate Resources Act*;

"Agreement" means this agreement;

"Business Day" means any working day, Monday to Friday inclusive, but excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day which the Crown has elected to be closed for business;

"Conservation Body" means a "conservation body" as defined by the Act;

"Easement" means a conservation easement described in Article 4;

"Indemnified Parties" means each of the following and their directors, officers, advisors, agents, appointees and employees: Her Majesty the Queen in right of Ontario and the members of the Executive Council of Ontario;

"Intention" means the intention described in Article 3;

"Lands" means the property and lands of the Owner described in Schedule A;

"Other Permitted Encumbrances" means the interests described in Schedule D;

"Owner" means the Party of the second part;

"Party" refers to either the Owner or the Crown and "Parties" refers to both;

"Protected Area" means that part of the Lands that is identified on Schedule B;

"Registered Professional Forester" has the same meaning as in the *Professional Foresters Act, 2000*, S.O. 2000, C.18, as amended and any statute that may be enacted to modify or replace the *Professional Foresters Act*; and

"Restrictions" mean the covenants described in Article 5.

### Article 2- Representations and Warranties

- 2.1 The Owner represents and warrants that the Owner is the legal, beneficial and registered owner of the Lands with good title thereto, subject only to the following registered encumbrances:
1. Lease dated July 29, 2004, between Lowndes Holding Corp. (now St. Marys Cement Inc. (Canada)) and PBR Systems Group Inc. notice of which is registered on the title to parcel 2 of Schedule A as Instrument No. WE683047;
  2. Charge registered on July 29, 2004 as Instrument No. WE250553, between Lowndes Holding Corp. (now St. Marys Cement Inc. (Canada)) as chargor and PBR Systems Group Inc as chargee, registered on the title to parcel 2 of Schedule A;
  3. Certificate of Tax Arrears registered on August 25, 1995 on title to parcel 3 of Schedule A; and
  4. Declaration registered on October 26, 1995 on title to parcel 3 of Schedule A.
- 2.2 The Owner is aware of and discloses to the Crown the Other Permitted Encumbrances as specified in Schedule D.
- 2.3 The Owner represents and warrants that it is not aware of any encumbrances against the Lands except for the registered encumbrances specified in Section 2.1 and the Other Permitted Encumbrances specified in Schedule D.
- 2.4 The Owner covenants and warrants that spousal consent is not needed to this Agreement under the provisions of the *Family Law Act*, R.S.O. 1990 C. F.3.
- 2.5 The Crown covenants and warrants that it has the right to enter into this Agreement and that it is a Conservation Body.

#### **Article 3- Intention**

- 3.1 The Owner and the Crown agree that the intention of this Agreement is to:
- (a) conserve all or a portion of the Lands or the wildlife thereon and to protect water quality and quantity by restricting the Lands from development for the purposes of extraction of Aggregates; and
  - (b) to conserve and protect the ecological systems, significant natural features, natural values and water resources in the Protected Area on the Lands.
- 3.2 This Agreement is to be construed, interpreted, performed and applied so as to give effect to the purpose and intent of this Agreement and to enforce the Restrictions and Easement. More specifically, it is intended that the use of the Lands will be restricted in the manner specified herein, consistent with the Intention.
- 3.3 Subject to section 5.1, the Owner and the Crown agree that it is not the intention of this Agreement to restrict current uses of the Lands.

#### **Article 4- Easement**

- 4.1 The Owner hereby grants to the Crown an Easement for access to the Lands to permit the Crown and its employees, agents or contractors, at the Crown's expense, to enter on to and have access to the Lands at reasonable times subject to notice requirements specified below, for the following purposes:
- (a) enabling the Crown to determine through inspection or non-intrusive testing whether in its opinion the Restrictions under the Agreement are being met and all aspects of the Intention are being respected/achieved;
  - (b) to review the condition of the Lands; and
  - (c) to carry out any remediation, restoration, rehabilitation or enhancement of the natural values of the Protected Area as in the opinion of the Crown acting reasonably, is necessary or desirable.
- 4.2 The Parties may agree to complete a further investigation of the Lands during the month of June, 2013 to make such further amendments to the extent of the Protected Area as the Parties may agree. Whether or not such further investigation is completed, if this easement cannot be registered without a reference plan being prepared and registered against the Lands, the Parties agree that they shall, on or before August 31, 2013,

prepare and file against the Lands a reference plan (the "Reference Plan") detailing the Protected Area (including such amendments as may be agreed pursuant to a further investigation) and the Parties shall amend this Agreement and enter into such further agreement and easement as may be required to register the reference plan against the Lands (collectively, the "Reference Plan Documents"). Such Reference Plan and Reference Plan Documents shall be subject to prior approval by the each of the Parties, provided that if Parties are unable to agree upon the terms of the Reference Plan and/or the Reference Plan Documents, such dispute shall be referred to dispute resolution by the Owner or the Crown for final and binding resolution in accordance with the procedures outlined in Schedule "C". The cost of preparing and registering the Reference Plan shall be shared equally by the Parties.

- 4.3 Prior to entry or access to the Lands for the foregoing purposes, the Crown shall provide at least 24 hours' notice to the Owner which notice, notwithstanding Article 8, shall be sufficient if only provided by electronic mail, or verbally and subsequently confirmed in writing by electronic or regular mail.
- 4.4 Entry under the Easement may be made by the employees, agents or contractors of the Crown with vehicles, equipment and materials, provided that the Crown shall take reasonable measures to interfere as little as possible with the use and enjoyment of the Lands by the Owner or tenants.
- 4.5 The Parties covenant and agree that the Easement shall be governed by and have the benefit of the Act and that the burden of the Easement shall run with and bind every part of the Lands from the registration of this Agreement and the benefit of the Easement shall enure to the Crown.
- 4.6 No right of access for the general public to any portion of the Lands is conveyed by this Agreement.

#### **Article 5- Restrictions**

- 5.1 The Restrictions are as follows:

##### Restrictions that apply to the entire Lands:

1. No part of the Lands shall be used for the extraction of Aggregates, including any type of pit or quarry or associated uses, structures or facilities to provide for the conservation, of all or a portion of the Lands or the wildlife on the Lands.
2. Subject to section 3.3, no part of the Lands shall be used in a way that would materially affect the quantity or quality of water on or flowing over or under the Lands.

##### Restrictions that apply only to the Protected Area:

1. No building or structure of any kind shall be erected, placed or maintained or be permitted to be erected, placed or maintained, on, in, under or over the Protected Area which will or may reasonably be expected to be detrimental or adverse to the Intention of this Agreement.
2. No new paved road, paved driveway or paved walkway, or parking area shall be erected, placed or maintained on, in or over the Protected Area.
3. No alteration shall be made or permitted to be made to the general topography of the Protected Area except for conservation purposes consistent with the Intention. Without limiting the foregoing, grading of the soil, construction or digging of drainage ditches, retaining walls, dams, ponds, and any other similar development, and the dumping, excavation, dredging, or removal of loam, soil, rock or other material shall not be undertaken.
4. No soil, rubbish, ashes, garbage, sewage, waste, or other unsightly or offensive materials of any type or description shall be dumped or stored or permitted to be dumped or stored on, in or under the Protected Area, or placed adjacent to the Protected Area so that it would be detrimentally affected.
5. No interference with, straightening, diverting or alteration of any lake, pond, wetland, watercourse or any other body of water in the Protected Area shall be

undertaken or permitted to be undertaken, nor shall any use thereof be made or permitted to be made which will or may reasonably be expected to be detrimental or adverse to the Intention.

6. No fencing or other obstruction shall be constructed or permitted to be constructed which would exclude or unduly restrict wildlife movement in or through the Protected Area.
7. No tree or shrub in the Protected Area shall be removed, destroyed or cut, save and except:
  - a. those that may be removed as part of a forest management plan that is agreed upon between the Owner and the Crown and is written or approved by a Registered Professional Forester to comply with the Intention;
  - b. to control invasive species;
  - c. for restoration purposes;
  - d. to remove a danger or hazard; or
  - e. cutting of firewood for personal use of the Owner or its tenants, so long as such cutting is consistent with the Intention

Any tree cutting will be conducted in a manner that is not injurious to the remaining trees, flora, fauna and soils, and maintains soil stability, water quality and quantity and the other natural features.

- 5.2 Nothing in this Agreement precludes the use of the portion of the Lands identified as Parcel 5 on schedule A for single family residential uses, including such ancillary uses, as may be permitted by the applicable zoning by-law and would normally be incidental to a single family use. Notwithstanding the Restrictions that apply to the Protected Area set out in section 5.1, the Owner shall be entitled on the portion of the Lands identified as Parcel 5 on Schedule A to: (a) maintain current ingress and egress; (b) maintain current landscaped or disturbed areas; and (c) within those landscaped or disturbed areas, undertake alterations to the topography, that would normally be incidental to a single family use, such as grading, gardening, tilling or building retaining walls.
- 5.3 The Parties covenant and agree that the Restrictions shall be deemed to be restrictive covenants governed by and having the benefit of the Act, that from the registration of this Agreement the burden of such covenants shall, in accordance with section 5.1, run with and bind every part of the Lands and the benefit of the Restrictions shall enure to the Crown.
- 5.3 The Owner covenants with the Crown that it, and anyone for whom the Owner is at law responsible or for whom the Owner holds the Lands shall abide by the Restrictions. The Owner further agrees to provide a copy of this Agreement to any tenant to whom all or part of the Lands are rented, and inform the tenant of its obligation to abide by the Restrictions during its tenancy.
- 5.4 The Owner shall not interfere with entry or access to the Lands by the Crown under the Easement.
- 5.5 The Owner reserves to itself, and to its successors and assigns and any transferee therefrom, all rights accruing from 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 restricted herein and that are not inconsistent with the Intention.
- 5.6 The Crown may, with the written consent of the Owner, which shall not be unreasonably withheld, waive, release or vary any of the Restrictions by an instrument in writing, duly executed and registered against the Lands.
- 5.7 The Crown acknowledges that the Owner will be decommissioning wells in the Protected Area and nothing in this Agreement precludes the Owner from doing so.

#### **Article 6- Owner's Ownership Responsibilities**

- 6.1 The Owner shall, at its expense, carry and maintain all the necessary and appropriate insurance that a prudent owner would maintain, including but not limited to comprehensive general liability coverage with an inclusive limit of not less than two million dollars (\$2,000,000.00) per occurrence for third party bodily injury, personal injury

and property damage with the Indemnified Parties being named as an additional insured thereunder.

- 6.2 The Owner shall provide the Crown evidence of the coverage described in section 6.1 upon request.
- 6.3 The Owner will use its best commercial efforts to obtain from all holders of interests in the Lands in priority to this Easement (other than holders of Other Permitted Encumbrances) subordinations or postponements of such interests to this Agreement, provided further that:
- (a) with respect to the lease Dated July 29, 2004, between Lowndes Holding Corp. (now St. Marys Cement Inc. (Canada)) and PBR Systems Group Inc. ("PBR") notice of which is registered on the title to parcel 2 of Schedule A as Instrument No. WE683047, if despite having used best commercial efforts to obtain a subordination or postponement of such interest in the Lands, the Owner is unable to do so, then the Owner covenants to make rules under such lease to require PBR to comply with the restrictions in the Protected Areas; and
  - (b) with respect to the charge registered on July 29, 2004 as Instrument No. WE250553, between Lowndes Holding Corp. (now St. Marys Cement Inc. (Canada)) as chargor and PBR Systems Group Inc as chargee, registered on the title to parcel 2 of Schedule A, if despite having used best commercial efforts to obtain a subordination or postponement of such interest in the Lands, the Owner is unable to do so, then the Owner covenants to prepay the applicable mortgage upon the sale or transfer of all or part of its interests in the Land to the extent of the net proceeds from the sale.
- 6.4 The Owner shall indemnify and save harmless the Indemnified Parties and any of their contractors and advisors, from any and all actions, proceedings, causes of action, suits, claims, demands, costs and expenses by or on behalf of any person arising out of or to the extent occasioned by any act or omission, negligent or otherwise by the Owner or by any licensee or lessee of the Owner or anyone for whom the Owner is in law responsible, in connection with the Easement and any of the Restrictions.
- 6.5 The Owner shall not transfer or charge the Lands without first:
- (a) providing at least 30 days prior written notice to the Crown; and
  - (b) providing the written agreement, in the form attached hereto as Schedule E, of the transferee or chargee to be bound by all of the covenants and obligations of the Owner hereunder including the obligation to comply with this Section 6.5.

#### **Article 7- Default by Owner**

- 7.1 In the event of a breach or default in the obligations and covenants owed to the Crown under this Agreement, the Crown may take any action that is available to it at law, provided that the Crown shall first give the Owner notice of the default, which notice shall specify the nature of the non-compliance and the measures necessary to remedy it and secure compliance with the Agreement. If notice of default is given, the Owner shall have 60 days to complete the required measures to remedy the default.
- 7.2 If the default is by the Owner and is not remedied or satisfactory arrangements have not been made to remedy the default, the Crown, in addition to its other rights aforesaid may remedy the default as provided under sections 7.3 and 7.4.
- 7.3 If notice of default has been given to the Owner under section 7.1 and default has not been cured within the period provided in section 7.1, the Crown may serve a further notice on the Owner setting out the particulars of the Crown's estimated costs of remedying the default. The Owner shall have 10 days from the receipt of the notice to remedy the default and if the Owner does not do so, the Crown through its employees, agents, or contractors may enter the Lands and cure the default.
- 7.4 The Owner shall reimburse the Crown for any costs and expenses incurred up to the estimated maximum costs of remedying the default, as set out in the notice of estimated costs. These costs and expenses shall, until paid to the Crown by the Owner be a debt owed by the Owner to the Crown with interest as provided for in section 7.5 and the debt

with such interest shall be a charge upon the lands enforceable in the same manner as a mortgage, and shall be recoverable by the Crown in a court.

- 7.5 Any amount payable by reason of the default of the Owner shall bear interest from the date the amount was paid until the date of repayment at the prime rate of interest from time to time published by the Bank of Canada.

#### **Article 8-Notice**

- 8.1 Any notice (including any request or waiver) provided or given under this Agreement shall be sufficiently given if it is in writing and delivered by hand, sent by fax or electronic mail or mailed by prepaid registered post to the following representative for the Crown:

District Manager, Guelph District Office  
Ministry of Natural Resources  
1 Stone Road West, 1<sup>st</sup> Floor  
Guelph, ON N1G 4Y2  
General Phone # 519-826-4955, Fax # 519-826-4929

And to the Owner at the address for service shown on the most recent document registered on the title to the Lands.

- 8.2 Any notice that is hand delivered, sent electronically or delivered by fax shall be deemed to have been given on the next Business Day; and any notice that is mailed, on the 4<sup>th</sup> Business Day following mailing.
- 8.3 Either Party may give the other notice of any change in address in the manner described in sections 8.1 and 8.2, and thereafter the new address, fax number or electronic mail address shall be the address of the Party for the purposes of giving notice.

#### **Article 9- Liability Limitation and Force Majeure**

- 9.1 The Owner shall remain liable to the Crown for any breach or default in obligations owed under this Agreement that are committed prior to the date of registration of a transfer by the Owner (other than a transfer by the Owner to an Affiliate or to a person who is not acting at Arm's Length to Owner) of all or part of its interest in the Lands, with respect to such part or parts of the Lands that have been transferred. For greater certainty, the Owner shall not be liable to the Crown for any breach or default in obligations owed under this Agreement that are committed after the date of registration of a transfer by the Owner (other than a transfer by the Owner to an Affiliate or to a person who is not acting at Arm's Length to Owner) of all or part of its interest in the Lands, with respect to such part or parts of the Lands that have been transferred. For the purposes of this section 9.1:

- (a) the term "Affiliate" means an "affiliate" as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto and, in the case of the Owner, shall include each of its unitholders, shareholders, partners or owners, as the case may be; and
- (b) the term "Arm's Length" means, with respect to two or more persons, that such persons are not related to each other within the meaning of subsections 251(2), (3), (3.1), (3.2), (4), (5) and (6) of the *Income Tax Act* (Canada) or that such persons, as a matter of fact, deal with each other at a particular time at arm's length.

- 9.2 The Owner shall not be liable to the Crown for any damage to or change in the Lands resulting from causes beyond the reasonable control of the Owner, including but not limited to damage by fire, flood, storm, disease, insect infestation or invasive plants or animals.

#### **Article 10- Miscellaneous**

- 10.1 Each Party shall give notice to the other of any change in the ownership or any change or assignment of such Party's interest in the Lands. The notice shall be given at least 10 days prior to the change and shall include the name and address of the new party.
- 10.2 The Owner shall register this Agreement at its expense against the title to the Lands and shall provide evidence of the registration to the Crown.

- 10.3 No failure by either Party to require performance by the other Party of any provision of this Agreement shall affect its right to thereafter enforce such obligation in the future.
- 10.4 Time shall be of the essence of this Agreement and shall be deemed to remain so, notwithstanding any extension of any time limit.
- 10.5 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.
- 10.6 Each Party shall be responsible for its own legal fees and expenses arising from the negotiation and entering in to this Agreement.
- 10.7 This Agreement embodies the whole agreement of the Parties with regard to matters dealt with herein and no understandings or agreements, verbal, collateral or otherwise, exist between the parties, except as set out expressly in this Agreement.
- 10.8 The Schedules form part of this Agreement.
- 10.9 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 Canada that are applicable.
- 10.10 Each Party shall execute and deliver assurances and do such other acts, at the request of the other that may be necessary, reasonable or desirable to give full effect to the provisions and intent of this Agreement.
- 10.11 Where the Owner should be comprised of more than one person, the obligations under this Agreement are joint and several.
- 10.12 This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and assigns.

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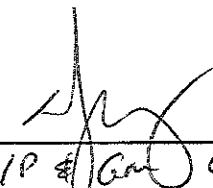
HER MAJESTY THE QUEEN IN RIGHT  
OF ONTARIO as represented by the  
Minister of Natural Resources

Per: \_\_\_\_\_

Title: \_\_\_\_\_

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

ST. MARYS CEMENT INC. (CANADA)

Per:  \_\_\_\_\_

Title: *VP of Sales CSM Aggregates* \_\_\_\_\_

Date: *Jan 24 2013* \_\_\_\_\_



HER MAJESTY THE QUEEN IN RIGHT  
OF ONTARIO as represented by the  
Minister of Natural Resources

Per: *Arshad*  
Title: *Counsel*  
Date: *January 24, 2013*

ST. MARYS CEMENT INC. (CANADA)

Per: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

### **Schedule A**

Attached to and forming part of the Conservation Agreement between the Crown and Saint Marys Cement Inc. (Canada) dated     day of     , 2013.

#### **Legal description of the Lands**

In the City of Hamilton, formerly in the Town of Flamborough, described as:

Parcel 1. Part of Lot 5 in Concession 11, East Flamborough as described in Instrument Number CD183074 and identified as Lands Identifier Number 17525-0151(LT).

Parcel 2. Part of Lot 4 in Concession 11, East Flamborough as described in Instrument Number CD399791, save and except Part 1 on Reference Plan 62R-16062 and identified as Lands Identifier Number 17525-0227(LT).

Parcel 3. Part of Lot 2 and Lot 3 in Concession 11, East Flamborough as described in Instrument Number AB157693 and identified as Lands Identifier Number 17525-0157(LT).

Parcel 4. Part of Lot 2 in Concession 11, East Flamborough as described in Instrument Number AB149944 and identified as Lands Identifier Number 17525-0158(LT).

Parcel 5. Part of Lot 1 in Concession 11, East Flamborough as described in Instrument Number AB200144 and identified as Lands Identifier Number 17525-0164(LT).

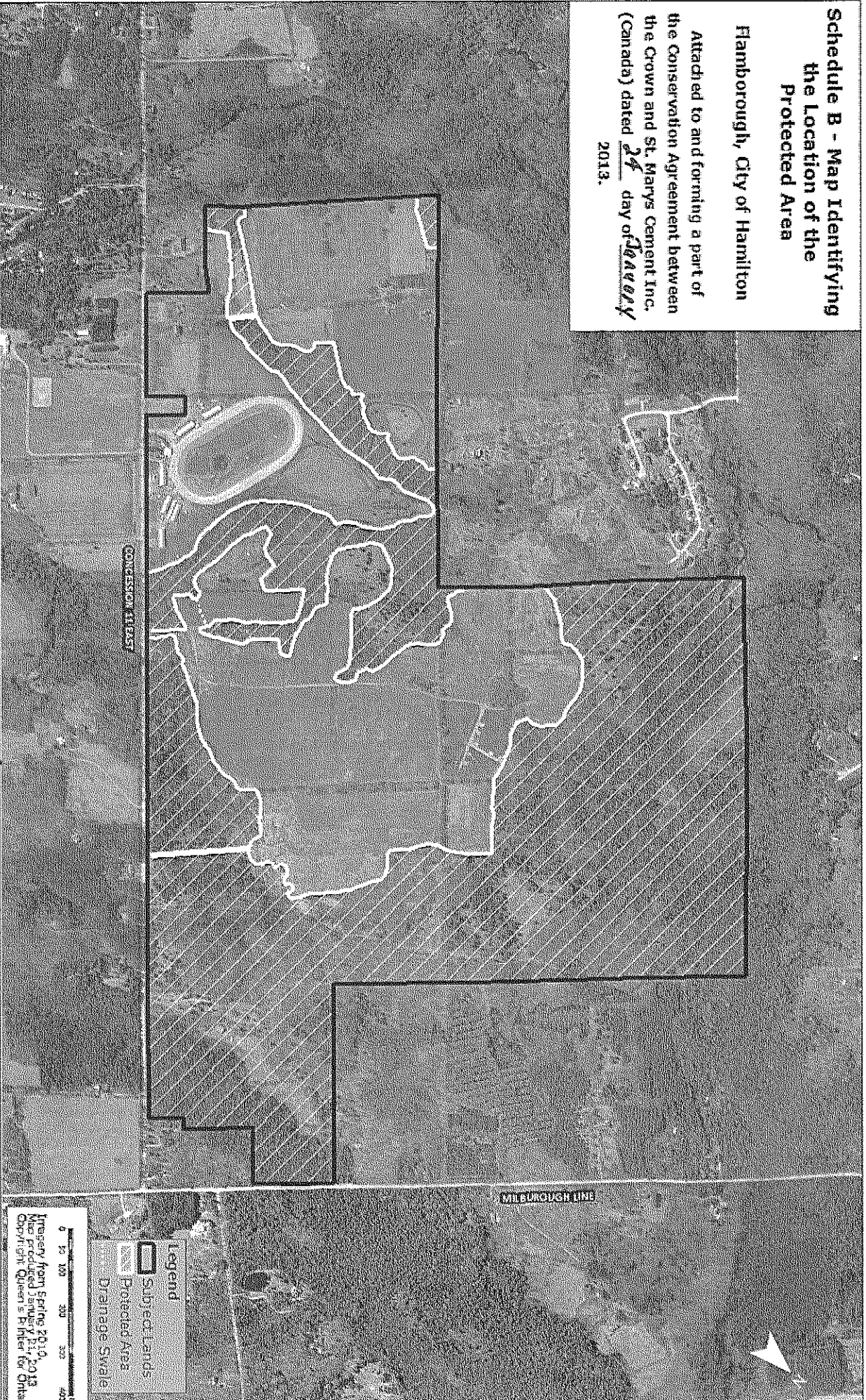
**Schedule B**  
**Map Identifying the location of the Protected Area**

Attached to and forming a part of the Conservation Agreement between the Crown and St. Marys Cement Inc. (Canada) dated    day of    2013

**Schedule B - Map Identifying  
the Location of the  
Protected Area**

**Hamborough, City of Hamilton**

Attached to and forming a part of  
the Conservation Agreement between  
the Crown and St. Marys Cement Inc.  
(Canada) dated 24 day of November  
2013.



**Legend**

- Subject Lands
- Protected Area
- Drainage Swale

Map produced from GeoInfo 2010  
Map produced January 24, 2013  
Copyright Queen's Printer for Ontario

**Schedule C**  
**Dispute Resolution Procedure**

Attached to and forming a part of the Conservation Agreement between the Crown and St. Marys Cement Inc. (Canada) dated    day of    2013

**1. DISPUTE RESOLVED BY ARBITRATION**

Any dispute (“**Dispute**”) between the parties under Section 4.2 of the Conservation Agreement shall be resolved by a single arbitrator (the “**Arbitrator**”) in accordance with the *Arbitration Act*, 1991 (Ontario).

**2. APPOINTMENT OF ARBITRATOR**

(a) The Arbitrator shall be appointed by agreement between the parties within 5 Business Days after delivery by any party of a notice of arbitration or, failing agreement, shall be determined by the Ontario Superior Court of Justice following an application thereto brought forthwith by the Party issuing the Notice of arbitration.

(b) The Arbitrator shall be independent of the Parties.

**3. ARBITRATION PROCEDURE**

(a) Location and Timing. The arbitration shall take place in the City of Toronto at such place therein as the Arbitrator may fix, subject to the agreement of the Parties as to place. The Parties agree that arbitration shall commence within thirty (30) days of the appointment of the Arbitrator.

(b) The Arbitrator and the Parties shall make best efforts to complete the arbitration expeditiously and the Arbitrator shall adopt such procedures and make such procedural rulings as are reasonable to achieve this outcome. Subject to any adjournments which the Arbitrator allows, the arbitration hearing will be continued on successive working days until it is concluded.

(c) Production of Documents. Within five (5) Business Days of the appointment of the Arbitrator, each Party shall produce to the other for inspection copies of all documents of the Party in any way relating to the Dispute including the final proposed drafts of the Reference Plan and the Reference Plan Documents by each of the Owner and the Crown, which are in the other parties’ power, possession or control, subject to solicitor/client privilege and litigation privilege.

(d) Fact Witnesses. Each party shall, not less than three (3) Business Days before the commencement of the arbitration hearing, provide to the other party a written list setting out the name, position and address of each proposed witness and a short summary of the evidence proposed to be given at the arbitration.

(e) Discoveries. Unless the Arbitrator determines that it is advisable, there shall be no oral or written discoveries of any Party.

(f) Expert Witnesses. An expert witness may not testify with respect to any issue unless the substance of his/her testimony with respect to that issue is set out in the report required to be served in accordance with this Schedule. Specifically:

(i) a Party who intends to call an expert witness at the arbitration hearing shall, not less than ten (10) days before the commencement of the arbitration hearing, serve on every other Party a report, signed by the expert, setting out his/her name, address and qualifications and the substance of his/her proposed testimony; and

(ii) if applicable, responding experts’ reports are to be served on every other Party not less than five (5) days before the commencement of the arbitration hearing.

(g) Language of the Arbitration. The arbitration shall be conducted in English.

(h) Representation by Counsel. Any Party may be represented at any meetings or hearings by legal counsel.

- (i) Examination of Witnesses. Each Party may examine, cross-examine and re-examine all witnesses at the arbitration.

#### **4. JURISDICTION AND POWERS OF THE ARBITRATOR**

- (a) By submitting to arbitration under this Schedule, the Parties confer upon the Arbitrator the following jurisdiction and powers, to be exercised at the Arbitrator's discretion subject only to provisions of the Settlement Agreement and the relevant law with the object of ensuring the just, expeditious, economical and final determination of the Dispute.
- (b) The Arbitrator shall determine which of the two versions of the Reference Plan and the Reference Plan Documents proposed by each of the Owner and the Crown best matches the intent and purpose of the Conservation Agreement and gives effect to its terms.
- (c) In that regard, the Arbitrator has the power to determine all questions of law, fact and jurisdiction, all matters of procedure relating to the arbitration, as well as the power to grant legal and equitable relief. The Arbitrator's power expressly includes, without limiting the generality of the foregoing or the Arbitrator's jurisdiction at law, the jurisdiction to:
  - (i) determine any question of law arising in the arbitration;
  - (ii) determine any question as to the Arbitrator's jurisdiction;
  - (iii) determine any question of good faith, dishonesty or fraud arising in the dispute;
  - (iv) order any Party to furnish further details of that Party's case, in fact or in law;
  - (v) proceed in the arbitration notwithstanding the failure or refusal of any Party to comply with this Agreement or with the Arbitrator's orders or directions, or to attend any meeting or hearing, but only after giving that Party written notice that the Arbitrator intends to do so;
  - (vi) receive and take into account such written or oral evidence tendered by the Parties as the Arbitrator determines is relevant, whether or not admissible in law;
  - (vii) make one or more interim awards;
  - (viii) hold meetings and hearings, and make a decision (including a final decision) in Toronto, Ontario, or elsewhere with the concurrence of the Parties;
  - (ix) order the Parties to produce to the Arbitrator, and to each other for inspection, and to supply copies of, any documents or classes of documents in their possession or power which the Arbitrator determines to be relevant, subject to the protections of solicitor/client privilege and litigation privilege; and
  - (x) order the preservation, storage, sale or other disposal of any property or thing under the control of any of the Parties.

#### **5. THE DECISION**

- (a) The Arbitrator will make a decision in writing and, unless the Parties otherwise agree, will provide reasons for the decision.
- (b) The Arbitrator will send the decision to the Parties as soon as practicable after the conclusion of the final hearing, but in any event no later than thirty (30) days thereafter, unless that time period is extended for a fixed period by the Arbitrator on written notice to each Party in order to allow the Arbitrator sufficient time to reach and render his or her decision.
- (c) An award by the Arbitrator shall be final and binding.

(d) The provisions of this Schedule shall not operate to prevent recourse to the court by any Party as permitted by the *Arbitration Act, 1991* with respect to enforcement of an arbitral award or order, or whenever enforcement of an arbitral award reasonably requires any further remedy which the Arbitrator has no power to award or enforce.

## **6. IMPLEMENTING THE DECISION**

(a) The Parties agree to execute forthwith after receipt of the decision of the Arbitrator the form of Reference Plan Documents as determined by the Arbitrator and the Owner shall forthwith file the Reference Plan as determined by the Arbitrator together with any applicable Reference Plan Documents upon title to the Lands.

## **7. COSTS OF ARBITRATION**

Each Party shall bear its own costs of the arbitration (including, but not limited to, legal, expert or other such costs of preparing for and attending at the arbitration), and each party shall pay half of the Arbitrator's fees and disbursements and half of any other Arbitrator's expenses incurred in holding and conducting the arbitration.

## **8. ARBITRATION ACT, 1991**

The rules and procedures of the *Arbitration Act, 1991* shall apply to the arbitration conducted hereunder except to the extent that they are modified by the express provisions of this Schedule.

## **9. GENERAL**

(a) Confidentiality. The proceedings provided for herein shall be strictly confidential, and no Party shall disclose any information, documents or evidence adduced by any Party in the arbitration proceeding or the Arbitrator's decision to any non-parties, except as may be required by law or may be requested by a governmental authority, and except to its parent company, affiliates, accountants, auditors and lawyers, and except for enforcement purposes. Before making any disclosure required by law or requested by a government authority, a Party from whom disclosure is sought shall give the other Party reasonable notice of the intended disclosure and afford the other Party an opportunity to protect its interests. The Arbitrator shall be required to sign an appropriate non-disclosure agreement.

(b) Governing Law. This Schedule shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

(c) Headings. The headings in this Schedule shall not affect its interpretation.

(d) Notices. Any notice, demand or other communication required or permitted to be given to any Party or the Arbitrator shall be in writing and shall be either: (i) personally delivered or sent by facsimile transmission or e-mail or similar method of communication, to counsel representing the Party or to the Arbitrator, as the case may be; or (ii) personally delivered to such Party; or (iii) sent by registered mail, postage prepaid.

Any notice given to a Party pursuant to subparagraphs (ii) and (iii) above shall be sent to the intended recipient at its address as follows:

To: Owner      To be provided by Owner.  
To: Crown      To be provided by Crown.

Any Party may from time to time change its address by written notice to each other Party given in accordance with the provisions of this subsection.

Any notice given by personal delivery or registered mail shall be deemed to be received on the date of delivery.

**Schedule D**  
**Other Permitted Encumbrances**

Attached to and forming a part of the Conservation Agreement between the Crown and St. Marys Cement Inc. (Canada) dated    day of    2013

1. A Lease dated May 8, 2010 from SMC to Murray Breeken for 40 acres in Lot 5, Con 11 for one year from March 2010 to March 2011 which has been renewed verbally on an annual basis and currently expires March 2013
2. An Agreement to Lease dated March 20, 2012 from SMC (2030607) to John Laurensen for 100 acres in Lots 2 & 3, Con 11 for nine months from March 2012 to Dec 2012
3. Encumbrances for taxes, assessments, utilities or governmental charges or levies not at the time due or delinquent or the validity of which is being contested at the time by the Owner in good faith; and undetermined or inchoate privileges or liens and charges incidental to current operations.
4. Any unregistered hydro easements in favour of Hydro One Networks Inc. or any other hydro authority or commission
5. A registered right of way over the westerly 12 feet of the lands described as parcel 4 of Schedule A in favour of the lands described as parcel 3 of Schedule A.
6. The reservations, limitations, provisos, conditions and exceptions, if any, expressed in any original grant from the Crown.
7. Any rights of expropriation, access or use, or any other right conferred or reserved by or in any statute of Canada or the Province of Ontario.
8. The provisions of all applicable laws, including without limitation by-laws, regulations, ordinances, land use contracts, development agreements and similar instruments relating, without limitation, to development, use and zoning.
9. Encumbrances of labourers, workmen, builders, contractors, suppliers of material or architects or other similar encumbrances incidental to construction, maintenance or operations which have not at the time been registered or filed pursuant to law against the Lands or which, although registered or filed, relate to obligations that are not at the time due or delinquent.



**Schedule E  
Acknowledgement and Agreement**

Attached to and forming a part of the Conservation Agreement between the Crown and St. Marys Cement Inc. (Canada) dated \_\_\_\_ day of \_\_\_\_ 2013

THIS ACKNOWLEDGEMENT AND AGREEMENT made as of the \_\_\_\_ day of \_\_\_\_ .

TO: Her Majesty The Queen In Right of Ontario as Represented by the Minister of Natural Resources (the "Crown")

AND TO: \_\_\_\_\_ (the "Owner")

RE: Conservation Agreement dated \_\_\_\_\_, 2013 between the Owner and the Crown and registered on \_\_\_\_\_, 2013 as Instrument No. \_\_\_\_\_ (the "Conservation Agreement")

WHEREAS the lands described in Schedule A hereto (the "Lands") are subject to the Conservation Agreement;

AND WHEREAS Section 6.5 of the Conservation Agreement provides that the Owner shall not transfer or charge the Lands without first providing the Crown with the written agreement, in the form attached to the Conservation Agreement as Schedule E, of the transferee or chargee to be bound by all of the covenants and obligations of the Owner contained in the Conservation Agreement including the obligation to comply with Section 6.5 thereof; and

[AND WHEREAS the undersigned has agreed to acquire the Lands from the Owner and is therefore providing this Acknowledgement and Agreement pursuant to Section 6.5 of the Conservation Agreement. or AND WHEREAS the undersigned has agreed to take a charge upon the Lands from the Owner and is therefore providing this Acknowledgement and Agreement pursuant to Section 6.5 of the Conservation Agreement. ]

NOW THEREFORE, in consideration of the sum of Two Dollars (\$2.00) paid by each of the Crown and the Owner to the undersigned, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the undersigned, the undersigned hereby acknowledges and agrees to and in favour of the Crown and the Owner that the undersigned is bound by and will comply with all of the covenants and obligations of the Owner contained in the Conservation Agreement including without limitation the obligation to comply with Section 6.5 of the Conservation Agreement.

All of the terms and provisions of this Acknowledgement and Agreement shall be binding upon the undersigned and its administrators, successors and assigns and shall enure to the benefit of the Crown and the Owner and their respective administrators, successors and assigns.

This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

IN WITNESS WHEREOF the undersigned has executed these presents as of the date first set out above.

**[NAME OF CHARGE/TRANSFeree]**

By: \_\_\_\_\_  
Name: ●  
Title: ●

Schedule A to Acknowledgement and Agreement  
(see Attached)