

TRUST AGREEMENT

THIS AMENDED TRUST AGREEMENT

is dated for reference

the _____ day of _____, 2014

BETWEEN:

THE CHIPPEWAS OF THE THAMES BAND,
Also known as the Chippewas of the Thames First Nation,
as represented by its Chief and Council,

- and -

Betsy Kechego, Kristen Hendrick, Monty McGahey II, Leslee White-Eye, G. Clinton Albert, Austin Henry and Shane Fisher as the Trustees of the Clench Fraud Trust as amended herein.

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PREAMBLE

WHEREAS the Chippewas are part of the Anishinabek, and the Council of the Chippewas is a government with its own law making powers, both inherent and recognized by the Government of Canada;

AND WHEREAS the Chippewas have made a Settlement Agreement with Her Majesty the Queen in Right of Canada to settle their claim arising from the Clench Defalcation;

AND WHEREAS in the Settlement Agreement, Her Majesty the Queen promised to deposit specific amounts of money as compensation into the Clench Fraud Trust;

AND WHEREAS the Chippewas want to ensure that the Compensation is managed, used and invested wisely, for the benefit of the present and future generations of Chippewas, and therefore, they created the Clench Fraud Trust for those purposes;

AND WHEREAS the Chippewas are of the opinion that the Clench Fraud Trust, as drafted, does not reflect best practices for the management and administration of trusts and that it would be in the best interests of the Beneficiaries that the Clench Fraud Trust be amended to improve the administration, operation and governance of the Trust;

AND WHEREAS the purpose of this amended Trust Agreement is to set clear rules for the administration and operation of the Trust;

AND WHEREAS the Chippewas have approved the original Trust Agreement by a vote held on the 26th day of June, 2004 and the Chippewas have approved this amended Trust Agreement by a

vote held on the ____ day of _____, 2014, and have directed Council and the Trustees to sign this amended Trust Agreement;

THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. AMENDMENT OF THE CLENCH FRAUD TRUST

- 1.1 The trust known as the CLENCH FRAUD TRUST dated for reference the 26th day of November, 2004 is hereby amended and renamed as the XY Trust.
- 1.2 The Trustees agree to hold the Trust Property in trust for the Beneficiaries in accordance with the terms of this Trust Agreement.
- 1.3 The Settlor of this Trust is the Chippewas of the Thames Band, also known as the Chippewas of the Thames First Nation,
- 1.4 All beneficial right, title interest, and benefit in the Trust Property shall remain vested in the Beneficiaries.
- 1.5 All legal right, title and interest in the Trust Property shall remain vested in the Trustees.
- 1.6 The Council and the Trustees will sign this amended Trust Agreement upon a vote of the Voters authorizing its execution and the amendments will come into effect on the Effective Date.
- 1.7 The Trustees and signatories to the XY Trust Agreement are Betsy Kecheho, Kristen Hendrick, Monty McGahey II,

Leslee White-Eye, G. Clinton Albert, Austin Henry, and Shane Fisher.

2. DEFINITIONS

2.1 Terms not otherwise defined in this Trust Agreement shall have the same meaning as defined in the Settlement Agreement or the *Indian Act*, R.S.C. 1985, c-15, as amended from time to time. Where there is an inconsistency between the Settlement Agreement and the *Indian Act*, the Settlement Agreement shall prevail to the extent of the inconsistency.

“Annual Income” means the amount calculated in accordance with paragraph 9.1.

“Appointed Trustee” means a Trustee appointed by Council in accordance with paragraph 5.7.

“Authorized Expense(s)” means the expenses reasonably incurred by the Trustees and Council in each Fiscal Year in carrying out the terms of this Trust Agreement including, without limitation, payment of administrative, accounting, legal, professional, and management costs, honoraria and the reasonable costs of training undertaken by Trustees in connection with their duties herein along with any expenses relating to the expenses incurred in amending the Trust.

“Authorized Investments” means investments purchased with funds from the Trust Account as selected by the Investment Manager from those investments listed

in Schedule "A" and in accordance with this Trust Agreement.

"Beneficiaries" means the Chippewas of the Thames First Nation and the Members thereof.

"Board, Tribunal or Commission of the Chippewas of the Thames" means a body created by the Chippewas of the Thames and which carries out governmental, judicial or administrative functions in the community.

"Capital" means the Compensation and all monies and receivables now or hereafter on deposit in the Trust Account, which for greater certainty includes any and all investment instruments in which the monies in the Trust Account may from time to time be invested hereunder as well as any additions to Capital or accruals thereto but excluding all amounts which have been paid or disbursed therefrom in the normal course of the administration of or pursuant to the provisions of this Trust Agreement.

"Code of Conduct" means the code developed by the Trustees which prescribes appropriate conduct by the Trustees, consistent with this Agreement and their fiduciary responsibilities in relation thereto.

"Chippewas of the Thames First Nation" or **"Chippewas"** or **"the First Nation"** means the Chippewas of the Thames Band of Indians, also known as the Chippewas of the Thames First Nation, as represented by its Chief and Council.

"Reserve" means any lands set aside by Her Majesty the Queen in Right of Canada for the use and benefit of the Chippewas.

“Compensation” means the amount referred to in Paragraph 3.1 of the Settlement Agreement.

“Consult” or **“Consultation”** means to provide:

- (a) notice of the matter in sufficient form and detail to allow the party being consulted to prepare views on the matter;
- (b) a reasonable period to prepare those views;
- (c) an opportunity to present those views to the decision-maker; and
- (d) full and fair consideration by the decision-maker of any views so presented.

“Council” means the Chief and Council of the Chippewas of the Thames First Nation.

“Councillor” means a member of the Council.

“Council Resolution” means a resolution of the Council approved by and signed by a quorum of the Council present at a duly convened meeting of the Council.

“CPI” means the annual Consumer Price Index published by the Bank of Canada.

“Effective Date” means the last date on which this Agreement is signed by the Council and the Trustees.

“Elected Trustee” means a Trustee elected in accordance with paragraph 5.8.

“Eligible Member” means a Member who was both a Member and alive on November 26, 2004 (the date the Compensation was paid).

“Financial Advisor” means a firm, partnership or sole proprietorship which is not engaged in the sale of investment products and services and which will provide independent advice to the Trustees on the development of the Investment Policy and selection of Investment Managers and evaluation of portfolio performance and which has an arm’s length relationship with the Council, each of the Trustees, and the Investment Manager(s) and whose staff have been awarded the Chartered Financial Analyst designation by the Chartered Financial Analyst Institute, or its successor.

“Financial Advisor Service Agreement” means an agreement between the Trustees and the Financial Advisor detailing the duties and responsibilities of the Financial Advisor in relation to this Trust Agreement.

“Financial Institution” means any bank or trust company that is a member institution for which the Canada Depository Insurance Corporation has a duty to insure deposits pursuant to the *Canada Deposit Insurance Corporation Act*, R.S.C. 1985, c. C-3, or a credit union or caisse populaires for which the Deposit Guarantee Corporation of Ontario has a duty to guarantee deposits pursuant to the *Credit Unions and Caisses Populaires Act*, 1994, S.O., c.11.

“Investment Manager” means a firm which has obtained registration with the Ontario Securities Commission as an advisor in the category of Portfolio Manager in accordance

with National Instrument 31-103 7.2(1)(a) as that term is amended from time to time, and whose revenue is derived from the discretionary management of investment portfolios, and which has an arm's length relationship with the Council, each of the Trustees and the Financial Advisor.

“Investment Management Agreement” means an agreement between the Trustees and an Investment Manager by which the investment management responsibility for funds invested in the public markets is to be undertaken solely by the Investment Manager pursuant to the terms of this Trust Agreement and the Investment Management Agreement.

“Investment Policy” means the policy approved by the Trustees from time to time following the receipt of advice from the Investment Manager and Financial Advisor, which sets out the policy, objectives, and framework for investment of funds in the Trust in Authorized Investments by the Investment Manager pursuant to Schedule “A” of this Trust Agreement.

“Member” means a person who is registered as a member of the Chippewas on the Indian Registry as maintained by Aboriginal Affairs and Northern Development Canada or by the Chippewas upon approval of a membership code, as the case may be.

“Member Payment” means the payment to Eligible Members pursuant to paragraphs 8.12 to 8.21.

“Minimum Amount” means the amount to be permanently maintained in Capital as described in Article 12.

“Purposes of the Trust” means the purposes set out in Article 4 and paragraphs 8.8 to 8.10.

“Restricted Capital” means the capital determined by the Trustees which is required to be set aside to make Member Payments as referred to in paragraphs 8.12 to 8.21.

“Settlement Agreement” means the agreement between Her Majesty the Queen in Right of Canada and the Chippewas, dated for reference the 7th day of April, 2004.

“Trust” or “this Trust Agreement” or “this Agreement” means the XY Trust Agreement.

“Trust Account” means an interest bearing account opened in a Financial Institution by the Trustees pursuant to subparagraph 6.2(a) of this Agreement.

“Trust Property” means Capital and, without limitation, all interest revenue and other income realized thereon but excluding all amounts which have been paid or disbursed therefrom whether out of income or Capital in the normal course of the administration of or pursuant to the provisions of this Trust Agreement.

“Trustee” means an Appointed Trustee, an Elected Trustee, a replacement Trustee, and those Trustees who are signatories to this amended Trust Agreement.

“Vote” means a vote conducted in accordance with the Voting Procedures.

“Voter” has the same meaning as defined in the Voting Procedures.

“Voting Procedures” means the XY Trust Voting Procedures that are attached to this XY Trust Agreement as Schedule “B”.

3. FISCAL YEAR

3.1 The Fiscal Year of the Trust shall be the calendar year.

4. PURPOSES OF THE XY TRUST

4.1 The Purposes of the Trust are the promotion of Benevolent Purposes, Economic Development and Housing for the well-being of the Beneficiaries, as described in paragraphs 8.8 to 8.10.

4.2 Subject to the provisions of this Trust, it is intended the Trust Property be held as a long-term asset for the use and benefit of the Beneficiaries.

4.3 The Trustees shall develop and implement strategic plans and policies for the management and use of the Trust Property, consistent with the Purposes set out in this Trust Agreement, and in their absolute discretion may change those strategic plans. In developing and implementing the strategic plans, the Trustees may seek expert advice on investments, taxation, strategic planning, finance and such other advice as the Trustees deem appropriate in the circumstances.

5. THE TRUSTEES

General

- 5.1 The Trustees of this Trust shall at all times be two (2) Trustees appointed by Council (“Appointed Trustees”) and five (5) Trustees elected by the Voters (“Elected Trustees”).
- 5.2 A majority of Trustees shall be resident on Reserve. .
- 5.3 Trustees shall serve terms which coincide with the terms for Council.
- 5.4 Trustees may serve more than one (1) term.
- 5.5 Members who are at least 19 years of age and who meet the following conditions are eligible to hold the office of a Trustee:
- (a) the individual must not have been removed as a Trustee within the previous twelve (12) month period;
 - (b) the individual must not be an undischarged bankrupt or insolvent, as those terms are defined in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, C. B-3, as amended or replaced from time to time;
 - (c) the individual must be eligible for bonding;
 - (d) the individual must not have unsatisfied judgments in any court;

- (e) the individual must not have been adjudged or declared to be mentally incompetent or incapable of managing his or her own affairs by a court of competent jurisdiction;
- (f) the individual has either obtained or has agreed to obtain, within the first twelve (12) months of their appointment, introductory trustee training from the National Aboriginal Trust Officers Association of Canada (NATOA) or from such successor organization or other qualified training centre that may exist from time to time;
- (g) the individual, or an entity in which the individual is a principal, must not in breach of obligations to the Trust under Article 10.0;
- (h) the individual must agree in writing to become a party to, and be bound by, the terms of this Trust Agreement and to faithfully and to the best of her abilities carry out her duties pursuant to the Trust Agreement by signing the Trustee's Certificate in Schedule "C"; and
- (i) the individual must not have been convicted of an indictable offence, or any offence, whether summary conviction or otherwise, involving theft, conversion, fraud, forgery or any other related offence under the *Criminal Code*, R.S.C. 1985 c-

46, or the *Controlled Drugs and Substances Act* 1996, c. 19 as amended or replaced from time to time, or an offence under the criminal laws of any other jurisdiction.

Current Trustees

- 5.6 Subject to paragraphs 5.11 to 5.16, the current Trustees as signatories to this amended Trust (Betsy Kechego, Kristen Hendrick, Monty McGahey II, Leslee White-Eye, G. Clinton Albert, Austin Henry and Shane Fisher) will continue to serve as Trustees until the general election of Council next following the Effective Date of this amended Trust. A current Trustee may stand for election as Elected Trustee or be appointed by Council as an Appointed Trustee.

Appointed Trustees

- 5.7 Subject to policies and procedure developed by the Trustees, following a general election for Council, and subject to paragraph 5.2, Council shall appoint two (2) Members, who may be members of Council, to be “Appointed Trustees”. Each of the Appointed Trustees shall serve a term which expires upon the next general election of Chief and Council after the date of her appointment, or until the happening of any of the events set out in paragraph 5.11, whichever first occurs.

Elected Trustees

- 5.8 Elections for Trustees shall take place at the same time as general elections for Council and generally follow the

nomination and voting procedures in place for those elections in place from time to time. The returning officer in charge of the election of Council shall also be the returning officer for the election of Trustees.

5.9 No person may stand for election as a Councillor and a Trustee at the same time.

5.10 Appeals regarding the election of Trustees shall be dealt with in accordance with the appeal procedures in place for Council elections.

Disqualification and Removal of Trustees

5.11 Subject to this Agreement, a Trustee shall serve until she:

- (a) dies;
- (b) is insolvent or declared or adjudged to be bankrupt as those terms are defined in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, C. B-3;
- (c) is charged with committing any indictable offence, or any offence, whether summary conviction or otherwise involving theft, conversion, fraud, forgery or any other related offense under the *Criminal Code*, R.S.C. 1985 c-46, or the *Controlled Drugs and Substances Act* 1996, c. 19 as amended or replaced from time to time, or an offence under the criminal laws of any other jurisdiction;

- (d) is adjudged to be mentally incompetent or incapable of managing his or her own affairs by a court of competent jurisdiction;
- (e) is required to resign by a resolution of the Trustees for failing to conduct herself in accordance with the Code of Conduct;
- (f) fails, in any twelve (12) month period, to attend three (3) meetings of the Trustees of which meetings she has received notice;
- (g) fails to disclose his or her interest in a material contract or benefit in accordance with Article 17 of this Agreement or votes on or participates in the discussion on any resolution contrary to paragraph 17.4 of this Agreement;
- (h) in the case of an Elected Trustee, is elected to Council;
- (i) resigns by delivery of a notice in writing to the other Trustees indicating an effective resignation date of not less than fourteen (14) days next following delivery; or,
- (j) fails to successfully complete the training program required under subparagraph 5.5(f);
- (k) becomes resident off-reserve in the case of a Trustee who was resident on-reserve when

appointed or elected, unless the change of residence does reduce the number of Trustees living on-reserve to less than a majority,

in which case the Trustee shall automatically cease to be a Trustee.

Vacancy and Replacement of Trustees

- 5.12 In the event that a vacancy among the Appointed Trustees occurs as a result of any of the events set out in paragraph 5.11, and subject to paragraph 5.2, Council shall appoint a replacement Trustee who meets the qualifications set out in paragraph 5.5.
- 5.13 In the event that a vacancy among the Elected Trustees occurs, and subject to paragraph 5.2, the qualified person with the next highest number of votes at the last election of Trustees who was not elected will be named as the replacement Trustee.
- 5.14 If there are no persons available for appointment under paragraph 5.13, and providing that there are at least six (6) months left in the departing Trustee's term, and subject to paragraph 5.2 the remaining Trustees may appoint a qualified Member to fill the departing Trustee's term. If there are fewer than six (6) months remaining in the departing Trustee's term, the Trustees may, in their sole discretion, determine not to appoint a replacement.
- 5.15 A replacement Trustee shall serve for the remaining term of the Trustee being replaced.

- 5.16 In the event that there should be fewer than four (4) duly appointed or elected Trustees at any time, those Trustees shall have the authority only to maintain the administration of the Trust and not to make any decisions with respect to the use of Trust Property beyond that what is necessary for administrative purposes.

Honouraria and Reimbursement of Community Trustee Expenses

- 5.17 The Trustees shall be paid honouraria for their services as Trustees and shall be reimbursed for reasonable expenses incurred in the performance of their services in accordance with the honouraria and expense reimbursement policy in place from time to time for Council. All honoraria and expenses paid must be disclosed in the annual Trust report.
- 5.18 The Trustees acknowledge that the remuneration to which the Trustees are entitled shall always be subject to review by Members and a court of competent jurisdiction.

6. DUTIES AND POWERS OF TRUSTEES

- 6.1 All Trustees, whether Elected, Appointed or replacement, have, first and foremost, a duty of loyalty to the Trust and must act in the best interests of all Beneficiaries in an even-handed manner. No Trustee is the representative of a particular constituency of the First Nation or otherwise.
- 6.2 Without in any way limiting or derogating from the powers, authorities, duties, discretions and immunities available to

the Trustees, whether under any statute or at law or otherwise, the Trustees shall exercise the following duties:

- (a) to maintain the Trust Account and other such accounts that the Trustees in their discretion may deem necessary from time to time, in a Financial Institution, for the management and investment of the Trust Property and to make such arrangements governing banking procedures as are consistent with this Agreement, including the delegation of authority to sign cheques and withdraw monies from the Trust Account to no fewer than three of the Trustees, only one of whom may be an Appointed Trustee;
- (b) to develop policies and procedures:
 - (i) for the administration of the Trust;
 - (ii) to make and amend, from time to time, such rules as the Trustees deem appropriate and reasonable to govern their procedures, provided that such rules shall not be inconsistent with this Trust Agreement or any laws which govern Trustees generally;
 - (iii) for the election and appointment of Trustees which, among other matters, ensure that a majority of Trustees reside on the Reserve lands of the Chippewas of the Thames First Nation;
 - (iv) for the filing, receiving and consideration of applications for funding

for projects which fulfil the Purposes of the Trust, including policies referred to in paragraph 8.5;

- (v) to ensure that funding for approved projects is advanced in a commercially responsible manner and with such reporting requirements by project proponents in receipt of funding as are necessary to ensure that the funds advanced are being used for the intended purpose and no other;
 - (vi) to ensure that no funds are withdrawn, invested, transferred or expended from the Trust without the requirements and obligations set out in this Agreement having first been met; and
 - (vii) to recover amounts which are not used for purposes authorized by the Trustees;
- (c) to develop a Code of Conduct for Trustees;
 - (d) to ensure safe custody of the assets of the Trust;
 - (e) to maintain the contact information for all Trustees;
 - (f) to provide orientation and training regarding the operation of this Trust to newly appointed and elected Trustees;

- (g) to obtain a conflict of interest disclosure from all agents, advisors, investment advisors, consultants, lawyers, accountants, financial institutions and any other professional advisor and service provider retained by the Trustees. Such conflict of interest disclosure shall be provided when the third party is retained and if the services are on-going, such disclosure shall be provided annually;
- (h) to appoint an auditor each year to conduct an consolidated audit of the accounts of the Trust in accordance with generally accepted auditing principles;
- (i) to maintain adequate records of all transactions affecting the Trust Property;
- (j) to maintain a copy of all Trustee resolutions;
- (k) to accept any notice that may be required to be served on the Trustees;
- (l) to pay such honouraria and disbursements as are permitted by this Agreement;
- (m) to pay Authorized Expenses first from income earned on income, if any, then from income and then from Capital;
- (n) to provide monthly statements regarding each account of the Trust to Council;
- (o) to provide Council with quarterly investment reports and post same in the administration office of the First Nation and in the Trust office;

- (p) to make available orientation and training regarding the operation of this Trust to Council after each general election;
- (q) to immediately notify the Council of any breaches of this Trust Agreement;
- (r) upon direction of Council, at the expense of the Trust, to obtain bonding or security for the due and faithful administration of the Trust and/or Errors and Omission Insurance;
- (s) to notify Council that a Trustee has ceased to be a Trustee as a result of any of the events set out in paragraph 5.11 and notify Council of the requirement to appoint a replacement Appointed Trustee when necessary;
- (t) to provide the Council with a copy of the minutes of each meeting of the Trustees, after second reading;
- (u) to provide the Council with a copy of all ledgers, registers and documents or recordings of transactions affecting the Trust Property upon request;
- (v) to respond to inquiries initiated by Council Resolution with respect to the Trust Property and management and administration thereof, as

Council may reasonably request, provided that to do so does not cause the Trustees to incur unbudgeted expenses;

- (w) to submit to Council and Members, within one hundred and twenty (120) days following the end of each Fiscal Year, an annual report and audited financial statement for the purposes of informing Council and Members about the status and expenditures of each Trust Account and whether the operation of the Trust was in compliance with the Trust Agreement;
- (x) at the request of Council, to participate in meetings of Members to review and explain the Trustees' annual report and audited financial statements and for any other purpose that Council may reasonably request;
- (y) to retain a Financial Advisor and enter into a Financial Advisor Services Agreement;
- (z) with the assistance of the Financial Advisor, to develop and amend from time to time an Investment Policy Statement which sets out the policy, objectives and framework for the investment of the Trust Property in Authorized Investments;
- (aa) within ninety (90) days of the Effective Date, in consultation with the Financial Advisor, to retain one or more Investment Managers and enter into

Investment Management Agreements which are consistent with this Trust Agreement;

- (bb) to direct the Investment Manager(s), once retained, to invest the Trust Property in accordance with the Investment Policy;
- (cc) to direct the Financial Advisor, at least once every four (4) years, or more often if reasonably necessary, to rate and report upon the quality of the Investment Manager(s)'s performance; and
- (dd) to do all such other things and execute such documents as may be required by the Trustees for the purpose of administering this Trust, all of which must be consistent with the terms of this Trust Agreement.

6.3 Without in any way limiting or diminishing the powers, authorities, duties, discretions and immunities available to the Trustees, whether under any statute or at law or otherwise, the Trustees may exercise the following powers:

- (a) to add to the Capital of the Trust Property, at such times and in such amounts as determined following Consultation with Council from time to time;
- (b) to compromise, settle and adjust any claim or demand made against the Trust or Trust Property and to institute and defend proceedings at law as

well as proceeding to the final determination thereof or compromise of the same;

- (c) to select, retain and act upon the opinion or advice of or information obtained from any lawyer, accountant, Financial Advisor, or from any other expert or professional persons and to pay the reasonable salaries, wages, fees and costs for the service of the persons or organizations so retained; and
- (d) to hire and pay the reasonable salaries of qualified staff to assist the Trustees in fulfilling the administrative and project management obligations of the Trust, provided that the Trustees have developed and posted job descriptions for any such staff.

6.4 In the event the Trustees must exercise any discretion on administrative or procedural matters not included in this Trust Agreement, the Trustees may seek independent advice as to the appropriate exercise of the discretion.

6.5 Except as determined by the Trustees pursuant to paragraph 10.6, the Trustees are not obliged or required to promote or develop projects or programs to fulfil the Purposes of the Trust.

6.6 The Trustees may, from time to time, Consult with the Beneficiaries for the purpose of seeking guidance or recommendations with respect to projects or programs to be funded by the Trust or management of the Trust.

Liability of Trustees

- 6.7 The Trustees shall have no responsibility or liability for losses to the Trust arising from:
- (a) the specific investment of Trust Property in Authorized Investments as directed by the Investment Manager(s) other than to ensure such investments directed by the Investment Manager(s) comply with the Investment Policy Statement; nor
 - (b) any loss, depreciation or damage occasioned by relying or acting upon the opinion or advice of or information obtained from any lawyer, accountant, Financial Advisor, or from any other expert or professional persons provided that it was reasonable at the time to so rely or act.
- 6.8 Provided that the Trustees have established and implemented and are enforcing policies and procedures pursuant to sub-paragraphs 6.2(b)(v) to (vii), and subject to paragraphs 8.7, 10.5 and 10.7, the Trustees are not responsible for funds once they are properly transferred to approved project proponents.

7. DUTIES AND POWERS OF COUNCIL

- 7.1 Without in any way limiting or derogating from the powers, authorities, duties, discretions and immunities available to Council, whether under any statute or at law or otherwise, Council shall exercise the following duties:
- (a) to appoint Trustees in accordance with Article 5;

- (b) to assist the Trustees in carrying out Consultations and Votes required under this Trust; and
- (c) manage projects approved by the Trustees, unless otherwise determined by the Trustees.

7.2 Without in any way limiting or derogating from the powers, authorities, duties, discretions and immunities available to Council, whether under any statute or at law or otherwise, Council shall exercise the following powers:

- (a) to require the Trustees to participate in meetings of Members to review and explain the Trustees' annual report and the audited financial statements and for any other purpose that Council may reasonably request;
- (b) to request and receive from the Trustees a copy of all ledgers, registers and documents or recordings of transactions affecting the Trust Property;
- (c) to direct the Trustees, at the expense of the Trust, to obtain bonding or security for the due and faithful administration of the Trust and/or Errors and Omission Insurance; and
- (d) upon Consultation with the Trustees to add to the Capital of the Trust Property.

8. USE OF TRUST PROPERTY

General

- 8.1 Trust Property shall be used only for the following:
- (a) for the Purposes set out in paragraphs 8.8, 8.9 and 8.10;
 - (b) to pay Authorized Expenses;
 - (c) to make Member Payments; and,
 - (d) to make Authorized Investments.
- 8.2 The Trustees shall at all times;
- (a) consider the impact of inflation on the real value of the Trust Property, and they may structure any transaction to minimize the effect of inflation as in their absolute discretion they consider appropriate; and
 - (b) seek to minimize any tax liability for the Trust and the Beneficiaries as a result of the activities of the Trust.
- 8.3 When considering which projects to approve for the Purposes set out in paragraphs 8.8, 8.9 and 8.10, the Trustees will seek to increase the benefit provided by the use of Trust Property, wherever possible, by seeking to fund projects for which there will be funding or support from other sources, or for which the Trust's contributions will create or enhance the basis for funding or support from other sources. Applicants for funding from the Trust will be expected to demonstrate that they have diligently explored and pursued other sources of funding and support, and where appropriate, to secure such other funding and support for the proposed project.

- 8.4 Despite the generality of any part of this Trust, the Trustees have absolute discretion to decide which projects and programs will be funded and the amount of funding to provide to those projects and programs to fulfill the Purposes of the Trust. They may, in their absolute discretion, provide funding or support for projects and programs based on merit, need or any other reasonable criteria set by the Trustees. In providing funding, the Trustees shall consider the advancement and protection of children, elders and persons with disabilities and shall maintain an even hand between Members who live on and off Chippewas of the Thames Territory.
- 8.5 In considering the allocation of Trust property for projects, the Trustees shall establish policies to ensure that the interests of children, elders and people with disabilities are adequately protected.
- 8.6 Except as permitted in this Agreement, the Trustees shall use Annual Income to fulfill the Purposes of the Trust.
- 8.7 All withdrawals of Trust Property from the Trust Account shall be by a decision duly documented in the minutes of a Trustees' meeting and evidenced by an executed Trustee Resolution in the form provided in Schedule "D" hereto.

Specific Uses of Trust Property

Benevolent Purposes

8.8 Subject to the terms of this Trust, the Trustees may in their absolute discretion authorize the use of Trust Property for the following purposes:

- (a) to promote the education of Members, by providing scholarships, bursaries, prizes, grants and loans for Members at all education levels (but not for tuition in private primary or secondary schools, unless for specialized programs not reasonably available in the public school system);
- (b) to promote the health of Members by paying expenses related to physical and mental health well-being not paid by government or other health plans;
- (c) to promote the health of Members in general through the development of health plans, health insurance or other coverage, and health programs, including programs of prevention, nutrition, disease control, and traditional medicine;
- (d) to promote the health of Members by purchasing equipment for health facilities that serve Members;
- (e) to provide funding for Chippewa athletes, either as individuals or as teams, for training, travel, equipment and competitions;
- (f) to purchase recreational equipment for community purposes and to maintain and repair such equipment;

- (g) to fund the construction and maintenance of recreational and cultural facilities used by members;
- (h) to fund programs that enhance Chippewa culture, language, history, tradition, music, dance and arts;
- (i) to fund research into Chippewa history, and to assist the publication of Chippewa historical, cultural or language materials;
- (j) to secure the return of Chippewa cultural artifacts, historic documents, and human remains and associated funerary objects from museums and other institutions;
- (k) to fund the research, development, negotiation and litigation of Chippewa rights and claims;
- (l) to provide assistance and relief to Members in the event of natural or other disasters, including but not limited to fire, flooding, high winds or drought;
- (m) to supplement the ZhoonyaNaadmoc-gitzijig fund for elderly Members; and,
- (n) to pay for basic grave memorials for Members.

Economic Development

- 8.9 Subject to the terms of this Trust, the Trustees may in their absolute discretion authorize the use of Trust Property for the following purposes:
- (a) to support First Nation economic development programs which focus on the creation of Beneficiary-owned, controlled and operated businesses on such terms as the Trustees deem are appropriate; and
 - (b) to assist Beneficiaries to establish or acquire an interest in a business.

Housing

- 8.10 Subject to the terms of this Trust, the Trustees may in their absolute discretion authorize the use of Trust Property for the following purposes:
- (a) to assist Beneficiaries in creating opportunities to purchase and build homes for the personal use of Members;
 - (b) to assist Beneficiaries in repairing or renovating their homes, including making them more accessible for the disabled or elderly; and
 - (c) to work with the Chippewas housing authority in the development and implementation of programs to assist with the housing needs of Members.

8.11 Prior to allocating Trust Property for Housing, the Trustees shall develop a strategic plan for the funding of this Purpose, taking into account the needs of all Members.

Member Payment

8.12 To help to alleviate the pain and suffering of Members felt over the generations as result of the injury to their rights and property resulting from the Clench Defalcation and the government misconduct that followed it, the Trustees shall make a single cash payment in the amount of One Thousand Five Hundred Dollars (\$1,500), adjusted as provided herein, from Restricted Capital, and not income, to each Eligible Member.

8.13 The Trustees shall, within 90 days of the execution of this amended Trust, calculate the number of Members who are eligible for a Member Payment and thereafter identify the amount of Capital required to make all Member Payments, and hold the same as Restricted Capital. Such amount shall include accrued interest earned from November 26, 2004 to July 31, 2013 as calculated under paragraphs 8.14 or 8.16, as applicable.

8.14 The total Member Payment payable to Eligible Members who are at least 21 years of age on the Effective Date will be as follows:

(a) \$1500, plus

(b) an adjustment for interest at the rate of 3.25 % calculated annually from November 26, 2004 to July 31, 2013; plus

- (c) an adjustment on the total of (a) and (b) based on the CPI, calculated annually, from August 1, 2013 to the date of payment.

8.15 Where an Eligible Member is a minor on the Effective Date, the Member shall be entitled to receive her Member Payment on the happening of the following events:

- (a) on the Eligible Member's eighteenth birthday, providing she has graduated from high school;
- (b) if she has not graduated from high school, on her twenty-first birthday; and,
- (c) if she graduates from high school after her eighteenth birthday but before her twenty-first birthday, on the day of her graduation from high school, as soon as practicable thereafter.

8.16 Eligible Members who are entitled to a Member Payment under paragraph 8.15 will receive a total Member Payment calculated as follows:

- (a) \$1500, plus
- (b) an adjustment for interest at the rate of 3.25 % calculated annually from November 26, 2004 to July 31, 2013; plus
- (c) an adjustment on the total of (a) and (b) for interest earned from August 1, 2013 at a rate that is equal to the overnight interest rate as published by the Bank of Canada on December 31 of the

previous fiscal year, plus 1.5%, until the Member graduates from high school and attains the age of 18 years or attains the age of 21 years, as the case may be; plus

- (d) an adjustment on the total of (a), (b) and (c) based on the CPI, calculated annually, from the date the Eligible Member graduates from high school and attains the age of 18 years or attains the age of twenty-one (21) years, as the case may be.

8.17 Subject to paragraphs 8.18 and 8.20, where the Trustees do not have an address for an Eligible Member who otherwise qualifies for a payment pursuant to this Part, the Member Payment payable to her shall be retained by the Trustees in Restricted Capital. If the Trustees locate the Member, they will send the Member the payment calculated in accordance with paragraphs 8.14 or 8.16, whichever applies.

8.18 Where an Eligible Member to whom paragraph 8.14 applies has not been located by November 26, 2024, or has not come forward to claim her Member Payment, that Eligible Member, and her heirs, successors and assigns, shall forever forfeit all rights to that Member Payment and the amount to which the Member would have been entitled shall be removed from Restricted Capital and returned to the Trust Account.

8.19 Where an Eligible Member to whom paragraphs 8.15 and 8.16 apply has not been located within ten (10) years after the Member attains the age of twenty-one (21) years, or has not come forward to claim her Member Payment, that Eligible Member, and her heirs, successors and assigns,

shall, as of the 10th anniversary of her attaining the age of twenty-one (21) years, forever forfeit all rights to that Member Payment and the amount to which the Member would have been entitled shall be removed from Restricted Capital and returned to the Trust Account.

8.20 Where an Eligible Member dies before receiving her Member Payment, and providing the entitlement has not been extinguished under paragraphs 8.18 or 8.19, the Trustees will pay the Member Payment calculated in accordance with 8.14 or 8.16, as the case may be, to the estate of the deceased Eligible Member. If the Eligible Member died intestate (without a Will), the Member Payment will be paid in accordance with provision of the *Indian Act* dealing with distribution of property on intestacy. The Trustees may request whatever documentation they deem appropriate to establish entitlement to the payment. Any person receiving payment on behalf of a deceased Member pursuant to this paragraph may be required to sign a release and an indemnity in favour of the Trust and the Beneficiaries.

8.21 For greater clarity:

- (a) Member Payments are payments from Capital; and
- (b) only Eligible Members who have not received Member Payments as of the Effective Date of this amended Trust are entitled to Member Payments after the Effective Date.

Authorized Expenses

- 8.22 The Trustees may in their absolute discretion use Trust Property to pay Authorized Expenses. Authorized Expenses shall be paid first from income earned on income if any, then from income and then from Capital.

9. ANNUAL INCOME

- 9.1 “**Annual Income**” means the greater of:

- (a) all of the income earned by the Trust in a Fiscal Year determined without reference to the provisions of subparagraph 104 of the *Income Tax Act* (Canada), which amount shall, in accordance with the provisions of this Trust, become payable irrevocably to the Beneficiaries as at December 31st in the same Fiscal Year; and,
- (b) subject to the development and implementation of the Investment Policy Statement, the amount calculated as three (3%) per cent of the market value of the Authorized Investments as held in the Trust Accounts as of December 31st as determined by the Trustees in accordance with generally accepted accounting principles.

- 9.2 Expenditures of Annual Income in excess of the amount calculated in 9.1(a) shall be paid by way of an interest-free loan from the Capital.

9.3 The Trustees are obligated to repay the loan referred to in 9.2 from net realized capital gains and, at their discretion, may set off such repayment against such net realized capital gains in any Fiscal Year.

10. PROCEDURES FOR USE OF ANNUAL INCOME – PURPOSES OF THE TRUST AND AUTHORIZED EXPENSES

10.1 Each fiscal year, and subject to paragraph 10.2, the Trustees shall allocate Annual Income to be spent by the Trustees in accordance with the procedures set out in this Article.

10.2 The Trustees shall prepare a budget identifying amounts required for Authorized Expenses and any multi-year projects which have been previously approved.

10.3 Allocation of Annual Income for projects to fulfil the Purposes of the Trust will be done by the Trustees on a project by project basis. The Trustees will develop policies and procedures for filing, receiving and considering applications for funding projects. Such policies and procedures shall be based upon the following and shall be published on the Trust’s website:

- (a) Council, an entity of the First Nation and any Member of the Chippewas (“project proponent” or “proponent”) may make a proposal for the use of Trust Property. The proponent may present the proposal in writing, orally at a meeting of the Trustees, or both. However, if the Trustees create an application process for proposals, that process

shall be used for submitting proposals. The Trustees may request additional information in such form and content as they determine is necessary for a full understanding of the proposal. All costs of the application process are those of the project proponent;

- (b) the Trustees may initiate proposals themselves and may solicit proposals from Council, an entity of the First Nation or Members;
- (c) the Trustees are entitled to rely on advice of such advisors as they deem appropriate when deciding whether to approve a proposal;
- (d) the Trustees shall have absolute discretion with respect to the allocation of any amount up to one hundred thousand dollars (\$100,000) towards a single proposal;
- (e) where the proposed project or program will require more than one hundred thousand dollars (\$100,000) from the Trust but less than two hundred thousand (\$200,000), the Trustees shall consult with Council with respect to the proposal;
- (f) where the proposed project or program will require in excess of two hundred thousand dollars (\$200,000) from the Trust, the Trustees shall consult with the Members with respect to the proposal; and

- (g) the Trustees may, in their discretion, request a business plan for a proposal up to one hundred thousand dollars (\$100,000) from the Trust, but shall require a business plan for any proposal in excess of one hundred thousand (\$100,000).

10.4 Trustees may approve multi-year projects and once such approval has been given, and subject to paragraph 10.8, the commitment shall be binding on future Trustees unless the Trustees and the proponent agree in writing to a modification or cancelation of the previously approved project.

10.5 The Trustees shall not pay or transfer any funds for a project until:

- (a) the project proponent has, in respect of any amount previously advanced by the Trustees, fulfilled its obligations under this Trust, any agreement entered into with the Trustees and any other conditions imposed by the Trustees in respect of those amounts;

- (b) the Trustees and the project proponent have entered into such written agreements as are required to ensure that the Trust Property is used only for the approved project and is advanced in a commercially responsible manner;

- (c) the Trustees are satisfied that the primary focus of the project fulfils at least one (1) Purpose of the Trust;

- (d) the Trustees are satisfied that the project will be undertaken in accordance with all laws and regulations which apply to the project; and
 - (e) the requirements of paragraph 8.7 have been met.
- 10.6 Approved projects shall be managed by Council or a project manager on behalf of the Trust or the project proponent as determined by the Trustees. Project approvals will include the cost of project management as determined by the Trustees and will be paid as Authorized Expenses.
- 10.7 The Trustees shall require project proponents in receipt of funding from the Trust, to provide a written report detailing the use and allocation of funding received from the Trust within sixty (60) days of the completion of the project and as otherwise required by the Trustees. Proponents of multi-year projects in receipt of funding from the Trust shall report at least annually and as otherwise required by the Trustees.
- 10.8 A commitment to fund any project may be cancelled or modified if the project manager or project proponent fails to fulfill any condition of the funding, including the requirement to report in accordance with paragraph 10.7.
- 10.9 For greater certainty, the requirement to pay out an amount equal to Annual Income shall not be dependent on the maintenance of the Minimum Amount.

11. PLEDGING OF ANNUAL INCOME

- 11.1 The Trustees may pledge or assign Annual Income multi-year projects or for security for a loan for multi-year

projects which fulfill Purpose of the Trust, subject to the following:

- (a) amounts of Annual Income not exceeding 25% of the Annual Income each year, to an annual maximum of one hundred and twenty-five thousand dollars (\$125,000.00), may be pledged or assigned for a period not longer than 10 years, providing that the Trustees have consulted with the Council and the Members prior to pledging or assigning the Annual Income; and
- (b) a pledge or assignment of Annual Income beyond either or both of the limits referred to in (a) shall only be permitted when approved by 50% plus one of the Members who cast a vote in a Vote conducted in accordance with the Voting Procedures, provided that at least 20% of the Members on the Voters List cast a ballot.

12. MINIMUM AMOUNT

- 12.1 A permanent amount of fifteen million dollars (\$15,000,000.00), plus any contributions to Capital, so designated by Council and the Trustees adjusted for inflation, as measured by the Consumer Price Index published by Statistics Canada, referred to as the "Minimum Amount", shall be maintained as Trust Property for the duration of this Trust. Restricted Capital shall not be included in the calculation of the Minimum Amount.
- 12.2 The Trustees shall calculate the Minimum Amount annually and whenever a Capital Encroachment is considered.

12.3 If the total value of the Capital falls below the Minimum Amount, and after the repayment of all loans referred to in paragraphs 9.2 and 9.3, the Trustees will make contributions to Capital from the net realized capital gains, when realized, to increase the value to at least the Minimum Amount.

13. CAPITAL ENCROACHMENTS

13.1 The Trustees may encroach on Capital to fund projects which fulfill the Purposes of the Trust, subject to the following:

- (a) Capital in the Trust, exclusive of Restricted Capital, at the time of request must be at least equal to 115% of the Minimum Amount plus the amount of the requested Capital Encroachment (the amount by which Capital is in excess of 115% of the Minimum Amount is the “Encroachable Capital”);
- (b) Capital Encroachments up to an aggregate amount of one hundred fifty thousand dollars (\$150,000) of the Encroachable Capital in any one year may be made provided that the Trustees have consulted with Council and the Members regarding the proposed use of funds and have entered into the records of the Trust the fact that the consultation has taken place; and
- (c) Capital Encroachments in excess of an aggregate of five hundred thousand dollars (\$500,000.00) of the Encroachable Capital in any one year may be made provided that the request has been

approved by 50% plus one (1) of the Voters who cast a ballot in a Vote conducted in accordance with the Procedures set out in Schedule B hereto, provided that at least 20% of Members entitled to vote cast a ballot

- 13.2 In lieu of a Capital Encroachment, upon having obtained the advice of the Financial Advisor and legal counsel, the Trustees may pledge Trust Property for security for a loan for a multi-year project which fulfills a Purpose of the Trust, provided that the aggregate amount so pledged together with Capital Encroachments during the year does not exceed the limits set out in this Article, and in all other respects, the provisions of this Article apply to such pledges as though they were Capital Encroachments.
- 13.3 Amounts referred to in 9.2 and 9.3 are not Capital Encroachments.

14. ADDITIONS TO CAPITAL

- 14.1 Council may from time to time upon Consultation with the Trustees, add funds to the Capital of this Trust.
- 14.2 When adding Capital, Council and the Trustees shall determine what amount of the additional Capital will be allocated to increasing the Minimum Amount, and paragraph 12.1 shall be amended accordingly.
- 14.3 If a ratification vote by the Members with respect to a settlement of a claim includes a direction to use any portion of the funds in that settlement for a specific Purpose(s), the Trustees are bound to use proceeds from that settlement added to Capital for the Purpose(s) so

specified.

15. AUTHORIZED INVESTMENTS & INVESTMENT MANAGERS

- 15.1 Within ninety (90) days of the effective date of this Trust, the Trustees shall, in consultation with the Financial Advisor, retain one or more Investment Managers and enter into Investment Management Agreements which are consistent with this Trust Agreement.
- 15.2 The Investment Manager shall review the terms of the Trust Agreement, the Investment Policy Statement and shall agree in writing to be bound by the Trust Agreement and the Investment Policy as amended from time to time.
- 15.3 The Trustees shall delegate the authority to make decisions on the types and timing of the purchase and sale of Authorized Investments to the Investment Manager(s).
- 15.4 The Investment Manager(s) shall provide a quarterly report to the Trustees documenting the investments held and the rate of return and confirming that the investments acquired with funds from the Trust Accounts comply with Schedule "A" and the Investment Policy.
- 15.5 The Trustees, in consultation with the Financial Advisor, shall satisfy themselves that the investment of Trust Property by the Investment Manager(s) complies with Schedule "A" and the Investment Policy and will notify the Investment Manager(s) of any non-compliance. The Trustees shall request from the Investment Manager(s) a

written plan to correct the non-compliance and the Trustees shall monitor the plan to ensure compliance.

- 15.6 Until the Investment Policy has been developed, the Trustees shall be permitted to purchase only those Authorized Investments listed in Part A of Schedule "A".

16. CONDUCT OF MEETINGS

- 16.1 The conduct of all meetings of the Trustees shall be governed by the following:
- (a) a quorum for meetings of Trustees shall be four (4) Trustees;
 - (b) subject to paragraph 16.2, the Trustees may hold meetings where some of the Trustees may be present or may participate by telephone or other telecommunication facility which permits each Trustee to communicate with all other Trustees;
 - (c) at the first meeting held in each year, the Trustees shall choose a Chairperson and a Vice-Chairperson from among the Trustees. The Chairperson is responsible for scheduling Trustee meetings, giving notice of meetings, recording and preparing meeting minutes and Trustee resolutions, and other such tasks in connection with the meetings of Trustees. The Vice-Chairperson shall assist the Chairperson in fulfilling these duties and, in the absence of the Chairperson, shall act as the Chairperson;

- (d) all decisions and actions of the Trustees shall be made by consensus where possible, by majority vote where consensus cannot be obtained and in the event of a tie vote, the Chair shall have a second or deciding vote;
- (e) minutes of decisions taken at all Trustee meetings shall be recorded in writing by the Chair or her delegate and shall be presented and accepted or amended as appropriate at the following meeting of the Trustees;
- (f) Trustees shall meet at least once every three (3) months;
- (g) the Chair of the Trust shall have the right to call such additional meetings of the Trustees as she decides are necessary. A majority of the Trustees shall also have the right to call a meeting of the Trustees provided that notice has been given in accordance with 16.1(h);
- (h) any meeting of the Trustees requires thirty (30) days advance written notice of the place, date and time of every meeting to be given to all Trustees unless all Trustees agree in writing to shorter notice; and
- (i) the Trustees may act either by an instrument in writing signed by the majority of the Trustees outside of a meeting, or by a resolution passed by a majority thereof at a meeting by telephone or other telecommunication facility and decisions or acts of the Trustees in such circumstances shall, for all purposes of this Trust, be deemed the

decision or act of the Trustees. Every deed or instrument of every nature executed by the Trustees in accordance with this Article shall, for the time being in office, be as valid, effectual and binding as if executed by all.

- 16.2 All meetings of the Trustees shall take place on Chippewas of the Thames Territory, unless it is impractical or to do so would contravene community standards.

17. CONFLICT OF INTEREST

- 17.1 In this part, “related by blood or marriage” means a known familial relationship with another person. Unless the contrary is demonstrated, it will be presumed that a familial relationship exists between a Trustee and the following persons: common law or lawful spouse, son, daughter, brother, sister, grandparent, aunt, uncle, first cousin, foster parent, foster child, adopted child, step-child and step-parent.

- 17.2 A Trustee who:

- (a) is a party or is related by blood or by marriage to a party to a material contract or a proposed project or to a proposed material contract of the Trust; or,
- (b) is a director, officer, partner, principal, sole proprietorship or employee or is related by blood or marriage to such a person where the company, partnership, sole proprietorship or related business is a party to a material contract or a

proposed project or proposed material contract ;
or,

- (c) is a member of a Board, Commission or Tribunal of the Chippewas of the Thames which is a party to a material contract or proposed project or proposed material contract; or
- (d) has a relationship to a party to a material contract which may reasonably give rise to a perception of a conflict of interest,

shall disclose in writing to the Trustees and request to have entered into the minutes of a meeting of Trustees, the nature and extent of his or her interest.

17.3 The disclosure shall be made:

- (a) at a meeting at which a proposed contract or benefit is first considered by the Trustees;
- (b) if the Trustee was not then interested in a proposed contract or benefit, at the first meeting after the Trustee becomes so interested;
- (c) if the Trustee becomes interested after a contract or benefit is made, at the first meeting after the Trustee becomes so interested; or,

- (d) if a person who is interested in a contract or benefit later becomes a Trustee, at the first meeting after the person becomes a Trustee.
- 17.4 A Trustee described in subparagraph 17.2 shall not participate in any discussion of the proposed contract or benefit and shall not vote on any resolution to approve the contract or benefit.
- 17.5 A material contract or benefit involving this Agreement between the Trustees and one (1) or more of the Trustees, or between the Trustees and a company or organization of which one (1) or more of the Trustees is a partner, shareholder, employee or employee of a related company, director or officer, or in which one (1) or more of the Trustees has a material interest, is neither void nor voidable by reason of that relationship or by reason only that a Trustee with an interest in the contract or benefit is present at or is counted to determine the presence of a quorum at a meeting of Trustees that authorized the contract or benefit if the Trustee disclosed his or her interest as required above and the contract or benefit was approved by the Trustees and was reasonable and fair to members of the First Nation at the time it was approved.
- 17.6 The Trustees may find a Trustee to be in a Conflict of Interest where that Trustee fails to self-disclose a Conflict of Interest, and where the failure to disclose is determined to be done knowingly, the Trustee shall be removed as a Trustee.
- 17.7 If a Trustee fails to disclose a Conflict of Interest and thereby benefits personally, that Trustee is liable to return

to the Trust Property any financial gain made as a result of that failure to disclose such a Conflict of Interest.

- 17.8 It shall not be considered a breach of a Trustee's responsibility if that Trustee carries on a business which competes with any business that the Trust carries on or invests in, or if that Trustee, directly or indirectly, owns, acquires or disposes of shares or securities in any corporation in which the Trust also owns shares or securities.
- 17.9 If a dispute arises as to the existence of a conflict which the Trustees are unable to resolve on their own, then the Trustees shall seek independent legal advice on how to resolve the matter.
- 17.10 The Financial Advisor, Investment Manager(s) and all other advisors and consultants ("advisors") who provide advice to the Trust must provide a written statement to the Trustees within sixty (60) days of the start of each Fiscal Year outlining any conflict of interest or potential conflict of interest that has or might arise due to other services offered by the advisor or any of its related companies or entities and this written statement shall be entered into the minutes and presented at the next meeting of Trustees. The advisors shall forthwith report an actual or potential conflict of interest which arises and of which the Trustees were not previously informed.

18. DURATION AND TERMINATION OF THE TRUST

- 18.1 Because Ontario law contains a “rule against perpetuities” which limits how long a trust can last, this Trust, unless terminated sooner according to the provisions of this Article, shall terminate twenty (20) years after the death of the last surviving Member who was alive at the date the Clench Fraud Trust originally came into effect (November 26, 2004).
- 18.2 In the event that the Trust terminates due to the application of the *Perpetuities Act of Ontario*, the Trust property shall be paid to the the Chippewas of the Thames First Nation on behalf of the Beneficiaries.
- 18.3 The Trust may be terminated, other than pursuant to paragraph 18.2, upon the following conditions:
- (a) the Trustees shall prepare a plan detailing how the Trust Property will be resettled or transferred for the use and benefit of the Beneficiaries;
 - (b) the plan must be approved by 50% + 1 of the Voters who cast a vote in a Vote, provided that at least 25% of the Voters entitled to vote cast a ballot ; and,
 - (c) upon receipt of a Council resolution advising the Trustees of the approval of the plan under subparagraph 18.3(b) for use of the Trust Property, the Trust Property shall be transferred by the Trustees pursuant to the provisions of the plan.

18.4 Within three months after the termination of the Trust, the Trustees shall prepare a final report of the Trust's activities, purchases and financial dealings, and shall deliver that report to the Council, along with the records, account books and other documents of the Trust.

19. PROHIBITIONS AND PROTECTIVE MEASURES

19.1 No Trust Property shall be applied or distributed by the Trustees or, if received by a Beneficiary, used by a Beneficiary, directly or indirectly:

(a) to pay the debt or operational deficit of the First Nation; or

(b) to make a per capita distribution to any Member except as provided in paragraphs 8.12 to 8.21.

19.2 Except as provided for in Articles 11.0 and 13.0, the Trustees shall not mortgage, pledge, assign, encumber or grant a security interest of any kind whatsoever against the Trust Property.

20. AMENDMENTS

20.1 There shall be no amendment to this Trust except as expressly provided herein.

20.2 For greater certainty, there shall be no amendment respecting:

(a) the Beneficiaries of this Trust; or

(b) Article 20 regarding Amendments.

Administrative Amendments

20.3 Amendments required:

- a) as a result of changes in law;
- b) as a result of changes in the status of the Beneficiaries;
- c) to protect the Trust or the Beneficiaries from taxation;
- d) to address clerical matters;
- e) to improve the administrative efficiency of the management of this Trust; or
- f) because of a change of the address(es) for Notice under Article 21,

may be made by the Trustees upon resolution and after notice to Council of the intended amendment and the reasons therefor.

Other Amendments

- 20.4 Subject to paragraph 20.6, amendments with respect to Article 4 (Purposes of the XY Trust), Article 6 (Duties and Powers of the Trustees), Article 7 (Duties and Powers of Council), Article 8 (Use of Trust Property), Article 9 (Annual Income), Article 10 (Procedures for Use of Trust Property – Purposes of the Trust and Authorized Expenses), Article 12 (Minimum Amount), Article 13

(Capital Encroachments), Article 15 (Authorized Investments and Investment Managers), Article 18 (Duration and Termination of the Trust), and Article 19 (Prohibitive and Protective Measures) shall require approval of 50% plus one (1) of the Voters who cast a ballot in a Vote conducted in accordance with the Voting Procedures, provided that at least 25% of the Members entitled to vote cast a ballot.

- 20.5 Amendments with respect to Article 5 (The Trustees), Article 16 (Conduct of Meetings), Article 17 (Conflict of Interest), Article 22 (General) and the Voting Procedures (except as provided in paragraph 20.9) shall require approval of 50% plus one (1) of the Voters who cast a vote in a vote conducted in accordance with the Voting Procedures, provided that at least 10% of the Members entitled to vote cast a ballot.
- 20.6 Amendments to paragraphs 10.3(d) to (g), 11.1(a), 12.1, 13.1(b) and (c) and to reflect the impact of inflation on the amounts referred to in those paragraphs may be made in accordance with paragraph 20.5.
- 20.7 Prior to a Vote to amend this Trust Agreement, the Trustees shall:
- (a) obtain a written opinion from legal counsel explaining the legal implications and benefits of the proposed amendment(s) and how the amendment alters the entitlement or obligations of the parties hereto, including the beneficial interests of the Chippewas and the Purposes of the Trust;

- (b) obtain a written opinion from the Financial Advisor explaining the financial implications, if any, of the proposed amendment(s); and,
- (c) having obtained such opinions, consult with the Beneficiaries with respect to the amendment(s).

20.8 Amendments under paragraph 20.3 may be initiated at any time. No amendments under paragraphs 20.4, 20.5 and 20.6 shall be initiated within the first two (2) years after the effective date of this amended Trust.

20.9 If technology advances to the point that a referendum could be cost effectively performed over the Internet, or in some other fashion, then an amendment to the Voting Procedures to accommodate that would constitute an Administrative Amendment.

20.10 The termination or revocation of the Trust shall not be considered an amendment of the Trust; termination of this Trust is governed by Article 18.

21. NOTICE

21.1 Notices under this Trust Agreement to the Trustees are effective if delivered personally, by facsimile, or by regular mail as follows:

XY Trust Office
641 Jubilee Road
Office B
Muncey, ON N0L 1Y0

Telephone: (519) 264-2626
Facsimile: (519) 264-2628,

or at such other place on Reserve as the Trustees shall determine and advise from time to time.

22. GENERAL

- 22.1 The Trustees and Council confirm that they have received and reviewed this Trust Agreement prior to executing same.
- 22.2 Where there is a conflict between this Trust Agreement and any other agreement with respect to the Trust Property, the terms of this Trust Agreement will prevail to the extent of the inconsistency.
- 22.3 This Trust Agreement represents the entire agreement amongst the Parties and there are no other terms, conditions, or agreements respecting the subject matter of this Trust Agreement other than as specifically stated.
- 22.4 This Trust Agreement will be interpreted and enforced in accordance with the laws of the Province of Ontario.
- 22.5 This Trust Agreement enures to the benefit of and is binding upon the Parties and their respective heirs and successors.
- 22.6 No amendment to the terms and conditions of this Trust Agreement will be valid and binding on the parties unless done so in accordance with Article 20, is made in writing,

and except as provided for in paragraph 20.3, is signed by an authorized representative of each of the Parties.

- 22.7 No provision of this Trust Agreement will be deemed to be waived unless such waiver is in writing. Any waiver of any default committed by any of the Parties hereto is limited to such default and will not extend to any other default.
- 22.8 This Trust Agreement is not assignable.
- 22.9 The division of this Trust Agreement into articles, paragraphs, subparagraphs and clauses and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Trust Agreement.
- 22.10 Unless otherwise specified, words importing the singular included the plural and vice versa, and words importing gender include all genders.
- 22.11 All accounting terms not otherwise defined herein have the meanings generally assigned to them, and all calculations will be made and all financial data to be submitted will be prepared, in accordance with the generally acceptable accounting principles in effect in Canada, including, without limitation, those approved or recommended from time to time by the Canadian Institute of Chartered Accountants, or any successor institute, applied on a consistent basis.
- 22.12 All dollar amounts referred to in this Trust Agreement are in lawful money of Canada.

- 22.13 Where there is a reference to a sum of money (eg, \$125,000.00), the amount so referenced shall be adjusted annually for inflation as measured by the Consumer Price Index published by Statistics Canada.
- 22.14 The Voting Procedures of the First Nation will apply to votes required under this Trust, modified as the circumstances may require as determined by the Trustees.
- 22.15 A reference to a statute includes every amendment to it, every regulation made under it, and any law enacted in replacement of it.
- 22.16 It is intended that all the provisions of this Trust Agreement will be fully binding and effective between the Parties, but in the event that any particular provision or provisions or part of one is determined by a court of competent jurisdiction to be void, voidable, or unenforceable for any reason whatever, then the particular provision or provisions will be deemed severed from the remainder of this Trust Agreement and all other provisions will remain in full force.
- 22.17 No Party will be held responsible for damages caused by delay or failure to perform its obligations under the terms of this Trust Agreement when then delay or failure is due to fires, strikes, floods, acts of God, civil insurrection, lawful acts of public authorities, or delays or default

caused by common carriers, which cannot reasonably be foreseen or provided against.

22.18 Any Party to this Trust Agreement may apply to a court of competent jurisdiction for advice and direction regarding any question relating to the scope and extent of the powers conferred herein.

22.19 Each Party will, at any time and from time to time, upon request by any other Party, execute and deliver such further documents and do such further acts and things as the other Party may reasonably request to evidence, carry out and give full effect to the terms, conditions intent, and meaning of this Trust Agreement.

22.20 The administrative office of the Trust shall be on the Reserve lands of the Chippewas of the Thames First Nation.

AND FURTHERMORE IN WITNESS WHEREOF the Chippewas as represented by Chief and Councillors, for themselves and on behalf of the First Nation, have executed this Trust Agreement under their respective hands this _____ day of _____, 2014, on the lands of Chippewas of the Thames First Nation, in Ontario.

Approved and passed at a duly convened meeting of the Council of the Chippewas of the Thames First Nation this _____ day of _____, 2014.

Witness

Chief

Witness

Councillor

Witness

Councillor

Witness

Councillor

Witness

Councillor

Witness

Councillor

Witness

Councillor

AND FURTHERMORE IN WITNESS WHEREOF the Trustees have executed this Trust Agreement under their respective hands this _____ day of _____, 2014, on the lands of the Chippewas of the Thames First Nation, in Ontario.

Approved and passed at a duly convened meeting of the Clench Fraud Trust, now known as the XY Trust, this _____ day of _____, 2014.

Witness

Trustee

Witness

Trustee

Witness

Trustee

Witness

Trustee

Witness

Trustee

Witness

Trustee

Witness

Trustee

SCHEDULE "A"

AUTHORIZED INVESTMENTS

PART I

1. Debt instruments issued or guaranteed by the government of Canada, a Province of Canada, or a Municipality of Canada, or mutual or pooled funds investing in these debt instruments, all of which shall have a term not exceeding three (3) years.

2. Debt instruments issued or guaranteed by any of the following chartered bank including bankers' acceptances:

Bank of Montreal;
Royal Bank of Canada;
Canadian Imperial Bank of Commerce;
Toronto-Dominion Bank;
National Bank of Canada, and,
Bank of Nova Scotia;

Including mutual or pooled funds thereof investing in these debt instruments, all of which shall have a term not exceeding three (3) years.

3. Mortgage backed securities guaranteed by the government of Canada, an agency of the Government of Canada, or one of the above chartered banks, including mutual or

pooled funds thereof investing in these securities, all of which shall have a term not exceeding three (3) years.

4. Commercial paper issued by corporations rated R-1 or A-1 by the Dominion Bond Rating Services or Standard and Poors Bond Rating Services including mutual or pooled funds thereof investing in commercial paper, all of which shall have a term not exceeding three (3) years.
5. Corporate bonds rated A or better by the Dominion Bond Rating Services or Standards and Poors Bond Rating Services including mutual or pooled funds thereof investing in these corporate bonds, all of which shall have a term not exceeding three years.

PART II

Upon The development and implementation of an Investment Policy, any investment that complies with the Prudent Investor/Prudent Portfolio Standard but not limited to common or preferred shares and any or all other debt or equity-like instruments, including derivatives, which take into consideration the following factors:

- 1) General economic conditions;
- 2) The possible effect of inflation or deflation on the investment;

- 3) The expected tax consequences of investment decisions or strategies;
- 4) The role that each investment or course of action plays within the overall trust portfolio;
- 5) The expected total return from Income and appreciation of capital;
- 6) The needs for liquidity, regularity of Income, and preservation or appreciation of capital; and,
- 7) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the Beneficiaries.

SCHEDULE "B"

TRUST VOTING PROCEDURES

1. Every person who is eligible to vote in an election for the Council of the Chippewas of the Thames is eligible to vote in an election for the Trustees of the Clench Fraud Trust.
2. The rules for the nomination and election of trustees of the Clench Fraud Trust shall be the same as the rules for an election of the Council of the Chippewas of the Thames, except that where the rules governing council elections specify a power is to be exercised by the Minister of Indian Affairs or his appointee, that power will be exercised by the Chief of the Chippewas of the Thames or his appointee, and the officer who shall conduct the vote shall be appointed by the Council, by Resolution.
3. Nominations and voting for the trustees of the Clench Fraud Trust shall take place at the same time and place as nominations and voting in the election for Chippewas of the Thames.
4. Appeals in connection with any Vote for the trustees of the Clench Fraud Trust shall be made in accordance with the procedures set out in a policy for appeals.
5. If any addition or clarification of these rules is required before the election of the trustees, following the approval of the XY agreement, the addition or clarification shall be made by the Council of Chippewas of the Thames, by Resolution.

Schedule "C"

Trustee Certificate

I, _____, of _____, being duly appointed/elected as a Trustee of the XY Trust ("the Trust"), do hereby agree that as such, I am a party to the Trust Agreement, that I am bound by its terms and that I will faithfully and to the best of my abilities carry out my duties pursuant to the Trust Agreement.

Date

Witness

Trustee

SCHEDULE "D"

TRUSTEES' RESOLUTION

A duly convened and authorized meeting of the Trustees of the XY Trust was held on the ___ day of _____, 2____.

It was attended by: (set out the names of the Trustees attending the meeting)

Pursuant to (Article, paragraph, sub-paragraph) _____ and being satisfied that all requirements of the Trust related to the decision have been fully and properly completed and documented, the originals of such documents having been tabled, reviewed by the Trustees and recorded as part of this Resolution, the Trustees resolved to authorize the following; (set out in detail the resolution of the Trustees).

Trustee _____
Trustee _____
Trustee _____
Trustee _____
Trustee _____
Trustee _____
Trustee _____