

# The Lorne and Elsie Hankinson Charitable Trust Foundation

THIS DEED OF SETTLEMENT is made in duplicate as of the 8th day of November 2004 between Lorne Hankinson and Elsie Hankinson of the City of Brantford in the Province of, Ontario (hereinafter called the "Settlor or Settlers"), and Elwood Flynn and Lorne Hankinson and Elsie Hankinson and Dr. Andrew Trevor and Kenneth Patrick Lefebvre all of the city of Brantford or of the County of Brant in the Province of Ontario (hereinafter referred to as "Trustees").

WHEREAS the Settlor wishes to establish an exclusively charitable trust and has transferred to the Trustees the property set forth in the Schedule hereto, all of which is to be held by the Trustees upon the trusts and with and subject to the powers and provisions hereinafter declared and contained;

NOW THEREFORE THIS DEED WITNESSES THAT in consideration of the premises and of the mutual covenants and agreements herein contained, it is hereby covenanted and agreed by and between the parties hereto as follows:

## 1. Interpretation

1.1 **Meanings of terms.** In this Deed, the following terms shall be interpreted in accordance with the following rules:

- (a) "*Income Tax Act*", or any reference to a specific provision or specific provisions thereof, shall mean the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended, or such provision or provisions, as the case may be, as amended from time to time, or any legislation of the Parliament of Canada from time to time in force of like or similar effect, and any legislation of any legislature of any province of Canada, from time to time in force of like or similar effect;
- (b) "Objects of the Settlement" shall mean such of the following objects which are by law exclusively charitable:
  - (i) the relief of poverty;
  - (ii) the advancement of education;
  - (iii) the advancement of religion; and
  - (iv) the advancement of other charitable purposes which benefit the community as a whole;provided that, for greater certainty, if it should be determined that any one or more (but not all), of the above-mentioned objects are not by law exclusively charitable they shall cease to be Objects of the Settlement;
- (c) "Charitable Person" means any exclusively charitable institution, foundation, corporation, organization or unincorporated association whose objects are confined to the Objects of the Settlement and which is a "qualified donee" as that term is defined in the *Income Tax Act*;

- (d) "person" shall (where the context so permits) include any individual, corporation, partnership, firm, association, syndicate, joint venture, organization, foundation, trust, government or governmental authority of any jurisdiction whatsoever (whether federal, provincial, state or municipal);
- (e) "Scheduled Property" shall mean the property specified in the Schedule hereto;
- (f) "Trustees" and all references thereto shall (where the context so permits) mean the Trustee and Trustees for the time being hereof, whether original, additional or substitutional, and "Trustee" shall be construed accordingly; and
- (g) "Trust Fund" shall mean:
  - (i) the Scheduled Property and accumulated income thereon (if any);
  - (ii) any further, substituted or additional property and accumulated income thereon (if any) which the Settlor or any other person or persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees to be held upon the trusts and with and subject to the powers and provisions hereof and any property substituted therefor;
  - (iii) any other property acquired by the Trustees pursuant to, and in accordance with, the provisions of this Deed; and
  - (iv) the property and accumulated income thereon (if any) for the time being and from time to time into which the Scheduled Property and the further, substituted or additional or other property (if any) aforesaid and accumulated income thereon (if any) may be converted.

**1.2 Index and headings.** All headings used in this Deed have been inserted for convenience of reference only and are not intended to assist in the interpretation of any of the provisions of this Deed.

## **2. Transfer to Trustees**

**2.1 Transfer of scheduled property.** The Settlor hereby gives and transfers unto the Trustees the Scheduled Property upon the trusts and subject to the powers and provisions hereinafter contained.

**2.2 Transfer of further property.** The Trustees shall have the right at any time during the continuance of this Trust to accept such further substituted or additional property which the Settlor or any other person or persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, the Trustees either personally or by testamentary act or disposition.

## **3. Distribution of Trust Fund**

Subject to the provisions of paragraph 4 of this Deed, the Trustees shall stand possessed of the capital and income of the Trust Fund and shall invest and keep the same invested and shall pay and transfer the same as follows:

- (a) *Trustee expenses* -- To pay and satisfy all just expenses and obligations from time to time incurred by the Trustees in respect of the Trust Fund; and
- (b) *Charitable distributions* -- To distribute or apply all or any part of the capital or income of the Trust Fund to or for the benefit of any one or more of the Objects of the Settlement or to any Charitable Person provided that any part of the capital of the Trust Fund which shall have been received by the Trustees subject to a trust or direction that the amount or property given, or property substituted therefor, is for some period of time to be held by the Trustees for the purpose of gaining or producing income therefrom shall be held by the Trustees for the period of time so directed.
- (c) The Settlers wish their trustees to, with out limiting their discretion set out hereinbefore and hereinafter in this trust settlement, to attempt to make charitable gifts and take charitable initiatives that benefit the Brantford-Brant County and her citizens first by aiding the development and improvement of its health care system, Brantford-Brant County relief agencies, religious charities and poverty relief initiatives that the trustees believe would be consistent with the wishes of the Settlers.
- (d) For greater certainty Brantford and Brant County means Geographic Brant County including Six Nations and the City of Brantford. The Brant-Brantford Health Care system includes but is not limited to but includes St. Joseph's Lifecare Foundation, Brantford, The Brantford General Hospital Foundation, The Willett Hospital Foundation, Paris. We also favour the Dunn Building Vocational Services or similarly inspired projects, Community Living Brant, the St. Pius X (Brantford) Parish Community, the Society of St. Vincent de Paul (Brantford Particular Council), and relief and assistance for families living with developmentally delayed adults (excluding relatives of the Settlers, the Settlers themselves, and relatives of any trustee within two or less generations) and Birthright of Brantford as long as it retains its charitable designation. We encourage our trustees to do as much good as this trust can do in their discretion, in the trust's name, by the end of December, 2044 A. D. If appropriate, our trustees may extend until the end of 2049 A. D. to expend or transfer to another community charitable trust any unexpended property of this trust if they or their successors are satisfied that good, charitable work can still be done in the name of this trust.

#### **4. Termination of Trust**

The Trustees may, at any time, in their absolute discretion, wind up or terminate this Trust by instrument in writing, whereupon the entire Trust Fund shall be paid and transferred to such one or more Charitable Persons as the Trustees shall in their unfettered discretion determine, and in such amounts and in such shares as the Trustees shall in their absolute discretion determine.

#### **5. Additional Trustee Powers**

In addition to all other powers vested in trustees by law or otherwise and without in any way restricting the general powers, discretions and authority in this Deed given to the Trustees, the Trustees, shall have from time to time and at any time or times power, discretion and authority, exercisable solely for the purpose of advancing the Objects of the Settlement, as follows:

- (a) *Investments* -- To retain, invest or reinvest, any cash funds or property constituting the whole or any part of the Trust Fund in any investments, including without limiting the generality of the foregoing any shares, stocks, bonds, debentures, notes, mortgages, real or personal property or securities, which the Trustees shall in their unfettered discretion determine to be advisable, without being limited to investments authorized by law for trustees.
- (b) *Disposition of Property* -- To sell, transfer, assign, exchange, convey, mortgage, lease, grant options with respect to or otherwise dispose of the whole or any part of the property, securities or investments from time to time constituting the Trust Fund, in any manner and at any price and upon such terms and conditions as the Trustees shall in their unfettered discretion determine advisable and the Trustees shall not be bound to secure the consent or approval of any person, official, authority, tribunal or court whomsoever or whatsoever.
- (c) *Mortgages* -- To renew and keep renewed any mortgage or mortgages upon any assets from time to time forming any part of the Trust Fund and to borrow money on the security by way of mortgage or otherwise of any assets from time to time forming any part of the Trust Fund and to pay off or renegotiate any mortgage or mortgages which may be in existence at any time.
- (d) *Shares and other securities* -- To exercise all voting powers attaching to and all rights incidental to the ownership of stocks, shares, bonds or other securities and investments and property held as part of the Trust Fund, and to delegate their discretionary powers in respect thereof; to sell or exercise any subscription rights and to exercise options, conversions, privileges or rights to subscribe for additional securities attaching to any securities held as part of the Trust Fund from time to time and in connection with the exercise of subscription rights, to use moneys of the Trust Fund for such purpose; to enter into any agreements in respect of the ownership of stocks, shares, bonds or other securities which at any time form part of the Trust Fund; to consent to, participate in or join in any plan, dissolution, merger, consolidation, arrangement or sale with respect to any corporation the stocks, shares, bonds or other securities of which at any time form part of the Trust Fund; to authorize the sale of the assets or undertaking or a substantial portion of the assets or undertaking of any such corporation; to vote for the election of any one or more of themselves or their nominees to any executive office or to membership on any board of directors or executive or other committee of any such corporation, and to serve in any such office or on any such board or committee; and generally to act in respect of such securities and investments as fully and effectually from time to time as if the same were not property of the Trust Fund, but always for the benefit of the Trust Fund and the trusts hereby created.

- (e) *Professional assistance* -- To employ and pay for such professional, expert, specialized or other assistance as the Trustees may deem requisite in the discharge of their duties as trustees and, without restricting the generality of the foregoing, in the event that any one or more of the Trustees shall be a barrister, solicitor, chartered accountant or other person engaged in any profession or business, to employ such person and to pay such person or persons all usual professional and other charges for business transacted, time expended and acts done by him, his clerk or his firm in connection with the trusts hereof including any act which such Trustee or Trustees not being a barrister, solicitor, chartered accountant or other person engaged in any profession or business could have done personally.
- (f) *Investment counsel* -- To employ one or more investment counsel, money managers or other financial advisors in any jurisdiction or jurisdictions whatsoever as their agent to provide such advice, make such decisions and perform such duties and obligations relating to the investment and other financial affairs of the Trust consistent with the instructions of the Trustees and otherwise to manage all or any part of the Trust Fund in the manner authorized and directed by the Trustees and in their absolute discretion the Trustees may terminate or revoke any such agency or agencies at any time and if they so desire to employ in substitution therefor, for the purposes hereinbefore mentioned, any other investment counsel, money manager or other financial advisor; and for the purposes hereinbefore mentioned the Trustees may pay to any investment counsel, money manager or other financial advisor so employed such remuneration as the Trustees shall in their absolute and uncontrolled discretion consider appropriate.
- (g) *Act on professional advice* -- To act on the opinion or advice of or information obtained from any lawyer, barrister, solicitor, accountant, financial adviser, valuer, surveyor, broker, auctioneer or from other experts and professional persons, and the Trustees shall not be responsible for any loss, depreciation or damage occasioned by acting, or not acting, in accordance therewith.
- (h) *Determination of questions* -- To elect a chairman and other officers of the Trust and to determine the procedures to be followed at meetings of the Trustees and all questions and matters of doubt which may arise in the course of the management, administration, realization, liquidation, partition or winding up of the Trust Fund.
- (i) *Legal proceedings* -- To institute and defend proceedings at law and to proceed to the final determination thereof or compromise the same as the Trustees shall in their unfettered discretion determine to be advisable.
- (j) *Situs of assets* -- To hold the Trust Fund or any part or parts thereof at any place or places and to move the same from time to time and from place to place inside or outside Canada.
- (k) *Cash deposits* -- To deposit any cash funds forming part of the Trust Fund at any time in any chartered bank or trust company duly registered to carry on the business of a trust company in the jurisdiction in which such deposit is made.
- (l) *Use of trust companies* -- To employ any trust company duly authorized to carry on the business of a trust company in Ontario or in any other jurisdiction in which any of the assets comprised in the Trust Fund may be situate as their agent to retain custody of all or any part of the Trust Fund, to keep all or any accounts

pertaining to all or any part of the Trust Fund, to maintain books of account, to receive and disburse moneys and to perform any clerical duties in connection with all or any part of the Trust Fund in accordance with the instructions of the Trustees and otherwise to manage all or any part of the Trust Fund in the manner authorized and directed by the Trustees and in their absolute discretion the Trustees may terminate or revoke any such agency at any time and if they so desire to employ in substitution therefor, for the purposes hereinbefore mentioned, any other trust company in Ontario or such other jurisdiction, and for the purposes hereinbefore mentioned the Trustees may pay to any such trust company so employed such remuneration as the Trustees shall in their unfettered discretion consider appropriate.

- (m) *Registration of title* -- Whenever for any reason it shall become necessary, advisable or expedient in the opinion of a majority of the Trustees to register or otherwise record the ownership, right, interest or title of the Trustees of, in or to any asset forming part of the Trust Fund, to register or otherwise record such ownership, right, interest or title in the name of any nominee approved by a majority of the Trustees, which nominee may be any of the Trustees, to act as nominee for and on behalf of the Trustees.
- (n) *Acceptance of contributions* -- To accept or to refuse to accept contributions or donations to the capital of the Trust Fund made by any person or persons whatsoever as the Trustees in their unfettered discretion shall from time to time determine.
- (o) *Purchase from settlor or related person* -- Notwithstanding anything herein otherwise contained or any rule of law to the contrary, to purchase any property, real or personal, as an investment or as part of the Trust Fund and to hold as part of the Trust Fund, from any person who is not acting at arms' length with the Settlor for purposes of the *Income Tax Act*, whether owned by such person in his personal capacity or otherwise, or from any other trust under which the Settlor or a Trustee hereunder may be the settlor, one of the settlors, the trustee or one of the trustees, whether during the existence of any such person or forming part of all of the estate of such person, or forming part or all of the property comprised in such other trust, as the case may be, at such prices (payable in cash or on credit or part in cash and part on credit), not to exceed fair market value, and subject to such terms and conditions as the Trustees shall in their unfettered discretion determine advisable and any such purchase so made, or the price paid or terms and conditions agreed upon in reference thereto, shall not be subject to questions by any person who may be entitled hereunder or by any person, official, authority, court or tribunal whatsoever and whomsoever.
- (p) *Sale to settlor, beneficiary or trustee* -- Notwithstanding anything herein otherwise contained or any rule of law to the contrary, to sell, convey or transfer any of the property, real or personal, from time to time forming all or part of the Trust Fund to the Settlor, to any person who is not acting at arm's length with the Settlor for purposes of the *Income Tax Act*, whether in his personal capacity or otherwise, or to any other trust under which the Settlor or a Trustee hereunder may be the settlor, one of the settlors, the trustee or one of the trustees, at such prices

(payable in cash or on credit or part in cash and part on credit), not to be less than fair market value, and subject to such terms and conditions as the Trustees shall in their unfettered discretion determine advisable and any such sale, conveyance or transfer so made, or the price paid or terms and conditions agreed upon in reference thereto, shall not be subject to question by any person who may be entitled hereunder or by any person, official, authority, court or tribunal whatsoever and whomsoever.

- (q) *Other acts* -- To do any other act which will advance the Objects of the Settlement.

## **6. Restriction on the Power of Trustees**

Notwithstanding anything contained in any other provision or provisions of this Deed, the Trustees shall not:

- (a) carry on business on behalf of or in the name of the Trust or with all or any part of the capital or income of the Trust Fund;
- (b) employ all or any part of the capital or income of the Trust Fund in acquiring control of any corporation;
- (c) retain any controlling interest in any corporation; or
- (d) distribute, expend, administer, apply or deal with any of the capital or income of the Trust Fund otherwise than for the advancement of the Objects of the Settlement.

## **7. Expenses and Remuneration**

The customary expenses in connection with the administration of the Trust, and of the investment and reinvestment of any part of the Trust Fund and the collection of income and other sums derivable therefrom, including reasonable expenses or disbursements incurred or made by any Trustee for any such purpose, shall be charged against the income of the Trust Fund but if such income is insufficient for the purpose, then the same shall be charged against the capital of the Trust Fund, or so much thereof as may be required in addition to the income for the purpose provided that no Trustee shall be entitled to receive remuneration or compensation for his services performed as a Trustee.

## **8. Appointment and Removal of Trustees**

**8.1 Appointment by trustees.** The power of appointing additional or substitute Trustees (who shall not be required to remain in or be residents of Ontario) hereof shall be vested in the Trustee or Trustees hereof for the time being, or the personal representatives of the last surviving Trustee, and such power shall extend to the appointment of a new Trustee or new Trustees in the place and stead of any Trustee (including the Trustee or Trustees so exercising the said power of appointment) dying, ceasing to act hereunder or resigning his trusteeship and also to the appointment of any additional Trustee or additional Trustees and such power shall be exercised so that at all times (except for the period in which the appointment or appointments shall be so made) there shall be at least two Trustees.

**8.2 Resignation.** Any Trustee may at any time resign from the office of Trustee hereof on giving not less than thirty days' notice addressed to the other Trustees (if any) but if there be no other Trustees, then on the appointment of and acceptance of such appointment by a new Trustee or Trustees in the place and stead of the resigning Trustee.

**8.3 Automatic termination of office.** The office of a Trustee shall be *ipso facto* determined and vacated if such Trustee, being an individual, shall be found to be incapable of managing property within the meaning of s. 6 of the *Substitute Decisions Act, 1992*, S.O. 1992, c. 30 as amended, or if he shall be declared bankrupt or insolvent.

**8.4 Residence of trustees.** Notwithstanding the provisions of s. 3(1) of the *Trustee Act*, R.S.O. 1990, c. T.23, as amended from time to time, or any statutory provisions from time to time in force of like or similar effect, no person who from time to time may be a Trustee hereof whether original, substituted or additional shall at any time be required to remain in or be a resident of Ontario.

**8.5 Surviving trustee.** Subject to clause 8.3 of this paragraph 8, in the event of the death or retirement of any Trustee hereof or upon the occurrence of any of the events to which reference is made in clause 8.3 of this paragraph 8, the remaining or surviving Trustee or Trustees, or the personal representative of the last surviving Trustee, shall forthwith appoint a substitute, other or additional Trustee or Trustees hereof.

**8.6 Removal of trustee.** The Trustees may by resolution passed by a majority of the Trustees remove any Trustee.

**8.7 Notices of changes.** Notices of all changes in the trusteeship hereunder shall be endorsed on or attached to this Deed and shall be signed by the surviving or continuing Trustee or Trustees and every such notice shall be sufficient evidence to any person having dealings with the Trustees for the time being hereof as to the facts to which it relates.

## **9. Liability of Trustees**

**9.1 Decisions.** Every discretion or power hereby or by law conferred on the Trustees shall be an unfettered and absolute and uncontrolled discretion or power and in cases in which there are less than three Trustees hereof every decision required at any time or from time to time to be made by Trustees, other than the exercise of the power to remove a Trustee referred to in clause 8.6 of paragraph 8 of this Deed which may be made by a majority of the Trustees, shall be unanimous, and in cases in which there are more than two Trustees hereof, every decision required at any time or from time to time to be made by the Trustees, other than the exercise of any of the powers referred to in clauses (p) and (q) of paragraph 5 of this Deed which shall always be unanimous, may be made by a majority of the Trustees, and no dissenting or abstaining Trustee who acts in good faith shall be personally liable for any loss or claim whatsoever arising out of any acts or omissions which result from the exercise of any such discretion or power, regardless of whether such Trustee assists in implementation of the decision.

**9.2 Execution of instruments.** Any and all bills of exchange, promissory notes, cheques, powers of attorney, transfers, papers, documents or other instruments in writing requiring at any time and from time to time to be executed for or on behalf of this Trust shall be validly executed, when there are more than two Trustees, if signed by any two thereof, and when there are less than three Trustees, if signed by all the Trustees.

**9.3 Willful misconduct and indemnification of trustees.** No Trustee shall be liable for any error of judgment or mistake of law or other mistake or for anything save the willful neglect or default of such Trustee or the willful misconduct of such Trustee or willful breach of the terms of this Trust by such Trustee and each Trustee shall be indemnified and held harmless against any claims and/or losses (except those arising from the willful neglect or default of such Trustee or Trustee), death duties, taxes and impositions arising in connection with the Trust Fund or any part thereof.

**9.4 Bond or security not required.** The Trustees and each of them shall be exempt from the giving of any bond or security in connection with the administration of the Trust Fund and the discharge of the trusts hereby created in any country, state, province, territory or other jurisdiction the laws of any such country, state, province, territory or other jurisdiction notwithstanding.

## **10. Trust Irrevocable by Settlor**

This Trust shall not be revocable by the Settlor and notwithstanding anything herein expressed or implied, no part of the capital or income of the Trust Fund shall be paid or lent or applied to or for the benefit of the Settlor, in any manner or in any circumstances whatsoever.

## **11. Amendment**

The Trustees may at any time in writing amend the provisions of this Deed whether by varying or deleting existing provisions or by substituting or inserting other provisions, provided that no amendment of the provisions of this deed shall be valid to the extent that it would:

- (a) permit the distribution, diversion or application of any capital or income of the Trust Fund to or for objects other than those which, by law, are exclusively charitable; or
- (b) entitle the Canada Customs and Revenue Agency or its successor or successors to revoke or not grant the registration of the Trust as a registered charity within the meaning of subsection 248(1) of the Income Tax Act, or within the meaning of any similar provision of any legislation of the Parliament of Canada from time to time in force of like or similar effect.

## **12. Interpretation**

In this Deed any personal pronoun relating to the Trustees, or any of them, and used therewith and any other personal pronoun used herein with reference to the Settlor or to any one or more of the beneficiaries shall be read and construed (where the context so permits) as the gender and number of the party or parties referred to in each case required.

## **13. Acceptance of Trust**

The Trustees hereby accept the trusts hereby constituted, upon the terms and conditions herein contained.

**14. Proper Law of Trust**

This Trust is established under the laws of the Province of Ontario and the rights of all parties and the construction and effect of each and every provision hereof shall be interpreted according to the laws of The Province of Ontario

**15. Designation of Settlement**

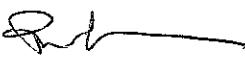
This Trust shall be known and designated, where convenient, as "The Lorne and Elsie Hankinson Charitable Trust Foundation" and the Trustees may, in their discretion, in that name or such other name as the Trustees in their discretion may designate, hold title to or ownership of any or all of the property from time to time forming part or all of the Trust Fund, carry out any transaction on behalf of this trust and enter into any contract or arrangements or otherwise exercise any of the powers, discretions and authorities hereunder upon them conferred.

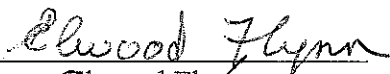
**Schedule**

One thousand Canadian dollars

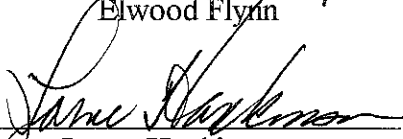
IN WITNESS WHEREOF the said Lorne and Elsie Hankinson as Settlers and the said Elwood Flynn and Lorne Hankinson and Elsie Hankinson and Dr. Andrew Trevor and Kenneth Patrick Lefebvre as Trustees have hereunto set their hands and affixed their seals.

SIGNED, SEALED AND DELIVERED  
in the presence of


  
\_\_\_\_\_


  
Elwood Flynn

  
\_\_\_\_\_

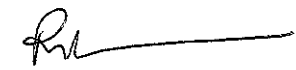
  
Lorne Hankinson

  
\_\_\_\_\_

  
Elsie Hankinson

  
\_\_\_\_\_

  
Dr. Andrew Trevor

  
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Kenneth Patrick Lefebvre

This trust prepared with the assistance of O'Brien's Encyclopedia of Forms Div. 5 Volume 1

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