



DEER MOUNTAIN

(www.deer-mountain.com)

Exclusive Country Residential Home Sites

RR 231 & Hwy 628 (NW Corner)

Sherwood Park

Strathcona County, Alberta

RESTRICTIVE COVENANT
CONSERVATION EASEMENT
GRANT & AGREEMENT

INFORMATION ON LOT SALES:

RE/MAX Real Estate

Darin Baxandall - (780) 464-4100
Joe Gaglione - (780) 488-4000

DEVELOPED BY:

Resland Development Inc.

Jim Chorley - (780) 940-0135
jim@resland.com

**DEER MOUNTAIN SUBDIVISION
CONSERVATION EASEMENT GRANT AND AGREEMENT**

BETWEEN:

DRAFT

**Resland Development Corporation
(the "Grantor")**

-and -

**Strathcona County
(the "Grantee")**

(the Grantor and the County sometimes referred to jointly as the "Parties")

In consideration of ten (\$10.00) dollars paid by the Grantee to the Grantor, and in consideration of the agreements and terms herein, the Grantor and the Grantee hereby agree as follows:

PART 1 PARTIES ACKNOWLEDGEMENTS AND AGREEMENTS

- 1.1 All words used in this Agreement which are defined in the conservation easement provisions of the *Environmental Protection and Enhancement Act* have the meanings assigned in those provisions, a copy of which is attached as Schedule "A".
- 1.2 The Grantor is the registered owner of the following:

**Lots _____ inclusive, Plan _____
Excepting thereout all mines and minerals**
- 1.3 The Grantee is a qualified organization.
- 1.4 The Grantor has agreed to grant to the Grantee a Conservation Easement in respect of that portion of the Lands described on the attached Schedule "B" (the Conservation Easement Area).
- 1.5 The Grantee considers the land area consisting of the Conservation Easement Area to satisfy the municipal and/or school reserve dedication requirements specified in Division 8 and Division 9 of the *Municipal Government Act*, for as long as this Agreement, and all parts, provisions and elements of it, remain in effect. Any discharge or modification of this Agreement including to any element of the conservation easement by a party other than the Grantee without the Grantee's express written consent, shall result in the Grantee being eligible to require dedication of reserve lands at the time of future subdivision in accordance with the provisions of the *Municipal Government Act*. The Grantee will file a deferred reserve caveat.
- 1.6 In this agreement "agricultural activity" includes but is not limited to cultivation of any type; seeding of non-native or noxious vegetation; or raising or grazing of domestic livestock or game production animal as defined by the *Livestock Industry Diversification Act* and

"water courses or bodies" includes natural water courses, wetlands or other bodies of water, including surface and subsurface water.

PART 2 GRANT, PERPETUITY, PURPOSE, RESTRICTIONS AND COVENANTS ON USE OF LAND

- 2.1 The Grantor hereby grants to the Grantee by way of this Agreement a conservation easement to run with the Lands.
- 2.2 The Grantor grants the conservation easement in perpetuity.
- 2.3 The purpose of the conservation easement is the conservation and enhancement of the environment of the Conservation Easement Area including, without limitation, the protection, conservation and enhancement of its biological diversity.
- 2.4 The Grantor agrees that each of the following covenants, agreements and restrictions constitutes an element of the conservation easement granted to the Grantee:

Vegetation
Disturbance

- A. Except as permitted in clause A.1, the Grantor shall not conduct, pursue or permit in the cutting, removal, or destruction of vegetation, including trees, shrubs or forbes, on the Conservation Easement Area, except as required by law or with the prior express written consent of the Grantee.

Vegetation
Disturbance
Allowance

- A.1 The Grantor may create and maintain within the Conservation Easement Area a sinuous trail two and four tenths meters (2.4 m) in width for personal recreational use in a location approved by the Grantee.

Hazard Tree
Removal

- A.2 The Grantor may selectively remove dead, diseased, or dying trees within the Conservation Easement Area that are within their fall distance of the developable area of the residential lot and which can reasonably anticipated to cause an adverse affect to the residence or safety of the occupants. The Parties agreeing that the Grantee in its reasonable opinion may determine the meaning and application of " adverse affect " for the purposes of this element.

Drainage
Alternation

- B. Except with the prior express written consent of the Grantee, the Grantor shall neither:
- i. conduct, pursue or permit any alteration, diversion or drainage of water courses or bodies on or under the Conservation Easement Area, excluding the need of water wells for domestic purposes, nor
 - ii. apply or permit the application to any applicable government authority to alter, divert or drain any water courses or bodies.

- | | | |
|-------------------------|-----|--|
| Water Pollution | C. | The Grantor shall not conduct, pursue or permit any uses or activities that would pollute or degrade the water courses or bodies on or under the Conservation Easement Area, the Parties agreeing that the Grantee in its reasonable opinion may determine to which uses or activities this element applies. |
| Shorelines | D. | The Grantor shall not conduct, pursue or permit any disturbance of vegetation or soil on shorelines of water courses or bodies within the Conservation Easement Area. |
| Wildlife Disturbance | E. | The Grantor shall not conduct, pursue or permit any activity making or causing noise, glare, obstruction or odour on the Conservation Easement Area which may be reasonably anticipated to disturb wildlife patterns, the parties agreeing that the Grantee in its reasonable opinion may determine to which activities this element applies. |
| Pets at Large | E.1 | For better certainty, the Grantor shall not allow pets to run at large within the Conservation Easement Area. Pet containment must be provided outside of the Conservation Easement Area. |
| Habitat Enforcement | F. | The Grantor shall not conduct, pursue or permit any habitat restoration or enhancement of the Conservation Easement Area without the prior express written consent of the Grantee |
| Agricultural Activities | G. | Except with the express written consent of the Grantee, and then for habitat management purposes only, the Grantor shall not conduct, pursue or permit any agricultural activity on the Conservation Easement Area. |
| Fencing | H. | The Grantor shall not conduct, pursue or permit the impeding of wildlife movement to and from the Conservation Easement Area and, not to limit the generality of the foregoing, except with the prior express written consent of Grantee, the Grantor shall not construct or place or permit the construction or placement of any fence within the Conservation Easement Area. |
| Chemical Spraying | I. | The Grantor shall not conduct, pursue or permit any application or deposit of any chemical herbicides, pesticides or fertilizers or other chemicals on the Conservation Easement Area except as required by law, and then only in the amounts and with the frequency of application which constitutes the minimum necessary to accomplish compliance with law. |
| Excavations | J. | The Grantor shall not conduct, pursue or permit any soil disturbance, excavating, dredging or mining of sand, gravel or rock or other materials within the Conservation Easement Area. |
| Refuse | K. | The Grantor shall not place or permit the placement of garbage, waste, debris or refuse, whether human or non-human produced, on the Conservation Easement Area. |

- Hunting, Trapping L. The Grantor shall not conduct, pursue or permit any hunting, killing or trapping of animals, including birds, on the Conservation Easement Area except as required by law or with the prior express written consent of the Grantee and then only for habitat management purposes.
- Motorized Vehicles M. The Grantor shall not operate or permit the operation of motorized vehicles of any kind on the Conservation Easement Area except as required by law, or as expressly authorized by the Grantee in writing, or to permit motorized access by the Grantee or its authorized representative to the Conservation Easement Area to monitor or enforce this Agreement.
- Constructions N. The Grantor shall not conduct, pursue or permit any development or construction on the Conservation Easement Area including, but not limited to, a dwelling or other building or structure, without the prior express written consent of the Grantee.
- Alteration or Construction O. The Grantor shall not conduct, pursue or permit any disturbance to or alteration of any improvements on the Conservation Easement Area made by or on behalf of the Grantee, without the prior express written consent of the Grantee.
- Right-of-Way P. The Grantor shall allow the Grantee or its authorized representative to enter and or pass upon that portion of the Lands reasonably required to observe the condition and state of the Conservation Easement Area in connection with this Agreement.

2.5 The Parties agree that where under this Agreement it is the Grantor's obligation to request the prior written consent of the Grantee, the Grantee will endeavour to give a response, be it a consent or a denial, however, failure to respond is not to be deemed an approval.

PART 3 ENFORCEMENT

- 3.1 The Conservation Easement may be enforced by the Grantee, or by such other persons or persons in accordance with section 22.1 of Environmental Protection and Enhancement Act (the Grantee or authorized persons or persons herein called the "Enforcer").
- 3.2 The Enforcer or its authorized representative may enter upon the Lands to access the Conservation Easement Area or monitor compliance with this agreement at any time with the Grantor's permission, or otherwise, at reasonable times, upon two day written notice to the Grantor.
- 3.3 The Enforcer may, without reasons, determine not to enforce any or all of the covenants herein contained without liability. Any failure to enforce or strictly enforce any of the covenants in this Agreement shall not constitute a waiver of or abrogate any of the covenants or elements of this Agreement.

- 3.4 The provisions and elements of this Agreement are enforceable jointly and severally.
- 3.5 This Agreement may be enforced upon the default of the Grantor of any provision or element herein, regardless of the degree or significance of the breach or default. In enforcing this Agreement the Enforcer shall be entitled to apply for and obtain any and all legal and equitable remedies, including injunction.
- 3.6 In addition to any other rights herein, if the Enforcer reasonably believes that default will occur the Enforcer may apply for injunctive relief.
- 3.7 The rights of the Enforcer given in this Part are continuing and may be exercised from time to time, and as many times, as the circumstances may require.

PART 4 ASSESSMENTS, TAXES, COSTS AND DAMAGES

- 4.1 The Grantor agrees to pay all real property taxes and assessments levied by a competent authority against the Lands, including as that does, the Conservation Easement Area.
- 4.2 Except as expressly agreed to in writing by the Grantee from time to time, the Grantor agrees to:
- A. maintain the Conservation Easement Area in accordance with this Agreement, and subject to obtaining any consents required by this Agreement, promptly repair any damage to the Conservation Easement Area caused by breach of this Agreement, including, but not limited to damage to improvements or fences within the Conservation Easement Area, and
 - B. bear all costs and liabilities of any kind relating to the operation, upkeep, maintenance, restoration and repair of the Conservation Easement Area, including, but not limited to improvements and fences, and the Grantor does hereby indemnify and hold the Grantee harmless therefrom.
- 4.3 In the event of a dispute as to the precise physical boundaries of the Conservation Easement Area, the Parties agree that all costs associated with determining the precise physical boundaries shall be paid as follows:
- A. Where the dispute arose by virtue of the Grantor carrying on activities within the disputed area which in the Grantee's or Enforcer's opinion violated this Agreement:
 - i) by the Grantor, where determination of the precise physical boundaries proved that the activities did occur within the boundaries of the Conservation Easement Area;
 - ii) by the Grantee, where determination of the precise physical boundaries proved that the activities did not occur within the boundaries of the Conservation Easement Area;

iii) prorated between the Grantor and the Grantee in accordance with 4.3 (i) and (ii) where determination of the precise physical boundaries proved that the activities partially occurred within the boundaries of the Conservation Easement Area;

B. In any other case, by the Party desiring to precisely determine the physical boundaries.

- 4.4 All remedies provided herein or at law or in equity shall be cumulative and not exclusive.
- 4.5 The Parties agree that any costs incurred by the Grantee or other Enforcer in enforcing, judicially or otherwise, any terms of this Agreement against the Grantor, including, without limitation, litigation costs, lawyers fees and disbursements and any costs of restoration or replacement necessitated by the violation of the terms of this Agreement by the Grantor, shall be borne by the Grantor.
- 4.6 The Parties acknowledge that damages based on market value will not usually adequately compensate for damage to ecological integrity, habitat alteration or other environmental harm. Accordingly, the Parties agree that if required to adequately compensate the Grantee for violations of this Agreement, damages may be based on restoration or replacement costs, whichever, in the opinion of the Court shall better compensate the Grantee.

PART 5 NOTICES

5.1 All notices under this Agreement shall be in writing and sent by registered or certified mail as follows:

To the Grantor at:

To the Grantee at: Strathcona County
2001 Sherwood Drive
Sherwood Park, Alberta
T8A 3W7
Attention: Real Estate and Land Development Services
Branch

5.2 A Party may change its address for service by notice to the other Party.

PART 6 GENERAL

- 6.1 The Parties may by mutual agreement in writing resolve any dispute on any matter contained in or arising out of this Agreement by arbitration in accordance with the Arbitration Act of Alberta. However, a notice in writing by one Party to the other at any time prior to the commencement of arbitration that the Party does not wish to resolve a matter by arbitration is sufficient evidence of lack of mutual agreement. For better certainty, the Parties acknowledge and agree that prior to making application for an arbitration process the Parties will use all reasonable efforts to resolve the dispute by mutual agreement. For better certainty, the Parties acknowledge and agree that prior to making application for an arbitration process the Parties will use all reasonable efforts to resolve the dispute by mutual agreement.
- 6.2 Where the context so requires, appropriate number or gender is deemed to be expressed.
- 6.3 The provisions of this Agreement shall be liberally construed to effect its purposes..
- 6.4 Each element and provision of this Conservation Easement is severable and the invalidation or discharge of any one or more of them shall not invalidate or discharge any other element or provision herein. In case any term, covenant, provision, phrase, section or other element contained in this Agreement for any reason shall be held invalid, illegal or unenforceable in any respect, the same shall not affect, alter, modify or impair in any manner whatsoever any other application thereof or any other term, covenant, provision, phrase, section or other element contained in this Agreement, the provisions of which shall be carried out as if such invalid, illegal or unenforceable provision were not contained herein.
- 6.5 This Agreement remains enforceable notwithstanding any change in local planning or change in the planning classification of the areas comprising the Lands or the Conservation Easement Area.
- 6.6 This Agreement remains enforceable notwithstanding any changes in particular species currently using the Lands or the Conservation Easement Area as habitat, or changes in habitat types. This provision recognises that ecosystems are vital systems changing with time and circumstances.
- 6.7 Every person who now owns or acquires any right, title or interest in or to any portion of the Lands containing all of or a portion of the Conservation Easement Area is and shall be conclusively deemed to have consented and agreed to every term, covenant, condition and restriction contained herein, whether or not any reference to the Agreement is contained in the instrument by which such person acquired an interest in the Lands.
- 6.8 The Conservation Easement herein shall be in full force and effect until discharged in accordance with *Environmental Protection And Enhancement Act*.

- 6.9 The Grantor agrees that the Grantee shall, with the consent of the Grantor, have the right to assign this Conservation Easement Grant and Agreement in whole or in part to any qualified organization.
- 6.10 Every section of this Agreement and the Schedules hereto incorporated herein constitute a part of this Conservation Easement Agreement.
- 6.11 This Conservation Easement Agreement shall be construed in accordance with the laws of Alberta.
- 6.12 Time shall, in all respects, be of the essence of this Agreement.

IN WITNESS WHEREOF the Grantor and the Grantee have executed this Conservation Easement Grant and Agreement under seal this _____ day of _____ 200_____.

Per: _____

Per: _____

STRATHCONA COUNTY

Per: _____

Per: _____

Schedule "A"

DEFINITIONS

In this Regulation (Alberta Regulation 215/96) Environmental Protection and Enhancement Act, Conservation Easement Registration Regulation:

1. "Act" means the *Environmental Protection and Enhancement Act*,
2. "agreement" means an agreement made in Accordance with section 22.1 of the Act,
3. "conservation easement" means a conservation easement as defined in section 2.1(1)(b) of the Act,
4. "grantee" means a grantee as defined in section 22.1(1)(c) of the Act,
5. "grantor" means a grantor as defined in section 22.1(1)(d) of the Act,
6. "qualified organization" means a qualified organization as defined under section 22.1(1)(e) of the Act,
7. "Registrar" means the Registrar of Land Titles under the Land Titles Act or the Registrar of the Metis Settlements Land Registry under the Metis Settlement Act, as the case may be,
8. "registration" means registration of an agreement in accordance with 22.2 of the Act,

In the Environmental Protection and Enhancement Act:

1. "biological diversity" means the variability among living organisms and the ecological complexes of which they are a part, and includes diversity within and between species and ecosystems;
2. "conservation easement" means a conservation easement granted under this section;
3. "grantee" means the recipient of a conservation easement, and includes a successor, assignee, executor, administrator, receiver, receiver- manager, liquidator and trustee of the grantee;
4. "grantor" means the person who grants a conservation easement, and includes a successor, assignee, executor, administrator, receiver, receiver-manager, liquidator and trustee of the grantor;

Schedule "A"

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5. "qualified organization" means:

- a. the Government,
- b. a Government agency,
- c. a local authority, or
- d. a body corporate that
 - i. has as one of its objects the acquisition and holding of interests in land for purposes that are substantially the same as any of the purposes listed in subsection (2),
 - ii. has in its constating instrument a requirement that, on or in contemplation of the winding-up of the body corporate, all conservation easements that the body corporate holds are to be transferred to another qualified organization, and
 - iii. is a registered charity within the meaning of the Income Tax Act (Canada).