

CONSERVATION EASEMENT GRANT AND AGREEMENT

BETWEEN:

(the "Grantor")

- and -

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

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

IN CONSIDERATION of the sum 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 *Alberta Land Stewardship 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:

◇
◇
◇

EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "Lands").

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 as:

"description"

as shown 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 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. |
| Trail Allowance | A.1 | The Grantor may create and maintain within the Conservation Easement Area a sinuous trail not exceeding one thousand two hundred metres (1200m) in length and two and four tenths metres (2.4m) in width for personal recreational use in a location approved by the Grantee. |
| Fence Allowance | A.2 | The Grantor may clear a maximum of two and four tenths metres (2.4m) adjacent to all property lines for the purpose of fencing. For better certainty, further clearing within the Conservation Easement Area will not be permitted for cross fencing. |
| Firewood Allowance | A.3 | The Grantor may cut one (1) cord of firewood per year for personal non-commercial purpose within the Conservation Easement Area. |

- 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.
- Dogs at Large E.1 The Grantor shall not allow dogs to run at large and unattended within the Conservation Easement Area. For better certainty, "run at large and unattended" shall mean that the Grantor is away from the property leaving the dog(s) unrestrained and thus beyond the Grantors ability to control their activities.
- 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.
- Livestock H. Except with the express written consent of the Grantee, and then only in respect of the Grantor's personal domestic livestock which the Grantor owns for non-commercial purposes, the Grantor shall not permit domestic livestock or game production animal as defined by the *Livestock Industry Diversification Act* from entering or using the Conservation Easement Area.

- | | | |
|---------------------------|-----|--|
| Fence Damage | I. | The Grantor shall not permit, as is reasonably possible, livestock damaging fences or other improvements on the Conservation Easement Area, the Parties agreeing that the Grantee in its reasonable opinion may determine the meaning and application of "reasonably possible" for the purposes of this element. |
| Wildlife Fence Type | J. | 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, or except as permitted in clause J.1, the Grantor shall not construct or place or permit the construction or placement of any fence within the Conservation Easement Area if it is greater than 1.2 meters high or if it contains more than three (3) strands. Fence should be constructed using smooth wire or page wire; barb wire shall not be permitted. |
| Fence Replacement, Repair | J.1 | For better certainty, clause J. does not obligate the Grantor to replace fences existing in the Conservation Easement Area prior to the date of this Agreement, however, any Grantor's repairs or replacements of existing fences shall be in compliance with clause J. |
| Chemical Spraying | K. | 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 | L. | 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 | M. | 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 | N. | 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 | O. | 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. |

- Equipment Allowance O.1 The Grantor may operate equipment for maintenance operations on the fence and trail allowances identified in Section 2.4, A.1 and A.2 of this Agreement. The Parties agree that the Grantee in its reasonable opinion may determine the meaning and application of "maintenance operations" for the purposes of this Agreement.
- Constructions P. 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 Q. 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 R. 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 30(1) of *Alberta Land Stewardship 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 (2) 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: Land Management Services

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 Agreement 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 recognizes 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 *Alberta Land Stewardship Act*.
- 6.9 The Grantor agrees that the Grantee shall, with the consent of the Grantor, have the right to assign this 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 Agreement.
- 6.11 This Agreement shall be construed in accordance with the laws of Alberta.
- 6.12 Time shall be of the essence of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement this _____ day of _____ 2014.

Witness

Witness

STRATHCONA COUNTY

Per: _____

(c/s)

Per: _____

AFFIDAVIT OF EXECUTION

CANADA) I, _____
)
 PROVINCE OF ALBERTA) of _____
)
 TO WIT:) in the Province of Alberta

MAKE OATH AND SAY:

1. THAT I was personally present and did see _____ and _____ named in the within (or annexed) Instrument, who are personally known to me to be the persons named therein, duly sign and execute the same for the purposes named therein.
2. THAT the same was executed at _____ in the Province of Alberta, and that I am the subscribing witness thereto.
3. THAT I know the said _____ and _____ who are each in my belief of the full age of eighteen years.

SWORN before me at _____)
 _____ in the)
 Province of Alberta this _____)
 day of _____, 2014.) _____
)
)
)

 A COMMISSIONER FOR OATHS IN AND
 FOR THE PROVINCE OF ALBERTA

FORM 2
Declaration by Grantee

CANADA)
PROVINCE OF)
ALBERTA)
TO WIT:)

IN THE MATTER of the registration of an agreement pursuant to Section 33(1) of the *Alberta Land Stewardship Act* (the "Agreement") affecting the land described as:

"legal"
EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "Lands") located in Strathcona County.

I, LARRY LUNSETH, authorized as the Designated Officer of Strathcona County of 2001 Sherwood Drive, Sherwood Park, Alberta, T8A 3W7, to sign this declaration:

SOLEMNLY DECLARE THAT :

1. Strathcona County of 2001 Sherwood Drive, Sherwood Park, Alberta, T8A 3W7, is:
 - a) a local authority as defined in the *Environmental Protection and Enhancement Act*.
2. The Conservation Easement to be registered by way of the Agreement in respect of all or part of the land is for one or more of the following purposes:
 - a) the protection, conservation and enhancement of the environment including, without limitation, the protection, conservation and enhancement of biological diversity;
 - b) the protection, conservation and enhancement of natural scenic or aesthetic values;
 - c) providing for any and all of the following uses of the land that are consistent with purposes set out in clause a) or b):
 - i) recreational use;
 - ii) open space use;
 - iii) environmental education use; and
 - iv) use for research and scientific studies or natural ecosystems.
3. Notice referred to in Section 33(2) of the *Alberta Land Stewardship Act* has been given to the persons entitled to receive the notice in accordance with the *Alberta Land Stewardship Act*.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED before me)
at _____)
in the Province of Alberta)
this ____ day of _____,)

Schedule "A"

DEFINITIONS

1. "Act" means the *Alberta Land Stewardship Act*.
2. "Agreement" means an agreement made in Accordance with Section 29(1) of the Act.
3. "Conservation Easement" means a conservation easement as defined in Section 2(d) of the Act.
4. "Grantee" means the recipient of a Conservation Easement, and includes a successor, assignee, executor, administrator, receiver, receiver- manager, liquidator and trustee of the Grantee, as defined in Section 28(a) of the Act.
5. "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, as defined in Section 28(b) of the Act.
6. "Qualified Organization" means a qualified organization as defined under Section 28(c) 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 Section 33(1) of the Act.
9. "Qualified Organization" means:
 - a. the Government;
 - b. a Government agency;
 - c. a local government body; or
 - d. a corporation 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 for which a Conservation Easement may be granted;
 - ii. has in its constating instrument a requirement that, on or in contemplation of the winding-up of the corporation, all Conservation Easements that the corporation holds are to be transferred to another qualified organization; and
 - iii. is a registered charity within the meaning of the *Income Tax Act (Canada)*.

Schedule "B"

(Description of Conservation Easement Area Map)