

## Conservation Easement for Agricultural (or Mixed) Purpose Template

**Important Note: The purpose of this template is to provide an example of a conservation easement agreement. The template should not be used in place of seeking proper legal advice regarding the contents and binding nature of a conservation easement agreement**

### CONSERVATION EASEMENT GRANT AND AGREEMENT

BETWEEN:

***Insert name***

(the "Grantor")

And

***Insert name***

(the "Grantee")

Effective, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

WHEREAS:

- A. The Grantor is the registered owner in fee simple of land located at **[legal land description]**, in the **[geographic location]**. The land constitutes the easement "Property", described in the survey attached hereto as Schedule A.
  - B. The Grantee is a qualified organization as defined in the *Alberta Land Stewardship Act* and has, as its objectives the preservation of agricultural heritage, the fostering and promotion of the community and environmental benefit of food grown in Alberta, and recognizes the need to preserve agricultural land from conversion to non-agricultural uses.
  - C. The Property contains **[x]** acres of agricultural land that is highly productive generating public and community benefits through support of local and regional food production;
  - D. The Property also has land of non-agricultural preservation values including wetlands and forested lands that are important for watershed function and wildlife habitat.
  - E. The Grantor and Grantee have the mutual aim of preserving the agricultural and ecological values of the Property for future generations of Albertans, in perpetuity;
  - F. The Grantor and Grantee agree that the preservation of the Property is best achieved by limiting the use of the land to agricultural uses as defined by the agreement herein;
- [Paid easement]** In consideration of **[value/\$]** paid by the Grantee to the Grantor, and in consideration of the agreement and terms herein, the Grantor and the Grantee hereby agree as follows.

**[Gift]** In consideration of the Grantor's desire to preserve the agricultural nature of the Property in perpetuity, the Grantor grants and conveys a conservation easement without monetary compensation, the Grantor and the Grantee hereby agree as follows.

**[by way of TDC or municipal planning program]** the Grantor, in compliance with and pursuant to **[relevant provisions of provincial regulation, municipal bylaws or resolutions]** enters into this agreement with the Grantee and hereby agrees as follows.

**1. Definitions** (examples of specific definitions for conservation easements for agriculture) **[other definitions to be included by reference or express inclusion of ALSA statutory definitions]**

- (a) Agricultural Land – means the land as described by survey and attached as Schedule B that has as its primary purpose, agricultural use.
- (b) Agricultural use– means the production of crops, livestock or livestock products as prescribed by section 5 of the conservation easement agreement.
- (c) Developable area –means the area of the Property prescribed in Schedule B to this agreement where farm related residence, outbuildings and ancillary buildings are allowed pursuant to section 5.
- (d) Ecologically Significant Lands - means the area of the Property prescribed in Schedule C to this agreement where agricultural use and other uses pursuant to section 6 are prohibited.
- (e) Property – means the land with the legal land description of **[X]**, including Agricultural Land, Developable Area and the Ecologically Significant Land, as prescribed in Schedules A-C.

**2. Granting of conservation easement**

The Grantor grants to the Grantee, and the Grantee accepts, a Conservation Easement to run with the land in perpetuity. The land that is the subject of the conservation easement (the "Property") is described in the detailed survey attached to this agreement as Schedule A. The Grantor grants and gives this conservation easement to the Grantee freely, voluntary, without any consideration or condition, under seal, by way of gift. The Grantor agrees that each of the following covenants, agreements and restrictions constitutes an element of the conservation easement granted to the Grantee.

**3. Purpose**

The conservation easement is granted for mixed purposes in relation to the Property. The primary purpose for those lands surveyed and attached as Schedule B is to be used for agriculture. The primary purpose for those lands surveyed and attached as Schedule D is for ecological and education values. Insofar as allowed by this agreement the purpose and use of lands in Schedule B and D may

overlap. In interpreting the relevant sections of this agreement the primary purpose related to the property in question will govern.

#### **4. Rights Reserved by Grantor**

The Grantor reserves the right to exclusive use, possession and enjoyment of the Property, and the right to sell, transfer, lease, mortgage or otherwise encumber the Property or any part thereof, except to the extent these rights are constrained by this agreement. The Grantor has the right to exclude any member of the public from entering onto the property.

#### **5. Permitted Uses**

(a) Developable area (farm complex)

All existing structures and improvements related to the use of the Agricultural Land may be maintained, repaired, removed, enlarged or replaced within the Developable Area. New structures and improvements may be constructed or placed in the Developable Area except as provided by this section. Any new structure or improvement to the developable area must be in furtherance of the agricultural use. A maximum of **[X]** personal residences **[as defined]** are permitted on the Property, one of which may be located outside the Developable Area, with the express written consent of the Grantee.

(b) Agricultural Lands

The production of crops, the raising of livestock and other animal husbandry practices are permitted on the Agricultural Land. Ancillary and related agricultural use of lands, including soil management, fertilization, water management, and pesticide use are permitted uses on the Agricultural Lands so long as they are conducted in compliance with the laws of Alberta and Canada. Livestock densities are not to exceed restrictions set out in s.6 of this agreement.

(c) Ecologically Sensitive Lands

Recreational use, including hunting, is permitted on the Ecologically Sensitive Lands, except to the extent constrained by restrictions in s.6.

#### **6. Restrictions**

(a) Restrictions on use of Property

i. Subdivision of Property

The Grantor shall not conduct, pursue or permit any application or otherwise seek to have the Property subdivided.

ii. Excavations and Mining

The Grantor shall not undertake nor permit any third party to undertake the excavation or mining of sand, gravel, rock or other materials on the Property.

iii. Timber harvesting

The Grantor shall not conduct, pursue or permit the cutting, removal or destruction of trees on the Property except with the prior express written consent of the Grantee.

Where a Timber Management Plan approved by an RFP has been agreed to and executed by the Grantor and Grantee the need for written consent under this part is waived. Upon execution of the Timber Management Plan, the terms, covenants and conditions of the plan are included as part of this agreement by reference and form an enforceable part of this conservation easement agreement.

iv. Waste management

The Grantor shall not dump or release or permit the dumping or release of trash, non-compostable garbage or any hazardous or toxic substance on the Property.

v. Roads

The Grantor shall not construct any roads **[as defined]** or related infrastructure on the Property except with express written consent of the Grantee.

(b) Restrictions on use of Agricultural Lands

i. Limitation of animal density in Agricultural Lands

Notwithstanding section 5, the Grantor shall not permit, undertake or otherwise allow more than **[X]** animal units per acre on the Agricultural Lands.

ii. Limitation on developments in Agricultural Lands

The Grantor shall not construct, permit or allow the construction of any buildings on the Agricultural Lands.

iii. Limitation on releases on Agricultural Lands

The Grantor shall not permit the release of a substance onto Agricultural Lands in a manner which allows the substance to travel, escape, or move onto the Ecologically Sensitive Lands. **[A buffer for pesticides and nutrients around the Ecologically Sensitive Lands may be prescribed]**

(c) Restrictions on use of Ecologically Sensitive Lands

i. Drainage or alteration of a water body occurring on the Ecologically Sensitive Lands

The Grantor shall not undertake any activity that results in the drainage of water or alteration of a water body **[as defined]** on the Ecologically Sensitive Lands.

ii. Disturbance of vegetation on Ecologically Sensitive Lands

The Grantor shall not conduct, pursue or permit the cutting, removal or destruction of vegetation, including trees, shrubs, grass or forbes, on Ecologically Sensitive Land except as required by law or with the prior express written consent of the Grantee.

iii. Trail construction on Ecologically Sensitive Lands

The Grantor shall not undertake any activity that results in the creation of a trail in the Ecologically Sensitive Lands except with the prior express written consent of the Grantee or as prescribed in Schedule D.

iv. Motorized access on Ecologically Sensitive Lands.

The Grantor shall not use nor permit the use by any third party of motorized vehicles in the Ecologically Sensitive Lands except with the prior express written consent of the Grantee

## **7. Conservation easement management and administration**

(a) Baseline condition

Attached to the this Agreement as Schedule E is a baseline condition report, as agreed to by both parties, regarding the biophysical and hydrological aspects of the Property which constitutes evidence of the condition of the land at the time of the grant so as to facilitate monitoring and enforcement of the conservation easement.

(b) Enforcement and rights of entry and inspection

- i. The conservation easement may be enforced by the Grantee, or by such other person appointed in accordance with section 30 of the *Alberta Land Stewardship Act*.
- ii. The Grantee or its authorized representative may enter upon the Property 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.
- iii. The Grantee may, without reasons, determine not to enforce any or all of the covenants herein but the non-enforcement of this agreement shall not constitute a waiver or abrogate any of the covenants of this agreement.

- iv. The Grantee may pursue the following remedies in relation to this Agreement:
  - (a) The Grantee may apply for injunctive relief if the Grantee believes that default under this agreement is likely to occur, to prevent default or the continuance of default
  - (b) The Grantee is entitled to apply and obtain all legal and equitable remedies.

- (c) Amendments to this agreement (and schedules attached hereto)

This Agreement and the Schedules attached hereto may only be amended, suspended or terminated, except as provided by the Laws of Alberta, by express agreement between the Grantor and Grantee.

## **8. Grantor's obligations, indemnity and warranties**

- (a) The Grantor agrees to maintain the Ecologically Significant Lands except as otherwise provided in this Agreement, and promptly repair any damage caused by breach of this agreement, and shall bear all costs and liabilities relating to the operation, upkeep, maintenance, restoration, and repair of the Ecologically Significant Lands, so damaged.
- (b) The Grantor shall provide the Grantee written notice of the intent to sell, transfer or otherwise convey an interest in the Property, in whole or in part, to a third party, at least (30) days prior to said sale, transfer or conveyance.
- (c) The Grantor warrants that the Property is free of any contamination, environmental or otherwise, that may adversely impact the Agricultural or Ecologically Sensitive Land.
- (d) The Grantor indemnifies and holds harmless the Grantee, its employees, contractors, employees, agents and successors and assigns from any and all actions arising by the act or omission to act on behalf of the Grantor, its agents or employees in carrying out obligations or meeting the covenants of this agreement or otherwise..

## **9. Obligations of Grantee**

- (a) Assignment of easement

The Grantor may advise the Grantee at any time of his or her preference for a substitute qualified organization, in the event that the Grantee assigns the conservation easement.

The Grantee shall take into account any such preference of the Grantor in the event the Grantee decides to assign this conservation easement.

(b) Upon windup

The Grantee will identify a qualified organization that will be transferred this conservation easement in the event that the Grantee ceases to be able to hold the easement for any reason, including winding-up.

**10. General matters**

(a) Responsibility for taxes

The Grantor agrees to pay all real property taxes and assessments levied by a competent authority against the Property.

(b) Severability

The provisions and elements of this agreement are enforceable jointly and severally. In the event that a court order, judgment or statute invalidates a provision of this agreement the remainder of this agreement remains in full force and effect.

(c) Encumbrances

Any further encumbrance of the Property is subject to this Agreement and shall include a provision indicating that this is the case. **[Include express language regarding how any other dispositions are subject to the CE]**

**[Signed/executed in the presence of a witness]**