

## SAMPLE COMMUNITY EASEMENT AGREEMENT

[Note: this sample of a community easement agreement is offered for illustrative purposes only. Eligible Bodies and Owners will require their own legal representation for the preparation and recording of a unique community easement agreement that meets the requirements of the *Community Easements Act*, contains the specific terms and conditions agreed upon by the individual parties, and is appropriate for the set of circumstances under which the community easement is to be granted.]

THIS COMMUNITY EASEMENT AGREEMENT is made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_.

**BETWEEN:**

*[OWNER's name]*  
(the "**Owner**")

- and -

*[EASEMENT HOLDER's name]*  
(the "**Easement Holder**")

### BACKGROUND

1. The Owner is the owner of certain lands located in the County of \_\_\_\_\_, Province of Nova Scotia, Canada, identified as *[PID xxxxxxxx or apparent PID xxxxxxxx, if not land registered]*, as more particularly described in the attached Schedule "A" ("the **Lands**") and indicated on the *[survey plan or sketch by \_\_\_\_\_, N.S.L.S. dated \_\_\_\_\_]* attached as Schedule "B";
2. It is the Owner's intent that a portion of the Lands become subject to a community easement as provided for in the Act as hereinafter defined and for the purposes described in this Agreement;
3. The Owner and Easement Holder have agreed to enter into this Agreement to create a community easement in respect of the specific community values, features and current uses of the Easement Parcel, as hereinafter defined, which are particularly described in the Report, as hereinafter defined; and
4. It is the Owner's intent that the Easement Holder ensure that all future owners of the Lands uphold the Owner's intent and wishes for the Lands.

**THIS AGREEMENT WITNESSES** that in consideration of the sum of one dollar (\$1.00) of

lawful money of Canada, the receipt and sufficiency of which is hereby acknowledged, and of the covenants and agreements herein contained, the parties covenant and agree as hereinafter set out.

## **ARTICLE I - DEFINITIONS**

1.1 Unless the context otherwise requires, in this Agreement the following words and phrases will have the following meanings:

- a) “**Act**” means the *Community Easements Act*, S.N.S. 2012, c.2 as amended from time to time, and any statute that may be enacted to modify or replace the same;
- b) “**Agreed Practices**” means the permitted, restricted and prohibited activities on the Easement Parcel as set out in the attached Schedule “E”;
- c) “**Agreement**” or “**this Agreement**” means this Community Easement Agreement, and the schedules attached hereto that form part of this Agreement, as of the date hereof and as amended from time to time;
- d) “**Easement Parcel**” means the portion of the Lands that lies within the area outlined in bold and shown as the “Community Easement” on the *[plan, sketch or drawing]* attached as Schedule “C”, and as more particularly described in the attached Schedule “D”;
- e) “**Eligible Body**” means an Eligible Body designated pursuant to subsection 8(1) of the Act;
- f) “**Report**” means the Baseline Documentation Report dated \_\_\_\_\_ and attached as Schedule “F” that includes a statement describing the community values, features and current use of the Easement Parcel including the natural, scenic, open space, archaeological, paleontological, historic, cultural, agricultural, working forest, wetland or other value of the Easement Parcel;
- g) “**Term**” means the term set out in Paragraph 4.1 of this Agreement.

## **ARTICLE 2 - PURPOSE AND INTENT**

2.1 The purpose of this Agreement, consistent with the Owner’s intent and subsection 4(2) of the Act, is to protect the values, features and current uses of the Easement Parcel, through: *[select the appropriate purpose or purposes from the list below]*

- a) conserving or restoring the natural, scenic or open space values of the land;
- b) protecting, restoring or enhancing archaeological, paleontological, historic or cultural values of the land;

- c) conserving, preserving or protecting agricultural land;
  - d) conserving, preserving or protecting the working-forest land;
  - e) conserving the land comprised of restored or enhanced wetlands including wetlands created for the purpose of compensation;
  - f) encouraging the sustainable and responsible use of the lands; or
  - g) preserving, conserving, enhancing or restoring the land by *[list purpose that meets one of the purposes prescribed in the regulation, if any]*.
- 2.2 This Agreement is intended, among other things, to confine the use of the Easement Parcel to activities that are consistent with the purposes of this Agreement, and to prohibit any use of the Easement Parcel that may impair, interfere with, damage, or destroy the community values, features and current uses of the Easement Parcel as outlined in the Report.

### **ARTICLE 3 – GENERAL REPRESENTATIONS AND WARRANTIES**

- 3.1 The Owner represents and warrants that the Owner is the sole legal and beneficial owner of the Lands with good and marketable title in fee simple thereto.
- 3.2 The Easement Holder represents and warrants that it is an Eligible Body and that it has the right to enter into this Agreement by virtue of being: *[Choose one of the following:*
- a) Her Majesty in right of the Province or any agency of Her Majesty in right of the Province;
  - b) Her Majesty in right of Canada or any agency of Her Majesty in right of Canada;
  - c) a municipality or any agency of a municipality;
  - d) one of the thirteen Nova Scotia Mi'kmaq bands or any legal organization representing two or more of the bands;
  - e) a non-profit organization designated by the Governor in Council as a conservation organization under the *Conservation Easements Act*; or
  - f) a non-profit organization designated pursuant to the *Community Easements Regulations*.]
- 3.3 The parties confirm that they have each received and reviewed a copy of the Report and represent and warrant to each other that the Report accurately describes the present condition, values, features and current use of the Easement Parcel as of the date of this Agreement.

- 3.4 The parties agree that the Report is intended to serve as an objective information base for monitoring compliance with this Agreement.
- 3.5 The Easement Holder represents and warrants that it has the capacity to monitor, enforce and remediate the Easement by virtue of [*provide information that demonstrates the capacity of the Easement Holder to do this*].

#### **ARTICLE 4 - GRANT OF EASEMENT**

- 4.1 The Owner grants to the Easement Holder a community easement on, over, and across the Easement Parcel [*Choose: "in perpetuity" or state "for a term of (insert the number) years"*] for the purposes and intents set out in Article 2 of this Agreement and with the right to preserve, protect and ensure compliance with those purposes, including through:
- a) monitoring and enforcing the Agreed Practices and the purposes and intents set out in this Agreement;
  - b) determining through inspection, testing, or otherwise, whether in its opinion the obligations of the Owner as stated in this Agreement are being complied with and the purposes of this Agreement are being achieved;
  - c) carrying out any conservation, preservation, protection, enhancement, remediation, restoration or rehabilitation of the values and features of the Easement Parcel as in the sole opinion of the Easement Holder are necessary or desirable and permitted under this Agreement;
  - d) passing and repassing over, across and upon the Easement Parcel on foot and with any vehicles, equipment and materials reasonably necessary to fulfill the Easement Holder responsibilities; and
  - e) generally doing all acts necessary or incidental to the exercise of the rights and privileges granted herein.
- 4.2 Further, the Owner grants to the Easement Holder a right of access to the Easement Parcel across the [*describe the access*] for the purposes set out in Paragraph 4.1 of this Agreement.
- 4.3 The rights granted herein to the Easement Holder extend to and may be exercised by the Easement Holder's directors, officers, employees, servants, agents and contractors, subject always to compliance with the provisions of this Agreement.
- 4.4 The Easement Holder may erect signage on the Easement Parcel setting out the existence of the Community Easement and may otherwise publicize its existence.
- 4.5 The Easement Holder will take reasonable measures to interfere as little as reasonably

possible with the use and enjoyment of the Easement Parcel by the Owner, provided the Owner's use and enjoyment are consistent with this Agreement.

- 4.6 Prior to entering the Easement Parcel, the Easement Holder will give the Owner at least twenty-four (24) hours written notice, unless, in the opinion of the Easement Holder, there is an emergency or other circumstance which precludes the giving of such notice.
- 4.7 The Owner covenants and agrees that the Easement Holder, upon observing and performing the terms and conditions of this Agreement, will and may peaceably hold and enjoy the rights and privileges granted by this Agreement without hindrance or interruption on the part of the Owner or any person or entity claiming by, through or under the Owner, subject to the provisions this Agreement.
- 4.8 The Owner reserves all of its rights as owner of the Lands, including the right to use and occupy the Easement Parcel in any way that is not restricted or prohibited by this Agreement, provided the use and occupancy is consistent with the Agreed Practices and purpose and intents of this Agreement.
- 4.9 Nothing contained in this Agreement should be construed as affording or permitting physical access to the general public to any portion of the Easement Parcel without the Owner's consent.
- 4.10 The parties agree that from the registration of this Agreement, the covenants and obligations contained in this Agreement will run with and be binding upon the Lands for the benefit of the Easement Holder and that this Agreement will be registered by the Easement Holder against title to the Lands in accordance with the provisions of the *Registry Act* or the *Land Registration Act*, whichever is applicable. The Easement Holder will, within thirty (30) days of the recording of this Agreement, forward a copy of it to the Minister of Natural Resources.

#### **ARTICLE 5 - AGREED PRACTICES**

- 5.1 The Owner covenants that the Owner will observe and uphold the Agreed Practices on the Easement Parcel for the Term. In addition, the Owner will not knowingly permit any breach of the Agreed Practices by any person, firm, corporation or other entity whatsoever.
- 5.2 The Easement Holder may from time to time waive, vary or release any or all of the Agreed Practices by an amendment or modification made in accordance with Paragraph 12.15 of this Agreement, provided that any such waiver, variance or release is not inconsistent with the purposes and intents of this Agreement.

#### **ARTICLE 6 - OWNER'S RESPONSIBILITIES**

- 6.1 The Owner will, at the expense of the Owner, continue to care for and operate the Easement Parcel as would a careful and prudent owner and maintain the Easement Parcel

in a manner consistent with this Agreement.

- 6.2 The Owner will advise the Easement Holder, as soon as reasonably possible, of any damage to the Easement Parcel.
- 6.3 If the Owner learns of any use of the Easement Parcel inconsistent with this Agreement, a breach of the Agreed Practices, or the likelihood of a breach occurring, by any person, the Owner will notify the Easement Holder of any inconsistent use, the breach or anticipated breach, as soon as possible and will, where reasonable in the circumstances, take the steps necessary to prevent the use or the breach from occurring or continuing.
- 6.4 The Owner will retain all liabilities and responsibilities related to the ownership, operation, and maintenance of the Easement Parcel.
- 6.5 The Owner will:
  - a) keep the Lands free of any claims or liens; and
  - b) where required, pay municipal, provincial taxes, rates, assessments and fees, the non-payment of which may give rise to a lien or charge on the Lands.
- 6.6 The Owner has the right to use the Lands as collateral to secure the repayment of debt provided that the rights of the Easement Holder to enforce this Agreement will not be extinguished by any public or privately placed lien or foreclosure of any mortgage and the collateral is granted in accordance with Paragraph 12.3.
- 6.7 The Owner will carry and maintain adequate comprehensive general liability coverage in respect of the Easement Parcel, with the Easement Holder being a named additional insured thereunder and will provide the Easement Holder with evidence of such coverage on an annual basis.

## **ARTICLE 7 – EASEMENT HOLDER RESPONSIBILITIES**

- 7.1 The Easement Holder will:
  - a) retain the Report on file at its offices;
  - b) carry out any monitoring and enforcement on the Easement Parcel that may, in the opinion of the Easement Holder, be required to uphold the purposes and intent of this Agreement;
  - c) undertake any conservation, preservation, protection, enhancement, remediation, restoration or rehabilitation of the values, features and current use of the Easement Parcel permitted under this Agreement that are, in the sole opinion of the Easement Holder, necessary or desirable to uphold this Agreement's purposes and intents, unless the need for conservation, preservation, protection,

enhancement, remediation, restoration or rehabilitation is the result of a breach of or default under this Agreement by the Owner, in which case the conservation, preservation, protection, enhancement, remediation, restoration or rehabilitation will be the responsibility of the Owner as provided for under Article 9 of this Agreement; and

- d) communicate to the Owner the results of monitoring, enforcement, conservation, preservation, protection, enhancement, remediation, restoration and rehabilitation conducted on the Easement Parcel.

7.2 The following conservation, preservation, protection, enhancement, remediation, restoration or rehabilitation measures may be undertaken by the Easement Holder: *[complete with allowable measures]*.

### **ARTICLE 8 - DAMAGE BY THIRD PARTY**

8.1 In the event of damage to the Easement Parcel caused by a third party which occurs without the knowledge, authorization, or consent of the Owner, the Owner and the Easement Holder will work together to find a mutually agreeable manner in which to address the damage. In the event that damage to the Easement Parcel is caused by a third party with the knowledge, authorization or consent of the Owner, the Owner will be in breach of this Agreement for the purposes of Article 9 of this Agreement.

8.2 The Owner will apply proceeds of any private insurance policy, or any funds paid as compensation for damage to the Easement Parcel, to the remediation, restoration and rehabilitation of the Easement Parcel.

8.3 The Owner, at its option, and in consultation with the Easement Holder, may pursue the third party for recovery of damage or join in any legal action with the Easement Holder for recovery of damage. Any such damages will, to the extent that the same have not already been recovered through insurance or otherwise, be applied to the costs of the remediation, restoration or rehabilitation of the Easement Parcel.

### **ARTICLE 9 - DEFAULT**

9.1 In the event of a breach of or default under this Agreement by either the Owner or the Easement Holder, the other party may take any lawful action available for the recovery of damages, provided that the other party will first give notice of the breach or default to the party in breach or defaulting and provide sixty (60) days for that party to remedy the same or make arrangements satisfactory to the other party to do so.

9.2 In the event the breach or default is by the Owner and it is not feasible, in the opinion of the Easement Holder, to delay for the notice period required under Paragraph 9.1 because of the nature of the breach or default or other circumstances, no notice period is required and the Easement Holder will have the right to immediately enter the Easement Parcel and cure the default at the reasonable expense of the Owner.

- 9.3 If notice has been given by the Easement Holder to the Owner pursuant to Paragraph 9.1 and the default has not been cured within the period provided for therein, the Easement Holder may, in addition to its rights outlined in Paragraph 9.1, serve on the Owner a further notice setting out the particulars of the Easement Holder's estimated costs of remedying the default. The Owner will have ten (10) days from the delivery of such notice to remedy the default or make arrangements satisfactory to the Easement Holder for remedying the default, failing which the Easement Holder, by itself, its servants, agents or contractors, may enter upon the Easement Parcel and cure the default.
- 9.4 In the case of a breach of or default under the Agreement by the Owner that is not remedied by the Owner under Paragraph 9.1 or Paragraph 9.3, the Owner will reimburse the Easement Holder for the reasonable cost of remedying the breach or default, including, without limitation, any cost of remediation, restoration or rehabilitation undertaken by the Easement Holder, as well as any reasonable costs and expenses of enforcement, including court costs, reasonable legal fees on a solicitor-client basis, and disbursements, tax and any other payments ordered by a Court or other decision-maker chosen by mutual consent of the parties.
- 9.5 In the event that the values, features and current uses of the Lands are irreparably and permanently damaged by a breach of or default under this Agreement by the Owner, the parties agree that the Owner will pay compensation to the Easement Holder based upon the fair market value of the Easement Parcel.
- 9.6 Such costs and expenses incurred by or compensation owed to either the Owner or the Easement Holder under Article 9 of this Agreement will, until paid, be a debt owed by the defaulting party to the other party with interest as provided for in Paragraph 9.7.
- 9.7 Any amount payable by a party hereunder by reason of a breach of or default under this Agreement will bear interest from the date the amount became payable until the date of payment at a rate which is two (2) percentage points over the key interest rate from time to time set by the Bank of Canada or the maximum allowed by law, whichever is less.

#### **ARTICLE 10 – NOTICES**

- 10.1 Any notice (which term in this Article 10 includes any request or waiver) provided or given under this Agreement will be sufficiently delivered by either party if in writing and delivered by hand, sent by facsimile or other means of electronic communication or mailed by prepaid registered post

if to the Easement Holder as follows:

Address:            *[Complete]*

Tel:

Fax:

Email:

Attention:

and if to the Owner as follows:

Address:            *[Complete]*

Tel:

Fax:

Email:

Attention:

- 10.2 Any notice delivered by hand or forwarded by facsimile or other means of communication will be deemed to have been given on the next business day following the day of delivery or forwarding and any notice mailed will be deemed to have been given on the fourth business day following the day of mailing.
- 10.3 Either party may, in any manner aforesaid, give notice to the other party of any change in the address or facsimile number thereof and thereafter the new address or facsimile number will be the address of such party for the purpose of giving notice hereunder.

#### **ARTICLE 11 - LIABILITY LIMITATIONS, FORCE MAJEURE, AND INDEMNITY**

- 11.1 Neither the Owner nor the Easement Holder will be liable to the other for any damage to or change in the Easement Parcel resulting from causes beyond the control of such party including, but not limited to, fire, flood, storm, earth movement, trespass, insect plague or disease.
- 11.2 The Owner will indemnify and save harmless the Easement Holder, its directors, officers, employees, servants, agents and contractors from and against any and all actions, causes of actions, suits, claims, costs, demands, or other proceedings of any kind by or on behalf of any person, firm, corporation or other entity whatsoever arising out of or occasioned by any act or omission, negligent or otherwise, in the operation, maintenance or use of the Easement Parcel by the Owner or the Owner's guests, invitees, servants, agents, employees, contractors, licensees, lessees, or anyone for whom the Owner is in law responsible.
- 11.3 The Easement Holder will indemnify and save harmless the Owner, its directors, officers, employees, contractors, servants and agents from and against all actions, causes of actions, suits, claims, demands, or other proceedings of any kind by or on behalf of any person, firm, corporation or other entity whatsoever arising out of any negligent act by the Easement Holder or the Easement Holder's guests, invitees, servants, agents, employees, contractors, or anyone for whom the Easement Holder is in law responsible.

#### **ARTICLE 12 - MISCELLANEOUS PROVISIONS**

- 12.1 **Assignment**. The Easement Holder may assign this Agreement to any Eligible Body with

objects the same as or similar to those of the Easement Holder. The Easement Holder will give notice to the Owner of any assignment of the interest of the Easement Holder under this Agreement. Any such notice will include the name and address of the assignee and will be given at least ten (10) days prior to the effective date of the assignment. The Easement Holder will record the assignment with the Registry of Deeds or the Land Administration Office and forward a copy to the Minister of Natural Resources within thirty (30) days of recording.

- 12.2 **Notice of change of interest.** The Owner will give notice to the Easement Holder of any change in the ownership of or interest in the Lands. Any such notice will include the name and address of the new owner or interest holder and will be given at least ten (10) days prior to the change of ownership or interest.
- 12.3 **Priority of interest of the Easement Holder.** The Owner will not transfer, or permit any mortgagee to transfer, any ownership interest in the Lands without requiring the transferee to acknowledge in writing (addressed and delivered to the Easement Holder) the priority of this Agreement and the interest of the Easement Holder thereunder, and will not grant any mortgage, lease, license or other interest respecting the Lands, or any part thereof, without such grant being made expressly subject to this Agreement.
- 12.4 **Failure to exercise or enforce rights.** No failure by the Easement Holder to require performance by the Owner of any provision of this Agreement will affect the right of the Easement Holder thereafter to enforce such obligation and no failure by the Owner to exercise any of the Owner's rights or obligations hereunder will be taken as a waiver of such rights in the future.
- 12.5 **Time of the essence.** Time will be of the essence in this Agreement and will be deemed to remain so notwithstanding any extension of any time limit.
- 12.6 **Severability.** All provisions of this Agreement will be severable and should any be declared invalid or unenforceable, in whole or in part, the validity and enforceability of the remaining provisions will remain valid and enforceable.
- 12.7 **Costs.** Save as provided in this Agreement or ordered by any court or tribunal, each party will be responsible for its own legal fees and related expenses arising from the negotiation and implementation of this Agreement.
- 12.8 **Entire Agreement.** This Agreement embodies the entire Agreement of the parties with regard to the matters dealt with this Agreement, and no understandings or agreements, verbal, collateral, or otherwise, exist between the parties except as expressly set out in this Agreement.
- 12.09 **Headings.** The headings in the body of this Agreement form no part of the Agreement but will be deemed to be inserted for convenience of reference only.
- 12.10 **Gender and number.** This Agreement will be read with such changes of gender and

number as the context requires. Any reference to a person will be deemed to include a corporation, partnership or trust.

- 12.11 **Applicable law.** This Agreement will be interpreted and enforced according to the laws of Nova Scotia and the laws of Canada and any disputes will be resolved exclusively in the courts of Nova Scotia.
- 12.12 **Further assurances.** Each party at the request of the other party will execute and deliver such assurances and do such other acts as may be reasonably required or desirable to give full effect to the provisions and intent of this Agreement.
- 12.13 **Joint and several.** Whenever the Owner should be comprised of more than one person the obligations of this Agreement will be joint and several.
- 12.14 **Enurement.** This Agreement is of the same force and effect to all intents and purposes as a covenant running with the Lands and it extends to and binds and enures to the benefit of the parties hereto and their respective successors, assigns, successors in title and in interest to Lands, as the case may be.
- 12.15 **Amendments.** No amendment or modification of this Agreement is effective unless it is in writing, executed, and delivered by both parties and recorded under the *Registry Act* or the *Land Registration Act*, whichever is applicable. This Agreement will not be changed, modified or discharged orally. The Easement Holder will forward a copy of the amendment or modification to the Minister of Natural Resources within thirty (30) days of recording.
- 12.16 **No Joint Venture, Partnership or Agency.** Nothing contained herein will be construed as creating any joint venture, partnership, agency or joint and several liability between the parties.
- 12.17 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which, when executed, will be deemed to be an original and all of which taken together will constitute one and the same agreement.

[The remainder of this page is left intentionally blank]

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

SIGNED, SEALED AND DELIVERED  
in the presence of:

_____	)	_____
Witness	)	Name: <i>[Owner]</i>
	)	(Seal)
	)	
	)	
	)	
	)	
_____	)	Per: _____
Witness	)	Name: _____ (Seal)
	)	<i>[Signing Authority for Easement Holder]</i>
	)	
	)	
_____	)	Per: _____
Witness	)	Name: _____ (Seal)
	)	<i>[Signing Authority for Easement Holder]</i>

*[Execute and attach the appropriate Certificates of Execution and Affidavits as required.]*

**SCHEDULE "A"**

Attached to and forming part of the Agreement between Owner and Easement Holder made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ .

**LEGAL DESCRIPTION OF THE LANDS**

Sample

**SCHEDULE "B"**

Attached to and forming part of the Agreement between Owner and Easement Holder made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_.

**PLAN OR SKETCH OF THE LANDS**

Sample

**SCHEDULE "C"**

Attached to and forming part of the Agreement between Owner and The Easement Holder made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

**PLAN, SKETCH OR DRAWING OF THE EASEMENT PARCEL**

Sample

**SCHEDULE "D"**

Attached to and forming part of the Agreement between Owner and The Easement Holder made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_.

**LEGAL DESCRIPTION OF THE EASEMENT PARCEL**

Sample

**SCHEDULE "E"**

Attached to and forming part of the Agreement between Owner and Easement Holder made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ .

**AGREED PRACTICES**

*(This section is to be tailored to the specific values and features and current uses of the Easement Parcel and the needs of the Owner.)*

**PROHIBITED PRACTICES**

*(List activities or uses of the Easement Parcel that are prohibited.)*

**RESTRICTED PRACTICES**

*(List activities or uses of the Easement Parcel that are restricted.)*

**PERMITTED PRACTICES**

*(List activities or uses of the Easement Parcel consistent with the purpose of this Agreement that do not adversely affect the values, features and current uses of the Easement Parcel and are permitted.)*

**SCHEDULE "F"**

Attached to and forming part of the Community Easement Agreement between Owner and Easement Holder made as of the \_\_day of \_\_\_\_\_, 20\_\_.

**THE BASELINE DOCUMENTATION REPORT**

Sample