

**The Corporation of the Town of Essex**

**By-Law Number 1994**

**Being a by-law to enter into a Conservation Easement Agreement between**

**Marc Johnston**

**and**

**The Corporation of the Town of Essex**

WHEREAS Marc Johnston is the owner of a parcel of land described as CON 2, Part Lot 17, Part 1 on Reference Plan 12R-28527, Town of Essex, in the County of Essex, and Province of Ontario (hereinafter the "Lands");

And whereas the owner is desirous of entering into a Conservation Easement with the Municipality over a parcel of land described as CON 2, Part Lot 17, Part 1 on Reference Plan 12R-28527 in the County of Essex and Province of Ontario (hereafter referred to as "Protected Area");

NOW THEREFORE BE IT RESOLVED THAT THE COUNCIL OF THE CORPORATION OF THE TOWN OF ESSEX ENACTS AS FOLLOWS:

1. That the Mayor and the Clerk are hereby authorized to execute the Conservation Easement Agreement attached hereto as Schedule "1" to this By-law, with the Owner relating to and over a parcel of land described as CON 2, Part Lot 17, designated as Parts 1 on Registered Plan 12R-28527 Town of Essex, in the County of Essex and Province of Ontario.

Read a first, a second and a third time and finally passed on March 15, 2021.

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Mayor

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Clerk

## **SCHEDULE “1”**

**THIS AGREEMENT made in duplicate this 15<sup>th</sup> day of March, 2021**

**BETWEEN:**

**MARC JOHNSTON**

(hereinafter called the “OWNER”)

**OF THE FIRST PART**

-and-

**TOWN OF ESSEX**

(hereinafter called the “MUNICIPALITY”)

**OF THE SECOND PART**

WHEREAS Marc Johnston is the owner of a parcel of land described as 3873 Concession Road 3, CON 2, PT LOT 17, Town of Essex, in the County of Essex, and Province of Ontario;

AND WHEREAS the owner is desirous of entering into a Conservation Easement with the Municipality over a parcel of land described as CON 2, PT Lot 17, Part 1 on Reference Plan 12R-28527 in the County of Essex and Province of Ontario (hereafter referred to as “Protected Area”);

In consideration of the sum of two (\$2.00) dollars now paid by the Owner to the Municipality, the Owners and the Municipality agree to the covenants, restrictions and easements as set out in this Agreement which shall run with the lands in perpetuity.

### **ARTICLE 1**

#### **DEFINITIONS**

- 1.1 For the purposes of this Agreement, the following words and phrases shall have the following meanings:
- (a) “Agreement” or “this Agreement” means this Conservation Easement Agreement and the schedules attached hereto as at the date hereof and as amended from time to time.
  - (b) “Covenants” mean the covenants set out in Article 4 as the same may be waived, varied or released by the Municipality in accordance with this Agreement.
  - (c) “Easement” means the rights and easement in respect of the Lands granted by the Owners to the Municipality in Article 5 of this Agreement.
  - (d) “Lands” means the lands and premises of the Owners situate in the Province of Ontario and more particularly described as CON 2 PT LOT 17.
  - (e) “Owners” means the above named parties of the First Part and any person who at any time after registration of this Agreement becomes the registered owner of the Lands or any part thereof or any ownership interest therein, including a trustee for any beneficial owner of the Lands.

- (f) "Protected Area" means that part of the Lands including the natural heritage conservation area that is to be protected and identified as Part of Lot 17, Concession 2, Part 1 on Reference Plan 12R-28527.

## ARTICLE 2

### REPRESENTATIONS AND WARRANTIES

- 2.1 The Owners covenants and warrants that the Owners are the legal, beneficial and registered owners of the Lands with good title thereto.
- 2.2 The parties represent and warrant to each other that the Lands, identified as, CON 2 PT LT 17, including the current use and the significant natural features of the Lands intended to serve as an objective information base for monitoring compliance with this Agreement.
- 2.3 The Lands include significant natural features which the Owners and the Municipality have agreed to protect and enhance.

## ARTICLE 3

### INTENTION

- 3.1 It is the intention of the parties that this Conservation Easement Agreement will ensure the protection of the natural features in the Protected Area and will prevent any use of the Protected Area that will damage or destroy those natural features. More specifically, it is intended that the use of the Protected Area will be restricted to natural heritage conservation uses that are consistent with the primary intention of the parties.

## ARTICLE 4

### COVENANTS

- 4.1 The Owners shall not use the Protected Area or permit any use of the Protected Area, which shall damage or destroy the natural features of the Protected Area or prevent their restoration. Without limiting the generality of the foregoing, the Owners expressly covenants and agrees that, except with the prior written approval which shall not be unreasonably withheld by the Municipality, the Owners shall not conduct the following in the Protected Area:
- (a) grant any easements in, over, on, under or through the Lands;
  - (b) sever or subdivide ;
  - (c) construct, erect, maintain or allow construction, erection or maintenance of any new building or structure, including without limitation, transmission tower or lines, fences, and signs;
  - (d) construct, improve or allow the construction or improvement of any road, parking lot, dock, aircraft landing strip or other such facility, except for the maintenance of existing foot trails, fire lanes or other accesses;

- (e) operate any motorized vehicles on the subject lands, outside of the existing established trails .

use or allow the Protected Area to be used as a trailer or mobile home park, parking or storage area;

dump or allow the dumping of soil, rubbish, ashes, garbage, waste or other unsightly or offensive materials of any type or description;

use or allow the use of pesticides, insecticides, herbicides, chemicals or other toxic materials of any type or description;

- (f)

change or allow any changes in the general appearance or topography of the Lands, including and without limiting the generality of the foregoing, the construction of drainage ditches, tile drains, retaining walls, dams or ponds or any similar undertakings, as well as the dumping, excavation, dredging, or removal of loam, gravel, soil, rock, sand or other materials;

- (g)

remove, destroy or cut or allow removal, destruction or cutting of trees, shrubs or other vegetation;

plant or allow the planting or other introduction of non-native plant or animal species within the Lands;

- (h)

permit agricultural livestock to enter or to use the Protected Area and maintain any fencing along the boundaries of the Protected Area in a condition that will prevent agricultural livestock from entering onto the Protected Area; or,

undertake or allow others to undertake any activities, actions or uses detrimental or adverse to water conservation or erosion control, soil conservation or the preservation of native plant and animal species.

- 4.2 The request for approval referred to in paragraph 4.1 shall be delivered to the Municipality and such approval shall be deemed to have been given by the failure of the Municipality to reply in writing within sixty (60) days of making of such request.

## ARTICLE 5

### EASEMENT

- 5.1 The Owners hereby grants to the Municipality an easement to permit the Municipality's employees, officers, to enter on and have access to the Lands at reasonable times and subject to the requirements specified below and for the following purposes:

- (a) inspection, in order to determine compliance with this Agreement; and,  
(b) for all purposes reasonably necessary or incidental to the exercise of the rights hereby created or related to any of the foregoing purposes.

- 5.2 Prior to entry or access to the Lands for the purposes identified in Section 5.1 the Municipality shall provide written notice to the Owners.

- (a) for the purposes specified in paragraph 5.1 (a) at least twenty four (24) hours written notice; and
  - (b) for the purposes specified in paragraph 5.1 (b) at least ten (10) days written notice. This notice shall describe the nature, scope, design, location, timetable and any other material aspect of the activity proposed.
- 5.3 No right of access by the general public to any portion of the Lands is granted by this Agreement.

## ARTICLE 6

### OWNERS' OBLIGATIONS AND INDEMNITY

- 6.1 The Owners shall at the expense of the Owners, continue to care for and maintain the Protected Area as would a careful and prudent owner. In particular, and without limiting the generality of the foregoing, the Owners shall:
  - (a) maintain the Protected Area in a good condition, and keep the Protected Area free of construction liens; and
  - (b) pay as they become due municipal and provincial taxes, rates and fees charged or levied against the Protected Area.
- 6.2 The Owners shall and do hereby indemnify and save harmless the Municipality, its directors, officers, employees, agents and contractors from and against any and all actions, causes of action, suits, claims, demands by or on behalf of any person arising out of or occasioned by any act or omission, negligence or otherwise, in the use and maintenance of the Protected Area by the Owners, any licensee or lessee thereof or anyone for whom the Owners are in law responsible, including any liability arising from any existing or future environmental matters or conditions affecting the Protected Area.

## ARTICLE 7

### DEFAULT

- 7.1 In the event of breach of or default in the obligations and covenants of the Owners under this Agreement, the Municipality may take action available to it at law, in equity, by statute or under this Agreement provided that the Municipality shall first give to the Owners written notice of the default which notice shall specify the nature of the non-compliance and the measures necessary to secure compliance with the terms of the Agreement. If notice of default is given, the Owners shall have sixty (60) days following receipt of the notice of default to complete the required measures and to rectify the non-compliance or default.
- 7.2 If the Municipality in its sole discretion determines that the circumstances require immediate action to prevent or mitigate damage to the natural features of the Protected Area, the Municipality may pursue its remedies under this Article 7 without prior notice to the Owners and without waiting for the expiry of the sixty (60) day notice period as otherwise required under paragraph 7.1.

- 7.3 In the event that the Owners have failed to provide compliance within the sixty (60) day period allowed, then the Municipality shall be entitled to enter onto the Lands and to complete those works and measures necessary to provide compliance and to remedy the default at the expense of the Owners. Until paid to the Municipality by the Owners, such costs of remedy incurred by the Municipality shall be a debt owed by the Owners to the Municipality and shall be a charge upon the Lands enforceable in the same manner as a Mortgage and recoverable by the Municipality in a court of law.
- 7.4 The parties recognize that damages based upon market value may not be adequate or effective for destruction of or restoration of the natural features of the Protected Area as they existed prior to default or breach of the Agreement. Accordingly, the parties agree that:
- (a) compensation to the Municipality in the event of default or breach of the Agreement may be based upon market value, restoration or replacement costs whichever, in the opinion of the court shall better compensate the Municipality; and
  - (b) in addition, and without limiting the scope of the other enforcement rights available to the Municipality under this Agreement, the Municipality may bring an action or an application for injunctive relief to prohibit or prevent default or the continuance of default under this Agreement.

## ARTICLE 8

### NOTICE

- 8.1 Any notice to be given or required under this Agreement (which term in this paragraph includes any request or waiver) shall be in writing and sent by personal delivery, email or by registered prepaid mail to the parties.
- 8.2 Any notice so delivered or any notice so forwarded by email, personal delivery, or other means of communication shall be deemed to have been given on the next business day following the day of delivery or forwarding and any notice so mailed shall be deemed to have been given on the fourth business day following the day of mailing. Either party may in any manner aforesaid give notice to the other party of any change in address, or email thereof and thereafter the new address, or email shall be the address of such party for the purpose of giving notice hereunder.

## ARTICLE 9

### GENERAL PROVISIONS

- 9.1 Rights reserved by Owner: The Owners reserve to themselves, and to their successors and assigns, and any transferee there from, all rights accruing from their ownership of the Lands, including the right to engage in or permit or invite others to engage in, all uses of the Lands that are not expressly prohibited in this Agreement and are not inconsistent with the purpose and terms of this Agreement.
- 9.2 Owner not Liable: No person who is an Owner shall be liable to the Municipality for any breach of or default in the obligations owed to the Municipality under this Agreement

committed after the registration of a transfer by such person of that person's interest in the Lands.

- 9.3     Registration: The Municipality may register this Agreement against the title to the Lands and the Owners shall execute any document that may be required to allow such registration.
- 9.4     Failure to Exercise or Enforce Rights: No failure by the Municipality to require performance by the Owners of any provision of this Agreement shall affect the right of the Municipality thereafter to enforce such obligations and no failure by the Owners to perform any of its rights or obligations hereunder shall be taken as a waiver of such performance or the performance of any other obligation in the future.
- 9.5     Time of the Essence: Time shall be of the essence of this Agreement and shall be deemed to remain so notwithstanding any extension of any time limit.
- 9.6     Severability: All provisions of this Agreement including each of the covenants shall be severable and should any be declared invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected thereby.
- 9.7     Costs: Save as provided herein or ordered by any court or tribunal, each party shall be responsible for its own legal fees and related expenses arising from the negotiations and implementation of the Agreement.
- 9.8     Joint and Several: Whenever the Owner comprises more than one person, the Owners' obligations in this Agreement shall be joint and several.
- 9.9     Entire Agreement: This Agreement is the entire agreement between the parties with respect to the matters dealt with herein, and no understandings or agreements, verbal collateral or otherwise, exist between the parties except as herein expressly set out.
- 9.10    Enurement: This Agreement including the Easement and the Covenants shall run with the Lands in perpetuity or until such time as the Municipality, or its successor or assign authorizes their release and shall enure to the benefit of and be binding upon the parties hereto and their respective successors, assigns, heirs, executors, and personal representatives as the case may be.
- 9.11    Acts Beyond Party's Control: Neither party shall be liable to the other for damage to or change in the Lands resulting from causes beyond the control of such party, including without limitation, accidental fire, flood, storm, earth quake, subsidence, trespass, insect infestation or disease.

IN WITNESS WHEREOF the Owners and the Municipality have executed this Agreement.

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

SIGNED, SEALED AND DELIVERED	)	The Corporation of the TOWN OF ESSEX
In the presence of	)	
	)	
	)	

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Witness of (Landowner)	)	Per:
	)	I have the authority to bind the Corporation
	)	
	)	
	)	
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Date	)	Marc Johnston
	)	
	)	
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