

Shore Line Improvement Property Owner Agreement

<p><i>As provided in the Expression of Interest in Appendix D,</i></p> <p><i>Property Owners (hereinafter, collectively, the "Property Owner"):</i></p> <p>1.</p> <p><i>Property Identifying Information (hereinafter, the "Property"):</i></p> <p>1. Address –</p> <p>2. Assessment Roll –</p>	<p><i>Certified as sufficient, in accordance with O.Reg. 586/06. On the date of:</i></p> <hr/> <p><i>Robert Auger, L.L.B.</i> <i>Town Solicitor / Clerk</i></p>
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THIS PROPERTY OWNER AGREEMENT ("POA"), made in duplicate as of this [] day of [] 20 [] ("Effective Date").

BETWEEN:

INSERT PROPERTY OWNER

(hereinafter called the "Property Owner")

Of The First Part

- and -

THE CORPORATION OF THE TOWN OF ESSEX

(hereinafter called the "Town" and, together with the Property Owner, the "Parties")

Of The Second Part

WHEREAS:

1. Essex Town Council ("Council") at its meeting(s) of [], 2020 adopted Resolution **R120-00-000** to authorize the undertaking of specific works and the entering into of a Shoreline Assistance Loan Program Property Owner Agreement (POA) with respect to such works and Resolution **R120-00-000** to give notice of the Towns intention to pass a Bylaw authorizing such works as a local improvement, respectively (the "Decisions"), and at its meeting of [], 2020 did enact By-law [], **as amended from time to time** (the "By-law"), pursuant to Section 36.5 and 36.6 of Ontario Regulation 586/06 to authorize the undertaking of flood

prevention and control works on private residential property as local improvements under the Shoreline Assistance Loan Program set out in the By-law (the "Program").

2. Among other things, the Decision authorizes the Clerk and Treasurer to negotiate and enter into POAs with consenting property owners on the terms and conditions set out in the Decision which are incorporated, as appropriate, into this POA.
3. The Property Owner owns the Property.
4. The Property Owner has submitted a complete Expression of Interest and complete Funding Request for the Property to participate in the Program.
5. The Town has reviewed the Expression of Interest and Funding Request and has approved the participation of the Property in the Program;

In consideration of the mutual covenants herein contained, the Parties agree as follows:

1. Definitions

In addition to the terms defined in the various sections of this POA, the following terms have the following meanings unless inconsistent with the subject matter or context:

"Actual Cost" means the invoiced cost of completion of the Actual Improvements as set out in Appendices A2 and G;

"Actual Improvements" means the Eligible Improvements undertaken to the Property under the Program as indicated in Appendices A2 and G;

"Administrative Charge" means a one-time charge of \$2,000, representing each Property's share of the Town's cost of administering the Program;

"Applicable Laws and Requirements" means:

- (1) any statute or proclamation or any delegated or subordinate legislation, including regulations and municipal by-laws;
- (2) any lawful requirement of a Governmental Authority, including but not limited to those lawful requirements contained in POAs with the Governmental Authority or in approvals, certificates, permits and/or other authorizations issued by the Governmental Authority; or
- (3) any applicable judgment of a relevant court of law, board, arbitrator or administrative agency of competent jurisdiction,

each of which is binding and in force in the Province of Ontario;

"Approved Final Cost" has the meaning given to it in section 9, and as set out in Appendix A2;

"Assignment, Novation, and Release" means an agreement to assign this POA to a new owner of the Property and to release the Property Owner from his or her obligations under this POA, in the form attached as Appendix C;

"Business Day" means Monday to Friday inclusive, excluding statutory and other holidays, namely; New Year's Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Christmas Day; Boxing Day and any other day which the Town has elected to be closed for business;

"Business Hours" means the hours between 8:30 am and 4:30 pm (Eastern time zone);

"Town" means the The Corporation of the Town of Essex;

"Town-Provided Material" means any written documentation or other material that the Town makes available generally to the public or specifically to the Property Owner in connection with the Program or this POA;

"Cost of Borrowing" means the Town's actual or notional cost of borrowing to fund the Program (with notional cost being set at the rate of foregone investment income to the Town) charged to the Property by applying the Program Interest Rate to the Funding Amount over the Special Charge Term;

"Completion Date" means the date indicated in Appendix E by which the Work shall be completed, as that date may be extended pursuant to section 7 of this POA;

"Contractor" means an insured person retained by the Property Owner to complete the Work;

"Council" means Essex Town Council;

"Current Value Assessment" means the current value assessment of the Property as shown on the last returned assessment roll at the time of submitting the Expression of Interest to the Town;

"Eligible Improvements" means the flood control/mitigation measures as recommended for the Property by the Essex Region Conservation Authority (ERCA) as identified in the Shoreline Assessment Report set out in Attachment 3 to Appendix E;

"Estimated Cost" means the estimated cost of completion of the Intended Improvements as set out in Appendix A1;

"Estimated Lifetime" means the estimated useful life of the Intended Improvements, as set out in Appendix A1;

"Expression of Interest" means an application in the Town's prescribed form that the Property Owner completed and submitted to the Town's satisfaction and that confirmed the Property's eligibility to participate in the Program, which completed form is attached as Appendix D to this POA;

"Final Disbursement" means the disbursement of the remaining portion of the Funding Amount not already disbursed as the Initial Disbursement by the Town to the Property Owner, as calculated pursuant to Section 10 and set out in Appendix A2;

"Funding Amount" means the total funds provided to the Property Owner by the Town under this POA, and calculated pursuant to Section 9 and set out in Appendix A2;

"Funding Request " means a request in the Town's prescribed form that the Property Owner has completed and submitted to the Town's satisfaction for funding for the Work, which completed request is attached as Appendix E to this POA;

"Governmental Authority" means any federal, provincial or municipal government, parliament, legislature, or any regulatory authority, agency, ministry, department, commission or board or other representative thereof, or any political subdivision thereof, or any court or (without limitation to the foregoing) any other law, regulation or rule-making entity, having jurisdiction over the relevant circumstances, or any person acting under the authority of any of the foregoing (including, without limitation, any arbitrator);

"Initial Disbursement" means disbursement to the Property Owner of the portion of the Funding Amount requested in the Funding Request of up to ten percent (10%) of the Estimated Cost in advance of completion of the Work, in accordance with Section 5;

"Intended Improvements" means the Eligible Improvements intended to be undertaken to the Property under the Program as set out in Appendix E;

"Lifetime" means the effective useful life of the Work, as set out in Appendix A2;

"Local Improvement Roll" means the local improvement roll for the Property setting out the Special Charge (Actual), as prepared and corrected by the Town and certified by the Town Treasurer in accordance with the Regulation;

"MFIPPA" means the *Municipal Freedom of Information and Protection of Privacy Act* R.S.O. 1990, Chapter M.56, as amended;

"Payment Term" means the time period over which the Property Owner will pay the Special Charge (Actual) commencing on the earlier of the date of first payment of the Special Charge (Actual) and the first payment due date for the Special Charge (Actual,) and ending upon full payment of the Special Charge (Actual);

"Pre-Authorized Property Tax Payment Program" means the Town's payment program in which the Property Owner authorizes automatic withdrawals from his or her bank account to the Town to pay property taxes and other charges collected through the tax bill as they become due and owing, such withdrawals to be made eleven times per calendar year;

"Program Documents" shall mean the documents comprising the Property Owners' request to participate in the Program and to obtain the requested funding, consisting of the:

- (1) Expression of Interest, attached as Appendix D;

- (2) Funding Request, attached as Appendix E; and
- (3) Project Completion Report, attached as Appendix F;

"Program Interest Rate" means the following annual interest rates corresponding to each of the following Special Charge Terms, which interest rate will be fixed for the duration of the Special Charge Term:

Special Charge Term	Effective Interest Rate (Annual)
Up to 10 years	Set by Financial Institution at time of borrowing

"Project Completion Report" means a report, in the Town's prescribed form (inclusive of any requisite attachments), that the Property Owner will prepare and submit to the Town's satisfaction following completion of the Work, for determination by the Town, in accordance with this POA, of any Final Disbursement for which the Property qualifies, which completed report will be attached as Appendix F to this POA. It is anticipated that a letter from the Essex Region Conservation Authority (herein "ERCA") evidencing final inspection of any permits obtained from ERCA will be a requisite attachment;

"Property" means the property defined on Appendix A3;

"Property Owner-Provided Material" means any written documentation or other material that the Property Owner provides to the Town, including but not limited to the Program Documents;

"Regulation " means Ontario Regulation 586/06, *Local Improvement Charges-Priority Lien Status* regulation made pursuant to the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended from time to time;

"Special Charge" means a charge imposed by the Town on the property pursuant to the Regulation;

"Special Charge (Actual)" means the final Special Charge for the Property based on the Actual Improvements, as set out in Appendix B2, that Town Council will impose on the Property;

"Special Charge (Estimated)" means the estimated Special Charge for the Property based on the Intended Improvements, as set out in Appendix B1;

"Special Charge Term" means the time period of five, ten, fifteen or twenty years, as selected by the Property Owner on Appendix E (Funding Request), commencing from the first payment due date for the Special Charge (Actual), which term cannot exceed the Lifetime of the Work;

"Substantially Performed" shall mean when the Work is ready for use or is being used for the purposes intended;

"Term" shall have the meaning ascribed to it in Section 2; and

"Work" means the Actual Improvements, collectively.

2. Term

This POA commences on the Effective Date and terminates at the end of the Payment Term.

As provided by Section 22, the Term continues even if ownership of the Property transfers but, upon such transfer, the prior Property Owner may become eligible for a Release (subject to applicable penalties as identified by the lending institution).

3. Interpretation

Each of the following Appendices to this POA are incorporated by reference into this POA as if they were fully stated herein:

Appendix A1 – Work – Intended
Appendix A2 – Work – Actuals
Appendix A3 – Property
Appendix B1 – Special Charge – Estimated
Appendix B2 – Special Charge – Actual
Appendix C – Form of Assignment, Novation and Release
Appendix D– Expression of Interest
Appendix E– Funding Request
Appendix F– Project Completion Report
Appendix G– POA Withdrawl Form
Appendix H– Pre-Authorized Property Tax Payment Program Application

Where there is a conflict between the language in any of the Appendices and this POA, the language of this POA shall prevail. The Property Owner authorizes the Treasurer for the Town to:

- a) Attach a completed Appendix H upon signing the Agreement; and
- b) Complete and attach Appendices A2, B2, and F upon the earlier of termination fo the Agreement or completion of the Work and provide copies of same to the Property Owner.

4. Property Owner's Initial Covenants:

The Property Owner covenants that the Property Owner:

- (1) is the lawful owner of the Property, and that if more than one person owns the Property, all Property Owners are parties to and have signed this POA;
- (2) is responsible for and will ensure that the Property Owner complies with all obligations it may have to any financing institutions or other lenders who may have a mortgage interest in the Property;
- (3) understands and agrees that:
 - (a) the Special Charge (Estimated) as set out Appendix B1 is only an estimate of the Special Charge amount based on the Estimated Cost set out in Appendix A1;

- (b) the Town shall provide the Property Owner from time to time with updated versions of Appendices A2 and B2 (as new information set forth in Appendices A2 and B2 becomes known) to which the Property Owner will then be bound except as otherwise provided in this POA;
 - (c) the maximum Special Charge (Actual) eligible for the Property to be the lesser of thirty percent of the Current Value Assessment or \$250,000; and
 - (d) the Town will advise the Property Owner of the Special Charge (Actual) pursuant to Section 16.
- (4) understands and agrees that by entering into this POA, completing and returning to the Town the Pre-Authorized Property Tax Payment Program Form attached as Appendix H, and providing a void blank cheque, the Town will automatically enroll the Property Owner in the Pre-Authorized Property Tax Payment Program, which payment program will apply to payment of the Special Charge (Actual), the property taxes payable on the Property, and any other charges that are payable through the Property's tax bill.

5. Initial Disbursement

Prior to completion of the Work, the Town will pay the Initial Disbursement indicated in Appendix A1 to the Property Owner.

6. Property Owner's Responsibility

The Property Owner understands and agrees that it is the Property Owner's sole responsibility to complete the Work by retaining a Contractor and to ensure that the Work is completed by the Completion Date.

The Town takes no responsibility for and has no involvement in retaining a Contractor or any other person to complete the Work. The Town also takes no responsibility for and has no involvement in the completion of the Work or in ensuring its completion, and the Property Owner is solely responsible for any action that may impede or adversely affect the Contractor and the Contractor's ability to complete the Work in a timely manner. The Property Owner further understands and agrees that the Town has no responsibility or liability to the Contractor or to the Property Owner for the completion of the Work including, without limitation, any delays, errors, or defects in the completion of the Work, any negligence of the Contractor in the completion of the Work, the Contractor's failure to complete the Work, any payment or failure to make payment to the Contractor or any other person in respect of completion of the Work, and the discharge of any liens on the Property.

7. The Property Owner is not an agent of the Town

The Property Owner understands and agrees that it is the Property Owner's sole responsibility to make payments for the completion of the Work, and that the Town will make payments to the Property Owner in accordance with this POA only if all requirements for such payment have been met.

The Town is not responsible for, and will not provide funding under the Program for, costs incurred by the Property Owner in retaining any subsequent contractor to maintain or repair the Work or consultant required to inspect the Work.

The Town is not liable for any failure of the Work to achieve the expected mitigation measures against flooding. The Property Owner further understands and agrees that the maximum Funding Amount under the Program is the lesser of the amounts set out in section 9 of this POA, and that the Property Owner may not receive payment from the Town of all, or any, costs incurred by the Property Owner to complete the Work.

8. Completion Date

Provided that the Property Owner notifies the Town in writing by at least 4:00 pm on the business day that is at least 10 business days before the Completion Date that the Property Owner is unable to Substantially Perform the Work by the Completion Date, and provided further that the Property Owner indicates the reasons for the delay and makes available whatever additional written or verbal information the Town requires, then the Town retains the right in its discretion on a case by case basis to extend the Completion Date to a later date.

9. Approved Final Cost

Within 30 days of the earlier of (a) the Work being Substantially Performed or (b) the Completion Date, the Property Owner shall provide the Town with the Project Completion Report.

The Town shall then verify the completeness and accuracy of the Project Completion Report, and will disqualify the Property from any funding under this POA if the Project Completion Report is incomplete or, in the Town's sole opinion, provides inadequate information to qualify for funding under this POA.

The Town may, in its sole discretion, make any reasonable adjustments to the Actual Cost as evidenced on the Project Completion Report, and may, at Property Owner expense, inspect or cause the inspection of the Work in accordance with Section 25 of this POA.

The Actual Cost as verified and adjusted by the Town in its sole discretion will constitute the Approved Final Cost.

10. Funding Amount

The Funding Amount shall be the amount that is the lesser of:

- 1) the Approved Final Cost;
- 2) the Estimated Cost plus Five (5) per cent of the Estimated Cost; and
- 3) the highest dollar amount that does not cause the Special Charge (Actual) to exceed the lesser of either 30 percent of Current Value Assessment for the property or \$250,000, when the Town calculates the Special Charge (Actual) as set forth in Section 11(1) of this POA.

11. Final Disbursement

The Final Disbursement shall be the Funding Amount as determined under Section 9 of this POA, less the Initial Disbursement.

The Town will pay to the Property Owner the Final Disbursement within a reasonable period of time following receipt of the Project Completion Report, as determined by the Town. Any Town payment will be made by cheque payable to the Property Owner.

12. Special Charge

(1) Calculating the Special Charge

After the Final Disbursement Amount is paid to the Property Owner, the Town will calculate the Special Charge (Actual) for the Property.

The Special Charge (Actual) shall equal the sum of (a) the Funding Amount, (b) the Cost of Borrowing, and (c) the Administrative Charge.

(2) Notice of the Special Charge

The Town will advise the Property Owner of the proposed Special Charge (Actual) pursuant to Section 16.

(3) Consent to Levy of the Special Charge

The Property Owner consents to the Special Charge (Actual) being levied by the Town on the Property pursuant to the Regulation, and agrees to pay (together with the annual property taxes assessed against the Property) the Special Charge (Actual) in equal annual amounts over the Special Charge Term, by making 12 monthly payments per year under the Pre-authorized Property Tax Payment Plan. The Property Owner understands that such monthly payments will be in an equal amounts, except for the final payment which may be greater or lower to address any remainder amounts.

(4) Apportioning the Special Charge

The Town apportions the Special Charge (Actual) on the basis of one Special Charge per property.

13. Property Owner's Additional Obligations:

The Property Owner shall:

- (1) Complete the Work by the Completion Date;
- (2) Remain enrolled and in good standing in the Town's Pre-authorized Property Tax Payment Program for the duration of the Payment Term;
- (3) If the Property Owner does not complete the Work or otherwise does not put the Property in a position where the Town can impose the Special Charge on the Property, repay in its entirety all funds received from the Town pursuant to this POA or under the

Program (the "funds") within ten business days of receipt of a demand for payment from the Town and if upon the expiry of said ten business days the funds have not been paid in its entirety then such funds shall constitute a charge imposed by the Town and a debt of the Property Owner to the Town and such charge may be added to the tax roll and collected in the same manner as municipal taxes pursuant to the provisions of Sections 391 and 398 of the *Municipal Act, 2001, S.O. 2001, c. 25*; and

- (4) Notify any party to whom the Property Owner plans to transfer the Property, whether a buyer or otherwise, in advance of such transfer that the Special Charge (Actual) has been, or will be imposed on the Property pursuant to the Program and the Regulation.
- (5) The Town is hereby authorized to: a) register notice of this agreement on title to the Property at the expense of the Property Owner; and b) otherwise notify anyone enquiring at the Town for a Tax Certificate in respect of the Property as to the existence of this POA and any payment required any party to whom the Property Owner plans to transfer the Property, whether a buyer or otherwise, in advance of such transfer that the Special Charge (Actual) has been, or will be imposed on the Property pursuant to the Program and the Regulation hereunder.

14. Withdrawal

The Property Owner may withdraw from this POA by completing the withdrawal form in Appendix G and submitting to the Town Clerk by mail or in person so long as such submission arrives date-stamped no later than eight Business Days from the date the Property Owner submitted the signed POA to the Town by mail or in person. Unless withdrawn in accordance with this section, this POA shall be final and binding after eight Business Days from the date the property owner submitted the signed POA by mail or in person and upon certification by the Town Clerk.

15. Certified POA

Once certified by the Town Clerk, this POA is final and binding.

16. Notice of Local Improvement Roll

The Town shall give notice to the Property Owner of the proposed Local Improvement Roll before the Special Charge (Actual) is imposed. The proposed Local Improvement Roll shall set out the proposed Special Charge (Actual) to be levied on the Property in respect of the undertaking of the Work on the Property under this POA and under the Program.

Upon receipt of notice of the proposed Local Improvement Roll, the Property Owner has 21 days to provide to the Town written objections or proposed revisions to the proposed Local Improvement Roll.

The Town's Treasurer shall consider any objections and proposed revisions to the proposed Local Improvement Roll as may be made by the Property Owner, and may make any corrections to the proposed Local Improvement Roll which the Treasurer considers fair and equitable as a result of such objections and proposed revisions. Once any such corrections are made, the Treasurer shall certify the Local Improvement Roll.

The certified Local Improvement Roll and the Special Charge (Actual) set out in it shall be final and binding on the Property, and the Work is conclusively deemed to have been lawfully undertaken in accordance with the Regulation.

17. Special Charges added to the Tax Roll

Pursuant to the *Municipal Act, 2001, S.O. 2001, c. 25* and the Regulation, once levied, the Special Charge (Actual) can be added by the Town to the tax roll for the Property. Once added to the tax roll the Special Charge (Actual) has the same priority to all other liens as property taxes, and will become an obligation of all subsequent owners of the Property.

The Town will note the full amount of the Special Charge (Actual) on the tax roll, and this amount will appear on any tax certificates requested for the Property.

The Special Charge (Actual) will be collected through the tax bill for the Property, and payment will be due and payable at the same time as property tax payments for the Property.

The portion of the Special Charge (Actual) annually payable will be added to the tax roll for the Property and will form a priority lien on the property if not paid when due.

18. Severed Lands

Where the Property Owner seeks to sever the Property, the Special Charge (Actual) shall be:

Reapportioned among the new lots in any manner the Town considers just and equitable, having regard to the relative degree of benefit received by each of the new lot, and a new special charge will be imposed on each of the new lots in the amount apportioned to each lot;

19. Corrections to Special Charges and to the Local Improvement Roll

- (1) The Town may correct the Special Charge (Actual) pursuant to the Regulation, if the Town Treasurer determines that the Special Charge (Actual) is incorrect due to a gross or manifest error.
- (2) The Town Treasurer will make any amendments and corrections to the Local Improvement Roll to reflect any correction to the Special Charge (Actual) made pursuant to subsection (1), and any apportionment of a Special Charge (Actual) pursuant to Section 18, and shall certify the corrected Local Improvement Roll.

20. Late Payment Penalties and Events of Default

- (1) If the Property Owner fails to make any payment owing to the Town under this POA on the date it becomes due, the payment is subject to the following late payment penalties (as may be amended by regulation from time to time):
 - (a) a fee for non-sufficient funds (per the Town's schedule of fees) being in the Property Owner's account under the Pre-authorized Property Tax Payment Program;

- (b) a one-time penalty of 1.25% of the unpaid amount on the first day of default; and
 - (c) an additional 1.25% of the unpaid amount on the first day of each month thereafter that the amount remains outstanding.
- (2) The Town may declare that an event of default has occurred (an "Event of Default") if the Property Owner:
 - (a) fails to meet any of its obligations under this POA, including without limitation
 - (i) failure to make any payment to the Town as it becomes due;
 - (ii) failure to reimburse the Town all portions of the Funding Amount that the Town has provided to the Property Owner in accordance with Section 10 and Section 5 in the event that the Property Owner has not completed the Work or otherwise has not put the Property in a position for the Town to apply a Special Charge; or
 - (iii) failure to adhere to its confidentiality obligations under this POA; or
 - (b) makes false or misleading representations or submits false or misleading information to the Town.
- (3) In the event that the Town has declared that an Event of Default has occurred, the Town may immediately, in its sole discretion, exercise one or more of the following remedies:
 - (a) terminate its obligations under this POA and, if applicable, demand repayment of all monies provided under this POA to the Property Owner to date;
 - (b) pursue a court action to recover all damages and/or demand specific performance; and
 - (c) add to the property tax roll for the Property the Initial Disbursement and/or any other monies paid by the Town to the Property Owner, as a fee/charge, as provided for Section 391 and 398 of the Municipal Act owed to the Town pursuant to this POA.
 - (d) be entitled to refuse building permits with respect to the Eligible Improvements and/or shall be entitled to refuse building and/or occupancy permits with respect to any buildings, and/or shall be entitled to issue stop work orders with respect to any matters in respect of which a permit has been issued and/or may refuse to grant to the Owner any permissions, permits, certificates, approvals or authorities of any kind or nature which the Owner would have been entitled to receive had the Owner otherwise complied with the Town's requirements in this agreement, and/or shall be entitled to refuse to issue releases, all of which may be done until such time as the default has been cured in a manner satisfactory to the Town.
 - (e) the owner acknowledges that this agreement is entered into pursuant to section 36.2, Part III of O. Reg. 586/06, provided for under subsection 400(j) of The Municipal Act, S.O.

2001, c.25 (herein "the Act") and amendments thereto, and that a bylaw has been passed by the Town approving the entering into of this Agreement by the Town and incorporating the terms of this Agreement into that bylaw, and further that section 446 of The Municipal Act, S.O. 2001, c.25 and amendments thereto, applies to all requirements of this Agreement. If the Owner neglects to undertake any matter or thing required to be done by this Agreement and such default continues after SEVEN (7) days of the Owner being given written notice by the Town of such default, in addition to other remedies available to the Town, the Town may direct that such matter or thing shall be done at the expense of the Owner, and the Town may recover the costs incurred in doing it, by action or by adding such costs to the tax role and collecting them in the same manner as taxes; the Owner hereby authorises the Town (including, without limiting the generality of the foregoing, its employees, agents and servants) to enter upon the Lands to do any such matter or thing.

21. Sale and Release

The Property Owner shall have the unfettered right to sell, transfer, charge, and mortgage, encumber or otherwise deal with the Property without the prior consent of the Town.

In the event the Property is transferred to a new owner, the Property Owner shall continue to be liable to the Town for all Property Owner obligations and liabilities under this POA until the Town signs the Assignment, Novation and Release, thereby releasing the Property Owner from obligations and liabilities under this POA.

The Town shall not sign the Assignment, Novation and Release until all of the following conditions are met to the satisfaction of the Town:

- (1) the Property Owner provides the Town with a registered copy of the Transfer of the Property from the Property Owner to a new owner;
- (2) the Special Charge (Actual) and other amounts due and owing under this POA for the portion of the Payment Term during which the Property Owner owned the Property are fully paid; and
- (3) the Property Owner provides the Town with an original Assignment, Novation and Release in the form attached as Appendix C, executed by the Property Owner and the new owner.

The Property Owner acknowledges that nothing in this POA interferes with the Town's rights, benefits and powers under the Regulation and *Municipal Act, 2001, S.O. 2001, c. 25* with respect to the Property or the Special Charge (Actual), and that the Town shall not be prevented from or prejudiced in carrying out its statutory rights and responsibilities thereunder.

22. Ownership, Disclosure, and Confidentiality of Written Material

(1) Ownership and Compelled Disclosure of Property Owner-Provided Material

Once in the possession and/or under the control of the Town, any Property Owner-Provided Material becomes the property of the Town and, consequently, subject to the Municipal Freedom

of Information and Protection of Privacy Act ("MFIPPA"). Pursuant to MFIPPA, the public has a right to seek access to these documents, in whole or in part, which the Town must then disclose in accordance with the provisions of MFIPPA. Please note that those provisions safeguard against disclosure of personal information but exceptions to such safeguards do apply.

Moreover, the Town may be required to disclose these documents pursuant to other Applicable Laws and Requirements regarding disclosure of information and production of documents, including (but not limited to) the Federal Courts Rules, the Ontario Rules of Civil Procedure, the Criminal Code of Canada, subpoenas and summonses to witness, court orders, and any other federal, provincial or municipal statutory power that compels the Town to disclose such information and documents.

The Town reserves the right to make all final disclosure decisions including those pursuant to MFIPPA.

(2) MFIPPA Designation of Property Owner-Provided Material

If the Property Owner finds that any of the Property Owner-Provided Material, in whole or in part, contains information exempt from disclosure under MFIPPA (pursuant to Section 10 of MFIPPA or any other section) or the other disclosure obligations discussed above, then the Property Owner should clearly identify the exempted information to the Town. Doing so will more easily enable the Town to notify the Property Owner in advance of any disclosure the Town may be compelled to undertake.

The Town shall assume no liability that may arise from a Property Owner failing to identify information to which any of these disclosure obligations stated above applies and to provide the necessary information in support thereof.

(3) Ownership and Confidentiality of Town-Provided Materials

All Town-Provided Material in connection with, or arising out of, the Program or this POA:

- (a) is and shall remain the property of the Town;
- (b) must be treated by the Property Owner as confidential and not disclosed to anyone other than the Property Owner or Town staff (which does not include Town Council Members) without written consent from the Town unless such Town-Provided Material was obtained in a manner available generally to the public (such as from the Town's website); and
- (c) other than in connection with the Program, must not be used or disseminated by the Property Owner for any purpose on this or related matters without the express written permission of the Town.

This provision survives the termination of the POA for five (5) years, beginning with the date on which the POA terminates.

23. Audit

The Town may audit this POA and related records. The Property Owner shall at all times during the term of the POA, keep and maintain records of the Work performed pursuant to this POA. This shall include proper records of invoices, Incentives/Rebates, timesheets, and other documents that

support actions taken by the Property Owner. The Property Owner shall at its own expense make such records available for inspection and audit by the Town at all reasonable times.

24. Inspection

Until the date that the Work is completed as verified in writing by and following a satisfactory final inspection conducted by the Essex Region Conservation Authority (ERCA) respecting any related permit issued by ERCA, the Town reserves the right, upon 14 days written notice to the Property Owner, to have a Town Official or third party contractor retained by the Town inspect the Work. Such inspection is solely for the purpose of verifying the Work stated in the Project Completion Report. By conducting such inspection, the Town is not making any representations or warranties with respect to the Work and is not liable for any aspect of the Work.

25. Indemnities

The Property Owner indemnifies and saves harmless the Town, its Mayor, Deputy Mayor, Members of Council, officers, employees, and agents from and against any losses, liens, charges, claims, demands, suits, proceedings, recoveries and judgements (including legal fees and costs) arising from or related to this POA and the Property Owner's performance or nonperformance of its obligations, including breach of any confidentiality obligations under the POA.

Upon assuming the defence of any action covered under this section the Property Owner shall keep the Town reasonably informed of the status of the matter, and the Property Owner shall make no admission of liability or fault on the Town's part without the Town's written permission.

26. Posting Security

Unless security has otherwise been posted to the Town through a parallel permitting process under the Building Code Act, 1992, S.O. 1992, c. 23 or similar legislation, the Town may require and the Property Owner agrees, so as to assure the performance by the Property Owner of each of the terms and conditions of this Agreement pending completion of the Work to the satisfaction of ERCA and the Town, upon execution of this Agreement, to forthwith deposit with the Town, security in an amount which is equal to \$. For greater certainty, the amount of said security shall be subject to approval by the Town's Clerk and Solicitor.

Said security shall be either by way of

- a) cash, or
- b) a Standby Letter of Credit pursuant to UCP500 only, issued by a chartered bank of Canada in form satisfactory to the Town's Clerk and Solicitor. (not a Letter of Guarantee or Bond)

Provided that in no event shall the Town be required to pay interest on this security.

26.1. Release of Security

The Town agrees to return the said security to the Property Owner upon the completion and final approval of the works specified in this Agreement which approval is at the Town's sole discretion.

27. Survival

In addition to any obligations set forth in this POA that by their nature survive the completion of the Work or termination of this POA or otherwise expressly survive, those obligations set forth in Sections 23 (Ownership and Confidentiality of Town-Provided Material), 24 (Audit), and 26 (Indemnities) shall continue to bind the Property Owner notwithstanding the completion of the Payment Term, the release by the Town of the Property Owner of its obligations under this POA, or the termination of this POA.

28. Severability

If any provision of this POA or the application thereof to any person or circumstances is found to be invalid, unenforceable or void by any court or tribunal of competent jurisdiction, such provision shall be deemed severable and all other provisions of this POA shall be deemed to be separate and independent therefrom and continue in full force and effect.

29. Further Assurances

The Property Owner agrees that it will do all such acts and execute all such further documents, conveyances, deeds, assignments, transfers and the like, and will cause the doing of all such acts and the execution of all such further documents (including waivers of moral rights) as are within its power to cause the doing or execution of, as the Town may from time to time reasonably request, in writing, and as may be necessary or desirable to give full effect to this POA.

30. Notices

Any demand or notice to be given pursuant to this POA shall be duly and properly made and given if made in writing and either delivered to the party for whom it is intended to the address as set out below or sent by prepaid registered mail addressed to such party as follows:

in the case of the Town:

The Corporation of the Town of Essex
33 Talbot Street South, Essex, ON N8M 1A8
Attention: Director, Corporate Services / Treasurer

and in the case of the Property Owner:

to the Primary Contact indicated in the Expression of Interest or to such other addresses as the Parties may from time to time notify in writing,

and any demand or notice so made or given shall be deemed to have been duly and properly made or given and received on the day on which it shall have been so delivered or, if mailed, then, in the absence of any interruption in postal service in the Town of Essex affecting the delivery or handling thereof, on the day following three business days following the date of mailing.

31. Successors and Assigns

The POA shall endure to the benefit of and be binding upon the Parties hereto and their respective heirs, executors, administrators, successors and assigns.

32. Appendices

The Appendices to this POA shall constitute an integral part of this POA and all expressions defined in this POA shall have the same meanings in such attachments. In the case of a conflict between the body of this POA and any attachment, the provisions of the body of this POA shall take precedence.

33. Governing Law

This POA shall be governed by the laws of the Province of Ontario. Any dispute arising out of this POA will be determined by a court of competent jurisdiction in the Province of Ontario.

34. Entire POA

The POA forms the entire agreement between the Parties. In the event of conflict or inconsistency between the POA and any other agreement between the Parties, the POA shall prevail.

35. Amendments

The Parties can mutually agree to amend this POA.

36. Headings, subheadings, index numbers, reference numbers

All headings, subheadings, index and reference numbers in POA and attachments are given for the convenience of the Parties and as such must be taken only as a general guide to the items referred to and not relied upon. It must not be assumed that such numbering is the only reference to each item, but the POA as a whole must be fully read in detail for each item.

37. Contra Proferentum

It is agreed and acknowledged that both parties, directly or through their agents, principals, representatives and/or solicitors, have participated in the preparation and/or negotiation of the provisions of this agreement.

Should any provision of this agreement require judicial interpretation, mediation or arbitration, it is agreed that the court, mediator or arbitrator interpreting or construing the same shall not apply a presumption that the terms thereof shall be more strictly construed against one party or so as to disadvantage any party on the basis that such party and/or its solicitor or agent:

- a. Prepared this agreement or any part of it; or
- b. Seeks to rely on this agreement or any part of it.

38. Independent Legal Advice

To the extent that the solicitors of Wolf Hooker Professional Corporation has been involved in the preparation of this agreement, such solicitors act solely as solicitors for the Town and with regard to the interests of the Town and not for any other party to this agreement. It is strongly recommended that all other parties to this agreement obtain independent legal advice prior to signing this agreement. Each such party acknowledges:

- 1) having obtained independent legal advice from his, her, or its' own solicitor with respect to the terms of this Agreement prior to its execution or having otherwise been given a reasonable opportunity to obtain such advice and declined to so;
- 2) that he or she or it understands the terms, and his or her rights and obligations, under this Agreement.

Signature page follows

IN WITNESS WHEREOF the Parties have executed this POA as of the Effective Date.

SIGNED AND DELIVERED

Authorized by
Resolution _____ as
adopted by Town of Essex
Council on _____ 2019 and by
Resolution _____ as
adopted by Town of Essex
Council on _____, 2019,
and enacted by **Bylaw**
_____ as amended from
time to time, pursuant to
Section 36.5 and 36.6 of Ontario
Regulation 586/06.

Town Clerk

(print name of witness above)

**THE CORPORATION OF THE TOWN OF
ESSEX**

Jeffrey R. Morrison, CPA, CGA
Director, Corporate Services / Treasurer

Robert Auger, L.L.B.
Town Solicitor / Clerk

PROPERTY OWNER

Name:

APPENDIX A1

Improvements -- Intended

Intended Improvements	Estimated Cost	Estimated Lifetime (years)
	\$XXXXXX	XXXXXX
(as per ERCA Permit)		
	TOTAL =	AVERAGE =

1. Completion Date

The Property Owner will complete the above Intended Improvements by the Completion Date.

APPENDIX A2

Improvements – Actual

Actual Improvements	Actual Cost	Expected Lifetime
	TOTAL =	AVERAGE =

1. Funding Amount

In accordance with Section 9 of the POA, the Funding Amount is [AMOUNT] which is the lesser of:

- (i) The Approved Final Cost which is [AMOUNT];
- (ii) The Estimated Cost plus five percent of the Estimated Cost which is [AMOUNT]; and
- (iii) the highest dollar amount that does not cause the Special Charge (Actual) to exceed the lesser of 30 percent of Current Value Assessment for the property up to a maximum of \$250,000 when the Town calculates the Special Charge (Actual) which is [AMOUNT].

2. Final Disbursement

The Final Disbursement is [AMOUNT] which is equal to the Funding Amount ([AMOUNT]) minus any Initial Disbursement ([AMOUNT]).

APPENDIX A3

"Property" means those lands:

Municipally known as: _____ within the boundaries of the Town of Essex,
Province of Ontario

Bearing Roll No.: _____

Legally Described as:

DRAFT

APPENDIX B1

Special Charge -- Estimated

The Special Charge (Estimated)¹ is [AMOUNT].

The Special Charge (Estimated) was calculated as follows:

Special Charge Term (years)	
Program Interest Rate (%)	
Actual Funding Amount	\$
Cost of Borrowing	\$
Administrative Charge	\$
Special Charge (Estimate)	\$

The monthly payment amount of the Special Charge (Estimated) is [AMOUNT]. This amount is payable 12 times per year.

¹ As per Section 16 of the POA, the Town will notify the Property Owner of the Special Charge (Actual) prior to certification of the charge and adoption of the by-law to impose the charge on the Property.

APPENDIX B2

Special Charge - Actual

The Special Charge (Actual) is [AMOUNT].

The Special Charge (Actual) was calculated as follows:

Special Charge Term (years)	
Program Interest Rate (%)	
Actual Funding Amount	\$
Cost of Borrowing	\$
Administrative Charge	\$
Special Charge (Actual)	\$

The monthly payment amount of the Special Charge (Estimated) is [AMOUNT]. This amount is payable 12 times per year.

APPENDIX C

Form of Assignment, Novation, and Release

(The current Property Owner of the Property can reproduce and use this form to satisfy the requirements in Section 22 (Sale and Release). Please inquire with Town staff if an electronic version is needed.)

THIS AGREEMENT made as of the ___ day of ___, 20__.

AMONG:

(the "**Assignor**")

- and -

(the "**Assignee**")

- and -

The Corporation of the Town of Essex
(the "**Town**")

WHEREAS:

A. Pursuant to Town of Essex Bylaw _____, the Assignor applied to participate in the The Corporation of the Town of Essex's Program and consequently, entered into a Property Owner Agreement with The Corporation of the Town of Essex on _____ (the "POA"), a copy of which is attached as Schedule A, to obtain funding for energy efficiency and water conservation improvements at the Property (the "Funding Amount");

B. The Corporation of the Town of Essex adopted Bylaw _____ (the "Bylaw") to impose on the Property a Special Charge (Actual) in the amount of _____ that requires the owner of the Property to repay the Funding Amount, together with the Cost of Borrowing and the Administrative Charge;

C. The POA includes additional obligations that are separate and apart from the obligation to repay the Special Charge (Actual) that the Bylaw has imposed on the Property

NOW THEREFORE in consideration of the transfer of the Property from the Assignor to the Assignee, the Town's release of the Assignor, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1. **Definitions.** Unless otherwise defined herein, all capitalized terms used in this POA shall have the respective meanings ascribed to them in the POA.

- 2. Assignment of POA.** The Assignor does hereby absolutely and unconditionally assign, novate, transfer, set over and convey unto the Assignee, for its sole use and benefit, all of the Assignor's right, title, interest, obligations and liabilities in, to and under the POA from and after the date hereof.
- 3. Assumption of POA.** The Assignee hereby accepts this assignment contained in Section 2 hereof and covenants and agrees with the Assignor that, from and after the date hereof, the Assignee assumes and is responsible for and will perform, observe, satisfy, discharge and pay as and when due the obligations and liabilities of the Assignor under the POA arising from and after the date hereof.
- 4. Consent of Town.** The Town (in its capacity as an existing party under the POA), effective from and after the date hereof, hereby consents to the assignment of all the Assignor's right, interest, obligations and liabilities in, to and under the POA, and accepts in full satisfaction the Assignee as a party to the POA in substitution for the Assignor.
- 5. Agreement between the Town and Assignee.** The Assignee covenants with the Town that the Assignee will perform, observe, satisfy, discharge and pay as a when due the obligations and liabilities of the Property Owner under the POA arising from and after the date hereof. Among other things, the Assignee will provide information necessary for automatic enrolment in the Pre-Authorized Property Tax Payment Program as discussed further in the POA.
- 6. Release of the Assignor.** In accordance with Section 22 of the POA, the Town hereby releases and discharges the Assignor of and from the observance and performance of the covenants, agreements and obligations under the POA, effective from and after the date hereof.
- 7. Joint and Several Liability.** The liability of each entity comprising the Assignee hereunder shall be joint and several.
- 8. Successors and Assigns.** This Assignment, Novation and Release shall ensure to the benefit of and shall be binding upon the Parties hereto and their respective heirs, executors, administrators, successors and assigns.
- 9. Governing Law.** This Assignment, Novation and Release shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.
- 10. Counterparts.** This Assignment, Novation and Release may be executed in several counterparts and by facsimile transmission of an originally executed document, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.
- 11. Further Assurances.** Each of the Parties hereto shall from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary

to more effectually implement and carry out the true intent and meaning of this Assignment, Novation and Release.

12. **Headings, Extended Meanings.** The headings in this Assignment, Novation and Release are inserted for convenience of reference only and shall not constitute a part hereof and are not to be considered in the interpretation hereof. In this Assignment, Novation and Release, words importing the singular include the plural and *vice versa*; words importing the masculine gender include the feminine gender and vice versa; and words importing persons include firms or corporations and *vice versa*.

IN WITNESS WHEREOF the Parties hereto have executed this Assignment, Novation and Release as of the date first above-written.

ASSIGNOR

In the presence of:

By:

Name:

Witness name:

ASSIGNEE

By:

Name:

Witness name:

TOWN OF ESSEX

By: _____
Name:

Attach copy of the POA and mark it Schedule "A"

APPENDIX D

Expression of Interest

I, _____ formally request the Town of Essex to review my property for consideration under the Shoreline Assistance Loan Program.

My property is located in the Town of Essex, and I confirm that I am the owner. Property details are as follows.

_____ Municipal Address

_____ Roll Number

I have obtained the following, which are attached:

- _____ ERCA Permits
- _____ Engineering Documents (if required by ERCA)
- _____ Contractor Quote(s)
- _____ Other

Signed,

_____ Property Owner

_____ Date

APPENDIX E

Funding Request

To be finalized.

DRAFT

APPENDIX F

Project Completion Report

To be finalized.

DRAFT

APPENDIX G

POA Withdrawal Form

(as permitted pursuant to subsection 36.4(4) of Ontario Regulation 586/06)

IF YOU INTEND TO WITHDRAW FROM THE POA, THIS FORM MUST BE
COMPLETED AND SUBMITTED NO LATER THAN 8 BUSINESS DAYS
AFTER YOU SUBMIT YOUR SIGNED POA TO THE TOWN

I/we, as signator(ies) to a Property Owner Agreement with the Corporation of The Town of Essex,

Dated, _____ concerning my/our property identified as [insert Effective Date]

[insert Assessment Roll Number] (the "POA"), withdraw my/our

signature(s) from the POA.

Property Owner 1	Title (if auth. rep. of corp. owner)	Date
Property Owner 2, if applicable	Title (if auth. rep. of corp. owner)	Date
Property Owner 3, if applicable	Title (if auth. rep. of corp. owner)	Date
Property Owner 4, if applicable	Title (if auth. rep. of corp. owner)	Date
Property Owner 5, if applicable	Title (if auth. rep. of corp. owner)	Date

Send completed form to:

Town Clerk, 33 Talbot Street South, Essex, ON N8M 1A8

APPENDIX H

Pre-Authorized Property Tax Payment Program Application

Application

Essex

Pre- Authorized Tax Payment

Applicant Information

Instalment Plan: <input type="checkbox"/> 2-Instalment <input type="checkbox"/> 6-Instalment <input type="checkbox"/> 12-Instalment If an option is not selected, you will be enrolled in the 12-Instalment Plan	
Assessment Roll Number (21 digits):	
Property Address:	
Property Owner(s):	
Signature*:	Signature*:
My/our application is for <input type="checkbox"/> Personal or <input type="checkbox"/> Business PAD service * By signing this form you agree to the terms and conditions listed on page 2. Please provide additional signatures, if more than one signature is required on cheques issued against the account. Please review, print, sign, and return your application form.	
Date (YYYY/MM/DD):	Date (YYYY/MM/DD):
Telephone (Day):	Telephone (Day):

Financial Institution Information

Please attach a void cheque or have your bank/financial institution complete the following.



Financial Institution (FI) Transit Number:	FI Number:	Account Number:
FI Name:		
FI Address:		
Name of FI Officer:		
FI Officer Title:		
Signature of FI Officer:	FI Officer Phone Number:	