

## CONSERVATION EASEMENT AGREEMENT

This Conservation Easement Agreement (“Agreement”) entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2023

BETWEEN

**CORPORATION OF THE TOWN OF PLYMPTON-WYOMING**  
**(the “Owner”)**

OF THE FIRST PART

-and-

**ST. CLAIR REGION CONSERVATION AUTHORITY**  
**(the “CA”)**

OF THE SECOND PART

WHEREAS the St. Clair Region Conservation Authority (the “CA”) has conveyed all rights, title, and interest in the CJ McEwen Conservation Area bearing property *PIN 43479-0058 (LT)* and more particularly described in Schedule A (the “Lands”) to the Corporation of the Town of Plympton-Wyoming by Agreement of Purchase and Sale dated \_\_\_\_\_, which provided for the grant of a conservation easement to the CA as an essential condition of closing.

NOW THEREFORE in consideration of the sum of two dollars (\$2.00) paid by the CA to the Owner and in consideration of the covenants, terms, conditions and restrictions contained herein, and pursuant to the Conservation Land Act, RSO 1990, c. C.28, as amended, the Owner and the CA hereby agree to the covenants, restrictions and easements as set out in this Agreement, which shall run with the Lands in perpetuity.

## **1. INTENTION**

It is the intention of the parties that this conservation easement Agreement will ensure the protection, maintenance, restoration, and enhancement of the natural features on the Lands and will prevent any use of the Lands that will damage or destroy those natural features or prevent their restoration and enhancement.

## **2. COVENANTS**

The Owner shall not use the Lands or permit any use of the Lands that will damage or destroy the natural features of the Lands. Without limiting the generality of the foregoing, the Owner expressly covenants and agrees that, except with the prior written approval of the CA, which approval shall be at the sole discretion of the CA, the Owner shall not:

- a) Sever or subdivide the Lands;
- b) Grant any further easement in, over, on, under or through the Lands;
- c) Undertake or allow commercial logging on the Lands;
- d) Use or allow the Lands to be used for commercial or sport hunting;
- e) Remove any native or naturally occurring species from the Lands or destroy or allow the destruction of their natural habitat;
- f) Remove, destroy or cut or allow the removal or destruction of trees, shrubs or other vegetation except as may be necessary for the maintenance of existing public park areas, foot trails, fire lanes or other accesses, or for the removal of hazard trees for public safety or the prevention or treatment of disease;
- g) Construct, erect, maintain or allow the construction, erection or maintenance of any building or structure of commercial, residential, or industrial use on the Lands, save and except for any pre-existing structures;
- h) Extract or allow the extraction, excavation or dredging of sand, rock, loam, gravel or any other materials from any part of the Lands;
- i) 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, dams or ponds or other similar undertakings;
- j) Dump or allow the dumping of soil, rubbish, ashes, garbage, waste or other unsightly or offensive materials of any type or description.

### **3. EASEMENT**

3.1 The Owner grants to the CA an easement in perpetuity from and including the date of this Agreement.

3.2 The easement hereby being granted by the Owner is to permit the CA and the employees, agents, servants, workers, contractors, officers, and directors of the CA and their supplies, equipment, materials, machinery, and vehicles to enter onto and have access to the Lands at reasonable times and for the following purposes-

- a) to conduct an inspection in order to determine compliance with this Agreement and to determine those measures necessary to ensure compliance with this Agreement;
- b) for any scientific research and development purposes;
- c) to carry out any construction, demolition, maintenance, alteration, repair, improvements, installation or work or any restoration of the natural features reasonably required in the opinion of the CA, or to remedy any default of the Owner;
- d) for all purposes reasonably necessary or incidental to the exercise of the rights hereby created or related to any of the foregoing purposes.

3.3 Prior to entry or access to the Lands for the purposes identified hereinabove, the CA shall provide at least twenty-four (24) hours' written notice to the Owner, unless in the opinion of the CA there is an emergency or other circumstance that does not make it feasible to give notice of the intent of the CA to enter onto the Lands.

### **4. OWNER'S OBLIGATIONS AND INDEMNITY**

4.1 The Owner shall, at its sole expense, continue to care for and operate the Lands as would a careful and prudent owner. In particular, and without limiting the generality of the foregoing, the Owner shall maintain the Lands and keep the improvements thereon in a good and sound state of repair, and shall keep the Lands free of construction liens.

4.2 The Owner shall and does hereby indemnify and save harmless the CA, 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, negligent or otherwise, in the use and maintenance of the Lands by the Owner, any licensee or lessee thereof or anyone for whom the Owner is in law responsible, including any liability arising from any existing or future environmental matters or conditions affecting the Lands.

## **5. DEFAULT AND RECOURSE**

- 5.1 In the event of breach or default in the obligations and covenants of the Owner under this Agreement, the CA may take any action available to it at law, in equity, by statute or under this Agreement provided that the CA shall first give to the Owner 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 this Agreement. If notice of default is given, the Owner 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.
- 5.2 In the event that the Owner has failed to comply within the sixty-day period allowed, the CA 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 Owner.
- 5.3 If the CA in its sole discretion determines that circumstances require immediate action to prevent or mitigate damage to the natural features of the Lands, the CA may pursue its remedies under this Article 5 without prior notice to the Owner or without waiting for expiry of the sixty-day notice period as otherwise required under Article 5.1.
- 5.4 The parties recognize that damages based on market value may not be adequate or effective to compensate for destruction of or restoration of the natural features of the Lands as they existed prior to default or breach of the Agreement. Accordingly, the parties agree that:
- a) compensation to the CA in the event of default or breach of the Agreement may be based on market value or the restoration or replacement costs, whichever, in the opinion of the court, shall better compensate the CA; and
  - b) in addition, and without limiting the scope of the other enforcement rights available to the CA under this Agreement, the CA may bring an action or an application for injunctive relief to prohibit or prevent default or the continuance of default under this Agreement.

5.5 All reasonable costs incurred by the CA in enforcing the terms of this Agreement, including without limitation legal costs and expenses, and any costs of restoration required to remedy any violation of the terms of this Agreement by the Owner shall be paid by the Owner to the CA. Until paid, such costs of remedy incurred by the CA shall be a debt owed by the Owner to the CA and shall be a charge upon the Lands enforceable in the same manner as a mortgage and recoverable by the CA in a court of law.

## 6. NOTICE

Any notice (including any request or waiver) provided or given hereunder shall be sufficiently given by either party if in writing and delivered by hand, sent by mail – prepaid registered post or by means of electronic communication as follows-

If to the CA:

Address: \_\_\_\_\_

Email: \_\_\_\_\_

If to the Owner:

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Any notice so delivered by hand or by means of electronic communication shall be deemed to have been given on the very same day if delivered before 3:00 pm or otherwise on the next business day following the day of delivery, 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 thereof and thereafter the new address shall be the address of such party for the purpose of giving notice hereunder.

## 7. GENERAL PROVISIONS

7.1 This Agreement and each of the terms and provisions hereof shall run with the Lands and enure to the benefit of and be binding upon the parties and their respective heirs, administrators, personal representatives, successors, assigns and transferees, etc.

- 7.2 The CA shall register this Agreement against title to the Lands and the Owner shall execute any document that may be required to allow such registration.
- 7.3 The Owner reserves to itself, and to its successors and assigns and any transferee therefrom, all rights accruing from its 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 herein and that are not inconsistent with the purpose and terms of this Agreement.
- 7.4 The Owner shall give notice to the CA of any change in the ownership of or any interest in the Lands, and the CA shall give notice to the Owner of any assignment of the interest of the CA. Any such notice shall include the name and address of the new party and shall be given at least fifteen (15) days prior to the change of interest.
- 7.5 The Owner shall not transfer or permit any mortgagee to transfer any ownership interest in the Lands without requiring the transferee to acknowledge in writing (by acknowledgement addressed and delivered to the CA) the priority of this Agreement and the interest of the CA thereunder and will not lease or licence the Lands or any part thereof without such lease or licence being made expressly subject to this Agreement. The failure of the Owner to perform any act required by this Article 7.5 or the preceding Article 7.4 shall not impair the validity of this Agreement or limit its enforceability in any way.
- 7.6 No person who is an Owner shall be liable to the CA for any breach of or default in the obligations owed to the CA under this Agreement committed after the registration of a transfer by such person of all of the interest thereof in the Lands, provided that the Owner has delivered to the CA an acknowledgement and assumption executed by the new registered owner, acknowledging the priority of this Agreement and the interest of the CA and assuming the obligations of the Owner under this Agreement.
- 7.7 The CA may assign all of its interest in this Agreement to any qualified CA, including the local municipality or the conservation authority, provided that the CA shall provide the Owner with written notice of such assignment. The CA shall not be liable to the Owner for any breach or default in the obligations owed to the Owner under this Agreement committed after notice of the assignment of this Agreement has been given to the Owner.

7.8 No failure by the CA to require performance by the Owner of any provision of this Agreement shall affect the right of the CA thereafter to enforce such obligation, and no failure by the Owner 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.

7.9 Neither the Owner nor the CA shall be liable to the other hereunder for any damage to or change in the Lands resulting from causes beyond the control of such party, including, without limitation, accidental fire, flood, storm, earth movement, trespass, insect plague or disease.

7.10 Time shall be of the essence to this Agreement and shall be deemed to remain so notwithstanding any extension of any time limit.

7.11 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.

7.12 Whenever the owner of the Lands should comprise more than one person, the obligations thereof hereunder shall be joint and several.

IN WITNESS WHEREOF the Owner and the CA have executed this Agreement as at the date first above written.

**Corporation of the Town of Plympton-Wyoming**

**St. Clair Region Conservation Authority**

Sign \_\_\_\_\_

Sign \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

**Schedule "A"**

**Legal Description of Lands**