

# **CORPORATION OF THE COUNTY OF DUFFERIN**

## **BY-LAW NUMBER 2022-45**

### **A BY-LAW TO RATIFY THE ACTIONS OF THE WARDEN AND THE CLERK FOR EXECUTING AN AGREEMENT BETWEEN THE CORPORATION OF THE COUNTY OF DUFFERIN AND SCONE DEVELOPMENTS INC. (Storm Sewer Easement Agreement)**

BE IT ENACTED BY THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE COUNTY OF DUFFERIN AS FOLLOWS:

1. That the Agreement between the Corporation of the County of Dufferin and Scone Developments Inc., in a form substantially the same as attached hereto as Schedule "A" be approved.
2. That the staff of the County of Dufferin is hereby authorized to take such actions as are appropriate, and the Warden and Clerk are hereby authorized to execute such documents as are appropriate to implement the agreement referred to herein.

READ a first, second and third time and finally passed this 13<sup>th</sup> day of October, 2022.

  
Wade Mills, Warden



  
Michelle Dunne, Clerk

## STORM SEWER EASEMENT AGREEMENT

THIS AGREEMENT is made as of the 6th day of September, 2022.

AMONG:

THE CORPORATION OF THE COUNTY OF DUFFERIN  
(the "Grantor")

- and -

SCONE DEVELOPMENTS INC.  
(the "Grantee")

WHEREAS:

- A. The Grantor is the registered owner of lands legally described as PT LT 1 CON 3 OS MELANCTHON AS IN MF230830; SUBJECT TO AN EASEMENT IN GROSS OVER PTS 1 & 2 PL 7R6250 UNTIL 2059/03/06 AS IN DC151688; TOWNSHIP OF MELANCTHON (the "Grantor Lands");
- B. The Grantee is the registered owner of lands legally described as PART OF LOT 1, CONCESSION 3, OLD SURVEY, PART 1, PLAN 7R-6534; SUBJECT TO AN EASEMENT AS IN DC227461; TOWN OF SHELBURNE and PT LT 1 CON 3 OS MELANCTHON PT 1 7R6732; MELANCTHON, Town of Shelburne, Dufferin County, Ontario (the "Grantee Lands");
- C. The Grantee proposes to construct a residential development upon the Grantee Lands, consisting of certain internal roadways and other facilities and services which will form the common elements of a "common elements condominium corporation" to be created upon the registration of the declaration and description against the Grantee Lands pursuant to the *Condominium Act, 1998* (the "Common Elements Condominium Corporation"). The Grantee shall also construct 33 residential dwellings on individual townhouse parcels within the Grantee Lands, each parcel to have a common interest in the Common Elements Condominium Corporation ("Parcel of Tied Land"). The proposed Common Elements Condominium Corporation and the 33 residential dwellings are collectively known as the "Project".
- D. Pursuant to a decision of the Committee of Adjustment of The Corporation of the Town of Shelburne, File # B21/04, dated the 4th day of October, 2021, the Committee of Adjustment granted its consent for the Grantee to obtain an easement on the Servient Lands (hereinafter defined), for the purposes of a proposed storm sewer that will function as part of the outlet for the new storm water management pond located on the Grantee Lands to the east of the former rail corridor in the Grantee Lands and servicing the Project.
- E. The parties have agreed to the establishment of the Easement (hereinafter defined) as well as certain rights and agreements between them concerning the Easement, subject to and in accordance with the terms set out herein.

NOW, THEREFORE, IN CONSIDERATION of the covenants hereinafter expressed and the sum of \$2.00 of lawful money in Canada now paid by each party to the other (the receipt and sufficiency of which are hereby acknowledged), the parties hereby agree and declare as follows:

### ARTICLE I - INTERPRETATION

#### Section 1.01 - DEFINITIONS

In this Agreement, including but not limited to the preceding Recitals, the following words and phrases shall have the meanings set forth below:

"Agreement" means this Agreement and all Schedules attached hereto as amended from time to time.

"Applicable Laws" means all applicable federal, provincial, county, municipal and other governmental laws, regulations, by-laws, ordinances, orders, rules, directives and other requirements or guidelines now in force or which may be in force in the future.

**"Assignor"** shall have the meaning given to it in Section 5.03 .

**"Assumption Agreement"** shall have the meaning given to it in Section 5.03 .

**"Business Day"** means any day which is not a Saturday or a Sunday, or a day observed as a holiday under Applicable Laws in Ontario.

**"Claims"** shall have the meaning given to it in Section 5.08 .

**"Common Elements Condominium Corporation"** shall have the meaning given to it in Recital C.

**"Default Rate of Interest"** shall have the meaning given to it in Section 5.01 .

**"Defaulting Party"** shall have the meaning given to in Section 4.02 .

**"Dispose"** means the entering into of any agreement or the taking of any act or any omission which results or shall in the future result in a Disposition.

**"Disposition"** means the sale, assignment, exchange or transfer or other disposition (or the granting of an option thereof) by a party to this Agreement of any portion of their respective Lands (hereinafter defined). A Disposition shall not mean the mortgage of any of the Lands to a mortgagee thereof, the sale or transfer of a Parcel of Tied Land, the conveyance of a freehold interest in any portion of the Grantee Lands to a governmental authority and/or the conveyance of any easement over the Grantee Lands.

**"Dominant Lands"** means the Grantee Lands.

**"Easement"** means the right, licence, privilege and easement to construct, inspect, maintain, repair, replace and use the Storm Water Facilities (hereinafter defined) across the Servient Lands (hereinafter defined) that will function as part of the outlet for the storm water management pond located on the Grantee Lands.

**"Environmental Activity"** means the use, receipt, storage, holding, existence, release, emission, discharge, manufacture, generation, processing, abatement, removal, disposal, transport, distribution, treatment or handling of any Hazardous Substance.

**"Environmental Law"** means any Applicable Laws which relates to or otherwise imposes liability or standards of conduct concerning Hazardous Substances (hereinafter defined) or otherwise relates to Environmental Activity or Environmental Matters (hereinafter defined).

**"Environmental Matters"** means any matter relating to the "environment" as such term is defined in the *Environmental Assessment Act* (Ontario), as amended, including but not limited to an Environmental Activity.

**"Force Majeure"** shall mean a delay resulting from an event or events the occurrence of which cannot be prevented by the exercise of reasonable best efforts by a party, provided that the party that purports to rely on the occurrence of a Force Majeure in excusing its failure to perform an obligation under this Agreement when required to do so has made reasonable best efforts in the circumstances to anticipate and minimize the adverse effect of the Force Majeure on the subject matter of this Agreement; without limiting the generality of the foregoing, "Force Majeure" includes but is not limited to delays resulting from strike, lock out, riots, insurrection, war, fire, tempest, flood, abnormal weather conditions, abnormal subsurface conditions, any other act of god, and shortage of material, but shall expressly exclude, without limitation, any delay caused by any economic matter.

**"Grantee Lands"** shall have the meaning given to it in Recital B.

**"Grantor Facilities"** means the improvements and facilities on the Grantor Lands, and any additions thereto and replacements thereof from time to time other than the Storm Water Facilities (hereinafter defined).

**"Grantor Lands"** shall have the meaning given to it in Recital A.

**"Hazardous Substance"** means any material, matter or substance which (i) constitutes a hazardous substance including but not limited to biological, hazardous waste, toxic substance, contaminant or pollutant as defined by Environmental Law or (ii) is regulated or controlled as a hazardous substance, hazardous waste, toxic substance, pollutant or other regulated or controlled material, substance or matter pursuant to Environmental Law.

**"Lands"** means both or either of the Grantee Lands and the Grantor Lands, or any part or parts thereof, as the context requires.

**"Maintain"** means to maintain, repair, restore, reconstruct, upgrade, renovate and replace, and **"Maintained"**, **"Maintaining"** and **"Maintenance"** have corresponding meanings.

**"Notice"** shall have the meaning given to it in Section 6.04 .

**"Parcel of Tied Land"** shall have the meaning given to it in Recital C.

**"Project"** shall have the meaning given to it in Recital C.

**"Servient Lands"** means a portion of the Grantor Lands designated as Parts 2 and 3 on Plan 7R-6738 registered in the Dufferin Land Registry Office on December 8, 2021.

**"Storm Water Facilities"** means the storm sewer pipe and related appurtenances constructed and installed by the Grantee and currently located on the Servient Lands for the conveyance of storm water from the storm water management pond constructed or to be constructed on the Grantee Lands, to the existing swales located on John Street, Shelburne. Any modifications to the Storm Water Facilities must be approved in writing by the Grantor in advance of such modifications.

## **ARTICLE II - GRANT OF EASEMENT AND RELATED RIGHTS AND OBLIGATIONS**

### **Section 2.01 - EASEMENT GRANTED BY GRANTOR TO GRANTEE**

The Grantor hereby grants unto the Grantee, its licensees, successors, assigns, servants, agents, workmen and contractors with all necessary vehicles, supplies, machinery and equipment necessary or incidental to enter upon the Servient Lands at all times (but only such vehicles, machinery and equipment as allowed by Applicable Law, including municipal requirements, and agreements relating to the Grantor Lands), and to pass and repass thereon for the purpose of the Easement, subject to Section 2.02(b)(i) and Section 2.02(b)(ii) herein.

The Grantee accepts the Easement and its interest in the Servient Lands on an "as is" basis and subject to: (i) all municipal requirements, including zoning by-laws; (ii) all rights under any easement for hydro, gas, telephone or like services including the easement in favour of Dufferin Wind Power Inc. registered on the Grantor Lands as Instrument No. DC151688 and attached hereto as Schedule "B"; (iii) any registered restrictions and covenants that run with the Servient Lands; and (v) any municipal agreement and agreements with publicly regulated utilities, whether existing or granted in the future, so long as such agreement does not prohibit the Grantee from exercising its Easement rights in accordance with the terms hereof.

The Grantee acknowledges that its rights pursuant to the Easement are in the nature of an easement only and subject always to the Grantor's rights as owner of the Grantor Lands. The Grantor acknowledges that in exercising its rights it will not prevent the reasonable use of the Servient Lands by the Grantee for the purpose of the Easement as granted herein.

The Grantee agrees and acknowledges that any future construction, installation or other modification of any portion of the Servient Lands shall be subject to the Grantor's standard Road Occupancy Permit process. The Grantee shall apply for a Road Occupancy Permit, prior to such future construction, installation or other modification and shall accommodate all requests and requirements of the Grantor in order to minimize any impacts on the Grantor Lands and the Grantor Facilities and upon completion of such future construction, installation or other modification, the Grantee shall landscape and otherwise improve the esthetic and integrity of the Servient Lands so as to minimize the impacts of such future construction, installation or other modification. For clarity, except in the case of emergencies, no future work will proceed without the issuance of a Road Occupancy Permit (for the purposes of this Agreement a situation shall be considered an emergency if there is an imminent threat to human life, the Grantors Facilities, the Storm Water Facilities or the Grantors Lands and it would be considered unreasonable not to take immediate action). All future work shall be completed in compliance with the reasonable directions of the Grantor. Plans detailing the specific nature and design of the future work to be located on the Servient Lands (other than work contemplated by the Engineering Plans dated October 27, 2021 attached hereto as Schedule "C") must be approved by the Grantor prior to the commencement of future work, which approval shall not be unreasonably withheld, conditioned or delayed. All design drawings must be submitted to the Grantor for review and approval before any future work is conducted other than in the case of emergencies. The plans for the future work shall take into account current legislative requirements and industry standards, as well as both the current and future likely uses of the Servient Lands by the Grantor and other users. The Grantee agrees that the Grantor may use the services of a third

party engineering firm to review the proposed future work, provide on-site supervision of the future work, and/or conduct post-construction inspection of the future work. The Grantee shall reimburse the Grantor for the reasonable cost of any such third party engineering services.

#### Section 2.02 - COVENANTS RE: EASEMENT

- (a) The Grantor, for itself and its successors and assigns, hereby covenants and agrees with the Grantee and its successors and assigns as follows:
- (i) Not to obstruct the Servient Lands or interrupt the use of the Servient Lands by the Grantee in accordance with this Agreement. Notwithstanding the foregoing, the Grantor shall be able to modify or alter the Servient Lands, including but not limited to the installation of fencing, placement of material, or resurfacing of the existing trail;
  - (ii) to permit the Grantee to remove, trim, sever, or fell any obstructions such as trees, roots, brush, stumps, boulders or rocks as is reasonably necessary for subsequent maintenance of existing or future improvements; and
  - (iii) to not do or suffer to be done any other thing which might materially injure or damage existing or future improvements on the Servient Lands.

Notwithstanding the foregoing, nothing herein shall be interpreted to require the Grantor to maintain or otherwise modify or improve the Servient Lands unless the Grantor, or those for whom the Grantor is in law responsible, violates the terms of this Section 2.02 by its own act or gross negligence. In the event that any obstruction or other impact is caused by the Grantee or any third party, the Grantor shall not be responsible for such obstruction or impact.

- (b) The Grantee, for itself and its successors and assigns, hereby covenants and agrees with the Grantor and its successors and assigns as follows:
- (i) to not further excavate, drill, install, erect or permit to be excavated, drilled, installed or erected over, under or through the Easement any pit, foundation, building or other structure or installation without the prior written consent of the Grantor, such consent not to be unreasonably withheld;
  - (ii) to not undertake or conduct any activities on the Easement or do anything on the Easement that may damage the Grantor Facilities; and
  - (iii) to maintain and repair the Storm Water Facilities and any impacts to the Servient Lands caused or occasioned by the existence and use of the Easement by the Grantor.

#### Section 2.03 - EXERCISE OF EASEMENT RIGHTS

In exercising its Easement rights, the Grantor shall act in a manner consistent with the intent of this Agreement and in a prudent, expeditious and reasonable manner.

#### Section 2.04 - OBLIGATIONS TO RESTORE

- (a) If the Grantee or its servants, agents, contractors or employees in the exercise of the Easement or other rights or obligations described in this Agreement cause damage to the Grantor Lands and/or Grantor Facilities, such damage shall be remedied, repaired or reconstructed by the Grantee at its sole cost and expense and the Grantee shall restore the Grantor Lands and/or Grantor Facilities to an appearance and condition that is as good as or better than the appearance and condition that existed prior to the occurrence of such damage.
- (b) If following reasonable written notice the Grantee fails to perform, undertake or initiate within a reasonable time, based on the circumstances, any replacement, repair or reconstruction required pursuant to Section 2.04 (a), the Grantor may undertake such work as reasonably required to rectify such damage and the reasonable costs and expenses incurred by the Grantor in so doing along with any legal costs shall be payable by the Grantee within thirty (30) days following written demand therefor, together with delivery of reasonable evidence of such costs and expenses. If the Grantee does not rectify such damage and fails to pay the costs of such remediation as provided herein, the Grantor shall be entitled, in its sole discretion, to declare this Easement null and void, and shall be entitled to request the deletion of this Easement from title to the Grantor Lands on the grounds of forfeiture by the Grantee.

#### Section 2.05 - CONSENTS AND POSTPONEMENTS

The Grantor shall endeavour to provide to the Grantee, upon request, concurrently with delivery of a Transfer of the Easement herein set out, the consent of any encumbrance having an interest in the part of the Grantor Lands made subject to an easement and a postponement of such encumbrancer's interest in favour of the interest created by the Transfer of Easement, each such postponement to be in registerable form. In the event that such encumbrancer requires payment of a fee or compensation for costs relating to such postponement, the Grantee shall be responsible for such costs as a condition of obtaining such postponement. If the encumbrancer refuses, after request by the Grantor, the Grantor shall not be required to take any further steps to obtain such postponement.

### **ARTICLE III - MAINTENANCE AND REPAIR**

#### **Section 3.01 - GRANTEE: EASEMENT**

The Grantee, shall at all times and at its own expense Maintain the Easement in good repair and condition, in accordance with Applicable Laws and the terms of this Agreement.

#### **Section 3.02 - GRANTOR: GRANTOR FACILITIES**

The Grantor shall not interfere with or interrupt the use of the Servient Lands by the Grantee in accordance with this Agreement.

#### **Section 3.03 - DAMAGE OR DESTRUCTION**

If any element of the Easement or the Storm Water Facilities is damaged or destroyed, in whole or in part, by any cause whatsoever, then the Grantee shall at its own expense repair, restore, reconstruct or replace such damaged or destroyed element of the Easement or the Storm Water Facilities and all such repairs, restorations, reconstructions or replacements of same shall be, at minimum, to the same quality and condition that prevailed immediately prior to the damage or destruction thereof and always in accordance with Applicable Laws.

### **ARTICLE IV - OPERATION**

#### **Section 4.01 - COMPLIANCE WITH AGREEMENT**

Each party hereto covenants and agrees that it will not authorize or condone any breach of this Agreement by any person, visitor, guest, agent or servant, and further covenants and agrees with the other parties to pay its costs, as set out in this Agreement, and shall not do or omit or fail to do any act or thing whereby any of the other parties shall be or become liable or obligated for the payment of same.

#### **Section 4.02 - DEFAULT AND SELF-HELP**

Intentionally deleted.

#### **Section 4.03 - CONSTRUCTION LIENS**

The Grantee covenants and agrees that the work contemplated by this Agreement shall be performed in a good and workmanlike manner by reputable and experienced contractors, and it shall pay all construction costs (less statutory holdbacks) in a timely manner. The Grantee shall not suffer or permit any construction liens under the *Construction Act*, RSO 1990, c C.30, as amended or other similar liens or orders (hereinafter called "**Liens**") to be filed or registered against the Grantor Lands or any part thereof by reason of work, labour, services or materials supplied or claimed to have been supplied to the Grantee in connection with the Easement. If any Liens shall be filed or registered as hereinbefore provided, the Grantee shall cause such Liens to be discharged from title to the Grantor Lands within twenty (20) Business Days after notice to the Grantee of such filing or registration. If the Grantee fails to so discharge such Liens within such twenty (20) Business Day period, the Grantor may (but shall not be obligated to) discharge the Lien by paying the amount claimed to be due including the obtaining and lodgment of a letter of credit or by any matter permitted by law, and any expenses of so doing including without limitation legal fees on a solicitor client basis and disbursements including without limiting the generality of the foregoing, the cost of obtaining a letter of credit, if required, shall be paid by the Grantee to the Grantor upon demand. If the Grantee fails to pay such amounts, after demand, then the Grantor shall be entitled, in its sole discretion, to declare this Easement null and void, and shall be entitled to request the deletion of this Easement from title to the Grantor Lands on the grounds of forfeiture by the Grantee.

#### **Section 4.04 - ENVIRONMENTAL REQUIREMENTS**

(a) The Grantee acknowledges that it has not relied on any information or representations, oral

or written, of the Grantor, its agents, employees or independent contractors concerning any condition of the Easement or Servient Lands, environmental or otherwise.

- (b) The Grantee acknowledges that it may encounter contaminated soil, groundwater, surface water and soil vapour in the course of the Grantee's works. The Grantee shall immediately inform the Grantor if it encounters or suspects that it has encountered contaminated soil, groundwater, surface water and/or soil vapour. The Grantee shall dispose of all contaminated and potentially contaminated soil, groundwater, and/or surface water in accordance with Applicable Laws at its sole cost and expense. The Grantee shall be exclusively responsible for the mitigation, remediation and disposal of any contaminants or hazardous substances encountered as required to safely conduct the works, or as may be otherwise required under Applicable Laws in connection with its work. Any soil, fill or other material brought onto the Servient Lands during the works must meet applicable standards and confirmation shall be provided by the Grantee to the Grantor to its satisfaction, acting reasonably. If the Grantee believes during the course of any of the works that contaminated soil, groundwater and/or surface water encountered during the works extends beyond the Servient Lands, the Grantee shall immediately notify the Grantor and provide any and all information that is in its possession that has led to this belief.
- (c) Subject to compliance with Applicable Laws, the Grantee is permitted to use such Hazardous Substances as are necessary to Maintain the Easement or the Storm Water Facilities, notwithstanding the foregoing, the Grantee shall not commit, permit or allow any act of waste or injury to the Grantor Lands and shall indemnify and save the Grantor harmless from any impacts and consequences for the use of such Hazardous Substance, including without limitation, any soil remediation or any costs or claims arising from the migration of such Hazardous Substances.

## **ARTICLE V - INTERESTS AND COSTS**

### **Section 5.01 - INTEREST AND COSTS**

- (a) The parties agree that the price associated with the Grantor granting the Easement shall be \$3,000.00 (the "**Easement Price**"). The Grantor agrees that upon execution of this Agreement, it shall pay to the Grantor the full amount of the Easement Price to the Grantor by certified cheque or wire transfer, or as otherwise directed by the Grantor, or their representatives, in writing.
- (b) The parties further agree that the Grantee will pay the legal fees incurred by the Grantor in connection with the negotiation of this Agreement and the conveyance of the Easement and any legal fees and consulting fees with respect to any modifications contemplated herein upon receipt of an itemized statement of account, within a reasonable time after execution of this Agreement. The Grantee further agrees and acknowledges that it shall be solely responsible for all costs in relation to the easement granted herein and the construction, operation and maintenance of the Storm Water Facilities.
- (c) All amounts payable under this Agreement will bear simple interest at the rate of 1.25% per month (15% per year) (the "**Default Rate of Interest**"). Interest will be calculated and payable from and including the day after the day the amount is due until payment in full of the overdue amount is received. Interest will be calculated only on the principal amount outstanding from time to time, and interest charges will not be added to the outstanding principal amount for purposes of calculating interest. Payments received will be applied first to outstanding interest charges and the balance (if any) will be applied to the outstanding principal amount. The rights of the parties to charge and receive interest in accordance with this Section 5.01 are without prejudice to any other rights at law or otherwise.

### **Section 5.02 - PROVISIONS RUN WITH LANDS**

The provisions of this Agreement are intended to and shall run with the Lands and shall benefit and burden the Lands, and shall bind and enure to the benefit of the parties hereto and their successors and assigns.

### **Section 5.03 - ASSUMPTION**

- (a) In furtherance of the rights and obligations of any successor in title of any of the parties hereto or any of their successors arising as a matter of law, as a condition precedent to any Disposition by any of the parties hereto or any of their successors in title, or any assignee of any of the parties hereto, or any of their respective successors in title (collectively referred to as an "**Assignor**"), any such Assignor shall obtain from the person to whom the Assignor

desires to Dispose of its interest, an agreement in favour of the parties to this Agreement (the "Assumption Agreement") substantially in the form attached hereto as Schedule "A", which Assumption Agreement shall be executed by the remaining parties to this Agreement in favour of the assignee, confirming that the assignee shall be entitled to the benefits hereunder. Notwithstanding the execution and delivery of such an Assumption Agreement the Assignor shall not be released from its obligations hereunder.

- (b) Without limiting the generality of Section 5.03 (a) above, the registration of the Common Elements Condominium Corporation upon the Grantee Lands shall be deemed to be a Disposition and the Common Elements Condominium Corporation so shall execute the Assumption Agreement and the purchasers of Parcels of Tied Land shall not be required to execute the Assumption Agreement upon the conveyance of same thereto. If the Common Elements Condominium Corporation is subsequently terminated each of the owners holding a common interest in the Common Elements Condominium Corporation shall be bound by this Agreement jointly and severally as tenants in common of the lands formerly subject to the Common Elements Condominium Corporation.

#### Section 5.04 - GRANTING OF EASEMENT BY GRANTOR

Intentionally Deleted.

#### Section 5.05 - INSURANCE

- (a) The Grantee shall obtain and maintain, or cause to be obtained and maintained, at all times during the term of this Agreement, at its expense, all risks insurance coverage on the Easement.
- (b) The Grantee shall obtain and maintain or cause to be obtained and maintained at all times at its expense commercial general liability insurance coverage in respect of property damage and/or bodily injury (including but not limited to death) which adds the Grantor (and its successors in title) as an additional insured. Each such policy shall contain, inter alia, cross-liability and severability of interest clauses, blanket contractual liability clause, products and completed operations clause, broad definition of insured clause, non-owned automobile coverage and tenant's legal liability coverage. The policy limit shall be not less than \$2,000,000.00 per occurrence (and such required limit shall increase from time to time to reflect such higher amounts as are typically carried for similar uses from time to time).
- (c) The Grantee shall provide a certificate of insurance evidencing the coverages required hereunder upon execution of this agreement, and shall furnish the Grantor with a certified copy of such policy to be maintained hereunder upon written request by the Grantor.
- (d) Each insurance policy maintained pursuant to this Section 5.05 shall contain an agreement by the insured to the effect that it will not cancel without endeavoring to provide thirty (30) Business Days' Notice of such cancellation, to be sent via email to the Grantor. Each policy shall contain an endorsement requiring the insurer(s) to notify the Grantor in writing at least thirty (30) days (fifteen (15) days if cancellation is due to non-payment of premium), prior to any cancellation of the Grantee's insurance.

#### Section 5.06 - CONDOMINIUM ACT

If a condominium corporation is created upon the Grantee Lands in accordance with the Condominium Act, each policy of insurance maintained under this Agreement in respect of the Easement, after registration of a declaration and description to create the Condominium, shall comply with the provisions of the Condominium Act, to the extent applicable thereto and shall at a minimum, comply with the requirements of Section 5.05 hereof.

#### Section 5.07 - GRANTOR RELEASE & INDEMNITY

- (a) Intentionally Deleted.
- (b) Intentionally Deleted.

#### Section 5.08 – GRANTEE RELEASE & INDEMNITY

The Grantee agrees to promptly provide to the Grantor copies of any notices, all manner of actions or causes of action, debts, claims, and demands whatsoever ("Claims"), injuries, or any other correspondence received from third parties relating to any Environmental Matters which have or which may reasonably be expected to have a material adverse effect on the Grantor Lands.

The Grantee shall indemnify and save harmless the Grantor and those for whom it is at law



responsible for, from and against all Claims, losses, demands, payments, suites, judgements, actions, damages, liabilities and expenses by whomsoever made, brought or prosecuted in connection with losses of life and personal injury, loss or damage to property, or any other loss, damage or injury, arising from the exercise of the Grantee's rights under the Easement or the Grantee's use of the Servient Lands. This Section 5.08 shall survive the termination or release of this Agreement.

#### Section 5.09 – LIABILITY RE: DESIGN AND CONSTRUCTION

Notwithstanding any consent or approval given by the Grantor with respect to any plans, specifications or other construction-related matter with respect to the Easement, the Grantor will not be in any way liable for the design or construction of the Easement, and the Grantee shall be wholly liable for such design and construction.

### **ARTICLE VI - GENERAL PROVISIONS**

#### Section 6.01 - ARBITRATION

(a) Intentionally deleted.

#### Section 6.02 - NO PARTNERSHIP, ETC.

No party shall in any way or for any purpose be a partner of any other party in the conduct of its business, or otherwise, or a joint venturer or a member of a joint enterprise with another party by reason of the entry into of this Agreement or the performance of its obligations or enjoyment of its rights hereunder.

#### Section 6.03 - FORCE MAJEURE

If and to the extent that any of the parties hereto shall be prevented or delayed by reason of Force Majeure in the performance of any obligation hereunder, it shall not be in default and the period for the fulfilment of such obligation shall be extended accordingly.

#### Section 6.04 - NOTICE

All notices, consents, approvals or other communications permitted or required to be given under this Agreement ("Notice") shall be in writing, shall not be unreasonably withheld or delayed unless otherwise specifically provided for in this Agreement, and shall be personally delivered, sent by prepaid registered mail (except during a postal disruption or threatened postal disruption), or sent by email, in each case to the applicable address set out below:

(a) to the Grantor:

The Corporation of the County of Dufferin  
55 Zina Street  
Orangeville, ON  
L9W 1E5

Attention: County Clerk:  
clerk@dufferincounty.ca

(b) to the Grantee

200 Ronson Drive, Suite 203  
Toronto, Ontario M9W 5Z9  
Attention: Mathew Melchior  
Email: mmelchior@coram.com

Any Notice shall be deemed to have been validly and effectively given and received: if personally delivered, on the date of delivery; if sent by prepaid registered mail, on the third (3rd) Business Day next following the date of mailing, provided, however, that during any postal disruption or threatened postal disruption, delivery shall be in person; and if sent by facsimile or email, on the Business Day on which it was sent, provided it was sent prior to 5:00 p.m.

Any party under this Agreement may from time to time by Notice to the other parties change its address for service under this Agreement.

#### Section 6.05 - TIME

Time shall be of the essence of this Agreement.

#### Section 6.06 - NO WAIVER

No waiver by any party of any breach by any other party of any of its covenants, obligations and agreements under this Agreement shall be a waiver of any subsequent breach or of any other covenant, obligation or agreement, nor shall any forbearance to seek a remedy for any breach be a waiver of any rights and remedies with respect to such or any subsequent breach.

#### Section 6.07 - PLANNING ACT

This Agreement shall be subject to compliance with the subdivision control provisions of the *Planning Act* (Ontario), R.S.O. 1990 c P.13 and any amendments thereto or any successor statutory provisions thereto. If consent is required to this Agreement or any part thereof, the term of this Agreement will be reduced to twenty-one (21) years less a day pending the obtaining of such consent, at the sole cost and expense of the Grantee.

#### Section 6.08 - SEVERABILITY

If any covenant, obligation or agreement in this Agreement, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such covenant, obligation or agreement to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each covenant, obligation and agreement in this Agreement shall be separately valid and enforceable to the fullest extent permitted.

#### Section 6.09 - HEADINGS

The article and section headings in this Agreement have been inserted for convenience of reference only, and shall not be referred to in the interpretation of this Agreement.

#### Section 6.10 - GENDER AND NUMBER

This Agreement shall be read with all changes of gender and number required by the context.

#### Section 6.11 - APPLICABLE LAW

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein from time to time, and shall be treated in all respects as an Ontario agreement. The parties agree to comply with Applicable Law.

#### Section 6.12 - FURTHER ASSURANCES

Each party agrees to give such further assurances as may be reasonably required from time to time by any other party to more fully implement the true intent of this Agreement.

#### Section 6.13 - AUTHORIZATION

The parties covenant that each party to this Agreement has the right to enter into this Agreement and has completed all acts necessary to give effect to this Agreement.

#### Section 6.14 - REGISTRATION

The parties hereto agree that this Agreement shall be registered on title to the Lands. The Grantee shall pay the costs of registration and taxes and shall promptly notify the Grantor of such registration particulars.

#### Section 6.15 - TERMINATION

Intentionally deleted.

#### Section 6.16 - ENUREMENT

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and, where permitted, assigns.

[signature page to follow.]

IN WITNESS WHEREOF the parties hereto have hereunder executed this Agreement on the day, month and year first above written.

**THE CORPORATION OF THE COUNTY OF DUFFERIN**

Per: 

Name: Michelle Dunne

Title: County Clerk

Per: 

Name: Wade Mills

Title: County Warden

We have authority to bind the corporation.

**SCONE DEVELOPMENTS INC.**

Per: 

Name: MATTHEW MELCHIOR

Title: PRESIDENT

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

We have authority to bind the corporation.

**SCHEDULE "A"**  
**ASSUMPTION AGREEMENT**

This Assumption Agreement made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

between:

- (the "Transferor")  
  
- and -
- (the "Remaining Party")  
  
- and -
- (the "Transferee")

**WHEREAS:**

- (a) the Transferor and the Remaining Party are parties to a storm sewer easement agreement made \_\_\_\_\_, 2022 between the Transferor and the Remaining Party (the "**Storm Sewer Easement Agreement**") which was registered in the Dufferin Land Registry Office on \_\_\_\_\_ as Instrument No. \_\_\_\_\_; and
- (b) the Transferor intends to transfer its interest to the Transferee and, in accordance with the terms of the Storm Sewer Easement Agreement, the parties hereto are entering into this Assumption Agreement.

Now therefore this Assumption Agreement witnesses that in consideration of the sum of Ten Dollars (\$10.00) of lawful money of Canada now paid by each of the parties hereto to the other and for other good and valuable consideration (the receipt and sufficiency of which are hereby expressly acknowledged), the parties hereto confirm the truth of the foregoing recitals in substance and in fact and agree as follows:

1. The Transferee hereby agrees with the Remaining Party to observe and perform all of the obligations of the Transferor under the Storm Sewer Easement Agreement from and after the date hereof and agrees to be bound by the terms and conditions of the Storm Sewer Easement Agreement as if it were an original party thereto and executed the same in the place and stead of the Transferor.
2. The Transferor shall not be released, relieved or discharged from any obligations and/or liabilities arising under the Storm Sewer Easement Agreement.
3. The Remaining Party agrees that the Transferee shall have the benefit of the Storm Sewer Easement Agreement from and after the date hereof.
4. Capitalized terms used, but not defined herein, have the meanings attributed to them in the Storm Sewer Easement Agreement.
5. This Assumption Agreement may be executed in one or more counterparts, each of which so executed shall constitute an original and all of which together shall constitute one and the same

Amending Agreement. This Assumption Agreement may be transmitted by electronic transmission, in which case all signatures and initials shall be deemed to be original.

In witness whereof the parties have executed this Assumption Agreement.

•

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/We have authority to bind the Corporation.

•

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/We have authority to bind the Corporation.

•

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/We have authority to bind the Corporation.

SCHEDULE "B"  
EASEMENT IN FAVOUR OF DUFFERIN WIND POWER INC.

SCHEDULE "C"  
ENGINEERING PLANS

1. General Servicing Plan C101
2. Above Ground Servicing Plan C102
3. Outfall Sewer C405
4. Stormwater Management Facility C601
5. Stormwater Management Facility Details (1 of 2) C602
6. Composite Utility Plan C801