

July 2, 2013

VIA E-MAIL & COURIER

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th Floor, Box 2319
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: K2 Wind Ontario Limited Partnership;
Road Use Agreement;
Board File Number: EB-2012-0458**

We are writing on behalf of K2 Wind Ontario Limited Partnership ("**K2 Wind**") to file with the Ontario Energy Board ("**Board**") an executed copy of the Road Use Agreement with Township of Ashfield-Colborne-Wawanosh ("**ACW Township**").

In response of Board Staff Interrogatory 8(v), K2 Wind stated that it would provide the Board with a copy of the Road Use Agreement once it had been executed. On March 5, 2013, ACW Township Council authorized the execution of a final Road Use Agreement and the agreement was executed on March 19, 2013.

Yours very truly

Dentons Canada LLP

(signed) Helen T. Newland

Helen T. Newland
HTN/ko

cc: Maureen Helt
Leila Azaiez
Ontario Energy Board

Boris de Jonge
Capital Power Corporation

Tam Wagner
IESO

Paul F. Wendelgass
K2 Wind Ontario Inc.

Anita & Paul Frayne
ACW Residents Group

THIS ROAD USE AGREEMENT ("**Agreement**") is made as of the 5th day of March 2013.

BETWEEN:

**THE CORPORATION OF THE TOWNSHIP OF ASHFIELD-COLBORNE-
WAWANOSH**, a municipal corporation under the *Municipal Act, 2001*

hereinafter referred to as "**ACW**"

OF THE FIRST PART

- AND -

K2 WIND ONTARIO LIMITED PARTNERSHIP, an Ontario limited partnership,
by its general partner, **K2 WIND ONTARIO INC.**

hereinafter referred to as "**K2 Wind**"

OF THE SECOND PART

WHEREAS K2 Wind is developing an approximately 270 megawatt commercial wind energy project known as the K2 Wind Project (the "**Wind Project**") in the Township of Ashfield-Colborne-Wawanosh (the "**Municipality**") pursuant to a Power Purchase Agreement dated August 3, 2011, between the Ontario Power Authority and K2 Wind;

AND WHEREAS K2 Wind wishes to make use of certain Road Allowances, as hereinafter defined, to make deliveries of materials and components to, and to allow for construction, operation and maintenance of the Wind Project;

AND WHEREAS K2 Wind may wish to temporarily modify the alignment of certain Road Allowances to permit delivery or movement of oversized Wind Project components, including wind turbine blades, tower sections and nacelles;

AND WHEREAS K2 Wind also wishes to install, maintain and operate Electrical Infrastructure, as hereinafter defined, over, across, along, within or under certain Road Allowances pursuant to its statutory rights under the *Electricity Act, 1998*;

AND WHEREAS K2 Wind also wishes to connect private access roads from Wind Project turbines to the Road Allowances to permit ongoing access to the turbines during Wind Project operations;

NOW THEREFORE IN CONSIDERATION of the undertakings and agreements hereinafter expressed by the Parties, ACW and K2 Wind mutually covenant and agree as follows:

1. **Interpretation**

1.1 In this Agreement:

- (a) “**Applicable Law**” means all present or future applicable laws, statutes, regulations, treaties, judgements and decrees and all present or future applicable published directives, rules, policy statements and orders of any Public Authority and all applicable orders and decrees of courts and arbitrators to the extent, in each case, that the same are legally binding on the Parties in the context of this Agreement;
- (b) “**Deliveries**” is defined in Section 2.1(a);
- (c) “**Electrical Infrastructure**” means infrastructure for the transmission and distribution of electricity, including a line or lines of towers or poles and wires or cables (whether above ground or buried), for the transmission or distribution of electrical energy, and all foundations, footings, cross arms and other appliances, facilities and fixtures for use in connection therewith including without limitation, vaults and junction boxes (whether above or below ground), manholes, handholes, conduit, fiber optics, cables, wires, lines and other conductors of any nature, multiple above or below ground control, communications, data and radio relay systems, and telecommunications equipment, including without limitation, conduit, fiber optics, cables, wires and lines;
- (d) “**Entrance Work**” is defined in Section 2.1(b);
- (e) “**Entrances**” means points of access across and through the Road Allowances to be constructed by K2 Wind, as applicable, from the travelled portion of the road allowance connecting to certain private access roads that lead to Wind Project turbines and other infrastructure;
- (f) “**Force Majeure**” is defined in Section 12.2;
- (g) “**Installation Work**” means Road Work and other work involving or incidental to the installation, construction, enlargement, relocation or removal of Electrical Infrastructure and Entrances;
- (h) “**Municipality**” is defined in the first recital;
- (i) “**Party**” means ACW or K2 Wind as applicable and “**Parties**” means both ACW and K2 Wind;
- (j) “**Plans**” is defined in Section 5.1;
- (k) “**Public Authority**” means any governmental, federal, provincial, regional, municipal or local body having authority over ACW, K2 Wind, the Wind Project, the Electrical Infrastructure or the Road Allowances;

- (l) **“Repair Work”** means work involving the maintenance, repair and replacement of installed Electrical Infrastructure and Entrances that does not cause the location, elevation, position, layout or route of the Electrical Infrastructure or Entrance to materially change;
- (m) **“Road Allowance(s)”** means the common and public highways located in the Municipality that are owned or managed by ACW, and shall include ditches, driveways, sidewalks and sodded or other areas forming part of the Road Allowance and shall also include unopened Road Allowances;
- (n) **“Road Work”** is defined in Section 2.1(a);
- (o) **“Traffic Effects”** is defined in Section 4.3;
- (p) **“Transmission Work”** is defined in Section 2.1(c);
- (q) **“Tree Work”** is defined in Section 9.1;
- (r) **“Wind Project”** is defined in the first recital; and
- (s) **“Work”** means, collectively, Deliveries, Road Work, Entrance Work, Tree Work, Repair Work and Transmission Work as defined herein.

1.2 The following schedules to this Agreement are integral parts of this Agreement:

Schedule A - Plan showing applicable Road Allowances

Schedule B – Form of Acknowledgement and Consent Agreement

1.3 Nothing contained in this Agreement shall abrogate or prejudice any statutory rights held by either Party under Applicable Law, including but not limited to the *Ontario Energy Board Act, 1998*, the *Municipal Act, 2001*, the *Green Energy Act, 2009* and the *Electricity Act, 1998* as amended.

2. **Grant**

2.1 ACW grants K2 Wind the non-exclusive right to enter upon and use the Road Allowances with such persons, vehicles, equipment and machinery as may be necessary for purposes of:

- (a) transporting materials, components and equipment including overweight or over-size cargoes (subject to applicable seasonal load limitations) across or along Road Allowances to provide for the construction, maintenance, repair, replacement, relocation or removal of wind turbines for the Wind Project (**“Deliveries”**), and temporarily reconstructing or re-aligning road sections, turns and intersections on the Road Allowances to permit the passage of said overweight or over-size cargoes (**“Road Work”**);

- (b) constructing, maintaining and using Entrances to private wind turbine access roads ("**Entrance Work**") provided that K2 Wind shall first acquire at its own expense any property rights to private lands required for the Entrance Work and shall apply for and obtain an entrance permit for each Entrance and pay the fees for such permits, which shall not exceed the normal fees generally applicable to such applications and permits; and
 - (c) installing, constructing, operating, inspecting, maintaining, altering, enlarging, repairing, replacing, relocating and removing Electrical Infrastructure over, along, across, within or under the Road Allowances in connection with the Wind Project ("**Transmission Work**").
- 2.2 This Agreement shall become effective on the date that K2 Wind obtains a Renewable Energy Approval for the Wind Project under provincial law and, unless earlier terminated, shall remain in effect until the Wind Project has been fully decommissioned and all necessary reclamation and restoration has been completed.
- 2.3 K2 Wind shall ensure that neither its Work nor its Electrical Infrastructure unduly interferes with the use of any Road Allowance by members of the public. Without limiting the generality of the foregoing, K2 Wind shall not be entitled to close or temporarily block any of the Road Allowances without the prior written consent of ACW, acting reasonably. K2 Wind acknowledges that the rights granted hereunder are non-exclusive, are in the nature of a License only, and do not constitute a grant of easement or any other permission other than as expressed herein in writing. ACW represents that it:
 - (a) has legal and beneficial title to the Road Allowances and full power and authority to grant the rights over the Road Allowances in the manner set out in this Agreement;
 - (b) has obtained the full and unconditional due authorization, execution and delivery of this Agreement by all required resolutions and other required municipal approvals; and
 - (c) shall defend its title to the Road Allowances against any person or entity claiming any interest adverse to ACW in the Road Allowances during the term of this Agreement.
- 2.4 ACW agrees, in the event it decides to permanently close or dispose of any Road Allowance, or any part of a Road Allowance, to give K2 Wind reasonable advance written notice of such proposed closing or disposal and to grant and transfer to K2 Wind, at no cost to K2 Wind and prior to the proposed closure or disposal of the applicable Road Allowance, such easements and rights-of-way, in registrable form, over that part of the Road Allowance closed or disposed of sufficient to allow K2 Wind to preserve any part of the Electrical Infrastructure in its then existing location, to enter upon such closed or disposed of Road Allowance to perform Work in respect of such Electrical Infrastructure and to gain access to the Wind Project on the terms and conditions set out in this Agreement.

- 2.5 In the event that ACW decides to dispose of any Road Allowance or part thereof, ACW agrees to require the transferee or assignee of such Road Allowance, as a condition precedent to the transfer or assignment, to agree in writing with K2 Wind, in a form acceptable to K2 Wind acting reasonably, to be bound by the terms of this Agreement and to assume ACW's obligations hereunder from and after the date of the transfer or assignment.

3. Conditions Precedent to Commencement of Work

- 3.1 K2 Wind shall not commence any Work unless and until it has obtained a Renewable Energy Approval (REA) from the Ministry of the Environment (MOE) pursuant to the provisions of the *Environmental Protection Act* and applicable regulations thereunder.
- 3.2 Prior to the commencement of any Work, K2 Wind shall arrange for and maintain liability insurance satisfactory to ACW, acting reasonably, insuring, for the joint benefit of K2 Wind, any lender(s) to K2 Wind and ACW as additional insured's, as against all claims, liabilities, losses, costs, damages or other expenses of every kind that K2 Wind, such lender(s) and ACW may incur or suffer as a consequence of personal injury, including death, and property damage arising out of or in any way incurred or suffered in connection with the Work as contemplated by this Agreement, which insurance, at a minimum, shall provide coverage with limits of liability not less than Ten Million Dollars (\$10,000,000) per incident until the Wind Project commences commercial operation and Five Million Dollars (\$5,000,000) per incident thereafter. K2 Wind shall satisfy ACW, from time to time upon reasonable request by ACW that the premiums of such insurance have been paid and that such insurance is in full force and effect.
- 3.3 Prior to the commencement of any Work, K2 Wind and ACW shall document, by means of a video recording made by an independent consultant to be agreed upon by both Parties, or another means satisfactory to ACW acting reasonably, the then-existing condition of all Road Allowances that K2 Wind expects will or may be used for or subject to such Work, and both Parties shall receive a complete copy of such document. K2 Wind shall pay all costs thereof.
- 3.4 Prior to the commencement of any Work, K2 Wind shall provide a letter of credit to ACW in the amount of one hundred thousand dollars (\$100,000) to guarantee K2 Wind's performance of its obligations under subsection 4.4 hereof. ACW shall have the right to draw upon the security for the purpose of making repairs to the Road Allowances if K2 Wind has failed to meet its obligations in subsection 4.4 of this Agreement. ACW shall refund or release any undrawn security to K2 Wind no later than twelve (12) months after the completion of all Installation Work.

4. Work Generally

- 4.1 Notwithstanding and without limiting any other term hereof, K2 Wind agrees and undertakes that it will perform the Work at its own expense in accordance with and compliance with good engineering practices, applicable Plans and approved by ACW, this Agreement and Applicable Law.

- 4.2 K2 Wind further agrees to use commercially reasonable efforts to undertake and complete all Work so as to avoid unnecessary adverse impacts on public use of the Road Allowances.
- 4.3 Notwithstanding and without limiting any other term hereof, the Parties acknowledge that the Work from time to time may require the temporary modification of traffic patterns or the imposition of temporary restrictions on public access to or use of the Road Allowances ("**Traffic Effects**"). K2 Wind agrees to:
- (a) give five (5) days notice of anticipated Traffic Effects to ACW and to coordinate with ACW and local emergency services to minimize and mitigate any adverse impacts of the Traffic Effects and to ensure public safety; and
 - (b) use commercially reasonable efforts to maintain adequate public access to and use of the Road Allowances while Work is in progress and to remove the Traffic Effects as soon as reasonably possible following the completion of the Work.
 - (c) obtain consent from ACW (which consent shall not reasonably be withheld) in advance of undertaking any Work pursuant to this paragraph.
- 4.4 K2 Wind further agrees that, in the event that it becomes necessary to break, remove, or otherwise pierce the existing surface of any of the Road Allowances to undertake any Work, K2 Wind will in all cases repair, reinstate and restore such surface to the same or better condition which existed prior to the commencement of such Work and, further thereto, K2 Wind also agrees that it shall thereafter, for a period of twelve (12) months following completion of the applicable Work, monitor that portion of such restored Road Allowances, at the sole expense of K2 Wind, and repair any settling thereof caused by the Work, to the satisfaction of ACW, acting reasonably. In the event that K2 Wind shall fail to repair, reinstate and restore such Road Allowances, as aforesaid, then in such case, ACW may undertake the same and charge the reasonable costs thereof to K2 Wind. K2 shall provide ACW with a proposed specification for such restoration within 90 days of the execution of this Agreement.
- 4.5 K2 Wind agrees to make commercially reasonable efforts to rely on ACW road maintenance staff to implement measures to mitigate the Traffic Effects pursuant to subsection 4.3 of this Agreement and to repair, reinstate and restore the Road Allowances pursuant to subsection 4.4 of this Agreement, and K2 Wind agrees to reimburse ACW for the reasonable costs of any such work conducted by ACW staff, including ACW staff and supervisory time, and materials.
- 4.6 The Parties agree to cooperate with each other and with local emergency services and Hydro One Networks Inc. to develop and adopt protocols applicable in the event of an emergency involving the Electrical Infrastructure or the Work prior to the commencement of any Installation Work.

- 4.7 Notwithstanding any other provision of this Agreement, in the event of any emergency involving the Work or Electrical Infrastructure, K2 Wind shall notify the local emergency services immediately upon becoming aware of the situation and shall do all that is necessary and desirable to control the emergency, including such work in and to the Electrical Infrastructure or the Road Allowances as may be required for the purpose. For the purposes of this provision, “**emergency**” shall mean a sudden unexpected occasion or combination of events necessitating immediate action. As soon as practical after the emergency is discovered, K2 Wind shall advise ACW by telephone and keep ACW advised through the emergency. If it becomes necessary for K2 Wind to exercise its emergency powers under this paragraph, K2 Wind shall forthwith make a written report to ACW of what work was done and the further work to be undertaken, if any, and seek the approval of ACW for the further work.
- 4.8 Notwithstanding the foregoing, K2 Wind shall not be required to carry out and shall not be responsible for any costs associated with any maintenance, repairs or restoration of the Road Allowances or any other road allowances other than as set out in this Agreement.

5. Installation Work

- 5.1 Prior to the commencement of Installation Work, K2 Wind shall file detailed plans with ACW that identify the location, size, elevation and scope of the Installation Work and demonstrate that the Installation Work will comply with applicable safety, technical and regulatory standards and the requirements of Applicable Law (the “**Plans**”).
- 5.2 ACW, acting reasonably and with diligence, shall review the Plans without delay after receipt from K2 Wind and either approve the Plans or advise K2 Wind in writing of any modifications or amendments to the Plans that ACW may seek and the reasons therefor. During its review of the Plans ACW shall be entitled to take into consideration any specific municipal or engineering interests affected by the Plans.
- 5.3 K2 Wind shall not proceed with the Installation Work before receiving:
- (a) written approval of the Plans from ACW, which approval shall not be unreasonably delayed, conditioned or withheld; and
 - (b) approval to proceed with the Installation Work from any other Public Authority having jurisdiction over the Installation Work, to the extent that Applicable Law requires such approval prior to the commencement of Installation Work.
- 5.4 The Parties agree that for Installation Work involving the construction or relocation of Entrances, K2 Wind shall submit applications to ACW to construct such Entrances using ACW’s standard form of application for entrances and driveways and shall pay ACW’s standard fees for such applications.

- 5.5 K2 Wind agrees to notify, prior to commencing Installation Work, any other person, entity or body operating any equipment, installations, utilities or other facilities within the Road Allowances or in the vicinity of the Road Allowances where Installation Work is to be conducted, of the details of the anticipated Installation Work so as to minimize the potential interference with or damage to such existing equipment, installations, utilities, and other facilities by the said Installation Work and so as to maintain the integrity and security thereof.
- 5.6 K2 Wind further agrees to commence, perform and complete the Installation Work in accordance with the Plans for such Installation Work approved by ACW in all material respects.
- 5.7 In the event that physical features of the Road Allowances or other obstacles or circumstances frustrate the ability of K2 Wind to complete the Installation Work in substantial compliance with the Plans approved by ACW, or render substantial compliance with the Plans commercially unreasonable, K2 Wind agrees to revise the relevant Plans and submit such revised Plans for review by ACW. ACW agrees to expedite the review of such revised Plans and shall not unreasonably condition or withhold its approval of such revised Plans.
- 5.8 K2 Wind agrees to deposit as-built drawings and plans with ACW within one hundred eighty (180) days after the completion of Installation Work showing the location and specifications of any Electrical Infrastructure installed over, along, across, under or within the Road Allowances and the location and specifications of any Entrances constructed pursuant to this Agreement.

6. Transmission Work

- 6.1 The Parties acknowledge and agree that K2 Wind, when undertaking the Transmission Work, will install Electrical Infrastructure within the Road Allowances below-grade except where below-grade installation is not practicable because of environmental, topographical or other obstacles, in which case K2 Wind shall consult with ACW with respect to installing parts or sections of the Electrical Infrastructure above grade. Locations where K2 Wind anticipates that above-grade Electrical Infrastructure may be required are tentatively shown on Schedule A. Any Plans submitted by K2 Wind in connection with Transmission Work shall identify the locations in which K2 Wind proposes to install above-grade Electrical Infrastructure and shall set out the reasons therefor. ACW agrees that it shall not unreasonably refuse to approve above-grade installation if warranted by local conditions.

- 6.2 Where practicable, if buried Electrical Infrastructure routes need to cross ACW roads, such crossings shall be constructed by boring underneath the roads instead of breaking open the surface of the roads. If buried Electrical Infrastructure routes need to cross a road in a location where a boring is not practicable for technical, right-of-way or environmental reasons, K2 Wind shall consult with ACW with respect to installing the Electrical Infrastructure through an open cut. ACW agrees that it shall not unreasonably refuse to approve an open cut installation if warranted by local conditions. K2 Wind further agrees to make commercially reasonable efforts to install the Electrical Infrastructure:
- (a) in the area between the roadside drainage ditch and the boundary of the Road Allowance, but if that is not practicable, K2 Wind shall consult with ACW ;
 - (b) at appropriate depths and/or elevations within the relevant Road Allowance so as to avoid conflicts with other existing infrastructure; and
 - (c) in consistent locations within the Road Allowances such that the number of road crossings is minimized.
- 6.3 K2 Wind acknowledges and agrees that its rights under this Agreement to install Electrical Infrastructure over, along, across, within or under the Road Allowances are subject to the following rights:
- (a) the right of free use of the Road Allowances by all persons or parties otherwise entitled to such use;
 - (b) the rights of the owners of the property adjoining any relevant Road Allowance to full access to and egress from their property and adjacent rights-of-way, highways, streets or walkways and the consequential right of such persons or parties to construct crossings and approaches from their property to any such right-of-way, highway, street, or walkway, subject to any necessary approvals from Public Authorities; and
 - (c) the rights and privileges that ACW may have previously granted to any other person or party to such Road Allowance or lands.
- 6.4 K2 Wind agrees at its sole expense to:
- (a) mark the location of Electrical Infrastructure installed by K2 Wind within the Road Allowances with appropriate markings;
 - (b) participate in the "One Call" system to facilitate ongoing notice to the public of the location of the Electrical Infrastructure; and

- (c) upon request of ACW through its officials or authorized agents, or otherwise, properly and accurately identify the location of any Electrical Infrastructure within the Municipality, such reports to identify the depth of the relevant portion of the Electrical Infrastructure, such request to be made in writing to K2 Wind with advance notice of ten (10) business days prior to ACW or a third party commencing work that may conflict with the Electrical Infrastructure.
- 6.5 The Parties agree and acknowledge that K2 Wind shall be entitled to relocate installed Electrical Infrastructure or Entrances on its own initiative by complying with the terms of this Agreement respecting Installation Work.
- 6.6 In the event that ACW, acting reasonably and with diligence, deems it necessary for ACW or ACW's agents or contractors to modify or change the location of any part of the installed Electrical Infrastructure or Entrances (the "**Relocation**"), the required Installation Work shall be conducted by K2 Wind, within a reasonable period of time, in accordance with the terms of this Agreement respecting Installation Work, and the full costs of the Relocation shall be borne solely by ACW unless the Relocation is required by ACW's Drainage Superintendent to deal with a drainage problem, in which case the costs shall be borne by K2 Wind.
- 6.7 In the event that ACW, acting reasonably and with diligence, deems it necessary that installed Electrical Infrastructure or Entrances be modified or relocated by a third party ("**Third Party Work**"), the required Installation Work shall be conducted by K2 Wind in accordance with the terms of this Agreement respecting Installation Work, and the full costs of such Installation Work shall be borne solely by the third party. ACW agrees to give K2 Wind sixty (60) days notice of the need for any such Third Party Work and to require that the relevant third party or parties bear the full cost of K2 Wind's Installation Work and indemnify K2 Wind against all claims and liabilities arising from the required Installation Work as a condition precedent to any grant, permit or approval from ACW for the Third Party Work.
- 7. **Repair Work**
- 7.1 K2 Wind shall be entitled to conduct Repair Work without prior approval of ACW provided that:
 - (a) all Repair Work complies with the requirements of Sections 4 and 9 of this Agreement; and

- (b) K2 Wind gives at least five (5) days notice to ACW that Repair Work will occur if such Repair Work:
 - (i) will have or is likely to have Traffic Effects;
 - (ii) will involve or is likely to involve Tree Work as defined hereinafter; or
 - (iii) could present a danger to public health and safety.

8. Maintenance and Snow Clearance

- 8.1 K2 Wind acknowledges that the winter and year-round maintenance of the Road Allowances is, and will continue to be limited and that ACW does not provide twenty-four (24) hour snow maintenance on any of the Road Allowances, or any snow clearance at all on some Road Allowances. As K2 Wind may need to use uncleared Road Allowances to access Electrical Infrastructure and other components of the Wind Project, K2 Wind may clear snow from such Road Allowances from time to time and use such Road Allowances at its own risk, provided that K2 Wind shall save harmless and indemnify ACW, its servants, officers and Councillors and agents from all demands, losses, damages, costs, charges and expenses which may be claimed against ACW by any person or persons as a result of K2 Wind's negligence in clearing snow from any Road Allowance.

9. Tree Work

- 9.1 In the event that K2 Wind, acting reasonably, deems it necessary for purposes of undertaking and completing Work, to cut, trim or remove trees or bushes growing in the Road Allowances ("**Tree Work**"), K2 Wind shall be entitled to conduct necessary Tree Work provided K2 Wind makes reasonable efforts to minimize the amount of Tree Work. In the event that trees are removed from within the Road Allowances, K2 Wind agrees, at its sole expense, to remove the tree stump to a level below grade and to restore and remediate the surface of the Road Allowance in accordance with subsection 4.4 of this Agreement
- 9.2 In the event that Tree Work involves removal of trees from the Road Allowance, K2 Wind shall offer, in writing, to the adjacent landowner to replace, at K2 Wind's sole expense, such trees in accordance with the following protocol:
 - (a) Trees below 7.5 cm dbh (diameter at breast height) will not be replaced;
 - (b) Trees 7.5 cm dbh or greater but less than 15 cm dbh will be replaced at a ratio of two (2) trees for each tree removed;
 - (c) Trees 15 cm dbh or greater but less than 30 cm dbh will be replaced at a ratio of three (3) trees for each tree removed; and
 - (d) Trees greater than 30 cm dbh will be replaced at a ratio of five (5) trees for each tree removed.

- 9.3 Written offers to replace trees pursuant to subsection 9.1 of this Agreement shall include the schedule of tree species listed on the Maitland Valley Conservation Authority Roadside/Windbreak Planting Program 2012 document and landowners receiving said offer shall be entitled to select from this schedule the tree species or mix of tree species they wish to receive as replacement trees.
- 9.4 In the event that an affected landowner does not wish to receive replacement trees, K2 Wind may, in its sole discretion, offer such trees to other neighbouring landowners or may cooperate with the Maitland Valley Conservation Authority to find suitable alternative locations for such trees within the Municipality.

10. Abandonment and Decommissioning of Electrical Infrastructure

- 10.1 During the term of this Agreement, the Parties agree that K2 Wind may elect to permanently discontinue the use of (“**abandon**”) any part of the Electrical Infrastructure on at least sixty (60) days prior written notice of such abandonment to ACW specifying the part of the Electrical Infrastructure to be abandoned and the date when the abandonment will occur.
- 10.2 If K2 Wind abandons any part or all of the Electrical Infrastructure, K2 Wind shall have the right to remove such part of its Electrical Infrastructure as has been abandoned, but if K2 Wind does not remove the Electrical Infrastructure that has been abandoned, K2 Wind shall deactivate all abandoned Electrical Infrastructure and certify to ACW that such Electrical Infrastructure has been deactivated within sixty (60) days of its abandonment. If the location of any such abandoned Electrical Infrastructure interferes with the location of any construction, alteration, work or improvement undertaken by ACW, ACW may remove and dispose of so much of the abandoned and deactivated part of the Electrical Infrastructure as ACW may require for such purposes and neither Party shall have recourse against the other for any loss, expense or damages occasioned thereby.
- 10.3 Within one hundred and eighty (180) days after the abandonment of any Electrical Infrastructure, K2 Wind shall consult with ACW in good faith to come to an agreement with respect to the decommissioning and removal or abandonment of such Electrical Infrastructure within the Road Allowances. The Parties anticipate that the principles for decommissioning articulated in the Decommissioning Report prepared for K2 Wind’s “Renewable Energy Approval” application for the Project will generally apply to Electrical Infrastructure within Road Allowances. Notwithstanding the foregoing, ACW agrees that any abandoned Electrical Infrastructure buried at a depth of more than three (3) feet below the surface may be left in place and K2 Wind agrees that it shall at a minimum remove all of the above-ground components of abandoned Electrical Infrastructure from the Road Allowances at its sole cost and expense to the satisfaction of ACW, acting reasonably. Any abandoned Electrical Infrastructure that is finally left in place upon the completion of decommissioning shall become the property of ACW.

11. Assignment

- 11.1 K2 Wind may not assign this Agreement without the written consent of ACW, which shall not be unreasonably withheld, except that no consent shall be required (i) for K2 Wind to assign this Agreement to an affiliated or successor entity, or to a buyer of all or part of K2 Wind's interest in the Wind Project, provided that all payments due under this Agreement have been satisfied and the assignee agrees in writing to assume and fulfill all of the covenants, agreements, terms and provisions and to abide by all limitations set forth in this Agreement, or (ii) for purposes of securing indebtedness or other obligations respecting the Electrical Infrastructure or the Wind Project, provided that if the Secured Party realizes on the security and further assigns this Agreement, the assignee agrees in writing to assume and fulfill all of the covenants, agreements, terms and provisions and to abide by all limitations set forth in this Agreement. ACW acknowledges that a change in control of K2 Wind shall not be considered an assignment by K2 Wind of this Agreement or of any of K2 Wind's rights and obligations under this Agreement.
- 11.2 For greater certainty, K2 Wind shall be entitled to assign this Agreement and all of its rights thereunder without the consent of ACW to K2 Wind's lenders ("**Secured Parties**" or "**Secured Party**" as applicable) as security for K2 Wind's obligations to such Secured Parties which shall be further entitled to assign this Agreement and K2 Wind's rights thereunder in connection with an enforcement of their security. ACW hereby agrees to execute and deliver an Acknowledgement and Consent Agreement in favour of any applicable Secured Party or assignee thereof, in the form attached as Schedule B, or as may otherwise be agreed.
- 11.3 K2 Wind shall be entitled, with the written consent of ACW, which may not be unreasonably withheld or conditioned, to assign this Agreement to a transferee of the Wind Project other than an affiliated or successor company, and K2 Wind shall thereupon be released from any and all obligations under this Agreement from and after the date of such assignment, provided that such assignee has agreed in writing with ACW, in a form acceptable to the assignee and ACW both acting reasonably, to be bound by the provisions of this Agreement from and after the date of the assignment.

12. Default

- 12.1 If a Party shall commit a breach of or omit to comply with any of the provisions of this Agreement (the "**Defaulting Party**"), the other Party (the "**Complainant**") may give the Defaulting Party notice in writing specifying the breach complained of and indicating the intention of the Complainant to terminate this Agreement unless the Defaulting Party shall have remedied the breach within the period mentioned in the notice, which period shall be not less than sixty (60) days. If the Defaulting Party shall have within such notice period commenced to remedy the breach and has diligently pursued the remedying thereof, the Defaulting Party shall be allowed one hundred and fifty (150) days after the expiry of the original notice period to remedy the breach. After the expiration of the later of the applicable periods, this Agreement may, at the option of the Complainant, be terminated in which case the rights and obligations of the Parties shall be determined in accordance with Applicable Law.

12.2 Whenever, and to the extent that a Party will be unable to fulfil or will be delayed or restricted in the fulfillment of any obligation under any provision of this Agreement by reason of:

- (a) strikes;
- (b) lock-outs;
- (c) war or acts of military authority;
- (d) rebellion or civil commotion;
- (e) material or labour shortage not within the control of the affected Party;
- (f) fire or explosion;
- (g) flood, wind, water, earthquake, or other casualty;
- (h) changes in Applicable Law not within the control of the affected Party, including the revocation by any Public Authority of any permit, privilege, right, approval, licence or similar permission in respect of the Wind Project;
- (i) any event or matter not wholly or mainly within the control of the affected Party (other than lack of funds or any financial condition of the parties hereto); or,
- (j) acts of God,

(in each case a “**Force Majeure**”)

not caused by the default or act of or omission by that Party and not avoidable by the exercise or reasonable effort or foresight by it, then, so long as any such impediment exists, that Party will be relieved from the fulfillment of such obligation and the other Party will not be entitled to compensation for any damage, inconvenience, nuisance or discomfort thereby occasioned. The Party relying on Force Majeure will be required and is entitled to perform such obligation within a period of time immediately following the discontinuance of such impediment that is equal to the period of time that such impediment existed. A Party shall promptly notify the other Party of the occurrence of any Force Majeure, which might prevent or delay the doing or performance of acts or things required to be done or performed.

13. Dispute Resolution

- 13.1 In the event that either Party provides the other Party with written notice of a dispute regarding the interpretation or implementation of this Agreement (a “**Dispute**”) then both Parties shall use their best efforts to settle the Dispute by consulting and negotiating with each other in good faith to reach a solution satisfactory to both Parties. However, if the Parties do not resolve the Dispute within thirty (30) days following receipt of such notice, then either Party may provide written notice to the other Party (the “**Arbitration Notice**”) requiring resolution by arbitration and thereafter the Dispute shall be referred to arbitration in accordance with the provisions of the *Arbitration Act, 1991*.
- 13.2 The arbitration tribunal shall consist of one arbitrator appointed by mutual agreement of the Parties or, if the Parties fail to agree on an arbitrator within ten (10) days after receipt of the Arbitration Notice, then either Party may apply to a judge of the Superior Court of Justice to appoint an arbitrator. The arbitrator shall be qualified by education and training to pass upon the matter to be decided.
- 13.3 The arbitration shall be conducted in English and shall take place in Goderich, Ontario or another place mutually agreed upon by the Parties.
- 13.4 The arbitration award shall be given in writing and shall address the question of costs of the arbitration and all related matters. The arbitration award shall be final and binding on the Parties as to all questions of fact and shall be subject to appeal only with respect to matters of law or jurisdiction.
- 13.5 Except to the extent that a matter is specifically the subject of a Dispute, both Parties shall continue to observe and perform the terms and conditions of this Agreement pending the resolution of a Dispute.

14. Further Assurances

- 14.1 Each of the Parties covenants and agrees with the other that it will at all times hereafter execute and deliver, at the request of the other, all such further documents, agreements, deeds and instruments, and will do and perform all such acts as may be necessary to give full effect to the intent and meaning of this Agreement.

15. Liability

- 15.1 K2 Wind hereby acknowledges that its performance of the Work and operation of the Electrical Infrastructure and Wind Project are entirely at its own risk and ACW shall in no way and in no circumstances be responsible or liable to K2 Wind, its contractors, agents, or customers for any damage or losses in consequence thereof, regardless of how such damage or loss was suffered or incurred, other than damage or loss arising out of the negligence of, or a breach of this Agreement by, ACW, anyone directly or indirectly employed by ACW, or anyone for whose acts ACW is in law responsible.

- 15.2 K2 Wind will indemnify and save harmless ACW its servants, officers, councillors and agents from and against all claims, liabilities, losses, costs (including but not limited to legal costs as between a solicitor and his own client), damages, and other expenses of every kind that ACW may incur or suffer as a consequence of the negligent exercise of K2 Wind's rights under this Agreement, including but not limited to the Work undertaken by K2 Wind.
- 15.3 The Parties agree and acknowledge that no relationship is formed between the Parties in the nature of a joint venture, partnership, co-ownership arrangement or other similar relationship.

16. Notice

- 16.1 All notices, communications and requests for approval which may be or are required to be given by either party to the other herein shall be in writing and shall be given by delivery by courier or by facsimile addressed or sent as set out below or to such other address or facsimile number as may from time to time be the subject of a notice:

To the Corporation:

The Township of Ashfield-Colborne-Wawanosh
82133 Council Line
RR #5
Goderich, ON N7A 3Y2

Attention: Public Works Superintendent
Facsimile: 519-524-1951

To K2 Wind:

c/o Pattern Renewable Holdings Canada ULC
Pier 1, Bay 3
San Francisco, CA 94111

Attention: General Counsel
Facsimile: 415-362-7900

With a copy to:

Capital Power Corporation
70 York Street, Suite 1720
Toronto, ON M5J 1S9

Attention: Director, Business Development
Facsimile: 647-253-3710

- 16.2 Any notice, if delivered by courier, shall be deemed to have been validly and effectively given and received on the date of such delivery and if sent by facsimile with confirmation of transmission, shall be deemed to have been validly and effectively given and received on the day it was received, whether or not such day is a business day.

17. Governing Law

- 17.1 This Agreement shall be governed by, and be construed and interpreted in accordance with, the laws of Ontario and the laws of Canada applicable in Ontario.

18. Miscellaneous

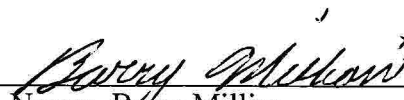
- 18.1 This Agreement may be executed by facsimile or PDF transmission and in one or more counterparts, all of which shall be considered one and the same Agreement.
- 18.2 This Agreement and the rights granted hereunder shall extend to, benefit and bind the parties hereto, their respective successors and permitted assigns.
- 18.3 The invalidity or unenforceability of any provision contained in this Agreement shall affect the validity or enforceability of such provision or covenant only and any such invalid provision shall be deemed to be severable from the balance of this Agreement, which shall be enforced to the greatest extent permitted by law.
- 18.4 No supplement, modification, amendment, or waiver of this Agreement shall be binding unless executed in writing by the Parties.
- 18.5 K2 Wind shall reimburse ACW for reasonable legal fees incurred in connection with the review of this Agreement up to a maximum of \$15,000.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives to be effective as of the date stated at the beginning of this Agreement.

**CORPORATION OF THE TOWNSHIP OF
ASHFIELD-COLBORNE-WAWANOSH**

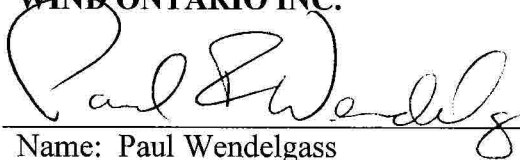


Name: Mark Becker
Title: Administrator/Clerk-Treasurer



Name: Barry Millian
Title: Councillor

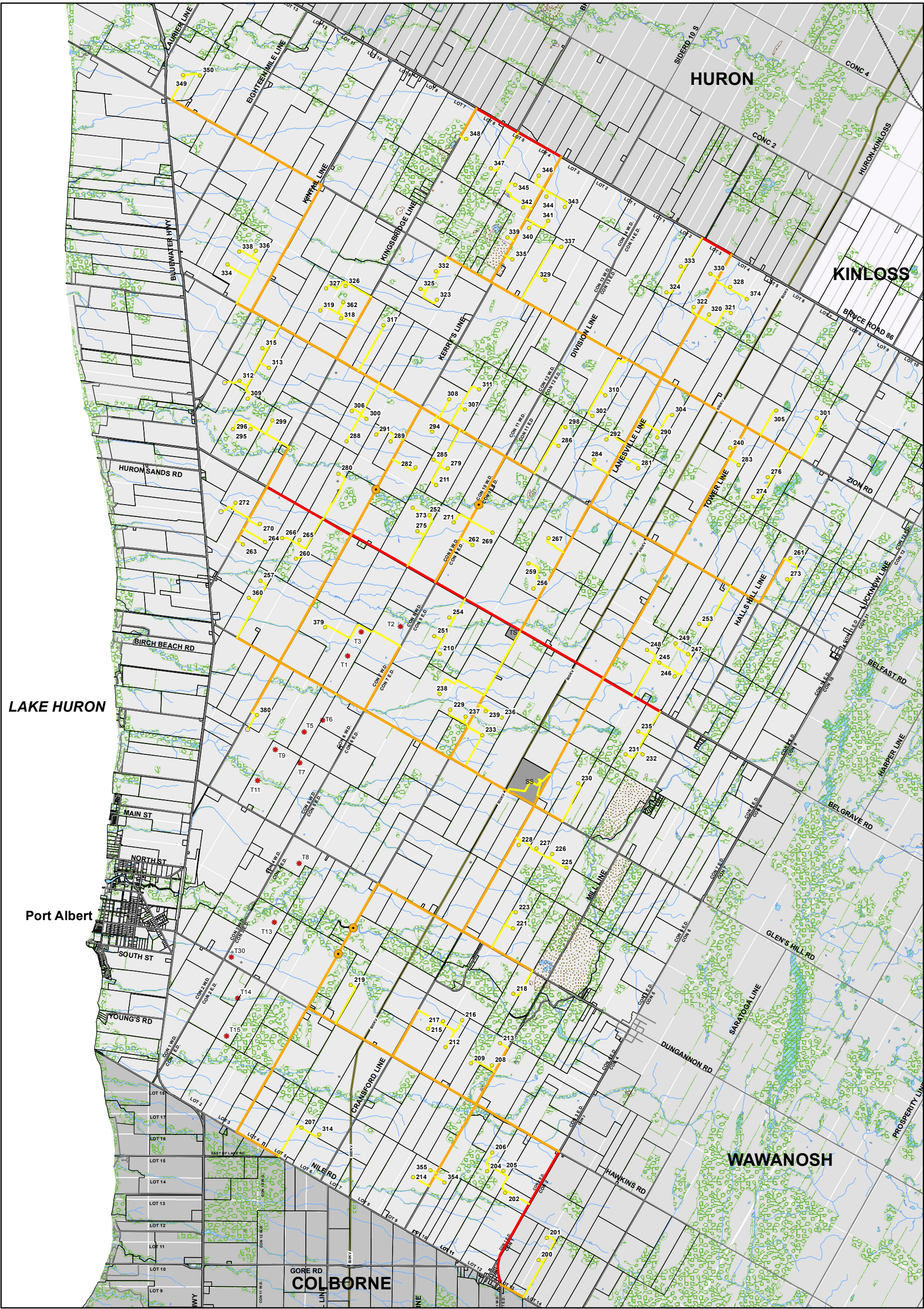
**K2 WIND ONTARIO LIMITED
PARTNERSHIP by its general partner, K2
WIND ONTARIO INC.**



Name: Paul Wendelgass
Title: Authorized Signatory

SCHEDULE "A"

Plan showing applicable Road Allowances



K2 WIND ONTARIO LIMITED PARTNERSHIP - K2 WIND POWER PROJECT

Proposed Project Components

- K2 Turbine Locations
- Waterbody Crossing (With Overhead Collector Line)
- Underground Collector/Transmission System - Private Lands
- Underground Collector/Transmission System - ACW Roads
- Underground Collector/Transmission System - Huron & Bruce County Roads
- MET Tower Location
- Substation & Transformer Station

Existing Project Components

- K1 Turbine Locations

LEGEND

Existing Features

- HONI 500KV line
- Railway
- Road Network
- Petroleum Well
- Pit Quarry
- Watercourse
- Waterbody
- Wetland

Lot and Concession Fabric Township

- Ashfield
- Colborne
- Huron
- Kinloss
- Wawanosh

Woodland

Parcel Fabric

0 500

0 500 1,000 1,500 2,000 2,500 3,000

Metres

1:70,000

DATE: 06 DECEMBER 2012

PROJECTION: UTM NAD83 ZONE 17N

DRAWING BASED ON PROJECT LAYOUT 194 UNLESS OTHERWISE SPECIFIED

PRODUCED BY SELLER CORP. UNDER LICENSE WITH THE ONTARIO MINISTRY OF NATURAL RESOURCES © QUEEN'S PRINTER FOR ONTARIO, 2012

SCHEDULE "B"

ACKNOWLEDGEMENT AND CONSENT AGREEMENT

This Owner's Acknowledgement and Consent Agreement ("Acknowledgement") is made as of the • day of •, 201•, by and between the Corporation of the Township of Ashfield-Colborne-Wawanosh, a municipal corporation under the Municipal Act, 2001 (the "Owner") and • (the "Agent") as agent pursuant to a credit agreement dated •, 201• (as amended from time to time, the "Credit Agreement") among, inter alia, K2 Wind Ontario Limited Partnership (the "Borrower"), the Agent, • and the other financial institutions from time to time party thereto, as lenders (collectively, the "Lenders") and •, in its capacity as collateral agent under the Collateral Agency Agreement made as of •, 201• (as amended from time to time, the "Collateral Agency Agreement") among •, the persons who are, and from time to time become, parties thereto as guarantors, and • (the "Collateral Agent"), as agent for the Secured Creditors (as defined therein).

WHEREAS:

A. The Borrower and the Owner entered into a Road Use Agreement dated • (the "Agreement"), pursuant to which the Owner granted to the Borrower, inter alia, certain rights in connection with access to municipal roads (the "Rights") on the terms and conditions set out in the Agreement.

B. Pursuant to, respectively, the Credit Agreement and the Collateral Agency Agreement (and documentation delivered in connection therewith), the Agent and Collateral Agent, respectively, have been granted charges, mortgages, assignments and security interests (collectively, the "Security Interests") in all of the property, undertaking, assets, interests, rights and benefits of the Borrower, including without limitation, all of Borrower's interest in and rights under the Agreement (collectively, the "Collateral").

C. The Owner has agreed to execute and deliver this Acknowledgement to the Agent and the Collateral Agent pursuant to the provisions of the Agreement.

NOW THEREFORE in consideration of the sum of Two Dollars (\$2) paid by each of the Agent and the Collateral Agent to the Owner and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner hereby acknowledges, covenants and confirms to each of the Agent and the Collateral Agent, as follows:

1. The Owner consents to the creation of the Security Interests.

2. The Owner acknowledges that, following an event of default by the Borrower under the Credit Agreement or an event of default as defined in the Collateral Agency Agreement (each, an "Event of Default"), the Agent, the Lenders, the Collateral Agent or the Secured Creditors or any nominee or designee thereof or any receiver or receiver-manager (collectively, an "Agent Party") shall have the right to enforce the Security Interests, including, without limitation, the right to enjoy and enforce the rights of the Borrower under the Agreement and, in the course of the enforcement of such rights, shall be entitled to assign, transfer or otherwise dispose of the Borrower's rights and interest in and under the Agreement, provided that in exercising such rights the Agent Party shall assume all of the liabilities and obligations of the Borrower under or in connection with the Agreement.

3. The Owner agrees:

- (a) to give each of the Agent and the Collateral Agent written notice (at the addresses below) of any default by the Borrower under the Agreement, concurrent with the delivery of such notice to the Borrower;
- (b) that if the Borrower fails to cure the breach or default identified in such notice, the Agent, the Collateral Agent or any other Agent Party may, but in no way shall be obligated to, cure such default and the Owner shall not terminate the Agreement or exercise any other remedy under the Agreement if the Agent, the Collateral Agent or any other Agent Party within 60 days of the date of receipt of the notice in section 3(a) above by the Collateral Agent is proceeding to cure such breach or default;
- (c) that upon a default by the Borrower under the Agreement, it shall not exercise any right to terminate if the Agent, the Collateral Agent or any other Agent Party or a nominee thereof agrees to assume the rights and obligations of the Borrower under the Agreement;
- (d) that if the Agreement is terminated or surrendered for any reason prior to the expiry of the term thereof, whether as a result of a default by the Borrower thereunder or otherwise, the Owner shall give notice of such termination to each of the Agent and the Collateral Agent and shall offer to enter into a new or replacement agreement (the "Replacement Agreement") with the Agent, the Collateral Agent or another Agent Party or other person designated by, as applicable, the Agent, the Collateral Agent or other Agent Party, which Replacement Agreement shall be upon the same terms and conditions as the Agreement; and
- (e) that if within 30 days of receipt of the notice referred to in item (d) above, the Agent or the Collateral Agent requests a Replacement Agreement, the Owner shall enter into such Replacement Agreement with, as applicable, the Agent, the Collateral Agent or another Agent Party or other person designated by the Agent or the Collateral Agent. Notwithstanding any of the foregoing, the Agent Party confirms and acknowledges that the Owner shall not be liable to the Agent Party for the non-delivery of any notice pursuant to subparagraph (a) above.

4. The Agent covenants and agrees with the Owner that during any period the Agent exercises its Security Interests and (either directly or indirectly through an Agent Party) forecloses upon the Agreement, or succeeds to the interest of the Borrower under the Agreement, it will assume all of the obligations of the Borrower under or in connection with the Agreement during such period, and thereafter observe and perform all of the Borrower's obligations under the Agreement.

5. The Collateral Agent covenants and agrees with the Owner that during any period the Collateral Agent exercises its Security Interests and (either directly or indirectly through an Agent Party) forecloses upon the Agreement, or succeeds to the interest of the Borrower under the Agreement, it will assume all of the obligations of the Borrower under or in connection with the Agreement during such period, and thereafter observe and perform all of the Borrower's obligations under the Agreement.

6. The Owner confirms and acknowledges that in the event that either the Agent or the Collateral Agent assigns, transfers or otherwise disposes of its interest in the Agreement pursuant to its Security Interests (a "Transfer"), and upon such assignee or transferee covenanting and agreeing in writing with the Owner to assume and perform all of the covenants and obligations of the Borrower pursuant to the Agreement, each of the Agent and the Collateral Agent shall, thereupon and without further agreement, be freed and relieved of all liability with respect to the Agreement from and after the effective date of such Transfer.

7. All notices hereunder shall be in writing, delivered by courier or sent by registered mail, return receipt requested, or by telecopy, to the respective parties and the addresses set forth on the signature page or at such other address as the receiving party shall designate in writing.

8. This Acknowledgement may be executed in any number of counterparts, shall be governed by the laws of the Province of Ontario and binds and inures to the benefit of the Agent, and its successors and assigns, the Collateral Agent, and its successors and assigns and shall be binding upon the Owner and its successors and assigns.

9. Each of the parties hereto agrees to do, make and execute all such further documents, agreements, assurances, acts, matters and things and take such further action as may be reasonably required by any other party hereto in order to more effectively carry out the true intent of this Acknowledgement.

10. The provisions of this Acknowledgement shall continue in effect until the Owner shall have received the written certification of the Agent and the Collateral Agent that all amounts advanced, and obligations arising, under the Credit Agreement and all Obligations (as defined in the Collateral Agency Agreement) have been paid and performed in full.

IN WITNESS WHEREOF this Acknowledgement is executed by the parties.

NOTICE OF ADDRESS:

CORPORATION OF THE TOWNSHIP OF
ASHFIELD-COLBORNE-WAWANOSH

By:
Name:
Title:

By:
Name:
Title:

We have authority to bind the Corporation

NOTICE OF ADDRESS:

[NAME OF AGENT] as Agent for the
Lenders and Secured Creditors

By:
Name:
Title:

I have authority to bind the Corporation.

NOTICE OF ADDRESS:

[NAME OF COLLATERAL AGENT] as
Agent for the Lenders and Secured Creditors

By:
Name:
Title:

I have authority to bind the Corporation.