

SEWER CONNECTION AGREEMENT

Between:

The Corporation of the Town of Tecumseh

-and-

Amicone Holdings Limited

PREPARED BY:

WOLF HOOKER PROFESSIONAL CORPORATION

Barristers & Solicitors

72 Talbot Street North, Suite 100

Essex, Ontario N8M 1A2

SEWER CONNECTION AGREEMENT

THIS AGREEMENT made in triplicate this _____ day of _____, 2021.

B E T W E E N:

THE CORPORATION OF THE TOWN OF TECUMSEH,
hereinafter called the "Municipality" or "Town"

OF THE FIRST PART

-and-

AMICONE HOLDINGS LIMITED
hereinafter called the "Owner"

OF THE SECOND PART

HEREINAFTER collectively referred to as the "Parties"

RECITALS

WHEREAS the Owners, own certain lands situated within the corporate limits of the Municipality, said lands being more particularly described in Schedule "A" hereto (the "Lands");

AND WHEREAS Sections 8 and 11 of the *Municipal Act, 2001*, S.O. 2001 (herein "the Act"), provides broad and specific powers to the *Town* of Tecumseh to regulate, prohibit or require persons to do things within the public utilities sphere of influence;

AND WHEREAS the Municipality has constructed and commissioned certain sewer works currently located within the road allowance fronting the lands on Schedule "A" (herein "the Sewer Works") as a service that is considered necessary and desirable for the public within the meaning of subsection 10(1) of the Act;

AND WHEREAS in order to finance the construction and commissioning of the Sewer Works, the Municipality will be passing a by-law under the authority granted to it under the Section 391 of the Act and/or under the Development Charges Act to recover costs from land owners within the servicing area of the Sewer Works (herein "the By-law");

AND WHEREAS the Owner wishes to connect to the Sewer Works in advance of the

passage of the by-law and as a condition of permitting the Owner to do so, the Municipality has requested the Owner enter into this agreement;

WITNESSETH that in consideration of these presents, and other good and valuable consideration, the Parties hereto mutually covenant, promise and agree as follows:

ARTICLE I CONNECTION TO WORKS

1.1 MUNICIPALITY TO PERMIT CONNECTION TO WORKS

The Municipality shall upon the later of:

- a) The Owner obtaining all permits from the Municipality, Ministry of Environment, Conservation and Parks (Ontario) (herein “MECP”), or any other public authority having jurisdiction, required for any infrastructure built within its lands for the purpose of connecting to the Works (herein “connecting infrastructure”);
- b) The Owner executing this agreement and paying the Estimated Costs (as herein defined);
- c) The Owner constructing the connecting infrastructure to the satisfaction of the Municipality and the MECP;

permit the Owner to connect to the Works.

ARTICLE 2 THE OWNER AGREES

2.1 OWNER AGREES

The Owner makes the following covenants, all of which shall be carried out at the Owner's expense:

2.1.1 Owner to Pay Estimated Costs

The Owner agrees to pay the sum of \$100,000 (Local Sewer Main Charge plus Connection Charge) as an estimate of the costs that would have been payable by the Owner to connect the Lands to the Sewer Works had the By-law been passed (herein “Estimated Costs”) in advance of connecting to the Sewer Works together with the Municipality’s costs of preparation, review and administration of the agreement.

2.1.2 Environmental Laws

The Owner shall at all times in connection with the development and the implementation of this agreement comply fully with all Environmental Laws. "Environmental Laws" means all applicable federal, provincial, municipal and local laws, regulations and orders issued by any governmental or regulatory agency relating to the environment, occupational health and safety, product safety, product liability and storage and transportation of goods;

2.1.3 Local Improvements / Drainage Act

The owner agrees to sign Local Improvement petitions for, and agrees not to oppose, any municipal services proposed by the Municipality to be constructed pursuant to:

- a) the provisions of the Municipal Act S.O., 2001, c.25, including but not limited to Ontario Regulation 119/03, or
- b) the Drainage Act of Ontario R.S.O. 1990 c.D.17 and amendments thereto, which shall directly or indirectly benefit the lands.

ARTICLE 3 PAYMENTS

3.1 COSTS

The Owner shall reimburse the Municipality for all the Municipality costs with respect to the agreement, its preparation, negotiation, administration, and enforcement including without limiting the generality of the foregoing, the fees and disbursements of its engineer, and solicitor. The Municipality shall deliver invoices to the owner in a timely fashion payment for which shall be due immediately.

3.2 MUTUAL UNDERTAKING TO RE-ADJUST

The Owner and the Town mutually undertake to pay to the other as applicable, immediately upon the "By-law" contemplated by this agreement being passed by the Town, the difference if any between the Estimated Costs and the amount that would have been payable by the Owner and otherwise chargeable against the Lands under the By-law. To the extent the Owner fails to pay any sum due upon re-adjustment, the Owner acknowledges and agrees that the Town reserves its rights to collect that amount by adding it to the property taxes assessed against the lands and collecting it in like manner as taxes as permitted under the Municipal Act;

ARTICLE 4 DEFAULT

4.1 STOP WORK

In the event of any default by the Owner in the performance of any of the terms and conditions of this Agreement, the Municipality at its discretion shall, in addition to other remedies available to the Municipality, be entitled to refuse building permits with respect to the connecting infrastructure or any other development on-site and/or shall be entitled to refuse building and/or occupancy permits with respect to any buildings, and/or shall be entitled to issue stop work orders with respect to any matters in respect of which a building permit has been issued and/or may refuse to grant to the Owner any permissions, permits, certificates, approvals or authorities of any kind or nature which the Owner would have been entitled to receive had the Owner otherwise complied with the Municipality's requirements in this agreement, and/or shall be entitled to refuse to issue releases, all of which may be done until such time as the default has been cured in a manner satisfactory to the Municipality.

4.2 MUNICIPALITY MAY COMPLETE

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

ARTICLE 5 REGISTRATION AND CONSENTS

5.1 REGISTRATION AND ENFORCEMENT

The parties agree that this Agreement may be registered against the Lands to which it applies, as a first charge, at the Owner's expense, and the Municipality is entitled to enforce the provisions hereof against the Owners, who shall be jointly and severally liable for the Owners' covenants and obligations outlined herein, and, subject to the provisions of The Registry Act, R.S.O. 1990, c.R.20 and amendments thereto, and the Land Titles Act, R.S.O. 1990, c.L.5 and amendments thereto, against any and all subsequent owners of the Lands.

5.2 CONSENT

The Owners hereby consent to the registration of this Agreement on the title of the Lands, said registration (as well as the preparation of this Agreement) to be at the Owners' expense.

5.3 MORTGAGEES

The owners agree to obtain and register a postponement of any mortgages or other encumbrances which may affect the Lands.

5.4 DELETION OF AGREEMENT FROM TITLE

Upon the Owner having paid all sums owing under this agreement, including, without limitation, those called for under Article 3, notice of this agreement together with any postponement of interests registered under Article 5.3 above may be vacated from title. At such time, the Town will execute an acknowledgement and direction to this effect authorizing the solicitor for the Owner to register the necessary application on title to the Lands at the expense of the Owner.

ARTICLE 6 MISCELLANEOUS

6.1 COMMUNICATION

Subject to the express provisions of this Agreement, all communications provided for or permitted hereunder shall be in writing, personally delivered to an officer of the addressee or sent by registered and receipted mail, charges prepaid, or by facsimile transmission or other means of recorded telecommunication, charges prepaid, to the applicable address set forth below or to such other address as either party hereto may from time to time designate to the other in such manner.

Communications sent to the Municipality shall be addressed to:

917 Lesperance Road, Tecumseh, Ontario N8N 1W9

Communications sent to the Owner shall be addressed to:

2199 Blackacre Drive, Unit 100, Oldcastle, Ontario N0R 1L0

Any communication so personally delivered shall be deemed to have been validly and effectively given on the date of such delivery. Communications so sent by registered and receipted mail shall be deemed to have been validly and effectively given on the Business Day next following the day on which it is received, as evidenced by the postal receipt.

Communications so sent by facsimile transmission or other means of recorded telecommunication shall be deemed to have been validly and effectively given on the Business Day next following the day on which it is sent. Any party may from time to time change his or its address for service on written notice to the others.

“Business Day” means any day, other than a Saturday, Sunday or any other day on which the principal chartered banks located in the Town are not open for business during normal banking hours.

6.2 TIME OF ESSENCE

Time shall be of the essence of this Agreement and of every part thereof.

6.3 WAIVER

No waiver by any part of a breach of any of the covenants, conditions and provisions herein contained shall be effective or binding upon such party unless the same shall be expressed in writing and any waiver so expressed shall not limit or affect such party's rights with respect to any other future breach.

6.4 FURTHER ASSURANCES

Each of the Parties covenants and agrees that he, his heirs, executors, administrators and assigns will sign such further agreements, assurances, waivers and documents, attend such meetings, enact such by-laws or pass such resolutions and exercise such votes and influence, do and perform or cause to be done and performed such further and other acts and things as may be necessary or desirable from time to time in order to give full effect to this Agreement and every part thereof.

6.5 HEADINGS

The headings of the Articles of this Agreement are inserted for convenience only and do not constitute part of this Agreement.

6.6 SUCCESSORS AND ASSIGNS

The covenants hereunder shall run with the land and this Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

6.7 GENDER

All words and personal pronouns relating thereto shall be read and construed as the number and gender of the party or parties referred to in each case require and the verb shall be

construed as agreeing with the required word and pronoun.

6.8 SEVERABILITY

If any covenant or provision contained herein is determined to be in whole or in part, invalid or unenforceable by reason of any rule of law or public policy, such invalidity or unenforceability shall not affect the validity or enforceability of any other covenant or provision contained herein and, in the case of partial invalidity or unenforceability of a covenant or provision, such partial invalidity or unenforceability shall not affect the validity or enforceability of the remainder of such covenant or provision, and such invalid or unenforceable covenant or provision or portion thereof, as the case may be, shall be severable from the remainder of this Agreement.

6.9 ENTIRE AGREEMENT

This Agreement expresses the final agreement among the parties hereto with respect to all matters herein and no representations, inducements, promises or agreements or otherwise among the parties not embodied herein shall be of any force and effect. This Agreement shall not be altered, amended or qualified except by a memorandum in writing, signed by all the parties hereto, and any alteration, amendment or qualification thereof shall be null and void and shall not be binding upon any such party unless made and recorded as aforesaid.

6.10 EXECUTION IN COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original and all of which together shall constitute one and the same instrument.

6.11 JURISDICTION

This Agreement and all other agreements, security and documents to be delivered in connection with this agreement shall be governed by and construed in accordance with the applicable laws of the Province of Ontario and of Canada.

6.12 ASSIGNMENT

Subject to the terms of this agreement, this agreement is not assignable by the owner prior to completion of the works without the consent of the Municipality.

6.13 TRUE COPY

All of the parties hereto acknowledge having received a true copy of this document.

IN WITNESS WHEREOF the Parties hereto have hereunto set their hands and seals.

SIGNED, SEALED AND DELIVERED

in the presence of

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**THE CORPORATION OF THE
TOWN OF TECUMSEH**

Per: _____
Gary McNamara – MAYOR

Laura Moy - CLERK

AMICONE HOLDINGS LIMITED

Per: _____
_____, President
"I have authority to bind the Corporation"

SCHEDULE "A"

THE LANDS

Roll No. 374455000019502
5175 8th Concession Road

Legally described as

PIN 75234-0023
PT LT 11 CON 7 PTS 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 & 19 12R8238 S/T LT66976
SANDWICH SOUTH

in the Town of Tecumseh, County of Essex