

THE CORPORATION OF THE TOWN OF KINGSVILLE

BY-LAW 135 - 2008

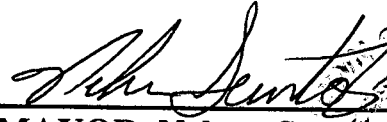
*Being a by-law authorizing the
Mayor and Clerk
to enter into a Share Purchase Agreement
made between The Corporation of the Town of
Kingsville and The Corporation of the Town of
Lakeshore, as Sellers, and The Corporation of
the Town of Essex, as Purchaser re: the
Sellers' Shareholder Interests in E.L.K.
Energy Inc. and E.L.K. Solutions Inc.*

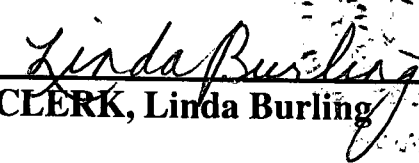
WHEREAS The Corporation of the Town of Kingsville deems it expedient for the Mayor and Clerk to enter into a Share Purchase Agreement made between The Corporation of the Town of Kingsville and The Corporation of the Town of Lakeshore, as Sellers, and The Corporation of the Town of Essex, as Purchaser for the Sellers' Shareholder Interests in E.L.K. Energy Inc. and E.L.K. Solutions Inc.


NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF KINGSVILLE ENACTS AS FOLLOWS:

1. **THAT** the Municipality enters into and executes with The Corporation of the Town of Lakeshore and the The Corporation of the Town of Essex the Share Purchase Agreement shown as Schedule "A" attached to this By-law;
2. **THAT** the Mayor and Clerk are hereby authorized and directed to execute the Share Purchase Agreement hereto attached as Schedule "A" on behalf of The Corporation of the Town of Kingsville.

READ a FIRST, SECOND and THIRD time and FINALLY PASSED this 15th day of September, 2008.


MAYOR, Nelson Santos


CLERK, Linda Burling



SCANNED

DATE:

SIGN:

Sept 16/08
Sheraun [Signature]

Schedule "A" to By-law 135-2008 of The Corporation
of the Town of Kingsville

SHARE PURCHASE AGREEMENT

THE CORPORATION OF THE TOWN OF KINGSVILLE

and

THE CORPORATION OF THE TOWN OF LAKESHORE

as Sellers

and

THE CORPORATION OF THE TOWN OF ESSEX

as Purchaser

September 15, 2008

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SHARE PURCHASE AGREEMENT

Share Purchase Agreement dated September _____, 2008

BETWEEN:

THE CORPORATION OF THE TOWN OF ESSEX, a municipal corporation within the meaning of the Municipal Act (Ontario).

(the "**Purchaser**")

AND

THE CORPORATION OF THE TOWN OF KINGSVILLE ("**Kingsville**"), a municipal corporation within the meaning of the Municipal Act (Ontario) and

THE CORPORATION OF THE TOWN OF LAKESHORE ("**Lakeshore**"), a municipal corporation within the meaning of the Municipal Act (Ontario).

(Lakeshore and Kingsville being each individually referred to as a "**Seller**" and collectively as the "**Sellers**")

RECITALS:

- A. The Purchaser and the Sellers are the registered and beneficial owners of all of the issued and outstanding shares in the capital of Energy.
- B. The Purchaser, the Sellers and Energy are parties to the Shareholders Agreement.
- C. Energy is indebted to Kingsville pursuant to the Kingsville Energy Loan.
- D. Energy is indebted to Lakeshore pursuant to the Lakeshore Energy Loan.
- E. The Purchaser and the Sellers are the registered and beneficial owners of all of the issued and outstanding Class B common shares in the capital of Solutions.
- F. Energy is the registered and beneficial owner of all of the issued and outstanding Class A common shares in the capital of Solutions, and together, the Purchaser, Sellers and Energy are the registered and beneficial owners of all of the issued and outstanding shares in the capital of Solutions.
- G. Pursuant to the Shareholders Agreement, the Purchaser has exercised its right to purchase the Sellers' Shareholder Interests and the Parties are entering into this Agreement to give effect to the transaction of purchase and sale resulting from the exercise of the Purchaser's right to purchase.

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are acknowledged), the Parties agree as follows:

ARTICLE I – INTERPRETATION

1.1 Definitions

In this Agreement, the following terms have the following meanings:

“**Affiliate**” means, as applied to any Person, (i) any other Person directly or indirectly controlling, controlled by or under common control with that Person, (ii) any other Person that owns or controls 50% or more of any class of equity securities (including any equity securities issuable upon the exercise of any option or convertible security) of that Person or any of its affiliates, or (iii) any director, partner, officer, agent, employee or relative of such Person. For the purposes of this definition, “control” (including with correlative meanings, the terms “controlling”, “controlled by”, and “under common control with”) as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through ownership of voting securities, by contract or otherwise.

“**Agreement**” means this share purchase agreement as the same may be amended from time to time; and the words “**Article**” and “**Section**” followed by a number or letter mean and refer to the specified Article or Section of this share purchase agreement.

“**Assets**” means all property and assets of the Corporations of every nature and kind and wherever located including (i) all properties and the buildings, improvements and fixtures located thereon, (ii) all machinery, equipment, furniture, accessories and supplies of all kinds, (iii) all trucks, cars and other vehicles, (iv) all Inventory, (v) all accounts receivable of the Corporations of every nature and kind, whether current or not, (vi) the leasehold interest of the Corporations in and to all leased properties and the buildings, improvements and fixtures located thereon, (vii) all Proprietary Rights of the Corporations, (viii) all Authorizations issued to the Corporations, (ix) all leases and all other Contracts binding on or affecting the Corporations, (x) the Books and Records, and (xi) the Corporate Records.

“**Audited Financial Statements**” means the consolidated audited financial statements of the Corporations as at December 31, 2007 including the notes and the report of the Corporation’s auditors.

“**Authorization**” means, with respect to any Person, any order, permit, approval, consent, waiver, licence or other authorization issued, granted, given or authorized by or made applicable under the authority of any Governmental Authority having jurisdiction over the Person.

“**Books and Records**” means all books of account, Tax Returns and other tax records, personnel records, historic documents relating to employees and plans relating to employees, sales and purchase records, customer and supplier lists, referral sources, research and development reports and records, production reports and records, equipment logs, operating guides and manuals, business reports, plans and projections and all other documents, files, correspondence and other information of the Corporations (whether in written, electronic or other form) other than the Corporate Records.

“**Business**” means the business currently carried on by the Corporations, being:

- (i) in the case of Energy, the business of a licensed “distributor” of electricity within the meaning of Part V of the *Ontario Energy Board Act* and the *Electricity Act*;
- (ii) in the case of Solutions, the business of the supply of electrical appliances including hot water heaters and lighting systems.

“**Business Day**” means any day, other than a Saturday, Sunday or statutory or civic holiday in Toronto, Ontario.

“**Closing**” means the completion of the transaction of purchase and sale contemplated in this Agreement.

“**Closing Date**” means the date which is five (5) Business days after the date on which all Required Consents and Authorizations relating to the transactions contemplated hereby have been obtained and are final and binding without the possibility of appeal, or such earlier or later date as the Parties may agree in writing.

“**Closing Period**” means the period between the close of business on the date of this Agreement and the Closing.

“**Commercially Reasonable Efforts**” means the efforts that a prudent person who desires to achieve a result would use in similar circumstances to ensure that such result is achieved as expeditiously as possible.

“**Consent**” means the consent, approval or similar authorization of a contracting party to any of the transactions contemplated in this Agreement, if required by the terms of any Contract, including any consent to a change in control of the Corporations.

“**Contracts**” means all agreements, arrangements, understandings, commitments and undertakings (whether written, electronic or oral), to which a Person is a party or a beneficiary or pursuant to which any of its property or assets are or may be affected.

“**Corporate Records**” means the corporate records of the Corporations, including (i) all constating documents, articles and by-laws, (ii) all minutes of meetings and resolutions of shareholders and directors, and (iii) the share certificate books, securities register, register of transfers and register of directors.

“**Corporations**” means Energy and Solutions, and where the context requires, includes “or either of them”.

“**Damages**” has the meaning specified in Section 11.1.

“**Draft Closing Balance Sheet**” has the meaning specified in Section 2.5(a).

“**Employee**” means any full-time or part-time employee of the Corporations including any employee on disability (long-term or short-term), workers’ compensation or parental or other statutory leave, employed as of the date hereof.

“**Energy**” means E.L.K. Energy Inc., a corporation incorporated pursuant to Section 142 of the *Electricity Act*.

“Environmental Laws” means all Laws relating to environmental matters or occupational health and safety, including without limitation any laws having as a purpose or effect the protection of the environment, the prevention or reduction to acceptable levels of pollution or the provision of remedies in respect of damage arising therefrom.

“Environmentally Hazardous Substance” means any material or substance that could reasonably be expected to impair the quality of the environment or that causes or could reasonably be expected to cause an adverse effect on the environment for any use which can be made of it and as to which liabilities or standards of conduct are imposed pursuant to Environmental Laws, including any material or substance that is deemed pursuant to any Environmental Law to be “hazardous”, “toxic”, “deleterious”, “caustic”, “dangerous”, a “contaminant”, a “hazardous waste”, a “source of contaminant” or a “pollutant”.

“Final Closing Balance Sheet” has the meaning specified in Section 2.5(e).

“GAAP” means, at any time, accounting principles generally accepted in Canada including those recommended or approved by the Canadian Institute of Chartered Accountants at the relevant time.

“Governmental Authority” means any (i) multinational, federal, provincial, state, municipal, local or other governmental or public department, central bank, court, commission, board, bureau or agency, domestic or foreign, (ii) any subdivision or authority of any of the above, or (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above.

“Indemnitee” has the meaning specified in Section 11.3(a).

“Indemnitee Representative” means (i) where the Indemnitee is the Purchaser, the Corporations or any Purchaser Indemnified Person, the Purchaser, or (ii) where the Indemnitee is the Seller or a Seller Indemnified Person, the Seller.

“Inventory” means all inventories of raw materials, work-in-process and finished goods and merchandise of the Corporations and all parts and packaging materials used or consumed by the Corporations.

“Kingsville Energy Loan” means all of the indebtedness of every nature and kind owing by Energy to Kingsville which indebtedness, as of the date hereof, is in the amount of One Million Four Hundred and Eighty-Two Thousand Dollars (\$1,482,000) and is evidenced by the Kingsville Promissory Note.

“Kingsville Energy Shares” means all of the issued and outstanding shares in the capital of Energy owned by Kingsville being comprised of Three Thousand Eight Hundred (3,800) common shares.

“Kingsville Promissory Note” means the promissory note issued by Energy to Kingsville in the original principal amount of Two Million Four Hundred and Seventy Thousand Dollars (\$2,470,000) dated the 23rd day of October, 2002 as evidence of the Kingsville Energy Loan.

"Kingsville Shareholder Interest" means the Kingsville Energy Shares, the Kingsville Solutions Shares and the Kingsville Energy Loan.

"Kingsville Solutions Shares" means all of the issued and outstanding shares in the capital of Solutions owned by Kingsville being comprised of Three Thousand Eight Hundred (3,800) Class B common shares.

"Known by the Purchaser" means, with respect to any matter, fact or state of affairs to which the phrase applies, that the matter, fact or state of affairs is actually known by any of the directors of Energy elected or appointed by the Purchaser.

"Lakeshore Energy Loan" means all of the indebtedness of every nature and kind owing by Energy to Lakeshore which indebtedness, as of the date hereof, is in the amount of Nine Hundred and Thirty-Six Thousand Dollars (\$936,000) and is evidenced by the Lakeshore Promissory Note.

"Lakeshore Energy Shares" means all of the issued and outstanding shares in the capital of Energy owned by Lakeshore being comprised of Two Thousand Four Hundred (2,400) common shares.

"Lakeshore Promissory Note" means the promissory note issued by Energy to Lakeshore in the original principal amount of One Million Five Hundred and Sixty Thousand Dollars (\$1,560,000) dated the 23rd day of October, 2002 as evidence of the Lakeshore Energy Loan.

"Lakeshore Shareholder Interest" means the Lakeshore Energy Shares, the Lakeshore Solutions Shares and the Lakeshore Energy Loan.

"Lakeshore Solutions Shares" means all of the issued and outstanding shares in the capital of Solutions owned by Lakeshore being comprised of Two Thousand Four Hundred (2,400) Class B common shares.

"Laws" means any and all applicable (i) laws, constitutions, treaties, statutes, codes, ordinances, orders, decrees, rules, regulations and municipal by-laws, (ii) judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings or awards of any Governmental Authority, and (iii) policies, guidelines and protocols.

"Lien" means (i) any mortgage, charge, pledge, hypothec, security interest, assignment, lien (statutory or otherwise), privilege, easement, servitude, pre-emptive right or right of first refusal, ownership or title retention agreement, restrictive covenant or conditional sale agreement, and (ii) any other encumbrance of any nature or any other arrangement or condition which, in substance, secures payment or performance of an obligation.

"OEB Approval" means:

- (i) a determination by the Ontario Energy Board that leave to acquire the Sellers' Shareholder Interests is not required pursuant to Section 86 of the *Ontario Energy Board Act*; or
- (ii) in the absence of the determination referred to in the foregoing subparagraph (i), leave of the Ontario Energy Board pursuant to Section 86 of the *Ontario Energy Board Act*.

“Ordinary Course” means, with respect to an action taken by a Person, that such action is (i) consistent with the past practices of the Person or its business, as the case may be, and is taken in the ordinary course of the normal day-to-day operations of the Person or its business, as the case may be, and (ii) similar in nature to an action customarily taken in the ordinary course of the day-to-day operations of other Persons that are in the same line of business as such Person.

“Parties” means Lakeshore, Kingsville, the Purchaser and any other Person who may become a party to this Agreement.

“Person” means a natural person, partnership, limited partnership, limited liability partnership, syndicate, sole proprietorship, corporation or company (with or without share capital), limited liability company, stock company, trust, unincorporated association, joint venture or other entity or Governmental Authority.

“Proprietary Rights” means (i) all patents, patent applications, patent disclosures and inventions (whether or not patentable and whether or not reduced to practice), and including all provisional applications, substitutions, continuations, continuations-in-part, patents of addition, improvement patents, divisions, renewals, reissues, confirmations, counterparts, re-examinations and extensions thereof, (ii) all trade-marks, service marks, trade dress, trade names, logos, domain names and corporate names, whether registered or existing at common law, (iii) all registered and unregistered statutory and common law copyrights and industrial designs, (iv) all registrations, applications and renewals for any of the foregoing, (v) all trade secrets, confidential information, ideas, formulae, compositions, know-how, improvements, innovations, discoveries, designs, manufacturing and production processes and techniques, and (vi) all other intellectual property rights owned, licensed, controlled or used by a Person, in any and all relevant jurisdictions in the world.

“Purchase Price” has the meaning specified in Section 2.2.

“Purchaser” has the meaning specified above the Recitals.

“Purchaser Indemnified Persons” has the meaning specified in Section 11.1.

“Reference Date” means December 31, 2007.

“Required Consents and Authorizations” means:

- (i) all Consents and Authorizations which are necessary for the continued operation of the Business on the terms and conditions and with the benefit of all rights held by the Corporations with respect to the Business as of the date hereof; and
- (ii) all Consents and Authorizations which are necessary or required for the completion of the transactions contemplated by this Agreement including OEB Approval.

“Sellers” has the meaning specified above the Recitals, and where the context requires includes “or either of them”.

“**Sellers Indemnified Persons**” has the meaning specified in Section 11.2.

“**Sellers’ Shareholder Interests**” means collectively the Kingsville Shareholder Interest and the Lakeshore Shareholder Interest.

“**Shareholders Agreement**” means that certain amended and restated shareholders agreement made the 21st day of October, 2002 among the Purchaser, the Sellers and Energy.

“**Solutions**” means E.L.K. Solutions Inc., a corporation incorporated under the *Ontario Business Corporations Act*.

“**Tax Returns**” means all returns, reports, declarations, elections, notices, filings, forms, statements and other documents (whether in written, electronic or other form) and any amendments, schedules, attachments, supplements, appendices and exhibits thereto, which have been prepared or filed or required to be prepared or filed in respect of Taxes.

“**Taxes**” includes any taxes, duties, assessments, imposts and levies imposed by any Taxing Authority and includes all interest, penalties, fines, additions to tax or other additional amounts imposed by any Taxing Authority including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, withholding, business, property, occupancy, employer health, payroll, employment, health, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping and all employment insurance, health insurance and Canada, Québec and other government pension plan and other employer plan premiums, contributions or withholdings.

“**Third Party Claim**” has the meaning specified in Section 11.3(a).

“**Territory**” means the geographic area encompassed within the boundaries of the Towns of Essex, Kingsville and Lakeshore, taken as a whole (and disregarding any contiguous boundaries) as such boundaries may be altered from time to time.

“**Transaction Documents**” means this Agreement and all other agreements, certificates and other instruments or documents delivered or given pursuant to this Agreement.

“**Working Capital**” means the difference between the current assets and current liabilities of the Corporations.

1.2 Gender and Number.

Any reference in this Agreement to gender includes all genders and words importing the singular include the plural and *vice versa*.

1.3 Certain Phrases and Calculation of Time.

(a) In this Agreement:

(i) the words “including” and “includes” mean “including (or includes) without limitation”; and

(ii) in the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding”, and if the last day of any such period is not a Business Day, such period will end on the next Business Day.

(b) When calculating the period of time “within” which or “following” which any act or event is required or permitted to be done, notice given or steps taken, the date which is the reference date in calculating such period is excluded from the calculation. If the last day of any such period is not a Business Day, such period will end on the next Business Day.

1.4 Headings, etc.

The inclusion of a table of contents, the division of this Agreement into Articles and Sections and the insertion of headings are for convenient reference only and are not to affect or be used in the construction or interpretation of this Agreement.

1.5 Currency

All monetary amounts in this Agreement, unless otherwise specifically indicated, are stated in Canadian currency.

1.6 Knowledge

Where any representation or warranty in this Agreement is expressly qualified by reference to the knowledge of the Sellers, it is deemed to refer to the actual knowledge of the directors appointed by each of the Sellers.

1.7 Accounting Terms

All accounting terms and references not defined in this Agreement are to be interpreted in accordance with GAAP.

1.8 Statutory References

Unless otherwise specifically indicated, any reference to a statute in this Agreement refers to that statute and to the regulations made under that statute, as the same may, from time to time, be amended, re-enacted or replaced.

1.9 Governing Law

- (a) This Agreement is governed by and is to be interpreted, construed and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to conflict of law principles.
- (b) Each of the Parties irrevocably attorns and submits to the jurisdiction of the courts of Ontario.

1.10 Acknowledgement

The Purchaser and the Sellers acknowledge that the completion of this agreement is conditional upon the Purchaser obtaining the approval of the Ontario Energy Board for this transaction. The Purchaser and Sellers agree that the obligations, representations and warranties contained herein shall be construed in that context.

ARTICLE II – SELLERS’ SHAREHOLDER INTERESTS AND PURCHASE PRICE

2.1 Purchase and Sale

Subject to the terms and conditions of this Agreement, the Sellers covenant and agree to sell, assign and transfer to the Purchaser and the Purchaser covenants and agrees to purchase and acquire from the Sellers on the Closing Date, the Sellers’ Shareholders Interests.

2.2 Purchase Price

The purchase price payable by the Purchaser to the Sellers for the Sellers’ Shareholder Interests is Twelve Million, Seven Hundred and Seventy Three Thousand, Two-Hundred and Forty Dollars (\$12,773,240.00), subject to adjustment in accordance with Section 2.5 and allocated as follows:

(a)	Kingsville Energy Loan –	\$ 1,482,000.00	
(b)	Kingsville Energy Shares –	\$ 6,346,560.70	
(c)	Kingsville Solutions Shares –	<u>\$ 200.00</u>	
(d)	Kingsville Shareholder Interest –		\$ 7,828,760.70
(e)	Lakeshore Energy Loan –	\$ 936,000.00	
(f)	Lakeshore Energy Shares –	\$ 4,008,279.30	
(g)	Lakeshore Solutions Shares –	<u>\$ 200.00</u>	
(h)	Lakeshore Shareholder Interest –		<u>\$ 4,944,479.30</u>
(i)	Total Sellers’ Shareholder Interest:		<u>\$12,773,240.00</u>

2.3 Payment of the Purchase Price

At the Closing, the Purchaser shall pay the Purchase Price by bank draft or other form of immediately available funds as follows:

- (a) to the order of Kingsville, the amount of Seven Million Eight Hundred and Twenty-Eight Thousand Seven Hundred and Sixty Dollars and Seventy Cents (\$7,828,760.70) for the Kingsville Shareholder Interest; and
- (b) to the order of Lakeshore, the amount of Four Million Nine Hundred and Forty-Four Thousand Four Hundred and Seventy-Nine Dollars and Thirty Cents (\$4,944,479.30) for the Lakeshore Shareholder Interest.

2.4 Deposit

- (a) The Sellers acknowledge receipt from the Purchaser of a deposit (the “**Deposit**”) in the amount of fifty thousand dollars (\$50,000.00) which, in accordance with the direction of the Sellers has been paid to Lakeshore.
- (b) Upon satisfaction or waiver of the conditions precedent to the Closing in Article VII, the Deposit will be applied in satisfaction of an equivalent amount of the component of the Purchase Price allocable to Lakeshore Shareholder Interest. If the Closing does not occur by reason of a default by the Sellers in the performance of their obligations under this Agreement, the full amount of the Deposit shall be immediately returned to the Purchaser.
- (c) If the Closing does not occur for any reason other than a default by the Sellers in the performance of their obligations under this Agreement, and provided the Sellers have not intervened in any manner in the Purchaser’s application for OEB Approval, the full amount of the Deposit shall become the property of, and may be retained by the Sellers (and allocated between them as they may determine) to compensate the Sellers for the expenses incurred and opportunities foregone as a result of the failure of the transaction to close, in addition to and not in substitution for such other rights and remedies, if any, as the Sellers may have with respect to Closing not having occurred.

2.5 Adjustment of Purchase Price

- (a) Within 90 days following the Closing Date, the Purchaser shall cause the Corporations’ auditor to prepare and deliver to the Sellers a draft audited consolidated closing balance sheet (the “**Draft Closing Balance Sheet**”) of the Corporations prepared as of the close of business on the Closing Date, together with a draft auditor’s report thereon, and, if requested by the Sellers, the Purchaser shall request the Corporations’ auditors to also produce copies of the working papers supporting the Draft Closing Balance Sheet. The Draft Closing Balance Sheet must be prepared in accordance with GAAP applied on a basis consistent with the preparation of the Audited Financial Statements.
- (b) Within 20 days following delivery of the Draft Closing Balance Sheet, the Parties may notify each other in writing if they have any objections to the Draft Closing Balance Sheet. The notice of objection must contain a statement describing the basis of the objections and each amount in dispute. The Parties shall be deemed to have accepted the Draft Closing Balance Sheet if no notice of objections has been delivered within the specified period of 20 days.
- (c) If any Party disputes the Draft Closing Balance Sheet by delivering a notice of objection pursuant to Section 2.5(b), the Parties shall work expeditiously and in good faith in an attempt to resolve such dispute within a further period of 20 days after the date of delivery of the notice of objection, failing which the dispute will be submitted for determination to an independent national firm of chartered accountants mutually agreed to by the Sellers and the Purchaser. The determination of the accountants will be final and binding upon the Parties and

will not be subject to appeal, absent manifest error. The appointed accountants are deemed to be acting as experts and not as arbitrators.

- (d) The Sellers and the Purchaser shall each bear the fees and expenses of their respective auditors in preparing or reviewing, as the case may be, the Draft Closing Balance Sheet. In the case of a dispute and the retention of a national firm of chartered accountants to resolve such dispute, the costs and expenses of such firm will be borne equally by the Sellers and the Purchaser. However, the Sellers and the Purchaser will each bear their own costs in presenting their respective cases to such firm.
- (e) Immediately following the 20 day period referred to in Section 2.5(b) or the resolution of any dispute in accordance with Section 2.5(c), the Purchaser shall deliver to the Sellers the final Draft Closing Balance Sheet (the "**Final Closing Balance Sheet**") together with the auditor's report. Such Final Closing Balance Sheet will be final and binding upon the Parties and will not be subject to appeal, absent manifest error.
- (f) The Purchase Price will be increased or decreased, as the case may be, by sixty two percent (62%) of each dollar by which the Working Capital as determined from the Final Closing Balance Sheet is more or less than the Working Capital calculated by reference to the balance sheet comprising part of the Audited Financial Statements. Any adjustment to the Purchase Price arising from the preparation of the Final Closing Balance Sheet will be made to that component of the Purchase Price allocable to the Kingsville Shares and the Lakeshore Shares on a pro rata basis and shall be paid forthwith by the Purchaser or Sellers, as the case may be, after delivery of the Final Closing Balance Sheet.
- (g) The determination and adjustment of the Purchase Price in accordance with the provisions of this Section 2.5 will not limit or affect any other rights or causes of action which either the Purchaser or the Sellers may have with respect to the representations, warranties, covenants and indemnities in its favour contained in this Agreement.

ARTICLE III – REPRESENTATIONS AND WARRANTIES OF THE SELLERS

Subject to the limitations contained herein, the Sellers represent and warrant as follows to the Purchaser and acknowledge and confirm that the Purchaser is relying upon the representations and warranties in entering into this Agreement and purchasing the Sellers' Shareholder Interests.

3.1 Municipal Authorizations

The execution, delivery and performance by the Sellers of this Agreement:

- (a) has been duly authorized by all necessary municipal action on the part of the Sellers; and

- (b) does not (or would not with the giving of notice, the passage of time or the happening of any other event or circumstance) result in a breach or a violation of, or conflict with, or allow any other Person to exercise any rights under, any of its by-laws or resolutions.

3.2 No Conflict with Authorizations, Laws, etc.

The execution, delivery and performance by the Sellers of this Agreement does not (or would not with the giving of notice, the passage of time or the happening of any other event or circumstance):

- (a) result in a breach or a violation of, conflict with, or cause the termination or revocation of, any Authorization held by the Sellers, or either of them, necessary to the transfer or ownership of the Sellers' Shareholder Interests;
- (b) result in or require the creation of any Lien upon any of the Sellers' Shareholder Interests;
- (c) result in a breach or a violation of, or conflict with, any judgement, judicial order or decree of any Governmental Authority; or
- (d) result in a breach or a violation of, or conflict with, any Law applicable to the Sellers or, except as Known by the Purchaser, the Corporations.

3.3 No Conflict with Contracts

Except as Known by the Purchaser, the execution, delivery and performance by the Sellers of this Agreement does not (or would not with the giving of notice, the passage of time or the happening of any other event or circumstance):

- (a) result in a breach or a violation of, or conflict with, any Contract binding on or affecting the Corporations, the Sellers' Shareholder Interests, or the Assets; or
- (b) result in or give any Person the right to seek, or to cause:
 - (i) the termination, cancellation, amendment or renegotiation of any Contract binding on or affecting the Corporations, the Sellers' Shareholder Interests or the Assets;
 - (ii) the acceleration of any payment amount or other obligation of the Corporation; or
 - (iii) the forfeiture or other loss, in whole or in part, of any benefit which would otherwise accrue to the Corporations.

3.4 Required Authorizations

Other than OEB Approval, there is no requirement for the Sellers to make any filing with, give any notice to, or obtain any Authorization of, any Governmental Authority as a result of, or in

connection with, or as a condition to the lawful completion of, the transactions contemplated by this Agreement.

3.5 Required Consents

There is no requirement for the Sellers to make any filing with, give any notice to, or obtain any consent, approval, waiver or other similar authorization of, any Person who is a party to a Contract binding on or affecting the Sellers or, except as Known by the Purchaser, the Corporations as a result of, or in connection with, or as a condition to the lawful completion of, the transactions contemplated by this Agreement.

3.6 Execution and Binding Obligation

This Agreement has been duly executed and delivered by the Sellers and constitutes legal, valid and binding obligations of the Sellers enforceable against the Sellers in accordance with its terms.

3.7 Kingsville Shareholder Interest and Lakeshore Shareholder Interest

- (a) The Kingsville Energy Shares, the Kingsville Solutions Shares, the Lakeshore Energy Shares and the Lakeshore Solutions Shares have been duly issued and are outstanding as fully paid and non-assessable.
- (b) All of the Sellers' Shareholder Interests have been issued in compliance with all applicable Laws (including securities Laws).
- (c) The Kingsville Energy Loan and the Lakeshore Energy Loan have been duly advanced by Kingsville and Lakeshore respectively to Energy and Energy is indebtedness to Kingsville and Lakeshore in the amounts of the Kingsville Energy Loan and the Lakeshore Energy Loan respectively without any claim for deduction or setoff.
- (d) The Kingsville Promissory Note and the Lakeshore Promissory Note constitute legal and valid obligations of the Corporation enforceable against the Corporation in accordance with their respective terms.

3.8 Title to Sellers' Shareholder Interests

The Kingsville Shareholder Interest and the Lakeshore Shareholder Interest are owned by Kingsville and Lakeshore respectively as the registered and beneficial owners thereof with good and valid title thereto, free and clear of all Liens. Upon completion of the transactions contemplated by this Agreement, the Purchaser will have legal and beneficial and good and valid title to all of the Sellers' Shareholder Interests, free and clear of all Liens.

3.9 No Other Agreements to Purchase

Except for the Purchaser's right under this Agreement and the rights, if any, of the Sellers to sell the Sellers' Shareholder Interests to Chatham-Kent Energy Inc., should the Purchaser ultimately be unsuccessful in completing the transaction embodied by this Agreement, no Person has any

written or oral agreement, option, understanding or commitment or any right or privilege (whether by law, contractual or otherwise) capable of becoming such for:

- (a) the purchase or acquisition from the Sellers of any of the Sellers' Shareholder Interests; or
- (b) except as Known by the Purchaser, the purchase, subscription, allotment or issuance of any of the unissued shares or other securities of the Corporations.

3.10 Full Disclosure

Except as Known by the Purchaser, to the knowledge of the Sellers, neither this Agreement nor any Transaction Document to which the Sellers (or any of their respective directors or officers) is a party:

- (i) contains any untrue statement of a fact; or
- (ii) omits any fact necessary in order to make the statements contained herein or therein not misleading.

3.11 Adverse Change

To the knowledge of the Sellers since the Reference Date there has occurred no material adverse change to the Business and the Sellers have no knowledge of the existence of any circumstance which could result in a material adverse change to the Business.

ARTICLE IV – REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants as follows to the Sellers and acknowledges and confirms that the Sellers are relying on the representations and warranties in entering into this Agreement and selling the Sellers' Shareholder Interests to the Purchaser:

4.1 Municipal Authorization

The execution, delivery and performance by the Purchaser of this Agreement has been duly authorized by all necessary municipal action on the part of the Purchaser.

4.2 No Conflict with Authorizations, Laws, etc.

The execution, delivery and performance by the Purchaser of this Agreement does not (or would not with the giving of notice, the passage of time or the happening of any other event or circumstance):

- (a) result in a breach or a violation of, conflict with, or cause the termination or revocation of, any Authorization held by the Purchaser or necessary to the ownership of the Sellers' Shareholder Interests;
- (b) result in a breach or a violation of, or conflict with, any judgement, judicial order or decree of any Governmental Authority applicable to the Purchaser; or

- (c) result in a breach or a violation of, or conflict with, any Law applicable to the Purchaser.

4.3 Execution and Binding Obligation

This Agreement has been duly executed and delivered by the Purchaser and constitutes (or will constitute) legal, valid and binding obligations of the Purchaser, enforceable against it in accordance with their respective terms.

ARTICLE V – COVENANTS OF THE PARTIES

5.1 Access for Due Diligence

Subject to compliance with applicable Laws, during the Closing Period, the Sellers shall:

- (a) If required by the Corporations, consent to the Corporations giving the Purchaser and its accountants, legal advisers and other representatives, full access to its personnel, premises, Books and Records, Corporate Records, accounts, Tax Returns, Contracts and its other Assets; and
- (b) Provide the Purchaser with such information as it has in its possession or control relating to the Corporations and the Business as the Purchaser may reasonably request.

At the request of the Purchaser, the Sellers shall execute or cause to be executed, such consents, authorizations and directions as may be necessary to enable the Purchaser and its representatives to obtain access to all files and records maintained by Governmental Authorities in respect of the Sellers' Shareholder Interests, the Corporations, the Assets and the Business. No investigation made by the Purchaser or its representatives will affect the Purchaser's right to rely on any representation or warranty made by the Sellers in this Agreement or in any Transaction Document.

5.2 Conduct of Business Prior to Closing

During the Closing Period, the Sellers shall not cause the Corporations to conduct the Business other than in the Ordinary Course to the extent that they are capable of so doing.

5.3 Actions to Satisfy Closing Conditions

- (a) The Sellers shall take all such actions as are within its power to control and shall use Commercially Reasonable Efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with all of the conditions set forth in Section 7.1 including ensuring that during the Closing Period and at Closing, there is no breach of any of its representations and warranties.
- (b) The Purchaser shall take all such actions as are within its power to control and shall use Commercially Reasonable Efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with all of

the conditions set forth in Section 7.2 including ensuring that during the Closing Period and at Closing, there is no breach of any of its representations and warranties.

5.4 Transfer of the Sellers' Shareholder Interests

The Sellers shall take all necessary steps and corporate proceedings to permit good title to the Sellers' Shareholder Interests to be duly and validly transferred and assigned to the Purchaser at the Closing, free of all Liens.

5.5 Request for Consents

The Sellers shall use Commercially Reasonable Efforts to obtain, prior to Closing, all Consents. The Consents shall be on such terms as are acceptable to the Purchaser, acting reasonably.

5.6 Filings and Authorizations

Each of the Sellers and the Purchaser, as soon as practicable after the execution of this Agreement, shall:

- (a) make, or cause to be made, all such filings and submissions under all Laws applicable to it as may be required for it to complete the purchase and sale of the Sellers' Shareholder Interests in accordance with the terms of this Agreement and the other transactions contemplated by this Agreement; and
- (b) use Commercially Reasonable Efforts to obtain, or cause to be obtained, all Authorizations necessary or advisable in order to complete the transfer of the Sellers' Shareholder Interests and the other transactions contemplated by this Agreement and each of the Acquisition Agreements.

The Sellers and the Purchaser shall coordinate and cooperate with each other in exchanging information and supplying such assistance as is reasonably requested in connection with the foregoing including providing each Party with all notices and information supplied to or filed with any Governmental Authority and all notices and correspondence received from any Governmental Authority (except for notices and information which the Sellers or the Purchaser, in each case acting reasonably, considers highly confidential and sensitive and which may be filed on a confidential basis).

5.7 Notice of Untrue Representation or Warranty

During the Closing Period, the Sellers shall promptly notify the Purchaser, and the Purchaser shall promptly notify the Sellers, upon any representation or warranty made by it contained in this Agreement or any Transaction Document becoming untrue or incorrect. Any such notification must set out particulars of the untrue or incorrect representation or warranty and details of any actions being taken by the Sellers or the Purchaser, as the case may be, to rectify that state of affairs. The recipient of any such notice shall consider the proposed amendment or supplement and the provisions of Section 8.1 will apply. In the event that the recipient of any such notice agrees in writing to the proposed amendment or supplement, then, and only in that

situation, the representations and warranties will be amended or supplemented as proposed in the notice and as agreed to in writing by the Parties.

5.8 Access to Books and Records

The Sellers shall, if requested by the Corporations, consent to the delivery to the Purchaser, at Closing, of all the Books and Records. For a period of 6 years from the Closing Date or for such longer period as may be required by applicable Law, the Purchaser shall retain all original accounting Books and Records relating to the Corporations for the period prior to and including the Closing Date, but the Purchaser shall not be responsible or liable to the Sellers for or as a result of any accidental loss or destruction of, or damage to, any such Books and Records. So long as any such Books and Records are retained by the Purchaser pursuant to this Agreement, the Sellers have the right to inspect and to make copies (at their own expense) of them at any time during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of the Corporations. The Purchaser has the right to have its representatives present during any such inspection.

ARTICLE VI – CLOSING

6.1 Date, Time and Place of Closing

Except as the Parties may otherwise agree in writing, the completion of the transaction of purchase and sale contemplated by this Agreement will take place at the offices of Energy, at 10:00 A.M. (Toronto time) on the Closing Date or at such other place, on such other date and at such other time as may be agreed upon in writing by the Parties.

6.2 Closing Procedures

Unless otherwise expressly provided for in this Agreement, the terms and conditions set out in Article 5 of the Shareholders Agreement shall apply to the Closing.

Except as the Parties may otherwise agree in writing, subject to satisfaction or waiver by the relevant Party of the conditions of closing, at the Closing, the Sellers shall deliver actual possession of the Sellers' Shareholder Interests to the Purchaser and upon such delivery the Purchaser shall pay or satisfy the balance Purchase Price in accordance with Section 2.3.

6.3 Non-Merger

Except as otherwise expressly provided in this Agreement, the covenants, representations and warranties will not merge on but will survive the Closing and, notwithstanding such Closing or any investigation made by or on behalf of any Party, will continue in full force and effect. Closing will not prejudice any right of one Party against any other Party in respect of anything done or omitted under this Agreement or in respect of any right to damages or other remedies.

ARTICLE VII – CONDITIONS OF CLOSING

7.1 Conditions in Favour of the Purchaser

The obligation of the Purchaser to complete the transactions contemplated by this Agreement is subject to the following conditions to be fulfilled or performed at or prior to Closing, which conditions are for the exclusive benefit of the Purchaser and may be waived, in whole or in part, by the Purchaser in its sole discretion:

- (a) **Truth of Representations and Warranties.** The representations and warranties of the Sellers contained in this Agreement shall be true and correct as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of such date and the Sellers shall have executed and delivered a certificate of a senior officer to that effect;
- (b) **Performance of Covenants.** The Sellers shall have fulfilled or complied with all covenants contained in this Agreement to be fulfilled or complied with by them at or prior to Closing, and the Sellers shall have executed and delivered certificates of senior officers to that effect;
- (c) **Consents.** All Required Consents and Authorizations shall have been obtained on terms acceptable to the Purchaser, acting reasonably;
- (d) **Due Diligence.** The Purchaser shall have completed its investigation into the Corporations, the Business, the Sellers' title to the Sellers' Shareholder Interests, the Assets and all other matters it has deemed relevant and such investigation shall be satisfactory to the Purchaser, acting reasonably;
- (e) **No Legal Action.** No action or proceeding shall be pending or threatened by any Person in any jurisdiction, to enjoin, restrict or prohibit:
 - (i) any of the transactions contemplated by this Agreement;
 - (ii) the right of the Purchaser to own the Sellers' Shareholder Interests; or
 - (iii) the right of the Corporations to operate the Business after Closing on substantially the same basis as currently operated.
- (f) **Deliveries.** The Sellers shall have delivered or caused to be delivered to the Purchaser the following:
 - (i) share certificates representing the Kingsville Energy Shares, the Kingsville Solutions Shares, the Lakeshore Energy Shares and the Lakeshore Solutions Shares respectively, duly endorsed in blank for transfer or accompanied by irrevocable stock transfer powers of attorney duly executed in blank, in either case, by the holders of record, together with evidence satisfactory to the Purchaser that the Purchaser has been entered in the Corporate

Records as the holder of record of the Kingsville Energy Shares, the Kingsville Solutions Shares, the Lakeshore Energy Shares and the Lakeshore Solutions Shares respectively;

- (ii) the Kingsville Promissory Note and the Lakeshore Promissory Note duly endorsed to the order of the Purchaser, together with evidence satisfactory to the Purchaser that the Purchaser has been recorded in the Corporate Records as the holder of record of the Kingsville Promissory Note and Lakeshore Promissory Note respectively;
- (iii) a general absolute assignment of the Sellers' Shareholder Interests;
- (iv) an assignment of all security issued by the Corporations to the Sellers in connection with the Kingsville Energy Loan and the Lakeshore Energy Loan;
- (v) certified copies of:
 - (A) by-laws of each of the Sellers approving the entering into and completion of the transactions contemplated by this Agreement; and
 - (B) resolutions of the board of directors of the Corporations authorizing the transfer of the Sellers' Shareholder Interests as contemplated by this Agreement; and
 - (C) a list of the officers and directors authorized to sign agreements together with their specimen signatures,

all in form and substance satisfactory to the Purchaser, acting reasonably;

- (vi) the certificates referred to in Section 7.1(a) and Section 7.1(b);
- (vii) evidence, satisfactory to the Purchaser, of the release and discharge of any Liens affecting the Sellers' Shareholders Interests;
- (viii) a duly executed resignation effective as at the Closing of each of the directors of the Corporations nominated or appointed to the board of directors by the Sellers;
- (ix) duly executed releases in favour of the Corporations and the Purchaser for matters up to Closing as contemplated by Section 5.1 of the Shareholders Agreement in form and substance satisfactory to the Purchaser acting reasonably from:

- (A) the Sellers; and
 - (B) each of the Persons referred to in Section 7.1(f)(viii); and
 - (x) the Corporate Records.
- (g) **Proceedings.** All proceedings to be taken by the Sellers in connection with the transactions contemplated in this Agreement shall be satisfactory in form and substance to the Purchaser, acting reasonably, and the Purchaser shall have received copies of all instruments and other evidence as it may reasonably request in order to establish the consummation of such transactions and the taking of all necessary proceedings in connection therewith; and

7.2 Conditions in Favour of the Sellers

The obligation of the Sellers to complete the transactions contemplated in this Agreement is subject to the following conditions to be fulfilled or performed at or prior to Closing, which conditions are for the exclusive benefit of the Sellers and may be waived, in whole or in part, by the Sellers in their sole discretion:

- (a) **Truth of Representations and Warranties.** The representations and warranties of the Purchaser contained in this Agreement shall be true and correct as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of such date and the Purchaser shall have executed and delivered a certificate of a senior officer to that effect.
- (b) **Performance of Covenants.** The Purchaser shall have fulfilled or complied with all covenants contained in this Agreement to be fulfilled or complied with by it at or prior to Closing and the Purchaser shall have executed and delivered a certificate of a senior officer to that effect.
- (c) **Deliveries.** The Purchaser shall have delivered or caused to be delivered to the Sellers the following:
 - (i) certified copies of:
 - (A) by-laws of the Purchaser approving the entering into and completion of the transactions contemplated by this Agreement; and
 - (B) a list of the officers and directors authorized to sign agreements together with their specimen signatures,all in form and substance satisfactory to the Sellers, acting reasonably; and
 - (ii) the certificates referred to in Section 7.2(a) and Section 7.2(b);
 - (iii) the balance of the Purchase Price by bank draft, certified cheque or other form of immediately available funds.

7.3 Condition Precedent re: OEB Approval

- (a) The Parties acknowledge and agree that OEB Approval is a true condition precedent to the completion of the transactions contemplated by this Agreement.
- (b) The Purchaser acknowledges and agrees that it bears the responsibility of applying for OEB Approval and agrees that it shall submit an application for OEB Approval to the Ontario Energy Board forthwith after the execution of this Agreement by all Parties and to prosecute such application diligently and in good faith.
- (c) If OEB Approval has not been obtained within six (6) months of the date of execution of this Agreement by all Parties, then unless such time period has been extended with the written consent of all Parties, this Agreement shall terminate without further liability of any Party to the other, and the Parties agree that, provided neither the Sellers nor Chatham-Kent Energy Inc. have intervened in any manner in the Purchaser's application to the Ontario Energy Board, the Sellers shall be free to complete a sale of their respective Sellers' Shareholder Interests to Chatham-Kent Energy Inc. without again complying with Section 4.4 of the Shareholders Agreement provided that:
 - (i) such sale is completed within ninety (90) days of Ontario Energy Board approval of such sale; and
 - (ii) such sale is completed in accordance with the terms and conditions of that certain binding letter of intent submitted by Chatham-Kent Energy Inc. to the Sellers dated June 30, 2008; and
 - (iii) Chatham-Kent Energy Inc. has executed an "Assumption Agreement" (as that term is defined in the Shareholders Agreement) in accordance with the requirements of Section 4.5 of the Shareholders Agreement.

ARTICLE VIII – TERMINATION AND ARBITRATION

8.1 Termination

This Agreement may be terminated at any time prior to the Closing:

- (a) by the Purchaser if, at the time of Closing, any of the conditions specified in Section 7.1 has not been satisfied in full;
- (b) by the Purchaser, if there has been a material violation or material breach by the Sellers of any covenant, representation or warranty or other agreement contained in the Agreement such that any condition specified in Section 7.1 would be incapable of being satisfied at Closing, and such violation or breach is not waived by the Purchaser or, in the case of a covenant breach, cured by the Sellers by the earlier of:

- (i) ten days after written notice thereof by the Purchaser; or
 - (ii) the Closing Date;
- (c) by the Sellers if, at the time of Closing, any of the conditions specified in Section 7.2 has not been satisfied in full;
- (d) by the Sellers, if there has been a material violation or material breach by the Purchaser of any covenant, representation or warranty or other agreement contained in the Agreement such that any condition specified in Section 7.2 would be incapable of being satisfied at Closing, and such violation or breach is not waived by the Sellers or, in the case of a covenant breach, cured by the Purchaser by the earlier of:
- (i) ten days after written notice thereof by the Sellers; or
 - (ii) the Closing Date;
- (e) by written agreement of the Parties;

and shall terminate automatically by the operation of Section 7.3.

8.2 Effect of Termination

If this Agreement is terminated pursuant to Section 8.1(e) or terminates automatically by the operation of Section 7.3, all obligations of the Parties under or pursuant to this Agreement will terminate without further liability of any Party to the other except for the provision of:

- (a) Section 12.9 relating to expenses;
- (b) Section 12.11 relating to public announcements; and
- (c) this Section 8.2,

provided nothing herein will relieve any Party from liability for any breach of this Agreement occurring before its termination.

8.3 Waiver of Conditions of Closing

If any of the conditions set forth in Section 7.1 have not been satisfied, the Purchaser may elect in writing to waive the condition and proceed with the completion of the transactions contemplated by this Agreement and, if any of the conditions set forth in Section 7.2 have not been satisfied, the Sellers may elect in writing to waive the condition and proceed with the completion of the transactions contemplated by this Agreement. Any such waiver and election by the Purchaser or the Sellers, as the case may be, will only serve as a waiver of the specific closing condition and the breaching party will have no liability with respect to that specific waived condition.

ARTICLE IX – NON-COMPETITION BY SELLERS

9.1 Non-Competition

- (a) Each Seller covenants that, for so long as the Purchaser is a shareholder (directly or indirectly) of a corporation which holds a license under the *Ontario Energy Board Act* to distribute electricity in the Territory, or which is otherwise engaged in the lawful distribution of electricity in the Territory, it will not anywhere within the Territory, either singly in or partnership or jointly or in conjunction with any other Person or Persons, whether as principal, agent, consultant, shareholder or in any other manner whatsoever, directly or indirectly, carry on, be engaged in or concerned with or interested in, or advise, acquire an interest in, or permit its name or any part thereof to be used or employed by any Person engaged in or concerned with, or interested in an activity which requires a license under Section 57(a) of the *Ontario Energy Board Act* or by any Person otherwise engaged in the lawful distribution of electricity in the Territory. Notwithstanding anything that might be construed to the contrary in this Section 9.1(a), the Parties acknowledge and agree that the nomination by the Sellers of directors to the board of directors of Energy pursuant to Section 10.4 of this Agreement shall not constitute a contravention this Section 9.1(a).
- (b) Each Shareholder agrees that if a court of competent jurisdiction shall limit, restrict or otherwise change the geographical area or time or businesses referred to in Section 9.1(a), that the limited or changed geographical area or time period or types of business determined by the said court shall, for the purposes of the section, be deemed to be the geographical area and/or time period and/or types of business referred to in the section, as if they were the original geographical area and time period and types of business set out therein. Each Shareholder hereby agrees that all covenants, provisions and restrictions in this section are reasonable and valid and all defences to the strict enforcement thereof are hereby waived by it.

ARTICLE X – POST CLOSING PROVISIONS RE: PURCHASER

10.1 Post Closing Provisions re: Employees

The Purchaser agrees that from and after the Closing Date, it will exercise such rights as it may have in its capacity as a shareholder of Energy to ensure that:

- (a) The employment of any Employee of Energy shall not be terminated; and
- (b) For a period of seven (7) years from the Closing Date no Employee shall be required, as a term of continuing employment, to permanently relocate their place of residence to a permanent residence outside of the Territory;

solely and exclusively as a result of the acquisition of the Sellers' Shareholder Interests by the Purchaser.

10.2 Operations of Energy

For so long as Energy holds a license under the *Ontario Energy Board Act* to distribute electricity in the Territory, the Purchaser shall exercise such rights as it may have in its capacity as a shareholder of Energy to ensure that Energy:

- (a) maintains a service centre in the Town of Essex;
- (b) meets all mandated performance targets with respect to the Ontario Energy Board's Service Quality Indicator;
- (c) pursues only such expansion opportunities as are reasonable and prudent to pursue in the circumstances;
- (d) will continue to be an active part of the local communities in which it operates and will continue to be a good corporate citizen and a facilitator of economic development;
- (e) does not divest itself of a material asset that is permanently located within the boundaries of either Seller without first affording such Seller a reasonable opportunity to acquire such asset for cash consideration at fair market value.

For the purposes of this Section 10.2(e):

- (i) "divest" means the disposition of a material asset:
 - (I) to a Person who will not be using the asset as part of, or in connection with a "distribution system" (as defined under the *Ontario Energy Board Act*) through which electricity is distributed in the Territory; and
 - (II) the proceeds of such disposition will not be used by Energy to acquire an asset or assets to form part of or to be used in connection with Energy's distribution system.
- (ii) "material asset" means a capital asset which has a fair market value at the time of a proposed divestiture in excess of Three Hundred Thousand Dollars (\$300,000);
- (f) does not materially fail to carry out the improvements outlined in the most recent existing capital forecast adopted by Energy prior to Closing during the period of time to which such forecast is applicable;
- (g) the property legally described as: "Lot 3, North side of Pearl Street, East, registered plan 185, saving and excepting the easterly twelve feet of said Lot 3" is transferred or made available to Kingsville for continued use as a municipal parking lot, provided the contemplated transaction is in compliance with existing regulations including the affiliate relationship code of the Ontario Energy Board.

- (h) senior members of the executive of Energy are made available on an annual basis to the councils of the Sellers for a presentation to council or the public, if requested, and that senior members of the executive are made available informally and on an as needed and reasonable basis at all other reasonable times and intervals.

10.3 Acknowledgement

Provided the Purchaser has taken no commercially unreasonable actions that have resulted in Energy's inability to meet its obligations contained in Sections 10.1 or 10.2, it is acknowledged and agreed that nothing contained in Sections 10.1 or 10.2 herein shall require the Purchaser to restrict in whole or in part the powers of the directors to manage or supervise the management of the business and affairs of Energy and that nothing contained herein shall constrain or restrict the directors officers, or other employees of Energy from acting in the Ordinary Course or otherwise restrict Energy from carrying on the Business in the Ordinary Course.

10.4 Nomination and Appointment of Directors

For so long as:

- (a) Energy is distributing electricity within the municipal boundaries of Kingsville and Lakeshore; and
- (b) the municipal boundaries of Kingsville and Lakeshore remain unchanged from the Closing Date; and
- (c) Energy is controlled by the Purchaser,

The Sellers shall be permitted to jointly nominate four (4) residents of the Territory for consideration by the Purchaser for appointment to the board of directors of Energy with effect as and from the Closing Date. Provided such nominees are otherwise qualified to serve on the board of directors, the Purchaser will appoint two of such nominees to the board of directors of Energy. The Parties acknowledge and agree that it is their intent that the first appointment of nominees of the Sellers to the board of directors of Energy shall be effective as and from the Closing Date. Provided the Sellers have nominated four (4) residents of the Territory for consideration by the Purchaser by such date, prior to Closing, as the Purchaser may require in order to consider and effect the appointments, then the Purchaser shall effect the appointments with effect as and from the Closing Date.

Nominees shall be qualified to serve as directors of Energy if:

- (i) The nominees meet the statutory criteria for directors pursuant to the *Ontario Business Corporations Act*; and
- (ii) The nominees meet such other criteria as may be established from time to time by Energy in accordance with such corporate governance policies or principles that Energy may adopt from time to time in establishing nomination criteria of general

application for all directors including those contained in the by laws of Energy.

ARTICLE XI – INDEMNIFICATION AND REMEDIES

11.1 Indemnification By The Sellers: General Matters

The Sellers shall indemnify and hold harmless on a several basis, the Purchaser and the Corporations and, to the extent named or involved in any third party action or claim, their respective employees, shareholders, directors, officers, representatives and related persons (collectively, the “**Purchaser Indemnified Persons**”) against, and shall pay to the Purchaser, the Corporations and the Purchaser Indemnified Persons, on demand, the amount of, any loss, liability, obligation, claim, damages (including incidental and consequential damages), loss of profits, diminution in value, fines and other penalties, costs, charges or expenses (including costs of investigation and defense and the full amount of all legal fees and other professional fees) (collectively, “**Damages**”), suffered by, imposed upon or asserted against, the Purchaser, the Corporations or any of the Purchaser Indemnified Persons as a result of, in respect of, connected with, or arising out of:

- (a) any breach of any representation or warranty made by the Sellers in this Agreement or in any Transaction Document, whether or not the Purchaser relied on or had knowledge of it;
- (b) any breach or non-fulfillment by the Sellers of any covenant or obligation of the Sellers contained in this Agreement or in any Transaction Document;
- (c) any claim by any Person for brokerage or finder’s fees, commissions or similar payments based upon any agreement or understanding made or alleged to have been made by any such Person with the Sellers or the Corporations (or any Person acting on their behalf) in connection with any of the transactions contemplated by this Agreement.

11.2 Indemnification by the Purchaser

The Purchaser shall indemnify and hold harmless the Sellers and, to the extent named or involved in any third party action or claim, its employees, shareholders, directors, officers, representatives and related persons (collectively the “**Sellers Indemnified Persons**”) against, and shall pay to the Sellers and the Sellers Indemnified Persons, on demand, the amount of any Damages suffered by, imposed upon or asserted against the Sellers or any of the Sellers Indemnified Persons as a result of, in respect of, connected with, or arising out of:

- (a) any breach of any representation or warranty made by the Purchaser in this Agreement or any Transaction Document;
- (b) any breach by the Purchaser of any covenant or obligation of the Purchaser contained in this Agreement or any Transaction Document; or
- (c) any claim by any Person for brokerage or finder’s fees, commissions or similar payments based upon any agreement or understanding made or alleged to have

been made by such Person with the Purchaser (or any Person acting on its behalf) in connection with any of the transactions contemplated in this Agreement.

11.3 Indemnification Procedure: Third Party Claims

- (a) Upon receipt by the Purchaser, the Sellers, the Corporations, a Purchaser Indemnified Person or a Sellers Indemnified Person, as the case may be, (an “**Indemnitee**”) of notice of any proceeding commenced in connection with a Third Party Claim and in respect of which the Indemnitee proposes to demand indemnification from a Party (the “**Indemnitor**”), the Indemnitee must give notice to that effect to its Indemnified Representative and the Indemnitor with reasonable promptness. The failure to give, or delay in giving, such notice will not relieve the Indemnitor of its obligations except and only to the extent of any prejudice caused to the Indemnitor by such failure or delay.
- (b) The Indemnitor has the right, by notice to the Indemnitee Representative given not later than thirty (30) days after receipt of the notice described in Section 11.3(a), to assume control of the defence, compromise or settlement of the Third Party Claim provided that:
 - (i) the Third Party Claim involves only money damages and does not seek any injunctive or other equitable relief;
 - (ii) if the named parties in any Third Party Claim include both the Indemnitor and the Indemnitee and representation by the same counsel would, in the judgment of the Indemnitee Representative, still be appropriate notwithstanding any actual or potential differing interests between them (including the availability of different defences);
 - (iii) settlement of, or an adverse judgment with respect to, the Third Party Claim is not, in the judgment of the Indemnitee Representative, likely to establish a precedent, custom or practice adverse to the continuing business interest of the Indemnitee; and
 - (iv) the Indemnitor, from time to time, at the Indemnitee Representative’s request, gives security satisfactory to the Indemnitee Representative against any costs and other liabilities to which the Indemnitee may be or become exposed as a result of such Third Party Claim.
- (c) Upon the assumption of control by the Indemnitor:
 - (i) the Indemnitor shall actively and diligently proceed with the defence, compromise or settlement of the Third Party Claim at the Indemnitor’s sole cost and expense, including the retaining of counsel reasonably satisfactory to the Indemnitee;

- (ii) the Indemnitor shall keep the Indemnitee Representative fully advised with respect to the defence, compromise or settlement of the Third Party Claim (including supplying copies of all relevant documents promptly as they become available) and shall arrange for its counsel to inform the Indemnitee Representative on a regular basis of the status of the Third Party Claim;
- (iii) the Indemnitee may retain separate co-counsel at its sole cost and expense, and may participate in the defence of the Third Party Claim; and
- (iv) the Indemnitor will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim unless consented to by the Indemnitee Representative (which consent may not be unreasonably or arbitrarily withheld or delayed).

Provided all the conditions set forth in Section 11.3(a) are satisfied and the Indemnitor is not in breach of any of its obligations under this Section 11.3(c), the Indemnitee and the Indemnitee Representative shall, at the expense of the Indemnitor, cooperate with the Indemnitor and use their Commercially Reasonable Efforts to make available to the Indemnitor all relevant information in their possession or under their control (provided that it does not cause the Indemnitee to breach any confidentiality obligations) and shall take such other steps as are, in the reasonable opinion of counsel for the Indemnitor, necessary to enable the Indemnitor to conduct such defence; provided always that:

- (v) no admission of fault may be made by or on behalf of the Purchaser, the Corporations or any Purchaser Indemnified Person without the prior written consent of the Purchaser;
- (vi) no admission of fault may be made by or on behalf of the Sellers or any Sellers Indemnified Person without the prior written consent of the Sellers; and
- (vii) the Indemnitee shall not be obligated to take any measures which, in the reasonable opinion of the Indemnitee's legal counsel, could be prejudicial or unfavourable to the Indemnitee.

(d) If

- (i) the Indemnitor fails to give the Indemnitee the notice provided in Section 11.3(a),
- (ii) any of the conditions in Section 11.3(a) are unsatisfied, or
- (iii) the Indemnitor breaches any of its obligations under Section 11.3(c),

the Indemnitee may assume control of the defence, compromise or settlement of the Third Party Claim in its sole discretion and is entitled to retain counsel as in its sole discretion may appear advisable, the whole at the Indemnitor's sole cost and expense.

Any settlement or other final determination of the Third Party Claim will be binding upon the Indemnitor. The Indemnitor shall, at its sole cost and expense, cooperate fully with the Indemnitee and use its Reasonable Commercial Efforts to make available to the Indemnitee all relevant information in its possession or under its control and take such other steps as are, in the reasonable opinion of counsel for the Indemnitee, necessary to enable the Indemnitee to conduct its defence. The Indemnitor shall reimburse the Indemnitee promptly and periodically for the costs of defending against the Third Party Claim (including legal fees and expenses), and shall remain responsible for any Damages the Indemnitee may suffer resulting from, arising out of, or relating to, the Third Party Claim to the fullest extent provided in this Article IX.

11.4 Expiry of Liability

- (a) Except as set out in Section 11.4(b), liability for breaches of the representations, warranties and covenants of the Sellers and the Purchaser contained in this Agreement will terminate upon the expiry of the period of two (2) years following the Closing Date, except:
 - (i) in the case of fraud, intentional misrepresentation or deliberate or wilful breach, in which case liability will continue indefinitely; and
 - (ii) to the extent that, during such period, the Indemnitee has given notice to the Indemnitor of a claim in respect of any such representation, warranty or covenant, in which case liability for such representation, warranty or covenant will continue in full force and effect until the final determination of such claim.
- (b) The representations and warranties contained in Section 3.8 and the Sellers' liability in connection therewith will survive indefinitely.
- (c) The Parties are aware of the provisions of the *Limitations Act*, 2002 (Ontario) and agree that (i) this agreement is a "business agreement" for purposes of the Act, and (ii) to the extent that the provisions hereof are found to be an agreement to vary or exclude a limitation period under the Act, such limitation period shall be deemed to be varied or excluded to the extent necessary to give full force and effect to the provisions of this Agreement.

ARTICLE XII – MISCELLANEOUS

12.1 Notices

Any notice, consent, waiver or other communication given under this Agreement or any Acquisition Agreement must be in writing and may be given by delivering it or sending it by facsimile or other similar form of recorded communication addressed:

(a) to the Purchaser at:

The Corporation of the Town of Essex
33 Talbot St. S.
Essex ON N8M 1A8

Attention: Wayne Miller, CAO
Telephone: (519) 776-7336
Facsimile: (519) 776-8811

with a copy (which shall not constitute notice to the Purchaser) to:

Ogilvy Renault LLP
Suite 3800
Royal Bank Plaza, South Tower
200 Bay Street
P.O. Box 84
Toronto, Ontario M5J 2Z4

Attention: Valerie Helbronner
Telephone: 416.216.4000
Facsimile: 416.216.3930

(b) to the Sellers at:

Town of Kingsville
2021 Division Road North
Kingsville, ON N9Y 2Y9

Attention: Dan DiGiovanni
Telephone: 519-733-2305
Fax: 519-733-8108

Town of Lakeshore
419 Notre Dame Street
Belle River, ON N0R 1A0

Attention: Ruth Coursey
Telephone: 519-728-2700
Fax: 519-728-9530

with a copy (which shall not constitute notice to the Sellers) to:

Jim Renick, Barrister & Solicitor
23 Talbot Street North
Essex, Ontario N8M 1A5

Attention: Jim Renick
Telephone: (519) 776-9020
Facsimile: (519) 776-9027

Any such communication is deemed to have been delivered and received on the date of personal delivery or transmission by facsimile or other similar form of recorded communication, as the case may be, if such day is a Business Day and such delivery or transmission was received by the recipient Party prior to 5:00 p.m. (Essex time) and otherwise on the next Business Day. Any Person may change its address for service by notice given in accordance with the foregoing and any subsequent communication must be sent to such Person at its changed address.

12.2 Entire Agreement

This Agreement and all other Transaction Documents delivered at Closing constitutes the entire agreement between the Parties and supersedes all prior agreements, understandings, negotiations and discussions relating to the subject matter thereof, whether oral or written. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the Parties relating to the subject matter hereof except as specifically set forth in this Agreement and the other Transaction Documents delivered at Closing. Neither Party has relied or is relying on any other information, discussions or understandings in entering into and completing the transactions contemplated in this Agreement and the other Transaction Documents delivered at Closing. If there is any conflict or inconsistency between the provisions of this Agreement and the provisions of any Transaction Document, the provisions of this Agreement will govern.

12.3 Amendments

This Agreement may only be amended, supplemented or otherwise modified by written agreement of the Sellers and the Purchaser.

12.4 Waiver

The failure or delay by a Party in enforcing, or insisting upon strict performance of, any provision of this Agreement will not be considered to be a waiver of such provision or in any way affect the validity or enforceability of this Agreement or deprive a Party of the right, at any time or from time to time, to enforce or insist upon strict performance of that provision or any other provision of this Agreement. Any waiver by a Party of any provision of this Agreement is effective only if in writing and signed by a duly authorized representative of such Party.

12.5 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision will be severed from this Agreement and the remaining provisions will continue in full force and effect, without amendment.

12.6 Assignments

- (a) This Agreement will become effective when executed by the Parties and thereafter will be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.
- (b) Except as otherwise provided in this Section 12.6, neither this Agreement nor any of the rights, duties or obligations under this Agreement are assignable or transferable by a Party without the prior written consent of the other Party. Any attempt to assign any of the rights, duties or obligations in this Agreement without such written consent is void.

12.7 Third Party Beneficiaries

Except as otherwise expressly provided in this Agreement, the Parties do not intend that this Agreement will benefit or create any right or cause of action in, or on behalf of, any Person other than a Party and no Person, other than a Party, is entitled to rely on the provisions of this Agreement in any proceeding. Without limiting the generality of the foregoing, the consent of the Corporations, a Sellers Indemnified Person or a Purchaser Indemnified Person is not required for any amendment or waiver of, or other modification to, this Agreement or any Transaction Document including any rights of indemnification to which such Person may be entitled.

12.8 Time of the Essence

Time is of the essence in this Agreement.

12.9 Expenses

Except as otherwise expressly provided in this Agreement, all costs and expenses (including the fees and disbursements of legal counsel, brokers, investment advisers, consultants and accountants) incurred in connection with this Agreement and the transactions contemplated herein are to be paid by the Party incurring such expenses.

12.10 Further Assurances

From time to time after the Closing, each Party will, at the request of the other Party, execute and deliver such additional conveyances, transfers and other assurances and perform or cause to be performed such further and other acts or things as may be reasonably required to give full effect to, and carry out the intent of, this Agreement and each of the Acquisition Agreements, including for purposes of effectively transferring the Sellers' Shareholder Interests to the Purchaser.

12.11 Announcements

No press release or other public announcement with respect to this Agreement or any transaction contemplated therein may be made by a Party unless and until the text of the announcement and the time and manner of its release have been approved by the other Party. However, if a Party is bound by Law to make a press release or other public announcement, such Party may do so, notwithstanding the failure of the other Party to approve same, provided:

- (a) the other Party is given at least 3 Business Days prior written notice of the intention to make such announcement and has a reasonable opportunity to comment on the announcement; and
- (b) the announcement merely relates the facts and then only to the extent necessary to satisfy the specific legal requirement.

12.12 Counterparts

This Agreement may be executed in any number of separate counterparts (including by facsimile or other electronic means) and all such signed counterparts will together constitute one and the same agreement.

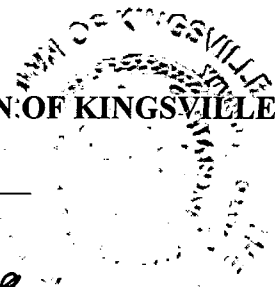
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IN WITNESS WHEREOF the Parties have executed this Share Purchase Agreement this 15th day of September, 2008.

THE CORPORATION OF THE TOWN OF KINGSVILLE

By: Nelson Santos
Nelson Santos - Mayor

By: Linda Burling
Linda Burling - Clerk



THE CORPORATION OF THE TOWN OF LAKESHORE

By: _____
Tom Bain - Mayor

By: _____
Mary Masse - Clerk

THE CORPORATION OF THE TOWN OF ESSEX

By: _____
Ron McDermott - Mayor

By: _____
Cheryl Bondy - Clerk

IN WITNESS WHEREOF the Parties have executed this Share Purchase Agreement this 15th
day of September, 2008.

THE CORPORATION OF THE TOWN OF KINGSVILLE

By: _____
Nelson Santos – Mayor

By: _____
Linda Burling - Clerk

THE CORPORATION OF THE TOWN OF LAKESHORE

By: *T. Bain* Sept 12/08
Tom Bain –Mayor

By: *Mary Masse* Sept 12/08
Mary Masse – Clerk



THE CORPORATION OF THE TOWN OF ESSEX

By: _____
Ron McDermott - Mayor

By: _____
Cheryl Bondy - Clerk

IN WITNESS WHEREOF the Parties have executed this Share Purchase Agreement this 15th day of September, 2008.

THE CORPORATION OF THE TOWN OF KINGSVILLE

By: _____
Nelson Santos – Mayor

By: _____
Linda Burling - Clerk

THE CORPORATION OF THE TOWN OF LAKESHORE

By: _____
Tom Bain –Mayor

By: _____
Mary Masse – Clerk

THE CORPORATION OF THE TOWN OF ESSEX

By: Ron McDermott
Ron McDermott - Mayor

By: Cheryl Bondy
Cheryl Bondy - Clerk

