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**SENT BY E-FILING AND COURIER**

January 15, 2009

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, Suite 2700  
Toronto, ON M4P 1E4

Dear Ms. Walli:

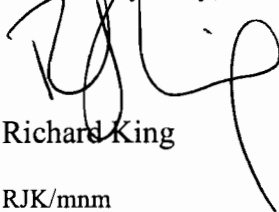
**RE: Town of Essex – MAAD Application (EB-2008-0310)**  
**Information Request Responses**

Please find enclosed the Town of Essex's Responses to Interrogatories filed by the School Energy Coalition and Board Staff in the above-referenced matter. The Responses are also being filed on the Board's RESS system, and served on all parties to the proceeding.

Also attached are CVs for Mr. Wayne Miller (Chief Administrative Officer – Town of Essex) and Ms. Donna Hunter (Director of Finance and Administration/Treasurer – Town of Essex). Mr. Miller and Ms. Hunter will sit as the Town's witness panel on Monday.

Please do not hesitate to contact me should you have any questions or concerns.

Yours very truly,



Richard King

RJK/mnm  
Encl.

cc. J. Shepherd (SEC)  
B. Williams (SEC)  
W. Miller (Essex)  
D. Hunter (Essex)  
R. Dimmel (Essex Power Lines)  
A. Sasso (Enwin)

**Wayne Miller**  
**33 Talbot Street South**  
**Essex, ON N8M 1A8**  
**wmiller@townofessex.on.ca / 519.776.7336**

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### **Work History**

Chief Administrative Officer Amalgamated Town of Essex	1999 – Present
Chief Administrative Officer Former Town of Essex	1987 – 1998
Councillor, 1980 – 1985 Deputy Reeve, 1985 – 1987 Municipal Council, Town of Essex	1980 – 1987
Small Business Owner/Operator	1972 – 1987

### **Education**

The Association of Municipal Managers, Clerks and Treasurers of Ontario	1988
M.A., Slavic Languages and Literatures University of Toronto	1972
B.A., Russian Language and Literature University of Western Ontario	1971

**Donna Hunter**  
**33 Talbot Street South**  
**Essex, ON N8M 1A8**  
**dhunter@townofessex.on.ca / 519.776.7336**

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### **Work History**

Director of Finance & Administration/Treasurer Town of Essex	2002 – Present
Vice President, Finance & Administration ForestCare	1997 – 2002
Treasurer Town of Geraldton	1995 – 1997
Small Business Owner	1985 – 1995
Manager of Financial Services Region of Peel	1980 – 1985
Senior Financial Analyst TransCanada PipeLines	1972 – 1980

### **Education**

The Association of Municipal Managers, Clerks and Treasurers of Ontario	1996
Certified General Accountant Program	1983

**TOWN OF ESSEX  
RESPONSES TO INTERROGATORIES FROM  
BOARD STAFF ("BOARD")**

**BOARD STAFF INTERROGATORY #1**

**Questions With Respect to Valuation of ELK Shares**

1. In its application, the Town of Essex states that the purchase price offered of \$12,773,240 is based on matching a third party offer with no assumptions being made in the valuation about future rate levels.
  - (a) Please advise the Board of the acquisition premium that is being paid, if any, in the purchase price of the proposed transaction.
  - (b) Please confirm the Town of Essex's understanding, as per the August 31, 2005 combined MAADs Decision (EB-2005-0234, EB-2005-0254 and EB-2005-0257) and the Board's Report on Rate-making Associated with Distributor Consolidation issued July 23, 2007, that any acquisition premium is not normally recoverable in rates.
  - (c) If the Board approves the transaction, and the transaction is completed, please explain ELK's approach in terms of operating the ELK service area. Specifically, please identify any plans currently known or being planned by ELK for recovery of part or all of any purchase price premium through efficiency gains (e.g. reductions to OM&A).
  - (d) Please confirm that recovery of any purchase price premium through efficiency gains can be accomplished without impairing ELK's ability to maintain its distribution operations to existing customers (i.e. with risk of service quality or reliability degradation, and appropriate operations and capital expenditures to maintain its existing infrastructure and to make necessary investment for any growth).

**RESPONSE**

- (a) The purchase premium as at December 31, 2007 was \$1,837,827. Based on the closing financial statements (end of September 2008), the premium is \$1,131,075.
- (b) Confirmed.
- (c) As per section 2.2.1 of Essex's MAAD Application, the share transfer will not result in any changes to the day-to-day operations of ELK.

(d) See response to (c) immediately above. Other than increasing its shareholding, Essex does not plan on directing ELK to alter its operations or capital plans.

**Questions With Respect to Financing of the Share Purchase Transaction**

**BOARD STAFF INTERROGATORY #2**

2. In its application, the Town of Essex states that the alteration in ELK's capital structure resulting from the bank financing will not impact the financial viability of ELK. Following completion of the transaction, ELK's actual capital (debt/equity) structure is forecasted to change from 40/60 to 78/22 in the first year following the transaction.
- (a) Please identify the impacts on ELK's cash flow position going forward with respect to meeting interest and principal payments given the increased debt in its capital structure.
  - (b) Please explain what impact, if any, the increased debt will have on ELK's ability to attain any third party financing at reasonable rates in the future, should it be required to finance investments in ELK's distribution assets beyond the loan for \$3 million to finance ELK's planned investments in smart meters as documented in the loan with the Toronto Dominion Bank.

**RESPONSE**

- (a) Please see PowerPoint presentation attached to SEC Interrogatory #6.
- (b) Essex does not believe that ELK's ability to attain any third party financing at reasonable rates will be adversely affected in any way, for at least two reasons:
  - First, the Bank Loan documentation places a negative covenant on Energy that prohibits Energy from repaying any shareholder debt while the loan is outstanding. As a result, the Bank (and Essex) consider the shareholder loans to be akin to equity. On that basis (i.e., treating the postponed shareholder loans as equity), the post-closing debt-to-equity ratio would be approximately 50/50.
  - Second, as you will note from the last page of Ms. Hunter's presentation to Town Council (attached to SEC Interrogatory #6) and the Meeting Minutes from the Town of Essex's Council Meeting of August 6, 2008 (attached at Tab J to the MAAD Application), the Town of Essex approved the transaction on the premise that the Town would have to forego dividends in the short- to medium-term.

**Questions With Respect to Loan between ELK and the Toronto Dominion Bank****BOARD STAFF INTERROGATORY #3**

3. If approved, a condition of closing is that ELK will issue a dividend of \$10.6 million to the Town of Essex, which will provide part of the cash by which the Town of Essex is purchasing the shares owned by Lakeshore and Kingsville and debt owed by ELK to Lakeshore and Kingsville. In turn, ELK will raise part of the \$10.6 million dividend through a loan with the Toronto Dominion Bank for \$8.0 million.

A copy of the Toronto Dominion Bank loan is provided in Tab I of the Application.

- (a) Please identify the source of the remaining \$2.6 million of the dividend from ELK (i.e. the portion of the 10.6 million dividend not financed by the loan from the Toronto Dominion Bank).
- (b) The loan agreement document states that the loan can be consummated in various forms (fixed rate or floating rate, rate term up to 10 years, amortization up to 20 years). For a fixed rate loan, the rate shall be a set by the Toronto Dominion Bank based on the term selected by ELK. For a variable or floating rate term, the rate is determined to be Bank Prime + 0.0%.
  - (i) Please provide ELK's views of the form of the loan that it expects to take, and the rate.
  - (ii) Given that the \$8.0 million loan results in significant leveraging of ELK, please confirm whether the loan rates being negotiated with the Toronto Dominion Bank incorporate any risk premium due to the significant debt leveraging.
- (c) In approving rates, the Board generally looks at the market conditions in effect at the time of execution in determining if the terms of an affiliate loan and the applicable interest rate are reasonable. For future or variable-rate loans, the Board will look at forecasts of similar rates, and the Board's own cost of capital methodologies for estimating near-term expected rates.
  - (i) Please provide ELK's views on any risk to ELK's financial viability if the Board were to determine that the rate of the Toronto Dominion Bank loan included a risk premium due to the significant leveraging and that premium should not be recoverable from ratepayers.
  - (ii) Please provide ELK's views on any risk to ELK's financial viability that, in the case of a variable-rate loan, the Board's deemed long-term debt rate as calculated in accordance with Appendix A of the

**December 20, 2006 Report of the Board of Cost of Capital and 2nd Generation Incentive Regulation for Ontario's Electricity Distributors was lower than the floating rate as documented in the bank loan.**

**RESPONSE**

To be clear, it is not a condition of closing that ELK will issue a dividend of \$10.6 million. Upon completion of the transaction, Essex will ask ELK to issue the dividend.

- (a) The \$2.6 million will come from ELK's current cash.
- (b)
  - (i) Ultimately, this is ELK's Board's view. Essex's current view is that given today's low interest rates, the best option would be a three-year term loan at the Prime-Based loan rate noted below. The Loan commitment to Energy was based on the following rates, with the risk premium associated with those rates indicated:
    - Prime-Based Loan = Prime Rate + 0.0% per annum includes risk premium of 1.5%.
    - Bankers' Acceptance = B/A Rate + 0.5% (risk premium is 0.5%).
  - (ii) Having regard to the manner in which the shareholder loans are treated (see response to Board Staff Interrogatory 2(b)) Essex does not consider there to be "significant" leveraging involved with the proposed loan transaction. Based on the information provided by the TD Bank, the risk premium is typical for electricity LDCs. It is Essex's understanding that no component of the risk premium identified above is attributable to "significant leveraging".
- (c)
  - (i) and (ii) Essex can only provide its own views (and not, strictly speaking, those of ELK at this time). However, if Essex were ELK's sole shareholder in the scenarios set out in (c)(i) or (ii), Essex could do a number of things, including forego any interest payments on the shareholder loans, refrain from taking dividends (which is Essex's current intent in any event), etc.



**Questions With Respect to Documents**

**BOARD STAFF INTERROGATORY #4**

4. **It appears that the Audited Financial Statements for the Corporation of the Town of Essex for the year ended December 31, 2007 are discussion drafts (due to watermarks shown on the pages of the Essex AFS). Please file copies of the final Audited Financial Statements for the year ended December 31, 2007 for the Corporation of the Town of Essex**

**RESPONSE**

Please see attached.

**The Corporation of the Town of  
Essex  
Financial Statements  
For the year ended December 31, 2007**

**The Corporation of the Town of Essex**  
**Financial Statements**  
**For the year ended December 31, 2007**

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**The Corporation of the Town of Essex Trust Funds**

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Essex, Ontario N8M 1B6  
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## Auditors' Report

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### To the Members of Council, Inhabitants and Ratepayers of The Corporation of the Town of Essex

We have audited the consolidated statement of financial position of The Corporation of the Town of Essex as at December 31, 2007 and the consolidated statements of financial activities and cash flows for the year then ended. These financial statements are the responsibility of the Municipality's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of The Corporation of the Town of Essex as at December 31, 2007 and the results of its financial activities and changes in cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

*BDO Dunwoody LLP*

Chartered Accountants, Licensed Public Accountants

Essex, Ontario  
July 7, 2008

# The Corporation of the Town of Essex Consolidated Statement of Financial Position

December 31 2007 2006

## Assets

### Financial Assets

Cash and short-term investments	\$ 13,459,716	\$ 11,593,670
Taxes receivable	2,581,622	2,671,648
Accounts receivable	2,082,470	2,649,222
Loan receivable (Note 15)	1,000,000	-
Investment in E.L.K. Energy Inc. (Note 2)	6,702,348	6,592,998
Investment in Union Water Supply System (Note 5)	1,107,619	989,628
Other assets	261,836	438,102

**\$ 27,195,611    \$ 24,935,268**

## Liabilities and Municipal Position

### Liabilities

Bank indebtedness (Note 6)	\$ 416,064	\$ 2,402,574
Accounts payable and accrued liabilities	2,183,207	2,626,677
Other current liabilities	144,904	51,642
Accrued interest payable on long-term debt	141,102	170,585
Employee future benefits (Note 9)	3,062,914	2,750,914
Deferred revenue - development charges (Note 13)	467,284	800,760
Net long-term debt (Note 3)	22,002,778	23,454,175
	<b>28,418,253</b>	<b>32,257,327</b>

### Municipal position

Operating fund (See schedule - page 19)	755,331	195,021
Equity in E.L.K. Energy Inc. (See schedule - page 19)	7,690,348	7,580,998
Capital fund (See schedule - page 20)	(1,193,815)	(1,294,104)
Reserves (See schedule - page 21)	1,000,000	1,000,000
Reserve funds (See schedule - page 21)	15,723,774	11,563,186
Fund balances	23,975,638	19,045,101
Amounts to be recovered in future years (Note 4)	(25,198,280)	(26,367,160)
Total municipal position	(1,222,642)	(7,322,059)
Contingencies and commitments (Note 11)		
	<b>\$ 27,195,611</b>	<b>\$ 24,935,268</b>

# The Corporation of the Town of Essex

## Consolidated Statement of Financial Activities

For the year ended December 31	2007	2007	2006
	Budget	Actual	Actual
<b>Revenue</b>			
Taxation	\$ 12,205,134	\$ 12,037,868	\$ 11,592,538
Sewer and water charges	5,596,513	6,011,933	5,503,611
Grants	2,089,490	4,737,778	3,773,204
User charges	2,165,210	2,542,475	2,276,865
Landfill compensation	1,263,774	1,249,680	1,709,291
Other	229,320	851,662	1,675,911
Interest and penalties	495,845	1,340,054	1,034,322
Share of undistributed income - E.L.K. Energy Inc.	-	109,350	305,476
Development contributions	440,643	652,256	274,876
Commuted payments	52,076	51,507	83,827
	<u>24,538,005</u>	<u>29,584,563</u>	<u>28,229,921</u>
<b>Expenditures</b>			
<b>Operating (Note 7)</b>			
General government	1,973,274	2,018,661	1,960,539
Protection to persons and property	5,729,171	5,793,150	5,434,549
Transportation services	2,365,319	2,074,146	1,889,948
Environmental services	4,853,277	4,662,012	4,543,970
Health services	215,728	192,669	218,180
Recreation and cultural services	2,623,742	2,749,857	2,573,510
Planning and development	299,772	266,515	274,617
	<u>18,060,283</u>	<u>17,757,010</u>	<u>16,895,313</u>
<b>Capital</b>			
General government	85,650	47,582	217,682
Protection to persons and property	487,602	451,691	395,855
Transportation services	1,911,209	1,393,397	3,462,639
Environmental services	3,094,290	2,494,821	2,444,140
Health services	400	7,533	40,691
Recreational and cultural services	490,090	984,550	418,829
Planning and development	132,400	362,744	110,937
	<u>6,201,641</u>	<u>5,742,318</u>	<u>7,090,773</u>
<b>Total expenditures</b>	<u>24,261,924</u>	<u>23,499,328</u>	<u>23,986,086</u>
<b>Net revenues for the year</b>	<u>276,081</u>	<u>6,085,235</u>	<u>4,243,835</u>
<b>Increase (decrease) in amounts to be recovered in future years:</b>			
New debt issued	2,741,992	1,425,074	2,016,495
Debt principal repayments	(2,972,798)	(2,862,289)	(2,300,287)
Employee benefits and accrued interest	-	282,517	362,218
	<u>(230,806)</u>	<u>(1,154,698)</u>	<u>78,426</u>
<b>Change in fund balance</b>	<u>45,275</u>	<u>4,930,537</u>	<u>4,322,261</u>
<b>Fund balance, beginning of the year</b>	<u>19,045,101</u>	<u>19,045,101</u>	<u>14,722,840</u>
<b>Fund balance, end of year</b>	<u>\$ 19,090,376</u>	<u>\$ 23,975,638</u>	<u>\$ 19,045,101</u>

The accompanying summary of significant accounting policies and notes are an integral part of these financial statements.

# The Corporation of the Town of Essex

## Consolidated Statement of Cash Flows

For the year ended December 31

2007

2006

Cash provided by (used in)

### Operating activities

Net revenues for the year	\$ 6,085,235	\$ 4,243,835
Items not involving cash		
Decrease (increase) in taxes receivable	90,026	(55,043)
Decrease (increase) in accounts receivable	566,752	(123,286)
Decrease (increase) in other assets	176,266	(89,566)
Decrease in accounts payable and accrued liabilities	(443,470)	(935,586)
Increase (decrease) in other current liabilities	93,262	(34,379)
Increase (decrease) in accrued interest payable on long-term debt	(29,483)	52,818
Increase in employee future benefits	312,000	308,513
Increase (decrease) in deferred revenue - development charges	(333,476)	60,779
	<u>6,517,112</u>	<u>3,428,085</u>

### Investing activities

Increase in investment in E.L.K. Energy Inc.	(109,350)	(58,476)
Increase in equity in Union Water Supply System	(117,991)	(738,756)
	<u>(227,341)</u>	<u>(797,232)</u>

### Financing activities

Long-term debt issued	1,425,074	2,016,495
Long-term debt repaid	(2,862,289)	(2,300,287)
Bank indebtedness issued (repaid)	(1,986,510)	433,657
Loan proceeds issued	(1,000,000)	-
	<u>(4,423,725)</u>	<u>149,865</u>

Net change in cash and cash equivalents 1,866,046 2,780,718

Cash and cash equivalents, beginning of year 11,593,670 8,812,952

**Cash and cash equivalents, end of year** **\$ 13,459,716** **\$ 11,593,670**

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# The Corporation of the Town of Essex

## Summary of Significant Accounting Policies

December 31, 2007

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### Management responsibility

The consolidated financial statements of The Corporation of the Town of Essex are the representations of management. They have been prepared in accordance with generally accepted accounting principles established by the Public Sector Accounting Board of the Canadian Institute of Chartered Accountants as prescribed by the Ministry of Municipal Affairs and Housing.

### Use of estimates

The preparation of financial statements in accordance with Canadian generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenditures during the reporting period. Actual results could differ from management's best estimates as additional information becomes available in the future.

### Basis of consolidation

#### (i) Consolidated Financial Statements

The consolidated statements reflect the operations, assets, liabilities, revenues and expenditures of the revenue fund, capital fund, reserves and reserve funds of all municipal organizations, committees, and boards which are owned or controlled by Council and The Essex Business Improvement Area. All interfund assets and liabilities and revenues and expenditures have been eliminated on consolidation.

#### (ii) Other entities

E.L.K. Energy Inc. is accounted for on the modified equity basis, which represents the Town's proportionate share of E.L.K.'s net assets at acquisition plus its share of undistributed earnings. The basis is consistent with the generally accepted accounting treatment of government business enterprises.

The Town's proportionate share in the Union Water Supply System is accounted for on a proportionate equity basis, consistent with the generally accepted accounting treatment for government units.

#### (iii) Accounting for County and School Board Transactions

The municipality collects taxation revenue on behalf of the school boards and the County of Essex. The taxation, other revenues, expenditures, assets and liabilities with respect to the operations of the school boards and the Corporation of the County of Essex are not reflected in the municipal fund balances of these financial statements.



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# **The Corporation of the Town of Essex**

## **Summary of Significant Accounting Policies**

**December 31, 2007**

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### **(iv) Trust funds**

Funds held in trust by the municipality, and their related operations are not consolidated.

### **Basis of accounting**

Revenues and expenditures are reported on the accrual basis of accounting. The accrual basis of accounting recognizes revenues as they become available and measurable; expenditures are recognized as they are incurred and measurable as a result of receipt of goods or services and the creation of a legal obligation to pay.

The consolidated statement of financial position reflects all of the financial assets and liabilities of the municipality. Financial assets are those assets which could provide resources to discharge existing liabilities or finance future operations. Municipal position represents the financial position of the municipality, and is the difference between its assets and liabilities. This provides information about the municipality's overall future revenue requirements and its ability to finance activities and meet its obligations.

### **Taxation and Related Revenue**

Property tax billings are prepared by the municipality based on assessment rolls issued by the Municipal Property Assessment Corporation ("MPAC"). Tax rates are established annually by Town Council, incorporating amounts to be raised for local services, the requisition made by the County of Essex in respect of County services and amounts the Town is required to collect on behalf of the Province of Ontario in respect of education taxes. A normal part of the assessment process is the issue of supplementary assessment rolls, which provide updated information with respect to changes in property assessment. Once a supplementary assessment roll is received, the municipality determines the taxes applicable and renders supplementary tax billings. Taxation revenue is recorded at the time tax billings are issued. Assessments and the related property taxes are subject to appeal and write off for physical changes to the property. Tax adjustments as a result of appeals are recorded when the results of the appeal process are known.

The municipality is entitled to collect interest and penalties on overdue taxes. This revenue is recorded in the period the interest and penalties are levied.

Sewer and water charges, grants, user charges, landfill compensation, and other revenues are recorded on the accrual basis of accounting noted above.

### **Capital assets**

The historical cost and accumulated amortization of capital assets are not recorded for municipal purposes. Capital assets are reported as an expenditure on the consolidated statement of financial activities in the period of acquisition.

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## The Corporation of the Town of Essex Summary of Significant Accounting Policies

**December 31, 2007**

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**Deferred revenue**

Revenue restricted by legislation, regulation or agreement and not available for general municipal purposes is reported as deferred revenue on the consolidated statement of financial position. The revenue is reported on the consolidated statement of financial activities in the year in which it is used for the specified purpose.

**Employee future benefits**

The Corporation has adopted the method of accounting for employee future benefits as required by the Canadian Institute of Chartered Accountants. The cost of future benefits earned by employees is actuarially determined using the projected benefit method prorated on service and assumptions with respect to mortality and termination rates, retirement age and expected inflation rates with respect to employee benefit costs.

The estimated cost of these benefit obligations is recognized as employee future benefit obligations and amounts to be recovered in future years.

**Amounts to be recovered**

Amounts to be recovered are reported in the municipal position on the consolidated statement of financial position. The balance represents the outstanding principal portion of unmatured long-term liabilities, liabilities not yet due, and other future expenditures not yet levied on the ratepayers.

# The Corporation of the Town of Essex

## Notes to Financial Statements

**December 31, 2007**

### 1. Operations of school boards and the County of Essex

During the year, the following taxation revenue was raised and remitted to the school boards and the County of Essex:

	<u>2007</u>	<u>2006</u>
School boards	\$ 5,977,252	\$ 5,896,953
County of Essex	<u>6,005,502</u>	<u>5,805,958</u>
	<u>\$ 11,982,754</u>	<u>\$ 11,702,911</u>

### 2. Investment in E.L.K. Energy Inc.

The Corporation holds a 38% investment in E.L.K. Energy Inc. This investment is recorded using the modified equity method, wherein the investment balance represents the Town's proportionate interest in the net assets of E.L.K. Energy Inc. at acquisition, plus its proportionate share of undistributed earnings.

The investment in E.L.K. Energy Inc. at December 31, 2007 is as follows:

	<u>2007</u>	<u>2006</u>
Corporation of the Town of Essex 38% proportionate interest in the net assets of E.L.K. Energy Inc.	\$ 5,220,348	\$ 5,110,998
7.25% promissory note due to the Corporation from E.L.K. Energy Inc.	<u>1,482,000</u>	<u>1,482,000</u>
	<u>\$ 6,702,348</u>	<u>\$ 6,592,998</u>

# The Corporation of the Town of Essex

## Notes to Financial Statements

**December 31, 2007**

### 2. Investment in E.L.K. Energy Inc. (continued)

Supplementary information of E.L.K. Energy Inc. at December 31 is as follows:

	<u>2007</u>	<u>2006</u>
<b>Financial Position</b>		
Current assets	\$ 12,297,248	\$ 12,374,542
Capital and regulatory authority	8,784,022	8,450,022
Future income taxes	1,096,000	1,193,000
Investments	84,641	-
<b>Total assets</b>	<b>\$ 22,261,911</b>	<b>\$ 22,017,564</b>
 Current liabilities	 \$ 7,494,192	 \$ 7,180,311
Long-term liabilities	1,029,956	1,387,255
<b>Total liabilities</b>	<b>8,524,148</b>	<b>8,567,566</b>
<b>Net assets</b>	<b>\$ 13,737,763</b>	<b>\$ 13,449,998</b>
 <b>Financial Activities</b>		
Total revenue	\$ 23,044,406	\$ 19,685,417
Total expenditures	21,706,773	17,901,292
Income taxes	594,555	580,240
<b>Net earnings</b>	<b>\$ 743,078</b>	<b>\$ 1,203,885</b>
 Corporation of the Town of Essex share of net earnings in E.L.K. Energy Inc.	 <b>\$ 282,370</b>	 <b>\$ 457,476</b>

E.L.K. Energy Inc. bills and collects the Town's water and sewer surcharge revenue. In 2007 these amounted to \$5,885,202 (2006 - \$5,380,151) and are included in sewer and water charges revenue.

At December 31, 2007, included in accounts receivable is a balance owing from E.L.K. Energy Inc. totaling \$400,114 (2006 - \$369,160).

These transactions are in the normal course of operations and are measured at the exchange amount which is the cost of the consideration established and agreed to by the related parties.

# The Corporation of the Town of Essex

## Notes to Financial Statements

**December 31, 2007**

### 3. Net long-term debt

The balance of long-term debt reported on the consolidated statement of financial position is made up of the following:

	<u>2007</u>	<u>2006</u>
<b><i>User Fee Supported</i></b>		
i) Essex Sewage Treatment Plant Update and Expansion Debenture, Ontario Infrastructure Projects Corporation (OIPC) - repayable in semi-annual instalments of \$138,915 including interest at 2.66%, due September 1, 2026	\$ 4,122,776	\$ 4,287,644
ii) Essex Sewage Update and Expansion Debenture, OIPC - repayable in semi-annual instalments of \$243,990 including interest at 2.53%, due September 1, 2016	3,905,741	4,287,644
iii) Harrow Sewage Lagoon Debenture, OIPC - repayable in semi-annual instalments of \$131,564 including interest at 2.67%, due February 3, 2025	3,659,512	3,821,677
iv) Essex Sanitary Sewer Construction Advance, OIPC - bearing interest ranging from 2.5% to 2.75%, repaid in full in February 2008	1,957,452	537,578
v) Harrow Sewage Lagoon Debenture - repayable in semi-annual instalments of \$91,272 including interest at 2.02%, due February 1, 2010	442,851	613,854
vi) Harrow/Colchester South Water Plant, OCWA - repayable in annual instalments including interest at 7.06%, due in various amounts by November 1, 2014	353,364	391,657
vii) Harrow Wastewater Lagoons Debenture, OCWA - repayable in monthly instalments of \$5,778 including interest at 6.95%, due December 1, 2009	124,096	182,588
	<u>14,565,792</u>	<u>14,122,642</u>

### ***Property Tax Supported***

i) Harrow/Colchester South Arena Debentures - repayable in annual instalments including interest ranging from 5.125% to 5.625%, due in various amounts by November 23, 2011	808,000	986,235
ii) Aquatics Centre Debentures - principal is repayable in annual instalments, interest is repayable in semi-annual instalments ranging from 5.65% to 6.5%, due in various amounts by December 10, 2009	513,000	747,000

# The Corporation of the Town of Essex

## Notes to Financial Statements

December 31, 2007

### 3. Net long-term debt (continued)

iii) Aquatics Centre Debentures - principal is repayable in annual instalments, interest is repayable in semi-annual instalments ranging from 5.125% to 5.625%, due in various amounts by November 23, 2011	\$ 493,000	\$ 601,750
iv) Transition Expense Debentures - principal is repayable in annual instalments, interest is repayable in semi-annual instalments ranging from 5.125% to 5.625%, due in various amounts by November 23, 2011	459,289	560,602
v) Joint Pool Venture Debenture - repayable in annual instalments of \$21,756 including interest at 5.25%, due August 1, 2013	109,549	124,755
vi) Other various debentures payable with various terms	61,555	63,000
	<u>2,444,393</u>	<u>3,083,342</u>

#### ***Benefiting Property Owners***

Watermain Debentures - repayable in annual instalments including interest ranging from 4.6% to 7.06%, due in various amounts from August 2008 to December 2014	2,510,109	3,393,603
Sanitary Sewer Connection Debentures - repayable in annual instalments including interest ranging from 5.65% to 11.8%, due in various amounts by July 2017	720,356	889,000
Drain loans - repayable in annual instalments including interest ranging from 4.25% to 5.25%, due in various amounts from July 2008 to August 2013	69,154	115,493
Tile Drain loans - repayable in annual instalments including interest ranging from 6.0% to 8.0%, due in various amounts from 2008 to 2017	49,566	53,255
Shoreline loans - repayable in annual instalments including interest ranging from 6.0% to 8.0%, due in various amounts from 2008 to 2014	44,057	72,931
Other various debentures payable with various terms	39,338	135,514
	<u>3,432,580</u>	<u>4,659,796</u>
Share of Union Water System obligations	<u>1,653,636</u>	<u>1,714,576</u>

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## The Corporation of the Town of Essex Notes to Financial Statements

**December 31, 2007**

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**3. Net long-term debt (continued)**

Subtotal	<b>\$ 22,096,401</b>	\$ 23,580,356
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The municipality is contingently liable for the tile and shoreline loans included above. The responsibility for payment of principal and interest has been assumed by individual landowners

<u>93,623</u>	<u>126,181</u>
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<b><u>\$ 22,002,778</u></b>	<b><u>\$ 23,454,175</u></b>
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Principal payments for the next 5 fiscal years and thereafter are as follows:

2008	\$ 4,788,059
2009	2,850,037
2010	2,098,446
2011	3,207,222
2012	936,476
Thereafter	<u>8,122,538</u>
	<b><u>\$ 22,002,778</u></b>

Interest payments included in revenue fund expenditures during the year were \$879,555 (2006 - \$882,815).

The long-term liabilities issued in the name of the Town have received approval by the Municipal Board on or before December 31, 2007. The annual principal and interest payments required to service these liabilities are within the annual debt repayment limit prescribed by the Ministry of Municipal Affairs and Housing.

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## The Corporation of the Town of Essex

### Notes to Financial Statements

**December 31, 2007**

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#### 4. Amounts to be recovered

The consolidated statement of financial position reflects a balance of \$25,198,280 (2006 - \$26,367,160) for amounts to be recovered in future years. This amount reflects liabilities which are budgeted and fully funded in future periods as these liabilities are retired. This balance is comprised of the following items:

	<u>2007</u>	<u>2006</u>
Long-term debt	\$ 22,002,778	\$ 23,454,175
Post-employment benefits	3,054,400	2,742,400
Accrued interest payable on long-term debt	141,102	170,585
	<u>\$ 25,198,280</u>	<u>\$ 26,367,160</u>

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#### 5. Equity in Union Water Supply System

	<u>2007</u>	<u>2006</u>
Equity in reserve funds	\$ 1,107,619	\$ 989,628

Effective January 2001, the assets, liabilities, rights and obligations of the Union Water Supply System (the "System") were transferred from the Ontario Clean Water Agency to the joint ownership of the System's participating municipalities pursuant to an order issued by the Minister of Environment under the Municipal Water and Sewage Transfer Act, 1997.

The equity interest of each municipality is determined according to its proportionate water consumption from the System. The Corporation's equity in the System is 6.4% (2006 - 6.4%).

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#### 6. Bank indebtedness

The municipality has an authorized line of credit up to \$5,000,000 bearing interest at prime less 0.80%. At December 31, 2007, \$4,583,936 in unused credit is available.



# The Corporation of the Town of Essex

## Notes to Financial Statements

**December 31, 2007**

### 7. Expenditures by object

Total operating expenditures for the year reported on the consolidated statement of financial activities are as follows:

	2007	2006
Salaries, wages and employee benefits	\$ 8,919,338	\$ 8,410,538
Materials, goods, services, utilities	4,657,379	4,295,436
Contracted services	2,867,571	2,781,005
Interest on long-term debt	857,863	943,716
Rents and financial expenses	351,229	352,991
External transfers	103,630	111,627
	<b>17,757,010</b>	<b>16,895,313</b>
Capital	5,742,318	7,090,773
	<b>\$ 23,499,328</b>	<b>\$ 23,986,086</b>

### 8. Public sector salary disclosure

The Public Sector Salary Disclosure Act requires all municipalities to disclose which, if any, employees or officers received a salary totaling more than \$100,000 during the year. During 2007, the following met this requirement:

Position	Name	Salary Paid	Taxable Benefits
Police Chief	Greg Pigeon	132,249	9,321
Deputy Police Chief	Chris Southward	118,443	528
C.A.O.	Wayne Miller	112,922	945
Treasurer	Donna Hunter	101,733	837

# The Corporation of the Town of Essex

## Notes to Financial Statements

**December 31, 2007**

### 9. Employment benefits

#### (a) Pension agreement

The municipality makes contributions to the Ontario Municipal Employees Retirement Fund (OMERS), which is a multi-employer plan, on behalf of its staff. This plan is a defined benefit plan which specifies the amount of the retirement to be received by the employees based on the length of service and rates of pay. The amount contributed to OMERS for 2007 was \$443,307 (2006 - \$422,450).

#### (b) Employee future benefit liabilities

Employee future benefit liabilities are future liabilities of the Corporation to its employees and retirees for benefits earned but not taken as at December 31, 2007 and consists of the following:

	<u>2007</u>	<u>2006</u>
Post employment benefits	\$ 3,054,400	\$ 2,742,400
Vacation	8,514	8,514
	<u>\$ 3,062,914</u>	<u>\$ 2,750,914</u>

Sick pay is paid annually for non-police and non-management employees.

#### (i) Post employment benefits

The post employment benefit liability is based on an actuarial valuation performed by the Corporation's actuaries. The actuarial valuation was performed as at January 1, 2006 and extrapolated to December 31, 2007. The significant actuarial assumptions adopted in estimating the Corporation's liability are as follows:

Discount rate	5.0%
Health Care Trend Rate	11% for 2008 grading to 6% in 2013
Other Medical Care Trend Rate	9% for the 2008 grading to 5% in 2012
Dental	4% per annum

Information about the Corporation's future liability with respect to these costs are as follows:

	<u>2007</u>	<u>2006</u>
Accrued benefit liability, beginning of year	\$ 2,742,400	\$ 2,433,000
Annual expense	379,500	362,800
Benefits paid	(67,500)	(53,400)
	<u>\$ 3,054,400</u>	<u>\$ 2,742,400</u>

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## The Corporation of the Town of Essex Notes to Financial Statements

**December 31, 2007**

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### **8. Employment benefits (continued)**

#### **(ii) Accrued sick leave**

Under the sick leave benefit plan, approved for all non-police employees and non-management employees, unused sick leave can accumulate and employees may become entitled to a cash payment when they leave the Town's employment. The amount of the payment is equal to the number of sick days to which the employee is entitled at one-half their rate of pay at the time of termination. Sick leave unused is normally paid out to non-police employees and non-management employees before the end of each fiscal year, resulting in no accrual at the year end. Police employees are paid one-half of unused sick leave days annually, resulting in no carryforward or vesting. Management employees are not entitled to sick leave benefits.

#### **(iii) Vacation**

Vacation entitlements for non-management employees can accumulate and employees would be entitled to a cash payment equal to the value of their unused entitlements if they were to terminate employment.

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### **10. Contractual obligation - Ontario Clean Water Agency**

In accordance with a service agreement entered into by the Town on February 13, 1958 with the Ontario Clean Water Agency (OCWA), the existing sewage and water systems are operated by OCWA. Under this agreement, the Town is obligated to meet all operating costs and repay the long-term liabilities related to this project.

Included in the consolidated statement of financial activities are the 2007 charges from OCWA of \$674,564 (2006 - \$564,552). The consolidated statement of financial position does not reflect any assets or liabilities pertaining to the sewage or water systems except to the extent of service charges due to (or from) OCWA and the total long-term liabilities outstanding. The accumulated net surplus of OCWA is not reflected in the accompanying consolidated financial statements. The total long-term liabilities as at December 31, 2007 are \$477,460 (2006 - \$574,245).

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# The Corporation of the Town of Essex

## Notes to Financial Statements

December 31, 2007

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### 11. Contingencies and commitments

The municipality is currently in the process of developing its pay equity plan. As a result, any salary adjustments resulting from the ultimate implementation of the pay equity plan are not determinable at this time. The Corporation has accrued \$97,900 to date. Any additional retroactive salary adjustments determined will be charged to expenditures in the year they become known.

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### 12. Comparative amounts

The comparative amounts presented in the financial statements have been restated to conform to the current year's presentation.

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### 13. Deferred revenue - development charges

Development charges are reported as deferred revenue since provincial legislation restricts the use of the funds to specific purposes and under certain circumstances the funds may be refunded.

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### 14. Tangible capital assets

For the year ended December 31, 2009 the municipality will be required to comply with Section 3150, Tangible Capital Assets of the Public Sector Accounting Board Handbook. Section 3150 requires the capitalization and amortization of tangible capital assets in the financial statements. As a transitional provision, Public Sector Guideline-7, Tangible Capital Assets of Local Governments, requires disclosure of information for each major class of tangible capital asset for which all the relevant information can be provided for the complete stock of tangible capital assets of that category.

There is currently no information available for any major class of tangible capital asset.

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### 15. Loan receivable

The loan receivable is monies loaned to Harrow Health Centre Inc. in the amount of \$1,000,000 bearing interest at 4.45% per annum, amortized over ten years. Principal and interest are due semi-annually and the loan can be repaid at any time without notice or bonus. The current repayment schedule is set with quarterly instalments of \$31,110 including principal and interest maturing on January 9, 2015.

# The Corporation of the Town of Essex Schedule of Current Fund Operations

For the year ended December 31	2007 Budget	2007 Actual	2006 Actual
<b>Revenue</b>			
Taxation	\$ 12,205,134	\$ 12,037,868	\$ 11,592,538
Sewer and water charges	5,596,513	6,011,933	5,503,611
Grants	1,960,032	1,975,469	2,596,125
User charges	2,165,210	2,542,475	2,276,865
Landfill compensation	1,263,774	1,249,680	1,709,291
Interest and penalties	495,845	799,511	676,643
Share of undistributed income - E.L.K. Energy Inc.	-	109,350	305,476
Development contributions	440,643	652,256	274,876
Other	204,820	307,958	246,354
Commuted payments	52,076	51,507	83,827
	<b>24,384,047</b>	<b>25,738,007</b>	<b>25,265,606</b>
<b>Expenditures</b>			
<b>Operating</b>			
General government	1,973,274	2,018,661	1,960,539
Protection to persons and property	5,729,171	5,793,150	5,434,549
Transportation services	2,365,319	2,074,146	1,889,948
Environmental services	4,853,277	4,662,012	4,543,970
Health services	215,728	192,669	218,180
Recreation and cultural services	2,623,742	2,749,857	2,573,510
Planning and development	299,772	266,515	274,617
	<b>18,060,283</b>	<b>17,757,010</b>	<b>16,895,313</b>
<b>Net revenues for the year</b>	<b>6,323,764</b>	<b>7,980,997</b>	<b>8,370,293</b>
<b>Financing and transfers</b>			
Debt principal repayments	(2,972,798)	(2,862,289)	(2,300,287)
Change in accrued interest payable and post-employment benefits	-	282,517	362,218
Transfers to capital fund operations	(81,169)	(1,038,347)	(1,402,199)
Net transfers to reserves and reserve funds	(2,271,688)	(3,693,218)	(4,782,771)
	<b>(5,325,655)</b>	<b>(7,311,337)</b>	<b>(8,123,039)</b>
<b>Change in fund balance for the year</b>	<b>998,109</b>	<b>669,660</b>	<b>247,254</b>
<b>Current fund, beginning of year</b>	<b>7,776,019</b>	<b>7,776,019</b>	<b>7,528,765</b>
<b>Current fund, end of year</b>	<b>\$ 8,774,128</b>	<b>\$ 8,445,679</b>	<b>\$ 7,776,019</b>
<b>Analyzed as follows:</b>			
Available to offset future taxation and user charges		\$ 755,331	\$ 195,021
Equity in E.L.K. Energy Inc.		7,690,348	7,580,998
		<b>\$ 8,445,679</b>	<b>\$ 7,776,019</b>

## The Corporation of the Town of Essex Schedule of Capital Fund Operations

For the year ended December 31	2007 Budget	2007 Actual	2006 Actual
<b>Revenue</b>			
Grants	\$ 129,458	\$ 2,762,309	\$ 1,177,079
Other	24,500	254,225	570,557
	<u>153,958</u>	<u>3,016,534</u>	<u>1,747,636</u>
<b>Expenditures</b>			
General government	85,650	47,582	217,682
Protection services	487,602	451,691	395,855
Transportation services	1,911,209	1,393,397	3,462,639
Environmental services	3,094,290	2,494,821	2,444,140
Health services	400	7,533	40,691
Recreation and cultural services	490,090	984,550	418,829
Planning and development	132,400	362,744	110,937
	<u>6,201,641</u>	<u>5,742,318</u>	<u>7,090,773</u>
<b>Net expenditures for the year</b>	<u>(6,047,683)</u>	<u>(2,725,784)</u>	<u>(5,343,137)</u>
<b>Financing and transfers</b>			
New debt issued	2,741,992	1,425,074	2,016,495
Transfers from current fund operations	81,169	1,038,347	1,402,199
Net transfers from reserves and reserve funds	2,735,077	362,652	2,817,028
	<u>5,558,238</u>	<u>2,826,073</u>	<u>6,235,722</u>
<b>Change in fund balance for the year</b>	<u>(489,445)</u>	<u>100,289</u>	<u>892,585</u>
<b>Capital fund, beginning of the year</b>	<u>(1,294,104)</u>	<u>(1,294,104)</u>	<u>(2,186,689)</u>
<b>Capital fund, end of the year</b>	<u>\$ (1,783,549)</u>	<u>\$ (1,193,815)</u>	<u>\$ (1,294,104)</u>

# The Corporation of the Town of Essex Schedule of Reserves and Reserve Funds

<b>For the year ended December 31</b>	<b>2007 Budget</b>	<b>2007 Actual</b>	<b>2006 Actual</b>
<b>Revenue</b>			
Other	\$ -	\$ 289,479	\$ 859,000
Interest	-	540,543	357,679
	-	830,022	1,216,679
<b>Net transfers from (to) other funds</b>			
Net transfers from current fund operations	2,271,688	3,693,218	4,782,771
Net transfers to capital fund operations	(2,735,077)	(362,652)	(2,817,028)
	(463,389)	3,330,566	1,965,743
<b>Change in balance for the year</b>	(463,389)	4,160,588	3,182,422
<b>Reserves and reserve funds, beginning of the year</b>	12,563,186	12,563,186	9,380,764
<b>Reserves and reserve funds, end of the year</b>	\$ 12,099,797	\$ 16,723,774	\$ 12,563,186
<b>Analyzed as follows:</b>			
<b>Reserves set aside for specific purpose by Council:</b>			
Working funds		\$ 1,000,000	\$ 1,000,000
<b>Reserve funds set aside for specific purpose by Council:</b>			
Contingencies		1,491,289	965,052
Sick leave benefits		173,112	166,021
Landfill		3,052,992	2,668,730
Other		3,744,220	1,616,690
Capital purposes		7,062,671	5,972,451
Gas tax revenue		199,490	174,242
		15,723,774	11,563,186
<b>Reserves and reserve funds, end of the year</b>		\$ 16,723,774	\$ 12,563,186

**The Corporation of the Town of Essex  
Trust Funds  
Financial Statements  
For the year ended December 31, 2007**





BDO Dunwoody LLP  
Chartered Accountants  
and Advisors

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## Auditors' Report

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### To the Members of Council, Inhabitants and Ratepayers of The Corporation of the Town of Essex

We have audited the balance sheet of the trust funds of The Corporation of the Town of Essex as at December 31, 2007 and the statement of continuity of the trust funds for the year then ended. These financial statements are the responsibility of the Municipality's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these financial statements present fairly, in all material respects, the financial position of the trust funds of The Corporation of the Town of Essex as at December 31, 2007 and the continuity of the trust funds for the year then ended in accordance with the accounting principles disclosed in the summary of significant accounting policies accompanying the financial statements.

*BDO Dunwoody LLP*

Chartered Accountants, Licensed Public Accountants

Essex, Ontario  
July 7, 2008

**The Corporation of the Town of Essex  
Trust Funds  
Balance Sheet**

**December 31, 2007**

	Ontario Home Renewal Program		Cemetery and Headstone Care and Maintenance	
	2007	2006	2007	2006
<b>Assets and liabilities</b>				
Cash	\$ 277	\$ 292	\$ 237,465	\$ 228,674
Due to general account	(225)	(245)	(94)	(739)
	<u>\$ 52</u>	<u>\$ 47</u>	<u>\$ 237,371</u>	<u>\$ 227,935</u>
 <b>Fund balance</b>	 <u>\$ 52</u>	 <u>\$ 47</u>	 <u>\$ 237,371</u>	 <u>\$ 227,935</u>

**Statement of Continuity**

**For the year ended December 31, 2007**

	Ontario Home Renewal Program		Cemetery and Headstone Care and Maintenance	
	2007	2006	2007	2006
<b>Net receipts</b>				
Interest and other	\$ 5	\$ -	\$ 9,436	\$ 7,800
 <b>Net change in trust funds during the year</b>	 5	 -	 9,436	 7,800
 <b>Balance, beginning of the year</b>	 47	 47	 227,935	 220,135
 <b>Balance, end of the year</b>	 <u>\$ 52</u>	 <u>\$ 47</u>	 <u>\$ 237,371</u>	 <u>\$ 227,935</u>

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**The Corporation of the Town of Essex  
Trust Funds  
Note to Financial Statements**

**December 31, 2007**

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**1. Summary of significant accounting policies**

**Basis of accounting**

Receipts and expenditures are reported on the cash basis of accounting.

**TOWN OF ESSEX  
RESPONSES TO INTERROGATORIES FROM  
THE SCHOOL ENERGY COALITION ("SEC")**

**Questions With Respect to the Post-Closing Covenants**

**SEC INTERROGATORY #1**

1. Please confirm that, under section 10.1 of the Purchase Agreement:
  - (a) The Applicant cannot allow the utility to terminate the employment of existing employees in order to obtain efficiencies of operation, for example by consolidating operations in Kingsville or Lakeshore into the town of Essex.
  - (b) In any subsequent M&A transaction involving the utility, the Applicant could not as shareholder consent to the transaction if the result of the transaction would be the termination any employees, or a requirement that any existing employees relocate outside of the existing franchise area.
  - (c) In particular, any acquisition by, or merger with, Chatham Kent Energy Inc. would have to have as a condition that existing employees of the utility would have to remain employed by the utility, and their place of employment would have to continue to be in the franchise area.

**RESPONSE**

With respect to each of the confirmations requested, it is noted generally that, to the extent that Section 10.1 of the Share Purchase Agreement purports to impose restrictions or obligations on the Applicant, those restrictions or obligations relate to terminations or relocations: "solely and exclusively as a result of the acquisition of the Sellers' Shareholder Interests by the (Applicant)". None of the hypothetical scenarios identified in SEC Interrogatory #1 relate to terminations or relocations occurring "solely and exclusively as a result of the acquisition of the Sellers' Shareholder Interest by the (Applicant)".

With respect to the specific matters identified in SEC Interrogatory #1, the Applicant provides the following responses:

- (a) Section 10.1 of the Share Purchase Agreement does not preclude the Applicant from allowing the utility to terminate the employment of existing employees in order to obtain efficiencies of operation, as such actions would not be attributable "solely and exclusively as a result of the acquisition of the Sellers' Shareholder Interests by the (Applicant)". Proper staffing of the utility is a management function that remains vested in the directors, officers and appropriate management personnel of E.L.K. Energy Inc. ("Energy"). Pursuant to Section 10.3

of the Share Purchase Agreement there is an express acknowledgement that nothing contained in Sections 10.1 or 10.2:

“...shall require the (Applicant) 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 (therein) 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”.

The Applicant can confirm that it is not contemplated that there will be any employee terminations or relocations “solely and exclusively as a result of the acquisition of the Sellers’ Shareholder Interests by the (Applicant)”.

(b) In any subsequent M&A transaction involving the utility the Applicant would not be precluded from granting shareholder consent to the transaction if the result of the transaction would be the termination of any employees, or a requirement that any existing employees relocate outside of the existing franchise area. In the circumstances described, the terminations or relocations would not be terminations or relocations attributable “solely and exclusively” as a result of the acquisition of the Sellers’ Shareholders Interests by the (Applicant)”. The terminations and relocations described in this hypothetical scenario would be attributable to the requirements of that specific transaction.

(c) In any acquisition by, or merger with, Chatham Kent Energy Inc. (or for that matter, with any other entity), there is nothing in the Share Purchase Agreement that would require a condition that existing employees of the utility would have to remain employed by the utility and their place of employment would have to continue to be in the franchise area.

**SEC INTERROGATORY #2**

2. **Please explain the reason why the Sellers have any interest in restricting the future operations of the utility as set forth in section 10.2.**

**RESPONSE**

The Applicant has no particular knowledge as to the reason why the Sellers have an interest in the matters set forth in Section 10.2 of the Share Purchase Agreement. The matters set forth in Section 10.2 of the Share Purchase Agreement were matters which the Sellers required any potential purchaser to address in the Sellers' request for proposals pursuant to which the sale process was initiated. These matters were contained in the offer submitted by Chatham-Kent Energy Inc. in response to the Sellers' request for proposals. As a consequence, in exercising its right of first refusal pursuant to the Shareholders Agreement (among Essex, the Town of Kingsville and the Town of Lakeshore), the Applicant addressed the identified matters in a manner consistent with the Chatham-Kent Energy Inc. offer.

Having said the foregoing, the Applicant does not agree with the characterization in the SEC interrogatory that the future operations of the utility are "restricted" by Section 10.2. Please see the responses to SEC Interrogatory #3 with respect to each item in Section 10.2 of the Share Purchase Agreement.

**SEC INTERROGATORY #3**

3. **With respect to the restrictive covenants in section 10.2 of the Purchase Agreement:**
- (a) **Please confirm that (a) prohibits the outsourcing of service centre operations to a third party if the result would be to provide service from a location outside of the Town of Essex.**
  - (b) **Please advise the test to be employed, and the reporting requirements that will arise, with respect to determining whether future “expansion opportunities” comply with (c).**
  - (c) **Please advise the actions that the utility expects to take to comply with (d). In particular, and without limiting the generality of the question, please advise the extent to which operations will be affected by the requirement to be a “facilitator of economic development”.**
  - (d) **Please provide a list of assets in the territory of each Seller that would qualify as a “material asset” under (e). Please confirm that this section is not intended to apply to either after-acquired assets, or distribution assets such as poles, wires, substations, and the like. Please describe the process to be undertaken to implement this right of first refusal, and the nature and impact of any delay in sale that will result from that process.**
  - (e) **Please confirm that, under (f), the utility would be prohibited from reducing its capital spending in response to an economic downturn or a substantial slowing of load growth.**
  - (f) **What is the “contemplated transaction” described in (g)? Please describe the property involved, and the expected transaction to transfer it to Kingsville. Please advise why this is not a pre-closing transaction.**

**RESPONSE**

(a) The requested confirmation cannot be provided. Section 10.2(a) of the Share Purchase Agreement does not prohibit the outsourcing of service centre operations to a third party if the result would be to provide service from a location outside of the Town of Essex. Section 10.2(a) on its face, simply requires the maintenance of at least one service centre in the Town of Essex for so long as Energy holds the Electricity Distribution Licence. The section does not preclude there being another service centre, nor does the section specify what level of activity must be conducted through the service centre maintained in the Town of Essex. As a practical matter, however, Essex is the only location from which Energy could meet service standards for all three municipalities. The attached map shows the location and municipal boundaries of the Towns of Essex, Kingsville and Lakeshore, as well as the location of Energy’s main service centre.

There are two important qualifiers to this Section 10.2. First, Section 10.2 applies only “[f]or so long as Energy holds a licence under the *Ontario Energy Board Act* to distribute electricity in the Territory”. Thus, any future merger or amalgamation that results in a new entity holding an Electricity Distribution Licence would mean that none of the obligations in Section 10.2 would continue to apply. Thus, the obligations in Section 10.2 in no way restrict any opportunities that might arise from a future merger or amalgamation.

Second, it should be noted that the section speaks to the Applicant exercising “such rights as it may have in its capacity as a shareholder of Energy...”. Section 10.3 of the Share Purchase Agreement makes it clear that the Applicant is not required “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 [Sections 10.1 or 10.2] 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”. Essex views decisions such as the maintenance of a service centre as a function of management, which appropriately remains vested in Energy’s management pursuant to Section 10.3 of the Share Purchase Agreement.

(b) There is no particular test to be employed and there are no reporting requirements that will arise with respect to determining whether future “expansion opportunities” comply with Section 10.2(c) of the Share Purchase Agreement. In the circumstances it is anticipated that the Board of Directors of Energy and its management would employ standard business judgment in compliance with their obligations as employees, officers and/or directors of Energy, and in accordance with the Ontario Energy Board’s jurisprudence that requires utility costs to be incurred reasonably and prudently.

(c) The Applicant does not anticipate that Energy will take any specific actions with respect to the matters identified in Section 10.2(d) of the Share Purchase Agreement other than to continue business in the ordinary course.

(d) The only asset that would qualify as a “material asset” within the meaning of Section 10.2(e) of the Share Purchase Agreement is the service depot in Kingsville. The Kingsville Service Depot is a service shop with four bays. It is 5,167 square feet and has an assessed value of \$300,000. Book value of the property is also approximately \$300,000.

The section is not intended to apply to either after-acquired assets, or distribution assets such as poles, wires, substations and the like. The foregoing is confirmed by the definition of “divest” in Section 10.2(e) of the Share Purchase Agreement. Dispositions of assets to a person who will be using the asset as part of or in connection with a “distribution system” do not meet the definition of “divest” as set out in Section 10.2.



For ease of reference, the definition of “divest” as set out in Section 10.2 of the Share Purchase Agreement is reproduced in its entirety:

“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);”

There is no particular process identified in the Share Purchase Agreement for affording a Seller a reasonable opportunity to acquire the asset for cash consideration at fair market value. The determination of the fair market value of the asset would depend upon the manner in which the process was initiated in the first instance. For example, if the process is initiated by an unsolicited offer from an arm's-length third party, it would be assumed that the consideration offered would reflect the fair market value of the asset. The Seller would then be afforded a reasonable opportunity to acquire the asset at fair market value. It is not anticipated that there would be any material delay in any sale resulting from that process.

(e) The requested confirmation cannot be provided. Pursuant to Section 10.2(f) of the Share Purchase Agreement, the utility would not necessarily be prohibited from reducing its capital spending in response to an economic downturn or a substantial slowing of load growth. The ultimate determination of the implementation of improvements contained in the most recent existing capital forecast is a management function specifically reserved to management pursuant to Section 10.3 of the Share Purchase Agreement. Energy's existing capital plan can be found at Tab H of the MAAD application. A good chunk of the capital plan deals with smart meters; the remainder does not anticipate any major work.

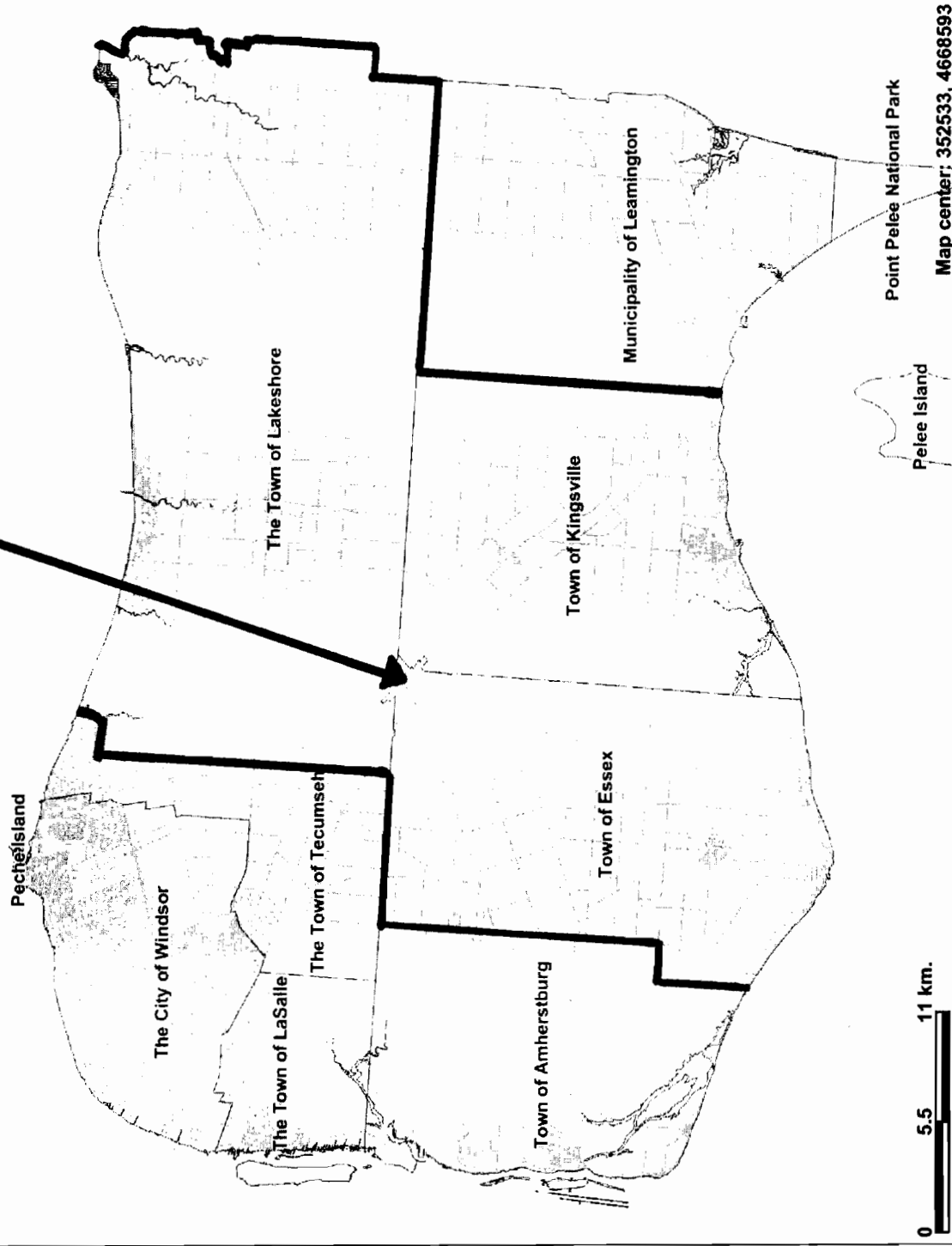
(f) The “contemplated transaction” described in subparagraph (g) is the transaction that would be required to effect the transferring or making the property described therein available to Kingsville for continued use as a municipal parking lot. However there is no specific “contemplated transaction” at this time. The property is currently leased by Energy to the Town of Kingsville. That lease expires on December 31, 2009, at which time it will likely be sold or re-leased to the Town of Kingsville.

# Location of Essex Service Centre



- Legend**
- Municipal Parks
  - Municipal Boundary
  - Streets - Other
  - Streets
  - Water Features
  - Water

Scale: 1:311,172



This map is a user generated static output from an internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

**SEC INTERROGATORY #4**

4. **Please provide a copy of the document dated June 30, 2008 from Chatham Kent Energy Inc. on which the Purchase Agreement is based. If that document was tendered in confidence, please file it in confidence under the Board's rules for confidential documents. Please also provide a copy of the Shareholders Agreement on which the right to match exercised in the Purchase Agreement is based. If any of the restrictive covenants in Article X of the Purchase Agreement are not contained in either the June 30th document, or the Shareholders Agreement, please identify those differences and explain why each one has been added.**

**RESPONSE**

Please see attached Shareholders Agreement among Essex, the Town of Kingsville, and the Town of Lakeshore. The Chatham-Kent Energy Inc. documentation is being filed in confidence.

**AMENDED AND RESTATED SHAREHOLDERS AGREEMENT**

**THIS AMENDED AND RESTATED SHAREHOLDERS AGREEMENT** made this  
21<sup>st</sup> day of October, 2002.

**A M O N G:**

**THE CORPORATION OF THE TOWN OF ESSEX**  
("Essex")

**OF THE FIRST PART;**

- and -

**THE CORPORATION OF THE TOWN OF**  
**KINGSVILLE** ("Kingsville")

**OF THE SECOND PART;**

- and -

**THE CORPORATION OF THE TOWN OF**  
**LAKESHORE** ("Lakeshore")

**OF THE THIRD PART;**

- and -

**E.L.K. ENERGY INC.** (the "Corporation")

**OF THE FOURTH PART;**

**WHEREAS** the issued and outstanding shares in the capital of the Corporation consist  
of 10,000 common shares, issued as follows:

<u>Shareholder</u>	<u>Number of Common Shares</u>
Essex	3,800
Kingsville	3,800
Lakeshore	2,400

**AND WHEREAS** the Corporation is indebted to each of the Shareholders for the following amounts, as evidenced by promissory notes issued by the Corporation on or about the date hereof.

<u>Shareholder</u>	<u>Amount of Indebtedness</u>
Essex	\$2,470,000.00
Kingsville	\$2,470,000.00
Lakeshore	\$1,560,000.00

**AND WHEREAS** the parties to this Agreement are parties to a Shareholders' Agreement dated the 1<sup>st</sup> day of January, 2000 (the "Original Agreement") and desire to amend and restate the Original Agreement on the terms and conditions hereinafter set forth;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto hereby covenant and agree with each other as follows:

## **ARTICLE 1 DEFINITIONS**

### **1.1        Definitions**

Wherever used in this Agreement, the following terms shall have the following meanings respectively:

- (a) **"Affiliate"** shall have the meaning ascribed thereto in the *Ontario Business Corporations Act*.
- (b) **"Agreement"** includes this agreement, any agreement which is supplementary to or in amendment or confirmation of this Agreement, any Assumption Agreement and any schedules hereto or thereto;
- (c) **"Assumption Agreement"** means an agreement among the Corporation and the Shareholders remaining after a Transfer of Shares and a Shareholder's Shareholder Loan and the transferee of such Shares and Shareholder Loan, whereby such transferee, if not a Shareholder prior to the Transfer, agrees to be bound by all the obligations and subject

to all the restrictions and liabilities under this Agreement in the same manner as if it had been an original party and to the same extent as the transferor of the Shares and Shareholder Loan and agrees, if such transferee is a Controlled Entity, not to suffer or permit any Transfer of shares in such Controlled Entity, if a corporation, except in accordance with the terms of this Agreement;

- (d) **"Business"** means the distribution of electricity throughout the Territory and the fulfillment of the Corporation's obligations under Section 29 of the Electricity Act with respect to the Territory, all in accordance with the provisions of the Electricity Act and the licenses issued to the Corporation under the OEB Act in respect of such activities;
- (e) **"Business Day"** means every day except Saturdays, Sundays and holidays (as that term is defined in the *Interpretation Act* (Canada));
- (f) **"Closing"** has the meaning ascribed thereto in Article 5 ;
- (g) **"Controlled Entity"** means a corporation which is wholly-owned by a Shareholder;
- (h) **"Corporation"** means E.L.K. Energy Inc., a corporation incorporated under the laws of Ontario;
- (i) **"Electricity Act"** means *The Electricity Act, 1998*;
- (j) **"OEB Act"** means the *Ontario Energy Board Act, 1998*;
- (k) **"Original Agreement"** has the meaning attributed to such term in the third recital of this Agreement;
- (l) **"Share"** means the common shares of the Corporation, as well as:
  - (i) any additional common shares or preference shares in the capital of the Corporation which may hereinafter be created;
  - (ii) any common shares or preference shares into which said shares then authorized may be converted, reclassified, redesignated, subdivided, consolidated or otherwise changed;

- (iii) any common shares or preference shares of the Corporation or of any successor or other body corporate which may be received by the Shareholders on a merger, amalgamation or other reorganization of the Corporation;
  - (iv) any securities of the Corporation which may now or hereafter be convertible or exercisable into common shares or preference shares; and
  - (v) any rights, warrants, or entitlement, contingent or actual, to acquire any securities of the Corporation or entitling a person to acquire any share of the Corporation;
- (m) **"Shareholders"** means Essex, Lakeshore and Kingsville and their respective successors and permitted assigns;
- (n) **"Shareholder Loan"** means, with respect to any Shareholder, all of the indebtedness of the Corporation to such Shareholder, including, without limitation, the indebtedness evidenced by the promissory note issued by the Corporation to such Shareholder on or about the date hereof;
- (o) **"Shareholder Loan Security"** means, with respect to any Shareholder, any security granted by the Corporation to such Shareholder to secure the Shareholder Loan held by such Shareholder;
- (p) **"Terminal Event"** means the occurrence of any of the following events with respect to a Shareholder:
- (i) such Shareholder making an assignment for the benefit of creditors or a proposal under the Bankruptcy and Insolvency Act or being declared bankrupt or becoming insolvent;
  - (ii) any trustee in bankruptcy, receiver, receiver and manager, liquidator or other officer with similar powers being appointed for such Shareholder or all or any material part of its or his property;

- (iii) any encumbrancer taking possession of the Shares or Shareholder Loan beneficially owned by such Shareholder, or a distress or execution or any similar process being levied or enforced upon or against the Shares or Shareholder Loan beneficially owned by such Shareholder or remaining unsatisfied for a period of thirty (30) days; or
- (iv) such Shareholder breaching any provision of this Agreement in any material respect and failing to remedy such breach within fifteen (15) days of being notified in writing of such breach by any other Shareholder or the Corporation.

In any case in which a Shareholder has transferred its Shares and Shareholder Loan to a Controlled Entity, the occurrence of one of the foregoing events with respect to the transferor shall be deemed to be a Terminal Event with respect to such Controlled Entity, and vice-versa.

- (q) **"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;
- (r) **"Third Party Offer"** and **"Third Party Offeror"** have the meanings attributed to such terms in Section 4.3;
- (s) **"Transfer"** means to, directly or indirectly, sell, assign, surrender, gift, bequeath, transfer, pledge, mortgage, charge, create a security interest in, hypothecate or enter into any agreement or option to or otherwise encumber or deal with or dispose of any of the Shares or the Shareholder Loan of a Shareholder or any interest, whether legal or beneficial, in the Shares or the Shareholder Loan of a Shareholder, whether voluntarily, involuntarily, by operation of law or otherwise (including without limitation, any arrangement by which legal title or beneficial ownership passes from one person to another, or to the same person in a different capacity, whether or not for value);



**ARTICLE 2**  
**MANAGEMENT AND OPERATIONS OF THE CORPORATION**

**2.1        Voting**

Each Shareholder agrees to vote, or cause to be voted, all of the Shares which such Shareholder owns or controls from time to time in order to give effect to the terms of this Agreement and to the extent, if any, which may be permitted by law, shall cause its respective nominee(s) as director(s) of the Corporation to act accordingly.

**2.2        Appointment of Directors**

**2.2.1**        The Corporation shall have a board of directors composed of six directors. Each Shareholder shall be entitled to nominate and elect two nominees to the board of directors.

**2.2.2**        On the appointment or election of each director, the secretary of the Corporation shall make note of the nominator. A nominator shall be entitled by direction in writing from time to time to remove any or all of its nominees and to nominate a successor who shall, promptly upon the resignation of the existing director, be elected a director to replace the individual previously nominated, subject to the provisions of subsection 2.2.1.

**2.2.3**        Should any vacancy occur on the Board of Directors of the Corporation, such vacancy shall be filled forthwith by the Shareholder(s) who is not then represented by the nominee to which it is entitled hereunder, appointing a nominee. Such vacancy shall be filled forthwith.

**2.3        Meetings of Directors**

**2.3.1**        A meeting of the board of directors of the Corporation may be called by any director, provided that at least four (4) Business Days prior written notice is sent to the other directors. A director may waive notice of a meeting of the board of directors, and the attendance of a director at a meeting shall constitute a waiver of notice of the meeting (except where a director attends a meeting for the express purpose of objecting to the transaction of business on the grounds that the meeting is not properly called). A

meeting of directors may be held by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously and a director participating in such meeting by such means is deemed for the purpose hereof to be present at that meeting.

**2.3.2** A quorum of a meeting of the directors shall consist of a majority of the directors.

**2.3.3** At all meetings of the directors no decision shall be made and no resolution shall be passed unless it is approved by a majority of the directors present. The Chairman of a meeting of directors shall not have a second or casting vote.

**2.4** **Meetings of Shareholders**

**2.4.1** The Shareholders of the Corporation shall meet at least once in every financial year of the Corporation to deal with those matters which the *Business Corporations Act* (Ontario) requires be dealt with at an annual meeting of shareholders and at each such meeting the Chief Executive Officer shall report fully to the Shareholders with respect to the current status of operations of the Corporation and with respect to all major developments or planned action involving the Corporation and shall present to the meeting full current financial information with respect to the Corporation. Alternatively, the Shareholders shall annually adopt a written resolution under Section 104(1) of the *Business Corporations Act* (Ontario) dealing with those matters required to be dealt with at an annual meeting of Shareholders.

**2.4.2** A meeting of the Shareholders of the Corporation may be called by any Shareholder, provided at least ten (10) days' prior written notice is sent to the other Shareholders. A Shareholder may waive notice of a meeting of the Shareholders, and the attendance of a Shareholder at a meeting, either in person or by proxy, shall constitute a waiver of notice of the meeting (except where a Shareholder attends a meeting for the express purpose of objecting to the transaction of business on the grounds that the meeting is not properly called).

**2.4.3** A quorum of a meeting of Shareholders shall consist of Shareholders present in person or by proxy representing not less than fifty-one (51%) percent of the issued Common Shares.

**2.4.4** At all meetings of Shareholders, no decision shall be made and no resolution shall be passed unless it is approved by more than fifty (50%) percent of the votes cast.

**2.5 Books of Account**

Proper books of account and records shall be kept by the Corporation at its head office and entries shall be made therein in accordance with generally accepted accounting principles. Each of the Shareholders shall have free access at all times to examine and copy such books of account and records, provided that any confidential information which is obtained shall not be disclosed to others or used for any improper purpose. Each of the Shareholders shall at all times, without any concealment or suppression, furnish correct information, accounts and statements to the Shareholders and to the Corporation in respect of all transactions pertaining to the Corporation.

**2.6 Shareholder's Audit**

A Shareholder may at any time, at its own expense, cause an audit to be made of the Corporation's books and accounts by a chartered accountant or certified general accountant who shall not be a Shareholder, appointed by such Shareholder. Such appointee shall, for the purpose of performing the audit, have access to all books, accounts, records, vouchers, cheques, papers and documents of or which relate to the Corporation's business, and shall be entitled to require the Shareholders, directors, officers and employees of the Corporation to provide such information and explanation as in his opinion are necessary to enable him to make such an audit. The results of such audit shall be disclosed to the Corporation and the Shareholders. If such audit shall disclose that there are material irregularities in the books and accounts of the Corporation, then the Shareholder who has caused such audit to be performed shall be reimbursed by the Corporation for all costs and expenses incurred by such Shareholder in connection therewith.

**2.7           Bank Account**

The Corporation shall maintain a bank account or bank accounts with such bank or trust company as the directors may from time to time determine. All bank accounts of the Corporation shall be kept in the name of the Corporation. All monies received for the account of the Corporation shall be paid immediately into a bank account of the Corporation, in the same drafts, cheques, bills or cash in which they are received.

**2.8           Officers**

The Corporation shall have five officers, namely, a Chief Executive Officer, Operations Manager, Director of Finance, a Chairperson of the Board and a Vice-Chair of the Board, and such other officers as may be appointed by the Board of Directors.

All contracts, banking documents, cheques, negotiable instruments and other documents entered into by or on behalf of the Corporation shall be in writing and shall require the signatures of the Chief Executive Officer or in his or her absence, the Operations Manager, for contracts, cheques, etc. involving the expenditure of amounts up to \$5,000.00 or contracts terminable on 30 days' notice or less, and either the Chair or Vice-Chair of the Board, for amounts over \$5,000.00 or contracts not terminable on 30 days' notice or less, subject to change by the board of directors at any time and from time to time.

**2.9           Enforcement of Certain Agreements**

Each Shareholder and every director of the Corporation who is a nominee of such Shareholder shall be deemed to have a material interest in, and is to be regarded as interested in the commencement of legal proceedings by or on behalf of the Corporation the subject matter of which would be the enforcement of, the provisions of any contract between the Corporation and such Shareholder or any person with whom such Shareholder does not deal at arm's length (as such term is used in the Income Tax Act (Canada)) and agrees that it shall, and shall cause its nominee to, refrain from voting on any resolution to approve or disapprove the commencement of such legal proceedings.

**2.10          Distributions**

All funds received by the Corporation shall be paid and distributed in the following order:

- (a) The payment of all debts and liabilities of the Corporation which are due and payable from time to time to Persons dealing at arms' length, as that term is construed for the purposes of the *Income Tax Act* (Canada), with all of the parties to this Agreement;
- (b) The establishment of such reserves as may be:
  - (i) required by the auditors of the Corporation in accordance with generally accepted accounting principles, and/or
  - (ii) approved by the Directors of the Corporation;
- (c) The repayment of interest owing on all Shareholder Loans, pro rata to each Shareholder in proportion to the total amount of accrued interest owed each Shareholder;
- (d) If agreed by all of the Shareholders, the repayment of principal owing on the Shareholder Loans in accordance with Section 2.11; and
- (e) The payment of dividends, provided that no such dividends shall be declared or paid except to the extent that they can be satisfied by the Corporation without incurring any additional liabilities.

#### **2.11      Shareholder Loans**

No Shareholder shall demand or require repayment of all or any portion of its Shareholder Loan or take any steps to enforce or realize upon its Shareholder Loan Security without the prior written consent of all Shareholders, and each Shareholder agrees that interest shall be paid on its Shareholder Loan only to the extent that funds are available for such payment under Section 2.10. Unless otherwise agreed by all Shareholders, any repayment of the principal of the Shareholder Loans shall be made on a pro rata basis in accordance with the proportion that the principal amount of indebtedness owing to each Shareholder in respect of its Shareholder Loan bears to the total principal amount of all Shareholder Loans.

#### **2.12      Priorities**

The security interests and floating charges in the properties and assets of the Corporation created by the Shareholder Loan Security granted each Shareholder shall rank equally, on

a *pari passu* basis, with the security interests and floating charges in the properties and assets of the Corporation created by the Shareholder Loan Security granted each other Shareholder, such that all proceeds derived from the Shareholder Loan Security granted each of the Shareholders shall be shared among the Shareholders on a pro rata basis in accordance with the proportion that the principal amount of the Shareholder Loan owed each Shareholder bears to the aggregate principal amount of all Shareholder Loans at the time of any distribution of such proceeds. The priorities provided for in this Section 2.12 shall apply notwithstanding:

- (a) the priorities otherwise accorded to the Shareholder Loan Security granted to each Shareholder under applicable law;
- (b) the time or order of creation, granting, execution, delivery, attachment, registration, perfection or enforcement of the Shareholder Loan Security granted each Shareholder;
- (c) that any Shareholder Loan Security granted any Shareholder shall be defective, unperfected, or unenforceable for any reason whatsoever;
- (d) the time of crystallization of any floating charge or floating hypothec in or on the assets or properties of the Corporation;
- (e) the provisions of any other document or agreement between or among, or executed by, any of the parties hereto;
- (f) any forbearance whatsoever, whether as to time, performance or otherwise, or any loss or alteration in, or dealing with, all or any part of, the Shareholder Loan Security granted any Shareholder, or any of the collateral secured thereby;
- (g) any invalidity or unenforceability of, or any limitation on, any liability of the Corporation to any of the parties hereto;
- (h) any defence, compensation, set off or counter-claim which the Corporation may claim, have or assert;
- (i) any dissolution, bankruptcy, receivership, winding-up, liquidation or other similar proceedings in respect of the Corporation (whether voluntary or involuntary), any

proposal or other proceeding seeking a stay of proceedings, reorganization or compromise of the claims of creditors made or commenced by the Corporation or others under the *Bankruptcy and Insolvency Act* (Canada), the *Companies Creditors Arrangement Act* (Canada), the *Winding-up and Restructuring Act* (Canada), each as now and hereinafter in effect, any successors to such statutes and any other applicable insolvency or similar law of any jurisdiction, including, without limitation, any law of any jurisdiction permitting a debtor to obtain a stay or compromise of the claims of its creditors against it;

- (j) any priority granted by any principle of law or any statute; or
- (k) any other matter whatsoever.

#### **2.13 Approved Financings**

If the board of directors of the Corporation approves the borrowing by the Corporation of funds from a bank or other lender dealing at arms' length (as such term is used in the *Income Tax Act* (Canada)) with the Corporation and each Shareholder (a "Lender"), and such Lender requires, as a condition of advancing such funds, that each Shareholder:

- (a) subordinate its Shareholder Loan Security to any security granted the Lender;
- (b) agree not to demand or accept repayment of any of the principal portion of its Shareholder Loan for so long as any indebtedness is owed to such Lender; and/or
- (c) provide such other assurances or acknowledgements as the Lender may reasonably request,

each Shareholder will provide such subordination, agreement and/or reasonable acknowledgements and assurances in such reasonable form as is required by the Lender.

#### **2.14 Sales of Assets**

If the Corporation, acting with the approval of its board of directors or with the approval of an officer or officers of the Corporation who have been delegated sufficient authority by the board to enable such officer(s) to give such approval, or, in the case of the sale, exchange or disposition of its

undertaking or any part thereof as an entirety or substantially as an entirety, with the approval of all of the Shareholders, sells, exchanges or disposes of all or any portion of its assets, each Shareholder shall, contemporaneously with the completion of such sale, exchange or disposition, release and discharge its Shareholder Loan Security from the asset(s) being sold, exchanged or disposed of. However, a Shareholder shall not be required to grant a release and discharge pursuant to the foregoing provisions of this Section 2.14 at any time while an "Event of Default" (as defined in the Shareholder's Shareholder Loan Security) has occurred and is continuing.

### **ARTICLE 3 SHAREHOLDER DECISIONS**

#### **3.1 Unanimous Shareholder Agreement**

This Agreement constitutes a unanimous shareholder agreement with respect to the Corporation within the meaning of the Ontario Business Corporation Act. All decisions, approvals, consents and other actions which this Agreement states are to be made or taken by two or more of the Shareholders under the terms of this Agreement shall be made or taken exclusively by the Shareholders and shall bind the Corporation. The powers of the directors to manage or supervise the management of the business and affairs of the Corporation (and the corresponding obligations and responsibilities of the directors) shall be accordingly restricted to such extent to the fullest extent permitted by law, and to such extent the Shareholders shall have all the rights, powers, duties and liabilities of a director of the Corporation.

#### **3.2 Major Decisions**

The parties agree that, notwithstanding any provision contained in the Act or in the articles or by-laws of the Corporation or in this Agreement, except with the written consent of all Shareholders:

- (a) no additional shares in the capital of the Corporation shall be allotted or issued;
- (b) the business of the Corporation shall be restricted to the Business and there shall be no material change in the nature of the business of the Corporation nor any action taken which may lead to or result in such material change; and



- (c) the Corporation shall not sell, lease, exchange or dispose of its undertaking or any part thereof as an entirety or substantially as an entirety;

## **ARTICLE 4 TRANSFERS**

### **4.1      Warranty as to Ownership**

Each Shareholder hereby warrants and represents that it is the registered and beneficial owner of that number of Shares and that principal amount of Shareholder Loan set forth beside its name in the recitals to this Agreement free and clear of any liens, charges, security interests, encumbrances, adverse claims, preemptive rights, options, contracts, actions or demands whatsoever except those contained in this Agreement, and that there is not now any basis upon which the said Shares and/or Shareholder Loan might become so encumbered, and that it is neither a party to nor bound by any agreement regarding the ownership of its Shares and/or Shareholder Loan, other than this Agreement, and that it is not a party to, bound by or subject to any indenture, mortgage, lease, agreement, instrument, charter or by-law provision, statute, regulation, order, judgment, decree or law which would be violated, contravened or breached by, or under which any default would occur as a result of the execution and delivery by such Shareholder of this Agreement or the performance by such Shareholder of any of the terms hereof.

### **4.2      Prohibition on Transfers**

**4.2.1** Except pursuant to the provisions of this Agreement, no Shareholder shall Transfer any of its Shares or its Shareholder Loan without the prior written consent of the other Shareholders. Notwithstanding the foregoing, a Shareholder shall be entitled to Transfer all, but not less than all, of its Shares and its Shareholder Loan to a Controlled Entity, provided that such Shareholder shall deliver to the other Shareholders, at least ten (10) days prior to any such sale:

- (i) a statutory declaration by such Shareholder setting out the particulars of the Transfer and of the shareholdings or beneficiaries of the Controlled Entity with an agreement to deliver to the other Shareholders details of any changes in the shareholdings or beneficiaries prior to any such change;

- (ii) an Assumption Agreement; and
- (iii) an agreement whereby the transferor and the transferee shall agree with the other Shareholders that the transferee will remain a Controlled Entity of such Shareholder so long as it is a Shareholder.

It is understood and agreed that notwithstanding any such Transfer, the transferor shall be liable for breaches by the Controlled Entity of its obligations under this Agreement and shall continue to be bound by the provisions of Article 6.

**4.2.2** Any proposed Transfer or Transfer in contravention of this Section 4.2 shall be null and void.

**4.3 "Third Party Offer" Defined**

"Third Party Offer" means a bona fide offer from an arm's length third party acting as principal (the "Third Party Offeror") for the purchase of all (but not less than all) of the issued and outstanding Shares and Shareholder Loan held by such Shareholder and pursuant to which:

- (a) the sole consideration for such Shares and Shareholder Loan is cash, in a stated Canadian dollar amount per share, payable either at closing or in instalments or both;
- (b) the sole security for the payment of any instalments of the purchase price is a security interest in the Shares and Shareholder Loan to be purchased; and
- (c) no terms or conditions are imposed which are so unique or unusual as to be impossible to satisfy on a commercially reasonable basis.

**4.4 Right of First Refusal on Sale By a Shareholder**

If any Shareholder (referred to in this Section 4.4 as the "Selling Shareholder") receives a Third Party Offer at any time after two (2) years from the date hereof for the purchase of all of its Shares (referred to in this Section 4.4 as the "Subject Interest") which the Selling Shareholder wishes to accept, then the other Shareholders (referred to in this Section 4.4 as the "Remaining Shareholders")

shall have an option to purchase the Subject Interest on the terms and conditions contained in the Third Party Offer and the following terms and conditions shall apply:

- (a) the Selling Shareholder shall promptly give written notice to the Remaining Shareholders stating that the Selling Shareholder desires to sell the Subject Interest in accordance with the Third Party Offer and such notice shall be accompanied by a true copy of the Third Party Offer;
- (b) a Remaining Shareholder may by giving written notice to the Selling Shareholder and the other Remaining Shareholder within thirty (30) days after the notice is given pursuant to subparagraph 4.4(a) above (the "First Acceptance Date"), elect to purchase a percentage of the Subject Interest which corresponds to the percentage which such Remaining Shareholder's Shares are of the total number of Shares owned by both Remaining Shareholders (its "Pro Rata Portion") (such percentage to be applied to both the Shares comprised within the Subject Interest and the principal amount of the Shareholder Loan comprised within the Subject Interest);
- (c) if each Remaining Shareholder elects to purchase its Pro Rata Portion of the Subject Interest it shall purchase and pay for, and the Selling Shareholder shall sell to the Remaining Shareholder, the Subject Interest on the terms and conditions set out in the Third Party Offer;
- (d) if one Remaining Shareholder elected to purchase its Pro Rata Portion of the Subject Interest but the other Remaining Shareholder does not so elect pursuant to the foregoing provisions, the Remaining Shareholder who elected to purchase its Pro Rata Portion shall not have the right to purchase any portion of the Subject Interest unless such Remaining Shareholder elects, by written notice delivered to the Selling Shareholder within ten (10) days following the First Acceptance Date (the "Final Acceptance Date"), to purchase all of the Subject Interest;
- (e) the date of closing of the transaction of purchase and sale contemplated in this section shall be the 30<sup>th</sup> day following the First Acceptance Date, if each Remaining Shareholder has elected to purchase its Pro Rata Portion of the Subject Interest, or the

Final Acceptance Date if one Remaining Shareholder has elected to purchase all of the Subject Interest (or, if the 30<sup>th</sup> day following the First or Final Acceptance Date, as the case may be, is not a Business Day, then the first Business Day following such 30<sup>th</sup> day) or such earlier date as the purchasing Remaining Shareholder(s) may elect on at least 48 hours notice;

- (f) unless either or both of the Remaining Shareholders agree pursuant to the foregoing provisions to purchase all of the Subject Interest, then the Selling Shareholder may sell the Subject Interest to the Third Party Offeror in accordance with the Third Party Offer;
- (g) if the sale of the Subject Interest to the Third Party Offeror is not completed within ninety (90) days after the First Acceptance Date or Final Acceptance Date, as the case may be, then the Selling Shareholder shall not proceed with the sale of the Subject Interest without again complying with the provisions of this Section 4.4.

#### **4.5      Assumption Agreement**

A Shareholder shall not Transfer any Shares to a Person who is not a party to this Agreement unless such Person also acquires such Shareholder's Shareholder Loan and has executed an Assumption Agreement.

#### **4.6      Terminal Event**

- (a) Upon the occurrence of a Terminal Event with respect to a Shareholder (the "Terminal Shareholder"), each Remaining Shareholder (a "Remaining Shareholder") shall have the right to require, by written notice delivered to the Terminal Shareholder and the other Remaining Shareholder, that the Shares and Shareholder Loan owned by the Terminal Shareholder (collectively, the "Subject Interest") be valued in accordance with the provisions of Schedule "A" attached hereto. The fair market value of the Subject Interest as determined in accordance with Schedule "A" is hereafter referred to as the "Fair Market Value".
- (b) At any time during the thirty (30) day period following the determination of the Fair Market Value of the Subject Interest, a Remaining Shareholder shall have the option,

exercisable by written notice to the Terminal Shareholder, to purchase, and to require the Terminal Shareholder to sell, a percentage of the Subject Interest which corresponds to the percentage which such Remaining Shareholder's Shares are of the total number of Shares owned by both Remaining Shareholders (its "Pro Rata Portion") (such percentage to be applied to both the Shares comprised within the Subject Interest and the principal amount of the Shareholder Loan comprised within the Subject Interest) for a purchase price equal to its Pro Rata Portion of the Fair Market Value of the Subject Interest. If one Remaining Shareholder elects to purchase its Pro Rata Portion of the Subject Interest but the other Remaining Shareholder does not so elect pursuant to the foregoing provisions, the Remaining Shareholder who elected to purchase its Pro Rata Portion of the Subject Interest shall have the right, during the ten (10) day period following the expiry of the aforementioned thirty (30) day period, to elect, by written notice delivered to Selling Shareholder to purchase all of the Subject Interest for its Fair Market Value.

- (c) The closing of any purchase pursuant to this Section 4.6 shall take place on the forty-fifth (45<sup>th</sup>) day (or, if such 45<sup>th</sup> day is not a Business Day, the next Business Day thereafter) following the determination of the Fair Market Value of the Subject Interest.
- (d) In addition to the rights of purchase set forth above in this Section 4.6, if a Terminal Event described in clause (iv) of the definition of that term contained in Section 1.1(p) should occur, the Remaining Shareholders shall have the right to, either jointly or alone:
  - (i) do such acts and things and make such payments as are reasonably necessary in order to remedy such Terminal Event and shall be entitled on demand to be reimbursed by the Terminal Shareholder for any monies expended in attempting or purporting to remedy such Terminal Event (including legal fees on a solicitor and client basis); and/or
  - (ii) exercise any other remedy available to the Remaining Shareholders either at law or in equity or pursuant to the terms of this Agreement.

## ARTICLE 5 CLOSING

### 5.1 Closing

The closing (referred to in this Section 5.1 as the "Closing") of any purchase and sale of the Shares and Shareholder Loan of a Shareholder pursuant to any provision of this Agreement shall be held at the head office of the Corporation at 10 o'clock in the morning (local time) on the date stipulated for the Closing in this Agreement and, unless otherwise expressly provided in or pursuant to this Agreement, the following terms and conditions shall apply:

- (a) At Closing, the Shareholder obligated to sell its Shares and Shareholder Loan (referred to in this Section 5.1 as the "Selling Shareholder") shall deliver to the Shareholders purchasing the Selling Shareholder's Shares and Shareholder Loan (referred to in this Section 5.1 as the "Purchasing Shareholder(s)") certificates representing the Shares being sold, and any promissory note(s) evidencing the Shareholder Loan being sold, in each case duly endorsed for transfer and shall resign or cause its nominees to resign, in writing, from all positions which it then holds with the Corporation whether as director, officer, employee, agent or otherwise and shall deliver a general release to the Corporation and the other Shareholders for matters up to Closing executed by the Selling Shareholder and its nominees.
- (b) At Closing, the Selling Shareholder shall deliver to the Purchasing Shareholder(s) good title to the Shares and Shareholder Loan being sold, free from all mortgages, charges, security interest, claims, encumbrances and restrictions whatsoever. If, at Closing, the Shares and/or Shareholder Loan being sold shall be subject to any mortgage, charge, security interest, claim, encumbrance or restriction, then the Purchasing Shareholder(s) shall be entitled to do such acts and things, and make such payments, as seem necessary to the Purchasing Shareholder(s) in order to discharge such mortgage, charge, security interest, claim, encumbrance or restriction and the Purchasing Shareholder(s) shall deduct from the purchase price for the Shares and Shareholder Loan being sold all costs, outlays and expenses made or incurred in so doing. In addition, the Selling Shareholder shall deliver to the Purchasing Shareholder(s) all accounts, records and other documents in its possession belonging to Corporation and shall execute and deliver to the

Purchasing Shareholder(s) or the Corporation, as the case may be, all such instruments as may reasonably be required to give effect to the Transfer.

- (c) Any amount owing by a Selling Shareholder to the Corporation or to the Purchasing Shareholder(s) or any Affiliate thereof shall be settled prior to Closing, failing which, as regards amounts owing by a Selling Shareholder, such amount may be deducted by the Purchasing Shareholder(s) from the purchase price and paid to the Corporation or the Purchasing Shareholder(s) or Affiliate, as the case may be.

## **5.2      Refusal to Close**

If a Selling Shareholder fails to complete the transaction of purchase and sale, then the amount which the Purchasing Shareholder(s) would otherwise be required to pay to such Selling Shareholder at Closing may be deposited by the Purchasing Shareholder(s) into a trust account in the name of such Selling Shareholder at a bank branch used by the Corporation in Toronto. Upon making such deposit and giving the Selling Shareholder notice thereof, the purchase of the Shares and Shareholder Loan by the Purchasing Shareholder(s) shall be deemed to have been fully completed and all right, title, benefit and interest, both at law and in equity, in and to the Shares and Shareholder Loan shall be conclusively deemed to have been transferred and assigned to and vested in the Purchasing Shareholder(s). The Selling Shareholder shall be entitled to receive the amount deposited in the trust account upon satisfying its obligations hereunder.

## **5.3      Power of Attorney**

In connection with the sale of any Shares and Shareholder Loan pursuant to this Agreement, if the Selling Shareholder has not complied with the provisions of this Article 5 without cause, the Selling Shareholder hereby irrevocably nominates, constitutes and appoints the other Shareholder as its true and lawful attorney and agent, in accordance with the *Powers of Attorney Act*, R.S.O. 1990, for, in the name of and on behalf of the Selling Shareholder to execute and deliver all such assignments, transfers, deeds or instruments as may be necessary to effectively transfer and assign the Shares and Shareholder Loan being sold to the Purchasing Shareholder(s) and in accordance with the *Powers of Attorney Act*, the Selling Shareholder declares that this power of attorney may be exercised during any subsequent legal incapacity on its part. Such appointment and power of attorney,

being coupled with an interest, shall not be revoked by the death, incapacity, dissolution, winding up, bankruptcy or insolvency of such Shareholder.

## **ARTICLE 6 CONFIDENTIALITY AND NON-COMPETITION**

### **6.1 Confidentiality**

Each Shareholder acknowledges and agrees that:

- (a) in its capacity as a shareholder of the Corporation, each Shareholder has acquired, and will have access to and be entrusted with information
  - (i) concerning the names and addresses of the suppliers, customers and business contacts of the Corporation; and
  - (ii) relating generally to the Business and the affairs of the Corporation;

(all such information, whether provided in oral, written or electronic format being hereinafter collectively referred to as the "Information", provided that "Information" will not include any such information which is or become general (available to the public other than through a breach of this Agreement.)

- (b) the right to maintain confidential such Information and the right to preserve the Corporation's goodwill constitute proprietary rights which the Corporation is entitled to protect; and
- (c) disclosure of any of the Information to present or future competitors of the Corporation or to the general public would be highly detrimental to the best interests of the Corporation.

Accordingly, each Shareholder covenants and agrees with the Corporation and with each other Shareholder that:

- (i) it will not, while it (or a Controlled Entity) is a Shareholder, or at any time thereafter without the prior written authorization of the Corporation and the



other Shareholder, which may be unreasonably withheld, disclose any Information to any person or entity, nor shall it use the same for any purposes other than those of the Corporation except such of the Information as is in the public domain; and

- (ii) during the time it (or a Controlled Entity) is a Shareholder it will not anywhere within the Territory, either singly or in partnership or jointly or in conjunction with any person or Persons, whether as principal, agent, consultant, shareholder, or in any other manner whatsoever, directly or indirectly, carry on or be engaged in or concerned with or interested in, or advise, acquire an interest in, or permit his name or any part thereof to be used or employed by an association, syndicate or corporation engaged in or concerned with or interested in, an activity which requires a license under Section 57 of the OEB Act.

## **6.2           Reasonableness**

Each Shareholder agrees that if a court of competent jurisdiction shall limit, restrict or otherwise change the geographical area or time period or businesses referred to in any section of Article 6 of this Agreement or the type of business to which such Sections apply, that the limited, restricted or changed geographical area or time period or types of business determined by the said court shall, for the purposes of the said Article 6, be deemed to be the geographical area and/or time period and/or types of business referred to in the said Section, as if they were the original geographical area and time period and types of business set out herein. Each Shareholder hereby agrees that all covenants, provisions and restrictions in Article 6 are reasonable and valid and all defenses to the strict enforcement thereof are hereby waived by it.

## **6.3           Exclusion**

Notwithstanding Section 6.1(a), each Shareholder may communicate Information if the disclosure of same is required by applicable law, governmental rule or regulation, subpoena or order of any court or governmental agency, provided that it shall;

- (a) promptly notify the others of them thereof;

- (b) consult with the others of them on the advisability of taking steps to resist or narrow such requirement; and
- (c) if disclosure is required or deemed desirable, cooperate with the others of them in any attempt to obtain an order or other assurance that such Information will be accorded confidential treatment.

## **ARTICLE 7 COMPULSORY WINDING-UP**

### **7.1        Wind-Up**

At any time after November 1, 2001 any Shareholder may require, by written notice delivered to the Corporation and the other Shareholder(s), that the Corporation be dissolved and its business and affairs wound up pursuant to the provisions of Part XVI of the *Ontario Business Corporations Act*. From and after the delivery of such notice, the Shareholders shall, and shall cause their nominees on the Corporation's board of directors to, pass all such resolutions and do all such other acts and things necessary to effect such winding-up and dissolution. In such event, the then Chief Executive Officer of the Corporation shall be appointed as liquidator of the Corporation at the same remuneration as he/she is then receiving in his/her capacity as Chief Executive Officer.

## **ARTICLE 8 GENERAL CONTRACT PROVISIONS**

### **8.1        Term of Agreement**

This Agreement shall take effect on the date hereof and will terminate with respect to each party on the date that such party (or a Controlled Entity to which such party has Transferred its Shares) ceases to be a Shareholder, save and except that (i) the obligations arising under Article 6 will survive for the periods specified therein; and (ii) such party shall not be released from liability for defaults which occurred under this Agreement while it was a Shareholder.

### **8.2        Currency References**

All references to dollar amounts contained herein are to Canadian dollars.

**8.3      Implementation of this Agreement**

The parties hereto shall sign such further and other documents, cause such meetings to be held, cause such resolutions to be passed and such by-laws to be enacted, exercise their vote and do and perform (and cause to be done and performed) such further and other acts or things as may be necessary or desirable in order to give full effect to this Agreement and every part hereof. If any conflict shall appear between the articles, by-laws or resolutions of the Corporation and the provisions of this Agreement, the provisions of this Agreement shall govern and supersede the provisions of such articles, by-laws and resolutions. If there shall be any such conflict, the Shareholders shall amend the articles, by-laws and resolutions so as to ensure conformity with the terms of this Agreement.

**8.4      Endorsement on Certificates**

All share certificates representing Shares and shall be endorsed with the following memorandum:

“This certificate is subject to an amended and restated shareholders agreement dated as of October 2 /, 2002 and is transferable only in accordance with the provisions of such agreement.”

**8.5      Notices**

All notices, requests, demands or other communications required or permitted to be given by one party to another hereunder shall be given in writing by personal delivery or by registered mail, postage prepaid, or by sending the same by telex, facsimile or other similar form of communication, addressed to such other parties or delivered to such other parties as follows:

Essex	The Corporation of the Town of Essex, 33 Talbot Street, South Essex, Ontario N8M 1A8  Attention: J.E. (Jerry) Marion, Town Clerk Facsimile: (519) 776-8811
Kingsville:	The Corporation of the Town of Kingsville 2021 Division Road North, Kingsville, Ontario N9Y 2Y9  Attention: Dan DiGiovanni, C.A.O. Facsimile: (519) 733-8108
Lakeshore:	The Corporation of the Town of Lakeshore 419 Notre Dame Street, Belle River, Ontario N0R 1A0  Attention: Dan Perdu, C.A.O. Facsimile: (519) 728-9530
the Corporation:	E.L.K. Energy Inc. 172 Forest Avenue, Essex, Ontario N8M 3E4  Attention: Michael J. Audet, C.E.O. Facsimile: (519) 776-5640

or at such other address of which written notice is given and such notices, requests, demands or other communications shall be deemed to have been received when delivered, and if sent by telex, facsimile or other similar form of communication be deemed to have been received on the next Business Day after it was so sent, or, if mailed, on the fourth Business Day after the mailing thereof; provided that if any such notice, request, demand or other communication shall have been mailed and if regular mail service shall be interrupted by strikes or other irregularities on or before the fourth Business Day after the mailing thereof, such notice, request, demand or other communication shall be deemed to have been received in the ordinary course unless otherwise delivered.

#### **8.6        Time of the Essence**

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

**8.7            Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. Each of the parties to this Agreement hereby attorns to the jurisdiction of the courts of the Province of Ontario.

**8.8            Entire Agreement**

This Agreement amends, restates, and supersedes the Original Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the matters herein and its execution has not been induced by, nor do any of the parties rely upon or regard as material, any representations, warranties, conditions, promises, agreements or statements whatsoever not incorporated herein and made a part hereof. This Agreement shall not be amended, altered or qualified except by a memorandum in writing signed by the parties.

**8.9            Cumulative Rights**

Except as otherwise provided for herein, all of the rights and remedies of a party herein are intended to be separate remedies and in no way a limitation on any one or more of the remedies otherwise available to such party, such that at its election it may exercise at any time all or any combination of such remedies successively or concurrently.

**8.10          Waiver**

No party to this Agreement shall be deemed or taken to have waived any provision of this Agreement unless such waiver is in writing, and then such waiver shall be limited to the circumstances set forth in such written waiver.

**8.11          Interpretation Not Affected by Headings, etc.**

Grammatical variations of any terms defined in this Agreement shall have similar meanings; words importing the singular number shall include the plural and vice versa; words importing the masculine gender shall include the feminine and neuter genders and vice-versa. The division of this Agreement into separate Articles, Sections, Subsections, Paragraphs and

Subparagraphs, the provision of an index hereto, and the insertion of headings and references are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**8.12        No Status Created**

Subject to the terms hereof, in view of the exclusive and limited purposes of this Agreement, nothing contained in this Agreement shall be deemed in any way or for any purpose to constitute any Shareholder a partner or agent or legal representative of any other Shareholder in the conduct of any business or otherwise or a member of a joint venture or joint enterprise with any other Shareholder, or to restrict in any way the freedom of any Shareholder to conduct any business or activity whatsoever without any accountability to any other Shareholder, except as specifically provided for in Article 6 of this Agreement or unless specifically agreed to the contrary.

**8.13        Time Periods**

Any time period for the doing of any thing under this Agreement shall be deemed to include the day on which the event triggering the commencement of such time period has occurred.

**8.14        Enurement**

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

**8.15        Execution**

This Agreement may be executed in one or more counterparts. This Agreement, once executed by three or more parties, shall constitute a binding agreement among such parties, notwithstanding that it is not executed by one or more of the other parties named herein.

**[Remainder of page intentionally left blank]**

IN WITNESS WHEREOF the parties hereto have executed this Agreement under seal.

**THE CORPORATION OF THE TOWN OF  
ESSEX**

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

Name: James J. Sweeney  
Title: Mayor

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

Name: L. G. Marston  
Title: Clerk

**THE CORPORATION OF THE TOWN OF  
KINGSVILLE**

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

Name: Patrick O'Neil  
Title: Mayor

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

Name: Linda Burling  
Title: Acting Clerk

**THE CORPORATION OF THE TOWN OF  
LAKESHORE**

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

Name: Pat Mares  
Title: Mayor

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

Name: Andrea Rivest  
Title: CLERK

**E.L.K. ENERGY INC.**

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

Name: Wilber R. Beetz  
Title: Chair

**SEC INTERROGATORY #5**

5. Please confirm that there are no understandings, expectations, promises, or other discussions between the Applicant or the utility, and either of the Sellers, with respect to the rates to be charged post-closing to the Sellers for general service, street lighting, or other electricity distribution services.

**RESPONSE**

Confirmed. There have been no discussions in this regard.



**SEC INTERROGATORY #6**

6. **Please provide a copy of the Powerpoint presentation by Donna Hunter presented August 6th at the Essex meeting, as well as any presentations by or on behalf of the Applicant or the utility to the councils of the Sellers in the course of getting their approvals to the transactions.**

**RESPONSE**

Please see attached.



*The Corporation  
of the  
Town of Essex*

**2008**

# Purchase of ELK Shares



## Incorporation of E.L.K.

- E.L.K. incorporated January 6, 2000 with merger of—
  - ❑ Hydro Electric Commission of the Town of Essex
  - ❑ Corporation of the Town of Lakeshore Hydro-Electric Commission
  - ❑ Kingsville Hydro-Electric Commission

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# HISTORY.

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## Current Ownership of E.L.K.

- Ownership based on relative asset value brought into E.L.K. by three former hydro-electric commissions as follows—

		Book Value of Equity	
		January 6, 2000	December 31, 2007 <sup>1</sup>
	% Ownership	(millions of dollars)	
Town of Essex	38%	\$4.3	\$5.2
Town of Kingsville	38%	4.3	5.2
Town of Lakeshore	24%	2.7	3.3
	100%	\$11.3	\$13.7

<sup>1</sup>Net of dividends declared in 2002, 2006 & 2007 totaling \$7.4 million

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# HISTORY.

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### Shareholders' Loans to E.L.K.

- Dividend declared in 2002 of \$6.5 million converted to Shareholders' Loans bearing interest at 7.25% payable annually
- Principal repayments of \$650,000/year made annually from 2003 to 2006
- In 2007 dividend paid to shareholders in lieu of principal repayment

	Balance O/S Dec. 31, 2002	Balance O/S Aug. 6, 2008
	(millions of dollars)	
Essex	\$2.5	\$1.5
Kingsville	\$2.5	\$1.5
Lakeshore	\$1.5	\$0.9
	\$6.5	\$3.9

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# HISTORY.

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## E.L.K.'s Net Earnings – 2003 to 2007

	2003	2004	2005	2006	2007
	<i>(thousands of dollars)</i>				
Service revenue (net)	\$ 5,140	\$ 3,958	\$ 3,492	\$ 3,795	\$ 3,499
Other operating revenue	584	513	615	775	836
Total revenue	5,724	4,471	4,107	4,570	4,335
Total expenditures	(2,941)	(2,729)	(2,781)	(2,786)	(2,997)
Net earnings before income taxes	2,783	1,742	1,326	1,784	1,338
PIL of income taxes	(693)	(414)	(171)	(580)	(595)
Net earnings	\$ 2,090	\$ 1,328	\$ 1,155	\$ 1,204	\$ 743
Return on equity	20.6%	11.6%	9.1%	9.0%	5.4%

**Average Net Earnings 2003 to 2007 - \$1.3 million**

# HISTORY.

## Efficiency Ranking of Ontario Electricity Distributors

- Benchmarking evaluations divide industry into 3 efficiency cohorts which will drive future rate increases
- Evaluations of operations, maintenance & administrative costs based on 2005 to 2007 data

	Performance Rankings (out of 83)	Efficiency Cohort (1 to 3)
Chatham-Kent Energy <sup>1</sup>	2	1
ELK	5	1
Essex Powerlines <sup>1</sup>	72	3
ENWIN Powerlines <sup>1</sup>	77	3
Erie Thames Powerlines <sup>1</sup>	80	3

<sup>1</sup> Represents all companies that responded to RFP

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# HISTORY.

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## Lakeshore/Kingsville R.F.P. Process

- Lakeshore issues Request for Proposal (“RFP”) to sell its 24% interest in ELK
- Closing date for Lakeshore’s RFP May 14, 2008
- Kingsville decides to sell its 38% interest in E.L.K. and adds to Lakeshore’s RFP
- Closing date for combined RFP extended to May 30, 2008
- Kingsville and Lakeshore Councils accept proposal from Chatham-Kent Energy and issue Binding Letter of Intent dated June 30, 2008

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# LAKESHORE & KINGSVILLE – R.F.P.

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**Cash Offer to Purchase from Chatham-Kent Energy**

<b>Book value of 62% Equity in E.L.K. – 12/31/07</b>	<b>\$8,517,413</b>
<b>Shareholders' Loans Outstanding – 12/31/07</b>	<b>2,418,000</b>
<b>Premium on purchase</b>	<b>1,837,827</b>
<b>Total purchase price</b>	<b>\$12,773,240</b>

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**LAKESHORE & KINGSVILLE – R.F.P.**

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**Non-Cash Conditions Proposed by Chatham-Kent Energy**

<b>1.</b>	<b>No individual job losses or relocations for current ELK employees</b>
<b>2.</b>	<b>Service Depot in Essex be maintained</b>
<b>3.</b>	<b>Maintain distinct rates until required by legislation &amp; phase in harmonization over maximum allowable time period</b>
<b>4.</b>	<b>Maintain ELK's existing capital forecast</b>
<b>5.</b>	<b>Board representation— - ELK as separate entity – 2 local candidates nominated by L/K - Amalgamation with CKE – 1 local candidate nominated by L/K</b>
<b>6.</b>	<b>Transfer of property or availability of property owned by ELK to Kingsville as municipal parking lot</b>

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**LAKESHORE & KINGSVILLE – R.F.P.**

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**Town of Essex – Right of First Refusal (“ROFR”)**

Shareholders’ Agreement dated October 21<sup>st</sup>, 2002 provides that—

*“If any Shareholder receives a Third Party Offer at any time after two (2) years from the date hereof for the purchase of all of its Shares which the Selling Shareholder wishes to accept, then the other Shareholders shall have an option to purchase the Subject Interest on the terms and conditions contained in the Third Party Offer...”*

**Key Dates**

Notice from Selling Shareholders – July 10, 2008

Notice of Election to Exercise ROFR – August 11, 2008

Transfer of Ownership – September 11, 2008

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**TOWN OF ESSEX PROCESS.**

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## **Consultative Process**

### **Meetings with—**

**ELK's senior administration**

**ELK's auditors (KPMG)**

**Town's auditors (BDO Dunwoody)**

**TD Canada Trust**

**Chatham-Kent Energy**

### **In consultation with—**

**Ogilvy Renault LLP**

**Pearsall & Marshall LLP**

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# **TOWN OF ESSEX PROCESS.**

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**Mechanics of Purchasing Kingsville & Lakeshore's Shares**

- ☐ Pay out and assume Kingsville & Lakeshore's Shareholders' Loans as investment for Landfill Reserve - \$2,418,000
- ☐ Utilize Town's reserves/general account or bridge financing to pay remainder of total purchase price on a temporary basis - \$10,355,240
- ☐ Appoint new ELK Board and pass resolution authorizing borrowing to repay Town of Essex, determined as follows—

Total Cost	\$12,773,240
Less Shareholder Loan	(2,418,000)
Allowance for Legal, etc.	<u>244,760</u>
Total to be Repaid	\$10,600,000

- ☐ ELK Board declares dividend to the Town of Essex - \$10,600,000
- ☐ No property tax impact for Town of Essex residents

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**100% OWNERSHIP.**

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## Details – Pay Out & Assume Kingsville & Lakeshore’s Shareholder Loans

- ☐ Landfill Reserve currently earning 3.01%
- ☐ ELK Shareholders’ Loans paying 7.25%
- ☐ Impact on annual interest earnings—

	Bank Deposit @ 3.01%	Shareholder’s Loan @ 7.25% <sup>1</sup>
Original Amount	\$2,418,000	\$2,418,000
Annual Interest	\$73,000	\$175,000
Increase in Earnings		\$102,000

<sup>1</sup> Assumes reinvestment of interest paid out annually by ELK as a bank deposit earning 3.01%

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# 100% OWNERSHIP.

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**Details – ELK Borrowing to Repay Town of Essex**

**Term Sheet provided by ELK’s bank—**

<b>Term Facility</b>	<b>\$8,000,000</b>
<b>Revolving Facility<sup>1</sup></b>	<b>3,000,000</b>
<b>Total</b>	<b>\$11,000,000</b>
<b>Payment to Town—</b>	
<b>From Loan Proceeds</b>	<b>\$8,000,000</b>
<b>From ELK Cash</b>	<b>2,600,000</b>
<b>Total</b>	<b>\$10,600,000</b>

<sup>1</sup> Credit facility to finance capital expenditures (ie. Smart Meters)

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**100% OWNERSHIP.**

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## Details – Impact on ELK's 2008 Pro Forma Balance Sheet

- ☐ Total Assets reduced by \$2.1 million, representing utilization of \$2.6 million in cash balances to pay Dividend, partially offset by estimated earnings for 2008
- ☐ Total Liabilities and Shareholders' Equity reduced by \$2.1 million due to—

New Bank Loan (increase in Liabilities)	\$ 8.0 million
Dividend to Town of Essex (reduction in Shareholders' Equity)	\$(10.6) million
Estimated 2008 Net Earnings (increase in Shareholders' Equity)	\$ 0.5 million

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**100% OWNERSHIP.**

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### **Details – Impact on ELK's Debt to Equity Ratio**

- Debt to Equity Ratio based on 2008 Pro Forma Statements will be approximately 76/24
- Debt to Equity Ratio currently approved by OEB is 53/47, moving towards recovery at 60/40
- Current rates will not recover full debt servicing costs—balance of debt servicing costs will impact net earnings
- Pro Forma Financial Statements assume Committed Facility for 3 years based on interest rate of 4% (BA's) & no principal repayments

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**100% OWNERSHIP.**

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**Details – Impact on ELK's Statement of Earnings**

- ❑ Net earnings reduced by \$0.2 million as a result of—
  - Increase in Interest Expense of \$0.3 million
  - Decrease in Income Taxes of \$0.1 million (interest tax deductible)
- ❑ Assumes identical level of Revenues and Expenditures as 2007

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**100% OWNERSHIP.**

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## Details – Impact on Essex’s Share of Earnings/Interest

	<b>Actual 2007 (38% Ownership)</b>	<b>Pro-Forma 2008 (100% Ownership)</b>
	<b>(millions of dollars)</b>	
<b>Essex share of net earnings</b>	<b>\$0.3</b>	<b>\$0.5</b>
<b>Interest on Shareholders’ loans<sup>1</sup></b>	<b>0.1</b>	<b>0.2</b>
<b>Total earnings &amp; interest</b>	<b>\$0.4</b>	<b>\$0.7</b>

<sup>1</sup>Interest in 2008 based on \$3.9 million Shareholder Loan for a part year only; full year’s interest for subsequent years \$283,000

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# 100% OWNERSHIP.

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### Mechanics of Entering into 50/50 Partnership with CKE

- ❑ Enter into Letter of Intent with Chatham-Kent Energy (“CKE”) to purchase additional 12% of ELK
- ❑ Acquire 12% of ELK from CKE at a cost of \$2,472,240 as follows—

50% of Shareholders’ Loans	\$1,950,000
Less: Current Shareholder Loan	(1,482,000)
Cost of 12% Share in Shareholder Loan	468,000
12% of Shareholders’ Equity at 12/31/07	1,648,532
12% of Premium Paid by CKE	355,708
Total Cost	\$2,472,240

- ❑ Appoint new ELK Board and pass resolution authorizing borrowing of \$5,000,000
- ❑ ELK Board declares dividend of \$5,000,000, shared equally between CKE and Essex

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## 50% OWNERSHIP WITH CKE.

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**Details – Assume Additional 12% of Shareholders’ Loans Using Landfill Reserve**

- ☐ Landfill Reserve currently earning 3.01%
- ☐ ELK Shareholders’ Loans paying 7.25%
- ☐ Impact on annual interest earnings to landfill reserve—

	Bank Deposit @ 3.01%	Shareholder’s Loan @ 7.25% <sup>1</sup>
Original Amount	\$468,000	\$468,000
Annual Interest	\$14,000	\$34,000
Increase in Earnings		\$20,000

<sup>1</sup>Assumes reinvestment of interest paid out annually by ELK as a bank deposit earning 3.01%

**50% OWNERSHIP WITH CKE.**

### Details – Impact on ELK’s Balance Sheet

- ❑ Total Assets increased by \$0.6 million, representing estimated increase in cash resulting from 2008 net earnings
- ❑ Total Liabilities and Shareholders’ Equity increased by \$0.6 million due to—

New Bank Loan (increase in Liabilities)	\$ 5.0 million
Dividend to Essex/CKE (reduction in Shareholders’ Equity)	\$(5.0) million
Estimated 2008 Net Earnings (increase in Shareholders’ Equity)	\$ 0.6 million

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**50% OWNERSHIP WITH CKE.**

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### **Details – Impact on ELK's Debt to Equity Ratio**

- Debt to Equity Ratio based on 2008 Pro Forma Statements will be approximately 47/53 assuming no distribution of 2008 earnings
- Debt to Equity Ratio currently approved by OEB is 53/47, moving towards recovery at 60/40
- Pro Forma Financial Statements assume Loan based on interest of 4% & no principal repayments

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**50% OWNERSHIP WITH CKE.**

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**Details – Impact on ELK’s Statement of Earnings**

- ❑ Net earnings reduced by \$0.1 million as a result of—
  - Increase in Interest Expense of \$0.2 million
  - Decrease in Payments in Lieu of Income Taxes of \$0.1 million (interest tax deductible)
- ❑ Assumes identical level of Revenues and Expenditures as 2007

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**50% OWNERSHIP WITH CKE.**

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**Details – Impact on Essex’s Share of Earnings/Interest**

	<b>Actual 2007 (38% Ownership)</b>	<b>Pro-Forma 2008 (50% Ownership)</b>
	<b>(millions of dollars)</b>	
<b>Essex share of net earnings</b>	<b>\$0.3</b>	<b>\$0.3</b>
<b>Interest on Shareholders’ loans<sup>1</sup></b>	<b>0.1</b>	<b>0.1</b>
<b>Total earnings &amp; interest</b>	<b>\$0.4</b>	<b>\$0.4</b>

<sup>1</sup>Interest in 2008 based on \$1.950 million Shareholder Loan for a part year only; full year’s interest for subsequent years \$141,000

**50% OWNERSHIP WITH CKE.**

**Details – Cost to Town of Essex**

<b>Payment to CKE</b>	<b>\$2,472,240</b>
<b>Less Addt'l Shareholders' Loan</b>	<b>(468,000)</b>
<b>Net Cost</b>	<b>2,004,240</b>
<b>Less special dividend</b>	<b>(2,500,000)</b>
<b>Net surplus on transaction</b>	<b>\$495,760</b>

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**50% OWNERSHIP WITH CKE.**

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## Details – Comparison of Impact on Essex’s Share of Earnings/Interest

	Actual 2007	Essex 100% Ownership Pro-Forma 2008	Essex 50% Ownership Pro-Forma 2008
	(millions of dollars)		
Essex share of net earnings	\$0.3	\$0.5	\$0.3
Interest on Shareholders’ loans <sup>1</sup>	0.1	0.2	0.1
Total earnings & interest	\$0.4	\$0.7	\$0.4

<sup>1</sup>Interest in 2008 based on \$3.9 million Shareholder Loan for a part year only (Essex at 100%) and \$1.950 million (Essex 50/50); full year’s interest for subsequent years \$282,750 and \$141,375, respectively

# COMPARISON – 100% vs. 50%.

## Action Required

### August 6, 2008

- Council decision on preferred alternative & appropriate by-law

### August 6 – 11, 2008 (pre-offer)

- Issue press release of intention to buy, subject to completion of due diligence by August 11<sup>th</sup>
- Legal team to prepare offer to purchase
- Solidify financing arrangements
- Issue cheque to Town of Lakeshore for \$50,000 deposit
- Legal team to recommend deal structure and corporate structure
- Staff to prepare necessary by-laws and resolutions with legal team ensuring conformity with applicable legislation
- Offer to purchase delivered to Lakeshore & Kingsville on August 11

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# NEXT STEPS – PURCHASE 100%.

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## Action Required (Cont'd.)

### August 12 – September 11, 2008 (pre-closing)

- Negotiate final agreement of purchase and sale
- Council to approve various aspects of corporate structure, Board structure, draft by-laws, etc. prepared by legal team and staff
- Appoint Board by September 11
- Board meets immediately after closing to pass borrowing bylaws, etc.
- September 11 – close deal if approved by OEB, otherwise close in escrow

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# NEXT STEPS – PURCHASE 100%.

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## Action Required

### August 6, 2008

- Council decision on preferred alternative & appropriate by-law

### August 7 – October 8, 2008

- Enter into Binding Letter of Intent to purchase 12% of ELK's shares with CKE (prior to formally advising Kingsville & Lakeshore of intention to forego buy)
- Issue press release of intention to forego buy
- Staff to prepare necessary by-laws and resolutions with legal team ensuring conformity with applicable legislation
- Council may need to meet before October 8<sup>th</sup> to pass resolution or by-law
- Town and CKE collaborate to appoint Board

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# NEXT STEPS – PURCHASE 50%.

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## **Recommendation**

**Based on previous meetings and discussions with Council—**

- ✓ Exercise “Right of First Refusal” to purchase Kingsville’s and Lakeshores combined 62% ownership in ELK**
- ✓ Retain 100% ownership as a long-term investment**
- ✓ Forego dividends in the short- to medium-term to allow ELK to reduce overall borrowings**

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# **RECOMMENDATION.**

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**Questions with Respect to the Financing and Related Transactions****SEC INTERROGATORY #7**

7. Please explain why \$8 million of the purchase price is being borrowed by the regulated entity for the purchase of its own shares by one of its shareholders. Please advise how much, if any, of the \$3 million #2 credit facility, stated to be for capex, will be used directly or indirectly to support the purchase or any actions that arise as a result of the purchase. Please advise the expected interest rate on any fixed rate term loans included in the credit.

**RESPONSE**

\$8 million of the purchase price is not being borrowed by the regulated entity for the purchase of its own shares by one of its shareholders. The Purchaser has in fact paid the purchase price for the shares into escrow in accordance with the terms and conditions of an Escrow Agreement between the Sellers, the Purchaser and Borden Ladner Gervais as Escrow Agent. The funds paid into escrow were borrowed by Essex. As described in the Application, it is anticipated that after the closing of the transaction, the Applicant will request Energy to pay a dividend and Energy has arranged credit facilities with the Toronto-Dominion Bank to pay a dividend to the Applicant.

It is not intended that any of the \$3 million #2 credit facility will be used directly or indirectly to support the purchase or any actions that arise as a result of the purchase. The \$3 million #2 credit facility will be used for smart meters. This credit facility is only a standby credit facility to be used for smart meter capex in the event that internal cash flows are insufficient for that purpose (which they are not anticipated to be).



## SEC INTERROGATORY #8

8. Please advise whether the existing promissory notes of Kingsville and Lakeshore, which are being transferred to Essex, will continue to be outstanding after the purchase, and if so for how long. If they are to continue to be outstanding, please provide copies of those notes. Please advise any changes to the interest rate on the promissory notes, or on the interest rate to be included in rates, resulting from the transfer of the notes. If they are to remain outstanding, please advise why they were not replaced by bank financing as part of the overall financing transaction.

**RESPONSE**

The existing promissory notes of Kingsville and Lakeshore (attached) which are being transferred to the Applicant will continue to be outstanding after the purchase and will be held by the Applicant as part of its shareholder loan to Energy together with the Applicant's existing promissory note. Attached are copies of the promissory notes. The shareholder loan will be maintained for such period of time as may be permitted under the *Municipal Act* (Ontario). There is not anticipated to be any changes to the interest rate on the promissory notes or on the interest rate to be included in rates resulting from the transfer of the promissory notes. The promissory notes were not replaced by bank financing as part of the overall financing transaction as the transfer of the promissory notes does not represent or constitute the incurring of any new indebtedness by Energy. As a result of the transfer of the promissory notes there will be no net change in the principal amount or interest rate payable on shareholder loans by Energy.

## DEMAND PROMISSORY NOTE

Cdn.\$2,470,000.00

Date: October 23, 2002

The undersigned, for value received, hereby acknowledges itself indebted to and promises to pay on demand therefor to or to the order of The Corporation of the Town of Kingsville (the "Lender"), at 2021 Division Road North, Kingsville, Ontario, N9Y 2Y9, or such other address within the Province of Ontario as the Lender may specify from time to time, the principal sum of Two Million, Four Hundred and Seventy-Thousand Dollars and 00/100 Cents (\$2,470,000.00) of lawful money of Canada, and to pay simple interest on such principal sum outstanding from time to time at the fixed rate of 7.25% per annum, calculated yearly from the date of this promissory note and to pay interest on amounts in default hereunder both before and after judgement at the same rate.

Subject to the provisions of the Shareholders Agreement (as defined below), interest shall be paid on each anniversary of the date of this promissory note (provided that if any such day is not a day on which banks are open for business in Windsor, Ontario, on the immediately following day on which banks are open for business in Windsor, Ontario) in respect of which such interest has accrued.

Demand for payment hereunder shall be made by notice in writing to the undersigned at the last known address of the undersigned setting out details of the amount outstanding and the appropriate method of payment. Any amounts owing hereunder shall be due and payable seven (7) days after demand therefor. Upon demand being made hereunder, any interest then accrued whether or not due and payable shall be deemed to be due and payable.

The undersigned hereby waives diligence, presentment for payment, notice of non-payment, and notice of protest of this promissory note, and all other notices in connection with the delivery, acceptance, performance, or enforcement of, or default under this promissory note, and waives diligence in collection on bringing suit with respect to this promissory note.

This promissory note shall not be assignable, transferable and negotiable by the Lender in whole or in part, except in accordance with the terms and conditions of that certain amended and restated shareholders agreement governing the business and affairs of the undersigned dated October 21, 2002 (the "Shareholders Agreement").

Demand may be made under this promissory note, and payments shall be made under this promissory note, only in accordance with sections 2.10 and 2.11 of the Shareholders Agreement.

This promissory note and every part hereof shall be binding upon the undersigned and its successors and permitted assigns, and shall enure to the benefit of, and be enforceable by, the Lender and any of its successors and permitted assigns.

The undersigned hereby agrees to pay any and all costs and expenses, including legal costs on a solicitor and his own client basis, paid or incurred by the Lender in connection with the enforcement of a default under this promissory note, including without limitation, collecting amounts payable under this promissory note after they shall become due and payable.

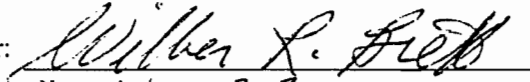
Kingsville

This promissory note shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The undersigned hereby irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario with respect to any matter arising under or related to this promissory note.

DATED this 21<sup>st</sup> day of October, 2002.

**E.L.K. ENERGY INC.**

Per:

A handwritten signature in black ink, appearing to read "Wilber R. Brett", is written over a horizontal line.

Name: WILBER R. BRETTE

Title: CHAIR

## DEMAND PROMISSORY NOTE

Cdn.\$1,560,000.00

Date: October 23, 2002

The undersigned, for value received, hereby acknowledges itself indebted to and promises to pay on demand therefor to or to the order of The Corporation of the Town of Lakeshore (the "Lender"), at 419 Notre Dame Street, Belle River, Ontario, N0R 1A0, or such other address within the Province of Ontario as the Lender may specify from time to time, the principal sum of One Million, Five Hundred and Sixty-Thousand Dollars and 00/100 Cents (\$1,560,000.00) of lawful money of Canada, and to pay simple interest on such principal sum outstanding from time to time at the fixed rate of 7.25% per annum, calculated yearly from the date of this promissory note and to pay interest on amounts in default hereunder both before and after judgement at the same rate.

Subject to the provisions of the Shareholders Agreement (as defined below), interest shall be paid on each anniversary of the date of this promissory note (provided that if any such day is not a day on which banks are open for business in Windsor, Ontario, on the immediately following day on which banks are open for business in Windsor, Ontario) in respect of which such interest has accrued.

Demand for payment hereunder shall be made by notice in writing to the undersigned at the last known address of the undersigned setting out details of the amount outstanding and the appropriate method of payment. Any amounts owing hereunder shall be due and payable seven (7) days after demand therefor. Upon demand being made hereunder, any interest then accrued whether or not due and payable shall be deemed to be due and payable.

The undersigned hereby waives diligence, presentment for payment, notice of non-payment, and notice of protest of this promissory note, and all other notices in connection with the delivery, acceptance, performance, or enforcement of, or default under this promissory note, and waives diligence in collection on bringing suit with respect to this promissory note.

This promissory note shall not be assignable, transferable and negotiable by the Lender in whole or in part, except in accordance with the terms and conditions of that certain amended and restated shareholders agreement governing the business and affairs of the undersigned dated October 21, 2002 (the "Shareholders Agreement").

Demand may be made under this promissory note, and payments shall be made under this promissory note, only in accordance with sections 2.10 and 2.11 of the Shareholders Agreement.

This promissory note and every part hereof shall be binding upon the undersigned and its successors and permitted assigns, and shall enure to the benefit of, and be enforceable by, the Lender and any of its successors and permitted assigns.

The undersigned hereby agrees to pay any and all costs and expenses, including legal costs on a solicitor and his own client basis, paid or incurred by the Lender in connection with the enforcement of a default under this promissory note, including without limitation, collecting amounts payable under this promissory note after they shall become due and payable.

This promissory note shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The undersigned hereby irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario with respect to any matter arising under or related to this promissory note.

DATED this 21<sup>st</sup> day of October, 2002.

**E.L.K. ENERGY INC.**

Per: Wilber R. Brett  
Name: Wilber R. Brett  
Title: CHAIR

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**SEC INTERROGATORY #9**

9. **Please describe in detail all steps relating to the purchase and financing transactions that result in the proceeds of the financing being used by the shareholder for the purchase. Please include all dividends, capital inflows and outflows, and transfers of assets that have an impact on the result. Please provide a copy of the description of the transaction that was provided to the Bank in support of the application for credit.**

**RESPONSE**

Please see PowerPoint presentation provided in response to SEC Interrogatory #6. No formal written description of the transaction was provided to the Bank.

**SEC INTERROGATORY #10**

10. **Please provide a detailed report of the post-closing capitalization and capital structure of the utility, and show how each of the expected steps leads to that final result. Please provide a pro forma post-closing balance sheet and income statement showing those changes, and showing any changes to the actual cost of capital resulting from the purchase, the financing, and related steps. Please describe any tax impacts (both actual and deemed) resulting from the changes in the capital structure.**

**RESPONSE**

Please see PowerPoint presentation provided in response to SEC Interrogatory #6, and see Tab E of the MAAD Application.

**SEC INTERROGATORY #11**

11. **Please provide a copy of the three-year business plan referred to on page 4 of the Bank commitment letter.**

**RESPONSE**

Essex provided the capital plan found at Tab H of the MAAD application, as well as Energy's budget for 2008.